

## LEGISLATIVE BILL 36

Approved by the Governor March 21, 1991

Introduced by Kristensen, 37; Robak, 22

AN ACT relating to landlord and tenant; to adopt the  
Disposition of Personal Property Landlord and  
Tenant Act.

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

Section 1. Sections 1 to 14 of this act shall  
be known and may be cited as the Disposition of Personal  
Property Landlord and Tenant Act.

Sec. 2. For purposes of the Disposition of  
Personal Property Landlord and Tenant Act:

(1) Landlord shall mean the owner, lessor, or  
sublessor of furnished or unfurnished premises for rent  
or his or her agent or successor in interest;

(2) Owner shall mean 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 premises and shall include a mortgagee in  
possession;

(3) Premises shall mean a building or a  
distinct portion of a building, the facilities and  
appurtenances in such building, and the grounds, areas,  
and facilities held out for the use of tenants generally  
or the use of which is promised to the tenants;

(4) Reasonable belief shall mean the knowledge  
or belief a prudent person should have without making an  
investigation, including any investigation of public  
records, except that when the landlord has specific  
information indicating that such an investigation would  
more probably than not reveal pertinent information and  
the cost of such an investigation would be reasonable in  
relation to the probable value of the personal property  
involved, reasonable belief shall include the actual  
knowledge or belief a prudent person would have if such  
investigation were made;

(5) Reasonable costs of storage shall include:

(a) Reasonable costs actually incurred, the  
reasonable value of labor actually provided, or both in  
removing personal property from its original location on  
the vacated premises to the place of storage, including  
disassembly and transportation; and

(b) Reasonable storage costs actually incurred

which shall not exceed the fair rental value of the space reasonably required for the storage of the personal property; and

(6) Tenant shall mean a person entitled under a rental agreement to occupy any premises for rent to the exclusion of others, whether such premises are used as a dwelling unit or not.

Sec. 3. (1) When personal property remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant through eviction or otherwise, the landlord shall give written notice as provided in subsection (2) of this section to such tenant and to any other person the landlord reasonably believes to be the owner of the property.

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

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

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

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

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

Sec. 4. A notice given pursuant to section 3 of this act shall contain one of the following

statements, as appropriate:

(1) "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the costs of storage, advertising, and sale are deducted, the remaining money will be turned over to the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act. You may claim the remaining money from the office of the State Treasurer as provided in such act."; or

(2) "Because this property is believed to be worth less than two hundred fifty dollars, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated in this notice."

Sec. 5. (1) A notice given to a former tenant which is in substantially the following form shall satisfy the requirements of section 3 of this act:

Notice of Right to Reclaim Abandoned Property

To: .....  
(Name of former tenant)

.....  
(Address of former tenant)

When you vacated the premises at  
.....  
(Address of premises, including room or apartment number, if any)

the following personal property remained:

.....  
(Insert description of the personal property)  
You may claim this property at .....  
.....  
(Address where property may be claimed)

Unless you pay the reasonable costs of storage for all the above-described property and take possession of the property which you claim not later than ....., (insert date not less than seven days after notice is personally delivered or, if mailed, not less than fourteen days after notice is deposited in the mail) this property may be disposed of pursuant to the Disposition of Personal Property Landlord and Tenant Act.

(Insert here the statement required by section 4 of this act)

Dated: .....  
.....  
(Signature of landlord)  
.....  
(Type or print name of landlord)

.....  
(Telephone number)  
.....

.....  
(Address)  
.....

(2) A notice which is in substantially the following form given to a person other than a former tenant whom the landlord reasonably believes to be the owner of personal property shall satisfy the requirements of section 3 of this act:

Notice of Right to Reclaim Abandoned Property

To: .....  
(Name)  
.....

.....  
(Address)  
.....

When ..... vacated the premises at  
(Name of former tenant)

.....  
(Address of premises, including room or apartment  
number, if any)

the following personal property remained:

.....  
(Insert description of the personal property)

If you own any of this property, you may claim it at

.....  
(Address where property may be claimed)

Unless you pay the reasonable costs of storage and take possession of the property to which you are entitled not later than .....

.....  
(insert date not less than seven days after notice is personally delivered or, if mailed, not less than fourteen days after notice is deposited in mail) this property may be disposed of pursuant to the Disposition of Personal Property Landlord and Tenant Act.

(Insert here the statement required by section

4 of this act)

Dated: .....  
(Signature of landlord)

.....  
(Type or print name of landlord)

.....  
(Telephone number)  
.....

.....  
(Address)

Sec. 6. A landlord may leave personal property on the vacated premises or may remove and store the property in a place of safekeeping until the landlord either releases or disposes of the property pursuant to the Disposition of Personal Property Landlord and Tenant Act. The landlord shall exercise

reasonable care in storing the property but shall not be liable to the tenant or any other owner for any loss unless such loss is caused by the landlord's intentional or negligent act.

Sec. 7. (1) A landlord shall release personal property left on the vacated premises to the former tenant or to any person reasonably believed by the landlord to be the owner if such tenant or other person pays the reasonable costs of storage and advertising and takes possession of the property not later than the date specified in the notice for taking possession.

(2) When personal property is not released pursuant to subsection (1) of this section and the notice has stated that the personal property will be sold at a public sale, the landlord shall release the personal property to the former tenant or other person if he or she claims the property prior to sale and pays the reasonable costs of storage, advertising, and preparation for sale incurred prior to such claim and payment.

