Understanding Eviction and its Consequences

We all have the right to safe and fair housing. All humans have a right to live indoors with security, peace, and dignity. But, what happens when our rights as property owners/landlords do not align with tenant housing rights? Historically, the rights of a property owner implicated the exclusive relationship between an individual and property that could not be infringed upon. However, principles of contract law, modern legislation, and the right to housing movement have resulted in mild but impactful shifts in the landlord-tenant relationship away from the traditional view of property rights that have historically favored landlords. Even with these developments, landlords still enjoy significant property rights and access to remedies not available to others. One such remedy is the right to an expedited process for an action to regain possession of the property, otherwise known as a summary proceeding for eviction. The eviction process highlights the enduring tension between a landlord’s property rights and the need to make a profit and the tenant’s right to housing.

The typical understanding of an eviction is that it is solely a product of a landlord-tenant relationship and the direct and sole result of a failure of the tenant to pay rent or uphold another obligation within the lease. Although a tenant’s inability to pay rent is the most common basis for eviction, this common understanding of evictions often fails to recognize the

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power imbalance between the parties in the landlord-tenant relationship (which is exacerbated by the judicially expedited eviction timeline) or the pervasive nature of discrimination and the devaluation of protected characteristics of tenants. While evictions are understudied and under-discussed, it has been demonstrated that evictions create, maintain, and exacerbate historical inequities in housing. Evictions impact everybody, not just tenants but also landlords and the community as a whole. The COVID-19 pandemic has highlighted the adverse effects to all parties to an eviction action: landlords struggle to cover their overhead due to outstanding rent, and families are displaced and often forced into substandard housing. Evictions also impact the community, as both parties heavily rely on government and social services, in effect subsidizing the expedited eviction process.

Many tenants facing eviction are employed but often working in low-wage, service industry jobs, where just one economic setback can cause them to miss rent by a few days and be forced out of their homes. This, in turn, starts a downward and often irreversible cycle: the loss of personal possessions, children having to switch schools, a move to shared and/or substandard housing, and too often houselessness, which of course results in the inability to follow guidelines and procedures to protect from the spread of the COVID-19 virus. Evictions can be similarly debilitating from a landlord perspective. Although the expedited process in Nebraska provides for quick, reasonably “cheap” evictions, most landlords would much rather keep the tenant in place and continue to collect rent than move forward with an eviction. Turnover is the most expensive and time-intensive aspect of being a landlord, and an eviction represents the worst form of turnover.

It is critically important to realize evictions are not just a problem for some people, in some places—evictions are impacting entire communities across the country, including throughout Nebraska. It is also crucial for those in the legal field to understand both our obligation and our opportunities to work to prevent the extreme level of devastation eviction can have, particularly in cases where the eviction is preventable or where alternatives are available. Lawyers are well-positioned to guide landlords and tenants to solutions to avoid the economically unfavorable and potentially devastating consequences of eviction.

**Brief Overview of Nebraska's Residential Landlord-Tenant Laws and Recent Updates Regarding Evictions**

A legal eviction is an action by which the landlord compels the tenant, through legal proceedings, to vacate the leased premises. In Nebraska, landlords can initiate eviction actions involving residential homes for a tenant’s violation of the lease agreement, a tenant’s failure to pay rent, a tenant’s alleged criminal or dangerous activity, or if the landlord decides not to renew the lease. If no rental agreement exists, like in the case of foreclosed properties or unauthorized occupants, a landlord can evict using Nebraska’s forcible entry and detainer statutes, which have an even faster timeline.

Certain minimal standards must be met to make an eviction action lawful. For example, certain timing requirements must be met: the notice period must have elapsed before the complaint was filed, the summons must have been served within three days of issuance and the return of service must be filed within five days, and trial must be initially scheduled for a date at least ten days, but no later than fourteen days after issuance of summons. Because of the expedited nature of the proceeding, and the resulting inability of the tenant to utilize discovery to obtain all the relevant facts forming the basis of the eviction, the facts must be pled with particularity—notice pleading is not sufficient in eviction actions. Depending on the basis for the eviction, other statutory requirements may be applicable. Assuming the pleading and statutory requirements are satisfied, the matter is expedited to trial for restitution of premises.

