

HB931 HD2

Measure Title:	RELATING TO THE LANDLORD-TENANT CODE.
Report Title:	Landlord-Tenant Code; Habitability; Retaliatory Evictions
Description:	Prohibits landlords from recovering possession of a dwelling unit from tenants if habitability of premises is significantly impaired. Sets a tenant's liability for rent if habitability of premises is significantly impaired. Provides remedies for retaliatory evictions. (HB931 HD2)
Companion:	
Package:	None
Current Referral:	CPH, JDC
Introducer(s):	C. LEE, Takumi



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 931, H.D. 2, RELATING TO THE LANDLORD-TENANT CODE.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Tuesday, March 12, 2019

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Clare E. Connors, Attorney General, or
Mana Moriarty, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are (1) to prohibit a landlord from recovering possession of a dwelling unit from a tenant, or causing the tenant to be removed from the dwelling unit involuntarily, if habitability of the premises is significantly impaired; (2) to cap the tenant's liability for rent to the landlord at the fair rental value of the premises if the habitability of the premises is significantly impaired; and (3) to authorize specific recovery in the amount of two months' rent by a tenant who has been evicted in retaliation for protected activity.

The provision authorizing two months of free occupancy may be subject to a constitutional challenge as a taking of private property for a public use without compensation. See page 7, lines 1–2. Under this provision, as drafted, a court may award to a tenant who proves a retaliatory eviction free occupancy of the landlord's premises for two months.

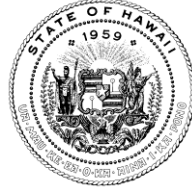
The Takings Clauses of the United States Constitution (Fifth Amendment and Fourteenth Amendment) and the Constitution of the State of Hawai'i (article I, section 20) prohibit the taking of private property for public use without just compensation. Although takings jurisprudence can be complex, the United States Supreme Court has essentially adopted a per se rule that any physical interference with private property requires compensation. *E.g., Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 441 (1982). Ordinarily, compensation will be required even if the governmental

interference with the property is temporary, as opposed to permanent. *Arkansas Game and Fish Comm'n v. United States*, 568 U.S. 23, 26 (2012).

To avoid a constitutional challenge and the risk that the State will be required to pay compensation for a taking, we recommend deleting the reference to "free occupancy for two months" that appears on page 7 at lines 1–2. Accordingly, section 521-74, Hawaii Revised Statutes, would be amended by amending subsection (c) to read as follows:

"(c) Any tenant from whom possession has been recovered or who has been otherwise involuntarily dispossessed, in violation of this section, is entitled to recover the damages sustained by the tenant in an amount equal to two months of rent, and the cost of suit, including reasonable attorney's fees."

Thank you for the opportunity to provide comments.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, March 12, 2019
9:00 a.m.
State Capitol, Conference Room 229**

**On the following measure:
H.B. 931, H.D. 2, RELATING TO THE LANDLORD-TENANT CODE**

Chair Baker and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department supports this bill.

The purposes of this bill are to: (1) prohibit landlords from recovering possession of dwelling units from tenants if habitability of premises is significantly impaired; (2) set a tenant's liability for rent if habitability of premises is significantly impaired; and (3) provide remedies for retaliatory evictions.

The Landlord-Tenant Information Center is staffed by OCP investigators and volunteers who provide landlords and tenants with information regarding landlord-tenant laws to help them resolve disputes relating to security deposits, late fees, and repairs. The most common complaint the center receives from tenants is a landlord failing to make repairs in a timely manner. While it is unclear if this type of complaint would result

in a dwelling unit becoming uninhabitable, this bill would incentivize landlords to keep their rental unit in a safe and sanitary condition.

Hawaii law allows a tenant to deduct up to \$500 from the following month's rent for the cost of repairs if the landlord does not respond to the tenant's written repair request within 12 business days. However, the cost to repair conditions that materially affect health and safety can exceed \$500, leaving the tenant with limited recourse to address, for example, an unsanitary plumbing or a dangerous electrical issue.

Hawaii renters already face one of the least affordable rental markets in the nation and oftentimes cannot find alternative housing if they are evicted. The Department supports this measure's deterrence of landlords from evicting tenants if the habitability of premises is significantly impaired.

Thank you for the opportunity to testify on this bill.



CGPTA
Chinatown Gateway Plaza Tenant Association
Since 2006

To: Committee on Commerce, Consumer Protection, and Health (CPH)

From: Chinatown Gateway Plaza Tenant Association (CGPTA)

Date: Tuesday, March 12, 2019, 9:00 AM

Place: Conference Room 229, State Capitol, 415 South Beretania Street

Re: Strong Support for HB931 HD2, Relating to the Landlord-Tenant Code.

