

Introduced: 2/17/76
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY PARKER AND MCKINNON

2 HOUSE BILL NO. 828

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to landlord tenant relations; and
7 amending Rules 4(b), 77, and 85, Rules of Civil Proce-
8 dure."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. Sec. 09.45.070 is amended by adding a new subsection to
11 read:

12 (c) In an action for possession under the Uniform Residential
13 Landlord and Tenant Act (AS 34.03), the summons and complaint shall be
14 served and the trial conducted as prescribed in secs. 60 - 160 of this
15 chapter and AS 34.03.190.

16 * Sec. 2. AS 09.45.090 is repealed and re-enacted to read:

17 Sec. 09.45.090. UNLAWFUL HOLDING BY FORCE. Except as otherwise
18 provided in secs. 60 - 160 of this chapter and in AS 34.03, the follow-
19 ing are cases of unlawful holding by force within the meaning of secs.
20 60 - 160 of this chapter:

21 (1) when the landlord fails to deliver possession of the
22 dwelling unit as provided in AS 34.03.170 after the tenant issues a
23 demand that the landlord comply with the rental agreement in accordance
24 with AS 34.03.170(a)(2);

25 (2) when the landlord unlawfully removes or excludes the
26 tenant from the premises;

27 (3) when the tenant remains in possession without the land-
28 lord's consent after the termination of the rental agreement under
29 AS 34.03.220(a) or (b), 34.03.300(a), and 34.03.290(a) or (b); or

1 (4) when a tenant fails to surrender possession after ex-
2 piration of a specified term and receipt of written notice to terminate.

3 * Sec. 3. AS 09.45.100 is amended to read:

4 Sec. 09.45.100. REQUISITES OF NOTICE TO TERMINATE [QUIT]. A
5 notice to terminate as required by sec. 90 of this chapter and AS 34.-
6 03.notice to terminate as required by sec. 90 of this chapter and AS 34.
7 03.220(a) or (b), 34.03.300(a), and 34.03.390(a) or (b) [QUIT] shall be
8 in writing and shall be served upon the tenant or person in possession
9 by being delivered to him personally or left with a person of suitable
10 age at the premises in case of his absence from the premises, or the
11 notice may be posted on the premises, and sent by registered or certi-
12 fied mail, in which case an additional three days shall be added to the
13 time periods set out in AS 34.03.220(a) and (b), 34.03.300(a) and
14 34.03.390(a) and (b) [10 DAYS].

15 * Sec. 4. AS 09.45.110 is repealed.

16 * Sec. 5. AS 09.45 is amended by adding a new section to read:

17 Sec. 09.45.111. COMMENCEMENT OF ACTION. When a person is unlaw-
18 fully holding property by force within the meaning of sec. 90 of this
19 chapter, an action for forcible detainer may be brought in superior
20 court in the district where the property is situated. The action for
21 forcible detainer is the exclusive remedy for violation of sec. 70(a) of
22 this chapter.

23 * Sec. 6. AS 09.45.120 is repealed and re-enacted to read:

24 Sec. 09.45.120. SUMMONS AND CONTINUANCE. No continuance may be
25 granted except for good cause shown. The summons shall state the nature
26 of the action, place, date, and time of the trial, and the right to a
27 continuance for good cause.

28 * Sec. 7. AS 09.45.130 is repealed.

29 * Sec. 8. AS 09.45 is amended by adding new sections to read:

1 Sec. 09.45.121. MOTION FOR IMMEDIATE POSSESSION. The plaintiff,
2 at the time of commencing an action for forcible detainer, or at any
3 time afterward, may move the superior court in which the action is
4 pending for an order restoring plaintiff to possession. A hearing shall
5 be held not less than six nor more than 12 days from the date of service
6 of the motion upon the defendant. A copy of the motion, together with a
7 copy of the summons and complaint if not previously served, shall be
8 served upon the defendant in the manner required for commencement of an
9 action. The motion shall state that if defendant does not appear at the
10 time and place specified for the hearing, the court may order immediate
11 restoration of the property to the plaintiff, but that any other relief
12 sought in the complaint will not be granted at that time.

13 Sec. 09.45.135. HEARING; DEFENSES AND COUNTERCLAIMS. At the time
14 and place fixed for the hearing of plaintiff's motion for immediate pos-
15 session, the defendant or any person in possession or claiming posses-
16 sion of the property, may answer, orally or in writing, and assert any
17 legal or equitable defense or counterclaim arising out of the tenancy.
18 If the answer is oral, the substance of it shall be endorsed on the
19 complaint by the court. The court shall examine the parties and wit-
20 nesses orally to ascertain the merits of the complaint and answer. If
21 it appears that plaintiff's complaint is sufficient and that the defen-
22 dant's answer, even if established by competent evidence at trial, would
23 not be a sufficient defense, the judge shall enter an order awarding
24 plaintiff possession of the property. If the complaint is not legally
25 sufficient, or if the defendant's answer, should it be proven by com-
26 petent evidence at trial, would be a complete defense to the plaintiff's
27 right of possession, the judge shall deny the motion for immediate
28 possession and either dismiss the complaint or direct the parties to
29 proceed to trial in the usual manner. If the judge awards possession to

1 plaintiff because of nonpayment of rent, the order may be stayed for
2 three days upon application to the court to allow the defendant to pay
3 all rent owed and costs of the action and thereby retain possession.

4 * Sec. 9. AS 09.45.496(a) and AS 22.15.030(a)(8) are repealed.

5 * Sec. 10. Sections 4, 5, and 7 of this Act effect a change in Rule 85 of
6 the Rules of Civil Procedure by establishing a certain procedure for re-
7 covering possession of property, renaming that procedure, and requiring
8 additional notice. Section 7 of this Act effects a change in Rule 77 of the
9 Rules of Civil Procedure by establishing a special motion procedure in these
10 actions. Sections 4 and 5 of this Act effect a change in Rule 4(b) of the
11 Rules of Civil Procedure by adding to the information which must appear in
12 the summons in an action for forcible detainer.