New Mexico Uniform Owner Resident Relations Act Amended 2025

Presented by: One Stop Real Estate Education

CHAPTER 47 – Property Law

ARTICLE 8 - Owner-Resident Relations

47-8-1. Short title.

Sections 47-8-1 through 47-8-51 [47-8-52] NMSA 1978 may be cited as the "Uniform Owner-Resident Relations Act".

History: 1953 Comp., § 70-7-1, enacted by Laws 1975, ch. 38, § 1; 1995, ch. 195, § 1.

ANNOTATIONS

Cross references. — For provisions on human rights, *see* 28-1-1 NMSA 1978 et seq.

The 1995 amendment, effective July 1, 1995, substituted "Sections 47-8-1 to 47-8-51 NMSA 1978" for "Sections 1 through 52 of this act [47-8-1 to 47-8-51 NMSA 1978]".

Uniform Owner-Resident Relations Act. — Laws 1975, ch. 38, §§ 1 to 51 appear as 47-8-1 to 47-8-51 NMSA 1978. Section 52 of that act is an uncodified severability provision. Additionally, Laws 1989, ch. 253, § 3 enacted 47-8-52 NMSA 1978 as part of the Uniform Owner-Resident Relations Act. The bracketed material was inserted by the compiler; it was not enacted by the legislature, and it is not part of the law.

Article is remedial and in derogation of common law. Its application must be liberally construed. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

For article, "Survey of New Mexico Law, 1982-83: Property Law," see 14 N.M.L. Rev. 189 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Inability to obtain license, permit, or charter required for tenant's business as defense to enforcement of lease, 89 A.L.R.3d 329.

Children's day-care use as violation of restrictive covenant, 29 A.L.R.4th 730.

Sufficiency as to method of giving oral or written notice exercising option to renew or extend lease, 29 A.L.R.4th 903.

What constitutes timely notice of exercise of option to renew or extend lease, 29 A.L.R.4th 956.

Sufficiency as to parties giving or receiving notice of exercise of option to renew or extend lease, 34 A.L.R.4th 857.

Death of lessee as terminating lease, 42 A.L.R.4th 963.

Express or implied restriction on lessee's use of residential property for business purposes, 46 A.L.R.4th 496.

Strict liability of landlord for injury or death of tenant or third person caused by defect in premises leased for residential use, 48 A.L.R.4th 638.

Air-conditioning appliance, equipment, or apparatus as fixture, 69 A.L.R.4th 359.

Implied warranty of fitness or suitability in commercial leases - modern status, 76 A.L.R.4th 928.

Provision in lease as to purpose for which premises are to be used as excluding other uses, 86 A.L.R.4th 259.

Landlord's liability to third person for injury resulting from attack off leased premises by dangerous or vicious animal kept by tenant, 89 A.L.R.4th 374.

Coverage of leases under state consumer protection statutes, 89 A.L.R.4th 854.

Landlord's liability for failure to protect tenant from criminal acts of third person, 43 A.L.R.5th 207.

Landlord's liability to third party for repairs authorized by tenant, 46 A.L.R.5th 1.

Apportionment of liability between landowners and assailants for injuries to crime victims, 54 A.L.R.5th 379.

Liability of landlord for injury or death occasioned by swimming pool maintained for tenants, 62 A.L.R.5th 475.

47-8-2. Purpose.

The purpose of the Uniform Owner-Resident Relations Act is to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of owner and resident, and to encourage the owners and the residents to maintain and improve the quality of housing in New Mexico.

History: 1953 Comp., § 70-7-2, enacted by Laws 1975, ch. 38, § 2.

ANNOTATIONS

Cross reference. — For the Mobile Home Park Act, *see* 47-10-1 NMSA 1978.

Acts linked. — Although the Uniform Owner-Resident Relations Act governs the rights and obligations of owners and residents of "dwelling units", and the Mobile Home Park Act [Section 47-10-1 NMSA 1978 et seq.], governs tenancy in a "mobile home park", the legislature has linked the two acts in that the latter provides that an action for termination shall be commenced and prosecuted in the manner described in the former. *Martinez v. Sedillo*, 2005-NMCA-029, 137 N.M. 103, 107 P.3d 543.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-3. Definitions.

As used in the Uniform Owner-Resident Relations Act:

A. “abandonment" means absence of the resident from the dwelling, without notice to the owner, in excess of seven continuous days; providing such absence occurs only after rent for the dwelling unit is delinquent;

B. “action" includes recoupment, counterclaim, set-off, suit in equity and any other proceeding in which rights are determined, including an action for possession;

C. “amenity" means a facility appurtenance or area supplied by the owner and the absence of which would not materially affect the health and safety of the resident or the habitability of the dwelling unit;

D. “applicant" means a person who submits an application to rent a dwelling unit to the owner or who agrees to act as a guarantor or cosigner on a rental agreement;

E. “codes" includes building codes, housing codes, health and safety codes, sanitation codes and any law, ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy or use of a dwelling unit;

F. “deposit" means an amount of currency or instrument delivered to the owner by the resident as a pledge to abide by terms and conditions of the rental agreement;

G. “dwelling unit" means a structure, mobile home or the part of a structure, including a hotel or motel, that is used as a home, residence or sleeping place by one person who maintains a household

or by two or more persons who maintain a common household and includes a parcel of land leased by its owner for use as a site for the parking of a mobile home;

H. “eviction" means any action initiated by the owner to regain possession of a dwelling unit and use of the premises pursuant to the terms of the Uniform Owner-Resident Relations Act;

I. “fair rental value" is that value that is comparable to the value established in the market place;

J. “good faith" means honesty in fact in the conduct of the transaction concerned as evidenced by all surrounding circumstances;

K. “normal wear and tear" means deterioration that occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident, abuse or intentional damage of the premises, equipment or chattels of the owner by the residents or by any other person in the dwelling unit or on the premises with the resident's consent; however, uncleanliness does not constitute normal wear and tear;

L. “organization" includes a corporation, government, governmental subdivision or agency thereof, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity;

M. “owner" means one or more persons, jointly or severally, in whom is vested:

(1) all or part of the legal title to property, but shall not include the limited partner in an association regulated pursuant to the Uniform Limited Partnership Act [repealed]; or

(2) all or part of the beneficial ownership and a right to present use and enjoyment of the premises and agents thereof and includes a mortgagee in possession and the lessors, but shall not include a person or persons, jointly or severally, who as owner leases the entire premises to a lessee of vacant land for apartment use;

N. “person" includes an individual, corporation, entity or organization;

O. “premises" means facilities, facilities and appurtenances, areas and other facilities held out for use of the resident or whose use is promised to the resident coincidental with occupancy of a dwelling unit;

P. “rent" means payments in currency or in-kind pursuant to terms and conditions of the rental agreement for use of a dwelling unit or premises, to be made to the owner by the resident, but does not include deposits;

Q. “rental agreement" means all agreements between an owner and resident and valid rules and regulations adopted under Section 47-8-23 NMSA 1978 embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises;

R. “resident" means a person entitled pursuant to a rental agreement to occupy a dwelling unit in peaceful possession to the exclusion of others and includes the owner of a mobile home renting premises, other than a lot or parcel in a mobile home park, for use as a site for the location of the mobile home;

S. “roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility in a structure where one or more major facilities are used in common by occupants of the dwelling units. As referred to in this subsection, "major facility", in the case of a bathroom, means toilet and either a bath or shower and, in the case of a kitchen, means refrigerator, stove or sink;

T. “screening fee" means a one-time charge that is charged to an applicant by an owner to recoup the owner's cost of purchasing a consumer credit report or reference check or the assistance of a screening service to validate, review or otherwise process an application for renting a dwelling unit;

U. “single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit;

V. “substantial violation" means a violation of the rental agreement or rules and regulations by the resident or occurring with the resident's consent that occurs in the dwelling unit, on the premises or within three hundred feet of the premises and that includes the following conduct, which shall be the sole grounds for a substantial violation:

(1) possession, use, sale, distribution or manufacture of a controlled substance, excluding misdemeanor possession and use;

(2) unlawful use of a deadly weapon;

(3) unlawful action causing serious physical harm to another person;

(4) sexual assault or sexual molestation of another person;

(5) entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;

(6) theft or attempted theft of the property of another person by use or threatened use of force; or

(7) intentional or reckless damage to property in excess of one thousand dollars ($1,000);

W. “term" is the period of occupancy specified in the rental agreement; and

X. “transient occupancy" means occupancy of a dwelling unit for which rent is paid on less than a weekly basis or where the resident has not manifested an intent to make the dwelling unit a residence or household.

History: 1953 Comp., § 70-7-3, enacted by Laws 1975, ch. 38, § 3; 1977, ch. 55, § 1; 1983, ch. 122, § 18; 1985, ch. 146, § 1; 1989, ch. 340, § 1; 1995, ch. 195, § 2; 1997, ch. 39, § 1; 1999, ch. 91, § 1; 2025, ch. 122, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2007, ch. 129, § 1206 repealed the Uniform Limited Partnership Act, effective January 1,

2009. For comparable provisions, *see* the Uniform Revised Limited Partnership Act, Chapter 54, Article 2A NMSA 1978.
Cross references. — For the Mobile Home Park Act, *see* 47-10-1 NMSA 1978.
The 2025 amendment, effective June 20, 2025, defined the terms "applicant" and "screening fee" as used in the Uniform Owner-Resident Relations Act; added new Subsection D and redesignated former Subsections D through R as Subsections E through S, respectively; and added new Subsection T and redesignated former Subsections S through V as Subsections U through X, respectively.
The 1999 amendment, effective June 18, 1999, added present Subsection C, and redesignated the subsequent subsections accordingly; deleted "written" following "means all" in Subsection P; and rewrote Subsection T.
The 1997 amendment, effective June 20, 1997, substituted "in excess of seven continuous days" for "for one full rental period or in excess of seven days, whichever is less" in Subsection A, deleted "other than a mobile home lot" following "land" in Subsection E, and made stylistic changes in Subsection S.
The 1995 amendment, effective July 1, 1995, deleted "as referred to in the Uniform Owner-Resident Relations Act" preceding "includes" in Subsection C; inserted "including a hotel or motel" following "part of a structure" in Subsection E; in Subsection I, substituted "that" for "which" and substituted "residents or any other person in the dwelling unit or on the premises with the resident's consent" for "tenant, members of the tenant's household or by his invitees or guests"; substituted "the Uniform Limited Partnership Act" for "Sections 54-2-1 through 54-2-30 NMSA 1978" in Paragraph (1) of Subsection K; inserted "corporation, entity" in Subsection L; added Subsection S, redesignated former Subsection S as Subsection T; added Subsection U; and made minor stylistic changes throughout the section.
The 1989 amendment, effective June 16, 1989, in Subsection O, substituted "all written agreements" for "all agreements written or oral".
The 1985 amendment added Subsection I and redesignated former Subsections I through R as Subsections J through S, respectively.
The 1983 amendment inserted "other than a mobile home lot" in Subsection E, deleted "or of vacant land for a mobile home park or court" at the end of Paragraph (2) of Subsection J and inserted "other than a lot or parcel in a mobile home park" in Subsection O.
Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).
Am. Jur. 2d, A.L.R. and C.J.S. references. — Recovery of expected profits lost by lessor's breach of lease, 92 A.L.R.3d 1286.
What constitutes abandonment of residential or commercial lease - modern cases, 84 A.L.R.4th 183.

47-8-4. Principles of law and equity.

Unless displaced by the provisions of the Uniform Owner-Resident Relations Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, equitable abatement, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions.

History: 1953 Comp., § 70-7-4, enacted by Laws 1975, ch. 38, § 4; 1995, ch. 195, § 3.

ANNOTATIONS
The 1995 amendment, effective July 1, 1995, inserted "equitable abatement" near the middle of the section.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).
Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 17.
Farmland cultivation arrangement as creating status of landlord-tenant or landowner-cropper, 95 A.L.R.3d 1013.

47-8-5. General act.

The Uniform Owner-Resident Relations Act being a general act is intended as a unified coverage of its subject matter, and no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History: 1953 Comp., § 70-7-5, enacted by Laws 1975, ch. 38, § 5.

ANNOTATIONS
Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 2.

47-8-6. Recovery of damages.

A. The remedies provided by the Uniform Owner-Resident Relations Act shall be so administered that the aggrieved party may recover damages as provided in the Uniform Owner-Resident Relations Act. The aggrieved party has a duty to mitigate damages.

B. Any right or obligation declared by the Uniform Owner-Resident Relations Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: 1953 Comp., § 70-7-6, enacted by Laws 1975, ch. 38, § 6.

ANNOTATIONS
Cross references. — For inapplicability of general forcible entry or detainer provisions to actions by landlord, *see* 35-10-2 NMSA 1978.
Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).
Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Development § 17.
Right and duty of lessor of advertising space to relet in order to minimize damages from lessee's breach, 35 A.L.R. 1536.
Recovery of expected profits lost by lessor's breach of lease, 92 A.L.R.3d 1286.
Tenant's recovery of damages for emotional distress under Uniform Residential Landlord and Tenant Act, 6 A.L.R.4th 528.
What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.
Respective rights in excess rent when landlord relets at higher rent during lessee's term, 50 A.L.R.4th 403.
Landlord's duty, on tenant's failure to occupy, or abandonment of, premises, to mitigate damages by accepting or procuring another tenant, 75 A.L.R.5th 1.
51C C.J.S. Landlord and Tenant §§ 247(2), 250(2).

47-8-7. Provision for agreement.

