

Principles of Montana Residential Landlord & Tenant Law

I. Purpose of Residential Landlord and Tenant Law:

- A. Recognition that parties need each other:
- B. Establish contractual and legal relationship:
- C. Avoid physical controversies:
- D. Applies to **reasonable** people

II. Sources of Law:

- A. **Sections 70-24-101 through 442, M.C.A.:** Montana Residential Landlord and Tenant Act (MRLTA): bulk of present law
- B. **Sections 70-25-101 through 206, M.C.A.:** Residential Tenants Security Deposit Act (MRTSDA)
- C. **Sections 70-27-101 through 212, M.C.A.:** Forcible Entry and Unlawful Detainer: **DOES NOT APPLY TO RESIDENTIAL PROPERTY:** Section 70-27-101(1)

70-27-101. Application and jurisdiction.

(1) **This chapter**, except as it relates to forcible detainer as defined in 70-27-103(2) only and as it relates to forcible entry, **does not apply to arrangements governed by chapter 24 of this title.**

Instead, use **action for possession:**

70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including **an action for possession**.

D. **Case law:** few cases reach Montana Supreme Court:
See Appendix, attached.

III. Present State of the Law:

A. MRLTA is a "people's" bill:

B. Covers **ALL** relationships between **residential** landlords and tenants

C. Colloquial Definitions of Terms: discussion of terms

1. Lease

2. Rental Agreement

3. Term Rental Agreement/Lease

D. Highlights of MRLTA

1. **Section 70-24-103(5):** Good faith defined

70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(5) "Good faith" means honesty in fact in the conduct of the transaction concerned.

2. **Section 70-24-109:** Obligation of good faith imposed on **all** transactions under the MRLTA

70-24-109. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

3. **Section 70-24-108:** Notice

- a. most notices required to be in writing
- b. intended to be useful and expedient but yet fair

70-24-108. What constitutes notice. (1) A person has notice of a fact if:

- (a) the person has actual knowledge of it;
- (b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made; or
- (c) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the person at the place held out by the person as the place for receipt of the communication or, in the absence of a designation, to the person's last-known address. If notice is made with a certificate of mailing or by certified mail, service of the notice is considered to have been made upon the date 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised reasonable diligence.

- c. read with **Section 70-24-322(2)**: landlord may require notice for absence of more than 7 days

70-24-322. Tenant to occupy as dwelling unit only -- extended absence.

(1) Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit.

(2) The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

4. **Section 70-24-202 and 70-24-403:** Prohibited provisions are unenforceable: What about "2 days for any violation?"

70-24-202. Prohibited provisions in rental agreements. A rental agreement may not provide that a party:

(1) agrees to waive or forego rights or remedies under this chapter;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(3) agrees to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or attorney's fees connected therewith.

and

70-24-403. Prohibited provision in rental agreement -- unenforceability -- damages.

(1) A provision prohibited by 70-24-202 included in a rental agreement is unenforceable.

(2) If a party purposefully uses a rental agreement containing provisions known by him to be prohibited, the other party may recover, in addition to his actual damages, an amount up to 3 months' periodic rent.

5. **Section 70-24-442:** Attorney's fees to prevailing party may be awarded, regardless of rental agreement contents.

70-24-442. Attorney fees -- costs.

(1) In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

(2) As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

6. **Section 70-24-303: Landlord's duties to maintain premises enumerated:**

- a. subsection (b): habitability clause: will probably have greater importance in time.
- b. subsections describe **reasonable** requirements.

70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector.

(1) A landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(i) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(ii) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(iii) gang-related activities, as prohibited by Title 45, chapter 8, part 4;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so

constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install, in accordance with rules adopted by the department of justice, an approved smoke detector in each dwelling unit under the landlord's control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant's rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required under subsection (1)(h).

