

Nebraska  
Residential Landlord Tenant Law  
Basics

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- I. Introduction
  - A. Residential Landlord and Tenant Act citation. Neb. R.R.S. §76-1401 through §76-1449 Known as the "Uniform Residential Landlord and Tenant Act" commonly referred to as URLTA.
  - B. Purposes of Act and Construction
    - 1. Purpose is to "simplify, clarify, modernize and revise the law governing the rental of dwelling units" as well as specifying the rights and obligations of the parties.
    - 2. Unifies the law among the states which enact it.
      - a. Model law not adopted in full by Nebraska.
      - b. Portions of the model act, adopted by about 35 states.
  - C. Exclusions from the Act: Public or private institutions for detention, medical cause, geriatric, education, counseling, religious cause; Occupancy pending sale; Fraternal or social organizations; Hotel/Motel; Employee of landlord (resident manager & maintenance); Condominium and cooperatives; Agricultural; Lease of 5 years or more.
  - D. Leases under URLTA are periodic tenancies.
    - 1. Week to week
    - 2. Month to month
- II. Formalities of Lease drafting
  - A. Written v. Oral
  - B. Statute of frauds
  - C. Parol evidence
- III. Terms and conditions of rental agreements
  - A. Basic contract principles
    - 1. Competent parties:
      - a. Legal age (19)
      - b. Not incompetent, if so, conservator must execute contract on ward's behalf
    - 2. Subject matter
    - 3. Legal consideration
    - 4. Mutuality of agreement and obligation
  - B. Essential elements of lease

1. A reversion in landlord
  2. The creation of an estate in the tenant
  3. The transfer of exclusive possession and control of the premises
  4. Express or implied (by acts and conduct) contract
- C. Rent
1. Fair rental value for the use and occupancy. If occupancy has commenced but rental has not been agreed upon, the tenant may be required to pay fair rental value.
  2. Payable without demand, unless otherwise specified:
    - a. at the dwelling
    - b. on the first of the month
- D. Term:
1. Allowable term up to one year, if exceeds one year, must comply with the statute of frauds.
  2. Automatically converts to month to month after expiration of a term
  3. If landlord or tenant desires to terminate at the end of the term, a notice terminating the lease may be given at least thirty days prior to the expiration date.
  4. Month to month (or week to week)
  5. Covenants and conditions of lease or rent may not be altered until after the expiration of the term of the lease except by mutual agreement.
- E. Use of Premises
1. Not for operation of business
  2. Not for illegal purposes
  3. For residential purposes only
- F. Security Deposits - Prepaid rent
1. Landlord may collect up to one month's rent as a security deposit.
  2. Pet deposit
    - a. In addition to the security deposit, landlords may collect up to one-fourth of one month's rent as a pet security deposit.
    - b. Service animals: landlords may collect up to one-fourth of one month's rent as a security deposit for seeing eye and hearing dogs.
  3. Pre-paid rent: Although the landlord tenant act never specifically addresses the issue of pre-paid rent, there is apparently no limit on the amount of pre-paid rent that could be demanded.
  4. Refund of Deposit and Notification of Allocation of Deposit to Damages and Unpaid Rent
    - a. Demand by tenant and notice of forwarding address
    - b. Landlord must return the deposit (including any unused prepaid rent) or make an itemized accounting within fourteen days after the tenant has demanded the same period
    - c. Non-compliance by landlord:
      - (1) Landlord may be required to return deposit and pay tenant's attorney fees.
      - (2) Tenant may recover the property and money due him and a

reasonable attorney's fee.

- G. Prohibitions. See Neb. R.R.S. §76-1414 and §76-1415.
1. Cannot waive or forego rights or remedies under URLTA.
  2. Cannot confess judgment (note this only applies to leases, URLTA apparently does not prevent confessions of judgment following a breach of the rental agreement).
  3. Cannot agree to pay landlord's or tenant's attorney fees.
  4. Cannot exculpate or limit the landlord's liability for active or actionable negligence or indemnify the landlord for the negligence of the landlord.
  5. Cannot enforce a landlord lien or distraint for rent.

