

---

---

# A BILL FOR AN ACT

RELATING TO THE LANDLORD-TENANT CODE.

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

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

15           The legislature believes that eviction procedures must  
16 carefully balance the landlord's need for sufficient enforcement  
17 against the tenant's need for sufficient protection. The



1 legislature further finds that without adequate safeguards,  
2 tenants become targets for abuse during these eviction  
3 proceedings. Currently, the residential landlord-tenant code  
4 makes it difficult for tenants to defend themselves against  
5 wrongful evictions. While the code clearly outlines landlords'  
6 responsibilities, it fails to provide tenants with suitable  
7 methods of recourse and ways to hold landlords accountable in  
8 various situations.

9 The legislature notes that leases, like other contracts,  
10 are reciprocal. The Hawai'i Supreme Court has held that  
11 landlords cannot require a tenant to pay rent if the tenant does  
12 not receive the basic services to which they are entitled.  
13 While many states have passed laws specifying that tenants  
14 cannot be forced to pay rent for uninhabitable premises, the  
15 legislature has failed to formally recognize this principle,  
16 resulting in a lack of enforcement and numerous unjust and  
17 illegitimate evictions.

18 The legislature acknowledges that landlords are prohibited  
19 from retaliating against tenants who request repairs to their  
20 respective homes or complain about health or safety code  
21 violations. However, although the residential landlord-tenant



1 code guarantees compensation for other landlord offenses, it  
2 also places on the tenant the burden of proving entitlement to  
3 compensation for a landlord's retaliation. The result is often  
4 that tenants who have been retaliated against are not made  
5 whole, allowing landlords to continue these retaliatory  
6 practices.

7 Accordingly, the purpose of this Act is to:

- 8 (1) Prohibit landlords from recovering possession of  
9 dwelling units from tenants if habitability of  
10 premises is significantly impaired;
- 11 (2) Set a tenant's liability for rent if habitability of  
12 premises is significantly impaired; and
- 13 (3) Provide remedies for unlawful retaliatory evictions.

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

16 **"§521-42 Landlord to supply and maintain fit premises.**

- 17 (a) The landlord shall at all times during the tenancy:
  - 18 (1) Comply with all applicable building and housing laws  
19 materially affecting health and safety;
  - 20 (2) Keep common areas of a multi-dwelling unit premises in  
21 a clean and safe condition;



1 (3) Make all repairs and arrangements necessary to put and  
2 keep the premises in a habitable condition;

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

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

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

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



1 executed copy of the inventory shall be presumed to be correct.  
2 If the landlord fails to make such an inventory and written  
3 record, the condition of the premises and any furnishings or  
4 appliances provided, upon the termination of the tenancy shall  
5 be rebuttably presumed to be the same as when the tenant first  
6 occupied the premises.

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

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

13 (2) The work to be performed by the tenant is not  
14 necessary to cure noncompliance by the landlord with  
15 ~~[section 521-42(a)(1);]~~ subsection (a)(1); and

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

19 (c) If a landlord's failure to materially comply with  
20 subsection (a) results in a significant impairment to the  
21 habitability of the premises:



1       (1) No action or proceeding to recover possession of the  
2       dwelling unit may be maintained against the tenant,  
3       nor shall the landlord otherwise cause the tenant to  
4       be removed from the dwelling unit involuntarily;  
5       provided that:

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

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

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

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

16       whichever comes first; and

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

20       SECTION 3. Section 521-74, Hawaii Revised Statutes, is  
21       amended by amending subsection (c) to read as follows:



# H.B. NO. 265

1           "(c) Any tenant from whom possession has been recovered or  
2 who has been otherwise involuntarily dispossessed, in violation  
3 of this section, is entitled to recover the damages sustained by  
4 the tenant in an amount equal to two months rent, and the cost  
5 of suit, including reasonable attorney's fees."

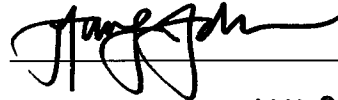
6           SECTION 4. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9           SECTION 5. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11           SECTION 6. This Act shall take effect on July 1, 2021.

12

INTRODUCED BY:



JAN 21 2021



# H.B. NO. 265

**Report Title:**

Landlord-tenant Code; Habitability; Retaliatory Evictions

**Description:**

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

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

