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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 Judiciary  
Friday, March 29, 2019  
9:30 a.m.  
State Capitol, Conference Room 016**

**On the following measure:  
H.B. 931, H.D. 2, S.D. 1, 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.



‘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 JDC

In Support of HB931 HD2, SD1  
Friday, March 29, 2019, at 9:30 a.m. in Room 016

Dear Chair Rhoads, Vice Chair Wakai and Honorable Members,

The Hawai‘i State Commission on the Status of Women **supports** of HB931 HD2, SD1 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.<sup>1</sup> The state overall is close behind at 43 percent.<sup>2</sup> One eviction occurs ever two days, and nine out of ten eviction lawsuits in the state result in tenants losing their homes.<sup>3</sup>

National data suggests that women of color living in poverty face the highest risk of eviction.<sup>4</sup> 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.

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<sup>1</sup> 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/>.

<sup>2</sup> *Id.*

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

<sup>4</sup> 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, SD1.

Sincerely,

Khara Jabola-Carolus



## HAWAII REGIONAL COUNCIL OF CARPENTERS

Senate Committee on Judiciary  
The Honorable Karl Rhoads, Chair  
The Honorable Glenn Wakai, Vice Chair

Friday, March 29, 2019  
9:30 AM, State Capitol Room 016

HB931 HD2 SD1 – Relating to the Landlord-Tenant Code

Statement of the Hawaii Regional Council of Carpenters – Support for HB931 HD2 SD1

Aloha Chair Rhoads, Vice Chair Wakai, and Members of the Committee:

The Hawaii Regional Council of Carpenters supports HB931 HD2 SD1, 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 SD1 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 SD1 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 SD1 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 SD1.

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**TO: Chair Rhoads, Vice Chair Wakai, and Members of the Senate Committee on Judiciary**

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

**DATE/LOCATION: March 29, 2019; 9:30 a.m., Conference Room 16**

**RE: TESTIMONY IN SUPPORT OF HB 931 SD 1– RELATING TO THE LANDLORD-TENANT CODE**

**We ask you to support HB 931 which 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 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 SD 1**, please contact me at (808) 847-3285 or [rkusumoto@pacthawaii.org](mailto:rkusumoto@pacthawaii.org) if you have any questions.

**HB-931-SD-1**

Submitted on: 3/27/2019 12:41:17 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Becky Gustafson	Testifying for Gustafson Real Estate LLC	Oppose	No

Comments:



**HB-931-SD-1**

Submitted on: 3/27/2019 12:59:59 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
david derauf	Testifying for Kokua Kalihi Valley	Support	No

Comments:

Aloha:

KKV thanks the legislature for advancing this important bill to support more equitable treatment of tenants. Obviously rental housing is a critical part of the housing solution for our community. It can only work well for ALL parties when relations are on an even footing which this bill takes a strong step forward to do.

Thank you for your support!

David Derauf MD

**HB-931-SD-1**

Submitted on: 3/27/2019 1:54:24 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brett Schenk	Testifying for National Association of Residential Property Managers - Oahu Chapter	Oppose	No

Comments:

Dear honorable members of the Senate Committee on Judiciary,

Thank you in advance for considering my attached written testimony in opposition to HB931 as written. I suggest a more precise change to existing Landlord-Tenant code. As the Landlord-Tenant code has not been updated to reflect inflation, please increase the maximum amount that the tenant can spend on urgent health and safety repairs from \$500 to \$1,000. The amount spent can be deducted from the following months rent and tenant has recourse against the landlord as the code is currently written. In the same token, the limit on Handyman repair costs should be raised to reflect inflation as well. These matters should be indexed to inflation on a ten year (decadal) basis so as to keep up with the cost of living.

With sincere gratitude for your public service,

Brett Schenk, Realtor RB-18955 BIC, CRS, GRI, CNE  
(808) 222-3366 cell  
[Brett@BrettSchenk.com](mailto:Brett@BrettSchenk.com)

Woodstock Properties, Inc. RB-15393  
(808) 488-1588 office(808) 487-0557 fax

Testimony of  
Christopher Delaunay, Government Relations Manager  
Pacific Resource Partnership

Senate Committee on Judiciary  
The Honorable Karl Rhoads, Chair  
The Honorable Glenn Wakai, Vice Chair

Friday, March 29, 2019  
9:30 A.M.  
State Capitol – Room 016

HB 931 HD2, SD1 – Relating to the Landlord-Tenant Code

Aloha Chair Rhoads, Vice Chair Wakai and Members of the Committee:

Pacific Resource Partnership (PRP) supports HB 931 HD2, SD1 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, SD1 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, SD1 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, SD1.

