

## ACT 202

H.B. NO. 2742

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

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

SECTION 1. The legislature finds that, due to the August 2023 Maui wildfires, thousands of Hawaii residents have lost their jobs and have been unable to pay their rent. The governor has issued proclamations relating to wildfires to provide protections for tenants struggling to pay rent during this time, including an eviction moratorium that prohibits any eviction from a residential dwelling unit for failure to pay rent. The legislature finds, however, that the eviction moratorium will eventually expire. Therefore, a balanced approach is needed to encourage communications and facilitate mediation between landlords and tenants to help reduce the large number of summary possession proceedings that are expected to follow the expiration of certain wildfire proclamations.

Accordingly, the purpose of this Act is to establish a pre-litigation mediation procedure for tenancies that are subject to the eviction moratorium issued under the governor's emergency proclamations relating to wildfires once the eviction moratorium expires. The procedure includes:

- (1) Requiring landlords to:

- (A) Provide tenants a fifteen-calendar-day written notice before bringing an action for summary possession of the dwelling unit;
  - (B) Provide the notice to a state-funded mediation center that offers free mediation for residential landlord-tenant matters; and
  - (C) Engage in mediation and delay filing of the action for summary possession if a tenant schedules or attempts to schedule a mediation;
- (2) Prohibiting landlords from bringing summary possession actions for failure to pay rent unless the rent amount due exceeds certain months' worth depending on the period passed after the expiration of the final eviction moratorium; and
  - (3) Requiring tenants and landlords to be responsible for their own attorney's fees and costs related to pre-litigation mediation.

SECTION 2. Chapter 521, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§521- Pre-litigation mediation for tenancies subject to certain emergency proclamations.** (a) This section shall apply to any tenancy subject to suspension of sections 521-68 and 521-71 and chapter 666, under emergency proclamations issued by the governor and relating to wildfires when it becomes legally permissible to terminate a residential tenancy for nonpayment of rent.

(b) A landlord or the landlord's agent, any time after rent is due, may demand payment thereof and notify the tenant in writing that unless payment is made within a time period mentioned in the notice as provided in subsection (c), not less than fifteen calendar days after receipt thereof, the rental agreement shall be terminated. If the tenant cannot be served with notice as required, notice may be given to the tenant by posting the same in a conspicuous place on the dwelling unit, and the notice shall be deemed received on the date of posting. If the tenant remains in default, the landlord may thereafter bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession, subject to subsections (c) through (j). The notice required in this section need not be given if the action is based on the breach of a mediated agreement or other settlement agreement.

(c) The fifteen-calendar-day notice shall provide, at a minimum, the following information:

- (1) The name of the landlord or the landlord's agent and the landlord's or landlord's agent's contact information, including, if possible, phone number, electronic mail address, and mailing address;
- (2) The address of the dwelling unit subject to the rental agreement;
- (3) The name and contact information of each tenant, including, if possible, phone number, electronic mail address, and mailing address;
- (4) The monthly rental rate of the dwelling unit;
- (5) The current amount of the rent due as of the date of the notice, after applying all rent paid from all sources;
- (6) Whether the landlord or landlord's agent has applied for rental assistance or been contacted on behalf of the tenant by any agency providing rental assistance;
- (7) That any rental assistance received by the landlord or landlord's agent has been credited to the tenant's amount due;
- (8) That a copy of the fifteen-calendar-day notice being provided to the tenant is also being provided to the mediation center to be identified by the landlord and, in accordance with subsection (d), in order for

- the mediation center to contact the landlord and tenant to attempt to schedule a mediation regarding the nonpayment of rent;
- (9) That the mediation center will provide proof to the landlord that the notice was received and provide confirmation of the scheduled date and time of mediation;
  - (10) That the landlord or landlord's agent may file an action for summary possession if the rent due is not paid and if mediation is not scheduled within fifteen calendar days after the tenant's receipt of the fifteen-calendar-day notice, regardless of whether the scheduled mediation session occurs within the fifteen calendar days;
  - (11) A warning in bold typeface print that says: **"If mediation is not scheduled within fifteen calendar days after receipt of the notice, regardless of whether the scheduled mediation session occurs within the fifteen-calendar-day period, then the landlord may file an action for summary possession after the expiration of the fifteen-calendar-day period. If mediation is scheduled before the expiration of the fifteen-calendar-day period, regardless of whether the scheduled mediation session occurs within the fifteen calendar days, then the landlord shall only file an action for summary possession after the expiration of thirty calendar days following the tenant's receipt of the fifteen-calendar-day notice. If the tenant cancels the scheduled mediation or does not appear at the scheduled mediation, the landlord may file the summary possession action immediately and shall not be required to wait for the expiration of the thirty calendar days. If the fifteen-calendar-day notice was mailed, receipt of notice shall be deemed to be two days after the date of the postmark. If the fifteen-calendar-day notice was posted on the premises, receipt of notice shall be deemed to be the date of posting. If an agreement is reached before the filing of an action for summary possession, whether through mediation or otherwise, then the landlord shall not bring an action for summary possession against the tenant, except as provided in any agreement that may be reached. The landlord shall be required to note the status of the mediation or settlement effort and proof of sending or posting the fifteen-calendar-day notice to the mediation center in the action for summary possession."**;
  - (12) Notice that the eviction may be subject to additional requirements and protections under state or federal law and that the tenant is encouraged to seek the tenant's own legal advice regarding their rights and responsibilities; and
  - (13) That the landlord or landlord's agent and tenant shall engage in mediation if mediation is scheduled.
- (d) The landlord or the landlord's agent shall provide the fifteen-calendar-day notice to any mediation center funded by the State that offers free mediation for residential landlord-tenant matters. The mediation center shall contact the landlord or landlord's agent and the tenant to schedule the mediation within fifteen calendar days of receipt of the landlord's notice pursuant to subsection (c). The mediation center shall offer to facilitate the mediation using remote means, such as video conferencing, telephone, or other similar means, and shall not require in-person mediation. If a tenant schedules mediation within the fifteen-calendar-day period, regardless of whether the scheduled mediation session occurs within the fifteen-calendar-day period, the landlord shall only file a summary proceeding for possession after the expiration of thirty calendar days from the date of the tenant's receipt of the landlord's notice. If the tenant schedules mediation, the landlord and tenant shall participate. If the tenant schedules

