

Arkless v. Kilstein.²⁸ In *Arkless*, the district court had held that “the Act refers to, in its commonly accepted legal interpretation, to a dispossession of a tenant by a landlord, and not to any disturbance of the tenant’s right to possession and quiet enjoyment of the premises by a third party.”²⁹

Section 531(d) provides for the possibility that allotments may be taken from a servicemember’s pay.³⁰ This requires secretarial implementation and currently there is no procedure authorized.³¹

IV. Residential Leases

In addition to the protections against evictions,³² the SCRA allows servicemembers to terminate residential leases. In fact, the SCRA, in contrast to the SSCRA, has expanded this gamut of protections and added similar protections for servicemembers who lease automobiles. Practitioners will undoubtedly conclude that this section must be read with a degree of care. The portions which deal with residential leases and those concerning automobile leases are similar, but they operate under different timelines. Thus, care must be taken to avoid using or advocating from the wrong timeline.

In any event, the entire section is as follows:

50 U.S.C. app. § 535

- (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.

²⁸ 61 F. Supp. 886 (E.D. Pa. 1944). See also H.R. REP. NO.108-81, at 40.

²⁹ *Arkless*, 61 F. Supp. at 888.

³⁰ 50 U.S.C. app. § 531(d).

³¹ U.S. DEP’T OF DEFENSE, REG. 7000.14-R, FINANCIAL MANAGEMENT REGULATION vol. 7A, ch. 50 (July 2005).

³² See 50 U.S.C. app. § 531. See also *supra* para. 4-3.

- (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. Rents or lease amounts unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. In the case of the lease of a motor vehicle, the lessor may not impose an early termination charge, but any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, 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) Penalties.
- (1) 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.
 - (2) Preservation of other remedies. The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.
- (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.³³

³³ 50 U.S.C. app. § 535.

This section of the Act differs from the section concerning evictions.³⁴ It provides a method by which the servicemember-lessee rather than the lessor, may terminate a lease. Its scope is not limited by either the amount of the agreed rent or the nature of the premises. In further contrast, this section does not require that the lessee's ability to perform be materially affected by his/her military service.

Servicemembers who come to active duty from the reserve components or those who join the armed forces³⁵ are allowed to terminate their "residential, professional, business, [or] agricultural"³⁶ leases. They must do this in writing, however.³⁷ As a concession to the lessor, the termination "is effective 30 days after the first date on which the next rental payment is due and payable"³⁸ and after the notice has been delivered.³⁹ For example, in the case of a month-to-month rental, the termination becomes effective 30 days after the first date on which the next rental payment is due subsequent to the date when the notice of termination is delivered. If the rent is due on the first day of each month, and notice is mailed on 1 August, then "the next rental payment is due and payable" on 1 September. Thirty days after that date would be 1 October.

There is also the possibility that a lessor may obtain equitable relief,⁴⁰ the lessor may, during the period from his/her receipt of notice to the effective date of termination, petition the appropriate court for relief from the lease termination. Landlords may petition the court on grounds of "undue hardship" or countervailing equitable consideration or for an "equitable offset" for lease termination. Such an "equitable offset" would most likely be granted in commercial or professional lease terminations. "Equitable offset" could include lost rent, realty fees for re-rental, depreciation in rental value of premises because of tenant-requested fixtures, and attorney fees and costs.⁴¹ In addition, if the servicemember requires the lessor to modify the property and subsequently terminates the lease, the lessor may charge the lessee for the alterations.⁴² This occurs only if the lessee knew of the impending call to active duty at the time the lessee requested the modifications.⁴³

Although there is a possibility that equity will require relief to the lessor, the servicemember's ability to terminate a lease is a clearly defined protection. Thus, "a

³⁴ *Id.* app. § 531. See also *supra* para. 4-3.

³⁵ 50 U.S.C. app. § 535(a)(1)(B).

³⁶ *Id.* app. § 535(b)(1).

³⁷ *Id.* app. § 535(c).

³⁸ *Id.* app. § 535(d)(1).

³⁹ *Id.*

⁴⁰ *Id.* app. § 535(g).

⁴¹ *Omega Indus. v. Raffaele*, 894 F. Supp. 1425, 1430 (D. Nev., 1995) ("For example, if a military person who knows that he or she will soon be invoking [50 U.S.C. app. § 535] to terminate an existing lease—wrongfully induces a lessor to make tenant improvements, a court may find that equity requires that an equitable remedy be granted in an amount equal to both the cost of those improvements and the monthly rental obligations of that military person").

⁴² *Id.*

⁴³ *Id.*

active duty for a period of 90 days,⁵⁴ an automobile lease may only be terminated after 180 days.⁵⁵

Servicemembers may also terminate their automobile leases when they receive orders for a permanent change of station (PCS) from a posting in the continental United States to another location outside the continental United States.⁵⁶ If they are stationed outside the continental United States, but in a United States territory or state, they may terminate the lease if they are transferred to the continental United States or to another state or territory outside the continental United States.⁵⁷ Finally, servicemembers who are not subject to a PCS, but who "deploy with a military unit, or as an individual in support of a military operation,"⁵⁸ may also seek relief if the deployment is for at least 180 days.⁵⁹

VI. Installment Contracts

Under Section 532, the SCRA protects servicemembers who enter into installment contracts prior to entry on active duty:

50 U.S.C. app. § 532

- (a) Protection upon breach of contract.
 - (1) Protection after entering military service. After a servicemember enters military service, a contract by the servicemember for—
 - (A) the purchase of real or personal property (including a motor vehicle); or
 - (B) the lease or bailment of such property, may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.
 - (2) Applicability. This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.
- (b) Penalties.
 - (1) Misdemeanor. A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act [50 U.S.C. app. § 517], or who knowingly 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.
 - (2) Preservation of other remedies and rights. The remedies and rights provided under this section are in addition to and do not preclude any

⁵⁴ *Id.* app. § 535(b)(1)(B).

⁵⁵ *Id.* app. § 535(b)(2)(A).

⁵⁶ *Id.* app. § 535(b)(2)(B)(i)(I).

⁵⁷ *Id.* app. § 535(b)(2)(B)(i)(II).

⁵⁸ *Id.* app. § 535(b)(2)(B)(ii).

⁵⁹ *Id.*