

Amendment No. 619

Senate Amendment to Assembly Bill No. 398 First Reprint
(BDR 10-664)

Proposed by: Senate Committee on Commerce, Labor and Energy

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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 underlining* is newly added transitory language.



ASSEMBLY BILL NO. 398—ASSEMBLYMAN OHRENSCHALL

MARCH 21, 2011

JOINT SPONSOR: SENATOR PARKS

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to commercial tenancies. (BDR 10-664)

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 commercial tenancies; prohibiting a landlord's interference with a tenant's use of commercial premises under certain circumstances; establishing a procedure for a tenant to recover possession of commercial premises following a lockout; ~~reestablishing requirements for accounting for, charges against and refund of security deposits; prohibiting a landlord from assessing charges against a tenant except under certain circumstances;~~ setting forth the circumstances under which a tenant can be presumed to have abandoned commercial premises; repealing and reenacting provisions relating to the disposal of personal property abandoned by a tenant on commercial premises; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 14 of this bill prohibits a landlord from interfering in certain manners with a tenant's use of commercial premises.

Section 15 of this bill establishes a process for a tenant to recover possession of commercial premises from which a landlord has locked the tenant out.

Section 15.5 of this bill provides that the justice court has jurisdiction over any civil action or proceeding concerning the exclusion of a tenant from commercial premises or the summary eviction of a tenant from commercial premises in which no party is seeking damages. Section 15.5 also provides that certain provisions of existing law governing actions for the recovery of a debt secured by a mortgage or other lien and the doctrines of res judicata and collateral estoppel do not apply to: (1) a claim by a landlord for contractual damages which is brought subsequent to an action by the landlord for the summary eviction of a tenant from commercial premises; or (2) an action by a landlord for the summary eviction of a tenant from commercial premises which is brought subsequent to a claim by the landlord for contractual damages.

Sections 16 and 27 of this bill repeal and reenact provisions authorizing a landlord to dispose of abandoned personal property left on commercial premises by a tenant under certain circumstances.

~~Sections 17-23 of this bill set forth requirements for the accounting for, refund of and charges against security deposits.~~

~~Section 24 of this bill prohibits a landlord from charging a tenant for rent or physical damages to commercial premises except under certain circumstances.~~

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

Section 1. Title 10 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 24, inclusive, of this act.

Sec. 2. *As used in sections 2 to 24, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *“Abandoned personal property” means any personal property which is left unattended on commercial premises after the termination of the tenancy and which is not removed by the tenant or a person who has an ownership interest in the personal property within 14 days after the date on which the landlord mailed, by certified mail, return receipt requested, notice of the landlord’s intention to dispose of the personal property, as required by paragraph (a) of subsection 1 of section 16 of this act.*

Sec. 4. *“Action” includes a counterclaim, crossclaim, third-party claim or any other proceeding in which rights are determined.*

Sec. 4.5. *“Commercial premises” means any real property other than premises as defined in NRS 118A.140.*

Sec. 5. *“Court” means the district court, justice court or other court of competent jurisdiction situated in the county or township wherein the commercial premises are located.*

Sec. 6. *“Landlord” means a person who provides commercial premises for use by another person pursuant to a rental agreement.*

Sec. 7. *“Owner” means one or more persons, jointly or severally, in whom is vested:*

1. All or part of the legal title to a commercial premises, except a trustee under a deed of trust who is not in possession of the commercial premises; or

2. All or part of the beneficial ownership, and a right to present use and enjoyment of the commercial premises.

Sec. 8. *“Person” includes a government, a governmental agency and a political subdivision of a government.*

Sec. 9. *“Rent” means all periodic payments to be made to the landlord for occupancy of commercial premises, including, without limitation, all reasonable and actual late fees set forth in the rental agreement.*

Sec. 10. *“Rental agreement” means an agreement to lease or sublease commercial premises for a term less than life which provides for the periodic payment of rent.*

Sec. 11. ~~*“Security deposit” means any advance of money, other than a deposit for a rental application or a payment in advance of rent, that is intended primarily to secure performance under a rental agreement.*~~ *(Deleted by amendment.)*

Sec. 12. *“Tenant” means a person who has the right to possess commercial premises pursuant to a rental agreement.*

