

HB 827

# COMMITTEE REPORT

HOUSE

2/17/76

Mr. Speaker:

Date 2/3/76

The Committee on MERCE has had HB 827

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR \_\_\_\_\_ AND THAT  
CS FOR \_\_\_\_\_ DO PASS

( ) "and" recommends it BE REFERRED TO THE \_\_\_\_\_  
COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[Signature] \_\_\_\_\_  
[Signature] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Members NOT concurring in the Majority report:

[Signature] recommends: Do Not Pass  
[Signature] recommends: Do Not Pass  
[Signature] recommends: Do not pass  
[Signature] recommends: Do Not Pass  
\_\_\_\_\_ recommends: \_\_\_\_\_

[Signature] Chairman

A M E N D M E N T

OFFERED IN THE HOUSE:

BY: Commerce Committee

To: \_\_\_\_\_ HOUSE BILL No. HB 827

SENATE BILL No. \_\_\_\_\_

PAGE: \_\_\_\_\_

LINE: \_\_\_\_\_

Line 21 on Page 1, reinsert the word "written".

Line 13, on Page 2 reinsert the word "written".

LAW OFFICES OF  
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TELEPHONE 586-6465 X6425  
February 24, 1976

MEMORANDUM

TO: Rep. Bob Bradley  
Commerce Committee

FROM: Don Clocksin, ALSC

SUBJECT: HB 827--Landlord-tenant amendments

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This bill contains a number of adjustments and improvements in the Uniform Residential Landlord and Tenant Act which was first adopted in 1974 (Ch. 10, SLA 1974). These proposed amendments are based upon two years of extensive use of the act and careful analysis of how it would work better.

Section 1. In the section governing sublease by a tenant, the tenant is required to reveal, among other things, his/her proposed sublessee's marital status. Since requiring that information conflicts with the newly adopted amendments to the anti-discrimination statute, it should be repealed. The new amendments, in AS 18.80.240(3) (Chapter 104, SLA 1975), prohibit inquiries into marital status.

Section 2. This section reduces the maximum deposit from two to one month's rent. After seeing the section on deposits in action, we have learned that limiting security deposits and prepaid rent to two months' rent is not sufficient. It does not protect tenants. In the typical situation, a landlord charges not only a security deposit but also a month of prepaid rent. If the monthly rental were \$350, the total payments required just to move in would be \$1050.

\$	350--First month's rent
	350--Last month's rent (prepaid)
	350--Security deposit
	<hr/>
	\$1,050

Few people can pay that much at one time. Besides, such large amounts of security are not necessary when housing is so tight that a landlord need not worry about his/her dwelling staying vacant very long.

Section 3. This section creates a penalty for failing to set the tenant's deposit aside in a trust account and failing to tell the tenant how to get the money back. Through an oversight, the penalty section (subsection d) referred only to subsection (b) but not to (c).

Section 4. (A) On pg. 1, line 18, a typographical error is corrected.

(B) On pg. 1, line 21, the obligation to give written notice of a defect is eliminated. In my experience, many many tenants give oral notice of defects, but the landlord still will not fix something defective. Many landlords in fact have notice of defects but never have to fix the problem because of this overly technical requirement.

(C) On pg. 1, lines 23-28, the repair and deduct remedy is clarified. Where the old language simply authorized a deduction from rent of the costs of obtaining essential services the landlord has failed to provide, the subsection as rewritten would specify that labor and materials used by the tenant are compensable and that, if the tenant performs the work himself/herself, the state minimum wage level is recoverable.

(D) On pg. 2, lines 4-5, the section clarifies that the landlord warrants that the dwelling is habitable. If it is not, and is in fact worth less because of serious defects, the rent owed is reduced to reflect the substandard conditions. The act already established this principle, but confusion has occurred about how the principle of warranty of habitability is applied. The amendment will resolve the confusion.

Section 5. This section also eliminates the requirement of written notice. It is unfair if a landlord actually knows of a defect and avoids his/her obligation to fix it because of a technicality. See Section 4(b) above.

Section 6. This section increases the penalty for an illegal lock-out to \$1000 or one and one-half times the actual damages, whichever is greater. The section used to allow only one and one-half times actual damages. One of the greatest problems we are still having is with illegal evictions. It occurs by shutting off heat or lights, changing locks while the tenant is gone, removing furniture, and in some cases, physical violence. The common factor is that all of these evictions are done in violation of the law and deprive the tenant any due process of law. The landlord who evicts a tenant in one of these ways deserves no protection at all. There is never any excuse for such cruel, arbitrary conduct.

