



Renters rights

*What every residential tenant needs to know
about Hawaii's Landlord-Tenant laws.*

1st Edition

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Renters Rights

What every renter needs to know about Hawaii's Landlord-Tenant laws.





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INTRODUCTION

We hope that you are purchasing this pamphlet because you are a landlord or tenant and want more information about that relationship, the laws that govern that relationship and ideas on how to approach common issues.

This pamphlet is intended as an introduction to those issues only. If you are having problems in a landlord-tenant relationship it is important that you retain a competent attorney knowledgeable in landlord-tenant issues to represent you. Reliance on this pamphlet without the advice of an attorney may lead to unforeseen problems. A landlord or tenant who represents himself/herself runs the risk of being sued if he/she does not hire competent counsel.

The Law Book Store also publishes an expanded version of this pamphlet called The Hawaii Landlord-Tenant Handbook. It includes all the information in this pamphlet and the Hawaii Revised Statutes for the Residential Landlord-Tenant Code. In general, the residential landlord-tenant relationship is governed by Chapter 521 of the Hawaii Revised Statutes, (HRS) and to a much lesser extent, HRS Chapter 666.

This pamphlet discusses the landlord tenant issues in a chronological fashion. It begins with a discussion of the pre-rental decisions process and follows with issues that may occur later on, such

CAUTION!

This publication is designed to provide general information in regard to the subject matter covered. It is sold with the understanding that neither the publisher nor the author is engaged in rendering legal, accounting, or other professional advice. This publication is not an authoritative legal reference.

You should consult an attorney for competent counsel for legal landlord-tenant issues.

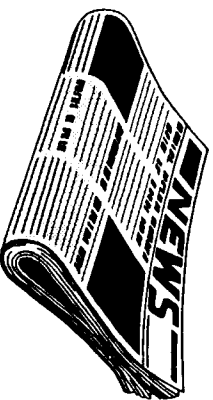
as violations of the lease, failure to pay rent and security deposits. The order of discussion is:

1. **Preparing the Property**
2. **Showing the Unit**
3. **Negotiations**
4. **Signing the Lease**
5. **Moving in**
6. **Problems in Occupation**
7. **Moving out**
8. **Return of Security Deposit**
9. **Collection of Rent and Damages**

As mentioned, the intent of this publication is to give you an understanding of some of the questions to be encountered with enough information to give guidance on how to approach them so you may find a satisfactory solution. Again, there is no substitute for experienced counsel, who should be consulted in all decisions. Citations to state and other law is provided as a source of authority for statements made in this pamphlet and to help you locate information for further research. Please note: As laws change, it is always wise to go to the source to make sure that things have not changed.

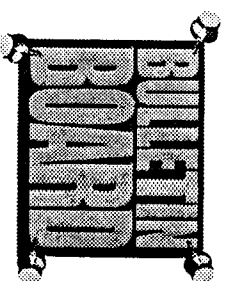
1. Preparing Property

Advertising.



Almost everyone is familiar with the procedures for advertising a rental unit. There are a variety of ways to advertise, including the newspapers, bulletin boards, special rental free illustrated publications and rental agencies. Almost everyone has enough experience so that with a little initiative they can advertise a property for rent.

Practical Tip: Remember to check public bulletin boards that are often found in shopping centers and grocery stores located near where you want to live or where your unit is.



Section 8 Housing.

Low-income housing is available in the State of Hawaii. These projects are generally subsidized by the Federal, State and/or County and are often referred to as Section 8 housing. The rents are usually set based on the family size and family income. If a tenant qualifies, he/she can pay rent substantially lower than "market" rent through subsidy or full payment from the government.

A landlord considering participation in the Section 8 housing program should be aware that there are certain benefits, such as direct rental income payment from the government, but there are also some administrative restrictions. For example, Section 8 properties are routinely inspected by the housing authority and must first meet and maintain a defined standard. Also it can be more difficult under certain circumstances for the landlord to evict tenants.

Rental Agent

Owners often face the question of whether or not to use a rental agent. The choice of using a rental agent should be considered a

business decision not a legal one. This decision is one which must be decided based on each individual case. In general, it is probably best to have a professional property manager manage your property. These are professionals who have the time and expertise generally required to properly manage rental property.

A rental agent can be hired to do all of the administrative and management work in renting the unit, including interviewing tenants, collecting rent, maintaining the unit in good repair and insuring the tenants properly vacate the property. A professional rental agent can also be expected to provide the landlord monthly income and expense statements and an annual financial summary. In addition, the rental agent should be expected to consult with the landlord on major decisions regarding the property and have a clear understanding of what the owner expects from the agent and vice-versa.

When a property manager is hired, it is recommended that the owner do the following:

- ✓ Check the background of the rental agent by checking with the State of Hawaii, Department of Commerce and Consumer Affairs (586-2643) to make sure the person/company is properly licensed. In a sense, a licensed rental agent is "insured" by the State for certain acts. See HRS Chapter 467, Hawaii Administrative Rules, Chapter 99. A person harmed by a licensed real estate broker or salesman can, under certain circumstances, recover up to \$25,000 from the real estate recovery fund.

- ✓ Sign a property management agreement. The rental agent will generally have a form for the owner to sign. The owner should carefully read and understand the agreement. In general, 5% of the gross rent is charged by the rental agent. (That is the rent paid by the tenant, before deductions for expenses)

Practical Tip: A landlord should hire a property manager unless he/she has the time and ability to manage the property.

Lead Paint Disclosure.

Federal law requires a landlord to disclose the existence of lead paint if the premises to be rented is "target housing". [42 U.S.(a) Section 4815, et al.; 240 CFR Part 35; 40 CFR Part 745]

"Target housing" is defined as housing constructed prior to 1978, with certain exceptions. [24 U.S.C. Section 4851b(251)]

The lead paint disclosure issue is complex. However, a lead paint disclosure form is attached as part of a publication from the Environmental Protection Agency.

Practical Tip: You can find out about these and other safety measures by calling 1-800-424-LEAD or on Oahu Hawaii (808) 832-5860

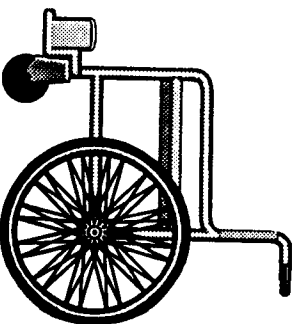
Asbestos Disclosure.

There is no requirement that asbestos be disclosed in a rental unit. However, in an overabundance of caution, a landlord may consider using the asbestos disclosure form commonly used in Hawaii in sales of residential units.

Practical Tip: You can find out about these and other safety measures by calling 1-800-424-LEAD or on Oahu Hawaii (808) 832-5860

Americans with Disabilities Act.

A rental unit is probably a "public accommodation" under 42 U.S.C. Section 12181(7) and is therefore subject to the requirements of the Americans with Disabilities Act "ADA". The ADA is a complex act and one should consult with



a person with sufficient expertise regarding any ADA matters. [42 U.S.C. Section 12101 et seq.]

Fair Housing Act.

Certain landlords and agents are also subject to the Fair Housing Act set forth in Federal Law 42- U.S.C. Section 3601, et. seq. In general this law spells out that it is unlawful to discriminate in the rental of any property due to race, religion, sex or national origin. The law has extremely sever penalties on both the federal and state civil areas for discrimination. Further discussion of this area is beyond the scope of this pamphlet, but it should be sufficient to warn agents and landlords that it is unlawful to discriminate. A landlord faced with a discrimination charge should immediately consult with an attorney knowledgeable in this area.

Megan's Law

On July 1, 1997 the state adopted a version of Megan's Law- Section 846E of the HRS titled Sex Offender Registration and Notification. This law requires certain convicted sex offenders to register with local authorities and in turn make such information publicly available. The law does not require landlords or agents to make such disclosure, however a landlord in an effort to exercise extreme caution, may consider making such disclosure.