Sec. 13. *The provisions of sections 2 to 24, inclusive, of this act apply only to the relationship between landlords and tenants of commercial premises.*

1 **Sec. 14. 1. A landlord or a landlord's agent may not interrupt or cause**
2 **the interruption of utility service paid for directly to the utility company by a**
3 **tenant unless the interruption results from construction, bona fide repairs or an**
4 **emergency.**

5 2. A landlord may not remove:

6 (a) A door, window or attic hatchway cover;

7 (b) A lock, latch, hinge, hinge pin, doorknob or other mechanism connected
8 to a door, window or attic hatchway cover; or

9 (c) Furniture, fixtures or appliances furnished by the landlord,
10 ↳ from commercial premises unless the landlord removes the item for a bona
11 fide repair or replacement. If a landlord removes any of the items listed in this
12 subsection for a bona fide repair or replacement, the repair or replacement must
13 be promptly performed.

14 3. A landlord may not intentionally prevent a tenant from entering the
15 commercial premises except by judicial process unless the exclusion results from:

16 (a) Construction, bona fide repairs or an emergency;

17 (b) Removing the contents of commercial premises abandoned by a tenant;
18 or

19 (c) Changing the door locks of a tenant who is delinquent in paying at least
20 part of the rent.

21 4. If a landlord or a landlord's agent changes the door lock of commercial
22 premises leased to a tenant who is delinquent in paying rent, the landlord or
23 agent must for a period of not less than 5 business days, place a written notice
24 on the front door of the commercial premises stating the name and the address or
25 telephone number of the person or company from which the new key may be
26 obtained. The new key is required to be provided only during the regular business
27 hours of the tenant and only if the tenant pays the delinquent rent.

28 5. If a landlord or a landlord's agent violates this section, the tenant may:

29 (a) Recover possession of the commercial premises ; ~~for terminate the rental~~
30 ~~agreement;~~ and

31 (b) Recover from the landlord an amount equal to the sum of the tenant's
32 actual damages, one month's rent or \$500, whichever is greater, reasonable
33 attorney's fees and court costs, less any delinquent rents or other sums for which
34 the tenant is liable to the landlord.

35 6. A rental agreement supersedes this section to the extent of any conflict.

36 **Sec. 15. 1. If a landlord locks a tenant out of commercial premises that**
37 ~~are~~ are subject to a rental agreement in violation of section 14 of this act, the
38 tenant may recover possession of the commercial premises as provided by this
39 section.

40 2. A tenant must file with the justice court of the township in which the
41 commercial premises are located ~~for with the district court of the county in which~~
42 ~~the commercial premises are located, whichever has jurisdiction over the matter,~~
43 a verified complaint for reentry, specifying the facts of the alleged unlawful
44 lockout by the landlord or the landlord's agent. The tenant must also state orally
45 under oath to the court the facts of the alleged unlawful lockout.

46 3. If a tenant has complied with subsection 2 and if the court reasonably
47 believes an unlawful lockout may have occurred, the court ;

48 (a) Shall issue an order requiring the tenant to post a bond in an amount
49 equal to 1 month of rent; and

50 (b) Upon the posting of the bond, may issue, ex parte, a temporary writ of
51 restitution that entitles the tenant to immediate and temporary possession of the
52 commercial premises, pending a final hearing on the tenant's verified complaint
53 for reentry.

4. A temporary writ of restitution must be served on the landlord or the landlord's agent in the same manner as a writ of restitution in a forcible detainer action. A sheriff or constable may use reasonable force in executing a temporary writ of restitution under this subsection.

~~5. [A landlord is entitled to]~~ The court shall hold a hearing on a tenant's verified complaint for reentry. A temporary writ of restitution must notify the landlord of the [right to a hearing.] pendency of the matter and the date of the hearing. The hearing must be held not earlier than the first judicial day and not later than the ~~[seventh]~~ fifth judicial day after the date on which the [landlord requests a hearing.] court issues the temporary writ of restitution.

~~6. [If a landlord fails to request a hearing on a tenant's verified complaint for reentry before the eighth day after the date of service of the temporary writ of restitution on the landlord under subsection 4, a judgment for court costs may be rendered against the landlord.]~~

~~7.]~~ A party may appeal from the court's judgment at the hearing on the verified complaint for reentry in the same manner as a party may appeal a judgment in an action for forcible detainer.

