

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

MAINE HOUSE OF REPRESENTATIVES
MAINE

A PRELIMINARY STUDY OF SOME EFFECTS OF
ADOPTION OF THE UNIFORM RESIDENTIAL LANDLORD
AND TENANT ACT IN MAINE

C

Maine House of Representatives
House Minority Office
January 13, 1977

From: Micheal E. Barr, Esquire
To: Linwood Palmer, House Minority
Leader

PREFACE

Maine's 107th Legislature considered a Maine Uniform Residential Landlord & Tenant Act. It is likely that this proposed act, or a similar proposal, will be submitted to a future legislative session.

It is the purpose of this study to evaluate how the Uniform Residential Landlord & Tenant Act as developed by the National Conference of Commissioners on Uniform State Laws would affect the current state of Landlord and Tenant Law in Maine if it were to be adopted. Further, an evaluation is also made as to how the Uniform Act differs from that submitted (L. D. 2258) in the 107th Legislature.

PART I

Short Title, Construction, Application and Subject Matter of the Act

Section 1.101 Short Title

Description: "Uniform Residential Landlord Tenant Relations Act."

Effect on present Maine Law: None

L. D. 2258: Same (Section 9001)

Section 1.102 Purposes; Rules of Construction

Description: Provides for liberal construction of this Act to achieve three purposes:

- (1) Simplify, clarify, modify, etc., Landlord Tenant Law.
- (2) Encourage maintenance and improvement of property.
- (3) Encourage uniformity between states.

Effect on Present Maine Law: None

L. D. 2258: Same (Section 9002)

Section 1.103 Supplementary Principles

Description: Other principles of law and equity remain binding unless specifically displaced.

Effect on Present Maine Law: None

L. D. 2258: Does not utilize this provision

Section 1.104 Construction Against Implicit Repealer

Description: Avoids implied repeal by subsequent legislation.

Effect on Present Maine Law: None

L. D. 2258: Does not utilize this provision.

Section 1.105 Administration of Remedies; Enforcement

Description: Aggrieved party able to receive damages; duty to mitigate; all rights enforceable in court.

Effect on Present Maine Law: None [14 MRSA Section 6010 denies recovery where unit is destroyed by fire or other casualty. There is no conflict so long as 4.106 of ULTA is also adopted.]

L. D. 2258: Same

Section 1.106 Settlement of Disputed Claim or Right

Description: Settlement of rights under this Act may be by agreement.

Effect on Present Maine Law: None

L. D. 2258: No provision

PART II

Scope and Jurisdiction

Section 1.201 Territorial Application

Description: Act applies throughout state.

Effect on Present Maine Law: None

L. D. 2258: No provision

Section 1.202 Exclusions From Application of Act

Description: Lists types of dwellings not covered by Act - -

- (1) Institutional residence
- (2) Where part of contract for sale
- (3) Fraternal or social organizations
- (4) Transient occupancy
- (5) Where part of employment contract
- (6) Condominiums
- (7) Co-operatives

Effect on Present Maine Law:

1. Forcible entry and detainer (summary process) now applies to tenants under a written lease or persons holding under such tenant, where tenancy is incidental to the employment of the tenant, and against a tenant at will [14 MRSA Section 6001].

2. Mobile home parks have separate process for eviction [30 MRSA Section 4006-B].

L. D. 2258:

- (1) Excludes owner occupied three (3) dwelling units.
- (2) Includes hotels, motels, and lodging houses subject to State licensing where rent is paid on weekly or longer basis.

Section 1.203 Jurisdiction and Service of Process

- (a) Description: The Circuit Court has jurisdiction over any Landlord for conduct under Act.

Effect on Present Maine Law: The District Court is presently the Court with jurisdiction in cases of forcible entry and detainer [14 MRSA Section 6003].

L. D. 2258: Provides for trial by jury in Superior Court except where equitable relief is sought.

- (b) Description: This is a long-arm statute for Service of Process on non-residents Landlords. It allows designation of agent and registration with Secretary of State, substitute service.

Effect on Present Maine Law: Maine Law provides long-arm jurisdiction arising out of the ownership, use or possession of real estate, and out of the transaction of any business within the State [14 MRSA Section 704].