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%

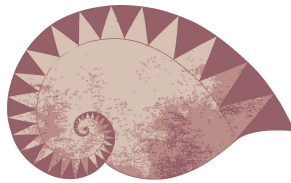


**(Continued From Page 1)**

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.*



Pono Hawai'i Initiative

Josh Frost - President • Kau'i Pratt-Aquino - Secretary • Patrick Shea - Treasurer  
Kristin Hamada • Nelson Ho • Summer Starr

Tuesday, March 26, 2019  
Testifying in Support

Aloha, Chair and Committee members

The Pono Hawai'i Initiative (PHI) **is in support of HB931 HD2 SD1 Relating to the Landlord-Tenant Code.** This measure aims to further protect the rights of tenants, many of whom do not have the financial ability to fight their case or the potential retaliatory evictions that could arise. All Hawai'i residents are entitled to safe and sanitary housing.

This measure will make it clear what responsibilities each party has in a rental agreement - tenants are required to pay rent and landlords are required to maintain the property. A tenant has the right to request necessary maintenance without the fear of eviction. Hawai'i hasn't codified the warranty of habitability, the rules are largely based in case law. This has led to confusion and lack of enforcement and resulted in tenants losing their homes.

Please pass this measure and give tenants the support and protection they need.

Mahalo for the opportunity to testify,

Gary Hooser

Executive Director

Pono Hawai'i Initiative, an organization member of the Common Good Coalition



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March 27, 2019

Senate Judiciary Committee  
Friday, March 29, 2019, 9:30am  
Conference Room 016

### **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](mailto:jeff@hawaiiancommunity.net) should you have any questions or need additional information.

Sincerely



Jeff Gilbreath  
Executive Director



Testimony of the Lawyers for Equal Justice  
Regarding HB 931, Senate Committee on Judiciary  
Friday, March 27<sup>th</sup>, 2019 at 9:30 AM

Thank you for the opportunity to testify in **strong support** of HB 931, which codifies the Hawai‘i Supreme Court decision establishing a warranty of habitability and sets minimum damages for tenants who been subject to retaliatory evictions.

In December of last year, Lawyers for Equal Justice (LEJ) released a report entitled “Evicted in Hawai‘i: Lives Hanging in the Balance” which found that only 4 percent of tenants had legal representation during the eviction process while 70 percent of landlords were represented. Not surprisingly, landlords won possession in 97 percent of observed cases. Even more depressing, approximately half of all tenants defaulted by not showing up for their first court hearing and were automatically evicted as a result.

Over the years, we have not had many legislative efforts in Hawai‘i to improve tenant rights and make protections easier to assert successfully. HB931 gives us a unique opportunity to begin a dialogue about changing that dynamic. **The bill 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.

- **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.
- **The Landlord-Tenant Code already guarantees minimum damages for certain violations of the law.** Section 521-63 of the Code, which covers illegal lockouts,

provides for damages in an “amount equal to two months’ rent” for victimized tenants. That is exactly what is being proposed in this bill. Retaliatory evictions are very similar to illegal lockouts—in both cases, the tenant is being unlawfully forced from their home. HB931 would therefore eliminate a discrepancy in the law and expand existing protections to tenants who need them.

- **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.

In addition to its unequivocal support for the bill, LEJ offers several comments regarding the SD1 and possibilities for improvement.

At various stages of the progression of HB931, concerns have been raised regarding the practicability of new standards like “fair rental value” in adjudicating landlord-tenant cases (“Who will determine fair rental value? How will conflicting valuations be reconciled?”).

LEJ believes these criticisms are unfounded on multiple levels. Judges, as neutral arbiters of fact and law, are well equipped to make the necessary determinations—it is, of course, their job to do so. Such judgments are frequently rendered in small claims court, where judges must determine the fair market value of cleaning and repair services in security deposit cases.

However, even more importantly for the purposes of this legislation, “fair rental value” isn’t actually a new standard at all. It already exists in the Residential Landlord-Tenant Code, under Section 521-21, “Rent:”

“In the absence of [an agreement specifying the amount of rent to paid] ... the tenant shall pay to the landlord the *fair rental value* of the dwelling unit” (emphasis added).

LEJ also notes that the Code specifies that tenants who have been illegally locked out “may recover possession” from the landlord (i.e., move back into their unit). This provision is important in that it directly provides the relief tenants need most—a place to live.

However, the Code lacks such a provision with respect to retaliatory evictions, for which tenants may recover only monetary damages under current law. LEJ recommends amending HB931 to indicate that like tenants who have been “unlawfully excluded” (i.e., illegally locked out, *see* Hawai‘i Revised Statutes Section 521-63), tenants who have experienced retaliatory evictions are entitled to “recover possession” of their units. This remedy would work in conjunction with the minimum damages already proposed in the bill to ensure that tenants who have been illegitimately kicked to the curb are made whole.

