

ACT 204

H.B. NO. 2357

A Bill for an Act Relating to the Hawaii Public Housing Authority.

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

SECTION 1. Chapter 356D, Hawaii Revised Statutes, is amended by adding a new subpart to part III to be appropriately designated and to read as follows:

“Subpart . State Low-Income Housing; Evictions

§356D-A Definitions. As used in this subpart:

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

“State low-income housing project” means any state low-income public housing project and program or elder or elderly housing owned, managed, administered, or operated by the authority in accordance with sections 356D-44 and 356D-71.

“Tenant” means any person occupying a dwelling accommodation or living quarters in any state low-income housing project, under or by virtue of any tenancy, lease, or rental agreement under or from the authority.

§356D-B Termination and evictions. (a) Except as otherwise provided by law, the authority may terminate any lease, rental agreement, permit, or license covering the use and occupation of any dwelling unit or other premises located within a state low-income housing project and evict from any premises any tenant, licensee, or other occupant for any of the following reasons:

- (1) Failure to pay rent when due;
- (2) Violation of any provision of a lease, rental agreement, permit, or license;
- (3) Violation of any rule of the authority;
- (4) Failure to maintain the dwelling unit in a clean, sanitary, and habitable condition;
- (5) Upon a third violation of section 356D-6.5; provided that a violation of paragraph (2) or (3), or this paragraph by a person who is not a tenant, a guest who is visiting a tenant, or any member of the tenant's household shall be deemed a violation by the tenant; or
- (6) The existence of any other circumstances giving rise to an immediate right to possession by the authority.

(b) When any lease, rental agreement, permit, or license is subject to termination pursuant to subsection (a), the authority, either directly or through its managing agent, shall provide the tenant with a written notice that shall inform the tenant of any violation, failure, or circumstances giving rise to an immediate right to possession by the authority and, if the tenant has been delinquent in payment of rent, the amount of that delinquency.

§356D-C Hearings. (a) When the authority proposes to terminate a lease, rental agreement, permit, or license and evict a tenant under section 356D-B, a hearing shall be held to determine whether cause exists for the action. The authority shall give written notice to the tenant specifying the reason for the eviction and the date, time, and place of the hearing. The written notice shall further inform the tenant of the right to inspect and copy the tenant's file at the tenant's expense before the hearing is held. The written notice shall be given at least five days before the date of the hearing. At the hearing, before final action is taken, the tenant shall be entitled to be heard in person or through counsel, and granted a full and fair hearing in accordance with the requirements of a contested case hearing under sections 91-9 and 91-10 to 91-13. This full and fair hearing shall be deemed to be a contested case hearing before the authority pursuant to chapter 91.

(b) Hearings shall be conducted by an eviction board appointed by the authority. The eviction board shall consist of no fewer than two persons, and no more than three persons, of which one member shall be a tenant. If feasible, the eviction board may conduct hearings using video conferencing technology; provided that these hearings shall be conducted pursuant to chapter 91. The findings, conclusions, decision, and order of the eviction board shall be final unless an appeal is taken pursuant to section 91-14.

(c) The eviction board shall have the same powers with respect to administering oaths, compelling the attendance of witnesses and the production of

documentary evidence, and examining witnesses, as those of the circuit courts. In case of a violation by any person of any order of the eviction board, or of any subpoena issued by the eviction board, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, a circuit court judge, upon application by the eviction board, may compel compliance with the order or subpoena, or compel testimony.

§356D-D Eviction. (a) If the eviction board finds cause to terminate a lease, rental agreement, permit, or license and evict the tenant, the authority shall provide the tenant with a written notice of the authority's decision to terminate the tenancy. The written notice shall inform the tenant that a writ of possession may be issued by the authority within ten business days. The written notice shall also inform the tenant whether the grounds for eviction are curable and, if so, specify the methods to remedy the grounds, timeframe for completion, and documentation required to prove to the authority that the grounds have been remedied.

(b) When the grounds for termination of the tenancy may be cured by the tenant, the tenant shall have ten business days from receipt of the written notice under subsection (a) to cure the grounds. If the grounds are cured within the ten-day period, no writ of possession shall be issued. If the grounds are not cured within the ten-day period, the authority may issue a writ of possession.

(c) The authority may adopt rules pursuant to chapter 91 to define curable and noncurable grounds for eviction. The authority may consider a tenant's history in determining noncurable grounds for eviction. A tenant's history may include chronic or consistent delinquency, or repeated violations of the terms of the lease, rental agreement, permit, or license.

(d) Enforcement of the order by a writ of possession shall be effected either by a process server appointed by the authority, who shall have all of the powers of a police officer for all actions in connection with the enforcement of the order, or by a sheriff or any other law enforcement officer of the State or any county, whose duty it shall be to carry out the order. The person enforcing the order shall remove all persons from the premises and put the authority in full possession thereof.

(e) Upon eviction, the household goods and personal effects of the tenant against whom the order is entered, and those of any persons using the premises incident to the tenant's 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 taken for the expenses incurred by the authority in moving and storing the property, and the authority is authorized to sell or otherwise dispose of the property if unclaimed after thirty days.

§356D-E Ex parte motion. If a tenant cannot be served with an order of eviction or writ of possession, and the authority receives an affidavit or declaration stating this fact, service on the tenant may be made in accordance with a special order of the authority. The order shall require the process server 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.

§356D-F Judicial review. (a) Any tenant aggrieved by a final decision and order of 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 subpart.

(b) Except as otherwise provided in this section, 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 rules of the court, except where a statute provides for a direct appeal to the intermediate appellate court. In such cases, the appeal shall be treated in the same manner as an appeal from the circuit 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 decision of the authority; provided that the authority or the reviewing court may order a stay upon terms as it deems proper.

(d) Within twenty 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 the evidence is material and good cause exists for the failure to present the evidence in the proceeding before the authority, the court may order the authority to hear the evidence upon the 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, decision, or order.

(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, upon request by any party, may hear oral arguments 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;
- (2) In excess of the statutory authority or jurisdiction of the authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§356D-G Appeals. An aggrieved party may secure a review of any final judgement of the circuit court under this subpart by appeal to the appellate courts, subject to chapter 602. The appeal shall be taken in the manner provided in the rules of court.

§356D-H Rules. The authority may adopt rules pursuant to chapter 91 necessary for the purposes of this subpart.”

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 3. This Act shall take effect upon its approval.
(Approved July 10, 2018.)