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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 and Consumer Protection
and
Senate Committee on Judiciary

Tuesday, February 28, 2023
Conference Room 0169:
9:30 AM

On the following measure:
S.B. 26, RELATING TO THE LANDLORD-TENANT CODE

Chair Keohokalole, Chair Rhoads, and Members of the Committees:

My name is Mana Moriarty, 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 a dwelling unit from tenants if habitability of the premises is significantly impaired; (2) set a tenant's liability for rent if habitability of the 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 failure would result in a dwelling unit becoming uninhabitable, this bill will incentivize landlords to keep their rental unit safe and sanitary.

Under Hawaii law, a tenant has the legal right to request necessary repairs without being evicted. If the landlord does not respond to the tenant's written repair request within 12 business days, the tenant can deduct up to \$500 from the following month's rent for the cost of repairs. 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.

Section 3 of this measure establishes a clear standard of damages for tenants who fall victim to retaliatory evictions. Other states, like California, already have minimum damages for tenants who were illegally retaliated against for asserting their lawful rights. In this regard, two months' rent plus court costs may represent a reasonable figure, especially when compared to damage claims under current landlord-tenant law. An unlawful retaliatory eviction prohibited by this bill would be treated in the same manner as an illegal lockout, for which existing law allows damages in an "amount equal to two months' rent" for victimized tenants¹. In view of the costs to the tenant of bringing a civil action to enforce the prohibition against retaliatory evictions, OCP recommends that two months' rent and court costs be the minimum amount of damages awarded. OCP suggests that page 7 line 4 of the bill be amended from: "in an amount equal to two months' rent" to "in an amount equal to no less than two months' rent." Establishing statutory minimum damages for tenants is in the interests of justice and will deter unscrupulous landlords from engaging in unlawful conduct.

Thank you for the opportunity to testify on this bill.

¹ Hawaii Revised Statutes section 521-63.

February 28, 2023

The Honorable Jarrett Keohokalole, Chair

Senate Committee on Commerce and Consumer Protection

The Honorable Karl Rhoads, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Conference Room 016 & Videoconference

RE: Senate Bill 26, Relating to the Landlord-Tenant Code

HEARING: Tuesday, February 28, 2023, at 9:30 a.m.

Aloha Chair Keohokalole, Chair Rhoads, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR **strongly opposes** Senate Bill 26, which 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.

Tenant Remedies for Habitability Already Covered Under the Law:

The Landlord-Tenant Code, Hawai'i Revised Statutes (HRS) §521, imposes strict habitability obligations upon housing providers and clear remedies for tenants for failure to properly maintain a rental unit or for engaging in improper retaliation evictions.

Regarding repairs and housing provider's obligations to maintain habitability of a unit and tenant remedies, the Code provides the following:

- HRS §521-64(c) and (d). **Emergency repairs** must be initiated within **3 business days**. If the landlord fails to repair the unit, the tenant may perform repairs and provide the 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 the landlord fails to repair the unit, the tenant may perform repairs and provide the 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 the landlord fails to repair the unit, the tenant may perform repairs and provide the landlord with receipts and deduct up to \$500 from next month's rent.

Additionally, under HRS §521-42, a housing provider 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.

Also, under HRS §521-74, a housing provider 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 housing provider directly.

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

Additional Concerns with this Measure:

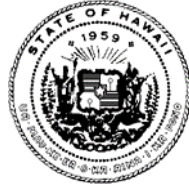
This measure, allows tenants to unilaterally assert that their unit is "significantly impaired." There is no provision for an owner to dispute or seek impartial review of whether "significant impairment" has occurred. Moreover, if the tenant caused the unit to become uninhabitable, there is no opportunity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

Additionally, "significant impairment" is not defined and subjective and could open the door to abuse. **Furthermore, as this bill is written if a unit does become uninhabitable a tenant cannot be temporarily removed from the dwelling for the housing provider to conduct repairs; therefore, there would be no recourse for a housing provider to fix the damaged unit.**

Based on existing law regarding housing provider 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, Hawai'i REALTORS® strongly opposes this measure. Mahalo for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

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February 27, 2023

TO: The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary

FROM: Cathy Betts, Director

SUBJECT: **SB 26 – RELATING TO THE LANDLORD-TENANT CODE.**

Hearing: February 28, 2023, 9:30 a.m.
Conference Room 016 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the measure's intent, provides comments, and defers to the Department of Commerce & Consumer Affairs.

PURPOSE: This bill 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.

Numerous studies find that housing is a primary social determinant that affects an individual's long-term health outcomes. See [More Than Shelter: Housing for Urban Maternal and Infant Health](#).

Efforts and resources to improve housing quality in Hawaii, especially for low-income renters who compete for limited housing, are positive steps toward addressing housing and health disparities.

Thank you for the opportunity to provide comments on this measure.

SB-26

Submitted on: 2/25/2023 4:11:27 PM

Testimony for CPN on 2/28/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Hawai‘i has one of the highest percentages of renter households in the nation, with 43% of households consisting of renters. Our state also has the least amount of affordable housing in the nation, resulting in thousands of families in Hawai‘i, many whom are already facing eviction, being unable to find alternative housing.

Evictions increase homelessness, unemployment, crime, and mental and physical illness. Further, children who experience the trauma of an eviction often show signs of slower academic progress and other developmental impairments. Additionally, each eviction results in significant financial and social costs to the evicted household and the surrounding community.

Without adequate safeguards, tenants become targets for abuse during these eviction proceedings. Currently, the residential landlord-tenant code makes it difficult for tenants to defend themselves against wrongful evictions. While the code clearly outlines landlords’ responsibilities, it fails to provide tenants with suitable methods of recourse and ways to hold landlords accountable in various situations.

The Hawai‘i Supreme Court has held that landlords cannot require a tenant to pay rent if the tenant does not receive the basic services to which they are entitled. While many states have passed laws specifying that tenants cannot be forced to pay rent for uninhabitable premises, the legislature has failed to formally recognize this principle, resulting in a lack of enforcement and numerous unjust and illegitimate evictions.

Landlords are prohibited from retaliating against tenants who request repairs to their respective homes or complain about health or safety code violations. However, although the residential landlord-tenant code guarantees compensation for other landlord offenses, it also places on the tenant the burden of proving entitlement to compensation for a landlord's retaliation. The result is often that tenants who have been retaliated against are not made whole, allowing landlords to continue these retaliatory practices.

This bill will help remedy the situation and I urge the committee to pass it. Mahalo.