A claim or right arising under the Uniform Owner-Resident Relations Act or on a rental agreement may be settled by agreement.

History: 1953 Comp., § 70-7-7, enacted by Laws 1975, ch. 38, § 7.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant §§ 77, 690.

47-8-8. Rights, obligations and remedies.

The Uniform Owner-Resident Relations Act applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History: 1953 Comp., § 70-7-8, enacted by Laws 1975, ch. 38, § 8.

ANNOTATIONS

Cross references. — For inapplicability of forcible entry or detainer provisions, *see* 35-10-2 NMSA 1978.

For landlord's lien on tenant's personalty, *see* 48-3-5 and 48-3-6 NMSA 1978.

Magistrate court had subject matter jurisdiction when it decided claim for possession. — Where the parties entered into a lease option contract pursuant to which plaintiff agreed to lease and defendant agreed to rent a residential property in Vanderwagen, New Mexico for sixty months, and where the lease option contract included an option to purchase the residence at any time during the contract's terms, and where defendant paid plaintiff $10,000 that defendant claimed to be a down payment toward the purchase price of the property but which was not mentioned in the lease option contract, and where defendant stopped making monthly payments on the property after two years, and where plaintiff filed a petition for restitution seeking possession of the property in magistrate court, and where the magistrate court granted the writ of restitution and awarded damages, past-due rent, and attorney fees, and where, on appeal, defendant claimed that the magistrate court did not have subject matter jurisdiction because defendant was not occupying the property pursuant to a rental agreement but pursuant to a contract for the sale of the real property, the magistrate court did not err in exercising jurisdiction because the plain language of the parties' lease option contract demonstrates that the parties entered into a rental agreement as defined in NMSA 1978 § 47-8-3 and subject to the Uniform Owner-Resident Relations Act (UORRA), and the plain language of NMSA 1978 § 47-8-10(A) demonstrates that the legislature has endowed magistrate courts with subject matter jurisdiction over claims arising from any conduct in this state governed by the UORRA or with respect to any claim arising from a transaction subject to UORRA for a dwelling located within its jurisdictional boundaries. *White v. Farris*, 2021-NMCA-014.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Development § 17.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

Specificity of description of premises as affecting enforceability of lease, 73 A.L.R.4th 236.

47-8-9. Exemptions.

Unless created to avoid the application of the Uniform Owner-Resident Relations Act, the following arrangements are exempted by that act:

A. residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, counseling, religious, educational when room and board are an entity or similar service;

B. occupancy under a contract of sale of a dwelling unit or the property of which it is part, if the occupant is the purchaser or a person who succeeds to his interest;

C. occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

D. transient occupancy in a hotel or motel;

E. occupancy by an employee of an owner pursuant to a written rental or employment agreement that specifies the employee's right to occupancy is conditional upon employment in and about the premises; and

F. occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

History: 1953 Comp., § 70-7-9, enacted by Laws 1975, ch. 38, § 9; 1995, ch. 195, § 4.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "that" for "which" in the introductory sentence, and substituted "pursuant to a written rental or employment agreement that specifies the employee's" for "whose" in Subsection E.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-10. Judicial jurisdiction.

A. The district or magistrate court of this state may exercise jurisdiction over any person with respect to any conduct in this state governed by the Uniform Owner-Resident Relations Act or with respect to any claim arising from a transaction subject to this act for a dwelling unit located within its jurisdictional boundaries. In addition to any other method provided by rule or by statute, personal jurisdiction over a person may be acquired in a civil action or proceeding instituted in the district or magistrate court by the service of process in the manner provided by this section.

B. If a person is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by the Uniform Owner-Resident Relations Act, or engages in a transaction subject to this act, he may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and shall be filed with the secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but service upon him is not effective unless the plaintiff or petitioner immediately mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable

address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

History: 1953 Comp., § 70-7-10, enacted by Laws 1975, ch. 38, § 10.

ANNOTATIONS

Magistrate court had subject matter jurisdiction when it decided claim for possession. — Where the parties entered into a lease option contract pursuant to which plaintiff agreed to lease and defendant agreed to rent a residential property in Vanderwagen, New Mexico for sixty months, and where the lease option contract included an option to purchase the residence at any time during the contract's terms, and where defendant paid plaintiff $10,000 that defendant claimed to be a down payment toward the purchase price of the property but which was not mentioned in the lease option contract, and where defendant stopped making monthly payments on the property after two years, and where plaintiff filed a petition for restitution seeking possession of the property in magistrate court, and where the magistrate court granted the writ of restitution and awarded damages, past-due rent, and attorney fees, and where, on appeal, defendant claimed that the magistrate court did not have subject matter jurisdiction because defendant was not occupying the property pursuant to a rental agreement but pursuant to a contract for the sale of the real property, the magistrate court did not err in exercising jurisdiction because the plain language of the parties' lease option contract demonstrates that the parties entered into a rental agreement as defined in NMSA 1978 § 47-8-3 and subject to the Uniform Owner-Resident Relations Act (UORRA), and the plain language of NMSA 1978 § 47-8-10(A) demonstrates that the legislature has endowed magistrate courts with subject matter jurisdiction over claims arising from any conduct in this state governed by the UORRA or with respect to any claim arising from a transaction subject to UORRA for a dwelling located within its jurisdictional boundaries. *White v. Farris*, 2021-NMCA-014.

District court had subject matter jurisdiction over Plaintiff's claim for damages pursuant to its original jurisdiction. — Where the parties entered into a lease option contract pursuant to which plaintiff agreed to lease and defendant agreed to rent a residential property in Vanderwagen, New Mexico for sixty months, and where the lease option contract included an option to purchase the residence at any time during the contract's terms, and where defendant paid plaintiff $10,000, which was not mentioned in the lease option contract but which defendant claimed to be a down payment toward the purchase price of the property, and where defendant stopped making monthly payments on the property after two years, and where plaintiff filed a petition for restitution seeking possession of the property in magistrate court, and where the magistrate court granted the writ of restitution and awarded damages, past-due rent, and attorney fees, and where, on de novo appeal, the district court ruled in plaintiff's favor on all issues and awarded plaintiff back-rent, damages over $10,000, and attorney fees, and where defendant argued that the district court did not have subject matter jurisdiction, arguing that the grant of authority to magistrate courts would have prevented the district court, on de novo appeal, from awarding more than $10,000 in damages, the district court did not err in exercising jurisdiction because the district court decided plaintiff's claim for damages pursuant to its original jurisdiction and therefore any limits on the district court's de novo appellate jurisdiction did not apply here. *White v. Farris,* 2021-NMCA-014.

47-8-11. Obligation of good faith.

Every duty under the Uniform Owner-Resident Relations Act and every act which must be performed as a condition precedent to the exercise of a right or remedy under the Uniform Owner-Resident Relations Act imposes an obligation of good faith in its performance or enforcement.

History: 1953 Comp., § 70-7-11, enacted by Laws 1975, ch. 38, § 11.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 109 et seq.

When lessor may withhold consent under unqualified provision in lease prohibiting assignment or subletting of leased premises without lessor's consent, 21 A.L.R.4th 188.

51C C.J.S. Landlord and Tenant § 2(1).

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, divided Subsection B to form Subsection C; in Subsection C, substituted "where written notice to the owner is required, when" for "in the case of the owner", and inserted "mailed or otherwise" preceding "delivered" in Paragraph (2), substituted "if written notice to the resident is required, when" for "in the case of the resident" in Paragraph (3); added Subsections D and F; and redesignated former Subsection C as Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of tenant holding over after termination of definite term to notice to quit, 19 A.L.R. 1405, 156 A.L.R. 1310.

Notice by landlord of change in rent or other modification of tenancy as affecting rights and liabilities incident to tenant's holding over after expiration of term or rent period or time fixed by notice, 109 A.L.R. 197.

Sufficiency as to parties giving or receiving notice of exercise of option to renew or extend lease, 34 A.L.R.4th 857.

47-8-12. Inequitable agreement provision.

A. If the court, as a matter of law, finds that any provision of a rental agreement was inequitable when made, the court may limit the application of such inequitable provisions to avoid an inequitable result.

B. If inequitability is put into issue by a party to the rental agreement, the parties to the rental agreement shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement, or settlement, to aid the court in making determination.

History: 1953 Comp., § 70-7-12, enacted by Laws 1975, ch. 38, § 12.

ANNOTATIONS

Purpose of section. — This section modifies common-law principles by allowing the court to make a determination of the underlying fairness of the rental agreement when made and allowing selective enforcement of the contract to bring about an equitable result. *Ramirez-Eames v. Hover*, 1989-NMSC-038, 108 N.M. 520, 775 P.2d 722.

Review on appeal. — The determination of whether a rental agreement is inequitable should not be made de novo on review. Appellate courts should not be de novo courts of equity in landlord-tenant disputes. *Ramirez-Eames v. Hover*, 1989-NMSC-038, 108 N.M. 520, 775 P.2d 722.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Application of usury laws to transactions characterized as "leases," 94 A.L.R.3d 640.

47-8-13. Service of notice.

A. A person has notice of a fact if:

(1) he has actual knowledge of it;

(2) he has received a notice or notification of it; or

(3) from all facts and circumstances known to him at the time in question he has reason to know that it exists.

B. A person notifies or gives a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course, whether or not the other actually comes to know of it.

C. A person receives a notice or notification:

(1) when it comes to his attention;

(2) where written notice to the owner is required, when it is mailed or otherwise delivered at the place of business of the owner through which the rental agreement was made or at any place held out by him as the place for receipt of the communication; or

(3) if written notice to the resident is required, when it is delivered in hand to the resident or mailed to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last known place of residence.

D. Notwithstanding any other provisions of this section, notice to a resident for nonpayment of rent shall be effective only when hand delivered or mailed to the resident or posted on an exterior door of the dwelling unit. In all other cases where written notice to the resident is required, even if there is a notice by posting, there must also be a mailing of the notice by first class mail or hand delivery of the notice to the resident. The date of a posting shall be included in any notice posted, mailed or hand delivered, and shall constitute the effective date of the notice. A posted notice shall be affixed to a door by taping all sides or placed in a fixture or receptacle designed for notices or mail.

E. Notice, knowledge or a notice or notification received by the resident or person is effective for a particular transaction from the time it is brought to the attention of the resident or person conducting that transaction, and in any event from the time it would have been brought to the resident's or person's attention if the resident or person had exercised reasonable diligence.

F. Where service of notice is required under the Uniform Owner-Resident Relations Act, and the item is mailed but returned as undeliverable, or where the last known address is the vacated dwelling unit, the owner shall serve at least one additional notice if an alternative address has been provided to the owner by the resident.

History: 1953 Comp., § 70-7-13, enacted by Laws 1975, ch. 38, § 13; 1995, ch. 195, § 5.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, divided Subsection B to form Subsection C; in Subsection C, substituted "where written notice to the owner is required, when" for "in the case of the owner", and inserted "mailed or otherwise" preceding "delivered" in Paragraph (2), substituted "if

written notice to the resident is required, when" for "in the case of the resident" in Paragraph (3); added Subsections D and F; and redesignated former Subsection C as Subsection E.
Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of tenant holding over after termination of definite term to notice to quit, 19 A.L.R. 1405, 156 A.L.R. 1310.
Notice by landlord of change in rent or other modification of tenancy as affecting rights and liabilities incident to tenant's holding over after expiration of term or rent period or time fixed by notice, 109 A.L.R. 197.
Sufficiency as to parties giving or receiving notice of exercise of option to renew or extend lease, 34 A.L.R.4th 857.

47-8-14. Terms and conditions of agreement.

The owner and resident may include in a rental agreement terms and conditions not prohibited by the Uniform Owner-Resident Relations Act or other rule of law including rent, term of the agreement or other provisions governing the rights and obligations of the parties.

History: 1953 Comp., § 70-7-14, enacted by Laws 1975, ch. 38, § 14.

ANNOTATIONS
Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).
Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 45 et seq.
Application of usury laws to transactions characterized as "leases," 94 A.L.R.3d 640.
Sufficiency of provision of lease to effect second or perpetual right of renewal, 29 A.L.R.4th 172.
51C C.J.S. Landlord and Tenant §§ 235 to 243.

47-8-15. Payment of rent.

A. The resident shall pay rent in accordance with the rental agreement. In the absence of an agreement, the resident shall pay as rent the fair rental value for the use of the premises and occupancy of the dwelling unit.

B. Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit. Unless otherwise agreed, periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each monthly period. The date of one month to the same date of the following month shall constitute a term of one month.

C. Unless the rental agreement fixes a definite term, the residency is week-to-week in the case of a person who pays weekly rent and in all other cases month-to-month.

D. If the rental agreement provides for the charging of a late fee and if the resident does not pay rent in accordance with the rental agreement, the owner may charge the resident a late fee in an amount not to exceed five percent of the rent for each rental period that the resident is in default. Late fees shall be calculated only based on rent. Rent calculations to determine late fees shall not include deposits, additional fees or utilities. To assess a late fee, the owner shall provide notice of the late fee charged no later than the last day of the next rental period immediately following the period in which the default occurred.

E. An owner may not assess a fee from the resident for occupancy of the dwelling unit by a reasonable number of guests for a reasonable length of time. This shall not preclude charges for use of premises or facilities other than the dwelling unit by guests.

F. An owner may increase the rent payable by the resident in a month-to-month residency by providing written notice to the resident of the proposed increase at least thirty days prior to the periodic rental date specified in the rental agreement or, in the case of a fixed term residency, at least thirty days prior to the end of the term. In the case of a periodic residency of less than one month, written notice shall be provided at least one rental period in advance of the first rental payment to be increased.

