

## SENATE BILL NO. 175

INTRODUCED BY R. WEBB

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LANDLORD'S RIGHT TO ENTER AND REPAIR WHEN TENANT FAILS TO MAINTAIN A DWELLING; PROVIDING FOR AN ACTION AGAINST AN UNAUTHORIZED PERSON; REVISING THE TIMING FOR LANDLORD'S ACTION TO BE HEARD; REVISING REQUIREMENTS RELATED TO LANDLORD'S DISPOSITION OF ABANDONED PERSONAL PROPERTY; AND AMENDING SECTIONS 70-24-425, 70-24-427, 70-24-430, 70-33-425, 70-33-427, AND 70-33-430, MCA."

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

**Section 1.** Section 70-24-425, MCA, is amended to read:

**"70-24-425. Failure of tenant to maintain dwelling -- landlord's right to enter and repair.** (1) If there is noncompliance by the tenant with 70-24-321, rules adopted pursuant to 70-24-311, or rental agreement terms: affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment:

(a) the landlord or authorized person shall give written notice to the tenant specifying the items of noncompliance;

(b) the tenant has 7 days to comply with the written notice given by the landlord or authorized person;

(c) if the tenant does not comply with the written notice, the landlord or authorized person may immediately enter the dwelling unit and cause the work to be completed as specified in the written notice; and

(d) the landlord may submit an itemized bill to the tenant for the actual cost or reasonable replacement of damaged items listed in the written notice.

(2) In the case of an emergency, the landlord or authorized person shall have immediate access to the premises without written notice pursuant to 70-24-312(2) to cause work to be completed.

1           (3) In the process of completing work as identified in the written notice, if the landlord or authorized  
 2 person discovers a hidden or previously unknown issue, the landlord or authorized person has the right to repair  
 3 the newly discovered issue and may submit an itemized bill to the tenant pursuant to subsection (1)(d)."  
 4

5           **Section 2.** Section 70-24-427, MCA, is amended to read:

6           **"70-24-427. Landlord's remedies after termination of rental agreement -- unauthorized person --**  
 7 **action for possession.** (1) If the rental agreement is terminated, the landlord has a claim for possession and  
 8 for rent and a separate claim for actual damages for any breach of the rental agreement.

9           (2) An action filed pursuant to subsection (1) in a court must be heard within ~~14~~ 5 days after the tenant's  
 10 appearance or the answer date stated in the summons, except that if the rental agreement is terminated because  
 11 of noncompliance under 70-24-321(3), the action must be heard within ~~5~~ 3 business days after the tenant's  
 12 appearance or the answer date stated in the summons. If the action is appealed to the district court, the hearing  
 13 must be held within 14 days after the case is transmitted to the district court, except that if the rental agreement  
 14 is terminated because of noncompliance under 70-24-321(3), the hearing must be held within 5 business days  
 15 after the case is transmitted to the district court.

16           (3) An action filed in a court against an unauthorized person must be heard within 5 business days after  
 17 the landlord has submitted a claim of possession to the court.

18           ~~(3)~~(4) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in  
 19 subsection (2) without the necessity of an undertaking.

20           ~~(4)~~(5) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the  
 21 action within 5 days after the hearing. If a landlord's claim for possession is granted, the court shall issue a writ  
 22 of possession."  
 23

24           **Section 3.** Section 70-24-430, MCA, is amended to read:

25           **"70-24-430. Disposition of personal property abandoned by tenant after termination.** (1) (a) If a  
 26 tenancy terminates in any manner except by court order and the landlord has clear and convincing evidence that  
 27 the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of  
 28 at least 48 hours has elapsed since the landlord obtained that evidence, the landlord may immediately remove  
 29 the abandoned property from the premises and immediately dispose of any trash or personal property that is  
 30 hazardous, perishable, or valueless.

1 (b) An item that is clearly labeled "rent to own" or "leased" or likewise identified may be discarded only  
2 with confirmation from the lessor that the item does not have a lien, provided that the lessor can be easily  
3 identified from the label and the landlord makes a reasonable effort to contact the lessor.

4 (c) For the purposes of this subsection (1), the following definitions apply:

5 (i) "Hazardous" means an item that is potentially or actually flammable or a biohazard or an item  
6 otherwise capable of inflicting personal harm or injury.

7 (ii) "Perishable" means any item requiring refrigeration or any food item with a marked expiration date.

8 (iii) "Valueless" means any item that has an insubstantial resale value but does not include personal  
9 photos, jewelry, or other small items that are irreplaceable.

10 (2) The landlord shall inventory and store all abandoned personal property of the tenant that the landlord  
11 reasonably believes is valuable in a place of safekeeping and shall exercise reasonable care for the property.  
12 The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the  
13 cost of removal of the property to the place of storage. The landlord may store the property in a commercial  
14 storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of  
15 the property to the place of storage.

16 (3) After complying with subsection (2), the landlord shall make a reasonable attempt to notify the tenant  
17 in writing that the property must be removed from the place of safekeeping by sending a notice with a certificate  
18 of mailing or by certified mail to the last-known address of the tenant, stating that at a specified time, not less than  
19 10 days after mailing the notice, the property will be disposed of if not removed.

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

21 (a) selling all or part of the property at a public or private sale; or

22 (b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that  
23 the value of the property is so low that the estimated cost of storage or sale exceeds the reasonable value of the  
24 property.

