

West's Annotated California Codes
Civil Code (Refs & Annos)
Division 3. Obligations (Refs & Annos)
Part 4. Obligations Arising from Particular Transactions (Refs & Annos)
Title 5. Hiring
Chapter 2. Hiring of Real Property (Refs & Annos)

West's Ann.Cal.Civ.Code § 1951.2

§ 1951.2. Termination of lease; remedy of lessor

Currentness

(a) Except as otherwise provided in [Section 1951.4](#), if a lessee of real property breaches the lease and abandons the property before the end of the term or if his right to possession is terminated by the lessor because of a breach of the lease, the lease terminates. Upon such termination, the lessor may recover from the lessee:

- (1) The worth at the time of award of the unpaid rent which had been earned at the time of termination;
- (2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the lessee proves could have been reasonably avoided;
- (3) Subject to subdivision (c), the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the lessee proves could be reasonably avoided; and
- (4) Any other amount necessary to compensate the lessor for all the detriment proximately caused by the lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

(b) The “worth at the time of award” of the amounts referred to in paragraphs (1) and (2) of subdivision (a) is computed by allowing interest at such lawful rate as may be specified in the lease or, if no such rate is specified in the lease, at the legal rate. The worth at the time of award of the amount referred to in paragraph (3) of subdivision (a) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1 percent.

(c) The lessor may recover damages under paragraph (3) of subdivision (a) only if:

- (1) The lease provides that the damages he may recover include the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award, or for any shorter period of time specified in the lease, exceeds the amount of such rental loss for the same period that the lessee proves could be reasonably avoided; or

(2) The lessor relet the property prior to the time of award and proves that in reletting the property he acted reasonably and in a good-faith effort to mitigate the damages, but the recovery of damages under this paragraph is subject to any limitations specified in the lease.

(d) Efforts by the lessor to mitigate the damages caused by the lessee's breach of the lease do not waive the lessor's right to recover damages under this section.

(e) Nothing in this section affects the right of the lessor under a lease of real property to indemnification for liability arising prior to the termination of the lease for personal injuries or property damage where the lease provides for such indemnification.

Credits

(Added by Stats.1970, c. 89, p. 104, § 2, operative July 1, 1971.)

Editors' Notes

OFFICIAL FORMS

2010 Main Volume

<Mandatory and optional Forms adopted and approved by the Judicial Council are set out in West's California Judicial Council Forms Pamphlet.>

LEGISLATIVE COMMITTEE COMMENTS--ASSEMBLY

1970 Addition

Section 1951.2 states the measure of damages when the lessee breaches the lease and abandons the property or when his right to possession is terminated by the lessor because of a breach of the lease. As used in this section, "rent" includes "charges equivalent to rent." See [Section 1951](#).

Nothing in section 1951.2 affects the rules of law that determine when the lessor may terminate the lessee's right to possession. See generally [2 WITKIN, SUMMARY OF CALIFORNIA LAW Real Property §§ 276-278 \(1960\)](#). Thus, for example, the lessor's right to terminate the lessee's right to possession may be waived under certain circumstances. *Id.* at [§ 278](#). Likewise, nothing in this section affects any right the lessee may have to an offset against the damages otherwise recoverable under the section. For example, where the lessee has a claim based on the failure of the lessor to perform all of his obligations under the lease, this section does not affect the right of the lessee to have the amount he is entitled to recover from the lessor on such claim offset against the damages otherwise recoverable under the section.

Subdivisions (a) and (b). Under paragraph (1) of subdivision (a), the lessor is entitled to recover the unpaid rent which had been earned at the time the lease terminated. Pursuant to subdivision (b), interest must be added to such rent at such lawful rate as may be specified in the lease, or if none is specified at the legal rate of seven percent. Interest accrues on each unpaid rental installment from the time it becomes due until the time of award *i.e.*, the entry of judgment or the similar point of determination if the matter is determined by a tribunal other than a court.

A similar computation is made under paragraph (2) of subdivision (a) except that the lessee may prove that a certain amount of rental loss could have been reasonably avoided. The lessor is entitled to interest only on the amount by which each rental installment exceeds the amount of avoidable rental loss for that rent period.

The lump sum award of future rentals under paragraph (3) of subdivision (a) is discounted pursuant to subdivision (b) to reflect prepayment. The amount by which each future rental installment exceeds the amount of avoidable rental loss for that rent period is discounted from the due date under the lease to the time of award at the discount rate of the Federal Reserve Bank of San Francisco plus one percent. Judicial notice can be taken of this rate pursuant to [Evidence Code Section 452\(h\)](#). Damages may be recovered under paragraph (3) only if the lease expressly so provides or if the lessor, acting reasonably and in good faith, has relet the property prior to judgment. See subdivision (c).

In determining the amount recoverable under paragraphs (2) and (3) of subdivision (a), the lessee is entitled to have offset against the unpaid rent not merely all sums the lessor has received or will receive by virtue of a reletting of the property which has actually been accomplished but also all sums that the lessee can *prove* the lessor could have obtained or could obtain by acting reasonably in reletting the property. The duty to mitigate the damages will often require that the property be relet at a rent that is more or less than the rent provided in the original lease. The test in each case is whether the lessor acted reasonably and in good faith in reletting the property.

