

ACT 132

S. B. NO. 1502-72

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

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
RESIDENTIAL LANDLORD-TENANT CODE  
PART I. GENERAL PROVISIONS AND DEFINITIONS**

**Sec. -1 Short title.** This chapter shall be known and may be cited as the Residential Landlord-Tenant Code.

**Sec. -2 Purposes; rules of construction.** (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are:

- (1) To simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants of dwelling units;
- (2) To encourage landlords and tenants to maintain and improve the quality of housing in this State; and
- (3) To revise the law of residential landlord and tenant by changing the relationship from one based on the law of conveyance to a relationship that is primarily contractual in nature.

**Sec. -3 Supplementary general principles of law, other laws, applicable.** (a) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law relative to capacity to contract, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

(b) Every legal right, remedy, and obligation arising out of a rental agreement not provided for in this chapter shall be regulated and determined under chapter 666, and in the case of conflict between any provision of this chapter and a provision of chapter 666, this chapter shall control.

(c) Nothing in this chapter shall be applied to interfere with any right, obligation, duty, requirement, or remedy of a landlord or tenant which is established as a condition or requirement of any program receiving subsidy from the government of the United States. To the extent that any provision of this chapter is inconsistent with such a federal condition or requirement then as to such subsidized project the federal condition or requirement shall control.

**Sec. -4 Construction against implicit repeal.** This chapter being a general law intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

**Sec. -5 Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**Sec. -6 Territorial application.** This chapter applies to rights, remedies, and obligations of the parties to any residential rental agreement wherever made of a dwelling unit within this State.

**Sec. -7 Exclusions from application of chapter.** Unless created solely to avoid the application of this chapter, this chapter shall not apply to:

- (1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services.

- (2) Residence in a structure directly controlled and managed by the University of Hawaii for housing students or faculty of the University of Hawaii or residence in a structure erected on land leased from the University of Hawaii by a nonprofit corporation for the exclusive purpose of housing students or faculty of the University of Hawaii.
- (3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser.
- (4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization.
- (5) Transient occupancy on a day to day basis in a hotel or motel.
- (6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon such employment or by a pensioner of the owner or landlord.
- (7) A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease.

**Sec. -8 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

- (1) "Action" with reference to a judicial proceeding includes recoupment, counterclaim, setoff, and any other proceedings in which rights are determined, including an action for possession.
- (2) "Apartment building" means a structure containing one or more dwelling units, except:
  - (A) A single-family residence, or
  - (B) A structure in which all tenants are roomers or boarders.
- (3) "Dwelling unit" means a structure, or part of a structure, which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others.
- (4) "Landlord" means the owner, lessor, sub-lessor assigns or successors in interest of the dwelling unit or the building of which it is a part and in addition means any agent of the landlord.
- (5) "Owner" means one or more persons, jointly or severally, in whom is vested:
  - (A) All or any part of the legal title to property; or
  - (B) All or any part of the beneficial ownership and a right to present use and enjoyment of the property; and includes a mortgagee in possession.
- (6) "Person" includes an individual, corporation, government or governmental agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.
- (7) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility whose use is promised to the tenant.
- (8) "Rental agreement" means all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations, or any

other provisions concerning the use and occupancy of a dwelling unit and premises.

- (9) "Roomer" or "boarder" means a tenant occupying a dwelling unit:
- (A) Which lacks at least one major bathroom or kitchen facility, such as a toilet, refrigerator, or stove,
  - (B) In a building where one or more such major facilities are supplied to be used in common by the occupants of the tenant's dwelling unit and by the occupants of one or more other dwelling units, and
  - (C) In a building in which the landlord resides.
- (10) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has a direct access to a street or thoroughfare and does not share hot water equipment or any other essential facility or service with any other dwelling unit.
- (11) "Tenant" means any person who occupies a dwelling unit for dwelling purposes under a rental agreement.