Aloha e Chair Baker, Vice Chair Chang, and Members of the Committee on CPH,

My name is Steve Lohse, I'm a resident of Chinatown Gateway Plaza (CGP), a 200-unit, city-owned, affordable housing project in Chinatown. I'm also chair of the CGP Tenant Association (CGPTA), organized by CGP residents in 2006 to represent our resident voice in matters of concern to our Chinatown community. On behalf of the CGPTA, thank you for this opportunity to submit written testimony in **Strong Support of HB931 HD2** for the following reasons:

(1) Regarding habitability, the CGPTA recently hosted a House Meeting with our Resident Manager. The discussion was entirely about maintenance! Work orders were being misplaced, so critical maintenance was not being performed, and frustration was rising. At our CGPTA initiative, we were able to sort this out, but what remedy would CGP residents have if we could not sort this out? What remedy do Hawaii's renter households have who don't have lawyers or tenant associations?

(2) Regarding retaliatory evictions, a vision-impaired CGP resident recently helped an elderly neighbor move a mattress in the freight elevator. She then received a written threat of eviction for using the freight elevator for a single one-way trip to move one item, clearly an arbitrary denial of a landlord-supplied/maintained service in a multi-dwelling unit premises and a clear retaliatory threat. This resident had no remedy except to appeal to me, and what remedy did I have?

Now we know that the principle of landlord-tenant equity that we needed in both cases already exists in Hawaii Supreme Court rulings! However, this principle is not yet formally recognized by the Legislature and so not enforced regarding habitability violations and retaliatory evictions, especially not to protect renters without legal aid. **Please pass HB931 HD2** to protect landlord-tenant equity in Hawaii, where 43% of all households statewide and over 50% in Honolulu are renters. Thank you!

Aloha no,
Steve Lohse, Chair
Chinatown Gateway Plaza Tenant Association (CGPTA)
CGP.Tenant.Association@gmail.com



TO: Chair Baker, Vice Chair Chang, and Members of the Senate Committee on Commerce, Consumer Protection, and Health

FROM: Ryan Kusumoto, President & CEO of Parents And Children Together (PACT)

DATE/LOCATION: March 12, 2019; 9:00 a.m., Conference Room 229

RE: TESTIMONY IN SUPPORT OF HB 931 HD 2– RELATING TO THE LANDLORD-TENANT CODE

We ask you to support HB 931 HD 2 which prohibits landlords from recovering possession of dwelling unit from tenants if habitability of premises is significantly impaired, sets a tenant's liability for rent if habitability of premises is significantly impaired and provides remedies for retaliatory evictions. We support this bill which aims to protect the rights of tenants, a majority of whom do not have additional time or resources to dedicate to fighting their case when faced with retaliatory evictions and for whom evictions could be detrimental to their futures. All Hawaii residents should be entitled to safe, stable housing.

- Tenants should not be subjected to sub-standard conditions of living nor should they be subjected to unfair treatment or retaliatory evictions when reporting health and safety violations to their landlords.
- Landlords have a responsibility to upkeep and maintain properties and adhere to all health and safety standards and building codes.
- A Hawaii 2018 *Lawyers for Economic Justice* study noted that in 2017 approximately 1,600-1,800 households were evicted.
- Evictions are a lose-lose situation for both landlords and tenants who are forced to invest both time and money into
- 42% of Hawaii residents are renters with Hawaii having one of the highest percentages of renter households in the nation.
- Many Hawaii renters are cost burdened (spending more than 30% of their income on rent), which makes it difficult to have any disposable income let alone funds to spend on legal representation when faced with retaliatory evictions.
- The *Lawyers for Economic Justice* study also noted that when faced with evictions, these renters would need to also likely incur additional expenses (i.e. moving fees, new rental application fees, security deposit) that would put them further into a financial hole and perpetuate issues of poverty and homelessness in Hawaii.

- Establishing minimum damages for tenants who can prove they suffered retaliatory evictions would hopefully deter landlords from unlawfully retaliating against tenants and, in the case of retaliatory evictions, provide compensation for hardships tenants endured.

Parents And Children Together serves over 90% of individuals and families who are living in deep poverty. Many of the individuals and families we work with are hard-working, brave, resourceful and resilient. They work hard to make ends meet and amongst juggling school and/or work they also commit a lot of time to “agency time” (seeking out resources to support their families). These are individuals and families who are already living paycheck to paycheck or for whom, one setback could mean a snowball effect of “hard luck” which puts them back into the vicious cycles of poverty and possibly homelessness. It is important that we continue to support all the people of Hawaii and create fair laws that help our residents continue to live, work and secure hopeful and healthy futures here in our home state.

Founded in 1968, Parents And Children Together (PACT) is one of Hawaii’s not-for-profit organizations providing a wide array of innovative and educational social services to families in need. Assisting more than 15,000 people across the state annually, PACT helps families identify, address and successfully resolve challenges through its 18 programs. Among its services are: early education programs, domestic violence prevention and intervention programs, child abuse prevention and intervention programs, childhood sexual abuse supportive group services, child and adolescent behavioral health programs, sex trafficking intervention, poverty prevention and community building programs.

Thank you for the opportunity to testify in **support of HB 931 HD 2**, please contact me at (808) 847-3285 or rkusumoto@pacthawaii.org if you have any questions.