25 (5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord  
26 on or before the day specified in the notice that the tenant intends to remove the property and does not do so  
27 within 7 days after delivery of the tenant's response, the tenant's property whether of value or not is conclusively  
28 presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the  
29 period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage.  
30 Reasonable storage costs are allowed a landlord who stores the property, and actual storage costs are allowed

1 a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the  
2 storage costs allowed under this subsection before the tenant may remove the property.

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

6 (7) A public or private sale authorized by this section must be conducted under the provisions of  
7 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

8 (8) (a) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage,  
9 labor, ~~and sale and any delinquent rent or damages owing on the premises~~ sale, rent, and damages and shall  
10 remit to the tenant the remaining proceeds, if any, together with an itemized accounting of costs incurred by the  
11 landlord.

12 (b) If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the  
13 county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the  
14 general fund of the county available for general purposes.

15 (9) The landlord shall ensure that the terms of this section are included in plain and understandable  
16 language as a notification in any lease or rental agreement at the time of the agreement or when the tenant  
17 occupies the property. The landlord shall provide the same notification upon termination of the lease or rental  
18 agreement."

19

20 **Section 4.** Section 70-33-425, MCA, is amended to read:

21 **"70-33-425. Tenant's failure to maintain lot -- landlord's right to enter and repair.** If there is  
22 noncompliance by the tenant with 70-33-321, rules adopted pursuant to 70-33-311, or rental agreement terms:  
23 ~~affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the~~  
24 ~~tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice~~  
25 ~~by the landlord specifying the breach and requesting that the tenant remedy the breach within that period of time,~~  
26 ~~the landlord may enter the lot and cause the work to be done in a competent manner and submit an itemized bill~~  
27 ~~for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value of the work as~~  
28 ~~rent on the next date rent is due or, if the rental agreement has terminated, for immediate payment.~~

29 (a) the landlord or authorized person shall give written notice to the tenant specifying the items of  
30 noncompliance;

1 (b) the tenant has 7 days to comply with the written notice given by the landlord or authorized person;

2 (c) if the tenant does not comply with the written notice, the landlord or authorized person may  
3 immediately enter the lot and cause the work to be completed as specified in the written notice; and

4 (d) the landlord may submit an itemized bill to the tenant for the actual cost or reasonable replacement  
5 of damaged items listed in the written notice.

6 (2) In the case of an emergency, the landlord or authorized person shall have immediate access to the  
7 premises without written notice pursuant to 70-33-312(2) to cause work to be completed.

8 (3) In the process of completing work identified in the written notice, if the landlord or authorized person  
9 discovers a hidden or previously unknown issue, the landlord or authorized person has the right to repair the  
10 newly discovered issue and may submit an itemized bill to the tenant pursuant to subsection (1)(d)."

11

12 **Section 5.** Section 70-33-427, MCA, is amended to read:

13 **"70-33-427. Landlord's remedies after termination of rental agreement -- unauthorized person --**  
14 **action for possession.** (1) If the rental agreement is terminated, the landlord has a claim for possession and  
15 for rent and a separate claim for actual damages for any breach of the rental agreement.

16 (2) (a) An action filed pursuant to subsection (1) in a court must be heard within ~~20~~ 5 days after the  
17 tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated  
18 because of noncompliance under 70-33-321(4), the action must be heard within ~~5~~ 3 business days after the  
19 tenant's appearance or the answer date stated in the summons.

20 (b) If the action is appealed to the district court, the hearing must be held within 20 days after the case  
21 is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance  
22 under 70-33-321(4), the hearing must be held within 5 business days after the case is transmitted to the district  
23 court.

24 (3) An action filed in a court against an unauthorized person must be heard within 5 business days after  
25 the landlord has submitted a claim of possession to the court.

26 ~~(3)~~(4) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in  
27 subsection (2) without the necessity of an undertaking.

28 ~~(4)~~(5) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the  
29 action within 5 days after the hearing. If a landlord's claim for possession is granted, the court shall issue a writ  
30 of possession."

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2           **Section 6.** Section 70-33-430, MCA, is amended to read:

3           **"70-33-430. Disposition of abandoned personal property.** (1) If a tenancy terminates in any manner  
4 except by court order, if the landlord reasonably believes that the tenant has abandoned all personal property  
5 that the tenant has left on the premises, and if at least 5 days have elapsed since the occurrence of the events  
6 upon which the landlord has based the belief of abandonment, the landlord may remove the property from the  
7 premises.

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

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

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

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

17           (c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

18           (d) send a notice by certified mail to the last-known address of the tenant and each known party having  
19 a lien or encumbrance of record, stating that at a specified time, not less than 15 days after mailing the notice,  
20 the property will be disposed of if not removed.

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

22           (a) selling all or part of the property at a public or private sale; or

23           (b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that  
24 the value of the property is so low that the estimated cost of storage or sale exceeds the reasonable value of the  
25 property.

26           (5) (a) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the  
27 landlord on or before the day specified in the notice that the tenant intends to remove the property and does not  
28 do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be  
29 abandoned.

30           (b) If the tenant removes the property, the landlord is entitled to storage costs for the period that the

1 property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable  
2 storage costs are allowed to a landlord who stores the property, and actual storage costs are allowed to a  
3 landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the  
4 storage costs allowed under this subsection before the tenant may remove the property.

5 (6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is  
6 caused by the landlord's purposeful or negligent act, in which case the landlord is liable for actual damages.

7 (7) (a) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage,  
8 labor, and sale and, subject to any prior security interest of record, any delinquent rent or damages owing on the  
9 premises. The landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized  
10 accounting of costs incurred by the landlord.

11 (b) If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the  
12 county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the  
13 general fund of the county."

14 - END -