

SENATE BILL 338

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Antoinette Sedillo Lopez

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

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

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

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

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

.218869.1AIC March 10, 2021 (11:15am)

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

underscoring material = new  
[bracketed material] = delete  
Amendments: new = bold, blue, highlight  
delete = bold, red, highlight, strikethrough

OWNER.--

A. Except as provided in the Uniform Owner-Resident Relations Act, if there is noncompliance with Section 47-8-22 NMSA 1978 materially affecting health and safety or upon the initial material noncompliance by the resident with the rental agreement or ~~any~~ a separate agreement, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days.

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

C. The initial notice provided in this section shall state that the rental agreement will terminate upon the

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach. To be effective, [~~any~~] a notice pursuant to this subsection shall be given within thirty days of the breach or knowledge thereof.

D. If rent is unpaid when due and the resident fails to pay rent within three days after written notice from the owner of nonpayment and [~~his~~] the owner's intention to terminate the rental agreement, the owner may terminate the rental agreement and the resident shall immediately deliver possession of the dwelling unit; provided that tender of the full amount due, in the manner stated in the notice, prior to the expiration of the three-day notice shall bar any action for nonpayment of rent.

E. In any court action for possession for nonpayment of rent or other charges where the resident disputes the amount owed because [~~(1)~~] the resident has abated rent pursuant to Section 47-8-27.2 or 47-8-4 NMSA 1978 or [~~(2)~~] the owner has allocated rent paid by the resident as payment for damages to the premises, then, if the owner is the prevailing party, the court shall enter a writ of restitution conditioned upon the right of the resident to remedy within three days of entry of judgment. If the resident has satisfied the judgment within three days, the writ shall be dismissed. If the resident has not satisfied the judgment within three days, the

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

owner may execute upon the writ without further order of the court.

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

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

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

I. If the resident knowingly commits or consents to another person in the dwelling unit or on the premises knowingly committing a substantial violation, the owner shall deliver a written notice to the resident specifying the time, place and nature of the act constituting the substantial violation and that the rental agreement will terminate upon a

.218869.1AIC March 10, 2021 (11:15am)

underscored material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

date not less than three days after receipt of the notice.

J. In any action for possession [~~under~~] pursuant to Subsection I of this section, it shall be a defense that the resident is a victim of domestic violence or of sexual assault. If the resident has filed for or secured a temporary domestic violence restraining order as a result of the incident that is the basis for the termination notice or as a result of a prior incident, the writ of restitution shall not issue. In all other cases [~~where~~] in which domestic violence or sexual assault is raised as a defense, the court shall have the discretion to evict the resident accused of the violation, while allowing the tenancy of the remainder of the residents to continue undisturbed.

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

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

M. In any action for possession [~~under~~] pursuant to Subsection I of this section, if the court finds that the

underscoring material = new  
[bracketed material] = delete  
Amendments: new = bold, blue, highlight  
delete = bold, red, highlight, strikethrough

action was frivolous or brought in bad faith, the petitioner shall be subject to a civil penalty equal to two times the amount of the monthly rent, plus damages and costs."

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

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

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

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

(2) a letter or form from any provider of services for victims of domestic violence or sexual assault that states that the resident is a victim of domestic violence

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

or sexual assault SHPAC→~~in the dwelling unit or on the~~  
~~premises~~←SHPAC .

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

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

.218869.1AIC March 10, 2021 (11:15am)

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

premises.

D. An owner who installs a new lock at the resident's request may retain a copy of the key that opens the new lock. Notwithstanding any provision in the rental agreement, the owner may refuse to provide a key that opens the new lock to the person alleged to have committed domestic violence or sexual assault in an order of protection or a letter or form pursuant to Subsection A of this section.

E. An owner shall refuse to provide access to the dwelling unit to reclaim property to any resident if the resident is the person alleged to have committed domestic violence or sexual assault against another resident in an order of protection or a letter or form pursuant to Subsection A of this section and who has been served with an order of protection naming that resident as the defendant, and the owner has received a copy of the order of protection, unless a law enforcement officer escorts the resident into and out of the dwelling unit.

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

G. A person alleged to have committed domestic violence or sexual assault in an order of protection or a

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight↔  
delete = →bold, red, highlight, strikethrough↔

letter or form pursuant to Subsection A of this section who provokes an early lease termination under this section is deemed to have interfered with the residential rental agreement between the owner and resident regardless of whether the person named in an order of protection or a letter or form pursuant to Subsection A of this section is a party to the rental agreement, and the person named in an order of protection or a letter or form pursuant to Subsection A of this section may be civilly liable for all economic losses incurred by an owner and for the domestic violence or sexual assault early lease termination. This civil liability includes unpaid rent, early lease termination fees, costs to repair damage to the premises and any reductions or waivers of rent previously granted to the resident who was the victim of domestic violence or sexual assault.

H. If there are multiple residents who are parties to a rental agreement that has been terminated under this section, the tenancy for those residents also terminates. The residents who are not the victims of domestic violence or sexual assault, excluding the person alleged to have committed domestic violence or sexual assault in an order of protection or a letter or form pursuant to Subsection A of this section that caused the termination of the lease pursuant to this section, may be released from any financial obligations due under the previously existing rental agreement and the

.218869.1AIC March 10, 2021 (11:15am)

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

remaining residents may be allowed to enter into a new lease with the owner if the residents meet all current application requirements.

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

**SECTION 3. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2021.

- 10 -