L. D. 2258: Requires designation of agent for all landlords.

PART III

General Definitions and Principles of Interpretation; Notice

Section 1.301 General Definitions

Description: Defines following terms: "action", "building and housing codes", "dwelling units", "good faith", "Landlord", "Organization", "owner", "person", "premises", "rent", "single family residence", "tenant".

Effect on Present Maine Law: None

L. D. 2258: Same

Section 1.302 Obligation of Good Faith

Description: All acts and duties under this Act must be performed in good faith.

Effect on Present Maine Law: Maine provides for good faith by tenant in retaliatory eviction setting [14 MRSA Section 6001].

L. D. 2258: Does not utilize this section.

Section 1.303 Unconscionability

- (a) Description: Court may refuse to enforce unconscionable agreements, or provisions thereof, or settlements.

Effect on Present Maine Law: None

L. D. 2258: Does not utilize this section.

- (b) Description: Where unconscionability raised, evidence may be introduced as to events surrounding the making of agreement or settlement.

Effect on Present Maine Law: None

L. D. 2258: Does not utilize this section.

Section 1.304 Notice

Description: Defines:

(a) when a person has notice of a fact -- (i) actual knowledge, (ii) received notice, (iii) reason to know;

(b) a person "notifies" another by taking steps to inform; one receives notice if a fact comes to his attention or is delivered to place of business or residence;

(c) notice is binding on an organization when it comes to the attention of an individual in organization, or should have.

Effect on Present Maine Law: The "notice to quit" requirements of 14 MRSA Sections 6001 and 6002, and the required notice of Section 6021 would all be affected as to how they should be delivered.

L. D. 2258: Does not utilize this section.

PART IV

General Provisions

Section 1.401 Terms and Conditions of Rental Agreement

Description: Rental agreements may include provisions not prohibited by this Act.

Effect on Present Maine Law: None

L. D. 2258: Same

Section 1.402 Effect of Unsigned or Undelivered Rental Agreement

Description: (a) Where Landlord doesn't sign agreement, acceptance of rent without reservation means acceptance of terms of agreement.

(b) Where Tenant doesn't sign, acceptance of possession and payment of rent means acceptance of terms of agreement.

(c) However, only effective for not more than one year.

Effect on Present Maine Law: (1) Effectively eliminates oral leases by allowing conversion to "written leases: by either side.

(2) Permits conversion of month to month tenancies (tenancy at will) to yearly lease.

L. D. 2258: Does not utilize this section.

Section 1.403 Prohibited Provisions in Rental Agreements

(a) Description: Agreement may not provide that Tenant:

- (1) waives rights under this Act;
- (2) confess judgement;
- (3) agrees to pay Landlord's attorney's fees;
- (4) agrees to exculpate Landlord from liability under law.

Effect on Present Maine Law: (1) Waiver of 30 day notice is permitted under 14 MRSA Section 6002.

(2) 36 MRSA Section 556 makes tenant in possession liable for one-half of taxes assessed against property unless agreement to contrary. (Sub 4)

L. D. 2258: (1) Adds provisions prohibiting agreements whereby the Landlord agrees to pay Tenant's attorney's fees or to exculpate Tenant from liability.

(2) Adds a provision prohibiting reimbursement to Landlord for damages due to reasonable wear and tear.

(3) Adds a provisions prohibiting clauses which disallow overnight guests.

(b) Description: Lease provisions in violation of subsection (a) are unenforcable. If Landlord deliberately uses provisions, Tenant may recover punitive damages equal to three months' rent plus attorney's fees.

Effect on Present Maine Law: Creates new cause of action for Tenant.

L. D. 2258: Sets punitive damages at one months' period rent and reasonable attorney's fees.

Section 1.404 Separation of Rents and Obligations to Maintain Property Forbidden

Description: An assignment of rents will not defeat the duties of the Landlord under 2.104(a). In addition, an assignee of rents appears to be bound by obligations of Landlord.

Effect on Present Maine Law: Remedy under present law is recession of rental agreement and recovery of just proportion of rent (14 MRSA Section 6021), after seven (7) day notice from time condition could have been discovered.

