

SENATE BILL NO. 175

INTRODUCED BY R. WEBB

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LANDLORD'S RIGHT TO ENTER AND REPAIR WHEN
5 TENANT FAILS TO MAINTAIN A DWELLING; PROVIDING FOR AN ACTION AGAINST AN UNAUTHORIZED
6 PERSON; REVISING THE TIMING FOR LANDLORD'S ACTION TO BE HEARD; REVISING REQUIREMENTS
7 RELATED TO LANDLORD'S DISPOSITION OF ABANDONED PERSONAL PROPERTY; ~~AND~~ AMENDING
8 SECTIONS ~~70-24-303~~, 70-24-425, 70-24-427, 70-24-430, ~~70-33-303~~, 70-33-425, 70-33-427, AND 70-33-430,
9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 ~~SECTION 1. SECTION 70-24-303, MCA, IS AMENDED TO READ:~~

14 ~~"70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation~~
15 ~~of landlord's liability for failure of smoke detector or carbon monoxide detector. (1) A landlord:~~

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

19 ~~(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that~~
20 ~~creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may~~
21 ~~be injured;~~

22 ~~(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable~~
23 ~~condition; If the tenant gives written notice to the landlord or authorized person requesting the maintenance or~~
24 ~~repair of specific items, the landlord or authorized person has 7 days to comply with the written notice given by~~
25 ~~the tenant.~~

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

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

30 ~~(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles~~

1 and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of
 2 the dwelling unit and arrange for their removal;

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

7 ~~———(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector,
 8 in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in
 9 accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the
 10 landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good
 11 working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working
 12 order during the tenant's rental period. For the purposes of this subsection, an approved carbon monoxide
 13 detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or
 14 other identification issued by an approved testing agency having a service for inspection of materials and
 15 workmanship at the factory during fabrication and assembly.~~

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

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

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

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

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

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

29 ~~———(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide
 30 detector or the smoke detector required under subsection (1)(h)."~~

1

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

3 **"70-24-425. Failure of tenant to maintain dwelling -- landlord's right to enter and repair.** (1) If there
 4 is noncompliance by the tenant with 70-24-321, rules adopted pursuant to 70-24-311, or rental agreement terms:
 5 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the
 6 tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice
 7 by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the
 8 landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an
 9 itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value
 10 thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate
 11 payment.

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

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

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

17 (d) the landlord may submit an itemized bill to the tenant for the actual cost or reasonable replacement
 18 of damaged items listed in the written notice AS A TENANT-CAUSED BILL OF REPAIR THAT MUST BE BILLED THE NEXT
 19 DATE PERIODIC RENT IS DUE OR, IF THE RENTAL AGREEMENT HAS TERMINATED, IMMEDIATELY.

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

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

26

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

28 **"70-24-427. Landlord's remedies after termination of rental agreement -- unauthorized person --**
 29 **action for possession.** (1) If the rental agreement is terminated, the landlord has a claim for possession and
 30 for rent and a separate claim for actual damages for any breach of the rental agreement.

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

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

10 ~~(3)(4)~~ The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in
 11 subsection (2) without the necessity of an undertaking.

12 ~~(4)(5)~~ In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the
 13 action within 5 days after the hearing. If a landlord's claim for possession is granted, the court shall issue a writ
 14 of possession."
 15

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

17 **"70-24-430. Disposition of personal property abandoned by tenant after termination.** (1) (a) If a
 18 tenancy terminates in any manner ~~except by court order~~ and the landlord has clear and convincing evidence that
 19 the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of
 20 at least 48 hours has elapsed since the landlord obtained that evidence, the landlord may immediately remove
 21 the abandoned property from the premises and immediately dispose of any trash or personal property that is
 22 hazardous, perishable, or valueless.

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

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

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

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

30 (iii) "Valueless" means any item that has an insubstantial resale value but does not include personal

1 photos, jewelry, or other small items that are irreplaceable.

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

8 (3) After complying with subsection (2), the landlord shall make a reasonable attempt to notify the tenant
9 in writing that the property must be removed from the place of safekeeping by sending a notice with a certificate
10 of mailing or by certified mail to the last-known address of the tenant, stating that at a specified time, not less than
11 10 days after mailing the notice, the property will be disposed of if not removed.