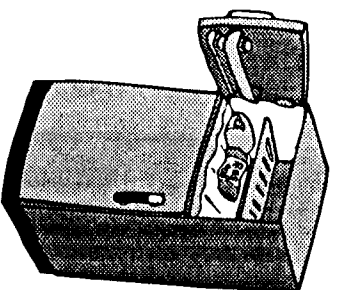
Discrimination.

It is illegal to discriminate against a tenant on the basis of race, sex, color, religion, marital status, familial status, ancestry, disability, age or HIV infection. HRS Chapter 515 provides, in general, that a person who believes that he/she has been discriminated against can file a complaint with the Hawaii Civil Rights Commission. After a finding of reasonable cause by the Commission, a person may file a civil action or go through an administrative hearing. Further discussion of this issue is beyond the scope of this pamphlet. If a tenant feels there is discrimination they should consult with an attorney or the Hawaii Civil Rights Commission.

2. Showing the Unit

Showing the Unit.

The landlord should properly prepare the unit for rental. The landlord should make sure that the unit is in proper condition, with all wiring and plumbing working properly. Any questionable appliances should be professionally inspected and repaired.



Similarly, a tenant should actually inspect the property and all appliances before signing a lease, as a landlord is much more likely to repair items before a lease is signed.

Rental Application.

A landlord should have each prospective tenant fill out and sign a rental application. The purpose of this application is to check the tenant's background to make sure that the tenant can pay rent and will not create problems.

Sample forms available in the Landlord-Tenant & 1st District Court Forms Supplemental Package from The Law Book Store.

Practical Tip: *It is always best for only the parties who are principals to complete the application forms. That means the landlord or rental agent and the actual tenants. The landlord should not accept an application from a friend, family member or agent of a potential tenant without interviewing the tenant.*

3. Negotiations

Negotiations.

If the landlord and tenant appear to be interested, negotiations should commence. The simplest way to negotiate is for the landlord to present the tenant with a blank lease, with both parties reading the

lease and filling in the appropriate spaces. Both parties should fully understand the lease before making a decision. If the tenant doesn't understand a provision he or she should ask for an explanation. Neither party should sign the lease without fully understanding all the provisions of the contract. Important items, discussed below should be negotiated.

Fixed/Month-to-Month Lease.

The landlord and tenant have a choice of a fixed or month-to-month lease. The fixed lease is generally for six months or more. The month-to-month automatically renews every month and can be terminated by forty-five days notice by the landlord and twenty-eight days notice by the tenant.

The advantage to the fixed lease is that both landlord and tenant have some assurance that there is a stable, long-term relationship. The disadvantage is both are "locked in" for a period of time. Thus, if the market rent increases, the landlord is "locked in" a lower rent. If the market rent decreases, the tenant is locked in a higher rent.

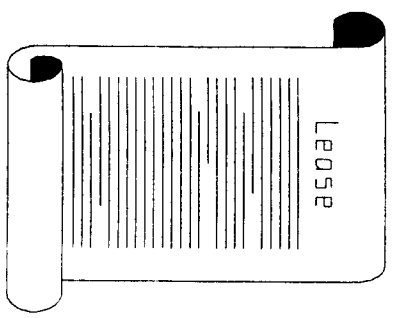
Overall, it is probably best for the landlord and tenant to sign a month-to-month lease so there is greater flexibility on both sides.

4. Signing Lease

In General.

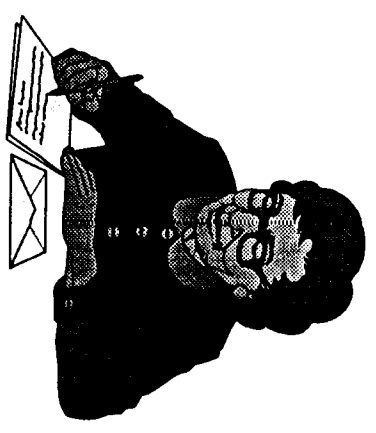
To complete the rental agreement, the landlord must give to the tenant:

- ✓ Keys
 - ✓ Signed lease
 - ✓ Receipt for monies
 - ✓ Check-in report
 - ✓ Copy of house rules
- The tenant must give the landlord:
- ✓ First month's rent
 - ✓ Security deposit



Choice of Tenants.

As any landlord knows, the most critical decision is choice of a tenant. A landlord may think that he/she is protected because he/she



has a security deposit and a signed lease. A security deposit is almost never adequate to cover damages from a problem tenant. Damages can easily exceed the amount of a security deposit. A properly drafted lease will not protect a landlord against a problem tenant. Thus, prior to signing a lease, a landlord should thoroughly investigate the prospective tenant and his/her background. A landlord may check a tenant by asking for references, checking those references, and obtaining information on the tenant's financial background. .

Once the choice of a tenant has been made, the landlord and tenant should do their best to maintain their relationship in a businesslike manner. This means that whenever possible, any agreements or notices should be in writing signed by the landlord and tenant.

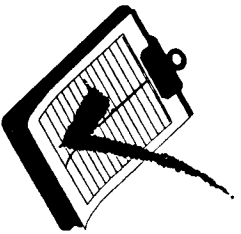
Practical Tip: The landlord's most important decision is the choice of tenant. A problem tenant can cause a landlord thousands of dollars in damage and loss of rental income. It is recommended that the landlord verify the accuracy of the information provided on the potential tenant's application form before signing a lease.

Practical Tip: It is always best for only the parties who are principals to complete the rental forms. That means the landlord/rental agent and the actual tenants. The landlord should not accept an application from a friend,

family member or agent of a potential tenant without interviewing the tenant.

Check in.

Generally, it is a good idea to have a check in report which describes the condition of the unit. The report should be signed by the landlord and tenant. This report is important in the event the landlord makes a claim for damages to the unit against the tenant.



Sample forms are available in the Landlord-Tenant & 1st District Court Forms Supplemental Package from The Law Book Store.

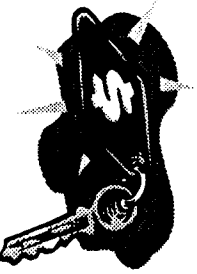
Inventory.

If the unit is furnished or unfurnished, there must be an inventory of the contents of the unit and the condition of the unit. [HRS 521-42(a)]

Again, it is important to properly document the condition as should there be a dispute regarding the condition or inventory of the items in the unit. Photos of the condition of the property would assist and is recommended. The landlord and tenant should sign the inventory and each should have a copy.

Practical Tip: Many problems in landlord tenant disputes are the result of failure to properly "document" (getting it in writing) a transaction. The time spent in the beginning will reward both parties if there is a disagreement later in

the lease. The documentation should be signed by both parties.



It is customary for a landlord to request one month's rent in advance (at the time the rental agreement is signed prior to occupancy) as a security deposit.

There are numerous restrictions on the security deposit, such as:

- ✓ it cannot be in excess of one month's rent;
- ✓ it cannot be construed as the last month's rent. [HRS §521-44(b)]

Practical Tip: The landlord should demand rent up-front, before the tenant moves in. The security deposit is one of the few protections given the landlord.

The landlord holds the security deposit during the period of the rental agreement and must return it to the tenant upon (1) termination of the rental agreement; and (2) performance by the tenant of the terms of the rental agreement. Generally, a landlord is not required to pay interest on a security deposit. Section seven of this book covers issues regarding disposition of the security deposit.

House Rules.

A tenant is required to follow house rules if:

- ✓ The rules are brought to the attention of the tenant at the time of entry into the rental agreement;
- ✓ It is for the purpose of promoting the convenience, safety, or welfare of the tenants of the property, or for the preservation of the landlord's property from abusive use, or for the fair distribution of services and facilities held out for the tenants generally;
- ✓ It is reasonably related to the purpose for which it is established;
- ✓ It applies to all tenants of the property in a fair manner; and
- ✓ It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply.



House rules may apply to the tenant if brought to the tenant's attention after the signing of the rental agreement if the tenant consents and conditions listed 2 through 5 above are satisfied.

