

LAW REVIEW 14083¹

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Terminating an Apartment Lease upon PCS Orders

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4.2—Right to terminate a lease or contract upon mobilization

Q: I am a Commander in the Navy and I am currently serving on active duty in the Pentagon. I reside (together with my wife and young child) in an apartment in Arlington, Virginia, and I walk to work at the Pentagon. On September 23, 2014, the Navy sent me Permanent Change of Station (PCS) orders, and I am to report to my new duty station in San Diego, California on January 1, 2015.

I have a lease on the Arlington apartment that runs until June 30, 2015. I pay \$2500 per month in rent. In Law Review 14082 (the immediately preceding article in the “Law Review” series), you talked about the Servicemembers Civil Relief Act (SCRA) and the right of a reservist (going on active duty) to terminate an apartment lease. Does the SCRA also apply to a military regular (like me) who receives PCS orders? Am I entitled to get out of my lease early in these circumstances?

A: Yes. You have the right to terminate your residential lease.

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enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers’ and Sailors’ Civil Relief Act (SSCRA), which was originally enacted in 1917, when the United States entered World War I. The SCRA is codified in the Appendix of title 50 of the United States Code, at sections 501-597b (50 U.S.C. App. 501-597b).

Some SCRA provisions only apply to a person who is not on active duty and who then enters active duty, voluntarily or involuntarily, including a Reserve Component (RC) member who enters active duty. Other SCRA provisions also apply to persons (like you) who have been on long-term active duty for years and expect to remain on active duty. Whatever the issue, you need to look to find the specific SCRA section that applies, and see if it is limited to RC members entering active duty or whether it also applies to regulars who have been on active duty for many years.

¹ We invite the reader’s attention to www.servicemembers-lawcenter.org. You will find almost 1,300 “Law Review” 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. The Reserve Officers Association (ROA) established this column in 1997, and we add new articles each week.

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Section 535 of the SCRA gives an individual the right to terminate a lease on *premises* (apartment, house, office, farm, etc.) and to terminate a *motor vehicle lease* under certain circumstances. Here is the entire text of section 535:

§ 535. Termination of residential or motor vehicle leases

(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.*

(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--

(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) *Lease 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) *Lease 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 basis. 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 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.

50 U.S.C. App. 535 (emphasis supplied).

Under section 535, the right to terminate a premises lease applies in two separate situations:

a. Person not on active duty enters active duty. b. Person on active duty receives PCS or deployment orders. You are clearly entitled, under b, to terminate your apartment lease.

Q: I do not need to report to San Diego until January 1, but I plan to have my family and our household goods out of the Arlington apartment before the end of November. We plan to spend December on leave, visiting relatives, and transitioning, and we will drive to San Diego right after Christmas. We do not need the apartment in December, and I certainly do not want to pay \$2500 in rent for December. I want to terminate the lease as of November 30, 2014.

On October 2, 2014, I hand-delivered my formal, written termination notice to the landlord, at the apartment rental office. I attached a copy of my PCS orders. I specified that I was terminating the lease effective November 30, 2014.

The landlord does not dispute my right to terminate the lease but disputes the November 30 date. The landlord insists that I must pay rent through the end of December because my report date in San Diego is January 1.

I found your "Law Review" articles by doing an Internet search. It seems that most of your articles are about the rights of those who serve in the National Guard or Reserve, but some of your articles are about the rights of long-term regulars like me.

What do you think about my dispute with the landlord? Am I correct, or is the landlord? Am I entitled to terminate the lease at the end of November?

A: I think that you are clearly correct. You have properly terminated the lease as of November 30, 2014. The landlord has no right to demand that you pay the \$2500 monthly rent for December.

I have reprinted section 535 of the SCRA above. The pertinent section is section 535(d)(1), and I have highlighted that subsection in italics above. You gave proper and sufficient written notice of lease termination on October 2, 2004. The lease termination 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." 50 U.S.C. App. 535(d)(1).

You gave notice on October 2. The next monthly rental payment, after October 2, is November 1. The termination is effective 30 days later, which is November 30.