



New Landlord-Tenant Act Makes It Easier for Legal Services and VLP Lawyers to Help Low-Income Tenants

BY LAWRENCE F. GARDELLA

Sally Tenant¹ is in the fifth month of a 12-month lease. Under the terms of her lease, rent was due on January 1 and in default if not paid by the fifth. As of January 7, she has not paid it. She had to use the rent money to pay for space heaters to make her home warm enough for her two children who have asthma. The cold temperatures in the apartment have triggered more frequent asthma attacks. Her lease provides for automatic termination upon default. When she gets her check on January 9, she will be able to pay the rent. Her landlord does not want to wait, however, because he is tired of her complaining about the heater not working properly.

If Ms. Tenant loses this apartment, she will end up forfeiting her security deposit. The check that she could use for rent might pay rent somewhere else, but it would not allow her to pay a security deposit at a new apartment and to pay the cost of moving. Being unable to cover all these unanticipated costs would put her at risk of being homeless at least temporarily if she had to move right away, which would force her to seek assistance from private charities and taxpayer-supported services. A precipitous move out of the school district would disrupt her children's education. And if she took out a title pawn or payday loan to cover the costs, the phenomenally high interest rates could easily cause her to lose her car and free fall into hopeless debt. So, she really has to try and keep this apartment.

On January 8, Ms. Tenant's landlord sends her a ten-day demand letter. On the 9th, she offers the rent, but he refuses to accept it. He files a Sanderson Act eviction. She goes to a Legal Services or VLP lawyer for help. The lawyer files her counteraffidavit and starts negotiating with the landlord. The lawyer learns that the notice was proper, and that Ms. Tenant will lose if she goes to court. Although she does not like her landlord and would like more dependable heat, she really loves the apartment and does not want to move. Her lawyer is able to negotiate a settlement that allows Ms. Tenant to remain—but only if she pays the rent, plus a late fee, plus court costs, plus a fee for the landlord's lawyer, and she signs an addendum to her lease providing that she will not have her boyfriend visit her at her apartment. The landlord holds all the bargaining chips.

Sally Tenant's cousin, Lester Lessee², also rents from the same landlord. He signed the same lease on the same day as Ms. Tenant. The lease prohibits all pets. Over Christmas, Lester got a dog. His landlord found out and sent a lease termination letter.

Mr. Lessee, too, got help from a Legal Services or VLP lawyer and was able to stay—but only after getting rid of his dog and paying court costs and an attorney's fee.

The leases for both Mr. Lessee and Ms. Tenant end in July 2007. They both sign new leases. (Since they are signing after the effective date of the Uniform Residential Landlord and Tenant Act, the new leases are subject to that law.) Ms. Tenant takes in a stray cat in September. Mr. Lessee cannot pay his September rent on time. Their landlord sends them both notices. Five days later Mr. Lessee comes up with the rent money, and Ms. Tenant gives the cat away to her mother. No matter how much their landlord may now dislike them and want them out, he cannot evict either Mr. Lessee or Ms. Tenant. Both have the right to cure their defaults during the notice period—and both have. And if the landlord hired a lawyer to send the termination notice, the landlord cannot make either one pay any of that lawyer's fees. If the landlord rejects Mr. Lessee's late rent because of his failure to pay lawyer's fees (or for any other reason) and files an eviction action against either Mr. Lessee or Ms. Tenant, a lawyer would be able to help both tenants prevail.

Once they have signed a lease or lease renewal after January 1, 2007, Mr. Lessee and Ms. Tenant are protected by *Alabama Code* §35-9A-421, which gives them the right to remedy any breach of the lease, and by *Alabama Code* §35-9A-163(a)(3), which prohibits lease provisions requiring tenants to pay a landlord's attorney's fees. Indeed, if the landlord uses such prohibited lease provisions in a lease signed after January 1, 2008, he will become liable to his tenants for one month's rent plus attorney's fees. *Alabama Code* §35-9A-163(b).

