

ASSEMBLY BILL NO. 379—ASSEMBLYMAN OHRENSCHALL

MARCH 17, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to commercial tenancies.
(BDR 10-126)

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; establishing requirements for accounting for, charges against and refund of security deposits relating to commercial premises; prohibiting a landlord of commercial premises from assessing charges against a tenant except under certain circumstances; revising provisions relating to prohibitions on a landlord's interference with a tenant's use of commercial premises under certain circumstances; revising procedures for a tenant to recover possession of commercial premises following a lockout; revising provisions relating to the disposal of personal property abandoned by a tenant on commercial premises; repealing provisions relating to the jurisdiction of courts over certain actions relating to commercial premises and the applicability of certain judicial doctrines in such actions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 3-9 of this bill set forth requirements for the accounting for, refund of and charges against security deposits that are advanced under a lease of commercial premises.

Section 10 of this bill prohibits a landlord from charging a tenant for rent or physical damages to commercial premises except under certain circumstances.

Existing law prohibits a landlord from interfering in certain matters with a tenant's use of commercial premises. Existing law also requires a landlord or a landlord's agent who has changed the door locks of a commercial tenant who is delinquent in paying rent to place a written notice for a period of not less than 5 business days on the front door of the premises. (NRS 118C.200) **Section 13** of this



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bill eliminates this minimum posting period and authorizes a tenant to terminate the lease if the landlord or the landlord's agent violates the provisions of **section 13**.

Existing law sets forth a process for a tenant to recover possession of commercial premises from which a landlord has locked the tenant out. (NRS 118C.210) **Section 14** of this bill revises these provisions to authorize a tenant to file a verified complaint for reentry in district court. **Section 14** eliminates a requirement that a court issue an order requiring a tenant who is reasonably believed to have been unlawfully locked out to post a bond in an amount equal to 1 month of rent. **Section 14** also extends the period after the filing of a tenant's verified complaint for reentry in which a court must hold a hearing when so requested by a landlord and provides for the rendering of a judgment for court costs against a landlord who fails to timely request such a hearing. **Section 14** further provides for the punishment of a party for contempt of court. Finally, **section 14** establishes the amount of the fee for filing a verified complaint for reentry and provides for the deferment and waiver of certain fees and costs under certain circumstances.

Existing law sets forth provisions that authorize a landlord to dispose of abandoned property left on commercial premises by a tenant under certain circumstances. (NRS 118C.230) **Section 15** of this bill requires a landlord to take reasonable steps to determine whether the abandoned personal property is subject to a perfected lien or security interest and, if so, to notify the holder of the lien or interest of the abandonment.

Section 17 of this bill repeals provisions governing the jurisdiction of courts over certain actions relating to commercial premises and the applicability of certain judicial doctrines in such actions.

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

Section 1. Chapter 118C of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. *"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 lease of commercial premises.*

Sec. 3. 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 7 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.*

Sec. 4. 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 lease or damages and charges that result from a breach of the lease.*



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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, without limitation, 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.

Sec. 5. 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 this chapter 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 lease; or

(b) The amount provided in an estoppel certificate prepared by the owner at the time the lease 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.

Sec. 6. A landlord shall keep accurate records of all security deposits.

Sec. 7. 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



1 *writing a mailing address to which the security deposit or written*
2 *description is to be sent.*

3 2. *A tenant does not forfeit the right to a refund of a security*
4 *deposit or the right to receive a description of damages and*
5 *charges for failing to give a mailing address to the landlord.*

6 **Sec. 8.** 1. *A tenant may not withhold payment of any*
7 *portion of the last month's rent on grounds that a security deposit*
8 *is security for unpaid rent.*

9 2. *A tenant who violates this section is presumed to have*
10 *acted in bad faith. A tenant who in bad faith violates this section is*
11 *liable to the landlord for an amount equal to three times the rent*
12 *wrongfully withheld and the landlord's reasonable attorney's fees*
13 *in an action to recover the rent.*

14 **Sec. 9.** 1. *A landlord who in bad faith retains a security*
15 *deposit in violation of this chapter is liable for an amount equal to*
16 *the sum of \$100, three times the portion of the deposit wrongfully*
17 *withheld, and the tenant's reasonable attorney's fees incurred in*
18 *an action to recover the deposit after the period prescribed for*
19 *returning the deposit expires.*

20 2. *A landlord who in bad faith does not provide a written*
21 *description and itemized list of damages and charges in violation*
22 *of this chapter:*

