



LAWYERS FOR
EQUAL
JUSTICE

EVICTED IN HAWAI‘I

LIVES HANGING IN THE BALANCE

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LAWYERS FOR EQUAL JUSTICE



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Lawyers for Equal Justice regrets that it does not have the budget to hire a photographer to document the real people affected by this issue. As a result, all images in this report are stock photos.

EXECUTIVE SUMMARY

SAFE, STABLE HOUSING provides a foundation for building a successful life—a foundation that can quickly crumble because of an improper eviction. The absence of housing stability increases the likelihood of homelessness, domestic violence, adverse impacts on health, and depressed educational outcomes. These consequences perpetuate generational cycles of poverty and give rise to serious social costs. Despite the heavy toll that eviction takes on households and communities, tenants facing eviction in Hawai‘i have relatively little support to ensure they are not improperly removed from their homes.

Evictions are conducted much more quickly than a typical court case through a process known

who can guide them through the process, and many other landlords appear through highly knowledgeable professional agents. Meanwhile, the percentage of represented tenants is close to nil. It is therefore unsurprising that landlords regain possession in almost every case: various studies indicate that unrepresented tenants are highly unlikely to win in court.¹ Certainly, in many cases, landlords prevail because there was adequate cause for eviction. However, it is more often the case that tenants do not fully understand the proceedings and cannot effectively advocate for themselves. In the frequent instances in which a tenant fails to respond to an eviction summons, a default judgment is entered in favor of the landlord.

“ABOUT HALF OF ALL EVICTION CASES RESULT IN DEFAULT JUDGMENT FOR THE LANDLORD DUE TO THE TENANTS’ FAILURE TO APPEAR IN COURT.”

as “summary possession.” This streamlined process is designed to quickly return possession of housing units to landlords. In theory, summary possession proceeds according to certain rules that level the playing field between landlords and tenants. However, the proceedings are only fair to the extent that the parties involved understand the rules.

A party with superior knowledge of the process gains a great advantage, creating a power imbalance. In Hawai‘i, landlords almost always have the advantage. The majority of landlords are represented by legal counsel

During three separate study periods spanning eight years, Lawyers for Equal Justice (LEJ) examined evictions in Hawai‘i. The results of the study in all three periods confirm the existence of a stark disparity in legal representation between landlords and tenants, and a resulting disparity in case outcomes. Approximately 70 percent of landlords are represented by counsel,² as opposed to 5 percent of tenants. About half of all eviction cases result in default judgment for the landlord due to the tenant’s failure to appear in court. Unsurprisingly, eviction is the final outcome in 85 to 95 percent of cases.

INSIDE THIS REPORT

- A discussion of the financial, social, and procedural costs of evictions in Hawai'i;
- An overview of summary possession cases in Hawai'i, including the legal process followed in Hawai'i District Courts and the grounds for and defenses to a claim for summary possession;
- Findings and analysis of LEJ's eviction study; and
- Recommendations aimed at addressing the inequities in our current summary possession process and reducing rent payment defaults.³

IN THE STATE OF HAWAI'I IN 2017, APPROXIMATELY:

70

Percent of landlords were represented by counsel.

5

Percent of tenants were represented by counsel.

85–95

Percent of cases ended in eviction.

50

Percent of eviction cases resulted in a default judgment for the landlord due to the tenant's failure to appear in court.

1,600–

1,800

Households were evicted.

RECOMMENDATIONS

- Revise the summons form so that tenants know exactly when they need to appear in court.
- Create and circulate to tenants informational materials describing the summary possession process and the legal defenses and resources available to contest an eviction. These materials, including a check-the-box answer form that can be returned by mail, should be served with the initial summons and complaint.
- Increase tenant representation by expanding the authority of trained paralegals and law students to provide direct and comprehensive advocacy for tenants facing eviction.
- Enact statutory reforms that would better balance the respective rights and obligations of landlords and tenants. Reforms should include:
 - 1 Expanding required notice and grace periods;
 - 2 An expansion of the rights of tenants to withhold rent and use rent owed to secure improvements required by the building code or the lease;
 - 3 A clear articulation of the legal defenses available to tenants; and
 - 4 Setting minimum damages for retaliatory evictions.

Faced with similarly imbalanced eviction processes, other states have taken corrective measures to ensure that tenants receive the full measure of justice.

We hope this report will encourage Hawai'i's legislators, judiciary, and legal community to scrutinize the procedures and substantive law affecting landlord-tenant disputes in our state and address the disparate outcomes found in this study.



WHY STUDY EVICTIONS?

EVICTION PROCEDURES must carefully balance landlords' need for sufficient enforcement against tenants' need for sufficient protection. Each eviction results in significant financial and social costs to the evicted household and the surrounding community.

DIRECT FINANCIAL COSTS

Evictions lead to substantial financial costs for landlords, tenants, and the local housing market. Landlords incur significant legal fees if they hire an attorney for eviction proceedings, which tenants are often ordered to pay if judgment is entered against them. In reality, landlords typically cannot recover back rent or repair expenses from tenants who lack assets.

Once evicted, tenants must pay moving expenses and other costs associated with setting up a new residence, such as application fees and security deposits. In addition, evicted tenants usually lose their security deposits, and even their personal belongings, to cover the landlord's eviction costs. Tenants' credit scores suffer from evictions, making replacement housing harder to find. These expenses quickly add up.⁴

Evictions also tend to destabilize the local housing market, leading landlords to screen potential tenants more carefully or increase rent to cover their losses.

HOMELESSNESS

Studies indicate that homelessness and evictions are closely linked. The New York Department of Homeless Services found that

eviction was the most common reason families became eligible for homeless shelter services in New York City between 2002 and 2012.⁵ In 2011, the Massachusetts Interagency Council on Housing and Homelessness found that more than 45 percent of homeless or at-risk households cited eviction as the reason for their lack of stable housing.⁶ Similarly, a Hawai'i study found that approximately 18 percent of homeless shelter clients came from homes they had either owned or rented, but were unable to retain.⁷

Despite significant reductions in homelessness since 2016, Hawai'i still has the highest rate of homelessness per capita of any state in the nation by a significant margin.⁸

DOMESTIC VIOLENCE

Studies show that major life stressors, including evictions and homelessness, tend to increase rates of domestic violence.⁹ One survey revealed that 41 percent of responding domestic violence shelters and programs nationwide reported evictions and home foreclosures as a driver of increased demand for domestic violence services.¹⁰

The programs addressing these needs are chronically overburdened and underfunded. Recent surveys conducted by the National Network to End Domestic Violence indicate a critical shortfall in funding and resources to assist victims in Hawai'i.¹¹ Medical and legal expenses place the annual nationwide cost of domestic violence in the billions of dollars.¹²

Domestic violence leads to other substantial long-term harms to individuals and society.



Many victims experience chronic psychological problems that can lead to issues such as poor school performance and violent behavior.¹³

HEALTH

For vulnerable groups, including people with mental health problems, individuals with substance-abuse tendencies, and people living with HIV/AIDS, stable housing is essential for proper treatment and reduced reliance on emergency care.

Major life disruptions like evictions lead to increased substance abuse and exacerbate

other psychiatric disorders.¹⁴ Homelessness also leads to higher mortality rates and poorer health generally.¹⁵ Studies have found that homeless individuals who have been hospitalized are much more likely to be re-hospitalized than other patients.¹⁶ Homeless patients also require longer hospital stays and more expensive emergency care.¹⁷

CHILD DEVELOPMENT AND EDUCATION

Evictions destabilize children's lives, often producing educational challenges linked to changing schools. Studies have consistently



shown that classroom turnover results in slower academic progress and a lower high-school graduation rate.¹⁸

Other research highlights dislocation and instability as drivers of juvenile delinquency and later criminal activity,¹⁹ behavioral problems,²⁰ substance abuse,²¹ and homelessness later in life.²² Because of these elevated long-term costs, efforts to prevent evictions should prioritize protections for tenants with children.

PROCEDURAL JUSTICE

For more than 40 years, social psychologists have been studying the effect of judicial procedure on people's perceptions of the legal

system's legitimacy.²³ The most important insight emerging from this research is that public support for and trust in the legal system is directly related to the perception of procedural fairness.²⁴ If people believe that they received fair treatment in instances of personal contact with the legal system, they tend to perceive the overall legal system as fair.²⁵ The perception of fairness leads people to comply voluntarily with the outcomes of legal proceedings.²⁶ Indeed, perceptions of procedural justice appear to have an even greater effect on people's willingness to obey the law than fear of punishment.²⁷

Perhaps surprisingly, people's perceptions of procedural justice are most strongly affected not by whether they win or lose their cases,



but rather by whether they believe they had a chance to “tell their story.” This is true even when people know that their participation will have little or no effect on the ultimate outcome.²⁸

The perception of fairness is especially important for members of disadvantaged social groups, at least some of whom harbor relatively greater feelings of distrust and disrespect toward the legal system.²⁹ If people believe a system is fair and respectful, they tend to also believe that the system will work in their best interests in the long run, even though they may disagree with a particular short-term outcome. Moreover, research demonstrates that positive perceptions of procedural justice increase people’s willingness to engage with

systems of authority through activities such as voting and volunteering.³⁰

Hawai‘i’s eviction process should be examined through this lens. Studies in other states have identified programs and services that improve perceptions of procedural fairness, with a resultant increase in satisfaction among those who deal with the judicial system.³¹

This report contains a number of specific recommendations aimed at modifying the summary possession process and the legal systems that surround it. Implementation of these recommendations will work to augment the sense of procedural justice provided by the system and give tenants facing eviction a fighting chance.

