



LEGAL BRIEF

LANDLORD-TENANT LAW

June 2021

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Nevada has adopted a comprehensive statutory scheme covering residential landlord-tenant matters. *See* Nevada Revised Statute (NRS) Chapter 118A. This handout discusses the following most common issues arising in legal assistance:

1. Security deposits
2. Rent increases
3. Entry by the landlord
4. Failure of landlord to maintain the rental premises in a habitable condition
5. Failure of landlord to provide essential services
6. Lockouts and other illegal acts by landlords
7. Eviction for non-payment of rent
8. Personal property left behind after eviction or abandonment
9. Starting a landlord/tenant court action
10. Answering an action
11. Alternate solutions

Please visit the Clark County Civil Law Self-Help Center website for more information: <http://www.civillawselfhelpcenter.org/>. The Civil Law Self-Help Center has free forms you can download and use for many of the issues addressed in this handout. If you have questions not addressed by this handout, you should consult with a Nevada-licensed attorney or schedule a legal assistance appointment.

1. Security Deposits

Almost every landlord will require the tenant to post a security deposit. Nevada law allows the landlord to apply the deposit toward any unpaid rent, cost of cleaning the premises, or cost of repairing the premises beyond normal wear and tear. *See* NRS 118A.240. There are no automatic deductions from deposits under the law. The only security that can be considered non-refundable is a reasonable cleaning fee and, then, only if the lease provides for such a charge. If the lease characterizes other security as nonrefundable (besides a reasonable cleaning fee), such language would be void. The law of this state also limits the maximum amount of a security deposit to an amount equal to three months rent. *See* NRS 118A.242(1).

Nevada law requires that the landlord refund the security deposit within 30 days of the tenant vacating the property. *See* NRS 118A.242(4). The landlord does not have to pay interest on the security deposits no matter how long the deposit is held. The security deposit refund must be accompanied by an itemized list of the deductions made by the landlord. If the landlord does

not return the remainder of the deposit within 30 days, the tenant may sue. The court may award a sum to be fixed by the court of not more than the amount of the entire deposit. Tenants should note that if the amount owed the tenant is less than \$10,000, the tenant may file his or her claim in Justice Court (Small Claims Court) without a lawyer.

2. Rent Increases

How much notice a landlord must give a tenant of a rent increase depends on their rental arrangement. If the tenant is renting from week-to-week, the landlord must provide the tenant with written notice of the rent increase at least 15 days in advance of the first increased rental payment. If the arrangement is month-to-month or for longer periods, then there must be 45 days' notice. Finally, if the parties have a written lease for a longer term, then rent cannot go up during the time of the lease unless expressly stated in the lease. *See* NRS 118A.300.

3. Entry by the Landlord

A landlord has the right, in certain circumstances, to enter the rental property, even without the tenant's consent. Unless an emergency exists, the landlord must provide at least 24 hours' notice of his or her intent to enter and may only enter at reasonable times during normal business hours. *See* NRS 118A.330. However, a tenant may agree to a shorter notice period or entry during nonbusiness hours. A landlord may only enter the rented premises under the following circumstances:

- Inspect the premises;
- Make necessary or agreed repairs, decorating, alterations or improvements;
- Supply necessary or agreed services;
- Show the unit to prospective or actual purchasers, mortgage companies, tenants, workers, contractors or other persons with a true interest in inspecting the premises;
- Without the consent of the tenant, if an emergency;
- When the tenant has abandoned or surrendered the premises;
- If the landlord has given the tenant a fourteen-day (14) written notice telling the tenant to make basic repairs, clean, or things of that nature, or the landlord would enter the property and fix the problem; or
- Pursuant to court order.