L. D. 2258: Same

ARTICLE II - LANDLORD'S OBLIGATIONS

Section 2.101 Security Deposits; Prepaid Rents

Description: (a) Security deposit may not be charged for more than a fixed term (probably one (1) month).

(b) Upon termination of occupancy, security deposit may be applied to damages caused by Tenant, provided written notice given within 14 days.

(c) If Landlord fails to comply with (b) above or fails to repay prepaid rent, Tenant gets money, plus damages of twice the amount withheld, and attorney's fees.

(d) Rights under this section not exclusive.

(e) Holder of Landlord's interest bound by this section.

Effect on Present Maine Law: (1) Creates new cause of action in Tenant with punitive damages and attorney's fees.

L. D. 2258: (1) Addition of 6% annual interest to be paid on security deposits by Landlord.

(2) Itemization with costs of repairs must be given.

Section 2.102 Disclosure

Description: (a) Landlord must disclose (1) person authorized to manage premises; (2) owner or person authorized to act for Landlord.

(b) Information must be kept current.

(c) The person who fails to comply with (a) becomes agent of Landlord for (1) service of process, (2) performing Landlord's obligations under this Act and lease.

Effect on Present Maine Law: (1) New requirement of notification.

(2) New liability on agent of an undisclosed principal.

L. D. 2258: Does not utilize this section.

Section 2.103 Landlord to Deliver Possession of Dwelling Unit

Description: Landlord must deliver possession of premises to Tenant in

compliance with rental agreement and 2.104, and Landlord has right to exclude one wrongfully in possession.

Effect on Present Maine Law: (1) 14 MRSA Section 6021 imposes a warranty that the dwelling is fit for human habitation and allows Tenant recession only upon strict procedural compliance and lack of tenant cause for the condition.

(2) Creates new damage action for Landlord against wrongful possessors.

L. D. 2258: Does not utilize this section.

Section 2.104 Landlord to Maintain Premises

Description: (a) Landlord's duties include:

- (1) complying with housing and building codes;
- (2) making necessary repairs to keep premises in habitable condition;
- (3) keeping common areas clean and safe;
- (4) maintaining utilities, etc.;
- (5) providing and maintaining appropriate disposal receptacles and areas;
- (6) supplying heat and hot water unless under exclusive control of Tenant.

(b) If housing or building code has stricter requirement, that stricter standard must be followed.

(c) Landlord and Tenant may agree that Tenant will perform (5) and (6) of section (a), provided good faith.

(d) Landlord and Tenant may agree that Tenant shall perform specified repairs, etc., only if:

- (1) good faith and separate writing supported by adequate consideration;
- (2) work done is not necessary to cure housing code violation;
- (3) Agreement doesn't diminish Landlord's obligation to other Tenants.

(e) Landlord can't treat performance of the contract under (d) as a condition to an obligation under rental agreement.

Effect on Present Maine Law: (1) 14 MRSA Section 6021 prohibits lack of habitability from being the fault of the Tenant.

(2) Habitability is presently undefined as used in Maine law.

(3) Presently, Tenant must request the repair of condition within seven (7) days of discovery of the condition, and Landlord has 30 days to repair.

L. D. 2258: Essentially the same except requires Landlord compliance with "other" (undefined) codes affecting health and safety, and denies Landlord of a single family residence ability to contract with Tenant for duties of Paragraphs 5 and 6, and denies Landlords and Tenants for other units from contracting for specified tasks in good faith.

Section 2.105 Limitation of Liability

Description: (a) Relieves Landlord of liability to Tenant for events that occur after Landlord has transferred premises upon written notice, except security deposit liability under 2.101.

(b) Releases manager of liability to Tenant for events occurring after manager has terminated upon written notice.

Effect on Present Maine Law: No change - (14 MRSA Section 6000 prevents assignment for purpose of eviction).

L. D. 2258: (1) Adds prohibition of sale whose primary purpose is to effect an eviction of Tenant.

(2) Maintains liability of Landlord to maintain dwelling in good repair.

