

1 SENATE BILL 423

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO REAL PROPERTY; ALLOWING TENANTS WHO ARE VICTIMS OF  
12 DOMESTIC VIOLENCE OR SEXUAL ASSAULT TO BE RELEASED WITHOUT  
13 PENALTY FROM LEASE AGREEMENTS.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 47-8-33 NMSA 1978 (being Laws 1975,  
17 Chapter 38, Section 33, as amended) is amended to read:

18 "47-8-33. BREACH OF AGREEMENT BY RESIDENT AND RELIEF BY  
19 OWNER.--

20 A. Except as provided in the Uniform Owner-Resident  
21 Relations Act, if there is noncompliance with Section 47-8-22  
22 NMSA 1978 materially affecting health and safety or upon the  
23 initial material noncompliance by the resident with the rental  
24 agreement or [~~any~~] a separate agreement, the owner shall  
25 deliver a written notice to the resident specifying the acts

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1 and omissions constituting the breach, including the dates and  
2 specific facts describing the nature of the alleged breach, and  
3 stating that the rental agreement will terminate upon a date  
4 not less than seven days after receipt of the notice if the  
5 breach is not remedied in seven days.

6 B. Upon the second material noncompliance with the  
7 rental agreement or any separate agreement by the resident,  
8 within six months of the initial breach, the owner shall  
9 deliver a written notice to the resident specifying the acts  
10 and omissions constituting the breach, including the dates and  
11 specific facts describing the nature of the alleged breach, and  
12 stating that the rental agreement shall terminate upon a date  
13 not less than seven days after receipt of the notice. If the  
14 subsequent breach occurs more than six months after the initial  
15 breach, it shall constitute an initial breach for purposes of  
16 applying the provisions of this section.

17 C. The initial notice provided in this section  
18 shall state that the rental agreement will terminate upon the  
19 second material noncompliance with the rental agreement or any  
20 separate agreement by the resident, within six months of the  
21 initial breach. To be effective, [~~any~~] a notice pursuant to  
22 this subsection shall be given within thirty days of the breach  
23 or knowledge thereof.

24 D. If rent is unpaid when due and the resident  
25 fails to pay rent within three days after written notice from

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1 the owner of nonpayment and [~~his~~] the owner's intention to  
2 terminate the rental agreement, the owner may terminate the  
3 rental agreement and the resident shall immediately deliver  
4 possession of the dwelling unit; provided that tender of the  
5 full amount due, in the manner stated in the notice, prior to  
6 the expiration of the three-day notice shall bar any action for  
7 nonpayment of rent.

8 E. In any court action for possession for  
9 nonpayment of rent or other charges where the resident disputes  
10 the amount owed because [~~(1)~~] the resident has abated rent  
11 pursuant to Section 47-8-27.2 or 47-8-4 NMSA 1978 or [~~(2)~~] the  
12 owner has allocated rent paid by the resident as payment for  
13 damages to the premises, then, if the owner is the prevailing  
14 party, the court shall enter a writ of restitution conditioned  
15 upon the right of the resident to remedy within three days of  
16 entry of judgment. If the resident has satisfied the judgment  
17 within three days, the writ shall be dismissed. If the  
18 resident has not satisfied the judgment within three days, the  
19 owner may execute upon the writ without further order of the  
20 court.

21 F. Except as provided in the Uniform Owner-Resident  
22 Relations Act, the owner may recover damages and obtain  
23 injunctive or other relief for [~~any~~] noncompliance by the  
24 resident with the rental agreement or this section or Section  
25 47-8-22 NMSA 1978.

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1           G. In a judicial action to enforce a remedy for  
2 which prior written notice is required, relief may be granted  
3 based only upon the grounds set forth in the written notice  
4 served; provided, however, that this shall not bar a defendant  
5 from raising any and all defenses or counterclaims for which  
6 written notice is not otherwise required by the Uniform Owner-  
7 Resident Relations Act.

8           H. When the last day for remedying any breach  
9 pursuant to written notice required under the Uniform Owner-  
10 Resident Relations Act occurs on a weekend or federal holiday,  
11 the period to remedy shall be extended until the next day that  
12 is not a weekend or federal holiday.

13           I. If the resident knowingly commits or consents to  
14 another person in the dwelling unit or on the premises  
15 knowingly committing a substantial violation, the owner shall  
16 deliver a written notice to the resident specifying the time,  
17 place and nature of the act constituting the substantial  
18 violation and that the rental agreement will terminate upon a  
19 date not less than three days after receipt of the notice.

20           J. In any action for possession [~~under~~] pursuant to  
21 Subsection I of this section, it shall be a defense that the  
22 resident is a victim of domestic violence or of sexual assault.  
23 If the resident has filed for or secured a temporary domestic  
24 violence restraining order as a result of the incident that is  
25 the basis for the termination notice or as a result of a prior

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1 incident, the writ of restitution shall not issue. In all  
2 other cases [~~where~~] in which domestic violence or sexual  
3 assault is raised as a defense, the court shall have the  
4 discretion to evict the resident accused of the violation,  
5 while allowing the tenancy of the remainder of the residents to  
6 continue undisturbed.

7 K. In any action for possession [~~under~~] pursuant to  
8 Subsection I of this section, it shall be a defense that the  
9 resident did not know of, and could not have reasonably known  
10 of or prevented, the commission of a substantial violation by  
11 any other person in the dwelling unit or on the premises.

