

Handbook for the Hawaii Residential Landlord-Tenant Code

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INTRODUCTION

This Handbook for the Hawaii Residential Landlord-Tenant Code is published by the Office of Consumer Protection and the Communications Office of the State Department of Commerce and Consumer Affairs. It is designed to be a useful guide for all Hawaii residents and attempts to address the questions and concerns most frequently expressed by landlords and tenants.

This handbook highlights areas of the landlord-tenant code. It does not duplicate or explain the complete text of the code.

The Hawaii Residential Landlord-Tenant Code is the name of Chapter 521 of the Hawaii Revised Statutes (HRS). The section numbers that are cited throughout this handbook refer to the sections of Chapter 521. Since its creation in 1973, the Hawaii Residential Landlord-Tenant Code has been amended in almost every legislative session. This revised edition of the handbook is based upon the law as amended in the 1991 Session of the Hawaii State Legislature.

The organization of this handbook is based upon the same general categories that appear in the Code. The reader may note that the recurrent intent of the Code is equal justice for both landlords and tenants. Much of the confusion and difficulty so common in landlord-tenant disputes would be minimized or eliminated if there were better understanding and communication between landlords and tenants. One way of achieving this is through the use of clearly written agreements and understandings and insuring that the agreements are signed by the landlord and the tenant in duplicate with copies provided to each. Such points of agreement that are not clearly understood should be discussed, clarified and put into writing.

If you have questions on a landlord-tenant matter, call the Office of Consumer Protection at 586-2634 or 1-800-513-8886.

RENTAL AGREEMENTS

Types of Agreements. Rental agreements between landlords and tenants are legal in both written and oral forms.

A. Written Agreements.

A written agreement may be for any length of time: month-to-month, six-months, one-year or any other term. All promises and house rules should be written into the agreement. Anytime the landlord and tenant make any new agreements or changes to the existing agreement, the new information should be put into writing and signed by both parties.

B. Oral Agreements.

An oral agreement normally creates a month-to-month tenancy. An oral agreement for a fixed term may not exceed one year in duration. While oral agreements are more easily reached, exact promises and details should not be neglected. Problems often arise when promises are made but are not clearly spelled out. For example, if the tenant is responsible for yard work, such terms as the following should be clarified and agreed upon:

- Is watering the lawn once a week sufficient?
- Is the tenant required to trim the hedges?

- Who will provide the tools?

Contract Provisions. The landlord and tenant should agree on the following:

- A. The amount of rent; how, where and by when the rent is to be paid, and the penalty for late rent or returned checks.
- B. Any exchange of services which affects the amount of rent, except employment as unit manager or maintenance personnel. (Example: yard work for reduced rent).
- C. The term of the rental (weekly, monthly, or lease).
- D. If the landlord's consent is required for the tenant to sublet the tenant's dwelling unit or to assign the rental agreement to another.
- E. Any special provisions for individual tenants.

Term of Rental Agreements - Section 22. The landlord and tenant may agree in writing to any time period as the term of the rental agreement. In the absence of such agreement, the tenancy shall be month to month or, in the case of boarders, week to week.

Rent - Section 21. Rent is usually paid on either a monthly or weekly basis. Normally, rent is paid on a monthly basis in a month-to-month tenancy and on a weekly basis in a week-to-week tenancy.

- A. In a month-to-month tenancy, rent may be increased by the landlord if written notice is given to the tenant at least 45 consecutive days before the effective date of the increase.
- B. For tenancies which are less than month-to-month a written notice must be given to the tenant at least 15 consecutive days prior to increasing rent.
- C. A landlord may not give a tenant a notice of termination for the purpose of evading the landlord's obligations to provide the required period of notice for a rental increase.

Inventory. Whether the rental agreement is written or oral, the landlord must, prior to occupancy, make a written inventory detailing the condition of the premises and furnishings (Section 42(a)). The inventory should be explicit and should include the cleanliness of the unit and each portion thereof. All details should be noted, no matter how minor, so that the actual condition is recorded. Duplicate copies of inventory and records shall be signed and retained by both landlord and tenant. If the landlord does not make this written inventory of the condition of the premises and any furnishings or appliances, the condition is presumed to be the same as when the tenant first moved in, unless the landlord can prove otherwise.

Advantages and Disadvantages of Different Types of Rental Agreements.

- A. In a month-to-month tenancy, the landlord may raise the rent after giving the tenant 45 days' written notice. However, in the case of a fixed term rental agreement, the rent is set by the terms of the agreement.
- B. Where there is a fixed term rental agreement, the tenant must remain in the dwelling for the entire term of the agreement or be subject to liability for breach of contract; a month-to-month tenancy, however, may be ended by either party if proper written notice of termination is given. If proper notice is not given, the party ending the tenancy may be liable for breach of contract.

Limitations on Rental Agreements and Practices. Both landlords and tenants have certain rights established by law that may not be waived or modified by either party, even if they wish to do so. This provision of the law is a safeguard of rights against pressure and/or coercion. Section 31(a).

The law requires:

A. Both landlords and tenants act in good faith in the performance and enforcement of duties, rights or remedies. Section 10.

