

HOUSE BILL NO. 385

INTRODUCED BY S. LAVIN

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO A TENANT ENGAGING IN OR KNOWINGLY ALLOWING ANY PERSON TO ENGAGE IN ANY ACTIVITY ON RENTAL PREMISES THAT CREATES A REASONABLE POTENTIAL THAT THE PREMISES MAY BE DAMAGED OR DESTROYED OR THAT NEIGHBORING TENANTS MAY BE INJURED; AND AMENDING SECTIONS 70-24-303, 70-24-321, 70-24-422, AND 70-24-427, MCA."

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

Section 1. Section 70-24-303, MCA, is amended to read:

"70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector. (1) A landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

- ~~_____ (i) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;~~
- ~~_____ (ii) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or~~
- ~~_____ (iii) gang-related activities, as prohibited by Title 45, chapter 8, part 4;~~

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles

1 and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of
2 the dwelling unit and arrange for their removal;

3 (g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat
4 between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be
5 equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an
6 installation within the exclusive control of the tenant; and

7 (h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector,
8 in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in
9 accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the
10 landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good
11 working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working
12 order during the tenant's rental period. For the purposes of this subsection, an approved carbon monoxide
13 detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or
14 other identification issued by an approved testing agency having a service for inspection of materials and
15 workmanship at the factory during fabrication and assembly.

16 (2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through
17 (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

18 (3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant
19 perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks,
20 alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of
21 evading the obligations of the landlord.

22 (4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to
23 perform specified repairs, maintenance tasks, alterations, or remodeling only if:

24 (a) the agreement of the parties is entered into in good faith and not for the purpose of evading the
25 obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate
26 consideration;

27 (b) the work is not necessary to cure noncompliance with subsection (1)(a); and

28 (c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

29 (5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide
30 detector or the smoke detector required under subsection (1)(h)."

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2 **Section 2.** Section 70-24-321, MCA, is amended to read:

3 **"70-24-321. Tenant to maintain dwelling unit.** (1) A tenant shall:

4 (a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and

5 housing codes materially affecting health and safety;

6 (b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as

7 the condition of the premises permits;

8 (c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe

9 manner;

10 (d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition

11 permits;

12 (e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning,

13 and other facilities and appliances, including elevators, in the premises;

14 (f) conduct oneself and require other persons on the premises with the tenant's consent to conduct

15 themselves in a manner, that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

16 (g) use the parts of the premises, including the living room, bedroom, kitchen, bathroom, and dining

17 room, in a reasonable manner, considering the purposes for which they were designed and intended. This section

18 does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject

19 to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold

20 consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

21 (2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any

22 person to do so.

23 (3) A tenant may not engage or knowingly allow any person to engage in any activity on the premises

24 that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants

25 may be injured by any of the following:

26 ~~—— (a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;~~

27 ~~—— (b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or~~

28 ~~—— (c) gang-related activities, as prohibited by Title 45, chapter 8, part 4, INCLUDING BUT NOT LIMITED TO ANY~~

29 OF THE FOLLOWING ACTIVITIES:

30 (A) CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS AS PROHIBITED BY 45-9-110;

- 1 (B) OPERATION OF AN UNLAWFUL CLANDESTINE LABORATORY AS PROHIBITED BY 45-9-132;
 2 (C) GANG-RELATED ACTIVITIES AS PROHIBITED BY TITLE 45, CHAPTER 8, PART 4;
 3 (D) UNLAWFUL POSSESSION OF A FIREARM, EXPLOSIVE, OR HAZARDOUS OR TOXIC SUBSTANCE; OR
 4 (E) ANY ACTIVITY THAT IS OTHERWISE PROHIBITED BY LAW."

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6 **Section 3.** Section 70-24-422, MCA, is amended to read:

7 **"70-24-422. Noncompliance of tenant generally -- landlord's right of termination -- damages --**

8 **injunction.** (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental
 9 agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant
 10 to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement
 11 will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the
 12 notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the
 13 following:

14 (a) If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant
 15 adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not
 16 terminate.

17 (b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

18 (c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is
 19 3 days.

20 (d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

21 (e) If substantially the same act or omission that constituted a prior noncompliance of which notice was
 22 given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice
 23 specifying the noncompliance and the date of the termination of the rental agreement.

24 (2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the
 25 landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within
 26 that period, the landlord may terminate the rental agreement.

27 (3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation
 28 of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying
 29 the noncompliance under the provisions of 70-24-321(2).

30 (4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that

1 neighboring tenants may be injured, ~~as evidenced by the tenant being arrested for or charged with an act that~~
 2 ~~violates the provisions~~ in violation of 70-24-321(3), the landlord may terminate the rental agreement IMMEDIATELY
 3 upon giving ~~3 days'~~ written notice specifying the violation and noncompliance under the provisions of
 4 70-24-321(3).

5 (5) IF A TENANT VIOLATES THE PROVISIONS OF 70-24-321(3) AND WRITTEN NOTICE SPECIFYING THE VIOLATION
 6 HAS BEEN PROVIDED TO THE COURT, THE COURT SHALL WITHIN 24 HOURS OF RECEIVING NOTICE ISSUE AN ORDER FOR
 7 POSSESSION IN FAVOR OF THE LANDLORD AND A WRIT OF ASSISTANCE TO THE COUNTY SHERIFF TO DELIVER POSSESSION
 8 TO THE LANDLORD.

9 ~~(5)(6)~~ Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive
 10 relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in
 11 subsection ~~(6)~~ (7), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

12 ~~(6)(7)~~ Treble damages may not be recovered for the tenant's early termination of the tenancy.

13 ~~(7)(8)~~ The landlord is not bound by this section in the event that the landlord elects to use the 30-day
 14 notice for termination of tenancy as provided in 70-24-441."

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16 **Section 4.** Section 70-24-427, MCA, is amended to read:

17 **"70-24-427. Landlord's remedies after termination -- action for possession.** (1) If the rental
 18 agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual
 19 damages for any breach of the rental agreement.

20 (2) An action filed pursuant to subsection (1) in a court must be heard within ~~20~~ 3 BUSINESS days after
 21 the tenant's appearance or the answer date stated in the summons, ~~except that if the rental agreement is~~
 22 ~~terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after~~
 23 ~~the tenant's appearance or the answer date stated in the summons.~~ If the action is appealed to the district court,
 24 the hearing must be held within ~~20~~ 3 BUSINESS days after the case is transmitted to the district court, ~~except that~~
 25 ~~if the rental agreement is terminated because of noncompliance under 70-24-321(3), the hearing must be held~~
 26 ~~within 5 business days after the case is transmitted to the district court.~~

27 (3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in
 28 subsection (2) without the necessity of an undertaking.

29 (4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action
 30 within ~~5~~ 3 BUSINESS days after the hearing."

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