G. Unless agreed upon in writing by the owner and the resident, a resident's payment of rent may not be allocated to any deposits or damages.

History: 1953 Comp., § 70-7-15, enacted by Laws 1975, ch. 38, § 15; 1995, ch. 195, § 6; 2025, ch. 122, § 6.

ANNOTATIONS

The 2025 amendment, effective June 20, 2025, reduced the maximum amount that an owner may charge a resident for a late fee, and provided that late fees can be calculated only based on rent; in Subsection D, after "not to exceed" changed "ten" to "five", and after "default" added "Late fees shall be calculated only based on rent. Rent calculations to determine late fees shall not include deposits, additional fees or utilities".

The 1995 amendment, effective July 1, 1995, inserted "the" preceding "case" in Subsection C, and added Subsections D to G.

Notice of late fees required. — Landlords failed to give notice of late fees in any month in which they claimed they intended to collect late fees; as such, the trial court did not err in ruling that the landlords were not entitled to collect late fees because they did not comply with the New Mexico Uniform Owner-Resident Relations Act. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 711 et seq.

Inability to obtain license, permit, or charter required for tenant's business as defense to enforcement of lease, 89 A.L.R.3d 329.

52 C.J.S Landlord and Tenant §§ 534 to 546.

47-8-16. Waiver of rights prohibited.

No rental agreement may provide that the resident or owner agrees to waive or to forego rights or remedies under the law.

History: 1953 Comp., § 70-7-16, enacted by Laws 1975, ch. 38, § 16.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-17. Unlawful agreement provision.

If an owner deliberately uses a rental agreement containing provisions known by him to be prohibited by law, the resident may recover damages sustained by him resulting from application of the illegal provision and reasonable attorney's fees.

History: 1953 Comp., § 70-7-17, enacted by Laws 1975, ch. 38, § 17.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Application of usury laws to transactions characterized as "leases," 94 A.L.R.3d 640.
51C C.J.S. Landlord and Tenant § 304.

47-8-18. Deposits.

A. An owner is permitted to demand from the resident a reasonable deposit to be applied by the owner to recover damages, if any, caused to the premises by the resident during his term of residency.

(1) Under the terms of an annual rental agreement, if the owner demands or receives of the resident such a deposit in an amount greater than one month's rent, the owner shall be required to pay to the resident annually an interest equal to the passbook interest permitted to savings and loan associations in this state by the federal home loan bank board on such deposit.

(2) Under the terms of a rental agreement of a duration less than one year, an owner shall not demand or receive from the resident such a deposit in an amount in excess of one month's rent.

B. It is not the intention of this section to include the last month's prepaid rent, which may be required by the rental agreement as a deposit as defined in Subsection D [E] of Section 47-8-3 NMSA 1978. Any deposit as defined in Paragraph (1) of Subsection A of this section shall not be construed as prepaid rent.

C. Upon termination of the residency, property or money held by the owner as deposits may be applied by the owner to the payment of rent and the amount of damages which the owner has suffered by reason of the resident's noncompliance with the rental agreement or Section 47-8-22 NMSA 1978. No deposit shall be retained to cover normal wear and tear. In the event actual cause exists for retaining any portion of the deposit, the owner shall provide the resident with an itemized written list of the deductions from the deposit and the balance of the deposit, if any, within thirty days of the date of termination of the rental agreement or resident departure, whichever is later. The owner is deemed to have complied with this section by mailing the statement and any payment required to the last known address of the resident. Nothing in this section shall preclude the owner from retaining portions of the deposit for nonpayment of rent or utilities, repair work or other legitimate damages.

D. If the owner fails to provide the resident with a written statement of deductions from the deposit and the balance shown by the statement to be due, within thirty days of the termination of the tenancy, the owner:

(1) shall forfeit the right to withhold any portion of the deposit;

(2) shall forfeit the right to assert any counterclaim in any action brought to recover that deposit;

(3) shall be liable to the resident for court costs and reasonable attorneys' fees; and

(4) shall forfeit the right to assert an independent action against the resident for damages to the rental property.

E. An owner who in bad faith retains a deposit in violation of this section is liable for a civil penalty in the amount of two hundred fifty dollars ($250) payable to the resident.

History: 1953 Comp., § 70-7-18, enacted by Laws 1975, ch. 38, § 18; 1985, ch. 146, § 2; 1989, ch. 340, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Subsection D of 47-8-3 NMSA 1978 was redesignated Subsection E by Laws 1999, ch. 99, § 1.

The 1989 amendment, effective June 16, 1989, in Subsection D, added Paragraph (4); and added Subsection E.

The 1985 amendment substituted "Section 47-8-3 NMSA 1978" for "Section 3 of the Uniform Owner-Resident Regulations Act" at the end of the first sentence and inserted "of Subsection A" following "Paragraph (1)" in the second sentence of Subsection B, substituted "Section 47-8-22 NMSA 1978" for "Section 22 of the Uniform Owner-Resident Relations Act" at the end of the first sentence, deleted the former second sentence, relating to delivering the balance of the deposit and prepaid rent to the resident, and added the second, third, and fourth sentences of Subsection C and deleted the former provisions of Subsection D which read as set out in the 1982 Replacement Pamphlet.

Duty to provide list of damages. — When the landlord failed to provide her tenant with an itemized list of damage deductions as required by Subsection C, she forfeited her right to withhold any portion of the deposit or to file suit for damages as provided by Subsection D, and the tenant was entitled to an award of attorney's fees. *Garcia v. Thong*, 1995-NMSC-030, 119 N.M. 704, 895 P.2d 226.

Landlord was not prohibited from filing an action for previously unidentified damages to rental property. — Where tenants signed a lease agreement with landlord to rent the subject property for a term of sixteen months, and where the parties subsequently agreed to end the lease several months early, and where landlord sent tenants an accounting that itemized deductions from tenants' damage deposit, and where tenants filed a complaint contesting the amount landlord deducted from their damage deposit and landlord filed a cross-claim stating that she was entitled to additional damages beyond those itemized in the deductions, and where tenants claimed that, 47-8-18(C) and 47-8-18(D) NMSA 1978 require a landlord to provide a tenant with an itemized listing of all damages to property within thirty days of the date the lease ends, and any claim for damages not then identified is forfeited, the district court did not err in rejecting tenants' argument, because the plain language of 47-8-18(C) and 47-8-18(D) NMSA 1978 establishes that only if a landlord fails to identify and itemize all deductions from a tenant's damage deposit and send the remaining balance, if any, to the tenant within thirty days, do they forfeit the right to assert any counterclaim in any action brought to recover the deposit. The landlord in this case fully complied with 47-8-18(C) and 47-8-18(D) NMSA 1978, and therefore was not prohibited from filing the cross-claim for damages to her property. *Stodgell v. Weissman*, 2025-NMCA-003, cert. denied.

Itemization not required when deposit used to cover deficient rent. — A landlord was entitled to apply the security deposit to the tenant's deficient rent payment without sending a written itemization. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

Unreasonable deposit. — The tenants' $50,000 was not a security deposit, and therefore there could be no interest due on it and no conversion as a matter of law; a deposit under the statute was required to be reasonable and most deposits were limited to one month's rent, or, if not, be somewhat greater, but not by a multiple of 32. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).
Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 119 et seq.
Landlord and tenant: violation of statute or ordinance requiring landlord to furnish specified facilities or services as ground of liability for injury resulting from tenant's attempt to deal with deficiency, 63 A.L.R.4th 883.
Landlord-tenant security deposit legislation, 63 A.L.R.4th 901.
52 C.J.S. Landlord and Tenant §§ 472(1) to 476.

47-8-19. Owner disclosure.

A. The owner or any person authorized to enter into a rental agreement on his behalf shall disclose to the resident in writing at or before the commencement of the residency the name, address and telephone number of:

(1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

B. The information required to be furnished by this section shall be kept current, and this section extends to and is enforceable against any successor, owner or manager.

C. A person designated under Paragraph (2) of Subsection A of this section becomes an agent of each person who is an owner for the purpose of service of process and receiving and receipting for notices and demands. A person designated under Paragraph (1) of Subsection A of this section becomes an agent of each person who is an owner for the purpose of performing the obligations of the owner under the Uniform Owner-Resident Relations Act and under the rental agreement.

D. Failure of the owner to comply with this section shall relieve the resident from the obligation to provide notice to the owner as required by the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-19, enacted by Laws 1975, ch. 38, § 19; 1995, ch. 195, § 7.

ANNOTATIONS

Cross references. — For the Real Estate Disclosure Act, *see* 47-13-1 NMSA 1978.
The 1995 amendment, effective July 1, 1995, substituted "name, address and telephone number" for "name and address" in Subsection A, and added Subsection D.
Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).
Am. Jur. 2d, A.L.R. and C.J.S. references. — 51C C.J.S. Landlord and Tenant § 307.

47-8-19.1. Owner disclosure to applicants.

An owner shall disclose to applicants in plain language all costs of a rental agreement in a published listing of the dwelling unit, including the base rent that will be assessed and a description of all fees or charges that will be assessed during the residency, which shall be itemized and readily identifiable in the listing. An owner shall not be liable for violating the provisions of the Uniform Owner-Resident Relations Act for a third-party website's failure to represent all costs provided by the owner.

History: Laws 2025, ch. 122, § 2.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 122 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

47-8-19.2. Dwelling unit applicant screening fee; prohibited fees.

A. An owner may charge an applicant a screening fee that shall not exceed fifty dollars ($50.00) to cover the cost of obtaining information about the applicant, including the cost of a consumer credit report, a reference check or a screening service; provided that the owner:

(1) provides the applicant with written or digital notice of the screening fee and the applicant agrees in writing to pay the screening fee;

(2) shall not charge the applicant a screening fee when the owner knows or should know that a dwelling unit is not available for rent at that time or will not be available at the beginning of the residency;

(3) provides the applicant with a written or digital receipt for the screening fee paid by the applicant;

(4) shall place a hold on a credit card or wait to deposit cash or checks for an applicant's screening fee until all prior applicants have either been screened and rejected or offered the dwelling unit and declined to enter into a rental agreement; and

(5) shall not charge any other fees to process an application.

B. An owner shall return the screening fee within thirty calendar days to an applicant if:

(1) a prior applicant is offered the dwelling unit and agrees to enter into a rental agreement; or

(2) the owner does not:

(a) obtain a consumer credit report;

(b) perform a reference check;

(c) use a screening service to obtain information about the applicant; or

(d) process the application.

C. A screening fee that is returned as provided in Subsection B of this section shall be:

(1) returned by certified mail;

(2) destroyed upon the applicant's request if paid by check; or

(3) made available for the applicant to retrieve.

History: Laws 2025, ch. 122, § 3.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 122 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

47-8-19.3. Background checks.

A. An owner may require a background check of an applicant before entering a rental agreement. An owner shall not charge more than one screening fee to the same applicant if the screening was completed within ninety calendar days of the application date for any properties under the same ownership.

B. An owner shall provide the applicant with a copy of any reports used to screen the applicant.

History: Laws 2025, ch. 122, § 4.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 122 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

47-8-19.4. Notice of fee changes required.

An owner may increase a fee that is provided pursuant to the terms of a rental agreement by providing written notice at least sixty days prior to the periodic rental date specified in the rental agreement or at least sixty days prior to the end of the term of a fixed term residency. In the case of a periodic residency of less than one month, written notice shall be provided at least one rental period in advance of the first fee payment to be increased.

History: Laws 2025, ch. 122, § 5.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 122 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

47-8-20. Obligations of owner.

A. The owner shall:

(1) substantially comply with requirements of the applicable minimum housing codes materially affecting health and safety;

(2) make repairs and do whatever is necessary to put and keep the premises in a safe condition as provided by applicable law and rules and regulations as provided in Section 47-8-23 NMSA 1978;

(3) keep common areas of the premises in a safe condition;

(4) maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, if any, supplied or required to be supplied by him;

(5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle; and

(6) supply running water and a reasonable amount of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the resident and supplied by a direct public utility connection.

B. If there exists a minimum housing code applicable to the premises, the owner's maximum duty under this section shall be determined by Paragraph (1) of Subsection A of this section. The obligations imposed by this section are not intended to change existing tort law in the state.

C. The owner and resident of a single family residence may agree that the resident perform the owner's duties specified in Paragraphs (5) and (6) of Subsection A of this section and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is in writing, for consideration, entered into in good faith and not for the purpose of evading the obligations of the owner.

D. The owner and resident of a dwelling unit other than a single family residence may agree that the resident is to perform specified repairs, maintenance tasks, alterations or remodeling only if:

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the owner and is set forth in a separate writing signed by the parties and supported by consideration; and

(2) the agreement does not diminish or affect the obligation of the owner to other residents in the premises.

E. Notwithstanding any provision of this section, an owner may arrange with a resident to perform the obligations of the owner. Any such arrangement between the owner and the resident will not serve to diminish the owner's obligations as set forth in this section, nor shall the failure of the resident to perform the obligations of the owner serve as a basis for eviction or in any way be

considered a material breach by the resident of his obligations under the Uniform Owner-Resident Relations Act or the rental agreement.