IV. Landlord's Obligations:

- A. Landlord to maintain fit premises. Sec. 76-1419(1). Landlord shall:
1. Substantially comply, after written or actual notice, with the requirements of the applicable minimum housing codes materially affecting health and safety. The landlord's obligation to make repairs and improvements to the property, are limited to those which must be made in order to comply with minimum housing code.
  2. Make all repairs and do whatever is necessary, after written or actual notice, to put and keep the premises in a fit and habitable condition;
  3. Keep all common areas of the premises in a clean and safe condition;
  4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;
  5. Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle; and
  6. Supply running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.
- B. The landlord and tenant of a single-family residence may agree that the tenant perform certain landlord's duties specified in subdivisions (5) and (6) above and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is in writing, for good consideration, entered into in good faith and not for the purpose of evading the obligations of the landlord. See Sec. 76-1419(2).
1. Note any agreement between landlord and tenant to perform landlord's duties must:
    - a. Be for good consideration
    - b. Be in good faith
    - c. BE IN WRITING. If not written, this may make the agreement

unenforceable. Unlike the statute of frauds, this section does not have a "partial performance" provision. While courts may honor performance, follow the statute.

2. In addition, the following matters should be considered:
    - a. Specifically identify the repairs and maintenance to be made.
    - b. Provide for certain subcontractors and suppliers.
    - c. Specify the consideration (not simply \$ per hour).
    - d. Specify a completion date.
    - e. Use a punch list or progression list.
    - f. If repairs are pre-occupancy or sweat equity in deposit, specify condition are to be in upon termination. May eliminate a misunderstanding that tenant must only return the premises to the condition that the premises were in at the date the occupancy commenced (pre-repairs).
  - C. The landlord and tenant of a dwelling unit other than a single-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling. See Sec. 76-1419(3).
    1. The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration; and
    2. The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.
  - D. A landlord may employ a tenant to perform the obligations of the landlord.
- V. TENANT OBLIGATIONS: See Sec. 76-1421.
- A. The tenant shall:
    1. Comply with all obligations primarily imposed upon tenants by applicable minimum standards of building and housing codes materially affecting health or safety;
    2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit, and upon termination of the tenancy place the dwelling unit in as clean condition, excepting ordinary wear and tear, as when the tenancy commenced;
    3. Dispose from his dwelling unit all ashes, rubbish, garbage, and other waste in a clean and safe manner;
    4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
    5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances including elevators in the premises;
    6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so;
    7. Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises; and

8. Abide by all bylaws, covenants, rules or regulations of any applicable condominium regime, cooperative housing agreement, or neighborhood association not inconsistent with landlord's rights or duties.
9. Pay rent:
  - a. Rent includes all payments to be made to the landlord under the rental agreement including late charges which are not unconscionable.
  - b. Unless otherwise agreed, rent shall be the fair market value for the use and occupancy of the premises.

VI. Miscellaneous:

- A. Retaliation by landlord. See sec. 76-1439. Retaliatory conduct prohibited.
  1. Landlords may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:
  2. The tenant has complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety; or
  3. The tenant has organized or become a member of a tenants' union or similar organization.
  4. If the landlord raises rent, decreases services, or brings an action for possession, the tenant is entitled to the remedies provided in §76-1430 and has a defense in action against him for possession. Reasonable rent increases or changes in services are not prohibited by sec. 76-1439.
    - a. Despite a tenant's complaint regarding minimum housing codes or organization of a tenant's union, a landlord may bring an action for possession if:
      - (1) The violation of the applicable minimum building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent;
      - (2) The tenant is in default in rent; or
      - (3) Compliance with the applicable minimum building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit. The maintenance of the action does not release the landlord from liability under §76-1425(2).

VII. Access: See sec. 76-1423.

- A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.
  1. The landlord may enter the dwelling unit without consent of the tenant in case of emergency.
  2. The landlord shall not abuse the right of access or use it to harass the

tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least one day's notice of his intent to enter and enter only at reasonable times.

3. The landlord has no other right of access except by court order, in case of emergency or if the tenant has abandoned or surrendered the premises.

B. Landlord and tenant remedies for abuse of access or entry. See sec. 76-1438.

1. If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees.

2. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages not less than an amount equal to one month's rent and reasonable attorney's fees.

3. The method of termination of the rental agreement is not specified in URLTA. One Lancaster County Court judge has ruled that a tenant may vacate the premises immediately on the landlord's unlawful entry.

VIII. Casualty and destruction of property

A. Fire or casualty damage. See sec. 76-1429. If the dwelling unit or premises are damaged or destroyed by fire or casualty.

