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## **Senate Judiciary Committee**

### **Testimony supporting AB 89, to remove NRS 118A.180.2(c)**

Mr. Chairman and Committee members:

My name is Marshall Schultz. I am founder and president of Residents Information Center, Inc. (RIC), a 501(c)(3) organization. We sponsor Nevada Renters Hotline, to which many state and local government offices refer callers, including the Governor's office and the AG's office. Ours is the only office collating data on rental problems from all around the state.

At this time I am representing myself only, not the corporation.

- ◆ Chapter 118A was added to NRS in 1977, the 60th Session. Very little of the statute has been revised in the ensuing 26 years.
- ◆ The small landlord exemption (118A.180.2(c)) is out of date and unfair to tenants who rightly expect fairness in the laws.
- ◆ The most egregious problems resulting from the exemption are: 1) Unconscionability (sec. 230); 2) Refunds of security deposits (sec. 242); Habitability issues (sec. 290); 3) Landlord's Access (sec. 330); and 4) Retaliation (sec. 510). Small landlords are exempt from most of the statute, but these four sections constitute the major part of tenant protections.
- ◆ Tenants are without legal remedy of habitability problems even in the few jurisdictions where code enforcement agencies are available.
- ◆ Regardless of local ordinances, a small landlord can evict a tenant without regard for the prohibition against retaliation, keep the security deposit, and rent the same dwelling unit to another innocent tenant. The cycle continues. Roofs leak, heat is not provided, hot water is not available, floors give way, wiring is unsafe, septic tanks overflow.
- ◆ Without the protection of the habitability section (.290) tenants have no legal remedy. They can only move out for the sake of family health, losing their security deposit in the process. The landlord then rents to a new tenant.
- ◆ A tenant who moves out does not get his deposit refunded by a small landlord. Low income tenants may not be able to move at all because the landlord is not required to refund the deposit. Without the refund many tenants cannot make a deposit on another rental unit.

- ◆ What are these people expected to do if forced to move for safety reasons, and the landlord refuses to refund the deposit? The law provides no remedy.
- ◆ Landlords and their agents have been known to unlawfully invade tenant's rented premises without the 24 hour advance notice required by the state statute. Under 118A.330 most tenants are protected and have legal remedy. But small landlords are exempt and again the tenant is without remedy. What ever happened to the ancient right of quiet enjoyment of one's home?
- ◆ A rental agreement is like any other business transaction: each party gives something of value to the other party. AB 89 simply levels the playing field, providing equal protection under the law to both parties. As it now stands, NRS 118A does not provide equal protection due to the small landlord exemption. 118A.180.2(c) discriminates unjustly, favoring small landlords. And Nevada families suffer for it.
- ◆ Customers expect fair treatment from business. Shouldn't both parties in the rental contract enjoy equal fairness under the law? Shouldn't Nevada at least provide legal remedies to both parties?
- ◆ Tenants need and deserve a fair return for their rent money, and protection from predators.

The attached page briefly describes five Hotline cases wherein the tenant was harmed by the small landlord exemption. Please read that page for details.

Thank you for your attention.

Marshall L. Schultz 8

## Five cases from Hotline files during five months from Sept., 2002 through Jan., 2003.

### Case #1 09/17/02

Tenant complained in writing to landlord about plumbing problems in rented house. Rent \$950, security \$900. LL refused to repair. Other complaints also ignored. Tenant quit premises, LL did not refund deposit or provide an "itemized written accounting" as required under section 242. Small landlords exemption.

### Case #2 11/20/02

Dwelling unit was an unfinished basement apartment (probably illegal) in a private home. Rental agreement was verbal, yet tenant was told that her \$250.00 security deposit was non-refundable. This could be a violation of NRS 118A.200.2(f), except paragraph 3 of that section says nothing about security deposits under verbal contracts, and small landlords are exempt from section 242 which specifies how security deposits are to be refunded.

