

Senate Bill 247

By: Senator Henson of the 41st

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated,
2 relating to landlord and tenant generally, so as to clarify and modernize the law governing
3 landlords and tenants; to provide for definitions; to provide for the duties of landlords; to
4 provide for duties of tenants; to establish rights and remedies for landlords and tenants; to
5 provide requirements for notice; to provide for entry to premises; to provide for statutory
6 construction; to provide for legislative findings; to provide for related matters; to provide for
7 applicability; to repeal conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 The General Assembly finds:

- 11 (1) Housing is an essential element of individual and community well-being;
- 12 (2) Housing is the strongest and most consistent predictor of well-being over the span of
13 childhood;
- 14 (3) Children in inadequate housing exhibit physiological, developmental, and emotional
15 challenges, and studies have shown poor housing quality may impact children's cognitive
16 development and emotional stability by imposing physiological stress during important
17 developmental phases;
- 18 (4) Such stresses can lead to increased health care costs, difficulty in learning, and
19 absences from school, setting the child up for a lifetime of adversity due to insufficient
20 education;
- 21 (5) Roughly 17 percent of Georgia's families face one of four serious housing problems,
22 including overcrowding, high housing costs, or lack of kitchen or plumbing facilities. This
23 number rises to around 25 percent in some rural areas of Georgia; and
- 24 (6) Inadequate housing is associated with mental stress in adults, which can lead to
25 depression, anxiety, substance abuse, and other diseases, jeopardizing families' ability to
26 raise healthy children.

27 **SECTION 2.**

28 Article 1 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to
 29 landlord and tenant generally, is amended by adding a new Code section to read as follows:

30 "44-7-1.1.

31 As used in this article, the term:

32 (1) 'Authorized occupant' means a person entitled to occupy a dwelling unit with the
 33 consent of the landlord but who has not signed a rental agreement and therefore does not
 34 have the rights and obligations as a tenant under the rental agreement.

35 (2) 'Building or housing code' means any law, ordinance, or governmental regulation
 36 concerning fitness for habitation or the construction, maintenance, operation, occupancy,
 37 use, or appearance of a dwelling unit.

38 (3) 'Dwelling unit' means a structure or part of a structure that is used as a home,
 39 residence, or sleeping place by one or more persons who maintain a household, whether
 40 single family or multifamily, including, but not limited to, a manufactured home.

41 (4) 'Guest or invitee' means a person, other than the tenant or authorized occupant, who
 42 has the permission of the tenant or authorized occupant to visit but not to occupy the
 43 premises.

44 (5) 'Integrated pest management' means a sustainable approach to managing pests by
 45 combining biological, cultural, physical, and chemical tools in a way that minimizes
 46 economic, health, and environmental risks.

47 (6) 'Interior of the dwelling unit' means the inside of the dwelling unit, consisting of
 48 interior walls, floors, and ceilings, that encloses the dwelling unit as a space separate
 49 from the outside.

50 (7) 'Landlord' means the owner or lessor of the dwelling unit or the building of which
 51 such dwelling unit is a part. 'Landlord' also includes a managing agent who fails to
 52 comply with the disclosure requirements in subsection (a) of Code Section 44-7-3.

53 (8) 'Managing agent' means a person who enters into a rental agreement on behalf of an
 54 owner or a landlord or both.

55 (9) 'Mold remediation in accordance with professional standards' means mold
 56 remediation of that portion of the dwelling unit or premises affected by mold, or any
 57 personal property of the tenant affected by mold, performed consistently with guidance
 58 documents published by the Environmental Protection Agency, the Department of
 59 Housing and Urban Development, the American Conference of Governmental Industrial
 60 Hygienists, standard reference guides of the Institute of Inspection, Cleaning and
 61 Restoration for Water Damage Restoration and Professional Mold Remediation, or any
 62 protocol for mold remediation prepared by an industrial hygienist consistent with such
 63 guidance documents.

64 (10) 'Move-in inspection' means a walkthrough of the property conducted by the landlord
 65 and tenant to document the condition of the unit at the time of move-in.

66 (11) 'Readily accessible' means areas within the interior of the dwelling unit available
 67 for observation at the time of the move-in inspection that do not require removal of
 68 materials, personal property, equipment, or similar items.

69 (12) 'Tenant' means a person entitled under a rental agreement to occupy a dwelling unit
 70 to the exclusion of others. 'Tenant' shall not include:

71 (A) An authorized occupant;

72 (B) A guest or invitee; or

73 (C) Any person who guarantees or cosigns the payment of the financial obligations of
 74 a rental agreement but has no right to occupy a dwelling unit.

75 (13) 'Visible evidence of mold' means the existence of mold in the dwelling unit that is
 76 visible to the naked eye by the landlord or tenant in areas within the interior of the
 77 dwelling unit readily accessible at the time of the move-in inspection."

