
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 of whom are already
7 facing 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 Hawai'i Supreme Court has held that
11 landlords cannot require a tenant to pay rent if the tenant does
12 not 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 a landlord's failure to
 10 materially comply with regulations results in
 11 uninhabitability of the premises;
- 12 (2) Set a tenant's liability for rent if a landlord's
 13 failure to materially comply with regulations results
 14 in uninhabitability of the premises; and
- 15 (3) Provide remedies for unlawful retaliatory evictions.

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

18 **"§521-42 Landlord to supply and maintain fit premises.**

- 19 (a) The landlord shall at all times during the tenancy:
 - 20 (1) Comply with all applicable building and housing laws
 - 21 materially affecting health and safety;



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

18 Prior to the initial date of initial occupancy, the
19 landlord shall inventory the premises and make a written record
20 detailing the condition of the premises and any furnishings or
21 appliances provided. Duplicate copies of this inventory shall



1 be signed by the landlord and by the tenant and a copy given to
2 each tenant. In an action arising under this section, the
3 executed copy of the inventory shall be presumed to be correct.
4 If the landlord fails to make such an inventory and written
5 record, the condition of the premises and any furnishings or
6 appliances provided, upon the termination of the tenancy shall
7 be rebuttably presumed to be the same as when the tenant first
8 occupied the premises.

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

12 (1) The agreement of the landlord and tenant is entered
13 into in good faith and is not for the purpose of
14 evading the obligations of the landlord;

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

18 (3) The agreement of the landlord and tenant does not
19 diminish the obligations of the landlord to other
20 tenants.



1 (c) If a landlord's failure to materially comply with
2 subsection (a) results in the uninhabitability of the premises:

3 (1) No action or proceeding to recover possession of the
4 dwelling unit may be maintained against the tenant,
5 nor shall the landlord otherwise cause the tenant to
6 be removed from the dwelling unit involuntarily;
7 provided that:

8 (A) The tenant continues to pay rent equal to the
9 fair rental value of the premises or the agreed
10 upon rent, whichever is less; and

11 (B) The landlord's ability to recover possession of
12 the unit is restored upon:

13 (i) Termination of the rental agreement in
14 accordance with law or terms of the
15 agreement; or

16 (ii) Restoration of the premises to a habitable
17 condition,

18 whichever comes first; and

19 (2) The tenant's liability for rent, from the date of
20 inhabitability, shall not exceed the fair rental value
21 of the premises."



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

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

8 SECTION 4. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date; provided that any contract in
11 effect prior to the effective date of this Act that is
12 subsequently renewed or extended on or after the effective date.

13 SECTION 5. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on June 18, 2050.



Report Title:

Landlord-tenant Code; Habitability; Retaliatory Evictions

Description:

Prohibits landlords from recovering possession of a dwelling unit from tenants if it is uninhabitable. Sets a tenant's liability for rent if it is uninhabitable. Provides remedies for retaliatory evictions. Takes effect 8/26/2050. (SD1)

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