23 (a) *Forfeits the right to withhold any portion of the security*
24 *deposit or to bring suit against the tenant for damages to the*
25 *commercial premises; and*

26 (b) *Is liable for the tenant's reasonable attorney's fees in an*
27 *action to recover the deposit.*

28 3. *In an action brought by a tenant under this chapter, the*
29 *landlord has the burden of proving that the retention of any*
30 *portion of a security deposit was reasonable.*

31 4. *Except as otherwise provided in subsection 1 of section 7 of*
32 *this act, a landlord who fails to return a security deposit or to*
33 *provide a written description and itemized list of deductions within*
34 *60 days after the date the tenant surrenders possession of the*
35 *commercial premises is presumed to have acted in bad faith.*

36 **Sec. 10.** 1. *A landlord may not assess a charge, excluding a*
37 *charge for rent or physical damage to the commercial premises, to*
38 *a tenant unless the amount of the charge or the method by which*
39 *the charge is to be computed is stated in the lease, an exhibit or*
40 *attachment that is part of the lease or an amendment to the lease.*

41 2. *This section does not affect the right of a landlord to assess*
42 *a charge or obtain a remedy allowed under a statute or common*
43 *law.*



Sec. 11. NRS 118C.010 is hereby amended to read as follows:

118C.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 118C.020 to 118C.110, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 12. NRS 118C.020 is hereby amended to read as follows:

118C.020 "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~~ *a perfected lien on, or perfected security* interest in , the personal property within 14 days after *the later of* the date on which the landlord ~~mailed,~~ :

1. Mailed, by certified mail, return receipt requested, notice of the landlord's intention to dispose of the personal property, as required by *subparagraph (1) of* paragraph (a) of subsection 1 of NRS 118C.230 ~~1~~; or

2. Provided notice to a person who has a perfected lien on, or a perfected security interest in, the personal property that the personal property has been left on the commercial premises, as required by subparagraph (2) of paragraph (a) of subsection 1 of NRS 118C.230.

Sec. 13. NRS 118C.200 is hereby amended to read as follows:

118C.200 1. A landlord or a landlord's agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from construction, bona fide repairs or an emergency.

2. A landlord may not remove:

(a) A door, window or attic hatchway cover;
(b) A lock, latch, hinge, hinge pin, doorknob or other mechanism connected to a door, window or attic hatchway cover; or
(c) Furniture, fixtures or appliances furnished by the landlord,
↳ from commercial premises unless the landlord removes the item for a bona fide repair or replacement. If a landlord removes any of the items listed in this subsection for a bona fide repair or replacement, the repair or replacement must be promptly performed.

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

(a) Construction, bona fide repairs or an emergency;
(b) Removing the contents of commercial premises abandoned by a tenant; or
(c) Changing the door locks of a tenant who is delinquent in paying at least part of the rent.

4. If a landlord or a landlord's agent changes the door lock of commercial premises leased to a tenant who is delinquent in paying



rent, the landlord or agent must ~~for a period of not less than 5 business days,~~ place a written notice on the front door of the commercial premises stating the name and the address or telephone number of the person or company from which the new key may be obtained. The new key is required to be provided only during the regular business hours of the tenant and only if the tenant pays the delinquent rent.

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

(a) Recover possession of the commercial premises ~~and~~ *or terminate the lease;* and

(b) Recover from the landlord an amount equal to the sum of the tenant's actual damages, 1 month's rent or \$500, whichever is greater, reasonable attorney's fees and court costs, less any delinquent rents or other sums for which the tenant is liable to the landlord.

6. A ~~rental agreement~~ *lease* supersedes this section to the extent of any conflict.

Sec. 14. NRS 118C.210 is hereby amended to read as follows:

118C.210 1. If a landlord locks a tenant out of *leased* commercial premises ~~that are subject to a rental agreement~~ in violation of NRS 118C.200, the tenant may recover possession of the commercial premises as provided by this section.

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

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

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

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



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

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

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

16 ~~7.+~~ 8. If a writ of restitution is issued, the writ supersedes a
17 temporary writ of restitution.

18 ~~8.+~~ 9. If the landlord or the person on whom a writ of
19 restitution is served fails to immediately comply with the writ or
20 later disobeys the writ, the failure is grounds for contempt of court
21 against the landlord or the person on whom the writ was served,
22 under chapter 22 of NRS.

23 ~~9.+~~ *If the writ is disobeyed, the tenant or the tenant's attorney*
24 *may file in the court in which the reentry action is pending an*
25 *affidavit stating the name of the person who has disobeyed the writ*
26 *and describing the acts or omissions constituting the disobedience.*
27 *On receipt of an affidavit, the court shall issue an order to show*
28 *cause, directing the person to appear on a designated date and*
29 *show cause why the person should not be adjudged in contempt of*
30 *court. If the court finds, after considering the evidence at the*
31 *hearing, that the person has directly or indirectly disobeyed the*
32 *writ, the court may commit the person to jail without bail until*
33 *the person purges himself or herself of the contempt in a manner*
34 *and form as the court may direct. If the person disobeyed the writ*
35 *before receiving the order to show cause but has complied with the*
36 *writ after receiving the order, the court may find the person in*
37 *contempt and punish the person under chapter 22 of NRS.*

38 10. This section does not affect a tenant's right to pursue a
39 separate cause of action under NRS 118C.200.

40 ~~10.+~~ 11. If a tenant in bad faith files a sworn complaint for
41 reentry resulting in a writ of restitution being served on the landlord
42 or landlord's agent, the landlord may in a separate cause of action
43 recover from the tenant an amount equal to actual damages, 1
44 month's rent or \$500, whichever is greater, reasonable attorney's



1 fees, and costs of court, less any sums for which the landlord is
2 liable to the tenant.

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

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

12 **Sec. 15.** NRS 118C.230 is hereby amended to read as follows:

13 118C.230 1. Except as otherwise provided in subsection 3, a
14 landlord who leases or subleases any commercial premises under a
15 ~~rental~~ *lease* agreement that has been terminated for any reason
16 may, in accordance with the following provisions, dispose of any
17 abandoned personal property, regardless of its character, left on the
18 commercial premises without incurring any civil or criminal
19 liability:

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

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

30 (2) *The landlord has taken reasonable steps to:*

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

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

39 ➡ *The landlord shall be deemed to have taken the reasonable*
40 *steps required by subparagraph (2) if the landlord has reviewed*
41 *the results of a current search of the records in which a financing*
42 *statement must be filed in order to perfect a lien or security*
43 *interest pursuant to chapter 104 of NRS for a financing statement*
44 *naming the tenant as the debtor of a debt secured by the*
45 *abandoned personal property and, if such a financing statement is*



1 *found, mailed to any secured party named on the financing*
2 *statement at the address indicated on the financing statement, by*
3 *certified mail, return receipt requested, a written notice stating*
4 *that the abandoned personal property has been left on the*
5 *premises.*

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

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

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

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

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

22 3. If a written agreement between a landlord and a ~~person~~
23 *secured party* who has ~~an ownership~~ *a perfected lien on, or a*
24 *perfected security* interest in , any abandoned personal property of
25 the tenant contains provisions which relate to the removal and
26 disposal of abandoned personal property, the provisions of the
27 agreement determine the rights and obligations of the landlord and
28 the ~~person~~ *secured party* with respect to the removal and disposal
29 of the abandoned personal property.

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

34 **Sec. 16.** NRS 40.430 is hereby amended to read as follows:

35 40.430 1. Except in cases where a person proceeds under
36 subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, ~~and~~
37 ~~except as otherwise provided in NRS 118C.220,~~ there may be but
38 one action for the recovery of any debt, or for the enforcement of
39 any right secured by a mortgage or other lien upon real estate. That
40 action must be in accordance with the provisions of NRS 40.430 to
41 40.459, inclusive. In that action, the judgment must be rendered for
42 the amount found due the plaintiff, and the court, by its decree or
43 judgment, may direct a sale of the encumbered property, or such
44 part thereof as is necessary, and apply the proceeds of the sale as
45 provided in NRS 40.462.



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

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

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

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

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

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

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

(c) To enforce a mortgage or other lien upon any real or personal collateral located outside of the State which does not, except as required under the laws of 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) Pursuant to an agreement entered into pursuant to NRS 361.7311 between an owner of the property and the assignee of a tax lien against the property, or an action which is authorized by NRS 361.733.

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

(q) 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. 17. NRS 118C.040 and 118C.220 are hereby repealed.

TEXT OF REPEALED SECTIONS

118C.040 "Commercial premises" defined. "Commercial premises" means any real property other than premises as defined in NRS 118A.140.

118C.220 Jurisdiction of courts; applicability of judicial doctrines.

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



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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.