We wish to thank the Senate Committee on the Judiciary for an opportunity to testify in strong support of 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.*



**CGPTA**  
**Chinatown Gateway Plaza Tenant Association**  
**Since 2006**

**To: Committee on Judiciary (JDC)**  
**From: Chinatown Gateway Plaza Tenant Association (CGPTA)**  
Date: Friday, March 29, 2019, 9:30 AM  
Place: Conference Room 016, State Capitol, 415 South Beretania Street

**Re: Strong Support for HB931 HD2 SD1**, Relating to the Landlord-Tenant Code.

Aloha e Chair Rhoads, Vice Chair Wakai, and Members of the Committee on JDC,

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 SD1** 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 SD1** 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](mailto:CGP.Tenant.Association@gmail.com)

**HB-931-SD-1**

Submitted on: 3/27/2019 4:48:23 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joylin Ho Shum	Testifying for Lani Properties Corp	Oppose	No

Comments:

March 27, 2019

The Honorable Karl Rhoads, Chair  
Senate Committee on Judiciary  
State Capitol, Room 016  
Honolulu, Hawaii 96813

RE: H.B. 931, HD2, SD1, Relating to the Landlord-Tenant Code

HEARING: Friday, March 29, 2019, at 9:30 a.m.

Aloha Chair Rhoads, Vice Chair Wakai, and Members of the Committee:

I am Joylin Ho Shum, Broker-In-Charge & VP of Lani Properties Corporation, submitting written testimony in strong opposition of H.B. 931, H.D.2, S.D.1, 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.

Due Process Concerns - This measure, allows tenants to unilaterally assert that their unit is "significantly impaired". There is no provision for an owner to dispute or seek impartial review of whether "significant impairment" has occurred. Moreover, **if the tenant caused the unit to become uninhabitable, there is no opportunity for the landlord to assert that defense.**

**The Landlord Tenant Code tends to favor the Tenants' rights over the Landlords'.**

Contracts Clause Concerns - Additionally, this measure may violate the Contracts Clause under the United States as it states that a tenant's liability for rent, from the date

of significant impairment, shall not exceed the fair rental value of the premises. While it is unclear who would determine the fair market value of the rent, if the fair market value is less than what was negotiated between the owner and tenant pursuant to the Rental Agreement, this would retroactively impair the contract rights established pursuant to said contract.

Tenant Remedies for Habitability Already Covered Under the Law - 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, existing law seems to sufficiently cover damages for retaliatory evictions and habitability of a unit. For the foregoing reasons, we respectfully request that this measure be held.

Mahalo for the opportunity to testify on this measure.

**HB-931-SD-1**

Submitted on: 3/27/2019 5:00:38 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leah Koanui	Testifying for Lani Properties	Oppose	No

Comments:

March 29, 2019

The Honorable Karl Rhoads, Chair  
Senate Committee on Judiciary  
State Capitol, Room 016  
Honolulu, Hawaii 96813

RE: H.B. 931, HD2, SD1, Relating to the Landlord-Tenant Code

HEARING: Friday, March 29, 2019, at 9:30 a.m.

Aloha Chair Rhoads, Vice Chair Wakai, and Members of the Committee:

I am a Property Manager, submitting written testimony in strong opposition of H.B. 931, H.D.2, S.D.1, 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.

Due Process Concerns - This measure, allows tenants to unilaterally assert that their unit is "significantly impaired". There is no provision for an owner to dispute or seek impartial review of whether "significant impairment" has occurred. Moreover, if the tenant caused the unit to become uninhabitable, there is no opportunity for the landlord to assert that defense.

Contracts Clause Concerns - Additionally, this measure may violate the Contracts Clause under the United States as it states that a tenant's liability for rent, from the date



of significant impairment, shall not exceed the fair rental value of the premises. While it is unclear who would determine the fair market value of the rent, if the fair market value is less than what was negotiated between the owner and tenant pursuant to the Rental Agreement, this would retroactively impair the contract rights established pursuant to said contract.

Tenant Remedies for Habitability Already Covered Under the Law - 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):
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  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, existing law seems to sufficiently cover damages for retaliatory evictions and habitability of a unit. For the foregoing reasons, we respectfully request that this measure be held.

Mahalo for the opportunity to testify on this measure.

**HB-931-SD-1**

Submitted on: 3/28/2019 8:31:52 AM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gavin Shiraishi	Testifying for Cen Pac Properties, Inc.	Oppose	No

Comments:

March 29, 2019

The Honorable Karl Rhoads, Chair  
Senate Committee on Judiciary  
State Capitol, Room 016  
Honolulu, Hawaii 96813

RE: H.B. 931, HD2, SD1, Relating to the Landlord-Tenant Code

HEARING: Friday, March 29, 2019, at 9:30 a.m.

Aloha Chair Rhoads, Vice Chair Wakai, and Members of the Committee:

I am Gavin Shiraishi with Cen Pac Properties, submitting written testimony in strong opposition of H.B. 931, H.D.2, S.D.1, 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.

