

# Montana Legal Services Association

Provide, protect and enhance access to justice.



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## MEMO

EXHIBIT 3  
DATE 3/17/15  
SB 385

To: House Judiciary Committee  
From: Amy Hall, attorney with MLSA *AH*  
RE: SB 385 – revising landlord-tenant laws concerning definitions, and requirement that tenant be current on rent before filing in court  
Primary sponsor: R. Webb  
Date: March 18, 2015

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Good morning, Mr. Chairman and members of the Committee:

My name is Amy Hall. I am an attorney with Montana Legal Services Association, a nonprofit organization that provides civil legal assistance to Montanans living in poverty. I have provided legal representation to low-income renters throughout Montana for more than nine years.

I am here on behalf of MLSA to express concerns about SB 385, primarily about the proposed new section, Section 5.

### **New Section 5 of SB 385**

Section 5, which is found on p. 5, lines 21-23 of the current bill draft, provides that a tenant may not bring an action under this chapter unless the tenant certifies to the court that the tenant is current on all rent at the time the action is filed.

The effect of this section, if passed, would be to prohibit a tenant from bringing any court claim at all against a landlord if that claim arises under Montana's landlord-tenant laws, unless the tenant is current on rent. Section 5 would prohibit all actions "under this chapter" which refers to Chapter 24 of Title 70 for regular, non-mobile home lot rentals, and to Chapter 33 of Title 70 for rentals of mobile home lots.

#### Administrative Office

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Renters who are not current on their rent often have legal justification for not paying in full. For example, if a landlord is failing to supply essential services to the rental, such as heat, hot water, or electricity, and the tenant procures substitute housing elsewhere for the time period that the rental is without essential services, Montana law excuses the tenant from paying rent. Sec. 70-24-408(1)(c), MCA. This bill, if passed, would prohibit that tenant from filing a court action against the landlord for the failure to provide essential services, because the tenant would not be current on her rent.

In a real-life example, a landlord was negligent in repairing the rental's sewer system after receiving several written notices from the tenant about the problem. The basement of the rental home flooded with raw sewage, causing \$8,000.00 in damage to the tenant's personal property. The tenant did not pay that month's rent to the landlord, because she used the money to pay a deposit on a new rental. The landlord sued the tenant for eviction and for unpaid rent. The real-life result in this case was that this tenant prevailed in court and recovered compensation from the landlord for the damage to her personal property, as a result of the landlord's violation of Sec. 70-24-303, MCA, which establishes a landlord's duty to make repairs. But if this bill passes, then this tenant would have been prohibited from bringing a court claim against the landlord for the damage to her property because the tenant was not current on the rent.

If SB 385 is passed, unscrupulous landlords could take advantage of the fact that a tenant who's behind on rent wouldn't be able to seek redress from the courts. An unscrupulous landlord could intentionally ignore the landlord's lawful responsibilities to maintain the premises, knowing that the tenant couldn't do anything about it in court if the tenant is behind even \$10 in rent.

Just to be clear -- no one is disputing that a tenant is obligated to pay rent. Just as no one is disputing that a landlord is obligated to maintain the rental. If the Legislature is going to require tenants to certify that they have paid the rent in full before they can access the courts, then perhaps the Legislature should also require landlords to certify that they have made repairs and complied with the maintenance obligations of Sections 70-24-303 and 70-33-303, MCA, before they can access the courts.

### **Including "Small Claims Court" in the Definition of "Court"**

In the definitions section of the bill, "small claims court" is added to the definition of "court." It is unclear whether this proposed amendment of the

statutes is intended to allow court actions for possession – which are the same as eviction actions – to be filed in small claims court. If so, this amendment would run afoul of the jurisdictional statute at Section 3-10-302, MCA (copy attached), which provides that justice courts have concurrent jurisdiction with the district courts over actions brought under Title 70, chapters 24, 25, and 33. A small claims court could possibly hear claims demanding the payment of money or recovery of specific personal property, up to \$7,000.00, but would not have jurisdiction over any other types of claims arising under landlord-tenant laws. (See Section 3-10-1004, MCA, copy attached).

### **Issuance of a Writ of Possession**

SB 385 proposes an addition to the statute, at p. 3, lines 20-21, and at p. 5, lines 18-19, to state: “If a landlord’s claim for possession is granted, the court shall issue a writ of possession.”

This addition is unnecessary. Courts already issue writs of possession after granting the landlord possession of the premises. MLSA is not aware of any situation where a court has refused to issue a writ of possession after awarding possession to the landlord. After the judgment of possession is entered, the landlord can request issuance of a writ of possession, which is the court order that orders the county sheriff to forcibly remove the tenant from the premises by a certain date. The landlord must pay the clerk of court the applicable fee for the writ of possession. In some circumstances, the tenant may have already moved out, and the landlord may not need the writ of possession to force the tenant out. Yet if this bill passes, it would be mandatory for the court to issue a writ of possession, and the landlord would be charged a fee for the issuance, whether the landlord actually needed the writ or not.

### **Conclusion**

Currently, Montana’s landlord-tenant act states that its underlying purpose is to “encourage landlords and tenants to maintain and improve the quality of housing.” Section 70-24-102 (2), MCA. Section 5 of the proposed bill would undermine this laudable legislative purpose. This bill would sharply curtail a tenant’s ability to enforce the rental agreement and the landlord’s obligation to keep the premises in a habitable condition. Legislators whose goal is to “maintain and improve the quality of housing,” as stated in existing law, would do well to reject SB 385.

Thank you for your consideration.

# Montana Code Annotated 2014

[Previous Section](#)   [MCA Contents](#)   [Part Contents](#)   [Search](#)   [Help](#)   [Next Section](#)

**3-10-302. Jurisdiction over forcible entry, unlawful detainer, rent deposit, and residential and residential mobile home landlord-tenant disputes.** The justices' courts have concurrent jurisdiction with the district courts within their respective counties in actions of forcible entry, unlawful detainer, and rent deposits and in actions brought under Title 70, chapters 24, 25, and 33.

**History:** En. Sec. 67, C. Civ. Proc. 1895; re-en. Sec. 6287, Rev. C. 1907; re-en. Sec. 8841, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 113; re-en. Sec. 8841, R.C.M. 1935; amd. Sec. 12, Ch. 420, L. 1975; R.C.M. 1947, 93-409; amd. Sec. 1, Ch. 417, L. 1979; amd. Sec. 1, Ch. 253, L. 2013.

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3-10-1004. Jurisdiction -- removal from district court.

<http://leg.mt.gov/bills/mca/3/10/3-10-1004.htm>

# Montana Code Annotated 2014

[Previous Section](#)   [MCA Contents](#)   [Part Contents](#)   [Search](#)   [Help](#)   [Next Section](#)

**3-10-1004. Jurisdiction -- removal from district court.** (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed \$7,000, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed \$7,000. The small claims court shall hear any action so removed from the district court.

**History:** En. 93-347 by Sec. 3, Ch. 572, L. 1977; R.C.M. 1947, 93-347; amd. Sec. 27, Ch. 586, L. 1981; amd. Sec. 1, Ch. 438, L. 1989; amd. Sec. 2, Ch. 307, L. 1991; amd. Sec. 2, Ch. 284, L. 2011.

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