

HB

931

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 whom are already facing
7 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
12 doesn't 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; and

11 (2) Provide remedies for unlawful retaliatory evictions.

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

14 **"§521-42 Landlord to supply and maintain fit premises.**

15 (a) The landlord shall at all times during the tenancy:

16 (1) Comply with all applicable building and housing laws
 17 materially affecting health and safety;

18 (2) Keep common areas of a multi-dwelling unit premises in
 19 a clean and safe condition;

20 (3) Make all repairs and arrangements necessary to put and
 21 keep the premises in a habitable condition;



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

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



1 record, the condition of the premises and any furnishings or
2 appliances provided, upon the termination of the tenancy shall
3 be rebuttably presumed to be the same as when the tenant first
4 occupied the premises.

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

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

11 (2) The work to be performed by the tenant is not
12 necessary to cure noncompliance by the landlord with
13 section 521-42(a)(1); and

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

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

20 (1) No action or proceeding to recover possession of the
21 dwelling unit may be maintained against the tenant,



1 nor shall the landlord otherwise cause the tenant to
 2 be removed from the dwelling unit involuntarily; and
 3 (2) The tenant's liability for rent shall not exceed the
 4 fair rental value of the premises."

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

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

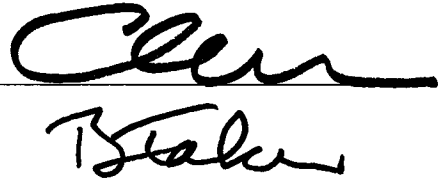
13 SECTION 4. This Act does not affect rights and duties that
 14 matured, penalties that were incurred, and proceedings that were
 15 begun before its effective date.

16 SECTION 5. New statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.

18

INTRODUCED BY: _____



JAN 22 2019



H.B. NO. 931

Report Title:

Landlord-Tenant Code; Habitability; Retaliatory Evictions;
Remedies

Description:

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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





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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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
Tuesday, February 5, 2019
2:00 p.m.
State Capitol, Conference Room 329**

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

Chair Takumi 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 unlawful retaliatory evictions.

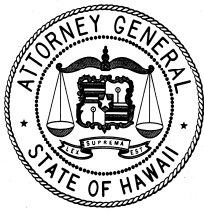
The Landlord-Tenant Information Center is staffed by OCP investigators and volunteers who provide landlords and tenants with information regarding landlord-tenant laws to help them resolve disputes relating to security deposits, late fees, and repairs. The most common complaint the center receives from 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 twelve business days. However, the cost to repair conditions that materially affect health and safety can exceed \$500, leaving the tenant with limited recourse to have, for example, an unsanitary plumbing or a dangerous electrical issue addressed.

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.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Tuesday, February 5, 2019 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329

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

Chair Takumi and Members of the Committee:

The Department of the Attorney General provides the following comments.

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

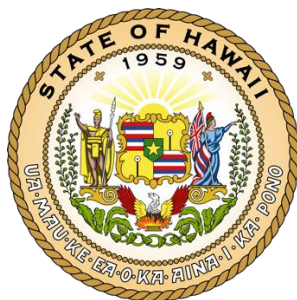
This bill may be subject to two different forms of takings challenges: physical and regulatory. The Takings Clauses of the United States Constitution (Fifth Amendment and Fourteenth Amendment) and the Constitution of the State of Hawai'i (article I, section 20) prohibit the taking of private property for public use without just compensation. If this bill is interpreted as authorizing a tenant to occupy the landlord's premises without paying either rent or fair rental value, our concern is that the bill effects a physical taking. Under section 2 of this bill, at page 6, lines 3–4, it is not clear whether the tenant is allowed to occupy the property without paying either rent or fair rental value. Although takings jurisprudence can be complex, the United States Supreme Court has essentially adopted a per se rule that any physical interference with private

property requires compensation. *E.g., Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 441 (1982). "Absent rare exercise of emergency powers, virtually any physical interference with private land requires compensation to the landowner." David L. Callies, *Takings: An Introduction and Overview*, 24 U. Haw. L. Rev. 441, 443 (2002). The risk of a physical takings claim could be reduced by clarifying that the tenant is liable for rent for as long as the tenant physically occupies the premises.

