

# Hawaii Residential Landlord-Tenant Code

## Part I. General Provisions and Definitions

### **[§521-1] Short title.**

This chapter shall be known and may be cited as the Residential Landlord-Tenant Code. [L 1972, c 132, pt of §1]

### **[§521-2] Purposes; rules of construction.**

- (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.
- (b) The underlying purposes and policies of this chapter are:
  - (1) To simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants of dwelling units;
  - (2) To encourage landlords and tenants to maintain and improve the quality of housing in this State; and
  - (3) To revise the law of residential landlord and tenant by changing the relationship from one based on the law of conveyance to a relationship that is primarily contractual in nature. [L 1972, c 132, pt of §1]

### **[§521-3] Supplementary general principles of law, other laws, applicable.**

- (a) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law relative to capacity to contract, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.
- (b) Every legal right, remedy, and obligation arising out of a rental agreement not provided for in this chapter shall be regulated and determined under chapter 666, and in the case of conflict between any provision of this chapter and a provision of chapter 666, this chapter shall control.
- (c) Nothing in this chapter shall be applied to interfere with any right, obligation, duty, requirement, or remedy of a landlord or tenant which is established as a condition or requirement of any program receiving subsidy from the government of the United States. To the extent that any provision of this chapter is inconsistent with such a federal condition or requirement then as to such subsidized project the federal condition or requirement shall control. [L 1972, c 132, pt of §1]

An association of owners under chapter 514A or 514B shall have standing to initiate and prosecute a summary proceeding for possession against a tenant residing in the condominium project who repeatedly violates the association's governing documents or the rights of other occupants to quiet enjoyment and whose landlord refuses to act;

provided that in such cases, the landlord shall be named as an additional party defendant.

(d)

### **Case Notes**

Cited in reference to common law doctrine of retaliatory eviction. 59 H. 104, 577 P.2d 326.  
Cited with respect to conflict between §666-1 and chapter 521 concerning landlord's remedies against tenant for failure of tenant to maintain premises. 63 H. 110, 621 P.2d 971.

#### **[§521-4] Construction against implicit repeal.**

This chapter being a general law intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [L 1972, c 132, pt of §1]

#### **[§521-5] Severability.**

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [L 1972, c 132, pt of §1]

#### **[§521-6] Territorial application.**

This chapter applies to rights, remedies, and obligations of the parties to any residential rental agreement wherever made of a dwelling unit within this State. [L 1972, c 132, pt of §1]

#### **§521-7 Exclusions from application of chapter.**

Unless created solely to avoid the application of this chapter, this chapter shall not apply to:

- (1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services;
- (2) Residence in a structure directly controlled and managed by the University of Hawaii for housing students or faculty of the University of Hawaii or residence in a structure erected on land leased from the University of Hawaii by a nonprofit corporation for the exclusive purpose of housing students or faculty of the University of Hawaii;
- (3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser;
- (4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization;
- (5) Transient occupancy on a day-to-day basis in a hotel or motel;
- (6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon such employment or by a pensioner of the owner or landlord or occupancy for a period of up to four years subsequent thereto, pursuant to a plan for the transfer of the dwelling unit or the property of which it is a part to the occupant;
- (7) A lease of improved residential land for a term of fifteen years or more, measured from the

- date of the commencement of the lease;
- (8) Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner's rights;
  - (9) Occupancy in a homeless facility, or any other program for the homeless authorized under part VII of chapter 356D;
  - (10) Residence or occupancy in a public housing project or complex directly controlled, owned, or managed by the Hawaii public housing authority pursuant to the federal low rent public housing program; or
  - (11) Residence or occupancy in a transitional facility for abused family or household members."
- [L 1972, c 132, pt of §1; am L 1986, c 112, §1; am L 1988, c 307, §1; am L 1991, c 18, §1 and c 212, §8; am L 1994, c 248, §1; am L 1995, c 43, §1; am L 1997, c 350, §14; am L 1998, c 11, §27]

#### **§521-8 Definitions.**

As used in this chapter, unless the context clearly requires otherwise:

**"Action"** with reference to a judicial proceeding includes recoupment, counterclaim, setoff, and any other proceedings in which rights are determined, including an action for possession.

**"Apartment building"** means a structure containing one or more dwelling units, except:

- (1) A single-family residence, or
- (2) A structure in which all tenants are roomers or boarders.

**"Dwelling unit"** means a structure, or part of a structure, which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others.

**"Landlord"** means the owner, lessor, sublessor, assigns or successors in interest of the dwelling unit or the building of which it is a part and in addition means any agent of the landlord.

**"Normal wear and tear"** means deterioration or depreciation in value by ordinary and reasonable use but does not include items that are missing from the dwelling unit.

**"Owner"** means one or more persons, jointly or severally, in whom is vested:

- (1) All or any part of the legal title to property; or
- (2) All or any part of the beneficial ownership and a right to present use and enjoyment of the property; and includes a mortgagee in possession.

**"Person"** includes an individual, corporation, government or governmental agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

**"Premises"** means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility whose use is promised to the tenant.

**"Rental agreement"** means all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit and premises.

**"Roomer"** or **"boarder"** means a tenant occupying a dwelling unit:

- (1) Which lacks at least one major bathroom or kitchen facility, such as a toilet, refrigerator, or

stove,

- (2) In a building where one or more such major facilities are supplied to be used in common by the occupants of the tenant's dwelling unit and by the occupants of one or more other dwelling units, and
- (3) In a building in which the landlord resides.

**"Single family residence"** means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has direct access to a street or thoroughfare and does not share hot water equipment or any other essential facility or service with any other dwelling unit.

**"Tenant"** means any person who occupies a dwelling unit for dwelling purposes under a rental agreement. [L 1972, c 132, pt of §1; am L 1975, c 10, §1; am L 1988, c 307, §2; am L 1991, c 212, §9]

**[§521-9] Notice, notification, knowledge, etc.**

- (a) A person has notice of a fact when:
  - (1) The person has actual knowledge of it; or
  - (2) The person has received a notice or notification of it; or
  - (3) From all the facts and circumstances known to the person at the time in question the person has reason to know of it.
- (b) A person knows or has knowledge of a fact when the person has actual knowledge of it. The terms **"discover"** or **"learn"** or terms of similar import refer to knowledge rather than reason to know. The time and circumstances under which a notice or notification ceases to be effective are not determined by this chapter.
- (c) A person notifies or gives a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person receives a notice or notification when:
  - (1) It comes to the person's attention; or
  - (2) It is delivered at the place of business through which the rental agreement was made or at any place held out as the place for receipt of such communications.
- (d) Notice, knowledge, or a notice or notification received by a person other than an individual is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction or from the time it should have been brought to the individual's attention, whichever time is earlier. [L 1972, c 132, pt of §1; gen ch 1993]

**[§521-10] Duties; obligation of good faith.**

Every duty imposed by this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [L 1972, c 132, pt of §1]

