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Double Damages for Wrongful Withholding of the Security Deposit

The Security Deposit Act as it was originally drafted in 1975 authorized the courts to award double damages for wrongful withholding of the deposit. That provision was removed in 1997 by an amendment to a related bill. Under the current law, the lower courts are only authorized to award court cost and attorney fees, in addition to a refund of the deposit.

This bill as amended will provide the courts with three options for awardable damages to the tenant: a sum equal to the amount found to be wrongfully withheld; two-times the amount wrongfully withheld; or two-times the monthly rent amount. Like court costs and attorney fees, these damages would be awarded at the courts discretion, and double damages would only be applied in the most egregious of circumstances.

Passing this bill will increase the likelihood that cases will settle outside of court and decrease the amount of pointless litigation cluttering the lower courts, thereby reducing costs for both parties. Furthermore, providing real incentives for refund of the security deposit will curb abusive behavior, strengthen the reputation of housing providers, and improve the quality of tenant-landlord relationships.

Frequently Asked Questions

What other sections of the Landlord Tenant Act authorize damages?

Four other sections of the Landlord Tenant Act authorize treble damages for wrongful withholding.

70-24-403 authorizes "an amount up to 3 months' periodic rent" if a landlord knowingly structures a rental agreement to include a provision that is specifically prohibited by Montana law, or waives the rights of the tenant. **70-24-429** allows the landlord to recover treble damages from the tenant for purposeful "holdover". Holdover means the tenant's right to occupy the premises has expired, but the tenant is unlawfully remaining in possession and refusing to vacate. **70-24-411** provides the counter balance to 429, by authorizing treble damages for unlawful eviction of the tenant. **70-24-431** prohibits retaliatory conduct by the landlord, and authorizes damages in provided in 70-24-411.

How often to wrongful withholding cases occur?

Montana Legal Services, a statewide organization that offers legal services to low income tenants across the state has handled 70 wrongful withholding cases in the last 12 months. ASUM Legal Services offers free legal advice, counsel, and representation to students at the University of Montana. In 1995 only 11 percent of the Landlord Tenant cases litigated by ASUM Legal Services pertained to the security deposit. In 2008, 53 percent of those complaints were related to wrongful withholding. That's an increase of nearly 500 percent in a little over 10 years. Those numbers are consistent with case records at ASMSU Legal Services in Bozeman.

Will this bill make it easier for tenants to sue their landlords?

The intent of the bill is not to make it easier for tenants to sue for their deposit, but to prevent wrongful withholding in the first place. By increasing the awardable penalty it will increase the likelihood of settlement prior to court, thereby decreasing the need to litigate these cases.

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What prevents a tenant from pursuing a claim against their landlord?

Several barriers currently exist that prevent a tenant from pursuing an action in court against an offending landlord including knowledge of Montana law, access the legal assistance, and financial resources to file suit. Also the vast majority of private attorneys refuse to litigate landlord tenant disputes because of the relatively small sums of money involved. For many tenants Montana Legal Services is the only option for legal representation, and there is a limited number of cases they can handle in a given year. These barriers will remain in place even if the bill is passed into law.

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