

MAINE STATE LEGISLATURE

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Date: 6/7/11

L.D. 1198
(Filing No. H-575)

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 889, L.D. 1198, Bill, "An Act To Reduce Regulations for Residential Rental Property Owners"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 14 MRSA §6001, sub-§3, as amended by PL 2009, c. 566, §2, is further amended to read:

3. Presumption of retaliation. In any action of forcible entry and detainer there is a rebuttable 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 the tenant's rights pursuant to section 6021;
- B. Complained as an individual, or if a complaint has been made in that individual's behalf, in good faith, of conditions affecting that individual's dwelling unit that 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 the landlord's 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
- E. Filed Prior to being served with an eviction notice, filed, in good faith, a fair housing complaint for which there is a reasonable basis with the Maine Human Rights Commission or filed, in good faith, a fair housing complaint for which there is a reasonable basis with the United States Department of Housing and Urban Development concerning acts affecting that individual's tenancy.

COMMITTEE AMENDMENT

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If an action of forcible entry and detainer is brought for failure to pay rent or for causing substantial damage to the premises, the presumption of retaliation does not apply, unless the tenant has asserted a right pursuant to section 6026.

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

Sec. 2. 14 MRSA §6001, sub-§5, as enacted by PL 2009, c. 566, §3, is repealed and the following enacted in its place:

5. Affirmative defense. A tenant may raise the affirmative defense of failure of the landlord to provide the tenant with a reasonable accommodation pursuant to Title 5, chapter 337 or the federal Fair Housing Act, 42 United States Code, Section 3604(f)(3)(B). The court shall deny the forcible entry and detainer and not grant possession to the landlord if the court determines that the landlord has a duty to offer a reasonable accommodation and has failed to do so and there is a causal link between the accommodation requested and the conduct that is the subject of the forcible entry and detainer action.

The court shall grant the forcible entry and detainer if the court determines that the landlord is otherwise entitled to possession and:

- A. The landlord does not have a duty to offer a reasonable accommodation;
- B. The landlord has, in fact, offered a reasonable accommodation; or
- C. There is no causal link between the accommodation requested and the conduct that is the subject of the forcible entry and detainer action.

For purposes of this subsection, "reasonable accommodation" means a change, exception or adjustment to a rule, policy, practice or service that is necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common access spaces for that dwelling.

Sec. 3. 14 MRSA §6008, sub-§6 is enacted to read:

6. Affidavit required. A notice of appeal filed by the defendant must be accompanied by an affidavit stating the defendant has complied with the requirements of subsection 2 regarding the payment of rent.

Sec. 4. 14 MRSA §6013, first ¶, as repealed and replaced by PL 2009, c. 566, §7, is amended to read:

Any personal property that remains in a rental unit after the issuance of a writ of possession entry of judgment in favor of the landlord or that is abandoned or unclaimed by a tenant following the tenant's vacating the rental unit must be disposed of as follows.

Sec. 5. 14 MRSA §6013, sub-§2, as enacted by PL 2009, c. 566, §7, is repealed and the following enacted in its place:

2. Notice to tenant. Notice to the tenant by the landlord is governed by this subsection. Notice may be sent at any time after entry of judgment in favor of the landlord.

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1 A. If the tenant is still in possession of the rental unit, the landlord shall send written
2 notice by first-class mail with proof of mailing to the tenant at the address of the
3 rental unit of the landlord's intent to dispose of, in accordance with subsection 5, any
4 property remaining in the rental unit following the tenant's vacating the rental unit.
5 Notwithstanding subsections 3 and 5, the notice provided pursuant to this paragraph
6 may not limit the the time in which the tenant may claim the property to less than 7
7 days following the mailing of the notice or 48 hours after service of the writ of
8 possession, whichever period is longer.

9 B. If the tenant has vacated the rental unit, the landlord shall send written notice by
10 first-class mail with proof of mailing to the last known address of the tenant
11 concerning the landlord's intent to dispose of the property stored pursuant to
12 subsection 1. The notice must include an itemized list of the items and containers of
13 items of the property and advise the tenant that if the tenant does not respond to the
14 notice within 7 days the landlord may dispose of the property as set forth in
15 subsection 5.

16 **Sec. 6. 14 MRSA §6013, sub-§§3 to 5, as enacted by PL 2009, c. 566, §7, are**
17 **amended to read:**

18 **3. Release of property claimed.** If the tenant claims the property within 14 7 days
19 after the notice under subsection 2 is sent, the landlord shall release the property to the
20 tenant and may not condition release of the property to the tenant upon payment of any
21 fee or any other amount that may be owed to the landlord by the tenant.

