

ACT 41

H. B. NO. 43

A Bill for an Act Relating to Repair of Substandard Rental Units.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 666, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . HEALTH REQUIREMENTS IN RENTAL DWELLINGS

Sec. 666- Definitions. As used in this part:

- (1) “Dwelling Unit” means a structure, or part of a structure, which is used as a home, residence, or sleeping place by one or more persons maintaining a common household, to the exclusion of all others, and the appurtenances thereto, grounds, and facilities held out and made available for the use of tenants.

ACT 41

- (2) (A) "Landlord" means the owner, lessor, or sub-lessor of the dwelling unit or the property of which it is a part, or any person authorized to exercise any aspect of the management of the dwelling unit, including any person who receives rent or any part thereof, other than as a bona fide purchaser, and who has no obligation to deliver the whole of such receipts to another person.
- (B) Wherever "landlord" is used in this part to signify the person to whom the tenant has a duty, including a condition to the exercise of a privilege, the duty may, at the tenant's election, be discharged in regard to:
- (i) Any person held out by any landlord as the appropriate party to accept performance, whether a landlord or not; or
 - (ii) Any person with whom the tenant usually deals as a landlord; or
 - (iii) Any person to whom the person specified in paragraph (A) or (B) is directly responsible.
- (C) Wherever "landlord" is used in this part to signify the person who is under a duty, whether to a tenant or to a property, every person specified in paragraph (A) shall be responsible for its performance and liable for its non-performance. Nothing in this paragraph shall prohibit the allocation by agreement among multiple landlords of such duties, but no such agreement shall be effective as against a tenant or other party with rights against the landlord under this part.
- (3) "Tenant" means a person who occupies a dwelling unit for dwelling purposes with the landlord's consent.

Sec. 666- . Tenant's remedy of repair and deduction for minor defects. (a) If the landlord of a dwelling unit fails to repair, maintain, keep in sanitary condition, or perform in any other manner required by sections 321-9 to 321-11 and 322-1 to 322-7, or by regulations thereunder, or as agreed to in a rental agreement, and does not remedy the failure within thirty days after being notified in writing by the tenant to do so, or if the cost to the landlord of remedying the failure would exceed \$100, within thirty days after being notified in writing by the department of health that there is a health violation, the tenant may further notify the landlord in writing of his intention to correct the objectionable condition at the landlord's expense and:

- (1) Immediately do or have done the necessary work in a workmanlike manner; or
- (2) The tenant may submit to the landlord, at least thirty days before having the work done, a written signed estimate from each of two qualified workmen and proceed to have done the necessary work by the workman who provides the lower estimate; provided the landlord may require by a writing a reasonable substitute workman or substi-

tute materials; and provided further that if the lower estimate exceeds \$100, the tenant shall not proceed to have done the necessary work until he obtains from the department of health a written statement that the objectionable condition in fact constitutes a violation of a health law or regulation, a copy of which statement shall be mailed by certified or registered mail by the department of health to the landlord.

(b) A tenant may deduct from his rent not more than \$100 for his actual expenditures for work done to correct an objectionable condition pursuant to subsection (a) (1) and may deduct not more than one month's rent for his actual expenditures for work done to correct an objectionable condition pursuant to subsection (a) (2), if he submits to the landlord copies of receipts amounting to at least the sum deducted.

(c) At the time the tenant initially notifies the landlord under subsection (a), the tenant shall list every condition that he knows or should know of non-compliance with sections 321-9 to 321-11 and 322-1 to 322-7, or regulations thereunder, in addition to the objectionable condition that the tenant then intends to correct or have corrected at the landlord's expense. Failure by a tenant to list such a condition that he knew of or should have known of shall estop the tenant from requiring the landlord to correct it and from having it corrected at the landlord's expense under this part for a period of six months after the initial notification to the landlord. Total correction and repair work costs under this part chargeable to the landlord's expense during each six-month period shall not exceed an amount equal to three month's rent.

(d) In no event may a tenant repair a dwelling unit at the landlord's expense when the condition complained of was caused by the want of due care by the tenant, a member of his family, or other person on the premises with his consent.

(e) Before correcting a condition affecting facilities shared by more than one dwelling unit, the tenant shall notify all other tenants sharing such facilities of his plans, and shall so arrange the work as to create the least practicable inconvenience to the other tenants.

Sec. 666- . Retaliatory evictions and rent increases prohibited. (a) Notwithstanding that the tenant has no written rental agreement or that it has expired, so long as the tenant continues to tender the usual rent to the landlord or proceeds to tender receipts for rent lawfully withheld under section 666- , 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 quit the dwelling unit involuntarily, nor demand an increase in rent from the tenant, nor decrease the services to which the tenant has been entitled, within six months after:

- (1) The tenant has complained in good faith to the department of health of conditions in or affecting his dwelling unit which constitute a violation of a health law or regulation; or
- (2) The tenant has in good faith requested repairs under section 666- .

ACT 41

(b) Notwithstanding subsection (a), the landlord may recover possession of the dwelling unit if:

- (1) The tenant is committing waste, or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of his rental agreement;
- (2) The landlord seeks in good faith to recover possession of the dwelling unit for immediate use as his own abode;
- (3) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises;
- (4) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit;
- (5) The complaint or request of subsection (a) relates only to a condition or conditions caused by the lack of ordinary care by the tenant or another person in his household or on the premises with his consent;
- (6) The landlord has received from the department of health certification that the dwelling unit and other property and facilities used by or affecting the use and enjoyment of the tenant were on the date of filing of the complaint or request in compliance with health laws and regulations;
- (7) The landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to paragraphs (2), (3), or (4); or
- (8) The landlord is seeking to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant previous to the complaint or request of subsection (a).

(c) Any tenant from whom possession has been recovered or who has been otherwise involuntarily dispossessed, in violation of this section, is entitled to recover three months' rent or three-fold the damages sustained by him, whichever is greater, and the cost of suit, including a reasonable attorney's fee.

- (d) Notwithstanding subsection (a), the landlord may increase the rent if:
- (1) The landlord has received from the department of health certification that the dwelling unit and other property and facilities used by and affecting the use and enjoyment of the tenant were on the date of filing of the complaint or request of subsection (a) in compliance with health laws and regulations;
 - (2) The landlord has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with his complying with the complaint or request, not less than four months prior to the demand for an increase in rent; and the increase in rent does not exceed the prorated portion of the net increase in taxes or costs;

- (3) The landlord has completed a capital improvement of the dwelling unit or the property of which it is a part and the increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefited by the improvement;
- (4) The complaint or request of subsection (a) relates only to a condition or conditions caused by the want of due care by the tenant or another person of his household or on the premises with his consent; or
- (5) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar dwelling units in his building or, in the case of a single-family residence or where there is no similar dwelling unit in the building, does not exceed the market rental value of the dwelling unit.

Sec. 666- . Waiver of liability forbidden. Every agreement between landlord and tenant in or in connection with a rental agreement of a dwelling unit exempting the landlord from a duty or liability imposed by this part shall be unenforceable.

Sec. 666- . Other laws. Every legal right, remedy, or obligation arising out of a dwelling unit rental agreement not provided for in this part shall be regulated and determined under other parts of this chapter, and in the case of conflict between any provision of this part and other parts of this chapter, this part shall control.”

SECTION 2. This Act shall take effect upon its approval.
(Approved June 5, 1970.)