

SENATE JUDICIARY COMMITTEE

291

MINUTES OF MEETING HELD

22nd DAY OF MARCH, 1973

The meeting was called to order at 9:00 a.m. Senator Close in the Chair.

PRESENT: Senator Swobe
Senator Foley
Senator Bryan
Senator Wilson
Senator Hecht

Judge Emile Gezelin, District Court, Washoe County
Senator Joe Neal
James Rourke, Clark County Legal Services
Rusty Nash, Washoe County Legal Aid Society
Peter Holden, Investigator, Consumer Fraud Unit,
Washoe County District Attorney's
Office
Gene Milligan, Nevada Association of Realtors
Fred Desiderio, Nevada Association of Realtors
Dean Person, Nevada Association of Realtors
Bill Simons, Nevada Association of Realtors
Bob Guinn, Managing Director, Nevada Motor Transport Association

EXCUSED: Senator Dodge

S.B. 449 - Provides for transfer to juvenile court of person 18 to 21 years of age charged with gross misdemeanor.

Judge Gezelin testified that the present statutes permit the court, upon application by the defendant between the ages of 18 and 21 who is charged with a felony, to make an investigation through the juvenile department and can certify the defendant as a juvenile to be treated under the juvenile act. This provision applies to a felony charge, and it seems inconsistent and discriminatory that it not apply in gross misdemeanors.

Senator Bryan moved "DO PASS." Motion seconded by Senator Foley.

Yeas - 5
Nays - None
Absent - Dodge, Wilson (2)

Motion carried.

S.B. 450 - Permits court to allow jury to separate after it retires to deliberate.

Judge Gezelin testified that this bill would allow for the separation of juries after beginning deliberations. He stated that oftentimes the juries begin deliberating at about 4:00 p.m. and would continue into the early hours of the morning. If they do not reach a decision, they must be provided with room accommodations, which is quite costly for the litigants in a civil case or the county in a criminal case. After sitting in court all day long and then deliberating until the early hours of the morning, the jurors are tired and cannot give fair and impartial consideration of evidence.

This bill would give the court the discretion, after the case is submitted to the jury, to permit them to go home after proper admonishment. All during the case the jurors are allowed to go home, and Judge Gezelin could not see any reason why they are required to remain all night after putting in a full day. The court would have the discretion in a case which is exceedingly important and there is a danger of tampering with the jury, to require them to stay together.

Judge Gezelin stated that the state-wide judges conference unanimously supported this bill.

Senator Swobe moved "DO PASS." Motion seconded by Senator Hecht.

Yeas - 4
Nays - Bryan (1)
Absent - Wilson, Dodge (2)

Motion carried. Senator Bryan reserved the right to oppose the bill on the floor.

S.B. 397 - Enacts the Uniform Residential Landlord and Tenant Act.

Mr. James Rourke testified that the Uniform Landlord-Tenant Act is a product of the National Commissioners of Uniform State Laws, which is comprised of legal scholars and representatives of each state. The act is a result of 5 years of work and rework until the final draft was arrived at last August. It recognizes the need to modernize the relationship between the landlord and tenant and attempts to codify the common law principles that have governed our laws since the middle ages.

Mr. Rourke explained the more important sections of the bill. Section 10 provides that absentee landlords must register with the Secretary of State. This would provide service and disclosure of the actual owners. If the landlord did not register, service could be made on the Secretary of State as is done in the Motor Vehicle Code.

Section 17 deals with prohibitions of lease agreements so that written agreements could not contain provisions which would be outlawed by the statute.

Section 19 would limit security deposits to one month's rent, and would require landlords to return that deposit at the conclusion of the rental term. The landlord may deduct any damages providing he gives the tenant an itemized list of the deductions. If he fails to return the deposit, he can be held accountable for at least twice the amount of the deposit.

Sections 22 and 24 spell out the obligations of both the landlord and the tenant. Section 22 requires that the landlord comply with all the building and health codes, make the necessary repairs, maintain the appliances, fixtures, water heater, etc. Section 24 requires the tenant to comply with the health codes, dispose of trash, and not damage the property of the landlord.

Section 28 sets out tenants' remedies and provides that if there is a material breach by the landlord in the rental agreement, the tenant may give 30 days notice to terminate. If not remedied in 14 days, the tenant may terminate in 30 days. Section 35 provides the same procedure for the landlord. That is a codification of common law.

Section 30 allows the tenant to repair and deduct. Where there is a defect in the property, the tenant can give notice to the landlord to remedy it and if not done within 14 days, he can go out and have the repairs done himself. There is a limitation on this provision of 1/2 the periodic rent or \$100.00. The landlord in Section 26 has the same right to require the tenant to repair, and after 14 days if not remedied, he can have them done and charge the tenant for the work as part of the rent. There is no limitation in this section.

