

SENATE BILL NO. 430  
INTRODUCED BY ELLINGSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977 AND THE LAWS RELATING TO RESIDENTIAL TENANTS' SECURITY DEPOSITS; REVISING THE DEFINITION OF "LANDLORD" AND DEFINING "TERM"; PROVIDING PROCEDURES TO BE FOLLOWED BY A LANDLORD IF A TENANT UNREASONABLY DENIES A LANDLORD ACCESS; ~~PROVIDING PROCEDURES TO BE FOLLOWED BY A LANDLORD IF A TENANT SURRENDERS THE PREMISES;~~ REVISING PROVISIONS RELATING TO PROHIBITED CONDUCT BY A LANDLORD; PROVIDING THAT A LANDLORD MAY NOT WITHHOLD MOBILE HOME POSSESSION TO OBTAIN PAYMENT; CLARIFYING THAT SECURITY DEPOSIT LAWS PERTAIN TO LEASEHOLD AND RENTAL PROPERTIES; PROVIDING THAT WITHHOLDING THE RETURN OF A SECURITY DEPOSIT MAY CREATE A REBUTTABLE PRESUMPTION OF WRONGFUL WITHHOLDING OF THE SECURITY DEPOSIT; AMENDING SECTIONS 70-24-103, 70-24-201, 70-24-302, 70-24-312, 70-24-406, ~~70-24-426~~, 70-24-429, 70-24-430, 70-24-431, 70-24-432, 70-25-101, 70-25-103, 70-25-201, 70-25-202, 70-25-204, AND 70-25-206, MCA; AND REPEALING SECTION 70-25-205, MCA."

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

**Section 1.** Section 70-24-103, MCA, is amended to read:

**"70-24-103. General definitions.** Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or

sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(5) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(6) "Landlord" means:

~~(a)~~ the owner, lessor, ~~or~~ sublessor, or manager of:

~~(i)~~(a) the dwelling unit or the building of which it is a part; or

~~(ii)~~(b) a mobile home park; ~~or,~~

~~(b) a manager of the premises who fails to disclose the managerial position.~~

(7) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.

(8) "Mobile home park" means a trailer court as defined in 50-52-101.

(9) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(10) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(11) "Person" includes an individual or organization.

(12) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(13) "Rent" means all payments to be made to the landlord under the rental agreement.

(14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(15) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of which are used in common by occupants in the structure.

(16) "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 is a single-family

residence if it has direct access to a street or thoroughfare and ~~shares neither~~ does not share heating facilities, hot water equipment, ~~nor~~ or any other essential facility or service with another dwelling unit.

(17) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

(18) "Term" means the length of a rental agreement."

**Section 2.** Section 70-24-201, MCA, is amended to read:

**"70-24-201. Rental agreement -- terms provisions and conditions.** (1) A landlord and a tenant may include in a rental agreement terms provisions and conditions not prohibited by this chapter or other rule or law, including rent, term ~~of the agreement~~, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit as determined by the landlord;

(b) rent is payable at the landlord's address;

(c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2) ~~of this section.~~"

**Section 3.** Section 70-24-302, MCA, is amended to read:

**"70-24-302. Landlord to deliver possession of dwelling unit.** (1) At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 70-24-303. A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a security deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship."

**Section 4.** Section 70-24-312, MCA, is amended to read:

**"70-24-312. Access to premises by landlord.** (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, ~~workmen~~ workers, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in a case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in a case of emergency ~~or unless it is impracticable to do so~~, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-425 and 70-24-426(2); or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter.

(6) If a tenant unreasonably denies access to the landlord, the landlord may proceed under 70-24-424."

**Section 5.** Section 70-24-406, MCA, is amended to read:

**"70-24-406. Failure of landlord to maintain premises -- tenant's remedies.** (1) Except as provided in this chapter, if there is a noncompliance with the rental agreement or 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate

by reason of the breach;

(ii) if substantially the same act or omission ~~which~~ that constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by the tenant, a member of the tenant's family, or other persons on the premises with the tenant's consent.

(b) make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) ~~of this section~~ is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title."

~~Section 6.~~ Section 70-24-426, MCA, is amended to read:

~~"70-24-426. Remedies for absence, or abandonment, or surrender.~~ (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 70-24-322, and the tenant fails to do so, the landlord may recover actual damages from the tenant.

~~(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary to make reasonably necessary inspections or repairs.~~

~~(3) If the tenant abandons the dwelling unit or surrenders possession prior to the expiration of the term, the landlord shall make reasonable efforts to rent it at a fair rental value. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, and the rental agreement is terminated by the landlord terminates as of the date that the landlord has notice of the abandonment or surrender unless the landlord rents the dwelling unit before the expiration of the term. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the case may be. If the landlord rents the~~

~~dwelling unit for a term beginning before the expiration of the rental agreement of the tenant who surrenders or abandons the premises, the rental agreement terminates as of the date of the new tenancy. The maximum period of time for which the tenant may be held liable for rent is until the end of the term or 30 days, whichever is longer."~~

**Section 6.** Section 70-24-429, MCA, is amended to read:

**"70-24-429. Holdover remedies -- consent to continued occupancy -- tenant's response to service in action for possession.** (1) If the tenant remains in possession without the landlord's consent after expiration of the term ~~of the rental agreement~~ or its termination of the rental agreement, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) In an action for possession or unlawful holdover, the provisions of Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 10 working days after service of summons and complaint, exclusive of the date of service.