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

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

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

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

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

28 (7) A public or private sale authorized by this section must be conducted under the provisions of
29 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

30 (8) (a) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage,

1 labor, ~~and sale and any delinquent rent or damages owing on the premises~~ sale, rent, and damages and shall
2 remit to the tenant the remaining proceeds, if any, together with an itemized accounting of costs incurred by the
3 landlord.

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

7 (9) The landlord shall ensure that the terms of this section are included in plain and understandable
8 language as a notification in any lease or rental agreement at the time of the agreement or when the tenant
9 occupies the property. The landlord shall provide the same notification upon termination of the lease or rental
10 agreement. THE PROVISIONS OF THIS SUBSECTION DO NOT APPLY TO AN AGREEMENT ENTERED INTO BEFORE OCTOBER
11 1, 2013."

12
13 ~~SECTION 5. SECTION 70-33-303, MCA, IS AMENDED TO READ:~~

14 ~~"70-33-303. Landlord to maintain premises -- agreement that tenant perform duties. (1) A landlord~~
15 ~~shall:~~

16 ~~(a) comply with the requirements of applicable building and housing codes materially affecting health~~
17 ~~and safety;~~

18 ~~(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable~~
19 ~~condition; If the tenant gives written notice to the landlord or authorized person requesting the maintenance or~~
20 ~~repair of specific items, the landlord or authorized person has 7 days to comply with the written notice given by~~
21 ~~the tenant.~~

22 ~~(c) keep all common areas of the premises in a clean and safe condition;~~

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

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

29 ~~(f) supply running water at all times unless the lot is not required by law to be equipped for that purpose~~
30 ~~or the running water is generated by an installation within the exclusive control of the tenant.~~

1 ~~———(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through~~
 2 ~~(1)(f), a landlord's duty must be determined by reference to subsection (1)(a):~~

3 ~~———(3) A landlord and tenant may agree in writing that the tenant is to perform the landlord's duties specified~~
 4 ~~in subsections (1)(e) and (1)(f) but only if the agreement is entered into in good faith and not for the purpose of~~
 5 ~~evading the obligations of the landlord:~~

6 ~~———(4) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks,~~
 7 ~~alterations, or remodeling only if:~~

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

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

12 ~~———(c) the agreement does not diminish the obligation of the landlord to other tenants."~~

13

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

15 **"70-33-425. Tenant's failure to maintain lot -- landlord's right to enter and repair.** If there is
 16 noncompliance by the tenant with 70-33-321, rules adopted pursuant to 70-33-311, or rental agreement terms:
 17 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the
 18 tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice
 19 by the landlord specifying the breach and requesting that the tenant remedy the breach within that period of time,
 20 the landlord may enter the lot and cause the work to be done in a competent manner and submit an itemized bill
 21 for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value of the work as
 22 rent on the next date rent is due or, if the rental agreement has terminated, for immediate payment.

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

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

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

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

30 (2) In the case of an emergency, the landlord or authorized person shall have immediate access to the

1 premises without written notice pursuant to 70-33-312(2) to cause work to be completed.

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

6

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

8 **"70-33-427. Landlord's remedies after termination of rental agreement -- unauthorized person --**
 9 **action for possession.** (1) If the rental agreement is terminated, the landlord has a claim for possession and
 10 for rent and a separate claim for actual damages for any breach of the rental agreement.

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

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

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

21 ~~(3)(4)~~ The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in
 22 subsection (2) without the necessity of an undertaking.

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

26

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

28 **"70-33-430. Disposition of abandoned personal property.** (1) If a tenancy terminates in any manner
 29 except by court order, if the landlord reasonably believes that the tenant has abandoned all personal property
 30 that the tenant has left on the premises, and if at least 5 days have elapsed since the occurrence of the events

1 upon which the landlord has based the belief of abandonment, the landlord may remove the property from the
2 premises.

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

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

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

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

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

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

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

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

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

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

25 (b) If the tenant removes the property, the landlord is entitled to storage costs for the period that the
26 property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable
27 storage costs are allowed to a landlord who stores the property, and actual storage costs are allowed to a
28 landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the
29 storage costs allowed under this subsection before the tenant may remove the property.

30 (6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is

1 caused by the landlord's purposeful or negligent act, in which case the landlord is liable for actual damages.

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

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

9

10 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

11

- END -