

LEGISLATIVE BILL 320

Approved by the Governor May 5, 2021

Introduced by Cavanaugh, J., 9; Blood, 3; Cavanaugh, M., 6; Day, 49; Hansen, M., 26; Hunt, 8; McKinney, 11; DeBoer, 10; McCollister, 20.

A BILL FOR AN ACT relating to landlords and tenants; to amend sections 25-21,219, 76-1401, 76-1410, 76-1423, 76-1441, 76-1442.01, 76-1443, 76-1485, 76-1486, 76-1489, and 76-14,101, Reissue Revised Statutes of Nebraska, and section 76-1431, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to forcible entry and detainer actions, landlords' and tenants' rights and duties regarding violent criminal activity upon a premises, a landlord's right of access, actions for possession under the Uniform Residential Landlord and Tenant Act and the Mobile Home Landlord and Tenant Act, summonses, continuances, return of rental deposits, damages, and the period of time for paying certain overdue rent; to define terms; to provide for the release of a victim of domestic violence from a rental agreement; to require a report by the Supreme Court regarding eviction proceedings; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 25-21,219, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,219 The district and county courts shall have jurisdiction over complaints of unlawful and forcible entry into lands and tenements and the detention of the same and of complaints against those who, having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same. If the court finds that an unlawful and forcible entry has been made and that the same lands or tenements are held by force or that the same, after a lawful entry, are held unlawfully, the court shall cause the party complaining to have restitution thereof. The court or the jury, as the situation warrants, shall inquire into the matters between the two litigants such as the amount of rent owing the plaintiff and the amount of damage caused by the defendant to the premises while they were occupied by him or her and render a judgment or verdict accordingly. This section shall not apply to actions for possession of any premises subject to the provisions of the Uniform Residential Landlord and Tenant Act or the Mobile Home Landlord and Tenant Act.

Sec. 2. Section 76-1401, Reissue Revised Statutes of Nebraska, is amended to read:

76-1401 Sections 76-1401 to 76-1449 and section 6 of this act shall be known and may be cited as the Uniform Residential Landlord and Tenant Act.

Sec. 3. Section 76-1410, Reissue Revised Statutes of Nebraska, is amended to read:

76-1410 Subject to additional definitions contained in the Uniform Residential Landlord and Tenant Act and unless the context otherwise requires:

(1) Act of domestic violence means abuse as defined in section 42-903, sexual assault under sections 28-319 to 28-320.01, domestic assault under section 28-323, stalking under section 28-311.03, labor or sex trafficking under section 28-831, and knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult under section 28-386.

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

(3) ~~(2)~~ Building and housing codes include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit. Minimum housing code shall be limited to those laws, resolutions, or ordinances or regulations, or portions thereof, dealing specifically with health and minimum standards of fitness for habitation.

(4) ~~(3)~~ Dwelling unit means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

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

(6) Household member means a child or adult, other than the perpetrator of an act of domestic violence, who resides with a tenant.

(7) ~~(5)~~ Landlord means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section 76-1417.

(8) ~~(6)~~ Organization includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(9) ~~(7)~~ Owner means one or more persons, jointly or severally, in whom is vested (a) all or part of the legal title to property, or (b) all or part of the beneficial ownership and a right to present use and enjoyment of the premises; and the term includes a mortgagee in possession.

(10) ~~(8)~~ Person includes an individual, limited liability company, or organization.

(11) Qualified third party means an organization that (a) is a nonprofit organization organized under section 501(c)(3) of the Internal Revenue Code or a federally recognized Indian tribe whose governmental body is within the borders of Nebraska and (b) has an affiliation agreement with the Department of Health and Human Services to provide services to victims of domestic violence and sexual assault under the Protection from Domestic Abuse Act.

(12) ~~(9)~~ Premises means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(13) ~~(10)~~ Rent means all payments to be made to the landlord under the rental agreement.

(14) ~~(11)~~ Rental agreement means all agreements, written or oral, between a landlord and tenant, and valid rules and regulations adopted under section 76-1422 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(15) ~~(12)~~ Roomer means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove, or sink.