The tenant complained that the apartment ceiling leaked [290.1(h)] and lacked heat [290.1(d)]. Heat is an "essential system" which all landlords of whatever size are required to provide [section 380], but section 290 is totally exempt.

Tenant was evicted for complaining. Eviction likely violated section 510 (retaliatory conduct prohibited), but again, small landlords are exempt from that section.

### Case #3 12/13/02

The unit is a mobile home (on private land owned by the landlord) rented as a dwelling in Spring Creek near Elko. Tenant family consists of husband, wife and 5 children. Family in the dwelling only 1 week as of 12/13/02. Rent is \$625.00 / month; a \$600.00 security deposit had not been paid at the time of the call.

Habitability (Sec 290): Windows not sealed against weather, no door seals or door locks. Ceiling stains indicate ceiling leaks. "Essential systems" of hot water and heat lacking. Essential systems required of all landlords, but leaky roofs, windows and doors sealed against inclement weather are section 290 habitability considerations from which small landlords are exempt.

We told tenant to call Elko County for code enforcement, and to call justice court daily to stay informed of law suit filed by landlord. Also told tenant to get a copy of 118A and to put everything in writing hereafter. Finally told her she should consult a lawyer (she can't afford to do that), and to move out ASAP, writing to LL explaining why.

The Hotline learned later that Elko does not have a code enforcement staff, only building construction staff.

### Case #4 12/23/02

A single family house, rent \$800, security \$800. Owner sold the house and new owner demanded additional \$800 security.

118A.244 requires original owner to notify tenant of name and address of successor in interest and that he has transferred the security deposit to successor OR refund the deposit to the tenant.

Under section 180 small landlords are exempt from section .244. No legal remedy available.

### Case #5 01/13/03

Dwelling unit a mobile home near Elko, family with 2 children aged 4 and 15. Rent \$500 per month, security deposit \$500. Written rental agreement but landlord did not supply a copy as promised.

Extensive section 290 habitability problems: Electric switches spark when turned on, most outlets spark when an appliance is plugged in; arcing often heard inside walls but not visible. Master bedroom has no lights at all and no outlets; lights and outlets in both bathrooms not functional; garbage disposal, dishwasher and laundry equipment not functioning.

Under section 380 landlord is supposed to provide electric service as an "essential system," and might be deemed to have complied simply because electric service was supplied to the dwelling, despite the fact that appliances did not work and the wiring was both faulty and dangerous. Section .380 gives the tenant specified options if landlord failure to provide essential services causes the premises to become unfit for habitation. However, tenants are still subject to eviction and/or retaliation and loss of security deposit due to the small landlord exemption.

April 16, 2003

Senate Judiciary Committee

Testimony in favor of AB 89

Mr. Chairman and Committee members:

My name is Nancy Brehm. At present I rent a Carson City apartment, but for two and a half months in 2002 I rented a converted basement apartment in a private home.

The rent for the basement was \$475.00 and the owner demanded a \$250.00 security deposit which she said was non-refundable, even though agreement was verbal. I now know that small landlords are exempt from refunding security deposits under the statute regardless of the form of the agreement.

I moved into that basement in August while weather was warm. When the weather got cooler I found there was no heat, and my ceiling leaked. The owner refused to provide heat or to fix the leaky ceiling so I moved in early November.

I had paid the rent on time but my security deposit was not refunded, so I have lost \$250.00 for no good reason. The fact that she kept the deposit legally is not a good reason in my opinion.

From information provided by Nevada Renters Hotline I now know that the owner is exempt from the state law regulating rentals since she owns and manages fewer than four units.

I feel cheated and abused. In fairness, and for public health, the law should apply to all landlords. A landlord who refuses to maintain a safe and decent dwelling unit should not be allowed to rent it.

Tenants deserve fair value for their hard earned money, but as the law now stands tenants of small landlords do not get fairness.

Please pass AB 89. Thousands of tenants will thank you.

Nancy Brehm  
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