F. In multi-unit housing, if there is separate utility metering for each unit, the resident shall receive a copy of the utility bill for his unit upon request made to the owner or his agent. If the unit is submetered, the resident shall then be entitled to receive a copy of the apartment's utility bill. When utility bills for common areas are separately apportioned between units and the costs are passed on to the residents of each unit, each resident may, upon request, receive a copy of all utility bills being apportioned. The calculations used as the basis for apportioning the cost of utilities for common areas and submetered apartments shall be made available to any resident upon request. The portion of the common area cost that would be allocated to an empty unit if it were occupied shall not be allocated to the remaining residents. It is solely the owner's responsibility to supply the items and information in this subsection to the resident upon request. The owner may charge an administrative fee not to exceed five dollars ($5.00) for each monthly request of the items in this subsection.

G. The owner shall provide a written rental agreement to each resident prior to the beginning of occupancy.

History: 1953 Comp., § 70-7-20, enacted by Laws 1975, ch. 38, § 20; 1987, ch. 297, § 1; 1989, ch. 340, § 3; 1999, ch. 91, § 2.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in Subsection F substituted "resident" for "tenant" in the next-to-last sentence and "five dollars ($5.00)" for "two dollars ($2.00)" in the last sentence; and substituted "resident" for "tenant" in Subsection G.

The 1989 amendment, effective June 16, 1989, added Subsection G.

The 1987 amendment, effective June 19, 1987, substituted "Section 47-8-23 NMSA 1978" for "Section 23 of the Uniform Owner-Resident Relations Act" in Subsection A(2) and added Subsection F.

Loss of use damages are available for reparable property, but not for completely destroyed property. *Behrens v. Gateway Court, L.L.C.*, 2013-NMCA-097, cert. granted, 2013-NMCERT-009.

Loss of use damages are not available for completely destroyed property. — Where plaintiff rented a mobile home unit from defendant; a fire destroyed the mobile home and its contents; and the fire was caused by an electrical short in the wiring of an old air conditioner that had been left under the porch of the mobile home when defendant installed a new air conditioner in the mobile home, plaintiff was not entitled to loss of use damages for plaintiff's completely destroyed property. *Behrens v. Gateway Court, L.L.C.*, 2013-NMCA-097, cert. granted, 2013-NMCERT-009.

Owners required to supply heat, unless specific legal objection. — The legislature intended to require owners to provide reasonable heat, unless they could show some specific law exempting them from the requirement. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Subsection (A)(6) places burden upon owner to show that a law exists which exempts him from providing reasonable heat for the resident. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Loose dogs as unsafe condition. — Under the right circumstances, dogs roaming loose upon the common grounds of a government-operated residential complex could represent an unsafe condition. *Castillo v. County of Santa Fe*, 1988-NMSC-037, 107 N.M. 204, 755 P.2d 48.

Unsafe condition of common area. — Where a child went through a hole in the fence around his apartment complex playground and was struck by a car and killed, the landlord, who undertook to provide a playground for children in a potentially hazardous area, was under a legal obligation to maintain the playground in a reasonably safe condition, so that children playing on the playground would be unable to escape from the playground and potentially be injured beyond its confines. *Calkins v. Cox Estates*, 1990-NMSC-044, 110 N.M. 59, 792 P.2d 36.

No right to complain about neighbors. — Section 47-8-39A(3) NMSA 1978 does not bar an owner's otherwise proper action for possession of the premises after termination of a month-to-month residency, where the owner is retaliating against the resident for complaining about noisy neighbors. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542.
Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).
For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).
For survey of 1990-91 tort law, see 22 N.M.L. Rev. 799 (1992).
Am. Jur. 2d, A.L.R. and C.J.S. references. — Failure of landlord to make, or permit tenant to make, repairs or alterations required by public authority as constructive eviction, 86 A.L.R.3d 352.
Measure of damages for landlord's breach of implied warranty of habitability, 1 A.L.R.4th 1182.
Liability of owner or occupant of premises to fireman coming thereon in discharge of his duty, 11 A.L.R.4th 597.
Applicability of exculpatory clause in lease to lessee's damages resulting from defective original design or construction, 30 A.L.R.4th 971.
Strict liability of landlord for injury or death of tenant or third person caused by defect in premises leased for residential use, 48 A.L.R.4th 638.
Legal aspects of speed bumps, 60 A.L.R.4th 1249.
Liability of landlord for injury or death occasioned by swimming pool maintained for tenants, 62 A.L.R.5th 475.

47-8-21. Relief of owner liability.

A. Unless otherwise agreed, upon termination of the owner's interest in the dwelling unit, including but not limited to terminations of interest by sale, assignment, death, bankruptcy, appointment of receiver or otherwise, the owner is relieved of all liability under the rental agreement and of all obligations under the Uniform Owner-Resident Relations Act as to events occurring subsequent to written notice to the resident of the termination of the owner's interest. The successor in interest to the owner shall be liable for all obligations under the rental agreement or under the Uniform Owner-Resident Relations Act. Upon receipt by the resident of written notice of the termination of the owner's interest in the dwelling unit, the resident shall pay all future rental payments, when due, to the successor in interest to the owner.

B. Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and the Uniform Owner-Resident Relations Act as to events occurring after written notice to the resident of the termination of his management.

History: 1953 Comp., § 70-7-21, enacted by Laws 1975, ch. 38, § 21.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-22. Obligations of resident.

The resident shall:

A. comply with obligations imposed upon residents by applicable minimum standards of housing codes materially affecting health or safety;

B. keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit, and, upon termination of the residency, place the dwelling unit in as clean condition, excepting ordinary wear and tear, as when residency commenced;

C. dispose from his dwelling unit all ashes, rubbish, garbage and other waste in a clean and safe manner;

D. keep all plumbing fixtures in the dwelling unit or used by the resident as clean as their condition permits;

E. use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilation, air conditioning and other facilities and appliances including elevators, if any, in the premises;

F. not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so;

G. conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;

H. abide by all bylaws, covenants, rules or regulations of any applicable condominium regime, cooperative housing agreement or neighborhood association not inconsistent with owner's rights or duties; and

I. not knowingly commit or consent to any other person knowingly committing a substantial violation.

History: 1953 Comp., § 70-7-22, enacted by Laws 1975, ch. 38, § 22; 1995, ch. 195, § 8.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, added Subsection I and made minor stylistic changes throughout the section.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant §§ 507, 538 et seq.

Liability of lessee to persons injured by defects in premises or property after surrender of possession by lessee, 11 A.L.R.4th 579.

Liability of owner or occupant of premises to fireman coming thereon in discharge of his duty, 11 A.L.R.4th 597.

Measure and elements of Damages for Lessee's breach of covenant as to repairs, 45 A.L.R.5th 251.

51C C.J.S. Landlord and Tenant §§ 235 to 243.

47-8-23. Application of rules or regulations.

An owner, from time to time, may adopt rules or regulations, however described, concerning the resident's use and occupancy of the premises. They are enforceable as provided in Section 47-8-33 NMSA 1978 against the resident only if:

A. their purpose is to promote the appearance, convenience, safety or welfare of the residents in the premises, preserve the owner's property from abusive use or make a fair distribution of services and facilities held out for the residents generally;

B. they are reasonably related to the purpose for which they are adopted;

C. they apply to all residents in the premises in a fair manner;

D. they are sufficiently explicit in their prohibition, direction or limitation of the resident's conduct to fairly inform him of what he must or must not do to comply;

E. they are not for the purpose of evading the obligations of the owner; and

F. the resident is presented with copies of existing rules and regulations at the time he enters into the rental agreement and is presented notice of amendments to the rules and regulations and rules and regulations adopted subsequent to the time he enters into the rental agreement. A rule or regulation adopted after the resident enters into the rental agreement is enforceable against the resident if reasonable notice of its adoption is given to the resident and it does not work a substantial modification of his bargain.

History: 1953 Comp., § 70-7-23, enacted by Laws 1975, ch. 38, § 23; 1995, ch. 195, § 9.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, made minor stylistic changes throughout the section.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant §§ 507, 538 et seq.

51C C.J.S. Landlord and Tenant §§ 235 to 243.

47-8-24. Right of entry.

A. The resident shall, in accordance with provisions of the rental agreement and notice provisions as provided in this section, consent to the owner to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, prospective residents, workmen or contractors; provided that:

(1) unless otherwise agreed upon by the owner and resident, the owner may enter the resident's dwelling unit pursuant to this subsection only after giving the resident twenty-four hours written notification of his intent to enter, the purpose for entry and the date and reasonable estimate of the time frame of the entry;

(2) this subsection is not applicable to entry by the owner to perform repairs or services within seven days of a request by the resident or when the owner is accompanied by a public official conducting an inspection or a cable television, electric, gas or telephone company representative; and

(3) where the resident gives reasonable prior notice and alternate times or dates for entry and it is practicable or will not result in economic detriment to the owner, then the owner shall attempt to reasonably accommodate the alternate time of entry.

B. The owner may enter the dwelling unit without consent of the resident in case of an emergency.

C. The owner shall not abuse the right of access.

D. The owner has no other right of access except by court order, as permitted by this section if the resident has abandoned or surrendered the premises or if the resident has been absent from the premises more than seven days, as permitted in Section 47-8-34 NMSA 1978.

E. If the resident refuses to allow lawful access, the owner may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the owner may recover damages.

F. If the owner makes an unlawful entry, or a lawful entry in an unreasonable manner, or makes repeated demands for entry that are otherwise lawful but that have the effect of unreasonably interfering with the resident's quiet enjoyment of the dwelling unit, the resident may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the resident may recover damages.

History: 1953 Comp., § 70-7-24, enacted by Laws 1975, ch. 38, § 24; 1995, ch. 195, § 10.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, in Subsection A, inserted "and notice provisions as provided in this section" near the beginning, substituted "; provided that:" for a period at the end of the introductory paragraph, added Paragraphs (1) to (3); in Subsection D, added "or if the resident has been absent from the premises more than seven days, as permitted in Section 47-8-34 NMSA 1978" at the end and made minor stylistic changes; and added Subsections E and F.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51C C.J.S. Landlord and Tenant § 318.

47-8-25. Use of dwelling unit limited.

Unless otherwise agreed, the resident shall occupy his dwelling unit only as a dwelling unit and in compliance with terms and conditions of the rental agreement. The rental agreement may require that the resident notify the owner of any anticipated extended absence from the premises in excess of seven days no later than the first day of the extended absence.

History: 1953 Comp., § 70-7-25, enacted by Laws 1975, ch. 38, § 25.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Provision in lease as to purpose for which premises are to be used, as excluding use for other purpose, 148 A.L.R. 583.

51C C.J.S. Landlord and Tenant § 327.

47-8-26. Delivery of possession.

A. At the time specified in the rental agreement for the commencement of occupancy, the owner shall deliver possession of the premises to the resident in compliance with the rental agreement and Section 47-8-20 NMSA 1978. The owner may bring an action for possession against the resident or any person wrongfully in possession and may recover the damages provided in Subsection F of Section 47-8-33 NMSA 1978.

B. If the owner fails to deliver possession of the premises to the prospective resident as provided in Subsection A of this section, one hundred percent of the rent abates until possession is delivered and the prospective resident may:

(1) upon written notice to the owner, terminate the rental agreement effective immediately. Upon termination the owner shall return all prepaid rent and deposits; or

(2) demand performance of the rental agreement by the owner and, if the prospective resident elects, maintain an action for possession of the premises against any person wrongfully withholding possession and recover the damages sustained by him and seek the remedies provided in Section 47-8-48 NMSA 1978.

C. If the owner makes reasonable efforts to obtain possession of the premises and returns prepaid rents, deposits and fees within seven days of receiving a prospective resident's notice of termination, the owner shall not be liable for damages under this section.

History: 1953 Comp., § 70-7-26, enacted by Laws 1975, ch. 38, § 26; 1999, ch. 91, § 3.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, added the Subsection A designation and substituted "At the time specified in the rental agreement for the commencement of occupancy" for "At the commencement of the rental period as specified in the rental agreement", deleted the former last sentence, which read "If the owner makes reasonable efforts to obtain possession of the premises, he shall not be liable for an action under this section"; added Subsections B and C; and updated statutory references.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Implied covenant or obligation to provide lessee with actual possession, 96 A.L.R.3d 1155.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

What constitutes tenant's holding over of leased premises, 13 A.L.R.5th 169.

51C C.J.S. Landlord and Tenant §§ 308 to 310.

47-8-27. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 195, § 27, repealed 47-8-27 NMSA 1978, as enacted by Laws 1975, ch. 38, § 27, relating to noncompliance by the owner to rental agreement or matters affecting health and safety, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

47-8-27.1. Breach of agreement by owner and relief by resident.

A. Upon the failure of the owner to perform his obligations as required by Section 47-8-20 NMSA 1978, the resident shall give written notice to the owner specifying the breach and:

(1) if there is a material noncompliance by the owner with the rental agreement or a noncompliance with the Uniform Owner-Resident Relations Act materially affecting health and safety, the resident shall deliver a written notice to the owner specifying the acts and omissions constituting the breach. The notice shall state that the rental agreement will terminate upon a date not less than

seven days after receipt of the notice if a reasonable attempt to remedy the breach is not made in seven days, and the rental agreement shall terminate as provided in the notice. If the owner makes a reasonable attempt to adequately remedy the breach prior to the date specified in the notice, the rental agreement shall not terminate. If the rental agreement is terminated by the resident and possession restored to the owner, the owner shall return the balance, if any, of prepaid rent and deposit to which the resident is entitled pursuant to the rental agreement or Section 47-8-18 NMSA 1978; or

(2) the resident may be entitled to abatement of the rent as provided in Section 47-8-27.2 NMSA 1978.