ARTICLE III - TENANT OBLIGATIONS

Section 3.101 Tenant to Maintain Dwelling Unit

Description: Tenant must

- (1) comply with applicable building and housing codes;
- (2) keep his unit clean;
- (3) dispose of all ashes, etc.;
- (4) keep plumbing fixtures clean;
- (5) use utilities, etc., in reasonable manner;
- (6) not deliberately or negligently harm structure;
- (7) not disturb neighbors.

Effect on Present Maine Law: None

L. D. 2258: Same

Section 3.102 Rules and Regulations

Description: (a) Landlord may adopt rules concerning Tenant's use of premises, provided

- (1) purpose is to promote convenience, safety or welfare, preserve Landlord's property, or make fair distribution of services and facilities;

- (2) rule reasonably relates to purpose;
- (3) applies to all Tenants fairly;
- (4) sufficiently explicit in its prohibition;
- (5) not for purpose of evading Landlord's obligation;
- (6) Tenant has notice.

(b) Tenant is not bound by a rule if it is made after rental agreement and substantially changes his rights unless he consents in writing.

Effect on Present Maine Law: None

L. D. 2258: Same

Section 3.103 Access

Description: (a) Tenant may not unreasonably withhold consent for Landlord to enter dwelling unit to inspect, provide services or show unit to prospective purchasers, etc.

(b) No consent necessary if emergency.

(c) Landlord shall not use right of access to harrass Tenant. If no emergency, Landlord must give Tenant two days' notice and enter at reasonable times.

(d) Landlord may only enter if

- (1) court order;
- (2) under section 4.202;
- (3) where Tenant has departed.

Effect on Present Maine Law: None

L. D. 2258: Same

ARTICLE IV - TENANT REMEDIES

Section 4.101 Non-Compliance by the Landlord In General

(a) Description: If there is a material breach by Landlord of duties under Section 2.104 which affects health and safety, Tenant may terminate the agreement 30 days after Tenant has given notice, unless Landlord has remedied the breach within 14 days. However:

(1) If breach is remediable by repairs, or payment of damages and the Landlord repairs before date specified by Tenant in the notice, then no termination.

(2) If same breach recurs within 6 months, Tenant may terminate within 14 days.

(3) Tenant may not terminate for a condition caused by his acts or omissions or conditions caused by persons on premises with Tenant's consent.

Effect on Present Maine Law: Major change in Maine law. 14 MRSA Section 6021 establishes covenant of habitability which a violation of which must be brought to Landlord's attention within 7 days of discovery.

L. D. 2258: Section 9015 1 A, B, C may terminate within 30 days of delivery of notice of material breach;

(1) Breach to be remedied by Landlord within 21 days if not caused by deliberate act of Tenant.

(2) Tenant may cause work to be done after 21 days and deduct cost from rent, and

(3) Actual and punitive damages and injunctive relief.

(b) Description: Except as provided by this act, Tenant may recover actual damages and injunctive relief for Landlord's breach of the rental agreement or standards of Section 2.104. For intentional breaches, Tenant may recover attorney's fees.

Effect on Present Maine Law: Creates new causes of action; 14 MRSA Section 6021 prohibits award of consequential damages. Attorney's fee provision is new.

L. D. 2258: No attorney's fee but allows punitive damages.

Section 4.102 Failure to Deliver Possession

(a) Description: If Landlord fails to deliver possession to Tenant, when agreed, Tenant need not pay rent and Tenant may:

(1) Terminate agreement after 5 days notice, or

(2) Sue Landlord or person wrongfully in possession for possession of premises.

Effect on Present Maine Law: None

L. D. 2258: Does not utilize this section.

(b) Description: Tenant may recover from "that person" not more than 3 months rent or 3 times actual damages and attorneys' fees if failure to deliver possession was willful.

Effect on Present Maine Law: None

L. D. 2258: See above

Section 4.103 Self-Help for Minor Defects

- (a) Description: If Landlord breaches agreement or violates Section 2.104, and defects cost less than \$100 or less than one-half a months rent to repair, Tenant may recover under Section 4.101 (b) or notify Landlord that Tenant will repair at Landlord's expense. If Landlord does not repair within 14 days, Tenant can repair and deduct from rental payments.