**[§521-11] Time; reasonable time.**

- (a) Whenever this chapter requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.
- (b) What is a reasonable time for taking any action depends on the nature, purpose, and circumstances of the action. [L 1972, c 132, pt of §1]

## **Part II. Rent**

### **§521-21 Rent.**

- (a) The landlord and tenant may agree to any consideration, not otherwise prohibited by law, as rent. In the absence of such agreement, and subject to section 521-71(e) in the case of holdover tenants, the tenant shall pay to the landlord the fair rental value for the dwelling unit.
- (b) Rents shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for one month or less, and for longer terms in equal monthly installments payable at the beginning of each month. When a rental agreement with a public assistance recipient requires that the rent be paid on or before the third day after the day on which the public assistance check is usually received, the tenant shall have the option of establishing a new due date by making a one-time payment to cover the period between the original due date and the newly established date. The new date shall not exceed by more than three days, excluding Saturdays, Sundays, and holidays, the date on which checks are mailed. The one-time payment shall be established by dividing the monthly rental by thirty and multiplying the result by the number of days between the original and the new due dates.
- (c) Except as otherwise provided in subsection (b), rent shall be uniformly apportionable from day to day.
- (d) When the tenancy is from month to month, the amount of rent for such tenancy shall not be increased by the landlord without written notice given forty-five consecutive days prior to the effective date of the increase.
- (e) When the tenancy is less than month to month, the amount of rent for such tenancy shall not be increased by the landlord without written notice given fifteen consecutive days prior to the effective date of the increase. [L 1972, c 132, pt of §1; am L 1974, c 180, §1; am L 1978, c 124, §1; am L 1989, c 383, §2]

#### **Revision Note**

Section "521-71(e)" substituted for "571-71(c)".

### **[§521-22] Term of rental agreement.**

The landlord and tenant may agree in writing to any period as the term of the rental agreement. In the absence of such agreement, the tenancy shall be month to month or, in the case of boarders, week to week. [L 1972, c 132, pt of §1]

# Part III. Limitations on Rental Agreements and Practices

## **[§521-31] Waiver; agreement to forego rights; settlement of claims.**

- (a) Except as otherwise provided in this chapter, a tenant or landlord may not waive or agree to forego rights or remedies under this chapter.
- (b) A claim by a tenant against a landlord for violation of this chapter or a claim by a landlord against a tenant for default or breach of duty imposed by this chapter, if disputed in good faith, may be settled by agreement.
- (c) A claim, whether or not disputed, against a tenant or landlord may be settled for less value than the amount claimed.
- (d) A settlement in which the tenant or landlord waives or agrees to forego rights or benefits under this chapter is invalid if the court, as a matter of law, finds the settlement to have been unconscionable at the time it was made. The competence of the tenant or landlord, any deception or coercion practiced against the tenant or landlord, the nature and extent of the legal advice received by the tenant or landlord, and the nature and value of the consideration are relevant to the issue of unconscionability. [L 1972, c 132, pt of §1; gen ch 1985]

## **[§521-32] Separation of rents and obligations to property forbidden.**

Any agreement, conveyance, or trust instrument which authorizes a person other than the beneficial owner to act as the landlord of a dwelling unit shall operate, regardless of its terms, to authorize and require such person to use rents to conform with this chapter and any other law, code, ordinance, or regulation concerning the maintenance and operation of the premises. [L 1972, c 132, pt of §1]

## **[§521-33] Landlord's waiver of liability prohibited.**

A provision in a rental agreement exempting or limiting the landlord, or requiring the tenant to indemnify the landlord, from liability for damages to persons or property caused by or resulting from the acts or omissions of the landlord, the landlord's agents, servants, or employees, in or about the dwelling unit covered thereby or in or about the premises of which it is a part is void. [L 1972, c 132, pt of §1; gen ch 1985]

## **[§521-34] Authorization to confess judgment prohibited.**

A tenant may not authorize any person to confess judgment on a claim arising out of a rental agreement of any dwelling unit. An authorization in violation of this section is void. [L 1972, c 132, pt of §1]

## **§521-35 Attorney's fees.**

- (a) A rental agreement may provide for the payment by the tenant of the costs of a suit, for unpaid rent, and reasonable attorney's fees not in excess of twenty-five per cent of the unpaid rent after default and referral to an attorney not a salaried employee of the landlord or the landlord's assignee.
- (b) A rental agreement may further provide that reasonable attorney's fees and costs may be awarded to the prevailing party in all other matters arising under this chapter.

- (c) A provision in violation of this section is unenforceable. [L 1972, c 132, pt of §1; gen ch 1985; am L 1986, c 103, §1]

**[§521-36] Effect of termination.**

Except as otherwise provided in this chapter, whenever a landlord or tenant exercises a right to terminate a rental agreement, the obligations of each party to the rental agreement shall cease upon the final discharge of all obligations imposed by the rental agreement and by this chapter. [L 1972, c 132, pt of §1]

**[§521-37] Subleases and assignments.**

- (a) Unless otherwise agreed to in a written rental agreement and except as otherwise provided in this section, the tenant may sublet the tenant's dwelling unit or assign the rental agreement to another without the landlord's consent.
- (b) Subsection (a) does not apply to a tenant of a dwelling unit administered, owned, or subsidized by the United States, the State, a county, or any agency thereof.
- (c) A written rental agreement may provide that the tenant's right to sublet the tenant's dwelling unit or assign the rental agreement is subject to the consent of the landlord. [L 1972, c 132, pt of §1; gen ch 1985]

**§521-38 Tenants subject to rental agreement; notice of conversions.**

When a period of tenancy is pursuant to any rental agreement and where a landlord contemplates conversion to condominium property regime under chapter 514A or 514B, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the termination of the rental agreement.

## **Part IV. Landlord Obligations**

**[§521-41] Landlord to supply possession of dwelling unit.**

The landlord shall, at the beginning of the agreed term, deliver possession of the dwelling unit to the tenant in the agreed condition unless otherwise agreed prior to delivery of possession. The landlord may bring an action for possession against any person wrongfully in possession including a holdover tenant. [L 1972, c 132, pt of §1]

**§521-42 Landlord to supply and maintain fit premises.**

- (a) The landlord shall at all times during the tenancy:
  - (1) Comply with all applicable building and housing laws materially affecting health and safety;
  - (2) Keep common areas of a multi-dwelling unit premises in a clean and safe condition;
  - (3) Make all repairs and arrangements necessary to put and keep the premises in a habitable condition;
  - (4) Maintain all electrical, plumbing, and other facilities and appliances supplied by the landlord in good working order and condition, subject to reasonable wear and tear;

- (5) Except in the case of a single family residence, provide and maintain appropriate receptacles and conveniences for the removal of normal amounts of rubbish and garbage, and arrange for the frequent removal of such waste materials; and
- (6) Except in the case of a single family residence, or where the building is not required by law to be equipped for the purpose, provide for the supplying of running water as reasonably required by the tenant.

