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People Policy Solutions

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Testimony of Frank D'Alessandro,
Maine Equal Justice
In support of LD 45
"An Act to Prevent Retaliatory Evictions"
February 9, 2023

Good afternoon, Senator Carney, Representative Moonen, and distinguished members of the Committee on Judiciary. My name is Frank D'Alessandro, and I am the Legal Services Director of Maine Equal Justice. We are a civil legal services organization, and we work with and for people with low income seeking solutions to poverty through policy, education, and legal representation. Thank you for the opportunity to offer written testimony to you in support of LD 45.

Maine Equal Justice supports LD 45 because it will ensure that tenants who assert their rights under Maine's Landlord Tenant Laws are not retaliated against by their landlords.

Current Law

Maine Law currently provides limited protections to tenants who assert their rights under Maine landlord tenant law. 14 M.R.S. § 6001(3). (Attached). These protections do not cover tenants who are evicted because they refuse to pay illegal rent increases. These protections are also so limited that a landlord can rebut the protections without having to demonstrate that the tenant has done anything wrong, even if the landlord's reason for evicting the tenant is arbitrary.¹

¹Mulholland v. Poole, 2005 ME 18, P9, 866 A.2d 122, 124, 2005 Me. LEXIS 17, *6

What This Bill Does

This bill expands the protections currently provided under Maine law in two ways. First, it provides protections that are absent in current law to tenants who refuse to pay illegal rent increases. Second, it defines what a landlord must prove in order to rebut the presumption of retaliation in current law by requiring a landlord to demonstrate that the tenant has violated a landlord tenant law or lease provision.

Why Maine Equal Justice Supports LD 45

This bill is necessary so that tenants do not face eviction and possible homelessness simply because they assert their rights under Maine Law. The threat posed by retaliatory evictions has never been more serious given Maine's current housing crisis.

Affordability

Even before the pandemic, Maine's rental housing market was among the least affordable in the nation, and our state has not done enough to protect people who are being priced out of their homes. According to MaineHousing's 2020 annual report, Maine needs about 25,000 more affordable housing units to respond effectively to the need.² Nearly 60% of extremely low-income households pay more than 50% of their monthly income towards rent, a threshold which HUD deems *severely* rent burdened.³ The end of federal rental assistance has left many Mainers without help or affordable options. These families continuously face the threat of eviction for non-payment. Finding affordable housing has become so difficult, many Mainers become homeless because they simply cannot find an apartment that meets their budget.

Discrimination

The lack of affordable housing is a racial equity issue as well. In Maine as in the rest of the country, people of color are disproportionately harmed due to the lack of affordable housing. According to Pine Tree Legal Assistance, between 2017 and 2019, 12% of households they represented in eviction court were non-white, though only 5% of Maine's population is non-white. Significantly, according to a study conducted by the Maine State Housing Authority in 2022, 34% of Maine's homeless

² <https://bangordailynews.com/2021/07/26/news/the-pandemic-made-maines-affordable-housing-problem-worse/#:~:text=Maine%20needs%20about%2025%2C000%20more,to%20MaineHousing's%202020%20annual%20report>.

³ [Maine | National Low Income Housing Coalition \(nlihc.org\)](#)

population is Black or African American⁴ even though they make up less than 2% of Maine's population.⁵

In Maine, the joint Section 8 waiting list which covers most of the state has over 15,000 households on it. These families will wait years for needed assistance. But even when these families do get vouchers, many will still struggle to find safe, affordable housing. Too often, tenants face the unfair stigma that comes with participation in rental assistance programs. Maine must enact protections to prohibit discrimination based on low-income tenants' participation in rental assistance programs.

Why the Tenant Protections Offered by this Bill are so Necessary

No one should lose their home and risk becoming homeless simply because they have asserted their right to live in safe, stable and affordable housing.

Eviction filings in the State of Maine in December 2022 are 172 percent higher than filings in December 2021.