Due Process Concerns - This measure, allows tenants to unilaterally assert that their unit is "significantly impaired". There is no provision for an owner to dispute or seek impartial review of whether "significant impairment" has occurred. Moreover, if the tenant caused the unit to become uninhabitable, there is no opportunity for the landlord to assert that defense.

Contracts Clause Concerns - Additionally, this measure may violate the Contracts Clause under the United States as it states that a tenant's liability for rent, from the date of significant impairment, shall not exceed the fair rental value of the premises. While it is unclear who would determine the fair market value of the rent, if the fair market value is less than what was negotiated between the owner and tenant pursuant to the Rental Agreement, this would retroactively impair the contract rights established pursuant to said contract.

Tenant Remedies for Habitability Already Covered Under the Law - 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, existing law seems to sufficiently cover damages for retaliatory evictions and habitability of a unit. For the foregoing reasons, we respectfully request that this measure be held.

Mahalo for the opportunity to testify on this measure.

March 29, 2019

**The Honorable Karl Rhoads, Chair**

Senate Committee on Judiciary  
State Capitol, Room 016  
Honolulu, Hawaii 96813

**RE: H.B. 931, HD2, SD1, Relating to the Landlord-Tenant Code**

**HEARING: Friday, March 29, 2019, at 9:30 a.m.**

Aloha Chair Rhoads, Vice Chair Wakai, 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 **strongly opposes** H.B. 931, H.D.2, S.D.1, 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.

**Due Process Concerns**

"Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Tr. Co*, 339 U.S. 306, at 313, 70 S.Ct. 652, at 656, 94 L.Ed 865.

This measure, allows tenants to unilaterally assert that their unit is "significantly impaired". There is no provision for an owner to dispute or seek impartial review of whether "significant impairment" has occurred. Moreover, if the tenant caused the unit to become uninhabitable, there is no opportunity for the landlord to assert that defense.

**Contracts Clause Concerns**

Additionally, this measure may violate the Contracts Clause under the United States Constitution, Article 1, section 10, clause 1, which prohibits states from enacting any law that retroactively impairs contract rights. Under this measure, it states that a tenant's liability for rent, from the date of significant impairment, shall not exceed the fair rental value of the premises. While it is unclear who would determine the fair market value of the rent, if the fair market value is less than what was negotiated between the owner and tenant pursuant to the Rental Agreement, this would retroactively impair the contract rights established pursuant to said contract.

We believe these deficiencies in the proposed bill could render it vulnerable to challenge based upon Constitutional grounds.

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### Tenant Remedies for Habitability Already Covered Under the Law

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, existing law seems to sufficiently cover damages for retaliatory evictions and habitability of a unit.

For the foregoing reasons, we respectfully request that this measure be held.

Mahalo for the opportunity to testify on this measure.

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.



THE HONORABLE SENATOR KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY

Nathan O'Hanlon, RS, RA  
National Association of Residential Property Managers, Maui Chapter

Realtor and Property Manager of Sailors Realty,  
Legislative Liaison and Director of NARPM, Maui Chapter

4242 L. Honoapiilani Rd., #C-2, Lahaina, HI 96761

FRIDAY, MARCH 29, 2019

OPPOSITION FOR H.B. No. 931, RELATING TO THE LANDLORD-TENANT CODE

On behalf of the National Association of Residential Property Managers, Maui Chapter:

I, Nathan O'Hanlon, RA, Sailors Realty, submit this testimony to express NARPM, Maui Chapter's OPPOSITION for H.B. No. 931 for the reasons stated below:

The changes to the Hawaii Landlord-Tenant Code proposed in this bill greatly increase the risk of tenant fraud and extortion against property owners.

As compared to current law, this bill does not serve to improve the habitability or timeliness of repairs or remedies. Rather, it simply imposes punishments against only one side of a mutual transaction without similar penalties for cases of fraud.

As there is no established and expedient way to confirm the habitability of a rental property, and the bill proposes to bar the legal eviction of a non-paying tenant; a tenant may claim uninhabitability and simply squat in a property without paying rent. There are no due process requirements to establish an impartial review of the condition of the property. Further, the proposal does not establish any recourse for the owner.

By amending the current regulations, H.B. No. 931 only increases risk for rental property owners in the State of Hawaii without any recourse in the event of fraud and extortion by tenants with malicious intent.

In response, owners and property managers will, understandably, increase their application and acceptance standards. As a result, there will be increases in rental prices, increase in tenant scrutiny, and a notable rise in homelessness as owners protect themselves from the one-sided liabilities assigned to them by these amendments.

Therefore, I, with the NARPM, Maui Chapter, OPPOSE H.B. No. 931. Thank you for the opportunity to testify.



