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SCRA Right to Terminate Apartment Lease

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4.2—SCRA right to terminate a lease

Q: I am a retired Coast Guard Reserve officer and a life member of ROA. I enjoy reading your “Law Review” articles about the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), and other laws that are especially pertinent to those who serve our country in uniform.¹

I am a landlord. I own and operate an apartment building that is near a major military base. Because of the proximity of the base, many of my tenants are active duty military personnel.

In my building I have a two-bedroom apartment that is currently leased by two service members—let’s call them Smith and Jones. They are not married to each other or otherwise related. Both Smith and Jones are signatories on the lease, and each one is jointly and severally liable for the payment of the rent. That has not been a problem. Each month, they have pooled their payments and have given me one check for the full amount of the rent.

When they signed the lease, both Smith and Jones were on active duty and assigned to the nearby base. Recently, Smith received Permanent Change of Station (PCS) orders to transfer to a base in a distant state², and he exercised his SCRA right to terminate the lease.

Jones is still on active duty and still assigned to the nearby base. Jones has told me that he wants out of the lease (which still has more than six months to go) because he cannot afford to pay the whole rent himself and he has been unable to find a new roommate to substitute for Smith.

¹ We invite the reader’s attention to www.servicemembers-lawcenter.org. You will find 990 articles and a detailed Subject Index and search function, to facilitate finding articles about very specific topics. Captain Wright initiated the column in 1997, and we add new articles each week. We added 122 new articles in 2012 and another 168 so far in 2013.

² Under section 535(b)(1)(B) of the title 50 Appendix of the United States Code [50 U.S.C. App. 535(b)(1)(B)], an active duty service member who signs a premises lease while on active duty and who thereafter (while still on active duty and during the term of the lease) receives PCS orders or orders 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 is entitled to terminate the premises lease. Similarly, under 50 U.S.C. App. 535(b)(1)(A), a person who signs a premises lease while not on active duty and thereafter (during the term of the lease) enters active duty voluntarily or involuntarily is entitled to terminate the lease.

Under these circumstances, does the SCRA give Jones the right to terminate the lease?

A: No. Jones has not been transferred or deployed, so he does not have the right to terminate the lease.

The SCRA contains a specific provision governing the situation of a premises lease signed by a married couple: “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.” 50 U.S.C. App. 535(a)(2) (emphasis supplied). Jones is not Smith’s dependent, so he does not have the right to terminate the lease.³

Congress has provided for the situation wherein a husband and wife have signed a lease and only one of them is a service member. By necessary implication, this means that there is no right to terminate a lease in another situation, like the Smith-Jones situation. The doctrine of *expressio unius est exclusio alterius*⁴ clearly applies here.

The classic example of *expressio unius est exclusio alterius* comes in the early Supreme Court case *Marbury v. Madison*, 5 U.S. 137 (1803). Article III, section 2, clause 2 of the Constitution establishes the *original* (as opposed to appellate) jurisdiction of the Supreme Court-cases affecting ambassadors and other public ministers and disputes between states. The statute at issue in *Marbury* expanded the original jurisdiction of the Supreme Court to include cases in which a *writ of mandamus* is sought against a federal official. The Supreme Court held that since the Constitution expressly states the classes of cases for which the Supreme Court has original jurisdiction, a federal statute that adds additional classes of cases to the original jurisdiction of the Supreme Court is unconstitutional.

As currently written, the SCRA does not confer on Jones or a person like Jones the right to terminate a premises lease under these circumstances.

³ Section 511 defines nine terms used in the SCRA, including the term “dependent.” A dependent is the service member’s spouse or child or a person for whom the service member has provided more than half of the person’s support for 180 days preceding an application for relief under the SCRA. 50 U.S.C. App. 511(4).

⁴ This Latin phrase can be translated as “to express one is to exclude all the others.”