78 **SECTION 3.**

79 Said article is further amended by revising Code Section 44-7-13, relating to the specific
 80 rights of tenants and the landlord's duties as to repairs and improvements, is amended as
 81 follows:

82 "44-7-13.

83 ~~The landlord must keep the premises in repair. He shall be liable for all substantial~~
 84 ~~improvements placed upon the premises by his consent.~~

85 (a) The landlord shall keep the dwelling unit and premises in a fit and habitable condition
 86 which shall include, but not be limited to:

87 (1) Complying with the requirements of applicable building and housing codes
 88 materially affecting health and safety;

89 (2) Maintaining in good and safe working order and condition all electrical, plumbing,
 90 sanitary, heating, ventilating, air conditioning, and other facilities and appliances,
 91 including elevators, supplied or required to be supplied by the landlord;

92 (3) Keeping all common areas of the premises shared by two or more dwelling units in
 93 a clean and structurally safe condition;

94 (4) Not causing or allowing any water, sewage, electrical, or gas service, facility, or
 95 equipment required for safe and healthy occupancy to be removed, shut off, or
 96 discontinued for any occupied dwelling, except for such temporary interruption as may
 97 be necessary while repairs or alterations are being performed or during temporary
 98 emergencies requiring discontinuance of service. This paragraph shall not apply where

- 99 the occupant has contractual control over the service and shall not be interpreted as
100 preventing a utility company from discontinuing service for reasons allowed by law;
101 (5) Supplying running water and reasonable amounts of hot water at all times and
102 reasonable air conditioning if provided and heat in season except where the dwelling unit
103 is so constructed that heat, air conditioning, or hot water is generated by an installation
104 within the exclusive control of the tenant or supplied by a direct public utility connection;
105 (6) Maintaining the premises in such a condition as to prevent the accumulation of
106 moisture or the growth of mold, remedying the conditions that are the cause or source of
107 moisture and mold, including any necessary mold remediation in accordance with
108 professional standards, and promptly responding to any occupant reports in accordance
109 with paragraph (10) of this subsection;
110 (7) Providing and maintaining appropriate receptacles for the collection, storage, and
111 removal of trash, recyclables, and other waste incidental to the occupancy of one or more
112 dwelling units and arranging for the removal of same;
113 (8) Maintaining the building and premises to keep pests from entering the building and
114 dwelling units, inspecting and monitoring for pests, and eliminating pest infestation in
115 accordance with integrated pest management methods;
116 (9) Providing occupants with at least 48 hours' written notice of the planned use of a
117 chemical agent such as a pesticide or herbicide, the date and location of application, and
118 a copy of the warning label; and
119 (10) Investigating occupant reports of unsafe or unhealthy conditions, responding in
120 writing, and making needed repairs in a timely manner.
121 (b) The tenant shall:
122 (1) Comply with all obligations imposed upon tenants by applicable provisions of
123 building and housing codes materially affecting health and safety;
124 (2) Keep that part of the premises that the tenant occupies and uses as clean and safe as
125 the condition of the premises permit;
126 (3) Remove from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean
127 and safe manner;
128 (4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their
129 condition permits;
130 (5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air
131 conditioning, and other facilities and appliances;
132 (6) Not engage in behavior or allow guests or others present with the tenant's consent to
133 engage in behavior that deliberately or negligently destroys, defaces, damages, impairs,
134 or removes any part of the premises;

- 135 (7) Work with the landlord to ensure pest-free conditions in accordance with integrated
 136 pest management;
- 137 (8) Not remove or tamper with a properly functioning smoke detector, including
 138 removing any working batteries, so as to render the smoke detector inoperative;
- 139 (9) Use reasonable efforts to maintain the dwelling unit and any other part of the
 140 premises that he or she occupies in such condition as to prevent accumulation of moisture
 141 and the growth of mold and to promptly notify the landlord of any moisture accumulation
 142 that occurs or of any visible evidence of mold discovered by the tenant;
- 143 (10) Be responsible for the tenant's conduct and the conduct of other persons on the
 144 premises with the tenant's consent, whether known by the tenant or not, to ensure that
 145 neighbors' peaceful enjoyment of the premises shall not be disturbed; and
- 146 (11) Abide by all reasonable rules and regulations provided by the landlord as an
 147 addendum to the rental agreement.
- 148 (c) The landlord and tenant may agree that the tenant perform specified repairs,
 149 maintenance tasks, alterations, or remodeling only if:
- 150 (1) The agreement of the parties is entered into in good faith and not for the purpose of
 151 evading the obligations of the landlord and is set forth in a separate writing signed by the
 152 parties and supported by adequate consideration;
- 153 (2) The repairs, maintenance tasks, alterations, or remodeling is not necessary to cure
 154 noncompliance with the requirements of applicable building and housing codes;
- 155 (3) The agreement does not diminish or affect the obligation of the landlord to other
 156 tenants in the premises; and
- 157 (4) The landlord does not require performance of such separate agreement as a condition
 158 to any obligation or performance of any rental agreement.
- 159 (d)(1) No rental agreement may provide that the tenant:
- 160 (A) Authorizes any person to confess judgment on a claim arising out of the rental
 161 agreement; or
- 162 (B) Agrees to the exculpation or limitation of any liability of the landlord to the tenant
 163 arising under law or to indemnify the landlord for that liability or the costs connected
 164 with such liability.
- 165 (2) A provision prohibited by paragraph (1) of this subsection which is included in a
 166 rental agreement shall be unenforceable."