Prior to the initial date of initial occupancy, the landlord shall inventory the premises and make a written record detailing the condition of the premises and any furnishings or appliances provided. Duplicate copies of this inventory shall be signed by the landlord and by the tenant and a copy given to each tenant. In an action arising under this section, the executed copy of the inventory shall be presumed to be correct. If the landlord fails to make such an inventory and written record, the condition of the premises and any furnishings or appliances provided, upon the termination of the tenancy shall be rebuttably presumed to be the same as when the tenant first Occupied the premises.

- (b) The landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, and minor remodeling only if:
  - (1) The agreement of the landlord and tenant is entered into in good faith and is not for the purpose of evading the obligations of the landlord;
  - (2) The work to be performed by the tenant is not necessary to cure noncompliance by the landlord with section 521-42(a)(1); and
  - (3) The agreement of the landlord and tenant does not diminish the obligations of the landlord to other tenants. [L 1972, c 132, pt of §1; am L 1976, c 90, §1; am L 1981, c 235, §1; gen ch 1985; am L 1989, c 143, §1]

#### **§521-43 Rental agreement, disclosure.**

- (a) A landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:
  - (1) Each person authorized to manage the premises; and
  - (2) Each person who is an owner of the premises or who is authorized to act for or on behalf of the owner for the purpose of service of process and receiving and receipting for rents, notices, and demands.

The information required to be furnished shall be kept current and shall be enforceable against any successor landlord, owner, or manager.

- (b) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for:
  - (1) Service of process and receiving and receipting for rents, notices, and demands; and
  - (2) Performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the purpose all rent collected from the premises.



- (c) Any owner or landlord not dealing directly with the tenant shall be responsible for compliance with this section by an owner or landlord dealing directly with the tenant and shall be stopped from any objection to a failure to serve process upon an owner or landlord in any proceeding arising under this chapter when such failure is due to failure to comply with this section. The owner or landlord who deals directly with the tenant and fails to comply with this section shall be deemed an agent of every other landlord under the rental agreement for performing the obligations of the landlord under this chapter and under the rental agreement.
- (d) In the case of a written rental agreement, the landlord shall furnish a copy of the lease or rental agreement to the tenant.
- (e) The landlord shall furnish to the tenant a written receipt for rents paid at the time of payment. Canceled checks shall also constitute and fulfill the requirement of a written receipt. If rent is paid by check, the landlord shall furnish a receipt therefor, provided a receipt is requested by the tenant.
- (f) Any owner or landlord who resides without the State or on another island from where the rental unit is located shall designate on the written rental agreement an agent residing on the same island where the unit is located to act in the owner's or landlord's behalf. In the case of an oral rental agreement, the information shall be supplied to the tenant, on demand, in a written statement.
- (g) Subsections (a) and (b) to the contrary notwithstanding, the information required to be disclosed to a tenant, instead of being disclosed in the manner described in subsections (a) and (b), may be disclosed as follows:
  - (1) In each multi-unit single-owner dwelling structure containing an elevator, a printed or typewritten notice containing the information required by subsections (a) and (b) shall be placed and continuously maintained in every elevator and in one other conspicuous place;
  - (2) In each multi-unit single-owner dwelling structure not containing an elevator, a printed or typewritten notice containing the information required by subsections (a) and (b) shall be placed and continuously maintained in at least two conspicuous places;
  - (3) In each multi-unit dwelling structure, a printed or typewritten notice containing the information required by subsections (a) and (b) shall be posted within the unit in a conspicuous place.
- (h) Landlords shall provide their general excise tax number to all tenants for the purpose of filing for a low-income tax credit. [L 1972, c 132, pt of §1; am L 1974, c 180, §2; am L 1975, c 33, §1 and c 104, §1; am L 1976, c 90, §2; gen ch 1985; am L 1988, c 307, §3]

#### **§521-44 Security deposits.**

- (a) As used in this section "security deposit" means money deposited by or for the tenant with the landlord to be held by the landlord to:
  - (1) Remedy tenant defaults for accidental or intentional damages resulting from failure to comply with section 521-51, for failure to pay rent due, or for failure to

return all keys furnished by the landlord at the termination of the rental agreement;

- (2) Clean the dwelling unit or have it cleaned at the termination of the rental agreement so as to place the condition of the dwelling unit in as fit a condition as that which the tenant entered into possession of the dwelling unit; and
- (3) Compensate for damages caused by a tenant who wrongfully quits the dwelling unit.

(b) The landlord may require as a condition of a rental agreement a security deposit to be paid by or for the tenant for the items in subsection (a) and no others, in an amount not in excess of a sum equal to one month's rent. The landlord may not require or receive from or on behalf of a tenant at the beginning of a rental agreement any money other than the money for the first month's rent and a security deposit as provided in this section. The security deposit shall not be construed as payment of the last month's rent by the tenant, unless mutually agreed upon, in writing, by the landlord and tenant if the tenant gives forty-five days' notice of vacating the premises; in entering such agreement, the landlord shall not be deemed to have waived the right to pursue legal remedies against the tenant for any damages the tenant causes. Any such security deposit shall be held by the landlord for the tenant and the claim of the tenant to the security deposit shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy, even if the security deposits are commingled.

(c) At the termination of a rental agreement in which the landlord required and received a security deposit if the landlord proposes to retain any amount of the security deposit for any of the purposes specified in subsection (a), the landlord shall so notify the tenant, in writing, unless the tenant had wrongfully quit the dwelling unit, together with the particulars of and grounds for the retention, including written evidence of the costs of remedying tenant defaults, such as estimates or invoices for material and services or of the costs of cleaning, such as receipts for supplies and equipment or charges for cleaning services. The security deposit, or the portion of the security deposit remaining after the landlord has claimed and retained amounts authorized under this section, if any, shall be returned to the tenant not later than fourteen days after the termination of the rental agreement. If the landlord does not furnish the tenant with the written notice and other information required by this subsection, within fourteen days after the termination of the rental agreement, the landlord shall not be entitled to retain the security deposit or any part of it, and the landlord shall return the entire amount of the security deposit to the tenant. A return of the security deposit or the furnishing of the written notice and other required information in compliance with the requirements of this subsection shall be presumptively proven if mailed to the tenant, at an address supplied to the landlord by the tenant, with acceptable proof of mailing and postmarked before midnight of the fourteenth day after the date of the termination of the rental agreement or if there is an acknowledgment by the tenant of receipt within the fourteen-day limit. All actions for the recovery of a landlord's complete or partial retention of the security deposit shall be instituted not later than one year after termination of the rental agreement.

(d) For the purposes of this section if a tenant is absent from the dwelling unit for a

continuous period of twenty days or more without written notice to the landlord the tenant shall be deemed to have wrongfully quit the dwelling unit; provided that the tenant shall not be considered to be absent from the dwelling unit without notice to the landlord during any period for which the landlord has received payment of rent. In addition to any other right or remedy the landlord has with respect to such a tenant the landlord may retain the entire amount of any security deposit the landlord has received from or on behalf of such tenant.