Testimony of the Lawyers for Equal Justice
Regarding HB 931, Senate Committee on Commerce, Consumer Protection and Health
Room 229, Tuesday, March 12th, 2019 at 9 AM

Thank you for the opportunity to testify in **strong support** of HB 931, which codifies the Hawaii Supreme Court decision establishing a warranty of habitability and sets minimum damages for a tenant who proves the landlord instituted an eviction process in retaliation for the tenant requesting repairs or seeking government assistance in correcting to endure health and safety violations in the apartment.

As you may know, in December Lawyers for Equal Justice (LEJ) released a report entitled “Evicted in Hawaii: Lives Hanging in the Balance” which found that only 4% of tenants had legal representation during the process while 70% of landlords were represented. Not surprisingly, landlords won possession in 97% of the cases. Even more depressing over 50% of tenants defaulted and did not show up for the first hearing and were automatically evicted.

Over the years, we have not had many legislative efforts in Hawaii to improve tenant rights and make protections easier to assert successfully. HB931 gives us that unique opportunity to begin a dialogue about changing that dynamic. **Bill 931 makes two important improvements to tenant rights and protections.**

The first improvement is to **amend the current Landlord-Tenant Code to include the concept of the warranty of habitability.** The principle of warranty of habitability is based on contract law: the tenant is responsible for paying the rent, while the landlord guarantees in return that the premises are habitable and in compliance with health, safety, and building codes. If the landlord fails to fulfill these obligations, then the tenant’s rent can be reduced by an appropriate amount retroactively to the date of failure.

- **The “warranty of habitability” already exists in Hawai‘i law.** The Hawai‘i Supreme Court has made clear that “the tenant’s obligation to pay rent and the landlord’s duty to maintain the premises in habitable condition are mutually dependent.” Contracts are two way streets: when tenants don’t receive the basic services to which they are entitled, landlords cannot require them to pay rent.
- **Some state courts don’t recognize warranty of habitability claims.** The Hawai‘i State Legislature has never codified the warranty of habitability. Because the warranty of

habitability exists only in case law, it has gone largely unenforced, resulting in a great number of unjust and illegitimate evictions.

- For many tenants, the warranty of habitability represents the only hope of receiving critical repairs. Landlords are required to provide tenants with functional plumbing, electricity, hot water, pest-free premises, garbage disposal, and basic security. Nevertheless, some landlords ignore these obligations until a court intervenes. It is critical that tenants know the law is on their side when it comes to their fundamental rights.
- **Current Repair and Deduct laws are impossible to use and never asserted.** In order to use the right to repair and deduct, the tenant must notify the landlord, find a merchant that will provide the services, come up with the cost of the repair (up to a maximum of \$500 required), have the repairs done to the satisfaction of the landlord and then withhold the costs of repairs from the rent. The next step is inevitable....prepare to fight an eviction and be sure you show up for the hearing and present the notice to the landlord and bills you paid.
- **Many other states have passed warranty of habitability laws.** For example: in California, the warranty of habitability has been passed into law. If a substantial breach is found—that is, if the tenant’s unit is unlivable due to the landlord’s negligence—the landlord cannot evict the tenant, provided the tenant pays any rent due based on the fair market value of the rental property.
- **Passing the warranty of habitability into law would do nothing more than reinforce current law and increase access to justice for Hawai‘i’s renters.** This would not be a novel addition to the law. Rather, it would simply work to ensure that cases are decided correctly and that tenants are not stripped of their rights.

The second improvement would be to **amend the Code to set minimum damages for retaliating against a tenant who requests repairs or reports health or safety code violations.**

- **Establishing minimum damages for retaliatory evictions would do nothing more than reinforce current law and increase access to justice for Hawai‘i’s renters.** It is already illegal for landlords to evict tenants for reporting sub-standard conditions. Minimum damages would simply give some teeth to the rules that already exist.
- **Anecdotal evidence suggests that retaliatory evictions are rampant in Hawai‘i.** Even though the law forbids it, tenants who complain about sub-standard conditions too often find themselves served with eviction notices from landlords who would rather not go to the trouble of bringing their rental units into compliance with health and safety regulations. This sort of retaliation is doubly harmful because it deters tenants from requesting repairs out of fear that doing so will put a target on their backs. Many tenants languish in unsanitary or unsafe units as a result.
- **Currently, the Landlord-Tenant Code puts the burden on tenants who have suffered retaliatory evictions to prove they are entitled to compensation.** Proving

“damages” (the right to financial compensation) in court can be highly difficult, especially for tenants who are not familiar with the law, rules of evidence, and civil procedure. For this reason, most tenants never receive any form of compensation.