METHODOLOGY



Ten students working with Lawyers for Equal Justice, the University of Hawai'i at Mānoa's William S. Richardson School of Law, and the Legal Aid Society of Hawai'i observed 205 District Court return hearings at the 'Ewa, Honolulu, Kāne'ohe, Kapolei and Wahiawā courthouses throughout the summer and fall of 2010. Subsequently, 25 additional observations of return hearings were conducted in Honolulu District Court in the spring of 2016. In order to buttress these observations, analysts at LEJ collected and analyzed two random samples of 500 summary possession cases from the Hawai'i State Judiciary's online Ho'ohiki database during the summer and fall of 2018. Both samples include cases from across the state; one covers the 10 years from 2008 to 2017, while the other is limited to cases filed in 2017.

2010 OBSERVATIONS

After receiving training in landlord-tenant law and court procedures, 10 law students worked in teams to attend return hearings and record what took place during the proceedings on standardized forms. The observers recorded information about:

- Attendance at court return hearings by landlords and tenants;
- Representation of landlords and tenants;
- Instructions to the parties by the presiding judge;
- Litigants' ability to communicate in English;
- Continuance requests;
- Defenses presented or attempts to present a defense;
- Length of the return hearing; and
- Disposition at the end of the return hearing.

Supervisors and observers met in weekly meetings to ensure that the collection of data was uniform and accurate. During the fall of 2010 and spring of 2011, the observers also reviewed the files for all of the cases observed in court to obtain information about final outcomes and other relevant details.

The 2010 observations included a group interview with District Court judges who presided over summary possession cases on O'ahu. Five students and one supervisor who had participated in the data collection conducted the interview. The judges were asked to share their thoughts about the strengths and weaknesses of the eviction process in Hawai'i and opportunities for improvement. After the interview, the judges received summaries of their comments for approval. Those summaries were then incorporated into this report.

2016 OBSERVATIONS

During the observations conducted in the spring of 2016, LEJ staff and volunteers observed an additional 25 return hearings in Honolulu District Court. The 2016 observations were more focused than the 2010 observations and were aimed at determining whether there had been significant changes in the rates of litigant representation or default judgments since 2010. Comments regarding summary possession procedures and practices were also solicited from the judiciary and from legal service providers.

2018 STATISTICAL ANALYSIS

In the summer of 2018, the Research and Statistics Office of the Hawai'i State Judiciary granted LEJ access to data on all Hawai'i eviction cases from 2008 to 2017. From the more than 25,000 cases in the data set, LEJ analysts pulled a random sample of 500 and retrieved more detailed information on these cases from the online court portal (Ho'ohiki). By carefully sorting these data and accounting for sampling error, statistically significant inferences were drawn about the overall state of landlord-tenant law in Hawai'i for the last 10 years.

Analysts then identified the roughly 2,400 cases filed in 2017 and pulled another random sample of 500 cases from this limited data set. Each individual docket was examined and sorted appropriately. This final analysis provides a definitive portrait of eviction court in Hawai'i as it currently exists.



SUMMARY POSSESSION PROCESS

COMPLAINT AND NOTICE REQUIREMENTS

To initiate the summary possession process, the landlord generally must give the tenant notice of a violation of the lease. The duration of required notice depends on the landlord's reason for seeking to regain possession of the property.

statutorily-required notice, and the tenant has not cured the violation or quit the premises, an eviction complaint may be filed. Hawai'i's District Courts have exclusive jurisdiction over summary possession actions.³⁸ Once the complaint is filed in a District Court, the Court

“IF THE TENANT DOES NOT APPEAR AT THE RETURN HEARING AND HAS NOT FILED A WRITTEN ANSWER TO THE COMPLAINT, THE TENANT IS DECLARED IN DEFAULT AND THE COURT WILL ISSUE A JUDGMENT FOR POSSESSION AND AN ORDER FOR EVICTION.”

If the tenant has stayed beyond the end of the lease term without the landlord's consent, the landlord may file an eviction action at any time within 60 days of the holdover, without giving notice.³² If the tenant has failed to pay rent, the landlord must issue a notice to cure or quit allowing the tenant to pay or move out within five business days.³³ For most other types of lease violations, the landlord must provide the tenant with a 10-day notice to cure or quit before a summary possession action can be filed.³⁴

To terminate a week-to-week lease, oral or written notice is required at least 10 days before the anticipated termination date;³⁵ to terminate a month-to-month lease, 45 days' notice is required.³⁶ Landlords must give 120 days' notice when contemplating voluntary demolition of the dwelling unit, conversion to a condominium, or conversion to a transient vacation rental.³⁷

Once a landlord has given the tenant the

will issue a summons informing the tenant that they must appear in court. A copy of both the complaint and the summons must be served on the tenant by someone other than the landlord who is at least 18 years of age.

RETURN HEARING

After receiving a properly served summons and complaint, the tenant must either file a written answer or appear in court at the time indicated in the summons for a hearing, called the return hearing. The return hearing process in Honolulu differs from the process followed in the rural O'ahu courts and other courts around the state.

In Honolulu, the return hearing is scheduled for five business days after service of the summons and complaint.³⁹ If the tenant does not appear at the return hearing and has not filed a written answer to the complaint, the

tenant is declared in default and the court will issue a judgment for possession and an order for eviction, called a “writ of possession,” effective “forthwith” (immediately).

If the tenant appears, the tenant is asked to admit or deny that the landlord is entitled to possession of the rental property. If the tenant admits that the landlord is entitled to possession, then the judge will enter judgment for the landlord and issue a writ of possession, granting immediate possession of the rented premises to the landlord. The admission and resulting eviction determination can happen in a matter of seconds.

Tenants who do not understand the import of this stage of the process may admit to the landlord’s allegations despite legitimate defenses to the eviction and, as a result, lose their homes and the ability to challenge the decision. If the tenant denies that the landlord is entitled to possession, the summary possession action is scheduled for a pretrial conference.

In the rural courts on O’ahu and in all courts on Maui and Kaua’i, a return hearing is scheduled on a particular day of the week following service of the summons and complaint (e.g., “on the second Thursday following date of service”).^{40 41} On Hawai’i Island, a return hearing is scheduled on a specified day (e.g., “Wednesday, November 21, 2018”).⁴²

Regardless of the location, the tenant will be asked at the return hearing to either admit or deny that the landlord is entitled to possession of the property. As in Honolulu, admission leads to immediate eviction. For all non-Honolulu cases, if the tenant denies the landlord’s claim, the Court will normally order the parties to same-day mediation by a court-appointed mediator. If no agreement is reached during mediation, a possession trial is generally scheduled for one week later.



PRETRIAL CONFERENCE IN HONOLULU

A formal pre-trial conference is scheduled only in the Honolulu District Court, and only if a tenant denies that the landlord is entitled to possession. At the pre-trial conference (a second court date after the return hearing), the parties first meet with a mediator to try to resolve their differences with the mediator’s help. If mediation fails, the parties will meet with the pretrial judge, who will schedule a trial. When possible, trials are generally scheduled within a week of the pretrial conference.

TRIAL

At trial, the parties present their evidence and the judge makes a decision based on the evidence



presented. The ultimate issue is whether the landlord proves they are entitled to possession of the rental property. If the tenant prevails at trial, no further hearings are scheduled. If the landlord prevails, a further trial on the issue of damages is scheduled for a later date. At issue in a trial on damages are the amount of rent and late fees owed, the cost of required repairs, and legal costs, including filing, service, and attorney's fees.

Most cases never make it to trial. However, for those that do, trial may be the stage of the summary possession process where legal counsel is most sorely missed. Without an advanced understanding of the preparation necessary for trial, the rules of evidence, and court procedures, unrepresented parties are at an enormous

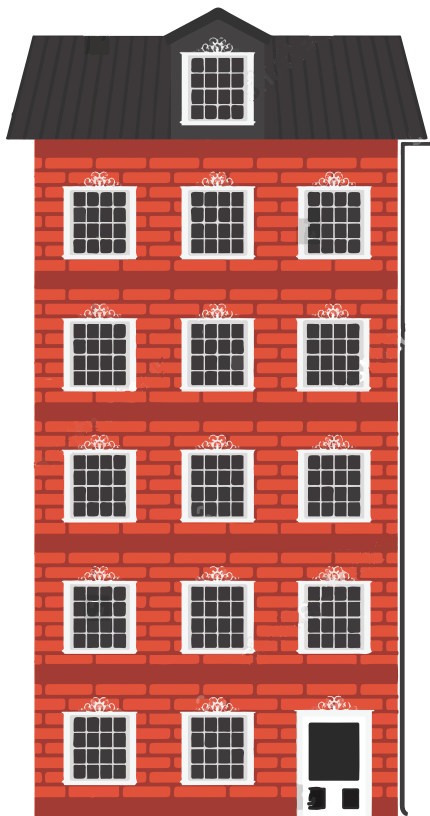
disadvantage to those represented by an attorney. Even when judges attempt to ensure fairness, it is nearly impossible to create a fair process in which one party is represented and the other is not.

EVICITION BY DEFAULT

If the tenant misses an appearance in court at any point in the process, the judge will award the landlord possession of the property and will grant other relief sought in the complaint by default. If the tenant did not appear in court for a good reason and has a defense to the complaint, the tenant may file a motion asking for the default to be set aside. In these cases, the tenant must also file a motion to stay the writ of possession to remain in the premises pending hearing.

SUMMARY POSSESSION PROCESS

Called “summary possession” because of the truncated process it entails, the eviction procedure established in Chapter 521 of the Hawai‘i Revised Statutes (known as the “Residential Landlord-Tenant Code”) is the only legal device available for private landlords seeking to evict residential tenants.⁴³ In order to facilitate the rapid repossession of property, summary possession actions are bifurcated proceedings in which determination of which party is entitled to possession of the housing unit is expedited and separated from later determination of any damages owed.