- (e) The landlord shall not require the delivery of any postdated check or other negotiable instrument to be used for payment of rent.
- (f) If the landlord who required and received a security deposit transfers the landlord's interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver, or otherwise, the landlord's successor in interest is bound by this section. The original landlord shall provide an accounting of the security deposits received for each dwelling unit to the landlord's successor at or before the time of the transfer of the landlord's interest; within twenty days thereafter the landlord's successor shall give written notice to each tenant of the amount of the security deposit credited to the tenant. In the event the landlord's successor fails to satisfy the requirements of this subsection, it shall be presumed that the tenant has paid a security deposit equal to no less than one month's rent at the rate charged when the tenant originally rented the dwelling unit and the landlord's successor shall be bound by this amount in all further matters relating to the security deposit.
- (g) If the landlord and the tenant disagree about the right of the landlord to claim and retain the security deposit or any portion of it, either the landlord or the tenant may commence an action in the small claims division of the district court, as provided in chapter 633 and the rules of court thereunder, to adjudicate the matter.
- (h) In any action in the small claims division of the district court pursuant to subsection (g) where the court determines that:
  - (1) The landlord wrongfully and wilfully retained a security deposit or part of a security deposit, the court may award the tenant damages in an amount equal to three times the amount of the security deposit, or part thereof, wrongfully and wilfully retained and the cost of suit.
  - (2) The landlord wrongfully retained a security deposit or part of a security deposit, the court shall award the tenant damages in an amount equal to the amount of the security deposit, or part thereof, wrongfully retained and the cost of suit.
  - (3) The landlord was entitled to retain the security deposit or a part of it, the court shall award the landlord damages in an amount equal to the amount of the security deposit, or part thereof, in dispute and the cost of suit.
  - (4) In any such action, neither the landlord nor the tenant may be represented by an attorney, including salaried employees of the landlord or tenant. [L 1972, c 132, pt of §1; am L 1974, c 180, §3; am L 1975, c 101, §1; gen ch 1985; am L 1986, c 12, §1; am L 1987, c 170, §1 and c 282, §1; am L 1989, c 169, §1]

#### **Case Notes**

Cited: 60 H. 52, 587 P.2d 807.

### **Hawaii Legal Reporter Citations**

If landlord fails to give the 14-day notice, tenant is entitled to the security deposit, but landlord is not precluded, upon proof, from being awarded damages. 77-1 HLR 76-147. Filing by tenants of claim for return of deposit is not a sufficient reason for landlord to fail to give the required notice of retention of deposit. 77-1 HLR 76-337.

When tenant remained on premises for three extra days, landlord's notification period was also extended. 77-1 HLR 76-343.

A sublessor is required to notify a subtenant of retention of security deposit. 77-1 HLR 77-295. Landlord's notice of retention of deposit though given four days after the 14-day requirement was in substantial compliance with the statute since landlord acted in good faith. 77-1 HLR 77-421.

"Wrongful" retention and "wilful" retention construed. 77-2 HLR 77-553.

### **§521-45 Limitation of landlord and management liability.**

- (a) Unless otherwise agreed, a landlord who conveys premises which include a dwelling unit subject to a rental agreement in a good faith sale to a person not connected with the landlord discloses, in writing, in any form of contract for the sale of such premises is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the conveyance.
- (b) The new owner who purchases the premises referred to in subsection (a) is liable under the rental agreement and under this chapter.
- (c) Unless otherwise agreed, a person who is a manager of premises which include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the termination of the person's management. [L 1972, c 132, pt of §1; am L 1976, c 90, §3; gen ch 1985]

## **Part V. Tenant Obligations**

### **§521-51 Tenant to maintain dwelling unit.**

Each tenant shall at all times during the tenancy:

- (1) Comply with all applicable building and housing laws materially affecting health and safety;
- (2) Keep that part of the premises which the tenant occupies and uses as clean and safe as the conditions of the premises permit;
- (3) Dispose from the tenant's dwelling unit all rubbish, garbage, and other organic or flammable waste in a clean and safe manner;
- (4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (5) Properly use and operate all electrical and plumbing fixtures and appliances in the dwelling unit or used by the tenant;

- (6) Not permit any person on the premises with the tenant's permission to wilfully destroy, deface, damage, impair, or remove any part of the premises which include the dwelling unit or the facilities, equipment, or appurtenances thereto, nor oneself do any such thing;
- (7) Keep the dwelling unit and all facilities, appliances, furniture, and furnishings supplied therein by the landlord in fit condition, reasonable wear and tear excepted; and
- (8) Comply with all obligations, restrictions, rules, and the like which are in accordance with section 521-52 and which the landlord can demonstrate are reasonably necessary for the preservation of the property and protection of the persons of the landlord, other tenants, or any other person. [L 1972, c 132, pt of §1; gen ch 1985; am L 1989, c 143, §2]

### **Case Notes**

Where no evidence that tenant's failure to replace damaged tiles constituted a violation of applicable building and housing laws materially affecting health and safety under paragraph (1), landlord was not authorized under §521-69(a) to terminate tenant's lease. 87 H. 353 (App.), 956 P.2d 1285.

### **§521-52 Tenant to use properly.**

- (a) The tenant shall comply with all obligations or restrictions, whether denominated by the landlord as rules, or otherwise, concerning the tenant's use, occupancy, and maintenance of the tenant's dwelling unit, appurtenances thereto, and the premises of which the dwelling unit is a part, if:
  - (1) Such obligations or restrictions are brought to the attention of the tenant at the time of the tenant's entry into the rental agreement; or
  - (2) Such obligations or restrictions, if not so known by the tenant at the time of the tenant's entry into the rental agreement, are brought to the attention of the tenant and, if they work a substantial modification of the tenant's bargain under the rental agreement, are consented to in writing by the tenant.
- (b) No such obligation or restriction shall be enforceable against the tenant unless:
  - (1) It is for the purpose of promoting the convenience, safety, or welfare of the tenants of the property, or for the preservation of the landlord's property from abusive use, or for the fair distribution of services and facilities held out for the tenants generally;
  - (2) It is reasonably related to the purpose for which it is established;
  - (3) It applies to all tenants of the property in a fair manner; and
  - (4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply.
- (c) In a rental agreement for a single family residence, a landlord shall not prohibit a tenant from erecting, maintaining, or displaying an otherwise legal sign or outdoor advertising device that urges voters to vote for or against any person or issue; provided that reasonable restrictions are permissible for purposes of complying with applicable building and housing laws affecting health and safety.
- (d) If the dwelling unit is an apartment or unit in a condominium property regime the tenant shall comply with the bylaws of the association of owners under chapter 514A or 514B and if the dwelling unit is an apartment in a cooperative housing corporation the tenant shall comply with the bylaws of the corporation. [L 1972, c 132, pt of §1; gen ch 1985; am L 1988, c 65 §2]

**[§521-53] Access.**

- (a) The tenant shall not unreasonably withhold the tenant's 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 services as agreed; or exhibit the dwelling unit to prospective purchasers, mortgagees, or tenants.
- (b) The landlord shall not abuse this right of access nor use it to harass the tenant. Except in case of emergency or where impracticable to do so, the landlord shall give the tenant at least two days notice of the landlord's intent to enter and shall enter only during reasonable hours.
- (c) The landlord shall have no other right of entry, except by court order, unless the tenant appears to have abandoned the premises, or as permitted by section 521-70(b). [L 1972, c 132, pt of §1; gen ch 1985]

**[§521-54] Tenant to use and occupy.**

The landlord may require, in the rental agreement, that the tenant must notify the landlord of any anticipated extended absence from the dwelling unit no later than the first day of such absence. [L 1972, c 132, pt of §1]

**[§521-55] Tenant's responsibility to inform landlord.**

Any defective condition of the premises which comes to the tenant's attention, which the tenant has reason to believe is unknown to the landlord, and which the tenant has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported by the tenant to the landlord as soon as practicable. [L 1972, c 132, pt of §1; gen ch 1985]

**§521-56 Disposition of tenant's abandoned possessions.**

- (a) When the tenant, within the meaning of section 521-70(d) or section 521-44(d), has wrongfully quit the premises, or when the tenant has quit the premises pursuant to a notice to quit or upon the natural expiration of the term, and has abandoned personalty which the landlord, in good faith, determines to be of value, in or around the premises, the landlord may sell such personalty, in a commercially reasonable manner, store such personalty at the tenant's expense, or donate such personalty to a charitable organization. Before selling or donating such personalty, the landlord shall make reasonable efforts to apprise the tenant of the identity and location of, and the landlord's intent to sell or donate such personalty by mailing notice to the tenant's forwarding address, or to an address designated by the tenant for the purpose of notification or if neither of these is available, to the tenant's previous known address. Following such notice, the landlord may sell the personalty after advertising the sale in a daily paper of general circulation within the circuit in which the premises is located for at least three consecutive days, or the landlord may donate the personalty to a charitable organization; provided that such sale or donation shall not take place until fifteen days after notice is mailed, after which the tenant is deemed to have received notice.
- (b) The proceeds of the sale of personalty under subsection (a) shall, after deduction of accrued rent and costs of storage and sale, including the cost of advertising, be held in trust for the tenant for thirty days, after which time the proceeds shall be forfeited to the landlord.
- (c) When the tenant has quit the premises any personalty in or around the premises left unsold after conformance to subsection (a) or otherwise left abandoned by the tenant and determined by the landlord to be of no value may be disposed of at the landlord's discretion without liability to the landlord. [L 1974, c 180, §6; am L 1981, c 154, §1]

# Part VI. Remedies and Penalties

## **§521-61 Tenant's remedies for failure by landlord to supply possession.**

- (a) If the landlord fails to put the tenant into possession of the dwelling unit in the agreed condition at the beginning of the agreed term:
  - (1) The tenant shall not be liable for the rent during any period the tenant is unable to enter into possession;
  - (2) At any time during the period the tenant is so unable to enter into possession the tenant may notify the landlord that the tenant has terminated the rental agreement; and
  - (3) The tenant shall have the right to recover damages in the amount of reasonable expenditures necessary to secure adequate substitute housing, the recovery to be made either by action brought in the district court or by deduction from the rent upon submission to the landlord of receipts totaling at least
    - (A) The amount of abated rent; plus
    - (B) The amount claimed against the rent; or
  - (4) If the inability to enter results from the wrongful holdover of a prior occupant, the tenant may maintain a summary proceeding in the district court for possession.
- (b) In any district court proceeding brought by the tenant under this section the court may award the tenant substitute housing expenditures, reasonable court costs, and attorney's fees. [L 1972, c 132, pt of §1; am L 1976, c 90, §4; gen ch 1985]

## **[§521-62] Tenant's remedy of termination at beginning of term.**

If the landlord fails to conform to the rental agreement, or is in material noncompliance with section 521-42(a), the tenant may, on notice to the landlord, terminate the rental agreement and vacate the dwelling unit at any time during the first week of occupancy. The tenant shall retain such right to terminate beyond the first week of occupancy so long as the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition which would justify termination by the tenant under this section. [L 1972, c 132, pt of §1; gen ch 1985]

## **§521-63 Tenant's remedy of termination at any time; unlawful removal or exclusion.**

- (a) If any condition within the premises deprives the tenant of a substantial part of the benefit and enjoyment of the tenant's bargain under the rental agreement, the tenant may notify the landlord in writing of the situation and, if the landlord does not remedy the situation within one week, terminate the rental agreement. The notice need not be given when the condition renders the dwelling unit uninhabitable or poses an imminent threat to the health or safety of any occupant. The tenant may not terminate for a condition caused by the want of due care by the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.
- (b) If the condition referred to in subsection (a) was caused wilfully or negligently by the landlord, the tenant may recover any damages sustained as a result of the condition.
- (c) If the landlord removes or excludes the tenant from the premises overnight without cause or without court order so authorizing, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to two months rent or free

occupancy for two months, and the cost of suit, including reasonable attorney's fees. If the rental agreement is terminated, the landlord shall comply with section 521-44(c). The court may also order any injunctive or other equitable relief it deems proper. If the court determines that the removal or exclusion by the landlord was with cause or was authorized by court order, the court may award the landlord the cost of suit, including reasonable attorney's fees if the attorney is not a salaried employee of the landlord or the landlord's assignee. [L 1972, c 132, pt of §1; am L 1981, c 235, §2; gen ch 1985]

### **Rules of Court**

Injunctions, see HRCp rule 65.

### **Case Notes**

No discretion to deny damages upon breach. 67 H. 549, 696 P.2d 839.

### **§521-64 Tenant's remedy of repair and deduction for minor defects.**

- (a) The landlord, upon written notification by the department of health or other state or county agencies that there exists a condition on the premises which constitutes a health or safety violation, shall commence repairs of the condition within five business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence the repairs within five business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence. Health or safety violations for the purpose of this section means any condition on the premises which is in noncompliance with section 521-42(a)(1).
- (b) If the landlord fails to perform in the manner specified in subsection (a), the tenant may:
  - (1) Immediately do or have done the necessary repairs in a competent manner, and upon submission to the landlord of receipts amounting to at least the sum deducted, deduct from the tenant's rent not more than \$500 for the tenant's actual expenditures for work done to correct the health or safety violation; or
  - (2) Submit to the landlord, at least five business days before having the work done, written signed estimates from each of two qualified workers and proceed to have done the necessary work by the worker who provides the lower estimate; provided that the landlord may require in writing a reasonable substitute worker or substitute materials, and upon submission to the landlord of receipts amounting to at least the sum deducted, the tenant may deduct \$500 or one month's rent, whichever is greater, for the tenant's actual expenditures for work done to correct the health or safety violation.
- (c) The landlord, upon written notification by the tenant of any defective condition on the premises which is in material noncompliance with section 521-42(a) or with the rental agreement, shall commence repairs of the condition within twelve business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within twelve business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence. In any case involving repairs, except those required due to misuse by the tenant, to electrical, plumbing, or other facilities, including major appliances provided by the landlord pursuant to the rental agreement, necessary to provide sanitary and habitable living conditions, the landlord shall



commence repairs within three business days of receiving oral or written notification, with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within three business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reasons for the delay and set a reasonable tentative date on which repairs will commence.

