

LEGISLATIVE BILL 293

Approved by the Governor March 25, 1974

Introduced by Simpson, 46

AN ACT to adopt the Uniform Residential Landlord and Tenant Act; to provide summary proceedings for possession; to amend section 24-568, Revised Statutes Supplement, 1972; to provide an operative date; to provide a savings clause; to provide severability; and to repeal the original section.

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

Section 1. This act shall be known and may be cited as the Uniform Residential Landlord and Tenant Act.

Sec. 2. (1) This act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this 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. 3. Unless displaced by the provisions of this act, the principals 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 provisions.

Sec. 4. This 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being a general act intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.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. 5. (1) The remedies provided by this 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 this act is enforceable by action unless the provision declaring it specifies a different and limited effect.

Sec. 6. A claim or right arising under this act or on a rental agreement may be settled by agreement.

Sec. 7. This 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. 8. Unless created to avoid the application of this act, the following arrangements are not governed by this 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 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. 9. (1) The district, county, or municipal court of this state may exercise jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this act or with respect to any claim

arising from a transaction subject to this act for a dwelling unit located within its jurisdictional boundaries. In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord may be acquired in a civil action or proceeding instituted in the district, county, or municipal court by the service of process in the manner provided by this section.

(2) If a landlord is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this act, or engages in a transaction subject to this act, he may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and filed with the Secretary of State. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

Sec. 10. Subject to additional definitions contained in subsequent sections of this act which apply to specific sections, and unless the context otherwise requires, in this act:

(1) Action includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) Building and housing codes include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit. Minimum housing code shall be limited to those laws, resolutions, or ordinances or regulations, or portions thereof, dealing specifically with health and minimum standards of fitness for habitation.

(3) Dwelling unit means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(4) Good faith means honesty in fact in the conduct of the transaction concerned.

(5) Landlord means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section 17 of this act.

(6) Organization includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(7) Owner means one or more persons, jointly or severally, in whom is vested (a) all or part of the legal title to property, or (b) all or part of the beneficial ownership and a right to present use and enjoyment of the premises; and the term includes a mortgagee in possession.

(8) Person includes an individual or organization.

(9) Premises means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(10) Rent means all payments to be made to the landlord under the rental agreement.

(11) Rental agreement means all agreements, written or oral, between a landlord and tenant, and valid rules and regulations adopted under section 22, embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) Roomer means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove or sink.

(13) Single family residence means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or

thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

(14) Tenant means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Sec. 11. Every duty under this act and every act which must be performed as a condition precedent to the exercise of a right or remedy under this act imposes an obligation of good faith in its performance or enforcement.

Sec. 12. (1) If the court, as a matter of law, finds that a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

Sec. 13. (1) A person has notice of a fact if (a) he has actual knowledge of it, (b) he has received a notice or notification of it, or (c) from all facts and circumstances known to him at the time in question he has reason to know that it exists. A person knows or has knowledge of a fact if he has actual knowledge of it.

(2) A person notifies or gives a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person receives a notice or notification when (a) it comes to his attention, (b) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by him as the place for receipt of the communication, or (c) in the case of the tenant, it is delivered in hand to the tenant or mailed to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last-known place of residence.

(3) Notice, knowledge or a notice or notification received by an organization is effective for a particular

transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

Sec. 14. (1) The landlord and tenant may include in a rental agreement terms and conditions not prohibited by this 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. 15. (1) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under this 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 of the costs connected therewith.

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

attorney's fees.

Sec. 16. (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 authorities organized or existing under sections 71-1518 to 71-1554.

(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 21. 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) the tenant may recover the property and money due him and reasonable attorney's fees.

(4) This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this act.

(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. 17. (1) The landlord or any person authorized to enter into a rental agreement on his 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) becomes an agent of each person who is a landlord for

the purpose of:

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

(b) Performing the obligations of the landlord under this act and under the rental agreement and expending or making available for the purpose all rent collected from the premises.

Sec. 18. At the commencement of the term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and section 19. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in section 37 subsection (3). If the landlord makes reasonable efforts to obtain possession of the premises, he shall not be liable for an action under this section.

Sec. 19. (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;

(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 19 (1) (a). 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) 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 this act, a landlord may employ a tenant to perform the obligations of the landlord.

Sec. 20. (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 this act as to events occurring subsequent to written notice to the tenant of the conveyance, but he remains liable to the tenant for any property and money to which the tenant is entitled under section 16 of this act, 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 16 of this act.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this act as to events occurring after written notice to the tenant of the termination of his management.