Sec. 8. (1) If the personal property is not released pursuant to section 7 of this act, it shall be sold at public sale by competitive bidding, except that if the landlord reasonably believes that the total resale value of the property not released is less than two hundred fifty dollars, he or she may retain such property for his or her own use or dispose of it in any manner he or she chooses. At such time as the decision to sell or to retain is made, any locked trunk, valise, box, or other container shall be opened, if practicable, with as little damage as possible, and its contents evaluated. Nothing in this section shall be construed to preclude the landlord or the tenant from bidding on the property at the public sale. The successful bidder's title shall be subject to ownership rights, liens, and security interests which have priority by law.

(2) Notice of the time and place of the public sale shall be given by advertisement of the sale published once a week for two consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted no fewer than ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The sale shall be held at the nearest suitable place to the place where the personal property is held or stored. The advertisement shall include a description of the goods,

the name of the former tenant, and the time and place of the sale. The sale shall take place no sooner than ten days after the first publication. The last publication shall be no less than five days before the sale is to be held. Notice of sale may be published before the last of the dates specified for taking possession of the property in any notice given pursuant to section 3 of this act.

(3) The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by section 9 of this act shall not release the landlord from any liability arising from the disposition of property not described in the notice.

(4) After deduction of the reasonable costs of storage, advertising, and sale, any proceeds of the sale not claimed by the former tenant, an owner other than such tenant, or another person having an interest in the proceeds shall, not later than thirty days after the date of sale, be remitted to the State Treasurer for disposition pursuant to the Uniform Disposition of Unclaimed Property Act. The former tenant, other owner, or other person having interest in the proceeds may claim the proceeds by complying with the act. If the State Treasurer pays the proceeds or any part thereof to a claimant, neither the State Treasurer nor any employee thereof shall be liable to any other claimant as to the amount paid.

Sec. 9. (1) If the landlord releases to the former tenant property which remains on the premises after a tenancy is terminated, the landlord shall not be liable to any person with respect to such property.

(2) If the landlord releases property pursuant to section 7 of this act to a person who is not the former tenant and who is reasonably believed by the landlord to be the owner of the property, the landlord shall not be liable with respect to such property to:

(a) Any person to whom notice was given pursuant to section 3 of this act; and

(b) Any person to whom notice was not given pursuant to section 3 of this act unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should, upon reasonable investigation, have known the address of such person.

(3) When property is disposed of pursuant to

section 8 of this act, the landlord shall not be liable with respect to that property to:

(a) Any person to whom notice was given pursuant to section 3 of this act; and

(b) Any person to whom notice was not given pursuant to section 3 of this act unless such person proves that, prior to disposing of the property pursuant to section 8 of this act, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should, upon reasonable investigation, have known the address of such person.

Sec. 10. (1) Costs of storage for which payment may be required shall be assessed in the following manner:

(a) When a former tenant claims property pursuant to section 7 of this act, he or she may be required to pay the reasonable costs of storage for all the personal property remaining on the premises at the termination of the tenancy; and

(b) When an owner other than the former tenant claims property pursuant to section 7 of this act, he or she may be required to pay the reasonable costs of storage for only the property in which he or she claims an interest.

(2) In determining the costs to be assessed under subsection (1) of this section, the landlord may not charge more than one person for the same costs.

Sec. 11. A residential landlord shall surrender to a residential tenant or to a residential tenant's duly authorized representative any personal property not owned by the landlord which has been left on the premises after the tenant has vacated the residential premises and the return of which has been requested by the tenant or by the authorized representative of the tenant if:

(1) The tenant requests in writing, within fourteen days of vacating the premises, the surrender of the personal property and the request includes a description of the personal property held by the landlord and specifies the mailing address of the tenant;

(2) The landlord or the landlord's agent has control or possession of such personal property at the time the request is received;

(3) The tenant, prior to the surrender of the personal property by the landlord and upon written demand by the landlord, tenders payment of all reasonable costs associated with the landlord's removal

and storage of the personal property. The landlord's demand for payment of reasonable costs associated with the removal and storage of personal property shall be in writing and shall either be mailed to the tenant at the address provided pursuant to subdivision (1) of this section or shall be personally presented to the tenant or to the tenant's authorized representative within five days after the actual receipt of the tenant's request for surrender of the personal property, unless the property is returned first. The demand shall itemize all charges, specifying the nature and amount of each item of cost; and

(4) The tenant agrees to claim and remove the personal property at a reasonable time mutually agreed upon by the landlord and tenant but not later than seventy-two hours after the tender provided for under subdivision (3) of this section.

Sec. 12. Any landlord who retains personal property in violation of the Disposition of Personal Property Landlord and Tenant Act shall be liable to the tenant in a civil action for:

(1) Actual damages not to exceed the value of the personal property if such property is not surrendered: (a) Within a reasonable time after the tenant requests surrender of the personal property; or (b) if the landlord has demanded payment of reasonable costs associated with removal and storage and the tenant has complied with the requirements of section 11 of this act. Three days shall be presumed to be a reasonable time in the absence of evidence to the contrary; and

(2) Reasonable attorney's fees and costs.

Sec. 13. Personal property which the landlord reasonably believes to have been lost shall be disposed of as otherwise provided by law, but if the appropriate law enforcement agency or other governmental agency refuses to accept custody of such property, the landlord may dispose of the property pursuant to the Disposition of Personal Property Landlord and Tenant Act. The landlord shall not be liable to the owner of the property if he or she disposes of such property in compliance with the act.

Sec. 14. The remedy provided by the Disposition of Personal Property Landlord and Tenant Act shall not be exclusive and shall not preclude the landlord or the tenant from pursuing any other remedy provided by law.