

ASSEMBLY BILL NO. 226—ASSEMBLYMEN FRIERSON,  
BROOKS, CARRILLO, SEGERBLOM; AND PIERCE

MARCH 2, 2011

Referred to Committee on Judiciary

SUMMARY—Revises various provisions governing landlords and tenants. (BDR 3-669)

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; revising various provisions governing landlords and tenants; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law generally authorizes a landlord to have a tenant removed from rental property if the tenant defaults on rental payments and continues to occupy the property. (NRS 40.253) **Section 1** of this bill requires a landlord to advise a tenant of certain information in a notice before applying for a court order to evict the tenant.

Additionally, existing law provides tenants with certain remedies if a landlord is required to provide certain essential services and fails to do so, or if the landlord commits certain other acts that interfere with the tenant's use of the rental property. (NRS 118A.380, 118A.390) **Section 6** of this bill includes a functioning door lock among essential items or services that a landlord must provide a tenant. **Section 7** of this bill authorizes a tenant to recover immediate possession of rental property if a landlord takes possession of the property in violation of NRS 118A.480, which prohibits a landlord from taking possession of the property unless the landlord pursues an available legal remedy or the tenant surrenders possession of or abandons the property.

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

**Section 1.** 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,



1 mobile home, recreational vehicle or commercial premises with  
2 periodic rent reserved by the month or any shorter period is in  
3 default in payment of the rent, the landlord or the landlord's agent,  
4 unless otherwise agreed in writing, may serve or have served a  
5 notice in writing, requiring in the alternative the payment of the rent  
6 or the surrender of the premises:

7 (a) At or before noon of the fifth full day following the day of  
8 service; or

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

13 ➔ As used in this subsection, "day of service" means the day the  
14 landlord or the landlord's agent personally delivers the notice to the  
15 tenant. If personal service was not so delivered, the "day of service"  
16 means the day the notice is delivered, after posting and mailing  
17 pursuant to subsection 2, to the sheriff or constable for service if the  
18 request for service is made before noon. If the request for service by  
19 the sheriff or constable is made after noon, the "day of service" shall  
20 be deemed to be the day next following the day that the request is  
21 made for service by the sheriff or constable.

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

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

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

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

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

42 (b) Advise the tenant ~~to~~:

43 (1) *Of* the tenant's right to contest the matter by filing, within  
44 the time specified in subsection 1 for the payment of the rent or  
45 surrender of the premises, an affidavit with the court that has



jurisdiction over the matter stating that the tenant has tendered payment or is not in default in the payment of the rent **H**;

*(2) That if the court determines that 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, directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order; and*

*(3) That, pursuant to NRS 118A.390, a tenant may seek relief if a landlord unlawfully removes the tenant from the premises or excludes the tenant by blocking or attempting to block the tenant's entry upon the premises or willfully interrupts or causes or permits the interruption of an essential service required by the rental agreement or chapter 118A of NRS.*

4. If the tenant files such an affidavit at or before the time stated in the notice, the landlord or the landlord's 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 the landlord's 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 the landlord's agent, and except when the landlord is prohibited pursuant to NRS 118A.480, the landlord



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1 or the landlord's agent may, in a peaceable manner, provide for the  
2 nonadmittance of the tenant to the premises by locking or otherwise.

3 6. Upon the filing by the tenant of the affidavit permitted in  
4 subsection 3, regardless of the information contained in the  
5 affidavit, and the filing by the landlord of the affidavit permitted by  
6 subsection 5, the justice court or the district court shall hold a  
7 hearing, after service of notice of the hearing upon the parties, to  
8 determine the truthfulness and sufficiency of any affidavit or notice  
9 provided for in this section. If the court determines that there is no  
10 legal defense as to the alleged unlawful detainer and the tenant is  
11 guilty of an unlawful detainer, the court may issue a summary order  
12 for removal of the tenant or an order providing for the  
13 nonadmittance of the tenant. If the court determines that there is a  
14 legal defense as to the alleged unlawful detainer, the court shall  
15 refuse to grant either party any relief, and, except as otherwise  
16 provided in this subsection, shall require that any further  
17 proceedings be conducted pursuant to NRS 40.290 to 40.420,  
18 inclusive. The issuance of a summary order for removal of the  
19 tenant does not preclude an action by the tenant for any damages or  
20 other relief to which the tenant may be entitled. If the alleged  
21 unlawful detainer was based upon subsection 5 of NRS 40.2514, the  
22 refusal by the court to grant relief does not preclude the landlord  
23 thereafter from pursuing an action for unlawful detainer in  
24 accordance with NRS 40.251.