A tenant should be given a copy of the house rules at the time of the signing as a part of the of the rental agreement and should sign a receipt for the house rules. [HRS §521-52]

Practical Tip: It is easy to ignore house rules when signing the lease. If problems occur, it may be critical for the rules to be a part of the lease. Therefore the landlord

(and tenant) should make sure that a copy of the house rules are given to the tenant at the time the rental agreement is signed.

Condo and Co-Op Rules.

The tenant must comply with condo and co-op rules. As with house rules, a copy should be given to the tenant at the time of the signing of the rental agreement with the tenant acknowledging receipt in writing. [HRS §521-52.]

General Excise Tax (GET) ID No.

A landlord must provide a GET number to a tenant for purposes of a low income tax credit. Every landlord is required to have a General Excise Tax ID number to conduct business in the state of Hawaii. Application forms for GET are available from all state tax offices.

Other Obligations.

- ✓ A landlord must:
 - ✓ furnish a copy of the lease to the tenant. This is not required for an oral lease.
 - ✓ provide receipts for rent.
 - ✓ disclose the name and address of the owner or the owner's agent who is authorized to accept rent. If a landlord is absent, an agent must be designated to accept rent.
- A tenant may recover \$100 plus attorney's fees if a landlord fails to comply with any disclosure required by law. [HRS §521-43]

5. Moving In

Tenant Cannot Move In.

- If the landlord does not have the unit ready at the beginning of the term, then:
- ✓ The tenant does not have to pay rent for the period the tenant cannot move in.
 - ✓ The tenant can terminate the rental agreement at any time the tenant cannot move in.

- ✓ The tenant can claim damages to obtain substitute housing by (1) suing the landlord; or (2) deducting from rent at least (a) the amount of the abated rent plus (b) the amount claimed against the rent. [HRS §521-61]

A different situation exists if the tenant refuses to move in. [HRS §521-71(d)]

6. Problems in Occupation

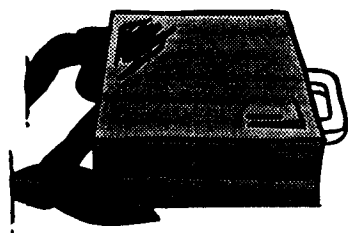
Use of Property.

Leases generally provide that the property shall be used solely for dwelling purposes (not for business or other purposes). The landlord may, after following certain procedures described in this pamphlet, evict a tenant for improper use of the premises. Regardless of any house rules, condominium rules or co-op rules, the use of the property is additionally governed by county regulation. Such use rules include limiting the use of the property for "garage sales", operating a business, the number of related and unrelated people occupying a property and the keeping of certain pets and farm animals. The respective city and county rules should be consulted if this is of concern. The public library or county clerk should have a current copy of the city and/or county rules.

Problems After Moving In.

If there exists a condition that substantially deprives a tenant of enjoyment of the dwelling unit, the tenant may notify the landlord in writing, and if the landlord does not remedy the situation in one week, the tenant may terminate the rental agreement and vacate the unit.

Such enjoyment may include lack of heat, air-conditioning, hot water, electricity, access, elevators, or parking if they are part of the lease agreement.



Nonpayment of Rent.

This is by far the most common and serious problem to be faced in any landlord-tenant relationship. As a result, this area will be covered in detail from both the landlord's and tenant's perspective.

Practical Tip: Most of the landlord-tenant problems arise from rental payments. A landlord should not allow a tenant to fall behind in rent payments. A generally accepted rule is: rent not paid probably will never be recovered.



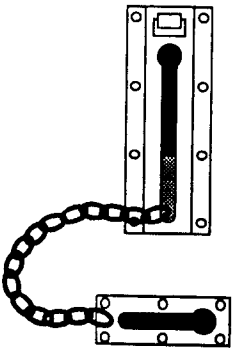
Failure to pay rent - The Landlord's Perspective

As a landlord, your tenant is behind on the rent. What should you do?

Should you Evict?

This is much more a business rather than legal decision. If someone cannot pay his or her rent, it is more likely than not that he/she will never catch up on rent. However, occasionally an emergency may cause a tenant, who would otherwise stay current, to fall behind. Therefore it is probably a wise business decision for the landlord to arrange for some reasonable repayment schedule to give the tenant the benefit of the doubt. A good general rule is never allow a tenant to fall more than one month behind on rent. Once that occurs, it is wise to move forward with the eviction process.

Practical Tip:
Remember that it takes a minimum of 30 days to evict a tenant. A landlord must consider this delay in deciding how to handle a delinquent tenant.



Practical Tip: Do not use self-help, such as changing locks, turning off electricity, water or other methods. These can often backfire and delay the process even longer.

THE EVICTION PROCESS

Eviction process.

In general, a landlord should move aggressively once the decision to evict is made. This means that there should be no delays in the process (described below). The eviction process should continue until the tenant pays the landlord in cash or the tenant gives some reasonable assurance of payment.

Step 1: Preparation and compliance

Who owns the property? First, the landlord needs to determine the true owner of the property. Often, real property is held in trust and the proper Plaintiff (the landlord) is a trust. As an example, the owner of the property is "John Guardian, trustee of the John Guardian revocable trust." In such cases, the trustee is the true owner and should be listed as Plaintiff. The court complaint form also allows the rental agent to bring the suit on behalf of the owner. Thus the rental agent or owner may be listed as the plaintiff.

Fair Debt Collection Practices Act. The Fair Debt Collection Practices Act ("FDCPA") (15 U.S.C. Section 1692) is a federal law that generally covers practices of collection agencies. The statute is broad enough that it may cover some situations faced by a landlord. The FDCPA is a complex act which merits discussion far beyond the scope of this pamphlet. For guidance in this area the assistance of an attorney is recommended.

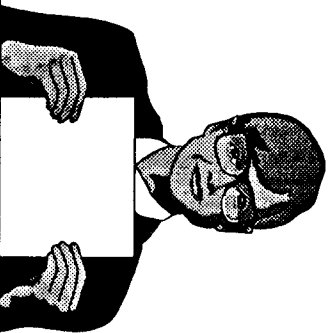
In general, the FDCPA does not apply to a person representing himself/herself as long as the person uses his own name and is not engaged in a business whose principal purpose is the collection of debts. Under 15 U.S.C. Section 1692a(5) a person acting without a rental agent or attorney is generally not covered by the FDCPA.

The FDCPA also does not apply to persons collecting debts owed if it "concerns a debt which was not in default at the time it was obtained by such person." 15 U.S.C. Section 1692a(6)(F)(vi). It is arguable that the rents are due on a regular basis and not in default when obtained by the creditor. Rent does not qualify as a "debt" under

15 U.S.C. Section 1692a(5). [Azar v. Hayter, 874 F.Supp. 1314 (N.D. Fla 1995).]

To be safe, compliance is recommended. However, counsel should be consulted, as each situation differs.

The flow chart on page 27 outlines the process necessary to evict a tenant for nonpayment of rent.



IMPORTANT

The Five (5) Day Letter is critical to the process (required by law.) It should be sent without delay when the rent is late and no communication between the tenant and landlord has taken place.

Step 2: Notice

5-day letter.

The next step in the eviction process is the 5-day demand letter required by law. [HRS §521-68]

A sample five day letter is available in the Landlord-Tenant & First District Court Forms Supplemental Package.

In general, the attorney should not mail the notice to the tenant. The reason why the owner or agent (and not the attorney) should hand deliver the 5-day notice is because: (1) it is quicker than mailing; (2) it is less likely that the tenant can deny he/she received the notice; and (3) it is preferable there is testimony by someone other than an attorney

regarding delivery. There have been situations where an attorney sends the letter, he/she may be forced to testify, making it awkward at trial.

It is generally better to hand deliver the notice to the tenant. If possible, the tenant should sign the notice, acknowledging its receipt. It



is also a good idea to have a third person accompany the landlord to witness the delivery so there will be no dispute over whether delivery was made. If the tenant cannot be located, the 5-day notice can be slipped under the door. Always note the date, time and circumstances of delivery. For additional proof the landlord may want to take a photograph of the door with the letter pinned to it along with a witness or that day's newspaper. [HRS 521-9]

Step 3: Court Procedures

If the tenant fails to pay the rent within the 5 business days after delivery of the letter and remains in the premises, the landlord must prepare and file a complaint for summary possession in the district court in which the property is located. [HRS § 666-6; Rule 3(c)(4), District Court Rules of Civil Procedure.]