We have a related concern about a regulatory takings claim if the landlord is perpetually barred from evicting a tenant after habitability of the premises is no longer significantly impaired. "A regulatory taking occurs when government, through the exercise of the police or regulatory power, so burdens land, or an interest in land, with land use regulations that courts treat the action as if government had intended physically to exercise eminent domain." Callies, 24 U. Haw. L. Rev. at 442. "A partial taking occurs whenever a land use regulation deprives a landowner of sufficient use and value that goes beyond necessary exercise of the police power for the health, safety, and welfare of the people, but stops short of depriving the landowner of all economically beneficial use." *Id.* at 443. If a landlord can only sell the property subject to the tenant's perpetual right to occupy the property, the law may deprive the landlord of sufficient economic value to give rise to a regulatory takings claim. The risk of a regulatory takings claim could be reduced by establishing conditions under which the landlord may recover possession or evict a tenant. We recommend that the landlord's ability to recover possession or evict the tenant be restored upon (a) termination of the rental agreement in accordance with law or the terms of the agreement, or (b) restoration of the premises to a habitable condition, whichever occurs earlier.

Lastly, the specification of two months' rent or two months' free occupancy is described as a type of damages. If the legislative intent is to impose a penalty, our recommendation is to authorize recovery in the amount of (a) a minimum fine that you determine to be appropriate, or (b) treble damages, whichever is greater.

Thank you for the opportunity to provide comments.



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

Prepared for the House Committee on Consumer Protection (CPC)

In Support of HB931
Tuesday, February 5, 2019, at 2:00 p.m. in Room 329

Dear Chair Takumi, Vice Chair Ichiyama and Honorable Members,

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

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

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

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

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

² *Id.*

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

⁴⁴ Eviction Lab, “Why Eviction Matters,” 2018, <https://evictionlab.org/why-eviction-matters/#eviction-facts>.

Sincerely,

Khara Jabola-Carolus

Testimony of the Lawyers for Equal Justice
Regarding HB 931, House Committee on Consumer Protection and Commerce
Tuesday, February 5th, 2019 at 2:00 PM

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

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

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

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

- **The “warranty of habitability” already exists in Hawai‘i law.** The Hawai‘i Supreme Court has made clear that “the tenant’s obligation to pay rent and the landlord’s duty to maintain the premises in habitable condition are mutually dependent.” Contracts are two-way streets: when tenants don’t receive the basic services to which they are entitled, landlords cannot require them to pay rent.
- **Some state courts don’t recognize warranty of habitability claims.** The Hawai‘i State Legislature has never codified the warranty of habitability. Because the warranty of habitability exists only in case law, it has gone largely unenforced, resulting in a great number of unjust and illegitimate evictions.
- **For many tenants, the warranty of habitability represents the only hope of receiving critical repairs.** Landlords are required to provide tenants with functional plumbing, electricity, hot water, pest-free premises, garbage disposal, and basic security. Nevertheless, some landlords ignore these obligations until a court intervenes. It is critical that tenants know the law is on their side when it comes to their fundamental rights.
- **Many other states have passed warranty of habitability laws.** For example: in California, the warranty of habitability has been passed into law. If a substantial breach is

found—that is, if the tenant’s unit is unlivable due to the landlord’s negligence—the landlord cannot evict the tenant, provided the tenant pays any rent due based on the fair market value of the rental property.

- **Passing the warranty of habitability into law would do nothing more than reinforce current law and increase access to justice for Hawai‘i’s renters.** This would not be a novel addition to the law. Rather, it would simply work to ensure that cases are decided correctly and that tenants are not stripped of their rights.

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

- **Establishing minimum damages for retaliatory evictions would do nothing more than reinforce current law and increase access to justice for Hawai‘i’s renters.** It is already illegal for landlords to evict tenants for reporting sub-standard conditions. Minimum damages would simply give some teeth to the rules that already exist.
- **Anecdotal evidence suggests that retaliatory evictions are rampant in Hawai‘i.** Even though the law forbids it, tenants who complain about sub-standard conditions too often find themselves served with eviction notices from landlords who would rather not go to the trouble of bringing their rental units into compliance with health and safety regulations. This sort of retaliation is doubly harmful because it deters tenants from requesting repairs out of fear that doing so will put a target on their backs. Many tenants languish in unsanitary or unsafe units as a result.
- **Currently, the Landlord-Tenant Code puts the burden on tenants who have suffered retaliatory evictions to prove they are entitled to compensation.** Proving “damages” (the right to financial compensation) in court can be highly difficult, especially for tenants who are not familiar with the law, rules of evidence, and civil procedure. For this reason, most tenants never receive any form of compensation.
- **Clearly, retaliatory evictions are always damaging—at the very least, tenants must spend time and money fighting in court, and there are severe consequences associated with physical displacement.** Eviction directly fuels homelessness and leads to lower educational achievement, higher rates of crime, domestic abuse, and substance abuse, and poorer health outcomes generally.
- **Other states have recognized the inherently damaging nature of retaliatory evictions and established minimum damages for tenants who can show they were retaliated against.** Two months’ rent plus court costs represents a reasonable figure.
- **By establishing minimum damages for tenants who have suffered retaliatory evictions, the legislature would discourage landlords from retaliating against tenants.** Currently, landlords who retaliate against tenants do so with relative impunity. The promise of meaningful fines would be an effect deterrent to blatantly unlawful behavior.

