

ACT 180

H.B. NO. 2888-74

A Bill for an Act Relating to the Residential Landlord-Tenant Code.

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

SECTION 1. Section 521-21, Hawaii Revised Statutes, is amended by adding a new subsection to read as follows:

“Sec. 521-21 Rent. (a) The landlord and tenant may agree to any consideration, not otherwise prohibited by law, as rent. In the absence of such agreement, and subject to section 521-71(c) in the case of holdover tenants, the tenant shall pay to the landlord the fair rental value for the dwelling unit.

(b) Rents shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for one month or less, and for longer terms in equal monthly installments payable at the beginning of each month.

(c) Except as otherwise provided in subsection (b), rent shall be uniformly apportionable from day to day.

(d) When the tenancy is from month to month, the amount of rent for such tenancy shall not be increased by the landlord without written notice given twenty-eight days preceding the end of such tenancy.”

SECTION 2. Section 521-43, Hawaii Revised Statutes, is amended by adding two new subsections to read as follows:

“Sec. 521-43 Rental Agreement, disclosure. (a) On each written rental agreement, the landlord shall disclose:

- (1) The name and usual address of each person authorized to manage the premises; and
- (2) The name and usual address of each person who is an owner of the premises or who is authorized to act for and on behalf of the owner for the purposes of service of process and of receiving and receiving rents, notices, and demands.

(b) In the case of an oral rental agreement the landlord shall, on demand, furnish the tenant with a written statement containing the information specified in subsection (a).

(c) Any owner or landlord not dealing directly with the tenant shall be responsible for compliance with this section by an owner or landlord dealing directly with the tenant and shall be estopped from any objection to a failure to serve process upon an owner or landlord in any proceeding arising under this chapter when such failure is due to failure to comply with this section. The owner or landlord who deals directly with the tenant and fails to comply with this section shall be deemed an agent of every other landlord under the rental agreement for performing the obligations of the landlord under this chapter and under the rental agreement.

(d) In the case of a written rental agreement, the landlord shall furnish a copy of the lease or rental agreement to the tenant.

(e) The landlord shall furnish to the tenant a written receipt for rents paid at the time of said payment. Cancelled checks shall also constitute and fulfill the requirement of a written receipt. If rent is paid by check, the landlord shall furnish a receipt therefor, provided such receipt is requested by the tenant.

SECTION 3. Section 521-44, Hawaii revised Statutes, is amended to read as follows:

“Sec. 521-44 Security deposits. (a) As used in this section ‘security de-

posit' means money deposited by or for the tenant with the landlord to be held by the landlord to:

- (1) Remedy tenant defaults for accidental or intentional damages resulting from failure to comply with section 521-51, for failure to pay rent due, or for failure to return all the keys furnished by the landlord at the termination of the rental agreement;
- (2) Clean the dwelling unit or have it cleaned at the termination of the rental agreement so as to place the condition of the dwelling unit in as fit a condition as that which the tenant entered into possession of the dwelling unit; and
- (3) Compensate for damages caused by a tenant who wrongfully quits the dwelling unit.

(b) The landlord may require as a condition of a rental agreement a security deposit to be paid by or for the tenant for the items in subsection (a) above and no others, in an amount not in excess of a sum equal to one month's rent. The landlord may not require or receive from or on behalf of a tenant at the beginning of a rental agreement any money other than the money for the first month's rent and a security deposit as provided in this section. The security deposit shall not be construed as payment of the last month's rent by the tenant. Any such security deposit shall be held by the landlord for the tenant and the claim of the tenant to the security deposit shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy, even if the security deposits are commingled.

(c) At the termination of a rental agreement in which the landlord required and received a security deposit if the landlord proposes to retain any amount of the security deposit for any of the purposes specified in subsection (a), he shall so notify the tenant, in writing, unless the tenant had wrongfully quit the dwelling unit, together with the particulars of and grounds for the retention, including written evidence of the costs of remedying tenant defaults, such as estimates or invoices for material and services or of the costs of cleaning, such as receipts for supplies and equipment or charges for cleaning services. The security deposit, or the portion of the security deposit remaining after the landlord has claimed and retained amounts authorized under this section, if any, shall be returned to the tenant not later than fourteen days after the termination of the rental agreement. If the landlord does not furnish the tenant with the written notice and other information required by this subsection, within fourteen days after the termination of the rental agreement, the landlord shall not be entitled to retain the security deposit or any part of it, and he shall return the entire amount of the security deposit to the tenant.

(d) For the purposes of this section if a tenant is absent from the dwelling unit for a continuous period of thirty days or more without written notice to the landlord the tenant shall be deemed to have wrongfully quit the dwelling unit. In addition to any other right or remedy the landlord has with respect to such a tenant the landlord may retain the entire amount of any security deposit he has received from or on behalf of such tenant.

(e) The landlord shall not require the delivery of any postdated check or other negotiable instrument to be used for payment of rent.

(f) If the landlord who required and received a security deposit transfers his interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver, or otherwise, the landlord's successor in interest is bound by this section.