but then cancels a mediation, or if the tenant does not appear at the scheduled mediation, the landlord may file the action for summary possession immediately and shall not be required to wait for the expiration of the thirty calendar days.

(e) The summary possession complaint for nonpayment of rent shall include:

- (1) A document or documents from the mediation center verifying that the landlord provided a copy of the required fifteen-calendar-day notice to the mediation center;
- (2) A statement as to whether the landlord or landlord's agent and tenant have participated in, or will participate in, any scheduled mediation; and
- (3) If mediation is pending, the date on which the mediation is scheduled.

(f) If the mediation has not occurred as of, or been scheduled for a future date after, the return hearing date on the summary possession complaint, the court, in its discretion and based on a finding of good cause, may order a separate mediation.

(g) If the mediation has occurred as of the return hearing date on the summary possession complaint, the court, in its discretion and based on a finding of good cause, may order a separate mediation.

(h) If there is any defect in the fifteen-calendar-day notice described in subsection (c) provided by the landlord, and the court determines that the defect was unintentional and immaterial, the court may allow the landlord to cure the defect without dismissing the action for summary possession.

(i) No landlord may bring an action for summary possession for a tenant's failure to pay rent except pursuant to this section and as follows:

- (1) Beginning on the first day after the expiration date of the final eviction moratorium through the thirtieth day after the expiration date of the final eviction moratorium, the rent due shall be equal to or greater than four months of rent;
- (2) Beginning on the thirty-first day after the expiration date of the final eviction moratorium through the ninety-first day after the expiration date of the final eviction moratorium, the rent due shall be equal to or greater than three months of rent;
- (3) Beginning on the ninety-second day after the expiration date of the final eviction moratorium through the one hundred fifty-second day after the expiration date of the final eviction moratorium, the rent due shall be equal to or greater than two months of rent; and
- (4) Beginning on the one hundred fifty-third day after the expiration date of the final eviction moratorium through the three hundred sixty-fifth day after the expiration date of the final eviction moratorium, the rent due shall be equal to or greater than one month rent.

For purposes of this subsection, "final eviction moratorium" means an emergency proclamation or supplementary proclamation, or any extension thereof, issued by the governor and relating to wildfires, that prohibits any eviction from a residential dwelling for a failure to pay rent, and either is not intended to be renewed by the governor or, if renewed or extended, is not intended to include any prohibition related to evictions from a residential dwelling unit for failure to pay rent; provided that nothing in this section shall prevent the governor from either renewing or issuing a new emergency proclamation that contains a prohibition against eviction from a residential dwelling for failure to pay rent if that intention should change.

(j) Each tenant and landlord shall be responsible for bearing the party's own costs, including attorney's fees, relating to the mediation.

(k) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has demanded payment of past due rent and notified the tenant of the landlord's intention to bring such an action. "

SECTION 3. The suspension of sections 521-68 and 521-71, Hawaii Revised Statutes, and chapter 666, Hawaii Revised Statutes, in effect as of July 1, 2024, under the various proclamations issued by the governor and relating to wildfires may continue until termination of the proclamation by the governor or expiration of the proclamation.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$410,000 or so much thereof as may be necessary for fiscal year 2024-2025 for the judiciary to contract for mediation services required by this Act.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date; provided that any contract in effect prior to the effective date of this Act that is subsequently renewed or extended on or after the effective date of this Act shall comply with the requirements of this Act.

SECTION 6. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Hawaii State Constitution or article I, section 10, of the United States Constitution.

SECTION 7. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect on July 1, 2024; provided that the governor shall notify the chief justice, legislature, and revisor of statutes no later than twenty days prior to the expiration of the final eviction moratorium identified in section 2 of this Act, that the governor will not issue any further eviction moratoria in response to the wildfires; provided further that section 2 of this Act shall take effect on the date of the expiration of the final eviction moratorium identified in section 2 of this Act; provided further that on December 31, 2026, or upon the one-year anniversary of the expiration date identified by the governor, whichever occurs first, all provisions of this Act except section 4 shall be repealed.

(Approved July 5, 2024.)

#### Note

1. Edited pursuant to HRS §23G-16.5.