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Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY SB 224: by Sturgulewski

After a tenant terminates his rental, property or money (held as security) may be applied by the landlord for payment of accrued rent or damages (AS 34.03.120).

Accrued rent and damages must be itemized by the landlord in a written notice and delivered with the amount due to the tenant no later than 30 days after the following:

1. Termination of the tenancy
2. Delivery of possession of the tenant
3. Notice to the landlord of an address to which notices to the tenant may be sent.

"DAMAGES" do not include wear resulting from ordinary use of the premises.

JUNEAU TENANTS COALITION
419 6TH ST. #232
JUNEAU, AK 99801

March 13, 1981

Michael Thill
Office of Sen. Bob Mulcahy
Pouch V
Juneau, Alaska 99811

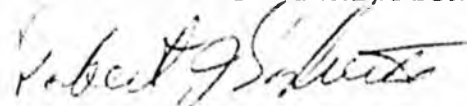
Dear Mr. Thill:

Thank you for the opportunity to comment on SB 224. I would like to have the 14-day limit retained. With damage deposits of \$150 to \$500 not uncommon, there should be as short a delay as possible when returning deposits. The 14-day limit may, on rare occasions, be difficult to comply with. Compare this with the tenant's hardship of not having access to this money. Added to moving expenses the tenant might have two security deposits paid out simultaneously. Many tenants live on fixed, low, or moderate incomes and may have to "do without" necessities during the moving period. To be deprived of their security deposit for a full month will be a true hardship to tenants. SB 224, as now worded, would cause hardship to many Alaskans and would benefit local or absentee landlords only on rare occasions.

Although no great need to modify other portions of the statutory section exists, we have no opinion as to other proposed changes in the bill.

Sincerely,

JUNEAU TENANTS COALITION


Robert J. Sylvester, President

MEMORANDUM

TO:

Senator Bob Mulcahy
Pouch V
Juneau, AK 99811

DATE:

March 18, 1981

FILE NO:

TELEPHONE NO:

FROM:

Wilson L. Condon
Attorney General

SUBJECT:

SB 224, Landlord/Tenant
Amendment

By: Robert A. Evans, Assistant Attorney General
Consumer Protection Section
1049 W. 5th Avenue, Suite 101
Anchorage, AK 99501

You asked the Consumer Protection Section to comment on SB 224, and this memo responds to your request.

It is in the best interests of both landlord and tenant to resolve the amount of the security deposit to be returned or withheld as soon as possible after termination of the tenancy. The interest of the landlord is served by a prompt inventory of the residence, determination of damages, and the ability to re-rent the premises to mitigate loss or damage, if any.

The interest of the tenants is served by quick resolution of any problems and timely return of their security deposit. The moving tenants must usually seek housing elsewhere and most likely will be required to make another deposit. The dual deposit will be particularly onerous on lower income tenants.

In fact, the dual deposit situation will work to the detriment of some landlords. When a lower income tenant is looking for a new apartment, he/she will probably have to request that the new landlord be either wholly or partially unsecure as far as the security deposit goes. As any landlord knows, once a tenant is in place without having paid a security deposit or a partial deposit, it is difficult to obtain the deposit or balance due.

The conditioning of the landlord's return of the security deposit or notice, upon the tenants being required to give notice "to the landlord of an address to which notices to the tenant may be sent" seems unwise for the following reasons:

1. The tenant is required to come up with two deposits, one for his/her old apartment, and one for his/her new apartment. Such a condition would cause a great hardship on many people.

Senator Bob Mulcahy

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2. The language of the amendment makes the giving notice of a forwarding address mandatory on the tenant and only permissive on the landlord. The specific language of the amendment states that the tenant must give notice to the landlord of a forwarding address. The landlord on the other hand may send notices. The effect of this mandatory requirement is to deny the tenant his security deposit if he fails to give notice. However, if the landlord fails to give notice or return the security deposit, the permissive word "may" in the amendment relieves the landlord of any legal obligation and denies the tenant of any legal right.

It may be useful to have the tenant give an address to which notices can be sent, but the requirement of forwarding address should definitely not be a condition precedent to the return of the security deposit or notice of rent due and damages. A tenant may be travelling or may not immediately know his new address. The statute could be amended to state that the tenant should give a forwarding address, but not make it an absolute requirement for security deposit returns or notice.

The amendment, though seemingly simple, could have a significant effect on the balance of rights and duties of landlords and tenants. For this reason, I think that any attempt to alter the existing uniform residential landlord/tenant act should be in a much more thorough and comprehensive manner.

