

HOUSE BILL NO. 800

INTRODUCED BY S. MANESS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LANDLORD AND TENANT LAWS; PROVIDING THAT THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT AND MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT DO NOT APPLY TO INVITEES WHO HAVE NOT ESTABLISHED A LANDLORD-TENANT RELATIONSHIP; PROVIDING THAT INVITEES WHO REFUSE TO LEAVE WHEN ASKED ARE SUBJECT TO PROSECUTION; PROVIDING FOR REMOVAL OF UNAUTHORIZED PERSONS OR TRESPASSERS; REVISING LAWS RELATED TO AN ACTION FOR POSSESSION AFTER TERMINATION OF LEASE; REVISING LAWS RELATED TO DISPOSITION OF PERSONAL PROPERTY ABANDONED BY A TENANT AFTER THE TERMINATION OF LEASE; AND AMENDING SECTIONS 70-24-104, 70-24-113, 70-24-427, 70-24-430, 70-33-104, 70-33-427, AND 70-33-430, MCA."

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

Section 1. Section 70-24-104, MCA, is amended to read:

"70-24-104. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service, including all housing provided by the Montana university system and other postsecondary institutions;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a

1 cooperative;

2 (6) occupancy under a rental agreement covering premises used by the occupant primarily for
3 commercial or agricultural purposes;

4 (7) occupancy by an employee of a landlord whose right to occupancy is conditional upon
5 employment in and about the premises; ~~and~~

6 (8) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or
7 agricultural privileges, along with the use of the dwelling unit; and

8 (9) occupancy by an individual other than the owner who was invited to stay at the premises for
9 any period of time and has not established a landlord-tenant relationship as described in 70-24-302. An invitee
10 who refuses to leave when asked to leave the premises by the owner is subject to prosecution for criminal
11 trespass to property pursuant to 45-6-203."

12

13 **Section 2.** Section 70-24-113, MCA, is amended to read:

14 **"70-24-113. Removal of unauthorized person or trespasser.** (1) An unauthorized person or
15 trespasser has no legal right to occupy, enter, or trespass on a premises. A person who cannot produce
16 authorization allowing the person to occupy a premises is an unauthorized person or trespasser for the purpose
17 of this section and ~~may~~ must be removed from the premises immediately by law enforcement.

18 (2) For the purposes of this section, authorization includes:

19 (a) a written rental agreement entitling the person to occupy the premises;

20 (b) written or verbal authorization from the landlord; or

21 (c) written or verbal authorization from a tenant if the person is a guest of the tenant.

22 (3) For the purposes of this section, verbal authorization is valid only if it is verified by the individual
23 or entity entitled to give it under subsection (2)(b) or (2)(c)."

24

25 **Section 3.** Section 70-24-427, MCA, is amended to read:

26 **"70-24-427. Landlord's remedies after termination -- action for possession.** (1) If the rental
27 agreement is terminated, the landlord has a claim for possession, rent, and actual damages for any breach of
28 the rental agreement.

(2) (a) Except as provided in subsection (2)(b), an An action for possession filed pursuant to subsection (1) in a court must be heard;

(i) within 10 business days after the tenant's appearance or the answer date stated in the summons if the rental agreement is terminated because of noncompliance with 70-24-422(1)(b), (1)(c), (1)(d), (1)(e) or (2); ; or

(ii) except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons if the rental agreement is terminated because of noncompliance under 70-24-321(3) or 70-24-422(3) or (4).

(b) If the action is appealed to the district court, the hearing must be held;

(i) within 10 business days after the case is transmitted to the district court in an action filed pursuant to (2)(a)(i); ; or

(ii) except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the case is transmitted to the district court in an action filed pursuant to (2)(a)(ii).

(b) (c) A hearing for damages for any breach of the rental agreement must be held within 45 days after the claim of possession and rent has been adjudicated landlord has requested a damages hearing and service to the tenant has been completed.

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

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing. If a landlord's claim for possession is granted, the court shall issue a writ of possession and a writ of assistance immediately. The writ of assistance must be executed by the sheriff:

(a) within 5 business days of the sheriff receiving the writ of assistance, excluding of the date of receipt by the sheriff; or

(b) at a time no more than 5 business days after the sheriff receives the writ of assistance or as otherwise agreed to by the landlord and the sheriff.

