

HOUSE BILL NO. 282

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE ISAACSON

Introduced: 1/29/14

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the rights and obligations of residential landlords and tenants; and
2 relating to the taking of a permanent fund dividend for rent and damages owed to a
3 residential landlord."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 09.45.090(a) is amended to read:

6 (a) For property to which the provisions of AS 34.03 ([UNIFORM]
7 Residential Landlord and Tenant Act) apply, unlawful holding by force includes each
8 of the following:

9 (1) when, for failure or refusal to pay rent due on the lease or
10 agreement under which the tenant or person holds, and after service, under
11 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for
12 recovery of possession of the premises if the rent is not paid, the tenant or person in
13 possession fails or refuses to vacate or pay the rent within seven days;

14 (2) when,

1 (A) after a violation of a condition or covenant set out in
2 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
3 deliberate infliction of substantial damage to the premises, or after a breach or
4 violation of a condition or covenant in a lease or rental agreement and
5 following service of written notice to quit, the tenant fails or refuses to remedy
6 the breach or to deliver up the possession of the premises within the number of
7 days provided for termination under AS 34.03.220(a)(2);

8 (B) after a violation of AS 34.03.120(a)(5) by deliberate
9 infliction of substantial damage to the premises, following service of written
10 notice to quit, the tenant fails or refuses to deliver up the possession of the
11 premises by the date set out in the written notice to quit under
12 AS 34.03.220(a)(1);

13 (C) after a violation of AS 34.03.220(e) following
14 discontinuance of a public utility service, following service of written notice to
15 quit, the tenant fails or refuses to deliver up the possession of the premises by
16 the date set out in the written notice to quit under AS 34.03.220(e);

17 (D) the landlord requires the tenant to vacate the premises for a
18 reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of
19 written notice to quit, the tenant fails or refuses to deliver up the possession of
20 the premises within the longer of 30 days or the period of notice for the
21 landlord's recovery of possession of the premises set out in the rental
22 agreement;

23 (E) in a mobile home park, there is to be a change in the use of
24 land for which termination of tenancy is authorized by AS 34.03.225(a)(4),
25 following service of written notice to quit, the mobile home dweller or tenant
26 fails or refuses to vacate within the number of days provided for termination
27 under AS 34.03.225(a)(4);

28 (F) after termination of a periodic tenancy as prescribed by
29 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant
30 remains in possession without the landlord's consent after expiration of the
31 term of the rental agreement or after the date of its expiration;

(G) after the tenant has violated AS 34.03.120(b) or the tenant has used the dwelling unit or allowed the dwelling unit to be used for an illegal purpose in violation of AS 34.03.310(c)(3) other than a breach of AS 34.03.120(b), following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises within five days; or

(H) following service of written notice to quit, a person in possession continues in possession of the premises without a valid rental agreement, as that term is defined in AS 34.03.360, and without the consent of the landlord; or

(3) when, without a notice to quit, a tenant or person in possession continues in possession of the premises after the tenancy has been terminated by issuance of an order of abatement under AS 09.50.210(a).

* **Sec. 2.** AS 09.45.090(b) is amended to read:

(b) For property to which the provisions of AS 34.03 ([UNIFORM] Residential Landlord and Tenant Act) do not apply, unlawful holding by force includes each of the following:

(1) when, for failure or refusal to pay rent due on the lease or agreement under which the tenant or person in possession holds, after service, under AS 09.45.100(c), of demand made in writing by the landlord for the possession of the premises if the rent is not paid, the tenant or person in possession fails or refuses to vacate or pay the rent due within seven days;

(2) when, following service of a written notice to quit,

(A) after the tenant or person in possession has breached or violated a condition or covenant of the lease or rental agreement other than breach of a covenant or condition set out in (B) of this paragraph, the tenant or person in possession of a premises fails or refuses to deliver up the possession of the premises within 10 days;

(B) after the tenant or person in possession has deliberately inflicted substantial damage to the premises, the tenant or person in possession of a premises fails or refuses to deliver up the possession of the premises on the date required by the landlord; the date specified may not be less than 24

hours after demand for possession of the premises by the landlord;

(C) after the tenant or person in possession has violated AS 34.05.100(a) or has used the premises for or allowed the premises to be used for an illegal purpose, the tenant or person in possession fails or refuses to deliver up the possession of the premises within five days;

(D) for premises the lease or occupation of which is primarily for the purpose of farming or agriculture, after the tenant or person in possession has violated AS 34.05.025, other than a violation that is a breach under (B) or (C) of this paragraph, the tenant fails or refuses to deliver up possession of the premises within 30 days;

(E) a tenancy based upon an estate at will terminates, and the tenant or person in possession continues in possession of the premises; or

(F) a person in possession continues in possession of the premises

(i) at the expiration of the time limited in the lease or agreement under which that person holds; or

(ii) without a written lease or agreement and without the consent of the landlord; or

(3) when, without a notice to quit, a tenant or person in possession continues in the possession of the premises after the tenancy has been terminated by issuance of an order of abatement under AS 09.50.210(a).