~~[8.]~~ 7. If a writ of restitution is issued, the writ supersedes a temporary writ of restitution.

~~[9.]~~ 8. If the landlord or the person on whom a writ of restitution is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served, under chapter 22 of NRS. ~~[If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the reentry action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. On receipt of an affidavit, the court shall issue an order to show cause, directing the person to appear on a designated date and show cause why the person should not be adjudged in contempt of court. If the court finds, after considering the evidence at the hearing, that the person has directly or indirectly disobeyed the writ, the court may commit the person to jail without bail until the person purges himself or herself of the contempt in a manner and form as the court may direct. If the person disobeyed the writ before receiving the order to show cause but has complied with the writ after receiving the order, the court may find the person in contempt and punish the person under chapter 22 of NRS.]~~

~~10.]~~ 9. This section does not affect a tenant's right to pursue a separate cause of action under section 14 of this act.

~~[11.]~~ 10. If a tenant in bad faith files a sworn complaint for reentry resulting in a writ of restitution being served on the landlord or landlord's agent, the landlord may in a separate cause of action recover from the tenant an amount equal to actual damages, one month's rent or \$500, whichever is greater, reasonable attorney's fees, and costs of court, less any sums for which the landlord is liable to the tenant.

~~[12.]~~ The fee for filing a verified complaint for reentry is the same as that for filing a civil action in the court in which the verified complaint is filed. The court may defer payment of the tenant's filing fees and service costs for the verified complaint for reentry and writ of restitution. Court costs may be waived only if the tenant files an affidavit under NRS 12.015.

~~13.]~~ 11. This section does not affect the rights of a landlord or tenant in a forcible detainer, unlawful detainer or forcible entry and detainer action.

Sec. 15.5. 1. Except as otherwise provided in subsection 2, the justice court has jurisdiction over any civil action or proceeding concerning the

exclusion of a tenant from commercial premises or the summary eviction of a tenant from commercial premises in which no party is seeking damages.

2. If a landlord combines an action for summary eviction of a tenant from commercial premises with a claim to recover contractual damages, jurisdiction over the claims rests with the court which has jurisdiction over the amount in controversy.

3. The provisions of NRS 40.430 and the doctrines of res judicata and collateral estoppel do not apply to:

(a) A claim by a landlord for contractual damages which is brought subsequent to an action by the landlord for the summary eviction of a tenant from commercial premises; or

(b) An action by a landlord for the summary eviction of a tenant from commercial premises which is brought subsequent to a claim by the landlord for contractual damages.

Sec. 16. 1. Except as otherwise provided in subsection 3, 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 of any abandoned personal property, regardless of its character, left on the commercial premises without incurring any civil or criminal liability:

(a) The landlord may dispose of the abandoned personal property and recover his or her reasonable costs out of the abandoned personal property or the value thereof if the landlord has notified the tenant in writing of the landlord's intention to dispose of the abandoned personal property and 14 days have elapsed since the notice was mailed to the tenant. The notice must be mailed, by certified mail, return receipt requested, to the tenant at the tenant's present address, and if that address is unknown, then at the tenant's last known address.

(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 or her authorized representative rightfully claiming the abandoned personal property within the appropriate period set forth in paragraph (a).

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

2. A tenant of commercial premises is presumed to have abandoned the premises if:

(a) Goods, equipment or other property, in an amount substantial enough to indicate a probable intent to abandon the commercial premises, is being or has been removed from the commercial premises; and

(b) The removal is not within the normal course of business of the tenant.

3. If a written agreement between a landlord and a person who has an ownership interest in any abandoned personal property of the tenant contains provisions which relate to the removal and disposal of abandoned personal property, the provisions of the agreement determine the rights and obligations of the landlord and the person with respect to the removal and disposal of the abandoned personal property.

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

Sec. 17. ~~[1. A landlord shall refund a security deposit to a tenant not later than 60 days after the date on which the tenant surrenders the commercial premises and provides notice to the landlord or the landlord's agent of the mailing address of the tenant pursuant to section 21 of this act.~~

~~2. A claim of a tenant to a security deposit to which the tenant is entitled takes priority over the claim of any creditor of the landlord, including a trustee in bankruptcy. (Deleted by amendment.)~~

Sec. 18. ~~{1. Before returning a security deposit, a landlord may deduct from the deposit damages and charges for which the tenant is legally liable under the rental agreement or damages and charges that result from a breach of the rental agreement.~~

~~2. A landlord may not retain any portion of a security deposit to cover normal wear and tear. For the purposes of this subsection, "normal wear and tear" means deterioration that results from the intended use of the commercial premises, including breakage or malfunction because of age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident or abuse of the commercial premises, equipment, or chattels by the tenant or by a guest or invitee of the tenant.~~

~~3. If a landlord retains all or part of a security deposit under this section, the landlord shall give to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. The landlord is not required to give the tenant a description and itemized list of deductions if:~~

~~(a) The tenant owes rent when the tenant surrenders possession of the commercial premises; and~~

~~(b) No controversy exists concerning the amount of rent owed. (Deleted by amendment.)~~

Sec. 19. ~~{1. Except as otherwise provided in subsection 4, if an owner's interest in commercial premises is terminated by sale, assignment, death, appointment of a receiver, bankruptcy or otherwise, the new owner is liable with respect to the security deposit pursuant to sections 2 to 24, inclusive, of this act from the date title to the premises is acquired, regardless of whether an acknowledgment is given to the tenant under subsection 2.~~

~~2. Except as otherwise provided in subsection 1, a person who no longer owns an interest in the commercial premises remains liable for a security deposit received while the person was the owner until the new owner delivers to the tenant a signed statement acknowledging that the new owner has received and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit.~~

~~3. The amount of a security deposit for which a new owner is liable pursuant to this section is the greater of:~~

~~(a) The amount provided in the tenant's rental agreement; or~~

~~(b) The amount provided in an estoppel certificate prepared by the owner at the time the rental agreement was executed or prepared by the new owner at the time the commercial premises is transferred.~~

~~4. Subsection 1 does not apply to a person who acquires title to the premises by foreclosure. (Deleted by amendment.)~~

Sec. 20. ~~{A landlord shall keep accurate records of all security deposits. (Deleted by amendment.)~~

Sec. 21. ~~{1. A landlord is not obligated to return a security deposit to a tenant or give the tenant a written description of damages and charges until the tenant provides to the landlord in writing a mailing address to which the security deposit or written description are to be sent.~~

~~2. A tenant does not forfeit the right to a refund of a security deposit or the right to receive a description of damages and charges for failing to give a mailing address to the landlord. (Deleted by amendment.)~~

1 Sec. 22. ~~[1. A tenant may not withhold payment of any portion of the last~~
2 ~~month's rent on grounds that a security deposit is security for unpaid rent.~~

3 ~~2. A tenant who violates this section is presumed to have acted in bad faith.~~
4 ~~A tenant who in bad faith violates this section is liable to the landlord for an~~
5 ~~amount equal to three times the rent wrongfully withheld and the landlord's~~
6 ~~reasonable attorney's fees in an action to recover the rent.] (Deleted by~~
7 ~~amendment.)~~

8 Sec. 23. ~~[1. A landlord who in bad faith retains a security deposit in~~
9 ~~violation of sections 2 to 24, inclusive, of this act is liable for an amount equal to~~
10 ~~the sum of \$100, three times the portion of the deposit wrongfully withheld, and~~
11 ~~the tenant's reasonable attorney's fees incurred in an action to recover the~~
12 ~~deposit after the period prescribed for returning the deposit expires.~~

13 ~~2. A landlord who in bad faith does not provide a written description and~~
14 ~~itemized list of damages and charges in violation of sections 2 to 24, inclusive, of~~
15 ~~this act:~~

16 ~~—(a) Forfeits the right to withhold any portion of the security deposit or to~~
17 ~~bring suit against the tenant for damages to the commercial premises; and~~

18 ~~—(b) Is liable for the tenant's reasonable attorney's fees in an action to recover~~
19 ~~the deposit.~~

20 ~~3. In an action brought by a tenant under sections 2 to 24, inclusive, of this~~
21 ~~act, the landlord has the burden of proving that the retention of any portion of a~~
22 ~~security deposit was reasonable.~~