12 L. In [~~an~~] any action for possession [~~under~~]  
13 pursuant to Subsection I of this section, it shall be a defense  
14 that the resident took reasonable and lawful actions in defense  
15 of [~~himself~~] the resident, others or [~~his~~] the resident's  
16 property.

17 M. In any action for possession [~~under~~] pursuant to  
18 Subsection I of this section, if the court finds that the  
19 action was frivolous or brought in bad faith, the petitioner  
20 shall be subject to a civil penalty equal to two times the  
21 amount of the monthly rent, plus damages and costs."

22 SECTION 2. A new section of the Uniform Owner-Resident  
23 Relations Act is enacted to read:

24 "[NEW MATERIAL] NO PENALTY TERMINATION OF RENTAL  
25 AGREEMENT.--

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1           A. A resident may terminate a rental agreement if  
2 the resident provides to the owner written notice that the  
3 resident is the victim of domestic violence or sexual assault  
4 in the dwelling unit or on the premises. In that case, the  
5 resident's rights and obligations under the rental agreement  
6 are terminated and the resident shall vacate the dwelling unit  
7 and avoid liability for future rent and shall not incur early  
8 termination penalties or fees if the tenant provides to the  
9 owner a written notice requesting release from the rental  
10 agreement with a mutually agreed on release date within the  
11 next thirty days, accompanied by any one of the following:

12                   (1) a copy of a protective order issued to the  
13 resident who is a victim of domestic violence or sexual  
14 assault; or

15                   (2) a copy of a written departmental report  
16 from a law enforcement agency that states that the tenant  
17 notified the law enforcement agency that the tenant was a  
18 victim of domestic violence or sexual assault.

19           B. The resident may terminate the rental agreement  
20 pursuant to this section only if the actions, events or  
21 circumstances that resulted in the tenant being a victim of  
22 domestic violence or sexual assault occurred within the thirty-  
23 day period immediately preceding the written notice of  
24 termination to the owner unless the thirty-day limitation is  
25 waived by the owner.

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1           C. If the resident terminates the rental agreement  
2 as prescribed by this section and if the resident is solely or  
3 jointly liable on the rental agreement, the resident is liable  
4 only for rent owed or paid through the date of the lease  
5 termination plus any previous obligations outstanding on that  
6 date. The amount due from the resident shall be paid to the  
7 owner on or before the date the resident vacates the dwelling  
8 unit. If the resident has prepaid rent that would apply for  
9 the month in which the lease is terminated, the owner may  
10 retain the prepaid rent and no refund is due to the resident.  
11 If the resident has paid a security deposit, the owner shall  
12 not withhold the security deposit for the early termination of  
13 the lease if the resident meets the requirements prescribed by  
14 Subsection A of this section, but may withhold the security  
15 deposit for payment of damages that the landlord suffered by  
16 reason of the resident's damage to or failure to maintain the  
17 premises.

18           D. An owner who installs a new lock at the  
19 resident's request may retain a copy of the key that opens the  
20 new lock. Notwithstanding any provision in the rental  
21 agreement, the owner may refuse to provide a key that opens the  
22 new lock to the person named in an order of protection or a  
23 departmental report pursuant to Subsection A of this section.

24           E. An owner shall refuse to provide access to the  
25 dwelling unit to reclaim property to any resident if the

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1 resident is the person named in an order of protection or a  
2 departmental report pursuant to Subsection A of this section  
3 and who has been served with an order of protection naming that  
4 resident as the defendant, and the owner has received a copy of  
5 the order of protection, unless a law enforcement officer  
6 escorts the resident into and out of the dwelling unit.

7 F. A resident who terminates a lease pursuant to  
8 this section and who is convicted of falsely filing a  
9 departmental report or order of protection for domestic  
10 violence or sexual assault is liable to the owner for treble  
11 damages for premature termination of the lease.

12 G. A person named in an order of protection or a  
13 departmental report pursuant to Subsection A of this section  
14 who provokes an early lease termination under this section is  
15 deemed to have interfered with the residential rental agreement  
16 between the owner and resident regardless of whether the person  
17 named in an order of protection or a departmental report  
18 pursuant to Subsection A of this section is a party to the  
19 rental agreement, and the person named in an order of  
20 protection or a departmental report pursuant to Subsection A of  
21 this section may be civilly liable for all economic losses  
22 incurred by an owner and for the domestic violence or sexual  
23 assault early lease termination. This civil liability includes  
24 unpaid rent, early lease termination fees, costs to repair  
25 damage to the premises and any reductions or waivers of rent

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1 previously granted to the resident who was the victim of  
2 domestic violence or sexual assault.

3 H. If there are multiple residents who are parties  
4 to a rental agreement that has been terminated under this  
5 section, the tenancy for those residents also terminates. The  
6 residents who are not the victims of domestic violence or  
7 sexual assault, excluding the person named in an order of  
8 protection or a departmental report pursuant to Subsection A of  
9 this section that caused the termination of the lease pursuant  
10 to this section, may be released from any financial obligations  
11 due under the previously existing rental agreement and the  
12 remaining residents may be allowed to enter into a new lease  
13 with the owner if the residents meet all current application  
14 requirements.

15 I. An emergency order of protection or a protective  
16 order that is issued to a resident of a rental property  
17 automatically applies to the entire residential rental property  
18 in which the resident has a rental agreement."

19 SECTION 3. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2019.