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Letter of Intent

~~In Addition~~

The Legislature recognizes that an increase in rent by the landlord, ~~in effect~~, may constitute a form of termination, ~~in that~~ in that it terminates the rental agreement then in existence and offers a new rental agreement at different terms. The tenant, however, should be given ample time to locate a new dwelling and to move. Upon receipt of a notice of rent increase a tenant ~~could~~ should have the full 45 days to vacate provided under this bill if ~~they~~ ^{he chooses} choose not to accept the higher rent. The tenant would be under the obligation to inform the landlord of his intention to ~~terminate~~ ^{vacate} within the 45 day-period if the tenant does not intend to pay the higher rent.

An Overview of
Sponsor Substitute for HOUSE BILL NO. 1
"An Act relating to landlords and tenants"

The Alaska Statutes governing Landlords/Tenants, (Title 34- Property), has not been clear in defining certain areas of concern to both the landlord and the tenant. Whether oral or written, both the landlord and tenant hold certain unalienable rights in the property they own as a landlord or rent as a tenant. With the 0% to 4% vacancy rate in most of Alaska, and because over 35% of the population in Alaska rent their dwellings, it is necessary to update the laws to answer the needs of the landlord and tenant. The following is a summary of HB 1, and how it answers some of these needs.

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

Section 1. AS 09.45.090 is amended by adding a new paragraph to read:

(4) when, after a notice to terminate the tenancy as provided in AS 34.03.290 with reference to termination of a periodic tenancy, a person continues in possession of a dwelling unit after expiration of the time for determining the tenancy.

This new paragraph is being added to stipulate a "periodic tenancy" termination. AS 09.45.090 (3) cites termination of an "estate at will" tenancy, which can be defined as a tenancy that transpires on a day to day basis on an indefinite term at the will of the lessor. In this case, the tenant has no say in the matter of how long the tenancy will last, and the landlord may, at any time, terminate the tenancy and the tenant has no right to a notice. (This type of tenancy was developed in a few hundred years ago in England, and rarely applies "modern day" tenancy.) For this reason, it is necessary to add Paragraph 4, as periodic tenancy, (month to month, or a predetermined period of time), is not referenced in the present context.

Section 2. AS 34.03.290 (b) is amended to read:

(b) The landlord or the tenant may terminate a month to month tenancy by a written notice given to the other at least 45 [30] days before the termination [RENTAL DUE] date specified in the notice.

This amendment provides a more equitable time frame to tenants. The vacancy rate for apartments at the present time in the Anchorage, Fairbanks, Ketchikan and Juneau markets ranges from 0% to 4%. Because of this tight rental market, it is sometimes quite difficult for low income families, minorities, pet owners, families with children, and the elderly, (to name a few), to find adequate and habitable housing. General termination, (30 days), on the part of the landlord, in a time of a severe housing crunch does not always give the tenant sufficient notice to find other adequate housing.

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Page Two

"Rental due" date refers to Sec. 34.03.020 (c) which is the date on the same day each month that rent is to be paid. The landlord may wish to give notice of termination to the tenant before the "rental due" date, and replacing "rental due" with "termination" date provides for either time frame.

Section 3. AS 34.03.290 (c) is amended to read:

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession and recovery of actual damages. If [IF] the tenant's holdover is wilful and not in good faith the landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, AS 34.20.020 applies.

An improper hold-over by a tenant has caused landlords financial hardships. If a tenant continues to occupy the dwelling after his tenancy expires, he has caused the owner loss of income needed to make mortgage payments, as well as loss of time to make necessary repairs, alterations, etc., before renting the unit to the next party. Alaska law allows landlords to sue for damages, but the time, effort and money involved is not always feasible to pursue.

The new clause noted above provides for recovery of actual damages, (i.e. lost rent income, lost time needed to make necessary repairs, etc.), as well as one and one-half times the actual damages as compensation to the landlord. This deters the tenant from staying on past termination or the expiration of the rental agreement and in effect is incentive to the individual(s) to vacate the premises.

Section 4. AS 34.03.310 is amended by adding a new subsection to read:

(f) A landlord is presumed to have violated (a) of this section if the landlord increases rent, decreases service, or brings or threatens to bring an action for possession within 60 days after a tenant has engaged in an action listed under (a)(1) - (4).

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Page Three

This new subsection protects the tenant from landlords who abuse the right to access or evict the tenant for retaliatory reasons. The tenant has a right to his/her privacy, and the landlord must give "reasonable" notice to the tenant before entering the premises, (See AS 34.03.010). This new subsection also provides that the tenant may not be evicted because they have made a complaint using the proper procedures, (See AS 34.03.140), i.e. complained to a government agency regarding unfair rent hikes, or requesting that certain necessary repairs be made to the premises or common area. Sixty days is a sufficient amount of time to correct a problem or answer a complaint. After the 60 day period has expired, the tenant should refer to AS 34.03.160 and the landlord should refer to AS 34.03.220 for remedies to their problem(s).

Introduced: 1/28/83
Referred: Labor & Commerce
and Judiciary

*FORCEABLE ENTRY
DETAINER*

*Referred to
Judgement*

1 IN THE HOUSE

BY ABOOD

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

F.E.D.