History: En. 42-420 by Sec. 20, Ch. 313, L. 1977; R.C.M. 1947, 42-420; amd. Sec. 1, Ch. 567, L. 1989; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 2, Ch. 401, L. 1997; amd. Sec. 1, Ch. 408, L. 2003.

7. **Section 70-24-321: Tenant's duties to maintain premises enumerated: again, reasonable requirements**

70-24-321. Tenant to maintain dwelling unit.

(1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner, that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises, including the living room, bedroom, kitchen, bathroom, and dining room, in a reasonable manner, considering the purposes for which they were designed and intended. This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(3) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(c) gang-related activities, as prohibited by Title 45, chapter 8, part 4.

History: En. 42-422 by Sec. 22, Ch. 313, L. 1977; R.C.M. 1947, 42-422; amd. Sec. 6, Ch. 222, L. 1993; amd. Sec. 2, Ch. 408, L. 2003.

8. **Section 70-24-311:** Landlord can make rules, e.g., no pets, no loud parties after 10:00 p.m., etc.
- a. must apply to all tenants fairly
 - b. notice is required
 - c. subsection (3) is the "rent increase" provision: 30 days notice required, in a month-to-month tenancy

70-24-311. Landlord authorized to adopt rules.

(1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

- (a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;
- (b) it is reasonably related to the purpose for which it is adopted;
- (c) it applies to all occupants in the premises in a fair manner;
- (d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;
- (e) it is not for the purpose of evading the obligations of the landlord; and
- (f) the tenant has notice of it at the time that the tenant enters into the rental agreement or when it is adopted.

(2) A rule adopted by a landlord must be in writing and must be given to each tenant residing on the premises and to each new tenant upon arrival.

(3) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of the tenant's bargain, it is not valid until 7 days after written notice to the tenant in the case of a week to week tenancy or 30 days' written notice in the case of tenancies from month to month.

and

70-24-313. Mobile home parks -- park rules.¹

(1) A mobile home park landlord may adopt a rule concerning the rental occupancy of a mobile home space and the use of common areas and facilities in accordance with 70-24-311. A rule may not be unreasonable, and a rule that does not apply uniformly to all mobile home residents of a similar class creates a rebuttable presumption, as defined in 70-24-431², that the rule is unfair.

(2) Each common area facility must be open or available to residents at all reasonable hours, and the hours of a common recreational facility must be posted at the facility.

9. **Section 70-24-312: Access to the premises: landlord has limited right of entry**

- a. 24 hours notice
- b. reasonable time of day
- c. emergency entry

70-24-312. Access to premises by landlord.

(1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to

¹ There are also special rules which apply when a tenant abandons a mobile home and the landlord wishes to dispose of the abandoned property, the mobile home itself: §70-24-432, not included in this outline.

² **70-24-431. Retaliatory conduct by landlord prohibited.**

(3) * * * For purposes of this section, "rebuttable presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-425³ and 70-24-426(2⁴); or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter.

d. **Section 70-24-410:** Unlawful entry or lawful entry in unreasonable manner can result in injunctive relief

³ **70-24-425. Failure of tenant to maintain dwelling -- landlord's right to enter and repair.**

If there is noncompliance by the tenant with 70-24-321 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

⁴ **70-24-426. Remedies for absence or abandonment.**

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

70-24-410. Unlawful or unreasonable entry by landlord -- tenant's remedies.

If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

- e. **Section 70-24-424:** Refusal for entry can result in injunctive relief

70-24-424. Refusal of access -- landlord's remedies.

(1) If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by 70-24-312(5), the landlord may either obtain injunctive relief or terminate the rental agreement.

10. **Section 70-24-406:** Noncompliance by a landlord; tenant's options:

- a. terminate within 30 days, if breach not remedied within 14 days, unless remediable by repairs or damages
- b. terminate within 14 days, if same breach occurred in past 6 months
- c. "repair and deduct" as long as cost is less than 1 month's rent: notice to correct defect required

70-24-406. Failure of landlord to maintain premises -- tenant's remedies.