Sec. 21. The tenant shall:

(1) Comply with all obligations primarily imposed upon tenants by applicable minimum standards of building and housing codes materially affecting health or safety;

(2) Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit, and upon termination of the tenancy place the dwelling unit in as clean condition, excepting ordinary wear and tear, as when the tenancy commenced;

(3) Dispose from his dwelling unit all ashes, rubbish, garbage, and other waste in a clean and safe manner;

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances including elevators in the premises;

(6) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so;

(7) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises; and

(8) Abide by all by-laws, covenants, rules or regulations of any applicable condominium regime, cooperative housing agreement, or neighborhood association not inconsistent with landlord's rights or duties.

Sec. 22. A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. It is enforceable as provided in section 31 against the tenant only if:

(1) Its purpose is to promote the appearance, convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(2) It is reasonably related to the purpose for which it is adopted;

(3) It applies to all tenants in the premises in a fair manner;

(4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(5) It is not for the purpose of evading the obligations of the landlord; and

(6) The tenant has notice of it at the time he enters into the rental agreement.

A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of his bargain.

Sec. 23. (1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) The landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least one day's notice of his intent to enter and enter only at reasonable times.

(4) The landlord has no other right of access except by court order, and as permitted by section 32 subsection (2), or if the tenant has abandoned or surrendered the premises.

Sec. 24. Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises in excess of seven days no later than the first day of the extended absence.

Sec. 25. (1) Except as provided in this act, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 19 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 family, or other person on the premises with his consent.

(2) Except as provided in this act, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section 19. 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 control, the tenant may not recover consequential damages, but retains remedies provided in section 27.

(3) The remedy provided in subsection (2) is in addition to any right of the tenant arising under section 25 subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under section 16.

Sec. 26. If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in section 18, rent abates until possession is delivered and the tenant shall:

(1) Upon at least five days' written notice to the landlord terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security; or

(2) Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against any person wrongfully in possession or wrongfully withholding possession and recover the damages sustained by him.

If a person's failure to deliver possession is willfull and not in good faith, an aggrieved person may recover from that person an amount not more than three months' periodic rent or threefold the actual damages sustained by him, whichever is greater, and reasonable attorney's fees.

Sec. 27. (1) If contrary to the rental agreement of section 19 the landlord deliberately or negligently fails to supply running water, hot water, or heat, or essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) Procure reasonable amounts of hot water, running water, heat and essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

In addition to the remedy provided in subdivisions (a) and (c), if the failure to supply is deliberate, the tenant may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent, and in any case under this subsection reasonable attorney's fees.

(2) If the tenant proceeds under this section, he may not proceed under section 25 as to that breach.

(3) The rights under this section do not arise until the tenant has given written notice to the landlord or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent. This section is not intended to cover circumstances beyond the landlord's control.

Sec. 28. (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 may recover under the rental agreement or this 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) but the tenant is not required to pay any rent into court.

Sec. 29. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) Immediately vacate the premises and notify the landlord in writing within fourteen days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) If continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) If the rental agreement is terminated the landlord shall return all prepaid rent and security recoverable under section 16. Accounting for rent in the event of termination or apportionment is to occur as of the date of the casualty. Notwithstanding the provisions of this section, the tenant is responsible for damage caused by his negligence.

Sec. 30. If the landlord unlawfully removes or excludes the tenant from the premises or willfully and wrongfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent as liquidated damages, and a

reasonable attorney's fee. If the rental agreement is terminated the landlord shall return all prepaid rent and security recoverable under section 16.

Sec. 31. (1) Except as provided in this act, if there is a noncompliance with section 21 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 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 this act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or section 21. If the tenant's noncompliance is willful the landlord may recover reasonable attorney's fees.

Sec. 32. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days as required in section 24 and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

(2) During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall take immediate possession and shall make reasonable efforts to rent it at a fair rental. If the

landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. Total absence from the premises without notice to landlord for one full rental period or thirty days, whichever is less, shall constitute abandonment.

Sec. 33. Acceptance of rent with knowledge of a default by tenant or acceptance of performance by the tenant that varies from the terms of the rental agreement or rules or regulations subsequently adopted by the landlord constitutes a waiver of his right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

Sec. 34. (1) A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable.

(2) Distraint for rent is abolished.

Sec. 35. If the rental agreement is terminated, the landlord is entitled to possession and may have a claim for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in section 31 subsection (3).