These are only a few of the provisions of Alabama's new Uniform Residential Landlord and Tenant Act that afford low-income tenants more rights and lawyers representing these tenants more opportunities to help them. Others include a duty for the landlord to make repairs needed to maintain the premises in a habitable condition³, and the related right of a tenant either to terminate the lease and move or to obtain injunctive relief if a landlord fails after demand to make needed repairs.⁴ These give a tenant's lawyer the means of forcing a landlord to make an apartment livable and a means of defending a suit for rent for the balance of a lease term when a tenant who follows the steps provided in the law moves out. Similar benefits flow from the tenant's right to enforce a landlord's duty to make utilities available.⁵

Both provisions would prove helpful if Ms. Tenant's landlord does not get the heater fixed before the 2007-2008 winter.

The limits on the amount of, and a right to the return of, a security deposit⁶ can make it easier for a lawyer to get back a tenant's security deposit. The ban on a landlord unilaterally imposing rules during the course of a tenant's lease that substantially diminish the tenant's rights⁷ will provide a complete defense to many evictions.

While other prohibitions give tenants additional substantive rights⁸, there are also new procedural provisions that could help a lawyer defend a tenant. First, there is the repeal of the Sanderson Act⁹, which gives a lawyer the ability to use every Rule of Civil Procedure. This is most helpful where a tenant has failed to file a timely response. Under the Sanderson Act, there was no right to set aside or appeal the writ of eviction.¹⁰ Now, a tenant can answer before judgment has been rendered and can move to set aside or appeal any default. Finally, when a landlord files an eviction, the new Act allows a tenant to raise counterclaims and to win the eviction case even in instances where the tenant did not in fact pay all the rent due.¹¹

In September 2002, Robert McCurley wrote an article noting the need for Alabama to enact a uniform landlord-tenant law and talking about the committee working with him for such legislation. Thanks to the work of Mr. McCurley and his committee and that of several groups acting on behalf of low-income Alabamians, such an act has passed, and lawyers have far more weapons at their disposal when representing tenants. ■

Endnotes

1. Fictional name.
2. Fictional name.
3. *Alabama Code* §35-9A-204, the Act's warranty of habitability.
4. *Alabama Code* §35-9A-401
5. *Alabama Code* §35-9A-404
6. *Alabama Code* §35-9A-201.
7. *Alabama Code* §35-9A-302(c) invalidates such rules, unless the tenant consents to them in writing.
8. See *Alabama Code* §§35-9A-163(a)(2), which prohibits confessions of judgment and 163(a)(4), which prohibits exculpatory clauses and clauses limiting a landlord's liability.
9. Section Three of *Alabama Code* §35-9A-603
10. See *Salvadore v. Howard*, 247 Ala. 533, 535, 25 So. 2d 412, 413-414 (Ala. 1946) (denying a tenant a trial where he failed to timely file a counteraffidavit with the sheriff, because "jurisdiction can only be quickened into exercise by following the mode prescribed by the statute").
11. *Alabama Code* §35-9A-405(a) specifies that a tenant can counterclaim against a landlord, and that if the court decides that the landlord owes the tenant more than the tenant owes the landlord, "judgment shall be entered for the tenant in the action for possession."

Larry Gardella

Larry Gardella is director for advocacy for Legal Services Alabama. He received both his A.B. and his J.D. from Cornell University. He is on the board of the Mid-Alabama Coalition for the Homeless and currently serves as president-elect.

Renters and landlords can learn more about their rights under the Act through a free brochure and handbook prepared by Alabama Appleseed Center for Law and Justice, Arise Citizens' Policy Project and Legal Services Alabama. "The Alabama Tenants' Handbook" and the brochure, "A Decent Place to Live: Tenant Rights in Alabama," are available at all LSA offices. Download copies at www.arisecitizens.org or order them by calling (800) 832-9060 or e-mailing brenda@alarise.org.

"SAVE THE DATE!"

THE FAMILY LAW SECTION'S Divorce on the Beach

Be sure to mark your calendars for
Thursday, May 31 - Saturday, June 2
Sandestin Golf and Beach Resort
(Bayside Inn)

More info to come!