B. Identification of each person authorized to manage the premises. Section 43(a)(1).

C. Identification of each owner or person who is authorized to act as owner for service of process. Section 43(a)(2).

D. That the tenant have the right to terminate a rental agreement at any time if he cannot move into the unit as promised. Section 61(a)(2).

E. Both the landlord and tenant to comply with all applicable building and housing laws affecting health and safety. Section 51(1).

F. If the unit is sold during the term of the lease, both the new owner and the tenant shall be bound by the terms of the agreement. Section 45(b).

SECURITY DEPOSITS

Lawful Use of Deposits - Section 44(a). A security deposit is money given by the tenant to the landlord for the following purposes:

A. To remedy tenant defaults for damages, for failure to pay rent or for failure to return keys at termination of the rental agreement;

B. To put the unit in as clean a condition at the end of the tenancy as it was at the start, except for normal wear and tear; or

C. To compensate for damages by a tenant who wrongfully quits the dwelling unit.

Except as discussed below, the application of a security deposit to cover unpaid rent is a right of the landlord, not the tenant.

Amount of Deposit - Section 44(b). The total amount of all deposits may not be in excess of one month's rent. This includes the security deposit and any deposits for keys, pets, or anything else. The tenant may not use the deposit as payment for the last month's rent unless the landlord agrees with the tenant in writing to such a use, and the tenant gives 45 days notice of vacating the premises. In any event, the landlord retains the right to have the tenant pay for damages caused by the tenant.

Retention of Deposit - Section 44(c). If the landlord has lawful grounds to retain all or any portion of the security deposit, the landlord must notify the tenant in writing of the reasons for retention. Any costs, such as

cleaning or specific repairs, must be itemized and copies of receipts included. If the repairs cannot be accomplished within the 14 days, estimates for the cleaning or repair services may be substituted.

The notice, and any portion of the security deposit remaining, after deductions, must be given to the tenant within 14 days after the termination of the rental agreement. In order to comply with this 14-day requirement, the landlord may mail the material to the tenant on or before the fourteenth day. The landlord should obtain acceptable proof of mailing from the Post Office. The landlord may also prove compliance with the 14-day requirement by other types of evidence, such as the tenant's acknowledgement or the testimony of a witness.

If notice, including the return of any remaining security deposit, is not accomplished within 14 days, all of the security deposit shall be returned to the tenant.

Limitation Period to Recover Deposit - Section 44(c). Any action by the tenant to recover all or any portion of the security deposit must be commenced within one year from the date the rental agreement terminated.

When Dwelling is Sold - Section 44(f). If the landlord sells or transfers the landlord's interest in a dwelling before termination of a rental agreement, the new landlord shall, within 20 days, give written notice to the tenant of the amount credited as the security deposit. If the new landlord does not give written notice to the tenant, it will be assumed that the tenant has paid a security deposit equal to no less than one month's rent at the time the tenant originally rented the unit.

Security Deposit Disputes - Section 44(h)(1)(2)(3) & (4). Legal action involving security deposit disputes may be undertaken by either party only in small claims court. In this type of small claims court action, lawyers are not allowed to represent either party. Where the court determines that the landlord:

- A. Wrongfully and willfully retained all or part of the security deposit, it may award the tenant damages equal to three times the security deposit plus the cost of the suit.
- B. Wrongfully retained all or part of the security deposit, it shall award the tenant damages equal to the portion of the security deposit wrongfully retained plus the cost of the suit.
- C. Retained the security deposit lawfully, it shall award the landlord damages equal to the portion of the security deposit in dispute plus the cost of the suit.

REPAIRS

Emergency Repairs - Section 64(c). If repairs are necessary to provide sanitary and habitable living conditions (including repairs to major appliances and electrical, plumbing or other necessary facilities), the landlord must take steps to start the repairs within three business days from the time the landlord is notified of the condition by the tenant either orally or in writing, unless the repairs were required because of misuse by the tenant. There is a good faith requirement that the repairs be completed as soon as possible. If the landlord is unable to commence repairs within three business days for reasons beyond the landlord's control, the landlord shall inform the tenant of the reasons for the delay and set a reasonable tentative date on which repairs will commence.

Repairs to Correct Conditions Affecting Health and Safety - Section 64(a) and (b).

- A. In the event that a health or safety condition exists in a dwelling which may constitute a violation of a State or County law, code, ordinance, or regulation which is designed to ensure health or safety in a dwelling unit, the

tenant should ask the landlord to repair the condition immediately. If repairs are not performed, the tenant should call the Department of Health or other appropriate State or County Agency and ask for an inspection of the condition.

B. If the inspection shows that a health or safety violation exists, the landlord must be notified. The landlord must commence repairs within five business days of this notification. There is a good faith requirement that the repairs be completed as soon as possible.

C. If the landlord is unable to commence the repairs within five business days for reasons beyond the landlord's control, the landlord must inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence.

D. If the landlord does not commence the repairs as described above, the tenant may do either of the following:

1. The tenant may perform the repairs or have them done. Then, upon providing all receipts to the landlord, the tenant may deduct up to \$500 from the next month's rent to cover the cost of the repairs.
2. The tenant may give the landlord two written estimates from qualified workers, at least five business days before the repair work is scheduled to begin. The landlord may require in writing a reasonable substitute worker or substitute material. Otherwise, the tenant may then proceed to have the necessary work done by the worker who provides the lower estimate. Then, upon providing all receipts to the landlord, the tenant may deduct \$500 or one month's rent, whichever is greater, to cover the cost of the repairs.