A minimum damages level would also speed up trials, and give victimized tenants just compensation for the hardship they have endured. Currently, it is almost never worth a tenant’s time to pursue a retaliatory eviction case. The prospect of numerous court hearings and

complex procedural requirements, coupled with the very real possibility of receiving nothing at the end of case, is enough to deter even those with the strongest cases from exercising their rights. If tenants were assured of a least a minimum level of compensation for their time and effort, they would much more often receive their due.

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

Aloha,

Victor Geminiani

Executive Director

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



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www.hawaiiancommunity.net

February 4, 2019

House Committee on Consumer Protection & Commerce
Tuesday, February 5, 2019
Conference Room 329

HB931 - 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.**

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”.

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

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

Sincerely

A handwritten signature in black ink that reads "Jeff Gilbreath". The signature is written in a cursive, slightly slanted style.

Jeff Gilbreath
Executive Director



CGPTA
Chinatown Gateway Plaza Tenant Association
Since 2006

To: Committee on Consumer Protection & Commerce (CPC)
From: Chinatown Gateway Plaza Tenant Association (CGPTA)
Date: Tuesday, February 5, 2019
Time: 2:00 p.m.
Place: Conference Room 329, State Capitol, 415 South Beretania Street

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

Aloha e Chair Takumi, Vice Chair Ichiyama, and CPC Members,

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** 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. We were able to sort this out, but what recourse would CGP residents have had otherwise? What recourse does the overwhelming majority of Hawaii renters have who don't have legal representation or Tenant Associations?

(2) Regarding retaliatory evictions, a vision-impaired CGP resident recently helped an elderly neighbor move a piece of furniture in the CGP freight elevator. She then received a written Notice of House Rules Violation from Security for using the freight elevator for five minutes without management permission, including a written threat of eviction for a second violation. Again, what recourse did these frightened residents have except to appeal to me for help, and what recourse did I have?

Now we know that the legal recourse we needed in both cases already exists in Hawaii case law, but it's not codified by the Legislature and so not enforced, especially not on behalf of renters without legal representation. **Please pass HB931** to give our Hawaii renter community at least a minimum level of legal protection for resident rights. Thank you!

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

February 5, 2019

The Honorable Roy M. Takumi, Chair

House Committee on Consumer Protection & Commerce
State Capitol, Room 312
Honolulu, Hawaii 96813

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

HEARING: Tuesday, February 5, 2019, at 2:00 p.m.

Aloha Chair Takumi, Vice Chair Ichiyama and Members of the Committee:

I am Ken Hiraki Government Affairs Director, submitting written testimony on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its over 9,500 members. HAR **opposes** H.B. 265, which prohibits landlords from recovering possession of dwelling unit from tenants if habitability of premises is significantly impaired. Sets a tenant's liability for rent if habitability of premises is significantly impaired. Provides remedies for retaliatory evictions.

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

Landlord Obligations / Tenant Remedies:

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



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

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

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

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

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

Mahalo for the opportunity to testify on this measure.



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House Committee on Consumer Protection and Commerce

Hawaii Alliance for Progressive Action (HAPA) strongly supports: HB 931

Tuesday, February 5, 2019, 2:00 p.m., Conference Rm. 329

Aloha Chair Takumi, Vice Chair Ichiyama and Members of the Committee,

My name is Anne Frederick and I am the Executive Director for the Hawaii Alliance for Progressive Action (HAPA). HAPA is a statewide environmental, social and economic justice organization. HAPA engages over 10,000 local residents annually through its work.

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

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

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

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

- **The “warranty of habitability” already exists in Hawai'i law.** The Hawai'i Supreme Court has made clear that “the tenant's obligation to pay rent and the landlord's duty to maintain the premises in habitable condition are mutually dependent.” Contracts are two-way streets: when tenants don't receive the basic services to which they are entitled, landlords cannot require them to pay rent.
- **Some state courts don't recognize warranty of habitability claims.** The Hawai'i State Legislature has never codified the warranty of habitability. Because the warranty of habitability exists only in case law, it has gone largely unenforced, resulting in a great number of unjust and illegitimate evictions.
- **For many tenants, the warranty of habitability represents the only hope of receiving critical repairs.** Landlords are required to provide tenants with functional plumbing, electricity, hot water, pest-free premises, garbage disposal, and basic security. Nevertheless, some landlords ignore these obligations until a court intervenes. It is critical that tenants know the law is on their side when it comes to their fundamental rights.
- **Many other states have passed warranty of habitability laws.** For example: in California, the warranty of habitability has been passed into law. If a substantial breach is found—that is, if the tenant's unit is unlivable due to the landlord's negligence—the landlord cannot evict the tenant, provided the tenant pays any rent due based on the fair market value of the rental property.
- **Passing the warranty of habitability into law would do nothing more than reinforce current law and increase access to justice for Hawai'i's renters.** This would not be a novel addition to the law. Rather, it would simply work to ensure that cases are decided correctly and that tenants are not stripped of their rights.

