

NRS 40.253 Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant for default in payment of rent.

1. Except as otherwise provided in subsection 10, in addition to the remedy provided in NRS 40.2512 and 40.290 to 40.420, inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or his agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

(a) At or before noon of the fifth full day following the day of service; or

(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

↳ As used in this subsection, "day of service" means the day the landlord or his agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.

2. A landlord or his agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of NRS 40.280. If the notice cannot be delivered in person, the landlord or his agent:

(a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and

(b) After the notice has been posted and mailed, may deliver the notice to the sheriff or constable for service in the manner set forth in subsection 1 of NRS 40.280. The sheriff or constable shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when he took possession of the premises, that the landlord or his agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the sheriff or constable shall serve the notice within 48 hours after the request for service was made by the landlord or his agent.

3. A notice served pursuant to subsection 1 or 2 must:

(a) Identify the court that has jurisdiction over the matter; and

(b) Advise the tenant of his right to contest the matter by filing, within the time specified in subsection 1 for the payment of the rent or surrender of the premises, an

affidavit with the court that has jurisdiction over the matter stating that he has tendered payment or is not in default in the payment of the rent.

4. If the tenant files such an affidavit at or before the time stated in the notice, the landlord or his agent, after receipt of a file-stamped copy of the affidavit which was filed, shall not provide for the nonadmittance of the tenant to the premises by locking or otherwise.

5. Upon noncompliance with the notice:

(a) The landlord or his agent may apply by affidavit of complaint for eviction to the Justice Court of the township in which the dwelling, apartment, mobile home or commercial premises are located or to the district court of the county in which the dwelling, apartment, mobile home or commercial premises are located, whichever has jurisdiction over the matter. The court may thereupon issue an order directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order. The affidavit must state or contain:

(1) The date the tenancy commenced.

(2) The amount of periodic rent reserved.

(3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month's rent, by the tenant.

(4) The date the rental payments became delinquent.

(5) The length of time the tenant has remained in possession without paying rent.

(6) The amount of rent claimed due and delinquent.

(7) A statement that the written notice was served on the tenant in accordance with NRS 40.280.

(8) A copy of the written notice served on the tenant.

(9) A copy of the signed written rental agreement, if any.

(b) Except when the tenant has timely filed the affidavit described in subsection 3 and a file-stamped copy of it has been received by the landlord or his agent, and except when the landlord is prohibited pursuant to NRS 118A.480, the landlord or his agent may, in a peaceable manner, provide for the nonadmittance of the tenant to the premises by locking or otherwise.

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the Justice Court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that there is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. If the court determines that there is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief, and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive. The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which he may be entitled. If the alleged unlawful detainer was based upon subsection 5 of NRS 40.2514, the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with NRS 40.251.

7. The tenant may, upon payment of the appropriate fees relating to the filing and service of a motion, file a motion with the court, on a form provided by the clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord pursuant to NRS 118A.460 for the inventory, moving and storage of personal

property left on the premises. The motion must be filed within 20 days after the summary order for removal of the tenant or the abandonment of the premises by the tenant, or within 20 days after:

- (a) The tenant has vacated or been removed from the premises; and
- (b) A copy of those charges has been requested by or provided to the tenant,
 ↪ whichever is later.

8. Upon the filing of a motion pursuant to subsection 7, the court shall schedule a hearing on the motion. The hearing must be held within 10 days after the filing of the motion. The court shall affix the date of the hearing to the motion and order a copy served upon the landlord by the sheriff, constable or other process server. At the hearing, the court may:

- (a) Determine the costs, if any, claimed by the landlord pursuant to NRS 118A.460, and any accumulating daily costs; and
- (b) Order the release of the tenant's property upon the payment of the charges determined to be due or if no charges are determined to be due.

9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or his agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in NRS 118A.240.

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215.

(Added to NRS by 1967, 195; A 1969, 263, 575; 1973, 1085; 1975, 1202; 1977, 418, 1346; 1979, 1398, 1879; 1985, 229; 1987, 1239; 1989, 1082, 1232; 1991, 113; 1995, 1851; 1997, 3511; 1999, 981)

WEST PUBLISHING CO.

Landlord and Tenant ⇄ 296.
 WESTLAW Topic No. 233.
 C.J.S. Landlord and Tenant §§ 756 et seq.

NEVADA CASES.