- **Clearly, retaliatory evictions are always damaging—at the very least, tenants must spend time and money fighting in court, and there are severe consequences associated with physical displacement.** Eviction directly fuels homelessness and leads to lower educational achievement, higher rates of crime, domestic abuse, and substance abuse, and poorer health outcomes generally.
- **Other states have recognized the inherently damaging nature of retaliatory evictions and established minimum damages for tenants who can show they were retaliated against.** Two months’ rent plus court costs represents a reasonable figure.
- **By establishing minimum damages for tenants who have suffered retaliatory evictions, the legislature would discourage landlords from retaliating against tenants.** Currently, landlords who retaliate against tenants do so with relative impunity. The promise of meaningful fines would be an effect deterrent to blatantly unlawful behavior.
- **A minimum damages level would also speed up trials, and give victimized tenants just compensation for the hardship they have endured.** Currently, it is almost never worth a tenant’s time to pursue a retaliatory eviction case. The prospect of numerous court hearings and complex procedural requirements, coupled with the very real possibility of receiving nothing at the end of case, is enough to deter even those with the strongest cases from exercising their rights. If tenants were assured of a least a minimum level of compensation for their time and effort, they would much more often receive their due.

We wish to thank the House Judiciary Committee for an opportunity to testify in strong support for HB 931 and urge the Committee to pass the bill to improve tenant rights in the islands.

Aloha,

Victor Geminiani

Executive Director

Lawyers for Equal Justice (LEJ) is a non-profit law firm that advocates for low-income residents of Hawai‘i. The central mission of Lawyers for Equal Justice is to help our clients gain access to the resources, services and fair treatment that they need to realize their opportunities for self-achievement and economic security. Our cases change systems and policies to make justice, equality and opportunity available to everyone.



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March 11, 2019

Senate Committee on Consumer Protection, Commerce, & Health
Tuesday, March 12, 2019, 9am
Conference Room 229

HB931, HD2 - SUPPORT

Aloha Committee Chair, Vice-Chair, and Members:

I am submitting testimony in my capacity as Executive Director of Hawaiian Community Assets (HCA), Hawaii's largest HUD-approved housing counseling agency, to **STONGLY SUPPORT HB931, HD2.**

HB931 codifies the Hawaii Supreme Court decision establishing a warranty of habitability and sets minimum damages for a tenant who proves the landlord instituted an eviction process in retaliation for the tenant requesting repairs or seeking government assistance in correcting to endure health and safety violations in the apartment.

This bill is critical as we learned in the recent Lawyers for Equal Justice report that only 4% of tenants had legal representation during the process while 70% of landlords were represented. This lopsided situation resulted in landlords winning possession in 97% of the cases.

Furthermore, in our work as a HUD housing counseling agency, we have been inundated over the last year with tenants coming to our organization for emergency loans for past due rent. Many of these tenants are residing in publicly subsidized affordable rental housing. After conducting our due diligence we are finding there are a significant number of cases in which the property management company failed to conduct an income certification after the tenant lost income in the household. This has resulted in an unjustified accumulation of past due rent for the tenant and worst, evictions.

In one instance, a tenant who was a disabled veteran came into our office only 5 days before an eviction hearing. He had been working 3 part-time jobs to make ends meet. When he lost two of his jobs, he contacted his property management company to ask for them to adjust his rent, but they failed to bring him in and complete the work and instead sought legal counsel to evict him from his apartment. Fortunately, we were able to pay his past due rent and keep him in the rental. However, we determined that he was actually due money from the property management

company due to their failure to adjust his rent. We sent letters to the property management company explaining the situation, but they failed to take action and continued to charge him a monthly rental amount based on his income with 3 part-time jobs instead of 1. The tenant contacted us in December to inform us he was evicted for being unable to pay rent and was at a homeless shelter “trying to put [his] life back together”.

Activate and Expand Mortgage Dispute Resolution Program During our organization's participation in the Mortgage Foreclosure Task Force in 2011-12, we worked with consumer advocates and mortgage lenders to establish a mortgage dispute resolution program that would provide mediation for nonjudicial foreclosures. This was intended to allow for homeowners and their lenders to mediate mortgage delinquencies, saving both parties a significant amount of financial resources. At the same time, the program was to help reduce the backlog of judicial foreclosures in the State.

In light of the need for tenants to receive representation in eviction cases, we highly encourage this legislation to activate the Mortgage Dispute Resolution Program and expand its focus to include mediation of eviction cases. This additional option would help ensure tenants receive greater attention to their case with a third-party present to address the facts of the case and seek mediation.

We must ensure tenants like this gentleman have recourse and opportunity to have their stories heard before an eviction can take place. Our organization is especially concerned about tenants in publicly subsidized affordable rental housing and their property management companies that are able to continue their business without proper regulation and oversight ensuring they are abiding by the rules required by the public funding source. HB931 would go a long way to improve tenant rights and address unnecessary evictions. **PASS HB931.**

Mahalo for your time, leadership and consideration. Please contact me directly at 808.587.7653 or jeff@hawaiiancommunity.net should you have any questions or need additional information.

