

ACT 57

H.B. NO. 1376

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

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

SECTION 1. The legislature finds that, due to the coronavirus disease 2019 (COVID-19) pandemic, tens of thousands of Hawaii residents have lost their jobs and have been unable to pay their rent. The governor has issued proclamations related to the COVID-19 emergency to provide protections for tenants struggling to pay rent during this time, including an eviction moratorium that prohibits any eviction from a residential dwelling unit for failure to pay rent. The legislature finds, however, that while this moratorium has been extended at various times throughout the course of the COVID-19 pandemic, at some point, the eviction moratorium will expire. Therefore, a balanced approach is needed to encourage communications and facilitate mediation between landlords and tenants to help reduce the large number of summary possession cases that are expected to follow the expiration of certain COVID-19 emergency proclamations.

Accordingly, the purpose of this Act is to:

- (1) Extend the period for a notice of termination of the rental agreement from five days to fifteen calendar days;
- (2) Require landlords to engage in mediation and delay filing an action for summary possession if a tenant schedules or attempts to schedule a mediation;
- (3) Require landlords to provide specific information in the fifteen-calendar day notice to tenants, which shall also be provided to a

- mediation center that offers free mediation for residential landlord-tenant disputes;
- (4) Restrict when a landlord may exercise remedies, depending on the number of days that have elapsed following the expiration of the governor's eviction moratorium and the amount of rent due; and
 - (5) Repeal these amendments made to Hawaii's residential landlord-tenant code one year after the expiration of the governor's final eviction moratorium or December 31, 2022, whichever is sooner.

SECTION 2. Section 521-68, Hawaii Revised Statutes, is amended to read as follows:

“§521-68 Landlord's remedies for failure by tenant to pay rent. (a) A landlord or the landlord's 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[~~;~~] as provided in subsection (b), not less than [five business] fifteen calendar days after receipt thereof, the rental agreement [will] shall be terminated. If the tenant cannot be served with notice as required, notice may be given to the tenant by posting the same in a conspicuous place on the dwelling unit[~~;~~], and the notice shall be deemed received on the date of posting. 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[~~;~~], subject to subsections (b) through (g). The notice required in this section need not be given if the action is based on the breach of a mediated agreement or other settlement agreement.

(b) The fifteen-calendar day notice shall provide, at a minimum, the following:

- (1) The name of the landlord or the landlord's agent and the landlord's or landlord's agent's contact information, including, if possible, phone number, electronic mail address, and mailing address;
- (2) The address of the dwelling unit subject to the rental agreement;
- (3) The name and contact information of each tenant, including, if possible, phone number, electronic mail address, and mailing address;
- (4) The monthly rental rate of the dwelling unit;
- (5) The current amount of the rent due as of the date of the notice, after applying all rent paid from all sources;
- (6) Whether the landlord or landlord's agent has applied for rental assistance or been contacted on behalf of the tenant by any agency providing rental assistance;
- (7) That any rental assistance received by the landlord or landlord's agent has been credited to the tenant's amount due;
- (8) That a copy of the fifteen-calendar day notice being provided to the tenant is also being provided to the mediation center to be identified by the landlord and, in accordance with subsection (c), in order for the mediation center to contact the landlord and tenant to attempt to schedule a mediation regarding the nonpayment of rent;
- (9) That the mediation center will provide proof to the landlord that the notice was received and provide confirmation of the scheduled date and time of mediation;
- (10) That the landlord or landlord's agent may file an action for summary possession if the rent due is not paid and if mediation is not scheduled within fifteen calendar days after the tenant's receipt of the fifteen-calendar day notice, regardless of whether the scheduled mediation session occurs within the fifteen calendar days;

