



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1440
TTY: (207) 287-4469

Amy Bradstreet Arata

P.O. Box 2,
New Gloucester, ME 04260
Residence: (207) 333-1817
Amy.Arata@legislature.maine.gov

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TESTIMONY IN OPPOSITION OF:

LD 1927 “An Act to Protect Housing Quality by Enacting Mold Inspection, Notification and Remediation Requirements”

THE JOINT STANDING COMMITTEE ON JUDICIARY

Senator Carney, Representative Kuhn, and distinguished members of the Judiciary Committee, my name is Amy Arata and I represent House District 104 which includes New Gloucester and Gray. I am here to testify in opposition to LD 1927.

I have been a housing provider since 2007. Before that, I was a scientist at the University of California School of Veterinary Medicine, Department of Pathology, Microbiology, and Immunology. I hope that my experience in these fields informs you as you consider this legislation.

Mold is ubiquitous in our environment. I could store sterilized petri dishes on a shelf in the laboratory and find them contaminated with mold a few months later. You could test a neonatal intensive care unit for mold and find it present. Most people are fairly tolerant of mold, but health problems can arise when it grows in excessive amounts. For example, many homes have mold on window sills, the seam where the bathtub meets the wall, and surface mold on bathroom ceilings, with no health impacts.

It's in the property owner's best interest to prevent water damage or mold, and the vast majority of landlords do a good job maintaining their buildings. I acknowledge that mold problems do occur. This is most often in buildings with an owner who is facing foreclosure or other financial problems, is ill, or has died. Thankfully, there are legal remedies for tenants already in Maine statute, which I will point you to at the end of my testimony.

In my years in property management, I have seen dampness and surface mold caused by tenants in various ways, and many times they deny that they are at fault. Examples include dryer vents that they disconnected, excessive use of hot water without activating ventilation, boiling liquid to make beer, running a humidifier during humid weather, and growing an excessive number of plants. In all of these cases I have been able to work with the tenants to remedy the issue. Depending on one's interpretation of LD 1927, this bill may prevent this positive cooperation.

Another issue is that there is no licensing in Maine of mold assessors, remediators, or industrial hygienists. Therefore, the standard for who qualifies as one of these professionals is not enforceable.

A 24-hour response time to leaks is not realistic. Whenever I am notified of a plumbing or roof leak, I try to respond well within one hour, but there are times when it's unsafe to travel or I'm out of the area or ill. Also, there is a licensed plumber and roofer shortage and they are difficult to find on short notice. If this bill passes, the excessive fines for non-compliance will make it even harder for well-intentioned property owners to maintain their buildings.

Thankfully, tenants are already protected from truly negligent landlords by Maine statute. Every municipality in Maine is required to have a designated Health Officer, who the tenant can call about violations of the covenant of habitability. Also, the tenant has the right to have the leak repaired and deduct the cost from the rent. I have included the sections of Title 14 regarding this below.

I ask you to oppose this unnecessary and unwieldy bill and I am happy to answer any questions.

Title 14 Part 7 Chapter 710

§6021. Implied warranty and covenant of habitability

1. Definition. As used in this section, the term "dwelling unit" shall include mobile homes, apartments, buildings or other structures, including the common areas thereof, which are rented for human habitation.

[PL 1977, c. 401, §4 (NEW).]

2. Implied warranty of fitness for human habitation. In any written or oral agreement for rental of a dwelling unit, the landlord shall be deemed to covenant and warrant that the dwelling unit is fit for human habitation.

[PL 1977, c. 401, §4 (NEW).]

3. Complaints. If a condition exists in a dwelling unit which renders the dwelling unit unfit for human habitation, then a tenant may file a complaint against the landlord in the District Court or Superior Court. The complaint shall state that:

- A. A condition, which shall be described, endangers or materially impairs the health or safety of the tenants; [PL 1977, c. 401, §4 (NEW).]
- B. The condition was not caused by the tenant or another person acting under his control; [PL 1977, c. 401, §4 (NEW).]
- C. Written notice of the condition without unreasonable delay, was given to the landlord or to the person who customarily collects rent on behalf of the landlord; [PL 1977, c. 401, §4 (NEW).]
- D. The landlord unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and [PL 1977, c. 401, §4 (NEW).]
- E. The tenant was current in rental payments owing to the landlord at the time written notice was given. [PL 1977, c. 401, §4 (NEW).]

The notice requirement of paragraph C may be satisfied by actual notice to the person who customarily collects rents on behalf of the landlord.

[PL 1977, c. 401, §4 (NEW).]

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

- A. The court may issue appropriate injunctions ordering the landlord to repair all conditions which endanger or materially impair the health or safety of the tenant; [PL 1977, c. 401, §4 (NEW).]
- B. The court may determine the fair value of the use and occupancy of the dwelling unit by the tenant from the date when the landlord received actual notice of the condition until such time as the condition is repaired, and further declare what, if any, moneys the tenant owes the landlord or what, if any, rebate the landlord owes the tenant for rent paid in excess of the value of use and occupancy. In making this determination, there shall be a rebuttable presumption that the rental amount equals the fair value of the dwelling unit free from any condition rendering it unfit for human habitation. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord. [PL 1977, c. 696, §164 (AMD).]
- C. The court may authorize the tenant to temporarily vacate the dwelling unit if the unit must be vacant during necessary repairs. No use and occupation charge shall be incurred by a tenant until such time as the tenant resumes occupation of the dwelling unit. If the landlord offers reasonable, alternative housing accommodations, the court may not surcharge the landlord for alternate tenant housing during the period of necessary repairs. [PL 1981, c. 428, §9 (AMD).]
- D. The court may enter such other orders as the court may deem necessary to accomplish the purposes of this section. The court may not award consequential damages for breach of the warranty of fitness for human habitation.

Upon the filing of a complaint under this section, the court shall enter such temporary restraining orders as may be necessary to protect the health or well-being of tenants or of the public. [PL 1977, c. 401, §4 (NEW) .]

Part 7, Chapter 710

§6026. Dangerous conditions requiring minor repairs

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.

[PL 2009, c. 566, §12 (AMD) .]

2. Tenant action if landlord fails to act. If a landlord fails to maintain a rental unit in compliance with the standards of subsection 1 and the reasonable cost of compliance is less than \$500 or an amount equal to 1/2 the monthly rent, whichever is greater, the tenant shall notify the landlord in writing of the tenant's intention to correct the condition at the landlord's expense. If the landlord fails to comply within 14 days after being notified by the tenant in writing by certified mail, return receipt requested, or as promptly as conditions require in case of emergency, the tenant may cause the work to be done with due professional care with the same quality of materials as are being repaired. Installation and servicing of electrical, oil burner or plumbing equipment must be by a professional licensed pursuant to Title 32. After submitting to the landlord an itemized statement, the tenant may deduct from the tenant's rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection. This subsection does not apply to repairs of damage caused by the tenant or the tenant's invitee.

[PL 2005, c. 78, §1 (AMD) .]

3. Limitation on rights. No tenant may exercise his rights pursuant to this section if the condition was caused by the tenant, his guest or an invitee of the tenant, nor where the landlord is unreasonably denied access, nor where extreme weather conditions prevent the landlord from making the repair.

[PL 1981, c. 428, §10 (NEW) .]

4. Limitation on reimbursement. No tenant may seek or receive reimbursement for labor provided by the tenant or any member of his immediate family pursuant to this section. Parts and materials purchased by the tenant are reimbursable.

[PL 1981, c. 428, §10 (NEW) .]

Respectfully,



Amy B. Arata
State Representative