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COMMITTEE REPORT

February 18, 2009

**H. 3247**

Introduced by Reps. Huggins and Duncan

S. Printed 2/18/09--H. [SEC 2/19/09 3:17 PM]

Read the first time January 13, 2009.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 3247) to amend the Code of Laws of South Carolina, 1976, by adding Section 27‑40‑445 so as to provide a landlord of a multi‑family dwelling may, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

WILLIAM E. SANDIFER for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 27‑40‑445 SO AS TO PROVIDE A LANDLORD OF A MULTI‑FAMILY DWELLING MAY EMPLOY CERTAIN EQUIPMENT OR METHODOLOGY TO DETERMINE THE QUANTITY OF WATER PROVIDED TO EACH SINGLE‑FAMILY RESIDENCE WITHIN THE DWELLING, AND TO PROVIDE THE LANDLORD MAY CHARGE A TENANT FOR WATER AND WASTEWATER USED BY HIS SINGLE‑FAMILY RESIDENCE, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 27‑40‑210, RELATING TO GENERAL DEFINITIONS IN THE RESIDENTIAL LANDLORD AND TENANT ACT, SO AS TO DEFINE A MULTI‑FAMILY DWELLING; AND TO AMEND SECTION 27‑40‑440, RELATING TO A LANDLORD’S OBLIGATIONS, SO AS TO PROVIDE SPECIFIC REQUIREMENTS PERTAINING TO THE PROVISION OF CENTRAL HEAT AND HOT WATER TO A MULTI‑FAMILY DWELLING.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 3, Chapter 40, Title 27 of the 1976 Code is amended by adding:

“Section 27‑40‑445. A landlord of a multi‑family dwelling may install equipment or use an economic allocation methodology to determine the quantity of water provided to tenants and the quantity of water used in common areas of the multi‑family dwelling. Based on water use as determined through the use of this equipment or methodology, the landlord may charge a tenant separately for water and wastewater used by his individual single‑family residence, provided the aggregate amount charged to all single‑family residences in the multi‑family dwelling does not exceed:

(1) the total charges paid by the landlord for water and wastewater service for the multi‑family dwelling, plus a reasonable fee to establish, service, and bill for water and wastewater service provided; and

(2) the terms of the charges are disclosed to the tenants prior to the formation of a landlord‑tenant agreement.”

SECTION 2. Section 27‑40‑210 of the 1976 Code is amended to read:

“Section 27‑40‑210. Subject to additional definitions contained in subsequent articles of this chapter ~~which~~ that apply to specific articles or parts of this chapter, and unless the context otherwise requires, in this chapter:

(1) ‘action’ includes recoupment, counterclaim, set‑off, suit in equity, ~~and any other~~ or another proceeding in which rights are determined, including an action for possession;

(2) ‘building and housing codes’ include ~~any~~ law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of ~~any~~ premise~~,~~ or dwelling unit;

(3) ‘dwelling unit’ means a structure or the part of a structure ~~that is~~ used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household and includes a landlord‑owned mobile ~~homes~~ home. Property ~~that is~~ leased for the exclusive purpose of being renovated by the lessee is not considered a dwelling unit within the meaning of this chapter;

(4) ‘fair‑market rental value’ means the actual periodic rental payment for comparable rental property to which a willing landlord and a willing tenant would agree. In determining the fair‑market rental value, ~~the~~ a court may consider an ~~appraisals~~ appraisal offered by the tenant, landlord, realty experts, licensed appraisers, and other relevant evidence;

(5) ‘good faith’ means honesty in fact in the conduct of the transaction concerned;

(6) ‘landlord’ means the owner, lessor, or sublessor of the premises, and it also means a manager of the premises who fails to disclose as required by Section 27‑40‑420;

(7) ‘organization’ includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, ~~and any other~~ or another legal or commercial entity;

(8) ‘owner’ means one or more persons, jointly or severally, in whom is vested:

~~(i)~~ (a) all or part of the legal title to property; or

~~(ii)~~(b) all or part of the beneficial ownership and a right to present use and enjoyment of the premises.