**Expedited Eviction Timeline**

Although Nebraska’s expedited eviction timeline helps to ensure a quicker turnover for the landlord in an effort to preserve profits and to presumably make the unit available for another family, the fast pace often prevents the legal and factual issues surrounding the eviction from being fully assessed. Similarly, it makes it difficult for available defenses to be presented or for alternative dispute resolution measures to be successfully implemented. Being aware and mindful of such short timelines, and having systems in place to address such fast-paced proceedings, is critical to reaching just and desirable outcomes for all parties.

The timeline for non-payment of rent eviction cases is as follows:

- Landlord issues tenant a seven-day Notice to Pay or Quit;
- After having provided the tenant seven days to get caught up on rent, the landlord may file the complaint to initiate eviction proceedings;
- Eviction hearing must be initially scheduled to be held within 10-14 days from the date of filing the Complaint; then
- If judgment is entered in favor of the landlord, the writ of restitution can be served on the tenant immediately, but in no case more than 10 days from the date of the judgment.

Ultimately, this results in only 17-21 days from when the landlord non-judicially issues the first notice to the tenant until
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the Constable or Sheriff can remove the tenant from the premises pursuant to the order of eviction.

While the timeline for eviction cases involving allegations of lease violations or lease non-renewals, outlined below, is a longer timeline than for non-payment of rent cases, it is still extremely expedited in comparison to the typical timeline of other civil proceedings:

- Landlord issues tenant a 14/30-day Notice of Lease Violation OR 30-day Notice of Non-Renewal;
- Landlord files a complaint to initiate eviction proceedings with the court after waiting the 30-day period;
- Eviction hearing must be initially scheduled to be held within 10-14 days from the date of filing the complaint; then
- If judgment is entered in favor of the landlord, the writ of restitution can be served on the tenant immediately, but in no case more than 10 days from the date of the judgment.

Given the fast eviction timeline and other factors affecting the traditional power imbalance in the eviction process, Nebraska lawmakers have worked during recent sessions to make the laws governing Nebraska evictions more equitable.

Nebraska Residential Landlord-Tenant Act Updates

Most recently, LB 320 was an omnibus landlord-tenant bill that passed on April 29, 2021, that modified several sections of Nebraska’s Uniform Residential Landlord and Tenant Act sections. The changes became effective as of August 28, 2021, and address a landlord’s right to access a tenant’s home and clarifications pertaining to filing requirements service of summons. The bill also provided the parties a more reasonable opportunity to obtain a continuance, created protections for tenant survivors of domestic violence, and instituted data collection requirements for tracking evictions statewide. The changes specifically related to eviction actions are outlined in additional detail below.

Initial Filing Requirement Clarification

Section 76-1441 was amended to codify the common law requirement that the complaint for restitution of premises set forth the statutory authority under which the eviction is sought. Thus, to convey subject matter jurisdiction to the court, the complaint must, in addition to pleading the facts with particularity, the description of the property, and the requisite compliance with the notice provision, also contain the specific statutory authority under which possession is sought. This amendment was intended to eliminate situations where the

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tenant and the court were made to speculate as to the grounds and authority for the eviction. This was significant because the statutory grounds for eviction dictate what procedures would be followed and what defenses might be applicable. It was also necessary for the data collection component of the omnibus bill, which requires the Supreme Court to track and create a report of statewide eviction proceedings by type.

**Constructive Service Clarification and Additional Requirements**

Section 76-1442.01 was amended to require that, when constructive service is utilized, the summons must be posted on the front door of the dwelling unit (i.e., it cannot be posted on a common entrance of an apartment complex, or the garage, or left under a windshield wiper, etc.) and a copy mailed the defendant’s last known address (which in some cases may be different than the address of the dwelling unit if the landlord knows the tenant had already moved or receives mail at a different address). The amendment also requires that the service affidavit that must be filed in addition to the service return “describe the diligent efforts” that were made to serve by traditional means before resorting to post and mail.