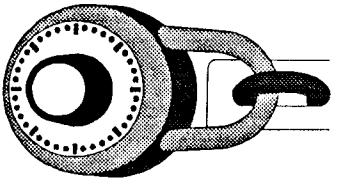
Who Can Act for Landlord?

In general a landlord who is an individual (not a corporation, trust or personal representative) may act on his/her own behalf in any court proceeding. However, an attorney must represent the landlord in other cases.

If the property owner is a corporation, the landlord must be represented by an attorney. A property manager cannot act as an attorney for a landlord in court matters (on legal documents and in court).

Self-Help.

If the landlord uses self-help and changes the locks or takes other action to deprive the tenant of the use of the premises, the landlord can be liable for damages. The landlord's options and legally correct



procedures are clearly established and are outlined here in this section. Any other procedures by the landlord may be improper.

For example, there was a situation where a landlord changed the locks to the rental premises. He was later successfully sued by the tenant for wrongful eviction. Under these circumstances, it is likely under state law that the landlord owes the tenant for two months' rent, attorney's fees and other costs. Thus, the tenant can turn the tables on the landlord who acts improperly, and the landlord (rather than the tenant) may be the one owing money. §521-63(c)]

Filing the Complaint.

Practical Tip: An eviction must be processed through District Court. The procedure is set fourth below. Strict adherence to each step is critical. The Landlord-Tenant Code, District Court forms for the First Circuit (Oahu), and supplemental forms and letters referred to in this publication are available in the Landlord-Tenant & First District Court Forms Supplemental Package from The Law Book Store (808) 422-6322

The formal or legal name given to the process where the landlord repossess the property is called Complaint for Summary Possession. It is filed in District Court rather than Circuit Court. It should be filed in the same district as the rental property. There are five district courts on Oahu. On Oahu, the Complaint for Summary Possession is filed in the Honolulu District Court clerk's office located on the third floor at 1111 Alakea Street. On the outer islands, the complaint should be filed in the District Court in the appropriate circuit.

See the District Court form for the complaint. The 'blanks' must be filled in as is appropriate.

Service of Complaint.

Once the complaint is filed and authorized by the court, a certified copy must be delivered to each defendant. The process of delivering the complaint to the tenant is called "Service." You can serve the tenant, by mail, or use the Sheriff. Generally, the sheriff will serve the

complaint, charging sheriff's fee and mileage. In the First District, the Sheriff's office is located on the second floor of the Honolulu District Court Building 1111 Alakea Street Honolulu, HI 96813.

Scheduling the Return date.

The scheduling of the return for the first court appearance is determined by the court in which it is filed. The following is a list of Oahu District Courts return date:

Honolulu 8:30 a.m. 5 days after service, excluding Saturdays, Sundays and holidays, 1111 Alakea Street 10th Floor, Honolulu, HI 96813

Ewa 8:30 a.m. on Friday, as set by the District Court, 870 Fourth Street, Pearl City, HI 96782

Wahiawa & Waialua 9:00 a.m. Wednesday, as set by the court, 1034 Kilani Avenue, Wahiawa HI 96786

Koolaupoko or Koolaula (Kaneohe) 8:30 a.m. Thursday, as set by the court, 46-201 Kahupipa St. Kaneohe, HI 996744

Waianae 9:00 a.m. Tuesday, as set by the court, 87-1784 Farrington Highway, Nanakuli, HI 96792

Kauai: District Court of the Fifth Circuit, 3095 Umi St., Lihui HI 96766

Maui: District Court of the Second Circuit, 2145 Main St., Wailuku HI 96793

Hawaii: District Court of the Third Circuit, 75 Aupuni St., Hilo HI 96720-0879

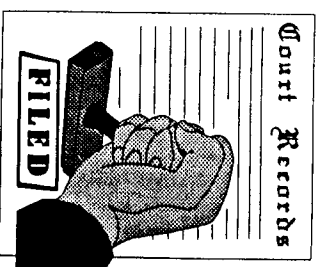
Appearing at Court on the Return Date

There are only three possible outcomes when a landlord sues to evict a tenant:

Possibility One: The tenant does not appear or the tenant appears and admits owing rent.

Possibility Two: The tenant appears and admits owing rent.

Possibility Three: The tenant appears and denies owing rent.



There are the two issues the court must resolve in a summary possession action. They are:

✓ Who is entitled to possession. Generally this is determined by whether rent is owed.

✓ How much rent and damages is owed by the tenant to the landlord.

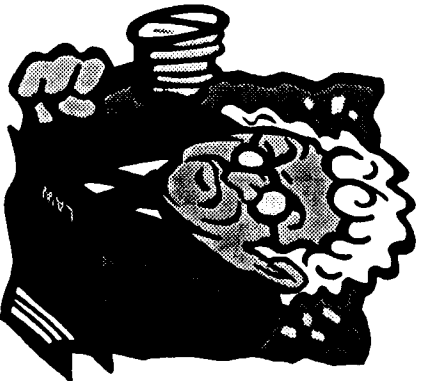
The landlord (or legal counsel) must be present at the proper courtroom at the appointed time on the return day or the case will be dismissed. Recently, judges have been dismissing cases 'with prejudice', when the landlord fails to appear. This means the landlord may not bring the same claim to court again. If this occurs, the landlord should file a motion to set aside the dismissal. If the tenant does not appear, he/she will almost always be judged in default and the landlord will be granted the right to evict the tenant.

In court, a person should be on time and appropriately dressed and groomed. The court does make allowances for people representing themselves (*pro se*) so they need not wear the coat and tie required of attorneys. You can wear business or aloha attire to appear in court, however "T-shirts," sandals and shorts are definitely inappropriate attire.

IMPORTANT!

If the tenant doesn't appear, he/she will usually be judged in default. That means that the case is judged in the favor of the landlord. When this happens the landlord can move for eviction so it is important for the tenant to appear on time if there is a legitimate reason for him/her to protest the eviction.

In the courtroom the clerk will call your case. At that time, landlord should answer "here" or "present" and walk up to the table in front of the judge. The landlord should answer as: "Your honor, I am Larry Landlord, the Plaintiff in this case."



If the defendant (tenant) is present, the tenant should answer "here" or "present" and walk up to the table in front of the judge when called. Identify yourself as: "I am Roger Renter, defendant." The judge will ask if the renter denies the allegations (that is: "Do you admit that you owe the rent?").

At this point there are three possible outcomes. The defendant does not appear or, if appearing, admits they owe the rent, and finally the tenant may appear at court but denies owing rent.

Possibility One: The tenant does not appear.

When the defendant (tenant) fails to appear the tenant will be defaulted and ordered evicted immediately. The judge should order a Writ of Possession and Judgment for possession issued. At this point the current court appearance is over.

The landlord must file two documents with the court to evict a tenant(s):

- ✓ Judgment for Possession; and,
- ✓ Writ of Possession.

These documents must be prepared by the landlord and submitted to the court clerk for processing. The key document is the Writ of Possession which must be served by a deputy sheriff on the tenants.

