

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 221

FINAL READING

Introduced by Harr, 8.

Read first time January 13, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to landlords and tenants; to amend sections
2 25-21,220, 69-2303, 76-1414, 76-1431, 76-1441, and 76-1446, Reissue
3 Revised Statutes of Nebraska; to change provisions relating to
4 forcible entry and detainer and the Uniform Residential Landlord and
5 Tenant Act; to provide for disposition of personal property upon the
6 death of a tenant; to harmonize provisions; and to repeal the
7 original sections.
8 Be it enacted by the people of the State of Nebraska,

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

3 25-21,220 Proceedings under sections 25-21,219 to 25-21,235 may be
4 had:

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

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

12 (3 2) In all cases of sales of real estate or executions, orders, or
13 other judicial process when the judgment debtor was in possession at the
14 time of the entry of the judgment or decree by virtue of which such sale
15 was made;

16 (4 3) In all cases of sale by executors or administrators or
17 guardians and on partition if any of the parties to the partition were in
18 possession at the commencement of the suit after such sales so made on
19 execution or otherwise have been examined by the proper court and the
20 sales adjudged legal; and

21 (5 4) In all cases when the defendant is a settler or occupier of
22 lands or tenements, without color of title, and to which the complainant
23 has the right of possession.

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

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

28 69-2303 (1) Except as otherwise provided in subsection (5) of
29 section 76-1414, when ~~when~~ personal property remains on the premises
30 after a tenancy has terminated or expired and the premises have been
31 vacated by the tenant, the landlord shall give written notice as provided

1 in subsection (2) of this section to such tenant and to any other person
2 the landlord reasonably believes to be the owner of the property.

3 (2)(a) The notice required by subsection (1) of this section shall
4 describe the property in a manner reasonably adequate to permit the owner
5 of the property to identify it. The notice may describe all or a portion
6 of the property, but the limitation of liability provided by section
7 69-2309 shall not protect the landlord from any liability arising from
8 the disposition of property not described in the notice, except that a
9 trunk, valise, box, or other container which is locked, fastened, or tied
10 in a manner which deters immediate access to its contents may be
11 described as such without describing its contents.

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

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

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

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

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

30 76-1414 (1) The landlord and tenant may include in a rental
31 agreement terms and conditions not prohibited by the Uniform Residential

1 Landlord and Tenant Act or other rule of law including rent, term of the
2 agreement, and other provisions governing the rights and obligations of
3 the parties.

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

6 (3) Rent shall be payable without demand or notice at the time and
7 place agreed upon by the parties. Unless otherwise agreed, rent is
8 payable at the dwelling unit and periodic rent is payable at the
9 beginning of any term of one month or less and otherwise in equal monthly
10 installments at the beginning of each month. Unless otherwise agreed,
11 rent shall be uniformly apportionable from day to day.

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

15 (5) Upon request by a landlord, the tenant may provide and routinely
16 update the name and contact information of a person who is authorized by
17 the tenant to enter the tenant's dwelling unit to retrieve and store the
18 tenant's personal property if the tenant dies. Upon the death of a
19 tenant, the landlord shall make a reasonable attempt to contact the
20 authorized person, if any, within ten days after the death. The
21 authorized person shall have twenty days after being contacted by the
22 landlord to notify the landlord that he or she will claim the tenant's
23 property, and he or she will then have twenty days after such
24 notification to remove the tenant's personal property from the dwelling
25 unit or obtain the personal property from where it is being stored. Upon
26 presentation of a valid government-issued identification confirming the
27 identity of the authorized person, the landlord shall grant the
28 authorized person reasonable access to the rented dwelling unit or to
29 where the personal property is being stored if not in the dwelling unit.
30 If the tenant's personal property is not entirely removed from the
31 dwelling unit by an authorized person, the landlord may dispose of the

1 remaining property as prescribed in the Disposition of Personal Property
2 Landlord and Tenant Act. If the landlord allows an authorized person to
3 receive the tenant's personal property as provided by this subsection,
4 the landlord has no further liability to the tenant, the tenant's estate,
5 or the tenant's heirs for lost, damaged, or stolen personal property. If
6 the landlord is unable to contact the authorized person at the address
7 and telephone number provided by the tenant or the authorized person
8 fails to respond to the landlord's notification within twenty days after
9 contact is made, the landlord may dispose of the tenant's personal
10 property as prescribed in the Disposition of Personal Property Landlord
11 and Tenant Act.