*** Sec. 3.** AS 34.03.010(b) is amended to read:

(b) The underlying purposes and policies of this chapter are to

(1) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant; **and**

(2) encourage landlord and tenant to maintain and improve the quality of housing; [AND

(3) MAKE UNIFORM THE LAW AMONG THOSE STATES THAT ENACT IT].

*** Sec. 4.** AS 34.03.020(e) is amended to read:

(e) If required by the landlord, the landlord and the tenant shall include within

the rental agreement, incorporate by reference in the rental agreement, or add as a separate attachment to the rental agreement a premises condition statement, setting out the condition of the premises, including fixtures but excluding reference to any of the other contents of the premises, and, if applicable, a contents inventory itemizing or describing all of the furnishings and other contents of the premises and specifying the condition of each of them. In the premises condition statement and contents inventory, the **landlord and tenant** [PARTIES] shall describe the premises and its contents at the commencement of the term of the period of the occupancy covered by the rental agreement. When signed by the **landlord and tenant** [PARTIES], the premises condition statement and contents inventory completed under this subsection become part of the rental agreement.

* **Sec. 5.** AS 34.03.070(a) is amended to read:

(a) **Except as provided in (h) of this section, a** [A] landlord may not demand or receive prepaid rent or a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. This section does not apply to rental units where the rent exceeds \$2,000 a month.

* **Sec. 6.** AS 34.03.070(b) is amended to read:

(b) Upon termination of the tenancy, property or money held by the landlord as prepaid rent or as a security deposit may be applied to the payment of accrued rent and the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with AS 34.03.120. The accrued rent and damages must be itemized by the landlord in a written notice mailed to the tenant's last known address within the time limit prescribed by (g) of this section, together with the amount due the tenant. In this subsection, "damages"

(1) means deterioration of the premises and, if applicable, of the contents of the premises;

(2) does not include deterioration

(A) that is the result of **normal wear and tear** [THE TENANT'S USE OF THE PREMISES BY NORMAL, NONABUSIVE LIVING];

(B) caused by the landlord's failure to prepare for expected

conditions or by the landlord's failure to comply with an obligation of the landlord imposed by this chapter.

* **Sec. 7.** AS 34.03.070(c) is amended to read:

(c) All money paid to the landlord by the tenant as prepaid rent or as a security deposit in a lease or rental agreement shall be promptly deposited by the landlord, wherever practicable, in a trust account in a bank, savings and loan association, or licensed escrow agent, and the landlord shall provide to the tenant the terms and conditions under which the prepaid rent or security deposit or portions of them may be withheld by the landlord. **Nothing** [; NOTHING] in this chapter prohibits the landlord from commingling prepaid rents and security deposits in a single financial account; **however, the landlord shall separately account for prepaid rent and security deposits received from each tenant. The landlord may not commingle prepaid rent and security deposits with other funds. The landlord may not use money held for one tenant in a trust account to**

(1) refund the security deposit of another tenant;

(2) apply to the payment of another tenant's accrued rent;

(3) apply to damages suffered by the landlord because of another tenant's noncompliance with AS 34.03.120.

* **Sec. 8.** AS 34.03.070 is amended by adding new subsections to read:

(h) Notwithstanding the limitation on the amount of prepaid rent or security deposit in (a) of this section, a landlord may demand or receive an additional security deposit from a tenant who has a pet on the premises that is not a service animal. The additional security deposit

(1) may not exceed the periodic rent for one month; and

(2) shall be accounted for separately from prepaid rent or a security deposit received under (a) of this section and may be applied only to the amount of damages that are directly related to the pet of the tenant.

(i) In this section,

(1) "normal wear and tear" means deterioration that occurs from the intended use of the rental unit and without negligence, carelessness, accident, misuse, or abuse of the premises or contents by the tenant, members of the household of the

tenant, or the invitees or guests of the tenant;

(2) "service animal" has the meaning given in AS 09.65.150.

* **Sec. 9.** AS 34.03.090(b) is amended to read:

(b) **The tenant shall** [AS A CONDITION OF DELIVERY OF POSSESSION OF THE PREMISES TO THE TENANT, THE LANDLORD MAY REQUIRE THE TENANT TO] acknowledge or verify by the tenant's signature the accuracy of the premises condition statement and contents inventory prepared under AS 34.03.020(e). **The** [BEFORE REQUIRING THE TENANT'S SIGNATURE, THE LANDLORD SHALL FIRST ADVISE THE TENANT THAT THE] premises condition statement and contents inventory

(1) may be used by the landlord **or tenant** as the basis

(A) to determine whether prepaid rent or a security deposit shall be applied to the payment of damages to the premises when authorized by AS 34.03.070(b); and

(B) to compute the recovery of other damages to which the parties may be entitled under this chapter; and

(2) is, in an action initiated by a party to recover damages or to obtain other relief to which a party may be entitled under this chapter, presumptive evidence of the condition of the premises and its contents at the commencement of the term of the period of occupancy covered by the rental agreement.

