

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

JON L. SASSER, ESQ.
LEGAL SERVICES
STATEWIDE ADVOCACY COORDINATOR

650 Tahoe Street
Reno, Nevada 89509
775-329-2727, Ext. 22
775-324-5509(FAX)
jsasser@washoelegalservices.org

TESTIMONY IN SUPPORT OF AB 89

Senate Judiciary Committee
April 16, 2003

INTRODUCTION

Chairman Amodei and members of the Committee, for the record I am Jon Sasser, representing 3 non-profit civil legal services programs: Washoe Legal Services, Nevada Legal Services and the Washoe County Senior Law Project. I testify today in support of AB 89. The legal services programs that I represent provide free assistance to low income tenants. Due to a shortage of attorneys, the help offered rarely takes the form of representation in court. Typically the programs provide advice and brief service including self-help pamphlets and forms. They are in position to observe the impact of the current law on tenants and the need to eliminate the "small landlord exemption" at NRS 118A.180.2(c).

I. HISTORY OF NRS 118A.180.2(c)

Nevada's Residential Landlord and Tenant Act (NRS 118A) passed originally as AB173 in the 1977 session. It was based on the Uniform Residential Landlord and Tenant Act (URLTA) drafted by the National Conference of Commissioners on Uniform State Laws in 1972. Neither URLTA nor the original bill contained a small landlord exemption.

AB 173 went through several changes in 1977. In the 1st Reprint, the Assembly amended the bill to create an exemption for a person who does not owe more than three single-family houses rented without the use of a licensed real estate broker. In its 2nd Reprint the Assembly exempted persons who did not own more than six single-family houses at one time. In the 3rd Reprint the Senate changed the exemption to "6 dwelling units" at the suggestion of the Apartment-owners Association and in the final version as enrolled, the bill exempted persons who owned "less than 7 dwelling units".

NRS 118A180.2(c). was re-visited in the 1983 session. At that time I worked with the Apartment-owners Association on a jointly sponsored bill. In our bill we totally

EXHIBIT E Senate Committee on Judiciary

Date: 4/16/03 Page 1 of 3

eliminated the small landlord exemption as proposed today. That bill passed the Assembly late in the session but did not arrive in the Senate in time for a hearing.

In 1985 I was again involved with a virtually identical bill - AB 504 (1985). Again, the Apartment-owners Association and the tenants wished to totally eliminate the small landlord exemption (which remained at "less than seven"). In the Assembly Judiciary Committee, however, we received an objection from the Southern Nevada Builders Association. They believed that eliminating the exemption may hurt their ability to sell four-plexes to seniors moving over from California who might live in one and rent out remaining three. We compromised with today's rule that a small landlord is one who "owns and personally manages four or fewer dwelling units".

NRS 118A.180.2(c) was next amended in 1999 in a bill granting tenants a right to withhold rent if landlords refused to provide essential services. With the approval of the Nevada Builders Association, NRS 118A.380 (essential services) was added to the list of provisions which NRS 118A.180.2(c) applies to small landlords.

A little over a year ago Marshall Schultz, the next witness who runs a tenants' hotline in Reno, approached me to say that he had been getting a number of complaints regarding the failure by small landlords to comply with the warrant of habitability. He asked if I thought it were possible to eliminate the exemption. I stated I would be willing to approach the Builders Association to see if their organization still had a problem with this provision. I contacted Irene Porter and she responded that they did not anticipate that they would oppose the bill. I then met with representatives of the Nevada Association of Realtors and the Apartment-owners Association to see if they had any problem with the removal. They did not. Assemblywoman Leslie was then kind enough to sponsor AB 89.

II. IMPACT OF ELIMINATING "SMALL LANDLORD" EXEMPTION.

Under NRS 118A.180.2(c) the exemptions from the provisions of the Residential Landlord and Tenant Act include:

(c) A person who owns and personally manages four or fewer dwelling units, except with respect to the provisions of NRS 118A.200, 118A.300, 118A.340, 118A.380, 118A.450 and 118A.460;

"Small landlords" must comply with six sections of the Act including the requirements to: conform to the provisions for written rental agreements at 118A.200, provide a 45 day advance notice prior to an increase in rent, (118A.300), allow an elderly surviving spouse to terminate a lease (118A.340), provide essential services such as electricity, hot water, heat, etc. (118A.380), and deal with abandoned units/personal property as any other landlord (118A.450, 118A.460). They are exempt, however, from the remaining provisions of the chapter.

The smaller landlords are exempt from most of the important provisions of the Act including those governing security deposits, the warranty of habitability, illegal lockouts, retaliation, etc. We therefore have a clear set of laws governing the conduct of larger landlords and major confusion involving smaller ones. It is frequently unclear to the courts how many units a landlord owns and just which law does apply.

Under NRS 118A.240-244, for example, the rules governing security deposits are clear. There is a limit on the amount of security which can be charged and there is a procedure set up for a landlord to either refund the security deposit within 30 days at the end of a tenancy or send a tenant an itemized letter setting forth what damages the landlord claims. There is then a procedure if the tenant wishes to challenge the amount withheld. If a "small landlord" obtains a security deposit there is no governing law. The court can at best attempt to apply the common law of contracts to the facts.

An area of major concern is the warranty of habitability. While after the 1999 bill the law currently recognizes that "small landlords" must supply heat and hot water (essential services required by 118A.380), it does not require such equally important items as a roof and a floor.

Nevada's warranty of habitability is not very stringent. Under NRS 118A.290, a landlord must provide a "habitable" unit which means basically that it has wiring, plumbing, roof, floors, walls and windows which conformed to applicable law when installed and maintained in good working order. If repairs are needed, tenants must send a written notice giving a landlord 14 days to make requested repairs prior to taking any action. If the landlord fails to make repairs, a tenant may either (a) go to court to recover actual damages under NRS 118A.350 or (b) have the items repaired themselves in limited circumstances and deduct the cost from rent under NRS 118A.360.

If you pass AB 89 "small landlords" must comply with all of NRS 118A. They will not longer be able to illegally lock out a tenant or shut off a tenant's utilities (118A.390), retaliate against a tenant for calling the building and safety department (118A.510), refuse to give rent receipts 118A.250), barge in on a tenant at will (118A.330) or seize a tenant's personal property (118A.520). The courts will apply the same laws to all.

CONCLUSION

AB89 removes a long-standing inequity in Nevada's landlord/tenant laws. Whatever historic justification for the exemption seems to have passed. The same basic rules should apply to all landlords and tenants today. Please pass AB 89.