**Sec. -9 Notice, notification, knowledge, etc.** (a) A person has notice of a fact when:

- (1) He has actual knowledge of it; or
- (2) He has received a notice or notification of it; or
- (3) From all the facts and circumstances known to him at the time in question he has reason to know of it.

(b) A person knows or has knowledge of a fact when he has actual knowledge of it. The terms "discover" or "learn" or terms of similar import refer to knowledge rather than reason to know. The time and circumstances under which a notice or notification ceases to be effective are not determined by this chapter.

(c) A person notifies or gives a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person receives a notice or notification when:

- (1) It comes to his attention; or
- (2) It is delivered at the place of business through which the rental agreement was made or at any place held out as the place for receipt of such communications.

(d) Notice, knowledge, or a notice or notification received by a person other than an individual is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction or from the time it should have been brought to his attention, whichever time is earlier.

**Sec. -10 Duties; obligation of good faith.** Every duty imposed by this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

**Sec. -11 Time; reasonable time.** (a) Whenever this chapter requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(b) What is a reasonable time for taking any action depends on the nature, purpose, and circumstances of the action.

## PART II. RENT

**Sec. -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 -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.

**Sec. -22 Term of rental agreement.** The landlord and tenant may agree in writing to any period as the term of the rental agreement. In the absence of such agreement, the tenancy shall be month to month or, in the case of boarders, week to week.

## PART III. LIMITATIONS ON RENTAL AGREEMENTS AND PRACTICES

**Sec. -31 Waiver; agreement to forego rights; settlement of claims.** (a) Except as otherwise provided in this chapter, a tenant or landlord may not waive or agree to forego rights or remedies under this chapter.

(b) A claim by a tenant against a landlord for violation of this chapter or a claim by a landlord against a tenant for default or breach of duty imposed by this chapter, if disputed in good faith, may be settled by agreement.

(c) A claim, whether or not disputed, against a tenant or landlord may be settled for less value than the amount claimed.

(d) A settlement in which the tenant or landlord waives or agrees to forego rights or benefits under this chapter is invalid if the court, as a matter of law, finds the settlement to have been unconscionable at the time it was made. The competence of the tenant or landlord, any deception or coercion practiced against him, the nature and extent of the legal advice received by him, and the nature and value of the consideration are relevant to the issue of unconscionability.

**Sec. -32 Separation of rents and obligations to property forbidden.** Any agreement, conveyance, or trust instrument which authorizes a person other than the beneficial owner to act as the landlord of a dwelling unit shall operate, regardless of its terms, to authorize and require such person to use rents to conform with this chapter and any other law, code, ordinance, or regulation concerning the maintenance and operation of the premises.

**Sec. -33 Landlord's waiver of liability prohibited.** A provision in a rental agreement exempting or limiting the landlord, or requiring the tenant to indemnify the landlord, from liability for damages to persons or property caused by or resulting from the acts or omissions of the landlord, his agents, servants, or employees, in or about the dwelling unit covered thereby or in or about the premises of which it is a part is void.

**Sec. -34 Authorization to confess judgment prohibited.** A tenant may not authorize any person to confess judgment on a claim arising out of a rental agreement of any dwelling unit. An authorization in violation of this section is void.

**Sec. -35 Attorney's fees.** A rental agreement may provide for the payment by the tenant of the costs of a suit, for unpaid rent, if any, and reasonable attorney's fees not in excess of twenty-five per cent of the unpaid rent after default and referral to an attorney not a salaried employee of the landlord or his assignee. A provision in violation of this section is unenforceable.

**Sec. -36 Effect of termination.** Except as otherwise provided in this chapter, whenever a landlord or tenant exercises a right to terminate a rental agreement, the obligations of each party to the rental agreement shall cease upon the final discharge of all obligations imposed by the rental agreement and by this chapter.

**Sec. -37 Subleases and assignments.** (a) Unless otherwise agreed to in a written rental agreement and except as otherwise provided in this section, the tenant may sublet his dwelling unit or assign the rental agreement to another without the landlord's consent.