**LATE**

**HB-931-SD-1**

Submitted on: 3/28/2019 9:24:12 AM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Moyer	Testifying for Hawaii Sands Realty	Oppose	No

Comments:

To whom it may concern:

I am a licensed real estate broker and property manager on Oahu and am writing in opposition to HB931 as I feel it places an unfair burden on property owners. While I agree that a property owner should be held accountable for maintenance of residential housing, I am concerned that this bill does nothing to address this and simply makes the owner accountable even for actions of a tenant. I have witnessed, first-hand, what some tenants can do to a perfectly habitable unit in less than 6 months of occupancy. In such cases owners have to incur costs for eviction, cleaning, painting, repairs, and even replacement of appliances that may have been new upon move-in. Owners lose thousands of dollars in such situations with little recourse because the tenants realistically cannot be pursued for damages. If we want affordable housing solutions on Oahu we need to make it easier and remove risk for landlords, not make it more difficult and increase risk.

**HB-931-SD-1**

Submitted on: 3/27/2019 6:45:30 AM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
chi guyer	Individual	Support	No

Comments:

aloha dear legislators, those of us who rent are at the mercy of landlords, some of whom, like those at front street apartment complex in lahaina, are insensitive and unconcerned about the humanity of tenants and who lack the basic foundation of hawai'i which is the "aloha spirit".. And, consequently, these property owners place vulnerable tenants those who are seniors or disabled or working multiple jobs just to keep their homes and families safe and together, at a frightening disadvantage all for the purpose of making more money and charging rental rates as high as the market will bear. Consequently, these tenants are fearful of addressing apartment repairs needed for fear of being evicted. Please find it in your hearts and souls to support the tenants in this beautiful state of Hawai'i. mahalo nui loa for your kind consideration and support. chi pilialoha guyer, tenant, front street apartments

**HB-931-SD-1**

Submitted on: 3/27/2019 9:30:29 AM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amanda Frazier	Individual	Oppose	No

Comments:

March 29, 2019

The Honorable Karl Rhoads, Chair  
Senate Committee on Judiciary  
State Capitol, Room 016  
Honolulu, Hawaii 96813

RE: H.B. 931, HD2, SD1, Relating to the Landlord-Tenant Code  
HEARING: Friday, March 29, 2019, at 9:30 a.m.

Aloha Chair Rhoads, Vice Chair Wakai, and Members of the Committee:

I am Amanda Frazier submitting written testimony on behalf of local landlords here in Hawaii.

I strongly oppose H.B. 931, H.D.2, S.D.1, 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.

Due Process Concerns

"Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Tr. Co*, 339 U.S. 306, at 313, 70 S.Ct. 652, at 656, 94 L.Ed 865.

This measure, allows tenants to unilaterally assert that their unit is "significantly impaired". There is no provision for an owner to dispute or seek impartial review of

whether "significant impairment" has occurred. Moreover, if the tenant caused the unit to become uninhabitable, there is no opportunity for the landlord to assert that defense.

### Contracts Clause Concerns

Additionally, this measure may violate the Contracts Clause under the United States Constitution, Article 1, section 10, clause 1, which prohibits states from enacting any law that retroactively impairs contract rights. Under this measure, it states that a tenant's liability for rent, from the date of significant impairment, shall not exceed the fair rental value of the premises. While it is unclear who would determine the fair market value of the rent, if the fair market value is less than what was negotiated between the owner and tenant pursuant to the Rental Agreement, this would retroactively impair the contract rights established pursuant to said contract.

These deficiencies in the proposed bill could render it vulnerable to challenge based upon Constitutional grounds.

Tenant Remedies for Habitability Already Covered Under the Law 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:

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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):

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3. Making all repairs to keep the unit in a livable condition.
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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, existing law seems to sufficiently cover damages for retaliatory evictions and habitability of a unit.

For the foregoing reasons, I respectfully request that this measure be held.

Mahalo for the opportunity to testify on this measure.

Amanda Frazier

March 27, 2019

**The Honorable Karl Rhoads, Chair**

Senate Committee on Judiciary  
State Capitol, Room 016  
Honolulu, Hawaii 96813

**RE: H.B. 931, HD2, SD1, Relating to the Landlord-Tenant Code**

**HEARING: Friday, March 29, 2019, at 9:30 a.m.**

Aloha Chair Rhoads, Vice Chair Wakai, and Members of the Committee:

I am Sheryl Oka (RA) CPM, CRB, SRES, submitting written testimony in **strong opposition** of H.B. 931, H.D.2, S.D.1, 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.

**Due Process Concerns** - This measure, allows tenants to unilaterally assert that their unit is "significantly impaired". There is no provision for an owner to dispute or seek impartial review of whether "significant impairment" has occurred. Moreover, if the tenant caused the unit to become uninhabitable, there is no opportunity for the landlord to assert that defense. This is incredibly important. One of the agents in our firm is currently going through a situation where the tenant shoved rags in the drain and turned the water on full blast and just let it run. In addition, the tenant turned on the shower full blast for an extended period of time resulting in the flooding their unit as well as TWO units below theirs. This is unacceptable. Especially, when you have a tenant who is not financially able to remedy the situation requiring the landlord to do so.

