

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 550

H. P. 498

House of Representatives, February 2, 1981

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Nadeau of Lewiston.

Cosponsor: Senator Dutremble of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**AN ACT Providing an Alternative to the Warranty of Habitability Law where
Dangerous Conditions Require Minor Repairs to a Dwelling Unit.**

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

14 MRSA § 6024 is enacted to read:

§ 6024. Dangerous conditions requiring minor repairs

1. **Prohibition of dangerous conditions.** No landlord leasing premises for human habitation may maintain or permit to exist on those premises any condition which endangers or materially impairs the health or safety of the tenants.

2. **Tenant action if landlord fails to act.** If a landlord fails to maintain a rental unit in compliance with the standards of subsection 1 and the reasonable cost of compliance is less than \$100 or an amount equal to 1/2 the monthly rent, whichever amount is greater, the tenant shall notify the landlord in writing of his intention to correct the condition at the landlord's expense. If the landlord fails to comply within 14 days after being notified by the tenant, or as promptly as conditions require in case of emergency, the tenant may cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, the tenant may deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection.

3. Limitation on reimbursement. No tenant may seek or receive reimbursement for labor provided by the tenant or any member of his immediate family pursuant to this section. Parts and materials purchased by the tenant are reimbursable.

4. Retaliation prohibited. No landlord may take any action in reprisal against any tenant who reasonably and in good faith exercises his rights under any provision of this section. Any such action occurring within 6 months of the tenant's exercise of his rights under this section creates a rebuttable presumption that the action is one of reprisal.

5. Waiver. A provision in a lease, whether oral or written, in which the tenant waives either his rights under this section or the duty of the landlord to maintain the premises in compliance with the standards of fitness specified in this section or any other duly promulgated ordinance or regulation is void, except that 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 is binding on the tenant and the landlord.

6. Rights are supplemented. The rights created by this section are supplemental to and in no way limit the rights of a tenant under section 6021.

7. Application. This section does not apply to any tenancy for a dwelling unit which is part of a structure containing no more than 5 dwelling units, one of which is occupied by the landlord.

STATEMENT OF FACT

This bill will provide a means to prevent a number of landlord-tenant disputes by allowing a limited repair option to tenants with protections for the landlord. It establishes a new remedy for inexpensive violations of the warranty of habitability, any "condition which endangers or materially impairs the health or safety of the tenant."

After giving written notice of the problem to the landlord, the tenant must give him the opportunity to make the repair. If the landlord fails to act within 14 days, the tenant may arrange for repair of the condition to be made and to deduct the cost from his rent. The condition being repaired must be serious; that is, substantial enough to be covered by the warranty of habitability.

The cost of repair must be less than \$100 or an amount equal to 1/2 the monthly rent. The value of labor provided by the tenant or any member of his family may not be deducted from the rent, thereby discouraging unnecessary repairs.

The repair and deduct option does not apply to conditions caused by the tenant, nor where the landlord is denied access, nor where extreme weather conditions interfere with the ability of the landlord to make the repair.

The landlord is protected from liability if there is any injury to the tenant or others arising from the repair.

Maine Revised Statutes, section 6024 does not apply to a tenancy in an owner-occupied building of 5 units or less, the same standard as applies to security deposit provisions.

While the landlord is prohibited from retaliating against a tenant who has utilized the repair and deduct option, no rebuttable presumption is created by this bill and therefore it is the responsibility of the tenant to affirmatively prove that an eviction action was filed in retaliation.

This bill will avoid the need for some litigation arising under the warranty of habitability statute by creating a reasonable alternative. The bill will return to the public their right to "repair and deduct" that was part of the common law and was implicitly repealed by enactment of the warranty statute in 1977.

Over 26 states have already enacted repair and deduct statutes.