Rising evictions are devastating families' finances, uprooting kids, causing job loss and stress, and increasing hunger and homelessness. Finding affordable housing in Maine has become so difficult that many Mainers become homeless simply because they cannot find an apartment that meets their budget.

When a tenant gets a 30 day no-cause eviction notice, they are put in the impossible position of finding a new apartment and moving with 30 days' notice, or risk going to eviction court and being forcibly removed from their home.

Eviction—or the forcible removal of a family from their home—is often a traumatic and highly consequential event, especially for low-income families. The Eviction Lab at Princeton University, a leading team of researchers working to highlight the prevalence, causes, and consequences of evictions nationwide, describes the fallout of eviction this way:

Eviction causes a family to lose their home. They often are also expelled from their community and their children have to switch schools. Families regularly lose their possessions, too, which are piled on the sidewalk or placed in storage, only to be reclaimed after paying a fee. A legal eviction comes with

⁴ https://www.mainehousing.org/docs/default-source/housing-reports/2022-point-in-time-survey---statewide.pdf?sfvrsn=1aa68615_7

⁵ <https://worldpopulationreview.com/states/maine-population>

a court record, which can prevent families from relocating to decent housing in a safe neighborhood, because many landlords screen for recent evictions. Studies also show that eviction causes job loss, as the stressful and drawn-out process of being forcibly expelled from a home causes people to make mistakes at work and lose their job. Eviction also has been shown to affect people's mental health: one study found that mothers who experienced eviction reported higher rates of depression two years after their move. The evidence strongly indicates that eviction is not just a condition of poverty, it is a cause of it.

Clearly, eviction causes financial losses to families who often lose their possessions and lose their jobs when they're forced from their homes and communities.⁶ It also causes enormous personal trauma with significant repercussions to economic and personal well-being. Research in the wake of the foreclosure crisis has tracked how housing instability negatively influences adult and children's physical and mental well-being including increasing the risk of depression in mothers.⁷ Eviction also increases suicide and anxiety.⁸ For children, it results in emotional and educational decline.⁹

People who have been evicted go on to be shadowed by an eviction judgement on their record and damaged credit that prevents them from moving forward and rebuilding their finances. Evidence shows that many housing providers screen prospective tenants out of the application process based on the existence of an eviction filing in a tenant's name, regardless of the basis or the legal outcome.¹⁰ As a result, families who have been evicted are often forced into poorer neighborhoods and substandard housing.

No tenant in Maine should have to suffer these consequences. But it is especially unfair to tenants simply because a tenant has asserted their rights under Maine State law. Though these tenants have done nothing wrong except fail the impossible task of finding a new home and moving within 30 days, they can suffer devastating

⁶ Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 *Soc. Prob.* 46, 46 (2016).

⁷ Matthew Desmond et al., *Eviction's Fallout: Housing, Hardship, and Health*, 94 *Social Forces* 295, 300-301 (2015).

⁸ Yerko Rojas & Sten-Åke Stenberg, *Evictions and Suicide: A Follow-Up Study Of Almost 22,000 Swedish Households In The Wake Of The Global Financial Crisis*, 70 *J. of Epidemiology & Comm. Health* 409 (2016).

⁹ See Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, U. Of Wis.: Inst. For Res. On Poverty (Mar. 2015), <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>.

¹⁰ Matthew Desmond & Monica Bell, *Housing, Poverty, and the Law*, 11 *Ann. Rev. L. & Soc. Sci.* 15 (2015); Paula A. Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 *Fordham Urb. L.J.* 661 (2018).

financial and health fallout from eviction and be barred from future housing opportunities.

All the evidence shows that Mainers' health and well-being starts with having a stable home and the opportunities that come with it. Maine should prevent all unnecessary evictions to ensure housing stability for Mainers.

Conclusion

For the above reasons Maine Equal Justice urges the Committee to vote 'ought to pass' on LD 45 so as to protect tenants who refuse to pay illegal rent increases and set forth a clear standard that landlords must prove in order to rebut the presumption of retaliation that protects tenants who have asserted their rights under Maine's landlord tenant laws.

