

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 797

6
7 S.P. 308

In Senate, February 28, 1985

8 Referred to the Committee on Legal Affairs. Sent down for concurrence
9 and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Najarian of Cumberland.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Clarify the Laws Relating to
18 Landlords and Tenants.
19

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

22 Sec. 1. 4 MRSA §152, sub-§5, ¶¶E & F, as re-
23 pealed and replaced by PL 1983, c. 796, §1, are
24 amended to read:

25 E. Actions to foreclose mortgages under Title
26 14, chapter 713, subchapter VI; and

27 F. Actions for restitution under Title 5, sec-
28 tion 213- i; and

29 Sec. 2. 4 MRSA §152, sub-§5, ¶G is enacted to
30 read:

31 G. Actions for illegal evictions under Title 14,
32 section 6014.

1 Sec. 3. 14 MRSA §1210-A is enacted to read:

2 §1210-A. Landlord's duty to mitigate

3 1. Scope of section. If a tenant unjustifiably
4 moves from the premises prior to the effective date
5 for termination of his tenancy and defaults in pay-
6 ment of rent, or if the tenant is removed for failure
7 to pay rent or any other breach of a lease, the land-
8 lord may recover rent and damages except amounts
9 which he could mitigate in accordance with this sec-
10 tion, unless he has expressly agreed to accept a sur-
11 render of the premises and end the tenant's liability.
12 Except as the context may indicate otherwise,
13 this section applies to the liability of a tenant un-
14 der a lease, a periodic tenant or an assignee of ei-
15 ther.

16 2. Measure of recovery. In any claim against a
17 tenant for rent and damages, or for either, the
18 amount of recovery shall be reduced by the net rent
19 obtainable by reasonable efforts to rerent the
20 premises. "Reasonable efforts" means those steps
21 which the landlord would have taken to rent the
22 premises if they had been vacated in due course, pro-
23 vided that those steps are in accordance with local
24 rental practice for similar properties. In the ab-
25 sence of proof that greater net rent is obtainable by
26 reasonable efforts to rerent the premises, the tenant
27 shall be credited with rent actually received under a
28 rerental agreement minus expenses incurred as a rea-
29 sonable incident of acts under subsection 4, includ-
30 ing a fair proportion of any cost of remodeling or
31 other capital improvements. In any case, the land-
32 lord may recover, in addition to rent and other ele-
33 ments of damage, all reasonable expenses of listing
34 and advertising incurred in rerenting and attempting
35 to rerent, except as taken into account in computing
36 the net rent. If the landlord has used the premises
37 as part of reasonable efforts to rerent, under sub-
38 section 4, paragraph C, the tenant shall be credited
39 with the reasonable value of the use of the premises,
40 which shall be presumed to be equal to the rent re-
41 coverable from the defendant unless the landlord
42 proves otherwise. If the landlord has other similar
43 premises for rent and receives an offer from a pro-
44 spective tenant not obtained by the defendant, it

1 shall be reasonable for the landlord to rent the oth-
2 er premises for his own account in preference to
3 those vacated by the defaulting tenant.

4 3. Burden of proof. The landlord must allege
5 and prove that he has made efforts to comply with
6 this section. The tenant has the burden of proving
7 that the efforts of the landlord were not reasonable,
8 that the landlord's refusal of any offer to rent the
9 premises or a part of the premises was not reason-
10 able, that any terms and conditions upon which the
11 landlord has in fact rerented were not reasonable and
12 that any temporary use by the landlord was not part
13 of reasonable efforts to mitigate in accordance with
14 subsection 4, paragraph C. The tenant shall also
15 have the burden of proving the amount that could have
16 been obtained by reasonable efforts to mitigate by
17 renting.

18 4. Acts privileged in mitigation of rent or dam-
19 ages. The following acts by the landlord shall not
20 defeat his right to recover rent and damages and
21 shall not constitute an acceptance of surrender of
22 the premises:

23 A. Entry, with or without notice, for the pur-
24 pose of inspecting, preserving, repairing, remodel-
25 ing and showing the premises;

26 B. Rentering the premises or a part of the
27 premises, with or without notice, with rent ap-
28 plied against the damages caused by the original
29 tenant and in reduction of rent accruing under
30 the original lease;

31 C. Use of the premises by the landlord until
32 such time as rerenting at a reasonable rent is
33 practical, not to exceed one year, if the land-
34 lord gives prompt written notice to the tenant
35 that the landlord is using the premises pursuant
36 to this section and that he will credit the ten-
37 ant with the reasonable value of the use of the
38 premises to the landlord for such a period; and

39 D. Any other act which is reasonably subject to
40 interpretation as being in mitigation of rent or
41 damages and which does not unequivocally demon-

1 strate an intent to release the defaulting ten-
2 ant.