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cc: Ron Lorensen, Deputy Attorney General
cc: Sarah Kavasharov, Assistant Attorney General
cc: Don Clocksin, Representative

(d) Within 14 days after the written offer has been delivered to the landlord, the landlord may refuse consent to a sublease or assignment by a written rejection signed and delivered by him to the tenant, containing one or more of the following reasonable grounds for rejecting the prospective occupant:

- (1) insufficient credit standing or financial responsibility;
- (2) number of persons in the household;
- (3) number of persons under 18 years of age in the household;
- (4) unwillingness of the prospective occupant to assume the same terms as are included in the existing rental agreement;
- (5) proposed maintenance of pets;
- (6) proposed commercial activity; or
- (7) written information signed by a previous landlord, which shall accompany the rejection, setting out abuses of other premises occupied by the prospective occupant.

(e) In the event the written rejection fails to contain one or more grounds permitted by (d) of this section for rejecting the prospective occupant, the tenant may consider the landlord's consent given, or at his option may terminate the rental agreement by a written notice given without unnecessary delay to the landlord at least 30 days before the termination date specified in the notice.

(f) If the landlord does not deliver a written rejection signed by him to the tenant within 14 days after a written offer has been delivered to him by the tenant, the landlord's consent to the sublease or assignment shall be conclusively presumed. (§ 1 ch 10 SLA 1974)

Article 3. Landlord Obligations.

Section	Section
70. Security deposits; prepaid rent	100. Landlord to maintain fit premises
80. Disclosure	110. Limitation of liability
90. Landlord to supply possession of the dwelling unit	

Sec. 34.03.070. Security deposits; prepaid rent. (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.

(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 which the landlord has suffered by reason of the tenant's noncompliance with § 120 of this chapter. The accrued rent and damages must be itemized by the landlord in a written notice delivered to the tenant together with the amount due no later than 14 days after termination of the tenancy and delivery of possession by the tenant. "Damages" do not include wear resulting from ordinary use of the premises.

(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 in this chapter prohibits the landlord from commingling prepaid rents and security deposits in a single financial account.

(d) If the landlord wilfully fails to comply with (b) of this section, the tenant may recover an amount not to exceed twice the actual amount withheld.

(e) This section does not preclude a landlord or tenant from recovering other damages to which he may be entitled under this chapter.

(f) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section. (§ 1 ch 10 SLA 1974)

Sec. 34.03.080. Disclosure. (a) The landlord or person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of

- (1) the person authorized to manage the premises; and
- (2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner or manager.

(c) A person who fails to comply with (a) of this section becomes an agent of each person who is a landlord for the purpose of

- (1) service of process and receiving and receipting for notices and demands; and
- (2) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the purpose all rent collected from the premises. (§ 1 ch 10 SLA 1974)

Sec. 34.03.090. Landlord to supply possession of the dwelling unit. At the commencement of the term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and § 100 of this chapter. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in § 290 of this chapter. (§ 1 ch 10 SLA 1974)

Sec. 34.03.100. Landlord to maintain fit premises. (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;

Article 4. Tenant Obligations.

Section

130. Rules and regulations

Sec. 34.03.120. Tenant to maintain dwelling unit.

Cleanup within 10 days of notice of noncompliance. — Where the tenants cleaned up the premises within 10 days from the date they were served with notice of noncompliance with the rental

agreement, the rental agreement could not be terminated for that reason. *Vczar v. Francis*, Sup. Ct. (p. No. 1634 (File No. 3173), 579 P.2d 1056 (1978).

Sec. 34.03.130. Rules and regulations.

(c) A mobile home park operator may determine by rule or regulation the style or quality of the equipment, including but not limited to underskirting and tie-downs, to be purchased by the tenant from the vendor of the tenant's choice; however, the operator may not require that the equipment be purchased from the operator.

(am § 4 ch 138 SLA 1976)

Effect of amendment. — The 1976 amendment added subsection (c).

As the rest of the section was not affected by the amendment, it is not set out.

Legislative history report. — For report on ch. 138, SLA 1976 (SCS CSHB 829 am S [re-engrossed]), see 1976 Senate Journal, p. 1368.

Article 5. Tenant Remedies.

Sec. 34.03.160. Noncompliance by the landlord: General.

Stated in *McCall v. Fickes*, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Sec. 34.03.180. Wrongful failure to supply heat, water, hot water or essential services.

Cited in *McCall v. Fickes*, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Article 6. Landlord Remedies.

Section

225. Limitations on mobile home park operator's right to terminate

Sec. 34.03.220. Noncompliance with rental agreement: Failure to pay rent.

Ten-day period dates from receipt of notice. — The period of 10 days in which to cure breaches in the rental agreement should be 10 days after receipt of the notice

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