(b) Subsection (a) does not apply to a tenant of a dwelling unit administered, owned, or subsidized by the United States, the State, a county, or any agency thereof.

(c) A written rental agreement may provide that the tenant's right to sublet his dwelling unit or assign the rental agreement is subject to the consent of the landlord.

#### PART IV. LANDLORD OBLIGATIONS

**Sec. -41 Landlord to supply possession of dwelling unit.** The landlord shall, at the beginning of the agreed term, deliver possession of the dwelling unit to the tenant in the agreed condition unless otherwise agreed prior to delivery of possession. The landlord may bring an action for possession against any person wrongfully in possession including a holdover tenant.

**Sec. -42 Landlord to supply and maintain fit premises.**

(a) The landlord shall at all times during the tenancy:

(1) Comply with all applicable provisions of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing main-

tenance, construction, use, or appearance of the dwelling unit and the premises of which it is a part;

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

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

- (1) The agreement of the landlord and tenant is entered into in good faith and is not for the purpose of evading the obligations of the landlord;
- (2) The work to be performed by the tenant is not necessary to cure non-compliance by the landlord with section -42(a)(1); and
- (3) The agreement of the landlord and tenant does not diminish the obligations of the landlord to other tenants.

**Sec. -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 receipting 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.

**Sec. -44 Security deposits.** (a) As used in this section "security deposit" means money deposited by or for the tenant with the landlord to be held by the landlord to:

- (1) Remedy tenant defaults for damages resulting from failure to comply with section -51(1) or (6), for failure to pay rent due, or for failure to return to the landlord the key or keys of the dwelling unit 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. 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.

**Sec. -45 Limitation of landlord and management liability.**

(a) Unless otherwise agreed, a landlord who conveys premises which include a dwelling unit subject to a rental agreement in a good faith sale to a person not connected with the landlord, is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the conveyance, except that he remains liable to the tenant for any security deposit to which the tenant is entitled under section -44.

(b) Unless otherwise agreed, a person who is a manager of premises which include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the termination of his management.

**PART V. TENANT OBLIGATIONS**

**Sec. -51 Tenant to maintain dwelling unit.** Each tenant shall at all times during the tenancy:

- (1) Comply with all provisions primarily applicable to tenants of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing maintenance, use, or appearance of the dwelling unit and that part of the premises which he occupies and uses;

- (2) Keep that part of the premises which he occupies and uses as clean and safe as the conditions of the premises permit;
- (3) Dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste in a clean and safe manner;
- (4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (5) Properly use and operate all electrical and plumbing fixtures and appliances in the dwelling unit or used by the tenant;
- (6) Not permit any person on the premises with his permission to wilfully destroy, deface, damage, impair, or remove any part of the premises which include the dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing;
- (7) Keep the dwelling unit and all facilities, appliances, furniture, and furnishings supplied therein by the landlord in fit condition, reasonable wear and tear excepted; and
- (8) Comply with all obligations, restrictions, rules, and the like which are in accordance with section -52 and which the landlord can demonstrate are reasonably necessary for the preservation of the property and protection of the persons of the landlord, other tenants, or any other person.

**Sec. -52 Tenant to use properly.** (a) The tenant shall comply with all obligations or restrictions, whether denominated by the landlord as rules, or otherwise, concerning his use, occupancy, and maintenance of his dwelling unit, appurtenances thereto, and the premises of which the dwelling unit is a part, if:

- (1) Such obligations or restrictions are brought to the attention of the tenant at the time of his entry into the rental agreement; or
  - (2) Such obligations or restrictions, if not so known by the tenant at the time of his entry into the rental agreement, are brought to the attention of the tenant and, if they work a substantial modification of his bargain under the rental agreement, are consented to in writing by him.
- (b) No such obligation or restriction shall be enforceable against the tenant unless:
- (1) It is for the purpose of promoting the convenience, safety, or welfare of the tenants of the property, or for the preservation of the landlord's property from abusive use, or for the fair distribution of services and facilities held out for the tenants generally;
  - (2) It is reasonably related to the purpose for which it is established;
  - (3) It applies to all tenants of the property in a fair manner; and
  - (4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply.
- (c) If the dwelling unit is an apartment in a horizontal property regime the tenant shall comply with the bylaws of the association of apartment-owners and if the dwelling unit is an apartment in a cooperative housing corporation the tenant shall comply with the bylaws of the corporation.