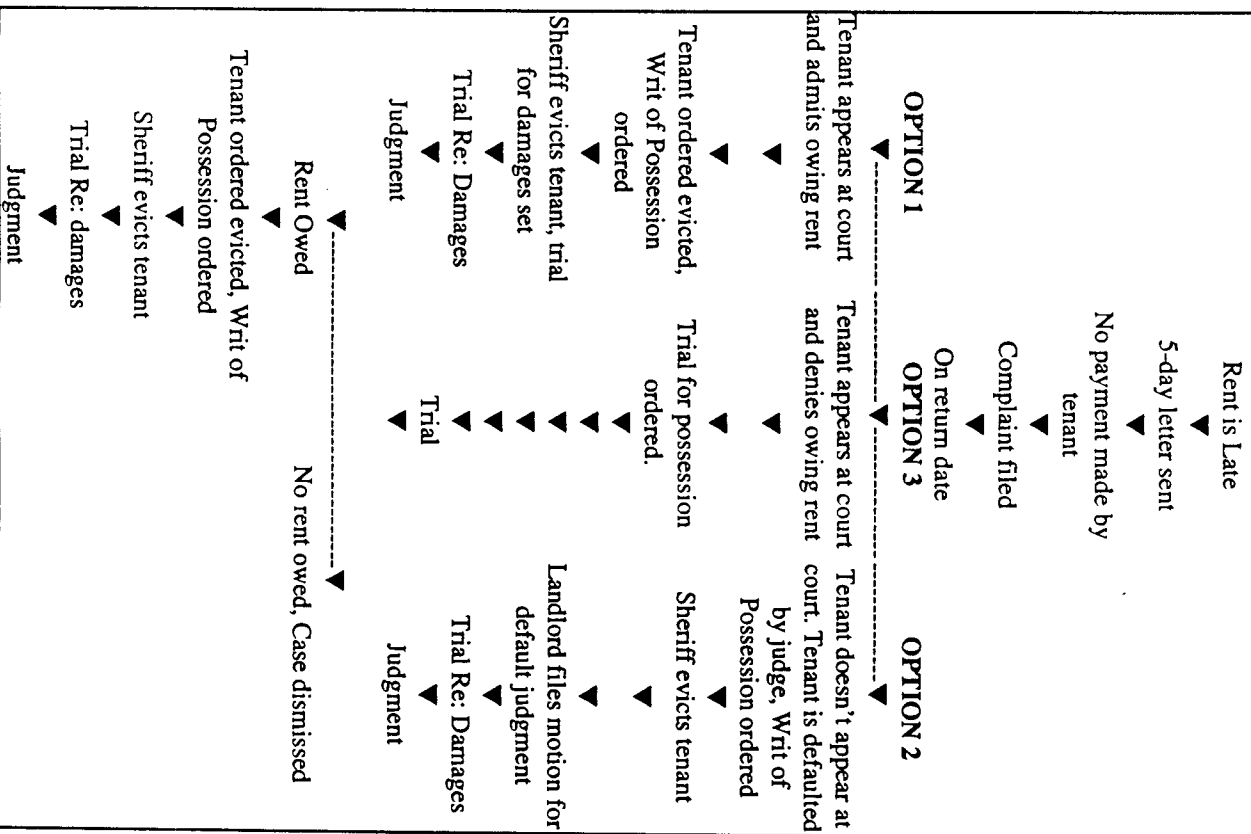
The landlord gives the sheriff the original Writ of Possession and one certified copy per tenant.

The Sheriff then serves the tenant(s) with the Writ of Possession.

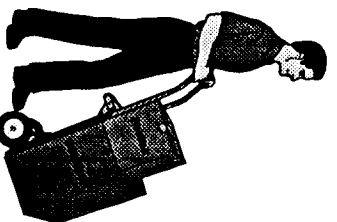
Sample forms are available in the Landlord-Tenant & 1st District Court Forms Supplemental Package from The Law Book Store.

In the "old days", sheriffs would evict a tenant and place his/her belongings on the street. Today such harsh action is unacceptable. Concerns regarding legal liability have changed policy and now some sheriffs require the landlord to hire a moving and storage company to remove the tenant's belongings if the tenant has not already removed them. This is expensive and can cost the landlord in the area of \$600-\$800. Thus, it is generally in the landlord's interest to allow the tenant(s) to remove their belongings as it (a) saves the landlord the cost

EVICTION PROCESS NONPAYMENT OF RENT



of moving and storage; and, (b) it reduces the potential for liability of the landlord.



Practical Tip: Give the tenant every opportunity to retrieve his/her belongings as the procedure to collect, inventory, store or sell the belongings are cumbersome. How to handle a tenant's abandoned property is discussed in a later section.

Possibility Two: The tenant appears and admits owing rent.

The procedure followed is the same as described above in possibility one, except that the judge will usually ask the tenant how much time the tenant needs to move out. Judges generally will give a tenant a minimum of one week to move and possibly more time if circumstances warrant.

Additionally, unlike possibility one above, where the tenant fails to appear, the judge will set a trial date to determine damages and a deadline to exchange exhibits. At trial, the judge hears evidence from the landlord and tenant. Then the judge will decide how much the tenant owes the landlord.

The judge should order a Writ of Possession and Judgment for possession issued. At this point the current court appearance is over.

The sheriff files the original Writ of Possession with the court. The Landlord can then ask the court for a judgment against the tenant.

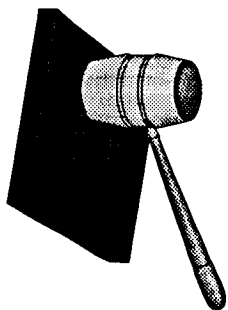
Practical Tip: The landlord must comply with all statutes and procedures regarding security deposits in eviction process.

At trial, if the landlord is entitled to damages, the court will order judgment be entered in the landlord's favor. Generally, the landlord can recover:

- | | |
|------------------|-----------------|
| Rent Late fees | Interest |
| Double rent | Damages |
| Cleaning charges | Attorney's fees |

Costs
Less: Security Deposit

The landlord is responsible for preparing and filing the judgment. Sample forms are available from the publisher.



The landlord is responsible for collecting the amount awarded not the court. The law provides for various remedies for collection of a judgment. The issues of collection discussion are beyond the scope of this pamphlet. *Contact The Law Book Store (808-422-6322) for other publications on collecting on judgments.*

Practical Tip: *A court judgment for damages is not the same thing as actually collecting on those damages. The court only decides who owes money and how much. It is the responsibility of the winning party in any law suit to collect the money owed.*

Note: *Attorney fees are generally limited to twenty-five percent of the amount claimed. HRS §521-35.*

Possibility Three: The tenant appears and denies owing rent.

If the tenant denies rent is owed, the court will set a trial date on the issue of possession only, usually within two weeks of the return date. The Honolulu District Court follows a procedure where a pretrial is required prior to trial. The pretrial is generally held the Monday following the return date. The pretrial is where the judge requires the parties to exchange exhibits prior to the trial date. Trial usually follows several days later.

At trial, the landlord must prove to the judge's satisfaction: (1) there is a rental agreement; (2) the tenant failed to pay rent or defaulted in some other condition of the contract; (3) a five-day letter was sent from the landlord to the tenant; and (4) the tenant still occupies the unit. Both sides will be allowed to present evidence. After hearing the evidence, the judge will decide whether the tenant will be evicted and the date of the eviction.

If the court orders the tenant evicted, the judge will, set another trial date to determine damages and upon submission by the landlord, sign the Judgment for Possession and Writ of Possession giving the landlord legal authority to repossess the unit.

After the tenant has moved the trial regarding damages is held. The issue of damages is discussed in greater detail in Possibility two above, discussed in

Under certain conditions, particularly where the landlord has not acted in accordance with the procedures outlined above, where the landlord has proceeded without authority or where the tenant is able to show that he or she did pay the rent or they were otherwise damaged the court may find that the tenant does not owe any rent and dismiss the case.

Mediation

In most eviction matters on Oahu, judges will require that the parties enter into mediation before trial.

"Mediation" means that an independent third party will talk to the landlord and tenant and try to have them settle their claims. Mediation can occur on the return date or on the trial date. If possible, the parties should attempt to mediate on the return date as if settlement is reached, you do not have to appear for trial.

In general, the mediator first explains his role, then meets with one party and gets his/her side, meets with the other party and gets

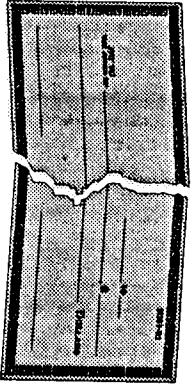


his/her side, then meets with both parties to try and reach an agreement. Mediation is usually a worthwhile process and the parties, whether landlord or tenant, should make a serious effort to resolve the dispute by settlement. Mediation is a time where a third person can

help find compromises can be made that allow the parties to resolve their differences in a way that is acceptable to all.

