

STAND. COM. REP. NO. 1309
Honolulu, Hawaii

RE: H.B. No. 931
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii
Sir:

Your Committee on Commerce, Consumer Protection, and Health, to which was referred H.B. No. 931, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO THE LANDLORD-TENANT CODE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit landlords from recovering possession of dwelling units from tenants if habitability of premises is significantly impaired;
- (2) Specify a tenant's liability for rent if habitability of premises is significantly impaired; and
- (3) Clarify remedies for retaliatory evictions.

Your Committee received testimony in support of this measure from the Department of Commerce and Consumer Affairs, Hawai'i State Commission on the Status of Women, Hawaiian Community Assets, Lawyers for Equal Justice, Parents and Children Together, PHOCUSED, Chinatown Gateway Plaza Tenant Association, Hawaii Regional Council of Carpenters, Pacific Resource Partnership, and seven individuals. Your Committee received testimony in opposition to this measure from the Hawai'i Association of REALTORS and one individual. Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that the warranty of habitability is a principle based on contract law, wherein the tenant is responsible for paying rent, while the landlord guarantees in return that the premises are habitable and in compliance with health, safety, and building codes. The warranty of habitability has been recognized by the Hawaii Supreme Court but has not been codified in statute, meaning it is largely unenforced.

Existing state law allows a tenant to deduct up to \$500 from the following month's rent for the cost of repairs if the landlord does not respond to the tenant's written repair request within twelve business days. However, the cost to repair conditions that materially affect health and safety can often exceed \$500. Your Committee further finds that Hawaii has one of the highest percentages of renter households in the nation, at forty-two percent. Renters in Hawaii already face one of the least affordable rental markets in the country and many do not have disposable funds to make necessary repairs when their landlords fail to do so, or to hire an attorney, thereby resulting in sub-standard living conditions. The end result is many tenants are served with retaliatory eviction notices from landlords who would rather not go through the trouble of repairing or bringing their rental units into compliance with health and safety regulations. Given the difficulty of finding adequate rental housing in the current market, many tenants who are subjected to eviction have few alternatives and may find themselves at risk of homelessness.

Your Committee notes that data from a recent Lawyers for Equal Justice report shows only four percent of tenants had legal representation during an eviction action, while seventy percent of landlords were represented. This discrepancy resulted in landlords being awarded possession in ninety-seven percent of cases.

Accordingly, this measure codifies the Hawaii Supreme Court's decision establishing a warranty of habitability and sets minimum damages for tenants who have suffered retaliatory evictions, which will incentivize landlords to keep their rental unit in a safe and sanitary condition.

Your Committee has amended this measure by:

- (1) Clarifying that the tenant must continue to pay rent equal to the fair rental value of the premises or the agreed upon rent, whichever is less, to avoid an action or proceeding to recover possession of the dwelling unit;
- (2) Removing language that would have entitled a tenant to a remedy of free occupancy for two months, in the case of a retaliatory eviction, as this provision raised certain constitutional concerns;
- (3) Inserting an effective date of July 1, 2019; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and

Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 931, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 931, H.D. 2, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on behalf of the members of the Committee on
Commerce, Consumer Protection, and Health,

ROSALYN H. BAKER, Chair