SLS 18RS-1023 ORIGINAL

2018 Regular Session

SENATE BILL NO. 466

BY SENATOR PRICE

LEASES. Provides relative to security deposits for residential leases. (1/1/19)

1	AN ACT
2	To amend and reenact Part IV of Chapter 1 of Title IX of Title 9 of the Revised Statutes of
3	1950, to be comprised of R.S. 9:3251 through 3254, relative to residential leases; to
4	provide for the return of a security deposit; to provide for the right of retention; to
5	provide time periods for the return of a security deposit; to provide for venue; to
6	provide for damages and attorney fees; to provide with respect to the waiver of
7	rights; and to provide for related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. Part IV of Chapter 1 of Title IX of Title 9 of the Revised Statutes of 1950,
10	comprised of R.S. 9:3251 through 3254, is hereby amended and reenacted to read as follows:
11	PART IV. RESIDENTIAL LESSEE'S SECURITY DEPOSIT
12	§3251. Lessee's deposit to secure lease; retention by lessor; conveyance of leased
13	premises; itemized statement by lessor Return of deposit; right of
14	<u>retention</u>
15	A. Any advance or deposit of money furnished by a tenant or lessee to a
16	landlord or lessor in a residential lease to secure the performance of any part of a
17	written or oral lease or rental agreement obligations of the lessee shall be returned

to the tenant or lessee of residential or dwelling premises within one month after the lease shall terminate in accordance with R.S. 9:3252, except that the landlord or lessor may retain all or any portion of the advance or security deposit which that is reasonably necessary to remedy a default of the tenant or to remedy unreasonable wear to the premises the lessee's failure to perform. If any portion of an advance or deposit is retained, by a landlord or lessor, he the lessor shall forward furnish to the tenant or lessee, within one month after the date the tenancy terminates, an a written itemized statement accounting for the proceeds which are amount retained and giving the reasons therefor for the retention. The tenant shall furnish the lessor a forwarding address at the termination of the lease, to which such statements may be sent.

B. In the event of a transfer of the lessor's interest in the leased premises during the term of a lease, the transferor shall also transfer to his successor in interest the sum deposited as security for performance of the lease and the transferor shall then be relieved of further liability with respect to the security deposit. The transferee shall be responsible for the return of the lessee's deposit at the termination of the lease, as set forth in Subsection A of this Section. The lessee shall furnish the lessor an address to which the security deposit and any statements shall be sent.

A lessee who fails to furnish an address to the lessor does not forfeit the right to the return of the security deposit or to any written itemized statements.

C. Paragraph A of this Section shall not apply when the tenant abandons the premises, either without giving notice as required or prior to the termination of the lease. If the lessee fails to bring an action for the return of the security deposit within three years after the date of the termination of the lease, the security deposit is deemed abandoned and becomes the property of the lessor.

§3251.1. Security deposit; security interest

A. The lessor's interest in the security deposit is a security interest under the Uniform Commercial Code. Nevertheless, R.S. 10:9-207(c)(2) shall not apply to the security deposit. Unless otherwise required by law or by agreement of the

parties, the lessor is not required to hold the security deposit in a separate account or to remit to the lessee any interest earned on the deposit.

- B. The claim of a lessee to a security deposit held in a deposit account maintained by the lessor with a financial institution is preferred to that of the lessor's creditors, except that the lessee's claim is subject to the rights of the following persons:
- (1) The financial institution with which the deposit account is maintained.
- (2) A transferee of funds from the deposit account, unless the transferee acts in collusion with the lessor in violating the rights of the lessee to the security deposit.
- (3) A secured party holding a security interest perfected by control of the deposit account in accordance with R.S. 10:9-104.
- §3252. Damages; venue Return of security deposit; time periods

A. The willful failure to comply with R.S. 9:3251 shall give the tenant or lessee the right to recover actual damages or two hundred dollars, whichever is greater, from the landlord or lessor, or from the lessor's successor in interest. Failure to remit within thirty days after written demand for a refund shall constitute willful failure. The lessor shall return the security deposit and furnish a written itemized statement accounting for any retention within one month after the date of termination of the lease. If the lessee remains in possession of the premises after the termination of the lease, the period within which the lessor shall return the security deposit and furnish any statement does not begin to run until the lessee has relinquished possession to the lessor.

B. An action for the recovery of such damages may be brought in the parish of the lessor's domicile or in the parish where the property is situated. If the lessee has not furnished an address to the lessor for the return of the security deposit, the period within which the lessor shall return the security deposit and furnish any statement does not begin to run until the address is furnished.

1 §3253. Costs and attorney's fees Return of security deposit; damages; venue; 2 attorney fees A. If the lessor fails to comply with R.S. 9:3252, the court shall order the 3 return of any portion of the security deposit wrongfully retained and shall 4 award damages in the amount of three hundred dollars or twice the amount of 5 the portion of the security deposit wrongfully retained, whichever is greater. If 6 7 the court determines that the lessee knew or should have known that the 8 security deposit is not owed or if the lessor's failure to perform was technical in 9 nature, the court may exercise its discretion to refuse an award of damages. 10 B. An action for the recovery of damages may be brought in the parish 11 of the lessor's domicile or in the parish where the premises are situated. 12 C. In an action brought under R.S. 9:3252 for the return of the lessee's 13 security deposit, the court may in its discretion award costs and attorney's attorney fees to the prevailing party. 14 §3254. Waiver of tenant's rights prohibited 15 16 Any waiver of the right clause that, in advance, excludes or limits the rights of a tenant lessee under this part Part shall be absolutely null and void. 17 18 Section 2. The provisions of this Act shall become effective January 1, 2019. The original instrument and the following digest, which constitutes no part

of the legislative instrument, were prepared by Jerry J. Guillot.

DIGEST

SB 466 Original

2018 Regular Session

Price

Present law (R.S. 9:3251) provides for the return of a security deposit within one month after the termination of a lease and allows for the retention of a portion of the deposit to remedy any default. Proposed law retains these provisions but clarifies language.

Proposed law provides that if the lessee fails to provide an address for the return of the deposit, he does not forfeit his right to the return.

Present law (R.S. 9:3251) provides for the transfer of the deposit to a successor in interest of the leased premises. Proposed law deletes these provisions.

Proposed law provides for the abandonment of the security deposit if not claimed within three years.

Proposed law (R.S. 9:3251.1) provides that a security deposit is a security interest, but the lessor is not required to hold the deposit in a separate account or pay interest to the lessee

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Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions.

and proposed law sets forth the ranking of a claim to the deposit.

<u>Present law</u> (R.S. 9:3252) provides for venue and damages for the willful failure to comply with statutory requirements to return the deposit. Proposed law retains the venue provision.

<u>Proposed law</u> provides the time period for the return of the deposit and requires a written statement accounting for the retention of any funds.

<u>Present law</u> (R.S. 9:3253) provides for costs and attorney fees. <u>Proposed law</u> retains these provisions and provides for the damages which may be awarded for a lessor's failure to comply with present law.

<u>Proposed law</u> provides that damages may equal \$300 or twice the amount of the portion of the deposit wrongfully retained, whichever is greater. <u>Proposed law</u> also gives the court discretion in the awarding of damages for technical violations.

<u>Present law</u> (R.S. 9:3254) provides for the nullity of any waiver of a lessee's rights. Proposed law retains these provisions but modernizes the terminology.

Effective on January 1, 2019.

(Amends R.S. 9:3251-3254)