Bankruptcy

Practical Tip: Be very careful when dealing with a tenant who has declared bankruptcy. Consult a qualified attorney.



If the tenant declares bankruptcy, the landlord must immediately cease his/her efforts to evict the tenant, regardless of the manner the landlord obtained such notice of the bankruptcy. Bankruptcy is a federal process and is handled by the local bankruptcy court in Honolulu. If a tenant has filed for bankruptcy, the landlord must file a Motion for Relief From Automatic Stay in the bankruptcy court. Generally, it takes 4-6 weeks to get the stay lifted. The issues involving bankruptcy are beyond the scope of this pamphlet, and a qualified attorney should be consulted in this matter.

Rent trust fund.

In some instances, the court may order disputed rent to be paid into court. If the court orders payment, and the tenant fails to make payment, the landlord will be automatically entitled to a writ of possession. [HRS §521-78]

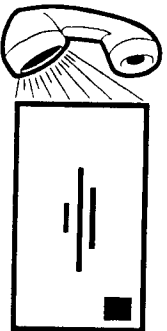
Failure to pay rent - The Tenant's Perspective

A tenant who can not pay rent is in a very difficult situation. The general rule is that the tenant will, sooner or later, be evicted from the premises unless he/she can make appropriate arrangements with the landlord to pay rent.

Outlined above is the landlord's perspective of the eviction process. Obviously, the tenant should expect a landlord or agent to follow the procedures outlined above.

If the landlord follows this same process the tenant should expect eviction.

The first thing a tenant should do if they are unable to pay the rent is make a realistic assessment whether he/she can pay the rent in the future and repay the rent in a reasonable time. If this can be done, the tenant should immediately approach the landlord and advise him/her of the proposal. Communication is critical. The tenant should contact the landlord by mail, phone or personal visit as soon as a problem arises. If the tenant delays contacting the landlord, (a) the landlord's attorney's fees will increase (the tenant generally is liable to pay these fees); and (b) the landlord loses some faith in the tenant and is less likely to give the tenant a break.



If the landlord and tenant reach an agreement, it should be in writing, signed by both parties.

Practical Tip: The renter may not withhold the payment of rent for any reason other than those provided for by law. A renter who does not pay rent can be evicted regardless of the reason! In disagreements between landlord and tenant either party may contact the Neighborhood Justice Center the Legal Aid Society or a qualified attorney.

Sample forms are available in the Landlord-Tenant & 1st District Court Forms Supplemental Package from The Law Book Store.

If the landlord and tenant cannot reach an agreement, the tenant must decide whether to move or face the eviction process. Remember a tenant cannot be evicted unless a deputy sheriff serves the tenant with a Writ of Possession.

Generally, it takes several weeks from the service of the Demand for Rent to the service of the Writ of Possession. The tenant should use this time to move or reach agreement with the landlord.

There may be defenses that the tenant can assert to resist the eviction. However, it is generally difficult for a tenant to win an eviction action brought by a landlord if the tenant admits any rent is owed.

Practical Tip: If a renter is unable to pay rent they should contact the landlord immediately and try to negotiate a payment schedule. Failure to communicate with the

landlord can substantially increase the cost to the renter. It is in the landlord's interest to find a compromise. The cost of eviction can be excessive in aggravation as well as financially.

Rental Increase.

The law provides for a landlord to raise the rent under certain conditions. A landlord may increase rent for a month-to-month lease by 45 days written notice. If the lease is less than month to month, 15 days written notice is required. The landlord may not increase the rent during a long term lease unless there is a provision in the contract. [HRS §521-21(d)]

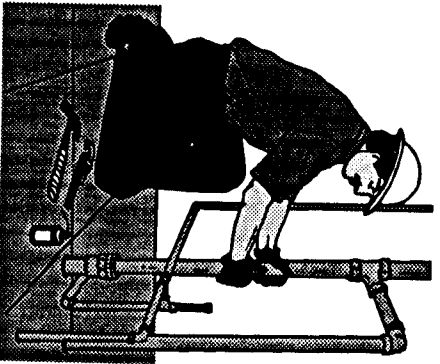
Emergency Repairs.

Repairs that are necessary to provide sanitary and habitable living conditions, including repairs to major appliances, electrical, plumbing, or other facilities repairs must be made by the landlord within three business days after being notified of the problem either orally or in writing by the tenant. If the landlord cannot commence repairs within three days for reasons beyond his/her control, the landlord must inform the tenant of the reasons for delay and set a reasonable tentative date when repairs will commence.

The tenant's remedy is to have the repair completed and present the landlord with receipts up to \$500 and deduct the amount of repairs from the next month's rent. [HRS §§ 521-64(c) and (d)]

Practical Tip: This is

one of the few instances where the law allows the renter to withhold full rent, but only if the process has been properly documented. Letters of notice to the landlord and invoices for repairs are required.



Repairs Affecting Health or Safety Condition.

If a condition that affects the health or safety exists, constituting a violation of state or county law, the tenant should ask the landlord to repair the condition immediately. If the landlord does not complete the repair, the tenant should call the Department of Health or other state or county agency.

The agency should then notify the landlord in writing of the violation, and the landlord must commence repairs within 5 business days of notification. If the landlord is not able to commence repairs within 5 business days, the landlord must notify the tenant of the reason for delay and set a reasonable tentative date when repairs will commence.

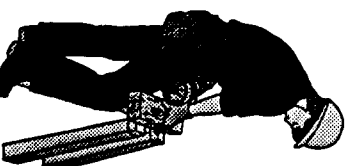
If the landlord cannot complete the repairs within 5 business days for reasons, the tenant can (a) arrange to have the repairs done and deduct the cost of repairs, up to \$500 from the next month's rent or (b) obtain two written estimates at least 5 business days before the work is to commence. The landlord may require a reasonable substitute worker or material. The tenant may then proceed with the repairs and deduct \$500 or one month's rent, whichever is greater, from the next month's rent. [HRS §§ 521-64(a) and (b)]

Practical Tip: Obviously, this procedure may be inadequate where there is a real threat, such as a burst water pipe, overflowing sewage, electrical shorts, etc. The tenant should demand the landlord immediately fix the problem. The landlord should make repair as soon as possible. There are questions of legal liability if nothing is done or there are delays. If the problems are not resolved the tenant should move out or fix the problem and bill the landlord or rental agent.

Minor Repairs.

State law defines how other repairs are handled:

- ✓ The tenant must first notify the landlord of the condition in writing.
- ✓ The landlord must then commence repairs within 12 business days.



✓ If the landlord is not able to commence repairs within 12 business days for reasons beyond the landlord's control, the landlord must inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence.

✓ If the landlord does not commence repairs, the tenant may have the repairs done and deduct up to \$500 from the next month's rent.

Limitation: The tenant may employ this procedure only once in any six month period. [HRS §521-64(c)]

Landlord's Responsibility for Repairs.

In general, the landlord is responsible for repair of all portions of the premises rented (windows, doors, electrical, plumbing, gas, etc.) as well as all appliances and furniture rented. [HRS §§ 521-42(a)(1), (2), (3) and (4)]

Practical Tip: *The landlord should try to keep the property in good repair and condition. If repairs are not immediately made the landlord is subject to substantial long term costs.*

Violations of Lease - State Law.

Sections 521-51, 69 and 72 of the HRS apply if a tenant violates a lease for reasons other than nonpayment of rent.

Common violations include:

- ✓ unauthorized guests
- ✓ unauthorized pets
- ✓ alternations
- ✓ subleases
- ✓ sanitary problems
- ✓ excessive unauthorized visitors
- ✓ use of premises for business activities
- ✓ noise



The Hawaii Revised Statutes has two sections dealing with these problems. One section deals with all tenants regardless of whether the tenant is aware of them or been agreed to by the landlord and tenant. The second applies only if there is an agreement between the landlord and tenant.