Thank you for the opportunity to provide testimony and I am happy to answer any questions.

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- [List of Titles](#)
- [Maine Law & Disclaimer](#)
- [Revisor's Office](#)
- [Maine Legislature](#)

[§6000](#)

Title 14: COURT PROCEDURE -- CIVIL

Part 7: PARTICULAR PROCEEDINGS

Chapter 709: ENTRY AND DETAINER

Subchapter 1: RESIDENTIAL LANDLORDS AND TENANTS

[§6002](#)

§6001. Availability of remedy

1. Persons against whom process may be maintained. Process of forcible entry and detainer may be maintained against a disseisor who has not acquired any claim by possession and improvement; against a tenant holding under a written lease or contract or person holding under such a tenant; against a tenant where the occupancy of the premises is incidental to the employment of a tenant; at the expiration or forfeiture of the term, without notice, if commenced within 7 days from the expiration or forfeiture of the term; against a tenant at will, whose tenancy has been terminated as provided in [section 6002](#); and against manufactured housing owners and tenants pursuant to [Title 10, chapter 951, subchapter 6](#). When there are multiple occupants of an apartment or residence, the process of forcible entry and detainer is effective against all occupants if the plaintiff names as parties "all other occupants" together with all adult individuals whose names appear on the lease or rental agreement for the premises or whose tenancy the plaintiff has acknowledged by acceptance of rent or otherwise.

[PL 2017, c. 210, Pt. B, §39 (AMD).]

1-A. Foreclosure. A bona fide tenancy in a building for which a foreclosure action brought pursuant to either [section 6203-A](#) or [6321](#) is pending or for which a foreclosure judgment has been entered may be terminated only pursuant to the provisions of the federal Protecting Tenants at Foreclosure Act of 2009, Public Law 111-22, Sections 701 to 704.

[PL 2009, c. 566, §1 (NEW).]

1-B. Residential lease without termination or notice language. If a written residential lease or contract does not include a provision to terminate the tenancy or does not provide for any written notice of termination in the event of a material breach of a provision of the written residential lease or contract, either the landlord or the tenant may terminate the written residential lease or contract pursuant to this subsection.

A. A landlord may terminate the tenancy in accordance with [section 6002, subsections 1 and 2](#). After a landlord has provided notice and service as provided in [section 6002](#), including language advising the tenant that the tenant has the right to contest the termination in court, the landlord may commence a forcible entry and detainer action as provided in this section. [PL 2011, c. 122, §1 (NEW).]

B. A tenant may terminate the tenancy by providing the landlord with 7 days' written notice of the termination if the landlord has substantially breached a provision of the written residential lease or contract. In the event that the tenant or the tenant's agent has made at least 3 good faith efforts to personally serve the landlord in-hand,

that service may be accomplished by both mailing the notice by first-class mail to the landlord's last known address and by leaving the notice at the landlord's last and usual place of abode. [PL 2011, c. 420, Pt. D, §1 (AMD); PL 2011, c. 420, Pt. D, §6 (AFF).]

[PL 2011, c. 420, Pt. D, §1 (AMD); PL 2011, c. 420, Pt. D, §6 (AFF).]

2. Persons who may not maintain process. The process of forcible entry and detainer may not be maintained against a tenant by a 3rd party lessee, grantee, assignee or donee of the tenant's premises, unless a tenant at will has received notice of termination in accordance with section 6002 by either the grantor or the grantee of the conveyance.

[PL 1985, c. 638, §4 (AMD).]

3. Presumption of retaliation. In any action of forcible entry and detainer there is a rebuttable presumption that the action was commenced in retaliation against the tenant if, within 6 months prior to the commencement of the action, the tenant has:

A. Asserted the tenant's rights pursuant to section 6021 or section 6030-D; [PL 2013, c. 324, §1 (AMD).]

B. Complained as an individual, or if a complaint has been made in that individual's behalf, in good faith, of conditions affecting that individual's dwelling unit that may constitute a violation of a building, housing, sanitary or other code, ordinance, regulation or statute, presently or hereafter adopted, to a body charged with enforcement of that code, ordinance, regulation or statute, or such a body has filed a notice or complaint of such a violation; [PL 2009, c. 566, §2 (AMD).]