Sincerely



Jeff Gilbreath
Executive Director



PROTECTING HAWAII'S OHANA, CHILDREN, UNDER SERVED, ELDERLY AND DISABLED

March 11, 2019

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Susan Chandler, Ex Officio*

TO: Chair Baker, Vice Chair Chang, and Members of the Senate Committee on Commerce, Consumer Protection, and Health:

FROM: Ryan Kusumoto, Vice Chair, PHOCUSED

SUBJECT: Testimony in Support of HB 931 HD2, Relating to the Landlord-Tenant Code

Hearing: Tuesday, March 12th, 2019 at 9:00 AM
Room 229

Dear Chair Baker, Vice Chair Chang and members of the Senate Committee on Commerce, Consumer Protection, and Health:

Thank you for the opportunity to testify in **support** of HB 931 HD2, which clarifies that renters have a right to live in apartments that meet at least minimal standards of health and safety. HB 931 would also create protections against retaliatory eviction for tenants that request their landlords fix health and safety issues. This bill would make two important improvements to tenant rights and protections:

1. Amend the current Landlord-Tenant Code to include the concept of the warranty of habitability.
2. Amend the Code to set minimum damages for retaliating against a tenant who requests repairs or reports health of safety violations.

A safe and healthy home is critical to the well-being of its occupants. No one should have to risk their safety or health because they are unable to afford a nicer home. At minimum, landlords must provide tenants with functional plumbing, electricity, hot water, pest-free premises, garbage disposal, and basic security. HB 931 would bring clarity to these requirements and help to ensure the well-being of Hawai'i renter families. The "warranty of habitability" already exists in Hawai'i case law and codifying it would simply reinforce current law and increase access to justice for Hawai'i's renters.

PHOCUSED is a membership and advocacy organization for health and human services in Hawaii, which works together with community stakeholders to collectively impact program and policy change for the most vulnerable in our state. Our commitment to the people is reflected in our name – Protecting Hawaii's 'Ohana, Children, Under-Served, Elderly, and Disabled. We are guided by the shared commitment of our members to protect the interests of Hawaii's people and the sector which seeks to provide them with quality programs and services.



PROTECTING HAWAII'S OHANA, CHILDREN, UNDER SERVED, ELDERLY AND DISABLED

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Health and safety requirements accomplish little if they cannot be enforced. Currently, with Hawai'i's high cost of housing and tight rental market, tenants are reluctant to complain about sub-standard conditions, recognizing that doing so may result in the loss of their home, and perhaps even lead to their becoming homeless. Not to mention the inherently damaging drain of the time, money and resources that tenants would have to endure to fight their claim.

Even though the law forbids it, tenants who complain about sub-standard conditions may find themselves served with eviction notices from landlords who would rather not go to the trouble of bringing their rental units into compliance with health and safety regulations—especially with so many other families looking for low-cost housing. Even if the landlord is found to have retaliated by evicting a complaining tenant, there are minimal consequences to the landlord. As a result, tenants do not request repairs and languish in unsanitary or unsafe units. Establishing minimum damages would discourage landlords from mistreating tenants and help ensure access to justice for renters. HB 931 would enact meaningful fines for retaliatory eviction that would be an effective deterrent to blatantly unlawful behavior.

Thank you for your consideration of this important bill.

PHOCUSED is a membership and advocacy organization for health and human services in Hawaii, which works together with community stakeholders to collectively impact program and policy change for the most vulnerable in our state. Our commitment to the people is reflected in our name – Protecting Hawaii's 'Ohana, Children, Under-Served, Elderly, and Disabled. We are guided by the shared commitment of our members to protect the interests of Hawaii's people and the sector which seeks to provide them with quality programs and services.

HB-931-HD-2

Submitted on: 3/11/2019 12:36:51 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Smart	Individual	Oppose	No

Comments:

Vote NO. There is a shortage of rentals because Hawaii legislators don't provide a business environment that makes rentals non-profitable. Business can't provide rentals if they can't make a profit and stay out of bankruptcy. More people live in rentals in Hawaii because Hawaii legislators have made the cost of living so expensive and housing costly. Change the housing environment and we could have more home owners and more options for rentals. This bill will make rentals even more scarce. Landlords have the high cost of Hawaii home ownership. Landlords are already taking a lot of risk with tenants. I have had tenants in properties that repeatedly damage walls, appliances and flooring. There is a limit to how much damage the landlord must sustain. Tenants are sometimes more careless with other people's property than with their own property. If a rental property becomes uninhabital, it is easier to do repairs if the home is vacant. If a home becomes uninhabitable, tenants should have the right to move to another home - not live in the home without paying rent. The cause of the inhabitality may be the tenant, weather, natural disaster or just aging of the property. Landlords don't always have the ability to make repairs right away. Some repairs are costly and take time to plan, get permits, obtain funds, and sign a contract with a contractor. If the tenant is allowed to withhold rent, the landlord may never be able to afford the repairs. This bill is not workable and completely unfair to landlords. Do not pass HB931 HD2.