**Sec. -53 Access.** (a) The tenant shall not unreasonably withhold his consent to the landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply services as agreed; or exhibit the dwelling unit to prospective purchasers, mortgagees, or tenants.

(b) The landlord shall not abuse this right of access nor use it to harass the tenant. Except in case of emergency or where impracticable to do so, the landlord shall give the tenant at least two days notice of his intent to enter and shall enter only during reasonable hours.

(c) The landlord shall have no other right of entry, except by court order, unless the tenant appears to have abandoned the premises, or as permitted by section -70(b).

**Sec. -54 Tenant to use and occupy.** The landlord may require, in the rental agreement, that the tenant must notify the landlord of any anticipated extended absence from the dwelling unit no later than the first day of such absence.

**Sec. -55 Tenant's responsibility to inform landlord.** Any defective condition of the premises which comes to the tenant's attention, which he has reason to believe is unknown to the landlord, and which he has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported by the tenant to the landlord as soon as practicable.

## PART VI. REMEDIES AND PENALTIES

**Sec. -61 Tenant's remedies for failure by landlord to supply possession.** (a) If the landlord fails to put the tenant into possession of the dwelling unit at the beginning of the agreed term:

- (1) The tenant shall not be liable for the rent during any period he is unable to enter into possession;
- (2) At any time during the period the tenant is so unable to enter into possession he may notify the landlord that he has terminated the rental agreement; and
- (3) The tenant shall have the right to recover damages in the amount of reasonable expenditures necessary to secure adequate substitute housing, the recovery to be made either by action brought in the district court or by deduction from the rent upon submission to the landlord of receipts totaling at least
  - (A) The amount of abated rent; plus
  - (B) The amount claimed against the rent; or
- (4) If the inability to enter results from the wrongful holdover of a prior occupant, the tenant may maintain a summary proceeding in the district court for possession.

(b) In any district court proceeding brought by the tenant under this section the court may award the tenant substitute housing expenditures, reasonable court costs, and attorney's fees.

**Sec. -62 Tenant's remedy of termination at beginning of term.** If the landlord fails to conform to the rental agreement, or is in material non-compliance with section -42(a), the tenant may, on notice to the landlord, terminate the rental agreement and vacate the dwelling unit at any time during the first week of occupancy. The tenant shall retain such right to terminate beyond the first week of occupancy so long as he remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition which would justify termination by the tenant under this section.

**Sec. -63 Tenant's remedy of termination at any time; unlawful removal or exclusion.** (a) If any condition within the premises deprives the tenant of a substantial part of the benefit and enjoyment of his bargain under the rental agreement, the tenant may notify the landlord in writing of the situation and, if the landlord does not remedy the situation within one week, terminate the rental agreement. The notice need not be given when the condition renders the dwelling unit uninhabitable or poses an imminent threat to the health or safety of any occupant. The tenant may not terminate for a condition caused by the want of due care by the tenant, a member of his family, or other person on the premises with his consent.

(b) If the condition referred to in subsection (a) was caused wilfully or negligently by the landlord, the tenant may recover any damages sustained as a result of the condition.

(c) If the landlord removes or excludes the tenant from the premises overnight without cause or without court order so authorizing, the tenant may recover possession or terminate the rental agreement and, in either case, recover damages sustained and the cost of suit, including reasonable attorney's fees. If the court determines that the removal or exclusion by the landlord was with cause or was authorized by court order, the court may award the landlord the cost of suit, including reasonable attorney's fees if the attorney is not a salaried employee of the landlord or his assignee.

**Sec. -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 -42(a), and does not remedy the failure or noncompliance 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 or noncompliance 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 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 noncompliance 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.

