

MAINE STATE LEGISLATURE

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New Draft of: H. P. 377, L. D. 415
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1531

H P. 1337

House of Representatives, April 13, 1981

Reported by Representative Soule from the Committee on Judiciary. Sent up for concurrence and ordered printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Amend, Revise and Codify the Landlord-Tenant Laws.

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

Sec. 1. 14 MRSA § 6001, as last amended by PL 1977, c. 401, § 2, is repealed and the following enacted in its place:

§ 6001. Availability of remedy

1. Persons against whom process may be maintained. Process of forcible entry and detainer may be maintained against a disseizor who has not acquired any claim by possession and improvement; against a tenant holding under a written lease or contract or person holding under such tenant; against a tenant where the occupancy of the premises is incidental to the employment of a tenant; at the expiration or forfeiture of the term, without notice, if commenced within 7 days from the expiration or forfeiture of the term; and against a tenant at will, whose tenancy has been terminated as provided in section 6002.

2. Persons who may not maintain process. The process of forcible entry and detainer shall not be maintained against a tenant by a 3rd party lessee, grantee, assignee or donee of the tenant's premises, if the primary purpose of any conveyance to such lessee, assignee, grantee or donee is to accomplish eviction of the tenant.

3. Presumption of retaliation. In any action of forcible entry and detainer

there shall be a presumption that the action was commenced in retaliation against the tenant if, within 6 months prior to the commencement of the action, the tenant has:

- A. Asserted his rights pursuant to section 6021;
- B. Complained as an individual, or a complaint has been made in his behalf, in good faith, of conditions 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 that code, ordinance, regulation or statute, or such a body has filed a notice or complaint of such a violation;
- C. Complained in writing or made a written request, in good faith, to the landlord or his agent to make repairs on the premises as required by any applicable building, housing or sanitary code, or by section 6021, or as required by the rental agreement between the parties; or
- D. Organized or become a member of the tenants' union or other similar organization concerned with landlord-tenant relationships.

No writ of possession may issue in the absence of rebuttal of the presumption of retaliation.

Sec. 2. 14 MRSA § 6002, sub-§ 1, first sentence, as last amended by PL 1979, c. 232, is further amended to read:

Notwithstanding any other provisions of this chapter, in the event that the landlord can show, by affirmative proof, that the tenant, the tenant's family or an invitee of the tenant has caused substantial damage to the demised premises which the tenant has not repaired or caused to be repaired before the giving of the notice provided in this subsection, has caused or permitted a nuisance within ~~said~~ the premises, has willfully wasted heat as defined in section 6024, subsection 4, has caused or permitted an invitee to cause the dwelling unit to become unfit for human habitation or has violated or permitted a violation of the law regarding ~~said~~ the tenancy, or when the tenant is 14 days or more in arrears in payment of his rent, the tenancy may be terminated by the landlord by 7 days' notice in writing for that purpose given to the tenant, and in the event that the landlord or his agent ~~have~~ has made at least 3 good faith efforts to serve the tenant, that service may be accomplished by leaving the notice at the tenant's last and usual place of abode.

Sec. 3. 14 MRSA § 6002, sub-§ 2, 2nd sentence, as enacted by PL 1979, c. 298, is amended to read:

~~Where the~~ If a ground claimed is rent arrearage of 14 days or more, the notice shall also include a statement indicating that the tenant can negate the effect of the notice of termination as it applies to rent arrearage if he pays the full amount of rent due before the expiration of the notice.

Sec. 4. 14 MRSA § 6002, sub-§ 3 is enacted to read:

3. **Breach of warranty of habitability as an affirmative defense.** In an action brought by a landlord to terminate a rental agreement on the ground that the tenant is in arrears in the payment of his rent, the tenant shall raise as a defense any alleged violation of the implied warranty and covenant of habitability. Upon finding that the dwelling unit is not fit for human habitation, the court shall permit the tenant either to terminate the rental agreement without prejudice or to reaffirm the rental agreement, with the court assessing against the tenant an amount equal to the reduced fair rental value of the property for the period during which rent is owed. The reduced amount of rent thus owed shall be paid on a pro rata basis, unless the parties agree otherwise, and payments shall become due at the same intervals as rent for the current rental period. The landlord may not charge the tenant for the full rental value of the property until such time as it is fit for human habitation.

Sec. 5. 14 MRSA § 6003 is amended by adding at the end a new paragraph to read:

If either party in a forcible entry and detainer action requests a recorded hearing, the court shall schedule it as soon as practicable, but no later than 7 days after the return day. Any defendant requesting a recorded hearing shall be prepared to file a written answer enumerating defenses on or before the return day.

Sec. 6. 14 MRSA § 6005, as amended by PL 1979, c. 327, § 1, is further amended by adding at the end a new paragraph to read:

When a writ of possession has been served on the defendant by a constable or sheriff, and the defendant fails to remove himself or his possessions within 48 hours of service by the constable or sheriff, the defendant is deemed a trespasser without right and the defendant's goods and property are considered by law to be abandoned and subject to section 6013.