3 Sec. 4. 14 MRSA §6001, sub-§1, as enacted by PL
4 1981, c. 428, §1, is amended to read:

5 1. Persons against whom process may be main-
6 tained. Process of forcible entry and detainer may be
7 maintained against a disseisor who has not acquired
8 any claim by possession and improvement; against a
9 tenant holding under a written lease or contract or
10 person holding under such tenant; at the expiration
11 or forfeiture of the term, after notice as provided
12 in section 6002-A, against a tenant where the occu-
13 pancy of the premises is incidental to the employment
14 of a tenant; at the expiration or forfeiture of the
15 term, without notice, if commenced within 7 days from
16 the expiration or forfeiture of the term; and against
17 a tenant at will, whose tenancy has been terminated
18 as provided in section 6002 6002-A.

19 Sec. 5. 14 MRSA §6002, as amended by PL 1983, c.
20 398, is repealed.

21 Sec. 6. 14 MRSA §6002-A is enacted to read:

22 §6002-A. Notices required for terminations of tenan-
23 cies at will and under leases of residen-
24 tial property

25 1. Tenancies at will; buildings on land of an-
26 other. Tenancies at will must be terminated by ei-
27 ther party by 30 days' notice, except as provided in
28 subsection 2, in writing for that purpose given to
29 the other party, and not otherwise, excepting cases
30 where the tenant, if liable to pay rent, shall not be
31 in arrears at the expiration of the notice, in which
32 case the 30 days' notice shall be made to expire upon
33 a rent day, provided that either party may waive in
34 writing the 30 days' notice at the time the notice is
35 given, and at no other time prior to the giving of
36 that notice. The termination shall not be affected
37 by the receipt of money, whether previously owed or
38 for current use and occupation, until the date a writ
39 of possession is issued against the tenant during the
40 period of actual occupancy after receipt of that no-
41 tice. When the tenancy is terminated, the tenant is

1 liable to the process of forcible entry and detainer
2 without further notice and without proof of any rela-
3 tion of landlord and tenant unless he has paid, after
4 service of the notice, rent that accrued after the
5 termination of the tenancy. These provisions apply to
6 tenancies of buildings erected on land of another
7 party. Termination of the tenancy shall be deemed to
8 occur at the expiration of the time fixed in the no-
9 tice.

10 In the case of a transfer of title, notice shall be
11 given to a tenant in accordance with this section by
12 either the transferor or transferee of the premises,
13 prior to the commencement of proceedings pursuant to
14 section 6001.

15 2. Causes for 7-day notice of termination of
16 tenancy. Notwithstanding any other provisions of
17 this chapter, in the event that the landlord can
18 show, by affirmative proof, that the tenant, the
19 tenant's family or an invitee of the tenant has
20 caused substantial damage to the demised premises
21 which the tenant has not repaired or caused to be re-
22 paired before the giving of the notice provided in
23 this subsection, has caused or permitted a nuisance
24 within the premises, has caused or permitted an
25 invitee to cause the dwelling unit to become unfit
26 for human habitation or has violated or permitted a
27 violation of the law regarding the tenancy, or when
28 the tenant is 14 days or more in arrears in payment
29 of his rent, the tenancy may be terminated by the
30 landlord by 7 days' notice in writing for that pur-
31 pose given to the tenant, and in the event that the
32 landlord or his agent has made at least 3 good faith
33 efforts to serve the tenant, that service may be ac-
34 complished by both mailing the notice by first class
35 mail to the tenant's last known address and by leav-
36 ing the notice at the tenant's last and usual place
37 of abode. If a tenant, who is 14 days or more in ar-
38 rears in payment of his rent, pays the full amount of
39 rent due before the expiration of the 7-day notice in
40 writing, that notice shall be void. Payment or writ-
41 ten assurance of payment through the general assist-
42 ance program, as authorized by the State or a munici-
43 pality pursuant to Title 22, chapter 1251, shall be
44 given the same effect as payment in cash.

1 3. Ground for termination notice. Any notice of
2 termination issued pursuant to subsection 2 shall indicate
3 the specific ground claimed for issuing the
4 notice. If a ground claimed is rent arrearage of 14
5 days or more, the notice shall also include a state-
6 ment indicating that the tenant can negate the effect
7 of the notice of termination as it applies to rent
8 arrearage if he pays the full amount of rent due be-
9 fore the expiration of the notice.

10 4. Notices in residential lease expirations,
11 forfeitures or terminations. Expiration, forfeiture
12 or termination of terms of a written lease shall be
13 governed by the written agreement of the parties, ex-
14 cept that, in the case of residential premises, no-
15 tice in accordance with this section shall be given
16 by the landlord to the tenant prior to commencement
17 of eviction proceedings.

