

# SB 1154

Measure Title:	RELATING TO THE LANDLORD-TENANT CODE.
Report Title:	Landlord-tenant Code; Landlords; Holdover Tenants; Summary Possession Proceedings; Writ of Possession
Description:	In a summary possession proceeding brought by a landlord against a holdover tenant: requires the court to address the complaint for summary possession during the first court appearance of the parties; prohibits a writ of possession from allowing the tenant more than fifteen days to vacate the premises; and specifies that the court shall expedite the proceeding so that the landlord is not unduly prejudiced by the delay.
Companion:	
Package:	None
Current Referral:	CPH, JDC
Introducer(s):	KIM, ENGLISH, RIVIERE, Baker, Fevella, Ihara, Inouye, Keith-Agaran, Kidani, Moriwaki, Shimabukuro



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  
Monday, February 11, 2019  
9:30 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
S.B. 1154, 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. The Department opposes this bill.

The purpose of S.B. 1154 is to require the court to address the complaint for summary possession during the first court appearance of the parties and specify that the court shall expedite the proceeding so that the landlord is not unduly prejudiced by delay.

The Department opposes this measure because it imposes obligations on the judiciary that already exist under current law and improperly intrudes upon the court's inherent judicial discretion and independence. Hawaii Revised Statutes (HRS) chapter 666 and the District Court Rules of Civil Procedure (DCRCP), not HRS chapter 521 (Residential Landlord-Tenant Code), governs judicial procedures involving summary possession in Hawaii. Rule 12 of the DCRCP sets forth the timing requirements

involved in summary possession proceedings: “All defendants shall appear on or answer . . . no less than five days following the date of service if made in the circuit in which the action was commenced and not less than seven days following the date of service if made in another circuit[.]” Consequently, the bill’s first proposed requirement that the court address the complaint for summary possession during the first court appearance of the parties is unnecessary.

The bill’s second proposed requirement imposes a standard of “good cause” to continue proceedings. Courts have inherent power to consider requests to continue proceedings for a variety of reasons, including scheduling issues, attempts at resolution, and myriad matters of equity. In addition, it is superfluous to require a court to adhere to a “good cause” requirement for which it is already duty-bound to comply.

Finally, the bill’s third proposed requirement of restricting a tenant to not more than fifteen days to vacate is also unnecessary. It is common practice for district courts to issue a writ of possession that can be acted upon immediately upon issuance. Stated another way, once a landlord has the writ in hand, the landlord can seek to immediately evict the tenant. The fifteen-day-to-vacate provision is therefore unnecessary because current law already adequately addresses the eviction process in Hawaii.

Thank you for the opportunity to testify on this bill.



*The Judiciary, State of Hawai‘i*

**Testimony to the Senate Committee on Commerce, Consumer Protection, and Health**

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice Chair

Monday, February 11, 2019, 9:30am

State Capitol, Conference Room 229

By

Calvin C. Ching

Deputy Chief Court Administrator

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 1154, Relating to the Landlord-Tenant Code.

**Purpose:** In a summary possession proceeding brought by a landlord against a holdover tenant: requires the court to address the complaint for summary possession during the first court appearance of the parties; prohibits a writ of possession from allowing the tenant more than fifteen days to vacate the premises; and specifies that the court shall expedite the proceeding so that the landlord is not unduly prejudiced by the delay.

**Judiciary's Position:**

The Judiciary respectfully opposes this measure.

Fair and timely case resolution are essential components of the administration of justice. To this end, the District Courts require the flexibility to manage and schedule their cases and caseloads. Currently, in the District Court of the First Circuit, when a summary possession case is served the case is set for a return date. At this return hearing, which are set every day in the Honolulu Division and once a week in the rural divisions, the defendant tenant is required to appear or file a written answer. If the tenant does not appear or file an answer a default is taken and a judgment for possession and writ of possession are granted effective immediately. If the tenant appears, they are given an opportunity to respond, they may agree to move out or deny the allegations in the complaint. If the case will need to proceed to trial then the case is set for



Senate Bill No. 1154, Relating to the Landlord-Tenant Code  
Senate Committee on Commerce, Consumer Protection, and Health  
February 11, 2019  
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pretrial (only in the Honolulu Division) or trial (in the rural courts). This pretrial date is necessary for the Honolulu Division as it is the Division with the most cases on Oahu.

The pretrial process allows both parties time to negotiate a settlement between themselves or with the assistance of a mediator thereby reducing the need for trial. This process not only allows the Honolulu District Court to be efficient and process cases timely, but also allows parties the opportunity to resolve their dispute without undergoing the expense of prolonged litigation. The neighbor island District Courts also have similar processes.

The proposed measure would require summary possession trials to take place at the return hearing date. While this may expedite the process, it may impose further hardship on both parties. Due to housing being a critical issue, summary possession cases already undergo an expedited process. Once the tenant is served with the Complaint and Summons, a return hearing is set five days after date of service. Most parties are not prepared to go to trial on the return hearing date and would not have had sufficient time to subpoena witnesses, prepare exhibits or consult with legal counsel. This would require plaintiff landlords to have all their exhibits and witnesses at the return date which is costly both in time and money. This added expense may be avoided if at the return date the tenant fails to appear or agrees to vacate the premises.

Trials for summary possession must adhere to the rules of evidence and take time to allow for witness testimony, presentation of evidence and arguments. There are a limited number of judges and court space to accommodate trials for all summary possession cases at the initial hearing date. For example, the Third and Fifth Circuits civil calendars are set for one-half day for each District Court each week. These calendars address temporary restraining orders, "regular claims" civil which include landlord-tenant cases, and small claims. The proposed measure would result in a congested court calendar and limit the court's ability to hear cases fully and in a timely manner.

While the intention of this legislation to expedite the process is appreciated, it may have the unintended consequence of imposing burdens on those seeking to access our judicial system. We therefore respectfully oppose this measure, but welcome an opportunity to discuss alternative ways to improve the summary possession process.

Thank you for the opportunity to testify on this measure.

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February 11, 2019

**The Honorable Rosalyn H. Baker, Chair**

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

**RE: Senate Bill 1154 Relating to Relating to the Landlord-Tenant Code**

**HEARING: Monday, February 11, 2019, at 9:30 a.m. in 229**

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

I am Ken Hiraki Government Affairs Director, testifying 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 supports Senate Bill 1154, which provides that in a summary possession proceeding brought by a landlord against a holdover tenant, it requires the court to address the complaint for summary possession during the first court appearance of the parties; prohibits a writ of possession from allowing the tenant more than fifteen days to vacate the premises; and specifies that the court shall expedite the proceeding so that the landlord is not unduly prejudiced by the delay.

Under the Landlord-Tenant Code, Hawaii Revised Statutes §521-71, when a tenancy is month-to-month, a landlord may terminate the rental agreement after providing at least 45 days' notice to the tenant in writing. If a tenant remains in the unit, they become a holdover tenant.

In this situation, it is usually, a couple of months before the landlord files for summary possession, such as for the tenant failing to pay their rent. Then, it takes at least a month to serve the tenant, hold a return hearing, hear preliminary motions and schedule deadlines for exhibits and a trial date. Prior to trial, the court will ask the parties to attempt a voluntary settlement via negotiations or mediation. If the matter goes to trial, the judge will often give a tenant a generous amount of time to vacate. From there, it can be months before a landlord has any resolution, and the landlord is not receiving rent or the unit could fall in disrepair.

HAR believes that having the court address the complaint for summary possession during the first court appearance will help to expedite this process and help landlords who have not been receiving rent payments for months. Additionally, the tenant is still safeguarded by the measure as this expedited summary possession proceeding would not apply to situations where improper notice was provided or the tenant has good cause.

Mahalo for the opportunity to testify.



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**TESTIMONY IN OPPOSITION TO S.B. 1154,**  
**RELATING TO THE LANDLORD-TENANT CODE**

**Senate Committee on Commerce, Consumer Protection, and Health**  
**Monday, February 11, 2019**  
**9:30 a.m.**  
**State Capitol, Conference Room 229**

**Senator Roz Baker, Chair**  
**Senator Michelle Kidani, Vice-Chair.**

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

The Legal Aid Society of Hawaii (Legal Aid) submits testimony in opposition to SB1154 – Relating to the Landlord Tenant Code. The purpose of the bill is to expedite the eviction process for holdover tenants.

From our reading of the bill, it is unclear what problem the bill is addressing. The bill directs the district courts to handle a holdover tenancy differently, including providing that a writ of possession will require a holdover tenant to vacate within 15 days.

However, once a writ of possession is issued, it can be executed immediately, unless otherwise provided by the court. Providing up to 15 days for a tenant to vacate will give both the landlord and tenant a false sense of timing as to when a tenant actually has to move out. The Landlord Tenant Code does not provide a 15-day grace period before a landlord can execute a writ of possession. We would not want a tenant to be under the misapprehension that they can stay an extra 15 days, while accruing double rent as a holdover.

Further, the bill requires the district courts to handle holdover tenants differently than the court currently does. Legal Aid has a statewide practice defending tenants. Each district court division schedules summary possession cases differently – for example, Honolulu division is daily (with Monday pretrial conferences), Wahiawa and Ewa, weekly. Neighbor islands handle their dockets differently depending on the location of the division, for example Hana monthly, Lahaina weekly, Lanai monthly, and Molokai three times per month. Each division also mediates according to its own schedule. This bill meddles with the district court's process solely with regard to holdover tenant cases, without any guidance as to how to expedite a summary possession process that is already expedited. It is not clear in the bill whether the rights of the landlord or tenant would be enhanced if SB1154 is passed.

The bill also requires the district court to address the complaint at the first court appearance. The effect of this could be to require the district court to conduct a trial on the day of the first appearance, making it more like a small claims case. A different notice would need to be provided in summary possession case of a putative holdover tenant in which a tenant is notified to be ready for a trial on the date of the return hearing. Legal Aid opposes the bill because of the uncertainty about tenant rights and the effect on district court proceedings.

The Legal Aid Society of Hawai'i has provided civil legal services to the community for almost 70 years and we are the only legal services organization in the state to have offices on each of the major Hawaiian islands, including four offices on Oahu (Bethel Street, Chinatown, Waianae and Kaneohe) and two on Hawai'i Island (Kona and Hilo). Our staff regularly assist residents of Hawai'i to navigate and solve basic issues which require legal interventions. In 2018, our staff closed over 6,500 cases in legal areas ranging from family, housing, consumer, foreclosure, public benefits, elder law, homelessness, immigration, language access, and child welfare.

Thank you for this opportunity to provide testimony.

Sincerely,

**Dan O'Meara**  
Managing Attorney Housing and Consumer Unit  
Legal Aid Society of Hawai'i



**SB-1154**

Submitted on: 2/7/2019 6:17:55 PM

Testimony for CPH on 2/11/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Randy L Prothero	Individual	Support	Yes

Comments:

Aloha Senators,

I am support of this bill. I am a Realtor and a Mediator.

I have seen many occurances of tenants causing extreme financial hardship to landlords, due to the terribly long court process. I feel this bill will bring a little more sanity and fairness to the process. It may also have a positive impact on property owners willingness to provide rental unit.

Thank you,

Randy L. Prothero

95-1048 Hookupu St

Mililani, HI 96789

**SB-1154**

Submitted on: 2/10/2019 3:39:08 PM

Testimony for CPH on 2/11/2019 9:30:00 AM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Sugimura	Individual	Oppose	Yes

Comments:

There is no need for this bill for the following reasons:

In any summary possession case (not only those initiated in connection with a hold-over tenant situation) , the court does in fact address the complaint on the court return date. The Defendant tenant is required to admit or deny the allegations in the complain. If the defendant admits, then the Landlord gets a Writ. If the Tenant denies, then, ithe case gets set for trial since whether or not the Landlord has complied with all notice requirements is a factual issue (that if denied) can only be determined at trial. Also, in a hold-over situation, assuming proper written notification is provided to the tenant, there is lease and in that case, there is no basis to continue the proceedings. Finally, Writs of Possession provide that the Landlord has the right of possession as of the effective date and has an expiration date of 180 days; however, its up to the Landlord and its sheriff or process server to remove the tenant. .