Other Repairs -- Section 64(c). In some cases, conditions exist in the unit which need repair and which the landlord is obliged to maintain, but which do not rise to the level of an emergency or create health or safety problems (see LANDLORD OBLIGATIONS: "Conditions a Tenant May Expect From Landlord"). The rental agreement itself may contain additional maintenance obligations for the landlord.

A. The tenant must notify the landlord in writing of a condition which is not in compliance with the landlord's obligation of maintenance, the landlord must commence repairs within 12 business days. There is a good faith requirement that the repairs be completed as soon as possible.

B. If the landlord is unable to commence the repairs within 12 business days for reasons beyond the landlord's control, the landlord must inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence.

C. If the landlord does not commence the repairs as described above, the tenant may perform the repairs or have them done. Then, upon providing all receipts to the landlord, the tenant may deduct up to \$500 from the next month's rent to cover the cost of the repairs. The tenant may only employ this procedure once every six months, so the initial notice to the landlord should include every defective condition known to the tenant. The amount which the tenant may charge to the landlord during the six month period may not exceed three months' rent. Different rules may apply if the problems were caused by the tenant or the tenant's family or guests.

Schedule of Deadlines for Repairs. FROM THE DATE OF NOTIFICATION, THE LANDLORD MUST START:

- Emergency Repairs within 3 business days
- Repairs for Noncompliance (with State or County Law, Code, or Ordinance) within 5 business days
- General Repairs within 12 business days

PROHIBITED PRACTICES

Prohibited Practices. The Code flatly prohibits certain types of conduct. As discussed in the section on Rental Agreements, these provisions are for the protection of the parties and may not be waived or modified. These practices include:

- A. Separation of right to collect rent from the landlord's obligations regarding the property and its maintenance and operations. Section 32.
- B. Any provision designed to limit the liability of the owner, including a waiver of liability. Section 33.
- C. Any agreement to a confession of judgment on behalf of the tenant. Section 34.
- D. The parties agreement to the recovery of attorney's fees in an amount greater than that allowed by the Code. Section 35.
- E. The landlord's collection of a security deposit (including all other deposits) greater than one month's rent. Section 44(b). See SECURITY DEPOSITS.
- F. The landlord's retention of the security deposit longer than 14 days after the termination of the rental agreement, without appropriate justification. Section 44(c). See SECURITY DEPOSITS.
- G. Unfair enforcement of house rules by the landlord. Section 52(b).
- H. Denying the landlord the right of reasonable access to dwelling units. Section 53(a).

Retaliatory Evictions and Rent Increases - Section 74. If the tenant has complained to the Department of Health, the Office of Consumer Protection, the landlord, or any governmental agency concerning conditions which violate health laws, or if the tenant has, in good faith, requested repairs or the landlord's compliance with any provision of the Landlord-Tenant Code, the landlord may not take any action to recover possession of the unit, increase the rent, decrease any services incident to the rental or evict the tenant as long as the tenant has paid and continues to pay the rent on time. In these circumstances, such action by the landlord will be deemed to be retaliatory, and is prohibited.

However, even if the circumstances for a retaliatory eviction exist, the landlord may recover possession of the dwelling unit if certain other conditions also exist. These other situations are where:

- A. The tenant is committing waste; or is a nuisance, or is using the dwelling illegally or not as a home in violation of the rental agreement.

B. The landlord wishes to occupy the dwelling for immediate use as the landlord's own residence or that of the landlord's immediate family.

C. The landlord wishes to substantially alter, remodel, or demolish the premises.

D. The landlord has contracted to sell the property, or to use it as the purchaser's own home.

E. The tenant's complaint to the Department of Health results in a determination that there was no violation of the health laws.

F. The landlord has a substantial increase in taxes or operating costs, not caused by complying with the tenant's complaint, and not less than four months before the demand for the increased rent.

G. The landlord has completed a capital improvement of the dwelling.

H. The tenant's complaint concerns a defect caused by the tenant.

I. The landlord can show that the rent demand does not exceed the rent charged to tenants of similar dwelling units in the landlord's building.

Note that the exception in paragraph B, where the landlord or the landlord's family will occupy the premises, is applicable only to retaliatory evictions. It can never serve as a basis for terminating a fixed term rental agreement prior to the expiration of the term.

TERMINATION OF TENANCY

Month-to-Month Tenancy - Section 71. When the tenancy is month-to-month, either the landlord or the tenant may terminate the rental agreement, provided proper notice is given. It is not necessary to give any reason for the termination.

A. Landlords. When it is the landlord who wishes to terminate the tenancy, the landlord must give the tenant written notice no less than 45 days before the anticipated termination date. The tenant may vacate the unit at any time within the last forty-five day period and is responsible for payment of prorated rent for the period that the premises are occupied and for notifying the landlord of the day of vacating.

In the following circumstances, a longer notice period is required. A 120-day written notice is required when the landlord contemplates:

1. Voluntary demolition of the dwelling unit.
2. Conversion of the unit to a condominium.
3. Conversion of the unit to a transient vacation rental.