However, because the damages which can be recovered in a law-suit are hard to prove, the landlord can usually evict illegally with little fear of economic penalty. In a poll of Anchorage attorneys, approximately nineteen answered the question of whether, under the present law, they would represent an illegally evicted tenant who was unable to pay for their services. Only one said he would, the others claiming that the penalty would have to be increased considerably before they would help. The amendment seeks to discourage lock-outs and encourage private lawyers to represent victimized low and middle income tenants.

Section 7. This section makes a violation of this act a violation of the Unfair Trade Practices and Consumer Protection Act. Many, many people who are injured by a violation of this landlord-tenant law are too poor to hire a private lawyer and too rich for help from Alaska Legal Services Corp. For them, there is little they can do unless the Attorney-General's Consumer Protection office can step in on their behalf. The Consumer Protection office, I understand, is still inundated by landlord-tenant problems. They are forced to turn them away because they have no jurisdiction.

An interesting statistic is found in the First Report of the Ombudsman--1975 (Feb. 1976). According to that report the Ombudsman received a surprisingly high number of landlord-tenant problems. Of all inquiries, about 6% related to a private landlord-tenant problem, even though the Ombudsman deals only with state agencies. This means, I think that people aren't getting help elsewhere and that they expect state government to provide some assistance. The Consumer Protection office is best able to help.

DEC:btg

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MEMORANDUM

TO: Reps. Bradley and Parker  
FROM: Donald E. Clocksin *DEC*  
RE: HB 827--Landlord-Tenant Amendments  
DATE: March 15, 1976

*H.B. 684.*  
*\*1. Filing arrangement -*  
*illegal*  
*2. Filing under Consumer*  
*Protection*  
*File*

This bill contains a number of adjustments and improvements in the Uniform Residential Landlord and Tenant Act which was first adopted in 1974 (Chapter 10, SLA 1974). These proposed amendments are based upon two years of extensive use of the Act and careful analysis of how it would work better.

Section 1. This amendment makes the Landlord and Tenant Act consistent with the anti-discrimination statute. In the section governing sublease by a tenant, the tenant is required to reveal, among other things, his/her proposed marital status. Since requiring that information conflicts with the newly adopted amendments to the anti-discrimination statute, it should be repealed. The new amendments, in A.S. 18.80.240(3) (Chapter 104, SLA 1975), prohibit inquiries into marital status.

Section 2. This section reduces the maximum deposit from two to one month's rent. After seeing the section on deposits in action, we have learned that limiting security deposits and prepaid rent to two months' rent is not sufficient. It does not protect tenants. In the typical situation, a landlord charges not only a security deposit but also a month of prepaid rent. If the monthly rental were \$350, the total payment required just to move in would be \$1,050.

\$ 350--First Month's Rent  
\$ 350--Last Month's Rent  
\$ 350--Security Deposit  
\$1,050

Few people can pay that much at one time. Besides, such large amounts of security are not necessary when housing is so tight that a landlord need not worry about his/her dwelling staying vacant very long. By charging last month's rent or a damage deposit, the landlord is adequately protected. They always have the right to collect for damage which exceeds the deposit.

\* Section 3. This section creates a penalty for failing to set the tenant's deposit aside in a trust account and failing to tell the tenant how to get the money back. Through an oversight, the penalty section (Subsection D) referred only to Subsection B instead of to Subsection C. The purpose of the trust account provision is to protect the tenant's money from the landlord's other creditors.

Section 4.

- (A) On page 1, line 18, a typographical error is corrected.
- (B) [The change on page 1, line 21, was deleted by the Commerce Committee amendment.]
- (C) On page 1, lines 23-28, the repair and deduct remedy is clarified. Where the old language simply authorized a deduction from rent of the costs of obtaining essential services the landlord has failed to provide, the subsection as rewritten would specify that only labor and materials used by the tenant are compensable and that, if the tenant performs the work himself/herself, the state minimum wage level is recoverable.
- (D) On page 2, lines 4-5, the section clarifies that the landlord warrants that the dwelling is habitable. If it is not, and is in fact worth less because of serious defects, the rent owed is reduced to reflect the substandard conditions. The Act already says this, but confusion has occurred about how the principle of warranty of habitability is applied. The amendment will resolve the confusion.