Section 31 provides that if the landlord fails to provide adequate heat, running water, etc. the tenant may, upon notice, vacate and seek damages against the landlord.

Section 32 is the most controversial section which provides that in an action for non-payment of rent, the tenant may withhold rent and set up as a counterclaim the landlord's breach to provide suitable living quarters. The defense must be meritorious or the tenant is subject to damages. It also provides that the tenant pay rent into the court during the pending action.

The committee was concerned that this bill, and particularly this section, was too heavily weighted against the landlord and would be taken advantage of by "deadbeats". Mr. Rourke argued that in instances where the properties are not maintained and building codes

are not enforced, the renters presently have no remedy except to move out. Poor people would have no place to move. This bill would require the landlord to maintain property in compliance with the code. The committee agreed that landlords should be compelled to live up to the codes, but felt the answer might be to require and give authority to the Health Department to enforce building and health codes. Mr. Rourke replied that this would not be the answer since the Health Department does not have enough staff, it would take them a long time to effect enforcement, and the penalties are not stiff enough.

Mr. Rourke continued detailing the provisions of the bill. Section 34 basically prohibits landlords from taking self-help remedies; such as cutting off utilities, unlawfully locking tenants out, etc. It provides that tenants can recover triple damages or triple rent in that situation. Section 42 provides that the tenant may not hold-over after notice, and provides the landlord with double damages, or double rent; assuming the landlord has already accepted one month's rent.

Section 39 abolishes the landlord lien. This type of lien has fallen under constitutional challenge. This is an especially important provision because it eliminates the "lock outs".

Section 44 would prohibit the landlord from taking action to retaliate against the tenant. It would prevent the landlord from increasing the rent or cutting off utilities because the tenant has complained. In order for the codes to be enforced, the tenants must be free to complain to the Inspectors of the Board of Health.

Section 53 should be deleted since it becomes superfluous since the notice provisions are contained in all other sections.

Senator Neal testified that this bill would codify the rights and privileges of landlords and tenants. The class of people this bill would affect in most cases is the apartment dweller. The bill would set out and equalize the rights and privileges of the tenants as opposed to the rights and privileges of managers.

Senator Close asked Mr. Rourke if he felt that this bill would provide more or less housing that would be available to poor people. Mr. Rourke replied that the scale should not measure whether it would create less housing vs. privilege abuses, but should insure that the housing provided is adequate and suitable.

Mr. Rusty Nash testified that the real reason behind the problems that are taking place in the landlord-tenant situation is the critical need for housing in Las Vegas and Reno, and particularly the need for low cost housing. President Nixon's recent cutback of federal housing programs has intensified the need to do something

about the present housing situation in the larger cities. Mr. Nash cited some experiences which have taken place in Washoe County in which he has been involved through the Legal Aid Society. For instance, there were 3 cases of tenants with no heat during the winter. If the tenants had the power to withhold a month's rent, the furnace could have been repaired without resort to the courts.

In answer to the question about enforcement by governmental agencies, perhaps enforcement powers exist within cities and counties but they are reluctant to utilize the enforcement powers realizing the scarcity of low cost housing. If they shut down any housing, there would be a couple of thousand people on the street.

If a tenant complains to the landlord, the landlord, knowing the critical housing situation, could evict the tenant and put somebody else into that unit without remedying the complaint.

The question of landlords locking people out is another matter. It is extremely important to abolish the landlord lien laws since those laws have been struck down by a number of courts across the country. Nevada's landlord lien law flies in the face of the statutory exemptions already on the books.

In answer to the committee's concern about Section 32 and its abuse from "deadbeats", Mr. Nash recalled that that section does allow that if someone is in arrears or fails to pay his rent, landlords may give notice, which has been increased to 14 days, but at the end of that time the landlord may immediately file an action. Section 32 gives the judge the power to require the tenant to pay rent into the court subject to further determination. The deposit the landlord requires could easily cover that 14 day period. The landlords are adequately covered under this bill.

Mr. Peter Holden testified that he is in favor of the basic concept of codifying the mutual obligations and privileges in this act.

We definitely have a problem in this area in Washoe County. The Consumer Fraud Unit had over 700 complaints in the past 8 months; those complaints were broken down into 50 categories, 7 of which dealt with the landlord-tenant relationship. The problems we have been confronted with run the entire gamut within the law; "lock-outs", when to refund the security deposit and when not to, utility cut off, vagueness of lease, rental units in unlivable conditions, no running water or workable sewer facilities, the problem of adequate notice. There are very few definitive remedies for the tenant, and this is also true for the landlord.

