

ASSEMBLY BILL NO. 189—ASSEMBLYMEN HOGAN, KIHUEN,
PIERCE, OHRENSCHALL; DENIS, MANENDO AND MORTENSON

FEBRUARY 18, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing the eviction of certain
tenants from property. (BDR 3-655)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to property; extending the period of time that
certain tenants have to comply with certain notices and
requirements to avoid being guilty of unlawful detainer;
extending the period of time that certain tenants have to
comply with a notice to quit under certain circumstances;
and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides several circumstances under which a tenant of real property or a mobile home may be guilty of unlawful detainer. (NRS 40.2512, 40.2514, 40.2516) For example, existing law provides that a tenant of real property is guilty of unlawful detainer if he: (1) fails to pay his rent; (2) fails to comply with a written notice directing him to either pay the rent or surrender the property; and (3) remains on the property for at least 5 days after the notice is served upon him. (NRS 40.2512) **Section 1** of this bill extends the 5-day period to 10 days for residential premises, so that such a tenant is not guilty of unlawful detainer until 10 days after the notice is served and he has failed to comply with the notice.

In addition, existing law provides that a tenant of real property is guilty of unlawful detainer if he: (1) fails to perform certain conditions of the lease; (2) fails to comply with a written notice directing him to perform the conditions or surrender the property; and (3) remains on the property for at least 5 days after the notice is served upon him. Further, existing law provides that the tenant or subtenant may save the lease from forfeiture by performing the conditions within 3 days after the notice is served. (NRS 40.2516) **Section 3** of this bill extends from 5 days to 10 days, the period during which such a tenant or subtenant of residential premises may remain on the property before becoming guilty of unlawful detainer. **Section 3** also gives the tenant and subtenant of residential premises 7 days, rather than 3 days, to perform the condition and save the lease from forfeiture.

Existing law provides procedures for summary evictions and exclusions of certain tenants who fail to pay their rent. (NRS 40.253) Specifically, existing law



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authorizes a landlord to serve such a tenant with written notice directing the tenant to pay the rent or surrender the property within 5 days after service of the notice. **Section 4** of this bill extends that 5-day period to 10 days after service for residential premises. Existing law also provides that, under certain circumstances, the landlord may obtain an order from the court directing the sheriff to remove the tenant within 24 hours after receiving the order. **Section 4** revises existing law to provide that, for residential premises, the sheriff may not remove the tenant earlier than 5 days after the sheriff receives the order, unless the rent is reserved by the week or less, in which case the sheriff may not remove the tenant earlier than 2 days after receipt of the order. Finally, **section 4** provides that the court is not required to hold a hearing concerning an alleged unlawful detainer until certain conditions are met, including that the time provided in this section for a tenant to pay rent or surrender the premises has expired. (NRS 40.253)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 40.2512 is hereby amended to read as follows:

40.2512 A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing, requiring in the alternative the payment of the rent or the surrender of the detained premises, remains uncomplished with for a period of 5 days, or in the case of ~~⌘~~ ~~mobile-home-lot,~~ **residential premises**, 10 days after service thereof. The notice may be served at any time after the rent becomes due.

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 40.2516 is hereby amended to read as follows:

40.2516 A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property or mobile home is held, other than those mentioned in NRS 40.250 to 40.252, inclusive, and NRS 40.254, and after notice in writing, requiring in the alternative the performance of the condition or covenant or the surrender of the property, served upon him, and, if there is a subtenant in actual occupation of the premises, also upon the subtenant, remains uncomplished with for 5 **days or, in the case of residential premises, 10** days after the service thereof. Within 3 **days or, in the case of residential premises, 7** days after the service, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person, interested in its continuance, may perform the condition or covenant and thereby save the lease from forfeiture, ~~⌘~~ but if the covenants and conditions of the lease, violated by the



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lessee, cannot afterwards be performed, then no notice need be given.

Sec. 4. NRS 40.253 is hereby amended to read as follows:

40.253 1. Except as otherwise provided in subsection 10, in addition to the remedy provided in NRS 40.2512 and 40.290 to 40.420, inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or his agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

(a) At or before noon of the fifth *full day or, in the case of residential premises, 10th* full day following the day of service; or

(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

➤ As used in this subsection, "day of service" means the day the landlord or his agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.