(3) If the landlord consents to the tenant's continued occupancy, 70-24-201(2)(e) applies."

**Section 7.** Section 70-24-430, MCA, is amended to read:

**"70-24-430. Disposition of personal property abandoned by tenant after termination.** (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least 57 CALENDAR days has elapsed since ~~the occurrence of events upon which the landlord formed that belief~~ delivery of written notice to the tenant's last-known address stating that unless the landlord is contacted within that time, the tenant's property will be removed, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

~~(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;~~

~~(b)~~(a) notify the local law enforcement office of the property held by the landlord;

(e)(b) make a reasonable effort to determine if the property is secured or otherwise encumbered; and  
 (d)(c) send a notice by certified mail or with a certificate of mailing to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or  
 (b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property. A landlord may not withhold the tenant's property in order to compel payment for any amounts owed to the landlord other than storage costs.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. ~~On the event of purposeful violation, the~~ The landlord is liable for actual damages for a purposeful violation.

(7) A public or private sale authorized by this section must be conducted under the ~~provisions of 30-9A-601 or the sheriff's sale provisions of Title 25, chapter 13, part 7.~~

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the premises and shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general purposes."

**Section 8.** Section 70-24-431, MCA, is amended to read:

**"70-24-431. Retaliatory conduct by landlord prohibited.** (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or threatening to bring an action

for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has ~~complained to the landlord in writing~~ given notice to the landlord of a violation of the rental agreement or of any violation under ~~70-24-303~~ this chapter; or

(c) has organized or become a member of a tenant's union, mobile home park tenant association, or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against ~~him~~ the tenant for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact ~~must find~~ finds the existence of the fact presumed unless and until evidence is introduced ~~which~~ that would support a finding of its nonexistence.

(4) Notwithstanding the provisions of subsections (1), (2), and (3) ~~of this section~~, a landlord may bring an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or other persons on the premises with ~~his~~ the tenant's consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition ~~which~~ that would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2)."

**Section 9.** Section 70-24-432, MCA, is amended to read:

**"70-24-432. Disposition of abandoned mobile home occupying a mobile home park space.** (1) If a tenancy terminates, ~~and~~ the landlord reasonably believes that the tenant has abandoned a mobile home not owned by the landlord, occupying a mobile home park space and a period of time of at least 57 days has elapsed since delivery of written notice to the tenant's last-known address stating that unless the landlord is contacted



within that time, the mobile home will be removed ~~the occurrence of events upon which the landlord formed that belief,~~ the landlord may remove the mobile home from the premises.

(2) If the landlord moves the mobile home from the premises, the landlord shall store the mobile home in a place of safekeeping and shall exercise reasonable care for the mobile home. The landlord may charge the mobile home owner a reasonable removal and storage charge.

(3) If the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the removal and storage;

(b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered; and

(c) send a notice by certified mail or with a certificate of mailing to the last-known address of the mobile home owner and to any person or entity found by the landlord to have an interest referred to in subsection (3)(b), stating that at a specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile home owner does not respond and remove the mobile home under subsection (4).

(4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection (3)(c), responds in writing to the landlord that the owner intends to remove the mobile home from storage and does not do so within 20 days after delivery of the owner's response, the mobile home is conclusively presumed to be abandoned. A landlord is entitled to payment of the removal and storage costs allowed under subsection (2) before the owner may remove the mobile home. A landlord may not withhold permission to move the mobile home in order to compel payment of any amounts owed to the landlord other than removal and storage costs.

(5) The landlord may dispose of the mobile home after complying with subsection (3) by:

(a) selling the mobile home at a public or private sale; or

(b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that the value of the mobile home is so low that the cost of a sale would exceed the reasonable value of the mobile home. Disposal may include having the mobile home removed to an appropriate disposal site.

(6) A public or private sale authorized by this section must be conducted under the sheriff's sale provisions of Title 25, chapter 13, part 7.

(7) The landlord may deduct from the proceeds of a sale the reasonable costs of removal, storage, notice, and sale and any delinquent rent or damages owing on the premises and shall remit to the mobile home owner the remaining proceeds, if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the county."

**Section 10.** Section 70-25-101, MCA, is amended to read:

**"70-25-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or ~~his~~ the owner's selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the leasehold or rental premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold or rental premises caused by the willful or accidental acts of the tenant occupying ~~same~~ the leasehold or rental premises or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold or rental premises.