- (d) If the landlord fails to perform in the manner specified in subsection (c), the tenant may immediately do or have done the necessary work in a competent manner and upon submission to the landlord of receipts amounting to at least the sums deducted, deduct from the tenant's rent not more than \$500 for the tenant's actual expenditures for work done to correct the defective condition.
- (e) At the time the tenant initially notifies the landlord under subsection (c), the tenant shall list every condition that the tenant knows or should know of noncompliance under subsection (c), in addition to the objectionable condition that the tenant then intends to correct or have corrected at the landlord's expense. Failure by a tenant to list such a condition that the tenant knew of or should have known of shall estop the tenant from requiring the landlord to correct it and from having it corrected at the landlord's expense under this section for a period of six months after the initial notification to the landlord. Total correction and repair work costs under this section chargeable to the landlord's expense during each six-month period shall not exceed an amount equal to three months' rent.
- (f) In no event may a tenant repair a dwelling unit at the landlord's expense when the condition complained of was caused by the want of due care by the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.
- (g) Before correcting a condition affecting facilities shared by more than one dwelling unit, the tenant shall notify all other tenants sharing such facilities of the tenant's plans, and shall so arrange the work as to create the least practicable inconvenience to the other tenants. [L 1972, c 132, pt of §1; am L 1974, c 180, §4; am L 1975, c 104, §2; am L 1976, c 90, §5; am L 1981, c 235, §3; am L 1982, c 211, §1; gen ch 1985; am L 1995, c 42, §1]

**[§521-65] Tenant's remedies for fire or casualty damage.**

When the dwelling unit or any part of the premises or appurtenances reasonably necessary to the benefit and enjoyment thereof is rendered partially or wholly unusable by fire or other casualty which occurs without wilful fault on the part of the tenant or a member of the tenant's family, the tenant may:

- (1) Immediately quit the premises and notify the landlord of the tenant's election to quit within one week after quitting, in which case the rental agreement shall terminate as of the date of quitting, but if the tenant fails to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's quitting or impossibility of further occupancy; or
- (2) If continued occupancy is otherwise lawful, vacate any part of the premises rendered unusable by the fire or other casualty, in which case the tenant's liability for rent shall be no more than the fair rental value of that part of the premises which the tenant continues to use and occupy. [L 1972, c 132, pt of §1; gen ch 1985]

**[§521-66] Tenant's right to refund of rent, etc., on termination; return of security deposit.**

When a tenant exercises a right to terminate the rental agreement pursuant to section 521-62, 521-63, or 521-65 the landlord shall return to the tenant, not later than fourteen days after the

termination, the amount of any advance rent paid apportionable to the remaining days of the term and the amount of any security deposit that the landlord is not authorized to retain pursuant to section 521-44. A return of advance rent or of a security deposit complies with the requirements of this section if it is mailed to the tenant, at an address supplied to the landlord by the tenant, by certified mail, return receipt requested, and postmarked before midnight of the fourteenth day after the date of the termination of the rental agreement. [L 1972, c 132, pt of §1]

**[§521-67] Tenant's remedy for failure by landlord to disclose.**

If the landlord fails to comply with any disclosure requirement specified in section 521-43 within ten days after proper demand therefor by the tenant, the landlord shall be liable to the tenant for \$100 plus reasonable attorney's fees. [L 1972, c 132, pt of §1]

**§521-68 Landlord's remedies for failure by tenant to pay rent.**

- (a) A landlord or the landlord's agent may, any time after rent is due, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in the notice, not less than five business days after receipt thereof, the rental agreement will be terminated. If the tenant cannot be served with notice as required, notice may be given the tenant by posting the same in a conspicuous place on the dwelling unit. If the tenant remains in default, the landlord may thereafter bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession.
- (b) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has demanded payment of past due rent and notified the tenant of the landlord's intention to bring such an action. [L 1972, c 132, pt of §1; am L 1978, c 167, §1; gen ch 1985]

**Case Note**

In action for summary possession for tenant's failure to pay rent, tenant may assert breach of implied warranty of habitability as defense. 61 H. 144, 598 P.2d 161.

**§521-69 Landlord's remedies for tenant's waste, failure to maintain, or unlawful use.**

- (a) If the tenant is in material noncompliance with section 521-51, the landlord, upon learning of any such noncompliance and after notifying the tenant in writing of the noncompliance and allowing a specified time not less than ten days after receipt of the notice, for the tenant to remedy the noncompliance:
  - (1) May terminate the rental agreement and bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession if the tenant is in material noncompliance with section 521-51(1); or
  - (2) May remedy the tenant's failure to comply and bill the tenant for the actual and reasonable cost of such remedy if the noncompliance can be remedied by the landlord by cleaning, repairing, replacing a damaged item, or the like, which bill shall be treated by all parties as rent due and payable on the next regular rent collection date or, if the tenancy has terminated, immediately upon receipt by the tenant.

No allowance of time to remedy noncompliance shall be required when noncompliance by the tenant causes or threatens to cause irreparable damage to any person or property. If the tenant cannot be served with notice as required, notice may be given the tenant by posting the same in a conspicuous place on the dwelling unit.

- (b) The landlord may terminate the rental agreement and bring a summary proceeding for

possession of the dwelling unit or any other proper proceeding, action, or suit for possession for any material noncompliance with section 521-51 by a roomer or boarder if the roomer or boarder fails to comply within the time specified in the notice.

- (c) The landlord may bring an action or proceeding for waste or for breach of contract for damage suffered by the tenant's wilful or negligent failure to comply with the tenant's obligations under section 521-51. [L 1972, c 132, pt of §1; am L 1976, c 90, §6; am L 1978, c 167, §2; am L 1983, c 146, §1; gen ch 1985]

#### **Case Notes**

Where no evidence that tenant's failure to replace damaged tiles constituted a violation of applicable building and housing laws materially affecting health and safety under §521-51(1), landlord was not authorized under subsection (a) to terminate tenant's lease. 87 H. 353 (App.), 956 P.2d 1285.

#### **§521-69.5 REPEALED.**

L 1991, c 212, §10.

#### **Cross References**

Similar provision, see §358D-11.

