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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE HOUSE COMMITTEE ON HOUSING
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

JANUARY 31, 2017
9:30 AM

TESTIMONY OPPOSING H.B. 1009, RELATING TO THE LANDLORD TENANT CODE.

TO THE HONORABLE TOM BROWER, CHAIR,
AND TO THE HONORABLE NADINE K. NAKAMURA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection (“OCP”) opposes H.B. 1009, Relating to the Landlord Tenant Code. My name is Stephen Levins and I am the Executive Director of the OCP.

H.B. 1009 allows a landlord to restrict access to a dwelling unit for failure to pay rent or when the tenant quits the premises, requires a landlord to provide access to a tenant for a period of one day to remove personal property, deems the personal property abandoned if not timely removed, and allows a landlord to dispose of a tenant’s property.

The OCP is opposed to H.B. 1009 since current law already adequately protects the rights and remedies of a landlord in the above described instances.

If a tenant fails to timely pay their rent a landlord can demand payment anytime after it is due and seek to terminate the rental agreement after the five day statutory “grace period”. 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. This procedure has been codified to ensure that both a tenant and landlord are afforded sufficient due process of law. Denying a tenant their right to occupy their rental without a court order as contemplated in this measure would be a denial of their due process.

Additionally, Section 56 of the Landlord Tenant Code, section 521-56 of the Hawaii Revised Statutes, already sufficiently governs the manner in which a landlord can dispose of a tenant’s possessions. This existing law provides reasonable procedures for notifying a tenant regarding a landlord’s intention and manner of disposing a tenant’s personalty. Allowing a landlord to dispose of a tenant’s worldly possessions on one day’s notice is impractical, unnecessary, and harsh. There is no reason to change an effective procedure that has been codified in Hawaii for decades.

Thank you for the opportunity to offer comments opposing H.B. 1009. I would be happy to answer any questions members of the Committee may have.



From: mailinglist@capitol.hawaii.gov
 Sent: Monday, January 30, 2017 9:29 PM
 To: HSGtestimony
 Cc: vgeminiani@gmail.com
 Subject: Submitted testimony for HB1009 on Jan 31, 2017 09:30AM
 Attachments: Eviction study 1 31 17.pdf

Follow Up Flag: Follow up
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HB1009

Submitted on: 1/30/2017

Testimony for HSG on Jan 31, 2017 09:30AM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
victor geminiani	lawyers for Equal Justice	Oppose	No

Comments: Chair Brower and members of the committee, Thank you for an opportunity to testify today in strong opposition to HB 1009. I apologize for this late testimony but I just found out about the timing and substance of this hearing. The eviction process in Hawaii is broken and tenants are the victims of that system’s failures. The results of that victimization reside in our streets. HB 1009 would only help to further tip the imbalance of justice against tenants. Safe, stable housing provides a foundation for building a successful life—a foundation that can quickly crumble because of an improper eviction. Absence of housing stability increases the likelihood of homelessness, domestic violence, adverse impacts on health and depressed children’s educational outcomes. These consequences perpetuate generational cycles of poverty and give rise to serious social costs. Despite these severe consequences to individual households and the community as a whole, tenants facing eviction in Hawaii have relatively little support to ensure they are not improperly removed from their homes. Evictions are conducted much more quickly than a typical court case through a process known as “summary possession.” The streamlined process is designed to quickly return possession of the premises to the landlord. In exchange, landlords are required to closely adhere to certain rules intended to level the playing field between landlords and tenants. However, the process is only fair to the extent the parties involved understand the rules. A party with superior knowledge of the process gains great advantage, creating an imbalance in what was intended to be a fair process. In Hawaii, landlords almost always have the advantage. The majority of landlords are represented by legal counsel who can guide them through the process, or in many cases appear through professional agents experienced with the process, while the percentage of represented tenants is close to nil. It is not surprising landlords regain possession in almost every case. Certainly, in many cases, the landlord prevails because there was adequate cause for eviction. However, for a significant percentage of cases, a tenant’s lack of representation and understanding of the proceedings results in an appearing tenant’s inability to identify and present valid defenses or otherwise effectively advocate for himself or herself or, in the frequent instances where tenants fail to appear, a default judgment in favor of the landlord. Indeed, various studies indicate represented tenants were six to ten times more likely to win in court, compared with unrepresented tenants. In partnership with law students at the University of Hawaii-Manoa William S. Richardson School of Law and the Legal Aid

Society of Hawaii, the Hawaii Appleseed Center for Law and Economic Justice conducted an observational study and case analysis of 205 eviction hearings on the island of Oahu in the summer and fall of 2010. A group interview with presiding District Court Judges was also conducted in August 2010. Later, between March and May 2016, Hawaii Appleseed conducted an additional 25 observations and solicited additional comments from leaders in the legal community to evaluate whether recent developments had an impact on eviction outcome statistics. Generally, there was no difference. The results of the study in both periods confirmed a stark disparity in legal representation and dissemination of legal information between landlords and tenants, and a resulting disparity in substantive case outcomes. Across the observed return hearings in 2010, 70 percent of landlords were represented by counsel,³ as opposed to 4 percent of tenants. The results for observed return hearings in 2016 were only slightly different, with 68 percent of landlords and 0 percent of tenants represented. Average hearing times varied greatly between judges but the average return hearing lasted only 75 seconds. The disparity in these percentages is even more glaring if it is considered that landlords may have their cases brought by knowledgeable and experienced “agent s” who are likely to be professional real estate or management agents with superior knowledge of the process. About half of all eviction cases resulted in default judgment for the landlord due to the tenants not responding to the complaint or appearing at the return hearing. Unsurprisingly, landlords regained possession in 97 percent of the summary possession proceedings. Attached to this testimony is the recent article on evictions in Hawaii printed in the Hawaii Bar Journal. HB 1009 would add significantly to the number of people who would face immediate homelessness and the speed with which they would be forced to exercise their most limited of options given the crisis we have in affordable rental units. Please vote against this bill. Aloha, Victor Geminiani Co Executive Director The Hawaii Appleseed Center for Law and Economic Justice

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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