LANDLORD

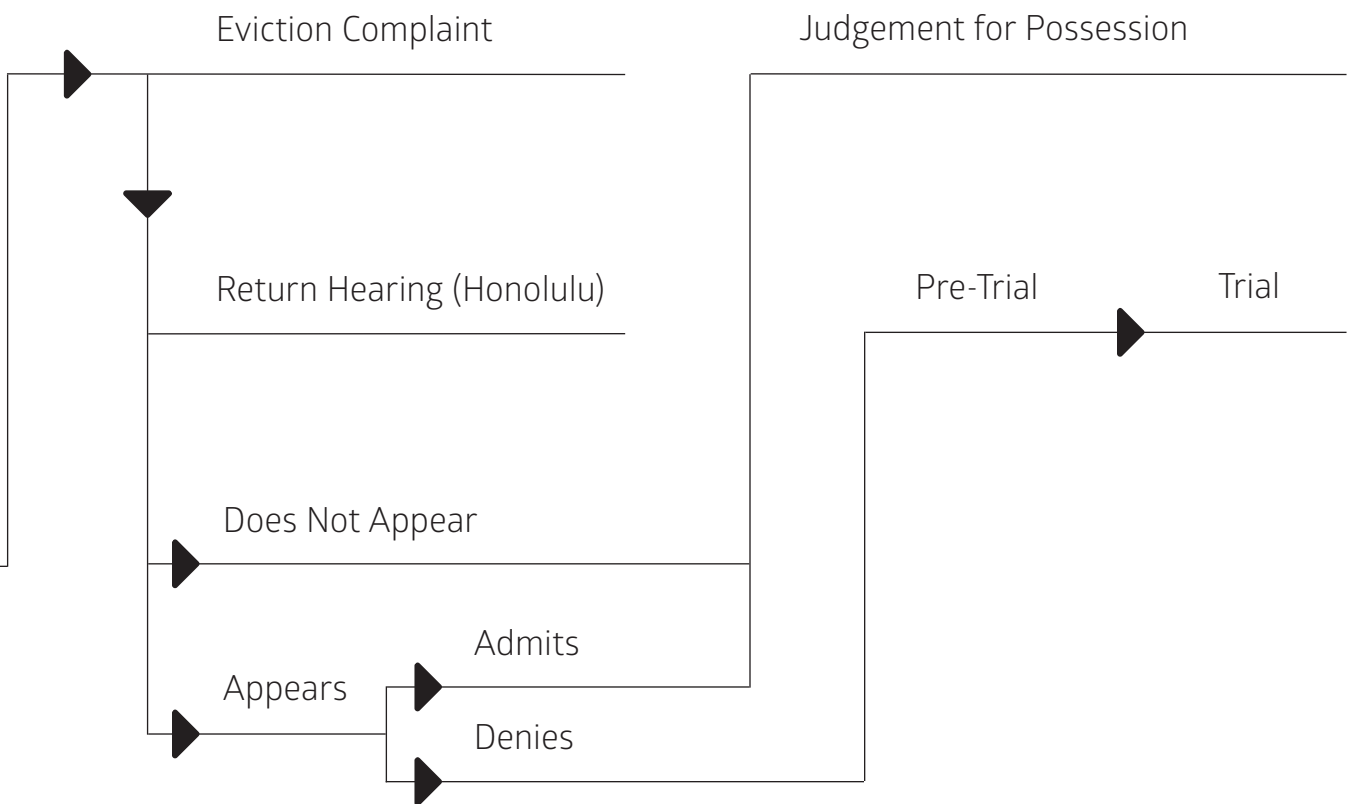
Notice of Violation

TENANT

Non-Compliance

Compliance

However, the eviction process is also intended to protect tenants from wrongful evictions. Summary possession proceedings must therefore balance the need to efficiently return possession of real property to landlords with the need to ensure that tenants are not prematurely forced out of their homes. Without adequate safeguards, tenants become vulnerable targets for abuse during eviction proceedings.



LANDLORD GROUNDS FOR SUMMARY POSSESSION

Landlords may seek to evict a tenant for various reasons including:

- Failure to pay rent;
- Material failure to maintain or unlawful use of the leased premises;
- Violation of house rules;
- Abandonment (when a tenant clearly acts in a manner consistent with the intention of ending the tenancy); and
- Holding over (staying after the expiration of the lease term).

Typically, tenants must be provided with an opportunity to pay the rent within five days of receiving written notice of non-payment, and an opportunity to cure other types of lease violations within 10 days of receiving notice.

In summary possession cases, the landlord (or their agent) is the plaintiff and must be able to prove all of the following elements:

- 1 Creation of a landlord-tenant relationship: That the tenant either rents or occupies property belonging to the landlord;
- 2 Grounds for summary possession: That one of the grounds for summary possession discussed above (typically, a violation of the lease agreement) applies;
- 3 Provision of the required written notice: That the required written notice to the tenant has been provided;⁴⁴ and
- 4 Service of complaint and summons: That someone other than the landlord who is at least 18 years of age served the tenant with the complaint and summons. If the tenant cannot be found, the court may authorize notice of the complaint by posting of the complaint at the premises.⁴⁵



REQUIRED NOTICE PERIODS

Type of event:

- Unilateral termination of rental (“no-fault eviction”)
- Holdover beyond the lease term
- Improper use, generally
- Improper use due to:
 - Tenant’s violation of health and safety state or county laws;
 - Purposeful destruction or extensive damages to the premises
 - Caused or threatened injury to a person
- Failure to pay rent

Type of notice required (prior to filing summary possession complaint):

- 10 days’ notice for a week- to-week rental; 45 days’ written notice for a month-to-month rental
- No notice required
- 10 days’ notice and opportunity to remedy
- No notice or opportunity to remedy required⁴⁶
- 5 business days’ notice and opportunity to pay in full



TENANT DEFENSES TO EVICTION

A personality conflict between a landlord and a tenant may be the source of great frustration for both parties, but it is not grounds for eviction; neither is a lease violation that is insignificant or immaterial, such as a tenant parking in the wrong spot on one occasion. Such scenarios illustrate the importance of the notice requirement—in some cases, tenants may not have understood their obligations under the lease or may disagree with the landlord regarding the nature or extent of those obligations. A landlord cannot surprise a tenant with eviction, and instead must provide notice of any violation that occurs and an opportunity to cure, giving the parties a chance to resolve issues before the drastic action of eviction is taken.



When an eviction action proceeds, tenant defenses to eviction may include the following:

- The landlord failed to provide required written notice and opportunity to comply.
- The landlord failed to properly serve the summons and complaint.
- Full rent payment has been made.
- A breach of the implied warranty of habitability: Serious structural, electrical, sanitary, and safety problems left uncorrected by the landlord breach the implied warranty of habitability.⁴⁷
- Repair and deduct reimbursement: If the landlord is given written notice of a physical problem with the dwelling and does not fix the problem within five business days, the tenant may fix the problem and deduct the repair costs from the amount of rent owed.⁴⁸
- In-kind payment: If the tenant can prove that they provided agreed-upon services in lieu of rent, then they can claim an in-kind payment reduction from the amount of rent owed.
- Retaliatory eviction or rent increase: A landlord may not retaliate—by eviction or rent increase—against a tenant who reports a violation to a government agency, requests repairs to the dwelling, or requests the landlord’s compliance with any provision of the Landlord-Tenant Code.⁴⁹
- Illegal lockout or utility shut-off: A landlord may not purposely lock a tenant out of the tenant’s unit or shut off utilities without cause or a court order.⁵⁰ Doing so may entitle the tenant to money damages from the landlord.⁵¹
- Non-violation or remedy of alleged breach: A tenant can nullify an eviction filing by showing that that an alleged breach of the rental agreement did not occur or was remedied within the required notice period.
- Discriminatory eviction: Landlords are prohibited by federal and state laws from discriminating against tenants on the basis of certain protected categories such as race, sex, familial status, religion, national origin, disability, age, or HIV status.⁵²

FINDINGS

Analysis of the study data and interview comments resulted in three key findings:

- 1 There is a stark disparity between the number of landlords and the number of tenants who are represented by legal counsel, and while landlords are statutorily permitted to appear through their non-lawyer agents,⁵³ tenants must appear personally or through legal counsel;
- 2 Tenants lack information necessary to represent themselves in summary possession proceedings; and
- 3 There is a severe imbalance in eviction proceeding outcomes in favor of landlords.

REPRESENTATION BY COUNSEL

The 2010 court observations revealed that tenants were represented by an attorney in only 4 percent of cases while 70 percent of landlords were represented—figures that are consistent with both the follow-up observations completed in 2016 and the 1,000-case analyses conducted in 2018. These figures indicate a severe imbalance between landlords’ and tenants’ access to representation, and, by extension, access to justice.

As discussed earlier under “Tenant Defenses to Eviction,” tenants may have numerous valid defenses to summary possession. However, even in cases where tenants do not have a statutory or common law defense to an eviction complaint, the presence of a knowledgeable attorney is still vital. Legal representation can ensure that relevant issues are presented to the court, leading to reduced damages (monetary penalties the tenant is required to pay) and more time for tenants to find a suitable new living situation before they are required to move out.

The 2010 court observations showed that return hearings often conclude in less than two

minutes, and the 2016 observations corroborated this finding; tenants must immediately understand the consequences of admitting or denying the landlord’s allegations and respond appropriately. Any misstep increases the risk of a judgment in the landlord’s favor.

