A BILL FOR AN ACT

RELATING TO THE LANDLORD-TENANT CODE.

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

SECTION 1. The legislature finds that the State has one of
the highest percentages of renter households in the nation, with
forty-three per cent of households in the State consisting of
renters. The legislature recognizes that the State also has the
least amount of affordable housing in the nation, resulting in
thousands of families in the State, many whom are already facing
eviction, being unable to find alternative housing. The
legislature further recognizes that evictions increase
homelessness, unemployment, crime, and mental and physical
illness. Further, children who experience an eviction often
show signs of slower academic progress and other developmental
impairments. Additionally, each eviction results in significant
financial and social costs to the evicted household and the
surrounding community.

The legislature believes that eviction procedures must
carefully balance the landlord's need for sufficient enforcement
against the tenant's need for sufficient protection. The
legislature further finds that without adequate safeguards, tenants become targets for abuse during these eviction proceedings. Currently, the residential landlord-tenant code makes it difficult for tenants to defend themselves against wrongful evictions. While the code clearly outlines landlords' responsibilities, it fails to provide tenants with suitable methods of recourse and ways to hold landlords accountable in various situations.

The legislature notes that leases, like other contracts, are reciprocal. The Hawaii supreme court has held that landlords cannot require a tenant to pay rent if the tenant does not receive the basic services to which they are entitled. While many states have passed laws specifying that tenants cannot be forced to pay rent for uninhabitable premises, the legislature has failed to formally recognize this principle, resulting in a lack of enforcement and numerous unjust and illegitimate evictions.

The legislature acknowledges that landlords are prohibited from retaliating against tenants who request repairs to their respective homes or complain about health or safety code violations. However, although the residential landlord-tenant
code guarantees compensation for other landlord offenses, it also places on the tenant the burden of proving entitlement to compensation for a landlord’s retaliation. The result is often that tenants who have been retaliated against are not made whole, allowing landlords to continue these retaliatory practices.

Accordingly, the purpose of this Act is to:

(1) Prohibit landlords from recovering possession of dwelling units from tenants if habitability of premises is significantly impaired;

(2) Set a tenant’s liability for rent if habitability of premises is significantly impaired; and

(3) Provide remedies for unlawful retaliatory evictions.

SECTION 2. Section 521-42, Hawaii Revised Statutes, is amended to read as follows:

"§521-42 Landlord to supply and maintain fit premises.

(a) The landlord shall at all times during the tenancy:

(1) Comply with all applicable building and housing laws materially affecting health and safety;

(2) Keep common areas of a multi-dwelling unit premises in a clean and safe condition;
(3) Make all repairs and arrangements necessary to put and keep the premises in a habitable condition;

(4) Maintain all electrical, plumbing, and other facilities and appliances supplied by the landlord in good working order and condition, subject to reasonable wear and tear;

(5) Except in the case of a single family residence, provide and maintain appropriate receptacles and conveniences for the removal of normal amounts of rubbish and garbage, and arrange for the frequent removal of such waste materials; and

(6) Except in the case of a single family residence, or where the building is not required by law to be equipped for the purpose, provide for the supplying of running water as reasonably required by the tenant.

Prior to the initial date of initial occupancy, the landlord shall inventory the premises and make a written record detailing the condition of the premises and any furnishings or appliances provided. Duplicate copies of this inventory shall be signed by the landlord and by the tenant and a copy given to each tenant. In an action arising under this section, the
executed copy of the inventory shall be presumed to be correct.

If the landlord fails to make such an inventory and written record, the condition of the premises and any furnishings or appliances provided, upon the termination of the tenancy shall be rebuttably presumed to be the same as when the tenant first occupied the premises.

(b) The landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, and minor remodeling only if:

(1) The agreement of the landlord and tenant is entered into in good faith and is not for the purpose of evading the obligations of the landlord;

(2) The work to be performed by the tenant is not necessary to cure noncompliance by the landlord with section 521-42(a)(1); and

(3) The agreement of the landlord and tenant does not diminish the obligations of the landlord to other tenants.

(c) If a landlord’s failure to materially comply with subsection (a) results in the significant impairment of the habitability of the premises:
(1) No action or proceeding to recover possession of the dwelling unit may be maintained against the tenant, nor shall the landlord otherwise cause the tenant to be removed from the dwelling unit involuntarily; provided that:

(A) The tenant continues to pay rent equal to the fair rental value of the premises or the agreed upon rent, whichever is less; and

(B) The landlord's ability to recover possession of the unit is restored upon:

(i) Termination of the rental agreement in accordance with law or terms of the agreement; or

(ii) Restoration of the premises to a habitable condition,

whichever comes first; and

(2) The tenant's liability for rent, from the date of significant impairment, shall not exceed the fair rental value of the premises."

SECTION 3. Section 521-74, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:
"(c) Any tenant from whom possession has been recovered or who has been otherwise involuntarily dispossessed, in violation of this section, is entitled to recover the damages sustained by the tenant in an amount equal to two months rent, and the cost of suit, including reasonable attorney's fees."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2019.
Report Title: Landlord-tenant Code; Habitability; Retaliatory Evictions

Description: Prohibits landlords from recovering possession of a dwelling unit from tenants if habitability of premises is significantly impaired. Sets a tenant's liability for rent if habitability of premises is significantly impaired. Provides remedies for retaliatory evictions. (SD1)

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