

JAN 19 2023

A BILL FOR AN ACT

RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE AND CHILDREN'S
HEALTH.

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 Hawaii's families, many of whom are facing
7 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. Ultimately, 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



1 against the tenant's need for sufficient protection. The
2 legislature further finds that without adequate safeguards,
3 tenants can become targets for abuse during eviction
4 proceedings. Currently, the residential landlord-tenant code
5 makes it difficult for tenants to defend themselves against
6 wrongful evictions. While the code clearly outlines landlords'
7 responsibilities, it fails to provide tenants with suitable
8 methods of recourse and ways to hold landlords accountable in
9 various situations.

10 The legislature notes that leases, like other contracts,
11 are reciprocal. The Hawaii supreme court has held that
12 landlords cannot require a tenant to pay rent if the tenant does
13 not receive the basic services to which they are entitled.
14 While many states have passed laws specifying that tenants
15 cannot be forced to pay rent for uninhabitable premises, the
16 legislature has failed to formally recognize this principle,
17 resulting in a lack of enforcement and numerous unjust and
18 illegitimate evictions.

19 The legislature acknowledges that landlords are prohibited
20 from retaliating against tenants who request repairs to their
21 respective homes or complain about health or safety code



1 violations. However, although the residential landlord-tenant
2 code guarantees compensation for other landlord offenses, it
3 also places on the tenant the burden of proving entitlement to
4 compensation for a landlord's retaliation. The result is often
5 that tenants who have been retaliated against are not made
6 whole, allowing landlords to continue these retaliatory
7 practices.

8 The legislature additionally finds that exposure to
9 environmental hazards can cause serious harm to a child's
10 health. Environmental hazards in poorly maintained housing can
11 cause developmental delays, lower cognitive function, behavioral
12 disorders, poor executive function, learning disabilities,
13 neurobehavioral effects, hypertension, cancer, endocrine
14 disorders, and many other long-term health problems. Socially
15 and economically marginalized families are often most at-risk
16 for these adverse effects since they have more language, time,
17 and financial constraints. Ensuring a basic level of healthy
18 housing will improve health, education, and achievement outcomes
19 for the most vulnerable children while minimizing long-term
20 costs to the State.

21 Accordingly, the purpose of this Act is to:



- 1 (1) Prohibit landlords from recovering possession of
- 2 dwelling units from tenants if habitability of
- 3 premises is significantly impaired;
- 4 (2) Set a tenant's liability for rent if habitability of
- 5 premises is significantly impaired; and
- 6 (3) Provide remedies for unlawful retaliatory evictions.

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

9 **"§521-42 Landlord to supply and maintain fit premises.**

- 10 (a) The landlord shall at all times during the tenancy:
 - 11 (1) Comply with all applicable building and housing laws
 - 12 materially affecting health and safety[?] with an
 - 13 affirmative duty to investigate and remediate health
 - 14 hazards;
 - 15 (2) Keep common areas of a multi-dwelling unit premises in
 - 16 a clean and safe condition;
 - 17 (3) Make all repairs and arrangements necessary to put and
 - 18 keep the premises in a habitable and safe condition[?]
 - 19 using licensed contractors certified by the State or
 - 20 federal government when disturbing hazardous



1 substances such as, but not limited to lead and
2 asbestos;

3 (4) Maintain all paint, electrical, plumbing, and other
4 facilities and appliances supplied by the landlord in
5 good working order and condition, subject to
6 reasonable wear and tear;

7 (5) Except in the case of a single family residence,
8 provide and maintain appropriate receptacles and
9 conveniences for the removal of normal amounts of
10 rubbish and garbage, and arrange for the frequent
11 removal of such waste materials; and

12 (6) Except in the case of a single family residence, or
13 where the building is not required by law to be
14 equipped for the purpose, provide for the supplying of
15 running water as reasonably required by the tenant.

16 Prior to the initial date of initial occupancy, the
17 landlord shall inventory the premises and make a written record
18 detailing the condition of the premises and any furnishings or
19 appliances provided. Duplicate copies of this inventory shall
20 be signed by the landlord and by the tenant and a copy given to
21 each tenant. In an action arising under this section, the



1 executed copy of the inventory shall be presumed to be correct.
2 If the landlord fails to make such an inventory and written
3 record, the condition of the premises and any furnishings or
4 appliances provided, upon the termination of the tenancy shall
5 be rebuttably presumed to be the same as when the tenant first
6 occupied the premises.

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

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

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

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

19 (c) If a landlord's failure to materially comply with
20 subsection (a) results in the significant impairment of the
21 habitability of the premises:



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

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

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

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

14 (ii) Restoration of the premises to a habitable
15 condition,
16 whichever comes first; and

17 (2) The tenant's liability for rent, from the date of
18 significant impairment, shall not exceed the fair
19 rental value of the premises."

