

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MAY 2, 1977

Meeting was called to order at 8:07 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Bryan
Senator Ashworth
Senator Dodge
Senator Foote
Senator Sheerin

ABSENT: Senator Gojack

AB 621 Changes qualifications of certain judicial officers.

Dave Frank stated that this amends the qualifications for District Court Judges and Supreme Court Justices. To bar anyone removed from judicial office from either being elected or appointed to either one of those offices. It is also in response to Constitutional amendments passed on the November ballot. It is directed at the question of what effect removal from judicial office should have, if any.

Senator Close questioned why we should do this, if the people elect him again even though he had been removed from office.

Mr. Frank stated there is the possibility that a bad judge can run a very good campaign. Also there is the possibility of the revolving door problem, where he is elected and finds himself running right into the same problems that got him removed in the first place.

Senator Sheerin stated the whole reason for the judicial review system is that the people don't know what a good judge is, or what a bad judge is. So if you want to put this back in, let's do away with the whole system.

Senator Dodge stated the people passed a Constitutional amendment and it seems to him the judgment and validity to that process, and the judgment of the discipline commission should justify this provision.

Mr. Frank stated it is a policy question. The amendment does not address as to what effect removal has and should it disqualify him from holding judicial office.

Senator Sheerin moved do pass.
Seconded by Senator Dodge.
Motion carried unanimously.

AB 636 Extends homestead exemption commensurate with increase in value of property for which the exemption was claimed.

Jim Banner, Assemblyman District Number 11 stated that this bill came from an attorney named Leonard Wilson, who asked me to submit it. 2 years ago the homestead provision was changed from \$10,000 to \$25,000 for exemption, and he contended that there was a question remaining that if you filed previously, did that automatically become \$25,000 now. They changed it in the Assembly to \$28,000 and all he wants is to have it cleared up that if you filed under the exemption before 72, then it automatically came into being, unless there was a lien against it before.

Senator Sheerin moved amend and do pass, bringing the figure back down to \$25,000.

Seconded by Senator Ashworth.

Motion carried unanimously.

Senator Ashworth stated at this time that he had an amendment to the usuary bill that would bring it down to 15% on all loans over \$20,000 and all loans under that would be 12%. He stated he would like to leave the amendment with the Chairman for him to look over.

Senator Dodge stated he would have to disqualify himself on this as he was a director of a savings and loan, so he would not enter the discussion or vote on the bill.

AB 586 Changes limitation on value of property exempt from execution under homestead law.

Senator Dodge moved to indefinitely postpone.

Senator Sheerin seconded the motion.

Motion carried unanimously.

AB 268 Specifies conditions under which persons under disability may recover damages for parents' or guardians' failure to bring medical malpractice action.

Senator Close stated that there is a new section for the person in prison. We had deleted the disability when a person was in prison on a criminal charge to solve the problem we faced when someone was in legal custody if a person is entitled to bring action, other than for the recovery of real property, be at the time of the cause of action include either within the age of 18 years, insane, or free in the custodial care of the State if placed in such care while less than 18 years of age except when the person is imprisoned, paroled or on probation". That takes care of the child, that is imprisoned in Spring Mountain at 17 and released when he is 18. He then has two years to bring a cause of action after he gets out of the State facility.

The Committee concurred with the amendment.
(see minutes of 4/14/77 for testimony)

Senator Bill Raggio stated he had moved one of our bills to the desk and wanted to clear this up. This involves AB 38, dealing with habeas corpus. Chairman Barengo of Assembly Judiciary had indicated to him that this bill is identical to SB 234. There are two differences as the Assembly version now removes existing language in NRS 34.380, which limits a district court to issuing a writ, but only within its own district. They have taken that out and he didn't know if the Committee was aware of that. It deletes the present language which says "the Supreme Court has the power to issue writs for any purpose in any part of the State". The existing law is that District Judges shall only have the power to issue writs within the judicial district of the judge to whom the application is made. This gives a judge the right to issue a writ anywhere in the State. We had the problem before where people went writ shopping. The other change is on the first page where it said "if the party appeals the court's ruling and the appeal isn't determined before the date set for trial, then the petition must consent that the trial dates automatically vacated and the trial postponed". They have taken out the language which said, "unless the court otherwise orders", he feels this is significant to be left in.