(1) Except as provided in this chapter, if there is a noncompliance with 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by the tenant, a member of the tenant's family, or other persons on the premises with the tenant's consent;

(b) make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title.

11. **Section 70-24-408:** Purposeful failure to supply heat, water, hot water or essential services:
- a. Remedies available to tenant
 - (1) procure own services and deduct cost
 - (2) recover damages
 - (3) procure substitute housing and pay no rent
 - b. Tenant **MUST** give notice and landlord must have **REASONABLE** opportunity to correct

70-24-408. Purposeful or negligent failure to provide essential services -- tenant's remedies.

(1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

- (a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;
- (b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or
- (c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, he may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of his family, or other person on the premises with his consent.

12. **Section 70-24-421:** Counterclaim of tenants after landlord sues for possession; now permitted:

- a. Court can order disputed sums paid into Court
- b. Counterclaims are specifically authorized; conflicted with former practices: See **Section 25-35-606:** Defendant's Counterclaim and Montana Justice and City Court Rules of Civil Procedure, Rule 7: pleadings allowed: subsection C: Counterclaim

70-24-421. Action for nonpayment of rent -- tenant's counterclaim.

(1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount he may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

13. **Section 70-24-422:** Landlord's remedies for tenant's non-compliance:
- a. 14 days **written** notice for breach **plus the opportunity to remedy** (notice would be defective if it merely terminated the agreement within 14 days)
 - b. 5 days notice, if breach occurred within 6 months
 - c. 3 days notice permitted ONLY for **failure to pay rent, unauthorized pet or unauthorized person: (notice must provide for opportunity to correct)**
 - d. 3 days notice for destroying, damaging, impairing or removing part of premise
 - e. Common law right of distress **not** a remedy: abolished in Bohm v. Dunphy, 1 Mont. 333 (1871). - **DISTRAINT FOR RENT ABOLISHED; NO LANDLORD'S LIEN!**
 - f. Mobile home lot rules: 7 days for failure to pay rent or destroying "premises": **NOTE CHANGES TO MRLTA REGARDING MOBILE HOMES IN Section 70-24-436 BELOW**

70-24-422. Noncompliance of tenant generally -- landlord's right of termination -- damages -- injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the

notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

(f) This subsection (1) does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement. This subsection does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2).

(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested for or charged with an act that violates the provisions of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3).

(5) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

(7) Subsections (3) through (6) apply to all rental agreements, including those involving a tenant who rents space for a mobile home but does not rent the mobile home.

(8) The landlord is not bound by this section in the event that:

(a) the rental agreement does not involve a tenant who rents space for a mobile home but does not rent the mobile home; and

(b) the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441.

History: En. 42-433 by Sec. 33, Ch. 313, L. 1977; R.C.M. 1947, 42-433; amd. Sec. 1, Ch. 221, L. 1983; amd. Sec. 1, Ch. 232, L. 1985; amd. Sec. 1, Ch. 547, L. 1987; amd. Sec. 9, Ch. 222, L. 1993; amd. Sec. 2, Ch. 389, L. 1995; amd. Sec. 1, Ch. 456, L. 2001; amd. Sec. 3, Ch. 408, L. 2003.

14. **Section 70-24-429:** Action for possession and unlawful holdover remedies for landlord: **COURT ACTION** (but not Small Claims Court)

- a. greater of treble rent or damages for purposeful holdover
- b. time to answer: 10 days

70-24-429. Holdover remedies -- consent to continued occupancy -- tenant's response to service in action for possession.

(1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for

possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) In an action for possession or unlawful holdover, the provisions of Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 10 days after service of summons and complaint, exclusive of the date of service.

(3) If the landlord consents to the tenant's continued occupancy, 70-24-201(2)(e)⁵ applies.