The tenant may vacate the unit at any time within the 120-day period and is responsible for payment of prorated rent for the period that the premises are occupied.

B. Tenants. When it is the tenant who wishes to terminate the tenancy, the tenant must give the landlord written notice no less than 28 days before the anticipated termination date. The tenant is responsible for payment of rent through the date stated in the termination notice, or through the date it is re-rented, whichever comes first.

Week-to-Week Tenancy - Section 71(b). When the tenancy is less than month-to-month, the landlord or the tenant may terminate the rental agreement upon giving the other notice at least 10 days before the anticipated termination date.

Fixed Term Rentals. Rental agreements for fixed terms--for example, a six-month lease--have a termination date stated in the agreement. Termination is automatic and there is no notice requirement.

Since there is no notice requirement, the expiration of a lease can create great problems if the landlord and the tenant do not communicate with one another. This is because the relationship between the landlord and the tenant depends on their intentions. A failure to inform the other about these intentions can cause critical misunderstandings. These are a few of the possible results.

A. The tenant can continue to occupy the unit with the landlord's consent. In this case, a month-to-month tenancy is created, at the same rent as provided in the lease.

B. The tenant might continue to occupy the unit, but without knowing that the landlord does not consent. Technically, a holdover tenancy is created. Holdovers are discussed below. The landlord may expect the tenant to leave, even though no communication has taken place, and may have lined up a new tenant. If the tenant stays, the landlord will not be able to deliver occupancy to the new tenant.

C. The landlord may expect the tenant to stay on as a month-to-month tenant, but the tenant may vacate, leaving the landlord without any tenant at all.

Holdover - Section 71(c). If a tenant remains in the dwelling unit after the termination date without the landlord's consent, the tenant becomes a holdover.

A. As a holdover, the tenant must pay the landlord a sum which is not more than twice the monthly rent under the previous agreement, calculated on a daily basis for each day the tenant remains in the unit.

B. The landlord may sue to evict the tenant any time during the first 60 days of the holdover. However, if the landlord does not sue to evict the tenant within the 60 days and there is no new rental agreement, a month-to-month tenancy at the rent stated in the previous agreement is created.

LANDLORD OBLIGATIONS

Conditions a Tenant May Expect From Landlord - Sections 41 & 42. The law provides that a tenant may expect certain things from the landlord. As prescribed by the Code the landlord must:

A. Have the unit ready for the tenant to move in at the time and in the condition agreed upon. Section 41.

B. Provide safe and healthy premises as required by law. Section 42(a)(1) & (2).

C. Make all repairs and arrangements necessary to keep the premises in a livable condition. Section 42(a)(3).

D. Maintain all electrical, plumbing and other facilities in good working condition. Section 42(a)(4).

E. Provide and maintain garbage bins and arrange for frequent removal of waste materials except in the case of a single family residence. Section 42(a)(5).

F. Provide for the supplying of running water as reasonably required except in the case where the building is specifically exempted by law. Section 42(a)(6).

Various sections of the Code require both the landlord and the tenant to comply with all applicable building and housing laws affecting health and safety. To accomplish this, the landlord and the tenant may agree that the tenant will perform certain minor repairs, minor remodeling, or maintenance tasks. However, this type of agreement will be effective only if:

A. It is made in good faith and not for the landlord to avoid any other obligations.

B. The agreement does not reduce any obligations the landlord may have to other tenants.

Rental Agreement; Disclosure - Section 43.

A. Written Agreements. When a rental agreement is in writing the landlord shall furnish a copy of the lease or rental agreement to the tenant.

B. Receipts for Rent. The landlord shall issue receipts for all rents paid. Canceled checks may constitute such receipts, but the tenant may request a landlord's written receipt in addition to the canceled checks.

C. Disclosure of Owner or Manager. The tenant shall be given, in writing, the name and address of the owner or the owner's agent authorized to receive rent, notices, and demands. This information must be kept current at all times. If the required information is not given to the tenant, the person renting to the tenant becomes the responsible party for all obligations of the landlord under the Code.

1. In single-owner apartment buildings the required disclosures may be made by placing the notice in elevators and one other conspicuous place or, if there are no elevators, in two conspicuous places.

2. In apartment buildings with more than one owner, a notice shall be posted within the unit.

D. Absentee Landlord's Agent. An absentee landlord shall designate an agent to act on the landlord's behalf. The agent must reside on the same island as the rental unit.

E. Tenant's Right to Demand Disclosure. If the name and address of the owner or the owner's agent are not given to a tenant under an oral agreement, the information must be supplied to the tenant, in writing, on demand. Disclosure of the names and addresses of landlord or agent must then be supplied to the tenant in writing within ten days.

F. Tenant's Remedy for Non-Disclosure. If the landlord fails to comply with any disclosure required by Section 43 within ten days after proper demand by a tenant, the landlord shall be liable to the tenant for \$100.00 plus attorney's fee. (Section 67. See also TENANT REMEDIES: "Non-Disclosure.")

G. General Excise Tax Number Disclosure. Landlords must provide their general excise tax number to all tenants for the purpose of filing for a low-income tax credit.

