

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 30, 1977

The meeting was called to order at 8:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Bryan
Senator Dodge
Senator Foote
Senator Sheerin
Senator Gojack
Senator Ashworth

ABSENT:

AB 173 Enacts Fair Rental Housing Act.

Senator and Mrs. William Hernstadt testified in opposition to this measure. He stated that he was not appearing as a member of the Senate but as an apartment owner and past president of the Clark County Apartment Association. He felt that because Nevada's population tends to be so transient due to the nature of our tourist-based economy, that this type of legislation, although it may work in other areas, is not appropriate in this case.

He also felt that the bill did not take into consideration one of the most significant problems in apartment living and that is tenant versus tenant relations.

The laws up to this point have created a good competitive climate which has benefited tenants by lower rents, lower deposits and a continuum of new investments. In areas that have very strict landlord-tenant relations, such as the city of New York, there is practically no new investment and people wait in line for years to get into rent-controlled buildings.

This bill, if enacted in its present form, would probably cause a doubling of security deposits and a 10-20% increase in rent.

Mike Milner, Director, State Commerce Department wanted to emphasize that Senator and Mrs. Hernstadt were speaking only for themselves and not for the Southern Nevada Apartment Owner's Association who support this legislation and who have been working with them on it. He stated that there has been considerable work done by both the landlord and tenant associations and they have reached agreement on this. He further stated that his department was in support of the measure. He introduced the following individuals and they reviewed the bill, section-by-section, with the committee:

Martin Weiner, attorney for Consumer Affairs; Rusty Nash, Washoe County Deputy District Attorney and legal advisor for the Tenants Association; and Clinto Wooster, legal advisor for the Landlords Association.

SECTION 6

Mr. Weiner: "Cause" is defined here and is of consequence only with respect to retaliatory evictions by the landlord. This does not limit the landlords opportunity to increase the rent, it merely says he cannot do so if it is intended as retaliation for certain actions by the tenant. In the absence of cause, there is a presumption that the action by the landlord is in retaliation.

SECTION 10

Mr. Wooster: We are all in agreement on including the following definition of "landlord" which is taken from the Uniform Residential Landlord-Tenant Act: "Landlord means the owner, lessor or sub-lessor of a dwelling unit or the building of which it is a part." It also means a manager of the premises who fails to disclose, as required by section 30 or 31 of this act. There is required some disclosure as to who the actual owner is and if this is not made, the manager may be treated as the landlord for purposes of this act.

SECTION 16 .

Mr. Wooster: There is disagreement on this section. The landlords would like to have "periodic" deleted from the definition of rent. The reason is that we feel there are certain payments that would be made under a rental agreement that might not be periodic, i.e., parking fees. The advantage of having rent cover all payments is that the summary provisions for collecting rent would then apply to some of these one-shot deals that are not necessarily periodic.

Mr. Weiner: The reason that "periodic" was retained revolves around the fact that non-payment of rent could result in eviction from the premises. A one-shot parking fee should not, we feel, result in eviction from an apartment but should involve merely the use of the parking space.

Albert Cartlidge, Chairman, Legislative Committee, Northern Nevada Apartment Owner's Association: We often allow tenants to pay security deposits over a period of time and we feel that "periodic" would not allow us to collect those deferred amounts if they did not pay when originally agree upon.

SECTION 20

Mr. Weiner: In subsection 2(b), an amendment was offered which would exclude housing programs operated by the Public Housing Authority. There are low-rent housing programs that permit an owner to use specific financing devices but a private individual is still in ownership. What we tried to do was exempt governmental authorities from the operation of the act. It would possibly exempt many housing units that are financed under HUD regulations that were not intended to be exempted.

Mr. Nash: Also there are a number of older hotels that have essentially been turned into apartments. They still say "hotel" but they are rented strictly on long-term tenancies and they should be included.

SECTION 20.5

Mr. Nash: The intent was to exempt the small landlord from the operation of this act with the exception of those provisions of the law that are already in existence. Plus we wanted to include the provisions of this act that were beneficial; the things that spelled out the tenant's duties.

