

LEGISLATIVE BILL 221

Approved by the Governor March 03, 2016

Introduced by Harr, 8.

A BILL FOR AN ACT relating to landlords and tenants; to amend sections 25-21,220, 69-2303, 76-1414, 76-1431, 76-1441, and 76-1446, Reissue Revised Statutes of Nebraska; to change provisions relating to forcible entry and detainer and the Uniform Residential Landlord and Tenant Act; to provide for disposition of personal property upon the death of a tenant; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 25-21,220, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,220 Proceedings under sections 25-21,219 to 25-21,235 may be had:

(1) In all cases against tenants holding over their terms, and a tenant shall be deemed to be holding over his or her term whenever the tenant has failed, neglected, or refused to pay the rent or any part thereof when the rent became due;

(2) In all cases when a tenant has threatened the health or safety of other tenants, the landlord, or the landlord's employees or agents, without the right of the tenant to cure the default;

(3) 2) In all cases of sales of real estate or executions, orders, or other judicial process when the judgment debtor was in possession at the time of the entry of the judgment or decree by virtue of which such sale was made;

(4) 3) In all cases of sale by executors or administrators or guardians and on partition if any of the parties to the partition were in possession at the commencement of the suit after such sales so made on execution or otherwise have been examined by the proper court and the sales adjudged legal; and

(5) 4) In all cases when the defendant is a settler or occupier of lands or tenements, without color of title, and to which the complainant has the right of possession.

This section shall not be construed as limiting the provisions of sections section 25-21,219 to 25-21,235.

Sec. 2. Section 69-2303, Reissue Revised Statutes of Nebraska, is amended to read:

69-2303 (1) Except as otherwise provided in subsection (5) of section 76-1414, when ~~when~~ personal property remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant, the landlord shall give written notice as provided in subsection (2) of this section to such tenant and to any other person the landlord reasonably believes to be the owner of the property.

(2)(a) The notice required by subsection (1) of this section shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by section 69-2309 shall not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(b) The notice shall state that reasonable costs of storage may be charged before the property is returned, the location where the property may be claimed, and the date on or before which such property must be claimed.

(c) The date specified in the notice shall be a date not less than seven days after the notice is personally delivered or, if mailed, not less than fourteen days after the notice is deposited in the mail.

(d) The notice shall be given within six months of the date of expiration of the lease of the property or the date of discovery of the abandonment, whichever is later.

(3) The notice shall be personally delivered or sent by first-class mail, postage prepaid, to the person to be notified at his or her last-known address and, if there is reason to believe that the notice sent to that address will not be received by him or her, also delivered or sent to such other address, if any, known to the landlord at which such person may reasonably be expected to receive the notice.

Sec. 3. Section 76-1414, Reissue Revised Statutes of Nebraska, is amended to read:

76-1414 (1) The landlord and tenant may include in a rental agreement terms and conditions not prohibited by the Uniform Residential Landlord and Tenant Act or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(3) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one

month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent shall be uniformly apportionable from day to day.

(4) Unless the rental agreement fixes a definite term, the tenancy shall be week to week in case of a roomer who pays weekly rent, and in all other cases month to month.

(5) Upon request by a landlord, the tenant may provide and routinely update the name and contact information of a person who is authorized by the tenant to enter the tenant's dwelling unit to retrieve and store the tenant's personal property if the tenant dies. Upon the death of a tenant, the landlord shall make a reasonable attempt to contact the authorized person, if any, within ten days after the death. The authorized person shall have twenty days after being contacted by the landlord to notify the landlord that he or she will claim the tenant's property, and he or she will then have twenty days after such notification to remove the tenant's personal property from the dwelling unit or obtain the personal property from where it is being stored. Upon presentation of a valid government-issued identification confirming the identity of the authorized person, the landlord shall grant the authorized person reasonable access to the rented dwelling unit or to where the personal property is being stored if not in the dwelling unit. If the tenant's personal property is not entirely removed from the dwelling unit by an authorized person, the landlord may dispose of the remaining property as prescribed in the Disposition of Personal Property Landlord and Tenant Act. If the landlord allows an authorized person to receive the tenant's personal property as provided by this subsection, the landlord has no further liability to the tenant, the tenant's estate, or the tenant's heirs for lost, damaged, or stolen personal property. If the landlord is unable to contact the authorized person at the address and telephone number provided by the tenant or the authorized person fails to respond to the landlord's notification within twenty days after contact is made, the landlord may dispose of the tenant's personal property as prescribed in the Disposition of Personal Property Landlord and Tenant Act.

