

# **Tenant's Guide to Forcing Landlords To Make Repairs in Hawaii**

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**If you are in doubt about your legal rights, there is no substitute for hiring a qualified attorney licensed to practice in Hawaii to answer your questions. At best, this material can serve only to educate you in a general sense, and cannot possibly address a particular factual situation like a Hawaii attorney could.**

## **Chapter 1: Contract Rights**

### **I. Lease As A Conveyance**

In Hawaii, leases are now construed as contracts with certain statutory protections for the tenants. But it wasn't always this way. Originally, a lease agreement was seen as a conveyance of property. The lease was looked upon as a conveyance of an estate in land for a term which was based upon the mutual promises between the parties. The view was that the tenant's promise to pay was exchanged only for the bare right of possession.

So long as the landlord owned the property at the time he signed the lease agreement and conveyed actual possession, this was all that was necessary to meet his duty to the tenant under the law. If the roof started leaking, the landlord was under no duty to fix it, because by transferring possession to the tenant, he had met all of his obligations. If the tenant wanted to be dry, he would just have to break out the umbrella in his living room or pay thousands of bucks to have the roof redone.

In fact, there was an old case (not from Hawaii) which best summed up the way that the law used to be on this subject. The judge in that case held that there is no prohibition at law against a landlord renting out a "tumbledown house" to a tenant.

In fact, the common law rule, long followed in Hawaii, was that in the absence of fraud or deceit, there was no implied warranty on the part of the landlord that premises leased for residential purposes are suitable for their intended use.

### **II. Lease As A Contract**

But as time went on, courts in Hawaii began to see residential rental agreements more in the nature of a contract than in the nature of a conveyance of land. This meant that if there was a provision in the contract which required the landlord to put and keep the rented premises in a fit and habitable condition, then the tenant could sue the landlord if the roof began to leak and the landlord refused to fix it.

When landlords got wind of the fact that they were going to have to live up to the promises that they made in their rental agreements, they quickly reworded their leases to indicate that they promised absolutely nothing. It didn't take courts too long to get wind of this either though, and the courts had a fix for this problem. Courts in Hawaii began to find that there was an "implied warranty of habitability" in every lease agreement.

When a Hawaii court finds an implied warranty of habitability in a lease, what this means is that the court will pretend that the landlord has a clause in his lease agreement which requires him to make whatever repairs are necessary to put and keep the rented premises in a fit and habitable condition so that the tenant can live there without a danger to his or her health.

### **III. Breach of Contract Law Suits**

At Common Law, a tenant can bring a lawsuit alleging breach of contract against the landlord if he provides the apartment to the tenant in a manner which is not in a habitable condition. The measure of the tenant's damages would likely be either the amount of rent paid for the place minus what it was actually worth to the tenant in the condition provided (if it was worth anything at all), or perhaps any damages that the tenant suffered in having to go out and find and pay for alternate living arrangements during the time that the apartment was not in the condition promised by the landlord.

It is important to note that not just any failure to repair on the part of the landlord will constitute a breach of the implied warranty of habitability.

### **IV. The Trouble With Common Law Remedies**

The trouble with a common law remedy like breach of contract is that Hawaii, like most other states in the U.S., follows the so-called "American Rule" of contract law, which states that in a contract case, each side pays its own attorneys fees, absent a statutory provision to the contrary. This means that if you sue your landlord, you will be paying your attorney \$150.00 per hour, and you will not be able to recover the money expended to vindicate your rights even if you win the case.

This can lead to a judgment in your favor for \$750.00 and an attorney bill from your attorney in the amount of \$1,500.00. Now you see why large companies sometimes settle silly lawsuits instead of fighting them.

## **Chapter 2: Statutory Rights of Tenants**

### **I. Introduction to Statutory Duties of Landlord To Tenant**

Fortunately for residential tenants in Hawaii, the Hawaii Legislature enacted Hawaii Revised Code Sections 521-41 and 521-42. These statutes deal with the condition in which the landlord has to deliver possession of the property and the condition in which he must maintain it during the term of the lease agreement.

To summarize the statute (and then I will reprint it in its entirety below), it says that the landlord must deliver possession of the rented unit to the tenant at the start of the lease term in the condition agreed to in the lease agreement. Further, the landlord must maintain the leased premises during the term of the lease agreement in a way that complies with all building and housing codes that materially affect health and safety, keep the common areas (if any) clean and safe, fix the place up so that it is in a fit and habitable condition, provide proper trash receptacles (unless the tenant is renting a single family residence), provide running water (unless the tenant is renting a single family residence or a place not required by law to have running water).

When the tenant first moves in, the landlord and the tenant must walk through the place and do a move in sheet wherein they inventory all of the items at the rented premises and the condition of these things. The landlord and the tenant have to sign it, and then a copy of it must be turned over to the tenant. If this isn't done, then a Hawaiian Court is going to start out any case with the presumption that the place was given over by the landlord to the tenant in the same condition that the landlord got it back from the tenant.

Just so you know, a presumption means that the court, which usually starts out in a case with no predispositions as to what the evidence will show, will start out believing that the way the tenant gave the apartment back to the landlord was the way that the tenant got it in the first place. Now the landlord can bring in evidence to rebut this presumption (meaning to convince the judge to abandon this predisposed notion), but the burden to do so will be on the landlord.

It should also be noted that the landlord and the tenant can agree that the tenant will do some work for the landlord around the place, but the agreement can't be in the nature of waiving the tenant's rights. For instance, the tenant could agree that she will paint the living room if the landlord will supply the paint. But the tenant cannot agree that she will be responsible for fixing all of the plumbing problems at the residence.

#### **§521-41 Landlord to supply possession of dwelling unit.**

The landlord shall, at the beginning of the agreed term, deliver possession of the dwelling unit to the tenant in the agreed condition unless otherwise agreed prior to delivery of possession. The landlord may bring an action