

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MAY 2, 1977

The meeting was called to order at 1:15 p.m. All were present, Senator Close was in the Chair.

AB 173 Enacts Fair Rental Housing Act.

Senator Close stated that they would now continue going through the bill section by section.

SECTION 20.5 - Mr. Wooster stated that the amendment that he proposed to the Committee had questions raised, one would delete the reference to single family housing and the reference to Real Estate Brokers. And just say, "if a person does not own more than 6 rental units at any one time the owner is not required to--".

Senator Bryan stated that he thought we should be very careful with that because if you delete that language it might modify an owners common law duties in the absence.

Mr. Wooster stated that then they would attack that problem next.

Mr. Weiner stated that in response to Mr. Milligan's objections earlier, what they were trying to do here was to make the law apply to commercial landlords and to exempt those who would be ignorant of the law because they were doing it on their own as a mom and pop operation. Working with an expert such as a Real Estate Broker, they would be informed of the law.

After some discussion it was the consensus of the Committee to take out Real Estate Broker. This would take out lines 25 and 26.

Mr. Wooster stated one more thing in this section was a suggestion that on line 27 we say, "the owner is not subject to the provisions of this chapter requiring or relating to" and then we would still list all of these so that it is clear that the requirements of this are simply requirements levied by the chapter and not common law requirements. Then we would add a subsection 3 down at the bottom of 20.5 to say "subsection 2 does not abrogate or diminish any rights, obligations or remedies which may exist under common law."

Senator Bryan stated he felt we should make the language clear that we cannot in any way intend to impair that contract.

Mr. Wooster stated that to make this read grammatically A would be disclosure, C would be maintenance and so on.

SECTION 21 - Senator Close stated he had a question on lines 18 and 19 but he doesn't recall what it was.

Mr. Wooster stated that went back to the notice of abandonment and we used then that definition to make it reasonably certain from all the facts and circumstances that it was an abandonment.

Mr. Nash stated perhaps it should read "should have reason to know it exists". I think that that was the intent.

The Committee after some discussion decided that the language should be that way, so it would read "is reasonably sure that it exists".

Senator Close stated that on line 25 is where it provides an alternate method by which the landlord can be given notice that's where he gets communication to rental payments. I think we should choose one or the other so you don't have to bounce around between the two of them. Now the communications as I recall, you had the right to call the landlord at midnight in Washington D.C., if that was where he resided. I would have a real question about even considering that, if he has a local manager.

Senator Dodge stated that maybe that was the only one that was know, everyone knows where the rent is paid. So, if you are trying to cushion this, it would be a constructive service and seems to me a good provision.

Senator Bryan asked if there shouldn't be a standard? If there is an agreement and the agreement specifies a place for notice, that should prevail. Secondly, if there is no agreement as to where the payments are to be made, I would think the logical place would be where the tenant pays rent.

Mr. Wooster thought that was the way it was already stated in the bill.

After discussion by the committee they agreed that they felt it was clear.

SECTION 23 - Senator Close felt that unconscionable was a very ambiguous term.

Senator Bryan stated that the unconscionability concept is something that has crept into our law, is expressly included in the commercial code. He doesn't like the phraseology used but he is not opposed to an unconscionability provision.

Mr. Wooster stated that under the unconscionability, if he refuses to force the agreement, then we would go to the provisions when we said in the absence of an agreement he is entitled to fair rental value of the property and so forth.

Senator Dodge stated he felt that a court was going to have to determine under this thing, if they would determine whether the contract would stand with the striking out of the unconscionable provisions, it may be that it is severable and it may be that it's not.

Mr. Wooster stated he felt there was already modification language in there already.

Senator Bryan stated that in Section b, he had some real reservations about the language after they had settled the issue, presumably, and then relying on a defense of unconscionability.

Senator Close stated that as an example of this section, there is a provision of the contract that is very harsh on the tenant, it was signed by the tenant when he moved in, it was determined afterward that it was very harsh, he takes the landlord to court and he says this is unconscionable and you should either not enforce it, modify or strike it and enforce the rest of the agreement.

After some discussion by the Committee it was agreed to strike section b, lines 33 to 38 and retain unconscionability in section a.

SECTION 24 - Senator Close stated there was an amendment submitted on this (see exhibit A), and the Committee concurred with this change.

SECTION 24.5 - Senator Closes stated there was also amended language submitted on this. The Committee concurred.

Senator Close stated at this time to the bill drafter Will Crocket, that all references to attorney's fees are to be excised, and we are relying on the general law as to attorney's fees, unless there is some specific category we mention to you to keep them in. And that is the method of damage compensation of one party or the other.

SECTION 27 - Senator Close stated in this section we are dealing with the cleaning deposit, and the question is whether or not there should be a non-refundable cleaning deposit.

Bob Murhpy, stated that what you would be doing is setting up a provision that calls for liquidating damages for a penalty which could be challenged as being unenforceable for that reason. Being that the contract construction is that liquidated damages clauses are only enforced to the extent that they reasonably estimate the amount of damages that have occurred, in the event that the damages otherwise would be ascertainable.

