

# MAINE STATE LEGISLATURE

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(New Title)  
New Draft of H. P. 228, L. D. 313

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 1843

H. P. 1641

House of Representatives, June 3, 1977

Reported by a Majority from Committee on Judiciary. Sent up for concurrence and ordered printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT** Defining the Rights and Responsibilities of  
Landlords and Tenants in Residential Property.

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1.** 14 MRSA § 6001, 3rd ¶, first sentence, as enacted by PL 1971, c. 322, § 1, is amended to read:

Where the tenant proves that within the past 6 months he has filed a complaint pursuant to section 6021 or that he has complained as an individual, or that a complaint has been made in his behalf, in good faith of conditions in or affecting his dwelling unit which may constitute a violation of a building, housing, sanitary or other code, ordinance, regulation or statute, presently or hereafter adopted, to a body charged with enforcement of such code, ordinance, regulation or statute or such a body has filed a notice or complaint of such a violation, a presumption shall arise that the action of forcible entry and detainer was commenced in retaliation for such complaint or notice.

**Sec. 2.** 14 MRSA § 6010, as last amended by PL 1973, c. 633, § 21, is further amended by adding at the end the following:

In any action for sums due for rent, if the court finds that:

1. Notice of condition. The tenant gave to the landlord or to the person who customarily collects rent on behalf of the landlord actual notice of a condition which rendered the rented premises unfit for human habitation;

2. Cause of condition. The condition was not caused by the tenant or another person acting under his control; and

3. Failure to take steps. The landlord failed to take prompt, effective steps to repair or remedy the condition; then the court shall deduct from the amount of rent due and owing the difference between the rental price and the fair value of the use and occupancy of the premises from the time of actual notice, as provided in subsection 1, to the time when the condition is repaired or remedied. In determining the fair value of the use and occupancy of the premises, there shall be a rebuttable presumption that the rental price is the fair value of the rented premises free from any condition rendering it unfit for human habitation. Any agreement by a tenant to waive the rights or benefits provided by this section shall be void. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.

Sec. 3. 14 MRSA § 6021, as enacted by PL 1971, c. 270, is repealed and the following enacted in its place:

§ 6021. Implied warranty and covenant of habitability

1. Definition. As used in this section, the term "dwelling unit" shall include mobile homes, apartments, buildings or other structures, including the common areas thereof, which are rented for human habitation.

2. Implied warranty of fitness for human habitation. In any written or oral agreement for rental of a dwelling unit, the landlord shall be deemed to covenant and warrant that the dwelling unit is fit for human habitation.

3. Complaints. If a condition exists in a dwelling unit which renders the dwelling unit unfit for human habitation, then a tenant may file a complaint against the landlord in the District Court or Superior Court. The complaint shall state that:

- A. A condition, which shall be described, endangers or materially impairs the health or well-being of the tenants or of the public;
- B. The condition was not caused by the tenant or another person acting under his control;
- C. Actual notice of the condition was given to the landlord; and
- D. The landlord failed to take prompt, effective steps to repair or remedy the condition.

The notice requirement of paragraph C may be satisfied by actual notice to the person who customarily collects rents on behalf of the landlord.

4. Remedies. If the court finds that the allegations in the complaint are true, the landlord shall be deemed to have breached the warranty of fitness for human habitation established by this section, as of the date when actual notice of the condition was given to the landlord. In addition to any other relief or remedies which may otherwise exist, the court may take one or more of the following actions.

**A. Injunction.** The court may issue appropriate injunctions ordering the landlord to repair all conditions which endanger or materially impair the health or wellbeing of the tenant or of the public;

**B. Determine fair value.** The court may determine the fair value of the use and occupancy of the dwelling unit by the tenant from the date when the landlord received actual notice of the condition until such time as the condition is repaired, and further declared what, if any, moneys the tenant owes the landlord or what, if any, rebate the landlord owes the tenant for rent paid in excess of the value of use and occupancy. In making this determination, there shall be a rebuttable presumption that the rental amount equals the fair value of the dwelling unit free from any condition rendering it unfit for human habitation. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.

**C. Authorize premises vacated.** The court may authorize the tenant to temporarily vacate the dwelling unit if the unit must be vacant during necessary repairs. No use and occupation charge shall be incurred by a tenant until such time as the tenant resumes occupation of the dwelling unit and the landlord may be ordered to pay the necessary moving expenses incurred by a tenant for temporary relocation.

**D. Other orders.** The court may enter such other orders as the court may deem necessary to accomplish the purposes of this section. The court may not award consequential damages for breach of the warranty of fitness for human habitation.

Upon the filing of a complaint under this section, the court shall enter such temporary restraining orders as may be necessary to protect the health or wellbeing of tenants or of the public.

**5. Waiver.** A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.

Any agreement, other than as provided in this subsection, by a tenant to waive any of the rights or benefits provided by this section shall be void.

### STATEMENT OF FACT

Maine law presently provides tenants with a warranty that their dwelling is fit for human habitation. Unfortunately, the only remedy a tenant has when the dwelling unit is not habitable is to bring a contract action. The new draft provides tenants with the legal means to assure that their dwellings are repaired should such a dwelling be unfit for human habitation. Finally, there is a provision that permits a landlord and a tenant to expressly agree to conditions that may not be fit for human habitation as long as the tenant receives fair compensation for this agreement.