(g) If the landlord and the tenant disagree about the right of the landlord to claim and retain the security deposit or any portion of it, either the landlord or the tenant may commence an action in the small claims division of the district court, as provided in chapter 633 and the rules of court thereunder, to adjudicate the matter.

(h) In any action in the small claims division of the district court pursuant to subsection (g) where the court determines that:

- (1) The landlord wrongfully and wilfully retained a security deposit or part of a security deposit, the court may award the tenant damages in an amount equal to three times the amount of the security deposit, or part thereof, wrongfully and wilfully retained and the cost of suit.
- (2) The landlord wrongfully retained a security deposit or part of a security deposit, the court shall award the tenant damages in an amount equal to the amount of the security deposit, or part thereof, wrongfully retained and the cost of suit.
- (3) The landlord was entitled to retain the security deposit or a part of it, the court shall award the landlord damages in an amount equal to the amount of the security deposit, or part thereof, in dispute and the cost of suit.
- (4) In any such action, neither the landlord nor the tenant may be represented by an attorney, including salaried employees of the landlord or tenant."

SECTION 4. Section 521-64, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 521-64 Tenant's remedy of repair and deduction for minor defects. (a) If the landlord 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, or if the landlord is in material noncompliance with Section 521-42(a), and does not remedy the failure or noncompliance within twenty days after being notified in writing by the tenant to do so, or if the cost to the landlord of remedying the failure or noncompliance would exceed \$100, within twenty 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 twenty days before having the work done, 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

substitute 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 under subsection (a), 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 section for a period of six months after the initial notification to the landlord. Total correction and repair work costs under this section chargeable to the landlord's expense during each six-month period shall not exceed an amount equal to three months' 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."

SECTION 5. Section 521-70, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 521-70 Landlord's remedies for absence, misuse, abandonment and failure to honor tenancy before occupancy. (a) If the rental agreement provides for notification of the landlord by the tenant of an anticipated extended absence and the tenant fails to make reasonable efforts to comply with such requirement, the tenant shall indemnify the landlord for any damage resulting from such absence.

(b) The landlord may, during any extended absence of the tenant, enter the dwelling unit as reasonably necessary for purposes of inspection, maintenance, and safe-keeping or for the purposes permitted by section 521-53(a).

(c) Unless otherwise provided in the rental agreement, use of the dwelling unit by the tenant for any other purpose than as his abode, or non-use of the dwelling unit, constitutes a breach of the tenant's obligations under section 521-52 and entitles the landlord to proceed as provided in section 521-72.

(d) If the tenant wrongfully quits the dwelling unit and unequivocally indicates by words or deeds his intention not to resume the tenancy, he shall be liable to the landlord for the lesser of the following amounts for such abandonment:

- (1) The entire rent due for the remainder of the term; or
- (2) All rent accrued during the period reasonably necessary to re-rent the dwelling unit at the fair rental, plus the difference between such fair rent and the rent agreed to in the prior rental agreement and a reasonable commission for the renting of the dwelling unit. This paragraph applies if the amount calculated hereunder is less than the amount calculated under paragraph (1) whether or not the landlord re-rents the dwelling unit.

(e) If the tenant unequivocally indicates by words or deeds his intention not to honor the tenancy before occupancy, he shall be liable to the landlord for the lesser of the following amounts:

- (1) All monies deposited with the landlord;
- (2) One month's rent at the rate agreed upon in the rental agreement;
- (3) All rent accrued from the agreed date for the commencement of the tenancy until the dwelling unit is re-rented at the fair rental, plus the difference between such fair rent and the rent agreed to in the prior rental agreement, plus reasonable costs, and a reasonable commission for the re-renting of the dwelling unit. This paragraph applies if the amount calculated hereunder is less than the amounts calculated under paragraphs (1) or (2), whether or not the landlord re-rents the dwelling unit."

SECTION 6. Chapter 521, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"Sec. 521-56 Disposition of tenant's abandoned possessions. (a) When the tenant, within the meaning of section 521-70(a), (b), (c), or (d), has wrongfully quit the premises, or when the tenant has quit the premises pursuant to a notice to quit or upon the natural expiration of the term, and has abandoned personalty which the landlord, in good faith, determines to be of value, in or around the premises, the landlord shall store such personalty at the tenant's expense for a period of not less than thirty days, after which time such personalty may be sold at public auction or in any other commercially reasonable manner; provided further that during the said thirty days of storage, during which such personalty is in storage, the landlord shall make reasonable efforts to apprise the tenant of the identity and location of such personalty by mailing him notice at his forwarding address, or at an address designated by the tenant for the purpose of notification or if none of these be available, at his previous known address.

(b) The proceeds of the sale of personalty under subsection (a) shall, after deduction of accrued rent and costs of storage and sale, be held in trust for the tenant for thirty days, after which time the proceeds shall be forfeited to the landlord.

(c) When the tenant has quit the premises pursuant to a notice to quit or upon the natural expiration of the term and has abandoned any property

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determined by the landlord to be of no value in or around the premises, such property may be disposed of at the landlord's discretion without liability to the landlord.”

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 8. This Act shall take effect upon its approval.

(Approved June 7, 1974.)

*Edited accordingly.