B. The rights provided under this section do not arise if the condition was caused by the deliberate or negligent act or omission of the resident, a member of his family or other person on the premises with his consent. If the noncompliance with the rental agreement or with Section 47-8-20 NMSA 1978 results solely from circumstances beyond the owner's control, the resident is entitled only to those remedies set forth in Paragraph (1) or (2) of this subsection and is not entitled to an action for damages or injunctive relief against the owner.

C. The resident may also recover damages and obtain injunctive relief for any material noncompliance by the owner with the rental agreement or the provisions of Section 47-8-20 NMSA 1978. The remedy provided in this subsection is in addition to any right of the resident arising under Subsection A of this section.

D. If the resident proceeds under Paragraph (1) of Subsection A of this section, he shall not proceed under Paragraph (2) of Subsection A of this section in the same rental period for the same violation. If the resident proceeds under Paragraph (2) of Subsection A of this section, he shall not proceed under Paragraph (1) of Subsection A of this section in the same rental period for the same violation. A resident may, however, proceed under another paragraph of Subsection A of this section for a subsequent violation or the same violation that occurs in subsequent rental periods.

E. When the last day for remedying any breach pursuant to the 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.

History: 1978 Comp., § 47-8-27.1, enacted by Laws 1995, ch. 195, § 11.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 195, § 28 made Laws 1995, ch. 195, § 11 effective July 1, 1995.

47-8-27.2. Abatement.

A. If there is a violation of Subsection A of Section 47-8-20 NMSA 1978, other than a failure or defect in an amenity, the resident shall give written notice to the owner of the conditions needing repair. If the owner does not remedy the conditions set out in the notice within seven days of the notice, the resident is entitled to abate rent as set forth below:

(1) one-third of the pro-rata daily rent for each day from the date the resident notified the owner of the conditions needing repair, through the day the conditions in the notice are remedied. If the conditions complained of continue to exist without remedy through any portion of a subsequent rental period, the resident may abate at the same rate for each day that the conditions are not remedied; and

(2) one hundred percent of the rent for each day from the date the resident notified the owner of the conditions needing repair until the date the breach is cured if the dwelling is uninhabitable and the resident does not inhabit the dwelling unit as a result of the condition.

B. For each rental period in which there is a violation under Subsection A of this section, the resident may abate the rent or may choose an alternate remedy in accordance with the Uniform Owner-Resident Relations Act. The choice of one remedy shall not preclude the use of an alternate remedy for the same violation in a subsequent rental period.

C. If the resident's rent is subsidized in whole or in part by a government agency, the abatement limitation of one month's rent shall mean the total monthly rent paid for the dwelling and not the portion of the rent that the resident alone pays. Where there is a third party payor, either the payor or the resident may authorize the remedy and may abate rent payments as provided in this section.

D. Nothing in this section shall limit a court in its discretion to apply equitable abatement.

E. Nothing in this section shall entitle the resident to abate rent for the unavailability of an amenity.

History: 1978 Comp., § 47-8-27.2, enacted by Laws 1995, ch. 195, § 12; 1999, ch. 91, § 4.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in Subsection A in the first sentence inserted "other than a failure or defect in an amenity" and updated a statutory reference and in the second sentence inserted "set out in the notice within seven days of the notice"; and added Subsection E.

Tenant was not entitled to abatement for repairs. — Where, in 2017, tenant and landlord entered into a lease agreement that specified that rent was $450 and was due the first day of each month and that landlord would assess a $50 fee to rent paid more than three days late, that tenant would pay a $400 security deposit, and that landlord would make all necessary repairs to the common areas of the building, and where, in 2018, landlord asked tenant to begin paying $10 a month for water, to which tenant agreed, and where, months later, tenant withheld $40 from his rent after reviewing his lease and discovering that there was no written obligation for him to pay for water, and where, the following day, landlord delivered a notice of nonpayment requiring tenant to pay $450 in rent plus a late fee of $50 for a total of $500, and where landlord filed a petition for restitution three days after the notice of nonpayment was delivered, and where tenant counterclaimed that he was entitled to abatement of his rent for repairs not made, the district court did not err in determining that tenant was not entitled to abatement for repairs, because tenant did not give landlord any written notice of the needed repairs until the notice of nonpayment was delivered and did not ask for any abatement or reimbursement in writing. The Uniform Owner Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, requires written notice of conditions needing repair and the passage of seven days before a resident can withhold rent. *Cheng v. Rabey*, 2023-NMCA-013.

Abatement not allowed. — Tenants were not entitled to abate rent where the tenants were living on the premises continuously until the fire and the premises were not uninhabitable for any of the 17 months the tenants had not paid rent; moreover, the trial court did not err in granting a directed verdict on the claim of retaliation because there was no issue of retaliation in response to rent abatement if there was no right to abate. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516.

47-8-28. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 91, § 8 repealed 47-8-28 NMSA 1978, as enacted by Laws 1975, ch. 38, § 28, relating to failure to deliver possession of premises, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 47-8-26 NMSA 1978.

47-8-29. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 195, § 27, repealed 47-8-29 NMSA 1978, as enacted by Laws 1975, ch. 38, § 29, relating to resident rights in event of breach by owner, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

47-8-30. Action for counterclaim for resident.

A. In an action for possession based upon nonpayment of rent or in an action for rent where the resident is in possession, the resident may counterclaim for any amount which he may recover under the rental agreement or the Uniform Owner-Resident Relations Act, providing that the resident shall be responsible for payment to the owner of the rent specified in the rental agreement during his period of possession. Judgment shall be entered in accordance with the facts of the case.

B. If the defense or counterclaim by the resident is without merit and is not raised in good faith, the owner may recover reasonable attorney's fees and his court costs.

C. If the action or reply to the counterclaim is without merit and is not in good faith, the resident may recover reasonable attorney's fees and his court costs.

History: 1953 Comp., § 70-7-30, enacted by Laws 1975, ch. 38, § 30.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Setoff or counterclaim in action by tenant against landlord for restitution under Federal Housing and Rent Act of 1947 and amendments, 10 A.L.R.2d 249.

Rights and remedies of tenant upon landlord's breach of covenant to repair, 28 A.L.R.2d 446.

Respective rights in excess rent when landlord relets at higher rent during lessee's term, 50 A.L.R.4th 403.

47-8-31. Resident rights following fire or casualty.

A. If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the resident may:

(1) vacate the premises and notify the owner in writing within seven days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the resident's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

B. If the rental agreement is terminated, the owner shall return the balance, if any, [of] prepaid rent and deposits recoverable under Section 18 [47-8-18 NMSA 1978] of the Uniform Owner-Resident Relations Act. Accounting for rent, in the event of termination or apportionment, is to occur as of the date of the vacation. Notwithstanding the provisions of this section, the resident is responsible for damage caused by his negligence.

History: 1953 Comp., § 70-7-31, enacted by Laws 1975, ch. 38, § 31.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 759 et seq.

Condition of premises within the contemplation of provision of lease or statute for cessation of rent or termination of lease in event of destruction of or damage to property as result of fire, 118 A.L.R. 106, 61 A.L.R.2d 1445.

Modern status of rule as to tenant's rent liability after injury to or destruction of demised premises, 99 A.L.R.3d 738.

Liability of owner or occupant of premises to fireman coming thereon in discharge of his duty, 11 A.L.R.4th 597.

52A C.J.S. Landlord and Tenant § 991.

47-8-32. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 195, § 27, repealed 47-8-32 NMSA 1978, as enacted by Laws 1975, ch. 38, § 32, relating to unlawful removal and penalty to owner, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

47-8-33. Breach of agreement by resident and relief by 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 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 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 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 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 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 date not less than three days after receipt of the notice.

J. In any action for possession under Subsection I of this section, it shall be a defense that the resident is a victim of domestic violence. 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 domestic violence 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 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 action for possession under Subsection I of this section, it shall be a defense that the resident took reasonable and lawful actions in defense of himself, others or his property.

M. In any action for possession under Subsection I of this section, if the court finds that the 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.

History: 1953 Comp., § 70-7-33, enacted by Laws 1975, ch. 38, § 33; 1977, ch. 130, § 1; 1995, ch. 195, § 14; 1999, ch. 91, § 5.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, substituted "the Uniform Owner-Resident Relations Act" for "this Act" in Subsection H; added present Subsection L, redesignating the subsequent subsection accordingly; and made minor stylistic changes.

The 1995 amendment, effective July 1, 1995, redesignated a former part of Subsection A as Subsection B, inserted "including the dates and specific facts describing the nature of the alleged breach" and "stating" in Subsections A and B, substituted "more than six months" for "six months" in Subsection B, added Subsection C, redesignated former Subsection B as Subsection D, added the last part in Subsection D beginning "provided that tender", added Subsection E, redesignated former Subsection C as Subsection F, deleted "If the resident's noncompliance is willful, the owner may recover reasonable attorney's fees and his court costs." from the end in Subsection F, added Subsections G to L, and made minor stylistic changes throughout the section.

Section 8 housing agreement. — Where the tenant rented a residential property from the landlord pursuant to the federal Section 8 housing program which paid the majority of the tenant's rent; in addition to rent, the lease required the tenant to pay a security deposit; the lease permitted the landlord to terminate the lease during the first year's term if the tenant committed a serious violation of the lease; the tenant failed to pay the full amount of the security deposit on the first day of the term; the tenant failed to pay rent for July and August on the first day of the month as required by the lease because the tenant did not receive public assistance checks for July and August until after the first day of the month; the tenant mailed rent payments for July and August when the tenant received the public assistance checks; the lease did not specify any date when the security deposit was due or whether partial payments could be made; the amount of the security deposit exceeded the amount of monthly rent contrary to the express terms of the lease; the failure to pay the security deposit on the first day of the term did not have a materially adverse effect on the landlord; and by October 2009, the tenant had fully paid the security deposit and was current on all monthly rent payments, tenant's late payments of rent and the security deposit did not constitute a serious violation of the lease. *Serna v. Gutierrez*, 2013-NMCA-026, 297 P.3d 1238.

Petition for restitution filed prematurely. — Where, in 2017, tenant and landlord entered into a lease agreement that specified that rent was $450 and was due the first day of each month and that landlord would assess a $50 fee to rent paid more than three days late, that tenant would pay a $400 security deposit, and that landlord would make all necessary repairs to the common areas of the building, and where, in 2018, landlord asked tenant to begin paying $10 a month for water, to which tenant agreed, and where, months later, tenant withheld $40 from his rent after reviewing his lease and discovering that there was no written obligation for him to pay for water, and where, the following day, landlord delivered a notice of nonpayment requiring tenant to pay $450 in rent plus a late fee of $50 for a total of $500, and where landlord filed a petition for restitution three days after the notice of nonpayment was delivered, and where tenant argued that landlord filed his petition for restitution prematurely because the three-day notice period had not elapsed at the time of filing, the landlord's petition should have been dismissed as untimely filed, because an owner cannot file a petition for restitution or otherwise terminate the rental agreement and seek possession of the premises until the day following the third day. Allowing an owner to file before the third day has elapsed would defeat the remedial purpose of Subsection D of this section. *Cheng v. Rabey*, 2023-NMCA-013.

Landlord and tenant orally modified the lease to include water payments. — Where, in 2017, tenant and landlord entered into a lease agreement that specified that rent was $450 and was due the first day of each month and that landlord would assess a $50 fee to rent paid more than three days late, that tenant would pay a $400 security deposit, and that landlord would make all necessary repairs to the common areas of the building, and where, in 2018, landlord asked tenant to begin paying $10 a month for water, to which tenant agreed, and where, months later, tenant withheld $40 from his rent after reviewing his lease and discovering that there was no written obligation for him to pay for water, and where, the following day, landlord delivered a notice of nonpayment requiring tenant to pay $450 in rent plus a late fee of $50 for a total of $500, and where landlord filed a petition for restitution three days after the notice of nonpayment was delivered, and where tenant argued that because the lease was silent as to who pays for water, landlord retained the obligation to pay for water, the district court did not err in denying tenant's requested offset for water, because the parties conduct clearly demonstrated an oral modification of the lease agreement requiring tenant to pay for water. In the absence of a prohibiting statute, a written agreement which specifies it may only be amended in writing may nevertheless be changed by the parties' words or conduct that signify an intention to change the prior agreement. *Cheng v. Rabey*, 2023-NMCA-013.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 228 et seq.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

Right to exercise option to renew or extend lease as affected by tenant's breach of other covenants or conditions, 23 A.L.R.4th 908.

Children's day-care use as violation of restrictive covenant, 29 A.L.R.4th 730.

Express or implied restriction on lessee's use of residential property for business purposes, 46 A.L.R.4th 496.

Commercial leases: application of rule that lease may be canceled only for "material" breach, 54 A.L.R.4th 595.

Provision in lease as to purpose for which premises are to be used as excluding other uses, 86 A.L.R.4th 259.

51C C.J.S. Landlord and Tenant §§ 250(1) to 250(3).

47-8-34. Notice of extended absence.

A. If the rental agreement requires the resident to give notice to the owner of an anticipated extended absence in excess of seven days as required in Subsection A of Section 3 [47-8-3 NMSA 1978] of the Uniform Owner-Resident Relations Act and the resident willfully fails to do so, the owner may recover damages from the resident.

B. During any absence of the resident in excess of seven days, the owner may enter the dwelling unit at times reasonably necessary.

C. If the resident abandons the dwelling unit as defined in Subsection A of Section 3 of the Uniform Owner-Resident Relations Act, the owner shall be entitled to take immediate possession of the dwelling unit. The owner shall, in such cases, be responsible for the removing and storing of the personal property for such periods as are provided by law. Upon abandonment, the owner may make reasonable efforts to rent the dwelling unit and premises at a fair rental. If the owner rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins.

History: 1953 Comp., § 70-7-34, enacted by Laws 1975, ch. 38, § 34.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes abandonment of residential or commercial lease - modern cases, 84 A.L.R.4th 183.

47-8-34.1. Disposition of property left on the premises.

A. Where the rental agreement terminates by abandonment pursuant to Section 47-8-34 NMSA 1978:

(1) the owner shall store all personal property of the resident left on the premises for not less than thirty days;

(2) the owner shall serve the resident with written notice stating the owner's intent to dispose of the personal property on a date not less than thirty days from the date of the notice. The notice shall also contain a telephone number and address where the resident can reasonably contact the owner to retrieve the property prior to the disposition date in the notice;

(3) the notice of intent to dispose of personal property shall be personally delivered to the resident or be sent by first class mail, postage prepaid, to the resident at his last known address. If the notice is returned as undeliverable, or where the resident's last known address is the vacated dwelling unit, the owner shall also serve at least one notice to such other address as has been provided to the owner by the resident, including the address of the resident's place of employment, or of a family member or emergency contact for which the owner has a record;

(4) the resident may contact the owner to retrieve the property at any time prior to the date specified in the notice for disposition of the property;

(5) the owner shall provide reasonable access and adequate opportunities for the resident to retrieve all of the property stored prior to any disposition; and

(6) if the resident does not claim or make attempt to retrieve the stored personal property prior to the date specified in the notice of disposition of the property, the owner may dispose of the stored personal property.

B. Where the rental agreement terminates by the resident's voluntary surrender of the premises, the owner shall store any personal property on the premises for a minimum of fourteen days from the date of surrender of the premises. The owner shall provide reasonable access to the resident for the purpose of the resident obtaining possession of the personal property stored. If after fourteen days from surrender of the premises, the resident has not retrieved all the stored personal property, the owner may dispose of the stored personal property.

C. Where the rental agreement terminates by a writ of restitution, the owner shall have no obligation to store any personal property left on the premises after three days following execution of writ of restitution, unless otherwise agreed by the owner and resident. The owner may thereafter dispose of the personal property in any manner without further notice or liability.

D. Where the property has a market value of less than one hundred dollars ($100), the owner has the right to dispose of the property in any manner.

E. Where the property has a market value of more than one hundred dollars ($100), the owner may:

(1) sell the personal property under any provisions herein, and the proceeds of the sale, if in excess of money due and owing to the owner, shall be mailed to the resident at his last known address along with an itemized statement of the amounts received and amounts allocated to other costs, within fifteen days of the sale; or

(2) retain the property for his own use or the use of others, in which case the owner shall credit the account of the resident for the fair market value of the property against any money due and owing to the owner, and any value in excess of money due and owing shall be mailed to the resident at his last known address along with an itemized statement of the value allocated to the property and the amount allocated to costs within fifteen days of the retention of the property.

F. If the last known address is the dwelling unit, the owner shall also mail at least one copy of the accounting and notice of the sums for distribution, to the other address, if provided to the owner by the resident, such as, place of employment, family members, or emergency contact on record with the owner.

G. An owner may charge the resident reasonable storage fees for any time that the owner provided storage for the resident's personal property and the prevailing rate of moving fees. The owner may require payment of storage and moving costs prior to the release of the property.

H. The owner may not hold the property for any other debts claimed due or owning or for judgments for which an application for writ of execution has not previously been filed. The owner may not retain exempt property where an application for a writ of execution has been granted.

History: 1978 Comp., § 47-8-34.1, enacted by Laws 1995, ch. 195, § 15.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 195, § 28 made Laws 1995, ch. 195, § 15 effective July 1, 1995.

Owners must provide residents with a reasonable opportunity to recover left-behind personal property. — The Uniform Owner-Resident Relations Act requires owners to provide residents with a reasonable opportunity to recover left-behind personal property as a matter of right, upon payment of reasonable moving and storage fees if sought by the owner, within three days of the execution of a writ of restitution or at a later agreed-to date. *White v. Farris*, 2021-NMCA-014.

47-8-34.2. Personal property and security deposit of deceased resident; contact person.

A. As used in this section, "contact person" means the person designated by a resident in writing as the person to contact and release property to in the event of the resident's death.

B. The owner may request in writing, including by a requirement in the rental agreement, that the resident:

(1) provide the owner with the name, address and telephone number of a contact person; and

(2) sign a statement authorizing the owner in the event of the resident's death to:

(a) grant the contact person access to the dwelling unit at a reasonable time and in the presence of the owner or the owner's agent;

(b) allow the contact person to remove the resident's property from the dwelling unit; and

(c) refund the resident's security deposit, less lawful deductions, to the contact person.

C. A resident may, without request from the owner, provide the owner with the name, address and telephone number of a contact person.

D. Except as provided in Subsection E of this section, in the event of the death of a resident who is the sole occupant of a rental dwelling, the owner:

(1) shall turn over possession of property in the dwelling unit to the contact person or to any other person lawfully entitled to the property if the request is made prior to the property being discarded pursuant to Paragraph (5) of this subsection;

(2) shall refund the resident's security deposit, less lawful deductions, including the cost of removing and storing the property, to the contact person or to any other person lawfully entitled to the refund;

(3) may remove and store all property found in the dwelling unit;

(4) may require any person who removes property from the resident's dwelling unit to sign an inventory of the property being removed; and

(5) may discard property removed by the owner from the resident's dwelling unit if:

(a) the owner has mailed a written request by certified mail, return receipt requested, to the contact person, requesting that the property be removed;

(b) the contact person failed to remove the property within thirty days after the request is mailed; and

(c) the owner, prior to the date of discarding the property, has not been contacted by anyone claiming the property.

E. An owner and a resident may agree to a procedure different than the procedure in this section for removing, storing or disposing of property in the dwelling unit of a deceased resident in a written rental agreement or other agreement.

F. If, after a written request by an owner, a resident does not provide the owner with the name, address and telephone number of a contact person, the owner shall have no responsibility after the resident's death for removal, storage, disappearance, damage or disposition of property in the resident's dwelling.

G. An owner who violates Subsection D of this section shall be liable to the estate of the deceased resident for actual damages.

History: Laws 2007, ch. 169, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 169, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

ANNOTATIONS

Compiler's notes. — The reference to Subsection C of 47-8-33 NMSA 1978 was a reference to former Subsection C and should now be a reference to Subsection F following the 1995 amendment to that section. Effective July 1, 1995, attorney's fees are no longer authorized by that section. See 47-8-48 NMSA 1978 for payment of attorney's fees to the prevailing party in a suit brought to enforce the terms and conditions of a rental agreement or the provisions of the Uniform Owner-Resident Relations Act.

District court did not err in awarding plaintiff damages for property damage and unpaid rent, but erred in failing to credit defendant for the cost of repairs to the property. — Where the parties entered into a lease option contract pursuant to which plaintiff agreed to lease and defendant agreed to rent a residential property in Vanderwagen, New Mexico for sixty months, and where the lease option contract included an option to purchase the residence at any time during the contract's terms, and where defendant paid plaintiff $10,000, which was not mentioned in the lease option contract but which defendant claimed to be a down payment toward the purchase price of the property, and where defendant stopped making monthly payments on the property after two years, and where plaintiff filed a petition for restitution seeking possession of the property in magistrate court, and where the magistrate court granted the writ of restitution and awarded damages, past-due rent, and attorney fees, and where, on de novo appeal, the district court ruled in plaintiff's favor on all issues and awarded plaintiff back-rent and damages over $10,000, and where defendant argued that plaintiff should have been barred from recovering damages and rent at all because plaintiff retained defendant's initial $10,000 payment and that the district court failed to credit defendant for the full value of the repairs he made to the property during his occupancy, despite evidence that defendant spent $900 repairing faucets and replacing a fuse box on the property, the district court did not err in determining that plaintiff was entitled to damages for past-due rent and property damage because the district court credited defendant with the $10,000 in calculating plaintiff's damages, in effect ruling that plaintiff was not entitled to retain the payment, but the district court erred to the extent that it determined that defendant's evidence was insufficient evidence of other repairs as a matter of law. *White v. Farris*, 2021-NMCA-014.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 786 et seq.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

What constitutes tenant's holding over of leased premises, 13 A.L.R.5th 169.

52 C.J.S. Landlord and Tenant § 568.

47-8-35. Claim for rent and damages.

If the rental agreement is terminated, the owner is entitled to possession and may have a claim for rent and a separate claim for damages for breach of the rental agreement and reasonable attorney's fees as provided in Subsection C of Section 33 [47-8-33 NMSA 1978] of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-35, enacted by Laws 1975, ch. 38, § 35.

ANNOTATIONS

Compiler's notes. — The reference to Subsection C of 47-8-33 NMSA 1978 was a reference to former Subsection C and should now be a reference to Subsection F following the 1995 amendment to that section. Effective July 1, 1995, attorney's fees are no longer authorized by that section.

See 47-8-48 NMSA 1978 for payment of attorney's fees to the prevailing party in a suit brought to enforce the terms and conditions of a rental agreement or the provisions of the Uniform Owner-Resident Relations Act.

District court did not err in awarding plaintiff damages for property damage and unpaid rent, but erred in failing to credit defendant for the cost of repairs to the property. — Where the parties entered into a lease option contract pursuant to which plaintiff agreed to lease and defendant agreed to rent a residential property in Vanderwagen, New Mexico for sixty months, and where the lease option contract included an option to purchase the residence at any time during the contract's terms, and where defendant paid plaintiff $10,000, which was not mentioned in the lease option contract but which defendant claimed to be a down payment toward the purchase price of the property, and where defendant stopped making monthly payments on the property after two years, and where plaintiff filed a petition for restitution seeking possession of the property in magistrate court, and where the magistrate court granted the writ of restitution and awarded damages, past-due rent, and attorney fees, and where, on de novo appeal, the district court ruled in plaintiff's favor on all issues and awarded plaintiff back-rent and damages over $10,000, and where defendant argued that plaintiff should have been barred from recovering damages and rent at all because plaintiff retained defendant's initial $10,000 payment and that the district court failed to credit defendant for the full value of the repairs he made to the property during his occupancy, despite evidence that defendant spent $900 repairing faucets and replacing a fuse box on the property, the district court did not err in determining that plaintiff was entitled to damages for past-due rent and property damage because the district court credited defendant with the $10,000 in calculating plaintiff's damages, in effect ruling that plaintiff was not entitled to retain the payment, but the district court erred to the extent that it determined that defendant's evidence was insufficient evidence of other repairs as a matter of law. *White v. Farris*, 2021-NMCA-014.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 786 et seq.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

What constitutes tenant's holding over of leased premises, 13 A.L.R.5th 169.

52 C.J.S. Landlord and Tenant § 568.

47-8-36. Unlawful removal and diminution of services prohibited.

A. Except in case of abandonment, surrender or as otherwise permitted in the Uniform Owner-Resident Relations Act, an owner or any person acting on behalf of the owner shall not knowingly exclude the resident, remove, threaten or attempt to remove or dispossess a resident from the dwelling unit without a court order by:

(1) fraud;

(2) plugging, changing, adding or removing any lock or latching device;

(3) blocking any entrance into the dwelling unit;

(4) interfering with services or normal and necessary utilities to the unit pursuant to Section 47-8-32 NMSA 1978, including but not limited to electricity, gas, hot or cold water, plumbing, heat or telephone service, provided that this section shall not impose a duty upon the owner to make utility payments or otherwise prevent utility interruptions resulting from nonpayment of utility charges by the resident;

(5) removing the resident's personal property from the dwelling unit or its premises;

(6) removing or incapacitating appliances or fixtures, except for making necessary and legitimate repairs; or

(7) any willful act rendering a dwelling unit or any personal property located in the dwelling unit or on the premises inaccessible or uninhabitable.

B. The provisions of Subsection A of this section shall not apply if an owner temporarily interferes with possession while making legitimate repairs or inspections as provided for in the Uniform Owner-Resident Relations Act.

C. If an owner commits any of the acts stated in Subsection A of this section, the resident may:

(1) abate one hundred percent of the rent for each day in which the resident is denied possession of the premises for any portion of the day or each day where the owner caused termination or diminishment of any service for any portion of the day;

(2) be entitled to civil penalties as provided in Subsection B of Section 47-8-48 NMSA 1978;

(3) seek restitution of the premises pursuant to Sections 47-8-41 and Section 47-8-42 NMSA 1978 or terminate the rental agreement; and

(4) be entitled to damages.

History: 1953 Comp., § 70-7-36, enacted by Laws 1975, ch. 38, § 36; 1995, ch. 195, § 16.

ANNOTATIONS

Compiler's notes. — Section 47-8-32 NMSA 1978, referred to in Paragraph A(4), was repealed in 1995.

The 1995 amendment, effective July 1, 1995, rewrote this section to such an extent that a detailed comparison would be impracticable.

Judgment of restitution of possession of premises does not constitute a court order to end water services. — Where plaintiffs brought a petition for restitution of possession of premises against resident based on unpaid rent and property damage, and where the magistrate court entered a judgment for restitution in favor of plaintiffs and issued a corresponding writ of restitution, ordering the sheriff to remove resident within seven days of entry of the judgment, and where, prior to the execution of the writ of restitution, plaintiffs had resident's water shut off for unpaid water charges, and where, on appeal to the district court, resident filed a counterclaim for unlawful diminution of services and seeking abatement of rent for the days resident was without water service, the district court erred in denying resident's claim for unlawful diminution of services, because 47-8-36(A) NMSA 1978, prohibits an owner from acting to recover possession of a dwelling unit that a resident has not surrendered or abandoned, such as directing a utility to shut off water to the premises, unless a "court order" authorizes the owner to take such action, and the plain language of Subsection A of this section indicates that the legislature did not intend that a judgment for restitution, for which a writ of restitution has been issued, constitutes a "court order". *Roser v. Hufstedler*, 2023-NMCA-040.

Duty exemption clause did not permit owners to direct utility to shut off water services. — Where Plaintiffs brought a petition for restitution of possession of premises against Resident based on unpaid rent and property damage, and where the magistrate court entered a judgment for restitution in favor of plaintiffs and issued a corresponding writ of restitution, ordering the sheriff to remove resident within seven days of entry of the judgment, and where, prior to the execution of the

writ of restitution, plaintiffs had resident's water shut off for unpaid water charges, and where, on appeal to the district court, resident filed a counterclaim for unlawful diminution of services and seeking abatement of rent for the days resident was without water service, the district court erred in concluding that, because the utility was holding plaintiffs responsible for resident's unpaid water bill, the duty exemption clause, set forth in 47-8-36(A)(4) NMSA 1978, permitted plaintiffs to direct the utility to shut off the dwelling unit's water services, because, in this case, the utility had not acted to interrupt utility services before plaintiffs directed the utility to do so. The duty exemption clause does not apply. *Roser v. Hufstedler*, 2023-NMCA-040.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 637 et seq.

Landlord and tenant: violation of statute or ordinance requiring landlord to furnish specified facilities or services as ground of liability for injury resulting from tenant's attempt to deal with deficiency, 63 A.L.R.4th 883.

51C C.J.S. Landlord and Tenant §§ 297, 298.

47-8-36.1. Landlord lien.

A. There shall be no landlord's lien arising out of the rental of a dwelling unit to which the Uniform Owner-Resident [Relations] Act applies.

B. Nothing in this section shall prohibit the owner from levy and execution on a judgment arising out of a claim for rent or damages.

History: 1978 Comp., § 47-8-36.1, enacted by Laws 1995, ch. 195, § 17.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For landlords' liens on personal property, *see* 48-3-5 NMSA 1978.

For liens of owners and operators of public accommodations on personal property, *see* 48-3-16 NMSA 1978.

Effective dates. — Laws 1995, ch. 195, § 28 made Laws 1995, ch. 195, § 17 effective July 1, 1995.

47-8-37. Notice of termination and damages.

A. The owner or the resident may terminate a week-to-week residency by a written notice given to the other at least seven days prior to the termination date specified in the notice.

B. The owner or the resident may terminate a month-to-month residency by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

C. If the resident remains in possession without the owner's consent after expiration of the term of the rental agreement or its termination, the owner may bring an action for possession and if the resident's holdover is willful and not in good faith the owner, in addition, may recover the damages sustained by him and reasonable attorney's fees. If the owner consents to the resident's continued occupancy, Subsection C of Section 15 [47-8-15 NMSA 1978] of the Uniform Owner-Resident Relations Act applies.

History: 1953 Comp., § 70-7-37, enacted by Laws 1975, ch. 38, § 37.

ANNOTATIONS

Tenant holding over formerly entitled to six-months' notice to vacate. — Since the tenant did not endorse the extensions of the lease, they were not binding upon him, and, therefore, he then became a tenant holding over after a term with the consent of the landlord. This would make him a tenant from year-to-year and entitle him to six-months' notice to vacate. *Baker v. Storie*, 1960-NMSC-037, 67 N.M. 27, 350 P.2d 1039 (1960) (decided under former law).

To be effective, notice must be sufficiently definite to inform the tenant of the landlord's desire that the tenant vacate the premises. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Notice coupled with option to remain insufficient. — Where a notice to quit is coupled with an option to the tenant to remain at an increased rental, it is insufficient to terminate the tenancy. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Notice not given within requisite time period effective for next rental date. — A notice to quit which is ineffective because it does not give the month-to-month tenant the requisite 30 days prior to the periodic rental date is nonetheless effective for the next ensuing rental date. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Failure to comply with Subsection B forfeits security deposit. — A landlord was entitled to apply the security deposit to the tenant's deficient rent payment without sending a written itemization since it was undisputed that the tenant failed to comply with the thirty-day notice requirement of Subsection B upon vacating the unit. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Tenant's liability in damages for holding over after expiration of terms as effected by reason or excuse for so doing, 122 A.L.R. 280.

Measure of damages for tenant's failure to surrender possession of rented premises, 32 A.L.R.2d 582.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

Waiver of statutory demand-for-rent due or of notice-to-quit prerequisite of summary eviction of lessee for nonpayment of rent - modern cases, 31 A.L.R.4th 1254.

Waiver or estoppel as to notice requirement for exercising option to renew or extend lease, 32 A.L.R.4th 452.

Lessor's retention of past-due rental payments as precluding termination of lease and dispossession of lessee for nonpayment of rent, 39 A.L.R.4th 1204.

52A C.J.S. Landlord and Tenant § 758.

47-8-38. Injunctive relief.

A. If the resident refuses to allow lawful access, the owner may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the owner may recover damages, reasonable attorney's fees and court costs.

B. If the owner makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the resident, the resident may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the resident may recover damages and reasonable attorney's fees.

History: 1953 Comp., § 70-7-38, enacted by Laws 1975, ch. 38, § 38.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Injunction to prevent tenant in arrears for rent from removing chattels or improvements not constituting fixtures, 53 A.L.R. 294.

Right to specific performance, or injunction against breach, of lease or sublease or of contract to make lease as affected by right of complainant to cancel lease before expiration of term for which other party is bound, 117 A.L.R. 256.

Injunction in respect of property as covering action for rent or for use or occupation, 155 A.L.R. 844.

52A C.J.S. Landlord and Tenant § 774.

47-8-39. Owner retaliation prohibited.

A. An owner may not retaliate against a resident who is in compliance with the rental agreement and not otherwise in violation of any provision of the Uniform Owner-Resident Relations Act by increasing rent, decreasing services or by bringing or threatening to bring an action for possession because the resident has within the previous six months:

(1) complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety;

(2) organized or become a member of a residents' union, association or similar organization;

(3) acted in good faith to exercise his rights provided under the Uniform Owner-Resident Relations Act, including when the resident makes a written request or complaint to the owner to make repairs to comply with the owner's obligations under Section 47-8-20 NMSA 1978;

(4) made a fair housing complaint to a government agency charged with authority for enforcement of laws or regulations prohibiting discrimination in rental housing;

(5) prevailed in a lawsuit as either plaintiff or defendant or has a lawsuit pending against the owner relating to the residency;

(6) testified on behalf of another resident; or

(7) abated rent in accordance with the provisions of Section 47-8-27.1 or 47-8-27.2 NMSA 1978.

B. If the owner acts in violation of Subsection A of this section, the resident is entitled to the remedies provided in Section 47-8-48 NMSA 1978 and the violation shall be a defense in any action against him for possession.

C. Notwithstanding the provisions of Subsection A of this section, the owner may increase the rent or change services upon appropriate notice at the end of the term of the rental agreement or as provided under the terms of the rental agreement if the owner can establish that the increased rent or changes in services are consistent with those imposed on other residents of similar rental units and are not directed at the particular resident, but are uniform.

History: 1953 Comp., § 70-7-39, enacted by Laws 1975, ch. 38, § 39; 1989, ch. 253, § 1; 1995, ch. 195, § 18; 1999, ch. 91, § 6.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, substituted "six months" for "three months" near the end of the introductory language of Subsection A and made a minor stylistic change.

The 1995 amendment, effective July 1, 1995, in subsection A, deleted "Except as provided in this section" from the beginning, added "the resident has within the previous three months:" to the end, deleted "the resident, who is in compliance with the rental agreement and not otherwise in violation of any provision of that act, has" from the beginning of Paragraph (1), inserted "association" following "union" in Paragraph (2), substituted all the language at the end of Paragraph (3) beginning "the Uniform Owner-Resident Relations Act" for "that act", and added Paragraphs (4) to (7); in Subsection B, substituted "remedies provided in 47-8-48" for "remedies provided in 47-8-29", substituted "the violation shall be a defense in any action" for "has a defense in action", and deleted "Nothing in this section shall be construed as prohibiting reasonable rent increases or changes in services notwithstanding the occurence of acts specified in Subsection A of this section" from the end of Subsection B; added Subsection C; and made minor stylistic changes throughout the section.

The 1989 amendment, effective June 16, 1989, added Subsection A(3), and made minor stylistic changes throughout the section.

Action uniform to all tenants. — Where the owner's decision to discontinue participation in the housing program was to be uniformly applied to all of the low-income tenants as their leases expired, the tenant could not base her retaliation defense on the owner's decision to discontinue the program. *Carol Rickert & Assocs. v. Law*, 2002-NMCA-096, 132 N.M. 687, 54 P.3d 91.

No right to complain about neighbors. — Subsection A(3) does not bar an owner's otherwise proper action for possession of the premises after termination of a month-to-month residency, where the owner is retaliating against the resident for complaining about noisy neighbors. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Retaliatory eviction of tenant for reporting landlord's violation of law, 23 A.L.R.5th 140.

47-8-40. Action for possession by owner.

A. Notwithstanding Subsections A and B of Section 47-8-39 NMSA 1978, an owner may bring an action for possession if:

(1) the violation of the applicable minimum building or housing code was caused primarily by lack of reasonable care by the resident or other person in his household or upon the premises with the resident's consent;

(2) the resident is in default in rent;

(3) there is a material noncompliance with the rental agreement that would otherwise give rise to the owner's right to terminate the rental agreement;

(4) a resident knowingly commits or consents to any other person in the dwelling unit or on the premises knowingly committing a substantial violation; or

(5) compliance with the applicable building or housing code requires alteration, remodeling or demolition that would effectively deprive the resident of use of the dwelling unit.

B. The maintenance of an action under Subsection A of this section does not release the owner from liability under Section 47-8-20 NMSA 1978.

History: 1953 Comp., § 70-7-40, enacted by Laws 1975, ch. 38, § 40; 1995, ch. 195, § 19.

ANNOTATIONS

Compiler's notes. — The reference to Subsections A and B of Section 38 of the Uniform Owner-Resident Relations Act in Subsection A of this section probably should be to Subsections A and B of Section 39 of the Uniform Owner-Resident Relations Act.

Cross references. — For unlawful and forcible entry provision, *see* 47-8-49 NMSA 1978.

For inapplicability of general forcible entry or detainer provisions to actions by landlord, *see* 35-10-2 NMSA 1978.

The 1995 amendment, effective July 1, 1995, in Subsection A, inserted Paragraphs (3) and (4), and redesignated former Paragraph (3) as Paragraph (5), and made minor stylistic changes throughout the section.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Tenant's recovery of damages for emotional distress under Uniform Residential Landlord and Tenant Act, 6 A.L.R.4th 528.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

Landlord's permitting third party to occupy premises rent-free as acceptance of tenant's surrender of premises, 18 A.L.R.5th 437.

52A C.J.S. Landlord and Tenant §§ 729 to 751.

47-8-41. Action for possession by owner or resident.

An action for possession of any premises subject to the provisions of the Uniform Owner-Resident Relations Act shall be commenced in the manner prescribed by the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-41, enacted by Laws 1975, ch. 38, § 41.

ANNOTATIONS

Eviction subject to equitable defenses. — A court may find that a qualified indigent tenant of public housing need not be evicted solely because adjudged liable for back rent. Equitable principles may be applied to prevent eviction. *City of Albuquerque v. Brooks*, 1992-NMSC-069, 114 N.M. 572, 844 P.2d 822.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51C C.J.S. Landlord and Tenant § 320.

47-8-42. Petition for restitution.

The person seeking possession shall file a petition for restitution with the clerk of the district or magistrate court. The petition shall contain:

A. the facts, with particularity, on which he seeks to recover;

B. a reasonably accurate description of the premises; and

C. the requisite compliance with the notice provisions of the Uniform Owner-Resident Relations Act.

The petition may also contain other causes of action relating to the residency, but such causes of action shall be answered and tried separately, if requested by either party in writing.

History: 1953 Comp., § 70-7-42, enacted by Laws 1975, ch. 38, § 42.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).
Am. Jur. 2d, A.L.R. and C.J.S. references. — Setoff or counterclaim in action by tenant against landlord for restitution under Federal Housing and Rent Act of 1947 and amendments, 10 A.L.R.2d 249.
52A C.J.S. Landlord and Tenant § 762.

47-8-43. Issuance of summons.

A. The summons shall be issued and directed, with a copy of the petition attached to the summons, and shall state the cause of the complaint, the answer day for other causes of action and notice that if the defendant fails to appear, judgment shall be entered against him. The summons may be served pursuant to the New Mexico rules of civil procedure and returned as in other cases. Trial of the action for possession shall be set as follows:

(1) for any matter brought by the owner for possession, not less than seven or more than ten days after the service of summons; or

(2) for any matter brought by the resident for possession, not less than three or more than five days after the service of summons.

B. Upon finding of good cause, the court may continue the date of hearing on the action for possession for up to seven days from the date of the initial hearing.

History: 1953 Comp., § 70-7-43, enacted by Laws 1975, ch. 38, § 43; 1995, ch. 195, § 20.

ANNOTATIONS

Cross references. — For the Rules of Procedure for the District Courts, *see* Rule 1-001 NMRA et seq.
The 1995 amendment, effective July 1, 1995, designated the existing language as Subsection A; in Subsection A, in the second sentence inserted "pursuant to the New Mexico rules of civil procedure" following "served" and deleted "or by any authorized person" from the end, deleted the former third sentence which read "The person making the service shall file with the court an affidavit stating with particularity the manner in which he made the service", substituted "shall be set as follows" for "shall be not less than seven nor more than ten days after the service of summons" at the end of the fourth sentence, added Paragraphs (1) and (2), and made minor stylistic changes throughout the subsection; and added Subsection B.
Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).
Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Landlord and Tenant § 741.

47-8-44. Absence from court of defendant.

If the defendant shall not appear in response to the summons, and it shall have been properly served, the court shall try the cause as though he were present.

History: 1953 Comp., § 70-7-44, enacted by Laws 1975, ch. 38, § 44.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-45. Legal or equitable defense.

On or before the day fixed for his appearance, the defendant may appear and answer and assert any legal or equitable defense, setoff or counterclaim.

History: 1953 Comp., § 70-7-45, enacted by Laws 1975, ch. 38, § 45.

ANNOTATIONS

Eviction subject to equitable defenses. — A court may find that a qualified indigent tenant of public housing need not be evicted solely because adjudged liable for back rent. Equitable principles may be applied to prevent eviction. *City of Albuquerque v. Brooks*, 1992-NMSC-069, 114 N.M. 572, 844 P.2d 822.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Rights and remedies of tenant upon landlord's breach of covenant to repair, 28 A.L.R.2d 446.

47-8-46. Writ of restitution.

A. Upon petition for restitution filed by the owner if judgment is rendered against the defendant for restitution of the premises, the court shall declare the forfeiture of the rental agreement and shall, at the request of the plaintiff or his attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff on a specified date not less than three nor more than seven days after entry of judgment.

B. Upon a petition for restitution filed by the resident, if judgment is rendered against the defendant for restitution of the premises, the court shall, at the request of the plaintiff or his attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff within twenty-four hours after entry of judgment.

History: 1953 Comp., § 70-7-46, enacted by Laws 1975, ch. 38, § 46; 1995, ch. 195, § 21.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, added Subsection A; designated the existing language as Subsection B, and in that subsection, substituted "Upon a petition for restitution filed by the resident" for "Trial shall be had on the date or dates set as in all other cases, and" at the beginning, deleted "declare the forfeiture of the rental agreement and shall" following "the court shall", substituted "within twenty-four hours" for "specified date not more than seven days" near the end, and made minor stylistic changes throughout the subsection.

Restitution not mandatory in back rent actions. — This section does not require that a court issue a writ of restitution if it renders a money judgment against a tenant based on causes of action such as back rent. *City of Albuquerque v. Brooks*, 1992-NMSC-069, 114 N.M. 572, 844 P.2d 822.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).
Am. Jur. 2d, A.L.R. and C.J.S. references. — Setoff or counterclaim in action by tenant against landlord for restitution under Federal Housing and Rent Act of 1947 and amendments, 10 A.L.R.2d 249.
52A C.J.S. Landlord and Tenant § 762.

47-8-47. Appeal stays execution.

A. If either party feels aggrieved by the judgment, that party may appeal as in other civil actions. An appeal by the defendant shall stay the execution of any writ of restitution; provided that in cases in which the resident is the appellant, the execution of the writ of restitution shall not be stayed unless the resident, within five days of the filing of the notice of appeal, pays to the owner or into an escrow account with a professional escrow agent an amount equal to the rental amount that shall come due from the day following the judgment through the end of that rental period. The resident shall continue to pay the monthly rent established by the rental agreement at the time the complaint was filed, on a monthly basis on the date rent would otherwise become due. Payments pursuant to this subsection by a subsidized resident shall not exceed the actual amount of monthly rent paid by that resident. When the resident pays the owner directly, the owner shall immediately provide a written receipt to the resident upon demand. When the resident pays into an escrow account the resident shall cause such amounts to be paid over to the owner immediately upon receipt unless otherwise ordered by the court. Upon the failure of the resident or the escrow agent to make a monthly rent payment on the first day rent would otherwise be due, the owner may serve a three-day written notice on the resident pursuant to Subsection D of Section 47-8-33 NMSA 1978. If the resident or the resident's escrow agent fails to pay the rent within the three days, a hearing on the issue shall be scheduled within ten days from the date the court is notified of the failure to pay rent. In the case of an appeal de novo, the hearing shall be in the court in which the appeal will be heard. If, at the hearing, the court finds that rent has not been paid, the court shall immediately lift the stay and issue the writ of restitution unless the resident demonstrates a legal justification for failing to comply with the rent payment requirement.

B. In order to stay the execution of a money judgment, the trial court, within its discretion, may require an appellant to deposit with the clerk of the trial court the amount of judgment and costs or to give a supersedeas bond in the amount of judgment and costs with or without surety. Any bond or deposit shall not be refundable during the pendency of any appeal.

History: 1953 Comp., § 70-7-47, enacted by Laws 1975, ch. 38, § 47; 1989, ch. 253, § 2; 1995, ch. 195, § 22; 1999, ch. 91, § 7.

ANNOTATIONS
The 1999 amendment, effective June 18, 1999, rewrote Subsection A.
The 1995 amendment, effective July 1, 1995, added the subsection designations and rewrote this section to such an extent that a detailed comparison would be impracticable.
The 1989 amendment, effective June 16, 1989, made minor stylistic changes in the second sentence, and inserted the fourth and fifth sentences.
Effect of violation of stay of execution. — This section does not explicitly or implicitly require that a property owner either do or not do a specific act after the court has issued a writ of restitution, nor does the statute provide a standard of conduct for a reasonable person under circumstances where an appeal has been taken. Accordingly, violation of the statute does not establish negligence per se. *Runge v. Fox*, 1990-NMCA-086, 110 N.M. 447, 796 P.2d 1143.
Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Landlord and Tenant § 784.

47-8-48. Prevailing party rights in lawsuit; private enforcement.

A. If suit is brought by an applicant or any party to the rental agreement to enforce the terms and conditions of the rental agreement or to enforce any provisions of the Uniform Owner-Resident Relations Act, the prevailing party shall be entitled to reasonable attorneys' fees and court costs to be assessed by the court.

B. An owner who charges an unauthorized screening fee shall be liable for two hundred fifty dollars ($250) and shall return all fees paid by the applicant.

C. An owner who violates a provision of Section 47-8-36 or 47-8-39 NMSA 1978 shall be liable for two times the amount of the monthly rent.

D. A resident who intentionally violates a provision of Subsection F of Section 47-8-22 NMSA 1978 shall be liable for two times the amount of the monthly rent.

History: 1953 Comp., § 70-7-48, enacted by Laws 1975, ch. 38, § 48; 1995, ch. 195, § 23; 2025, ch. 122, § 7.

ANNOTATIONS

The 2025 amendment, effective June 20, 2025, expanded private remedies; in the section heading, deleted "civil penalties" and added "private enforcement"; added new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively; in Subsection C, after "shall be" deleted "subject to a civil penalty equal to" and added "liable for"; and in Subsection D, after "shall be" deleted "subject to a civil penalty equal to" and added "liable for".

The 1995 amendment, effective July 1, 1995, designated the existing language as Subsection A, and in that subsection, substituted "or to enforce any provisions" for "entered into pursuant to the terms", and substituted "attorneys' " for "attorney's"; and added Subsections B and C.

Determination of reasonable attorney fees. — Where a fire, that was negligently caused by defendant, destroyed plaintiff's personal property in a mobile home that plaintiff rented from defendant; the jury awarded plaintiff $25,000 in compensatory damages; plaintiff sought $70,318 in attorney fees based on the lodestar calculation of time spent on the case and the hourly rate charged by plaintiff's counsel; and on the grounds that plaintiff's attorney fees were almost three times the jury award and that the case involved only property damage and no broader public policy, the district court applied a proportional test and awarded plaintiff $10,000 in attorney fees with an offset of $5,000 for defendant's successful defense of plaintiff's claims for punitive damages, emotional stress damages, and civil penalty damages, the district court abused its discretion because the district court failed to consider the public policy goals of the Uniform Owner-Resident Relations Act to encourage compliance with the act and because the district court failed to consider a lodestar analysis or any objective analysis of the facts in determining attorney fees. *Behrens v. Gateway Court, L.L.C.*, 2013-NMCA-097, cert. granted, 2013-NMCERT-009.

Prevailing party. — The "prevailing party" is the party who wins on the merits or on the main issue of the case. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516.

Landlord, as the prevailing party, was entitled to attorney fees and costs. — Where tenants signed a lease agreement with landlord to rent the subject property for a term of sixteen months, and where the parties subsequently agreed to end the lease several months early, and where landlord sent tenants an accounting that itemized deductions from tenants' damage deposit, and where

tenants filed a complaint contesting the amount landlord deducted from their damage deposit and landlord filed a cross-claim stating that she was entitled to additional damages beyond those itemized in the deductions, and where tenants claimed that, 47-8-18(C) and 47-8-18(D) NMSA 1978 require a landlord to provide a tenant with an itemized listing of all damages to property within thirty days of the date the lease ends, and any claim for damages not then identified is forfeited, and where the district rejected tenants' argument, concluding that the plain meaning of 47-8-18 NMSA 1978 only prohibits a landlord from filing an independent claim for damages if the landlord failed to comply with the statute's terms regarding return of the damage deposit, and awarded landlord, as the prevailing party, attorney fees and costs, the district court did not abuse its discretion in finding that landlord was the prevailing party, because landlord prevailed on the main issue in her cross-claim and tenants were found liable for over $2,300 in damages to landlord's property. *Stodgell v. Weissman*, 2025-NMCA-003, cert. denied.

Assessing attorneys' fees. — Assessing attorneys' fees need not be mechanistic or formalistic, but as governed by, and should be apportioned according to, the facts and circumstances of the case and the extent to which the parties, in fact, prevailed. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516.

Prevailing parties are entitled to award of reasonable attorney fees. — Where tenants brought action against apartment owner and manager for violations of the New Mexico Unfair Practices Act (UPA), §§ 57-12-1 through § 57-12-26 NMSA 1978, and the New Mexico Uniform Owner-Resident Relations Act (UORRA), §§ 47-8-1 through § 47-8-52 NMSA 1978, and where the parties reached a settlement agreement on all issues except attorney fees, plaintiffs were entitled to reasonable attorney fees, notwithstanding the fact that the damage award was small, because plaintiffs successfully prosecuted their UPA and UORRA claims; the amount involved and the results obtained are only one factor among several the court may consider to determine a reasonable attorney fee. *Fallen v. GREP Southwest, LLC*, 247 F.Supp.3d 1165 (2017).

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51C C.J.S. Landlord and Tenant §§ 247(2), 250(2).

47-8-49. Unlawful and forcible entry.

The laws and procedures of New Mexico pertaining to complaints of unlawful and forcible entry shall apply to actions for possession of any premises not subject to the provisions of the Uniform Owner-Resident Relations Act or the Mobile Home Park Act [Chapter 47, Article 10 NMSA 1978].

History: 1953 Comp., § 70-7-49, enacted by Laws 1975, ch. 38, § 49; 1995, ch. 195, § 24.

ANNOTATIONS

Cross references. — For action for possession by owner, *see* 47-8-40 NMSA 1978.

For inapplicability of general forcible entry or detainer provisions to actions by landlord, *see* 35-10-2 NMSA 1978.

The 1995 amendment, effective July 1, 1995, rewrote the section to such an extent that a detailed comparison would be impracticable.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Landlord and Tenant §§ 720, 752 to 792.

47-8-50. Prior transactions valid.

Transactions entered into before the effective date of the Uniform Owner-Resident Relations Act, and not extended or renewed after that date, and the rights, duties and interests flowing from them

remain valid and may be terminated, completed, consummated or enforced as required or permitted prior to the effective date of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-50, enacted by Laws 1975, ch. 38, § 50.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-51. Applicability.

The provisions of the Uniform Owner-Resident Relations Act are applicable to rental agreements entered into or extended or renewed after the effective date and shall not be applicable to any agreements or conditions entered into between the owner and resident which provisions may alter agreements or conditions existing prior to the effective date of the provisions of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-51, enacted by Laws 1975, ch. 38, § 51.

ANNOTATIONS

Severability. — Laws 1975, ch. 38, § 52 provided for the severability of the act if any part or application thereof is held invalid.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-52. Conflicts; applicability of law.

Unless a provision of the Mobile Home Park Act [Chapter 47, Article 10 NMSA 1978] directly conflicts with the provisions of the Uniform Owner-Resident Relations Act, the provisions of the Uniform Owner-Resident Relations Act shall apply to mobile home park owners and residents.

History: Laws 1989, ch. 253, § 3.

ARTICLE 8A
Rent Control Prohibition

47-8A-1. Rent control prohibition.

A. No political subdivision or any home rule municipality shall enact an ordinance or resolution that controls or would have the effect of controlling rental rates for privately owned real property.

B. This section does not impair the right of a state agency, county or municipality to otherwise manage or control its property.

C. The provisions of Subsection A of this section do not apply to privately owned real property for which benefits or funding have been provided under contract by federal, state or local governments or a governmental instrumentality for the express purpose of providing reduced rents to low- or moderate-income tenants.

History: Laws 1991, ch. 23, § 1.