The general principles that govern mitigation of damages apply in determining what constitutes a “rental loss that the lessee proves” could be “reasonably avoided.” These principles were summarized in [Green v. Smith](#), 261 Cal.App.2d 392, 396-397, 67 Cal.Rptr. 796, 799-800 (1968):

A plaintiff cannot be compensated for damages which he could have avoided by reasonable effort or expenditures. . . . The frequent statement of the principle in the terms of a “duty” imposed on the injured party has been criticized on the theory that a breach of the “duty” does not give rise to a correlative right of action. . . . It is perhaps more accurate to say that the wrongdoer is not required to compensate the injured party for damages which are avoidable by reasonable effort on the latter's part. . . .

The doctrine does not require the injured party to take measures which are unreasonable or impractical or which would involve expenditures disproportionate to the loss sought to be avoided or which may be beyond his financial means. . . . The reasonableness of the efforts of the injured party must be judged in the light of the situation confronting him at the time the loss was threatened and not by the judgment of hindsight. . . . The fact that reasonable measures other than the one taken would have avoided damage is not, in and of itself, proof of the fact that the one taken, though unsuccessful, was unreasonable. . . . “If a choice of two reasonable courses presents itself, the person whose wrong forced the choice cannot complain that one rather than the other is chosen.” . . . The standard by which the reasonableness of the injured party's efforts is to be measured is not as high as the standard required in other areas of law. . . . It is sufficient if he acts reasonably and with due diligence, in good faith. [Citations omitted.]

Paragraph (4) of subdivision (a) makes clear that the measure of the lessor's recoverable damages is not limited to damages for the loss of past and future rentals. This paragraph adopts language used in [Civil Code Section 3300](#) and provides, in substance, that all of the other damages a person is entitled to recover for the breach of a contract may be recovered by a lessor for the breach of his lease. For example, to the extent that he would not have had to incur such expenses had the lessee performed his obligations under the lease, the lessor is entitled to recover his reasonable expenses in retaking possession of the property, in making repairs that the lessee was obligated to make, in preparing the property for reletting, and in reletting the property. Other damages necessary to compensate the lessor for all of the detriment proximately caused by the lessee would include damages for the

lessee's breach of specific covenants of the lease--for example, a promise to maintain or improve the premises or to restore the premises upon termination of the lease. Attorney's fees may be recovered only if they are recoverable under [Section 1717](#).

If the lessee proves that the amount of rent that could reasonably be obtained by reletting after termination exceeds the amount of rent reserved in the lease, such excess is offset against the damages otherwise recoverable under paragraph (4) of subdivision (a). Subject to this exception, however, the lease having been terminated, the lessee no longer has an interest in the property, and the lessor is not accountable for any excess rents obtained through reletting.

The basic measure of damages provided in this section is essentially the same as that formerly set forth in [Civil Code Section 3308](#). The measure of damages under [Section 3308](#) was applicable, however, only when the lease so provided and the lessor chose to invoke that remedy. Except as provided in [Section 1951.4](#), the measure of damages under this section is applicable to all cases in which a lessor seeks damages upon breach and abandonment by the lessee or upon termination of the lease because of the lessee's breach of the lease. Moreover, this section makes clear that the lessee has the burden of proving the amount he is entitled to have offset against the unpaid rent, while [Section 3308](#) was silent as to the burden of proof. In this respect, the rule stated is similar to that now applied in actions for breach of employment contracts. See discussion in [Erler v. Five Points Motors, Inc.](#), 249 Cal.App.2d 560, 57 Cal.Rptr. 516 (1967).

Subdivision (d). Under former law, attempts by a lessor to mitigate damages sometimes resulted in an unintended acceptance of the lessee's surrender and, consequently, in loss of the lessor's right to future rentals. See [Dorcich v. Time Oil Co.](#), 103 Cal.App.2d 677, 230 P.2d 10 (1951). One of the purposes of this section is to require mitigation by the lessor, and subdivision (d) is included to insure that efforts by the lessor to mitigate do not result in a waiver of his right to damages under section 1951.2.

Subdivision (e). The determination of the lessor's liability for injury or damage for which he is entitled to indemnification from the lessee may be subsequent to a termination of the lease, even though the cause of action arose prior to termination. Subdivision (e) makes clear that, in such a case, the right to indemnification is unaffected by the subsequent termination.

Effect on other remedies. Section 1951.2 is not a comprehensive statement of the lessor's remedies. When the lessee breaches the lease and abandons the property or the lessor terminates the lessee's right to possession because of the lessee's breach, the lessor may simply rescind or cancel the lease without seeking affirmative relief under the section. Where the lessee is still in possession but has breached the lease, the lessor may regard the lease as continuing in force and seek damages for the detriment caused by the breach, resorting to a subsequent action if a further breach occurs. In addition, [Section 1951.4](#) permits the parties to provide an alternative remedy in the lease--recovery of rent as it becomes due. See also [Section 1951.5](#) (liquidated damages) and [Section 1951.8](#) (equitable relief).

One result of the enactment of this section is that, unless the parties have otherwise agreed, the lessor is excused from further performance of his obligations after the lease terminates. In this respect, the enactment of Section 1951.2 changes the result in [Kulawitz v. Pacific Woodenware & Paper Co.](#), 25 Cal.2d 664, 155 P.2d 24 (1944).

Statute of Limitations. The statute of limitations for an action under this section is four years from the date of termination in the case of a written lease and two years in the case of a lease not in writing. See [Code of Civil Procedure Sections 337.2 and 339.5](#). [9 Cal.L.Rev.Comm. Reports 153 (1969); 10 Cal.L.Rev.Comm. Reports 1044 (1970)].

[Notes of Decisions \(50\)](#)

West's Ann. Cal. Civ. Code § 1951.2, CA CIVIL § 1951.2

Current with urgency legislation through Ch. 185 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

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