This bill would define situations which Mr. Holden's office and the Legal Aid people are confronted with on a day-to-day basis and

would provide some way to handle these problems. Mr. Holden works with the Civil Division of the Sheriff's Department in Washoe County and they have informed him that they are working in the dark regarding eviction notices. Without a court order, they feel they are over-extending themselves in terms of defined duties. This bill would establish guidelines for them to work under.

Mr. Holden suggested for consideration that attorneys in private practice are more acquainted with the problems that confront the landlords than those which confront the tenant simply because of social and economic reasons. If the landlord has a number of units he must work with an attorney to protect his interests. On the other hand, the broad spectrum of renters fall within the areas where they are too rich to qualify for legal aid and too poor to hire an attorney.

Senator Foley asked Mr. Holden if justice court is equipped to handle these types of cases so that the tenant could present his own case. Mr. Holden replied that if a person goes into small claims court without knowledge of the law or an attorney to represent him, in the vast majority of cases he comes out on the short end of the stick regardless of the equities. He stated that the small claims court in Washoe County has stated that security deposits may be confiscated at the discretion of the landlord.

Mr. Gene Milligan testified that the Nevada Association of Realtors appreciates the intent of the bill and agrees that some abuses do exist, but feels that this bill is too ambiguous, especially in the use of terms such as "good", "habitable", "whatever necessary", etc. He felt the abuses could be handled on a local level rather than requiring state-wide remedies.

Mr. Fred Desiderio also agreed that there are certain areas that need improvement in the relationship between landlords and tenants. He felt there were inequitable limitations which this bill would impose on landlords and property owners, such as limiting the security deposit to one month's rent.

Mr. Desiderio felt that presently tenants are adequately protected, but landlords are not. Before a person could be evicted, a landlord would lose two months rent. If tenants do not properly dispose of their trash, landlords get notice from the Health Division.

Mr. Desiderio also suggested that enforcement should take place on a city and county level rather than through state-wide legislation.

Mr. Dean Person testified that a certificate of occupancy must have 4 inspections before changing hands. Those 4 inspections are: fire hazards, heat, ventilation, and minimum square footage. Therefore, at least every time a building changes ownership, it is up-graded.

For the most part the landlord-tenant relationships work out fairly well. He is not convinced that illegal lock-outs and utility cut offs are not illegal regardless of the passage or defeat of this bill. In the area of security deposits, legislation should be passed to bring about a fair solution.

Mr. Person objected to the elimination of property being held in lieu of rent. Currently in Washoe County after a person is locked out, the landlord may keep the tenant's personal property except that which is exempted by NRS (necessities of life), and the tenant has the opportunity to regain possession by paying his back due rent. Many times the only way a landlord may recoupe any consideration is to keep televisions, etc.

Mr. Bill Simons testified that the reason for the existence of sub-standard housing in Washoe County is because there is a grandfather clause of real property. At the time the present code was enacted, existing conditions were not forced to be brought up to code until the property changed hands or the ownership was terminated.

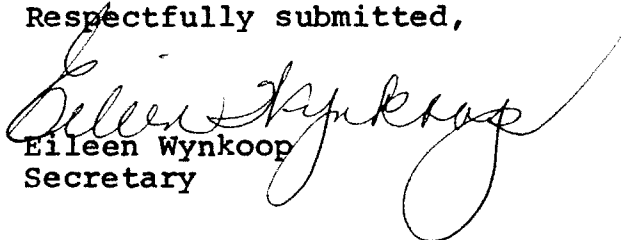
S.B. 394 - Requires notice and permit for repossession of certain vehicles.

Mr. Bob Guinn testified against this bill. The question of the constitutionality of lien laws is presently being decided. The courts have ruled that repossession of motor vehicles with governmental authority is unconstitutional. It has not been decided whether an individual having a security interest has the right to repossess. This bill would apply to both situations with a provision for 10 days notice. Mr. Guinn felt that this would be quite expensive to give notice and hire an attorney which is not presently required.

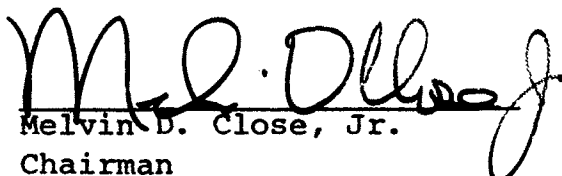
Senator Close also reminded the committee that this provision would probably be ineffective in that during the 10 days notice the person could scrap, sell, or hide the car.

The meeting was adjourned at 11:00 a.m.

Respectfully submitted,


Eileen Wynkoop
Secretary

APPROVED:


Melvin D. Close, Jr.
Chairman