

## LEGISLATIVE BILL 7

Approved by the Governor February 6, 2001

Introduced by Executive Board: Coordsen, 32, Chairperson

AN ACT relating to the Uniform Residential Landlord and Tenant Act; to amend sections 76-1402 to 76-1409, 76-1411, 76-1414, 76-1415, 76-1417, 76-1419, 76-1420, 76-1425, 76-1428, 76-1431, 76-1436, and 76-1448, Reissue Revised Statutes of Nebraska, and section 76-1416, Revised Statutes Supplement, 2000; to change internal references; and to repeal the original sections.

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

Section 1. Section 76-1402, Reissue Revised Statutes of Nebraska, is amended to read:

76-1402. (1) ~~Sections 25-21,219 and 76-1401 to 76-1449~~ The Uniform Residential Landlord and Tenant Act shall be liberally construed and applied to promote ~~their~~ its underlying purposes and policies.

(2) Underlying purposes and policies of ~~sections 25-21,219 and 76-1401 to 76-1449~~ the act are:

(a) To simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(b) To encourage landlord and tenant to maintain and improve the quality of housing; and

(c) To make uniform the law among those states which enact it.

Sec. 2. Section 76-1403, Reissue Revised Statutes of Nebraska, is amended to read:

76-1403. Unless displaced by the provisions of ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement ~~its~~ the act's provisions.

Sec. 3. Section 76-1404, Reissue Revised Statutes of Nebraska, is amended to read:

76-1404. ~~Sections 25-21,219 and 76-1401 to 76-1449~~ The Uniform Residential Landlord and Tenant Act being a general act intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Sec. 4. Section 76-1405, Reissue Revised Statutes of Nebraska, is amended to read:

76-1405. (1) The remedies provided by ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act shall be so administered that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) Any right or obligation declared by ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

Sec. 5. Section 76-1406, Reissue Revised Statutes of Nebraska, is amended to read:

76-1406. A claim or right arising under ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act or on a rental agreement may be settled by agreement.

Sec. 6. Section 76-1407, Reissue Revised Statutes of Nebraska, is amended to read:

76-1407. ~~Sections 25-21,219 and 76-1401 to 76-1449 apply to, regulate, and determine~~ The Uniform Residential Landlord and Tenant Act applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

Sec. 7. Section 76-1408, Reissue Revised Statutes of Nebraska, is amended to read:

76-1408. Unless created to avoid the application of ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act, the following arrangements are not governed by ~~sections 25-21,219 and 76-1401 to 76-1449~~ the act:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his or her interest.

(3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel or motel.

(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

(7) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

(8) A lease of improved or unimproved residential land for a term of five years or more.

Sec. 8. Section 76-1409, Reissue Revised Statutes of Nebraska, is amended to read:

76-1409. The district or county court of this state may exercise jurisdiction over any landlord or tenant with respect to any conduct in this state governed by ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act or with respect to any claim arising from a transaction subject to ~~sections 25-21,219 and 76-1401 to 76-1449~~ the act for a dwelling unit located within its jurisdictional boundaries.

Sec. 9. Section 76-1411, Reissue Revised Statutes of Nebraska, is amended to read:

76-1411. Every duty under ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act and every act which must be performed as a condition precedent to the exercise of a right or remedy under ~~sections 25-21,219 and 76-1401 to 76-1449~~ the act imposes an obligation of good faith in its performance or enforcement.

Sec. 10. 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 ~~sections 25-21,219 and 76-1401 to 76-1449~~ 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.

Sec. 11. Section 76-1415, Reissue Revised Statutes of Nebraska, is amended to read:

76-1415. (1) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act;

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(c) Agrees to pay the landlord's or tenant's attorney's fees; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising due to active and actionable negligence of the landlord or to indemnify the landlord for that liability arising due to active and actionable negligence or the costs connected therewith.

(2) A provision prohibited by subsection (1) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him or her to be prohibited, the tenant may recover actual damages sustained by him or her and reasonable attorney's fees.

Sec. 12. Section 76-1416, Revised Statutes Supplement, 2000, is amended to read:

76-1416. (1) A landlord may not demand or receive security, however denominated, in an amount or value in excess of one month's periodic rent,

except that a pet deposit not in excess of one-fourth of one month's periodic rent may be demanded or received when appropriate, but this subsection shall not be applicable to housing agencies organized or existing under the Nebraska Housing Agency Act.

(2) Upon termination of the tenancy, property or money held by the landlord as prepaid rent and security may be applied to the payment of rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with the rental agreement or section 76-1421. The balance, if any, and a written itemization shall be delivered or mailed to the tenant within fourteen days after demand and designation of the location where payment may be made or mailed.

(3) If the landlord fails to comply with subsection (2) of this section, the tenant may recover the property and money due him or her and reasonable attorney's fees.

