

Getting out of a Lease upon Deployment of Soldier

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

[About Sam Wright](#)

4.2—Right to Terminate a Lease or Contract upon Mobilization

Q: I am married to an active duty Army Soldier. He enlisted in the Regular Army in 2006 and we got married shortly thereafter. In September 2011, he was assigned to an Army base in Kentucky, and I moved with him into an apartment near the base. We signed a one-year lease, running through September 2012. We thought that he would be assigned to the Kentucky base for three years, but in January 2012 he deployed to Afghanistan, likely for a year. In early February, my husband and I notified the landlord, by certified mail, that we would be vacating the apartment by the end of April, and we enclosed a copy of my husband's deployment orders.

I took my young daughter and moved in with my mother, in another state, for the duration of my husband's deployment to Afghanistan. We paid the rent through the end of April. I got all

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

of our stuff out of the apartment and returned the keys to the landlord on April 30. Although the landlord has acknowledged that there was no damage to the apartment, she refused to refund my \$900 security deposit. I sued the landlord in small claims court, seeking return of the \$900. The landlord hired a lawyer and filed a countersuit, seeking rent for the last five months remaining on the lease.

I have been unable to find a lawyer to represent me in this matter, but one of the lawyers I consulted called the landlord's attorney and told him that something called the "Soldiers and Sailors Act" gave my husband and me the right to terminate the lease under these circumstances. The landlord's attorney insisted that the right to terminate a lease only applies to a member of the National Guard or Reserve who signs a lease when not on active duty and then is called to active duty. Is the landlord's attorney correct?

A: No, the landlord's attorney is wrong and should know better. The lawyer needs to learn a lesson that I learned well in the fall of 1973, as I started law school at the University of Houston. Professor Newell Blakely (now deceased) told me and my classmates that we should always have the text of the statute in front of us when we speak or write about what the statute provides.

In 2011, as the Director of the Service Members Law Center, I received and responded to 5,405 inquiries about military-legal topics, and 63% of the inquiries were about the Uniformed Services Employment and Reemployment Rights Act (USERRA). This is a law that I know very well, since I have been dealing with it for 30 years and I had a hand in drafting its present form. Nonetheless, I keep a copy of USERRA on my desk. Whenever I am asked a question about what USERRA provides, I always turn to the relevant section and reread it, no matter how confident I may be that I know the answer off the top of my head. This is a good habit that I have been endeavoring to maintain for almost 40 years.

In 1917, shortly after the United States entered World War I, Congress enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA), to protect the legal rights of all the "doughboys" who answered the nation's call, whether by voluntary enlistment, by draft, or by call-up from the nascent Army National Guard, Army Reserve, Navy Reserve, or Marine Corps Reserve. In 2003, Congress substantially updated and improved the SSCRA, and the new law is called the Servicemembers Civil Relief Act (SCRA).

Yes, the SCRA applies to the situation of a Reservist or National Guard member who wants to get out of a lease because he or she has been called to active duty. This law also applies to the individual who is already on active duty when he or she signs a lease and who later, during the term of the lease, wants to get out of the lease because of a permanent change of station (PCS) move or a deployment of 90 days or more. Here is the pertinent SCRA language:

(a) Termination by lessee.

(1) In general. The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--

(A) the lessee's entry into military service; *or*

(B) *the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.*

(2) Joint leases. *A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.*

(b) Covered leases. This section applies to the following leases:

(1) Leases of premises. A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; *or*

(B) *the servicemember, while in military service, executes the lease and thereafter receives military orders for a change of permanent station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.*

Title 50, United States Code Appendix, section 535 (50 U.S.C. App. 535) (emphasis supplied).

It is clear beyond any question that the right to terminate the lease applies in your family's situation. You and your husband did what you were required to do to terminate the lease. The landlord has no right to charge you for the last five months on the lease. If you can prove that you returned the apartment undamaged, you are entitled to a refund of the entire \$900 security deposit.

Update – March 2022³

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.⁴ The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the sections. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

The relevant section cited throughout the article can be found as followed:

³Update by Second Lieutenant Lauren Walker, USMC.

⁴*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-skra> (last visited Mar. 10, 2022).

50 U.S.C. App. § 535 discussing the termination of residential or motor vehicle leases can be found at 50 U.S.C. § 3955.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.⁵

Please join or support ROA

This article is one of 2,300-plus “Law Review” articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation’s eight⁶ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE

⁵Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

⁶Congress recently established the United States Space Force as the 8th uniformed service.