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

14 76-1431 (1) Except as provided in the Uniform Residential Landlord
15 and Tenant Act, if there is a noncompliance with section 76-1421
16 materially affecting health and safety or a material noncompliance by the
17 tenant with the rental agreement or any separate agreement, the landlord
18 may deliver a written notice to the tenant specifying the acts and
19 omissions constituting the breach and that the rental agreement will
20 terminate upon a date not less than thirty days after receipt of the
21 notice if the breach is not remedied in fourteen days, and the rental
22 agreement shall terminate as provided in the notice subject to the
23 following. If the breach is remediable by repairs or the payment of
24 damages or otherwise and the tenant adequately remedies the breach prior
25 to the date specified in the notice, the rental agreement will not
26 terminate. If substantially the same act or omission which constituted a
27 prior noncompliance of which notice was given recurs within six months,
28 the landlord may terminate the rental agreement upon at least fourteen
29 days' written notice specifying the breach and the date of termination of
30 the rental agreement.

31 (2) If rent is unpaid when due and the tenant fails to pay rent

1 within three days after written notice by the landlord of nonpayment and
2 his or her intention to terminate the rental agreement if the rent is not
3 paid within that period of time, the landlord may terminate the rental
4 agreement.

5 (3) Except as provided in the Uniform Residential Landlord and
6 Tenant Act, the landlord may recover damages and obtain injunctive relief
7 for any noncompliance by the tenant with the rental agreement or section
8 76-1421. If the tenant's noncompliance is willful, the landlord may
9 recover reasonable attorney's fees.

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

1 which would otherwise threaten the health or safety of any person or
2 involving threatened, imminent, or actual damage to the property.

3 (5) Subsection (4) of this section does not apply to a tenant if the
4 violent criminal activity, illegal sale of any controlled substance, or
5 other activity that threatens the health or safety of other tenants, the
6 landlord, or the landlord's employees or agents, as set forth in
7 subsection (4) of this section, is conducted by a person on the premises
8 other than the tenant and the tenant takes at least one of the following
9 measures against the person engaging in such activity:

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

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

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

18 76-1441 (1) The person seeking possession shall file a complaint
19 for restitution with the clerk of the district or county court. The
20 complaint shall contain (a) the facts, with particularity, on which he or
21 she seeks to recover; (b) a reasonably accurate description of the
22 premises; and (c) the requisite compliance with the notice provisions of
23 the Uniform Residential Landlord and Tenant Act. The complaint may notify
24 the tenant that personal property remains on the premises and that it may
25 be disposed of pursuant to section 69-2308 or subsection (5) of section
26 76-1414. The complaint may also contain other causes of action relating
27 to the tenancy, but such causes of action shall be answered and tried
28 separately, if requested by either party in writing.

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

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

3 76-1446 Trial of the action for possession shall be held not less
4 than ten nor more than fourteen days after the issuance of the summons.
5 The action shall be tried by the court without a jury. If the plaintiff
6 serves the summons in the manner provided in section 76-1442.01, the
7 action shall proceed as other actions for possession except that a money
8 judgment shall not be granted for the plaintiff. If judgment is rendered
9 against the defendant for the restitution of the premises, the court
10 shall declare the forfeiture of the rental agreement, and shall, at the
11 request of the plaintiff or his or her attorney, issue a writ of
12 restitution, directing the constable or sheriff to restore possession of
13 the premises to the plaintiff on a specified date not more than ten days
14 after issuance of the writ of restitution. The plaintiff shall comply
15 with the Disposition of Personal Property Landlord and Tenant Act and
16 subsection (5) of section 76-1414 in the removal of personal property
17 remaining on the premises at the time possession of the premises is
18 restored.

19 Sec. 7. Original sections 25-21,220, 69-2303, 76-1414, 76-1431,
20 76-1441, and 76-1446, Reissue Revised Statutes of Nebraska, are repealed.