- c. time for hearing: within 20 days of tenant's answer or appearance: **Section 70-24-427 (2)**

70-24-427. Landlord's remedies after termination -- action for possession. (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons. If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the hearing must be held within 5 business days after the case is transmitted to the district court.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

⁵ **70-24-201. Rental agreement -- terms and conditions.**

(2) Unless the rental agreement provides otherwise:

(e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing.

History: En. 42-438 by Sec. 38, Ch. 313, L. 1977; R.C.M. 1947, 42-438; amd. Sec. 1, Ch. 585, L. 1993; amd. Sec. 4, Ch. 408, L. 2003.

15. **Section 70-24-431:** Retaliatory conduct by a landlord is prohibited:

- a. no increase in rent, decrease in services, or an action for possession after
 - (1) complaint of housing code violation;
 - (2) complaint in writing of landlord's duty to maintain premises;
 - (3) become a tenant's union member;
 - (4) general argument against retaliation.
- b. 6 month rebuttable presumption of retaliation
- c. Section does **not** apply if:
 - (1) tenant caused the housing code violation
 - (2) tenant is in default of rent
 - (3) compliance with the codes requires tenant's ouster: possibility for abuse

d. tenant can still get damages

70-24-431. Retaliatory conduct by landlord prohibited.

(1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

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

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

(c) has organized or become a member of a tenant's union, mobile home park tenant association, or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against him for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(4) Notwithstanding subsections (1), (2), and (3) of this section, a landlord may bring an action for possession if:

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

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

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

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

16. **Section 70-24-441:** Termination of rental agreement: normal, ordinary termination; departure from some practices;

a. 30 days **written** notice: NO LESS

b. begins on date of notice

c. rent is uniformly apportionable from day to day

70-24-441. Termination by landlord or tenant -- applicability. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(4) The provisions of this section do not apply to a tenant who rents space for a mobile home in a mobile home park but does not rent the mobile home.

History: En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(1), (2); amd. Sec. 3, Ch. 456, L. 2001.

17. **Section 70-24-436: Mobile Home "Good Cause" termination.**

- a. Landlords may evict for listed reasons **only**;
- b. Notice requirement for specific events are listed;
- c. Premise: good tenants are protected; bad tenants are not.

70-24-436. Mobile home parks -- grounds for termination of rental agreement. (1) With respect to a tenant who rents space in a mobile home park but does not rent the mobile home, if there is a noncompliance by the tenant with the rental agreement or with a provision of 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon a date specified in the notice that may not be less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, for which the notice period is 7 days;

(b) a violation of a mobile home park rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any resident of the mobile home park or its manager or owner, for which the notice period is 14 days;

(c) a violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park, its manager, or its owner, for which the notice period is 24 hours;

(d) late payment of rent, late charges, or common area maintenance fees, as established in the rental agreement, three or

more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period for the final late payment is 30 days;

(e) a violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park, its manager, or its owner, whether or not notice was given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection (3), for which the notice period is 14 days;

(f) two or more violations within a 12-month period of the same rule for which notice has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or (1)(c), for which the notice period for the final violation is 30 days;

(g) two or more violations of 70-24-321(1) within a 12-month period, for which the notice period for the final violation is 14 days;

(h) any violation of 70-24-321(2), for which the notice period is as provided in 70-24-422(3);

(i) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 30 days;

(j) any other noncompliance or violation not covered by subsection (1)(a) through (1)(i) that endangers other residents or mobile home park personnel or causes substantial damage to the mobile home park premises, for which the notice period is 14 days;

(k) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park, or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

(l) changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

(m) any legitimate business reason not covered elsewhere in this subsection (1), provided that the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the land comprising the mobile home park from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the mobile home park.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice, the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner, and any tenant of the mobile home owner whose identity and address have been provided to the landlord, written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(d), only one notice for each violation per month may be included in the calculation.

History: En. Sec. 2, Ch. 470, L. 1993; amd. Sec. 3, Ch. 389, L. 1995; amd. Sec. 4, Ch. 401, L. 1997; amd. Sec. 2, Ch. 456, L. 2001; amd. Sec. 119, Ch. 114, L. 2003.

