

# EASING THE HOUSING CRISIS BY REFORMING THE EVICTION PROCESS

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*By: Edward D. Kania, President Southern Nevada Eviction Services*

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As various governmental and industry officials try desperately to address the continuing housing crisis, one solution rarely mentioned is that of reforming the eviction process. Often overlooked is the reality that many investors are facing foreclosure not because of the adjustable rate mortgages but due to their tenants' failure to pay rent. Furthermore, these landlords confront a legal system which is unsympathetic to the homeowner's plight. Under the existing landlord-tenant laws, tenants can often live in a rented property for upwards of six months without paying rent, and landlords have little recourse on recouping unpaid rent or damage to the property. Therefore, to truly solve the housing crisis, new laws are needed to strengthen a homeowner's ability to quickly and effectively evict problem tenants. In particular, the following reforms are critical:

## **In Order to Receive a Hearing, Tenants Should Be Obligated to Provide a Legitimate Defense for Failing to Pay the Rent**

Under Nevada Revised Statute 40.253, a tenant, when filing for a court hearing to contest the eviction process, may provide a written reason for failure to pay his rent but he is not obligated to provide such a reason. This system encourages tenants, with no legitimate reason for not paying their rent, to seek a court hearing to stall the eviction process and to live rent-free for a longer period. Since landlords are obligated, as part of their notice and eviction paperwork, to provide specific details on the amounts of rent, late fees and utilities due, tenants should also be required to provide a written reason for failing to pay rent.

Moreover, the Court should not grant a hearing unless the tenant provides a legitimate reason for withholding rent. Under the law, the only legitimate defenses to the eviction process are that (1) the tenant does not owe the rent in question (i.e., the amount due is wrong or the tenant has previously paid the rent); or (2) the tenant has a legally sustainable reason for not paying

the rent (i.e., the property is "uninhabitable" and the landlord has failed to correct the problem). Tenants who claim that they cannot pay the rent for financial reasons (i.e., "lost my job") should not receive a hearing and should be summarily evicted.

## **In Order to Receive a Hearing, Tenants Should Be Obligated to Deposit Their Rent with the Court**

Currently, a tenant is only obligated to pay a small fee to the court to schedule a court hearing. Between the filing and the actual court date, the landlord must allow the tenant to live in the rental property, further increasing the amount of unpaid rent due to the landlord. Even if the landlord is successful at the hearing, there is no monetary judgment awarded to the landlord and the tenant is simply obligated to move. Therefore, the tenant bears no financial risk in asking for a hearing while the landlord is obligated to allow a non-paying tenant to remain in his property. To address this inequity, the Court should require any tenant seeking to contest the eviction to deposit the full amount of the rent in question, plus the rent which would be due up to the court hearing date, with the Court. Moreover, if the tenant loses at the hearing, the rent should be forfeited to the landlord to cover the time that the tenant remained in the property. This ensures that the tenant is legitimately contesting the eviction and that the landlord is paid for the time that the tenant remains in the property.

## **If the Court Provides the Tenant with Additional Time to Pay the Rent, the Landlord Should Be Awarded Late Charges and Legal Costs**

Even though late charges are often included in the lease agreement signed by the tenant, most local judges refuse to add late charges into the amount the tenant must pay in order not to be evicted. Consequently, tenants benefit by stretching out the eviction process since they will not be required to pay more than the base rent even though they may be two or three months in arrears. Judges should be given the authority to

include late charges, plus any legal costs in preparing and processing the eviction paperwork, in the amounts to be paid by the tenant. This will put tenants on notice that they will suffer a financial loss for dragging out the eviction process.

### **Change the Mindset Regarding the True Nature of a Tenant's Failure to Pay Rent**

While this aspect doesn't require a change in law, it does require the courts and judges to take a close look at the true nature of the failure to pay rent: it is theft! While there are legitimate reasons to not pay rent and to contest the eviction process (the "uninhabitability" of the rental property or legitimate disagreements regarding the accounting of rent), many tenants simply refuse to pay rent and utilize the eviction process to prolong their rent-free status. An individual who stays in a hotel room without paying is guilty of a crime under Nevada law yet tenants who intentionally refuse to pay rent suffer no negative consequence. It would be inconceivable to tell a shopkeeper who apprehends a shoplifter that he must allow the thief to remain in the store and continue to steal property while the courts adjudicate whether the thief is guilty. However, landlords who have not been paid their rent must

continue to provide free housing and expend time and money to evict their tenants. The courts must realize that landlords are often the victims of tenants who manipulate the legal system and should rule accordingly.

While the above reforms will not completely solve the housing meltdown, they would re-instill confidence that investors can purchase rental property and be assured that they can quickly and effectively remove problem tenants. By ensuring that only truly legitimate disputes receive hearings, the Court can lessen its workload and protect the rights of tenants and landlords.

Edward will be speaking at a future Property Management Committee meeting, please think of questions or concerns you have with the eviction process for use at that time.

**Edward Kania is President of Southern Nevada Eviction Services and the founding member of the Law Office of Edward D. Kania. He can be contacted at 702-366-0321 or by email at [ekania@vegas-evictions.com](mailto:ekania@vegas-evictions.com)**