Effect on Present Maine Law: New remedy which is performed only by mutual consent.

L. D. 2258: Increases amount of repair to equal one month's rent, and allows recovery of actual damages and injunctive relief.

- (b) Description: If damage caused by Tenant or person he has allowed on premises, he may not charge Landlord.

Effect on Present Maine Law: Tenant is liable for damage caused under his control.

L. D. 2258: Limits responsibility of tenant to only his own negligent acts.

Section 4.104 Wrongful Failure to Supply Heat, Water, Hot Water or Essential Services

- (a) Description: If, contrary to agreement or Section 2.104, the Landlord willfully or negligently fails to provide essential services, Tenant may give written notice to Landlord and may:

- (1) Procure reasonable amounts of service elsewhere and deduct from rent;
- (2) Recover damages based on diminution of rental value;
- (3) Procure other substitute housing and not pay Landlord rent.

Effect on Present Maine Law: 14 MRSA Section 6021 covers this area under a breach of warranty of habitability, but allows only the remedies of recession and recovery of just proportion of rent.

L. D. 2258: Same

- (b) Description: Tenant also entitled under Section (a) (3) to the cost of the substitute housing and under all of section (2) reasonable attorneys' fees.

Effect on Present Maine Law: 14 MRSA Section 6021 disallows consequential damages.

L. D. 2258: Same

Section 4.105 Landlord's Non-Compliance as Defense to Action for Possession

- (a) Description: If Tenant is in possession when Landlord sues for non-payment of rent, Tenant may counterclaim for any amount claimed under the rental

agreement or under this act. The Court may require Tenant to pay into Court accrued rents and the Court will determine case on merits. Monies paid into Court will be paid in accordance with decision. If Tenant's damages exceed rent due, judgement for Tenant. Landlord is permitted attorneys' fees where Tenant's counterclaim not made in good faith and is without merit.

Effect on Present Maine Law: Under 14 MRSA Section 6001 Tenant may prevent eviction by proof of complaint of housing violation by Landlord within 6 months of eviction action, and no writ of possession where eviction is retaliatory for participation in Tenant's organization. No provision for allowance of attorneys' fees. No provision for escrow account.

L. D. 2258: Allows escrow account for all disputes between Landlord and Tenant.

- (b) Description: Where Tenant not in possession, Tenant doesn't have to pay money into Court.

Effect on Present Maine Law: None

L. D. 2258: Does not utilize this provision.

Section 4.106 Fire or Casualty Damage

- (a) Description: If fire or casualty destroys part or all of dwelling, Tenant may

- (1) Vacate premises and notify Landlord within 14 days 14 days he intends to terminate agreement,
- (2) Vacate the part destroyed and pay a proportionate share of the rent.

Effect on Present Maine Law: 14 MRSA Section 6010 precludes rent recovery where premises destroyed or damaged by fire or unavoidable casualty, except written lease to the contrary. No provision to vacate or pro-rate rent.

L. D. 2258: Same

- (b) Description: If agreement is terminated, Tenant gets back security deposits and prepaid rent apportioned as of date of loss.

Effect on Present Maine Law: None

L. D. 2258: Same

Section 4.107 Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or Diminution of Services

Description: If Landlord unlawfully ousts Tenant or willfully diminishes essential services, Tenant may recover possession or terminate and may also recover an amount not more than 3 months rent or 3 times the actual damages and attorney's fees. If lease is terminated, Landlord must return security deposit and prepaid rent.

Effect on Present Maine Law: 14 MRSA Section 6001 prevents retaliatory evictions where Landlord has violated housing code. No writ of possession can issue.

No attorney's fees allowed to Tenant and no minimum to an action for damages.

L. D. 2258: Same

ARTICLE IV - LANDLORD REMEDIES

Section 4.201 Non-Compliance with Rental Agreement; Failure to Pay Rent

(a) Description: Except as provided by this act, if Tenant fails to comply with lease or Section 3.101, in a manner which materially affects health and safety, Landlord may give Tenant written notice and may terminate after 30 days if breach not remedied within 14 days, except

(1) If breach remedied before date specified in notice;

(2) If same breach within 6 months, Landlord may terminate within 14 days after written notice.