HB-931-HD-2

Submitted on: 3/11/2019 5:22:59 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
chi guyer	Individual	Support	No

Comments:

Aloha dear congress people, please vote yes on HB931 to save our homes at front street apartment complex in Lahaina (FSA). There are about 250+ of us consisting of families with school age children, working adults, seniors, disabled veterans; folks who have worked all of our adult lives to contribute to the economy and peace of maui. The landlords have already begun to rent vacancies at FSA at market rate and they are threatening to make the entire complex a "market rate" complex by august of 2019. This means that rents will double and many of us who are currently paying "affordable rate rents" are working 3 and even 4 jobs just to support ourselves and families and live a beautiful life here in lahaina on maui. Eviction directly fuels homelessness and leads to lower educational achievement, higher rates of crime, domestic abuse, and substance abuse, and poorer health outcomes generally. Hawai'i has the least affordable housing of any state in the country. Therefore, tenants have very little leverage in our efforts to secure adequate housing. In the absence of meaningful legal protections, we tenants are discouraged from raising issues related to substandard conditions. Many of we tenants at FSA facing eviction do not know our rights or understand the process in which we are involved. We at FSA are fortunate in that attorney Victor Geminiani has graciously agreed to assist us pro bono in actions to maintain our affordable housing and thus our homes. respectfully submitted by chi pilialoha guyer, tenant, front street apartments

HB-931-HD-2

Submitted on: 3/11/2019 9:08:16 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Deja	Individual	Support	Yes

Comments:

HB931; Relating to the Landlord Tenant Code

Senate Committee on Commerce, Consumer Protection, and Health.

Aloha mai e Chair and Committee Members:

I am an attorney currently representing patients at a community health center with their civil legal needs. I am submitting this testimony in **SUPPORT** to of HB931. The policy changes proposed in this bill are just one tiny step to providing tenants with some remedy in court to challenge retaliatory evictions and helps to shift the burden from tenants who are often left to cover the costs of repairs themselves.

Currently under landlord tenant law, landlords can require a tenant to vacate a unit without any cause. The law only requires sufficient notice depending on the length of a lease. For many of the low-income clients I work with, tenancy is month-to-month. Tenants who have problems in their units live in a precarious space, where a landlord need only give the tenant 45 days written notice to vacate, and does not need to give any reason. Tenants then, must weigh the benefits of advocating for repairs to their units, or risk being seen as a 'difficult' tenant. In the current rental market, units within the budget of an individual working minimum wage, on social security, or low income families are in such a demand that landlords have no problem renting units that are dilapidated and in need of repairs. Tenants who attempt to enforce their rights in court face an unclear process, as well as risks of paying attorney fees for a landlord who is much more savvy, and has more time to devote to a court case. This bill is just the first step to clearly codifying tenants rights to a safe and habitable unit in law.

I urge you to **PASS** this bill as one very small step to providing tenants in our states with some protection. Mahalo for the opportunity to testify **IN SUPPORT** of this measure.

Deja Ostrowski, J.D.

HB-931-HD-2

Submitted on: 3/11/2019 9:04:47 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Henny	Individual	Support	No

Comments:

My name is Barbara Henny and I am a tenant at Front Street Apartments in Lahaina. During the past 3 years I have supported numerous bills and acts trying to protest what has been transpiring, whereby the owners are taking away our affordable rental status and establishing market rates by August 2019. This is a very unfair move and will result in many persons residing at FSA being evicted through not being able to afford to remain. We need more tenants rights and and opportunity to retain our contracts originally set for 50 years. Most of our tenants are unable to afford legal assistance, therefore we trust this Bill will offer a better avenue of communication. Thank you for your assistance and support. Special appreciation to Roz Baker who has been involved throughout.

HB-931-HD-2

Submitted on: 3/11/2019 12:01:23 PM

Testimony for CPH on 3/12/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Helen Bullion	Individual	Support	No

Comments:

RE: HB931

1. has come to my attention this AM that as a renter at FSA, I Helen Bullion, lack sufficient legal protection when it comes to eviction and at this time I do not have an annual lease. Rather my rent has been changed to month to month basis without any notification. My biggest fear is that my landlord here at FSA can raise my rent at any time.

I have been living at FSA for the past four years. My rent has been increased and it is a struggle for me. I will not be able t afford any more increase in my rent. Under these

Circumstances I support bill HB931.

Thank you,

Helen Bullion

FSA#802



LATE

HAWAII REGIONAL COUNCIL OF CARPENTERS

Senate Committee on Commerce, Consumer Protection, and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair

Tuesday, March 12, 2019
9:00 AM, State Capitol Room 229

HB931 – Relating to the Landlord-Tenant Code

Statement of the Hawaii Regional Council of Carpenters – Support for HB931 HD2

Aloha Chair Baker, Vice Chair Chang, and Members of the Committee:

The Hawaii Regional Council of Carpenters supports HB931 HD2, which would prohibit landlords from recovering possession of a dwelling unit from tenants if habitability of premises is significantly impaired, set a tenant's liability for rent if habitability of premises is significantly impaired, and provide remedies for retaliatory evictions.

