

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

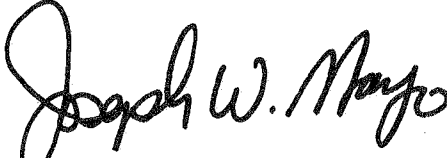
No. 1361

H.P. 981

House of Representatives, March 4, 1997

An Act to Amend the Laws Concerning Commercial Tenancies.

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


JOSEPH W. MAYO, Clerk

Presented by Representative DEXTER of Kingfield.

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

2
3 **Sec. 1. 14 MRSA §6014**, as amended by PL 1995, c. 66, §1, is
4 further amended to read:

6 **§6014. Remedies for illegal evictions**

8 **1. Illegal residential evictions.** Except as permitted by
9 Title 15, chapter 517 or Title 17, chapter 91, residential
10 evictions that are effected without resort to the provisions of
11 this chapter are illegal and against public policy. Illegal
12 residential evictions include, but are not limited to, the
13 following.

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

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

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

30 **2. Remedies.** Upon a finding that an illegal residential
31 eviction has occurred, the court shall find one or both of the
32 following.

33 A. The tenant is entitled to recover actual damages or
34 \$250, whichever is greater.

35 B. The tenant is entitled to recover the aggregate amount
36 of costs and expenses determined by the court to have been
37 reasonably incurred on the tenant's behalf in connection
38 with the prosecution or defense of such action, together
39 with a reasonable amount for attorneys' fees.

40 **3. Good faith.** A court may award attorneys' fees to the
41 defendant if, upon motion and hearing, it is determined that an
42 action filed pursuant to this section was not brought in good
43 faith and was frivolous or intended for harassment only.
44
45
46
47
48
49
50

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

4
6 **5. Commercial self-help remedies.** A commercial landlord
may elect to proceed by the provisions of section 6001 to 6016 or
8 may exercise the right of reentry by self-help as previously
existed under the common law of this State if the tenant's lease:

10 A. Is in writing;

12 B. Is for commercial purposes;

14 C. Provides for the landlord's reentry or repossession
16 without judicial process;

18 D. Has been terminated according to its terms and provides
that its terms govern the obligations of landlord and tenant
20 in any period of holdover by the tenant; and

22 E. The landlord's reentry or repossession is accomplished
without breach of the peace.

24 **6. Breach of peace.** It may not be considered a breach of
the peace for the landlord to change the locks on the premises or
26 otherwise make the premises inaccessible to the tenant at any
time when any individual commercial tenant or individual
28 representative of a commercial tenant is not physically present
on the premises. It also may not be considered a breach of the
30 peace for the landlord, if liable for the costs of utilities, to
sever or otherwise shut off utility services to the premises,
32 regardless of whether the tenant is or is not physically present
on the premises. These are not the exclusive means of permitted
34 exercise of self-help remedies. Other remedies that may be
developed at common law may be engaged in by landlords exercising
36 their remedies of self-help without breach of the peace.

38 **7. Notification to tenant; personal property of tenant.** If
the landlord has taken possession of the premises through
40 exercise of the remedy of self-help, the landlord immediately
shall notify the tenant of the landlord's repossession and afford
42 the tenant a reasonable opportunity to retrieve any of the
tenant's personal property remaining on the premises. If the
44 tenant does not retrieve the personal property within 2 weeks of
the landlord's notice, the landlord shall deal with the property
46 as provided for under section 6013.

48 **8. Self-help that causes breach of peace.** If the landlord
engages in self-help that at the time of the landlord's
50 repossession causes a breach of the peace or is otherwise

not authorized under subsection 5, the limitation of subsections 1 and 2 to residential tenancies does not apply.

Sec. 2. 14 MRSA §§6017 and 6018 are enacted to read:

§6017. Commercial leases

1. Construction with other laws; procedure. A commercial landlord and tenant are governed, in addition to the provisions of this chapter, by this section. If this section conflicts with any other provision of law governing the relationship between a landlord and a tenant, the provisions of this section control as to all commercial lease relationships to the extent the commercial lease is in writing and executed by the party to be charged.

