

RENTAL AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: _____

LONG TITLE**General Description:**

This bill modifies provisions related to rental properties.

Highlighted Provisions:

This bill:

- provides that a court shall award costs and reasonable attorney fees to the prevailing party in an action:

- under the Utah Fit Premises Act; and
- for unlawful detainer.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-22-6, as repealed and reenacted by Laws of Utah 2010, Chapter 352**78B-6-811**, as renumbered and amended by Laws of Utah 2008, Chapter 3

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **57-22-6** is amended to read:**57-22-6. Renter remedies for deficient condition of residential rental unit.**

- 28 (1) As used in this section:
- 29 (a) "Corrective period" means:
- 30 (i) for a standard of habitability, three calendar days; and
- 31 (ii) for a requirement imposed by a rental agreement, 10 calendar days.
- 32 (b) "Deficient condition" means a condition of a residential rental unit that:
- 33 (i) violates a standard of habitability or a requirement of the rental agreement; and
- 34 (ii) is not caused by:
- 35 (A) the renter, the renter's family, or the renter's guest or invitee; and
- 36 (B) a use that would violate:
- 37 (I) the rental agreement; or
- 38 (II) a law applicable to the renter's use of the residential rental unit.
- 39 (c) "Notice of deficient condition" means the notice described in Subsection (2).
- 40 (d) "Rent abatement remedy" means the remedy described in Subsection (4)(a)(i).
- 41 (e) "Renter remedy" means:
- 42 (i) a rent abatement remedy; or
- 43 (ii) a repair and deduct remedy.
- 44 (f) "Repair and deduct remedy" means the remedy described in Subsection (4)(a)(ii).
- 45 (g) "Standard of habitability" means a standard:
- 46 (i) relating to the condition of a residential rental unit; and
- 47 (ii) that an owner is required to ensure that the residential rental unit meets as required
- 48 under Subsection 57-22-3(1) or Subsection 57-22-4(1)(a) or (b)(i), (ii), or (iii).
- 49 (2) (a) If a renter believes that the renter's residential rental unit has a deficient
- 50 condition, the renter may give the owner written notice as provided in Subsection (2)(b).
- 51 (b) A notice under Subsection (2)(a) shall:
- 52 (i) describe each deficient condition;
- 53 (ii) state that the owner has the corrective period, stated in terms of the applicable
- 54 number of days, to correct each deficient condition;
- 55 (iii) state the renter remedy that the renter has chosen if the owner does not, within the
- 56 corrective period, take substantial action toward correcting each deficient condition;
- 57 (iv) provide the owner permission to enter the residential rental unit to make corrective
- 58 action; and

(v) be served on the owner as provided in:

(A) Section 78B-6-805; or

(B) the rental agreement.

(3) (a) As used in this Subsection (3), "dangerous condition" means a deficient condition that poses a substantial risk of:

(i) imminent loss of life; or

(ii) significant physical harm.

(b) If a renter believes that the renter's residential rental unit has a dangerous condition, the renter may notify the owner of the dangerous condition by any means that is reasonable under the circumstances.

(c) An owner shall:

(i) within 24 hours after receiving notice under Subsection (3)(b) of a dangerous condition, commence remedial action to correct the dangerous condition; and

(ii) diligently pursue remedial action to completion.

(d) Notice under Subsection (3)(b) of a dangerous condition does not constitute a notice of deficient condition, unless the notice also meets the requirements of Subsection (2).

