



Meetings between the various advocacy groups went on for over a year. Legislators and the Attorney General's Office were deeply involved. The net result of all of this activity was a new landlord/tenant law enacted during the final days of the 124th Maine Legislature. Some changes will be helpful for property managers; others will assist tenants; and the net result of other provisions are simply not clear.

Two new grounds for creating a presumption of retaliation in evictions have now been established. If a tenant has filed a good faith, fair housing/discrimination complaint, or if he has asserted his rights pursuant to the new bedbug law, within six months of an eviction being initiated, it will be presumed that the landlord's intention was to retaliate against the tenant for asserting his rights. 14 MRSA §6001(3) and §6021-A. The landlord can overcome the presumption by showing a non-retaliatory motive for the eviction. However, the balance of power in evictions again shifted in the wrong direction.

For the first time, tenants are now authorized, by statute, to raise as an affirmative defense to an eviction a claim that the landlord has failed to provide the tenant with a reasonable accommodation pursuant to State or Federal non-discrimination laws. 14 MRSA §6001(5). If the court concludes that the landlord had a duty to offer a reasonable accommodation and failed to make such an offer, the judge must deny the eviction.

Maine law now requires every Notice to Quit (in a tenancy at will only) to include language advising the tenant of his right to contest the termination of the tenancy in court. 14 MRSA §6002. If the tenant attends the hearing, the failure of the landlord to include the verbiage in the notice cannot be held against the landlord. If the tenant fails to attend the hearing, and the tenant later files a motion to set aside the default judgment, the tenant's motion will be granted and the court must permit the tenant to have a new hearing.

The abandoned property statute has been simplified. There is no longer the requirement to treat property with a fair market value of less than \$750.00 differently than property of greater value. The new law appears at 14 MRSA §6013 and should be carefully examined for details. The short description is that the new law requires the landlord to send written notice to the tenant by first class mail, with proof of mailing to the last known address of the tenant. The letter must identify the items that have been left behind, provide the tenant with 14 days to respond, and indicate that the landlord intends to dispose of the property after that period. If the tenant claims the property within 14 days, the landlord is required to release the property without any right to demand payment in exchange for release of the items, no matter what is owed to the landlord for rent, damages or otherwise.

There is no simple explanation of the new "Bedbug Infestation" law, which can be found at 14 MRSA §6021-A. We have posted an in-depth article on our website Blog at www.shankmanlegal.com. Upon receiving either written or oral notice from a tenant, the landlord must conduct an inspection within 5 days and contact a pest control agent within 10 days. There are disclosure requirements. Tenants are subject to mandates to report problems,

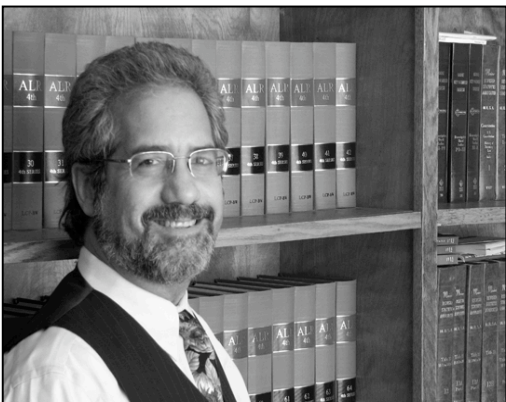
cooperate with their landlord, and facilitate resolution of any bedbug infestation. The landlord is required to offer to “make reasonable assistance, including financial assistance” available to tenants who are not financially able to implement bedbug inspections or control measures. Failure of a landlord to comply with any aspect of this law subjects him to a \$250.00 penalty, or actual damages, whichever is greater, plus reasonable attorney’s fees. The new law has established a special procedure whereby a landlord can get access to a tenant’s premises for purposes of addressing bedbugs on an expedited basis.

While Maine has had a “common area electric charge prohibition” for decades, the new law has now extended it to heat, electricity or any other utility service. If one tenant is responsible for the cost of common area services, he has the right to sue his landlord for actual damages, or \$250.00, whichever is greater, plus attorney’s fees and costs. A tenant may agree to accept sole responsibility for common area services if the parties agree in writing that the rent is to be reduced by a specific amount that approximates the actual cost. 14 MRSA §6024.

There is also a new law enabling tenants to withhold rent in order to pay for utility services that a landlord has failed to pay on a timely basis. 14 MRSA §6024-A.

Another statute authorizes (but does not require) a municipality to arrange for the maintenance, repairs and provision of heat or utilities on behalf of a tenant if any housing unit is without heat, facing imminent heat loss, or facing the loss of necessary utility services. 14 MRSA §6026-A. The municipality must try to reach the landlord, but if he fails to act on a timely basis, the municipality can act on its own, file a lien on the landlord’s property, and seek reimbursement of all expenses.

There have been changes to the law which controls the handling of security deposits (14 MRSA §6038). The lead paint law (14 MRSA §6030-B), the residential energy efficiency disclosure law (14 MRSA §6030-C), and the radon testing law (14 MRSA §6030-D) have also been amended. All of these new laws are addressed in the Shankman & Associates publication ***Maine Landlord Tenant Relations: Process and Procedures***. It can be ordered by calling Karen Cook at 786-0311 or e-mailing her at kcook@shankmanlegal.com.



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