1. Tenant's Options:

a. Immediately vacate the premises and notify the landlord in writing within fourteen days. Rent abates to the date of the fire or casualty. The landlord shall return all prepaid rent and security recoverable under section 76-1416.

b. Vacate any part of the dwelling unit rendered unusable by the fire or casualty. Rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

c. Accounting for rent in the event of termination or apportionment is to occur as of the date of the casualty.

2. Notwithstanding the provisions of this section, the tenant is responsible for damage caused by his negligence.

B. Landlord's Options:

1. Does not have a statutory right to terminate the rental agreement.

2. Statute is not clear whether or not the landlord is required to re-rent to the tenant after repairs are completed, or whether or not the rent can be increased.

IX. Remedies for absence, nonuse, and abandonment. See sec. 76-1432.

A. If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

B. During any absence of the tenant in excess of seven days, the landlord may

enter the dwelling unit at times reasonably necessary.

- C. If the tenant abandons the dwelling unit, the landlord shall take immediate possession and shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins.
- D. Total absence from the premises without notice to landlord for one full rental period or thirty days, whichever is less, shall constitute abandonment.

X. Abandonment:

A. Defining Abandonment: See sec. 76-1432 (3) Total absence from the premises without notice to landlord for one full rental period or thirty days, whichever is less, shall constitute abandonment. However, Mason v. Shumacher, 231 Neb. 929 (1989) suggests that we must look to the subjective intent of the tenant to determine whether or not the tenant has abandoned the premises.

B. Disposition of Personal Property Landlord and Tenant Act. In the event that a tenant has abandoned the premises or has been evicted from the premises and has left property in the premises, the landlord has a duty to store such property.

1. Neb. Rev. Stat. §69-2306 (1996). The Act is quite specific in terms of the required procedure, notices and the rules regarding to disposition of the property. Care should be taken to follow the law to the letter:
2. Inventory the property. The property may then be moved into storage.
3. Notice must be delivered to any person who the landlord reasonably believes to have an interest in the property. The notice must give the owner of the property at least 7 days to reclaim the property if the notice is delivered in person and at least 14 days to reclaim if the notice is mailed. The statute sets out an acceptable form of the notice and landlords are encouraged to use that form. The notice must include the following.
4. That reasonable costs of storage may be charged before the property is returned.
5. The location where the property may be claimed.
6. The date on or before which such property must be claimed.
7. The required statement as to the disposition of the property which depends on the value of the property (either above \$250 or less than \$250). See Neb. Rev. Stat. §69-2305.

C. Disposition of the Property.

1. If the property is worth less than \$250, the property may be disposed of as the landlord sees fit after the 14 days expires.
2. If the property is worth \$250 or more, the property will have to be advertised and put up for public sale by competitive bidding.
  - a. The time and place of the sale must be advertised published in a newspaper of general circulation once a week for two consecutive weeks and held no sooner than 10 days after the first publication and the last publication no less than five days before the sale.
3. The proceeds, after deduction for the costs of storage, handling, and sale, must be delivered to the State Treasurer in the tenant's name or to the

tenant if his or her whereabouts are known. See Neb. Rev. Stat. §69-2309.

XI. Residential Landlord and Tenant Notices:

A. URLTA Notices.

1. Delivery:

- a. Notices to the tenant must either be mailed first class postage prepaid (regular mail) or delivered in hand. §76-1413(2)(c).
- b. Notices to landlord are effective when delivered to the landlord's place of business. As there is no requirement that the tenant or landlord accept registered or certified mail, and URLTA allows service by regular mail, landlords and tenants, unless required by the lease or other statute, should mail by first class mail.
- c. Refusing to accept a notice by certified mail may be deemed to be acceptable notice.
- d. You can obtain a Certificate of Mailing from the postmaster if mailed from the post office and the requisite fee is paid. The certificate is equivalent to a postmark.
- e. If the notice is posted at the premises or delivered to a person not a party to the lease, a copy should (though not required by law) be mailed. Remember, one purpose of URLTA is to simplify the law, use the simpler method of delivering notice, regular first class mail. Various judges have ruled that "posting" is not a method of service under URLTA.