**Contracts Clause Concerns** - Additionally, this measure may violate the Contracts Clause under the United States as it states that a tenant's liability for rent, from the date of significant impairment, shall not exceed the fair rental value of the premises. While it is unclear who would determine the fair market value of the rent, if the fair market value is less than what was negotiated between the owner and tenant pursuant to the Rental Agreement, this would retroactively impair the contract rights established pursuant to said contract.

**Tenant Remedies for Habitability Already Covered Under the Law** - 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:

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  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, existing law seems to sufficiently cover damages for retaliatory evictions and habitability of a unit. For the foregoing reasons, we respectfully request that this measure be held.

Mahalo for the opportunity to testify on this measure.

March 29, 2019

**The Honorable Karl Rhoads, Chair**

Senate Committee on Judiciary

State Capitol, Room 016

Honolulu, Hawaii 96813

**RE: H.B. 931, HD2, SD1, Relating to the Landlord-Tenant Code**

**HEARING: Friday, March 29, 2019, at 9:30 a.m.**

Aloha Chair Rhoads, Vice Chair Wakai, and Members of the Committee:

I am Earl S. Mente. As a Realtor and property manager for over 40 years I am submitting written testimony in **strong opposition** of H.B. 931, H.D.2, S.D.1, 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.

**Due Process Concerns** - This measure, allows tenants to unilaterally assert that their unit is "significantly impaired". There is no provision for an owner to dispute or seek impartial review of whether "significant impairment" has occurred. Moreover, if the tenant caused the unit to become uninhabitable, there is no opportunity for the landlord to assert that defense.

**Contracts Clause Concerns** - Additionally, this measure may violate the Contracts Clause under the United States as it states that a tenant's liability for rent, from the date of significant impairment, shall not exceed the fair rental value of the premises. While it is unclear who would determine the fair market value of the rent, if the fair market value is less than what was negotiated between the owner and tenant pursuant to the Rental Agreement, this would retroactively impair the contract rights established pursuant to said contract.

**Tenant Remedies for Habitability Already Covered Under the Law** - 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



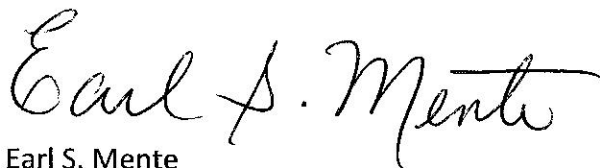
provide landlord with receipts and deduct up to \$500 or one month's rent, whichever is greater.

- 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, existing law seems to sufficiently cover damages for retaliatory evictions and habitability of a unit. For the foregoing reasons, we respectfully request that this measure be held.

Mahalo for the opportunity to testify on this measure.



Earl S. Mente  
Realtor, RB-10960

**From:** [KAKOU](#)  
**To:** [Rep. Chris Lee](#); [Rep. Joy San Buenaventura](#); [JUDtestimony](#)  
**Subject:** HB 931: Landlord-Tenant Code  
**Date:** Wednesday, March 27, 2019 2:37:08 PM

---

KAKOU



Dear Chair Lee, Vice Chair San Buenaventura, and members of the House Judiciary Committee,

Thank you for the opportunity to testify in strong support HB 931. Over the years, we have not had many legislative efforts in Hawaii to improve tenant rights and make protections easier to assert. HB931 gives us that unique opportunity to begin a dialogue about changing that dynamic. The bill 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. This is common sense: if a landlord fails to provide a livable dwelling, then they can't demand full rent.

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.

Anecdotal evidence suggests that retaliatory evictions are rampant in Hawaii. 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. By establishing minimum damages for tenants who have suffered retaliatory evictions, the legislature would discourage landlords from

retaliating against tenants. A minimum damages level would also speed up trials, and give victimized tenants just compensation for the hardship they have endured.

I wish to thank the Committee again 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.

Mahalo,

Kris Tanahara  
745 Fort Street, Suite 900, HONOLULU, HAWAII, 96813



SIGNATURE:

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For more information, visit our website.

**From:** [KAKOU](#)  
**To:** [Rep. Chris Lee](#); [Rep. Joy San Buenaventura](#); [JUDtestimony](#)  
**Subject:** HB 931: Landlord-Tenant Code  
**Date:** Wednesday, March 27, 2019 2:41:28 PM

---

KAKOU



Dear Chair Lee, Vice Chair San Buenaventura, and members of the House Judiciary Committee,

Thank you for the opportunity to testify in strong support HB 931. Over the years, we have not had many legislative efforts in Hawaii to improve tenant rights and make protections easier to assert. HB931 gives us that unique opportunity to begin a dialogue about changing that dynamic. The bill 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. This is common sense: if a landlord fails to provide a livable dwelling, then they can't demand full rent.

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.

Anecdotal evidence suggests that retaliatory evictions are rampant in Hawaii. 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. By establishing minimum damages for tenants who have suffered retaliatory evictions, the legislature would discourage landlords from

retaliating against tenants. A minimum damages level would also speed up trials, and give victimized tenants just compensation for the hardship they have endured.

I wish to thank the Committee again 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.

Mahalo,

Warren Daubert  
2123 10th Ave., #A, HONOLULU, HAWAII, 96816



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**HB-931-SD-1**

Submitted on: 3/27/2019 4:35:20 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Darren S. Holbrook	Individual	Oppose	No

Comments:

I oppose this bill as it is too vague. Who determines habitability? Tenants have rights now to address this issue. There are no timelines or actions described in this bill. How does a tenant notify landlord that there is a problem? How long does landlord have to fix the problem before the tenant stops paying rent. The Hawaii Landlord/Tenant code addresses this already.

Will this bill also apply to Government run houses? If passed it should apply to everyone. I encourage you to not pass this bill as it is horribly written and is too vague. This is a court challenge waiting to happen.

**HB-931-SD-1**

Submitted on: 3/27/2019 4:47:49 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen K. Cardoza	Individual	Oppose	No

Comments:

I am Karen Keanu Cardoza, Principal Broker/Owner of Windward Realty LLC. Windward Realty LLC has been managing single family homes and condo units in Kailua for over 40 years.

I strongly oppose HB931 which 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 and provides remedies for retaliatory evictions.

Each point which HB931 is looking to remedy has been addressed by the Landlord Tenant Code. The Code imposes greater obligations upon the landlord than what this bill proposes to accomplish. HRS 521 42 (a) 1, 2, 3, 4, 5 & 6 requires that landlords: provide a safe and healthy unit, make all repairs to keep the unit in livable condition, maintain electrical, plumbing & other utilities in working order, provide garbage bins with regular removal and provide clean running water.

This bill is meant to apply to landlords who are trying to evict tenants while not making any effort to fix the property which happens to be substantially impaired. The additional penalties, on top of the penalties in the Code (recover damages, legal costs, & attorney's fees) are meant to deter unscrupulous landlords by staying an eviction and awarding free rent; however there is no definition of substantially impaired and there is no consequence if the tenant themselves had caused the damages and made the unit "substantially impaired". Because of this law, the tenant who negligently caused the damages can expect 2 months of free rent while not moving out, therefore not allowing a legitimate landlord or property manager to make the necessary repairs to preserve the home and make it available to someone else who will appreciate it more. This bill will make the work of legitimate law abiding landlords and licensed property managers substantially more difficult.

Mahalo for considering my testimony.

# DAVID W.H. CHEE

Attorney at Law  
1001 Bishop Street  
ASB Tower, Suite 2755  
Honolulu, Hawaii 96813

Telephone: 808-539-1150  
Facsimile: 808-208-8689

Email: dchee@dcheelaw.com

March 27, 2019

SENATE COMMITTEE ON JUDICIARY  
Kenekoa/Senator Karl Rhoads  
Kenekoa/Senator Glenn Wakai

Re: HB931 HD2 SD1 - Relating to Landlord-Tenant Code

Dear Senators:

I am an attorney who practices in the field of landlord/tenant law, including residential matters and am writing regarding the above-referenced bill.

The proposed law in its present state gives a landlord an incentive to fix their properties quickly since the law will allow a tenant to pay less rent when a unit has a habitability problem. Unfortunately, this can provide an incentive to a tenant to keep the rent low by preventing a landlord from restoring the property to a habitable condition.

Since some people are willing to live with inconvenience or defective conditions if the price is right, the legislature should help landlords who want to repair their properties.

Sometimes, getting a tenant to cooperate to allow a landlord to make repairs can be difficult. For example, I have seen tenants refuse to move out of a unit temporarily after a fire, even after the water damage caused black mold. In that instance, repairs to the unit were delayed – and the tenant's health threatened – because the tenants simply refused to move.

To avoid delays in restoring habitability, and to assist landlords who wish to restore their rental properties as soon as possible, the amendment should be changed as follows:

(1) No action or proceeding to recover possession of the dwelling unit may be maintained against the tenant, nor shall the landlord otherwise cause the tenant to be removed from the dwelling unit involuntarily; provided that:

(A) The tenant cooperates with the landlord to allow for the restoration of the premises to a habitable condition and continues to pay rent equal to the fair rental value of the premises or the agreed upon rent, whichever is less; and

(B) The landlord's ability to recover possession of the unit is restored upon:



(i) Termination of the rental agreement in accordance with law or terms of the agreement; or

(ii) Restoration of the premises to a habitable condition, whichever comes first; and

(2) The tenant's liability for rent, from the date of significant impairment, shall not exceed the fair rental value of the premises."

Making this small change will encourage everyone to cooperate in the restoration of habitability to any apartment that has been affected.

Please let me know if you have any questions.

Very truly yours,

David W.H. Chee, Esq.

**HB-931-SD-1**

Submitted on: 3/27/2019 8:09:18 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Henny	Individual	Support	No

Comments:

Aloha Senators Rhoades and Wakai and the Committee on Judiciary,

My name is Barbara Henny I am a tenant at Front Street Apartments in Lahaina who like many others, may face eviction due to an increase in rent whereby formerly affordable living was available until it was announced that market rental values may be enforced in August 2019. This is disturbing to all who contracted to reside under affordable rentals until 2050.

I would like to express appreciation for favorable support of past hearings and hope that you will consider worthy consideration and agreement on HB931 which will assist tenants in lower income/affordable housing complexes with legal negotiations and aid if faced with eviction and retaliatory action by landlords when adjustments and improvements to provide safe and sanitary habitation are requested.

I support HB931 and hope you will approve HB931 accordingly.

March 29, 2019

**The Honorable Karl Rhoads, Chair**

Senate Committee on Judiciary  
State Capitol, Room 016  
Honolulu, Hawaii 96813

**RE: H.B. 931, HD2, SD1, Relating to the Landlord-Tenant Code**

**HEARING: Friday, March 29, 2019, at 9:30 a.m.**

Aloha Chair Rhoads, Vice Chair Wakai, and Members of the Committee:

I am Lani Samer, submitting written testimony in **strong opposition** of H.B. 931, H.D.2, S.D.1, 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.

**Due Process Concerns** - This measure, allows tenants to unilaterally assert that their unit is "significantly impaired". There is no provision for an owner to dispute or seek impartial review of whether "significant impairment" has occurred. Moreover, if the tenant caused the unit to become uninhabitable, there is no opportunity for the landlord to assert that defense.

**Contracts Clause Concerns** - Additionally, this measure may violate the Contracts Clause under the United States as it states that a tenant's liability for rent, from the date of significant impairment, shall not exceed the fair rental value of the premises. While it is unclear who would determine the fair market value of the rent, if the fair market value is less than what was negotiated between the owner and tenant pursuant to the Rental Agreement, this would retroactively impair the contract rights established pursuant to said contract.

**Tenant Remedies for Habitability Already Covered Under the Law** - 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:**

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- 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, existing law seems to sufficiently cover damages for retaliatory evictions and habitability of a unit. For the foregoing reasons, we respectfully request that this measure be held.

Mahalo for the opportunity to testify on this measure.

**From:** [Chrystal Wong](#)  
**To:** [JUDtestimony](#)  
**Subject:** H.B. 931, HD2, SD1, Relating to the Landlord-Tenant Code  
**Date:** Wednesday, March 27, 2019 9:11:03 PM

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**The Honorable Karl Rhoads, Chair**

Senate Committee on Judiciary  
State Capitol, Room 016  
Honolulu, Hawaii 96813

**RE: OPPOSE H.B. 931, HD2, SD1, Relating to the Landlord-Tenant Code**

**HEARING: Friday, March 29, 2019, at 9:30 a.m.**

Aloha Chair Rhoads, Vice Chair Wakai, and Members of the Committee:

I am Chrystal Wong, submitting written testimony in **strong opposition of** H.B. 931, H.D.2, S.D.1, 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.

**Due Process Concerns** - This measure, allows tenants to unilaterally assert that their unit is "significantly impaired". There is no provision for an owner to dispute or seek impartial review of whether "significant impairment" has occurred. Moreover, if the tenant caused the unit to become uninhabitable, there is no opportunity for the landlord to assert that defense.

**Contracts Clause Concerns** - Additionally, this measure may violate the Contracts Clause under the United States as it states that a tenant's liability for rent, from the date of significant impairment, shall not exceed the fair rental value of the premises. While it is unclear who would determine the fair market value of the rent, if the fair market value is less than what was negotiated between the owner and tenant pursuant to the Rental Agreement, this would retroactively impair the contract rights established pursuant to said contract.

**Tenant Remedies for Habitability Already Covered Under the Law** - 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:

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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):
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  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, existing law seems to sufficiently cover damages for retaliatory evictions and habitability of a unit. For the foregoing reasons, we respectfully request that this measure be held.

Mahalo for the opportunity to testify AGAINST this measure.

\*\*\*\*\*

Chrystal S.K. Wong, RB-16499, CRS, GRI  
Executive MBA  
(808) 256-8901

Palace Realty, Inc., RB-6957  
(808) 591-2155

**HB-931-SD-1**

Submitted on: 3/28/2019 9:12:38 AM

Testimony for JDC on 3/29/2019 9:30:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jen Jenkins	Individual	Support	No

Comments:

Please pass HB931 to give renters more power against landlords.