Senator Ashworth stated they had testimony where if the

landlord had a cleaning deposit he would encourage the people not to clean it up, he would do that himself, which saved a hassle of whether it was as clean now as when he moved in.

Bob Murphy stated that if you say non-refundable though the argument could be made that it was liquidated damages.

Mr. Wooster stated it seemed to him the cleaning fee could only be called non-refundable if it actually approximated the cleaning cost. The point he is worried about is where the cleaning fee is \$100 and then go into court and prove that the landlord only traditionally spent \$50.

Senator Dodge stated he felt the tenant was open to abuse if you let them put in a non-refundable provision.

Mr. Wooster stated that in order to preserve the non-refundable provision they might add in on line 4 page 7, that you couldn't characterize it as non-refundable unless the cost of cleaning actually incurred approximate the thing you paid.

After further discussion the Committee agreed to leave the language the way it was with an itemized statement on what was actually spent. Also, after further discussion on lines 32 and 33 take out where it says, "not reasonably ascertainable". If you mail to his last known address or forwarding address then it will reach him.

Mr. Weiner stated that there was an amendment proposed in 27.7 (see exhibit B), however the attorney's fees would be taken out.

Senator Bryan stated he felt the general document of punitive damages might apply here.

Mr. Weiner said if he was sure it would apply he would withdraw the proposed amendment.

Mr. Wooster stated he felt there should be some sanction against the real blatant violator.

Senator Dodge moved they leave it like it is and cut out the attorney's fees. The committee concurred.

SECTION 30 - Senator Close stated he felt we should take out landlord on line 26. And say owner or his designated representative.

Senator Dodge stated he felt it should be owner or other responsible party.

The Committee agreed with this language.

Senator Close stated that on page 7 line 38 there was a question as to the wording of "undisclosed landlord or manager".

Senator Dodge stated you can't have an undisclosed manager as he is on the premises.

The Committee concurred that "or manager" would be deleted. Put a period after landlord and take the whole phrase out.

SECTION 33 - Senator Close stated he had a problem on line 3 with the wording "at all times".

Senator Dodge asked what about reasonable diligence.

Mr. Weiner stated that perhaps we could say reasonably free from all accumulations.

After some discussion the Committee agreed that the reasonably free should go on line 29 and leave in "all times" as it has to be upon notice.

After some discussion by the Committee it was agreed that lines 46 through 48 should be deleted. Also on lines 39 and 40 put a period after in good faith and delete the remainder.

SECTION 34 - The Committee agreed that it should be worded as to "a minimum of 7 days for any periodic tenancy less than a month". This would cover the week to week or any thing else that was less than a month.

SECTION 36 - After some discussion the Committee agreed that this should be deleted.

SECTION 37 - The Committee agreed to add a new section that would say "to comply with the rental agreement" we are talking about a tenant shall as a basic obligation of this chapter to comply with the rental agreement.

SECTION 39 - Mr. Wooster stated he felt that the word "otherwise" should be deleted on line 21.

The Committee agreed that this would make it less ambiguous. Also, as this referred to section 50 this should be made clear here in the language.

SECTION 41 - Senator Close stated they had agreed that the language on line 3 should come out, "by repairs, the payment of damages or otherwise". Line 18, "unused fees".

The Committee concurred with these changes.

The Committee raised the question if sub-section 4 was really needed here.

Bob Murphy stated that this provision could be taken out as it might lead to some confusion, it might indicate to the court that the final source should be the governmental agency which might not be in the best interest of the tenant. They might rather have their own experts come in and testify as to the conditions.

Senator Bryan stated it didn't look like this added anything. The court could always request.

It was the Committees decision to delete lines 20 thru 24, which is the entire subsection.

SECTION 42 - Senator Closes stated he had a note to put in after habitable condition, "as required by this chapter".

The Committee concurred with this.

SECTION 44 - After some discussion by the Committee it was agreed that "if required by the rental agreement or by this chapter", then he is only liable if it is willful or negligent, this is to be placed at the beginning of line 22.

SECTION 45 - Senator Close stated on line 8 they were going to take out unused fees. The Committee concurred.

SECTION 46 - Mr. Wooster stated they had an amendment to submit on this on line 11 (see exhibit A). The Committee agreed with the amended language.

SECTION 47 - Mr. Wooster stated they also had a language change here on line 28, which the Committee concurred with.

SECTION 49 - Senator Close read the proposed language in exhibit A that is to be deleted. The Committee concurred.

SECTION 51 - Mr. Wooster stated he had some language which was not in his proposal he wished to submit here for the Committees approval. On line 16 say, "but the tenant shall be liable for any actual damages to the landlord resulting from the abandonment".

Senator Bryan stated what bothered him with this was that we all know what we are talking about here, but if you see that, can we spell it out. We should provide reasonable expenses incurred by the landlord in rehabilitating the unit for rental purposes, reasonable expenses incurred in renting the unit out, which is the existing law.

Mr. Weiner stated he had language but the Assembly thought it was too long. It stated, "the excess of the agreed upon rent over the amount of the rental period".

