

SENATE BILL NO. 335—SENATOR OHRENSCHALL

MARCH 20, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions regarding real property.
(BDR 3-883)

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

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

AN ACT relating to property; authorizing tenants subject to certain eviction proceedings to assert certain affirmative defenses relating to rental assistance and establishing procedures relating thereto; authorizing a justice court to establish a diversion program for certain tenants subject to an action for summary eviction; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for a summary eviction procedure when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises defaults in the payment of rent. (NRS 40.253) **Section 9** of this bill defines the term “designated eviction proceeding” to include certain proceedings relating to the eviction of certain tenants who have defaulted in the payment of rent. **Section 9** authorizes a tenant to claim as an affirmative defense to a designated eviction proceeding that: (1) the tenant has a pending application for rental assistance; or (2) the landlord of the tenant refused to participate in the application process for rental assistance or accept rental assistance provided on behalf of the tenant. **Section 9** requires the court to stay the proceedings upon the assertion of such an affirmative defense for a period not to exceed 60 days unless the landlord receives an exemption. **Section 9** also authorizes the landlord to file a motion to rebut the affirmative defense. If such a motion is filed by a landlord, **section 9** authorizes the court to: (1) hold a hearing; or (2) maintain the stay of the proceedings for a period not to exceed 60 days. **Section 9** also requires the court to: (1) dismiss the proceedings for eviction upon the granting of the application for rental assistance and receipt of the rental assistance by the landlord under certain circumstances; or (2) deny the eviction if the tenant proves the claim that the landlord refused to participate in the application for rental assistance or accept rental assistance on behalf of the tenant. The court is authorized to award damages if an eviction is denied for such refusal. In determining the amount of damages, if any, to award to the tenant, **section 9** requires the court to consider the degree of harm caused to the



tenant by the refusal of the landlord to participate in the application process for rental assistance or accept the rental assistance on behalf of the tenant.

Section 9.5 of this bill authorizes a justice court to establish a diversion program to which it may assign an eligible tenant subject to an action for summary eviction. **Section 9.5** sets forth factors the court may consider in determining whether a tenant is eligible for assignment to such a diversion program. If the court assigns a tenant to such a diversion program, **section 9.5** requires the court to: (1) stay the pending action for summary eviction for not more than 60 days; and (2) if the tenant pays the landlord the rent that is in default or surrenders the premises before the expiration of the stay, dismiss the action.

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

Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9.5, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. 1. *In any designated eviction proceeding, the tenant may claim as an affirmative defense that:*

(a) The tenant has a pending application for rental assistance; or

(b) The landlord has refused to:

(1) Participate in the application process for rental assistance; or

(2) Accept rental assistance on behalf of the tenant.

2. *To assert the affirmative defense described in subsection 1, a tenant must:*

(a) Have submitted the application for rental assistance before the date on which the landlord filed the complaint on which the designated eviction proceeding is based; and

(b) Provide proof to the court of the date on which the application was submitted.

3. *If an affirmative defense described in subsection 1 is asserted by the tenant:*

(a) Except as otherwise provided in subsection 8, the court shall stay the designated eviction proceeding until the applicable time described in subsection 5 or 6; and

(b) The landlord may file a motion to rebut the affirmative defense by the tenant.



1 4. If a landlord files the motion described in subsection 3, the
2 court may:

3 (a) Hold a hearing on the motion; or

4 (b) Maintain the stay until the applicable time described in
5 subsection 5 or 6.

6 5. Except as otherwise provided in subsection 6, if the
7 affirmative defense asserted was that described in:

8 (a) Paragraph (a) of subsection 1, the stay of the designated
9 eviction proceeding must be maintained by the court until such
10 time as the application for rental assistance is no longer pending
11 or a determination is made on the pending application for rental
12 assistance, and, except as otherwise provided in subsection 11, if
13 the application for rental assistance is granted, the court must
14 dismiss the designated eviction proceeding at the time that the
15 rental assistance is received by the landlord.

16 (b) Paragraph (b) of subsection 1, the stay of the designated
17 eviction proceeding must be maintained by the court until such
18 time as the tenant proves the validity of the claim, in which case
19 the court:

20 (1) Must deny the eviction; and

21 (2) May award damages to the tenant.

22 6. The stay of a designated eviction proceeding must not
23 exceed 60 days.

24 7. In determining the amount of damages to award a tenant
25 pursuant to subsection 5, the court shall consider the degree of
26 harm caused to the tenant by the refusal of the landlord to:

27 (a) Participate in the application process for rental assistance;
28 or

29 (b) Accept rental assistance on behalf of the tenant.

30 8. The court may grant a landlord an exemption from the
31 requirement to stay a designated eviction proceeding pursuant to
32 this section if:

33 (a) The landlord:

34 (1) Provides written notice to the tenant of the exemption
35 sought at the same time that notice relating to the designated
36 eviction proceeding is served upon the tenant; and

37 (2) Files a motion with the court for an exemption from the
38 requirement to stay the designated eviction proceeding; and

39 (b) The court finds:

40 (1) That there is a pending designated eviction proceeding;
41 and

42 (2) Evidence that the landlord faces a realistic threat of the
43 foreclosure of the premises if the landlord is not able to evict the
44 tenant.



9. If a tenant in bad faith submits an application for rental assistance or asserts the affirmative defense described in paragraph (a) of subsection 1 in bad faith, the landlord may, in a separate cause of action, recover damages from the tenant.

10. If a landlord in bad faith files a motion for an exemption pursuant to subsection 8, the tenant may, in a separate cause of action, recover from the landlord an amount equal to damages, 1 month's rent or \$1,000, whichever is greater, reasonable attorney's fees and costs of court.

11. The provisions of paragraph (a) of subsection 5 which require the court to dismiss the designated eviction proceeding do not apply if the rental assistance received by the landlord does not cure the default of the tenant.

12. This section does not apply to any proceeding for eviction relating to:

(a) A commercial premises; or

(b) An unlawful detainer pursuant to subsection 4 of NRS 40.2514 or 40.255.

13. For purposes of subsection 5, an application for rental assistance is no longer pending if the application is not actively being pursued by the tenant, including, without limitation, by providing in a timely manner any information or documentation requested by the person or entity to whom the application was submitted.

14. Any person or entity to whom a tenant submits a rental assistance application shall use its best efforts to notify the tenant, landlord and court of any determination made on a pending application for rental assistance as soon as reasonably practicable after making the determination.

15. As used in this section:

(a) "Designated eviction proceeding" means

(1) A proceeding for summary eviction where the tenant has defaulted in the payment of rent;

(2) A proceeding for eviction for unlawful detainer pursuant to NRS 40.2512; or

(3) A proceeding for eviction relating to paragraph (a) of subsection 1 of NRS 118B.200.

(b) "Pending application for rental assistance" means an application for rental assistance submitted in good faith by a tenant. The term includes, without limitation, an application which is inactive due to any technical difficulty on the part of the tenant in the filing of the application for rental assistance. The term does not include an application for rental assistance that was started by the tenant but is not actively being pursued by the tenant.



(c) “Rental assistance” includes, without limitation, federal, state or local funds:

(1) Provided by a governmental entity; and

(2) Administered for the purpose of paying any amount of delinquent rent.

Sec. 9.5. 1. A justice court may establish a diversion program to which it may assign an eligible tenant whose landlord applies by affidavit of complaint for eviction of the tenant pursuant to NRS 40.253.

2. To determine whether a tenant is eligible for a diversion program established pursuant to subsection 1, the court may consider, without limitation, whether the tenant is eligible for any programs that are designed to provide:

(a) Social services which assist tenants in paying delinquent rent; and

(b) Wrap-around services.

3. If the court assigns a tenant to a diversion program established pursuant to subsection 1, the court shall:

(a) Stay the pending action for summary eviction for not more than 60 days after the date on which the tenant files an affidavit permitted in subsection 3 of NRS 40.253; and

(b) If the tenant pays to the landlord the amount of rent that is in default or surrenders the premises before the expiration of the stay, dismiss the pending action for summary eviction.

4. As used in this section, “wrap-around services” means services provided to a tenant that assist the tenant in avoiding future summary eviction actions.

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 19. (Deleted by amendment.)

Sec. 20. (Deleted by amendment.)

Sec. 21. (Deleted by amendment.)

Sec. 22. The amendatory provisions of this act apply to an action for summary eviction which accrues on or after October 1, 2023.

Sec. 23. (Deleted by amendment.)

