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April 7, 2015

ENGROSSED HOUSE

BILL NO. 1449

By: Calvey of the House

and

Fry of the Senate

An Act relating to landlord and tenant; amending 12 O.S. 2011, Section 1148.5A, which relates to actions regarding real property; modifying certain service of summons; amending 41 O.S. 2011, Section 115, which relates to security deposits; prohibiting certain judicial determinations; declaring certain judicial determinations void; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2011, Section 1148.5A, is amended to read as follows:

Section 1148.5A If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by certified mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by ~~the sheriff's posting or by private process service~~ any person over eighteen (18) years of age, as directed by the attorney for the property owner, posting of said summons conspicuously on the

1 building on the premises, and, if there be no building on said
2 premises, then by posting the same at some conspicuous place on the
3 premises sought to be recovered at least five (5) days prior to the
4 date of trial, and by the claimant's mailing a copy of said summons
5 to the defendant at his or her last-known address by certified mail
6 at least five (5) days prior to said date of trial. In order to
7 approve the posting of a notice as described in this section, it
8 shall not be necessary for the attorney to enter an appearance in
9 the action. Such service shall confer no jurisdiction upon the
10 court to render any judgment against the defendant for the payment
11 of money nor for any relief other than the restoration of possession
12 of the premises to the claimant, unless the defendant appears at
13 trial. Such service shall not be rendered ineffectual by the
14 failure of the defendant to actually see or receive such posted
15 process nor by his or her failure to actually receive or sign a
16 return receipt for such mailed process.

17 SECTION 2. AMENDATORY 41 O.S. 2011, Section 115, is
18 amended to read as follows:

19 Section 115. A. Any damage or security deposit required by a
20 landlord of a tenant must be kept in an escrow account for the
21 tenant, which account shall be maintained in the State of Oklahoma
22 with a federally insured financial institution. Misappropriation of
23 the security deposit shall be unlawful and punishable by a term in a
24 county jail not to exceed six (6) months and by a fine in an amount

1 not to exceed twice the amount misappropriated from the escrow
2 account.

3 B. Upon termination of the tenancy, any security deposit held
4 by the landlord may be applied to the payment of accrued rent and
5 the amount of damages which the landlord has suffered by reason of
6 the tenant's noncompliance with this act and the rental agreement,
7 all as itemized by the landlord in a written statement delivered by
8 mail to be by return receipt requested and to be signed for by any
9 person of statutory service age at such address or in person to the
10 tenant if he or she can reasonably be found. If the landlord
11 proposes to retain any portion of the security deposit for rent,
12 damages or other legally allowable charges under the provisions of
13 this act or the rental agreement, the landlord shall return the
14 balance of the security deposit without interest to the tenant
15 within thirty (30) days after the termination of tenancy, delivery
16 of possession and written demand by the tenant. If the tenant does
17 not make such written demand of such deposit within six (6) months
18 after termination of the tenancy, the deposit reverts to the
19 landlord in consideration of the costs and burden of maintaining the
20 escrow account, and the interest of the tenant in that deposit
21 terminates at that time.

22 C. Upon cessation of a landlord's interest in the dwelling unit
23 including, but not limited to, termination of interest by sale,
24 assignment, death, bankruptcy, appointment of receiver or otherwise,

1 the person in possession of the tenants' damage or security deposits
2 at his or her option or pursuant to court order shall, within a
3 reasonable time:

4 1. Transfer said deposits to the landlord's successor in
5 interest and notify the tenants in writing of such transfer and of
6 the transferee's name and address; or

7 2. Return the deposits to the tenants.

8 D. Upon receipt of the transferred deposits under paragraph 1
9 of subsection C of this section, the transferee, in relation to such
10 deposits, shall have all the rights and obligations of a landlord
11 holding such deposits under this act.

12 E. If a landlord or manager fails to comply with this section
13 or fails to return any prepaid rent required to be paid to a tenant
14 under this act, the tenant may recover the damage and security
15 deposit and prepaid rent, if any.

16 F. Except as otherwise provided by the rental agreement, a
17 tenant shall not apply or deduct any portion of the security deposit
18 from the last month's rent or use or apply such tenant's security
19 deposit at any time in lieu of payment of rent.

20 G. This section does not preclude the landlord or tenant from
21 recovering other damages to which he or she may be entitled under
22 this act.

23 H. No judicial determination or order regarding a security
24 deposit shall be issued if a tenant is still in possession of the

1 premises and any judicial determination or order regarding a
2 security deposit issued prior to the tenant vacating the premises
3 shall be null and void.

4 SECTION 3. This act shall become effective November 1, 2015.

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
6 April 7, 2015 - DO PASS
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