

Housing Rights **ADVOCATE**

Austin Tenants Council • Issue 92, Spring 2019

Legislative Updates: Landlord-Tenant Bills

This legislative session, Texas legislators have proposed many bills that could impact tenants. The following are a few bills which address issues that tenants commonly ask us about. For more information on these and other proposed bills, see the Texas Legislature's website (capitol.texas.gov). We encourage tenants to reach out to community members and state representatives to share their thoughts on how these bills could impact housing rights.

Landlord Entry

In Texas, there is no law that governs when a landlord can and cannot enter a rental dwelling. Landlord entry is generally established by a tenant's lease agreement. Many leases state that a landlord can enter a rental dwelling at any reasonable time for any reasonable business purpose. Other leases allow a landlord to enter at any time, but require the landlord to leave a note explaining why they entered the apartment. Sometimes, a rental agreement will require advance notice before the landlord may enter.

HB 1860, proposed by Representative Victoria Neave (D-107), would require a landlord to provide 48-hour written notice prior to entering a rental unit. This notice would need to specify the time and date that the landlord would enter, and it would need to provide the landlord's purpose for entering. If this bill passes, landlords will still be allowed to enter without notice in

emergency situations.



Photo by Guillermo Garza de Alexander

Payments

A lease agreement should establish any rental payments that a tenant must make, along with any other sums for which a tenant is liable, such as damages or late fees. If a tenant falls behind on payments, a landlord can start eviction proceedings against a tenant only for nonpayment of rent. However, it is common for a lease agreement to state that a landlord may apply rent payments towards other unpaid obligations, such as late fees, before applying that amount to rent. This can put a tenant behind on rent even if they pay the full rent amount. A landlord could then start the eviction process or continue to charge late fees, decreasing the likelihood that a tenant will pay off their balance.

HB 2457, proposed by Representative Terry Canales (D-40), would end this practice. If passed, this bill would require a landlord

to apply any payment received towards rent before applying it towards another amount owed.

Domestic Violence

Under certain circumstances, Texas tenants have a right to vacate their rental unit and avoid liability for future rent following an incident of domestic violence. In order to exercise this right, a tenant must provide one of the following forms of documentation to their landlord: a temporary injunction, a temporary ex parte protective order, or a final protective order. Several bills have been proposed which would allow a tenant to use other forms of documentation to exercise this right.

HB 1209, proposed by Representatives Rodriguez (D-51), Morrison (R-30), and Moody (D-78), would expand the list of family violence documentation that a landlord must accept. If this bill passes, survivors of domestic violence will be able to terminate their lease early with an emergency protective order or with documentation from a licensed healthcare or mental health provider. Certain family violence service providers would also be able to provide the necessary documentation.

Similarly, SB 234, proposed by Senator

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Nelson (R-12), would allow survivors of family violence to terminate their lease early with an emergency protective order, documentation from a licensed healthcare or mental health provider, or with documentation from certain victim services advocates.

Eviction Records

The mere act of having an eviction filed can be permanently damaging to an individual, as it can remain in the public records section of a credit report. Tenants who have had an eviction filed against them commonly have their rental applications rejected due to the eviction filing, even if the judge ruled in their favor. Several bills have been proposed which could limit access to these records.

HB 174, filed by Rep. Canales, would give the court that an eviction was filed in the jurisdiction to expunge, or seal, the eviction record. On the tenant's request, the court could order all relevant eviction records expunged if the initial filing lacked sufficient basis.

SB 519 would also limit the impact of wrongful eviction filings. Senator Zafirin's (D-21) bill would require a court to enter an order of limited dissemination of the eviction case information in certain circumstances, such as if the judgment was in a tenant's favor or if more than five years had passed since the date of the final judgment. An order of limited dissemination would cause the tenant's name to be removed from all public records pertaining to the eviction case, and it would prevent credit and tenant screening agencies from using that information.

Late Fees

A landlord may charge late fees in accordance with the lease agreement. The Texas Property Code states that late fees must

be a reasonable estimate of uncertain damages resulting from late payment of rent. Generally, a lease will require an initial late fee and then additional charges that are calculated each day that rent remains unpaid.

Rep. Canales has proposed a bill which would place a cap on the amount that a landlord can charge Section 8 tenants in late fees. HB 175 would allow a landlord to charge a Section 8 tenant only up to 5% of the rent owed by the tenant during a rental pay period.