23 ~~4. Except as otherwise provided in subsection 1 of section 21 of this act, a~~
24 ~~landlord who fails to return a security deposit or to provide a written description~~
25 ~~and itemized list of deductions within 60 days after the date the tenant surrenders~~
26 ~~possession of the commercial premises is presumed to have acted in bad faith.]~~
27 ~~(Deleted by amendment.)~~

28 Sec. 24. ~~[1. A landlord may not assess a charge, excluding a charge for~~
29 ~~rent or physical damage to the commercial premises, to a tenant unless the~~
30 ~~amount of the charge or the method by which the charge is to be computed is~~
31 ~~stated in the rental agreement, an exhibit or attachment that is part of the rental~~
32 ~~agreement or an amendment to the rental agreement.~~

33 ~~2. This section does not affect the right of a landlord to assess a charge or~~
34 ~~obtain a remedy allowed under a statute or common law.] (Deleted by~~
35 ~~amendment.)~~

36 Sec. 25. NRS 118.171 is hereby amended to read as follows:

37 118.171 As used in NRS 118.171 to ~~[118.207.] 118.205~~, inclusive, unless the
38 context otherwise requires:

39 1. ["Abandoned personal property" means any personal property which is left
40 ~~unattended on any commercial premises after the termination of the tenancy and~~
41 ~~which is not removed by the tenant or a person who has a perfected lien on, or~~
42 ~~perfected security interest in, the personal property within 14 days after the later of~~
43 ~~the date on which the landlord:~~

44 —(a) Mailed, by certified mail, return receipt requested, notice of the landlord's
45 ~~intention to dispose of the personal property, as required by subparagraph (1) of~~
46 ~~paragraph (a) of subsection 1 of NRS 118.207; or~~

47 —(b) Provided notice to a person who has a perfected lien on, or a perfected
48 ~~security interest in, the personal property that the personal property has been left on~~
49 ~~the premises, as required by subparagraph (2) of paragraph (a) of subsection 1 of~~
50 ~~NRS 118.207.~~

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

~~3.1~~ 2. "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.

~~3.2~~ 3. "Tenant" means a person who has the right to possess real property pursuant to a rental agreement.

Sec. 26. 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 the landlord's 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

(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 the landlord's 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 the landlord's 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 the landlord's 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 the tenant took possession of the premises, that the landlord or the landlord's 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 the landlord's 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 the tenant's 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 the tenant 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 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 or the landlord's 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 the tenant 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 ~~418.207 or~~ 118A.460 *or section 16 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

1 order a copy served upon the landlord by the sheriff, constable or other process
2 server. At the hearing, the court may:

3 (a) Determine the costs, if any, claimed by the landlord pursuant to NRS
4 ~~118.207 or~~ 118A.460 *or section 16 of this act* and any accumulating daily costs;
5 and

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

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

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

18 ***Sec. 26.5. NRS 40.430 is hereby amended to read as follows:***

19 40.430 1. Except in cases where a person proceeds under subsection 2 of
20 NRS 40.495 or subsection 1 of NRS 40.512, *and except as otherwise provided in*
21 *section 15.5 of this act*, there may be but one action for the recovery of any debt, or
22 for the enforcement of any right secured by a mortgage or other lien upon real
23 estate. That action must be in accordance with the provisions of NRS 40.430 to
24 40.459, inclusive. In that action, the judgment must be rendered for the amount
25 found due the plaintiff, and the court, by its decree or judgment, may direct a sale
26 of the encumbered property, or such part thereof as is necessary, and apply the
27 proceeds of the sale as provided in NRS 40.462.

28 2. This section must be construed to permit a secured creditor to realize upon
29 the collateral for a debt or other obligation agreed upon by the debtor and creditor
30 when the debt or other obligation was incurred.

31 3. At any time not later than 5 business days before the date of sale directed
32 by the court, if the deficiency resulting in the action for the recovery of the debt has
33 arisen by failure to make a payment required by the mortgage or other lien, the
34 deficiency may be made good by payment of the deficient sum and by payment of
35 any costs, fees and expenses incident to making the deficiency good. If a deficiency
36 is made good pursuant to this subsection, the sale may not occur.

