

March 7, 2023

Senators Donate, Gonzalez Peters and Watts
Senate Committee on Commerce and Labor

Re: SB 78

Dear Hon. Senators and Committee Members:

Please consider these points in regard to S.B. 78 which proposes to change the unlawful detainer period in NRS 40.251 from 30 days to 60 days.

Unintended Consequences

Sophisticated landlords will likely request not only first and last month's rent, but first and last two (2) month's rent, possibly making it harder for tenants to come up with the initial required payment.

Residential Tenancies v. Commercial Tenancies

NRS Chapter 40 summary eviction statutes apply to both residential and commercial leases. S.B. 78, however, is presumably aimed at helping residential tenants due to a shortage of housing stock. The unlawful detainer does not need to be extended for commercial tenants. A distinction should therefore be made between residential tenants and commercial tenants.

No Cause Eviction v. Evictions for Cause

NRS Chapter 40 summary eviction statutes cover both evictions for cause [for non-payment of rent or breach of other lease provisions] and no-cause evictions [essentially unlawful detainer after remaining in possession of property after the expiration of a 30-day notice, now proposed as a 60-day notice].

In practice, I (and presumably other attorneys) file no-cause/unlawful detainer proceedings even if there are grounds for eviction for cause. It is simply easier and avoids a hearing on disputed facts regarding for cause evictions. If the notice period is extended from 30 to 60 days, there may be a greater tendency to file for cause summary evictions, which should be faster, in theory. Unfortunately, the reality is that justice courts will not grant summary evictions for cause if there is any defense, even a patently inadequate defense.

The summary eviction statutes in NRS Chapter 40 are vague on what happens if the justice court denies summary eviction. NRS 40.300 allows the plaintiff/landlord to file a complaint. There are no details on how that gets heard or on what time frame. We are left to assume it is a lawsuit the same as other lawsuits. As such, the landlord could be denied recovery for months or even a year while the lawsuit proceeds.



In fairness to the landlords, if the notice period is extended from 30 to 60 days as proposed in S.B. 78, they should have improvements to NRS Chapter 40 and more clarity regarding for cause evictions. Specifically, justices of the peace should have the authority to overrule inadequate defenses and not force the landlords to file a separate lawsuit to reclaim the property.

30 days to 120 days

Even with the current 30-day notice period, the landlord does not necessarily recover the property on the 30th day. If the tenant does not vacate the property, the landlord has to file a 5-day notice. That is 5 court days. The notice has to be served by a process server or constable. If the tenant cannot be located, the notice is posted on the property and the time period is extended to 8 court days. If the tenant still has not vacated, the landlord has to file an affidavit of unlawful detainer to obtain a 48-hour lockout notice. That notice also has to be served. All told, this could take another month.


Tenants over the age of 60 can request another 30 days on top of this. All told it currently takes about 60-90 days to complete an unlawful detainer proceeding. If the notice period is extended to 60 days, it will take between 90-120 days. This is a long time, especially if the tenant is not paying rent or is in violation of the lease.

New Option – Hardship Affidavit

One option would be to maintain the 30-day notice period and allow the residential tenant to file a form affidavit requesting another 30 days based on hardship for any reason. This could be age, disability, severe weather, shortage of housing stock. The tenant would have to swear that they are actively searching for substitute housing (subject to the hardship), that they are current on rent and that they will continue paying rent. The landlord should be able to request an expedited hearing to contest the affidavit.

Sincerely,

MATUSKA LAW OFFICES, LTD.

By: 
MICHAEL L. MATUSKA, ESQ., SBN 5711