

JAN 22 2008

S.B. NO. 2802

A BILL FOR AN ACT

RELATING TO RENTAL SECURITY DEPOSITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 521-44, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§521-44 Security deposits.** (a) As used in this section
4 "security deposit" means money deposited by or for the tenant
5 with the landlord to be held by the landlord to:

6 (1) Remedy tenant defaults for accidental or intentional
7 damages resulting from failure to comply with section
8 521-51, for failure to pay rent due, or for failure to
9 return all keys furnished by the landlord at the
10 termination of the rental agreement;

11 (2) Clean the dwelling unit or have it cleaned at the
12 termination of the rental agreement so as to place the
13 condition of the dwelling unit in as fit a condition
14 as that which the tenant entered into possession of
15 the dwelling unit; and

16 (3) Compensate for damages caused by a tenant who
17 wrongfully quits the dwelling unit.



1 (b) The landlord may require as a condition of a rental
2 agreement a security deposit to be paid by or for the tenant for
3 the items in subsection (a) and no others, in an amount not in
4 excess of a sum equal to one month's rent. The landlord may not
5 require or receive from or on behalf of a tenant at the
6 beginning of a rental agreement any money other than the money
7 for the first month's rent and a security deposit as provided in
8 this section. The security deposit shall not be construed as
9 payment of the last month's rent by the tenant, unless mutually
10 agreed upon, in writing, by the landlord and tenant if the
11 tenant gives forty-five days' notice of vacating the premises;
12 in entering such agreement, the landlord shall not be deemed to
13 have waived the right to pursue legal remedies against the
14 tenant for any damages the tenant causes. Any such security
15 deposit shall be held by the landlord for the tenant and the
16 claim of the tenant to the security deposit shall be prior to
17 the claim of any creditor of the landlord, including a trustee
18 in bankruptcy, even if the security deposits are commingled.

19 (c) At the termination of a rental agreement in which the
20 landlord required and received a security deposit if the
21 landlord proposes to retain any amount of the security deposit
22 for any of the purposes specified in subsection (a), the



1 landlord shall so notify the tenant, in writing, unless the
2 tenant had wrongfully quit the dwelling unit, together with the
3 particulars of and grounds for the retention, including written
4 evidence of the costs of remedying tenant defaults, such as
5 estimates or invoices for material and services or of the costs
6 of cleaning, such as receipts for supplies and equipment or
7 charges for cleaning services. [~~The~~] Except as provided in this
8 section, the security deposit, or the portion of the security
9 deposit remaining after the landlord has claimed and retained
10 amounts authorized under this section, if any, shall be returned
11 to the tenant not later than fourteen days after the termination
12 of the rental agreement. If the landlord does not furnish the
13 tenant with the written notice and other information required by
14 this subsection, within fourteen days after the termination of
15 the rental agreement, the landlord shall not be entitled to
16 retain the security deposit or any part of it, and the landlord
17 shall return the entire amount of the security deposit to the
18 tenant. A return of the security deposit or the furnishing of
19 the written notice and other required information in compliance
20 with the requirements of this subsection shall be presumptively
21 proven if mailed to the tenant, at an address supplied to the
22 landlord by the tenant, with acceptable proof of mailing and



1 postmarked before midnight of the fourteenth day after the date
2 of the termination of the rental agreement or if there is an
3 acknowledgment by the tenant of receipt within the fourteen-day
4 limit. All actions for the recovery of a landlord's complete or
5 partial retention of the security deposit shall be instituted
6 not later than one year after termination of the rental
7 agreement.

8 (d) At the termination of a rental agreement, any security
9 deposit returned to a tenant, or any portion thereof that
10 represents deductions made by a landlord pursuant to this
11 section, shall be in addition to simple interest equal to six
12 per cent of the returned security deposit, calculated each year.

13 (e) Every landlord shall maintain security deposits
14 subject to this section and any interest accruing thereto in a
15 trust or separate account that is separate from any personal
16 account maintained by the landlord and accessible only by mutual
17 consent of the landlord and tenant; provided that any fee or
18 cost related to the account shall be an expense of the landlord.

19 [~~d~~] (f) For the purposes of this section if a tenant is
20 absent from the dwelling unit for a continuous period of twenty
21 days or more without written notice to the landlord the tenant
22 shall be deemed to have wrongfully quit the dwelling unit;



1 provided that the tenant shall not be considered to be absent
2 from the dwelling unit without notice to the landlord during any
3 period for which the landlord has received payment of rent. In
4 addition to any other right or remedy the landlord has with
5 respect to such a tenant the landlord may retain the entire
6 amount of any security deposit the landlord has received from or
7 on behalf of such tenant.

8 [~~+~~] (g) The landlord shall not require the delivery of
9 any postdated check or other negotiable instrument to be used
10 for payment of rent.

11 [~~+~~] (h) If the landlord who required and received a
12 security deposit transfers the landlord's interest in the
13 dwelling unit, whether by sale, assignment, death, appointment
14 of a receiver, or otherwise, the landlord's successor in
15 interest is bound by this section. The original landlord shall
16 provide an accounting of the security deposits received for each
17 dwelling unit to the landlord's successor at or before the time
18 of the transfer of the landlord's interest; within twenty days
19 thereafter the landlord's successor shall give written notice to
20 each tenant of the amount of the security deposit credited to
21 the tenant. In the event the landlord's successor fails to
22 satisfy the requirements of this subsection, it shall be



1 presumed that the tenant has paid a security deposit equal to no
2 less than one month's rent at the rate charged when the tenant
3 originally rented the dwelling unit and the landlord's successor
4 shall be bound by this amount in all further matters relating to
5 the security deposit.

6 ~~[(g)]~~ (i) If the landlord and the tenant disagree about
7 the right of the landlord to claim and retain the security
8 deposit or any portion of it, either the landlord or the tenant
9 may commence an action in the small claims division of the
10 district court, as provided in chapter 633 and the rules of
11 court thereunder, to adjudicate the matter.

12 ~~[(h)]~~ (j) In any action in the small claims division of
13 the district court pursuant to subsection (g) where the court
14 determines that:

15 (1) The landlord wrongfully and wilfully retained a
16 security deposit or part of a security deposit, the
17 court may award the tenant damages in an amount equal
18 to three times the amount of the security deposit, or
19 part thereof, wrongfully and wilfully retained and the
20 cost of suit.

21 (2) The landlord wrongfully retained a security deposit or
22 part of a security deposit, the court shall award the



1 tenant damages in an amount equal to the amount of the
2 security deposit, or part thereof, wrongfully retained
3 and the cost of suit.

4 (3) The landlord was entitled to retain the security
5 deposit or a part of it, the court shall award the
6 landlord damages in an amount equal to the amount of
7 the security deposit, or part thereof, in dispute and
8 the cost of suit.

9 (4) In any such action, neither the landlord nor the
10 tenant may be represented by an attorney, including
11 salaried employees of the landlord or tenant."

12 SECTION 2. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

15

INTRODUCED BY: *David Furumaga*



Report Title:

Landlord Tenant; Security Deposit

Description:

Requires landlords to add 6% interest to security deposits returned to tenants. Requires landlords to maintain security deposits and any interest accruing thereto in trust or separate accounts.

