

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 433

FINAL READING

Introduced by Hansen, M., 26; Linehan, 39; Blood, 3.

Read first time January 18, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Uniform Residential Landlord and Tenant
- 2 Act; to amend sections 76-1416 and 76-1431, Reissue Revised Statutes
- 3 of Nebraska; to change provisions relating to the return of security
- 4 deposits and damages and the period of time relating to a written
- 5 notice to quit; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-1416, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 76-1416 (1) A landlord may not demand or receive security, however
4 denominated, in an amount or value in excess of one month's periodic
5 rent, except that a pet deposit not in excess of one-fourth of one
6 month's periodic rent may be demanded or received when appropriate, but
7 this subsection shall not be applicable to housing agencies organized or
8 existing under the Nebraska Housing Agency Act.

9 (2) Upon termination of the tenancy, property or money held by the
10 landlord as prepaid rent and security may be applied to the payment of
11 rent and the amount of damages which the landlord has suffered by reason
12 of the tenant's noncompliance with the rental agreement or section
13 76-1421. The balance, if any, and a written itemization shall be
14 delivered or mailed to the tenant within fourteen days after the date of
15 termination of the tenancy. If no mailing address or instructions are
16 provided by the tenant to the landlord, the landlord shall mail, by
17 first-class mail, the balance of the security deposit to be returned, if
18 any, and a written itemization of the amount of the security deposit not
19 returned to the tenant's last-known mailing address. If the mailing is
20 returned as undeliverable, or if the returned balance of the security
21 deposit remains outstanding thirty days after the date of the mailing,
22 the landlord shall, not later than sixty days after the date of the
23 mailing, remit the outstanding balance of the security deposit to the
24 State Treasurer for disposition pursuant to the Uniform Disposition of
25 Unclaimed Property Act ~~demand and designation of the location where~~
26 ~~payment may be made or mailed.~~

27 (3) If the landlord fails to comply with subsection (2) of this
28 section, the tenant may recover the property and money due him or her,
29 court costs, and reasonable attorney's fees. In addition, if the
30 landlord's failure to comply with subsection (2) of this section is
31 willful and not in good faith, the tenant may recover an amount equal to

1 one month's periodic rent or two times the amount of the security
2 deposit, whichever is less, as liquidated damages.

3 (4) This section does not preclude the landlord or tenant from
4 recovering other damages to which he or she may be entitled under the
5 Uniform Residential Landlord and Tenant Act. However, a tenant shall not
6 be liable for damages directly related to the tenant's removal from the
7 premises by order of any governmental entity as a result of the premises
8 not being fit for habitation due to the negligence or neglect of the
9 landlord.

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

12 Sec. 2. 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 seven calendar ~~three~~ days after written notice by the landlord of
2 nonpayment and his or her intention to terminate the rental agreement if
3 the rent is not paid within that period of time, the landlord may
4 terminate the rental 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. 3. Original sections 76-1416 and 76-1431, Reissue Revised
17 Statutes of Nebraska, are repealed.