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SENATE BILL

No. 782

Introduced by Senator Yee

(Coauthor: Senator Florez)

(Coauthors: Assembly Members Blumenfield, Davis, Huffman, Saldaña,
Smyth, Swanson, and Torrico)

February 27, 2009

An act to add Sections 1941.5 and 1941.6 to the Civil Code, and to add Section 1161.3 to the Code of Civil Procedure, relating to unlawful detainer.

LEGISLATIVE COUNSEL'S DIGEST

SB 782, as amended, Yee. Residential tenancies: domestic violence.

Existing law governs the hiring of real property based on the terms of the agreement, or on the behavior of the parties. Under existing law, a tenant may notify the landlord in writing that he or she, or a household member, was a victim of an act of domestic violence, sexual assault, or stalking, and intends to terminate the tenancy. The tenant is released from any rent payment obligation 30 days following the giving of the notice, or as specified.

Existing law establishes the criteria for determining when a tenant is guilty of unlawful detainer of a premises, and includes committing nuisance in this regard. Existing law provides, until January 1, 2012, for the purposes of the law of unlawful detainer, that if a person commits any specified act or acts of domestic violence, sexual assault, or stalking against another tenant or subtenant on the premises, there is a rebuttable presumption affecting the burden of proof that the person has committed a nuisance on the premises if the victim or a member of the victim's household has not vacated the premises.

This bill would, except as specified, prohibit a landlord from terminating a tenancy or failing to renew a tenancy based upon an act of domestic violence, sexual assault, or stalking against a protected tenant, as defined, or a protected tenant's household member when that act is documented, as specified, and the person who is restrained from contact with the protected tenant under a court order, as defined, or is named in a police report of that act is not a tenant of the same dwelling unit.

The bill would require the landlord to change the locks, as defined, within 24 hours of a written request, as specified, when the restrained person is not a tenant of the same dwelling unit.

The bill would also require, under specified circumstances, the landlord to change the locks when the restrained person is a tenant of the same dwelling unit. The bill would declare the landlord not liable to a restrained person who is excluded from the dwelling unit if the locks are changed pursuant to that provision. The bill would state that a restrained person who has been excluded from a dwelling unit under that provision remains liable under the lease with all other tenants of the dwelling unit for rent as provided in the lease.

The bill would authorize a protected tenant to change the locks without the landlord's permission, as specified, notwithstanding any provision in the lease to the contrary, if the landlord does not change the locks within 24 hours, as specified, with regard to leases executed on or after the date the bill would take effect. The bill would also specify the manner in which a protected tenant is required to change the locks if the protected tenant changes the locks without the permission of the landlord.

The bill would also require the Judicial Council, on or before January 1, 2012, to develop a new form or ~~amend~~ *revise* an existing form that may be used by ~~parties~~ *a party* to assert *in the responsive pleading* the

grounds set forth in this section as an affirmative defense to an unlawful detainer action.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Domestic violence is a widespread problem impacting one
4 in three households in the United States in all communities.

5 (b) Safe housing for domestic violence victims is essential for
6 safe recovery.

7 (c) Countless studies demonstrate that stable, safe housing is a
8 public safety issue, a critical element of ensuring the safety of
9 domestic violence and stalking victims.

10 (d) Landlords may evict domestic violence and stalking victims
11 based upon complaints of noise, fighting, or repeated visits from
12 the police to a victim's residence, even though they are results of
13 crimes committed against the victim.

14 (e) Domestic violence and stalking victims should not lose their
15 housing because they are being abused and should not be forced
16 to leave their homes in order to report abuse.

17 (f) The United States government and many states, cities, and
18 counties already have enacted comprehensive tenants' rights
19 protections for victims of domestic violence and stalking.

20 (g) An increasing number of courts have found that evictions
21 of tenants based on acts of domestic violence, sexual assault, and
22 stalking committed against them violate federal and state fair
23 housing laws.

24 (h) It is critical for rental property owners to develop policies
25 and procedures that balance the needs of tenants' peaceful
26 enjoyment of the property while considering the safety and fair
27 housing rights of victims of domestic violence, sexual assault, and
28 stalking.

