

ACT 66

H.B. NO. 2537-80

A Bill for an Act Relating to Eviction.

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

SECTION 1. Chapter 360, Hawaii Revised Statutes, is amended by amending part I to read:

“PART I. EVICTION

Sec. 360-1 Definitions. As used in this part:

“Authority” means the Hawaii housing authority.

“Party” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in any court or agency proceeding.

Sec. 360-2 Termination and eviction. Except as hereinafter provided, the authority may terminate any lease, rental agreement, permit, or license covering the use and occupation of any dwelling unit or other premises owned or controlled by it and evict from any such premises any tenant, licensee, or other occupant for any of the following reasons:

- (1) Failure to pay rent when due;
- (2) Violation of any of the provisions of a lease, rental agreement, permit, or license;
- (3) Violation of any of the rules of the authority;
- (4) Failure to maintain the dwelling unit in a clean, sanitary, and habitable condition;
- (5) The existence of any other circumstances giving rise to an immediate right to possession by the authority.

Sec. 360-3 Hearings. (a) Where the authority proposes to terminate a lease, rental agreement, permit, or license, and evict a tenant, licensee, or other occupant under section 360-2, a hearing shall be held to determine whether cause exists for such action. The authority shall give written notice to the person concerned specifying the reason for which the eviction is proposed and fixing the date and place of hearing. The notice shall be given at least five days before the date set for the hearing. At the hearing, before final action is taken the person concerned shall be entitled to be heard in person or through counsel, and shall be accorded a full and fair hearing.

(b) Hearings shall be conducted by a trial examiner or board appointed by the

authority. The board shall consist of not less than three persons. Trial examiners or members of the board may be commissioners or employees of the authority. At least one trial examiner or board, hereinafter called the hearing examiners, shall be established in each county of the State. The findings, conclusions, decision, and order of the hearing examiners shall be final unless an appeal is taken as hereinafter provided.

(c) The hearing examiners shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the hearing examiners, or of any subpoena issued by it, or the refusal of any witness to testify to any matter regarding which he may lawfully be questioned, any circuit judge, on application by the hearing examiners, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

Sec. 360-4 Appeal. (a) Within five days after the issuance of an order under section 360-3 hereof, an appeal may be taken to the authority. The appeal shall be in writing and shall include new facts or evidence pertinent to the case which could not have been presented and were not available for presentation to the hearing examiner. The authority shall give written notice to the person concerned fixing the date and place of the appeal hearing. The notice shall be given at least five days before the date set for the hearing.

(b) The authority shall review the records of the hearing examiners and the new facts and evidence as submitted in the request for an appeal. The authority shall have the same powers in connection with such appeals as are provided for the hearing examiners in section 360-3, and the decision of the authority in the appeal shall be final.

Sec. 360-5 Eviction. (a) If it is proven to the satisfaction of the hearing examiner that there is cause to terminate a lease, rental agreement, permit, or license and evict the tenant, licensee, or other occupant, a writ of possession shall be issued by the authority.

(b) The order of eviction shall not be enforced for five days after its entry. Enforcement of the order by a writ of possession shall be effected either by an officer appointed by the authority, who shall have all of the powers of a police officer for all action in connection with the enforcement of the order, or by the sheriff, or any other law enforcement officer of the State or any county, whose duty it shall be to carry out such order. The person enforcing the order shall remove all persons from the premises and put the authority in full possession thereof.

(c) Upon eviction, the household goods and personal effects of the person against whom the order is entered, and those of any persons using the premises incident to his holding, may be removed from the premises and stored by the authority. If the action is taken, the authority shall have a lien on the property so taken for the expenses incurred by it in moving and storing the same, and the authority is authorized to sell or otherwise dispose of the property, if unclaimed after thirty days.

Sec. 360-6 Ex parte motion. If a tenant or licensee cannot be served with an order of eviction or writ of possession, and the facts shall appear by affidavit to the

hearing examiners, service to such tenant or licensee may be made according to the special order of the hearing examiners. Such order shall require the officer to affix a certified copy of the order of eviction or writ of possession in a conspicuous place upon the premises such as the door or wall of the dwelling unit.

Sec. 360-7 Judicial review. (a) Any person aggrieved by a final decision and order by the authority or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive the appellant of adequate relief is entitled to judicial review thereof under this chapter.

(b) Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the authority pursuant to the provisions of the Hawaii Rules of Civil Procedure, except where a statute provides for a direct appeal to the supreme court and in such cases the appeal shall be in like manner as an appeal from the circuit court to the supreme court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal. The court in its discretion may permit other interested persons to intervene.

(c) The proceedings for review shall not stay enforcement of the decisions of the authority; but the authority or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within fifteen days after the determination of the contents of the record on appeal in the manner provided by the rules of court, or within such further time as the court may allow, the authority shall transmit to the reviewing court the record of the proceeding under review. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence and such evidence is material and good cause exists for the failure to present such evidence in the proceeding before the authority, the court may order the authority to hear such evidence upon such conditions as the court deems proper. The authority may modify its findings, decision, and order by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modification of its findings or decision.

(f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the authority and not shown in the record, testimony thereon may be taken in court. The court may, upon request by any party, hear oral argument and receive written briefs.

(g) Upon review of the record the court may affirm the decision of the authority or remand the case with instructions for further proceedings, or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

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(6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Sec. 360-8 Appeals. An aggrieved party may secure a review of any final judgment of the circuit court under this chapter by appeal to the supreme court. The appeal shall be taken in the manner provided in the rules of court.

Sec. 360-9 Rules. The authority may adopt rules pursuant to chapter 91 necessary for the purposes of this part.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.*

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

(Approved May 17, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.