Why Do I Have to Send My Landlord a Certified Letter?

When seeking a repair, a tenant should maintain records of all communication with their landlord or property manager. Many tenants who call our counseling line are surprised when a Housing Advocate advises them to send a repair request through certified mail, return receipt requested, even if they already asked their landlord to make the repair. While we understand that sending a certified letter is more expensive and time-consuming than communicating through email or text, it is crucial that tenants communicate all requests in a way that complies with the lease agreement and the Texas Property Code. Otherwise, a tenant may have trouble seeking legal remedies. The Texas Property Code does not provide a definition of written notice, but it does acknowledge certified mail as a way to communicate and track repair requests. It does not address email or text.

Tenants who have written leases should examine the rental agreement to determine how notice must be communicated.

Many leases state that notice must be in writing, signed and delivered to the landlord or property manager. Other lease agreements may allow for email. That being said, it can be hard to prove that a party received an email if they did not respond to it. Sending a certified letter allows a tenant to prove that a landlord received the notice, or that delivery was attempted. Tenants should always keep a copy of any notice given as well as the return receipt.

Any tenant who would like assistance exercising their right to safe housing is encouraged to call 512-474-1961 and ask about ATC's Repair Mediation Program.

Looking for Us?

ATC is still in the process of moving to a new location. During this transition, we do not have a public office and unfortunately cannot accommodate walk-in appointments. Anyone who would like a counseling session or would like to purchase a lease packet should call 512-474-7006 to schedule an appointment at one of our temporary counseling locations in Central East Austin. Individuals who may have trouble reaching us in-person are encouraged to reach out to our telephone (512-474-1961) and online counseling (housing-rights.org) programs.

Special thanks to the African-American Cultural & Heritage Facility, the George Washington Carver Museum, and the Sandra Joy Anderson Community Health and Wellness Center for allowing us to use their spaces. We look forward to announcing our new location this summer!

Noticias legislativas: propuestas relativas a registros de desalojo

El mero hecho de que se presente un trámite de desalojo puede perjudicar permanentemente a una persona, porque suele permanecer en la sección de registros públicos de reportes de crédito. Los inquilinos a los que se les ha presentado desalojo suelen ser rechazados en sus solicitudes de renta debido a ese trámite de desalojo, aún si el juez falla a su favor. En esta sesión legislativa se han propuesto algunas medidas que podrían limitar el acceso a esos registros. Para mayor información sobre éstas y otras medidas propuestas, visite el sitio electrónico de la Legislatura de Texas (capitol.texas.gov), en inglés.

La HB 174 del Representante Canales permitiría que la corte donde se presenta el desalojo suprima, o selle, el registro de desalojo. A pedido del inquilino, la corte podría ordenar se suprima o borre todo registro relevante del desalojo si su introducción no tuvo fundamento suficiente.

La SB 519 también limitaría el efecto de presentaciones injustificadas de desalojo. La medida de la Senadora Zaffirini (D-21) ordenaría a la corte introducir una orden de diseminación limitada de la información sobre casos de desalojo en ciertas circunstancias --como si el fallo fue a favor del inquilino o si han pasado más de cinco años desde la fecha del fallo final. Una orden de diseminación limitada haría que el nombre del inquilino se borre de todo registro público relativo al caso de desalojo, e impediría que agencias de investigación de crédito e inquilinos usen

esa información.

¿Nos está buscando?

ATC está en proceso de mudarse a un nuevo lugar. Durante esta transición, no contamos con una oficina pública y lamentablemente no podemos atender a personas sin turno. Todo el que necesite una sesión de asesoría, o desea adquirir un paquete para contrato de renta, debe llamar al 512-474-7006 para pedir una cita en uno de nuestros sitios temporales de asesoría en Austin centro/este. Las personas que no logran comunicarse con nosotros en persona pueden obtener asesoría a través de nuestros programas telefónico (512-474-1961) o en internet (housing-rights.org). ¡Esperamos anunciar nuestra nueva oficina este verano!

¿Porqué debo enviar a mi arrendador una carta certificada?