Effect on Present Maine Law: 14 MRSA Section 6002 (1) provides for 7 day notice for nuisances or violation of law regarding tenancy or intentional or substantial damage. URLTA expands notice requirements Landlord must meet.

L. D. 2258: Does not utilize this section.

(b) Description: Landlord may terminate lease within 14 days after notice for nonpayment of rent.

Effect on Present Maine Law: 14 MRSA Section 6002 (1) allows Landlord to terminate tenancy with 7 day notice in tenant 30 days or more in arrears in rent.

L. D. 2258: Does not Utilize this section.

(c) Description: Except as under this act, Landlord may recover damages and obtain injunctive relief. If Tenant willfully acts, attorneys' fees are also allowed.

Effect on Present Maine Law: No attorney's fees allowed.

L. D. 2258: Does not utilize this section.

Section 4.202 Failure to Maintain

Description: If Tenant has breached Section 3.101 in a manner materially affecting health and safety and it may be remedied by repairs, if Tenant does not repair as promptly as possible in case of emergency or 14 days after written notice, Landlord may enter premises, make repairs and chare Tenant.

Effect on Present Maine Law: None

L. D. 2258: Does not utilize this section.

Section 4.203 Remedies for Absence, Nonuse and Abandonment

- (a) Description: Where the lease so states Tenant may be required to notify Landlord of extended absences (over 7 days) and may recover actual damages if Tenant doesn't notify.

Effect on Present Maine Law: Creates new damage action.

L. D. 2258: Does not utilize this section.

- (b) Description: During Tenant's absence, Landlord may enter at reasonable time.

Effect on Present Maine Law: Would create new practice (See Section 3.103)

L. D. 2258: Does not utilize this section.

- (c) Description: When Tenant abandons premises, Landlord must make reasonable efforts to rent it. The date Landlord relets the premises is the date the prior lease terminates. If Landlord fails to use reasonable efforts to relet the premises, the lease terminates on the date that Landlord has notice of Tenant's abandonment. Same is true for all term leases, i.e. monthly or weekly.

Effect on Present Maine Law: Landlord has duty to mitigate damages under general contract principles.

L. D. 2258: Does not utilize this section.

Section 4.204 Waiver of Landlord's Right to Terminate

Description: If Landlord accepts rent with knowledge of Tenant's default or if Landlord accepts performance by Tenant that varies with lease or Landlord's rules, Landlord waives right to terminate the lease for that breach by Tenant.

Effect on Present Maine Law: Under 14 MRSA Section 6002, if tenancy at will, rent may be accepted up to time of writ of possession if extinguished on a 30 day notice. Otherwise, waiver would be a question of fact.

L. D. 2258: Does not utilize this section.

Section 4.205 Landlord Liens; Distress for Rent

Description: Abolishes Landlord liens on Tenant's household items and abolishes distraint for rent.

Effect on Present Maine Law: None. Maine has no Landlord lien or distraint for rent provisions.

L. D. 2258: Does not utilize this section.

Section 4.206 Remedy after Termination

Description: Landlord has two remedies upon termination:

- (1) possession;
- (2) Damages for breach of lease.

Also allows fees.

Effect on Present Maine Law: Under 14 MRSA Section 6001, an action for forcible entry and detainer lies, but damages and rent must be brought in a separate action.

No attorney's fees are allowed.

L. D. 2258: Does not utilize this section.

Section 4.207 Recovery of Possession Limited

Description: Landlord may take possession only in case of abandonment, surrender or pursuant to this act. Landlord may not use "self-help" or cut off essential services.

Effect on Present Maine Law: 14 MRSA Section 6001 denies recovery to Landlord if tenant has within 6 months past, complained in good faith of violation of housing code. No retaliatory evictions permitted.

L. D. 2258: Does not utilize this section.

ARTICLE IV - PERIODIC TENANCY: HOLDOVER: ABUSE OF ACCESS

Section 4.301 Periodic Tenancy; Holdover Remedies

- (a) Description: In week-to-week tenancy, upon written notice Landlord or Tenant may terminate after 10 days.