20 SECTION 3. Section 521-63, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) If the condition referred to in subsection (a) was
2 caused wilfully or negligently by the landlord[7] or was the
3 result of noncompliance with 521-42(a), the tenant may recover
4 any damages sustained as a result of the condition."

5 SECTION 4. Section 521-74, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§521-74 Retaliatory evictions and rent increases**

8 **prohibited.** (a) Notwithstanding that the tenant has no written
9 rental agreement or that it has expired, so long as the tenant
10 continues to tender the usual rent to the landlord or proceeds
11 to tender receipts for rent lawfully withheld, no action or
12 proceeding to recover possession of the dwelling unit may be
13 maintained against the tenant, nor shall the landlord otherwise
14 cause the tenant to quit the dwelling unit involuntarily, nor
15 demand an increase in rent from the tenant; nor decrease the
16 services to which the tenant has been entitled, after:

- 17 (1) The tenant has complained in good faith to the
18 department of health, landlord, building department,
19 office of consumer protection, or any other
20 governmental agency concerned with landlord-tenant
21 disputes of conditions in or affecting the tenant's



1 dwelling unit which constitutes a violation of a
2 health law or regulation or of any provision of this
3 chapter; or

4 (2) The department of health or other governmental agency
5 has filed a notice or complaint of a violation of a
6 health law or regulation or any provision of this
7 chapter; or

8 (3) The tenant has in good faith requested repairs under
9 section 521-63 or 521-64.

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

12 (1) The tenant is committing waste, or a nuisance, or is
13 using the dwelling unit for an illegal purpose or for
14 other than living or dwelling purposes in violation of
15 the tenant's rental agreement;

16 (2) The landlord seeks in good faith to recover possession
17 of the dwelling unit for immediate use as the
18 landlord's own abode or that of the landlord's
19 immediate family;



- 1 (3) The landlord seeks in good faith to recover possession
2 of the dwelling unit for the purpose of substantially
3 altering, remodeling, or demolishing the premises;
- 4 (4) The complaint or request of subsection (a) relates
5 only to a condition or conditions caused by the lack
6 of ordinary care by the tenant or another person in
7 the tenant's household or on the premises with the
8 tenant's consent;
- 9 (5) The landlord has received from the department of
10 health certification that the dwelling unit and other
11 property and facilities used by or affecting the use
12 and enjoyment of the tenant were on the date of filing
13 of the complaint or request in compliance with health
14 laws and regulations;
- 15 (6) The landlord has in good faith contracted to sell the
16 property, and the contract of sale contains a
17 representation by the purchaser corresponding to
18 paragraph (2) or (3); or
- 19 (7) The landlord is seeking to recover possession on the
20 basis of a notice to terminate a periodic tenancy,



1 which notice was given to the tenant previous to the
2 complaint or request of subsection (a).

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 (d) Notwithstanding subsection (a), the landlord may
9 increase the rent if:

10 (1) The landlord has received from the department of
11 health certification that the dwelling unit and other
12 property and facilities used by and affecting the use
13 and enjoyment of the tenant were on the date of filing
14 of the complaint or request of subsection (a) in
15 compliance with health laws and regulations;

16 (2) The landlord has become liable for a substantial
17 increase in property taxes, or a substantial increase
18 in other maintenance or operating costs not associated
19 with the landlord's complying with the complaint or
20 request, not less than four months prior to the demand
21 for an increase in rent; and the increase in rent does



1 not exceed the prorated portion of the net increase in
2 taxes or costs;

3 (3) The landlord has completed a capital improvement of
4 the dwelling unit or the property of which it is a
5 part and the increase in rent does not exceed the
6 amount which may be claimed for federal income tax
7 purposes as a straight-line depreciation of the
8 improvement, prorated among the dwelling units
9 benefited by the improvement;

10 (4) The complaint or request of subsection (a) relates
11 only to a condition or conditions caused by the want
12 of due care by the tenant or another person of the
13 tenant's household or on the premises with the
14 tenant's consent; or

15 (5) The landlord can establish, by competent evidence,
16 that the rent now demanded of the tenant does not
17 exceed the rent charged other tenants of similar
18 dwelling units in the landlord's building or, in the
19 case of a single-family residence or where there is no
20 similar dwelling unit in the building, does not exceed
21 the market rental value of the dwelling unit.



1 (e) Notwithstanding subsections (b) and (d) to the
2 contrary, subsection (a) shall apply without exception if the
3 department of health or other governmental agency has notified
4 the landlord about a health hazard and recommended actions are
5 incomplete."

6 SECTION 5. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 6. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect upon its approval.

12

INTRODUCED BY: _____



S.B. NO. 329

Report Title:

Landlord-Tenant Code; Children's Health; Habitability;
Retaliatory Evictions

Description:

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. Updates landlord-tenant code to ensure a basic level of health housing that will improve health, education, and achievement outcomes for the most vulnerable of children while minimizing long-term costs to the State.

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