4. Failure of Landlord to Maintain the Rental Premises in a Habitable Condition

Landlords are obligated by law to maintain the rental premises in a "habitable condition," which means that an average person could reside in the rental property with reasonable comfort. *See* NRS 118A.355. If the rental property is not in habitable condition, the tenant must deliver written notice to the landlord describing the issue and allow the landlord 14 days to fix the problem. If the landlord fails to fix the problem and the reasonable cost of compliance or necessary repairs is less than \$100 or one month's rent (whichever is greater), the tenant may sue in court for damages or notify the landlord in writing of the tenant's intention to correct the problem at the landlord's expense. *See* NRS 118A.360. If the landlord does not remedy the problem within 14 days after receiving notice, the tenant may cause the repairs to be made in a

workmanlike manner. If the tenant, or someone hired by the tenant, makes the necessary repairs, the tenant must then submit an itemized statement of repairs and repair costs to the landlord before deducting the cost of such repairs from the tenant's rent. Keep in mind that the tenant may only deduct the "actual and reasonable costs or the fair or reasonable value of the work" from his or her rent. *See* NRS 118A.360.

If the cost of making the rental property habitable exceeds \$100 or one month's rent (whichever is greater), then the tenant can provide the landlord with written notice that specifies the problem and advises him or her that the rental agreement will terminate if the landlord does not remedy the problem or use his or her best efforts to remedy the problem within 14 days of receipt of the notice. If, after receipt of the tenant's written notice, the landlord fails to fix the problem or make reasonable efforts to do so, the tenant may terminate the lease and go to court to recover actual damages and any other relief the court deems appropriate. If the rental agreement is terminated in such a manner, the landlord must return all prepaid rent and security normally recoverable by the tenant.

It is important to note that the courts will ultimately decide whether the premises was habitable given the problems that existed during the period complained of by the tenant. Therefore, tenants **must be very cautious** when deciding to make deductible repairs or attempting to terminate their tenancy on the basis that their rental premises is uninhabitable. Tenants must also not be responsible for the problem through their own negligence or willful conduct, or that of a member of the tenant's household or any other person on the premises with the tenant's consent for the benefits of this provision to apply. *See* NRS 118A.350(2); NRS 118A.360(3).

A rental property is **not habitable** if it violates housing or health codes concerning health, safety, sanitation, or fitness, or if the rental property *substantially* lacks the following:

- Effective waterproofing and weather protection;
- Plumbing facilities in good working order;
- Water supply with hot and cold water that is connected to an approved sewage disposal;
- Adequate heating facilities;
- Electrical lighting, outlets, and wiring;
- Adequate removal of garbage;
- Building, grounds, and other areas under the landlord's control that are clean, sanitary, and reasonably free from an accumulation of debris, filth, rubbish, garbage, rodents, insects, and vermin;
- Floors, walls, ceilings, stairways, and railings maintained in good order; or
- Ventilating and air-conditioning maintained in good order if supplied by the landlord.

5. Failure of Landlord to Provide Essential Services

Essential services include but are not limited to heat, air-conditioning, running water, hot water, electricity, gas, and a functioning door lock. There are similarities between the failure to provide essential services and the failure to maintain habitable living conditions. However, the procedures and rights (e.g., the amount of notice to the landlord) under each category are different. Thus, it is important to understand the differences between the two. The term

“habitable living conditions” is broader and encompasses more issues than “essential services.” This means that a tenant may have a non-essential service that renders the property uninhabitable. For example, if the building is infested by insects, it is a non-essential service because it does not involve heat, air-conditioning, running water, hot water, electricity, gas, or a functioning door lock, even though it renders the property uninhabitable. On the other hand, if the heating facilities go out, the tenant has an essential service that renders the property uninhabitable. If the condition on the property can be categorized as “essential,” the landlord is entitled to 48 hours’ notice rather than 14 days’ notice for non-essential services.

Nevada law provides avenues through which tenants may seek relief in cases in which their landlords have covenanted, or promised, in the rental agreement to provide essential services such as air conditioning, gas, functioning door lock, electric, heat, running water, or hot water, but willfully or negligently fail to do so. If such action or inaction on the part of the landlord causes the premises to become uninhabitable, then the tenant can act to remedy the problem. Before taking any action, however, **the tenant must first give the landlord written notice that clearly identifies the problem.** *See* NRS 188A.380. Make sure to mail your written notice certified mail, return receipt requested, so you have proof of mailing. The landlord will then have 48 hours (excluding Saturdays, Sundays or legal holidays) to remedy the problem or use his or her best efforts to remedy the problem. If the landlord fails to do so, the tenant may:

- **Withhold Rent.** Unlike with habitability problems, the tenant need not pay the rent into the court’s escrow account in order to have a defense in an eviction action;
- **Repair and Deduct.** The tenant may obtain their own essential services and deduct the cost from the rent;
- **Move, Withhold Rent, and Sue.** The tenant may move into comparable (similarly priced) housing and, in addition to withholding rent during the time that the rental unit is uninhabitable, may sue the landlord for the cost of the other housing that is in excess of the rent that the tenant pays for the rental unit.
- **Sue** the landlord for damages and/or an order to repair the problem(s). If the tenant needs relief quickly, this can be done by filing a Verified Complaint

The tenant, or a member of his or her household or any other person on the premises with the tenant’s consent, must not have willfully or negligently caused the problem complained of for the benefits of this provision to apply. *See* NRS 118A.380(5).

6. Lockouts and Other Illegal Acts by Landlords

Nevada law prohibits landlords from exercising “self-help evictions.” Instead, a landlord may only deny the tenant access to the rental property if the landlord believes the tenant has abandoned the premises or if the landlord has a valid eviction order from a judge. The landlord can presume the tenant has abandoned the rental unit if the tenant is absent for half of the rental period and has neither paid the current rent due nor given the landlord written notice of the intended absence. *See* NRS 118A.450.

The remedies for an illegal lockout include:

- Terminating the rental agreement;
- Suing for actual money damages; and

- Forcing the landlord to let the tenant back into the property. *See* NRS 118A.390.

If the tenant wants to force the landlord to let the tenant back into the property or to maintain an essential service, the tenant must file a verified complaint for expedited relief within **5 judicial days** (no weekends or holidays) of the landlord's unlawful act. *See* NRS 118A.390(4). If the tenant fails to file the verified complaint within five days, the tenant may still recover money damages for **up to three years**. In addition to actual damages (e.g., costs of temporary lodging), the tenant may also receive up to \$2,500 in punitive damages from the landlord.

7. Eviction for Non-Payment of Rent

Nevada law is very favorable to landlords when it comes to eviction for non-payment of rent. A landlord may evict a tenant with only five days written notice. *See* NRS 118A.430. That is to say, if a tenant fails to pay their rent on time, the landlord may serve the tenant with a written "notice to quit" on any day after the rent becomes late and may then evict said tenant five days after the service of such notice. The landlord may present you with notice the day the rent is due and have you evicted five days later. *See* NRS 40.2512. The notice to quit must be a specific and unconditional written demand that the tenant either pay the rent owed or vacate and surrender the premises. *See* NRS 40.253. It must also advise the tenant of their right to contest the matter in court. *See id.*

If the tenant is given such notice by the landlord, the tenant has three options. The tenant may remedy the breach (pay the rent due), vacate the premises, or contest the notice. The grounds upon which a tenant may contest this type of eviction are very narrow. To contest the landlord's actions, the tenant must show either that the back rent was not owed or that payment was refused by the landlord. The tenant must contest within five days of the landlord's service of the notice to quit by filing in court an affidavit stating that the tenant has either tendered payment or is not in default of the rent. *See id.* Once the contest is made and a copy of the affidavit is served upon the landlord, the landlord may not prevent the tenant from entering the property. *See* NRS 40.253(4). If the tenant does not properly contest the planned eviction, the landlord may proceed to court to obtain an order directing the local authorities to remove the tenant from the premises within 24 hours of receipt of the order. *See* NRS 40.253(5).

8. Personal Property Left Behind after Eviction or Abandonment

If a landlord evicts a tenant or the tenant abandons the premises, the landlord must protect the tenant's personal property left behind. This obligation lasts for 30 days. *See* NRS 188A.460. The landlord may charge the tenant for reasonable costs incurred from moving, storing, and inventorying the property. The tenant must reimburse the landlord for these expenses before getting the property back. After 30 days, the landlord may sell the property to recover costs. The landlord must make reasonable efforts to locate the tenant and give the tenant 14 days' notice prior to selling the property. *See id.* The landlord may not hold the personal property of the tenant to secure unpaid rent, absent a court order. *See* NRS 118A.520.