- (11) A warning in bold typeface print that says: “If mediation is not scheduled within fifteen calendar days after receipt of the notice, regardless of whether the scheduled mediation session occurs within the fifteen-calendar day period, then the landlord may file an action for summary possession after the expiration of the fifteen-calendar day period. If mediation is scheduled before the expiration of the fifteen-calendar day period, regardless of whether the scheduled mediation session occurs within the fifteen calendar days, then the landlord shall only file an action for summary possession after the expiration of thirty calendar days following the tenant’s receipt of the fifteen-calendar day notice. If the fifteen-calendar day notice was mailed, receipt of notice shall be deemed to be two days after the date of the postmark. If the fifteen-calendar day notice was posted on the premises, receipt of notice shall be deemed to be the date of posting. If an agreement is reached before the filing of an action for summary possession, whether through mediation or otherwise, then the landlord shall not bring an action for summary possession against the tenant, except as provided in any agreement that may be reached. The landlord shall be required to note the status of the mediation or settlement effort and proof of sending or posting the fifteen-calendar day notice to the mediation center in the action for summary possession.”;
- (12) Notice that the eviction may be subject to additional requirements and protections under state or federal law and that the tenant is encouraged to seek the tenant’s own legal advice regarding their rights and responsibilities; and
- (13) That the landlord or landlord’s agent shall engage in mediation if mediation is scheduled.
- (c) Landlords or their agents shall provide the fifteen-calendar day notice to a mediation center that offers free mediation for residential landlord-tenant matters. The mediation center shall contact the landlord or landlord’s agent and the tenant to schedule the mediation. If a tenant schedules mediation within the fifteen-calendar day period, regardless of whether the scheduled mediation session occurs within the fifteen-day period, the landlord shall only file a summary proceeding for possession after the expiration of thirty calendar days from the date of receipt of the notice. If the tenant schedules mediation, the landlord shall participate.
- (d) The summary possession complaint for nonpayment of rent shall include:
- (1) A document or documents from the mediation center verifying that the landlord provided a copy of the required fifteen-calendar day notice to the mediation center;
 - (2) A statement as to whether the landlord or landlord’s agent and tenant have participated in, or will participate in, any scheduled mediation; and
 - (3) If mediation is pending, the date on which the mediation is scheduled.
- (e) If the mediation has not occurred as of, or been scheduled for a future date after, the return hearing date on the summary possession complaint, the court, in its discretion and based on a finding of good cause, may order a separate mediation.
- (f) If there is any defect in the fifteen-calendar day notice described in subsection (b) provided by the landlord and the court determines the defect

was unintentional and immaterial, the court may allow the landlord to cure the defect without dismissing the action for summary possession.

(g) No landlord may bring a summary proceeding for possession for a tenant's failure to pay rent except pursuant to this section and as follows:

- (1) Beginning on the first day after the expiration date of the final eviction moratorium through the thirtieth day after the expiration date of the final eviction moratorium, the rent due shall be equal to or greater than four months' rent;
- (2) Beginning on the thirty-first day after the expiration date of the final eviction moratorium through the ninety-first day after the expiration date of the final eviction moratorium, the rent due shall be equal to or greater than three months' rent;
- (3) Beginning on the ninety-second day after the expiration date of the final eviction moratorium through the one hundred fifty-second day after the expiration date of the final eviction moratorium, the rent due shall be equal to or greater than two months' rent; and
- (4) Beginning on the one hundred fifty-third day after the expiration date of the final eviction moratorium through the three hundred sixty-fifth day after the expiration day of the final eviction moratorium, the rent due shall be equal to or greater than one month's rent.

For purposes of this section, "final eviction moratorium" means an emergency proclamation or supplementary proclamation, or any extension thereof, issued by the governor and related to the coronavirus disease 2019 pandemic, that prohibits any eviction from a residential dwelling for a failure to pay rent.

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

SECTION 3. There is appropriated out of the American Rescue Plan Act of 2021, section 3201, Emergency Rental Assistance, Housing Stability Services funds, allocated to the State of Hawaii in the sum of \$3,545,000 but not more than ten per cent of the funds received under the Emergency Rental Assistance or so much thereof as may be necessary for fiscal year 2021-2022, to be allocated as follows:

- (1) \$490,000 to the county of Hawaii;
- (2) \$245,000 to the county of Kauai;
- (3) \$710,000 to the county of Maui; and
- (4) \$2,100,000 to the city and county of Honolulu,

to contract for services as permissible by this Act and the guidance published by the United States Treasury for Emergency Rental Assistance.

The sum appropriated shall be expended by each county for the purposes of this Act.

SECTION 4. There is appropriated out of the American Rescue Plan Act of 2021, section 9901, Coronavirus State and Local Fiscal Recovery Fund, allocated to the State of Hawaii in the sum of \$505,000 or so much thereof as may be necessary for fiscal year 2021-2022, to be allocated as follows:

- (1) \$69,000 to the county of Hawaii;
- (2) \$36,000 to the county of Kauai;
- (3) \$100,000 to the county of Maui; and
- (4) \$300,000 to the city and county of Honolulu,

to contract for services as permissible by this Act and the guidance published by the United States Treasury to assist households that do not qualify under

American Rescue Plan Act of 2021, section 3201, Emergency Rental Assistance, Housing Stability Services funds.

The sum appropriated shall be expended by each county for the purposes of this Act.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date; provided that any contract in effect prior to the effective date of this Act that is subsequently renewed or extended on or after the effective date of this Act shall comply with the requirements of this Act.

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

SECTION 7. This Act shall take effect upon approval; provided that the governor shall notify the chief justice, legislature, and revisor of statutes no later than twenty days prior to the expiration of the final eviction moratorium identified in section 2 of this Act, that the governor will not be issuing any further eviction moratoriums in response to the COVID-19 pandemic. On December 31, 2022, or upon the one year anniversary of the expiration date identified by the governor, whichever is sooner:

- (1) All provisions of this Act except sections 3 and 4 shall be repealed; and
- (2) Section 521-68, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Approved June 16, 2021.)