C. Complained in writing or made a written request, in good faith, to the landlord or the landlord's agent to make repairs on the premises as required by any applicable building, housing or sanitary code, or by section 6021, or as required by the rental agreement between the parties; [PL 2015, c. 293, §2 (AMD).]

D. [PL 1989, c. 484, §2 (NEW); MRSA T. 14 §6001, sub-§3, ¶D (RP).]

E. Prior to being served with an eviction notice, filed, in good faith, a fair housing complaint for which there is a reasonable basis with the Maine Human Rights Commission or filed, in good faith, a fair housing complaint for which there is a reasonable basis with the United States Department of Housing and Urban Development concerning acts affecting that individual's tenancy; [PL 2019, c. 351, §2 (AMD).]

F. Prior to being served with an eviction notice, provided the landlord or the landlord's agent with notice that the tenant or tenant's minor child is a victim; or [PL 2019, c. 351, §2 (AMD).]

G. Prior to being served with an eviction notice, communicated to the landlord or the landlord's agent about an act of sexual harassment or filed a complaint with a law enforcement agency, the Maine Human Rights Commission or a court of an act of sexual harassment by the landlord or the landlord's agent against the tenant or a family or household member of the tenant. [PL 2019, c. 351, §2 (NEW).]

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.

No writ of possession may issue in the absence of rebuttal of the presumption of retaliation.

[PL 2019, c. 351, §2 (AMD).]

4. Membership in tenants' organization. No writ of possession may issue when the tenant proves that the action of forcible entry and detainer was commenced in retaliation for the tenant's membership in an organization concerned with landlord-tenant relationships.

[PL 1981, c. 428, §1 (NEW).]

5. Affirmative defense. A tenant may raise the affirmative defense of failure of the landlord to provide the tenant with a reasonable accommodation pursuant to Title 5, chapter 337 or the federal Fair Housing Act, 42 United States Code, Section 3604(f)(3)(B). The court shall deny the forcible entry and detainer and not grant possession to the landlord if the court determines that the landlord has a duty to offer a reasonable accommodation and has failed to do so and there is a causal link between the accommodation requested and the conduct that is the subject of the forcible entry and detainer action.

The court shall grant the forcible entry and detainer if the court determines that the landlord is otherwise entitled to possession and:

A. The landlord does not have a duty to offer a reasonable accommodation; [PL 2011, c. 405, §2 (NEW).]

B. The landlord has, in fact, offered a reasonable accommodation; or [PL 2011, c. 405, §2 (NEW).]

C. There is no causal link between the accommodation requested and the conduct that is the subject of the forcible entry and detainer action. [PL 2011, c. 405, §2 (NEW).]

For purposes of this subsection, "reasonable accommodation" means a change, exception or adjustment to a rule, policy, practice or service that is necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common access spaces for that dwelling.

[PL 2011, c. 405, §2 (RPR).]

6. Domestic violence, sexual assault and stalking. This subsection applies to incidents involving domestic violence, sexual assault or stalking.

A. A victim may not be evicted based on an incident or incidents of actual or threatened domestic violence, sexual assault or stalking occurring at the premises or reporting to any agency such incidents that otherwise may be construed as:

(1) A nuisance under section 6002;

(2) Damage to property under section 6002; or

(3) A lease violation arising from a nuisance, a disturbance or damage to premises. [PL 2015, c. 293, §5 (NEW).]

B. A victim may not be held liable for damage to the property related to an incident or incidents of actual or threatened domestic violence, sexual assault or stalking beyond the value of the victim's security deposit, as long as the alleged perpetrator is a tenant and the victim provides written notice of the damage and documentation required pursuant to paragraph H within 30 days of the occurrence of the damage. [PL 2015, c. 293, §5 (NEW).]