167 **SECTION 4.**

168 Said article is further amended by adding new Code sections to read as follows:

169 "44-7-23.

170 (a)(1) The tenant may terminate the rental agreement if the landlord is not in compliance
171 with this article or has otherwise materially breached the rental agreement, by providing
172 the landlord with written notice describing the breach and stating that the rental
173 agreement will terminate in no less than 14 days if the breach is not remedied. The rental
174 agreement shall not terminate if the landlord adequately remedies the breach no more
175 than 14 days after receiving the notice, initiates repairs for a breach that does not pose an
176 imminent risk to health or safety within 14 days after receiving the notice, and continues
177 in good faith to complete the repairs within a reasonable time frame commensurate with
178 the complexity of the repairs and the risk posed by the unmitigated defect.

179 (2) If there exists a condition which detrimentally affects the habitability, sanitation, or
180 security of the dwelling unit, or which constitutes a violation of a local housing or
181 building code, and the reasonable cost to correct the condition is less than \$300.00,
182 provided that the cost may not exceed one month's rent, the tenant may notify the
183 landlord of the tenant's intention to correct the condition at the landlord's expense. If the
184 landlord fails to correct the condition within 14 days after being notified by the tenant in
185 writing or as promptly as required in case of an emergency, the tenant may cause the
186 work to be done in a workmanlike manner and, after submitting to the landlord an
187 itemized statement, including receipts, deduct from the rent the actual and reasonable cost
188 of the work, as documented by the receipts, not to exceed \$300.00. However, if the
189 landlord provides to the tenant within such notice period a written statement disputing the
190 necessity of the repair, then the tenant may not deduct the cost of the repair from the rent
191 without securing, before the repair is performed, a written certification from the local
192 government entity that the condition requiring repair either constitutes a violation of local
193 housing or building code or poses an imminent threat to the health and safety of the
194 occupants. In the event of such certification, the tenant may cause the work to be done
195 as described in this paragraph if the landlord fails to correct the condition within 14 days
196 after the date of such certification or the date of the notice from the tenant, whichever is
197 later, or as promptly as required in case of an emergency. The tenant's remedy provided
198 in this paragraph is not exclusive of any other remedies which may be available to the
199 tenant under the law.

200 (3) The tenant may initiate a legal action against the landlord based on the landlord's
201 breach of the rental agreement or the provisions of this article and deposit rent into an
202 escrow account with the court in lieu of paying the landlord if the landlord has been
203 provided with notice of the breach but failed to make the required repairs in the required
204 time period. The court shall determine the allotment of the funds as part of the final
205 adjudication of the action filed by the tenant.

206 (4) The tenant may raise the landlord's failure to maintain the premises in accordance
207 with this article as an affirmative defense to the landlord's action for eviction for
208 nonpayment of rent, if the tenant is in compliance with the provisions of this article.

209 (5) The landlord shall return the security deposit in accordance with Code Section
210 44-7-34 and all unearned prepaid rent if the rental agreement is terminated pursuant to
211 this article.

212 (6) The tenant's rights under this subsection do not arise if the condition was caused by
213 the willful or negligent act or omission of the tenant, a member of the tenant's family, a
214 licensee, an invitee, or other person on the premises with the tenant's consent.

215 (7) The tenant's action to exercise the rights and remedies provided by this subsection
216 shall not constitute grounds for eviction.

217 (8) No rental agreement shall contain a waiver of the rights described in this subsection.

218 (9) A court may award the tenant actual damages, damages based on the property's
219 diminution in value, reasonable attorney fees, injunctive relief, or any combination of the
220 foregoing if the landlord fails to comply with this article or materially breaches the rental
221 agreement.

