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TO: Distinguished Members of the Judiciary Committee

FROM: Samuel M. Sherry, Esq.
Representing the Rental Housing Alliance of Southern Maine

RE**:** **LD 804 –** An Act to Increase the Time Period for Notice to Terminate a Tenancy at Will

As a Board member of the Rental Housing Alliance of Southern Maine ("RHA"), I submit this testimony on RHA's behalf in opposition to LD 804.

RHA is a non-profit organization generally comprised of small and medium-sized landlords with properties in York, Cumberland, Sagadahoc and Androscoggin Counties. Our members range from people who rent out a room over their garage to full-time landlords with paid staff.

My practice is directed exclusively to commercial law, almost evenly divided between small business practice and landlord representation. I represent landlords for advice and in court.

A. <u>The Broad Context: How Maine's Eviction Statute Balances The Interests of Tenants and Landlords, And Why That Matters</u>.

Across the United States there are two general approaches to eviction law and procedure found in different states. One group is only about recovery of possession; the other allows landlords to obtain a judgment for possession and for money owed in the same case.

In Maine a residential eviction is about possession only. Even in a case about non-payment of rent, the landlord must prove that rent is unpaid but the Court does not enter a judgment allowing the landlord to collect.[1] The judgment is only for possession.

Essentially, when it enacted the original version of Maine's forcible entry and detainer statute in 1971, the Legislature decided to provide landlords with a method to recover their

[1] 14 M.R.S. 6017 applies only in commercial cases. It allows the Court to determine the amount of money owed (if that is in dispute) and to enter judgment in the landlord's favor for that amount.

property over a period of five to twelve weeks. If a landlords wants to seek money they are owed they must go through the regular litigation process, which takes several months to several years to complete.

That is a fair "social pact." In Maine today, *every single rental unit* is worth somewhere between $75,000 (in Madawaska) and $400,000 (on Munjoy Hill in Portland). Maine landlords – my clients – keep their eyes on the ball: They skip the $2,500 debt for rent and focus on the safety and productivity of their $250,000 asset. Tenant advocates appropriately focus on how 'peoples' homes are at stake' in the eviction process. That is accurate: Those homes belong to landlords, and those homes have become uncomfortably costly (which is to say, startlingly valuable).

Maine's eviction statutes allow landlords and tenants to choose whether to enter into a contract which fixes a rent for a term – a lease – or to use a simple, month-by-month agreement. *In a month-to-month tenanc*y (also called "tenancy at will") *each party has the power* to stop the agreement on thirty days' notice. If the tenant wants to move and the landlord does not re-rent the property immediately, that's the landlord's problem and the tenant is not responsible. If the landlord wants to recover possession, they can follow the due process of law and get it.

LD 804 says that those days are done. In exchange for nothing whatsoever, landlords *and their other tenants* must suffer through the problem tenant for a period of <u>four to six months</u> while the 90-day notice runs and then while the eviction process proceeds Legislators, that is more time than it takes for a bad apple to empty all the good tenants out of a building.

As noted, in different states that legislative framework works differently. When you hear someone talk about how the laws of, for example, New York provide more protection, that's because in many states even more is at stake than recovery of possession.[2]

B. <u>Usage of 30-Day Notices And Why This Matters</u>:

Legislators, please do not think that landlords evict people for no reason. Most landlords understand that good tenants are their second-most-important asset. **Landlords use so-called 'no cause' notices to safely evict bad tenants** and they use them when they want to provide more time than the statutory minimum. Both of those circumstances are curtailed if the 'no-cause' notice period is tripled.

1. <u>Safety and Proof Issues</u>: "Attorney Sherry, everybody at the building says that these people are selling drugs out of my unit." Sounds like a simple 7-day NTQ, right? Wrong.

Evictions are subject to the Rules of Evidence. Yes, I can draw a 7-day notice to quit for my client and I can file an eviction case for them. But when they get to court the landlord can

[2] Other jurisdictions allowing money judgments in eviction cases include Ohio, Illinois and the District of Columbia.

only testify about that which they personally know. "Everybody told me" is hearsay, not admissible evidence. Police reports are almost always hearsay, not admissible evidence. Texts and emails from tenants are hearsay, not admissible evidence.

How does the landlord get around that? The first way is for the landlord to *persuade the complaining tenants to testify.* But remember, for about two full weeks after the hearing the complaining tenant will be in the same building (or even the same unit) as the person they just testified against. That is every bit as dangerous as it sounds!

The answer is a 30-day notice. The landlord can testify that they served the notice and that the tenant has not vacated. Almost all of the time that is sufficient. Problem solved. Neighbors protected. Community protected. No-one (except maybe the landlord) placed at risk.

That doesn't work with 90 days notice. By the time that 90-day notice has expired, and 2-6 weeks of additional process ahead, all the good tenants have up and left.

2. Scofflaws: A similar scenario plays out with scofflaws. If someone habitually pays their rent after getting a seven-day notice every month they are a bad tenant, but they can't be evicted for that practice. The 30-day notice gives landlords a useful tool. The 90-day notice gives landlords (and their solid tenants) nothing but more trouble.

3. Compassionate Landlords: Last but not least, landlords use 30-day Notices because *they want to voluntarily give a tenant more time* but don't want to give away the farm in the process. Increasing the no-cause notice from thirty to ninety days makes that unattractive and improbable.

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