C. A landlord may bifurcate a lease or tenancy without regard to whether a household member who is a victim is a signatory to the lease in order to evict or terminate the tenancy of a perpetrator of domestic violence, sexual assault or stalking. In bifurcating a tenancy, a landlord may not interfere with a victim's property rights as allocated in a valid court order. Nothing in this section may be construed to create a tenancy that previously did not exist. [PL 2015, c. 293, §5 (NEW).]

D. A victim may terminate a lease early due to an incident or threat of domestic violence, sexual assault or stalking by providing:

(1) Seven days' written notice and documentation required pursuant to paragraph H, in the case of a lease of less than one year; or

(2) Thirty days' written notice and documentation required pursuant to paragraph H, in the case of a lease with a term of one year or more.

A victim is not liable for any unpaid rent under the victim's lease. [PL 2015, c. 293, §5 (NEW).]

D-1. A tenant who is the victim of sexual harassment by a landlord or the landlord's agent may terminate a lease as set forth in paragraph D if the tenant provides documentation set forth in paragraph H. [PL 2019, c. 351, §3 (NEW).]

E. Nothing in this section prohibits a landlord from evicting a tenant for reasons unrelated to domestic violence, sexual assault or stalking. [PL 2015, c. 293, §5 (NEW).]

F. Nothing in this section prohibits a landlord from instituting a forcible entry and detainer action against the tenant of the premises who perpetrated the domestic violence, sexual assault or stalking or obtaining a criminal no trespass order against a nontenant who perpetrates such violence or abuse at the premises. [PL 2015, c. 494, Pt. A, §10 (AMD).]

G. Nothing in this section limits the rights of a landlord to hold a perpetrator of the domestic violence, sexual assault or stalking liable for damage to the property. [PL 2015, c. 293, §5 (NEW).]

H. When a victim asserts any of the provisions contained within this chapter specifically available to a victim, except for changing locks according to section 6025, subsection 1, a victim shall provide to the landlord documentation of the alleged conduct by the perpetrator, including the perpetrator's name. Acceptable documentation includes, but is not limited to:

(1) A statement signed by a Maine-based sexual assault counselor as defined in Title 16, section 53-A, subsection 1, paragraph B, an advocate as defined in Title 16, section 53-B, subsection 1, paragraph A or a victim witness advocate as defined in Title 16, section 53-C, subsection 1, paragraph C;

(2) A statement signed by a health care provider, mental health care provider or law enforcement officer, including the license number of the health care provider, mental health care provider or law enforcement officer if licensed;

(3) A copy of a protection from abuse complaint or a temporary order or final order of protection;

(4) A copy of a protection from harassment complaint or a temporary order or final order of protection from harassment;

(5) A copy of a police report prepared in response to an investigation of an incident of domestic violence, sexual assault or stalking; and

(6) A copy of a criminal complaint, indictment or conviction for a domestic violence, sexual assault or stalking charge. [PL 2017, c. 455, §3 (AMD).]

[PL 2019, c. 351, §3 (AMD).]

SECTION HISTORY

PL 1971, c. 322, §1 (AMD). PL 1977, c. 401, §2 (AMD). PL 1981, c. 428, §1 (RPR). PL 1985, c. 638, §4 (AMD). PL 1989, c. 484, §§1,2 (AMD). PL 1995, c. 60, §2 (AMD). PL 1995, c. 372, §1 (AMD). PL 2009, c. 566, §§1-3 (AMD). PL 2011, c. 122, §1 (AMD). PL 2011, c. 405, §§1, 2 (AMD). PL 2011, c. 420, Pt. D, §1 (AMD). PL 2011, c. 420, Pt. D, §6 (AFF). PL 2013, c. 324, §1 (AMD). PL 2015, c. 293, §§2-5 (AMD). PL 2015, c. 494, Pt. A, §10 (AMD). PL 2017, c. 210, Pt. B, §39 (AMD). PL 2017, c. 455, §3 (AMD). PL 2019, c. 351, §§2, 3 (AMD).

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