(5) If court rules allow or require mediation, mediation must be agreed on by both parties. If

1 mediation is not agreed on, then subsection (2)(a) applies. Both landlord and tenant may agree on mediation
2 for an action for possession."

3

4 **Section 4.** Section 70-24-430, MCA, is amended to read:

5 **"70-24-430. Disposition of personal property abandoned by tenant after termination.** (1) (a) If a
6 tenancy terminates by court order, the personal property is considered abandoned and the landlord may
7 immediately dispose of the personal property ~~as allowed by law.~~

8 (b) If a tenancy terminates in any manner other than by court order and the landlord has clear and
9 convincing evidence that the tenant has abandoned all personal property that the tenant has left on the
10 premises and a period of time of at least 48 hours has elapsed since the landlord obtained that evidence, the
11 landlord may immediately remove the abandoned property from the premises and immediately dispose of any
12 trash or personal property that is hazardous, perishable, or valueless.

13 (c) An item that is clearly labeled "rent to own" or "leased" or likewise identified may be discarded
14 only with confirmation from the lessor that the item does not have a lien, provided that the lessor can be easily
15 identified from the label and the landlord makes a reasonable effort to contact the lessor.

16 (d) For the purposes of this subsection (1), the following definitions apply:

17 (i) "Hazardous" means an item that is potentially or actually flammable or a biohazard or an item
18 otherwise capable of inflicting personal harm or injury.

19 (ii) "Perishable" means any item requiring refrigeration or any food item with a marked expiration
20 date.

21 (iii) "Valueless" means any item that has an insubstantial resale value but does not include
22 personal photos, jewelry, or other small items that are irreplaceable.

23 (2) The landlord shall inventory and store all abandoned personal property of the tenant that the
24 landlord reasonably believes is valuable in a place of safekeeping and shall exercise reasonable care for the
25 property. The landlord may charge a reasonable storage and labor charge if the property is stored by the
26 landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in
27 a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost
28 of removal of the property to the place of storage.

1 (3) After complying with subsection (2), the landlord shall make a reasonable attempt to notify the
2 tenant in writing that the property must be removed from the place of safekeeping by sending a notice with a
3 certificate of mailing or by certified mail to the last-known address of the tenant, stating that at a specified time,
4 not less than 10 days after mailing the notice, the property will be disposed of if not removed.

5 (4) The landlord may dispose of the property after complying with subsection (3) by:

6 (a) selling all or part of the property at a public or private sale; or

7 (b) destroying or otherwise disposing of all or part of the property if the landlord reasonably
8 believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of
9 the property.

10 (5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the
11 landlord on or before the day specified in the notice that the tenant intends to remove the property and does not
12 do so within 7 days after delivery of the tenant's response, the tenant's property whether of value or not is
13 conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage
14 costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the
15 place of storage. Reasonable storage costs are allowed a landlord who stores the property, and actual storage
16 costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to
17 payment of the storage costs allowed under this subsection before the tenant may remove the property.

18 (6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss
19 is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is
20 liable for actual damages.

21 (7) A public or private sale authorized by this section must be conducted under the provisions of
22 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

23 (8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage,
24 labor, and sale and any delinquent rent or damages owing on the premises and shall remit to the tenant the
25 remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be
26 found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale
27 occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general
28 purposes.

(9) The landlord shall ensure that the terms of this section are included in plain and understandable language as a notification upon termination of the lease or rental agreement."

Section 5. Section 70-33-104, MCA, is amended to read:

"70-33-104. Applicability. (1) This chapter applies to landlord-tenant relationships in which the landlord is renting a lot to the tenant for placement of the tenant's mobile home. This chapter applies to land rental in a mobile home park as well as to the rental of individual parcels of land not in a mobile home park that are for the placement of a tenant's mobile home.

(2) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(a) occupancy under a contract of sale of a lot if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(b) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(c) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(d) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or agricultural privileges along with the use of the lot; and

(e) any rental premises that are governed by the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24; and

(f) occupancy by an individual other than the owner who was invited to stay at the premises for any period of time and has not established a landlord-tenant relationship as described in 70-33-302. An invitee who refuses to leave when asked to leave the premises by the owner is subject to prosecution for criminal trespass to property pursuant to 45-6-203.