Termination of lease. In an action by lessor to terminate a lease, recover the amount due from lessee and appoint a receiver to take charge of the leased premises during pendency of the litigation, where the lease provided that, upon lessee's default, lessor could reenter the premises, take possession of lessee's business and declare the lease to be terminated or, if lessor elected to file a suit in equity, a receiver could be appointed to sell the business to pay existing claims, it was error for the trial court to order the receiver to sell the remaining term of the lease with the other assets of the business on the ground that lessor's request for a receiver was an election of the remedies which required partial forfeiture of the lease and precluded him from terminating the remaining term of the lease. There is nothing unreasonable or unconscionable in permitting lessor to terminate the lease and seek the appointment of a receiver to conduct business while termination of the lease is being litigated. *Lynn v. Ingalls*, 100 Nev. 115, 676 P.2d 797 (1984), cited, *Fullerton v. Second Judicial Dist. Court*, 111 Nev. 391, at 400, 892 P.2d 935 (1995)

Section is inapplicable to an unlawful detainer action against a tenant who does not pay rent and is not required to pay rent. A Justice Court exceeded its jurisdiction by holding a summary eviction proceeding and entering an eviction order where a tenant did not pay rent and was not required to pay rent. The statute providing for summary eviction (see NRS 40.253) allows a landlord to apply to a Justice Court for an eviction order based on default in the payment of rent and is inapplicable to an unlawful detainer action against a tenant who does not pay rent and is not required to pay rent. *Glazier v. Justice Court*, 111 Nev. 864, 899 P.2d 1105 (1995)

NRS 40.280 Service of notices to quit; proof required before issuance of order to remove.

1. Except as otherwise provided in NRS 40.253, the notices required by NRS 40.251 to 40.260, inclusive, may be served:

- (a) By delivering a copy to the tenant personally, in the presence of a witness;
- (b) If he is absent from his place of residence or from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at his place of residence or place of business; or

(c) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the leased property, delivering a copy to a person there residing, if the person can be found, and mailing a copy to the tenant at the place where the leased property is situated.

2. Service upon a subtenant may be made in the same manner as provided in subsection 1.

3. Before an order to remove a tenant is issued pursuant to subsection 5 of NRS 40.253, a landlord shall file with the court a proof of service of any notice required by that section. Except as otherwise provided in subsection 4, this proof must consist of:

- (a) A statement, signed by the tenant and a witness, acknowledging that the tenant received the notice on a specified date;
- (b) A certificate of mailing issued by the United States Postal Service; or
- (c) The endorsement of a sheriff, constable or other process server stating the time and manner of service.

4. If service of the notice was not delivered in person to a tenant whose rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, proof of service must include:

- (a) A certificate of mailing issued by the United States Postal Service or by a private postal service to the landlord or his agent; or
- (b) The endorsement of a sheriff or constable stating the:
 - (1) Time and date the request for service was made by the landlord or his agent;
 - (2) Time, date and manner of the service; and
 - (3) Fees paid for the service.

[1911 CPA § 649; RL § 5591; NCL § 9138]—(NRS A 1961, 413; 1967, 196; 1985, 231, 1418; 1987, 701; 1995, 1854; 2007, 1287)

WEST PUBLISHING CO.

Landlord and Tenant ⇐ 297(3).

WESTLAW Topic No. 233.

C.J.S. Landlord and Tenant § 769.

NRS 40.385 Stay of execution upon appeal; duty of tenant who retains possession of premises to pay rent during stay. Upon an appeal from an order entered pursuant to NRS 40.253:

1. Except as otherwise provided in this subsection, a stay of execution may be obtained by filing with the trial court a bond in the amount of \$250 to cover the expected costs on appeal. In an action concerning a lease of commercial property or any other property for which the monthly rent exceeds \$1,000, the court may, upon its own motion or that of a party, and upon a showing of good cause, order an additional bond to be posted to cover the expected costs on appeal. A surety upon the bond submits to the jurisdiction of the appellate court and irrevocably appoints the clerk of that court as his agent upon whom papers affecting his liability upon the bond may be served. Liability of a surety may be enforced, or the bond may be released, on motion in the appellate court without independent action.

2. A tenant who retains possession of the premises that are the subject of the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the underlying contract between the tenant and the landlord as it becomes due. If the tenant fails to pay such rent, the landlord may initiate new proceedings for a summary eviction by serving the tenant with a new notice pursuant to NRS 40.253.

(Added to NRS by 1997, 3510)