(16) ~~(13)~~ Single-family residence means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

(17) ~~(14)~~ Tenant means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Sec. 4. Section 76-1423, Reissue Revised Statutes of Nebraska, is amended to read:

76-1423 (1) The tenant shall not unreasonably withhold consent to the landlord 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 prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

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

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall:

(a) Give give the tenant at least twenty-four hours' written one day's notice of the landlord's his intent to enter. Such notice shall be provided to each individual unit and include the intended purpose for entry and a reasonable period during which the landlord anticipates making entry; and

(b) Enter enter only at reasonable times.

(4) The landlord has no other right of access except by court order, and as permitted by subsection (2) of section 76-1432, or if the tenant has abandoned or surrendered the premises.

Sec. 5. Section 76-1431, Revised Statutes Cumulative Supplement, 2020, is amended to read:

76-1431 (1) Except as provided in the Uniform Residential Landlord and Tenant Act, if there is a noncompliance with section 76-1421 materially affecting health and safety or a material noncompliance by the tenant with the rental agreement or any separate agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within seven calendar days after written notice by the landlord of nonpayment and his or her intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(3) Except as provided in the Uniform Residential Landlord and Tenant Act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or section 76-1421. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

(4) Notwithstanding subsections (1) and (2) of this section or section 25-21,221, and except as provided in subsection (5) of this section, a landlord may, after five days' written notice of termination of the rental agreement and without the right of the tenant to cure the default, file suit and have judgment against any tenant or occupant for recovery of possession of the premises if the tenant, occupant, member of the tenant's household, guest, or

other person who is under the tenant's control or who is present upon the premises with the tenant's consent, engages in any violent criminal activity on the premises, the illegal sale of any controlled substance on the premises, or any other activity that threatens the health or safety of other tenants, the landlord, or the landlord's employees or agents. Such activity shall include, but not be limited to, any of the following activities of the tenant, occupant, member of the tenant's household, guest, or other person who is under the tenant's control or who is present upon the premises with the tenant's consent: (a) Physical assault or the threat of physical assault; (b) illegal use of a firearm or other weapon or the threat of illegal use of a firearm or other weapon; (c) possession of a controlled substance if the tenant knew or should have known of the possession, unless such controlled substance was obtained directly from or pursuant to a medical order issued by a practitioner legally authorized to prescribe while acting in the course of his or her professional practice; or (d) any other activity or threatened activity which would otherwise threaten the health or safety of any person or involving threatened, imminent, or actual damage to the property.

(5)(a) A landlord shall not take action under subsection (5) Subsection (4) of this section does not apply to a tenant if the violent criminal activity, illegal sale of any controlled substance, or other activity that threatens the health or safety of other tenants, the landlord, or the landlord's employees or agents, as set forth in subsection (4) of this section, is conducted by a person on the premises other than the tenant or a household member and the tenant or household member takes at least one of the following measures against the person engaging in such activity:

(i) (a) The tenant or household member seeks a protective order, restraining order, or other similar relief which would apply to the person conducting such activity; or

(ii) (b) The tenant or household member reports such activity to a law enforcement agency in an effort to initiate a criminal action against the person conducting the activity; or

(iii) If the activity is an act of domestic violence, the tenant or household member receives certification of the activity from a qualified third party as set forth in the housing protection provisions of the federal Violence Against Women Reauthorization Act of 2013.

(b) This subsection shall not apply to a tenant who is a perpetrator of an act of domestic violence. If both the victim who takes measures under this subsection and perpetrator of an act of domestic violence are parties to a rental agreement, a landlord shall only take action under subsection (4) of this section against the perpetrator.

Sec. 6. (1) A tenant who is a victim of an act of domestic violence or whose household member is a victim of an act of domestic violence may obtain a release from a rental agreement if the tenant or household member has:

(a) Obtained a protective order, restraining order, or other similar relief which applies to the perpetrator of the act of domestic violence; or

(b) Obtained certification confirming domestic violence as set forth in subdivision (5)(a)(iii) of section 76-1431.