A. After termination of a commercial lease and after a complaint for forcible entry and detainer is filed and served, the defendant shall file in advance of the return date a written answer with the clerk of the appropriate court controverting in good faith the landlord's claim to a judgment of forcible entry and detainer. If a written answer is not filed on or before the day before the return date, the clerk upon application by the plaintiff for a default judgment immediately shall enter the default judgment and immediately shall issue a writ of possession. Upon service of the writ of possession by the sheriff, the defendant has 2 court days within which to return to the court and to request that the writ be withdrawn and the judgment reopened. The writ may be withdrawn and the judgment may be reopened only upon the grounds that exist for reopening of judgments. Upon such a request, use of the writ of possession is stayed and the District Court shall hear the request to remove the default judgment as expeditiously as possible. If the District Court declines to reopen the judgment, the defendant has 48 hours in which to vacate the premises or the defendant may be forcibly removed pursuant to the original writ of possession. If the decision of the District Court is appealed, the writ of possession issued by the District Court remains in full force and effect unless affirmatively stayed by order of the Superior Court.

B. If judgment of forcible entry and detainer is sought against a defendant on the grounds of nonpayment of rent, a defendant must, as a condition of maintaining the defendant's defense, appear on the return day ready, willing and able to pay the claimed or disputed rent. The disputed rent must be paid into the court in good funds at the time of hearing. In addition to deciding the right of

2 possession, the District Court also shall decide the amount
3 of rent owed. If the District Court takes the issue under
4 advisement, the tenant shall continue to pay rent into the
5 court in the amount specified by the court, so long as the
6 action remains undecided. Upon final decision by the
7 District Court, the District Court shall order such sums as
8 the court considers proper to be turned over by the clerk to
9 either or both of the parties. Any decision of the District
10 Court for payment of rent continues in effect through any
11 appeal of the District Court's decision. The landlord may
12 apply for turnover of rent money held by the court prior to
13 final judgment in the District Court or prior to final
14 decision on appeal in the Superior Court upon a showing of
15 hardship and reasonable likelihood of success on the
16 merits. Failure of the tenant to pay rent into the court
causes the writ of possession to issue immediately.

18 2. Judgment for plaintiff; surety bond. When judgment is
19 rendered for the plaintiff, a writ of possession may issue
20 immediately in the District Court or from the Superior Court on
21 appeal in all cases if the plaintiff provides the defendant with
22 a surety bond conditioned to pay all damages and costs as may be
23 suffered by the defendant if final judgment is rendered for the
24 defendant. In setting the amount of the required surety bond,
25 the court may consider any offsetting claims between the parties.

26 3. Removal. The following provisions govern removal to the
27 Superior Court.

30 A. Upon the filing of a complaint for forcible entry and
31 detainer, a commercial tenant, prior to the return day, may
32 request removal to the Superior Court and demand a jury
33 trial if the commercial tenant pays the removal fee and any
34 jury trial fee and tenders for deposit with the Superior
35 Court all rent allegedly owed, if any, together with an
36 affidavit or affidavits meeting the requirements of the
37 Maine Rules of Civil Procedure, Rule 56(e) and setting forth
38 specific facts showing that there is a genuine issue of
39 material fact as to which there is a right to trial by
40 jury. Failure to make a demand for a jury trial accompanied
41 by payment of the jury trial fee, the removal fee and all
42 alleged rental arrears constitutes a waiver of the right to
43 a jury trial and the Superior Court shall decide the issues
44 upon questions of law only. The landlord may, within 10
45 days after notice of the defendant's removal and the filing
46 of the defendant's affidavit with the Superior Court, file a
47 counter affidavit or affidavits meeting the requirements of
48 the Maine Rules of Civil Procedure, Rule 56(e) and the
49 Superior Court shall, without hearing, review the affidavits
50 of both parties and determine whether there is a genuine

2 issue of material fact as to which there is a right to trial
3 by jury.

4 B. So long as the action is undecided, the defendant shall
5 continue to pay into the court all rent in dispute subject
6 to the court's discretion to require that rent be paid to
7 the plaintiff during the pendency of the action.

