

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1046

Introduced by Cavanaugh, J., 9.

Read first time January 08, 2024

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Housing Agency Act; to amend
- 2 section 71-15,139, Reissue Revised Statutes of Nebraska; to require
- 3 appointment of counsel for termination hearings and eviction
- 4 proceedings for residents of public housing located in a city of the
- 5 metropolitan class; to require the city to pay for such counsel; to
- 6 provide duties for housing agencies; and to repeal the original
- 7 section.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-15,139, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 71-15,139 (1) A housing agency may adopt and promulgate reasonable
4 rules and regulations consistent with federal and state laws, rules, and
5 regulations and the purposes of the Nebraska Housing Agency Act
6 concerning the termination of tenancy.

7 (2)(a) If a housing agency seeks to terminate a resident's tenancy,
8 the housing agency shall serve Any resident so terminated shall be sent a
9 written notice of termination on such resident setting out the reasons
10 for such termination.

11 (b) If the premises is located in a city of the metropolitan class,
12 the notice shall contain a statement in substantially the following form:
13 "You have the right to representation by an attorney. This right applies
14 to eviction proceedings before a court and in any hearing to contest
15 termination of your tenancy before the [name of housing agency]. An
16 attorney will be appointed to represent you, at no cost to you, at the
17 beginning of such proceedings or hearing." ~~and any~~

18 (c) The resident served with a notice shall be given the opportunity
19 to contest the termination in an appropriate hearing by the housing
20 agency. A resident may contest the termination in any suit filed by the
21 housing agency in any court for recovery of possession of the premises.

22 (3) {2} Such notice may provide that if the resident fails to (a)
23 pay his or her rent or comply with any covenant or condition of his or
24 her lease or the rules and regulations of such housing agency, (b) cure a
25 violation or default thereof as specified in such notice, or (c) follow
26 the procedure for a hearing as set forth in the notice, all within the
27 time or times set forth in such notice, the tenancy shall then be
28 automatically terminated and no other notice or notices need be given of
29 such termination or the intent to terminate the tenancy, and upon such
30 termination, and without any notice other than as provided for in this
31 section, a housing agency may file suit against any resident for recovery

1 of possession of the premises and may recover the same as provided by
2 law.

3 (4) ~~(3)~~ A housing agency may, after three days' written notice of
4 termination and without an administrative hearing, file suit and have
5 judgment against any resident for recovery of possession of the premises
6 if the resident, any member of the resident's household, any guest, or
7 any other person who is under the resident's control or who is present
8 upon the premises with the resident's consent, engages in any drug-
9 related or violent criminal activity on the premises, or engages in any
10 activity that threatens the health, safety, or peaceful enjoyment of
11 other residents or housing agency employees. Such activity shall include,
12 but not be limited to, any of the following activities of the resident,
13 or the activities of any other person on the premises with the consent of
14 the resident: (a) Physical assault or the threat of physical assault; (b)
15 illegal use of a firearm or other weapon or the threat to use an illegal
16 firearm or other weapon; or (c) possession of a controlled substance by
17 the resident or any other person on the premises with the consent of the
18 resident if the resident knew or should have known of the possession by
19 such other person of a controlled substance, unless such controlled
20 substance was obtained directly from or pursuant to a medical order
21 issued by a practitioner authorized to prescribe as defined in section
22 28-401 while acting in the course of his or her professional practice.

23 (5)(a) This subsection only applies if the premises is located in a
24 city of the metropolitan class.

25 (b) If the resident requests a hearing by the housing agency to
26 contest the termination, counsel shall be appointed for the tenant prior
27 to such hearing unless the tenant is already represented by counsel. The
28 housing agency shall file an application with the county court or
29 district court of the county in which the premises is located. The court
30 shall appoint counsel to represent the resident in the hearing and in any
31 related action for recovery of possession of the premises.

1 (c) If the resident does not request a hearing by the housing agency
2 to contest the termination and the housing agency files an action for
3 recovery of possession of the premises, the court shall appoint counsel
4 for the resident unless the resident is already represented by counsel.

5 (d) The resident may waive court-appointed counsel or retain the
6 resident's own counsel. The cost of any court-appointed counsel shall be
7 paid by the city.

8 (e) Counsel appointed pursuant to this section shall apply to the
9 court before which the proceedings were had for fees for services
10 performed.

11 (f) In the case of a hearing to contest a termination for which
12 there are no related court proceedings, counsel shall apply to the county
13 court or district court of the county in which the premises is located.

14 (g) The court, upon hearing the application, shall fix reasonable
15 fees. The city shall allow the account, bill, or claim presented by any
16 attorney for such services in the amount determined by the court. No such
17 account, bill, or claim shall be allowed by the city until the amount has
18 been determined by the court.

19 Sec. 2. Original section 71-15,139, Reissue Revised Statutes of
20 Nebraska, is repealed.