

## LAW REVIEW 13102

### July 2013

#### Air Force Recruit Has Right to Terminate Apartment Lease

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

##### 4.2—Right to terminate a lease or contract upon entering active duty

##### 4.9—SCRA enforcement

**Q: I am an Air Force recruiter. I found your “Law Review” articles<sup>1</sup> on the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA). I am trying to help a young man that I have recruited for the Air Force.**

The young man will be reporting to boot camp on September 1. He lives in an apartment and has a lease that runs until February 2014. He is a bachelor with no children, so he does not need the apartment after he reports to active duty. Back in June, he notified the landlord, in writing by certified mail, that he would be leaving the apartment at the end of August, and he enclosed a letter from the Commanding Officer of our Recruiting District, attesting to the fact that this young man is scheduled to report to boot camp on September 1.

**The landlord has refused to terminate the lease and has threatened to withhold the security deposit and to prevent this young man from removing his furniture and other belongings from the apartment. The landlord insists that the right to terminate a lease only applies to folks who are already on active duty and who transfer to a new duty station or who deploy to a place like Afghanistan. Please help!**

**A: The landlord is wrong. The SCRA gives an individual the right to get out of a premises lease in several circumstances, and one of those circumstances is when a person signs a lease as a civilian and then goes on active duty (in whatever way) while the lease is in effect.**

Congress enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers’ and Sailors’ Civil Relief Act (SSCRA), which was originally enacted in 1917, shortly after the United States entered World War I. The point of the SSCRA was to protect the rights and interests of the “doughboys” who were called to the colors to fight “the war to end all wars.” This includes those who were drafted, those who voluntarily enlisted, and those who were called to active duty (voluntarily or involuntarily) from the nascent National Guard, Army Reserve, Naval Reserve, or Marine Corps

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<sup>1</sup> We invite the reader’s attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). You will find 924 articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. Captain Wright initiated this column in 1997, and we add new articles each week. We added 122 new articles in 2012, and we have added another 102 so far in 2013.

Reserve. From the beginning, the SSCRA has given individuals entering active duty the right to terminate leases on premises (apartments, houses, offices, stores, farms, etc.).

I invite your attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org), the website of the Service Members Law Center (SMLC). Toward the bottom of the page you will find a copy of the complete text of the SCRA, along with most helpful footnotes by Colonel John S. Odom, Jr., USAF (Ret.), the nation's foremost expert on the SCRA and SSCRA. The SCRA is codified in the Appendix of title 50 of the United States Code, at sections 501 through 597b (50 U.S.C. App. 501-597b).

I invite your attention to section 305 of the SCRA, 50 U.S.C. App. 535, which reads as follows:

**§ 535. Termination of residential or motor vehicle leases***10 /Sec. 305*

(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) of (2)(B) of subsection (b), as the case may be.

10 50 U.S.C. App. §535 is among the most frequently amended sections in the SCRA. Congress has continued

to amend the section as a result of the continuing efforts of landlords and leasing companies to try and defeat

the purpose of the section, which is to allow servicemembers to terminate premises and vehicle leases when

they are not in a position to utilize the premises or vehicles because of their military service. The principal

amendments to this section have been made by P.L. 108-454, effective December 10, 2004, and P.L. 111-275,

effective October 13, 2010.

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(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 permanent change of 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.

(2) Leases of motor vehicles. A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation 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 under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders —

(i) for a change of permanent station —

(I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or

(ii) to deploy with a military unit or as an individual in support of a military operation for a period of not less than 180 days.

(c) Manner of termination.

(1) In general. Termination of a lease under subsection (a) is made —

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(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) Delivery of notice. Delivery of notice under paragraph (1)(A) may be accomplished —

(A) by hand delivery;

(B) by private business carrier; or

(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) Effective date of lease termination.

(1) Leases of premises. In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) Leases of motor vehicles. In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) Arrearages and other obligations and liabilities.

(1) Leases of premises. Rent amounts for a lease described in subsection (b)(1) that are unpaid for the period preceding the effective date of the lease termination shall be paid on

a prorated bases. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease shall be paid by the lessee..

(2) Leases of motor vehicles. Lease amounts for a lease described in subsection (b)(2) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee 23

in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) Rent paid in advance. Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) Relief to lessor. Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) Misdemeanor. Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(i) Definitions.

(1) Military orders. The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS. The term 'continental United States' means the 48 contiguous States and the District of Columbia.

Section 535(b)(1) clearly provides that an individual is permitted to terminate a lease on premises in two circumstances. The first circumstance is for the person who signs a premises lease while a civilian (not on active duty) and thereafter, during the term of the lease, enters active duty. The second circumstance is for the service member on active duty who signs a premises lease and thereafter, during the term of the lease, is transferred to a new duty station or is deployed.

The landlord is apparently familiar with the second circumstance because that situation arises frequently in an area (like your area) where this is a major military installation. The landlord's ignorance of the other circumstance for terminating a premises lease is irrelevant because ignorance of the law is no excuse.

**Q: Section 535(c)(1)(A) requires the person terminating a premises lease to deliver “a copy of the servicemember’s military orders” to the landlord. This young man is not yet on active duty and does not yet have military orders. How is he to comply with this provision?**

**A:** I invite your attention to section 535(i)(1), which provides: “The term ‘military orders’ with respect to a servicemember means official military orders *or any notification, certification, or verification from the servicemember’s commanding officer with respect to the servicemember’s current or future military duty status.*” (Emphasis supplied.) The letter signed by the Commanding Officer of the Recruiting District certainly qualifies in this respect.

**Q: The landlord is threatening to withhold return of the security deposit and to prevent this young man from removing his belongings from the apartment. What can be done about that?**

**A:** First, I suggest that you call to the landlord’s attention to subsection (h) of section 535. The conduct you describe is a federal misdemeanor, punishable by up to one year in jail and a substantial fine.

Moreover, the SCRA creates a private right of action and provides for attorney fees.<sup>2</sup> I know several lawyers in your area who would love to take on this young man’s case, at no cost to him.

**Q: This young man is also leasing an expensive automobile that he cannot take to boot camp. Does the SCRA give him the right to terminate the vehicle lease?**

**A:** Yes. See section 535 above.<sup>3</sup>

**Q: He also has a cell phone contract. I don’t think that the drill instructors take too kindly to recruits having cell phones at boot camp.**

**A:** Section 535a (50 U.S.C. App. 535a) gives him the right to terminate telephone service contracts, including cell phone contracts. He should probably terminate his cell phone contract now, before he reports to boot camp. After he graduates from boot camp he can get a new cell phone contract if he is not deployed.

**Q: This young man probably has other leases and contracts that it would make sense for him to terminate before he reports to active duty. For example, he has an expensive health club membership with another eight months on the contract. Does the SCRA give him the right to terminate other leases and contracts?**

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<sup>2</sup> Please see Law Reviews 0941 and 0942 (October 2009).

<sup>3</sup> See also Law Review 110 (January 2004).

**A:** Unfortunately, no. The SCRA gives him the right to terminate telephone service contracts and leases on premises and vehicles. The legal doctrine of *expressio unius est exclusio alterius* applies. That is Latin for “the express one is to exclude all the others.” The SCRA specifically gives this young man the right to terminate three kinds of leases and contracts. These provisions militate against the argument that there is an implied right to terminate other kinds of leases and contracts.

We favor a provision that would permit the person entering active duty the right to terminate leases and contracts generally. This will require congressional action.

Also, please see Law Review 0944 (October 2009).