E. Highlights of the MRTSDA:

1. Security Deposits remain an area of controversy
2. **Section 70-25-101:** Definitions:
 - a. subsection (1): cleaning expenses includes cost of cleaning done to return premises to condition at time of renting: NOT normal wear and tear
 - b. subsection (2): damage is a tangible loss, injury or deterioration: NOT normal wear and tear
 - c. subsection (4): security deposit is **value** given to secure payment of rent, payment of damage and payment of cleaning; ANY deposit given is **presumed** to be a security deposit
 - d. **No** amount limitation

70-25-101. Definitions.

As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or his selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit. A fee or charge for cleaning and damages, no matter how designated, is presumed to be a security deposit.

3. **Section 70-25-103:** Neither landlord or tenant can waive any elements of the security deposit provisions

70-25-103. Waivers and contrary provisions invalid.

Any provision of a leasehold agreement, either oral or written, that is contrary to this chapter is invalid. Any attempted waiver of this chapter by the tenant is invalid.

4. **Section 70-25-201:** Enumerates deductions authorized from security deposits -
 - a. landlord may deduct amount equal to damage caused by tenant and any unpaid rent
 - b. cyclical cleaning charges cannot be deducted unless tenant's lack of care requires it

- c. NO cleaning charges deductible until after tenant has notice
 - (1) notice shall include what needs to be cleaned
 - (2) tenant shall have 24 hours to so clean

70-25-201. Security deposit -- deductions authorized therefrom.

(1) A landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent, late charges, utilities, penalties due under lease provisions, and other money owing to the landlord at the time of deduction, including rent owed under 70-24-441(3), and a sum for actual cleaning expenses, including a reasonable charge for the landlord's labor.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) Cleaning charges may not be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time that the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, cleaning charges may not be deducted until written notice has been given to the tenant. The notice must include the cleaning not accomplished by the tenant and the additional and type or types of cleaning that need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 24 hours to complete the required cleaning. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing. A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit.

(4) A person may not deduct or withhold from the security deposit any amount for purposes other than those set forth in this section.

5. **Section 70-25-202: Requirements for Damage list**

- a. landlord shall provide tenant, within 30 days after the termination of the tenancy, a WRITTEN list of rent due, damages and cleaning which is tenant's responsibility.
- b. delivery of the list shall include payment of the difference between the amount withheld and the security deposit
- c. mail list to last known address of tenant or the new address
- d. **"speedy" return of deposit:** if no damages, no rent due and no utilities unpaid, then 10 days to return deposit

70-25-202. List of damages and refund -- delivery to departing tenant.

(1) Every landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, to the leasehold premises that the landlord alleges are the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery shall be accomplished by mailing the list and refund to the tenant's last-known address or the new address provided by the tenant.

(2) If after inspection there are no damages to the premises, no cleaning required, and no rent unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return the security deposit within 10 days.

6. **Section 70-25-203:** Landlord forfeits ALL rights to security deposit if he fails to provide list within 30 days

70-25-203. Failure to provide list -- forfeiture of deduction rights.

Any landlord who fails to provide the departing tenant with a written list of damage and cleaning charges as required by 70-25-202 shall forfeit all rights to withhold any portion of the security deposit for the damages or cleaning charges.

7. **Section 70-25-204:** Wrongful withholding and its consequences: extremely limited now

a. if the withholding of a security deposit is wrongful, landlord shall be liable to a tenant for the deposit plus attorney's fees, in the Court's discretion: **no more double amount of deposit**

b. no action to recover the amount until:

(1) landlord denies amount is wrongfully withheld;

(2) 30 days must go by after termination or surrender;

(3) 10 days expires after landlord indicates no rent was due, no utilities are unpaid, no damages and no cleaning was required.