Access--Section 53(b). Except in an emergency, the landlord must give the tenant at least two days' notice and, with the tenant's approval, may enter the tenant's unit only during reasonable hours.

TENANT OBLIGATIONS

Tenant Maintenance - Section 51. The tenant must keep the dwelling in a clean, fit condition and must obey laws and regulations governing cleanliness, health and safety. Such things include garbage disposal and proper use of appliances and plumbing. Friends and family members are also bound under this section of the Code.

Compliance With Rules - Section 52. The tenant must comply with all rules brought to the tenant's attention. If the rules are not brought to the tenant's attention at the time the tenant enters into the rental agreement, and if the rules substantially modify the tenant's bargain under the rental agreement, the rules do not apply to the tenant unless the tenant consents to them in writing. For the rules to apply, they must:

- A. Promote the tenant's convenience, safety and general welfare;
- B. Preserve the landlord's property from abuse;
- C. Promote the fair distribution of services and facilities available to all tenants in general;
- D. Reasonably relate to the purpose of the rules;
- E. Apply to all tenants of the property in a fair manner;
- F. Be clear enough to be understood.

Tenants must comply with condominium bylaws.

Obligation to Pay Rental - Section 21(b). The tenant must pay the agreed upon rent and pay it on time. Tenants who receive public assistance may change the rent due date to within three business days (excluding Saturdays, Sundays and holidays), after the mailing date of public assistance checks, by making a one-time prorated payment to cover the period between the original due date in the rental agreement and a newly established due date for the remainder of the landlord-tenant relationship.

Tenant's Absence Without Notice - Section 44(d). If a tenant is absent from the dwelling for a continuous period of 20 days or more without written notice to the landlord, the tenant shall be deemed to have wrongfully quit the dwelling unit, provided that the tenant shall not be considered to be absent from the dwelling unit without notice to the landlord during any period for which the landlord has received payment of rent.

Access - Section 53. The tenant must allow the landlord reasonable entry into the unit to inspect, make repairs, and show the dwelling to prospective purchasers and tenants. The landlord, except in emergencies, shall give the tenant at least two days' notice and shall enter only during reasonable hours.

Tenant Absence and Repair Needs - Section 54. If required by the rental agreement, the tenant must notify the landlord of any extended absence from the premises.

Inform Landlord of Repair Needs - Section 55. The tenant must inform the landlord of conditions which need repair.

LANDLORD REMEDIES

Failure to Pay Rent - Section 68(a). The landlord may demand payment of rent anytime after it is due. The landlord may notify the tenant in writing that unless payment is made within five business days after tenant receives the notice, the rental agreement will be terminated. If the tenant does not pay the past-due rent in full after receiving the landlord's notice, the landlord may sue to evict the tenant. (It is suggested that the landlord provide notice to the tenant by certified mail or by hand delivery. If this is not possible, the law allows the landlord to post a notice in a conspicuous place on the dwelling unit.)

Court Action for Rent Payment - Sections 68(b). The landlord may sue for rent alone anytime after demanding payment of past-due rent and notifying the tenant of the landlord's intention to bring such action.

Rent Trust Fund - Section 78. After court action involving a dispute concerning the payment or nonpayment of rent has been initiated, the Code provides that, upon request of either the tenant or the landlord, the court shall order the tenant to pay the disputed rent to the court as it becomes due.

A. If a rent increase is in dispute, the court shall order the tenant to deposit into court the amount of the rent prior to the increase.

B. The tenant need not make such payments to the court if the tenant can show that the rent has already been paid to the landlord or a written agreement exists between the parties providing that rent can be withheld or deducted.

C. If the tenant fails to comply with the court's order to make payments to the Rent Trust Fund, the landlord shall be entitled to a judgment for possession. Execution will be issued accordingly, and the tenant and the personal property of the tenant shall then be removed from the premises by the appropriate officials.

D. The court can pay the landlord out of the Rent Trust Fund if the court determines that rent was not paid. It may pay the tenant if rent was paid or properly withheld or deducted.

E. A party acting in bad faith shall be liable for reasonable interest on the rent deposited with the court.

Tenant Negligence, Failure to Maintain, or Unlawful Use - Section 69. The landlord may take the following steps in cases where the tenant does not comply with the tenant's obligations to maintain the unit (Section 51):

A. The landlord may notify the tenant in writing of the problem and specify a time (not less than 10 days) in which the tenant must correct the problem.

B. If the tenant cannot be otherwise notified in writing, the landlord may give notice of the tenant's violations by posting the notice in a conspicuous place on the dwelling unit;

C. If the tenant does not correct the problem within the time specified the landlord may:

1. Terminate the rental agreement and sue to evict the tenant; or
2. Correct the problem and bill the tenant for it.

D. If the landlord finds out that a tenant's action or lack of it may cause irremediable damage to person or property, the landlord need not give the tenant any time for correction. Instead the landlord may proceed immediately to end the agreement or make the repair and bill the tenant.

Absence - Section 70(a) & (b). If a rental agreement provides that the tenant must notify the landlord of any extended absence, such as vacation, and this is not done, the landlord may collect for any damage resulting from such absence.

During an extended absence of the tenant the landlord may enter the unit as may be reasonably necessary for safekeeping, inspection, maintenance, and to show the dwelling to prospective purchasers and tenants.