37 4. A sale directed by the court pursuant to subsection 1 must be conducted in
38 the same manner as the sale of real property upon execution, by the sheriff of the
39 county in which the encumbered land is situated, and if the encumbered land is
40 situated in two or more counties, the court shall direct the sheriff of one of the
41 counties to conduct the sale with like proceedings and effect as if the whole of the
42 encumbered land were situated in that county.

43 5. Within 30 days after a sale of property is conducted pursuant to this
44 section, the sheriff who conducted the sale shall record the sale of the property in
45 the office of the county recorder of the county in which the property is located.

46 6. As used in this section, an "action" does not include any act or proceeding:

47 (a) To appoint a receiver for, or obtain possession of, any real or personal
48 collateral for the debt or as provided in NRS 32.015.

49 (b) To enforce a security interest in, or the assignment of, any rents, issues,
50 profits or other income of any real or personal property.

51 (c) To enforce a mortgage or other lien upon any real or personal collateral
52 located outside of the State which does not, except as required under the laws of
53 that jurisdiction, result in a personal judgment against the debtor.

(d) For the recovery of damages arising from the commission of a tort, including a recovery under NRS 40.750, or the recovery of any declaratory or equitable relief.

(e) For the exercise of a power of sale pursuant to NRS 107.080.

(f) For the exercise of any right or remedy authorized by chapter 104 of NRS or by the Uniform Commercial Code as enacted in any other state.

(g) For the exercise of any right to set off, or to enforce a pledge in, a deposit account pursuant to a written agreement or pledge.

(h) To draw under a letter of credit.

(i) To enforce an agreement with a surety or guarantor if enforcement of the mortgage or other lien has been automatically stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a federal bankruptcy court under any other provision of the United States Bankruptcy Code for not less than 120 days following the mailing of notice to the surety or guarantor pursuant to subsection 1 of NRS 107.095.

(j) To collect any debt, or enforce any right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt.

(l) For filing a claim pursuant to chapter 147 of NRS or to enforce such a claim which has been disallowed.

(m) Which does not include the collection of the debt or realization of the collateral securing the debt.

(n) Pursuant to NRS 40.507 or 40.508.

(o) Which is exempted from the provisions of this section by specific statute.

(p) To recover costs of suit, costs and expenses of sale, attorneys' fees and other incidental relief in connection with any action authorized by this subsection.

Sec. 27. NRS 118.207 is hereby repealed.

TEXT OF REPEALED SECTION

118.207 Disposal of personal property abandoned by tenant on commercial premises; notice; procedure by landlord; releasing property to tenant; limitation on landlord's liability.

1. Except as otherwise provided in subsection 2, 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 of any abandoned personal property, regardless of its character, left on the commercial premises without incurring any civil or criminal liability:

(a) The landlord may dispose of the abandoned personal property and recover his or her reasonable costs out of the abandoned personal property or the value thereof if the conditions set forth in subparagraphs (1) and (2) are satisfied:

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

(2) The landlord has taken reasonable steps to:

(I) Determine whether the tenant has subjected the abandoned personal property to a perfected lien or security interest; and

(II) If the landlord determines that the tenant has subjected the abandoned personal property to a perfected lien or security interest, notify the holder of the perfected lien or the security interest that the abandoned personal property has been left on the premises.

☞ The landlord shall be deemed to have taken the reasonable steps required by subparagraph (2) if the landlord has reviewed the results of a current search of the records in which a financing statement must be filed in order to perfect a lien or security interest pursuant to chapter 104 of NRS for a financing statement naming the tenant as the debtor of a debt secured by the abandoned personal property and, if such a financing statement is found, mailed, to any secured party named on the financing statement at the address indicated on the financing statement, by certified mail, return receipt requested, a written notice stating that the abandoned personal property has been left on the premises.

(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 or her authorized representative rightfully claiming the abandoned personal property within the appropriate period set forth in paragraph (a).

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

2. If a written agreement between a landlord and a secured party who has a perfected lien on, or a perfected security interest in, any abandoned personal property of the tenant contains provisions which relate to the removal and disposal of abandoned personal property, the provisions of the agreement determine the rights and obligations of the landlord and the secured party with respect to the removal and disposal of the abandoned personal property.

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