

SENATE BILL NO. 276

INTRODUCED BY R. WEBB

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO RETALIATION CONCERNING LANDLORDS AND TENANTS; AND AMENDING SECTIONS 70-24-411 AND 70-24-431, MCA."

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

Section 1. Section 70-24-411, MCA, is amended to read:

"70-24-411. Unlawful ouster, exclusion, or diminution of service -- tenant's remedies. If a landlord unlawfully removes or excludes the tenant from the premises, ~~or~~ purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, or retaliates against the tenant as provided in 70-24-431, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount of not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent."

Section 2. Section 70-24-431, MCA, is amended to read:

"70-24-431. Retaliatory conduct by landlord prohibited. (1) ~~Except as provided in this section, a A~~ landlord may not retaliate ~~by increasing rent, by decreasing services, or by bringing or threatening to bring an~~ action ~~for possession as provided in subsection (2) within 6 months~~ after the tenant:

(a) exercises in good faith a tenant's right or remedy under this chapter, including but not limited to delivering a notice to repair pursuant to 70-24-406 or exercising a tenant's remedy provided for in Title 70, chapter 24, part 4;

~~(a)(b) has complained~~ complains of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building, ~~or~~ housing, health, ~~or safety~~ code; if:

(i) the tenant makes the complaint to the agency in good faith;

(ii) the tenant provides ~~the~~ A specific code ~~alleged to be violated~~ ISSUE THAT IS A CODE VIOLATION in the tenant's complaint to the agency; and

1 (iii) the agency finds that a violation has occurred and issues a citation or violation to the landlord;

2 (b) has complained to the landlord in writing of a violation under 70-24-303; or

3 (c) has organized, or become a member of, or participated in a tenant's union or similar organization.

4 (2) (a) Except as provided in subsection (2)(b), retaliation includes:

5 (i) increasing the tenant's rent unless the rent is increased as part of a pattern of rent increases for
6 dwelling units on a property that contains multiple dwelling units. For the purposes of this subsection (2)(a)(i),
7 an increase in rent includes an increase in rent, utilities, or other amenities that a tenant is charged for under the
8 rental agreement.

9 (ii) decreasing services to the tenant unless the service reduction is part of a pattern of service reduction
10 for dwelling units on a property that contains multiple dwelling units;

11 (iii) depriving the tenant of the use of the premises, except as provided in Title 10, chapter 3, in this
12 chapter, or as otherwise provided by law;

13 (iv) engaging in conduct in bad faith that materially interferes with the tenant's rights under the tenant's
14 lease;

15 (v) terminating the rental agreement, except as provided in subsection (2)(b)(ii); or

16 (vi) bringing or threatening to bring an action for possession, except as provided in subsection (2)(b)(ii)
17 or (2)(b)(iii).

18 (b) Retaliation does not include:

19 (i) actions taken by the landlord if the landlord proves that the actions were not taken for the purpose of
20 retaliation;

21 (ii) termination of a rental agreement by the landlord under 70-24-422 or a subsequent action for
22 possession based on the tenant's noncompliance under 70-24-422;

23 (iii) an action for possession if the rental agreement has terminated; or

24 (iv) an action of a landlord taken in compliance with an existing court order.

25 (2)(3) If the landlord acts retaliates against a tenant in violation of subsection (1) of this section, the
26 tenant is entitled to the remedies provided in 70-24-411 and any other remedy allowed by law and has a defense
27 in any retaliatory action against the tenant for possession.

28 ~~—— (3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act~~
29 ~~of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption~~
30 ~~does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services.~~

For purposes of this section, "rebuttable presumption" means that the trier of fact is required to find the existence of the fact presumed unless and until evidence is introduced that would support a finding of its nonexistence.

~~Subsections (1), (2), and (3) do not prevent a landlord from bringing an action for possession if:~~

~~(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent;~~

~~(b) the tenant is in default in rent; or~~

~~(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit.~~

~~(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2).~~

(4) (a) If a tenant brings an action claiming retaliation under this section in bad faith, the landlord may recover possession of the dwelling unit and a civil penalty equivalent to one month's rent plus \$500, court costs, and reasonable attorney fees.

(b) If a tenant brings an action claiming retaliation under subsection (1)(b) and the government agency determines in writing that a violation did not occur, there is a rebuttable presumption that the tenant acted in bad faith."

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