29 SEC. 2. Section 1941.5 is added to the Civil Code, to read:

30 1941.5. (a) This section shall apply if a person who is
31 restrained from contact with the protected tenant under a court
32 order or is named in a police report is not a tenant of the same
33 dwelling unit as the protected tenant.

1 (b) A landlord shall change the locks of a protected tenant's
2 dwelling unit upon written request of the protected tenant not later
3 than 24 hours after the protected tenant gives the landlord a copy
4 of a court order or police report, and shall give the protected tenant
5 a key to the new locks.

6 (c) (1) If a landlord fails to change the locks within 24 hours,
7 ~~or if the protected tenant has failed to request the landlord to change~~
8 ~~the locks~~, the protected tenant may change the locks without the
9 landlord's permission, notwithstanding any provision in the lease
10 to the contrary.

11 (2) If the protected tenant changes the locks pursuant to this
12 subdivision, the protected tenant shall do all of the following:

13 (A) Change the locks in a workmanlike manner with locks of
14 similar or better quality than the original lock.

15 (B) Notify the landlord within 24 hours that the locks have been
16 changed.

17 (C) Provide the landlord with a key by any reasonable method
18 agreed upon by the landlord and protected tenant.

19 (3) This subdivision shall apply to leases executed on or after
20 the date the act that added this section takes effect.

21 (d) For the purposes of this section, the following definitions
22 shall apply:

23 (1) "Court order" means a court order lawfully issued within
24 the last 180 days pursuant to Section 527.6 of the Code of Civil
25 Procedure, Part 3 (commencing with Section 6240), Part 4
26 (commencing with Section 6300), or Part 5 (commencing with
27 Section 6400) of Division 10 of the Family Code, Section 136.2
28 of the Penal Code, or Section 213.5 of the Welfare and Institutions
29 Code.

30 (2) "Locks" means any exterior lock that provides access to the
31 dwelling.

32 (3) "Police report" means a written report, written within the
33 last 180 days, by a peace officer employed by a state or local law
34 enforcement agency acting in his or her official capacity, stating
35 that the protected tenant or a household member has filed a report
36 alleging that the protected tenant or the household member is a
37 victim of domestic violence, sexual assault, or stalking.

38 (4) "Protected tenant" means a tenant who has obtained a court
39 order or has a copy of a police report.

40 (5) "Tenant" means tenant, subtenant, lessee, or sublessee.

1 SEC. 3. Section 1941.6 is added to the Civil Code, to read:

2 1941.6. (a) This section shall apply if a person who is
3 restrained from contact with a protected tenant under a court order
4 is a tenant of the same dwelling unit as the protected tenant.

5 (b) A landlord shall change the locks of a protected tenant's
6 dwelling unit upon written request of the protected tenant not later
7 than 24 hours after the protected tenant gives the landlord a copy
8 of a court order that excludes from the dwelling unit the restrained
9 person referred to in subdivision (a). The landlord shall give the
10 protected tenant a key to the new locks.

11 ~~(c) If a protected tenant changes the locks of his or her dwelling~~
12 ~~unit without the landlord's permission, the protected tenant shall~~
13 ~~do all of the following:~~

14 ~~(1) Change the locks in a workmanlike manner with locks of~~
15 ~~similar or better quality than the original lock.~~

16 ~~(2) Notify the landlord within 24 hours that the locks have been~~
17 ~~changed.~~

18 ~~(3) Provide the landlord with a key by any reasonable method~~
19 ~~agreed upon by the landlord and protected tenant.~~

20 ~~(d)~~

21 (c) (1) If a landlord fails to change the locks within 24 hours,
22 the protected tenant may change the locks without the landlord's
23 permission, notwithstanding any provision in the lease to the
24 contrary.

25 (2) If the protected tenant changes the locks pursuant to this
26 subdivision, the protected tenant shall do all of the following:

27 (A) Change the locks in a workmanlike manner with locks of
28 similar or better quality than the original lock.

29 (B) Notify the landlord within 24 hours that the locks have been
30 changed.

31 (C) Provide the landlord with a key by any reasonable method
32 agreed upon by the landlord and protected tenant.

33 (3) This subdivision shall apply to leases executed on or after
34 the date the act that added this section takes effect.

