

No. 1978-299

AN ACT

HB 1834

Providing for notice and the right to cure landlord's default to avoid the termination of utility service to tenants.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the "Utility Service Tenants Rights Act."

Section 2. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Landlord ratepayer." One or more individuals or an organization listed on a gas, electric, steam or water utility's records as the party responsible for payment of the gas, electric, steam or water service provided to one or more residential units of a residential building or mobile home park of which building or mobile home park such party is not the sole occupant.

"Mobile home." A transportable, single-family dwelling unit intended for permanent occupancy and constructed as a single unit, or as two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations and constructed so that it may be used without a permanent foundation.

"Mobile home park." Any site, lot, field or tract of land, privately or publicly owned or operated, upon which three or more mobile homes, occupied for dwelling or sleeping purposes, are or are intended to be located.

"Municipal corporation." All cities, boroughs, towns, townships, or counties of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth.

"Public utility." A municipal corporation now or hereafter owning or operating within its corporate boundaries equipment or facilities for:

- (1) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.
- (2) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.

“Residential building.” A building containing one or more dwelling units occupied by one or more tenants, but excluding nursing homes, hotels and motels.

“Tenant.” Any person or group of persons whose dwelling unit in a residential building or mobile home park is provided gas, electricity, steam or water, pursuant to a rental arrangement for such dwelling unit, mobile home or plot of ground within a mobile home park, but who is not the ratepayer of the company which supplied such gas, electricity, steam or water.

Section 3. Notices before service to landlord ratepayer discontinued.

(a) Except when required to prevent or alleviate an emergency or except in the case of danger to life or property, before any discontinuance of service within the utility’s corporate limits, to a landlord ratepayer for nonpayment a public utility shall:

(1) Notify the landlord ratepayer of the proposed discontinuance in writing as prescribed in section 5 at least 37 days before the date of discontinuance of service.

(2) Notify the following agencies which serve the community in which the affected premises are located in writing at the time of delivery of notice to the tenants of the proposed discontinuance of service:

(i) the Department of Licenses and Inspections of any city of the first class;

(ii) the Department of Public Safety of any city of the second class, second class A, or third class; and

(iii) the city or county Public Health Department or in the event that such a department does not exist, the Department of Health office responsible for that county.

(3) Notify each residential unit reasonably likely to be occupied by an affected tenant of the proposed discontinuance in writing as prescribed in section 6 at least seven days after notice to the landlord ratepayer pursuant to this section, and at least 30 days before any such discontinuance of service. However, if within seven days of receipt of the notice issued pursuant to this section, the landlord ratepayer files a petition with the court disputing the right of the utility to discontinue service, such notice shall not be rendered until such petition has been adjudicated by the court of common pleas or the Commonwealth Court.

(b) Before any discontinuance of service by a public utility to a landlord ratepayer due to a request for voluntary relinquishment of service by the landlord ratepayer:

(1) the landlord ratepayer shall state in a form bearing his notarized signature that all of the affected dwelling units are either unoccupied or the tenants affected by the proposed discontinuance have consented in writing to the proposed discontinuance, which form shall conspicuously bear a notice that false statements are punishable criminally;

(2) all of the tenants affected by the proposed discontinuance shall inform the utility orally or in writing of their consent to the discontinuance; or

(3) the landlord ratepayer shall provide the utility with the names and addresses of the affected tenants pursuant to section 4 and the utility shall notify the community service agencies and each residential unit pursuant to sections 3 and 6. Under the voluntary relinquishment discontinuance procedures of this subparagraph the tenants shall have all of the rights provided in sections 7 through 11.

Section 4. Identifying tenants.

(a) Upon receiving a lawful request for the names and addresses of the affected tenants pursuant to this act, it shall be the duty of the landlord ratepayer to provide the utility with the names and addresses of every affected tenant of any building or mobile home park for which the utility is proposing to discontinue service unless within seven days of receipt of the notice, the landlord ratepayer pays the amount due the utility or makes an arrangement with the utility to pay the balance.

(b) Such information shall be provided by the landlord ratepayer:

(1) within seven days of receipt of the notice to the landlord ratepayer required by section 3; or

(2) within three days of any adjudication by a court having jurisdiction that the landlord ratepayer must provide the requested information if the landlord files a petition with the court within seven days of receipt of the notice to the landlord disputing the right of the utility to discontinue service.

(c) It shall be the duty of any public utility to pursue any appropriate legal remedy it has, necessary to obtain from the landlord ratepayer, the names and addresses of all affected tenants of a building or mobile home park for which the utility is proposing discontinuance of service to such landlord ratepayer.

