

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 814

H.P. 596

House of Representatives, March 16, 1989

Reference to the Committee on Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative MURPHY of Berwick.

Cosponsored by Representative PLOURDE of Biddeford and Senator
CARPENTER of York.

STATE OF MAINE

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

**An Act to Clarify the Affirmative Defense of Breach of Warranty of
Habitability.**



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

3 **14 MRSA §6002, sub-§3**, as enacted by PL 1981, c. 428, §4, is
5 amended to read:

7 **3. Breach of warranty of habitability as an affirmative**
9 **defense.** In an action brought by a landlord to terminate a
11 rental agreement on the ground that the tenant is in arrears in
13 the payment of his rent, the tenant may raise as a defense any
15 alleged violation of the implied warranty and covenant of
17 habitability, provided that the tenant has fulfilled the
19 prerequisite obligations specified in section 6021, subsection 3
21 and that any rental payments that would otherwise have been owing
23 to the landlord have been placed in an escrow account that is
25 inaccessible to the tenant until the underlying claim has been
27 resolved. 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.

29 **STATEMENT OF FACT**

31 Current law provides that a tenant whose landlord is seeking
33 to evict him based on nonpayment of rent may claim at the time of
35 the eviction hearing that he has not been paying his rent based
37 on an alleged violation of the implied warranty and covenant of
39 habitability. This provision has enabled tenants to withhold
41 their rent and thus circumvent the procedural protections that
are included in the implied warranty and covenant of habitability
laws, Maine Revised Statutes, Title 14, section 6021, and in the
repair and deduct laws, Title 14, section 6026. The proposed
amendment would simply require compliance with basic, well
established procedural protections.