(2) To obtain a release from a rental agreement under this section, the tenant shall:

(a) Provide to the landlord a copy of the documentation described in subsection (1) of this section; and

(b) Provide to the landlord a written notice containing:

(i) The date on which the tenant wishes the release to be effective. Such date shall be at least fourteen days after the date the tenant provides the documentation and written notice and no more than thirty days after such date; and

(ii) The names of any household members to be released in addition to the tenant.

(3) The tenant shall remain liable for rent for the month in which the tenant terminated the rental agreement.

(4) A tenant and any household member who is released from a rental agreement pursuant to this section:

(a) Are not liable for rent or damages to the premises incurred after the release date; and

(b) Are not subject to any fee solely because of termination of the rental agreement.

(5) Other tenants who are parties to the rental agreement, other than household members of a tenant released under this section, are not released pursuant to this section from their obligations under the rental agreement or the Uniform Residential Landlord and Tenant Act.

(6) A tenant who is a perpetrator of an act of domestic violence may not obtain a release from a rental agreement under this section.

Sec. 7. Section 76-1441, Reissue Revised Statutes of Nebraska, is amended to read:

76-1441 (1) The person seeking possession shall file a complaint for restitution with the clerk of the district or county court. The complaint shall contain (a) the specific statutory authority under which possession is sought; (b) the facts, with particularity, on which he or she seeks to recover; (c) (b) a reasonably accurate description of the premises; and (d) (c) the requisite compliance with the notice provisions of the Uniform Residential Landlord and Tenant Act. The complaint may notify the tenant that personal property remains on the premises and that it may be disposed of pursuant to section 69-2308 or subsection (5) of section 76-1414. The complaint may also contain other causes

of action relating to the tenancy, but such causes of action shall be answered and tried separately, if requested by either party in writing.

(2) The person seeking possession pursuant to subsection (4) of section 76-1431 shall include in the complaint the incident or incidents giving rise to the suit for recovery of possession.

Sec. 8. Section 76-1442.01, Reissue Revised Statutes of Nebraska, is amended to read:

76-1442.01 When authorized by section 76-1442, service of a summons issued under such section may be made by posting a copy on the front door of the dwelling unit leaving a copy of the summons at the defendant's last-known address and mailing a copy by first-class mail to the defendant's last-known such address. The plaintiff shall file an affidavit with the court describing the diligent efforts showing that an attempt was made to serve the summons in the manner provided in sections 25-505.01 to 25-516.01, the reasons why such service was unsuccessful, and that service was made by posting the summons on the front door of the dwelling unit at the last-known address of the defendant and mailing a copy by first-class mail to the defendant's last-known address defendant.

Sec. 9. Section 76-1443, Reissue Revised Statutes of Nebraska, is amended to read:

76-1443 The court may grant a continuance for good cause shown by either party, but no subsequent ~~No~~ continuance shall be granted except by agreement or unless extraordinary cause be shown to the court. For any subsequent continuance extending the initial trial date into the next periodic rental period, the court may require a tenant to deposit with the clerk of the court such rental payments as accrue during the pendency of the suit, and then not unless the defendant applying therefor shall deposit with the clerk of the court payment of any rents that have accrued, or give an undertaking with sufficient surety therefor, and, in addition, deposit with the clerk such rental payments as accrue during the pendency of the suit.

Sec. 10. Section 76-1485, Reissue Revised Statutes of Nebraska, is amended to read:

76-1485 (1) A landlord shall, within fourteen ~~thirty~~ days from the date of termination of the tenancy or receipt in writing of the tenant's mailing address or delivery instructions, whichever is later, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding all or any portion of the rental deposit. If no mailing address or delivery instructions are provided by the tenant to the landlord, the landlord shall mail, by first-class mail, the balance of the rental deposit to be returned, if any, and the written statement regarding any amounts withheld to the tenant's last-known mailing address. If the mailing is returned as undeliverable, or if the returned balance of the rental deposit remains outstanding for one year, it shall be considered abandoned property to be reported to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. The landlord may withhold from the rental deposit only such amounts as are reasonable:

(a) To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement; and

(b) To restore the mobile home space to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

(2) In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

Sec. 11. Section 76-1486, Reissue Revised Statutes of Nebraska, is amended to read:

76-1486 A landlord who fails to provide a written statement as required by section 76-1485 shall forfeit all rights to withhold any portion of the rental deposit. If no mailing address or instructions are provided to the landlord within one year from the termination of the tenancy, the rental deposit shall revert to the landlord and the tenant shall be deemed to have forfeited all rights to the rental deposit.