Section 5. Delivery and contents of discontinuance notice to landlord ratepayer.

(a) The notice required to be given to a landlord ratepayer pursuant to section 3 shall contain the following information:

(1) the amount owed the utility by the landlord ratepayer for each affected account;

(2) the date on or after which service will be discontinued;

(3) the date on or after which the company will notify tenants of the proposed discontinuance of service and of their rights under sections 7, 9 and 10;

(4) the obligation of the landlord ratepayer under section 4 to provide the utility with the names and addresses of every affected tenant or to pay the amount due the utility or make an arrangement with the utility to pay the balance including a statement:

(i) that such list must be provided or payment or arrangement must be made within seven days of receipt of the notice; and

(ii) of the penalties and liability which the landlord ratepayer may incur under section 18 by failure to comply; and

(5) the right of the landlord ratepayer to stay the notification of tenants by filing a petition with the court disputing the right of the utility to discontinue service.

(b) Any one of the following procedures shall constitute effective notice to the landlord under section 3:

(1) Notice by certified mail if the utility receives a return receipt signed by the landlord ratepayer or his agent.

(2) Notice by personal service of the landlord ratepayer or his agent.

(3) After unsuccessful attempts at personal service on two separate days, notice by first class mail and conspicuously posting at the landlord ratepayer's principal place of business or the business address which the landlord provided the utility as his address for receiving communications.

Section 6. Delivery and contents of first discontinuance notice to tenants.

The notice required to be given to a tenant pursuant to section 3 shall be mailed or otherwise delivered to the address of each affected tenant, and shall contain the following information:

(1) the date on which the notice is rendered;

(2) the date on or after which service will be discontinued;

(3) the circumstances under which service to the affected tenant may be continued, specifically referring to the conditions set out in section 7;

(4) the bill for the 30-day period preceding the notice to the tenants;

(5) the statutory rights of a tenant to deduct the amount of any direct payment to the utility from any rent payments then or thereafter due; to be protected against any retaliation by the landlord for exercising such statutory right; to recover money damages from the landlord for any such retaliation;

(6) that tenants may make payment to the utility on account of nonpayment by the landlord ratepayer only by check or money order drawn by the tenant to the order of the utility; and

(7) a telephone number at the utility which a tenant may call for an explanation of his rights.

The information in paragraphs (1) through (7) shall be posted by the utility in those common areas of the building or mobile home park where it is reasonably likely to be seen by the affected tenants. Any officer or employee of the utility may at any reasonable time, enter the common hallways and common areas of such building for the purpose of complying with the provisions of this section.

Section 7. Rights of tenants to continued service.

(a) At any time before or after service within the utility's corporate limits is discontinued by a public utility on account of nonpayment by the landlord ratepayer, the affected tenants may apply to the utility to have service continued or resumed. A public utility shall not discontinue such

service or shall promptly resume service previously discontinued if it receives from the tenants an amount equal to the bill of the landlord ratepayer for the 30-day period preceding the notice to the tenants. Thereafter, such utility shall notify each tenant of the total amount of the bill for the second and each succeeding period of 30 days or less and if the tenants fail to make payment of any such bill within 30 days of the delivery of the notice to the tenants, the utility may commence discontinuance procedures: Provided, That no such discontinuance may occur until 30 days after each tenant has received written notice of the proposed discontinuance as prescribed in section 8. All payments by tenants to a utility on account of nonpayment by the landlord ratepayer shall be made by a check or money order drawn by the tenant to the order of the utility. Upon receiving any such payment, the utility shall notify the landlord ratepayer who is liable for the utility service of the amount or amounts paid by any tenant and the amount or amounts credited to the landlord's bill for each tenant pursuant to the provisions of this section. In the event that the tenants fail to satisfy the requirements of this section to maintain or restore service and service to the affected dwelling units is discontinued, the utility shall refund to each tenant the amount paid by such tenant toward the bill which the tenants failed to pay, upon the request of the tenant or after holding the tenant's payment during 60 consecutive days of discontinued service, whichever occurs first.

(b) Any tenant of a residential building or mobile home park who has been notified of a proposed discontinuance of utility service pursuant to section 3 shall have the right to agree to subscribe for future service individually if this can be accomplished without a major revision of distribution facilities or additional right-of-way acquisitions.

Section 8. Delivery and contents of subsequent discontinuance notices to tenants.

Subsequent notices required to be given to a tenant pursuant to section 7 shall be mailed or otherwise delivered to the address of each affected tenant and shall contain the following information:

- (1) the date on or after which service will be discontinued;
- (2) the amount due, which shall include the arrearage on any earlier bill due from tenants;
- (3) a telephone number at the utility which a tenant may call for an explanation of his rights; and
- (4) the right of a tenant to file a petition with the court to enforce any legal right that he may have.