8
9
10 C. If the Superior Court determines that there exists a
11 right to trial by jury, the case must be placed on the first
12 available jury trial list. If the Superior Court determines
13 that there is no issue of material fact as to which there is
14 a right to trial by jury, the Superior Court shall hold on
15 an expedited basis such hearing as the court determines
16 necessary and render final judgment. If the Superior Court
17 renders final judgment in favor of the plaintiff, a writ of
18 possession may issue directly out of the Superior Court.

19
20 D. Failure to request removal for the purposes of jury
21 trial constitutes a waiver of the right to a jury trial.
22 The Superior Court shall impose sanctions if it determines
23 that a removal and demand for jury trial was made for the
24 purposes of delay and not in good faith.

25
26 4. Writ of possession. Upon final decision by the Superior
27 Court, whether in an original action or on appeal, a writ of
28 possession may issue out of the Superior Court within 5 days of
29 the date of entry of the Superior Court's decision, unless the
30 defendant affirmatively seeks and obtains a stay of issuance of
31 the writ of possession from the Superior Court under a good faith
32 representation by the defendant of an intent to appeal the
33 decision of the Superior Court. Upon the expiration of the time
34 for appeal after such a stay has been granted, without appeal,
35 the writ of possession must immediately issue out of the Superior
36 Court. The court shall impose sanctions on the defendant if the
37 court concludes that representation of an intent to appeal was
38 made solely for the purposes of delay. During the pendency of
39 any appeal to the Law Court, the defendant shall continue to pay
40 into the Superior Court rent as it may accrue during the pendency
41 of the appeal. The Superior Court retains jurisdiction during
42 the pendency for the appeal to determine whether rent should be
43 paid to the plaintiff.

44
45 5. Arbitration. A commercial landlord and tenant may agree
46 in writing to arbitration of disputes as to termination of
47 tenancy and the right of possession arising under a lease between
48 the landlord and tenant before an arbitrator chosen in advance
49 pursuant to the written lease agreement. The decision of the
50 arbitrator is final. If the arbitrator rules in favor of the
landlord, the landlord may, by presentation of an attested copy

of the arbitrator's decision and after docketing of the arbitrator's decision by the District Court, immediately obtain a writ of possession from the clerk of the District Court. The arbitrator's decision may be stayed or appealed only upon such grounds as generally lie for stay or appeal of an arbitration decision pursuant to the Uniform Arbitration Act.

§6018. Abandonment

A presumption of abandonment of commercial premises arises if, without written agreement between the commercial landlord and tenant, the tenant does not conduct business activity on the premises for a continuous period of 2 weeks. Upon the expiration of this 2-week period, the landlord may reenter the premises and may not be liable to the tenant for this reentry and any reletting of the premises. Any property of the tenant abandoned on the premises must be dealt with as provided for under section 6013.

SUMMARY

This bill amends the laws concerning commercial tenancies in the following ways.

1. It provides that a commercial landlord may exercise the right of reentry by self-help if the lease is in writing; provides for the landlord's reentry or repossession without judicial process; has been terminated according to its terms and provides that its terms govern the obligations of the landlord and tenant in any period of holdover by the tenant, and the landlord's reentry or repossession is accomplished without breach of the peace. The bill provides that it is not a breach of the peace for a commercial landlord to change the locks while the tenant is not on the premises or to shut off utility services to the premises.

2. It provides a procedure for a forcible entry and detainer action and for the issuance of a writ of possession. The bill provides that upon the filing of a complaint for forcible entry and detainer a commercial tenant may request removal to the Superior Court and demand a jury trial. A commercial tenant is required to deposit with the court all rent in dispute in order to preserve the tenant's rights to assert defenses and request removal to the Superior Court in an action for forcible entry and detainer.

3. It provides that a commercial landlord and tenant may agree in writing to arbitration of disputes.

2 4. It provides a presumption of abandonment of commercial
3 premises when the tenant does not conduct business activity on
4 the premises for a continuous period of 2 weeks. Upon the
5 expiration of the 2-week period, the landlord may reenter the
6 premises.