(3) "Leasehold or rental premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold or rental agreement or to secure payment for damage to and cleaning of the leasehold or rental premises. If a leasehold or rental agreement or an agreement incident ~~thereto~~ to the leasehold or rental agreement requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold or rental agreement, the deposit ~~shall~~ must be presumed to be a security deposit. A fee or charge for cleaning and damages, ~~no matter~~ regardless of how designated, is presumed to be a security deposit."

**Section 11.** Section 70-25-103, MCA, is amended to read:

**"70-25-103. Waivers and contrary provisions invalid.** Any provision of a leasehold or rental agreement, either oral or written, that is contrary to this chapter is invalid. Any attempted waiver of this chapter by the tenant is invalid."

**Section 12.** Section 70-25-201, MCA, is amended to read:

**"70-25-201. Security deposit -- deductions authorized therefrom.** (1) A landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent, late charges, utilities, penalties due under lease provisions, and other money owing to the landlord at the time of deduction, including rent owed under

70-24-441(3), and a sum for actual cleaning expenses, including a reasonable charge for the landlord's labor.

(2) At the request of either party, the leasehold or rental premises may be inspected within 1 week prior to termination of the tenancy.

(3) Cleaning charges may not be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time that the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, cleaning charges may not be deducted until written notice has been given to the tenant. The notice must include the cleaning not accomplished by the tenant and the additional and type or types of cleaning that need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 24 hours to complete the required cleaning. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing. A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit. If a landlord imposes charges for cleaning and then fails to have that cleaning carried out, the landlord shall return the amount that was withheld for that cleaning to the tenant.

(4) A person may not deduct or withhold from the security deposit any amount for purposes other than those set forth in this section."

**Section 13.** Section 70-25-202, MCA, is amended to read:

**"70-25-202. List of damages and refund -- delivery to departing tenant.** (1) ~~Every~~ A landlord, within 30 days ~~subsequent to~~ after the termination of a tenancy or within 30 days ~~subsequent to~~ after a surrender and acceptance of the leasehold or rental premises, whichever occurs first, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, with regard to the leasehold or rental premises that the landlord alleges are the responsibility of the tenant. Delivery of the list must be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery must be accomplished by mailing the list and refund to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address.

(2) If after inspection there are no damages to the leasehold or rental premises, ~~no~~ cleaning is not required, and ~~no~~ there is not any rent unpaid and if the tenant can demonstrate that ~~no~~ there are not any utilities ~~are~~ unpaid by the tenant, the landlord shall return the security deposit within 10 days by mailing it to the new

address provided by the tenant or, if a new address is not provided, to the tenant's last-known address.

(3) It is not a wrongful withholding of security deposit funds if the landlord mails the funds to the last-known address of a tenant who has departed and the tenant does not receive the funds because the tenant has not given the landlord the tenant's new address, but the landlord remains liable to the tenant for the amount due the tenant."

**Section 14.** Section 70-25-204, MCA, is amended to read:

**"70-25-204. Wrongful withholding of security deposit -- action.** (1) A person who wrongfully withholds a residential property security deposit or any portion of the deposit is liable in damages to the tenant in a civil action for an amount equal to the sum determined to have been wrongfully withheld or deducted. ~~The~~ Attorney fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold or rental premises is on the landlord.

(2) An action may not be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or the landlord's agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy;

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold or rental premises;

or

(d) the expiration of a 10-day period after the landlord has indicated there were no damages to the leasehold or rental premises, ~~no~~ cleaning was not required, ~~no~~ there was not any rent ~~was~~ unpaid, and ~~no~~ there were not any utilities ~~were~~ unpaid by the tenant. For the purposes of this subsection (2)(d) only, the failure to return a security deposit within 10 days creates a rebuttable presumption that the security deposit was wrongfully withheld."

**Section 15.** Section 70-25-206, MCA, is amended to read:

**"70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.** (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each tenant, in conjunction with execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the leasehold or rental premises intended to be let. At the written request of the tenant, a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately

preceding leasehold or rental agreement for the leasehold or rental premises in question must be provided to the tenant.

(2) Each written statement of the present condition of a leasehold or rental premises intended to be let ~~shall~~ must contain at least the following:

(a) a clear and concise statement of the present condition of the leasehold or rental premises known to the landlord or the landlord's agent or ~~which~~ that should have been known upon reasonable inspection;

(b) if the leasehold or rental premises have never previously been let, a statement indicating the fact; and

(c) the signature of the landlord or the landlord's agent.

(3) A person engaged in the rental of property for residential purposes who fails to furnish a tenant, in conjunction with the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the leasehold or rental premises intended to be let and, upon the written request of the tenant, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold or rental agreement is barred from recovering any sum for damage to or cleaning of the leasehold or rental premises unless the person can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold or rental premises or the tenant's family, licensees, or invitees."

NEW SECTION. **Section 16. Repealer.** Section 70-25-205, MCA, is repealed.

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