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Testimony of Leo J. Delicata, Esq., Legal Services for the Elderly, in support of L.D. 45 An Act to Prevent Retaliatory Evictions before the Joint Standing Committee on Judiciary

Senator Carney, Representative Moonen and members of the Joint Standing Committees on Judiciary

Legal Services for the Elderly is a non-profit legal services organization that was established in Maine following the passage of the Older American's Act in 1974. Since then, we have provided free legal assistance to our disadvantaged older adults when their basic human needs are at stake. Our clients are all aged sixty or older and most have very low incomes. Some are the most physically and financially compromised people in our communities.

The financial challenges experienced during the pandemic continue for most Maine people. In fact, some have become worse. Over 33,000 Maine households received rental assistance payments through the Federal Emergency Rental Assistance Program. Unfortunately, that program has ended and additional State general funds, though welcomed and appreciated will not replace the level of help delivered by the federal program.

Sadly, the need for affordable rental housing still far exceeds supply and court actions for evictions have not moderated. As the year progresses more household that rent will be forced to look for another place to live. The most recent Maine Judicial Branch data shows that over 4900 evictions actions were filed in 2022. That's 25 percent more than the year before. Last year at LSE we experienced a 30 percent increase in cases involving evictions and in most of those cases the risk of homelessness was real.

Our statutes recognize an individual's right to control their own property including the right to choose when to begin or end a landlord/tenant

relationship. However they also recognize the tenant's need to have a safe place to live and the right to be treated fairly by the landlord. Thus our laws require landlords to offer housing that is habitable; contain a process that a landlord must follow to legally terminate a tenancy; and provisions that will allow tenants to defend against illegal evictions. A retaliatory eviction is a type of prohibited illegal evictions.

This bill proposes to affect the existing law on the subject of retaliatory evictions in three different ways. Two are intended and the third appears to be unintended.

First, it adds to the list of things that, if proved, constitute a retaliatory eviction the following: existing prohibitions on raising rent without giving a 45 day notice or raising the rent if the rented dwelling is unfit for habitation and new language raising rent pursuant to a municipal ordinance limiting rent increase. Second, it clarifies how a landlord may overcome a presumption that a retaliatory eviction exists once it is raised by the tenant. Third, it removes from the existing retaliatory eviction section an eviction filed in response to legally allowed actions a tenant has taken to fix a dangerous condition requiring minor repair.

The following are our comments on each of these potential changes.

First, the additions. Currently, section 6015 prohibits a landlord from raising the rent without giving the tenant a 45-day notice in writing. Section 6016 prohibits a landlord from raising the rent if the physical conditions in the apartment breach the landlord obligation to provide the tenant with a habitable dwelling. The text of those sections follows.

§6015. Notice of rent increase

Rent charged for residential estates may be increased by the lessor only after providing at least 45 days' written notice to the tenant. A written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section is liable for the return of any sums unlawfully obtained from the lessee, with interest, and reasonable attorney's fees and costs.

6016. Rent increase limitation

Rent charged for residential estates may not be increased if the dwelling unit is in violation of the warranty of habitability. Any violation caused by the tenant, his family, guests or invitees shall not bar a rent increase. A written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section shall be liable for the return of any sums unlawfully obtained from the lessee, with interest and reasonable attorneys' fees and costs.

As you see, the tenant's remedy in each case is to sue for return of the increased rent. However, an illegally increased the rent does not provide the tenant with a defense against an eviction. If a landlord files an eviction action against a tenant who has had their rent increased without the proper notice, adding these sections will allow the court to analyze whether the eviction is retaliatory. We have not provided an example of a municipal ordinance limiting rent increases but believe that a tenant who is evicted in retaliation for a rent increase at violates any law should have a defense.

Second: the presumption.

Currently the law creates a "rebuttable presumption" that an eviction is retaliatory when a defendant provides evidence to the court that within the last six months either the tenant has complained about certain illegal actions by their landlord or the landlord has not fulfilled the required obligations described in the retaliatory eviction prohibitions set out in section 6001 subsection 3.