Sec. 7. 14 MRSA § 6013, as enacted by PL 1979, c. 327, § 2, is repealed and the following enacted in its place:

§ 6013. Property abandoned by tenant

Any property with a total value of \$100 or more that is abandoned or unclaimed by a tenant following the tenant's vacating the rental unit shall be disposed of according to Title 33, chapter 27.

Any property with a total value of more than \$10 and less than \$100 abandoned or unclaimed by a tenant following the tenant's vacating the rental unit shall be placed in storage by the landlord in a safe, dry, secured location for a period of 60 days. If the property remains unclaimed after the 60th day following the vacating of the rental unit, the landlord shall make all reasonable efforts to contact the tenant, including giving notice to the tenant at his last known address, concerning his intent to dispose of the abandoned property. If the tenant does not respond or

cannot be found within a period of 14 days after attempted notice, the landlord may sell the property for a reasonable fair market price and apply all proceeds to rental arrearages, damages and cost of sale. Any and all remaining balances shall then be forwarded to the Treasurer of State.

Sec. 8. 14 MRSA §§ 6014 to 6017 are enacted to read:

§ 6014. Remedies for illegal evictions

1. **Illegal evictions.** Evictions which are effected without resort to the provisions of this chapter are illegal and against public policy. Illegal evictions include, but are not limited to, the following.

A. No landlord may willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant including, but not limited to, water, heat, light, electricity, gas, telephone, sewerage, elevator or refrigeration, whether or not the utility service is under the control of the landlord, except for such temporary interruption as may be necessary while actual repairs are in process or during temporary emergencies.

B. No landlord may willfully seize, hold or otherwise directly or indirectly deny a tenant access to and possession of the tenant's rented or leased premises, other than through proper judicial process.

C. No landlord may willfully seize, hold or otherwise directly or indirectly deny a tenant access to and possession of the tenant's property, other than by proper judicial process.

2. **Remedies.** Upon a finding that an illegal eviction has occurred, the court shall take one or both of the following actions.

A. The tenant shall recover actual damages or \$100, whichever is greater.

B. The tenant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorneys' fees.

3. **Good faith.** A court may award attorneys' fees to the defendant if, upon motion and hearing, it is determined that an action filed pursuant to this section was not brought in good faith and was frivolous or intended for harassment only.

4. **Nonexclusivity.** The remedies provided in this section are in addition to any other rights and remedies conferred by law.

§ 6015. Notice of rent increase

Rent charged for residential estates at will may be increased by the lessor only after 30 days' written notice to the tenant. A written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section is liable for the return of any sums unlawfully obtained from the lessee, with interest, and reasonable attorneys' fees and costs.

§ 6016. Rent increase limitation

Rent charged for residential estates at will may not be increased if the dwelling unit is in violation of the warranty of habitability. Any violation caused by the tenant, his family, guests or invitees shall not bar a rent increase. A written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section shall be liable for the return of any sums unlawfully obtained from the lessee, with interest and reasonable attorneys' fees and costs.

§ 6017. Notice of termination

Failure of the tenant to give written notice of termination of the tenancy to the landlord prior to the expiration of the last rental period shall give rise to the presumption that the tenancy continues to exist and the tenant shall be responsible for payment of the rent due until the end of the next rental period, unless the landlord has actual notice of the termination of the tenancy.

Sec. 9. 14 MRSA § 6021, sub-§ 4, ¶C, as enacted by PL 1977, c. 401, § 4, is amended by adding at the end a new sentence to read:

If the landlord offers reasonable, alternative housing accommodations, the court may not surcharge the landlord for alternate tenant housing during the period of necessary repairs.

Sec. 10. 14 MRSA §§ 6024 to 6026 are enacted to read:

§ 6024. Minimum heating standards

1. **Minimum equipment requirements.** The owner or lessor of any residential dwelling unit offered for rent shall have heating equipment and appurtenances which are properly installed and are maintained in safe and good working condition and which are capable of safely and adequately heating all habitable rooms in the unit.

2. **Residential temperature requirements.** Between October 1st and April 30th of each year all habitable rooms of any rented residential dwelling unit shall be heated to a temperature of at least 68° fahrenheit at a distance of 48 inches above the floor, as measured at a distance of 12 inches from all outside walls.

3. **Substantial deviation.** Any deviation greater than 5 degrees and continuing for a duration of more than 2 days in a row or greater than 10 degrees is a substantial deviation from the minimum heating standards in subsection 2.

4. **Willful wastage.** No tenant may willfully waste heat in any unreasonable manner including, but not limited to, maintaining a temperature in the dwelling unit greater than 10 degrees above the heating standards in subsection 2.