Various studies support the conclusion that adequate legal representation can significantly change the outcome of summary possession proceedings. In a 2012 randomized controlled study conducted in a Massachusetts District Court, researchers discovered that tenants were twice as likely to retain possession of their housing units in eviction cases when represented by counsel.⁵⁴ These results were achieved despite landlord representation rates of 86 to 96 percent.

Similarly, a study of evictions in Hawai‘i public housing between 1966 and 1985 demonstrated that legal representation for tenants decreased the likelihood of eviction by 39 to 50 percent.⁵⁵ The massive boost that represented tenants receive reflects the complexity of the legal proceedings and the effectiveness of competent counsel.

INFORMATION DISPARITY

The 2010 courtroom observations and interviews also revealed that landlords were vastly better informed about the summary possession process than the tenants they were taking to court. The informational resources available to unrepresented tenants were sparse, incomplete, and inaccessible in comparison to the wealth of knowledge and strategy wielded by landlords. Uninformed, self-represented tenants reduce court efficiency and are unable to effectively advocate for themselves.

The courtroom observations conducted in 2010 indicated a significant degree of confusion by unrepresented tenants in a number of procedural areas, including:

- The process for calling cases and the response expected from litigants;
- The practical result of using terms such as “admit” and or “deny;”
- When and how affirmative defenses should be asserted;
- How to introduce documents or other material into evidence;
- How to use family members or other witnesses to assist in establishing facts; and
- The process for accessing translation services (to which every litigant has the right) and other forms of assistance.

Although some District Court judges were observed attempting to assist unrepresented tenants by slowing down proceedings or explaining court processes, the burden of tenant education should not fall on individual judges. When interviewed for this study, judges commented that unrepresented parties often lack knowledge about court procedures, their rights, and their responsibilities. Judges further

observed that litigants who lack knowledge often bog down the courtroom, and their inability to advocate for themselves makes it difficult for judges to determine whether or not they have meritorious defenses.

Since 2010, the State Judiciary, the Hawai‘i Access to Justice Commission, the Hawai‘i State Bar Association, and a number of legal nonprofits have collaborated to increase the informational resources available to self-represented tenants. Significant progress has been made on this front:

- Self-help centers were established in every circuit across the state, including “Access to Justice Rooms” in the First Circuit, in which volunteer attorneys provide limited legal advice to unrepresented litigants involved in civil cases;
- Computer workstations were set up in court buildings to provide unrepresented litigants with access to interactive legal software;
- The Hawai‘i State Library System made this software available in public libraries and began hosting “Know Your Rights” seminars related to landlord-tenant law;
- Online informational videos were created to publicize basic information regarding the eviction process and self-representation in various languages; and
- Trained volunteers began to guide unrepresented litigants through court proceedings in a “Court Navigator” pilot program.

However, it is important to note that tenants may not be able to take advantage of these new sources of information in the context of expedited summary possession proceedings. Return hearings are often scheduled within



one week of service of the summons and complaint. Tenants must therefore access and act upon relevant information within days of their receipt of service, a demand that is often unrealistic for families struggling to make ends meet. As evidenced by the high percentage of tenants who do not come to court at all, many ultimately do not receive the benefit of services such as in-court self-help centers.

DISPARATE OUTCOMES

In 97 percent of the 2010 observations, the landlord regained possession of the premises through the summary possession process. The court records scrutinized in 2018 confirm the plausibility of this figure on the state level—tenants’ prospects in eviction court have not improved significantly over the last eight years.

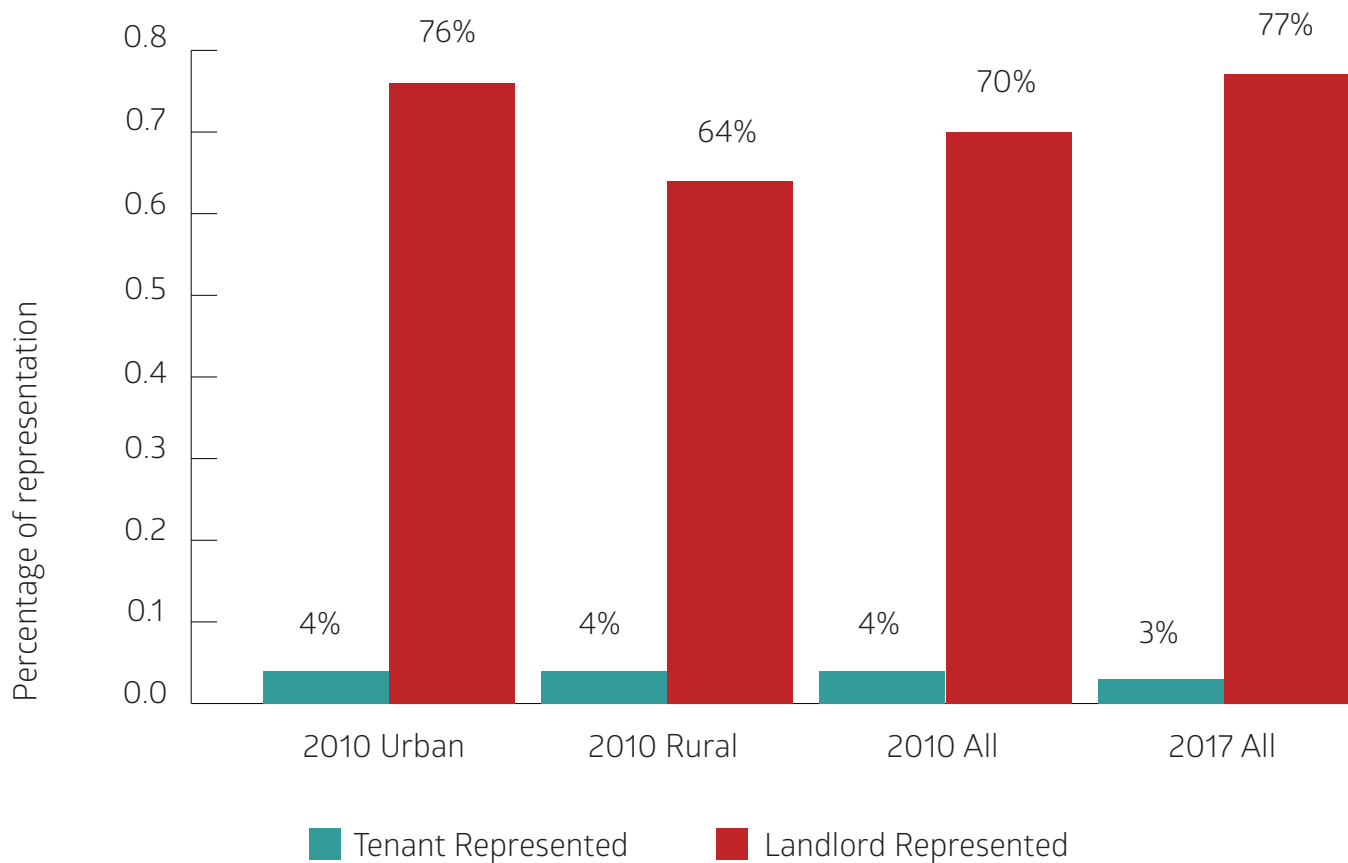
In addition, District Courts across the state continue to be plagued by high rates of default judgments. In over 45 percent of the cases

observed in 2010 and 2016, tenants did not file a written answer and did not appear in court for their return hearing, resulting in an automatic judgment for the landlord. LEJ’s most recent statistical analyses demonstrate that this figure is consistent with the statewide 10-year average. At 48 percent, the 2017 statewide default rate was even higher. The vast majority of these defaults take place in the First Circuit (the island of O’ahu). In 2017, default rates in the Second and Third Circuits (covering Maui and Hawai’i Counties, respectively) came in at about 30 percent. However, the First Circuit’s default rate of more than 54 percent—almost 10 full points above 2010 levels—drove the statewide rate upwards.

As the interviewed judges observed, justice is better served when judges are able to decide a case on its merits, rather than when they are forced to grant judgment based on a party’s failure to appear.

PARTY REPRESENTATION - 2010 OBSERVED HEARINGS AND 2017 CASE DOCKETS

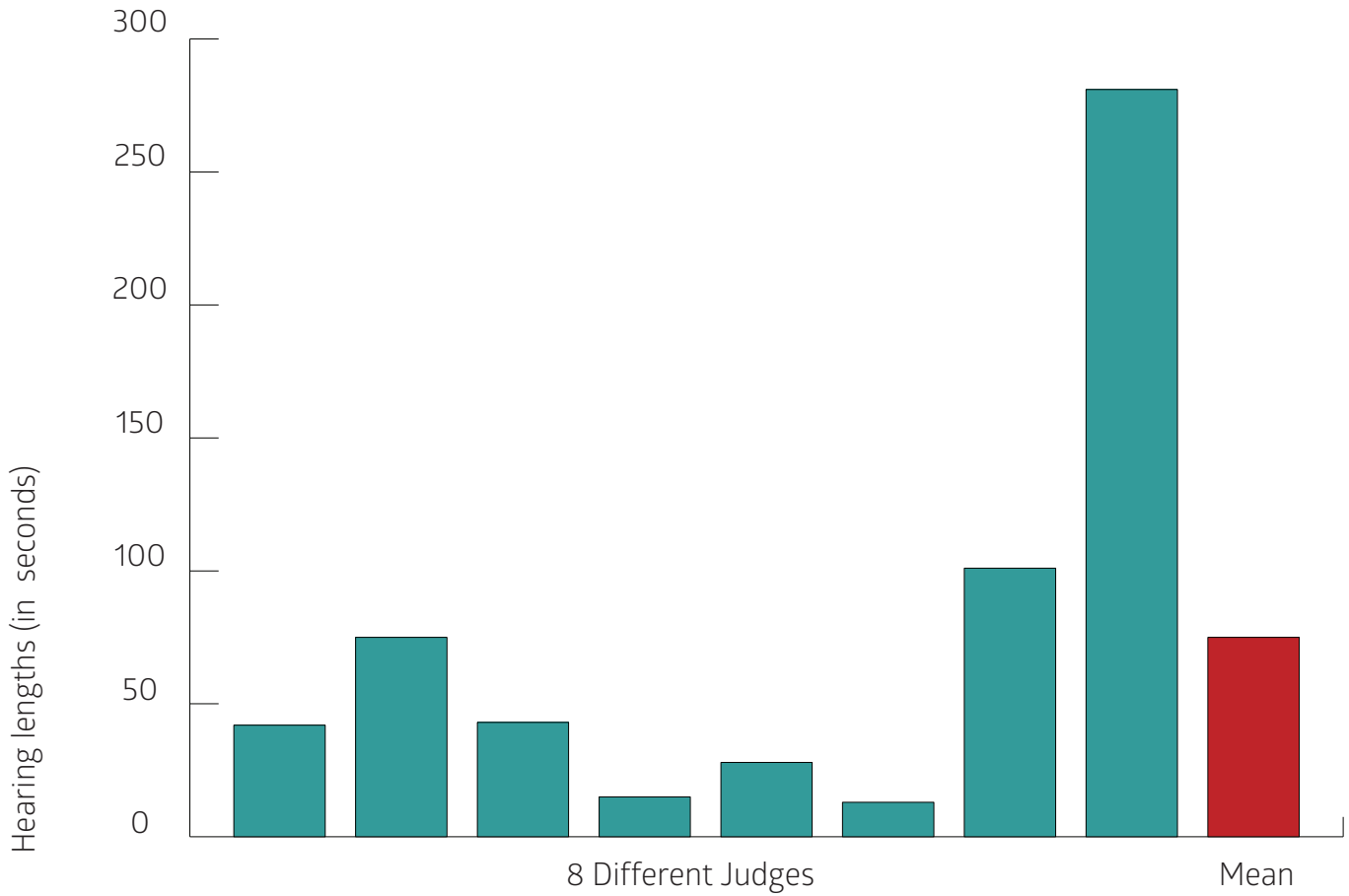
O'AHU SIDE-BY-SIDE COMPARISONS



Regardless of fluctuations in landlord representation, tenant representation in courts across O'ahu remained consistently low.

The rate of tenant representation on O'ahu has dropped even further since 2010, while the rate of landlord representation has increased, approaching 80 percent.

AVERAGE HEARING LENGTHS - 2010 OBSERVED HEARINGS

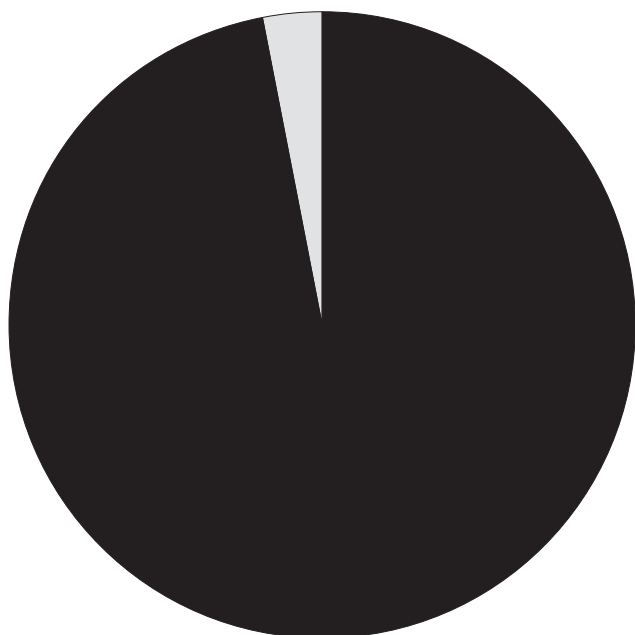


On average, return hearings—which often result in a determination that tenants must immediately leave their homes—lasted just 1 minute.

CASE OUTCOMES - 2010 OBSERVED HEARINGS AND 2017 CASE DOCKETS

2010 (O'AHU)

3% Did Not End in Eviction



97% Ended in Eviction

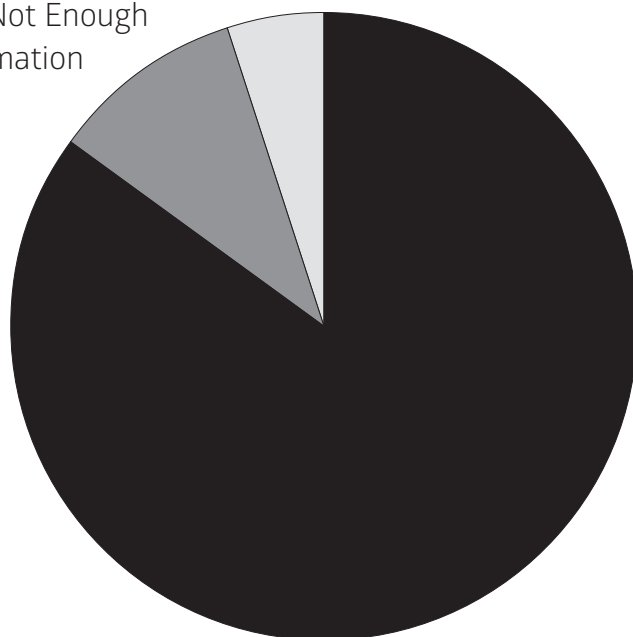
In 97 percent of the 2010 observations, the landlord regained possession of the premises through the summary possession process.

2017 (STATEWIDE)

In 10 percent of the 2017 cases, there was not enough information in the court records to determine final outcome. 85–95 percent of cases ended in eviction.

5–15% Did Not End in Eviction

10% Not Enough Information



85–95% Ended in Eviction

RECOMMENDATIONS

Hawai'i's current Landlord-Tenant Code, and the procedures in place to enforce it, succeed in efficiently returning possession to landlords. However, the status quo operates at the expense of tenant rights and at significant cost to local communities. The evidence presented in this report attests to the fact that improvements must be made. In the following pages, LEJ sets out a positive vision for the future.

INCREASE INFORMATION AVAILABLE TO TENANTS

REVISE THE SUMMONS FORM AND RESTRUCTURE THE RETURN HEARING PROCESS

More than half of all return hearings in Honolulu District Court result in default judgments for landlords. The statewide default rate appears to hover around 45 percent. Default judgments are not in the interest of justice⁵⁶ and erode trust in the judicial process. The high default rate may be due to tenants' failure to understand the need to appear. It is partially attributable to some tenants' inability to appear because of transportation challenges or conflicting employment, education or childcare responsibilities. Legal service providers also cite confusion over the return hearing date as a common reason why tenants fail to appear at their hearings. Many tenants either do not understand that they are permitted to file an answer instead of appearing or are unable to prepare an answer because no guidance for doing so is provided.

Recommendation: Amend the District Court Summons forms so that tenants know when they need to appear in court. The current form for the First Circuit, District Court Form #1DC50, indicates only that return hearings for eviction proceedings in Honolulu take place five business days after the date of service.⁵⁷ Due to delays between the time of filing and the time of service, the date stamped on the summons and complaint is often different than the date on which the tenant actually received the documents; many tenants must perform multi-step online searches of court records just to determine the date from which they should start counting business days. This method of scheduling hearings unnecessarily requires tenants to conduct online research and then calculate hearing dates while accounting for weekends and holidays, all to simply avoid default. In certain

court proceedings where litigants must often appear self-represented, and in summary possession cases on the island of Hawai'i, summons forms identify the exact date and day of the week on which the hearing will be held rather than require the defendant to count days from service with no confirmation that they have done so correctly.^{58 59} Form #1DC50, as well as the summons forms for Maui and Kaua'i Counties (#2DC50 and #5DC50) should be amended to this end.

Recommendation: Circulate additional information with the summons and complaint. Although court rules⁶⁰ allow a tenant to file a written answer with the court clerk in lieu of appearing in court at the time of the return hearing, the courts' summons form barely mentions this option and does not explain to tenants how written answers work. Along with the summons form, the courts should provide:

- 1 A short brochure that describes the eviction process;
- 2 A warning that failure to file a written answer to the complaint or to appear at the return hearing will result in a default judgment and an explanation of the consequences of a default judgment;⁶¹
- 3 A checklist of possible defenses and explanations of each defense so that tenants have a better opportunity to evaluate their options and a better chance to exercise their rights;
- 4 A model written answer in plain English and instructions on how to file an answer in lieu of appearance at a return hearing;⁶²
- 5 Information in multiple languages about the right to interpreter services and the process for requesting language assistance; and
- 6 Contact information for nonprofit agencies that may provide assistance or representation.⁶³

These materials would help tenants avoid defaults, identify their specific defenses, and represent their cases more clearly to the courts.





EXPAND AND STANDARDIZE JUDICIAL INSTRUCTIONS

During the observed return hearings, instructions given by judges to litigants differed from judge to judge. These instructions were often the only guidance given to unrepresented parties. While some judges spent considerable time providing detailed information on courtroom processes, others provided minimal information. Often, the depth of instruction appeared to influence the ability of unrepresented tenants to understand the process and present their cases.

Recommendation: Judges should provide uniform introductions about the eviction process before beginning the day's return hearings. A consistently delivered "script" regarding the return hearing and eviction process would ensure that all tenants have the same opportunities to represent themselves. For example, the California Center for Judicial Education and Research maintains a "Benchguide" for California judges who preside over Landlord-Tenant litigation. The Benchguide recommends that judges use a script to introduce their unlawful detainer (summary possession) trial calendars.⁶⁴ The script outlines the general process governing trials and the presentation of evidence. A similar script explaining return hearing procedures in Hawai'i and the legal significance of admitting or denying allegations in a complaint would assist unrepresented litigants in navigating summary possession hearings.

COORDINATE EXISTING TENANCY PRESERVATION RESOURCES

Resolution of the underlying issues affecting a tenancy can often resolve the legal dispute between landlord and tenant. Greater coordination between legal service providers and social service organizations providing resources to tenants—such as public benefits, “shallow rent subsidies”⁶⁵ or other rental assistance programs, domestic violence victim services, and relocation assistance services—would reduce the necessity and frequency of eviction actions.

Recommendation: The judiciary, the legislature, community organizations and state and local government agencies should develop a program to provide holistic services to tenants facing eviction with the goal of preserving tenancies whenever possible. Since many summary possession complaints allege failure to pay rent, such a program would work with tenants to pursue all resources that might be available to prevent a rent payment default. Massachusetts has a homelessness prevention program called the Tenancy Preservation Program (TPP).⁶⁶ The TPP operates within the housing courts and provides social workers who work with tenants facing eviction as a result of behavior related to a disability (including mental illness, intellectual disability, substance abuse, and aging-related impairments). In consultation with the Housing Court Department, the TPP functions as a neutral party and works with property owners and tenants to determine whether disabilities can be reasonably accommodated and tenancies preserved.





INCREASE TENANT REPRESENTATION

Almost no tenants have legal representation. In contrast, roughly 70 percent of landlords are represented by legal counsel, and many others are effectively represented by knowledgeable property management “agents” who can bring eviction suits in their own names. This disparity points to a severe imbalance in access to representation that undermines the achievement of procedural and substantive justice. Studies indicate that represented tenants are 6 to 10 times more likely to win in court than their unrepresented counterparts.⁶⁷

AUTHORIZE LAY ADVOCACY FOR TENANTS

Hawai‘i already permits non-lawyers to represent certain types of litigants in certain types of court proceedings. For example, Hawai‘i law mandates the appointment of guardians *ad litem*, who are not required to be attorneys.⁶⁸ Similarly, a landlord’s agent, typically a property manager, is permitted to represent the actual landlord in eviction proceedings. There is no corresponding right to non-attorney representation for tenants.

Recommendation: Hawai‘i courts should amend existing restrictions and permit lay advocates to assist tenants in eviction proceedings. Other states have created lay advocacy programs specifically for housing courts. Over the last several years, the Hawai‘i Access to Justice Commission successfully lobbied for the creation of a “navigator” program similar to that existing in the New York City Housing Court to help tenants explore their legal options and provide the court with background information on each case. The recent implementation of this program represents a major step in the right direction; it should be supplemented with substantive representation for tenants. Models to pursue include:

- A tenant advocate program that would allow trained paralegals to provide tenants with full representation under the supervision of legal aid providers or private members of the bar; and
- A program similar to the Washington State “Limited License Legal Technicians” program that permits licensed paralegals to represent tenants for a fee without the supervision of an attorney.⁶⁹



AUTHORIZE LAW STUDENT REPRESENTATION

In Hawai'i, law students may not represent clients in court unless they are involved in a clinical training program with a supervisor present in court.⁷⁰ Hawai'i's limitations on law-student practice are more restrictive than those in many other states.

Recommendation: Hawai'i courts should amend existing rules to expand student practice rights. Many law schools across the country assist unrepresented litigants in a variety of ways. In Massachusetts, students may make court appearances without the presence of their supervising attorney,⁷¹ which significantly improves the efficiency of clinical programs. The Washington, D.C. program "DC Law Students in Court" allows students to provide direct representation for litigants as part of a two-semester clinical course.⁷² An expanded Landlord/Tenant law school clinic could better help unrepresented litigants by allowing trained students to meet a portion of the demand for tenant advocates in eviction cases—providing effective representation for tenants and meaningful advocacy opportunities for law students.

IMPLEMENT TENANT SCREENING AND CREATE A TENANT REPRESENTATION PLAN

Cities and states across the country have acknowledged that the inaccessibility of legal counsel for most tenants represents a major impediment to justice. Accordingly, many jurisdictions have begun to develop programs aimed at tackling this problem head-on. Washington, D.C.⁷³ and California⁷⁴ have set up pilot programs that significantly expand the resources dedicated to providing representation for tenants in housing court. Meanwhile, New York City⁷⁵ and San Francisco⁷⁶ have passed legislation guaranteeing the right to a lawyer for all low-income tenants facing eviction. These state and municipal actions are premised on a recognition of the fact that housing is a basic human need, and that evictions threaten livelihoods on the most basic level. LEJ strongly supports this approach.

Recommendation: Implement an in-court screening process to identify tenants with valid defenses to eviction. The Legal Aid Society of Hawai'i (LASH) currently utilizes such a screening process, but it has limited resources and must apply strict income requirements in order to offer its services. Screening services should be available at the courthouse so as to maximize effectiveness. Since 2010, informational resources have been expanded to assist unrepresented tenants in better understanding the summary possession process and their legal rights. Initial screening should be added to these resources.

Recommendation: Design and price a plan whose goal is to provide legal advice to all tenants involved in the eviction process and full representation for those with valid defenses. Interested legal and social services providers should partner to design a comprehensive plan that should include a budget and committed funding to help tenants analyze the defenses and counterclaims available to them, receive instructions about court processes and timeframes, receive advice on overcoming the barriers they will likely confront throughout the process, and receive full representation where valid defenses or counterclaims appear to exist.

The plan should include initiatives that will support an unbundled practice by both the interested legal services providers as well as members of the private bar. Service hours should accommodate tenants whose work schedules might conflict with traditional intake hours. The program should include access to necessary translation services.

RECOMMENDATIONS

ENACT REFORMS TO BETTER BALANCE LANDLORD/TENANT RIGHTS & OBLIGATIONS

Hawai'i's sparse case law and low volume of published judicial opinions leaves many landlord obligations and tenant rights unclear.

ENACT A STATUTORY GRACE PERIOD FOR NON-PAYMENT OF RENT

In 65 percent of observed cases, non-payment of rent was the only issue. Typical leases in Hawai'i permit a five-day grace period for non-payment of rent, but there is no statutorily established grace period.

Recommendation: Establish a statutory grace period for non-payment of rent. A grace period for non-payment of rent would decrease the incidence of non-payment issues going to court, leading to fewer summary possession cases and fewer evictions. Grace periods permit tenants critical time to gather required resources or work with state or federal administrative agencies to overcome delays in payments they should have received. Other states have recognized the value of less punitive late payment laws. For example, in Maine, rent is not considered late until 15 days after the date the rent is due.⁷⁷ Connecticut has a nine-day grace period for non-payment of rent for residential leases.⁷⁸ Limited grace periods ensure that landlords get paid while allowing well-intentioned tenants to stay above water.

EXTEND NOTICE PERIODS

Hawai'i's Landlord-Tenant Code only requires landlords to give tenants a five-day notice to cure or quit for failure to pay rent⁷⁹ and a 10-day notice to cure or quit for failure to maintain a dwelling unit or for improper use⁸⁰ prior to filing suit for summary possession. Notice requirements allow landlords to recover possession of housing units quickly and limit their financial losses; they also serve to protect tenants' ability to marshal their legitimate defenses or secure alternative affordable housing.

Recommendation: The Landlord-Tenant Code should be amended to increase the mandatory notice periods for evictable offenses. Laws in Connecticut and Massachusetts provide models for this adjustment. In Connecticut, landlords must give tenants a 15-day notice to quit when the tenant’s conduct “materially affects the health and safety of the other tenants or materially affects the physical condition of the premises, or if there is a material non-compliance by the tenant with the rental agreement . . . and the landlord chooses to evict based on such noncompliance.”⁸¹ In Massachusetts, landlords must give tenants 14 days’ notice to quit for nonpayment of rent.⁸² To evict a tenant for any other reason, landlords in Massachusetts must give 30 days’ notice.⁸³ Hawai‘i should follow the examples set by other progressive states and extend its notice periods.

CODIFY TENANT PROTECTIONS AGAINST LANDLORD ABUSE

While summary possession allows landlords to enforce a tenant’s responsibilities, Hawai‘i’s Landlord-Tenant Code does not give tenants many vehicles through which to enforce a landlord’s responsibilities. Hawai‘i permits a tenant to terminate a lease agreement if the tenant is deprived of “a substantial part of the benefit and enjoyment of the tenant’s bargain under the rental agreement,” provided the landlord does not remedy the situation within a week after receiving the tenant’s written notification. When the condition of the residence is “uninhabitable or poses an imminent threat to the health or safety of any occupant,” no notice is required for the tenant to terminate the rental agreement.⁸⁴ However, termination of a rental agreement is often not an effective remedy: for many families, the costs of moving are prohibitively high, and alternative accommodations may be difficult to arrange in a timely manner.

Recommendation: The Landlord-Tenant Code should be amended to recognize the tenant’s remedy of withholding rent. Adoption of this provision would lead to more habitable dwellings while also counterbalancing the power discrepancy inherent to the landlord-tenant relationship. Other states have made successful inroads to this end. For example, Connecticut permits tenants to withhold rent where landlords violate building and housing codes materially affecting health and safety; fail to maintain the habitability, cleanliness and safety of the residence; fail to provide necessary upkeep of facilities, appliances and elevators; or fail to provide adequate trash removal, hot water and heat.⁸⁵ The express purpose of the tenant’s remedy of withholding rent is “to ensure that the landlord’s duties are performed.”⁸⁶

RECOMMENDATIONS

Recommendation: Codify the implied warranty of habitability. In California, the legislature has recognized a breach of the implied warranty of habitability as a valid defense to an eviction suit. If a substantial breach is found—that is, if the tenant’s unit is uninhabitable due to the landlords’s negligence—the court is required to award possession to the tenant as the prevailing party, provided the tenant pays any rent due based on the reduced market value of the rental property in its untenable state.⁸⁷ Hawai‘i should similarly codify the implied warranty of habitability defense. Hawai‘i’s Supreme Court has acknowledged that landlords who fail to maintain habitable dwellings cannot evict tenants from those dwellings.⁸⁸ The legislature should follow suit and pass the implied warranty of habitability defense into law.

EXPAND THE TENANT'S REMEDY OF REPAIR AND DEDUCTION

The Hawai‘i Landlord-Tenant Code includes the “tenant’s remedy of repair and deduction,” which allows tenants to make repairs to their unit to address health or safety violations and deduct the cost of the repairs from their rent (after notice to the landlord goes unanswered for five business days). However, compared to other states, Hawai‘i’s repair and deduction limits are quite low at \$500, or one month’s rent, for any six-month period.⁸⁹ These limits have not been updated for more than two decades.

Recommendation: Hawai‘i should adopt a higher cap on the repair and deduction remedy. If caps on the repair and deduct remedy are too low, tenants may end up shouldering the cost of repairs for units they are only living in briefly and losing their investment upon termination of the tenancy. Realistically, low caps on the repair and deduction remedy force many tenants to live with unaddressed health and safety violations. In Massachusetts, tenants may deduct up to four months’ rent for health or safety repairs.⁹⁰ New York law simply allows tenants to deduct “reasonable costs” of repairs after notifying and giving the landlord time to correct the problem.⁹¹ Hawai‘i should adopt a similar provision.

ESTABLISH PRIMA FACIE REQUIREMENTS FOR A VALID SUMMARY POSSESSION FILING

Owners of rental properties are required to pay a General Excise Tax (“GET”) on rent received; however, some landlords illegally rent properties without paying taxes. Others attempt to force tenants out without providing them with the required warnings.

Recommendation: Hawai'i's Landlord-Tenant Code should clearly set forth the *prima facie* elements needed to support an eviction filing, including proof of ownership, GET compliance, and fulfillment of notice requirements. Courts should specifically determine that each of these elements has been established before awarding possession to a landlord, even where tenants fail to appear. This remedy would serve the dual purpose of encouraging tax code compliance and discouraging frivolous and illegal eviction efforts by landlords who don't care to respect their tenants' rights. Landlords who use the taxpayer-funded court system to evict tenants should be required to prove they are complying with their tax-related obligations.

ARTICULATE AND CLARIFY TENANT DEFENSES TO EVICTION

Defenses are not clearly articulated in the Hawai'i Landlord-Tenant Code. In fact, the Code does not even include the word "defenses." Rather, it addresses general defenses available to tenants in language that is neither explicit nor user-friendly.⁹² As a result, the code is skewed in favor of landlords, whose right to bring eviction actions is established in great detail.⁹³

Recommendation: Hawai'i's Landlord-Tenant Code should clearly articulate tenants' right to assert permissible defenses. For example, Connecticut's code explicitly states that tenants in summary process proceedings "may present any affirmative legal, equitable or constitutional defense that the tenant may have."⁹⁴ New York's code states that an "answer may contain any legal or equitable defense, or counterclaim,"⁹⁵ while Illinois allows defendants to raise all defenses germane to the purpose of the proceeding.⁹⁶ Similarly, Hawai'i's code should explicitly assert the right of tenants to defend themselves.

Recommendation: Hawai'i's Landlord-Tenant Code should specify defenses that may be raised in summary possession cases. The lack of binding legal authority on the availability of specific defenses is a disadvantage to defendants.

In addition to the defenses listed earlier in this report (see "Tenant Defenses to Eviction," page 20), some states recognize an equitable defense where a tenant is unable to pay rent due to forces beyond their control, such as a delay in receiving public benefit checks. Under these circumstances, if the landlord will not suffer irreparable harm by permitting the tenant to remain in possession of the unit, and can receive rent at a later date, the eviction may be stayed. Case law in both Connecticut⁹⁷ and Massachusetts⁹⁸ clearly articulates the availability of this defense. Hawai'i case law has no equivalent, leaving many tenants with no obvious alternative to eviction.

ESTABLISH MINIMUM DAMAGES FOR RETALIATORY EVICTIONS

Providing protections for tenants who attempt to hold abusive landlords accountable is essential. It is illegal for landlords to file eviction complaints in retaliation against tenants who request repairs or report safety or health code violations to government agencies. However, Hawai'i's Landlord-Tenant Code currently puts the burden on tenants who have suffered retaliatory eviction to prove they are entitled to damages.⁹⁹ Proving “actual damages sustained” can be highly difficult. The result is often that tenants who have been retaliated against do not receive their due, and landlords who retaliate do so with relative impunity.

Recommendation: The legislature should set a floor for retaliatory eviction damages. Clearly, retaliatory evictions are always damaging—at the very least, tenants must spend time and money fighting in court, and, as previously noted, there are severe consequences associated with physical displacement. An established minimum amount of damages awarded to tenants for such evictions would serve to discourage landlords from retaliating against tenants, speed up damages trials, and give tenants more consistent judgments. As an example of a workable minimum damages statute, Massachusetts guarantees tenants who have suffered retaliatory evictions the equivalent of one month's rent plus the costs of suit, including a reasonable attorney's fee.¹⁰⁰

DELAY THE EXECUTION OF WRITS OF POSSESSION

Hawai'i's Landlord-Tenant Code provides that after a judgment and writ of possession is issued, there is no delay before the sheriff can serve the writ, remove the tenant, and return possession to the landlord.¹⁰¹ Particularly where default judgment rates are high, the immediate execution of the writ of possession significantly hinders tenants' ability to find alternative affordable housing.

Recommendation: Require a 48-hour delay between the issuance of a writ of possession and physical removal. The chance for tenants facing eviction to find alternative housing, or at least temporary shelter, would be significantly improved by providing for a two-day delay in the execution of the writ. In Massachusetts, after possession is granted to the landlord, the tenant must be given at least 48 hours' notice before the removal takes place. The removal must take place between the hours of 9:00 a.m. and 5:00 p.m. on a business day.¹⁰² These provisions afford tenants a fighting chance to avoid homelessness without unduly burdening landlords.



CONCLUSION

EACH YEAR, evictions alter the lives of thousands of families throughout our state. Tenants who do not know their rights and do not understand the eviction process face truncated legal proceedings which afford them very little time to access available resources. Tenants facing eviction must simultaneously seek alternate shelter; given Hawai‘i’s acute shortage of affordable rental housing, finding another place to live often amounts to a near-impossible task. In addition, evictions significantly burden state and city budgets and impose heavy social costs.

The severe imbalances that plague the eviction process must be addressed. Recent

efforts to provide increased access to justice in our courts by making more information available at self-help centers and online are important and noteworthy. However, facilitating the usage of these resources by heavily-stressed tenants remains a serious challenge. Rates of both tenant representation and tenant appearances at summary possession return hearings remain extremely low, while eviction verdicts continue to be issued in the vast majority of cases. Adoption of the recommendations in this report would advance the interests of justice, reduce homelessness and government expenditures, and augment the cohesion of our communities.

ENDNOTES

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- 2 Landlords that are corporations or limited liability companies must be represented by counsel. See *O’ahu Plumbing & Sheet Metal v. Kona Const. (Hawai’i, 1979)*, vol. 590, P.2d, p. 570, 572 (citing *Osborn v. Bank of United States (United States, 1824)*, vol. 22, U.S., p. 738, 830).
- 3 Although this study was conducted as a collaborative effort of Lawyers for Equal Justice, the University of Hawai’i at Mānoa’s William S. Richardson School of Law, and the Legal Aid Society of Hawai’i, the recommendations set forth in this report are proposed solely by the authors on behalf of Lawyers for Equal Justice.
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- 19 T. Herrenkohl et al., “Early Adolescent Predictors of Youth Violence as Mediators of Childhood Risks,” *The Journal of Early Adolescence*, vol. 21, no. 4, 2001, p. 447–469.
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33 Hawai'i Revised Statutes § 521-68.

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35 Hawai'i Revised Statutes § 521-71(d).

36 Hawai'i Revised Statutes § 521-71(a).

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39 Hawai'i District Court Civil Procedure Rules 8(b), 12(a); see also Hawai'i District Court Summons form #1DC50 (01/18), http://www.courts.state.hi.us/docs/court_rules/rules/dcrp.htm.

40 See District Court Form #2DC50 (08/17), <http://www.courts.state.hi.us/docs/form/maui/2DC50.pdf>.

41 See District Court Form #5DC50 (08/08), <http://www.courts.state.hi.us/docs/form/kauai/5DC50.pdf>.

42 See District Court Form #3DC50 (06/15), <http://www.courts.state.hi.us/docs/form/hawaii/3DC50.pdf>.

43 See *Queen Emma Foundation v. Tingco (Hawai'i, 1992)*, vol. 845 P.2d, p. 1186 (“The purpose of a summary possession proceeding is to provide a prompt remedy for landlords against tenants who have violated a material condition of their lease or have wrongfully withheld possession after expiration of the lease.”) (citing *Harrison v. McCandless (Hawai'i, 1914)*, vol. 22 Haw. p. 129, 130).