22 **4. Continuation of storage for claimed property.** If the tenant responds to the
23 notice sent pursuant to subsection 2, the landlord shall continue to store the property for
24 at least 24 14 days after the landlord sent the notice.

25 **5. Conditional release; sale or disposal.** A landlord shall comply with the
26 following.

27 A. If the tenant makes an oral or written claim for the property within 14 7 days after
28 the date the notice described in subsection 2 is sent, the landlord may not condition
29 the release of the property to the tenant upon the tenant's payment of any rental
30 arrearages, damages and costs of storage as long as the tenant makes arrangements to
31 retrieve the property by the 24th 14th day after the notice described in subsection 2 is
32 sent.

33 B. If the tenant makes the claim as set forth in paragraph A but fails to retrieve the
34 property by the 24th 14th day, the landlord may employ one or more of the remedies
35 described in paragraph D.

36 C. If the tenant does not make an oral or written claim for the property within 14 7
37 days after the notice described in subsection 2 is sent, the landlord may employ one
38 or more of the remedies described in paragraph D.

39 D. With regard to any property that remains unclaimed by the tenant in accordance
40 with this subsection, the landlord may take one or more of the following actions:

- 41 (1) Condition the release of the property to the tenant upon the tenant's payment
42 of all rental arrearages, damages and costs of storage;

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1 (2) Sell any property for a reasonable fair market price and apply all proceeds to
2 rental arrearages, damages and costs of storage and sale. All remaining balances
3 must be forwarded to the Treasurer of State; or

4 (3) Dispose of any property that has no reasonable fair market value.

5 **Sec. 7. 14 MRSA §6013, sub-§6** is enacted to read:

6 **6. Waiver.** After or upon vacating the rental unit, a tenant may waive the tenant's
7 rights pursuant to this section. If this waiver is oral, the landlord shall confirm this
8 waiver in writing.

9 **Sec. 8. 14 MRSA §6021-A, sub-§2, ¶F,** as enacted by PL 2009, c. 566, §8, is
10 amended to read:

11 F. A landlord shall offer to make reasonable assistance, ~~including financial~~
12 ~~assistance,~~ available to a tenant who is not able to comply with requested bedbug
13 inspection or control measures under subsection 3, paragraph C. The landlord shall
14 disclose to the tenant what the cost may be for the tenant's compliance with the
15 requested bedbug inspection or control measure. After first disclosing what the cost
16 of the tenant's compliance with requested bedbug inspection or control measures may
17 be, a making this disclosure, the landlord may provide financial assistance to the
18 tenant to prepare the unit for bedbug treatment. A landlord may charge the tenant a
19 reasonable amount for any such assistance, subject to a reasonable repayment
20 schedule, not to exceed 6 months, unless an extension is otherwise agreed to by the
21 landlord and the tenant. This paragraph may not be construed to require the landlord
22 to provide the tenant with alternate lodging or to pay to replace the tenant's personal
23 property.

24 **Sec. 9. 14 MRSA §6021-A, sub-§4, ¶D,** as enacted by PL 2009, c. 566, §8, is
25 amended to read:

26 D. In any action of forcible entry and detainer under section 6001, there is a
27 rebuttable presumption that the action was commenced in retaliation against the
28 tenant if, within 6 months before the commencement of the action, the tenant has
29 asserted the tenant's rights pursuant to this section. The rebuttable presumption of
30 retaliation does not apply unless the tenant asserted that tenant's rights pursuant to
31 this section prior to being served with the eviction notice. There is no presumption of
32 retaliation if the action for forcible entry and detainer is brought for failure to pay rent
33 or for causing substantial damage to the premises.

34 **Sec. 10. 14 MRSA §6030-C,** as amended by PL 2009, c. 652, Pt. B, §2 and
35 affected by §3, is further amended to read:

36 **§6030-C. Residential energy efficiency disclosure statement**

37 **1. Energy efficiency disclosure.** A prospective tenant who will be paying utility
38 costs has the right to obtain from an energy supplier for the unit offered for rental the
39 amount of consumption and the cost of that consumption for the prior 12-month period.
40 A landlord or other person who on behalf of a landlord enters into a lease or tenancy at
41 will agreement for residential property that will be used by a tenant or lessee as a primary
42 residence shall provide to potential tenants or lessees who pay for an energy supply for

1 the unit, or upon request by a tenant or lessee a residential energy efficiency disclosure
2 statement in accordance with Title 35-A, section 10117, subsection 1 that includes, but is
3 not limited to, information about the energy efficiency of the property. Alternatively, the
4 landlord may include in the application for the residential property the name of each
5 supplier of energy that previously supplied the unit, if known, and the following
6 statement: "You have the right to obtain a 12-month history of energy consumption and
7 the cost of that consumption from the energy supplier."