(4) (a) Subject to Subsection (4)(b), if an owner fails to take substantial action, before the end of the corrective period, toward correcting a deficient condition described in a notice of deficient condition:

(i) if the renter chose the rent abatement remedy in the notice of deficient condition:

(A) the renter's rent is abated as of the date of the notice of deficient condition to the owner;

(B) the rental agreement is terminated;

(C) the owner shall immediately pay to the renter:

(I) the entire security deposit that the renter paid under the rental agreement; and

(II) a prorated refund for any prepaid rent, including any rent the renter paid for the period after the date on which the renter gave the owner the notice of deficient condition; and

(D) the renter shall vacate the residential rental unit within 10 calendar days after the expiration of the corrective period; or

(ii) if the renter chose the repair and deduct remedy in the notice of deficient condition, and subject to Subsection (4)(c), the renter:

(A) may:

(I) correct the deficient condition described in the notice of deficient condition; and

(II) deduct from future rent the amount the renter paid to correct the deficient condition, not to exceed an amount equal to two months' rent; and

(B) shall:

(I) maintain all receipts documenting the amount the renter paid to correct the deficient condition; and

(II) provide a copy of those receipts to the owner within five calendar days after the beginning of the next rental period.

(b) A renter is not entitled to a renter remedy if the renter is not in compliance with all requirements under Section 57-22-5.

(c) (i) If a residential rental unit is not fit for occupancy, an owner may:

(A) determine not to correct a deficient condition described in a notice of deficient condition; and

(B) terminate the rental agreement.

(ii) If an owner determines not to correct a deficient condition and terminates the rental agreement under Subsection (4)(c)(i):

(A) the owner shall:

(I) notify the renter in writing no later than the end of the corrective period; and

(II) within 10 calendar days after the owner terminates the rental agreement, pay to the renter:

(Aa) any prepaid rent, prorated as provided in Subsection (4)(c)(ii)(B); and

(Bb) any deposit due the renter;

(B) the rent shall be prorated to the date the owner terminates the rental agreement under Subsection (4)(c)(i); and

(C) the renter may not be required to vacate the residential rental unit sooner than 10 calendar days after the owner notifies the renter under Subsection (4)(c)(ii)(A)(I).

(5) (a) After the corrective period expires, a renter may bring an action in district court to enforce the renter remedy that the renter chose in the notice of deficient condition.

(b) In an action under Subsection (5)(a), the court shall endorse on the summons that the owner is required to appear and defend the action within three business days.

(c) If, in an action under Subsection (5)(a), the court finds that the owner unjustifiably refused to correct a deficient condition or failed to use due diligence to correct a deficient condition, the renter is entitled to any damages, in addition to the applicable renter remedy[; ~~to~~].

~~[(i) any damages, and]~~

~~[(ii) court costs and a reasonable attorney fee.]~~

(d) An owner who disputes that a condition of the residential rental unit violates a requirement of the rental agreement may file a counterclaim in an action brought against the owner under Subsection (5)(a).

(6) An owner may not be held liable under this chapter for a claim for mental suffering or anguish.

(7) In an action under this chapter, the court ~~shall~~ **may** award costs and reasonable attorney fees to the prevailing party.

Section 2. Section **78B-6-811** is amended to read:

78B-6-811. Judgment for restitution, damages, and rent -- Immediate enforcement.

(1) (a) A judgment may be entered upon the merits or upon default.

(b) A judgment entered in favor of the plaintiff shall include an order for the restitution of the premises as provided in Section **78B-6-812**.

(c) If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from any obligation for payments on a lease for the remainder of the lease's term.

(ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate damages.

(2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:

(a) forcible entry;

- 152 (b) forcible or unlawful detainer;
- 153 (c) waste of the premises during the defendant's tenancy, if waste is alleged in the
154 complaint and proved at trial;
- 155 (d) the amounts due under the contract, if the alleged unlawful detainer is after default
156 in the payment of amounts due under the contract; and
- 157 (e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107
158 through 78B-6-1114.
- 159 (3) The judgment shall be entered against the defendant for the rent, for three times the
160 amount of the damages assessed under Subsections (2)(a) through (2)(e)[~~and for reasonable~~
161 ~~attorney fees~~].
- 162 (4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be
163 issued immediately after the entry of the judgment.
- 164 (b) In all cases, the judgment may be issued and enforced immediately.
- 165 (5) In an action under this chapter, the court ~~Shall~~ **may** ~~award costs and~~
165a reasonable attorney
166 fees to the prevailing party.

Legislative Review Note
Office of Legislative Research and General Counsel