Section 5. [This section was deleted by Commerce Committee amendment.]

Section 6. This section increases the penalty for an illegal lockout to \$1,000 or one and one-half times the actual damages, whichever is greater. The section used to allow only one and one-half times actual damages. One of the greatest problems we are still having is with illegal evictions. It occurs by shutting off heat or lights, changing locks while the tenant is gone, removing furniture, and in some cases, physical violence. The common factor is that all of these evictions are done in violation of the law and deprive the tenant any due process of law. The landlord who evicts a tenant in one of these ways deserves no protection at all. There is never any excuse for such cruel, arbitrary conduct.

*Written into Bill  
incorporated in  
Bill*

However, because the damages which can be recovered in a lawsuit are hard to prove, the landlord can usually evict illegally with little fear of economic penalty. In a poll of Anchorage attorneys, approximately nineteen answered the question of whether, under the present law, they would represent an illegally evicted tenant who was unable to pay for their services. Only one said he would, the others claiming that the penalty would have to be increased considerably before they would help. The amendment seeks to discourage lockouts and encourage private lawyers to represent victimized low and middle income tenants.

Section 7. This section makes a violation of this act a violation of the Unfair Trade Practices and Consumer Protection Act. Many, many people who are injured by a violation of this landlord-tenant law are too poor to hire a private lawyer and too rich for help from Alaska Legal Services Corporation. For them, there is little they can do unless the Attorney General's Consumer Protection office can step in on their behalf. The Consumer Protection office, I understand, is still inundated by landlord-tenant problems. They are forced to turn them away because they have no jurisdiction.

*patterns of  
identity - not  
isolated incidents*

An interesting statistic is found in the First Report of the Ombudsman--1975 (February, 1976). According to that report the Ombudsman received a surprisingly high number of landlord-tenant problems. Of all inquiries, about 6% related to a private landlord-tenant problem, even though the Ombudsman deals only with state agencies. This means, I think, that people aren't getting help elsewhere and that they expect state government to provide some assistance. The Consumer Protection office is best able to help.

#### Possible Objections to HB 827

1. We worked out a compromise in 1974 which shouldn't be tampered with now. Answer: Senator Zeigler said in 1974 that we should try the Act for two years and, if changes are needed, come back to the Legislature. Two years of extensive experience with the Act has revealed problems. It's not cast in concrete.
2. By creating a penalty for failing to deposit a security deposit in a trust account, you're penalizing only a technical violation. Answer: The section requiring a trust account is preventative - to protect the deposit, which is the tenant's money, in case the landlord goes

bankrupt. Many landlords in Anchorage are violating Subsection C of A.S. 34.03.070 by refusing to protect the tenant's money.

3. The repair and deduct remedy takes away the landlord's right to control his/her own property. Answer: That right does not include the right to refuse to fix serious defects. If the landlord, after being given a chance to fix an "essential service," refuses to do it, the tenant, who is suffering, should be allowed to. Besides, the amendments on page 1, lines 23-28 don't really increase the tenants' right. They only specify that the costs cannot exceed the cost of labor and materials.
4. A \$1,000 penalty for a lockout is too high. Answer: There is no excuse for these lockouts or utility shut-offs. They continue to occur often and a high penalty is needed to stop them. It's this or making it a crime. Lots of other laws have minimum penalties (state Consumer Protection Act--\$200 minimum; state Anti-Trust Act--treble actual damages; federal Truth-In-Lending Act--\$100 to \$1,000). The "good" landlord, who we should try to protect, does not use lockouts or utility shut-offs. A higher penalty will make more lawyers available to middle-income tenants.
5. What is it going to cost to extend the Consumer Protection office's jurisdiction to landlord-tenant disputes? Answer: About \$50,000 next year. ~~The intent is to allow that office to deal with patterns of illegal activity, not to take the place of private attorneys for all disputes.~~ Since the Consumer Protection office has the discretion to determine which illegal activities need the most attention, the fiscal impact of the bill could vary considerably, depending on what cases they get involved with. The Consumer Protection offices are already receiving lots of complaints, so a portion of the current budget is going to landlord-tenant disputes already. We figure roughly that if we could add an attorney in Fairbanks (which has no resident Consumer Protection attorney) and an attorney in Anchorage, that would be enough to carry the office through the first year. That's about \$50,000. Then we'll know more about the need for more staff. That's how we handled the staffing question on the anti-trust bill we passed last session.