8 **2. Provision of statement.** A landlord or other person who on behalf of a landlord
9 enters into a lease or tenancy at will agreement shall provide the residential energy
10 efficiency disclosure statement required under subsection 1 in accordance with this
11 subsection. The landlord or other person who on behalf of a landlord enters into a lease
12 or tenancy at will agreement shall provide the statement to any person who requests the
13 statement in person ~~and shall post the statement in a prominent location in a property that~~
14 ~~is being offered for rent or lease.~~ Before a tenant or lessee enters into a contract or pays a
15 deposit to rent or lease a property, the landlord or other person who on behalf of a
16 landlord enters into a lease or tenancy at will agreement shall provide the statement to the
17 tenant or lessee, obtain the tenant's or lessee's signature on the statement and sign the
18 statement. The landlord or other person who on behalf of a landlord enters into a lease or
19 tenancy at will agreement shall retain the signed statement for a minimum of 7 3 years.'

20 **SUMMARY**

21 This amendment replaces the bill and does the following:

22 1. It provides that there must be a reasonable basis for the fair housing complaint for
23 it to be a defense to an eviction and provides that the presumption of retaliation does not
24 apply if the fair housing complaint was filed after the tenant was served with an eviction
25 notice;

26 2. It defines the term "reasonable accommodation" and provides that there must be a
27 causal link between the reasonable accommodation and the conduct that is the subject of
28 the eviction action;

29 3. It provides that if an action for forcible entry and detainer is brought for failure to
30 pay rent or for causing substantial damages to the premises, there is no presumption of
31 retaliation unless the tenant has asserted that tenant's rights under the Maine Revised
32 Statutes, Title 14, section 6026, which allows the tenant to offset rent with expenditures
33 made by the tenant for repairs or heating costs if included in the rent;

34 4. It provides that the tenant must attach an affidavit to a Notice of Appeal stating
35 that the tenant has complied with the law in order to stay the issuance of a writ of
36 possession pending an appeal;

37 5. It provides that a lease or tenancy at will agreement may permit a landlord to
38 dispose of property abandoned by the tenant without liability as long as the landlord
39 complies with the applicable notice requirements;

40 6. It reduces the time a tenant has to respond to a notice to dispose of the tenant's
41 property that is being stored by the landlord from 14 days to 7 days;

- 1 7. It reduces the time a landlord must continue to store the tenant's property if that
2 tenant responds to the notice to dispose within the required time frame from 24 days to 14
3 days;
- 4 8. It provides that a tenant may waive the rights provided in law addressing
5 unclaimed property. If the tenant's waiver is oral the landlord must confirm this waiver in
6 writing;
- 7 9. It provides that the notice of disposal may be sent after entry of judgment for the
8 landlord but prior to the service of the writ of possession or the tenant's vacating the
9 premises. However, if the tenant is still in possession of the rental unit, the tenant would
10 still have at least 7 days after the notice is sent or 48 hours after the writ of possession is
11 served, whichever is later, to claim the property;
- 12 10. It repeals the law that requires a landlord to provide financial assistance to
13 tenants to control bed bugs;
- 14 11. It requires landlords to disclose the cost of the tenant's compliance with the
15 requested inspection or bed bug control measures and allows a landlord to provide
16 financial assistance in preparing the unit for bed bug treatment and provides that the
17 landlord is not liable to provide the tenant with alternate lodging or to replace the tenant's
18 personal property;
- 19 12. It provides that the presumption of retaliation only applies if the tenant
20 complained about the bed bugs prior to being served with the eviction notice and the
21 presumption of retaliation does not apply if the action for forcible entry and detainer was
22 brought for failure to pay rent or causing substantial damages to the premises;
- 23 13. It provides that a prospective tenant who would be paying for a utility has the
24 right to obtain from the regulated utility or the vendor the amount of consumption for the
25 prior 12 months;
- 26 14. It requires the landlord to provide an energy efficiency disclosure statement to
27 the tenant or lessee who is paying for an energy supply for the unit or upon the request of
28 a tenant or lessee;
- 29 15. It allows a landlord to either place a disclosure of the tenant's right to obtain the
30 energy use history of the rental unit in the application or give the tenant the energy
31 efficiency disclosure statement; and
- 32 16. It removes the requirement that the landlord post the disclosure statement in a
33 prominent location in the property that is being offered for rent or lease and reduces the
34 time a landlord must retain the statement signed by the tenant from a minimum of 7 years
35 to 3 years.