Sec. 4. Section 76-1431, Reissue Revised Statutes of Nebraska, is amended to read:

76-1431 (1) Except as provided in the Uniform Residential Landlord and Tenant Act, if there is a noncompliance with section 76-1421 materially affecting health and safety or a material noncompliance by the tenant with the rental agreement or any separate agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and his or her intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(3) Except as provided in the Uniform Residential Landlord and Tenant Act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or section 76-1421. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

(4) Notwithstanding subsections (1) and (2) of this section or section 25-21,221, a landlord may, after five days' written notice of termination of the rental agreement and without the right of the tenant to cure the default, file suit and have judgment against any tenant or occupant for recovery of possession of the premises if the tenant, occupant, member of the tenant's household, guest, or other person who is under the tenant's control or who is present upon the premises with the tenant's consent, engages in any violent criminal activity on the premises, the illegal sale of any controlled substance on the premises, or any other activity that threatens the health or safety of other tenants, the landlord, or the landlord's employees or agents. Such activity shall include, but not be limited to, any of the following activities of the tenant, occupant, member of the tenant's household, guest, or other person who is under the tenant's control or who is present upon the premises with the tenant's consent: (a) Physical assault or the threat of physical assault; (b) illegal use of a firearm or other weapon or the threat of illegal use of a firearm or other weapon; (c) possession of a controlled substance if the tenant knew or should have known of the possession, unless such controlled substance was obtained directly from or pursuant to a medical order issued by a practitioner legally authorized to prescribe while acting in the course of his or her professional practice; or (d) any other activity or threatened activity which would otherwise threaten the health or safety of any person or involving threatened, imminent, or actual damage to the property.

(5) Subsection (4) of this section does not apply to a tenant if the violent criminal activity, illegal sale of any controlled substance, or other activity that threatens the health or safety of other tenants, the landlord, or the landlord's employees or agents, as set forth in subsection (4) of this

section, is conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person engaging in such activity:

(a) The tenant seeks a protective order, restraining order, or other similar relief which would apply to the person conducting such activity; or

(b) The tenant reports such activity to a law enforcement agency in an effort to initiate a criminal action against the person conducting the activity.

Sec. 5. Section 76-1441, Reissue Revised Statutes of Nebraska, is amended to read:

76-1441 (1) The person seeking possession shall file a complaint for restitution with the clerk of the district or county court. The complaint shall contain (a) the facts, with particularity, on which he or she seeks to recover; (b) a reasonably accurate description of the premises; and (c) the requisite compliance with the notice provisions of the Uniform Residential Landlord and Tenant Act. The complaint may notify the tenant that personal property remains on the premises and that it may be disposed of pursuant to section 69-2308 or subsection (5) of section 76-1414. The complaint may also contain other causes of action relating to the tenancy, but such causes of action shall be answered and tried separately, if requested by either party in writing.

(2) The person seeking possession pursuant to subsection (4) of section 76-1431 shall include in the complaint the incident or incidents giving rise to the suit for recovery of possession.

Sec. 6. Section 76-1446, Reissue Revised Statutes of Nebraska, is amended to read:

76-1446 Trial of the action for possession shall be held not less than ten nor more than fourteen days after the issuance of the summons. The action shall be tried by the court without a jury. If the plaintiff serves the summons in the manner provided in section 76-1442.01, the action shall proceed as other actions for possession except that a money judgment shall not be granted for the plaintiff. If judgment is rendered against the defendant for the restitution of the premises, the court shall declare the forfeiture of the rental agreement, and shall, at the request of the plaintiff or his or her attorney, issue a writ of restitution, directing the constable or sheriff to restore possession of the premises to the plaintiff on a specified date not more than ten days after issuance of the writ of restitution. The plaintiff shall comply with the Disposition of Personal Property Landlord and Tenant Act and subsection (5) of section 76-1414 in the removal of personal property remaining on the premises at the time possession of the premises is restored.

Sec. 7. Original sections 25-21,220, 69-2303, 76-1414, 76-1431, 76-1441, and 76-1446, Reissue Revised Statutes of Nebraska, are repealed.