Mr. Wooster: We had wanted to exempt 6 rental units, whether they were single family homes or not. That had been the proposal of the landlords so that the very small landlords would not be required to meet all of the detailed provisions of this act.

Mr. Weiner: We disagree because the intent of the act was to cover multiple unit dwellings; those that are bought for investment purposes.

Senator Dodge: But they are still a small landlord. The test ought to be whether they are small or not.

Mr. Weiner: We did not intend to exempt the small landlord because he was small but because they would not be able to deal with the complexity of the act. We feel that when someone enters into a commercial transaction, he knows he is going to be involved in a landlord-tenant relationship and he should be aware of the law. We made an exception for the single family dwelling unit only if they are rented without the use of a professional real estate broker.

Mr. Wooster: That is our second objection. Our proposal was to simply exempt people who owned less than 6 dwelling units, period.

SECTION 22

Mr. Weiner: This pertains to constructive notice.

Senator Close: I don't think constructive notice applies "from all the facts and circumstances known to him..."

Senator Bryan: That is beyond the concept of constructive notice.

SECTION 23

Mr. Weiner: This does not mean that the "unconscionable" provision results in the whole contract being thrown out.

Senator Close: But line 49 says that the "court may refuse to enforce 'the' agreement." That would mean the total agreement. That is one option the court has. What is an example of what would constitute "unconscionable."

Mr. Weiner: "Unconscionable" would be more likely to fall into the areas of subsection (b) which has to do with the settlement of claims. For instance, a tenant may agree to waive some of his rights in return for a non-existent promise by the landlord. This was not done in response to any specific problems but in doing a comprehensive act, we felt the possibility of unconscionability should be dealt with.

SECTION 24

Mr. Nash: When the act was originally drafted, it required a written lease in every case. One of the compromises we struck was an optional written contract as long as there was something spelled out that would clear up some of the problems when you don't have a written contract. One of those problems is what the condition the premises are left in. If you have a written lease, you take inventory. If you do not have a written lease, there is a rebuttable presumption that the tenant left the premises in the same condition that he rented them. It puts the burden on the landlord to come forward with proof.

Senator Bryan: What you have here is an implied condition of the agreement. What you are proposing is that it be an evidentiary matter in case it goes to court. There is a difference. One is an implied term of the contract; the other is an evidentiary presumption.

Mr. Wooster: And the evidentiary presumption is the one we intended.

SECTION 24.5

Mr. Weiner: This would cover the eventuality that there is no written agreement. Under subsection 3, unless it is otherwise agreed, we are not going to say that there is no agreement at all. The court could construct an agreement.

Senator Close: What if there is an oral agreement. Wouldn't an oral agreement as to rent apply?

Mr. Wooster: Yes. There may be situations where a landlord will let someone use the premises and defer consideration of some of these important things. If they get into a dispute, the tenant can't say "look, we didn't agree on rent so I don't have to pay any."

Senator Bryan: Under common law, wouldn't he have to pay the value of that which he reasonably received?

Mr. Wooster: I think so but we want to put it in the bill to make sure.

Senator Bryan: What about subsection (c). Rent is apportionable on a daily basis.

Mr. Wooster: If you don't have a written or oral agreement and you have a dispute, you assess the fair rental value for the time the person was there.

Senator Bryan: That is a departure from common law because in the absence of an agreement, if you pay rent on a weekly basis it is presumed that the periodic tenancy is week-to-week. Let's suppose that people have been in a relationship on a month-to-month basis for several months. They haven't really discussed precisely what the term of the tenancy is and all of a sudden mid-way through the month the person moves out and says his rent is apportionable on a daily basis. I don't think that is fair.

Mr. Wooster: I think you would have a constructive agreement in that case. We are talking about the circumstance where you don't have any agreement at all. "In the absence of an agreement" is what we gave the bill drafter although that is not the way it came out.

SECTION 25

Senator Close: Lines 48-50 will be amended so that a landlord cannot limit his liability for his own negligence but he can for the negligence of others.

