

JAN 17 2020

A BILL FOR AN ACT

RELATING TO THE LANDLORD-TENANT CODE.

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

1 SECTION 1. The legislature finds that the State has one of
2 the highest percentages of renter households in the nation, with
3 forty-three per cent of households in the State consisting of
4 renters. The legislature recognizes that the State also has the
5 least amount of affordable housing in the nation, resulting in
6 thousands of families in the State, many of whom are already
7 facing eviction, being unable to find alternative housing. The
8 legislature further recognizes that evictions increase
9 homelessness, unemployment, crime, and mental and physical
10 illness. Further, children who experience an eviction often
11 show signs of slower academic progress and other developmental
12 impairments. Additionally, each eviction results in significant
13 financial and social costs to the evicted household and the
14 surrounding community.

15 The legislature believes that eviction procedures must
16 carefully balance the landlord's need for sufficient enforcement
17 against the tenant's need for sufficient protection. The



1 legislature further finds that without adequate safeguards,
2 tenants become targets for abuse during these eviction
3 proceedings. Currently, the residential landlord-tenant code
4 makes it difficult for tenants to defend themselves against
5 wrongful evictions. While the code clearly outlines landlords'
6 responsibilities, it fails to provide tenants with suitable
7 methods of recourse and ways to hold landlords accountable in
8 various situations.

9 The legislature notes that leases, like other contracts,
10 are reciprocal. The Hawaii supreme court has held that
11 landlords cannot require a tenant to pay rent if the tenant does
12 not receive the basic services to which they are entitled.
13 While many states have passed laws specifying that tenants
14 cannot be forced to pay rent for uninhabitable premises, the
15 legislature has failed to formally recognize this principle,
16 resulting in a lack of enforcement and numerous unjust and
17 illegitimate evictions.

18 The legislature acknowledges that landlords are prohibited
19 from retaliating against tenants who request repairs to their
20 respective homes or complain about health or safety code
21 violations. However, although the residential landlord-tenant



1 code guarantees compensation for other landlord offenses, it
2 also places on the tenant the burden of proving entitlement to
3 compensation for a landlord's retaliation. The result is often
4 that tenants who have been retaliated against are not made
5 whole, allowing landlords to continue these retaliatory
6 practices.

7 Accordingly, the purpose of this Act is to:

- 8 (1) Prohibit landlords from recovering possession of
9 dwelling units from tenants if habitability of
10 premises is significantly impaired;
11 (2) Set a tenant's liability for rent if habitability of
12 premises is significantly impaired; and
13 (3) Provide remedies for unlawful retaliatory evictions.

14 SECTION 2. Section 521-42, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§521-42 Landlord to supply and maintain fit premises.**

- 17 (a) The landlord shall at all times during the tenancy:
18 (1) Comply with all applicable building and housing laws
19 materially affecting health and safety;
20 (2) Keep common areas of a multi-dwelling unit premises in
21 a clean and safe condition;



- 1 (3) Make all repairs and arrangements necessary to put and
2 keep the premises in a habitable condition;
- 3 (4) Maintain all electrical, plumbing, and other
4 facilities and appliances supplied by the landlord in
5 good working order and condition, subject to
6 reasonable wear and tear;
- 7 (5) Except in the case of a single family residence,
8 provide and maintain appropriate receptacles and
9 conveniences for the removal of normal amounts of
10 rubbish and garbage, and arrange for the frequent
11 removal of such waste materials; and
- 12 (6) Except in the case of a single family residence, or
13 where the building is not required by law to be
14 equipped for the purpose, provide for the supplying of
15 running water as reasonably required by the tenant.

16 Prior to the initial date of initial occupancy, the
17 landlord shall inventory the premises and make a written record
18 detailing the condition of the premises and any furnishings or
19 appliances provided. Duplicate copies of this inventory shall
20 be signed by the landlord and by the tenant and a copy given to
21 each tenant. In an action arising under this section, the



1 executed copy of the inventory shall be presumed to be correct.
2 If the landlord fails to make such an inventory and written
3 record, the condition of the premises and any furnishings or
4 appliances provided, upon the termination of the tenancy shall
5 be rebuttably presumed to be the same as when the tenant first
6 occupied the premises.

7 (b) The landlord and tenant may agree that the tenant is
8 to perform specified repairs, maintenance tasks, and minor
9 remodeling only if:

10 (1) The agreement of the landlord and tenant is entered
11 into in good faith and is not for the purpose of
12 evading the obligations of the landlord;

13 (2) The work to be performed by the tenant is not
14 necessary to cure noncompliance by the landlord with
15 ~~[section 521-42(a)(1);]~~ subsection (a)(1); and

16 (3) The agreement of the landlord and tenant does not
17 diminish the obligations of the landlord to other
18 tenants.

19 (c) If a landlord's failure to materially comply with
20 subsection (a) results in the significant impairment of the
21 habitability of the premises:



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

6 (A) The tenant continues to pay rent equal to the
7 fair rental value of the premises or the agreed
8 upon rent, whichever is less; and

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

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

14 (ii) Restoration of the premises to a habitable
15 condition,

16 whichever comes first; and

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

20 SECTION 3. Section 521-74, Hawaii Revised Statutes, is
21 amended by amending subsection (c) to read as follows:



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




6 SECTION 4. This Act does not affect rights and duties that
 7 matured, penalties that were incurred, and proceedings that were
 8 begun before its effective date.

9 SECTION 5. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 2020.

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INTRODUCED BY:



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S.B. NO. 2646

Report Title:

Landlord-tenant Code; Habitability; Retaliatory Evictions

Description:

Prohibits landlords from recovering possession of a dwelling unit from tenants if habitability of the premises is significantly impaired. Sets a tenant's liability for rent if habitability of the premises is significantly impaired. Provides remedies for retaliatory evictions.

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