

The Senate Committee on Judiciary offered the following substitute to SB 443:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated,
2 relating to security deposits, so as to clarify provisions relating to lists of existing defects and
3 of damages before and after a tenancy; to clarify provisions relating to the return of a security
4 deposit and an action to recover such security deposit; to correct cross-references; to provide
5 for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

7 Article 2 of Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to
8 security deposits, is amended by revising Code Sections 44-7-33 through 44-7-35, relating
9 to lists of existing defects and of damages during tenancy, right of tenant to inspect and
10 dissent, action to recover security deposit, return of security deposit, grounds for retention
11 of part, delivery of statement and sum due to tenant, unclaimed deposit, court determination
12 of disposition of deposit, and remedies for landlord's noncompliance with article,
13 respectively, as follows:
14

15 "44-7-33.

16 (a) Prior to tendering a security deposit, the tenant shall be presented with a
17 comprehensive list of any existing damage to the premises; which list shall be for the
18 tenant's permanent retention. The tenant shall have the right to inspect the premises to
19 ascertain the accuracy of ~~the~~ such list prior to taking occupancy. The landlord and the
20 tenant shall sign the list, and this shall be conclusive evidence of the accuracy of the list but
21 shall not be conclusive as to latent defects. If the tenant refuses to sign the list, the tenant
22 shall state specifically in writing the items on ~~the~~ such list to which he or she dissents and
23 shall sign such statement of dissent.

24 (b)(1) Within three business days after the date of the termination of occupancy the lease
25 or rental agreement and surrender of the premises, the landlord or his or her agent shall
26 inspect the premises and compile a comprehensive list of any damage done to the

27 premises which is the basis for any charge against the security deposit and the estimated
 28 dollar value of such damage. After compiling such list, the landlord shall maintain a
 29 copy of such list and make it available to the tenant upon request at any time on or prior
 30 to the fifth business day following the termination of the lease or rental agreement and
 31 surrender of the premises. The tenant shall have the right to inspect the premises within
 32 five business days after the termination of the ~~occupancy~~ lease or rental agreement and
 33 surrender of the premises in order to ascertain the accuracy of the list. ~~The~~ If the tenant
 34 exercises such inspection within five business days, the landlord shall make the list
 35 available to the tenant and the landlord and the tenant shall may sign the list, and this
 36 shall be conclusive evidence of the accuracy of the list. If the tenant refuses to sign the
 37 list, he or she shall state specifically in writing the items on the list to which he or she
 38 dissents and shall sign such statement of dissent.

39 (2) If the tenant ~~terminates occupancy~~ vacates or surrenders the premises without
 40 notifying the landlord, the landlord may make a final inspection and compile a
 41 comprehensive list of any damage done to the premises which is the basis for any charge
 42 against the security deposit and the estimated dollar value of such damage within a
 43 reasonable time, not to exceed seven business days, after discovering the ~~termination of~~
 44 occupancy vacated or surrendered premises.

45 (c) A tenant who disputes the accuracy of the final damage list ~~given~~ compiled pursuant
 46 to subsection (b) of this Code section and provided to the tenant pursuant to Code Section
 47 44-7-34 may bring an action in any court of competent jurisdiction in this state to recover
 48 the portion of the security deposit which the tenant believes to be wrongfully withheld for
 49 damages to the premises. The tenant's claims shall be limited to those items to which the
 50 tenant specifically dissented in accordance with this Code section. If the tenant fails to sign
 51 a list or to dissent specifically in accordance with this Code section, the tenant shall not be
 52 entitled to recover the security deposit or any other damages under Code Section 44-7-35,
 53 provided that the lists required under this Code section contain written notice of the tenant's
 54 duty to sign or to dissent to the list.

55 44-7-34.

56 (a) Except as otherwise provided in this article, within ~~one month~~ 30 days after the
 57 termination of the ~~residential~~ lease or rental agreement and the surrender and acceptance
 58 of the premises, whichever occurs last, a landlord shall return to the tenant the full security
 59 deposit which was deposited with the landlord by the tenant. No security deposit shall be
 60 retained to cover ordinary wear and tear which occurred as a result of the use of the
 61 premises for the purposes for which the premises were intended, provided that there was
 62 no negligence, carelessness, accident, or abuse of the premises by the tenant or members

63 of his or her household or their invitees or guests. In the event that actual cause exists for
 64 retaining any portion of the security deposit, the landlord shall provide the tenant with a
 65 written statement listing identifying the exact reasons for the retention thereof, which shall
 66 include the comprehensive list of damages prepared as required by Code Section 44-7-33,
 67 if ~~If~~ the reason for retention is based on damages to the premises, ~~such damages shall be~~
 68 ~~listed as provided in Code Section 44-7-33.~~ When the such statement is delivered, it shall
 69 be accompanied by a payment of the difference between any sum deposited and the amount
 70 retained. The landlord shall be deemed to have complied with this Code section by mailing
 71 the such statement and any payment required to the last known address of the tenant via
 72 ~~first-class~~ first-class mail. If the letter containing the payment is returned to the landlord
 73 undelivered and if the landlord is unable to locate the tenant after reasonable effort, the
 74 payment shall become the property of the landlord 90 days after the date the payment was
 75 mailed. Nothing in this Code section shall preclude the landlord from retaining the security
 76 deposit for nonpayment of rent or of fees for late payment, for abandonment of the
 77 premises, for nonpayment of utility charges, for repair work or cleaning contracted for by
 78 the tenant with third parties, for unpaid pet fees, or for actual damages caused by the
 79 tenant's breach, provided that the landlord attempts to mitigate the actual damages.

80 (b) In any court action in which there is a determination that neither the landlord nor the
 81 tenant is entitled to all or a portion of a security deposit under this article, the judge or the
 82 jury, as the case may be, shall determine what would be an equitable disposition of the
 83 security deposit; and the judge shall order the security deposit paid in accordance with such
 84 disposition.

85 44-7-35.

86 (a) A landlord shall not be entitled to retain any portion of a security deposit if ~~the~~:

87 (1) The security deposit was not deposited in an escrow account in accordance with Code
 88 Section 44-7-31 or a surety bond was not posted in accordance with Code Section
 89 44-7-32; ~~and if the~~

90 (2) The initial ~~and final~~ damage lists required by subsection (a) of Code Section 44-7-33
 91 ~~are~~ was not made and ~~provided~~ presented to the tenant as required by such subsection;
 92 and

93 (3) The final damage list required by subsection (b) of Code Section 44-7-33 was not
 94 compiled and made available to the tenant as required by such subsection.

95 (b) The failure of a landlord to provide ~~each of the~~ lists and written statements within the
 96 time periods specified in Code ~~Sections 44-7-33 and~~ Section 44-7-34 shall work a
 97 forfeiture of all ~~his~~ the landlord's rights to withhold any portion of the security deposit or
 98 to bring an action against the tenant for damages to the premises.

99 (c) Any landlord who fails to return any part of a security deposit which is required to be
100 returned to a tenant pursuant to this article shall be liable to the tenant in the amount of
101 three times the sum improperly withheld plus reasonable attorney's fees; provided,
102 however, that the landlord shall be liable only for the sum erroneously withheld if the
103 landlord shows by the preponderance of the evidence that the withholding was not
104 intentional and resulted from a bona fide error which occurred in spite of the existence of
105 procedures reasonably designed to avoid such errors."

106

SECTION 2.

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