

SENATE BILL NO. 226

INTRODUCED BY DEPRATU, BERGREN, BOOKOUT-REINICKE, BRUEGGEMAN, CARNEY, P. CLARK, COCCHIARELLA, COONEY, GOLIE, JUNEAU, KITZENBERG, LAIBLE, LENHART, MAHLUM, MCCARTHY, MUSGROVE, PATTISON, PEASE, RICE, RIPLEY, D. RYAN, WILSON, WINDY BOY

A BILL FOR AN ACT ENTITLED: "~~AN ACT PROTECTING LANDLORDS AND TENANTS FROM PROVIDING THAT AN ARREST FOR DRUG AND OR GANG-RELATED ACTIVITY BY PROVIDING RULES FOR TERMINATION OF A RENTAL AGREEMENT AND REPOSSESSION OF THE PREMISES FOR VIOLATION OF LAWS RELATING TO DRUGS AND GANGS CONSTITUTES NONCOMPLIANCE WITH A TENANT'S DUTY TO MAINTAIN A DWELLING UNIT AND A LANDLORD'S DUTY TO MAINTAIN PREMISES; REVISING THE TIME PERIOD FOR NOTIFICATION OF INTENDED TERMINATION BASED ON THE NONCOMPLIANCE; REVISING HEARING TIME REQUIREMENTS FOR REPOSSESSION ACTIONS BASED ON THE NONCOMPLIANCE; AND AMENDING SECTIONS 70-24-303, 70-24-321, 70-24-422, AND 70-24-427, MCA.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 70-24-303, MCA, IS AMENDED TO READ:

"70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector. (1) A landlord ~~shall~~:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, including but not limited to BY ANY OF THE FOLLOWING:

(i) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(ii) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(iii) gang-related activities, as prohibited by Title 45, chapter 8, part 4;

~~(b)(c)~~ shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

~~(e)(d)~~ shall keep all common areas of the premises in a clean and safe condition;

~~(d)~~(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

~~(e)~~(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

~~(f)~~(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

~~(g)~~(h) shall install, in accordance with rules adopted by the department of justice, an approved smoke detector in each dwelling unit under the landlord's control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant's rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through ~~(+)~~(g) ~~(1)~~(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections ~~(+)~~(e) ~~(1)~~(f) and ~~(+)~~(f) ~~(1)~~(g) of this section and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required

under subsection ~~(1)(g)~~ (1)(h)."

SECTION 2. SECTION 70-24-321, MCA, IS AMENDED TO READ:

"70-24-321. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner₁ that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises₁ including the living room, bedroom, kitchen, bathroom, and dining room₁ in a reasonable manner₁ considering the purposes for which they were designed and intended. This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, ~~provided~~ if the landlord has consented in writing. The landlord may not unreasonably withhold consent, ~~provided that~~ if the limited business or cottage industry is operated within reasonable rules of the landlord.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(3) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, including but not limited to BY ANY OF THE FOLLOWING:

(a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(c) gang-related activities, as prohibited by Title 45, chapter 8, part 4."

Section 3. Section 70-24-422, MCA, is amended to read:

"70-24-422. Noncompliance of tenant generally -- landlord's right ~~or duty~~ of termination -- damages -- injunction. (1) ~~(a)~~ Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the following:

~~(a)(i)(A)~~ If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

~~(b)(ii)(B)~~ If the noncompliance involves an unauthorized pet, the notice period is 3 days.

~~(c)(iii)(C)~~ If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

~~(iv) If the noncompliance involves a violation of Title 45, chapter 8, part 4, or Title 45, chapter 9, the notice period is 3 days, except as provided in subsection (1)(b):~~

~~(d)(v)(D)~~ If the noncompliance is not listed in ~~subsection (1)(b) or (1)(c)~~ subsections (1)(a)(i) through (1)(a)(iv) SUBSECTION (1)(B) OR (1)(C), the notice period is 14 days.

~~(e)(vi)(E)~~ If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

~~(b) If illegal drugs are seized from the premises by a peace officer, the landlord shall terminate the rental agreement. The landlord shall deliver a written notice to the tenant pursuant to 70-24-108 stating that because of the seizure, the rental agreement will terminate 3 days after receipt of the notice.~~

~~(f)(c)(F)~~ This subsection (1) does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement. This subsection does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation

of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2).

(4) IF THE TENANT CREATES A REASONABLE POTENTIAL THAT THE PREMISES MAY BE DAMAGED OR DESTROYED OR THAT NEIGHBORING TENANTS MAY BE INJURED, AS EVIDENCED BY THE TENANT BEING ARRESTED FOR OR CHARGED WITH AN ACT THAT VIOLATES THE PROVISIONS OF 70-24-321(3), THE LANDLORD MAY TERMINATE THE RENTAL AGREEMENT UPON GIVING 3 DAYS' WRITTEN NOTICE SPECIFYING THE VIOLATION AND NONCOMPLIANCE UNDER THE PROVISIONS OF 70-24-321(3).

~~(4)~~(5) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection ~~(5)~~ (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

~~(5)~~(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

~~(6)~~(7) Subsections (3) through ~~(5)~~ (6) apply to all rental agreements, including those involving a tenant who rents space for a mobile home but does not rent the mobile home.

~~(7)~~(8) The landlord is not bound by this section in the event that:

- (a) the rental agreement does not involve a tenant who rents space for a mobile home but does not rent the mobile home; and
- (b) the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."

Section 4. Section 70-24-427, MCA, is amended to read:

"70-24-427. Landlord's remedies after termination -- action for possession. (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of a violation of Title 45, chapter 8, part 4, or Title 45, chapter 9 NONCOMPLIANCE UNDER 70-24-321(3), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons. If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court, except that if the rental agreement is terminated because of a violation of Title 45, chapter 8, part 4, or Title 45, chapter 9 NONCOMPLIANCE UNDER 70-24-321(3), the hearing must be held within 5 business days after the case is transmitted to the district court.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in

subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing."

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