

ASSEMBLY BILL

No. 969

Introduced by Assembly Member Ammiano

February 22, 2013

An act to amend Section 1942.5 of the Civil Code and Section 1174.2 of the Code of Civil Procedure, relating to landlord and tenants.

LEGISLATIVE COUNSEL'S DIGEST

AB 969, as introduced, Ammiano. Landlord and tenant.

(1) Existing law provides that, if a lessor retaliates against a lessee of a dwelling for exercising his or her rights or because of a complaint to an appropriate agency as to tenantability and the lessee is not in default as to the payment of rent, the lessor may not recover possession, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of the occurrence of specified events.

This bill would provide that a lessee is not in default as to the payment of rent when the lessee has made all payments or has exercised a right to deduct an amount from or withhold rent, or the lessor is prohibited from collecting rent.

(2) Existing law governs unlawful detainer proceedings. Existing law requires a court, in an unlawful detainer proceeding involving residential premises, as specified, and in which the tenant has raised as an affirmative defense a breach of the landlord's obligations, as provided by law, or of any warranty of habitability, to determine whether a substantial breach of these obligations has occurred.

This bill would clarify that, in unlawful detainer proceedings involving residential premises, the jury, or the court, if the proceeding is tried without a jury, shall determine whether a substantial breach of the obligations has occurred.

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

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

1 SECTION 1. Section 1942.5 of the Civil Code is amended to
2 read:

3 1942.5. (a) If the lessor retaliates against the lessee because
4 of the exercise by the lessee of his *or her* rights under this chapter
5 or because of his *or her* complaint to an appropriate agency as to
6 tenantability of a dwelling, and if the lessee of a dwelling is not
7 in default as to the payment of his *or her* rent, the lessor may not
8 recover possession of a dwelling in any action or proceeding, cause
9 the lessee to quit involuntarily, increase the rent, or decrease any
10 services within 180 days of any of the following:

11 (1) After the date upon which the lessee, in good faith, has given
12 notice pursuant to Section 1942, or has made an oral complaint to
13 the lessor regarding tenantability.

14 (2) After the date upon which the lessee, in good faith, has filed
15 a written complaint, or an oral complaint ~~which~~ *that* is registered
16 or otherwise recorded in writing, with an appropriate agency, of
17 which the lessor has notice, for the purpose of obtaining correction
18 of a condition relating to tenantability.

19 (3) After the date of an inspection or issuance of a citation,
20 resulting from a complaint described in paragraph (2) of which
21 the lessor did not have notice.

22 (4) After the filing of appropriate documents commencing a
23 judicial or arbitration proceeding involving the issue of
24 tenantability.

25 (5) After entry of judgment or the signing of an arbitration
26 award, if any, when in the judicial proceeding or arbitration the
27 issue of tenantability is determined adversely to the lessor.

28 In each instance, the 180-day period shall run from the latest
29 applicable date referred to in paragraphs (1) to (5), inclusive.

30 (b) (1) A lessee may not invoke subdivision (a) more than once
31 in any 12-month period.

32 (2) *For purposes of subdivision (a), a lessee of a dwelling is*
33 *not in default as to the payment of rent when either of the following*
34 *conditions are met:*

1 (A) *The lessee has made all rent payments due or has exercised*
2 *his or her right to deduct an amount from or withhold the payment*
3 *of rent pursuant to this chapter.*

4 (B) *The lessor is prohibited from collecting rent pursuant to*
5 *this chapter.*

6 (c) ~~Notwithstanding subdivision (a)~~, it is unlawful for a lessor
7 to increase rent, decrease services, cause a lessee to quit
8 involuntarily, bring an action to recover possession, or threaten to
9 do any of those acts, for the purpose of retaliating against the lessee
10 because he or she has lawfully organized or participated in a
11 lessees' association or an organization advocating lessees' rights
12 or has lawfully and peaceably exercised any rights under the law.
13 In an action brought by or against the lessee pursuant to this
14 subdivision, the lessee shall bear the burden of producing evidence
15 that the lessor's conduct was, in fact, retaliatory.

16 (d) Nothing in this section shall be construed as limiting in any
17 way the exercise by the lessor of his or her rights under any lease
18 or agreement or any law pertaining to the hiring of property or his
19 or her right to do any of the acts described in subdivision (a) or
20 (c) for any lawful cause. Any waiver by a lessee of his or her rights
21 under this section is void as contrary to public policy.

22 (e) Notwithstanding subdivisions (a) to (d), inclusive, a lessor
23 may recover possession of a dwelling and do any of the other acts
24 described in subdivision (a) within the period or periods prescribed
25 therein, or within subdivision (c), if the notice of termination, rent
26 increase, or other act, and any pleading or statement of issues in
27 an arbitration, if any, states the ground upon which the lessor, in
28 good faith, seeks to recover possession, increase rent, or do any
29 of the other acts described in subdivision (a) or (c). If the statement
30 is controverted, the lessor shall establish its truth at the trial or
31 other hearing.

32 (f) Any lessor or agent of a lessor who violates this section shall
33 be liable to the lessee in a civil action for all of the following:

34 (1) The actual damages sustained by the lessee.

35 (2) Punitive damages in an amount of not less than one hundred
36 dollars (\$100) nor more than two thousand dollars (\$2,000) for
37 each retaliatory act where the lessor or agent has been guilty of
38 fraud, oppression, or malice with respect to that act.

39 (g) In any action brought for damages for retaliatory eviction,
40 the court shall award reasonable attorney's fees to the prevailing

1 party if either party requests attorney’s fees upon the initiation of
 2 the action.

3 (h) The remedies provided by this section shall be in addition
 4 to any other remedies provided by statutory or decisional law.

5 SEC. 2. Section 1174.2 of the Code of Civil Procedure is
 6 amended to read:

7 1174.2. (a) In an unlawful detainer proceeding involving
 8 residential premises after default in payment of rent and in which
 9 the tenant has raised as an affirmative defense a breach of the
 10 landlord’s obligations under Section 1941 of the Civil Code or of
 11 any warranty of habitability, ~~the court~~ *jury, or the court, if the*
 12 *proceeding is tried without a jury*, shall determine whether a
 13 substantial breach of these obligations has occurred. If the ~~court~~
 14 *trier of fact* finds that a substantial breach has occurred, ~~the court~~
 15 *it* (1) shall determine the reasonable rental value of the premises
 16 in its untenable state to the date of trial, (2) shall deny
 17 possession to the landlord and adjudge the tenant to be the
 18 prevailing party, conditioned upon the payment by the tenant of
 19 the rent that has accrued to the date of the trial as adjusted pursuant
 20 to this subdivision within a reasonable period of time not exceeding
 21 five days, from the date of the ~~court’s~~ judgment or, if service of
 22 the ~~court’s~~ judgment is made by mail, the payment shall be made
 23 within the time set forth in Section 1013, (3) may order the landlord
 24 to make repairs and correct the conditions which constitute a breach
 25 of the landlord’s obligations, (4) shall order that the monthly rent
 26 be limited to the reasonable rental value of the premises as
 27 determined pursuant to this subdivision until repairs are completed,
 28 and (5) except as otherwise provided in subdivision (b), shall award
 29 the tenant costs and ~~attorneys’~~ *attorney’s* fees if provided by, and
 30 pursuant to, any statute or the contract of the parties. If the court
 31 orders repairs or corrections, or both, pursuant to paragraph (3),
 32 the court’s jurisdiction continues over the matter for the purpose
 33 of ensuring compliance. The *jury or court* shall, however, award
 34 possession of the premises to the landlord if the tenant fails to pay
 35 all rent accrued to the date of trial, as determined due in the
 36 judgment, within the period prescribed by the *jury or court* pursuant
 37 to this subdivision. The tenant shall, however, retain any rights
 38 conferred by Section 1174.

39 (b) If the ~~court~~ *jury, or the court, if the proceeding is tried*
 40 *without a jury*, determines that there has been no substantial breach

1 of Section 1941 of the Civil Code or of any warranty of habitability
2 by the landlord or if the tenant fails to pay all rent accrued to the
3 date of trial, as required by the *jury or* court pursuant to subdivision
4 (a), then judgment shall be entered in favor of the landlord, and
5 the landlord shall be the prevailing party for ~~the~~ purposes of
6 awarding costs or ~~attorneys'~~ *attorney's* fees pursuant to any statute
7 or the contract of the parties.

8 (c) As used in this section, "substantial breach" means the failure
9 of the landlord to comply with applicable building and housing
10 code standards ~~which~~ *that* materially affect health and safety.

11 (d) Nothing in this section is intended to deny the tenant the
12 right to a trial by jury. Nothing in this section shall limit or
13 supersede any provision of Chapter 12.75 (commencing with
14 Section 7060) of Division 7 of Title 1 of the Government Code.