2. Types:

- a. Non-payment of rent, 3 Day Notice. If rent is unpaid when due the landlord may issue a notice requiring the tenant to pay rent within 3 days and advising the tenant that the landlord will terminate the rental agreement if rent is unpaid.
- b. Tenant's Breach of Agreement, 14/30 Day Notice. If the tenant has breached the rental agreement in any manner except the payment of rent, or has violated any provision in of §76-1421 the tenant may be given a 30 day notice of the termination of the rental agreement unless the breach is remedied within 14 days.
- c. Landlord's Breach of Agreement. If the landlord has breached the rental agreement in any manner or has violated any provision of §76-1419 the tenant may give a 30 day notice of the termination of the rental agreement unless the breach is remedied within 14 days.
- d. Subsequent breach of agreement, 14 Day Notice. If a breach of obligation re-occurs within 6 months of a previous notice, the landlord or tenant may give a 14 day notice of termination with no right to cure.
- e. Termination, 30 Day Notice. Landlords and tenants may terminate month-to-month tenancies by giving the other a written notice of the intent to terminate at least 30 days prior to the periodic rental date. In absence of a provision specifying to the contrary, if rent is due on

the 17th of the month, the notice must be given prior to that date rather than the first.

- f. Termination, 7 Day Notice. Rarely do we see week to week tenancies but for those that do exist, this tenancy is terminated by giving the other written notice of the intent to terminate at least 7 days prior to the periodic rental date.
- B. Modifications.
1. Rental Agreements which are month to month may be modified upon 30 days notice.
  2. Rules and regulations may be modified during the lease term only if "reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of his bargain". §76-1422.
- C. Waiver. Acceptance of rent from the tenant will act as a waiver of any pending notice and the lease will be reinstated. If the tenant agrees that the acceptance of the rent will not constitute a waiver the landlord may retain the payment, but is otherwise admonished to refuse the payment.
- D. Mobile Home Notices:
1. Non-payment of rent. 5 day.
  2. Breach of Agreement. 30 day. 76-14,101
  3. Noncompliance affecting health and safety. 14 day. §76-14,102.
  4. Termination. Month to month rental agreements may be cancelled by either party by giving the other at least 30 days notice to the other. A landlord may not cancel a rental agreement solely for the purpose of making the space available for another tenant. 76-1475(5)
  5. Modification of rules and regulation. 76-1494 60 days. However, rules and regulations may not be enforceable if they are enacted after the tenant enters into a lease and the proposed rule or regulation conflicts with the tenant's lease.
  6. Rent Increases. Rent can only be changed after the term of the agreement has expired. Notices to increase rent must be in writing and mailed or given by "actual notice" at least sixty days prior to the date of the increase. See §76-1489.
- E. Non-URLTA Notices
1. 3 day pursuant to Sec. 25-21,221. Unless otherwise specified in a rental agreement, a notice of termination must be served at least three days prior to the commencement of a forcible entry and detainer action.
  2. Termination. The type of notice required to be given depends on the type of tenancy that is held by the tenant. In addition the notice for termination may covered by the rental agreement. Provisions in the rental agreement requiring specified length of time and manner of delivery must be followed.
- F. Public Housing.
1. Generally Public Housing units are covered by URLTA requirements. Depending on which program the tenant occupies the premises under, the Housing Authority may be required to give longer notices and the tenant

may be allowed a hearing.

2. Serious and Clear Danger. If a tenant has created a serious and clear danger, they may be given a 3 day notice of termination (without right to an administrative hearing) of the rental agreement.

## XII. The Eviction Process

### A. Notice must be given of the termination of the rental agreement.

1. If the attorney serves the notice, the attorney must follow the fair debt collection practices act requirements. Romea v. Heiburger and Associates, 163 F2d. 111 (2nd Cir, 1998).
  - a. All correspondence must state: "This letter is an attempt to collect a debt any information obtained will be used for that purpose"
  - b. The first correspondence must include the following statement:  
"Unless you notify this office in thirty days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing in thirty days from receiving this notice, this office will obtain verification of the debt and mail you a copy of the verification. If requested by my client, I may institute legal action for the collection of the debt at any time. This letter is an attempt to collect a debt, any information obtained will be used for that purpose."
2. Statute of Limitations: although URLTA does not set one, the general Statute of Limitation may require that the action for possession be commenced within 1 year of the service of the notice.