Effect on Present Maine Law: Maine law provides for 30 day notice in tenancies at will. Law is unclear as to roomers on a week to week basis.

L. D. 2258: 6 months

- (b) Description: In a month-to-month tenancy, Landlord or Tenant must give 60 days notice.

Effect on Present Maine Law: Only 30 days notice by either party.

L. D. 2258: Does not utilize this section.

- (c) Description: If Tenant willfully and not in good faith remains in possession after expiration of term, or termination of lease, Landlord can recover 3 months rent, or 3 times the actual damage whichever is greater and attorneys' fees. If Landlord consents to continued occupancy, See Section 1.401(d).

Effect on Present Maine Law: New remedy for holdover. Under 14 MRSA Section 6001, Tenant at sufferance is subject to normal forcible entry and detainer.

L. D. 2258: Does not utilize this section.

Section 4.302 Landlord and Tenant Remedies for Abuse of Access

- (a) Description: If Tenant refuses to allow lawful access, Landlord may obtain injunctive relief to compel access or terminate lease. Tenant liable for damages and attorneys' fees.

Effect on Present Maine Law: Tenant has exclusive possession even against Landlord remedy. Marden v Jordan 65 Me. 9, (1874)

L. D. 2258: Does not utilize this section

- (b) Description: If Landlord unlawfully enters or does so to harass Tenant, Tenant may obtain injunctive relief or terminate lease and may recover damages (not less than 1 months rent) and attorneys' fees.

Effect on Present Maine Law: Does not utilize this section

L. D. 2258: Does not utilize this section.

ARTICLE V - RETALIATORY CONDUCT

Section 5.101 Retaliatory Conduct Prohibited

- (a) Description: Except as provided in this section, Landlord may not retaliate by increasing rent or decreasing services or bringing or threatening suit for possession after:

- (1) Tenant complained to government agency of housing or building code violations,
- (2) Tenant has complained to Landlord of violation of Section 2.104, or
- (3) Tenant joins tenant union.

Effect on Present Maine Law: 14 MRSA Section 6001 contains these same prohibitions, but only as to an action for forcible entry and detainer. Increase in rent or decreasing services not covered unless an eviction stage were reached.

L. D. 2258: Same (Section 9020 sub (1))

- (b) Description: For violation of (a), Tenant has remedies of Section 4.107 and defense of retaliatory eviction. Presumption of retaliation if Tenant complained within 1 year of Landlord's action against Tenant. No presumption if complaint made after Tenant received notice of increase in rent. Presumption only stands until evidence to contrary.

Effect on Present Maine Law: The non-issuance of a writ of possession, or

recession of lease in the case of a breach of the warranty of habitability (14 MRSA Section 6021) and general injunctive or common law actions, are tenants remedies.

The period of the retaliatory presumption is 6 months.

L. D. 2258: Does not remove presumption from Tenant where complaint is made after a rent increase or iminution in services. The period is 6 months.

(c) Description Notwithstanding (a) and (b), Landlord may bring an action if:

- (1) Housing code violations caused by Tenant or his "agent";
- (2) Tenant defaults in rent;
- (3) Compliance with building and housing codes will deprive Tenant of use of dwelling unit.

Effect on Present Maine Law: These conditions would be sufficient to overcome the presumption of retaliation.

L. D. 2258: Omits default in rent and compliance with applicable codes as conditions for bringing possession action.

(d) Description: Maintenance of action under (c) does not relieve Landlord of liability under Section 4.101 (b).

Effect on Present Maine Law: Maine has no such restrictions.

L. D. 2258: Maine has no such restrictions.

ARTICLE VI - EFFECTIVE DATE AND REPEALER

Section 6.101 Effective Date

Description: This affects all leases entered into, or renewed on after that date.

Effect on Present Maine Law: None

L. D. 2258: Same

Section 6.102 Specific Repealer

Description: Lists the sections of the general statutes to be repealed.

Effect on Present Maine Law: None

L. D. 2258: Same

Section 6.103 Savings Clause

Description: A transaction entered into before effective date to be in accordance with statutes which are to be repealed by the act.