#### **§521-70 Landlord's remedies for absence, misuse, abandonment and failure to honor tenancy before occupancy.**

- (a) If the rental agreement provides for notification of the landlord by the tenant of an anticipated extended absence and the tenant fails to make reasonable efforts to comply with such requirement, the tenant shall indemnify the landlord for any damage resulting from such absence.
- (b) The landlord may, during any extended absence of the tenant, enter the dwelling unit as reasonably necessary for purposes of inspection, maintenance, and safe-keeping or for the purposes permitted by section 521-53(a).
- (c) Unless otherwise provided in the rental agreement, use of the dwelling unit by the tenant for any other purpose than as the tenant's abode, or nonuse of the dwelling unit, constitutes a breach of the tenant's obligations under section 521-52 and entitles the landlord to proceed as provided in section 521-72.
- (d) If the tenant wrongfully quits the dwelling unit and unequivocally indicates by words or deeds the tenant's intention not to resume the tenancy, the tenant shall be liable to the landlord for the lesser of the following amounts for such abandonment:
  - (1) The entire rent due for the remainder of the term; or
  - (2) All rent accrued during the period reasonably necessary to re-rent the dwelling unit at the fair rental, plus the difference between such fair rent and the rent agreed to in the prior rental agreement and a reasonable commission for the renting of the dwelling unit. This paragraph applies if the amount calculated hereunder is less than the amount calculated under paragraph (1) whether or not the landlord re-rents the dwelling unit.
- (e) If the tenant unequivocally indicates by words or deed the tenant's intention not to honor the tenancy before occupancy, the tenant shall be liable to the landlord for the lesser of the following amounts:
  - (1) All monies deposited with the landlord;

- (2) One month's rent at the rate agreed upon in the rental agreement;
- (3) All rent accrued from the agreed date for the commencement of the tenancy until the dwelling unit is re-rented at the fair rental, plus the difference between such fair rent and the rent agreed to in the prior rental agreement, plus reasonable costs, and a reasonable commission for the re-renting of the dwelling unit. This paragraph applies if the amount calculated hereunder is less than the amounts calculated under paragraphs (1) or (2), whether or not the landlord re-rents the dwelling unit. [L 1972, c 132, pt of §1; am L 1974, c 180, §5; gen ch 1985]

### **Hawaii Legal Reporter Citations**

Subtenant vacating dwelling because of fear of physical harm from sublessor has not "wrongfully quit" the dwelling. 77-1 HLR 77-295.

### **§521-71 Termination of tenancy; landlord's remedies for holdover tenants.**

- (a) When the tenancy is month-to-month, the landlord may terminate the rental agreement by notifying the tenant, in writing, at least forty-five days in advance of the anticipated termination. When the landlord provides notification of termination, the tenant may vacate at any time within the last forty-five days of the period between the notification and the termination date, but the tenant shall notify the landlord of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation.
- (b) When the tenancy is month-to-month the tenant may terminate the rental agreement by notifying the landlord, in writing, at least twenty-eight days in advance of the anticipated termination. When the tenant provides notice of termination, the tenant shall be responsible for the payment of rent through the twenty-eighth day.
- (c) Before a landlord terminates a month-to-month tenancy where the landlord contemplates voluntary demolition of the dwelling units, conversion to a condominium property regime under chapter 514A or 514B, or changing the use of the building to transient vacation rentals, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the anticipated demolition or anticipated termination. If notice is revoked or amended and reissued, the notice period shall begin from the date it was reissued or amended. Any notice provided, revoked, or amended and reissued shall be in writing. When the landlord provides notification of termination pursuant to this subsection, the tenant may vacate at any time within the one-hundred-twenty-day period between the notification and the termination date, but the tenant shall notify the landlord of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation.
- (d) When the tenancy is less than month-to-month, the landlord or the tenant may terminate the rental agreement by notifying the other at least ten days before the anticipated termination.
- (e) Whenever the term of the rental agreement expires, whether by passage of time, by mutual agreement, by the giving of notice as provided in subsection (a), (b), (c), or (d) or by the exercise by the landlord of a right to terminate given under this chapter, if the tenant continues in possession after the date of termination without the landlord's consent, the tenant may be liable to the landlord for a sum not to exceed twice the monthly rent under the previous rental agreement, computed and prorated on a daily basis, for each day the tenant remains in possession. The landlord may bring a summary proceeding for recovery of the possession of the dwelling unit at any time during the first sixty days of holdover. Should the landlord fail to commence summary possession proceedings within the first sixty days

of the holdover, in the absence of a rental agreement, a month-to-month tenancy at the monthly rent stipulated in the previous rental agreement shall prevail beginning at the end of the first sixty days of holdover.

- (f) Any notice of termination initiated for the purposes of evading the obligations of the landlord under subsections 521-21(d) or (e) shall be void. [L 1972, c 132, pt of §1; am L 1975, c 104, §3; am L 1978, c 124, §2; am L 1979, c 95, §1; am L 1980, c 189, §4; am L 1982, c 211, §2; am imp L 1985, c 164, §5; gen ch 1985; am L 1987, c 29, §1; am L 1988, c 65, §2 and c 307, §4; am L 1989, c 169, §2; am L 1990, c 57, §2; am L 1991, c 194, §1; am L 1995, c 41, §1; am L 1996, c 221, §1]

### **Cross References**

Effect of acceptance of rent during litigation, see §666-5.

Summary possession proceedings, see §666-6.

### **Case Notes**

Timeliness of notice. 61 H. 144, 598 P.2d 161.

"Voluntary demolition." 61 H. 156, 598 P.2d 168.

Sufficiency of notice under subsection (a) which has been amended and reissued. 63 H. 110, 621 P.2d 971.

### **Hawaii Legal Reporter Citations**

A six-month rental agreement expires by its own terms and no notice is required. 77-1 HLR 77-421.

### **§521-72 Landlord's remedies for improper use.**

- (a) If the tenant breaches any rule authorized under section 521-52, the landlord may notify the tenant in writing of the tenant's breach. The notice shall specify the time, not less than ten days, within which the tenant is required to remedy the breach and shall be in substantially the following form:

"(Name and address of tenant) (date)

You are hereby notified that you have failed to perform according to the following rule:

(specify rule allegedly breached)

Be informed that if you (continue violating) (again violate) this rule after (a date not less than ten days after this notice), the landlord may terminate the rental agreement and sue for possession of your dwelling unit."

No allowance of time to remedy the breach of any rule authorized under section 521-52 shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section 521-51(1) or (6).

- (b) If the breach complained of continues or recurs after the date specified in the notice, the landlord may bring a summary proceeding for possession within thirty days after such continued or recurring breach. [L 1972, c 132, pt of §1; am L 1976, c 90, §7; am L 1983, c 146, §2; gen ch 1985]

### **§521-73 Landlord's and tenant's remedies for abuse of access.**

- (a) The tenant shall be liable to the landlord for any damage proximately caused by the tenant's unreasonable refusal to allow access as provided in section 521-53(a).
- (b) Except for an entry under an emergency such as fire, the landlord shall be liable to the

tenant for any theft, casualty, or other damage proximately caused by an entry into the dwelling unit by the landlord or by another person with the permission or license of the landlord:

- (1) When the tenant is absent and has, after having been notified by the landlord of a proposed entry or entries, refused consent to any such specific entry;
  - (2) Without the tenant's actual consent when the tenant is present and able to consent; or
  - (3) In any other case, when the damage suffered by the tenant is proximately caused by the landlord's negligence.
- (c) In the event of repeated demands by the landlord for unreasonable entry, or any entry by the landlord or by another with the landlord's permission or license which is unreasonable and not consented to by the tenant:
- (1) The tenant may treat such actions as grounds for termination of the rental agreement;
  - (2) Any circuit court judge on behalf of one or more of the tenants may issue an injunction against a landlord to enjoin violation of this subsection;
  - (3) Any circuit court judge hearing a dispute as set out in [paragraph] (2) may also assess a fine not to exceed \$100.
- (d) Every agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section, except consent by a tenant to a particular entry, shall be void. [L 1972, c 132, pt of §1; am L 1975, c 104, §4; gen ch 1985]

### **Rules of Court**

Injunctions, see HRCF rule 65

### **Hawaii Legal Reporter Citations**

Damages. 77-1 HLR 76-337.