### B. Holdover. If the occupants remain in possession of the premises following the service of a proper notice, the hold-over may be unlawful for which the landlord may have a right to commence an action for possession.

### C. Petition

1. Must allege facts on which landlord seeks to recover, reasonably accurate description of the premises and requisite compliance with the notice provisions.
2. Separately identify other causes of action (besides restitution of premises) such as rent and damages.
3. Petition may also notify the tenant that abandon property may be disposed of pursuant to the Disposition of Personal Property Landlord and Tenant Act.

### D. Service of Summons:

1. Personal - Residential: Process server serves tenant personally or by leaving with person of suitable age and discretion at the person's residence. Personal service may occur at any place within the jurisdiction of the court.
2. Mail and Posting: Neb. R.R.S. §76-1442.01 allows for mailing and posting if server is unable to serve the defendant after "diligent efforts". If service is accomplished in this manner, plaintiff will only be given judgment for restitution of the premises unless the tenant appears in court.

If service was obtained by Mail and Posting, an affidavit is to be filed showing service.

3. Substitute service: Neb. R.R.S. §25-517.02 If tenant avoids personal or residential service, landlord may, after obtaining a court order, post summons at the premises and mail a copy to the tenant.
  4. Return of service. The process server is required to file a proof of service within five days of issuance of the summons.
- E. Trial for restitution. Trial will occur no less than 10 days and no more than 14 days after the issuance of the summons.
1. Always have witness(es) prepared to testify for restitution.
  2. Proving up - key issues
    - a. Valid notice, service and non-waiver
    - b. Default exists through no fault of landlord
    - c. Tenant remains in possession
    - d. No valid tenant defenses
- F. Restoring the premises to landlord. Praeipice for Writ & Writ of restitution.
1. Sheriff or Constable has up to 10 days to execute writ. However §76-1446 requires that the premises to be restored "on a specified date" which apparently the landlord selects.
  2. Personal property remaining in the property "shall" be treated as abandon property according to §69-2301. Thus the tenant is to be physically removed from the premises and locks are to be changed rather than removing persons and property to street.
- G. Rent and damages trial.
1. Trials on the rent and damages issues are to be scheduled no sooner than 30 days after the date of service.
    - a. Default judgment may be entered against the tenant on rent portion of case if the tenant does not file with the court a response in writing to the petition.
    - b. Trials of contested matters (damages).
- H. Monetary Judgments in evictions and other cases.
1. One purpose of URLTA is to discourage the use of self-help remedies which may have been available under common law. To this end URLTA allows judges to impose awards of damages and attorney fees. The goal is to allow courts to use these as methods to discourage both landlords and tenants from violating URLTA and to encourage use of the courts rather than traditional self help remedies.
  2. Statutory provisions allowing actual damages:
    - a. §76-1415 Deliberate use of a prohibited provision in lease.
    - b. §76-1427 Failure to supply heat, water, hot water, or essential services.
    - c. §76-1432 Breach of lease.
    - d. §76-1438 Landlord's abuse of access. No less than one month's rent.
    - e. §69-2312 Landlord's failure to return property according to

Disposition of Personal Property, Landlord and Tenant  
Act.

3. Statutory provisions allowing threefold actual damages or three times one month's rent.
  - a. §76-1418 Failure to supply possession of premises at commencement of term.
  - b. §76-1426 Failure to supply possession of premises at commencement of term.
  - c. §76-1430 Constructive or wrongful eviction.
  - d. §76-1437 Willful holdover without landlord's consent.
4. Statutory provisions allowing award of attorney fees.
  - a. §76-1415 Deliberate use of a prohibited provision in lease.
  - b. §76-1416 Failure to return deposit or an accounting within 14 days.
  - c. §76-1425 Willful noncompliance by landlord affecting habitability.
  - d. §76-1426 Failure to supply possession of premises at commencement of term.
  - e. §76-1427 Failure to supply heat, water, hot water or essential services.
  - f. §76-1428 Meritless defense or counterclaim lacking good faith.
  - g. §76-1430 Constructive or wrongful eviction.
  - h. §76-1435 Breach of rental agreement.
  - i. §76-1437 Willful holdover without landlord's consent.
  - j. §76-1438 Abuse of access.
  - k. §76-1432 Absence or abandonment.
  - l. §69-2312 Landlord's failure to return property according to Disposition of Personal Property, Landlord and Tenant Act.