35 ~~(e)~~

36 (d) Notwithstanding Section 789.3, if the locks are changed
37 pursuant to this section, the landlord is not liable to a person
38 excluded from the dwelling unit pursuant to this section.

39 ~~(f)~~

1 (e) A person who has been excluded from a dwelling unit under
 2 this section remains liable under the lease with all other tenants of
 3 the dwelling unit for rent as provided in the lease.

4 ~~(g)~~

5 (f) For the purposes of this section, the following definitions
 6 shall apply:

7 (1) “Court order” means a court order lawfully issued within
 8 the last 180 days pursuant to Section 527.6 of the Code of Civil
 9 Procedure, Part 3 (commencing with Section 6240), Part 4
 10 (commencing with Section 6300), or Part 5 (commencing with
 11 Section 6400) of Division 10 of the Family Code, Section 136.2
 12 of the Penal Code, or Section 213.5 of the Welfare and Institutions
 13 Code.

14 (2) “Locks” means any exterior lock that provides access to the
 15 dwelling.

16 (3) “Protected tenant” means a tenant who has obtained a court
 17 order.

18 (4) “Tenant” means tenant, subtenant, lessee, or sublessee.

19 SEC. 4. Section 1161.3 is added to the ~~Civil~~ *Code of Civil*
 20 *Procedure*, to read:

21 1161.3. (a) Except as provided in subdivision (b), a landlord
 22 shall not terminate a tenancy or fail to renew a tenancy based upon
 23 an act or acts against a tenant or a tenant’s household member that
 24 constitute domestic violence as defined in Section 6211 of the
 25 Family Code, sexual assault as defined in Section 1219, or stalking
 26 as defined in Section 1708.7 of the Civil Code or Section 646.9
 27 of the Penal Code, if both of the following apply:

28 (1) The act or acts of domestic violence, sexual assault, or
 29 stalking have been documented by one of the following:

30 (A) A temporary restraining order or emergency protective order
 31 lawfully issued within the last 180 days pursuant to Section 527.6,
 32 Part 3 (commencing with Section 6240), Part 4 (commencing with
 33 Section 6300), or Part 5 (commencing with Section 6400) of
 34 Division 10 of the Family Code, Section 136.2 of the Penal Code,
 35 or Section 213.5 of the Welfare and Institutions Code that protects
 36 the tenant or household member from domestic violence, sexual
 37 assault, or stalking.

38 (B) A copy of a written report, written within the last 180 days,
 39 by a peace officer employed by a state or local law enforcement
 40 agency acting in his or her official capacity, stating that the tenant

1 or household member has filed a report alleging that he or she or
2 the household member is a victim of domestic violence, sexual
3 assault, or stalking.

4 (2) The person against whom the protection order has been
5 issued or who was named in the police report of the act or acts of
6 domestic violence, sexual assault, or stalking is not a tenant of the
7 same dwelling unit as the tenant or household member.

8 (b) A landlord may terminate or decline to renew a tenancy after
9 the tenant has availed himself or herself of the protections afforded
10 by subdivision (a) if all of the following apply:

11 (1) The tenant allows the person against whom the protection
12 order has been issued or who was named in the police report of
13 the act or acts of domestic violence, sexual assault, or stalking to
14 visit the property.

15 (2) The landlord reasonably believes that the presence of the
16 person against whom the protection order has been issued or who
17 was named in the police report of the act or acts of domestic
18 violence, sexual assault, or stalking poses a threat to other tenants,
19 either physically or to their right to quiet possession pursuant to
20 Section 1927 of the Civil Code.

21 (3) The landlord previously gave at least ~~three days~~ *days*' notice
22 *to the tenant* to correct ~~the~~ *a* violation of *paragraph (1) or (2)*.

23 (c) Notwithstanding any provision in the lease to the contrary,
24 the landlord shall not be liable to any other tenants for any action
25 that arises due to the landlord's compliance with this section.

26 (d) For the purposes of this section, "tenant" means tenant,
27 subtenant, lessee, or sublessee.

28 (e) The Judicial Council shall, on or before January 1, 2012,
29 develop a new form or ~~amend~~ *revise* an existing form that may be
30 used by ~~parties~~ *a party* to assert *in the responsive pleading* the
31 grounds set forth in this section as an affirmative defense to an
32 unlawful detainer action.