

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. 1608

H. P. 1476

House of Representatives, May 15, 1981

Reported by Representative Hobbins from the Committee on Judiciary.
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Sec. 1. 14 MRSA § 6001, as last amended by PL 1977, c. 401, § 2, is repealed and the following enacted in its place: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 disseisor 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; or
- 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.

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

4. Membership in tenants' organization. No writ of possession may issue when the tenant proves that the action of forcible entry and detainer was commenced in retaliation for the tenant's membership in an organization concerned with landlord-tenant relationships.

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 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 may 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 § 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. 6. 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 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 30 days. If the property remains unclaimed after the 30th 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 storage and sale. Any and all remaining balances shall then be forwarded to the Treasurer of State.

Sec. 7. 14 MRSA §§ 6014 to 6016 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 providing at least 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.

Sec. 8. 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. 9. 14 MRSA §§ 6025 and 6026 are enacted to read:

§ 6025. Access to premises

1. **Tenant obligations.** A tenant may not unreasonably 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. Installation and servicing of electrical, oil burner or plumbing equipment shall be by a professional licensed pursuant to Title 32. 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. **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 supplemental.** The rights created by this section are supplemental to and in no way limit the rights of a tenant under section 6021.

7. **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 injured thereby.

8. **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. 10. 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. 11. 14 MRSA § 6038, last sentence, as enacted by PL 1979, c. 315, is repealed.

Sec. 12. 33 MRSA § 1313, sub-§ 2, first sentence, as enacted by PL 1979, c. 327, § 3, is amended to read:

Tangible property presumed to be abandoned under this section may be sold by the landlord at public auction if the fair market value of all of the property left by a tenant is \$100 or more but less than \$1,000.

Sec. 13. 33 MRSA § 1313, sub-§ 3 is enacted to read:

3. Sale of property by landlord. Tangible property presumed to be abandoned under this section may be sold by the landlord in accordance with Title 14, section 6013 if the fair market value of the property left by the tenant is less than \$100.

STATEMENT OF FACT

This new draft makes the following changes to the landlord-tenant laws.

Section 1 divides Title 14, section 6001, into subsections and amends that section by adding another reason for creating a presumption of retaliation, complaints or requests to the landlord for repairs required by building codes or the warranty of habitability.

Section 2 adds a provision that a 7-day notice of termination may be given if the tenant has made the unit unfit for human habitation.

Section 3 clarifies the current law by stating that if there is more than one reason for a 7-day notice to terminate a tenancy, and rent arrearage is only one of those reasons, paying the rent due only negates the rent arrearage basis for a 7-day notice and leaves the other reasons intact.

Section 4 allows the court the opportunity to settle warranty of habitability actions and eviction actions in one trial instead of 2.

Section 5 clarifies current law by specifying a 48-hour time period by which a tenant who has been evicted must leave or be a trespasser and have his property declared abandoned.

Sections 6, 12 and 13 simplify the procedure for abandoned property of less than \$100.

Section 7 provides remedies for illegal evictions, such as cutting off the heat in the apartment; requires a 30-day notice of rent increases; and prevents the landlord from increasing the rent if the rental unit violates the warranty of habitability, unless the violation was caused by the tenants.

Section 8 provides that the landlord may not be charged for alternate housing during a period of necessary repairs if he has offered reasonable alternate housing for the tenant.

Section 9 codifies the common law guidelines for reasonable access to rented premises and clarifies the tenant's and landlord's obligations. It also allows tenants to repair dangerous conditions to their rented units if, after notice, the landlord has refused to make those repairs. It allows a maximum of \$100, which may be deducted from the rent for materials and labor, if the labor has been done by a professional. It requires repairs to be done in a workmanlike manner and prohibits electrical, plumbing and oil burner equipment repairs unless done by a licensed professional.

Section 10 elaborates on the definition of normal wear and tear as it relates to the return of a security deposit.

Section 11 repeals the exemption for landlords with 5 or less units. Current law exempts them from the requirements concerning the treatment of security deposits.