

CHAPTER 47 - Property Law
ARTICLE 8- Owner-Resident Relations

CHAPTER 47**Property Law****ARTICLE 8****Owner-Resident Relations**

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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.

STATUTORY NOTES

Cross reference — Conversion buildings, 47-7D-12 NMSA 1978.

JUDICIAL DECISIONS

Constitutionality

Generally

Applicability

Construction

Instructions

Notice Requirement

Statute of limitations

Constitutionality

70-7-27B, 1953 Comp. is not found to be constitutionally vague in connection with an action brought by a landowner to recover un- paid rent under the Uniform Owner-Resident Relations Act, “former 70-7-1, 1953 Comp. (now 47-8-1 NMSA 1978)”, after the resident was awarded damages. *Kepler v. Covarrubia*, 91 N.M. 443, 575 P.2d 952 (1978).

Generally

Property owners’ actions against residents were not barred by Uniform Owner-Resident Relations Act (UORRA) because the UORRA created no bar to an otherwise proper action for possession brought in retaliation for residents’ complaints about their noisy neighbors. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542, cert. denied, 125 N.M. 322, 961 P.2d 167 (1998).

Applicability

New Mexico Uniform Owner-Resident Relations Act applied to parties’ agreement that constituted a residential lease; tenants had no right to abate rent where property was not uninhabitable. *Hedicke v. Gunville*, 2003- NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516 (2003). Contention of a tenant that the implied warranty of habitability was in effect in New Mexico and that he had a right to abate rent because the landlord did

Construction

The Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., does not create a bar to property owners’ alleged retaliatory action for possession of the premises following the residents’ complaints about their noisy neighbors. *Casa*

Ruling that plaintiff mobile home park met the notice requirements contained in the Mobile Home Park Act, 47-10-1 NMSA 1978, for the termination of a mobile home tenancy was reversed where the park failed to strictly comply with the notice requirements of the Owner-Resident Relations Act, 47-8-1 to 47-8-52 NMSA 1978, showing good cause for the termination of defendant renter’s month-to-month tenancy in the park; even though there had been extensive communication, both written and oral, regarding the park’s dissatisfaction with the renter’s maintenance of the rental space, the park was required to include in its notice to quit a statement of the cause justifying the termination and strict compliance with the notice provision was required. *Green Valley Mobile Home Park v. Mulvaney*, 1996-NMSC-037, 121 N.M. 817, 918 P.2d 1317. Metropolitan court has legal and equity jurisdiction in cases arising under the New Mexico Uniform Owner-Resident Relations Act, 47- 8-1 NMSA 1978 et seq., pursuant to 47-8-45 NMSA 1978; the application of equitable defenses in cases involving public housing rests in the sound discretion of the metropolitan court, and its exercise thereof will not be disturbed on appeal unless there is a clear abuse of discretion. *Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992).

not supply reasonable heat for his rental unit was remanded to the trial court for determination of the applicability of 47-8-20 NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, which encompassed the issue and which was adopted after the court held that there was no implied warranty of habitability in New Mexico. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Blanca Mobile Home Park v. Hill, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542, cert. denied, 125 N.M. 322, 961 P.2d 167 (1998)

Instructions

Given the provisions of Rules 12-216 and 1-051 NMRA, because defendant landlord did not tender correct instructions to inform jury of his theory that the Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, did not apply because plaintiff tenant was an employee whose residency depended on his employment status, and

because landlord was not entitled to rely on the concept of fundamental error to escape the consequences of his failure to object and his failure to tender appropriate instructions, judgment in favor of tenant against landlord was affirmed. *Gracia v. Bittner*, 120 N.M. 191, 900 P.2d 351 (Ct. App. 1995).

Notice

Resident is not entitled to abatement of rent after being awarded damages in connection with an action brought by a landowner to recover unpaid rent under the Uniform Owner-Resident Relations Act, “former 70-7-1, 1953 Comp. (now

47-8-1 NMSA 1978)”, because the resident failed to give written notice of any breach as required by 70-7-29, 1953 Comp. *Kepler v. Covarrubia*, 91 N.M. 443, 575 P.2d 952 (1978).