Effect on Present Maine Law: None

L. D. 2258: Same

Section 6.104 Severability

Description: If any section declared invalid, the other provisions remain in force.

Effect on Present Maine Law: None

L. D. 2258: Same

Note: L. D. 2258 - Remove process of forcible entry and detainer from area of dwellings intended for human habitation.

COMMENTS

Maine is basically a rural state in modest transition. The Portland area is unquestionably becoming urbanized at a much faster rate than the balance of the state. However, the core city-suburban syndrome is striking at a number of cities traveling north along Route I-95. Housing has become increasingly expensive while the population continues to grow at a steady rate. The number of persons who rent their housing accommodations is continually increasing while the social and economic backgrounds of those who rent is becoming increasingly diversified.

Maine's present law in Landlord-Tenant relations leaves a great deal to be desired by both the Landlord and the Tenant in areas of the state which have large numbers of rental units. Maine law is silent or vague in the areas of Landlord responsibilities and Tenant remedies. Such a situation leads to inconsistent enforcement in the courts and frustrated landlords and tenants who are limited in what they can particularize by way of causes of action against one another.

The Uniform Landlord and Tenant Relations Act certainly would provide Maine with needed consistency, comprehension, and reliability in its law. However, the Uniform Act as drafted fails to take into consideration the rural nature of much of the rental population in the State of Maine. Many of the act's provisions would work an unnecessary hardship upon landlords who are renting to a very few number of tenants. They would be either incapable of meeting the building code requirements or would find themselves at the mercy of a tenant knowledgeable in his remedies available under the code. If the State of Maine is to adopt an Uniform Act it should certainly consider excluding or modifying the act for at least owner occupied three dwelling units. Another exclusion to be considered would be for landlords who provide single family houses as rental dwelling units.

The act submitted in the 107th Legislature L. D. 2258 is much less desirable for the State of Maine than the Uniform Act would be. L. D. 2258 unnecessarily weights the burdens and responsibilities of rental arrangements against the Landlord. The attached appendix gives some idea of the profile of the rental-housing situation in Maine. While the statistics are several years out of date they were the most accurate available at the time of the drafting of this report. The contract rental figures are certainly much higher today than in 1970.

1970 CENSUS OF HOUSING
U. S. DEPARTMENT OF COMMERCE

Issued August, 1972

Occupied Housing Units for the State of Maine as of 1970

Total population	992,048
Total housing units	397,169
Occupied housing units	
Total	302,923
Median No. of persons	2.7
per cent owner occupied	70.1
1.01 or more person per room	7.5
with all plumbing facilities	5.7
Vacancy Rate	
Homeowner	1.4
Rental	7.2
Renter Occupied	90,724

All year around housing units

Plumbing facilities	
with all facilities	284,922
Lacking some or all facilities	52,015
Lacking only hot water	5,323
Lacking other plumbing facilities	46,692
Piped water in structure	
Hot and cold	299,237
Cold only	22,615
None	15,155
Flush Toilet	
for exclusive use of household	305,682
Also used by another household	4,177
None	27,148

Renter Occupied housing	90,724
1 rm	3,962
2 rm	5,873
3 rm	16,011
4 rm	24,298
5 rm	20,589
6 rm	11,744
7 rm	4,538
8 rm	2,099
9 or more	1,610
Median	4.3

Persons per room	Owner Occ	Renter Occ
0.50 or less	113,795	43,138
0.51 to 0.75	44,806	19,943
0.76 to 1.00	38,474	19,934
1.01 to 1.50	12,009	5,813
1.51 or more	3,115	1,896

Contract Rent

Renter Occupied	86,904
Less than \$30	4,165
\$30 to \$39	4,333
\$40 to \$59	18,399
\$60 to \$79	22,121
\$80 to \$99	14,284
\$100 to \$119	7,620
\$120 to \$149	4,411
\$150 to \$199	1,608
\$200 to \$249	281
\$250 or more	192
No Cash rent	9,490
Median	\$69

Discrimination Complaints

For i year ending May, 1974 there were 13 discrimination complaints filed within the State of Maine.

- 9 race and color
- 1 national origin
- 1 sex discrimination
- 1 physical handicap
- 1 mental handicap