The Hawaii Regional Council of Carpenters has worked extensively over the past several years to advocate for more affordable housing, particularly rental housing. We appreciate the work of the legislature to provide incentives for new rental housing stock, but note that more needs to be done to preserve habitability of our existing rental housing stock.

HB931 HD2 would help to provide more rights to tenants to ensure that our state's existing rental housing stock is adequately habitable: that is, units are properly up to code, maintained in a clean and safe manner, and furnished with necessary electrical, plumbing, and appliances.

HB931 HD2 would also ensure that tenants are not evicted in a retaliatory way. While retaliatory evictions are already prohibited, tenants continue to be evicted for complaining about health or safety violations. Given the difficulty of finding adequate rental housing in the current market, we are concerned that tenants who are subject to eviction have few alternatives and may find themselves at risk of homelessness. Therefore, we appreciate that HB931 HD2 would allow a tenant to remain in a unit at current rent until habitability is restored, as a means of ensuring that tenants are treated equitably.

Mahalo for the opportunity to provide these comments in support of HB931 HD2.

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HB-931-HD-2

Submitted on: 3/11/2019 1:44:59 PM

Testimony for CPH on 3/12/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carmie Spellman	Individual	Support	No

Comments:

Dear Honorable Legislators of the CPH Committee:

Thank you for your time and consideration by voting yes in support of HB931. My name is Carmie Spellman and I live in W. Maui.

Daily, I fret over retaliatory management practices where I live in Maui. Discrimination, numerous retaliatory occurrences and what feels like constructive eviction methods causes me undue duress. I am permanently disabled, fixed income, elderly woman in low-income housing that is disappearing this fall. I suffer physically and mentally due to inadequate protection and frequent instances of retaliation, unsafe conditions along with discriminatory practices. As it stands currently, I have no recourse due to my poverty and I cannot hire a lawyer. So many times I have needed legal assistance.

Please help us all with your sound decision making to equalize the disparity between the Rights of Tenants versus Landlords. I am so sad all the time and giving up on any hope of quiet enjoyment or equal rights.

Mahalo for your yes vote on HB931.

Carmie Spellman, Front Street Apts., Lahaina, Maui, HI 96761

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

Senate Committee on Commerce, Consumer Protection, and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair

Thursday, March 12, 2019
9:00 A.M.
State Capitol – Room 229

LATE

HB 931 HD2 – Relating to the Landlord-Tenant Code

Aloha Chair Baker, Vice Chair Chang and Members of the Committee:

Pacific Resource Partnership (PRP) supports HB 931 HD2 which prohibits landlords from recovering possession of a dwelling unit from tenants if habitability of premise is significantly impaired; sets a tenant's liability for rent if habitability of premises is significantly impaired; and provides remedies for retaliatory evictions.

PRP is a strong advocate for building more affordable rental housing for the people of Hawaii. We understand how difficult it is for Hawaii renters to find affordable rentals, and when they do find something affordable, we want to ensure that their home is a safe place.

HB 931 HD2 will help to ensure that tenants have suitable methods of recourse and ways to hold landlords accountable, especially if the tenants are forced to pay rent for an uninhabitable unit or home that is not maintained properly and does not comply with health, safety, and building codes. Moreover, HB 931 HD2 provides protections against retaliatory evictions, which would empower tenants to voice their concerns about sub-standard conditions to landlords without fear of retaliation. As such, PRP supports HB 931 HD2.

Thank you for this opportunity to submit written testimony.

PRP has supported the State of Hawaii and City and County of Honolulu's efforts to find concrete solutions to build more housing for Hawaii's workforce in the 80% to 140% area medium income (AMI) range to address the State and Honolulu County's shortfall in supply of workforce housing. For instance, we supported affordable housing legislation—which became Act 54 and Act 39, Session Laws of Hawaii 2017 and 2018 respectively—expanding the types of general excise tax exemptions for rental housing projects to include those built for households with incomes at or below 140% AMI, of which at least 20%



(Continued From Page 1)

of the available dwelling units must be for households with incomes at or below 80% AMI. We also advocated for a provision in Act 54 (2017) that allows for construction unions to participate and negotiate a special wage rate and benefits package to help reduce the construction costs for affordable rental housing projects. Moreover, at the Honolulu City Council, PRP supported the enactment of Ordinance 18-1 which provides affordable housing incentives exclusively for the development of affordable rental dwelling units, including rental dwelling units for Hawaii's workforce.

About PRP

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.

March 12, 2019

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce, Consumer Protection and Health
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: H.B. 931, HD2, Relating to the Landlord-Tenant Code

HEARING: Tuesday, March 12, 2019, at 9:00 a.m.

LATE

Aloha Chair Baker, Vice Chair Chang, and Members of the Committee:

I am Ken Hiraki Government Affairs Director, submitting written testimony on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 9,500 members. HAR **opposes** H.B. 931, H.D.2, which prohibits landlords from recovering possession of dwelling unit from tenants if habitability of premises is significantly impaired. Sets a tenant's liability for rent if habitability of premises is significantly impaired. Provides remedies for retaliatory evictions.

