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House of Representatives, April 2, 2013

An Act Related to Rent Escrow

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SCHNECK of Bangor. (BY REQUEST)
Cosponsored by Representatives: NADEAU of Winslow, VEROW of Brewer.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 14 MRSA §6021, sub-§4**, as amended by PL 1981, c. 428, §9, is further
3 amended to read:

4 **4. Remedies.** If the court finds that the allegations in the complaint are true, the
5 landlord ~~shall be~~ is deemed to have breached the warranty of fitness for human habitation
6 established by this section, as of the date when actual notice of the condition was given to
7 the landlord. In addition to any other relief or remedies ~~which~~ that may otherwise exist,
8 the court may take one or more of the following actions.

9 A. The court may issue appropriate injunctions ordering the landlord to repair all
10 conditions ~~which~~ that endanger or materially impair the health or safety of the tenant;

11 B. The court may determine the fair value of the use and occupancy of the dwelling
12 unit by the tenant from the date when the landlord received actual notice of the
13 condition until such time as the condition is repaired, and further declare what, if any,
14 ~~moneys~~ money the tenant owes the landlord or what, if any, rebate the landlord owes
15 the tenant for rent paid in excess of the value of use and occupancy. In making this
16 determination, there ~~shall be~~ is a rebuttable presumption that the rental amount equals
17 the fair value of the dwelling unit free from any condition rendering it unfit for
18 human habitation. A written agreement whereby the tenant accepts specified
19 conditions ~~which~~ that may violate the warranty of fitness for human habitation in
20 return for a stated reduction in rent or other specified fair consideration ~~shall be~~ is
21 binding on the tenant and the landlord.

22 C. The court may authorize the tenant to temporarily vacate the dwelling unit if the
23 unit must be vacant during necessary repairs. No use and occupation charge ~~shall~~
24 may be incurred by a tenant until such time as the tenant resumes occupation of the
25 dwelling unit. If the landlord offers reasonable, alternative housing accommodations,
26 the court may not surcharge the landlord for alternate tenant housing during the
27 period of necessary repairs.

28 D. The court may enter such other orders as the court may ~~deem~~ determine necessary
29 to accomplish the purposes of this section. The court may not award consequential
30 damages for breach of the warranty of fitness for human habitation.

31 ~~Upon the filing of a complaint under this section, the court shall enter such temporary~~
32 ~~restraining orders as may be necessary to protect the health or well-being of tenants~~
33 ~~or of the public.~~

34 E. The court may order a disbursement from an escrow account under section 6026,
35 subsection 2.

36 Upon the filing of a complaint under this section, the court shall enter such temporary
37 restraining orders as may be necessary to protect the health or well-being of tenants or of
38 the public.

39 **Sec. 2. 14 MRSA §6026, sub-§2**, as amended by PL 2005, c. 78, §1, is further
40 amended to read:

1 **2. Tenant action if landlord fails to act.** If a landlord fails to maintain a rental unit
2 in compliance with the standards of subsection 1 ~~and the reasonable cost of compliance is~~
3 ~~less than \$500 or an amount equal to 1/2 the monthly rent, whichever is greater,~~ the
4 tenant shall notify the landlord in writing of the ~~tenant's intention to correct the condition~~
5 ~~at the landlord's expense of the rental unit that is out of compliance.~~ If the landlord fails
6 to comply within 14 days after being notified by the tenant in writing by certified mail,
7 return receipt requested, or as promptly as conditions require in case of emergency, the
8 tenant may ~~cause the work to be done with due professional care with the same quality of~~
9 ~~materials as are being repaired. Installation and servicing of electrical, oil burner or~~
10 ~~plumbing equipment must be by a professional licensed pursuant to Title 32. After~~
11 ~~submitting to the landlord an itemized statement, the tenant may deduct from the tenant's~~
12 ~~rent the actual and reasonable cost or the fair and reasonable value of the work, not~~
13 ~~exceeding the amount specified in this subsection~~ notify the appropriate municipal or
14 local enforcement official or agency to inspect the rental unit and certify that the
15 condition of the rental unit constitutes a violation of the standards of subsection 1. If an
16 appropriate municipal or local enforcement official or agency certifies that a rental unit
17 violates the standards under subsection 1, within 10 days of this certification the tenant
18 shall notify the landlord of the certification in writing by certified mail, return receipt
19 requested. If the landlord does not remedy the condition certified in violation of
20 subsection 1 within 15 days of notice of certification under this subsection, or make a
21 substantial step to remedy the condition upon a showing that the condition cannot be
22 remedied in 15 days, the tenant may deposit any rent due into an escrow account
23 controlled by an attorney, bank or other disinterested 3rd party that accepts and holds
24 escrow payments payable only upon order of a court or the signatures of both the tenant
25 and the landlord or person to whom rent is customarily paid. If a tenant receives rental
26 assistance from a governmental unit and the governmental unit is withholding rental
27 assistance because the condition of the rental unit is not in compliance with the standards
28 of subsection 1, the tenant may pay into escrow only the unassisted portion of the tenant's
29 rent. If the parties cannot agree to the terms of the remedy to the condition of the rental
30 unit not in compliance with the standards of subsection 1, either party may bring an
31 action in District Court. After providing the parties with an opportunity to agree to the
32 terms of the remedy through alternative means, the court shall determine whether the
33 condition of the rental unit is not in compliance with the standards of subsection 1 and the
34 scope of any remedy of a condition of the rental unit that is not in compliance with the
35 standards of subsection 1 if the parties cannot agree to the terms of a remedy through
36 alternative means. Pursuant to section 6021, subsection 4, paragraph E, the court may
37 order funds to be disbursed from an escrow account under this subsection to remedy a
38 condition of a rental unit out of compliance with the standards of subsection 1. A court's
39 order under this subsection is not limited by the amount of funds in the escrow account or
40 from any other remedy ordered under section 6021, subsection 4. The attorney, bank or
41 3rd party holding the funds in escrow may deduct from the escrow account reasonable
42 administrative costs and fees for maintaining the escrow account. All court-ordered
43 disbursements and administrative costs and fees paid from the escrow account under this
44 subsection or by the tenant under subsection 9 are considered a cost of compliance and
45 must be subtracted from the amount of rent owed to the landlord. Any funds remaining
46 in the account after all court-ordered disbursements and administrative costs and fees are
47 paid must be returned to the landlord. Compliance with this subsection by a tenant is a

1 defense to a claim of nonpayment of rent. This subsection does not apply to ~~repairs of~~
2 ~~damage caused by the tenant or the tenant's invitee.~~

3 **Sec. 3. 14 MRSA §6026, sub-§4,** as enacted by PL 1981, c. 428, §10, is repealed.

4 **Sec. 4. 14 MRSA §6026, sub-§10,** as enacted by PL 2009, c. 566, §14, is
5 amended to read:

6 **10. Foreclosure.** For tenancies in buildings in which a foreclosure action brought
7 pursuant to section 6203-A or 6321 has been filed and is currently pending, or in which a
8 foreclosure judgment has been entered, if the landlord fails to maintain the premises in
9 compliance with the standards in subsection 1, a tenant may exercise the tenant's rights
10 pursuant to this section ~~without regard to the cost of compliance limitations set forth in~~
11 ~~subsection 2, except that the reasonable costs of compliance may not be more than the~~
12 ~~equivalent of 2 months' rent. A tenant who exercises the tenant's rights under this~~
13 ~~subsection and who thereafter seeks assistance pursuant to Title 22, chapter 1161 may not~~
14 ~~have any amounts expended under this subsection counted as income pursuant to Title 22,~~
15 ~~section 4301, subsection 7.~~

16 SUMMARY

17 This bill allows a tenant to place rent owed into an escrow account if the tenant's
18 rental unit has a condition that endangers or materially impairs the health or safety of the
19 tenant and the landlord fails to remedy the condition. If the tenant and landlord cannot
20 agree to a remedy of an unhealthful or unsafe condition of a rental unit after the tenant
21 has placed the rent into an escrow account, either side may bring an action in District
22 Court to determine whether an unhealthful or unsafe condition of the rental unit exists. If
23 a court rules for the tenant, the court may order funds to be disbursed from the escrow
24 account to remedy the unhealthful or unsafe condition with those funds and
25 administrative fees subtracted from the amount of rent the tenant owes the landlord. This
26 bill also removes the ability of a tenant to repair a dangerous condition that the landlord
27 has failed to repair after notice and deduct the cost of the repair from the tenant's rent.