* **Sec. 10.** AS 34.03.100(a) is amended to read:

(a) The landlord shall

(1) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(2) keep all common areas of the premises in a clean and safe condition;

(3) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(4) provide and maintain appropriate receptacles and conveniences for

the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(5) supply running water and reasonable amounts of hot water and heat at all times, insofar as energy conditions permit, except where

(A) the building that includes the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection; or

(B) the premises does not have a well or water provided by a direct public utility connection and the rental agreement specifically states that the duty of the landlord to supply running water or hot water to the premises is waived by the tenant;

(6) if requested by the tenant, provide and maintain locks and furnish keys reasonably adequate to ensure safety to the tenant's person and property; and

(7) provide smoke detection devices and carbon monoxide detection devices as required under AS 18.70.095.

* **Sec. 11.** AS 34.03.120(a) is amended to read:

(a) The tenant

(1) shall keep that part of the premises occupied and used by the tenant as clean and safe as the condition of the premises permit;

(2) shall dispose all ashes, rubbish, garbage, and other waste from the dwelling unit in a clean and safe manner;

(3) shall keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(4) shall use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other facilities and appliances, including elevators, in the premises;

(5) may not deliberately or negligently destroy, deface, damage, impair, or remove a part of the premises or knowingly permit any person to do so;

(6) may not unreasonably disturb, or permit others on the premises with the tenant's consent to unreasonably disturb, a neighbor's peaceful enjoyment of

1 the premises;

2 (7) shall maintain smoke detection devices and carbon monoxide
3 detection devices as required under AS 18.70.095;

4 (8) may not, except in an emergency when the landlord cannot be
5 contacted after reasonable effort to do so, change the locks on doors of the premises
6 without first securing the written agreement of the landlord and, immediately after
7 changing the locks, providing the landlord a set of keys to all doors for which locks
8 have been changed; in an emergency, the tenant may change the locks and shall,
9 within five days, provide the landlord a set of keys to all doors for which locks have
10 been changed and written notice of the change; [AND]

11 (9) may not unreasonably engage in conduct, or permit others on the
12 premises to engage in conduct, that results in the imposition of a fee under a municipal
13 ordinance adopted under AS 29.35.125; and

14 (10) may not allow the number of individuals occupying the
15 premises to exceed the number allowed by applicable law or covenant limiting
16 the landlord's use of the premises.

17 * **Sec. 12.** AS 34.03 is amended by adding a new section to article 5 to read:

18 **Sec. 34.03.215. Early termination of rental agreement as the result of**
19 **domestic violence, sexual assault, or stalking.** (a) Notwithstanding the term of
20 occupancy in a rental agreement, a tenant who has been the victim of domestic
21 violence, sexual assault, or stalking on the premises or by an occupant of the premises
22 may terminate a rental agreement within 10 days after giving notice to the landlord as
23 provided in this section.

24 (b) The notice to the landlord must be delivered to the landlord within 30 days
25 after the incident that is the basis for the early termination of the rental agreement
26 under this section.

27 (c) In support of the early termination of the rental agreement, the tenant shall
28 include the following in the notice to the landlord:

29 (1) a copy of the complaint or other documentation provided to a law
30 enforcement agency or court related to the incident of domestic violence, sexual
31 assault, or stalking that is the basis for the early termination;

(2) the approximate date of the most recent incident that is the basis for the early termination of the rental agreement under this section;

(3) the date the individual will terminate the rental agreement;

(4) a statement as to whether the perpetrator of the domestic violence, sexual assault, or stalking was a tenant under the rental agreement;

(5) whether a tenant other than the individual providing notice under this section intends to continue to occupy the premises;

(6) the plan, if any, for the tenant to remove or retrieve personal property from the premises or a statement that the tenant is abandoning any personal property remaining on the premises; and

(7) contact information for the purpose of notice and the payment of any amount due the tenant under AS 34.03.070.