Senator Close stated that this is not the law now on units

or apartments or commercial premises. Most states are going toward this philosophy of mitigation of damages.

Senator Bryan stated he felt personally that a landlord should have a duty to mitigate damages.

Senator Dodge stated he felt that if he rents the apartment for less than the amount but it is part of the time, he doesn't feel that he should have a double advantage there, by collecting from a tenant and have the other money too. He feels the simplest thing to say in determining damages that any rental made by the landlord during the period for which the tenant was obligated should be credited to the tenant.

Senator Bryan stated he agreed but he feels the landlord should be entitled to reasonable expense to make the premise tenable also any reasonable expense, say to advertise in the newspaper.

Mr. Wooster stated he felt that we all agreed in the concept and if we need to spell out what damages are it could be done here.

Senator Close stated they should continue working on that.

SECTION 53 - Senator Dodge stated he had a note to say, "they may dispose of the personal property abandoned the premises or as a result of eviction".

Mr. Wooster stated he had "or left on the premises after a period of time".

Senator Dodge stated this language should go on line 31 after "on the premises".

Senator Close stated they should work on this language too.

Mr. Wooster stated too they wanted in here something about the landlord is liable only for the negligence or wrongful act in the storage of the property.

Also on line 34 after termination they should add in abandonment. The Committee concurred.

Senator Close stated on line 45 strike "and not reasonably ascertainable" and on line 48 add in NRS 487.

SECTION 56 - Senator Close stated on line 20 we would have a cross reference back to section 52.

Mr. Wooster stated that way with a notice of abandonment you could go into either 52 or 56.

SECTION 58 - Mr. Wooster stated that on releasing funds they

have worked up some language. "the court may order to be paid into court", now we want to make sure the court can release funds on application of a landlord who says I have to have some money to pay the mortgage, so on line 28 after each party we insert, "upon application by either party the court after notice and opportunity for hearing may for good cause, release to either party rent paid into court by the tenant".

SECTION 60 - Senator Close stated on line 41 we would put "as provided by this chapter or the rental agreement".

SECTION 61 - Mr. Nash stated that we want to make sure that it is very clear that the only prohibition about terminating or increasing or decreasing is as retaliation, so we thought if we put retaliation after the word landlord in the first sentence it would be clearer. He is only prohibited from doing these things when he does them in retaliation.

Senator Close stated he had some problems with the language in lines 27 and 28 as to presumption.

Mr. Wooster stated he felt that the burden of proof is the key here, and if it is on the tenant he feels it is livable but it isn't spelled out here.

Mr. Weiner stated that there is a very broad definition under cause under section 6, which all this says anytime that the landlord tries to evict a tenant without any reason at all within 6 months of the time that he does one of those acts there is a presumption of retaliation. It does not say when he tries to evict him for non-payment of rent or violation of a lease agreement or anything like that. This is only for without cause evictions.

Bob Murphy stated that the presumption can be overcome however. It is really difficult to prove retaliation if the burden is on the tenant.

After further discussion by the Committee it was agreed that section 3 should be deleted.

SECTION 64 - Senator Close stated that on line 21 and 22 provides for 15 days so we want to take that out and make it 30 days notice for eviction.

Senator Bryan stated we are abrogating the common law here so we want to be very clear here on what our intent is.

Senator Close stated that on 32 and 33 we should take out the 60 days also. Then we will be uniform for all of these.

SECTION 65 - Senator Close stated it was agreed that lines 39 through 43 should be deleted.

The Committee concurred with the deletion.



Also, under subsection 4 there had been some new language worked on that states, "upon the filing of the landord of the affidavit required by subsection 2, the Justice of the Peace shall hold a hearing after service and notice of the hearing upon the parties to determine the truthfullness and sufficiency of any affidavit or notice provided for in this section. If the justice determines that there is an actual dispute between the parties as to the unlawful detainer and the tenant is guilty of unlawful detainer the justice may issue a summary order for removal of the tenant or an order providing for the non-admittance of the tenant pursuant to sub-section 2. If the justice determines that actual dispute on unlawfull detainer exsits he shall refuse to grant either party any relief and shall require that any further proceedings shall be pursuant to NRS 45.290 to 40.420. The issuance of such an order does not preclude an action by the tenant for any damages or other relief to which he may be entitled".

Senator Bryan stated he didn't think we should say actual dispute we should say that the affidavit of the tenant does not raise an issue which is not in dispute, that is legally cognizable under the act as providing a defense.

Senator Close stated we would work the language very carefully here to make sure it is simple and clear. Also, around lines 41 and 43 we want to make sure that this conforms with the language in SB 82 on commercial tenancys. He is not sure where it should go but the bill drafter will take care of that.

Senator Bryan moved an amend and do pass.  
Seconded by Senator Gojack.  
Motion carried unanimously, Senator Foote was absent from the vote.

The meeting was adjourned at 3:40 p.m.

Respectfully submitted,

APPROVED:

  
Virginia C. Letts, Secretary

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN