

AMENDED IN ASSEMBLY JANUARY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 969

Introduced by Assembly Member Ammiano

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 969, as amended, 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.

(1) Existing law provides that it is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law.

This bill would, with respect to that provision, notwithstanding another law that 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.

(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 that is registered or
16 otherwise recorded in writing, with an appropriate agency, of which
17 the lessor has notice, for the purpose of obtaining correction of a
18 condition relating to tenantability.

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

4 (4) After the filing of appropriate documents commencing a
5 judicial or arbitration proceeding involving the issue of
6 tenantability.

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

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

12 (b) ~~(4)~~—A lessee may not invoke subdivision (a) more than once
13 in any 12-month period.

14 ~~(2)~~ For purposes of subdivision (a), a lessee of a dwelling is not
15 in default as to the payment of rent when either of the following
16 conditions are met:

17 ~~(A)~~ The lessee has made all rent payments due or has exercised
18 his or her right to deduct an amount from or withhold the payment
19 of rent pursuant to this chapter.

20 ~~(B)~~ The lessor is prohibited from collecting rent pursuant to this
21 chapter.

22 (c) Notwithstanding subdivision (a), it is unlawful for a lessor
23 to increase rent, decrease services, cause a lessee to quit
24 involuntarily, bring an action to recover possession, or threaten to
25 do any of those acts, for the purpose of retaliating against the lessee
26 because he or she has lawfully organized or participated in a
27 lessees' association or an organization advocating lessees' rights
28 or has lawfully and peaceably exercised any rights under the law.
29 In an action brought by or against the lessee pursuant to this
30 subdivision, the lessee shall bear the burden of producing evidence
31 that the lessor's conduct was, in fact, retaliatory.

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

38 (e) Notwithstanding subdivisions (a) to (d), inclusive, a lessor
39 may recover possession of a dwelling and do any of the other acts
40 described in subdivision (a) within the period or periods prescribed

1 therein, or within subdivision (c), if the notice of termination, rent
2 increase, or other act, and any pleading or statement of issues in
3 an arbitration, if any, states the ground upon which the lessor, in
4 good faith, seeks to recover possession, increase rent, or do any
5 of the other acts described in subdivision (a) or (c). If the statement
6 is controverted, the lessor shall establish its truth at the trial or
7 other hearing.

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

- 10 (1) The actual damages sustained by the lessee.
- 11 (2) Punitive damages in an amount of not less than one hundred
12 dollars (\$100) nor more than two thousand dollars (\$2,000) for
13 each retaliatory act where the lessor or agent has been guilty of
14 fraud, oppression, or malice with respect to that act.

15 (g) In any action brought for damages for retaliatory eviction,
16 the court shall award reasonable attorney’s fees to the prevailing
17 party if either party requests attorney’s fees upon the initiation of
18 the action.

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

21 SEC. 2. Section 1174.2 of the Code of Civil Procedure is
22 amended to read:

23 1174.2. (a) In an unlawful detainer proceeding involving
24 residential premises after default in payment of rent and in which
25 the tenant has raised as an affirmative defense a breach of the
26 landlord’s obligations under Section 1941 of the Civil Code or of
27 any warranty of habitability, the jury, or the court, if the proceeding
28 is tried without a jury, shall determine whether a substantial breach
29 of these obligations has occurred. If the trier of fact finds that a
30 substantial breach has occurred, it (1) shall determine the
31 reasonable rental value of the premises in its untenable state to
32 the date of trial, (2) shall deny possession to the landlord and
33 adjudge the tenant to be the prevailing party, conditioned upon the
34 payment by the tenant of the rent that has accrued to the date of
35 the trial as adjusted pursuant to this subdivision within a reasonable
36 period of time not exceeding five days, from the date of the
37 judgment or, if service of the judgment is made by mail, the
38 payment shall be made within the time set forth in Section 1013,
39 (3) may order the landlord to make repairs and correct the
40 conditions which constitute a breach of the landlord’s obligations,

1 (4) shall order that the monthly rent be limited to the reasonable
2 rental value of the premises as determined pursuant to this
3 subdivision until repairs are completed, and (5) except as otherwise
4 provided in subdivision (b), shall award the tenant costs and
5 attorney's fees if provided by, and pursuant to, any statute or the
6 contract of the parties. If the court orders repairs or corrections,
7 or both, pursuant to paragraph (3), the court's jurisdiction continues
8 over the matter for the purpose of ensuring compliance. The jury
9 or court shall, however, award possession of the premises to the
10 landlord if the tenant fails to pay all rent accrued to the date of
11 trial, as determined due in the judgment, within the period
12 prescribed by the jury or court pursuant to this subdivision. The
13 tenant shall, however, retain any rights conferred by Section 1174.

14 (b) If the jury, or the court, if the proceeding is tried without a
15 jury, determines that there has been no substantial breach of Section
16 1941 of the Civil Code or of any warranty of habitability by the
17 landlord or if the tenant fails to pay all rent accrued to the date of
18 trial, as required by the jury or court pursuant to subdivision (a),
19 then judgment shall be entered in favor of the landlord, and the
20 landlord shall be the prevailing party for purposes of awarding
21 costs or attorney's fees pursuant to any statute or the contract of
22 the parties.

23 (c) As used in this section, "substantial breach" means the failure
24 of the landlord to comply with applicable building and housing
25 code standards that materially affect health and safety.

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

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