

## Revised Maine Landlord-Tenant Statutory Provisions

By Wendy Paradis and James Garrett | June 14, 2010

On March 29, 2010, the 124th Maine State Legislature, Second Regular Session, passed “An Act to Implement the Recommendations of the Working Group to Study Landlord and Tenant Issues” (the “Act”). The Act, **which is set to become effective on or about July 12, 2010**, changes current residential landlord-tenant practice. It affects FEDs, security deposits and lease provisions. The Act has the effect of creating a number of new rights for tenants and, at the same time, increasing the burden on landlords. Below is a summary of the most noteworthy changes brought on by the Act.

### Noteworthy Changes

- The Act broadens the presumption of retaliation in FED actions by providing that there is a rebuttable presumption of retaliation against a tenant if, within 6 months prior to the commencement of the action, the tenant has filed, in good faith, a fair housing complaint with the Maine Human Rights Commission or the United States Department of Housing and Urban Development concerning acts affecting the tenancy. This does not affect a landlord’s ability to rebut the presumption of retaliation; it simply broadens the circumstances when a landlord may be forced to do so.
- The Act adds a new subsection that provides that a tenant faced with an FED action may raise as an affirmative defense the landlord’s failure to provide the tenant with a reasonable accommodation under the federal Fair Housing Act. This provision does not broaden the application of the reasonable accommodation requirement to all landlords; single-family houses sold or rented by an owner and units in owner-occupied 4-family (or less) dwellings remain exempt.
- The Act adds new language that provides that a notice to terminate a tenancy at will must include language advising the tenant that he/she has the right to contest the termination in court. The landlord’s failure to include such language is not grounds for dismissal of an FED action, but it may be sufficient grounds to set aside any default judgment entered against the tenant for failure to appear at the FED action court hearing.
- The Act replaces the abandoned property statute and now requires: that the landlord store abandoned property in a safe, dry and secure storage location; that the landlord notify the tenant that the landlord may dispose of the property 14 days after notice if there is no response by the tenant; that if the tenant claims the property within 14 days after notice is sent, the landlord must release the property to the tenant and **may not** condition release of the property to the tenant upon payment of any fee or other amount owed to the landlord, including rental arrearages, damages or storage costs, **as long as the tenant makes arrangements to retrieve the property by the 24th day after notice is sent**; that if the tenant claims the property within 14 days after notice is sent but fails to retrieve the property by the 24th day after notice is sent OR if the tenant does not claim the property within 14 days after notice is sent, the landlord may: condition release of the property to the tenant upon his/her payment of all arrearages, damages and storage costs; sell any property for a reasonable fair market price, apply all proceeds to arrearages, damages and storage/sale costs and forward all remaining proceeds to the State Treasurer; or dispose of any property that has no

reasonable fair market value.

- The Act adds a new provision for the treatment of bedbug infestations specifically outlining landlord duties, tenant duties and remedies.

**a. The landlord must:**

- i. Conduct an inspection of the unit for bedbugs within 5 days of notice from the tenant about a possible bedbug infestation.
- ii. Contact a pest control agent within 10 days of determination that infestation of bedbugs does exist in a unit.
- iii. Employ a pest control agent that carries current liability insurance to promptly treat the bedbug infestation and take reasonable measures to treat the bedbug infestation.
- iv. Disclose to a prospective tenant if an adjacent unit is currently infested or being treated before renting. Upon request from a tenant or prospective tenant, the landlord must disclose the last date the unit or adjacent unit(s) was inspected and free of bedbug infestation.
- v. Not offer to rent a unit the landlord knows or suspects is infested with bedbugs.
- vi. Offer reasonable assistance, including financial, to the tenant who is not able to comply with inspection or control measures.

**b. The tenant must:**

- i. Promptly notify the landlord when the tenant knows or suspects infestation of bedbugs in his/her unit.
- ii. Once the tenant notifies the landlord, the tenant must grant the landlord, landlord's agent or pest control agent access to the unit for inspection or control of the bedbug infestation. This inspection is limited to visual/manual inspection of the tenant's bedding and upholstered furniture (unless additional inspection is considered reasonable). If there are bedbugs, the landlord/landlord's agent may investigate further.
- iii. The tenant must comply with reasonable measures to eliminate and control the bedbug infestation, as determined by the landlord and the pest control agent, and unreasonable failure to comply will result in the tenant's financial responsibility for all pest control treatments arising from his/her failure to comply.

**c. Remedies:**

- i. The landlord's failure to comply constitutes a finding that the landlord has unreasonably failed to promptly remedy a condition that endangers the health and safety of the tenant.
- ii. The landlord's failure to comply makes the landlord liable for the greater of \$250 or actual damages, plus attorney's fees.
- iii. The tenant's failure to provide reasonable access, comply with reasonable requests for inspection/treatment or comply with reasonable bedbug control measures permits the landlord to commence an action under §6030-A. If a court finds the tenant has unreasonably failed to comply, the court may issue a temporary order or interim relief to carry out this section, including:
  1. Granting the landlord access to the unit (which must be served on the tenant

at least 24 hours prior to the landlord entering the unit);

2. Granting the landlord a right to engage in control measures;

3. Requiring the tenant to comply with control measures or assessing the tenant related noncompliance costs and damages.

iv. The tenant's assertion of rights under this section within 6 months before any FED action creates a rebuttable presumption that the action was commenced in retaliation against the tenant.

- The Act adds new language that provides that in any action regarding payment for heat and utility service in common areas there is a rebuttable presumption that the landlord knows the tenant has been paying for heat or utility service in common areas. If the landlord rebuts, the landlord is only liable for actual damages to the tenant. On a related note, if a court finds the landlord has failed to pay for utility service in the landlord's name, the court must award to the tenant the greater of the actual amount paid by the tenant or \$100, together with the tenant's costs and expenses from the action, and may award the tenant reasonable attorney's fees.

- The Act adds new language that expands the provision allowing municipal intervention to ensure continued habitability of any premises by adding that municipal officers may provide "basic necessities," not just heating fuel. "Basic necessities" means services, including maintenance, repairs and provision of heat and utilities, which a landlord is otherwise responsible to provide.

- The Act repeals and replaces the provision on transfer of security deposits. The landlord may use a single escrow account to hold the security deposits of the tenants residing in separate buildings if the buildings are owned by different entities as long as the different entities are controlled/owned by a single landlord. If a court finds the landlord has violated this section, the tenant is entitled to the greatest of actual damages, \$500 or one month's rent, together with the tenant's reasonable attorney's fees and costs. The remedy provision applies to all security deposits collected by a landlord after June 1, 2010. As of October 1, 2010, the remedy provision applies to all security deposits held by or on behalf of a landlord.

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