The first is HRS § 521-69 which deals with violations of HRS §521-51. Note that the tenant's acts need not violate the rental agreement for this section to apply.

Essentially HRS §521-69 prohibits violation of HRS §521-51, which requires the tenant to maintain the dwelling unit. Specifically, the tenant must:

- ✓ Comply with all provisions primarily applicable to tenants of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing maintenance, use, or appearance of the dwelling unit and that part of the premises which the tenant occupies and uses;
- ✓ Keep that part of the premises which the tenant occupies and uses as clean and safe as the conditions of the premises permit;
- ✓ Dispose from the tenant's dwelling unit all rubbish, garbage, and other organic or flammable waste in a clean and safe manner;
- ✓ Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- ✓ Properly use and operate all electrical and plumbing fixtures and appliances in the dwelling or used by the tenant;

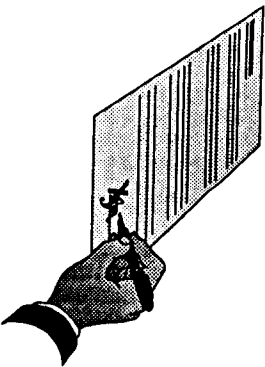
✓ Not permit any person on the premises with the tenant's permission to willfully destroy, deface, damage, impair, or remove any part of the premises which include the dwelling unit or the facilities, equipment, or appurtenances thereto, nor oneself do any such thing;

✓ Keep the dwelling unit and all facilities, appliances, furniture, and furnishings supplied therein by the landlord in fit condition, reasonable wear and tear excepted; and

✓ Comply with all obligations, restrictions, rules, and the like which are in accordance

with statute and which the landlord can demonstrate are reasonably necessary for the preservation of the property and protection of the persons of the landlord, other tenants, or any other person. [HRS §521-52]

If these problems occur, the landlord must:



- ✓ notify the tenant of the problem in writing; and
- ✓ allow the tenant not less than 10 days after receipt of the notice to remedy the problem.

If the tenant fixes the problem, the matter ends.

If the tenant does not fix the problem, the landlord has two options;

First, the landlord may terminate the rental agreement and bring a summary possession action. [HRS §521-69(a)(1)]

Second, the landlord may remedy the problem and bill the tenant for actual and reasonable cost of the remedy, if it can be done by cleaning, repairing or replacing a damaged item. The bill will be treated as rent due. [HRS §521-69(a)(2)]

No notice need be given if the noncompliance threatens irreparable damage to person or property.

Violations of the rental agreement or house rules is also provided for under another section of state law. Such obligations must be (a) brought to the attention of the tenant at the time of the tenant's entry into the rental agreement; (b) if not brought to the attention at the time of the agreement, or if the landlord makes a substantial modification of the rules such modification be brought to the attention and consented to in writing by the tenant.

If the tenant breaches the rental agreement/rule, the landlord may notify the tenant in writing and specify a time limit of not less than 10 days, to remedy the breach. No time need be given if the violation threatens to cause damage to any person or constitutes health or safety hazard or is a violation. [HRS §§ 521-51(a)(1), (b), HRS § 521-72]

If the tenant fails to remedy the breach, the landlord may bring a summary possession action within 30 days after the continued or recurring breach. [HRS §521-72(b)]

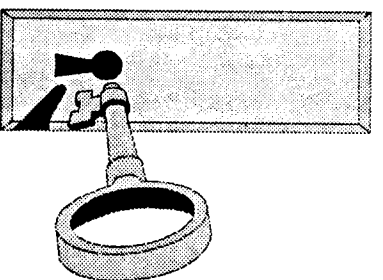
The Hawaii Revised Statutes and sample forms are available from The Law Book Store

Access by Landlord.

The law requires a landlord to give a tenant two days prior notice before entering the unit for purposes of inspection, maintenance and safe keeping. In an emergency however, the landlord may enter on shorter notice in compliance with HRS §521-70(b). In addition, if a

landlord enters without the tenants consent, the landlord is liable for theft, casualty or damage under HRS §§ 521-73(b)(1), (2) and (3). If a landlord feels it necessary to enter the property with and especially without the consent of the tenant, it may be in the landlord's best interest to bring a witness. [HRS §521-53(b)]

If the landlord makes repeated demands for unreasonable entry or enters unreasonably and without the tenant's permission, the tenant may: (a) terminate the rental agreement; or (b) seek a court injunction against the landlord and a fine of not more than \$100. [HRS §521-73(c)]



Fire.

If a unit is damaged by fire, making the unit partially or wholly uninhabitable, the tenant may vacate and notify the landlord within one week after moving. The rental agreement ends on the date the tenant moves out.

Subleases.

Most leases provide that subleasing of property is not allowed without the express written consent of the landlord. Subleasing means that the tenant allows another person to live in the unit and pays rent to the tenant. This is a common problem, and a landlord should review the Hawaii Revised Statutes at the back of this pamphlet in addressing this problem. [HRS §521-69]

Abandonment.

In general the law defines that a tenant is deemed to have abandoned the premises if (a) the tenant is absent more than 20 days; (b) no written notice has been given to the landlord; and (c) the tenant has not paid rent. If these requirements have been met, the tenant is deemed to have wrongfully quit the dwelling unit. In such case, the landlord should bring an eviction action. In such an action, the landlord may recover the rent for the remainder of the rents due or the daily rent for the time period necessary to rent the dwelling, plus any lesser rent received. [HRS §521-71(d), HRS §§521-44(d), 521-70(d)]

Practical Tip: *If it appears that a tenant has truly abandoned premises, the landlord may take a risk and take over the property without resort to the court process. If the landlord takes this course of action, the landlord should document the condition of the property, including such things as taking pictures and make a complete inventory.*

A tenant can also "abandon" the premises if he/she fails to move in. If a tenant unequivocally indicates by words or deed the tenant's indication not to honor the tenancy before occupation, the tenant owes the landlord the lesser of:

- ✓ Money deposited with the landlord;
- ✓ One month's rent; or
- ✓ Fair market rent from the time the property was abandoned to the time it is again rented, plus any future reduced lost rent. [HRS §521-70(e)]

Abandoned Property

A common problem occurs when a tenant leaves personal property (furniture, clothing, dishes, etc.) in the unit. If the tenant fails to take the property, the landlord must properly dispose of the property.

If the property is left after the tenant has been evicted by court order (Writ of Possession), the sheriff will generally require that the landlord hire a moving company to move and store the property. Then, the landlord must properly dispose of the property.

If the tenant moves voluntarily, the landlord must properly dispose of the property.

First, the landlord must determine in good faith whether the property has any value.

If the property has no value, the landlord may dispose of the property in the landlord's discretion without liability to the landlord. The landlord, should prior to disposing the property, inventory and photograph the property so the landlord has evidence should a dispute arise later. [HRS §521-56(c)]

If the landlord determines that the property has commercial value, then the landlord can do the following:

✓ He/she may sell the property in a commercially reasonable matter. Before selling the property the landlord must make reasonable efforts to apprise the tenant of the identity, location and intention to sell the property. The landlord must mail the notice to the forwarding address or to an address designated by the tenant for the purposes of notification or if neither of these is available to the last known address. Following such notice, the landlord may sell the property by advertising the sale in a daily newspaper of general circulation within the circuit in which the premises is located for at least 3 consecutive days. The sale cannot take place until 15 days after the notice has been mailed.

✓ The landlord may donate the property to a charitable organization. Again, the landlord must make reasonable efforts to apprise the tenant of the identity, location of and intention to donate the property by mailing notice to the tenant's forwarding address or to an address designated by the tenant for purposes of notification or if neither of these are available then to the tenant's last known address. After this notice, the landlord may donate the property. The donation cannot take place until 15 days after the notice has been mailed to the tenant.

✓ The landlord may store the property. Obviously, this is the least desirable result for the landlord as the landlord will bear cost, expense and liability for storing the property.