The term includes a mortgagee in possession;

(9) ‘person’ includes an individual or organization;

(10) ‘premises’ means a dwelling unit and the structure of which it is a part ~~and facilities~~, a facility and ~~appurtenances therein~~ appurtenance to it, and grounds, ~~areas~~ area, and ~~facilities~~ facility held out for the use of ~~tenants~~ a tenant generally or whose use is promised to ~~the~~ a tenant;

(11) ‘rent’ means the consideration payable for use of the premises, including a late ~~charges whether~~ charge, payable in a lump sum or ~~periodic payments~~ periodically, excluding a security ~~deposits~~ deposit or other ~~charges~~ charge;

(12) ‘rental agreement’ means ~~all agreements,~~ a written or oral agreement, and valid rules and regulations adopted under Section 27‑40‑520 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(13) ‘roomer’ means a person occupying a dwelling unit that does not include a toilet and either a bathtub or a shower, and a refrigerator, stove, and kitchen sink, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure;

(14) ‘single‑family residence’ means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single‑family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with ~~any other~~ another dwelling unit;

(15) ‘multi‑family dwelling’ means a structure that includes four or more single‑family residences;

~~(15)~~(16) ‘tenant’ means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

~~(16)~~(17) ‘wilful’ means an attempt to intentionally avoid obligations under the rental agreement or the provisions of this chapter;

~~(17)~~(18) ‘essential services’ means sanitary plumbing or sewer services; electricity; gas, ~~where it is~~ used for heat, hot water, or cooking; running water, and reasonable amounts of hot water and heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

~~(18)~~(19) ‘security deposit’ means a monetary deposit from the tenant to the landlord which is held in trust by the landlord to secure the full and faithful performance of the terms and conditions of the lease agreement as provided in Section 27‑40‑410.”

SECTION 3. Section 27‑40‑440 of the 1976 Code is amended to read:

“Section 27‑40‑440. ~~(a)~~(A) A landlord shall:

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

(2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(3) keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition;

(4) make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(5) maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him. ~~Appliances~~ An appliance present in the dwelling unit ~~are~~ is presumed to be supplied by the landlord unless specifically excluded by the rental agreement. ~~No appliances~~ An appliance or ~~facilities~~ facility necessary to the provision of essential services may not be excluded~~.~~; and

(6) in addition to the other requirements of this section, a landlord shall provide:

(a) heat from a central heating system to a single residence within a multi‑family dwelling, and from October 1 through May 31 annually, the landlord shall provide this heat at a temperature of at least:

(i) 68 degrees Fahrenheit between 6:00 a.m. and 10:00 p.m., but only if the temperature outside the multi‑family dwelling falls below 55 degrees Fahrenheit; and

(ii) 55 degrees Fahrenheit between 10:00 p.m. and 6:00 a.m., but only if the temperature outside the multi‑family dwelling falls below 40 degrees Fahrenheit; and

(b) water at a constant minimum temperature of 120 degrees Fahrenheit from a central source of supply for hot water to a bathtub, shower, washbasin, and sink in a multi‑family dwelling, except a bath or shower equipped with a balanced pressure mixing valve, thermostatic mixing valve, or a combination of these valves may produce a discharge temperature of less than 120 degrees Fahrenheit. A gas or electric hot water heater, if approved by the Department of Consumer Affairs, may be used in lieu of a central source of supply for hot water.

~~(b)~~(B) If the duty imposed by ~~paragraph (1)~~ item (1) of subsection (~~a~~A) is greater than ~~any~~ duty imposed by ~~any other paragraph~~ another item of that subsection, the landlord’s duty must be determined by reference to ~~paragraph (1)~~ item (1) of subsection (~~a~~A).

~~(c)~~(C) The landlord and tenant of a single‑family residence may agree in writing that the tenant perform the landlord’s duties specified in ~~paragraph (5)~~ item (5) of subsection (~~a~~A) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered ~~into~~ in good faith and not for the purpose of evading ~~the obligations~~ an obligation of the landlord.

~~(d)~~(D) The landlord and tenant of ~~any~~ a dwelling unit other than a single‑family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling ~~only~~ if:

(1) the agreement of the parties is entered ~~into~~ in good faith and not for the purpose of evading ~~the obligations~~ an obligation of the landlord;

(2) the work is not necessary to cure noncompliance with ~~subsection~~ item (~~a~~A)(1) of this section; and

(3) the agreement does not diminish or affect ~~the obligations~~ an obligation of the landlord to ~~other tenants~~ another tenant in the premises.”

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect six months after approval by the Governor.

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