* **Sec. 13.** AS 34.03.220(a) is amended to read:

(a) Except as provided in this chapter,

(1) if the tenant or someone in the tenant's control deliberately inflicts substantial damage to the premises in breach of AS 34.03.120(a)(5) **or the tenant engages in or permits another to engage in prostitution or another illegal activity at the premises in breach of AS 34.03.120(b)**, the landlord may deliver a written notice to quit to the tenant under AS 09.45.100 - 09.45.105 specifying the act **or activity** constituting the breach and specifying that the rental agreement will terminate **on** [UPON] a date that is not less than 24 hours **or more than five days** after service of the notice; for purposes of this paragraph, damage to premises is "substantial" if the loss, destruction, or defacement of property attributable to the deliberate infliction of damage to the premises exceeds \$400;

(2) if there is a material noncompliance by the tenant with the rental agreement, or if there is noncompliance with AS 34.03.120, other than deliberate infliction of substantial damage to the premises or other than noncompliance as to a utility service for which the provisions of (e) of this section apply, materially affecting health and safety, the landlord may deliver a written notice to quit to the tenant under AS 09.45.100 - 09.45.110 specifying the acts and omissions constituting the breach and specifying that the rental agreement will terminate **on** [UPON] a date not less than

1 10 days after service of the notice; if the breach is not remedied, the rental agreement
 2 terminates as provided in the notice subject to the provisions of this section; if the
 3 breach is remediable by repairs or the payment of damages or otherwise and the tenant
 4 adequately remedies the breach before the date specified in the notice, the rental
 5 agreement will not terminate; in the absence of due care by the tenant, if substantially
 6 the same act or omission that constituted a prior noncompliance of which notice was
 7 given recurs within six months, the landlord may terminate the rental agreement upon
 8 at least five **days**' [DAYS] written notice to quit specifying the breach and the date of
 9 termination of the rental agreement.

10 * **Sec. 14.** AS 34.03.330(b) is amended to read:

11 (b) Unless created to avoid the application of this chapter, the following
 12 arrangements are not governed by this chapter:

13 (1) residence at an institution, public or private, if incidental to
 14 detention or the provision of medical, geriatric, educational, counseling, religious, or
 15 similar services;

16 (2) occupancy under a contract of sale of a dwelling unit or the
 17 property of which it is a part if the occupant is the purchaser or a person who succeeds
 18 to the interest of a purchaser;

19 (3) occupancy by a member of a fraternal or social organization in the
 20 portion of a structure operated for the benefit of the organization;

21 (4) transient occupancy in a hotel, motel, lodgings, or other transient
 22 facility; **in this paragraph, "transient occupancy" means the presence or stay of**
 23 **an individual for less than 30 consecutive days;**

24 (5) occupancy by an employee of a landlord whose right to occupancy
 25 is conditioned upon employment substantially for services, maintenance, or repair to
 26 the premises;

27 (6) occupancy by an owner of a condominium unit or a holder of a
 28 proprietary lease in a cooperative;

29 (7) occupancy under a rental agreement covering premises used by the
 30 occupant primarily for agricultural purposes;

31 (8) occupancy under a rental agreement covering premises used as part

1 of a transitional or supportive housing program that is sponsored or operated by a
 2 public corporation or by a nonprofit corporation and that provides shelter and related
 3 support services intended to improve the occupant's opportunity to obtain permanent
 4 housing.

5 * **Sec. 15.** AS 34.03.380 is amended to read:

6 **Sec. 34.03.380. Short title.** This chapter may be cited as the ["UNIFORM]
 7 Residential Landlord and Tenant Act.["]

8 * **Sec. 16.** AS 43.23.065(b) is amended to read:

9 (b) An exemption is not available under this section for permanent fund
 10 dividends taken to satisfy

11 (1) child support obligations required by court order or decision of the
 12 child support services agency under AS 25.27.140 - 25.27.220;

13 (2) court ordered restitution under AS 12.55.045 - 12.55.051,
 14 12.55.100, or AS 47.12.120(b)(4);

15 (3) claims on defaulted education loans under AS 43.23.067;

16 (4) court ordered fines;

17 (5) writs of execution under AS 09.35 of a judgment that is entered

18 (A) against a minor in a civil action to recover damages and
 19 court costs;

20 (B) under AS 09.65.255 against the parent, parents, or legal
 21 guardian of an unemancipated minor;

22 (6) a debt owed by an eligible individual to an agency of the state,
 23 including the University of Alaska, unless the debt is contested and an appeal is
 24 pending, or the time limit for filing an appeal has not expired;

25 (7) a debt owed to a person for a program for the rehabilitation of
 26 perpetrators of domestic violence required under AS 12.55.101, AS 18.66.100(c)(15),
 27 AS 25.20.061(3), or AS 33.16.150(f)(2);

28 **(8) a judgment for unpaid rent or damage owed to a landlord by**
 29 **an eligible individual that was a tenant of the landlord; in this paragraph,**
 30 **"tenant" has the meaning given in AS 34.03.360.**

31 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to

- 1 read:
- 2 APPLICABILITY. Sections 4 - 14 of this Act apply to a residential rental agreement
- 3 for a period beginning on or after the effective date of this Act.