222 (b)(1) If there is a material noncompliance by the tenant with the rental agreement, an
223 intentional misrepresentation of a material fact in a rental agreement or application, or a
224 noncompliance with Code Section 44-7-13 materially affecting health and safety, the
225 landlord may deliver a written notice to terminate the rental agreement to the tenant
226 specifying the acts and omissions constituting the breach and that the rental agreement
227 will terminate upon a date not less than seven days after receipt of the notice. An
228 intentional misrepresentation of a material fact in a rental agreement or application may
229 not be remedied or cured. If the breach is not remedied within the seven days after
230 receipt of the notice to terminate the rental agreement, it shall terminate on the date
231 provided in the notice to terminate the rental agreement. If the tenant adequately
232 remedies the breach before the date specified in the notice, the rental agreement shall not
233 terminate.

234 (2) If there is noncompliance by the tenant with this article materially affecting health
235 and safety that can be remedied by repair, replacement of a damaged item, or cleaning,
236 and the tenant fails to comply as promptly as conditions require in case of emergency or
237 within 14 days after written notice by the landlord specifying the breach and requesting
238 that the tenant remedy it within that period of time, the landlord may enter the dwelling
239 unit and cause the work to be done in a workmanlike manner and submit the itemized bill
240 for the actual and reasonable cost thereof as rent on the next date periodic rent is due, or
241 if the rental agreement has terminated, for immediate payment.

242 (3) Acceptance of rent with knowledge of a default by the tenant or acceptance of
243 performance by the tenant that varies from the terms of the rental agreement constitutes
244 a waiver of the landlord's right to terminate the rental agreement for that breach, unless
245 otherwise agreed after the breach has occurred.

246 (4) The landlord may only recover or take possession of the dwelling unit by action or
247 otherwise, including willful diminution of services to the tenant by interrupting or
248 causing the interruption of heat, running water, hot water, electrical, gas, or other
249 essential service to the tenant, in case of abandonment or surrender by the tenant.

250 (5) The landlord may challenge a tenant's actions to terminate the rental agreement or
251 conduct repairs at the landlord's expense by filing an action in magistrate court.

252 (6) The landlord must file an action in court and demonstrate compliance with the terms
253 of the rental agreement and with this article to recover rent the tenant has deposited into
254 an escrow account with the court in lieu of paying the landlord when there is a violation
255 of this article and the landlord was provided with notice but failed to make the required
256 repairs in the required time period.

257 (7) A landlord may recover actual damages and reasonable attorney fees and obtain
258 injunctive relief for noncompliance by the tenant with the rental agreement or the
259 provisions of this article.

260 44-7-24.

261 (a) Except as otherwise provided in this article, notice shall be deemed given in writing
262 by either regular mail or hand delivery, with the sender retaining sufficient proof of having
263 given such notice, which may be either a United States postal certificate of mailing or a
264 certificate of service confirming such mailing prepared by the sender. However, a person
265 shall be deemed to have notice of a fact if he or she has actual knowledge of it, he or she
266 has received verbal notice of it, or from all of the facts and circumstances known to him
267 or her at the time in question, he or she has reason to know it exists.

268 (b) The initial disclosure required by a landlord pursuant to subsection (a) of Code Section
269 44-7-3 may be made in writing or by posting a notice of the change in a conspicuous place
270 on the property.

271 (c) Notice to a tenant is deemed made at the tenant's last known place of residence, which
272 may be the dwelling unit.

273 (d) If notice is given that is not in writing, the person giving the notice has the burden of
274 proof to show that the notice was given to the recipient.

275 44-7-25.

276 (a) A tenant shall not unreasonably withhold consent to the landlord to enter onto the
 277 premises, including entering into the dwelling unit, in order to inspect the premises, make
 278 necessary or agreed repairs, decorations, alterations, or improvements, supply necessary
 279 or agreed services, or exhibit the premises to prospective or actual purchasers, mortgagees,
 280 workers, or contractors.

281 (b) A landlord may enter the premises without consent of the tenant in case of emergency.

282 (c) A landlord shall not abuse the right of entry or use it to harass the tenant. Except in
 283 case of emergency or unless it is impracticable to do so, the landlord shall give the tenant
 284 at least two days' notice of intent to enter and may enter only at reasonable times.

285 (d) The landlord has no other right of entry except:

286 (1) Pursuant to court order;

287 (2) Where the tenant has abandoned or surrendered the premises; or

288 (3) Where the tenant is deceased, incapacitated, or incarcerated.

289 (e) As used in this Code section, the term 'emergency' means a sudden, generally
 290 unexpected occurrence or set of circumstances demanding immediate action.

291 44-7-26.

292 This article shall be liberally construed and applied to promote its underlying purposes to:

293 (1) Simplify, clarify, modernize, and revise the law governing the rental of dwelling
 294 units and the rights and obligations of landlords and tenants;

295 (2) Encourage landlords and tenants to maintain and improve the quality of housing; and

296 (3) Promote equal protection to all parties."

297 **SECTION 5.**

298 This Act shall apply to all rental agreements entered into on and after July 1, 2015.

299 **SECTION 6.**

300 All laws and parts of laws in conflict with this Act are hereby repealed.