Misuse - Section 70(c). Unless provided in the rental agreement, the tenant may not use a dwelling unit for any purpose other than as the tenant's residence or home. If the tenant violates this requirement, the landlord may terminate the agreement and sue for eviction.

Abandonment - Section 70(d). If the tenant vacates the unit wrongfully, with no intention of resuming the tenancy, the landlord is entitled to the lesser of:

A. The entire rent for the remainder of the term;

B. The daily rent for the period necessary to re-rent the dwelling, plus a reasonable commission, plus the difference between the rent agreed to in the prior rental agreement and the fair rental value.

Tenant Quits Before Occupancy - Section 70(e). If the tenant changes his or her mind about taking the unit before moving in, the tenant shall be liable to the landlord for the lesser of the following amounts:

A. All monies deposited with the landlord;

B. One month's rent at the rate agreed upon in the rental agreement;

C. The daily rent for the period necessary to re-rent the dwelling, plus the difference between the rent agreed to in the rental agreement and the fair rental value, plus reasonable cost and commission.

Landlord's Remedies for Improper Use - Section 72(a) & (b). If the tenant does not comply with the rules regarding use of the dwelling (see TENANT OBLIGATIONS: "Compliance With Rules"), the landlord may notify the tenant in writing of the breach. The notice shall specify the time (not less than 10 days) within which the tenant must remedy the breach.

If the tenant continues to breach the rule after the date specified in the notice and the landlord wants to evict the tenant, the landlord must sue within 30 days of the continued breach. The landlord may sue immediately to evict the tenant and need not give the tenant time to correct a rule violation when:

A. A tenant violates state or county laws relating to health and safety;

B. A tenant or the tenant's friend or family member purposely destroys or extensively damages the rental unit or any part of the premises;

C. The breaking of a house rule causes or threatens to cause injury to a person.

Tenant's Refusal to Allow Reasonable Access - Section 73(a). If the tenant refuses to allow the landlord reasonable entry into the dwelling unit, the tenant shall be liable to the landlord for losses suffered by such refusal.

Entry in Case of Emergencies - Section 53(b) & (c). The landlord may enter a dwelling without permission of the tenant in cases of emergency such as fire, weather damage, abandonment and extended absence (see LANDLORD REMEDIES: "Absence" and "Abandonment").

Sample form for the landlord's notice (See LANDLORD REMEDIES: "Landlord's Remedies for Improper Use," Section 72)

(Name of Landlord)

(Date)

(Name of Tenant)

(Address of Tenant)

(Mr. or Ms. Name of Tenant):

You are hereby notified that you have failed to perform according to the following rule:

(Specify the rule that has been breached.)

Be informed that if you continue violating (or again violate) this rule after (date) (not less than ten from the date this notice), the landlord may terminate the rental agreement and sue for possession of your dwelling unit.

Sincerely,

(Landlord's signature)

(print Landlord's name), Landlord

TENANT REMEDIES

Tenant Unable to Gain Possession - Section 61. If the landlord fails to have the unit ready for occupancy at the beginning of the agreed term and in the agreed condition:

- A. The tenant does not have to pay rent during the time the tenant cannot move in.
- B. The tenant may notify the landlord and terminate the rental agreement at any time during the period that the tenant is unable to move in.
- C. The tenant may recover reasonable damages from the landlord for the cost of securing alternative housing. This recovery may be made by either of the following:
 1. Filing a lawsuit.
 2. If the tenant eventually takes occupancy of the unit, by taking the difference between the cost of the alternate housing and the agreed rent and deducting that amount from the rent. Receipts for the other amounts must be presented to the landlord.

Termination During First Week of Occupancy - Section 62. If the landlord fails to conform to the rental agreement or the conditions the tenant may expect from the landlord (see LANDLORD OBLIGATIONS: "Conditions a Tenant May Expect From Landlord") at the beginning of the term, the tenant may provide notice

to the landlord, terminate the rental agreement and vacate the dwelling at any time during the first week of occupancy. The tenant's right to terminate is extended indefinitely if the tenant stays in the unit, relying on the landlord's promise to correct the problems.

Termination at Any Time - Section 63. If a condition exists within the premises that is not due to the tenant's neglect and that substantially deprives the tenant of enjoyment of the dwelling under the rental agreement, the tenant may notify the landlord in writing of the situation and terminate the rental agreement if the condition is not remedied within one week. No notice needs to be given if the condition poses an imminent threat to health or safety. If the condition was caused by landlord's negligence or done willfully, the tenant may recover any damages caused by the condition.

Unlawful Removal or Exclusion - Section 63. If the landlord should lock the tenant out of the unit overnight without cause or without a court order, the tenant may recover possession or terminate the rental agreement. In either case, the tenant may recover an amount equal to two month's rent or free occupancy for two months, and the cost of the legal suit.

Retaliatory Evictions and Rent Increases Prohibited - Section 74. Any tenant who has lost possession in violation of this section is entitled to recover damages, cost of suit, and attorney's fees. (See PROHIBITED PRACTICES: "Retaliatory Evictions and Rent Increases.")