Al solicitar una reparación, el inquilino debe mantener registro de toda comunicación con el propietario o encargado de la propiedad. Muchos inquilinos que llaman a nuestra línea de asesoría se sorprenden cuando el asesor de Viviendas les aconseja enviar un pedido de reparación por carta certificada, con acuse de recibo, aún si ya le han pedido al propietario hacer la reparación. Aunque entendemos que enviar una carta certificada es más caro y lleva más tiempo

que comunicarse por email o texto, es crucial que los inquilinos comuniquen todo pedido de manera que cumpla con requisitos del contrato de alquiler y el Código de Propiedad de Texas. De otra manera, el inquilino podría tener problemas si presenta una acción legal. El Código de Propiedad de Texas no define el aviso escrito, pero reconoce la carta certificada como manera de comunicarse y registrar pedidos de reparaciones. El código no habla de emails ni textos.

Los inquilinos que tienen contratos de renta escritos deben examinarlo para determinar cómo deben comunicar un pedido. Muchos contratos disponen que los pedidos deben ser escritos, firmados y entregados al propietario o su encargado. Otros contratos de renta podrían permitir el uso de email. Aún así, puede ser difícil probar que una persona recibió el email si no respondió al mismo. Enviar una carta certificada permite al inquilino probar que el propietario recibió el pedido, o que se intentó una entrega. Los inquilinos deben guardar siempre una copia del pedido enviado, así como el acuse de recibo.

Aconsejamos que todo inquilino que busque asistencia para ejercer su derecho a una vivienda segura llame al 512-474-1961 y pregunte sobre el Programa de Mediación en Reparaciones de ATC.

If your agency would like to receive additional copies of this newsletter or if you have any changes to the mailing list, contact Rachel at 512-474-7006 Ext. 101 or rachel@housing-rights.org. If you prefer to view our newsletter online, we will gladly remove your name from our mailing list.

This service is certified as a lawyer referral service as required by the State of Texas under Chapter 952, Occupations Code.

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The Austin Tenants' Council, as a subrecipient of the City of Austin, is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call 512-474-1961 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance. The City does not discriminate on the basis of disability in the admission or access to, or treatment or employment in its programs and activities. David Ondich has been designated as the City's Section 504/ADA Program Manager. His office is located at 505 Barton Springs Road, Suite 600. If you have any questions or complaints regarding your Section 504/ADA rights, please call the 504/ADA Program Manager at 512-974-3256 (voice) or 974-2445 (TTY). This publication is available in alternative formats. Please call 512-474-1961 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

Fair Housing Program / Programa de Vivienda Justa This program helps any person in the Austin metropolitan area who has been discriminated against in the rental, sale, financing, or appraisal of housing. FHP investigates complaints and coordinates legal services to assist victims of discrimination when their rights under state and federal fair housing laws have been violated. Este programa ayuda a cualquier persona en el area metropolitana de Austin que se ha enfrentado con discriminación en la renta, compra, financiamiento, o evaluación de vivienda. El FHP investiga las quejas y coordina servicios legales para las victimas de discriminación cuando sus derechos están violados bajo las leyes estatales y federales de vivienda justa. Call / llame al 512-474-7006.

Telephone Counseling / Consejos por Telefono Trained counselors answer tenant-landlord questions and make appropriate referrals. However, ATC offers no legal advice. Consejeros contestan preguntas acerca de inquilinos-propietarios y hacen referencias necesarias. Sin embargo, ATC no ofrece consejos legales. Call / llame al 512-474-1961.

In-House Counseling / Consejos en la Oficina Counseling information and materials are provided to clients in need of more in-depth assistance. Se provee información y materiales a los clientes que necesitan mayor información. Call for an appointment / llame para una cita al 512-474-7006.

Crisis Intervention / Intervencion Crisis Counselors mediate on behalf of tenants to resolve emergencies that threaten their housing. Consejeros median en nombre del inquilino a resolver una emergencia que amenaza su vivienda. Call / llame al 512-474-1961.

Rental Repair Assistance / Ayuda con Reparaciones en su Vivienda The Renters' Rights Assistance Program helps low-income renters enforce their rights for repairs through advocacy and mediation. El Programa de Asistencia con los Derechos de Inquilinos ayuda a los inquilinos de bajo ingreso da fuerza a sus derechos para reparaciones por medio de negociación y mediación. Call / llame al 512-474-7006.

Lease Forms / Contratos ATC sells lease packets and brochures describing landlord and tenant rights and responsibilities to landlords for a small fee. ATC vende paquetes de contratos y folletos, por una cuota nominal, describiendo los derechos y las responsabilidades del propietario y del inquilino. Call for more information / llame para mayor información al 512-474-7006.

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