9. Starting a Landlord/Tenant Court Action

Starting an Action: In the city of Las Vegas, Small Claims actions are filed in Justice Court (“Small Claims Court”). The Small Claims Court can grant you monetary relief only. It cannot grant injunctive relief. Therefore, if you are a tenant who wants the court to order your landlord to make repairs, Small Claims Court is not the appropriate court in which to file your suit. You would need to file in Civil Court, which is located in the same building. However, Justice Court may be the right place to go if you want your security deposit refunded. Pick up a copy of our Small Claims Court handout for instructions on how to file an action in Small Claims Court.

10. Answering an Action

Step 1: Understand How The Eviction Process Works

Getting an eviction notice can be an overwhelming experience. Taking the time to understand how the eviction process works will help you evaluate your options so that you can make the best decision possible under the circumstances.

Step 1(A): How Is Your Landlord Trying To Evict You?

You first need to determine how your landlord is trying to evict you. This is important as what you file and how much time you have to take action will depend on whether your landlord is trying to evict you through: the Summary Eviction Process or the “Formal” Eviction Process.

If your landlord is using the Summary Eviction Process, as most landlords do, he or she may send you any one of the following types of notices:

- Pay Rent or Quit (You will receive a single 5-day notice)
- Nuisance, Assignment/Subletting, or Unlawful Business (You will receive a 3-day notice that will be followed by a 5-day “Unlawful Detainer” notice)
- Lease Violation (You will receive a 5-day notice that will be followed by a 5-day “Unlawful Detainer” notice)
- “No Cause” (You will receive a 7 or 30-day notice, depending on whether you pay rent by the week or month, followed by a 5-day “Unlawful Detainer” notice)
- Tenancy-at-Will (You will receive a 5-day notice that will be followed by a 5-day “Unlawful Detainer” notice)

If your landlord is using the “formal” eviction process, as banks which have foreclosed on a residence and mobile home parks are generally required to do, he or she will send you an eviction notice that will be followed by a summons and complaint.

Step 1(B): Choose How To Respond

When you receive an eviction notice(s) or an eviction notice followed by a complaint, your options are generally to:

- Move;
- Comply with the notice (pay rent or remedy the lease violation); or
- File an Answer with the court.

If your landlord is using the summary eviction process and you file an Answer, the court will hold a hearing, usually within a week, to determine whether an order for summary eviction should be granted. We have provided the following flowcharts to show how the summary eviction process works for evictions for non-payment of rent and for evictions for reasons other than non-payment of rent.

If your landlord is using the “formal” eviction process, your landlord may serve you with an “Order to Show Cause” or Notice of Trial Setting that already schedules an eviction hearing.

Step 2: Determine How Much Time You Have To Take Action

How much time you have to act in response to an eviction notice, depends on how much time is given in the notice. If the notice tells you to take action in 10 days or less (as nearly all eviction notices will), you count *judicial* days. That is, you do not count: (1) the day of service, (2) weekends, or (3) legal holidays. If the notice tells you to take action in 11 days or more (i.e., a 30-day “no cause” notice), you count *calendar* days. That is, you do not count the day of service but you do count weekends and legal holidays.

Step 3: Responding To The Notice

Upon receipt of the Notice, the tenant may, no later than noon of the fifth full judicial day following the day of service:

- Pay the rent demanded;
- Move;
- File an Answer with the Justice Court that is referenced in the notice; or
- File a Motion to Stay, in which the tenant asks that the court delay the eviction for up to 10 days pursuant to NRS 70.010.
 - Please note, the tenant may file the Motion to Stay instead of filing an Answer or may file a Motion to Stay after the eviction order is entered.

The tenant should do one of the above no later than noon of the fifth full judicial day following the day of service.

11. Alternate Solutions

Finally, if you are seeking relief from a landlord/tenant problem but wish to avoid lawsuits, you may want to consider utilizing the Neighborhood Justice Center (702-455-3898). The Neighborhood Justice Center offers free mediation services to Las Vegas residents. While

results are not guaranteed, this service provides an attractive means by which you can seek to resolve disputes while avoiding the costs and time-delays of the court system. However, keep in mind that both parties to the dispute must be willing to use the service and to compromise for the service to be of any real benefit to you.

THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE NELLIS AIR FORCE BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.