When the court is satisfied that a rebuttable presumption exists, the landlord may present evidence that the eviction is not brought improperly but for another legal reason. The law does not currently specify what those other reasons may be. The proposed language in Section 3 of this bill adds those reasons. It provides the following:

"To rebut the presumption of retaliation, a plaintiff in a forcible entry and detainer action must show by a preponderance of the evidence that a reason set forth in section 6002, subsection 1 or a violation of a lease provision is a substantial reason for bringing the action."

The citation to Section 6002 subsection 1 (attached to this testimony) describes the reasons for which the landlord may evict the tenant with a 7-day notice. The “preponderance of the evidence” standard is commonly described as meaning “more likely than not”. So, adding this language will bring more certainty to the task of rebutting the presumption and will assist the court in deciding whether it is “more likely than not” the landlord’s reasoning has been persuasive. We believe that this will serve the interests of justice and support its adoption.

Lastly, we believe that one of the grounds described in the existing retaliatory eviction sections will be unintentionally removed. Here’s the pertinent part of what is deleted: “...If an action of forcible entry and detainer is brought for any reason set forth in section 6002, subsection 1 or for violation of a lease provision, the presumption of retaliation does not apply, **unless the tenant has asserted a right pursuant to section 6026.**” Emphasis added.

Section 6026 is titled “Dangerous conditions requiring minor repairs”. It describes dangerous conditions as follows:

“1. Prohibition of dangerous conditions. A landlord who enters into a lease or tenancy at will agreement renting premises for human habitation may not maintain or permit to exist on those premises any condition that endangers or materially impairs the health or safety of the tenants.”

It allows a tenant to give notice to the landlord that such a condition exists in the rented dwelling and to spend up to \$500 or half the rent to address the problem if the landlord fails to act.

We hope that this deletion was not intended and see no reason for changing existing law in this manner. If a landlord attempts to evict a tenant for fixing a condition that the landlord had the obligation to address, it should remain a subject that the court may address as a potentially retaliatory eviction. This omission may be remedied by adding Section 6026 to the other additions in Section 1 of the LD.

Thank you for allowing us to share our thoughts with you.

§6002. Tenancy at will; buildings on land of another

...1. Causes for 7-day notice of termination of tenancy. Notwithstanding any other provisions of this chapter, the tenancy may be terminated upon 7 days' written notice in the event that the landlord can show, by affirmative proof, that:

A. The tenant, the tenant's family or an invitee of the tenant has caused substantial damage to the demised premises that the tenant has not repaired or caused to be repaired before the giving of the notice provided in this subsection; [PL 2009, c. 171, §2 (NEW).]

B. The tenant, the tenant's family or an invitee of the tenant caused or permitted a nuisance within the premises, has caused or permitted an invitee to cause the dwelling unit to become unfit for human habitation or has violated or permitted a violation of the law regarding the tenancy; [PL 2015, c. 293, §7 (AMD).]

C. The tenant is 7 days or more in arrears in the payment of rent; [PL 2017, c. 103, §1 (AMD).]

D. The tenant is a perpetrator of domestic violence, sexual assault or stalking and the victim is also a tenant; [PL 2017, c. 103, §2 (AMD).]

E. The tenant or the tenant's guest or invitee is the perpetrator of violence, a threat of violence or sexual assault against another tenant, a tenant's guest, the landlord or the landlord's employee or agent, except that this paragraph does not apply to a tenant who is a victim as defined in section 6000, subsection 4 and who has taken reasonable action under the circumstances to comply with the landlord's request for protection of the tenant, another tenant, a tenant's guest or invitee, the landlord or the landlord's employee or agent or of the landlord's property; or [PL 2017, c. 103, §3 (NEW).]

F. The person occupying the premises is not an authorized occupant of the premises. [PL 2017, c. 103, §3 (NEW).]