(3) The combined rental of the lot and mobile home, when the landlord owns both, are covered by the Montana Residential Landlord and Tenant Act of 1977."

Section 6. Section 70-33-427, MCA, is amended to read:

1 **"70-33-427. Landlord's remedies after termination -- action for possession.** (1) If the rental
2 agreement is terminated, the landlord has a claim for possession, rent, and actual damages for any breach of
3 the rental agreement.

4 (2) (a) Except as provided in subsection (2)(c), an action for possession filed pursuant to
5 subsection (1) in a court must be heard within 10 business days after the tenant's appearance or the answer
6 date stated in the summons, except that if the rental agreement is terminated because of noncompliance under
7 70-33-321(4), the action must be heard within 5 business days after the tenant's appearance or the answer
8 date stated in the summons.

9 (b) If the action is appealed to the district court, the hearing must be held within 10 business days
10 after the case is transmitted to the district court, except that if the rental agreement is terminated because of
11 noncompliance under 70-33-321(4), the hearing must be held within 5 business days after the case is
12 transmitted to district court.

13 (c) A hearing for damages for any breach of the rental agreement must be held within 45 days
14 ~~after the claim of possessions and rent has been adjudicated~~ landlord has requested a damages hearing and
15 service to the tenant has been completed.

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

18 (4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the
19 action within 5 days after the hearing. If a landlord's claim for possession is granted, the court shall issue a writ
20 of possession immediately.

21 (5) If court rules allow or require mediation, mediation must be agreed on by both parties. If
22 mediation is not agreed on, then subsection (2)(a) applies. Both landlord and tenant may agree on mediation
23 for an action for possession."

24
25 **Section 7.** Section 70-33-430, MCA, is amended to read:

26 **"70-33-430. Disposition of abandoned personal property.** (1) (a) If a tenancy terminates by court
27 order, the personal property is considered abandoned and the landlord may immediately dispose of the
28 personal property ~~as allowed by law.~~

1 (b) If a tenancy terminates in any manner other than by court order, if the landlord reasonably
2 believes that the tenant has abandoned all personal property that the tenant has left on the premises, and if at
3 least 48 hours have elapsed since the occurrence of the events upon which the landlord has based the belief of
4 abandonment, the landlord may remove the property from the premises.

5 (2) The landlord shall inventory and store all personal property of the tenant in a place of
6 safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable
7 storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the
8 place of storage. The landlord may store the property in a commercial storage company, in which case the
9 storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

10 (3) After complying with subsections (1) and (2), the landlord shall:

11 (a) make a reasonable attempt to notify the tenant in writing that the property must be removed
12 from the place of safekeeping;

13 (b) notify the local law enforcement office of the property held by the landlord;

14 (c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

15 (d) send a notice by certified mail to the last-known address of the tenant and each known party
16 having a lien or encumbrance of record, stating that at a specified time, not less than 15 days after mailing the
17 notice, the property will be disposed of if not removed.

18 (4) The landlord may dispose of the property after complying with subsection (3) by:

19 (a) selling all or part of the property at a public or private sale; or

20 (b) destroying or otherwise disposing of all or part of the property if the landlord reasonably
21 believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of
22 the property.

23 (5) (a) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the
24 landlord on or before the day specified in the notice that the tenant intends to remove the property and does not
25 do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be
26 abandoned.

27 (b) If the tenant removes the property, the landlord is entitled to storage costs for the period that
28 the property remains in safekeeping, plus the cost of removal of the property to the place of storage.

1 Reasonable storage costs are allowed to a landlord who stores the property, and actual storage costs are
2 allowed to a landlord who stores the property in a commercial storage company. A landlord is entitled to
3 payment of the storage costs allowed under this subsection before the tenant may remove the property.

4 (6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss
5 is caused by the landlord's purposeful or negligent act, in which case the landlord is liable for actual damages.

6 (7) A public or private sale authorized by this section must be conducted under the provisions of
7 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

8 (8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage,
9 labor, and sale and, subject to any prior security interest of record, any delinquent rent or damages owing on
10 the premises. The landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized
11 accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with
12 the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to
13 the general fund of the county.

14 (9) The landlord shall ensure that the terms of this section are included in plain and
15 understandable language as a notification upon termination of the lease or rental agreement."

16 - END -