70-25-204. Wrongful withholding of security deposit -- action.

(1) A person who wrongfully withholds a residential property security deposit or any portion of the deposit is liable in damages to the tenant in a civil action for an amount equal to the sum determined to have been wrongfully withheld or

deducted. The attorney fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises is on the landlord.

(2) An action may not be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or the landlord's agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy;

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold premises; or

(d) the expiration of a 10-day period after the landlord has indicated there were no damages to the premises, no cleaning was required, no rent was unpaid, and no utilities were unpaid by the tenant.

8. **Section 70-25-205:** If tenant fails to give landlord the forwarding address, landlord is relieved of liability imposed by **Section 70-24-204** [above], but not for the actual amount due:

70-25-205. Failure of departing tenant to furnish new address. Failure by the departing tenant to provide the landlord with a new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, does not bar the tenant from recovering the amount owing to the tenant by the landlord.

History: En. 42-307 by Sec. 7, Ch. 219, L. 1974; R.C.M. 1947, 42-307; amd. Sec. 3, Ch. 342, L. 1993; amd. Sec. 2, Ch. 241, L. 2001.

9. **Section 70-25-206:** Previous condition statement:

- a. landlord shall give tenant a written statement of the present condition, and, at tenant's request, a copy of last tenant's damage statement

- b. failure to provide the previous condition statement bars landlord from collecting for damage and cleaning, unless he can establish by **clear and convincing evidence** that tenant caused it

70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.

(1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each tenant, in conjunction with execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let. At the written request of the tenant, a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question must be provided to the tenant.

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or the landlord's agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating the fact; and

(c) the signature of the landlord or the landlord's agent.

(3) A person engaged in the rental of property for residential purposes who fails to furnish a tenant, in conjunction with the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, upon the written request of the tenant, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement is barred from recovering any sum for damage to or cleaning of the leasehold premises unless the person can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees.

III. Eviction Procedure:

- A. Montana Justice Court Rules of Civil Procedure vs. Montana Rules of Civil Procedure
- B. Justice Court vs. Small Claims Court - NOTE: Small Claims Courts **cannot** hear actions for possession
- C. District Court: when?

IV. Future Trends:

- A. "Put it in writing"
- B. Mutual suspicion vs. mutual trust
- C. Growing area of law: suitable housing is a preeminent need of our society and in Montana.
- D. "Good cause" for eviction: pros & cons
- E. Supreme Court's "consumerism" approach:

**Montana Supreme Court
Residential Landlord/Tenant Cases**

1. Bohm v. Dunphy, 1 Mont. 333 (1871):
2. Welsh v. Roehm et al., 125 Mont. 517, 241 P.2d 816 (1952):
3. Kranskey v. Hensleigh, 146 Mont. 486, 409 P.2d 537 (1965):
4. Rennick v. Hoover, 186 Mont. 167, 606 P.2d 1079 (1980):
5. Corrigan v. Janney, 192 Mont. 99, 626 P.2d 838 (1981):
6. Roy v. Neibauer, 191 Mont. 224, 623 P.2d 555 (1981):
7. Busch v. Kammerer, 200 Mont. 130, 649 P.2d 1339 (1982):
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10. LIC., Inc. v. Baltrusch, 215 Mont. 44, 692 P.2d 1264 (1985):
11. Rookhuizen v. Blain's Mobile Home Court, 236 Mont. 7, 767 P.2d 1331 (1989):
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13. Mathes, et al. v. Adams and Magruder, 254 Mont. 347, 838 P.2d 390 (1992):
14. Sage v. Rogers, 257 Mont. 229, 848 P.2d 1034 (1993):
15. Kreger v. Francis, 52 St. Rep. 493, 898 P.2d 672 (1995):
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21. Kunst v. Pass, 55 St. Rep. 289 (Mont. 1998):
22. Nason v. Leistiko, 55 St. Rep. 910, 290 Mont 460 (Mont. 1998):