Non-Disclosure - Section 67. If the landlord fails to comply with any disclosure required within ten days after proper demand by tenant, the landlord shall be liable to the tenant for \$100 plus reasonable attorney's fee. (See LANDLORD OBLIGATIONS: "Rental Agreement; Disclosure.")

Landlord's Entry Without Permission - Section 73(b)(1)(2) & (3). Except for an entry in an emergency such as a fire, the landlord shall be liable to the tenant for any theft, casualty, or damage caused by the landlord's entry or by anyone acting for the landlord when the tenant is absent and has not consented to a specific entry. The landlord is also liable for theft, casualty, or damage caused when the tenant is present but has not given consent for entry or in any case where damage is caused by the landlord's negligence.

Unreasonable Entry - Section 73(c). Upon repeated demands by the landlord for unreasonable entry, or any entry by the landlord or by another person with the landlord's permission or license which is unreasonable and not consented to by the tenant, a tenant may:

A. Terminate the rental agreement;

B. Seek a court injunction against the landlord, and a fine of not more than \$100.

Fire or Casualty Damage - Section 65. If a dwelling is rendered partially or wholly unusable by fire or casualty damage, the tenant may immediately leave the premises and notify the landlord within one week after moving. The rental agreement shall end on the date the tenant moves out. If the tenant fails to notify the landlord in such a case, the landlord may collect rent up to the time the landlord knows that the tenant has moved. If the tenant continues to live in a portion of a dwelling that remains usable after fire or casualty damage, the rent shall be adjusted by the landlord to cover payment for only the portion still usable.

Tenant's Remedy for Repair - Section 64(c). The tenant should follow these steps to correct any defective condition on the premises which is in material noncompliance with the rental agreement or with the landlord's obligations to supply and maintain fit premises (see LANDLORD OBLIGATIONS "Conditions a Tenant May Expect From Landlord"). The tenant may:

A. Notify the landlord with a written list of things that need repairing (a sample letter to a landlord requesting repairs follows this section). If the tenant does not include the defective condition on this list, the tenant cannot require that the landlord to make repairs within six months. Because the tenant can only deduct up to three month's rent for every six-month period, the tenant must decide which repairs are the most important.

B. The landlord must start making the repairs requested by the tenant within 12 business days after receiving the written notice and must try to have the repairs completed as soon as possible. If the landlord cannot start making the repairs within 12 business days because of reasons beyond the landlord's control, the tenant must be informed of the reason for the delay and when the landlord expects the repairs to be started.

C. If the landlord does not do the repairs as specified above, the tenant may make repairs and deduct up to \$500 from the following month's rent for the cost of repairs. If the tenant makes the repairs, or has them made, the tenant must give the landlord copies of all receipts connected with the repair work.

Sample Letter for a Tenant Requesting Repair of the Dwelling

(Date)

(Mr. or Ms. Landlord's name)

(Street address)

(City or town, Hawaii , ZIP)

Dear (Mr. or Ms. Landlord's name):

I live at (tenant's street address -- and apartment number, if there is one). I am requesting that the following problems be fixed as soon as possible:

(List the problems, such as the following examples:

1. The screen to the kitchen window is torn and needs to be replaced.
2. The kitchen faucet cannot be completely turned off and is constantly dripping.)

If you cannot start the repairs within 12 business days, I am going to start repairs and deduct the cost from my next month's rent and send you the receipts for the amount I spent.

Please call me or write to me at (tenant's telephone number and street address -- and apartment number, if there is one) as soon as possible and let me know when these conditions will be repaired.

Sincerely,

(Your signature)

(Print your name), Tenant

QUESTIONS AND ANSWERS

REGARDING COMMON LANDLORD-TENANT PROBLEMS

Deposits

Q Is the landlord required to pay interest on security deposits?

A The landlord is not required to do so by law.

Q May landlords increase the security deposit by an amount similar to a general excise tax charge?

A No. The deposit is the tenant's money held by the landlord.

Q Are final inspections required?

A Not by law, but they are considered a good way to prevent further disputes.

Q After an inspection of the premises, are landlords required to give the tenants a second chance to correct those conditions found unsatisfactory?

A Not by law. It is advisable for tenants to have everything in order prior to inspection. In practice, many landlords do give tenants a second chance, thereby saving the time it would otherwise take for the landlord to have the conditions corrected. If an inspection is made prior to an agreed upon termination date, it would be reasonable to allow the tenant an opportunity to make the required corrections prior to that date.

Q What can the tenant do to insure full refund of the deposit?

A To insure full refund a tenant should:

1. Repair all damages to the unit caused during the tenancy. Damages include such things as holes put into walls for the hanging of pictures. Any holes should be puttied and repainted.
2. Clean the unit thoroughly.
3. Return all keys on the termination date.

Taxes

Q May the landlord increase the rent by an amount equal to the landlord's general excise tax obligation?

A Yes. The landlord must pay an excise tax of 4 percent for rent received because it is gross revenue. This cost may be added to the base amount. However, the addition of the increment and the percentage must be stated in the rental agreement.

Q What is transient accommodations tax?

A This is a six percent (6%) tax (effective 6/94) on the amount paid for lodging by any person who takes accommodations which he or she does not intend to make a permanent home. The types of lodgings include, but are not limited to, rooms, apartments or suites which are usually occupied for less than 180 consecutive days.