Section 9. Tenant's right to withhold rent.

Any tenant who has made a payment to a utility on account of nonpayment by the landlord ratepayer pursuant to this act may subsequently recover the amount paid to the utility either by deducting said amount from any rent or payment on account of taxes or operating expenses then or thereafter due from such tenant to the person to whom he

would otherwise pay his rent or by obtaining reimbursement from the landlord ratepayer.

Section 10. Waiver prohibited.

Any waiver of the tenant's rights under sections 3 through 11 shall be void and unenforceable.

Section 11. Retaliation by landlord ratepayer prohibited.

It shall be unlawful for any landlord ratepayer or agent or employee thereof to threaten or take reprisals against a tenant because the tenant exercised his rights under section 7 or 9. Any landlord ratepayer, or agent or employee thereof who threatens or takes such reprisals against any tenant shall be liable for damages which shall be two months' rent or the actual damages sustained by the tenant, whichever is greater, and the costs of suit and reasonable attorney's fees. The receipt of any notice of termination of tenancy, an increase in rent or of any substantial alteration in the terms of tenancy within six months after the tenant has acted pursuant to section 7 or 9 to avoid discontinuance of utility service, shall create a rebuttable presumption that such notice is a reprisal against the tenant for exercising his rights under section 7 or 9. However, the presumption shall not arise if the notice of termination of tenancy is for nonpayment of rent not withheld under section 9 or lawfully withheld under any other right that the tenant may have under law.

Section 12. Duties of the Attorney General.

The Attorney General shall have the power and it shall be his duty to enforce this act.

Section 13. Assurances of voluntary compliance.

In the administration of this act, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the act from any person who has engaged or was about to engage in such method, act or practice. Such assurance may include a stipulation for voluntary payment by the alleged violator providing for the restitution by the alleged violator to any person in interest of money, property or other things received from them in connection with the violation of this act. Any such assurance shall be in writing and be filed with the court of common pleas in the county in which the alleged violator resides, has his principal place of business, or is doing business, or the Commonwealth Court. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest.

Section 14. Restraining prohibited acts.

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared in this act to be unlawful and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice. The action may be brought in the court of common pleas of the

county in which such person resides, has his principal place of business, or is doing business, or may be brought in the Commonwealth Court. The said courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this act and such injunctions shall be issued without bond.

Section 15. Payment of costs and restitution.

Whenever any court issues a permanent injunction to restrain and prevent violations of this act, the court may in its discretion provide for payment by defendant or defendants to the Commonwealth of the court costs of the action. In addition, the court may in its discretion direct that the defendant or defendants restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violation of this act, under terms and conditions established by the court.

Section 16. Civil penalties; violation of injunction or assurance of voluntary compliance.

Any person who violates the terms of an injunction issued under section 14 or any of the terms of an assurance of voluntary compliance duly filed in court shall forfeit and pay to the Commonwealth a civil penalty of not more than \$5,000 for each violation. For the purposes of this section, the court issuing an injunction, or in which an assurance of voluntary compliance is filed shall retain jurisdiction, and the cause shall be continued; and, in such cases the Attorney General, acting in the name of the Commonwealth, may petition for recovery of civil penalties and any other equitable relief deemed needed or proper.

Section 17. Civil penalties; willful violations.

In any action brought under section 14, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful, the Attorney General, acting in the name of the Commonwealth of Pennsylvania, may recover, on behalf of the Commonwealth of Pennsylvania, a civil penalty not exceeding \$1,000 per violation, which civil penalty shall be in addition to other civil penalties which may be granted under this act.

Section 18. Penalties for removing, interfering or tampering with notices.

(a) Any landlord ratepayer who fails to provide a utility with the names and addresses of affected tenants pursuant to section 4 shall forfeit and pay to the Commonwealth a civil penalty of not more than \$500 for each day of the landlord ratepayer's failure to respond. The court in its discretion may award the utility reasonable attorneys' fees, filing fees and reasonable costs of suit for any action against the landlord ratepayer which was necessary to obtain the names and addresses of affected tenants pursuant to section 4.

(b) Any person who removes, interferes or tampers with a notice to tenants of proposed discontinuance of service, posted pursuant to section 6 shall be guilty of a violation of this section and shall be punished by a fine not to exceed \$25.

Section 19. Effective date.

This act shall take effect immediately.

APPROVED—The 26th day of November, A. D. 1978.

MILTON J. SHAPP