The statute appears to limit these procedures to situations where the tenant has abandoned the premises, wrongfully quit the premises, where the tenant has quit the premises pursuant to notice or upon expiration of the term of the lease. There is some question whether these procedures apply in other situations, such as where the tenant is evicted. However, to be on the safe side, it is recommended that these procedures be followed in all situations in which a tenant leaves personal property on the premises. [HRS §521-56j]

Extended Absences

A landlord may require a tenant to notify the landlord of any "extended absences." The state law does not define specifically what an "extended absence" is, but a reasonable period would likely be 5 days or more. §521-70(a)]

If a tenant fails to make reasonable efforts to notify the landlord of an extended absence, the tenant "shall" indemnify the landlord for

damages resulting from such absence. Note: This is a limited remedy; it is unlikely that a landlord will suffer damages from an extended absence

Retaliatory Evictions.

This is a complex area of the law that is intended to prevent a landlord from evicting a tenant or raising a tenant's rent because the tenant complained to governmental agencies or requested repairs by the landlord. Caution should be exercised because there are some exceptions to this general rule. [HRS §521-74]

Practical Tip: A landlord faced with a problem tenant can, under a month to month lease, terminate the lease with a 45 day notice. No reason for termination is required.

In addition a tenant may recover damages, attorney's fees and costs for violation of the retaliatory provisions of the law. [HRS §521-74.]

Unlawful Removal.

If a tenant is unlawfully removed (for example, locked out) by the landlord, law provides the tenant a choice of recovering possession or terminating the rental agreement. In addition the landlord is penalized and the tenant may also recover two months' rent or get two months' free rent. [HRS §521-63]

7. Moving Out

Termination of Lease.

A rental agreement terminates upon certain events listed below:

- ✓ Fixed lease. A fixed lease is one which ends on a specific date will terminate by its own terms. No notice need be given for termination.
- ✓ Month to month lease. Month to month leases are probably the most common term of lease. A landlord must give 45 days' written prior notice for termination under state law. Upon notice, the tenant may vacate the unit during any time during the 45-day period and is responsible for prorated rent due during that period. [HRS §521-71]

A tenant may terminate a month-to-month lease by 28 days' written notice to the landlord. The tenant is liable for rent through the termination date or the date the unit is rented, whichever is first.

✓ Week to week lease. A tenancy for less than month to month may be terminated on 10 days' oral or written notice.

✓ Demolition or conversion 120-day notices. If a landlord intends to (a) demolish the unit; (b) convert to a condominium; or (c) convert to a transient vacation rental, the landlord must give 120 days' notice. [HRS § 521-71]

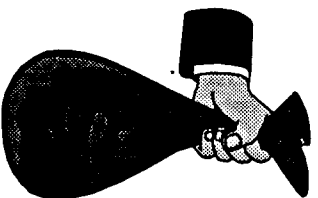
Inspection.

Generally, a landlord or agent and tenant should meet and jointly inspect the premises. At that time, the landlord should advise the tenant of any cleaning and repairs that are necessary and give the tenant a reasonable time to remedy the problems. The tenant should return the keys and give the landlord his/her forwarding address.

8. Return of Security Deposit

Security Deposit.

Once the tenant has vacated the rental unit, state law requires that the landlord return the security deposit within 14 days. In some cases, there will not be any money left after deduction for rent and damages from the security deposit. Nonetheless, the landlord must return the deposit or send notice of any deduction to the tenant. [HRS §521-44(c)]



Practical Tip: Many landlord/tenant problems arise from the handling of the security deposit. This area, what is expected of the condition of the property, should be discussed between the landlord and tenant before the tenant moves out.

- State law restricts a security deposit to one month's rent and limits its use to:
- ✓ Accidental or intentional damage to the unit;

IMPORTANT:

There are harsh penalties for the landlord who fails to comply with this requirement to return the security deposit within 14 days after termination of the rental agreement.

If the landlord and tenant have a dispute regarding return of the security deposit, either may file an action in the small claims division of the district court in which the property is located as defined in the statutes. [HRS §521-44(h)]

- ✓ Rent;
- ✓ Failure to return keys;
- ✓ Cleaning of unit; and
- ✓ Damages due to wrongfully quitting premises. [HRS §521-44]

As stated, the security deposit must be returned to the tenant within 14 days after the rental agreement ends. In the event that the landlord does not return the deposit within 14 days, they must give the tenant the reason for retention, including written receipts and estimates for repairs and cleaning. However, this does not apply if the tenant wrongfully quits the premises. [HRS §521-44(c)]

Note: Unlike all other Landlord-Tenant issues which are brought to District Court, security deposit issues must be brought into Small Claims Court. No attorneys are allowed in disputes regarding security deposits. For more information on Small Claims Court, an excellent reference on collecting amounts owed is "Hawaii - How to Win and Collect in Small Claims Court" Available from The Law Book Store.

If the tenant prevails, the court can award the tenant the security deposit "wrongfully retained." If the court finds that the landlord "wrongfully and willfully" retained the security deposit, the court "shall" award three times the amount of the security deposit, plus costs as provided under state law. [HRS §§521-44(h)(1), (2)]

This is an area that the landlord should pay close attention to and strictly follow the law. It is common for tenants to sue landlords over the landlord's failure to properly handle security deposits.

If a landlord has no new address for a tenant the landlord should send the notice of retention of the security deposit to the tenant's last known address, even if the landlord knows the tenant no longer resides there as it is possible the tenant could have left a forwarding address with the post office. Even if the letter is returned, the landlord has proof that the landlord made an effort to mail the notice to the tenant.

Practical Tip: Security deposit issues are perhaps the most common problems between the landlord and tenant. The landlord and tenant should both pay close attention and communicate clearly to what is expected in this area.

9. Collection of Rent and Damages

Judgment for rent and damages against tenants.

If a tenant moves out of the premises without the necessity of an eviction action still owing the landlord money for past rent, damages, or other matters, the landlord may sue the tenant for the amount owed. These issues have been discussed previously. Collecting on a judgment is a complicated process, and the procedure takes some time. It is beyond the scope of this pamphlet (see above), or you may rely on your attorney to obtain a judgment. In most cases, the cost (in terms of the landlord's time and the attorney fees) doesn't justify obtaining a money judgment against the tenants.

Other factors to consider before pursuing a judicial judgment and then the process of trying to collect are:

- ✓ Do they own real property? A judgment recorded in the Bureau of Conveyances is a lien on any real property owned by the defendant. [HRS §636-3]



- ✓ Once a judgment is recorded it is good for 10 years and should affect the tenant's credit for that period of time even if they subsequently pay the judgment.
- ✓ The judgment properly recorded gives notice to other potential landlords/creditors of the tenant's credit history.
- ✓ If the landlord owns several units, it gives other tenants notice that they too could have a judgment filed against them.

Overall, it is recommended that a landlord take a judgment against a tenant even though the probability of collection is small.

Holdover Tenants.

State law defines a holdover tenant as one who is in the premises after the rental agreement is terminated. The holdover tenant is liable to the landlord for twice the monthly rental, prorated on a daily basis. As a general rule, judges do not like to assess "double rent" for holdover tenants, and some flatly refuse to award double rent. One judge requires the double rent provision to be included in the 5-day demand letter. [HRS §521-71(c)]

GLOSSARY

"Landlord" means the owner of the property. Sometimes, people refer to the Rental Agent who acts as the landlord.

"Rental Agent" means a company or person hired by the landlord to manage the property. The Rental Agent generally must be licensed. As an "agent," the rental agent can act on behalf of the landlord.

"Rental Agreement" means the lease between the landlord and tenant. It can be oral (as in a conversation) or in writing. It is strongly recommended that the agreement be in writing.

"Return day" means the first court date that one must appear in court to respond to a complaint. If a tenant fails to appear, a landlord will obtain a default judgment. If a landlord fails to appear, the case will be dismissed.

"Summary possession" means a lawsuit filed in the District Court of the Circuit in which the property is located. It generally is the same as "eviction."

"Writ of Possession" means a legal document that is signed by a judge, served by a deputy sheriff or police officer, which orders that officer to evict a tenant (and others) from the premises.

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