**Sec. -65 Tenant's remedies for fire or casualty damage.** When the dwelling unit or any part of the premises or appurtenances reasonably necessary to the benefit and enjoyment thereof is rendered partially or wholly unusable by fire or other casualty which occurs without wilful fault on the part of the tenant or a member of his family, the tenant may:

- (1) Immediately quit the premises and notify the landlord of his election to quit within one week after quitting, in which case the rental agreement shall terminate as of the date of quitting, but if the tenant fails to notify the landlord of his election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's quitting or impossibility of further occupancy; or
- (2) If continued occupancy is otherwise lawful, vacate any part of the premises rendered unusable by the fire or other casualty, in which case the tenant's liability for rent shall be no more than the fair

rental value of that part of the premises which he continues to use and occupy.

**Sec. -66 Tenant's right to refund of rent, etc., on termination; return of security deposit.** When a tenant exercises a right to terminate the rental agreement pursuant to section -62, -63, or -65 the landlord shall return to the tenant, not later than fourteen days after the termination, the amount of any advance rent paid apportionable to the remaining days of the term and the amount of any security deposit that the landlord is not authorized to retain pursuant to section -44. A return of advance rent or of a security deposit complies with the requirements of this section if it is mailed to the tenant, at an address supplied to the landlord by the tenant, by certified mail, return receipt requested, and postmarked before midnight of the fourteenth day after the date of the termination of the rental agreement.

**Sec. -67 Tenant's remedy for failure by landlord to disclose.** If the landlord fails to comply with any disclosure requirement specified in section -43 within ten days after proper demand therefor by the tenant, the landlord shall be liable to the tenant for \$100 plus reasonable attorney's fees.

**Sec. -68 Landlord's remedies for failure by tenant to pay rent.** (a) A landlord or his agent may, any time after rent is due, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in the notice, not less than five business days after receipt thereof, the rental agreement will be terminated. 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.

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

**Sec. -69 Landlord's remedies for tenant's waste, failure to maintain, or unlawful use.** (a) If the tenant is in material noncompliance with section -51, the landlord, upon learning of any such noncompliance and after notifying the tenant in writing of the noncompliance and allowing a specified time not less than thirty days after receipt of the notice, for the tenant to remedy the noncompliance:

- (1) May terminate the rental agreement and bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession if the tenant is in material noncompliance with section -51(1); or
- (2) May remedy the tenant's failure to comply and bill the tenant for the actual and reasonable cost of such remedy if the noncompliance can be remedied by the landlord by cleaning, repairing, replacing a damaged item, or the like, which bill shall be treated by all parties as rent due and payable on the next regular rent collection date or, if the tenancy has terminated, immediately upon receipt by the tenant.

No allowance of time to remedy noncompliance shall be required when non-compliance by the tenant causes or threatens to cause irreparable damage to any person or property.

(b) The landlord may terminate the rental agreement and bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession for any material noncompliance with section -51 by a roomer or boarder if the roomer or boarder fails to comply within the time specified in the notice.

(c) The landlord may bring an action or proceeding for waste or for breach of contract for damage suffered by the tenant's wilful or negligent failure to comply with his obligations under section -51.

**Sec. -70 Landlord's remedies for absence, misuse, and abandonment.** (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 -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 -52 and entitles the landlord to proceed as provided in section -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.

**Sec. -71 Termination of tenancy; landlord's remedies for holdover tenants.** (a) When the tenancy is month to month, the landlord or the tenant may terminate the rental agreement upon his notifying the other at least twenty-eight days in advance of the anticipated termination.

(b) When the tenancy is less than month to month, the landlord or the tenant may terminate the rental agreement upon his notifying the other at least ten days before the anticipated termination.