Senator Close stated that he should go down and tell the Assembly that if we are going to accept their bill that it will have to be modified.

AB 173 Enacts Fair Rental Housing Act.

(see minutes of 4/30/77 for continuing testimony)

SECTION 50:

Senator Dodge asked what the purpose was of referring to cost repairs done by the landlord and billed to the tenant, as itemized on the next date periodic rent is due?

Rusty Nash stated that would give rise to remedies for non-payment of rent, rather than just breach of contract.

Clint Wooster stated that this is just to refer back to the tenants basic obligations without limiting it in any way.

Senator Close stated that he would assume if the rental agreement is terminated, that you could utilize the security deposit, but it doesn't say that.

Mr. Wooster stated that it could be used for that purpose and that is under the security deposit section.

SECTION 51:

Senator Bryan stated that under the common law there is an obligation on the landlord to mitigate damages. Let us suppose he does find a new tenant but he cannot find a tenant at the same rate, is he entitled to the difference?

Martin Weiner stated he didn't feel that would take away

his common law rights to sue under the original agreement for breach.

Senator Bryan felt the language should be clarified as it does not read that way.

Mr. Weiner stated maybe they should just add there, while the agreement terminates the obligation to pay rent for the agreed upon period still exists.

Senator Dodge stated whay they want to say is you credit rent. So if you have a tenant that pays \$200 a month and he abandons the dwelling on the 10th, then the landlord rents it on the 15th, at \$180 a month, a half months credit of \$90 is placed against the \$200 obligation on the original tenant.

Senator Close stated he felt they should work out some language on that.

SECTION 52:

Senator Bryan asked if there was a section in there on a fact of abandonment, as to what facts constitute abandonment.

Mr. Wooster said no, but there is a definition of a notice of a fact, the language is awkward. What we want to get at is when you have notice of abandonment with the facts and circumstances alone, would be enough. So we thought maybe if we went back to using the notice of the fact, the definition might be helpful in determining when you knew there was an abandonment. That is section 22 where it defines what notice of a fact is.

Senator Close asked what about the guy that has taken most or all of his clothes from the apartment, then do you have to wait for two weeks to resume rental.

Mr. Wooster stated that at least you could start then. You could start proceedings for summary eviction.

Mr. Weiner stated that this only had to do with disposing of the property that was left on the premises. So sections 52 and 53 should be read together.

Mr. Nash stated that what they wanted was to get away from when you actually know that he has abandoned it, does he have to tell you, and we wanted to use that definition of notice of a fact so that we could presume it from the facts and circumstances surrounding it. So he couldn't come back and say I never told the landlord I was really abandoning it. We wanted to say the landlord had the right to say that it was reasonable under the facts and circumstance.

Senator Close stated maybe you could say, or unless he was

evicted by a court proceeding, a five day notice, or something like that.

Mr. Wooster stated that in Section 53 it might be more appropriate to say the landlord may dispose of personal property abandoned on the premises or as a result of eviction.

Senator Close asked what happens if the guy comes back for one day during that time period?

Mr. Weiner stated that then rather than talk in terms of a presumption, we should say that the landlord may dispose of the property pursuant to Section 53 if the tenant is absent from the premises for one half the time unless the rent is current or the tenant has notified the landlord in writing.

Mr. Wooster stated that unless the rent is current, is the key. If the rent is current then we can't proceed here. So you would have to be in a default situation to begin with.

Senator Dodge stated he had no problem with this. He also feels that there is an adequate time frame for him to come in and protect his property. He asked if the rent is not current, how would the landlord best proceed to protect himself?

Mr. Wooster stated he could go with the summary eviction proceedings, that are later on.

Mr. Nash stated that on the first page, there is a section that defines abandoned property and maybe that takes care of some of these problems. What this was an attempt to do was improve on current law, which just says that a landlord may dispose of abandoned property, and doesn't say what that is. This is Chapter 118.170.

After some discussion by the Committee they felt that "on the premises" and the 30 days should be eliminated. There should, however, be a statutory period of time in which the landlord feels he can act with some degree of safety in disposing of the property, or store it somewhere else so that it doesn't have to be on the property.