**Allow for Continuances if “Good Cause” is Shown**

Section 76-1443 was amended to permit each party one continuance for good cause, and for any subsequent continuance, the moving party must show extraordinary cause (unless the parties agree to the subsequent continuance). If the subsequent continuance pushes the initial trial date into a new rental period, then the court may require a tenant to deposit rent with the clerk as it comes due. Using “may” was intentional and significant because there may be instances where ordering payment of rent to the clerk is not appropriate. For instance, in cases where the question of whether the tenant even owes rent is in dispute (e.g., when the tenant has actually overpaid or when there has been a diminution in value of the rental unit), or in cases where the parties prefer and agree that the rent be paid directly to the landlord (e.g., when the parties enter into a payment plan). Notably, this amendment did not modify or limit the court’s ability to continue a matter sua sponte.

**Protections for Survivors of Domestic Violence**

Section 76-1431 was amended to broaden protections for survivors of domestic violence. Under the prior version of § 76-1431(5), a landlord could not proceed in an eviction action pursuant to § 76-1431(4) against a tenant if the activity was conducted by someone other than that tenant, and that tenant either sought a protection order or sought assistance from law enforcement. As amended, the tenant now qualifies for these protections if they obtained a protection order, reported the activity to law enforcement, or obtained a certification from a “qualified third party,” which is defined as part of the amendment, along with a few other new terms. The law also clarifies that the protection does not apply to the tenant who is the perpetrator. And if both the perpetrator and victim-survivor are tenants, the landlord can only proceed under § 76-1431(4) against the perpetrator tenant. Section § 76-1431(6) was also added, which permits a tenant who is a victim of domestic violence to seek early release from a rental agreement under certain conditions.

While the legislative updates were successful in progressing toward equity in the rental housing environment, the toll of the ongoing housing crisis continues to be primarily shouldered by already stigmatized, low-income renters, many of whom are subject to financial strain, and houselessness, in addition to discrimination. In order to properly respond to evictions where discrimination may be a factor, one must look outside of statutory landlord-tenant laws and instead to fair housing laws.

**Fair Housing and Discriminatory Evictions**

Fair Housing is the right for all people to have safe, decent housing and obtain such housing without discrimination. City, state, and federal fair housing laws require that all people have an equal opportunity to buy, rent, or live in housing. Fair housing laws prohibit discrimination based on protected characteristics such as: race, color, religion, national origin, Sex (includes sexual orientation and gender identity), familial status (children in the home), marriage, and disability (physical or mental).

While housing discrimination and lack of opportunity exist in all areas of housing, discriminatory evictions are particularly harmful, while at the same time extremely difficult to identify and defend. Additionally, the COVID-19 pandemic has increased the potential harm resulting from discriminatory evictions, as well as the urgency at identifying and responding to them. Fortunately, the Fair Housing Act, and the substantially equivalent Nebraska and local fair housing laws, provide important protections to help families restore stability in their housing, free from discrimination and evictions based upon improper impetus, which often is written off as “landlord discretion.” However, studies show that tenants with protected characteristics are subject to eviction actions and evicted at a significantly higher rate. Discriminatory evictions impact not only tenants but also landlords, as landlords operating in good faith and in line with the law are put at an economic disadvantage when competing against those acting in bad faith and skirting the law. Proper application of anti-discrimination laws benefits tenants, landlords, and our community.
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Protected Classes of Tenants Disproportionally Impacted by Eviction

Race

You cannot talk about housing justice without racial justice, which is true as well with the eviction crisis that is currently happening. Studies across the United States have shown that tenants of color compromise approximately 80% of those facing evictions.\textsuperscript{29} One study revealed that, controlling for education, Black households were more than twice as likely to face eviction as white households.\textsuperscript{30} The link between evictions, the legacy of segregation, and gentrification cannot be ignored and requires further investigation.\textsuperscript{31} Moreover, landlords that choose to pursue eviction against tenants of color, but not white tenants who are similarly situated, must not be overlooked as matters of “discretion.”

