

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. The Residential Landlord-Tenant Code was enacted in 1972 to govern the relationship between landlord and tenant, granting rights and imposing duties upon each party. One of the basic duties imposed upon landlords and tenants is that they act in good faith. Housing is a basic necessity of each person, and the Code in seeking to protect and promote this necessity has granted certain rights to the tenant while imposing certain limitations upon the landlord. One of these tenant rights is the right, upon the landlord's failure to make certain repairs, to have the repairs made and to deduct the costs of repair from the rent.

The landlord is required to bring a summary proceeding for possession of the dwelling unit if the tenant defaults on the rent. The legislature finds that many times the tenant wrongfully fails to pay the rent, forces the landlord to go to court to seek possession, and withholds any payment of rent during the time the proceeding takes place. The legislature finds that the landlord often obtains possession after a long, drawn out court proceeding, only to find that the tenant cannot or will not pay for the time in which the tenant was in possession of the premises.

The purpose of this Act is to require the tenant, in any proceeding in which the payment or nonpayment of rent is in dispute, to pay the rent as due into a special fund and to make other amendments to further effectuate the purposes for which the landlord tenant code was established.

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

**"Sec. 521- Rent trust fund.** (a) At the request of either the tenant or the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court shall order the tenant to deposit any disputed rent as it becomes due into the court as provided under subsection (c); provided that the tenant shall not be required to deposit any rent where the tenant can show to the court's satisfaction that the rent has already been paid to the landlord; provided further that if the parties had executed a signed, written instrument agreeing that the rent could be withheld or deducted, the Court shall not require the tenant to deposit rent into the fund. No deposit of rent into the fund ordered under this section shall affect the tenant's rights to assert either that payment of rent was made or that any grounds for nonpayment of rent exist under this chapter.

(b) If the tenant is unable to comply with the court's order under subsection (a) in paying the full amount of rent in dispute into the court, the landlord shall have judgment for possession and execution shall issue accordingly. The writ of possession shall issue to the sheriff or to a police officer of the circuit where the premises are situated, commanding him to remove all persons from the premises, and to put the landlord, or his agent, into the full possession thereof.

(c) The court in which the dispute is being heard shall accept and hold in

trust any rent deposited under this section and shall make such payments out of money collected as provided herein. The court shall order payment of such money collected or portion thereof to the landlord if the court finds that the rent is due and has not been paid to the landlord and that the tenant did not have any basis to withhold, deduct, or otherwise set off the rent not paid. The court shall order payment of such money collected or portion thereof to the tenant if the court finds that the rent is not due or has been paid, or that the tenant had a basis to withhold, deduct, or otherwise set off the rent not paid.

(d) The court shall, upon finding that either the landlord or the tenant raised the issue of payment or nonpayment of rent in bad faith, order that person to pay the other party reasonable interest on the rent deposited into the court.”

SECTION 3. 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 4. This Act shall take effect upon its approval.

(Approved May 16, 1978.)

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\*Edited accordingly.