2. A landlord or his agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of NRS 40.280. If the notice cannot be delivered in person, the landlord or his agent:

(a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and

(b) After the notice has been posted and mailed, may deliver the notice to the sheriff or constable for service in the manner set forth in subsection 1 of NRS 40.280. The sheriff or constable shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when he took possession of the premises, that the landlord or his agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the sheriff or constable shall serve the notice within 48 hours after the request for service was made by the landlord or his agent.

3. A notice served pursuant to subsection 1 or 2 must:



1 (a) Identify the court that has jurisdiction over the matter; and

2 (b) Advise the tenant of his right to contest the matter by filing,
3 within the time specified in subsection 1 for the payment of the rent
4 or surrender of the premises, an affidavit with the court that has
5 jurisdiction over the matter stating that he has tendered payment or
6 is not in default in the payment of the rent.

7 4. If the tenant files such an affidavit at or before the time
8 stated in the notice, the landlord or his agent, after receipt of a file-
9 stamped copy of the affidavit which was filed, shall not provide for
10 the nonadmittance of the tenant to the premises by locking or
11 otherwise.

12 5. Upon noncompliance with the notice:

13 (a) The landlord or his agent may apply by affidavit of
14 complaint for eviction to the justice court of the township in which
15 the dwelling, apartment, mobile home or commercial premises are
16 located or to the district court of the county in which the dwelling,
17 apartment, mobile home or commercial premises are located,
18 whichever has jurisdiction over the matter. ~~The~~ *If the tenant is in*
19 *possession of commercial premises, the* court may thereupon issue
20 an order directing the sheriff or constable of the county to remove
21 the tenant within 24 hours after receipt of the order. *If the tenant is*
22 *in possession of residential premises, the court may thereupon*
23 *issue an order directing the sheriff or constable of the county to*
24 *remove a tenant not earlier than 5 days after receipt of the order*
25 *or, if the rent is reserved by a period of 1 week or less, not earlier*
26 *than 2 days after receipt of the order.* The affidavit must state or
27 contain:

28 (1) The date the tenancy commenced.

29 (2) The amount of periodic rent reserved.

30 (3) The amounts of any cleaning, security or rent deposits
31 paid in advance, in excess of the first month's rent, by the tenant.

32 (4) The date the rental payments became delinquent.

33 (5) The length of time the tenant has remained in possession
34 without paying rent.

35 (6) The amount of rent claimed due and delinquent.

36 (7) A statement that the written notice was served on the
37 tenant in accordance with NRS 40.280.

38 (8) A copy of the written notice served on the tenant.

39 (9) A copy of the signed written rental agreement, if any.

40 (b) Except when the tenant has timely filed the affidavit
41 described in subsection 3 and a file-stamped copy of it has been
42 received by the landlord or his agent, and except when the landlord
43 is prohibited pursuant to NRS 118A.480, the landlord or his agent
44 may, in a peaceable manner, provide for the nonadmittance of the
45 tenant to the premises by locking or otherwise.



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6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, ~~land~~ the filing by the landlord of the affidavit permitted by subsection 5 ~~and the expiration of the time specified in subsection 1 for the payment of rent or surrender of the premises,~~ the justice court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that ~~there~~:

(a) *There* is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. ~~If the court determines that there~~

(b) *There* is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief ~~and~~ and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive.

↪ The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which he may be entitled. If the alleged unlawful detainer was based upon subsection 5 of NRS 40.2514, the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with NRS 40.251.

7. The tenant may, upon payment of the appropriate fees relating to the filing and service of a motion, file a motion with the court, on a form provided by the clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord pursuant to NRS 118A.460 for the inventory, moving and storage of personal property left on the premises. The motion must be filed within 20 days after the summary order for removal of the tenant or the abandonment of the premises by the tenant, or within 20 days after:

(a) The tenant has vacated or been removed from the premises; and

(b) A copy of those charges has been requested by or provided to the tenant,

↪ whichever is later.

8. Upon the filing of a motion pursuant to subsection 7, the court shall schedule a hearing on the motion. The hearing must be held within 10 days after the filing of the motion. The court shall affix the date of the hearing to the motion and order a copy served upon the landlord by the sheriff, constable or other process server. At the hearing, the court may:

(a) Determine the costs, if any, claimed by the landlord pursuant to NRS 118A.460, and any accumulating daily costs; and



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(b) Order the release of the tenant's property upon the payment of the charges determined to be due or if no charges are determined to be due.

9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or his agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in NRS 118A.240.

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215.

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. This act becomes effective upon passage and approval.