Sex

Eviction data shows that women are predicted to be evicted approximately 16% more often than men.\textsuperscript{32} Unfortunately, the numbers are even higher for women who have survived domestic violence or have minor children in their household.\textsuperscript{33} While landlord discretion plays a part in the gender disparity, studies also show that gender dynamics play a significant role. For example, female tenants are much less likely to directly engage and attempt to identify eviction alternatives with their predominantly male landlords when they experience a crisis in their lives, like a job loss or health problems, that may lead to difficulty paying rent on time or other lease violations.\textsuperscript{34} Income disparities between men and women also contribute to women facing eviction at a higher rate than men. The intersection between race and sex is particularly troubling and reveals that Black women have the highest risk of being evicted.\textsuperscript{35}

Familial Status

Although there is a misconception that children in a household would offer a family protection from eviction, research reveals the opposite. Controlling for age, gender, and race—having minor children makes a renter three times more likely to face eviction. Sadly, having a child is a significant risk factor for eviction.\textsuperscript{36} In fact, it has been shown that the presence of children in a household is more significant in explaining the distribution of evictions across neighborhoods and the distribution of eviction judgments across tenants who appeared in court than factors associated with race, sex, or class.\textsuperscript{37}

Disability

Tenants with disabilities are the most likely to experience discrimination.\textsuperscript{38} While national statistics are difficult to obtain, in part because “disability” is a very broad term, people with disabilities are also more burdened by housing issues, including evictions. Tenants with physical disabilities that require access accommodations, or tenants living with psychological or intellectual disabilities face routine daily discrimination that likely impacts lack of access to housing as well as being evicted even if housing can be secured. Moreover, tenants with disabilities may also have difficulty vacating a property in a timely manner due to mobility issues, mental health symptoms, and/or have difficulty locating an accessible unit. As a result, fair housing law mandates have recognized that a reasonable accommodation\textsuperscript{39} can be requested at any time during the eviction process, up until the tenant vacates the property.\textsuperscript{40} Thus, a person with a disability can request more time to vacate a property if the failure to vacate promptly is related to their disability. The failure of the landlord to provide reasonable accommodations may be considered housing discrimination. Unfortunately, a reasonable accommodation of more time to vacate the premises will not undo the numerous other adverse outcomes resulting from housing discrimination and/or an eviction action.

Identification and Response to Discriminatory Evictions

The COVID-19 pandemic and expired eviction moratoria have increased the likelihood of fair housing complaints involving a household’s imminent eviction.\textsuperscript{41} Discriminatory evic-
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tions require urgent attention to prevent additional substantial harm. Fair housing agencies, listed below, have the statutory authority to “grant and seek prompt judicial action for appropriate temporary or preliminary relief pending the final disposition of a complaint when such action is necessary to carry out the purposes of the [Fair Housing] Act.”

The prima facia elements to consider in determining whether there is reasonable cause to determine an eviction was discriminatory are as follows: 1) the tenant is a member of a protected class, 2) the tenant was the landlord’s tenant at the time of the alleged harm, 3) the landlord acted to terminate the tenant’s tenancy, including, but not limited to: initiating an eviction, sending a notice to vacate or terminate tenancy, refusing to renew the tenant’s lease, or filing an eviction or other action to terminate the tenancy in court; and 4) the landlord did not take similar action again a tenant of a different protected class.

If the prima facia elements are likely to be met, an analysis of whether prompt judicial action is appropriate includes: 1) will the tenant suffer irreparable harm absent injunctive relief; 2) does the balance of equities tip in the tenant’s favor; and 3) is an injunction in the public interest. Specific questions to consider in this analysis are as follows:

- Is there an immediate threat of lost housing? Are there other immediate threats of serious injury, loss, or damage to the aggrieved person? In addition to the loss of housing, serious injury could occur if the tenant might lose affordable rent/payment, the eviction action may exacerbate the tenant’s medical conditions, the landlord has turned off all utilities, or the tenant is likely to experience houselessness as a result of the harm.
- Is there a high degree of certainty that irreparable injury, loss, or damage will occur unless injunctive relief is granted immediately?
- Has the court already ordered the eviction?