6 For an Act entitled: "An Act relating to landlords and tenants."

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22 and not in good faith the landlord, in addition, may recover an amount
23 not to exceed one and one-half times the actual damages. *SUB-SECTION*
24 landlord consents to the tenant's continued occupancy, AS 34.20.020 *If the*
25 applies. *(a+b)*
OR TENANT FAILS TO PROVIDE THE NOTICE REQUIRED
failure to give notice; termination

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Actual possession must be shown.— Since forcible entry and detainer is an action purely for possession, and not to try title (AS 22.15.050), such an action cannot be maintained without showing actual possession. *Wills v. Peterson*, 5 Alas. L.J. No. 12, p. 206 (Dec., 1967).

Possession of tenant does not make such tenant an agent or employee of his landlord. *Wills v. Peterson*, 5 Alas. L.J. No. 12, p. 206 (Dec., 1967).

Sec. 09.45.080. Undertaking on appeal. If judgment is rendered against the defendant for the restitution of the real property described in the complaint or any part of it, no appeal may be taken by the defendant from the judgment until he gives, in addition to an undertaking required upon appeal, an undertaking to the adverse party with two sureties. The sureties shall justify, in the manner as bail upon arrest, for the payment to the plaintiff of twice the rental value of the real property of which restitution shall be adjudged from the rendition of the judgment until final judgment in the action, if the judgment is affirmed upon appeal. (§ 17.03 ch 101 SLA 1962)

Sec. 09.45.090. Unlawful holding by force. The following are cases of unlawful holding by force within the meaning of §§ 60—160 of this chapter:

(1) when the tenant or person in possession of a premises fails or refuses to pay the rent due on the lease or agreement under which he holds, or deliver up the possession of the premises for 10 days after demand made in writing for the possession;

(2) when, after a notice to quit as provided in §§ 60—160 of this chapter, a person continues in the possession of the premises at the expiration of the time limited in the lease or agreement under which that person holds, or contrary to a condition or covenant in the lease or agreement, or without a written lease or agreement;

(3) when, after a notice to terminate the tenancy as provided in this title with reference to termination of estate at will or by sufferance, a person continues in possession of the premises after expiration of the time for determining the tenancy. (§ 17.03 ch 101 SLA 1962)

Section defines detainer article is designed to prevent.—This section of the forcible entry and detainer act suggests the character of the de-

entry and detainer, 45 ALR 323.

Forcible entry and detainer as remedy for interference with right of way, 47 ALR 556.

Criminal offense of forcible detainer where entry was peaceable, 49 ALR 657.

Forcible entry and detainer as a remedy of tenant against stranger wrongfully interfering with his possession, 12 ALR2d 1100.

Right of landowner who has conveyed property to third person to maintain forcible detainer or similar summary possessory action, 47 ALR2d 1170.

Constructive force is defined by this section, and that only is constructive force which this section declares to be such. *Miners' & Merchants' Bank v. Brice*, 5 Alaska 418 (1915).

Where entry was without force and under claim of title, article is inapplicable. — Where defendant en-

entryman, and entered under verse claim of title, and admitting the title or possession to plaintiff, under such facts he is summarily removed by title entry and detainer act, but entitled to have his title tried. *Stell v. Desmore*, 3 Alaska (1907).

Sec. 09.45.100. Requisites of notice to quit. A notice to quit must be in writing and shall be served upon the tenant or person in possession by being delivered to him or left at the premises of his absence from the premises, or the notice may be registered or certified mail, in which case an additional three days shall be added to the 10 days. (§ 17.05 ch 101 SLA 1962)

C.J.S. reference. — 30 C.J.S. Forcible Entry and Detainer §§ 23 to 25.

Sec. 09.45.110. Period between service of notice and commencement of action. An action for the recovery of the possession of the premises may be maintained in the cases specified in § 90(2) of this chapter when the notice to quit has been served upon the tenant or person in possession for the period of 10 days before the commencement of the action unless the leasing or occupation is for the purpose of farming or agriculture, in which case the notice must be served 90 days before commencement of the action. (§ 17.06 ch 101 SLA 1962)

Sec. 09.45.120. Summons and continuance. Summons in an action for forcible entry and detainer shall be served not less than ten nor more than four days before the date of trial. No continuance shall be granted for a longer period than two days unless the defendant applying for the continuance gives an undertaking to the adverse party, with sureties approved by the court conditioned upon the payment of the rent that may accrue if judgment is rendered against the defendant. (§ 17.07 ch 101 SLA 1962)

Sec. 09.45.130. Action against persons paying rent in advance. The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against him for the possession of the premises until the expiration of the term for which that tenant or person may have paid rent for the premises in advance. To authorize an action against a tenant or person in possession who has paid rent in advance, a notice must be served at least 10 days before the date the rent is due again in case of a month-to-month tenancy or at least three days before in the case of a week-to-week tenancy. (§ 17.08 ch 101 SLA 1962)

Sec. 09.45.140. Agricultural tenant. When the leasing or

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Sec. 1