Rent

Q Is there a grace period for paying rent?

A Not in the Landlord/Tenant Code. Many landlords permit a certain number of days beyond the due date to pay rent without penalty and many rental agreements include such a provision. If not otherwise stated, rent is due on the due date.

Q Are there any limits on how often a landlord can increase the rent or the amount by which a landlord can increase the rent?

A The landlord must give "adequate" written notice of the intent to increase the rent according to the type of tenancy (see chart on page 29). There is no limit on the amount of the rent increase as there is no rent control in Hawaii.

Q How much notice must be given by the landlord or tenant to terminate a tenancy at the expiration of a lease? To increase rent after the expiration of the lease?

A No notice is required in either case. A lease is a contract for a set period of time at a set rate. In order to continue the tenancy beyond the expiration of the lease, new terms would have to be negotiated. It is recommended that either the landlord or tenant advise the other of their intention to continue or terminate the agreement after its expiration to avoid misunderstanding and unnecessary problems. This applies equally to changing the amount of rent to be paid, also. If the landlord wishes to terminate the tenancy, the tenant must vacate the unit or become a holdover tenant (see TERMINATION OF TENANCY: "Holdover").

Abandoned Possessions

Q How may the landlord dispose of a tenant's abandoned possessions?

A The landlord may sell the abandoned possessions in a commercially responsible manner or store the possessions at the tenant's expense, or donate the possessions to a charitable organization. Before selling or donating the possessions, the landlord must mail a notice of his intent to sell or donate the possessions to the tenant at the tenant's forwarding or last known address. In addition, after the 15-day notification before selling the possessions, the landlord must advertise the sale in a daily paper of general circulation for at least three consecutive days.

The proceeds of the sale of possessions under subsection (a) shall, after deduction of accrued rent and costs of storage and sale, including the cost of advertising, be held in trust for the tenant for 30 days, after which time the proceeds shall be forfeited to the landlord.

Discrimination in Real Property Transactions

Q If an individual believes that he or she has been denied housing on the basis of race, sex, color, religion, marital status, ancestry, handicapped status, HIV (human immunodeficiency virus) infection, or because his or her family includes children, to which agency may the individual direct a complaint?

A Cases involving discrimination in housing are now handled by the State Civil Rights Commission, a branch of the State Department of Labor and Industrial relations, telephone number 586-8636. The U.S. Department of Housing and Urban Development handles complaints against landlords who violate federal Fair Housing provisions, telephone number 522-8181.

HAWAII'S LANDLORD/TENANT CODE DEADLINES

1. Return of Security Deposit: (one year to bring action by tenant for return of deposit)

- Week to Week. 14 days after rental termination**
- Month to Month. 14 days after rental termination**

- Lease. 14 days after lease expires

2. Notice of Rent Increase:

- Week to Week. 15 days notice*
- Month to Month. 45 days notice*

3. Notice of termination of rental:*

- Week to Week. 10 days notice
- Month to Month. 45 days written notice from landlord to tenant* 28 days written notice from tenant to landlord
- Lease. It is recommended that either landlord or tenant give notice of intent prior to lease expiration.

*(from 1991 Legislative session:

After 45 days written notice from the landlord, the tenant may vacate the unit at any time within the last 45 day period and is responsible for payment of prorated rent for the period that the premises are occupied and for notifying the landlord of the day of vacating.

4.

- a. Notice of voluntary demolition*. 120 days
- b. Notice of conversion to condominium*. 120 days
- c. Notice of conversion to transient vacation rental*. 120 days

The tenant may vacate the unit at any time within the 120-day period, so long as the tenant notifies the landlord of the day of vacating and shall pay a prorated rent for the period the premises are occupied.

5. General Repair Schedule:

- Week to Week 12 business days
- Month to Month 12 business days--landlord must start repairs within 12 days after being notified or explain why they cannot be done at that time.
- Lease 12 business days

6. Emergency Repairs (repairs necessary to provide sanitary & habitable conditions):

- Week to Week 3 business days
- Month to Month 3 business days--landlord must take steps to correct within 3 business days or tenant may have repairs done and deduct cost from rent.
- Lease 3 business days

7. Notice of Intent to Enter:

- Week to Week 2 days
- Month to Month 2 days
- Lease 2 days

8. Wrongfully quit rental:

- Week to Week 20 days

- Month to Month 20 days--if tenant is absent without notice for 20 days, he is considered to have "wrongfully quit" premises. However, the tenant will not be considered absent during any period for which rent has been paid.
- Lease 20 days

9. Improper Use:

- Week to Week 10 days
- Month to Month 10 days to remedy
- Lease 10 days

10. Failure to pay rent:

- Week to Week 5 days
- Month to Month 5 business days after notice, rent must be paid or landlord may sue for eviction.
- Lease 5 business days

11. Failure to disclose:

- Week to Week 10 days
- Month to Month 10 days if requested by tenant, landlord must disclose names of owners and agents
- Lease 10 days

12. Security deposit transfer statement:

- Week to Week 20 days
- Month to Month 20 days if owner sells or transfer interest, tenant must be given a statement of security deposit amount by new owner.
- Lease 20 days

* Notice must be written

**Return postmark before midnight of 14th day

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