(4) This section does not preclude the landlord or tenant from recovering other damages to which he or she may be entitled under the Uniform Residential Landlord and Tenant Act. ~~and section 25-21,219.~~

(5) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

Sec. 13. Section 76-1417, Reissue Revised Statutes of Nebraska, is amended to read:

76-1417. (1) The landlord or any person authorized to enter into a rental agreement on his or her behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) The person authorized to manage the premises; and

(b) An owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

(2) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) of this section becomes an agent of each person who is a landlord for the purpose of:

(a) Service of process and receiving and receipting for notices and demands; and

(b) Performing the obligations of the landlord under ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act and under the rental agreement and expending or making available for the purpose all rent collected from the premises.

Sec. 14. Section 76-1419, Reissue Revised Statutes of Nebraska, is amended to read:

76-1419. (1) The landlord shall:

(a) Substantially comply, after written or actual notice, with the requirements of the applicable minimum housing codes materially affecting health and safety;

(b) Make all repairs and do whatever is necessary, after written or actual notice, to put and keep the premises in a fit and habitable condition;

(c) Keep all common areas of the premises in a clean and safe condition;

(d) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him or her;

(e) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle; and

(f) Supply running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

If there exists a minimum housing code applicable to the premises, the landlord's maximum duty under this section shall be determined by subdivision (1)(a) of this section. The obligations imposed by this section are not intended to change existing tort law in the state.

(2) The landlord and tenant of a single-family residence may agree that the tenant perform the landlord's duties specified in subdivisions ~~(e)~~ and (f) of subsection (1) (1)(e) and (1)(f) of this section and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is in writing, for good consideration, entered into in good faith

and not for the purpose of evading the obligations of the landlord.

(3) The landlord and tenant of a dwelling unit other than a single-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration; and

(b) The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(4) Notwithstanding any provision of ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act, a landlord may employ a tenant to perform the obligations of the landlord.

Sec. 15. Section 76-1420, Reissue Revised Statutes of Nebraska, is amended to read:

76-1420. (1) Unless otherwise agreed, a landlord, who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act as to events occurring subsequent to written notice to the tenant of the conveyance, but ~~he~~ the landlord remains liable to the tenant for any property and money to which the tenant is entitled under section 76-1416, except that assignment of any security deposits or prepaid rents to a bona fide purchaser with written notice to the tenant shall serve to relieve the conveying landlord of any further liability under section 76-1416.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act as to events occurring after written notice to the tenant of the termination of his or her management.

Sec. 16. Section 76-1425, Reissue Revised Statutes of Nebraska, is amended to read:

76-1425. (1) Except as provided in ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 76-1419 materially affecting health and safety, the tenant may deliver a written notice to the landlord 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 landlord 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 tenant may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental agreement. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his or her family, or other person on the premises with his or her consent.

(2) Except as provided in ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section 76-1419. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees. If the landlord's noncompliance is caused by conditions or circumstances beyond his or her control, the tenant may not recover consequential damages, but retains remedies provided in section 76-1427.

(3) The remedy provided in subsection (2) of this section is in addition to any right of the tenant arising under subsection (1) of ~~section 76-1425~~ this section.

(4) If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under section 76-1416.

Sec. 17. Section 76-1428, Reissue Revised Statutes of Nebraska, is amended to read:

76-1428. (1) In an action for possession based upon nonpayment of the rent or in an action for rent where the tenant is in possession, the tenant may counterclaim for any amount which he or she may recover under the rental agreement or ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act. In that event, the court from time to

time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover reasonable attorney's fees.

(2) In an action for rent where the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) of this section but the tenant is not required to pay any rent into court.

Sec. 18. Section 76-1431, Reissue Revised Statutes of Nebraska, is amended to read:

76-1431. (1) Except as provided in ~~sections 25-21,219 and 76-1401 to 76-1449~~ 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 ~~sections 25-21,219 and 76-1401 to 76-1449~~ 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.

Sec. 19. Section 76-1436, Reissue Revised Statutes of Nebraska, is amended to read:

76-1436. A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water, or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in ~~sections 25-21,219 and 76-1401 to 76-1449~~ the Uniform Residential Landlord and Tenant Act.

Sec. 20. Section 76-1448, Reissue Revised Statutes of Nebraska, is amended to read:

76-1448. ~~Sections 25-21,219 and 76-1401 to 76-1449 shall become operative on July 1, 1975. They apply~~ The Uniform Residential Landlord and Tenant Act applies to rental agreements entered into or extended or renewed after ~~that date~~ July 1, 1975.

Sec. 21. Original sections 76-1402 to 76-1409, 76-1411, 76-1414, 76-1415, 76-1417, 76-1419, 76-1420, 76-1425, 76-1428, 76-1431, 76-1436, and 76-1448, Reissue Revised Statutes of Nebraska, and section 76-1416, Revised Statutes Supplement, 2000, are repealed.