

**Senator Lincoln Fillmore** proposes the following substitute bill:

**RENTAL AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lincoln Fillmore**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to rental properties to make clarifying amendments regarding awards to any prevailing party for costs and attorney fees.

**Highlighted Provisions:**

This bill:

► clarifies provisions regarding the prevailing party to whom a court awards costs and reasonable attorney fees:

- in an action under the Utah Fit Premises Act; and
- in certain proceedings related to a renter's tenancy or detainer.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**57-22-6**, as repealed and reenacted by Laws of Utah 2010, Chapter 352

**78B-6-811**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **57-22-6** is amended to read:

28 **57-22-6. Renter remedies for deficient condition of residential rental unit.**

29 (1) As used in this section:

30 (a) "Corrective period" means:

31 (i) for a standard of habitability, three calendar days; and

32 (ii) for a requirement imposed by a rental agreement, 10 calendar days.

33 (b) "Deficient condition" means a condition of a residential rental unit that:

34 (i) violates a standard of habitability or a requirement of the rental agreement; and

35 (ii) is not caused by:

36 (A) the renter, the renter's family, or the renter's guest or invitee; and

37 (B) a use that would violate:

38 (I) the rental agreement; or

39 (II) a law applicable to the renter's use of the residential rental unit.

40 (c) "Notice of deficient condition" means the notice described in Subsection (2).

41 (d) "Rent abatement remedy" means the remedy described in Subsection (4)(a)(i).

42 (e) "Renter remedy" means:

43 (i) a rent abatement remedy; or

44 (ii) a repair and deduct remedy.

45 (f) "Repair and deduct remedy" means the remedy described in Subsection (4)(a)(ii).

46 (g) "Standard of habitability" means a standard:

47 (i) relating to the condition of a residential rental unit; and

48 (ii) that an owner is required to ensure that the residential rental unit meets as required

49 under Subsection [57-22-3](#)(1) or Subsection [57-22-4](#)(1)(a) or (b)(i), (ii), or (iii).

50 (2) (a) If a renter believes that the renter's residential rental unit has a deficient  
51 condition, the renter may give the owner written notice as provided in Subsection (2)(b).

52 (b) A notice under Subsection (2)(a) shall:

53 (i) describe each deficient condition;

54 (ii) state that the owner has the corrective period, stated in terms of the applicable  
55 number of days, to correct each deficient condition;

56 (iii) state the renter remedy that the renter has chosen if the owner does not, within the

57 corrective period, take substantial action toward correcting each deficient condition;  
58 (iv) provide the owner permission to enter the residential rental unit to make corrective  
59 action; and  
60 (v) be served on the owner as provided in:  
61 (A) Section 78B-6-805; or  
62 (B) the rental agreement.  
63 (3) (a) As used in this Subsection (3), "dangerous condition" means a deficient  
64 condition that poses a substantial risk of:  
65 (i) imminent loss of life; or  
66 (ii) significant physical harm.  
67 (b) If a renter believes that the renter's residential rental unit has a dangerous condition,  
68 the renter may notify the owner of the dangerous condition by any means that is reasonable  
69 under the circumstances.  
70 (c) An owner shall:  
71 (i) within 24 hours after receiving notice under Subsection (3)(b) of a dangerous  
72 condition, commence remedial action to correct the dangerous condition; and  
73 (ii) diligently pursue remedial action to completion.  
74 (d) Notice under Subsection (3)(b) of a dangerous condition does not constitute a  
75 notice of deficient condition, unless the notice also meets the requirements of Subsection (2).  
76 (4) (a) Subject to Subsection (4)(b), if an owner fails to take substantial action, before  
77 the end of the corrective period, toward correcting a deficient condition described in a notice of  
78 deficient condition:  
79 (i) if the renter chose the rent abatement remedy in the notice of deficient condition:  
80 (A) the renter's rent is abated as of the date of the notice of deficient condition to the  
81 owner;  
82 (B) the rental agreement is terminated;  
83 (C) the owner shall immediately pay to the renter:  
84 (I) the entire security deposit that the renter paid under the rental agreement; and  
85 (II) a prorated refund for any prepaid rent, including any rent the renter paid for the  
86 period after the date on which the renter gave the owner the notice of deficient condition; and  
87 (D) the renter shall vacate the residential rental unit within 10 calendar days after the

88 expiration of the corrective period; or

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

91 (A) may:

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

93 (II) deduct from future rent the amount the renter paid to correct the deficient

94 condition, not to exceed an amount equal to two months' rent; and

95 (B) shall:

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

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

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

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

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

105 (B) terminate the rental agreement.

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

108 (A) the owner shall:

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

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

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

113 (Bb) any deposit due the renter;

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

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

118 (5) (a) After the corrective period expires, a renter may bring an action in district court

119 to enforce the renter remedy that the renter chose in the notice of deficient condition.

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

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

126 [~~(i) any damages; and~~]

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

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

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

133 (7) (a) In an action under this section, the court shall award costs and reasonable  
134 attorney fees to the prevailing party.

135 (b) Subsection (7)(a) applies retroactively to any action pending on May 9, 2017.

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

137 **78B-6-811. Judgment for restitution, damages, and rent -- Immediate**  
138 **enforcement.**

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

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

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

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

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

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

153 (a) forcible entry;

154 (b) forcible or unlawful detainer;

155 (c) waste of the premises during the defendant's tenancy, if waste is alleged in the  
156 complaint and proved at trial;

157 (d) the amounts due under the contract, if the alleged unlawful detainer is after default  
158 in the payment of amounts due under the contract; and

159 (e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107  
160 through 78B-6-1114.

161 (3) The judgment shall be entered against the defendant for the rent, for three times the  
162 amount of the damages assessed under Subsections (2)(a) through (2)(e)[~~and for reasonable~~  
163 ~~attorney fees~~].

164 (4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be  
165 issued immediately after the entry of the judgment.

166 (b) In all cases, the judgment may be issued and enforced immediately.

167 (5) (a) In an action under this part, the court shall award costs and reasonable attorney  
168 fees to the prevailing party.

169 (b) Subsection (5)(a) applies retroactively to any action pending on May 9, 2017.