SECTION 53:

Senator Close stated this seems to make the landlord the insurer. He feels there needs to be some flexibility. It is reasonable to store, but he doesn't feel the landlord should be held responsible.

Mr. Wooster stated that perhaps we should make him liable for negligence.

SECTION 56:

Senator Bryan stated he was bothered by action for possession. He felt that perhaps it confuses the issue if it is an action for possession or action for unlawful detainer.

Mr. Wooster stated that there is the summary eviction, which is technically not unlawful detainer action.

Senator Bryan stated he thought they should make the reference section consistent with the substantive provisions of the landlord/tenant law.

Mr. Weiner stated that this section is intended to delineate the only permissible means by which a landlord can retake possession of the premises.

Mr. Wooster stated there is a lock out statute in the present law and this would be modified by this bill. The summary procedure is being retained.

Mr. Weiner stated it would require an affidavit in order with the court before you would lock out.

The Committee had some discussion over the eviction time and it was brought out that there is nothing in the current law, but this gives the landlord an alternative and two weeks really isn't that long of a time period.

Scott Branakey asked if there was some way to define, if the rent is not paid and there seems to be nothing in the apartment of value or if every thing is moved out?

Mr. Weiner stated there are two areas of abandonment that is important. One is to give the landlord the right to retake possession of the premises and the second is what his obligations and rights are in regard to the property that is left.

Mr. Nash stated that he had some language to put into 52 and 53. The landlord has notice of abandonment by the tenant, the landlord may dispose of the personal property as provided in section 53 and recover possession as set forth in 56. In the absence of notice of abandonment, it is presumed the tenant has abandoned the dwelling unit if he is absent from the premises, for a period of time equal to $\frac{1}{2}$ of the time for periodical rental payments, unless the rent is current or the tenant has notified the landlord in writing of an intended absence. So if he has notice he doesn't have to wait the 15 days he can go ahead and dispose of the property, that would be the 30 day period, but he can go ahead and use the 30 day section of 53 to recover the premises under section 56. That is when he has real notice.

SECTION 58:

Senator Bryan stated that now if he brings action for possession based upon non-payment of rent, may the landlord

recover reasonable attorney's fees?

Mr. Nash stated he can get treble damages under present law.

Senator Bryan asked, where it reads in good faith, is that a substantial change to the present general law

Mr. Wooster stated that the treble damages is out of the bill now.

Senator Bryan stated in fairness to both parties, the prevailing party ought to be able to recover his costs and reasonable attorney's fees.

Senator Close stated that they should tell them where they feel it is needed to leave in attorney's fees, because they are going to take out all reference to attorney's fees where it applies in general law.

Mr. Wooster stated in reading the language in section 58 about monies to be paid into court, he isn't sure the language is what they really want.

Senator Bryan stated that they should have in there upon application and notice.

Mr. Wooster stated that they were trying to get the point across that if the money was paid into court, and there were lengthy proceedings, they could get some of that money released, say for a mortgage payment. This is the language of the uniform act, and is it flexible enough for the courts to do that.

SECTION 61:

Senator Dodge asked how in the world did they ever get the landlords locked into a situation not to raise the rents?

Mr. Wooster stated the you have to read that in connection with the last section where it states that you can not do such and such in retaliation.

Mr. Weiner stated that it could be a retaliation against all the tenants and we just wanted to leave that as a matter of proof, rather than to legislate what is and what isn't retaliation.

Mr. Wooster stated we felt that the burden of proof is always on the tenant to prove that it was retaliation, and they cannot bring action unless the landlord has done one of the things enumerated in A thru F.

Mr. Weiner stated in nearly all cases this would merely be a defense that the tenants raise, rather than an affirmative action that they bring.

Gene Milligan stated that it seems to him that if a tenant organization is in existence, then any type of general increase occurs, that it could be charged that it is retaliation. You might say if an organization has been in existence for a period of time, or something like this, it could not be considered retaliation.

Mr. Weiner stated that all you have to have though, is an affidavit by a tenant alledging any defense to tie it up. This is just a valid defense they dgranted.

Mr. Wooster stated hi concern was that while there is an action pending, that the tenant continue to pay rent into court and the court have the ability to have the landlord take this rent out of court if it was needed.

Mr. Nash stated that perhaps where the word retaliation exists, it could be construed as aonly applying to that last phrase. It might be better to put the "as retaliation" in line 1 after the landlord, then it would be obvious.

SECTION 62:

Mr. Nash stated that this covers that the attachment is the procedure to be used in a lien attachment.

Senator Dodge stated that if we are talking about attachment or garnishment, why don't we refer to those sections specifically?

SECTION 64:

The Committee decided that the language should be made clearer as to the 30 day notice so that it was clear that it could be given at any time before the rental period ended, so that notice could be given in the middle of the month.

Mr. Wooster stated that in one place you are talking about all leases and in the other you are talking about the basic obligations of this act, which only applies to residential. He felt that was a problem, going into the general law area.

Mr. Weiner stated that on page 18, this was to extend the summary proceeding for eviction to all unlawful detainers rather than just for non-payment of rent.

Senator Close asked what the purpose was of saying "to be given to the tenant in good faith". What type of bad faith were they contemplating?

Fred Stockey stated if he understands the subsection, it is to get the landlord under oath again in the default situation and that he is doing everything without detriment to the tenant. The understanding is that the tenant is not going to be there at the time this affidavit is executed. He would

suppose it is documentation for the Justice of the Peace, that his decision for ordering eviction is perpetrated on the fact.

Mr. Weiner stated that this refers to the affidavit that the landlord would submit to court. The idea is to insure that if there is a default, that the court will scrutinize whether the notice to quit was one that was justified.

Scott Branakey stated that if you stay with good faith it would seem to nullify the landlord to be able to evict for any reason and would put it back in the situation where he would have to have good cause which is defined in here to evict and that would be the only reason he could evict.

Senator Close stated that this was only in summary proceedings and in the case you are referring to it would not be a summary proceeding.

Mr. Branakey stated it would, because under this law would cover if the person went into an unlawful detainer because he was given a proper 30 day eviction, whether by cause or not by cause. So we would now have some hold on evicting somebody, if it be by cause or not by cause if he refused to move.

Mr. Weiner stated that perhaps the problem here is that we are not talking about notice, but cause of action. If we were to say the cause of action was authorized by law, than I think we would solve our problem of good or bad faith.

Scott Branakey stated that perhaps they could use claim for relief rather than cause for action.

Mr. Wooster stated that what they are trying to do is incorporate all of 40.253, except the notice to surrender. He felt that lines 41 thru 43 should be eliminated because it is just a part of 40.253 but not all, so it could be subjected to a great deal of misinterpretation.

Senator Sheerin stated then we should either strike that or include all of the other.

The Committee after some discussion concurred with deleting it.

Senator Sheerin brought out the fact that SB 82 amends section 40.253, adding commercial tenant. This has been passed and signed by the Governor so this bill should conform with SB 82.

Senator Close stated they would make sure in the drafting that it was not in conflict.

Mr. Weiner stated that on the lock out procedure, what they have done is take that procedure and insert it so that it can only be done after the court scrutinizes the basis for it.

SECTION 71:

Mr. Weiner stated this section deletes the three sections in the law that relate to the landlord liens, 108.500 to 108.520.

Senator Close stated that as the bill drafter had arrived they would now go through the bill with him as to the amendments. He stated there would be no arguing, they will ask the three gentlemen questions if they feel it is necessary.

SECTION 20.5

Gene Milligan stated he would just like to make one quick statement and that was in the reference to realtors, licensed brokers and salesmen, they feel that this is discriminatory as anyone can manage a unit. To single out licensed people who probably have more knowledge than the average person other than regular management people is discriminatory.

Mr. Weiner stated it doesn't single out licensed people it states that if you go through a licensed real estate salesman, then you are under the obligation of the act because you have expert help. If you don't go under a licensed Real Estate salesman, and you fall under the other sections are you are not under the act.

SECTION 1 - line 18 delete the "30 days or more".

SECTION 10 - Page 2, amend language see Exhibit A, Committee concured with the language as amended.

SECTION 12 - Senator Close asked why have this and section 14, include one in the other. After discussion the Committee felt it would be clearer to leave it as is.

Page 2 line 48 and 49 put a period after tenants and delete the rest. The Committee concured.

SECTION 16 - Senator Close stated there was a question on "periodic". The Committee agreed to take it out.

SECTION 20 - Senator Close stated there was a suggested modification in the language, see exhibit A, which would replace subsection B. The Committee concured.

SECTION 20.5 - Senator Close stated there were two different changes, see exhibit A & B, he would like the Committee to look them over.

As they had to go into session Senator Close stated they would continue this as soon as they recessed. He had some amendments he wanted to go over quickly with the Committee.

SB 386 Prohibits judges who are removed from office from exercising judicial duties.

Page 2 line 6, delete "death". Committee concurred unanimously with amendment #1117.

SB 263 Revises procedures relating to recovery of costs and attorney's fees in civil actions.

Page 1 line 17 delete "discovery". Lines 7 thru 9 delete and insert "for one copy of each deposition". Committee concurred unanimously with amendment #1190.

SB 54 Authorizes payment of lodging allowances to jurors under certain circumstances.

Page 1 line 17 delete "75 miles" and insert "50 miles". Page 1 delete line 19 and insert "to receive a reasonable room rate in addition to daily requirements". The Committee stated that the second amendment was not their intent and they refused to concur with amendment #1187.


SB 185 Provides for retention of and access to certain medical records.

Page 2 lines 5 and 6, insert under section B "any authorized representative". The Committee felt this broadend their intent and refused to concur with amendment #396-A.

The meeting was adjourned at 10:00 a.m.

Respectfully submitted,

APPROVED:


Virginia C. Letts, Secretary

MELVIN D. CLOSE, JR. CHAIRMAN

AMENDMENTS TO A.B. 173

Sec. 10 "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by Sections 30 or 31 of this act.

Sec. 20 Delete lines 20 and 21 and insert:
" (b) Low-rent housing programs operated by public housing authorities and established pursuant to the United States Housing Act of 1937, as amended (42 U.S.C. 1401 et. seq.)

Sec. 20.5 Delete lines 24 through 27 and insert:
" 2. If a person does not own more than six rental units at any one time, the owner is not required to: "

Sec. 20.5 Delete lines 27 and insert:
" the owner is not subject to the provisions of this chapter requiring or relating to: "

(Note: Sec. 20.5 (2) (a) - (j) must be changed to conform: e.g. "(a) Disclosure of the name: * * * "

Sec. 20.5 Insert between lines 43 and 44:
" 3. Subsection 2 does not abrogate or diminish any rights, obligations or remedies which may exist under common law."

Sec. 24 (3) (d) Delete lines 23-24 and insert:
" (d) other than normal wear, the tenant has returned the premises in the same condition in which he found them."

Sec. 24.5 (3) Delete line 35 and insert:
"3. In the absence of an agreement, either written or oral:"

Sec. 30 (3) line 21 insert "if" after "alternatively"

Sec. 33 (2) (a) delete lines 39 and 40 and insert:
"(a) The agreement of the parties is entered into in good faith."

Sec. 33 (3) to be deleted. Delete lines 46-48

Sec. 36 line 6 delete "written"

Sec. 38 line 32 before "tenants" add "landlord or"

Sec. 39 line 21 delete "otherwise"

- Sec. 41 line 3 delete "by repairs, the payment of damages or otherwise"
- Sec. 41 line 18 delete "unused fees"
- Sec. 42 Delete line 29 and insert:
" habitable condition as required by this chapter, and the reasonable cost of compliance or repair."
- Sec. 42 (5) line 4 add "as required by this chapter." after "condition"
- Sec. 43 line 11 insert "or" after "agreement;"
- Sec. 44 line 32 insert "or" after "rent;"
- Sec. 45 line 8 delete "unused fees"
- Sec. 46 delete line 11 and insert:
" unit is substantially impaired, the landlord may terminate the rental agreement and the tenant may, in addition to any other"
- Sec. 47 delete line 28 and insert: "Sec. 47 after demand by the tenant, if a landlord fails to disclose as provided in section 30 or "
- Sec. 49 delete "by repairs" line 41 and delete "or the payment of damages or otherwise" line 42
- Sec. 54 line 2 delete "or" and insert "and"



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DIRECTOR

May 2, 1977

Senator Mel Close, Chairman
Senate Judiciary Committee
Nevada State Legislature
Carson City, Nevada 89710

Re: A.B. 173, Landlord-Tenant Bill

Dear Senator Close:

Representatives of Nevada's landlord and tenant communities are in almost complete agreement on the provisions of A.B. 173. However, a few areas of disagreement still exist.

The Department of Commerce requests that your committee adopt two amendments that are essential for the protection of tenants, and reject two amendments proposed by the landlords. In the spirit of compromise, the department will withdraw its objection to one amendment proposed by the landlords. No other areas of disagreement exist.

We attach our amendments and comments.

Multiple-unit dwellings represent 40 percent of Nevada's housing units, yet there is virtually no law governing their landlords and tenants. A.B. 173 is a compromise that answers the needs of both landlords and tenants alike. Nevada is in dire need of remedial legislation.

Thank you for your interest and attention to this problem area.

Sincerely,

Michael L. Melner
Director

MLM/JK

c: Members of Senate Judiciary Committee
Martin H. Wiener
Shelley Levine
Clinton Wooster
Russell Nash, Jr.

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S. D. L. + R. I

Objection Withdrawn

1. Section 16: Agree to the deletion of "periodic" on page 3, line 1.

Proposed Amendments

2. Section 27.7: Delete lines 1 and 2; page 7, and insert

"payment of the amount owed to the tenant and damages equal to the sum wrongfully withheld, together with reasonable attorney's fees."

Comment: A landlord holds the tenant's security deposit as a fiduciary. Many states recognize this fiduciary relationship by requiring security to be deposited by the landlord in a separate escrow account. Some states even require that it be an interest-bearing account, and the tenant is paid the interest.

Currently, Section 27 provides that the tenant may recover actual damages in the event of bad faith retention of the security by the landlord. Actual damages are hard to prove in such a case, and there is little incentive for a landlord to act in good faith. Some sanction is necessary to prevent landlords from routinely refusing to return security and advising tenants to sue in court for its return.

Without some sanction against bad faith security retention, the entire procedure provided in Section 27 for the handling of such deposits is lacking the "teeth" necessary to make it work. Without a sanction, Section 27 is virtually worthless.

3. Section 33.3: Delete lines 46 to 48, page 8, and insert

"3. An agreement made pursuant to subsection 2:

- (a) Shall not be made a part of any rental agreement;
- (b) Shall not condition a tenant's right to occupancy of the premises on his performance of that agreement; and
- (c) Shall, if not fully performed by either party, give rise to any appropriate remedy available at law or equity for breach of contract."

Comment: The intent of this amendment is to ensure that the tenant may continue his tenancy although he does not complete the agreed-upon repairs. The landlord's remedy should be to sue for damages, rather than to evict the tenant. The

repair agreement will be treated as an ordinary contract, separate and apart from the rental agreement.

Without this provision it is feared that unscrupulous landlords will force repair agreements on tenants as a condition for permitting them to sign a lease. Illusory rent reductions will be granted, and the landlord will retain a ready excuse to evict the tenant for failing to complete the repairs satisfactorily.

Objections To Landlord Amendments

4. Section 20.5: Landlords seek to delete on lines 25 to 27, page 7

"and a house is rented without the use in any manner of the rental facilities or services of a licensed real estate broker, broker-salesman, or salesman".

5. Landlords seek to exclude smaller multiple-unit dwellings from the Act.

Comment: There are three basic points of philosophy behind the coverage of AB 173:

1. Rights under the act are basic to all residential tenants.
2. The obligations under the act should extend to all landlords in the commercial marketplace.
3. The act should not cover landlords who are not in the business of residential rentals, and who also lack the benefit of expert advice on the law.

The exclusion from the act of landlords with a small number of single-family dwellings rented without expert assistance from licensed realtors or salesmen is taken verbatim from NRS 118.060.

It was put in the act to maintain consistency with current Nevada law. The Assembly changed the exclusion from three to six single-family residences, but retained the requirement that they be rented without expert assistance.

A landlord who rents with the assistance of a realtor will have the benefit of expert advice on all facets of landlord-tenant law, and there is no justification for excusing that landlord from complying with the law.

A landlord who purchases a multiple-unit dwelling, no matter how small, is entering the commercial marketplace. That landlord is in the business of seeking residential tenants. Part of his decision to enter the business should be a thorough familiarity with all laws governing that business.

We can find no justification for excluding any multiple-unit dwellings from the act.