Sec. 36. A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful deprivation 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 this act.

Sec. 37. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least seven days prior to the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

(3) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith the landlord, in addition, may recover an amount not more than three months' periodic rent or threefold the actual damages sustained by him, whichever is greater, and reasonable



attorney's fees. If the landlord consents to the tenant's continued occupancy, section 14 subsection (4) applies.

Sec. 38. (1) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees.

(2) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages not less than an amount equal to one month's rent and reasonable attorney's fees.

Sec. 39. (1) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:

(a) The tenant has complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety; or

(b) The tenant has organized or become a member of a tenants' union or similar organization.

(2) If the landlord acts in violation of subsection (1), the tenant is entitled to the remedies provided in section 30 and has a defense in action against him for possession. Nothing in this section shall be construed as prohibiting reasonable rent increases or changes in services notwithstanding the occurrence of acts specified in subsection (1).

(3) Notwithstanding subsections (1) and (2), a landlord may bring an action for possession if:

(a) The violation of the applicable minimum building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent;

(b) The tenant is in default in rent; or

(c) Compliance with the applicable minimum building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

The maintenance of the action does not release the landlord from liability under section 25 subsection (2).

Sec. 40. An action for possession of any premises subject to the provisions of this act shall be commenced in the manner described by sections 40 to 47 of this act.

Sec. 41. The person seeking possession shall file a petition for restitution with the clerk of the district, county, or municipal court. The petition shall contain (a) the facts, with particularity, on which he seeks to recover; (b) a reasonably accurate description of the premises; and (c) the requisite compliance with the notice provisions of the act. The petition may also contain other causes of action relating to the tenancy, but said causes of action shall be answered and tried separately, if requested by either party in writing.

Sec. 42. The summons shall be issued and directed, with a copy of the petition attached thereto, and shall state the cause of the complaint, the time and place of trial of the action for possession, answer day for other causes of action, and notice that if the defendant fails to appear judgment shall be entered against him. The summons may be served and returned as in other cases, or by any person. The person making the service shall file with the court an affidavit stating with particularity the manner in which he made the service. Trial of the action for possession shall be not less than seven nor more than ten days after the service of summons.

Sec. 43. No continuance shall be granted unless extraordinary cause be shown to the court, and then not unless the defendant applying therefor shall deposit with the clerk of the court payment of any rents that have accrued, or give an undertaking with sufficient surety therefor, and, in addition, deposit with the clerk such rental payments as accrue during the pendency of the suit.

Sec. 44. If the defendant shall not appear in response to the summons, and it shall have been properly served, the court shall try the cause as though he were present.

Sec. 45. On or before the day fixed for his appearance, the defendant may appear and answer and assert any legal or equitable defense, setoff, or counterclaim.

Sec. 46. Trial shall be had on the date or dates set as in all other cases, and if judgment be rendered against 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 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 seven days after entry of judgment.

Sec. 47. If either party feels aggrieved by the judgment, he may appeal as in other civil actions. An appeal by the defendant shall stay the execution of any writ of restitution, so long as the defendant deposits with the clerk of the district court the amount of judgment and costs, or gives an appeal bond with surety therefor, and thereafter pays into court, on a monthly basis, an amount equal to the monthly rent called for by the rental agreement at the time the complaint was filed.

Sec. 48. That section 24-568, Revised Statutes Supplement, 1972, be amended to read as follows:

24-568. The county and municipal courts shall have jurisdiction over complaints of unlawful and forcible entry into lands and tenements and the detention of the same, and of complaints against those who, having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same. If the court finds that an unlawful and forcible entry has been made, and that the same lands or tenements are held by force, or that the same, after a lawful entry, are held unlawfully, the court shall cause the party complaining to have restitution thereof. The court, or the jury as the situation warrants, shall inquire into the matters between the two litigants such as the amount of rent owing the plaintiff and the amount of damage caused by the defendant to the premises while they were occupied by him, and render a judgment or verdict accordingly. This section shall not apply to actions for possession of any premises subject to the provisions of the Uniform Residential Landlord and Tenant Act.

Sec. 49. This act shall become operative on July 1, 1975. It applies to rental agreements entered into or extended or renewed after that date.

Sec. 50. Transactions entered into before the effective date of this act, and not extended or renewed after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted prior to the effective date of this act.

Sec. 51. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration or invalidity shall not affect the validity of the remaining portions thereof.

Sec. 52. That original section 24-568, Revised Statutes Supplement, 1972, is repealed.