18 A. In the case of expiration of the term or a
19 forfeiture prior to the end of the term for one
20 of the causes listed in subsection 2, the land-
21 lord shall give 7 days' notice in the manner pro-
22 vided in subsection 2.

23 B. In the case of a notice for nonpayment of
24 rent more than 14 days in arrears, the notice
25 shall indicate that the tenant may negate the ef-
26 fect of the notice of termination as it applies
27 to rent arrearage if he pays the full amount of
28 rent due before the expiration of the notice.

29 C. In all other cases, the landlord shall give
30 30 days' notice.

31 5. Breach of warranty of habitability as an af-
32 firmative defense. In an action brought by a landlord
33 to terminate a rental agreement on the ground that
34 the tenant is in arrears in the payment of his rent,
35 the tenant may raise as a defense any alleged viola-
36 tion of the implied warranty and covenant of
37 habitability. Upon finding that the dwelling unit is
38 not fit for human habitation, the court shall permit
39 the tenant either to terminate the rental agreement
40 without prejudice or to reaffirm the rental agree-
41 ment, with the court assessing against the tenant an
42 amount equal to the reduced fair rental value of the

1 property for the period during which rent is owed.
2 The reduced amount of rent thus owed shall be paid on
3 a pro rata basis, unless the parties agree otherwise,
4 and payments shall become due at the same intervals
5 as rent for the current rental period. The landlord
6 may not charge the tenant for the full rental value
7 of the property until such time as it is fit for hu-
8 man habitation.

9 Sec. 7. 14 MRSA §6015, as enacted by PL 1981, c.
10 428, §8, is amended to read:

11 §6015. Notice of rent increase

12 Rent charged for residential estates ~~at will~~ may
13 be increased by the lessor only after providing at
14 least 30 days' written notice to the tenant. A writ-
15 ten or oral waiver of this requirement is against
16 public policy and is void. Any person in violation of
17 this section is liable for the return of any sums un-
18 lawfully obtained from the lessee, with interest, and
19 reasonable attorneys' fees and costs.

20 Sec. 8. 14 MRSA §6016, as enacted by PL 1981, c.
21 428, §8, is amended to read:

22 §6016. Rent increase limitation

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

33 Sec. 9. 14 MRSA §6031, sub-§2, as enacted by PL
34 1977, c. 359, is amended to read:

35 2. Security deposit. "Security deposit" means
36 any advance or deposit, regardless of its denomina-
37 tion, of money, the primary function of which is
38 either to secure the performance of a rental agree-
39 ment for residential premises or any part thereof or

1 to complete payment for part or all of a term in
2 advance.

3 Sec. 10. 14 MRSA §6033, sub-§2, as enacted by PL
4 1977, c. 359, is amended to read:

5 2. Return; time; retention. A landlord shall re-
6 turn to a tenant the full security deposit deposited
7 with the landlord by the tenant with interest at the
8 rate of 8% per year or, if there is actual cause for
9 retaining the security deposit or any portion of it,
10 the landlord shall provide the tenant with a written
11 statement itemizing the reasons for the retention of
12 the security deposit or any portion of it:

13 A. In the case of a written rental agreement,
14 within the time, not to exceed 30 days, stated in
15 the agreement; and

16 B. In the case of a tenancy at will, within 21
17 days after the termination of the tenancy or the
18 surrender and acceptance of the premises, which-
19 ever occurs later.

20 The written statement itemizing the reasons for the
21 retention of any portion of the security deposit
22 shall be accompanied by a full payment of the differ-
23 ence between the security deposit and the amount re-
24 tained.

25 The landlord is deemed to have complied with this
26 section by mailing the statement and any payment re-
27 quired to the last known address of the tenant.

28 Nothing in this section shall preclude the landlord
29 from retaining the security deposit for nonpayment of
30 rent or nonpayment of utility charges which the ten-
31 ant was required to pay directly to the landlord.

32 STATEMENT OF FACT

33 This bill contains several clarifications of
34 landlord-tenant laws.

35 Section 1 provides that the district court has
36 jurisdiction over suits regarding illegal evictions.

1 Section 2 provides that when a tenant leaves an
2 apartment prior to expiration of the term, the
3 landlord's claim for unpaid rent for the unexpired
4 term must be reduced by any rent obtainable by rea-
5 sonable efforts to rerent the premises.

6 Sections 3, 4 and 5 provide that residential
7 leaseholders are entitled to the same notice period
8 prior to eviction proceedings as tenants at will.

9 Sections 6 and 7 provide that the notice required
10 of rent increases apply to residential leaseholders
11 as well as tenants at will.

12 Section 8 clarifies that the security deposit
13 laws apply to "advance rent" as well as "security."

14 Section 9 provides for the payment of interest on
15 security deposits.

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