(c) Whenever the term of the rental agreement expires, whether by passage of time, by mutual agreement, by the giving of notice as provided in subsection (a) or (b), or by the exercise by the landlord of a right to terminate

given under this chapter, if the tenant continues in possession after the date of termination without the landlord's consent, the tenant shall be liable for and shall pay to the landlord a sum not to exceed twice the monthly rent under the previous rental agreement, computed and prorated on a daily basis, for each day he remains in possession for any period up to one month. If the tenant remains in possession for a period longer than one month, he shall be liable for and shall pay to the landlord a sum equal to the monthly rent under the previous rental agreement for each additional month or fraction thereof. The landlord may bring a summary proceeding for recovery of the possession of the dwelling unit at any time during the first sixty days of holdover, except that the landlord's acceptance of rent in advance after the first month of hold-over shall create a month-to-month tenancy in the absence of an agreement between the parties to the contrary at the time of such acceptance.

**Sec. -72 Landlord's remedies for improper use.** (a) If the tenant breaches any rule authorized under section -52, the landlord may notify the tenant in writing of his breach. The notice shall specify the time, not less than thirty days, within which the tenant is required to remedy the breach and shall be in substantially the following form:

“(Name and address of tenant) (date)

You are hereby notified that you have failed to perform according to the following rule:

(specify rule allegedly breached)

Be informed that if you (continue violating) (again violate) this rule after (a date not less than thirty days after this notice), the landlord may terminate the rental agreement and sue for possession of your dwelling unit.”

No allowance of time to remedy the breach of any rule authorized under section -52 shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section -51(1) or (6).

(b) If the breach complained of continues or recurs after the date specified in the notice, the landlord may bring a summary proceeding for possession within thirty days after such continued or recurring breach.

**Sec. -73 Landlord's and tenant's remedies for abuse of access.** (a) The tenant shall be liable to the landlord for any damage proximately caused by the tenant's unreasonable refusal to allow access as provided in section -53(a).

(b) Except for an entry under an emergency such as fire, the landlord shall be liable to the tenant for any theft, casualty, or other damage proximately caused by an entry into the dwelling unit by the landlord or by another person with the permission or license of the landlord:

(1) When the tenant is absent and has, after having been notified by the landlord of a proposed entry or entries, refused consent to any such specific entry;



- (2) Without the tenant's actual consent when he is present and able to consent; or
- (3) In any other case, when the damage suffered by the tenant is proximately caused by the landlord's negligence.

(c) Repeated demands by the landlord for unreasonable entry, or any entry by the landlord or by another with the landlord's permission or license which is unreasonable and not consented to by the tenant, may be treated by the tenant as grounds for termination of the rental agreement. Any circuit court judge on behalf of one or more tenants may issue an injunction against a landlord to enjoin violation of this subsection.

(d) Every agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section, except consent by a tenant to a particular entry, shall be void.

**Sec. -74 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, 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, 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 department of health has filed a notice or complaint of a violation of a health law or regulation; or
- (3) The tenant has in good faith requested repairs under section -63 or -64.

(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 paragraph (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 the damages sustained by him and the cost of suit, including reasonable attorney's fees.

(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. -75 Unconscionability.** (a) In any court action or proceeding with respect to a rental agreement, if the court as a matter of law finds the agreement or any provision of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable provision, or it may so limit the application of any unconscionable provision as to avoid any unconscionable result.

(b) If it is claimed or appears to the court that the rental agreement or

any provision thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(c) For the purposes of this section, an act or practice expressly permitted by this chapter is not in itself unconscionable.

**Sec. -76 Office of consumer protection to provide counsel for certain tenants.** In any proceeding brought by or for a landlord against a tenant under this chapter, other than actions brought in the small claims court, [the court]\* shall inform the tenant of his right to counsel, and if the court determines that the tenant is unable to afford his own counsel and is unable to obtain counsel through a nonprofit organization authorized to provide administrative support to lawyers who provide legal services to indigents, the court may notify the office of consumer protection which shall provide counsel for the tenant in the proceedings.”

SECTION 2. Chapter 666, Hawaii Revised Statutes, is amended by repealing part II.

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. This Act, upon its approval, shall take effect on January 1, 1973.

(Approved May 30, 1972.)

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\*Added to correct apparent omission.