Under the Landlord-Tenant Code, Hawai'i Revised Statutes (HRS) §521, it imposes strict habitability obligations upon landlords and clear remedies for tenants for failure to properly maintain a rental unit or for engaging in improper retaliation evictions. Regarding repairs and landlord obligations to maintain habitability of a unit and tenant remedies, the Code provides the following:

Landlord Obligations / Tenant Remedies:

- HRS §521-64(c) and (d). **Emergency repairs** must be initiated within **3 business days**. If landlord fails to repair the unit, tenant may perform repairs and provide landlord with receipts and deduct up to \$500 from the next month's rent.
- HRS § 521-64(a) and (b). Repairs for **law, code or ordinance violations** must be initiated **within 5 business days**. If landlord fails to repair unit, tenant may perform repairs and provide landlord with receipts and deduct up to \$500 or one month's rent, whichever is greater.
- HRS §521-64(c). **General repairs** must be initiated **within 12 business days**. If landlord fails to repair unit, tenant may perform repairs and provide landlord with receipts and deduct up to \$500 from next month's rent.

Additionally, under HRS §521-42, a landlord has a duty to supply and maintain a fit premises at all times during the tenancy, which includes the following under subsection (a):

1. Complying with all applicable building and housing laws materially affecting health and safety.
2. Keeping the common areas of a multi-dwelling unit clean and safe
3. Making all repairs to keep the unit in a livable condition.
4. Maintaining electrical, plumbing and other facilities in good working order.
5. Providing garbage bins and frequent waste removal.
6. Providing running water.

Furthermore, under HRS §521-74, a landlord is prohibited from doing a retaliatory eviction and rent increase if a tenant in good faith requested repairs or complained in good faith to a governmental agency concerned with landlord-tenant disputes or to the landlord directly.

If a landlord violates this section, a tenant can recover damages, legal costs and reasonable attorney fees.

Based on existing law regarding landlord obligations and tenant remedies, this measure does not seem necessary. Furthermore, if a unit is uninhabitable, two months of free occupancy may not be the best remedy, and existing law seems to sufficiently cover damages for retaliatory evictions.

Mahalo for the opportunity to testify on this measure.



‘O kēia ‘ōlelo hō’ike no ke
Komikina Kūlana Olakino o Nā Wāhine

Testimony on behalf of the
Hawai‘i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Prepared for the Senate Committee on CPH

In Support of HB931 HD2
Tuesday, March 12, 2019, at 9:00 a.m. in Room 229

LATE

Dear Chair Baker, Vice Chair Chang and Honorable Members,

The Hawai‘i State Commission on the Status of Women **supports** of HB931 HD2 which would codify the right to assert a defense of warranty of habitability to an eviction. HB931 HD2, if passed, would also establish a minimum damages level of two months a tenant would be entitled by proving the landlord is evicting the tenant in an attempt to retaliate for requesting repairs or reporting health and safety issues to the government entity.

Hawai‘i ranks top six renter-dominated states in the nation. Since 2006, Honolulu has become a renter majority population, with 56.1 percent of residents renting a home.¹ The state overall is close behind at 43 percent.² One eviction occurs ever two days, and nine out of ten eviction lawsuits in the state result in tenants losing their homes.³

National data suggests that women of color living in poverty face the highest risk of eviction.⁴ Domestic violence victims and families with children are also at particularly high risk of eviction. In Hawaii, women can also be evicted for domestic violence issues because domestic violence victims are not a protected class for housing discrimination.

¹ Szekely, B., “Renters Became the Majority Population in 22 Big U.S. Cities,” Jan. 25, 2018, <https://www.rentcafe.com/blog/rental-market/market-snapshots/change-renter-vs-owner-population-2006-2016/>.

² *Id.*

³ Geminiani, V., Lawyers for Equal Justice, *Evicted in Hawai‘i: Lives Hanging in the Balance*, Dec. 7, 2018, <http://hiequaljustice.org/evicted-hawaii/>.

⁴ Eviction Lab, “Why Eviction Matters,” 2018, <https://evictionlab.org/why-eviction-matters/#eviction-facts>.

The disparate power and outcomes in favor of landlords should be addressed by state legislation. Accordingly, the Commission respectfully urges the passage of HB931 HD2.

Sincerely,

Khara Jabola-Carolus

HB-931-HD-2

Submitted on: 3/11/2019 6:34:27 PM

Testimony for CPH on 3/12/2019 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Annie AuHoon	Individual	Support	No

Comments:

HB-931-HD-2

Submitted on: 3/11/2019 7:51:32 PM

Testimony for CPH on 3/12/2019 9:00:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
david derauf	Individual	Support	No

Comments:

I strongly support this bill to bring some equity and justice to the landlord-tenant situation for rental properties.