44 See Hawai'i District Court Complaint (Summary Possession) Form #DC08 (virtually identical for all four Circuits), <http://www.courts.state.hi.us/docs/form/oahu/1DC08.pdf>.

45 Hawai'i District Court Rules of Civil Procedure 4(c), 4(d).

46 Hawai'i Revised Statutes § 521-72.

47 See *Lau v. Bautista (Hawai'i, 1979)*, vol. 61 Haw. p. 144, 149–150.

48 Hawai'i Revised Statutes § 521-64.

49 Hawai'i Revised Statutes § 521-74.

50 Hawai'i Revised Statutes § 521-63(c).

51 Hawai'i Revised Statutes § 521-74.5.

52 See Fair Housing Act 1968 (U.S.), Title VIII of the Civil Rights Act 1968, vol. 42 U.S.C p. 3601–3619, 3631; see also Hawai'i Revised Statutes Chapter 515, “Discrimination in Real Property Transactions.”

53 Under Hawai'i Revised Statutes § 521-8, “landlord” is defined, in part, as “any agent of the landlord.” The District Courts have interpreted this to mean that property managers may file summary possession actions on behalf of property owners or lessors, and may appear on their behalf. It is also relatively common for a landlord’s non-attorney agent to file suit in their own name and appear in court without an attorney. But for the statutory definition of “landlord,” both of these practices would amount to the unauthorized practice of law. There is currently no similar statute allowing a non-attorney representative to appear on behalf of a tenant.

54 J. Greiner et al., “The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future,” *Harvard Law Review*, vol. 126, no. 4, February 2013, p. 901–989.

55 K. Monsma and R. Lempert, “The Value of Counsel: 20 Years of Representation before a Public Housing Eviction Board,” *Law and Society*

Review, vol. 26, no. 3, 1992, p. 627–668.

56 See *BDM, Inc. v. Sageco, Inc. (Hawai‘i, 1976)*, vol. 549 P.2d, p. 1147, 1150 (“We agree with the reasoning of those decisions which hold that defaults and default judgments are not favored and that any doubt should be resolved in favor of the party seeking relief [on a motion to set aside default], so that, in the interests of justice, there can be a full trial on the merits.”).

57 See District Court Form #1DC50 (01/18), <http://www.courts.state.hi.us/docs/form/oahu/1DC50.pdf>.

58 See, e.g., Family Court Form #1F-P-1000 (02/15), <http://www.courts.state.hi.us/docs/form/oahu/1F-P-1000.pdf>; see also District Court Form #3DC50 (06/15), <http://www.courts.state.hi.us/docs/form/hawaii/3DC50.pdf>.

59 See District Court Form #3DC50 (06/15), <http://www.courts.state.hi.us/docs/form/hawaii/3DC50.pdf>.

60 Hawai‘i District Court Civil Procedure Rule 12(a): requires defendants in summary possession proceedings to appear on or answer by the return day, which must be no less than five days following service.

61 See, e.g., Florida Bar Form 7, “Summons–Eviction Claim,” providing a list of steps to challenge an eviction and stating, in capital letters, “If you do not do all of these things within 5 days (not including Saturdays, Sundays, and legal holidays for your courthouse) you may be evicted without a hearing or further notice.”), <https://www.floridabar.org/wp-content/uploads/2018/08/form-7.pdf>.

62 The California Judicial Council has published an answer form, Form UD-105, available at <http://www.courts.ca.gov/ud105.pdf>,

as well as video instructions to assist tenants in filling the form out properly, available at <http://www.cc-courts.org/video.aspx?File=UD-105>.

63 See, e.g., Judicial Council of California Form SUM-130 (Rev. July 1, 2009): “If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Website (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.”), <http://www.courts.ca.gov/documents/sum130.pdf>; see also Michigan Landlord-Tenant/Land Contract Summons Form DC 104 (6/17), p. 2 (setting forth four suggestions for “how to get help”), <https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/dc104.pdf>.

64 Center for Judicial Education and Research, “Benchguide 31-Landlord-Tenant Litigation: Unlawful Detainer,” § 31.100, 2015, http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/bg31_2015.pdf.

65 Shallow rent subsidies are temporary financial assistance programs that aim to either prevent at-risk individuals from losing housing or provide recently homeless households with rapid re-housing assistance. For example, the Institute for Human Services provides four types of shallow subsidy programs in Hawai‘i: (1) Homeless Prevention; (2) Rapid Re-Housing; (3) Housing Placement Programs for Needy Families; and (4) Clean & Sober Transition. See “Housing Support Services,” The Institute for Human Services, accessed November 21, 2018, <https://ihshawaii.org/what-we-do/housing-programs>.

ENDNOTES

- 66 “Tenancy Preservation Program,” Mass.gov, accessed November 26, 2018, <https://www.mass.gov/info-details/tenancy-preservation-program>.
- 67 Hartman and Robinson, 2003, p. 477–78 (citing studies by Chen, 2003; Chadha, 1996; Hall, 1991; Eldridge 2001; Podolsky and O’Brien, 1995; Seron et al., 2001).
- 68 Hawai‘i Revised Statutes §§ 587A-14, 587A-16.
- 69 Washington State Bar Association, “Limited License Legal Technicians,” accessed November 21, 2018, <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians>.
- 70 Hawai‘i Supreme Court Rule 7.
- 71 Massachusetts Supreme Judicial Court Rule 3:03.
- 72 “About the Clinic: Civil Division,” Law Students in Court, accessed Nov. 21, 2018, <https://dclawstudents.org/prospective-law-student/>.
- 73 National Coalition for a Civil Right to Counsel, “D.C. Enacts Expanding Access to Justice Act of 2017,” July 12, 2017, http://civilrighttocounsel.org/major_developments/1031.
- 74 National Coalition for a Civil Right to Counsel, “All About California’s Sargent Shriver Civil Counsel Pilots,” July 28, 2017, http://civilrighttocounsel.org/major_developments/1110.
- 75 National Coalition for a Civil Right to Counsel, “NYC First Jurisdiction to Guarantee Council for Evictions, Looks to Expand,” September 12, 2018, http://civilrighttocounsel.org/major_developments/894.
- 76 National Coalition for a Civil Right to Counsel, “San Francisco is Second City to Enact Right to Counsel in Housing Cases,” June 5, 2018, http://civilrighttocounsel.org/major_developments/1179.
- 77 Maine Revised Statutes Annotated Title 14 § 6028.
- 78 Connecticut General Statutes § 47a-15a.
- 79 Hawai‘i Revised Statutes § 521-68(a).
- 80 Hawai‘i Revised Statutes §§ 521-69, 521-72.
- 81 Connecticut General Statutes § 47a-15.
- 82 Massachusetts General Laws Chapter 186 § 11.
- 83 Massachusetts General Laws Chapter 186 § 13.
- 84 Hawai‘i Revised Statutes § 521-63(a).
- 85 Connecticut General Statutes §§ 47a-4a, 47a-7.
- 86 See *Housing Authority of E. Hartford v. Olesen (Connecticut, 1993)*, vol. 31 Conn. App. p. 359, 363, 624, A.2d p. 920.
- 87 California Civil Procedure Code § 1174.2(a).
- 88 See *Lau v. Bautista (Hawai‘i, 1979)*, vol. 61 Haw. p. 144, 149–150.
- 89 Hawai‘i Revised Statutes §§ 521-64(b)(1), 521-64(b)(2).
- 90 Massachusetts General Laws Chapter 111 § 127L (“A tenant may not deduct pursuant to this section an amount greater than four months’ rent in any twelve-month period, or period of occupancy, whichever is shorter, from rent due to the owner” for repairs required for “the health, safety, and well-being of a tenant.”).
- 91 See *Katurah v. Wells (New York, 1982)*, vol. 454 N.Y.S.2d p. 770 (N.Y. App. Term).

92 Hawai'i Revised Statutes § 521-3(a) (“Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law relative to capacity to contract, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.”).

93 Hawai'i Revised Statutes §§ 521-68, 521-69, 521-71, 521-72.

94 Connecticut General Statutes § 47a-33a.

95 New York Real Property Acts Law § 743.

96 735 Illinois Compiled Statutes 5/9-106.

97 See *E. Hartford Hous. Auth. v. Parker* (Connecticut, 1992), Connecticut Superior Court LEXIS 2778, p. 1-25, 10-11 (granting equitable relief to a tenant who had not paid rent because her loss of subsidized housing would have been a substantial hardship (she was a single mother with three children), the tenant was not found “culpable,” she had lived in the housing for 3 years, the tenant made a good faith effort to pay rent, and the tenant’s “conduct was not willful or grossly negligent”).

98 See *Howard D. Johnson Co. v. Madigan* (Massachusetts, 1972), vol. 361 Mass. p. 454 (where a tenant has not paid rent as delineated in the lease agreement, the balance of the harm is worse for the defendant, and the harm to the plaintiff is not irreparable, equitable relief may be granted to a tenant).

99 Hawai'i Revised Statutes § 521-74(c).

100 Massachusetts General Laws Chapter 186 § 18 (“Any person or agent thereof who threatens to or takes reprisals against any tenant of residential premises...shall be liable for damages

which shall not be less than one month’s rent or more than three month’s rent, or the actual damages sustained by the tenant, whichever is greater, and the costs of the suit, including a reasonable attorney’s fee.”).

101 Hawai'i Revised Statutes § 666-11.

102 Massachusetts General Laws Chapter 239, § 3.



