

Amendment No. 312

Senate Amendment to Senate Bill No. 338	(BDR 10-1152)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	☐	Lost ☐	Adopted	☐	Lost ☐
Concurred In	☐	Not ☐	Concurred In	☐	Not ☐
Receded	☐	Not ☐	Receded	☐	Not ☐

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

BFG/KEL



Date: 4/15/2009

S.B. No. 338—Authorizes a landlord who leases or subleases any commercial premises to dispose of any abandoned personal property left on the commercial premises under certain circumstances.
(BDR 10-1152)



SENATE BILL NO. 338—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Authorizes a landlord who leases or subleases any commercial premises to dispose of any abandoned personal property left on the commercial premises under certain circumstances. (BDR 10-1152)

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; authorizing a landlord who leases or subleases any commercial premises to dispose of any abandoned personal property left on the commercial premises without incurring any civil or criminal liability under certain circumstances; authorizing the landlord to charge and collect certain reasonable and actual costs before releasing the abandoned personal property; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill authorizes a landlord who leases or subleases any commercial premises under a rental agreement ***that has been terminated for any reason*** to dispose of any abandoned personal property left on the commercial premises without incurring any civil or criminal liability if the landlord ~~provides for the safe storage of the abandoned personal property for 30 days after the termination of the tenancy and the landlord is not negligent or does not commit any wrongful acts in storing the property.~~ ***takes reasonable steps to notify any holder of a lien or security interest of the existence of the abandoned property and notifies the tenant who left the property on the premises of his intention to dispose of the property.*** **Section 2** of this bill defines “abandoned personal property” as any personal property which is left unattended on the commercial premises after the termination of the tenancy, unless the owner of the personal property expresses his intent in writing to return for the personal property. ~~After the expiration of the 30 day period for safely storing the abandoned personal property, section 1 authorizes the landlord to dispose of the abandoned personal property and recover his reasonable costs if he provides written notice to the tenant expressing the intent of the landlord to dispose of the property.~~ If the abandoned personal property is a vehicle, **section 1** requires the vehicle to be disposed of in the manner provided in chapter 487 of NRS for abandoned vehicles. **Section 1** also authorizes the landlord to charge and collect the reasonable and actual costs of inventory, moving and ***safe storage, if necessary,*** of the abandoned personal property before releasing the abandoned personal property to the tenant or his authorized representative. If the tenant disputes the costs claimed by the landlord, **section 1** authorizes the dispute to be resolved using the procedure specified in NRS 40.253, as amended by **section 3** of this bill.

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

Section 1. Chapter 118 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A landlord who leases or subleases any commercial premises under a rental agreement that has been terminated for any reason may, in accordance with the following provisions, dispose ~~in the following manner~~ of any abandoned personal property, regardless of its character, left on the commercial premises without incurring any civil or criminal liability:

~~(a) The landlord shall provide for the safe storage of the abandoned personal property for 30 days after the termination of the tenancy. The landlord is liable to the tenant only for the landlord's negligent or wrongful acts in storing the property.~~

~~(b) After the expiration of the 30 day period, the~~ landlord may dispose of the abandoned personal property and recover his reasonable costs out of the abandoned personal property or the value thereof if ~~the~~ the conditions set forth in subparagraphs (1) and (2) are satisfied:

(1) The landlord has taken reasonable steps to:

(I) Determine whether the abandoned personal property is subject to a lien or security interest; and

(II) If the abandoned personal property is subject to a lien or security interest, notify the holder of the lien or the security interest that the abandoned personal property has been left on the premises.

(2) The landlord has notified the tenant in writing of his intention to dispose of the abandoned personal property and 14 days have elapsed since the notice was given to the tenant. The notice must be mailed to the tenant at the tenant's present address, and if that address is unknown, then at the tenant's last known address.

~~for (b)~~ (b) The landlord may charge and collect the reasonable and actual costs of inventory, moving and safe storage, if necessary, before releasing the abandoned personal property to the tenant or his authorized representative rightfully claiming the abandoned personal property within the appropriate period set forth in paragraph (a). ~~for (b)~~

~~(d)~~ (c) Vehicles must be disposed of in the manner provided in chapter 487 of NRS for abandoned vehicles.

2. Any dispute relating to the amount of the costs claimed by the landlord pursuant to paragraph ~~(e)~~ (b) of subsection 1 may be resolved using the procedure provided in subsection 7 of NRS 40.253.

Sec. 2. NRS 118.171 is hereby amended to read as follows:

118.171 As used in NRS 118.171 to 118.205, inclusive, and section 1 of this act, unless the context otherwise requires:

1. "Abandoned personal property" means any personal property which is left unattended on any commercial premises after the termination of the tenancy, unless the owner of the personal property has expressed an intent in writing to return for the personal property.

2. "Real property" includes an apartment, a dwelling, a mobile home that is owned by a landlord and located on property owned by the landlord and commercial premises.

~~(2)~~ 3. "Rental agreement" means an agreement to lease or sublease real property for a term less than life which provides for the periodic payment of rent.

~~3.4~~ 4. "Tenant" means a person who has the right to possess real property pursuant to a rental agreement.

Sec. 3. 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 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:

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

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

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

5. Upon noncompliance with the notice:

(a) The landlord or his agent may apply by affidavit of complaint for eviction to the Justice Court of the township in which the dwelling, apartment, mobile home or commercial premises are located or to the district court of the county in which the dwelling, apartment, mobile home or commercial premises are located, whichever has jurisdiction over the matter. The court may thereupon issue an order

directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order. The affidavit must state or contain:

- (1) The date the tenancy commenced.
- (2) The amount of periodic rent reserved.
- (3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month's rent, by the tenant.
- (4) The date the rental payments became delinquent.
- (5) The length of time the tenant has remained in possession without paying rent.

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

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

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

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

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

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, 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 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 is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief, 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 **or section 1 of this act** 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 **or section 1 of this act** and any accumulating daily costs; and

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

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

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