

HOUSE BILL NO. 402

INTRODUCED BY S. GALLOWAY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROPERTY RENTAL LAWS; REVISING WHAT MAY BE FOUND UNCONSCIONABLE IN A RENTAL AGREEMENT; REVISING TERMINATIONS OF RENTALS; AMENDING SECTIONS 70-24-404, 70-24-422, 70-24-423, 70-33-403, 70-33-422, AND 70-33-423, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 70-24-404, MCA, is amended to read:

"70-24-404. Unconscionability -- court discretion to refuse enforcement. (1) ~~Except as provided in subsection (2),~~ if the court, as a matter of law, finds that:

(a) a rental agreement or any provision ~~thereof of the rental agreement~~ is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) A finding pursuant to subsection (1) may not be made based on a responsibility outlined in a rental agreement that:

(a) a tenant maintain a dwelling unit in accordance with 70-24-321; or

(b) a landlord maintain the premises in accordance with 70-24-303.

~~(2)(3)~~ If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination."

1 **Section 2.** Section 70-24-422, MCA, is amended to read:

2 **"70-24-422. Noncompliance of tenant generally -- landlord's right of termination -- damages --**
 3 **injunction.** (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental
 4 agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant
 5 to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement
 6 will terminate, and that the tenant shall vacate the premises on ~~upon~~ a date specified in the notice not less than
 7 the minimum number of days after receipt of the notice provided for in this section. The rental agreement
 8 terminates and the tenant shall vacate the premises as provided in the notice, subject to the following:

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

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

13 (c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is
 14 3 days.

15 (d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

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

19 (2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the
 20 landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid
 21 within that period, the landlord may terminate the rental agreement, and the tenant shall vacate the premises if
 22 the landlord terminates the rental agreement.

23 (3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation
 24 of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying
 25 the noncompliance under the provisions of 70-24-321(2), and the tenant shall vacate the premises if the
 26 landlord terminates the rental agreement.

27 (4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or
 28 that neighboring tenants may be injured in violation of 70-24-321(3), the landlord may terminate the rental

1 agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions
 2 of 70-24-321(3), and the tenant shall vacate the premises if the landlord terminates the rental agreement.

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

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

8 (7) The landlord is not bound by this section in the event that the landlord elects to use the 30-day
 9 notice for termination of tenancy as provided in 70-24-441."

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11 **Section 3.** Section 70-24-423, MCA, is amended to read:

12 "**70-24-423. Waiver of landlord's right to terminate for breach.** Acceptance by the landlord of full
 13 payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the
 14 nonpayment of rent. Acceptance of full payment of rent due when a claimed breach is something other than the
 15 nonpayment of rent does not constitute a waiver of any right. The acceptance of partial payment of rent due
 16 does not constitute a waiver of any right, including rent due."

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18 **Section 4.** Section 70-33-403, MCA, is amended to read:

19 "**70-33-403. Unconscionability -- court discretion.** (1) Except as provided in subsection (2), if the
 20 court, as a matter of law, finds that:

21 (a) a rental agreement or any provision of the rental agreement is unconscionable, the court, in order
 22 to avoid an unconscionable result, may refuse to enforce the agreement or may enforce the remainder of the
 23 agreement without the unconscionable provision result; or

24 (b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or
 25 under a rental agreement is unconscionable, the court, in order to avoid an unconscionable result, may refuse
 26 to enforce the settlement, may enforce the remainder of the settlement without the unconscionable provision, or
 27 may limit the application of any unconscionable provision.

28 (2) A finding pursuant to subsection (1) may not be made based on a responsibility outlined in a rental

1 agreement that:

2 (a) a tenant maintain a lot in accordance with 70-33-321; or

3 (b) a landlord maintain the premises in accordance with 70-33-303.

4 ~~(2)(3)~~ If unconscionability is put into issue by a party or by the court upon its own motion, the parties
5 must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the
6 rental agreement or settlement to aid the court in making its determination."
7

8 **Section 5.** Section 70-33-422, MCA, is amended to read:

9 **"70-33-422. Noncompliance of tenant generally -- landlord's right of termination -- damages --**
10 **injunction.** (1) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in
11 violation of 70-33-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice
12 specifying the noncompliance under the provisions of 70-33-321(3). If the landlord terminates the rental
13 agreement, the tenant shall vacate the premises on termination of the agreement.

14 (2) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or
15 that neighboring tenants may be injured, as evidenced by the tenant being arrested or charged with an act that
16 violates the provisions of 70-33-321(4), the landlord may terminate the rental agreement upon giving 3 days'
17 written notice specifying the violation and noncompliance under the provisions of 70-33-321(4). If the landlord
18 terminates the rental agreement, the tenant shall vacate the premises on termination of the agreement.

19 (3) Except as otherwise provided in this chapter, the landlord ~~may shall~~ MAY recover actual damages
20 and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-33-321. Except
21 as provided in subsection (4) of this section, if the tenant's noncompliance is purposeful, the landlord ~~may~~
22 shallMAY recover treble damages.

23 (4) Treble damages may not be recovered for the tenant's early termination of the tenancy."
24

25 **Section 6.** Section 70-33-423, MCA, is amended to read:

26 **"70-33-423. Waiver of landlord's right to termination.** (1) Acceptance by the landlord of full
27 payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the
28 nonpayment of rent.