### **§521-74 Retaliatory evictions and rent increases prohibited.**

- (a) Notwithstanding that the tenant has no written rental agreement or that it has expired, so long as the tenant continues to tender the usual rent to the landlord or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the tenant, nor shall the landlord otherwise cause the tenant to quit the dwelling unit involuntarily, nor demand an increase in rent from the tenant; nor decrease the services to which the tenant has been entitled, after:
- (1) The tenant has complained in good faith to the department of health, landlord, building department, office of consumer protection, or any other governmental agency concerned with landlord-tenant disputes of conditions in or affecting the tenant's dwelling unit which constitutes a violation of a health law or regulation or of any provision of this chapter; or
  - (2) The department of health or other governmental agency has filed a notice or complaint of a violation of a health law or regulation or any provision of this chapter; or
  - (3) The tenant has in good faith requested repairs under section 521-63 or 521-64.
- (b) Notwithstanding subsection (a), the landlord may recover possession of the dwelling unit if:
- (1) The tenant is committing waste, or a nuisance, or is using the dwelling unit for an

illegal purpose or for other than living or dwelling purposes in violation of the tenant's rental agreement;

- (2) The landlord seeks in good faith to recover possession of the dwelling unit for immediate use as the landlord's own abode or that of the landlord's immediate family;
  - (3) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises;
  - (4) The complaint or request of subsection (a) relates only to a condition or conditions caused by the lack of ordinary care by the tenant or another person in the tenant's household or on the premises with the tenant's consent;
  - (5) The landlord has received from the department of health certification that the dwelling unit and other property and facilities used by or affecting the use and enjoyment of the tenant were on the date of filing of the complaint or request in compliance with health laws and regulations;
  - (6) The landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to paragraph (2) or (3); or
  - (7) The landlord is seeking to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant previous to the complaint or request of subsection (a).
- (c) Any tenant from whom possession has been recovered or who has been otherwise involuntarily dispossessed, in violation of this section, is entitled to recover the damages sustained by the tenant and the cost of suit, including reasonable attorney's fees.
- (d) Notwithstanding subsection (a), the landlord may increase the rent if:
- (1) The landlord has received from the department of health certification that the dwelling unit and other property and facilities used by and affecting the use and enjoyment of the tenant were on the date of filing of the complaint or request of subsection (a) in compliance with health laws and regulations;
  - (2) The landlord has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with the landlord's complying with the complaint or request, not less than four months prior to the demand for an increase in rent; and the increase in rent does not exceed the prorated portion of the net increase in taxes or costs;
  - (3) The landlord has completed a capital improvement of the dwelling unit or the property of which it is a part and the increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefited by the improvement;
  - (4) The complaint or request of subsection (a) relates only to a condition or conditions caused by the want of due care by the tenant or another person of the tenant's household or on the premises with the tenant's consent; or
  - (5) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar dwelling units in the landlord's building or, in the case of a single-family residence or where there is no similar dwelling unit in the building, does not exceed the market rental value of the dwelling unit. [L 1972, c 132, pt of §1; am L 1975, c 104, §5; am L 1981, c 235, §4;

### **Case Notes**

Specified rights and remedies are not exclusive as basis for defense of retaliatory eviction. 59 H. 104, 577 P.2d 326.

#### **§521-74.5 Recovery of possession limited.**

The landlord shall not recover or take possession of a dwelling unit by the wilful interruption or diminution of running water, hot water, or electric, gas, or other essential service to the tenant contrary to the rental agreement or Section 521-42, except in case of abandonment or surrender. A landlord who engages in this act shall be deemed to have engaged in an unfair method of competition or unfair and deceptive acts or practices in the conduct of any trade or commerce within the meaning of section 480-2; provided that in addition to the penalties available under section 480-3.1, there shall also be minimum damages of three times the monthly rent or \$1,000, whichever is greater. [L 1987, c 125, §1; am L 1990, c 34, §33]

#### **[§521-75] Unconscionability.**

- (a) In any court action or proceeding with respect to a rental agreement, if the court as a matter of law finds the agreement or any provision of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable provision, or it may so limit the application of any unconscionable provision as to avoid any unconscionable result.
- (b) If it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.
- (c) For the purposes of this section, an act or practice expressly permitted by this chapter is not in itself unconscionable. [L 1972, c 132, pt of §1]

#### **§521-76 REPEALED.**

L 1976, c 77, §1.

#### **[§521-77] Investigation and resolution of complaints by the office of consumer protection.**

The office of consumer protection may receive, investigate and attempt to resolve any dispute arising under this chapter. [L 1976, c 77, §2]

#### **§521-78 Rent trust fund.**

- (a) At the request of either the tenant or the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court shall order the tenant to deposit any disputed rent as it becomes due into the court as provided under subsection (c), and in the case of a proceeding in which a rent increase is in issue, the amount of the rent prior to the increase; provided that the tenant shall not be required to deposit any rent where the tenant can show to the court's satisfaction that the rent has already been paid to the landlord; provided further that if the parties had executed a signed, written instrument agreeing that the rent could be withheld or deducted, the court shall not require the tenant to deposit rent into the fund. No deposit of rent into the fund ordered under this section shall affect the tenant's rights to assert either that payment of rent was made or that any grounds for nonpayment of rent exist under this chapter.
- (b) If the tenant is unable to comply with the court's order under subsection (a) in paying the required amount of rent into the court, the landlord shall have judgment for possession and



execution shall issue accordingly. The writ of possession shall issue to the sheriff or to a police officer of the circuit where the premises are situated, commanding the sheriff or police officer to remove all persons from the premises, and to put the landlord, or the landlord's agent, into the full possession thereof.

- (c) The court in which the dispute is being heard shall accept and hold in trust any rent deposited under this section and shall make such payments out of money collected as provided herein. The court shall order payment of such money collected or portion thereof to the landlord if the court finds that the rent is due and has not been paid to the landlord and that the tenant did not have any basis to withhold, deduct, or otherwise set off the rent not paid. The court shall order payment of such money collected or portion thereof to the tenant if the court finds that the rent is not due or has been paid, or that the tenant had a basis to withhold, deduct, or otherwise set off the rent not paid.
- (d) The court shall, upon finding that either the landlord or the tenant raised the issue of payment or nonpayment of rent in bad faith, order that person to pay the other party reasonable interest on the rent deposited into the court. [L 1978, c 75, §2; am L 1981, c 235, §5; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]