SECTION 27

Senator Close: Attorney's fees are presently governed under existing law.

The meeting was adjourned at this point and will resume upon adjournment of the general session.

The meeting was called to order at 1:45 p.m. Senator Close was in the Chair. Senators Gojack and Foote were excused to attend a meeting of Government Affairs.

Mr. Weiner: Cleaning deposits are refundable only if they are not spent. This was one point that was discussed more thoroughly than any other. It was determined that the only satisfactory solution that would answer both the needs of the tenants and landlords was one that would permit cleaning deposits to be handled as security. If they are spent then they are non-refundable, although that is not announced ahead of time.

Mr. Wooster: I think that a cleaning fee that is non-refundable and does not equal the cost of cleaning works as a forfeiture and is not going to be enforceable. It is like liquidated damages or anything else. The cleaning fee has got to approximate the actual cost.

SECTION 30

Mr. Weiner: This mandates that there should be some disclosure to the tenant of not only who the owner is but who is authorized to act for him. Our idea was to prevent the problem of the absentee landlord. There were significant problems brought to our attention about managers who commit all kinds of outrageous acts and there is no way to get in touch with the owner.

SECTION 33

Mr. Weiner: This is the habitability section. It defines what is habitable by defining a dwelling that is not. We felt it was best to be specific about what had to be kept in what kind of condition. This only requires application of codes at the time of installation.

Senator Close: Can you by contract, require the tenant to maintain something which the landlord is obligated to provide by statute?

Mr. Weiner: Yes. If the tenant chooses not to perform, the landlord is still the one ultimately responsible. The tenant would be treated like a repairman who is under a separate contractual agreement.

Senator Bryan: Is that contrary to public policy or is that made ineffectual here? This is a philosophical question. To what extent can the parties contract? I have some difficulty in understanding the philosophical justification for limiting the right to contract.

Mr. Wooster: My conception of all this was if it was the tenant's responsibility and that was part of the agreement and he failed to maintain it, he lost his right to enforce the habitability provisions of Section 44.

Senator Close: But those are things that are the landlord's responsibility, by statute, and cannot so far as I can tell, be waived.

Mr. Wooster: Except what we are looking at is what is the penalty if the landlord doesn't do it.

Senator Close: Not if he doesn't do it. What if he contracts that the tenant has to do it.

Mr. Wooster: It was our understanding that this could be shifted and when it was shifted by contract, section 44 would then prevent the tenant from enforcing the habitability provisions if it was his responsibility.

Mr. Weiner: The intent of subsection 3 was that, for instance, if you do not paint your apartment the landlord does not have the right to evict you as if that were non-payment of some kind of consideration due.

Senator Bryan: But what if that were a condition of moving in. Shouldn't that be a subject for eviction.

Mr. Weiner: The premise you are working from is that this is an arm's length agreement and one that is done in a free market context. The experience has been that most obligations of tenants, via rental agreements, are ones that they are forced to accept.

SECTION 36

Mr. Wooster: This says that the landlord ceases to be liable for the

obligations under this act once he sells the property.

Mr. Nash: If the landlord doesn't notify the tenant that he is no longer the owner, the tenant is entitled to rely on the landlord as the person who has the obligation under this act.

Senator Sheerin: If the new landlord is required to give notice that he is taking over, why does the old landlord have the duty of giving written notice that he is leaving? Why are you requiring dual notice?

SECTION 38

Mr. Nash: This is an attempt to get at the regulation that is aimed at one tenant where you want to evict him for violation of a rule that only he could violate.

SECTION 39

Mr. Nash: This spells out the landlord's right to access.

Senator Close: What does "as otherwise permitted under this chapter" refer to? Is there any other section in this bill that permits the landlord to enter the premises?

Mr. Weiner: Section 50 allows the landlord to enter the dwelling unit for purposes of repairs. We will amend section 39 to make specific reference to this.

No action was taken at this time.

There being no further business, the meeting was adjourned.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN