Issues in Landlord-Tenant Cases Impacted by Hurricane Harvey

We have received several questions related to landlord-tenant issues that have arisen along the Texas coast in the wake of Hurricane Harvey. Here is a brief summary of the law on some of these issues. Remember that the court may not give legal advice to any party, this information is intended as a guide for courts where eviction or repair and remedy cases have been filed. We advise courts dealing with these cases to thoroughly review Chapter 92 of the Property Code, particularly Subchapter B.

**Q: What if a case can’t be heard by the 21 day deadline?**

A: The Texas Supreme Court issued a joint order with the Court of Criminal Appeals, available on our website and on <http://www.txcourts.gov/court-closures-delays> which authorizes courts to modify or suspend deadlines or procedures in criminal and civil cases as needed due to Harvey-related issues.

**Q: Can a landlord still evict a tenant in a county impacted by Harvey?**

A: Yes. Subject to the below provisions, a landlord can still evict a tenant who is in breach of the lease, even in counties impacted by Harvey.

**Q: When must a landlord begin making repairs on premises damaged by Harvey?**

A: If a condition results from an insured casualty loss, the period for repair does not begin until the landlord receives the insurance proceeds.

**Q: What if the premises are completely unusable?**

A: If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed. If the lease is terminated, the tenant is entitled only to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.

**Q: What if the premises are partially unusable?**

A: If after a casualty loss the rental premises are partially unusable for residential purposes, the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, but **only on judgment of a county or district court**.

**Q: What if the landlord closes the premises after receiving a repair request from the tenant?**

A: If the landlord closes the rental unit after the tenant gives the landlord a notice to repair and the tenant moves out on or before the end of the rental term, the landlord must pay the tenant's actual and reasonable moving expenses, refund a pro rata portion of the tenant's rent from the date the tenant moves out, and, if otherwise required by law, return the tenant's security deposit.

A landlord who violates this law is liable to the tenant for an amount equal to the total of one month's rent plus $100 and attorney's fees, which the tenant would have to file a small claims suit to recover.

**Q: How are a tenant’s rights to repair the premises and deduct the costs from rent impacted?**

Sec. 92.0561 of the Property Code outlines the complex “repair and deduct” procedure. Once the landlord gets notice that the tenant intends to utilize this remedy, the landlord can delay the tenant’s right to repair and deduct by delivering to the tenant an affidavit of delay.

The affidavit must summarize the reasons for the delay and the diligent efforts made by the landlord up to the date of the affidavit to get the repairs done. The affidavit must state facts showing that the landlord has made and is making diligent efforts to repair the condition, and it must contain dates, names, addresses, and telephone numbers of contractors, suppliers, and repairmen contacted by the owner.

This affidavit delays repair by the tenant for **30 days if the landlord's failure to repair is caused by a general shortage of labor or materials for repair following a natural disaster such as a hurricane**, tornado, flood, extended freeze, or widespread windstorm.

**Q: Can a landlord move a tenant from an unusable premises to another unit and require a lease extension?**

No. If a rental premises is, as a practical matter, totally unusable for residential purposes as a result of a natural disaster such as a hurricane, tornado, flood, extended freeze, or widespread windstorm, a landlord that allows a tenant to move to another rental unit owned by the landlord may not require the tenant to execute a lease for a term longer than the term remaining on the tenant's lease on the date the premises was rendered unusable as a result of the natural disaster.