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

- **Establishing minimum damages for retaliatory evictions would do nothing more than reinforce current law and increase access to justice for Hawai'i's renters.** It is already illegal for landlords to evict tenants for reporting sub-standard conditions. Minimum damages would simply give some teeth to the rules that already exist.
- **Anecdotal evidence suggests that retaliatory evictions are rampant in Hawai'i.** Even though the law forbids it, tenants who complain about sub-standard conditions too often find themselves served with eviction notices from landlords who would rather not go to the trouble of bringing their rental units into compliance with health and safety regulations. This sort of retaliation is doubly harmful because it deters tenants from requesting repairs out of fear that doing so will put a target on their backs. Many tenants languish in unsanitary or unsafe units as a result.
- **Currently, the Landlord-Tenant Code puts the burden on tenants who have suffered retaliatory evictions to prove they are entitled to compensation.** Proving "damages" (the right to financial compensation) in court can be highly difficult, especially for tenants who are not familiar with the law, rules of evidence, and civil procedure. For this reason, most tenants never receive any form of compensation.
- **Clearly, retaliatory evictions are always damaging—at the very least, tenants must spend time and money fighting in court, and there are severe consequences associated with physical displacement.** Eviction directly fuels homelessness and leads to lower educational achievement, higher rates of crime, domestic abuse, and substance abuse, and poorer health outcomes generally.
- **Other states have recognized the inherently damaging nature of retaliatory evictions and established minimum damages for tenants who can show they were retaliated against.** Two months' rent plus court costs represents a reasonable figure.
- **By establishing minimum damages for tenants who have suffered retaliatory evictions, the legislature would discourage landlords from retaliating against tenants.** Currently, landlords who retaliate against tenants do so with relative impunity. The promise of meaningful fines would be an effect deterrent to blatantly unlawful behavior.

A minimum damages level would also speed up trials, and give victimized tenants just compensation for the hardship they have endured. Currently, it is almost never worth a tenant's time to pursue a retaliatory eviction case. The prospect of numerous court hearings and complex procedural requirements, coupled with the very real possibility of receiving nothing at the end of case, is

The Hawai'i Alliance for Progressive Action (HAPA) is a public non-profit organization under Section 501(c)(3) of the Internal Revenue Code. HAPA's mission is to catalyze community empowerment and systemic change towards valuing 'aina (environment) and people ahead of corporate profit.

enough to deter even those with the strongest cases from exercising their rights. If tenants were assured of a least a minimum level of compensation for their time and effort, they would much more often receive their due.

We wish to thank the House Committee on Consumer affairs and Commerce 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,

A handwritten signature in black ink, appearing to read "Anne Frederick", with a stylized, cursive script.

Anne Frederick
Executive Director



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

February 5, 2019

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TO: Chair Takumi, Vice Chair Ichiyama, and Members of the House Committee on Consumer Protection and Commerce:

FROM: Ryan Kusumoto, Vice Chair, PHOCUSED

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

Hearing: Tuesday, February 5th, 2019 at 2:00 PM
3:10 pm
Room 016

Dear Chair Takumi, Vice Chair Ichiyama, and members of the House Committee on Consumer Protection and Commerce:

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

A safe and healthy home is critical to the well-being of its occupants. No one should have to risk their safety or health because they are unable to afford a nicer home. At minimum, landlords must provide tenants with functional plumbing, electricity, hot water, pest-free premises, garbage disposal, and basic security. HB 931 would bring clarity to these requirements and help to ensure the well-being of Hawai'i renter families.

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

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



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

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

Thank you for your consideration of this important bill.

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



TO: Chair Takumi, Vice Chair Ichiyama, and Members of the House Committee on Consumer Protection & Commerce

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

DATE/LOCATION: Tuesday, February 5, 2019; 2:00 p.m., Conference Room 329

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

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

- Tenants should not be subjected to sub-standard conditions of living nor should they be subjected to unfair treatment or retaliatory evictions when reporting health and safety violations to their landlords.
- Landlords have a responsibility to upkeep and maintain properties and adhere to all health and safety standards and building codes.
- A Hawaii 2018 *Lawyers for Economic Justice* study noted that in 2017 approximately 1,600-1,800 households were evicted.
- Evictions are a lose-lose situation for both landlords and tenants who are forced to invest both time and money into
- More than 50% of renters are already 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 find hopeful and healthy futures here at home.

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, and community building programs.

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