The fair housing administrative agency may reach out to a landlord alleged to have engaged in discriminatory acts and request a stay and/or delay in any eviction proceedings without pursuing prompt judicial action. If the landlord refuses to pause the eviction action, the fair housing agency is authorized to request intervention by the court to prevent irreparable harm during the pendency of the housing discrimination investigation. Since time is of the essence, the fair housing administrative agency needs to ensure that there is sufficient information to support a filing seeking prompt judicial action. This may encompass the tenant’s signed affidavit with a detailed factual statement detailing the landlord’s alleged discriminatory conduct, as well as how that conduct threatens or is about to threaten the tenant with irreparable harm, a housing discrimination complaint including proper identification of parties to the complaint and evidence of notice, and other affidavits or evidence showing the tenant will likely prevail on the merits of the discrimination complaint, and that landlord’s actions are causing or will cause imminent and irreparable harm to the tenant.

Call To Action

Just outcomes are more likely when both sides have knowledgeable and competent advocates representing their interests. This has been verified through the creation of the Tenant Assistance Project (TAP), now operating in Lancaster County and Douglas County eviction courts. Tenant advocates not only ensure the evictions are lawful by affording the court the opportunity to hear all the facts and law relevant to the matter, allowing it to make a just and fair ruling, but also help negotiate outcomes that benefit both tenants and landlords, as well as the local community. In Lancaster County, the rate of immediate evictions has dropped from nearly 80% to around 2%, and the program has directly resulted in over $9 million of rental assistance in landlords’ pockets for rent that would have otherwise gone unpaid and uncollected had the eviction matter proceeded to judgment. Attorneys looking for rewarding and impactful pro bono opportunities should consider volunteering for TAP, or starting a similar program in your jurisdiction. Attorneys who represent landlords should work collaboratively with tenant advocates to find mutually beneficial solutions, and explore alternatives to eviction. One such alternative is mediation.

If the conflict has arisen due to the failure or difficulty to pay rent, there may be emergency rental assistance (ERA) funds available. The ERA application can be initiated by either the tenant or the landlord; however, both parties must participate in the process. The funds will typically be paid directly to the landlord. Qualifying tenants will have to verify eligibility for ERA funds, including the income guidelines of 80% of the area median income by county, and inability to pay all or part of rent due to a COVID-19 related hardship, risk of houselessness or housing insecurity, or in some circumstances, a need for rental assistance for monthly rent incurred during the pandemic.

Eviction Prevention and Fair Housing Resources

Attorneys and support staff dedicated to addressing the hous-
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The Nebraska College of Law’s Tenant’s Rights Project handles certain types of landlord-tenant issues for low-income clients in Nebraska, focusing on Lancaster County. Those who want to apply for legal services can call the Civil Clinic at (402) 472-3271.

The Milton R. Abrahams Legal Clinic at Creighton University offers legal services, including landlord-tenant-related legal services, to those in need within the greater Omaha community. For more information, email clinic@creighton.edu or call (402) 280-3068.

Office of Dispute Resolution (ODR)-Approved Mediation Centers

Mediation is available in all 93 counties of Nebraska, and is a helpful problem-solving process that empowers disputing parties to prioritize and express their wants and needs in order to arrive at a mutual agreement. ODR partners with six nonprofit ODR-Approved Mediation Centers in Nebraska, listed at https://supremecourt.nebraska.gov/programs-services/mediation-restorative-justice/odr-approved-mediation-centers, to provide problem-solving and conflict resolution services for a variety of disputes, including landlord-tenant related disputes. For more information about mediation, email nsc.odr@nebraska.gov or call (402) 416-0670.

Endnotes

1 Adequate housing was recognized as part of the right to an adequate standard of living in the 1948 Declaration of Human Rights and in the 1966 International Covenant on Economic, Social and Cultural Rights. See United Nations Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 21, The Human Right to Adequate Housing, November 2009, Fact Sheet No. 21/Rev.1, available at https://www.refworld.org/docid/479477400.html (accessed December 20, 2021) (evictions are defined as “permanent or temporary removal against their will of individuals, families and/or communities from the homes … which they occupy”).

2 Id.

3 Denise R. Johnson, Reflections on the Bundle of Rights, 32 VT. L. REV. 247, 250 (2007) (noting that the English common law widely used in the early days of the United States defined property as a “sole and despotic” relationship between a person and a thing).


5 See supra note 1.


8 Deanna Pantin Parish, Designing for Housing Stability: Best Practices for Court-Based and Court-Adjacent Eviction Prevention and/or Diversion Programs, June 2021, available at https://protect-us.mimecast.com/s/g4nGCJ6xYPq9AE7iv5im3?domain=americanbar.org (last visited December 20, 2021).

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15 Although the eviction moratoria enacted as a result of the COVID-19 pandemic have expired, certain additional pandemic-related requirements remain to help keep tenants housed and as safe as possible, including the requirement of public and project-based rental assistance to give tenants at least 30 days’ notice that includes information about the availability of federal emergency funding intended to prevent evictions. See Extension of Time and Required Disclosures for Notification of Nonpayment of Rent, 86 FR 5593-01.
19 Complaints for restitution of premises typically assert three causes of action: (1) restitution of premises, (2) claims for past due rent, and (3) claim for “presumed” damages to the premises; however, only the restitution of premises cause of action is expedited (the other causes are set for hearing on the normal civil docket according to traditional rules of civil procedure).
20 See Neb. Rev. Stat. § 76-1431(1) (requiring a landlord to give a tenant 14-days to correct an issue of material noncompliance or health/safety issue, with the tenant’s failure to correct such noncompliance within the 14-day grace period allowing the landlord to terminate the lease 30 days after such original notice to the tenant was given).
22 See, e.g., Nebraska Senator John Cavanaugh, District 09 Blog, LB320 Is Now In Effect, August 28, 2021, available at: http://news.nebraska.gov/dist09/2021/08/28/lb320-is-now-in-effect/ (as assessed December 21, 2021) (“LB320, my priority bill which was signed into law in May, took effect on Saturday, August 28, 2021. This law contains many small but important changes to protect Nebraska residents”).
23 But, several other landlord-tenant bills were wrapped into LB320 along the way (LBs 45, 46, 246, 268, 277 and 402). https://nebraskalegisbillviewer.com/LogInDocs/107/PDF/Sp/LB320.pdf.
24 Nebraska’s Mobile Home Landlord and Tenant Act, Neb. Rev. Stat. §§ 76-1450; 76-14, 111, was also updated to harmonize with the Nebraska’s Uniform Residential Landlord Tenant Act.
26 Neb. Rev. Stat. § 76-1410 (“Qualified third party means an organization that (a) is a nonprofit organization organized . . . and (b) has an affiliation agreement with the Department of Health and Human Services to provide services to victims of domestic violence and sexual assault under the Protection from Domestic Abuse Act.”).
28 See 42 U.S.C. § 3601 et. seq.; see also LINCOLN MUNICIPAL CODE § 11.06 (includes marriage as a protected class).
34 Id.
35 Id.
37 Id.
39 A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B).
40 See, e.g., Douglas v. Kriegsfeld Corp., 884 A.2d 1109, 1139 (D.C. App. 2005) (finding that tenant’s request for a stay of eviction proceeding as a reasonable accommodation request for tenant’s disability was in fact a potential reasonable accommodation of tenant’s disability).
42 24 CFR § 115.204(b)(1).
45 National Fair Housing Training Academy of the U.S. Department of Housing and Urban Development, PROMPT JUDICIAL ACTION UNDER THE FAIR HOUSING ACT TO COMBAT DISCRIMINATORY EVICTIONS, June 2021.
46 Id.
47 Id.
48 City of Lincoln/Lancaster County residents can apply for emergency rental assistance online at lincoln.ne.gov/rent or by calling 402-441-4929; City of Omaha residents can apply at macconnect.org or call 402-957-1747 if unable to apply online; Douglas County residents can apply at douglas.co.us/rent-assistance; and all other Nebraska residents can apply at https://coronavirus.nebraska.gov/EmergencyRentalAssistanceProgram or by calling 833-500-8810.
50 https://www.hud.gov/program_offices/fair_housing_equal_opp.
51 https://www.lincoln.ne.gov/City/Departments/City-Attorneys-Office/LCHR.
52 https://humanrights.cityofomaha.org/.
54 https://law.unl.edu/civil-clinic-outreach/tenants-rights-project/.