25 7. The tenant may, upon payment of the appropriate fees  
26 relating to the filing and service of a motion, file a motion with the  
27 court, on a form provided by the clerk of the court, to dispute the  
28 amount of the costs, if any, claimed by the landlord pursuant to NRS  
29 118.207 or 118A.460 for the inventory, moving and storage of  
30 personal property left on the premises. The motion must be filed  
31 within 20 days after the summary order for removal of the tenant or  
32 the abandonment of the premises by the tenant, or within 20 days  
33 after:

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

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

38 ➤ whichever is later.

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



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(a) Determine the costs, if any, claimed by the landlord pursuant to NRS 118.207 or 118A.460 and any accumulating daily costs; and

(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 the landlord's 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. 2.** (Deleted by amendment.)

**Sec. 3.** (Deleted by amendment.)

**Sec. 4.** (Deleted by amendment.)

**Sec. 5.** (Deleted by amendment.)

**Sec. 6.** NRS 118A.380 is hereby amended to read as follows:

118A.380 1. If the landlord is required by the rental agreement or this chapter to supply heat, air-conditioning, running water, hot water, electricity, gas, *a functioning door lock* or another essential *item or* service and the landlord willfully or negligently fails to do so, causing the premises to become unfit for habitation, the tenant shall give written notice to the landlord specifying the breach. If the landlord does not adequately remedy the breach, or use his or her best efforts to remedy the breach within 48 hours, except a Saturday, Sunday or legal holiday, after it is received by the landlord, the tenant may, in addition to any other remedy:

(a) Procure reasonable amounts of such essential *items or* services during the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) Recover actual damages, including damages based upon the lack of use of the premises or the diminution of the fair rental value of the dwelling unit;

(c) Withhold any rent that becomes due during the landlord's noncompliance without incurring late fees, charges for notice or any other charge or fee authorized by this chapter or the rental agreement, until the landlord has attempted in good faith to restore the essential *items or* services; or



(d) Procure other housing which is comparable during the landlord's noncompliance, and the rent for the original premises fully abates during this period. The tenant may recover the actual and reasonable cost of that other housing which is in excess of the amount of rent which is abated.

2. If the tenant proceeds under this section, the tenant may not proceed under NRS 118A.350 and 118A.360 as to that breach.

3. The rights of the tenant under this section do not arise until the tenant has given written notice as required by subsection 1, except that the tenant may, without having given that notice:

(a) Recover damages as authorized under paragraph (b) of subsection 1 if the landlord:

(1) Admits to the court that the landlord had knowledge of the lack of such essential *items or* services; or

(2) Has received written notice of the uninhabitable condition caused by such a lack from a governmental agency authorized to inspect for violations of building, housing or health codes.

(b) Withhold rent under paragraph (c) of subsection 1 if the landlord:

(1) Has received written notice of the condition constituting the breach from a governmental agency authorized to inspect for violations of building, housing or health codes; and

(2) Fails to remedy or attempt in good faith to remedy the breach within the time prescribed in the written notice of that condition from the governmental agency.

4. The rights of the tenant under paragraph (c) of subsection 1 do not arise unless the tenant is current in the payment of rent at the time of giving written notice pursuant to subsection 1.

5. If such a condition was caused by the deliberate or negligent act or omission of the tenant, a member of his or her household or other person on the premises with his or her consent, the tenant has no rights under this section.

**Sec. 7.** NRS 118A.390 is hereby amended to read as follows:

118A.390 1. If the landlord unlawfully removes the tenant from the premises or excludes the tenant by blocking or attempting to block the tenant's entry upon the premises, ~~the~~ willfully interrupts or causes or permits the interruption of any essential *item or* service required by the rental agreement or this chapter ~~or~~ *otherwise recovers possession of the dwelling unit in violation of NRS 118A.480*, the tenant may recover immediate possession pursuant to subsection 4, proceed under NRS 118A.380 or terminate the rental agreement and, in addition to any other remedy, recover the tenant's actual damages, receive an amount not greater than ~~[\$1,000]~~ *\$2,500* to be fixed by the court, or both.



2. In determining the amount, if any, to be awarded under subsection 1, the court shall consider:

- (a) Whether the landlord acted in good faith;
- (b) The course of conduct between the landlord and the tenant; and
- (c) The degree of harm to the tenant caused by the landlord's conduct.

3. If the rental agreement is terminated pursuant to subsection 1, the landlord shall return all prepaid rent and security recoverable under this chapter.

4. Except as otherwise provided in subsection 5, the tenant may recover immediate possession of the premises from the landlord by filing a verified complaint for expedited relief for the unlawful removal or exclusion of the tenant from the premises, ~~for~~ the willful interruption of *any* essential ~~services~~ *item or service or the recovery of possession of the dwelling unit in violation of NRS 118A.480.*

5. A verified complaint for expedited relief:

(a) Must be filed with the court within 5 judicial days after the date of the unlawful act by the landlord, and the verified complaint must be dismissed if it is not timely filed. If the verified complaint for expedited relief is dismissed pursuant to this paragraph, the tenant retains the right to pursue all other available remedies against the landlord.

(b) May not be filed with the court if an action for summary eviction or unlawful detainer is already pending between the landlord and tenant, but the tenant may seek similar relief before the judge presiding over the pending action.

6. The court shall conduct a hearing on the verified complaint for expedited relief ~~within~~ *not later than* 3 judicial days after the filing of the verified complaint for expedited relief. Before or at the scheduled hearing, the tenant must provide proof that the landlord has been properly served with a copy of the verified complaint for expedited relief. Upon the hearing, if it is determined that the landlord has violated any of the provisions of subsection 1, the court may:

(a) Order the landlord to restore to the tenant the premises or essential *items or* services, or both;

(b) Award damages pursuant to subsection 1; and

(c) Enjoin the landlord from violating the provisions of subsection 1 and, if the circumstances so warrant, hold the landlord in contempt of court.

7. The payment of all costs and official fees must be deferred for any tenant who files a verified complaint for expedited relief. After any hearing and not later than final disposition of the filing or



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1 order, the court shall assess the costs and fees against the party that  
2 does not prevail, except that the court may reduce them or waive  
3 them, as justice may require.

4 **Sec. 8.** NRS 118A.480 is hereby amended to read as follows:

5 118A.480 The landlord shall not recover or take possession of  
6 the dwelling unit by action or otherwise, including willful  
7 diminution or interruption or causing or permitting the diminution  
8 or interruption of any essential *item or* service required by the rental  
9 agreement or this chapter, except:

10 1. By an action for possession or other civil action or summary  
11 proceeding in which the issue of right of possession is determined;

12 2. When the tenant has surrendered possession of the dwelling  
13 unit to the landlord; or

14 3. When the tenant has abandoned the dwelling unit as  
15 provided in NRS 118A.450.

16 **Sec. 9.** NRS 118A.510 is hereby amended to read as follows:

17 118A.510 1. Except as otherwise provided in subsection 3,  
18 the landlord may not, in retaliation, terminate a tenancy, refuse to  
19 renew a tenancy, increase rent or decrease essential *items or*  
20 services required by the rental agreement or this chapter, or bring or  
21 threaten to bring an action for possession if:

22 (a) The tenant has complained in good faith of a violation of a  
23 building, housing or health code applicable to the premises and  
24 affecting health or safety to a governmental agency charged with the  
25 responsibility for the enforcement of that code;

26 (b) The tenant has complained in good faith to the landlord or a  
27 law enforcement agency of a violation of this chapter or of a  
28 specific statute that imposes a criminal penalty;

29 (c) The tenant has organized or become a member of a tenant's  
30 union or similar organization;

31 (d) A citation has been issued resulting from a complaint  
32 described in paragraph (a);

33 (e) The tenant has instituted or defended against a judicial or  
34 administrative proceeding or arbitration in which the tenant raised  
35 an issue of compliance with the requirements of this chapter  
36 respecting the habitability of dwelling units;

37 (f) The tenant has failed or refused to give written consent to a  
38 regulation adopted by the landlord, after the tenant enters into  
39 the rental agreement, which requires the landlord to wait until the  
40 appropriate time has elapsed before it is enforceable against the  
41 tenant; or

42 (g) The tenant has complained in good faith to the landlord, a  
43 government agency, an attorney, a fair housing agency or any other  
44 appropriate body of a violation of NRS 118.010 to 118.120,  
45 inclusive, or the Fair Housing Act of 1968, 42 U.S.C. §§ 3601





et seq., or has otherwise exercised rights which are guaranteed or protected under those laws.

2. If the landlord violates any provision of subsection 1, the tenant is entitled to the remedies provided in NRS 118A.390 and has a defense in any retaliatory action by the landlord for possession.

3. A landlord who acts under the circumstances described in subsection 1 does not violate that subsection if:

(a) The violation of the applicable building, housing or health code of which the tenant complained was caused primarily by the lack of reasonable care by the tenant, a member of his or her household or other person on the premises with his or her consent;

(b) The tenancy is terminated with cause;

(c) A citation has been issued and compliance with the applicable building, housing or health code requires alteration, remodeling or demolition and cannot be accomplished unless the tenant's dwelling unit is vacant; or

(d) The increase in rent applies in a uniform manner to all tenants.

➤ The maintenance of an action under this subsection does not prevent the tenant from seeking damages or injunctive relief for the landlord's failure to comply with the rental agreement or maintain the dwelling unit in a habitable condition as required by this chapter.