5. **Remedies.** Whenever heating equipment and appurtenances in a rented residential dwelling unit do not meet the standards of subsection 1 or there is a substantial deviation from the minimum heating standards defined in subsection 3, an action for relief shall lie. Any failure to meet these standards is prima facie evidence of a violation of the implied warranty of habitability.

§ 6025. Access to premises

1. **Tenant obligations.** A tenant may not reasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.

2. **Landlord obligations.** Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant reasonable notice of his intent to enter and shall enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.

3. **Remedy.** If a landlord makes an entry in violation of this section, makes a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful which have the effect of harassing the tenant, the tenant shall recover actual damages or \$100, whichever is greater, and obtain injunctive relief to prevent recurrence of the conduct, and if he obtains a judgment, reasonable attorneys' fees.

4. **Waiver.** Any agreement by a tenant to waive any of the rights or benefits provided by this section is against public policy and is void.

§ 6026. 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 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 with the same quality of materials as are being repaired 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 rights.** No tenant may exercise his rights pursuant to this section if the condition was caused by the tenant, his guest or an invitee of the tenant, nor where the landlord is unreasonably denied access, nor where extreme weather conditions prevent the landlord from making the repair.

4. **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.

5. **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.

6. **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.

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

8. **Limitation on liability.** Whenever repairs are undertaken by or on behalf of the tenant, the landlord shall be held free from liability for injury to that tenant or other persons reasonably or indirectly injured thereby.

9. **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.

Sec. 11. 14 MRSA § 6031, sub-§ 1, as enacted by PL 1977, c. 359, is amended by adding at the end 2 new sentences to read:

The term "normal wear and tear" does not include sums or labor expended by the landlord in removing from the rental unit articles abandoned by the tenant such as trash. If a rental unit was leased to the tenant in a habitable condition or if it was put in a habitable condition by the landlord during the term of the tenancy, normal wear and tear does not include sums required to be expended by the landlord to return the rental unit to a habitable condition, unless expenditure of these sums was necessitated by actions of the landlord, events beyond the control of the tenant or actions of someone other than the tenant or members of his household or their invitees or guests.

Sec. 12. 14 MRSA § 6033, sub-§ 2, first sentence, as enacted by PL 1977, c. 359, is amended to read:

A landlord shall return to a tenant the full security deposit deposited with the landlord by the tenant plus all interest as provided by section 6038 or, if there is actual cause for retaining the security deposit or any portion of it, the landlord shall provide the tenant with a written statement itemizing the reasons for the retention of the security deposit or any portion of it:

Sec. 13. 14 MRSA § 6033, sub-§ 3, as enacted by PL 1977, c. 359, is amended to read:

3. Penalty. If a landlord fails to provide a written statement or to return the security deposit within the time specified in subsection 2, the landlord shall forfeit his right to withhold any portion of the security deposit or to bring suit against the tenant for alleged damages to the premises.

Sec. 14. 14 MRSA § 6034, sub-§ 1, as enacted by PL 1977, c. 359, is amended by adding at the end a new sentence to read:

If during the 7-day notice period the landlord provides written notice specifying the reasons why he is withholding the security deposit and if a court in a subsequent proceeding determines that the grounds stated were sufficient to withhold the deposit, the landlord shall be deemed to have rebutted the presumption that he acted willfully and wrongfully.

Sec. 15. 14 MRSA § 6038, 2nd sentence, as enacted by PL 1979, c. 315, is amended to read:

All security deposits received after October 1, ~~1979~~ 1981, shall be held in an interest-bearing account of a bank or other financial institution under such terms as will place the security deposit beyond the claim of creditors of the landlord, including a foreclosing mortgagee or trustee in bankruptcy, and as will provide for transfer of the security deposit to a subsequent owner of the dwelling unit.

Sec. 16. 14 MRSA § 6038, last sentence, as enacted by PL 1979, c. 315, is repealed.

Sec. 17. 14 MRSA § 6038, as enacted by PL 1979, c. 315, is amended by adding at the end a new paragraph to read:

When calculating the amount of a security deposit and interest to be returned to a tenant pursuant to section 6033, a landlord is not required to return interest that has accrued if the security deposit has been held by the landlord for a period of less than 6 months.

Sec. 18. 17-A MRSA § 357, sub-§ 3, as amended by PL 1977, c. 183, § 1 is further amended to read:

3. As used in this section, "services" includes, but is not necessarily limited to, labor, professional service, public utility and transportation service, ski lift service, restaurant, hotel, motel, tourist cabin, rooming house, rental dwelling unit and like accommodations, the supplying of equipment, tools, vehicles or trailers for temporary use, telephone, telegraph or computer service, gas, electricity, water or steam, admission to entertainment, exhibitions, sporting events or other events or services for which a charge is made.

STATEMENT OF FACT

This new draft consolidates most of the provisions of 22 of the landlord-tenant bills introduced this session in order to facilitate the revision of the landlord-tenant law and prevents potentially conflicting action on 22 separate bills.