Sec. 12. Section 76-1489, Reissue Revised Statutes of Nebraska, is amended to read:

76-1489 If a landlord retains all or any portion of a rental deposit in violation of sections 76-1483 to 76-1488, the tenant may recover the amount of the rental deposit due to the tenant, court costs, and reasonable attorney's fees. In addition, if the landlord's retention of the rental deposit or any portion thereof is willful and not in good faith, the tenant may recover an amount equal to one month's periodic rent or two times the amount of the rental deposit, whichever is less, as liquidated damages. The bad faith retention of all or any portion of a rental deposit by a landlord in violation of sections 76-1483 to 76-1488 shall subject the landlord to liquidated damages in an amount not to exceed one and one-half months' rent and reasonable attorney's fees.

Sec. 13. Section 76-14,101, Reissue Revised Statutes of Nebraska, is amended to read:

76-14,101 (1) If there is a noncompliance with section 76-1493 materially affecting health and safety or a material noncompliance by the tenant with the rental agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice. Only in the event the breach is remediable by repairs or the payment of damages and the tenant adequately remedies the breach or takes

reasonable steps to remedy it prior to the date specified in the notice, the rental agreement shall not terminate.

(2) If rent is unpaid when due and the tenant fails to pay rent within ~~seven~~ five days after written notice by the landlord of nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(3) A landlord may recover damages, obtain injunctive relief, or recover possession of the mobile home space by an action in forcible detainer for any material noncompliance by the tenant with the rental agreement or section 76-1493 by bringing an action for possession in the manner described in sections 76-1440 to 76-1447.

(4) The remedy provided in subsection (3) of this section shall be in addition to any right of a landlord arising under subsection (1) of this section.

Sec. 14. (1) On or before January 15, 2022, and July 15, 2022, and on or before each January 15 and July 15 thereafter, the Supreme Court shall electronically submit a report to the Clerk of the Legislature that includes, for the preceding six months the following information pertaining to eviction proceedings, broken down by county:

(a) The number of eviction proceedings initiated;

(b) The number of tenants represented by counsel;

(c) The number of landlords represented by counsel;

(d) The number of orders granting restitution of the premises entered by default; and

(e) The numbers of orders granting restitution of the premises entered, broken down by the specific statutory authority under which possession was sought.

(2) For purposes of this section:

(a) Eviction proceeding means an action involving a claim for forcible entry and detainer involving a residential tenancy under sections 25-21,219 to 25-21,235, the Uniform Residential Landlord and Tenant Act, or the Mobile Home Landlord and Tenant Act;

(b) Landlord includes a landlord as defined in section 76-1410 and a landlord as defined in section 76-1462;

(c) Residential tenancy means a tenancy subject to the Uniform Residential Landlord and Tenant Act or the Mobile Home Landlord and Tenant Act or any other tenancy involving a dwelling unit as defined in section 76-1410;

(d) Tenant means a tenant or former tenant of a residential tenancy; and

(e) When reference in this section is made to a definition found in both the Uniform Residential Landlord and Tenant Act and the Mobile Home Landlord and Tenant Act, the definition relevant to the type of tenant at issue applies for purposes of this section.

Sec. 15. Original sections 25-21,219, 76-1401, 76-1410, 76-1423, 76-1441, 76-1442.01, 76-1443, 76-1485, 76-1486, 76-1489, and 76-14,101, Reissue Revised Statutes of Nebraska, and section 76-1431, Revised Statutes Cumulative Supplement, 2020, are repealed.