Requirements

“Former 70-7-13A, 1953 Comp. (now 47-8-13NMSA 1978)” controls any notice requirement under the Uniform Owner-Resident Relations Act, “former 70-7-1, 1953

Comp. (now 47-8-1 NMSA 1978)”, except for the written notice specifically required by 70-7-29, 1953 Comp. *Kepler v. Covarrubia*, 91 N.M. 443, 575 P.2d 952 (1978)

Statute of limitations

Where the tenant waited three years after removed out of the rental property before suing the landlords for negligence in connection with mold and for a violation of their obligations under 47-8-20A(1)-(4) NMSA 1978 of the New Mexico Uniform Owner-Resident Relations Act, the tenant’s claim was barred by the applicable three-year

statute of limitations set forth in 37-1-8 NMSA 1978. Applying the discovery rule, the tenant’s cause of action accrued no later than the day he vacated the home; at that time, the tenant knew there was mold in the home, believed that the mold was causing his symptoms, and had been informed that mold could be dangerous to humans. *Gerke v. Romero*, 2010-NMCA-060, 148 N.M. 367, 237d 111

47-8-2 Purpose

The purpose of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] 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.**

JUDICIAL DECISIONS**Negligence**

Because 47-8-2 NMSA 1978 in the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, states that the Act’s general purpose is to clarify the rights and the obligations of owners and residents and because it is not clear that the provision in 47-8-47 NMSA 1978, which gives a tenant a right to file an appeal to stay the execution of a writ of restitution regarding an eviction action, in the Act is

intended to provide protection against sheriff’s deputies who execute the writ due to not knowing of the appeal, the execution of the writ by the deputies did not entitle the tenants to a recovery as to the negligence claim that was filed against the County of Bernalillo (New Mexico), the sheriff and the deputies. *Runge v. Fox*, 110 N.M. 447, 796 P.2d 1143 (Ct. App. 1990).

47-8-3 Definitions

As used in the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978]:

- 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. “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;
- E. “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;
- F. “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;
- G. “Eviction” means any action initiated by the owner to regain possession of a dwelling unit and use of the premises under terms of the Uniform Owner-Resident Relations Act;
- H. “Fair rental value” is that value that is comparable to the value established in the market place;
- I. “Good faith” means honesty in fact in the conduct of the transaction concerned as evidenced by all surrounding circumstances;
- J. “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;
- K. “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;
- L. “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 under the Uniform Limited Partnership Act [54-2-1 NMSA 1978]; 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.

- M. "Person" includes an individual, corporation, entity or organization;
- N. "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;
- O. "Rent" means payments in currency or in-kind under 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;
- P. "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;
- Q. "Resident" means a person entitled under 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;
- R. "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;
- S. "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;
- T. "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; unlawful use of a deadly weapon;
 - (2) Unlawful action causing serious physical harm to another person;

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

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

(4) Intentional or reckless damage to property in excess of one thousand dollars (\$1,000);

U. "Term" is the period of occupancy specified in the rental agreement; and;

V. "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.

STATUTORY NOTES

Cross reference — Deposits, 47-8-18 NMSA 1978.

JUDICIAL DECISIONS

Generally Applicability Eviction Holdover period

Applicability

Court disagreed that the New Mexico Uniform Owner-Resident Relations Act (Act) applied to this case because there were no claims alleged under the Act; however, the court noted in passing that the Act includes a definition of

Eviction

In an action filed against a nursing home for wrongful death, personal injury, negligent hiring, training and supervision, and loss of consortium, the court ruled an arbitration agreement that the nursing home required to be signed as a condition of admission was substantively unconscionable and therefore unenforceable. The "collection actions" exemption

Holdover period

Pursuant to 47-8-35 NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51, NMSA 1978, a landowner was entitled to rent during a holdover period; because there was no rental agreement after a particular date,

Generally

Uniform Building Code, 47-8-3C (now D) NMSA 1978, sets minimum standards to safeguard health and property by regulating and controlling the use and occupancy and maintenance of all buildings and structures within New Mexico; 47-8-3C (now D) NMSA 1978 defines "codes" within the Act as including building codes. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

single family residence that was a much closer match linguistically to the language before the court. *Estates at Desert Ridge Trails Home-owners' Ass'n v. Vazquez*, N.M.300 P.3d 736 (Ct. App. 2013).

provision showed that the agreement was one-sided because the arbitration agreement exempted the most likely claims the nursing home would bring against a resident for guardianship, collection, and eviction under Subsection G of this section. *Figueroa v. THI of N.M. at Casa Arena Blanca LLC*, N.M., P.3d (Ct. App. July 18, 2012).

the tenant was required to pay the fair rental value of the premises as they existed during these months, under 47-8-15 NMSA 1978 and defined by 47-8-3 NMSA 1978, Inc. v. Rhudy, 96 N.M. 354, 630 P.2d 753 (1981).

47-8-4 Principles of law and equity

Unless displaced by the provisions of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], 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

STATUTORY NOTES

Cross-reference — Breach of agreement by resident and relief by owner, 47-8-33 NMSA 1978.

47-8-5 General act

The Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] 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.

47-8-6 Recovery of damages

- A. The remedies provided by the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] 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 [47-8-1 NMSA 1978] 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

47-8-7 Provision for agreement

A claim or right arising under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] or on a rental agreement may be settled by agreement.

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

47-8-8 Rights, obligations and remedies

The Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] 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

JUDICIAL DECISIONS

Generally

Incidental to employment

Generally

(Unpublished) Where 47-8-8 NMSA 1978 in the Uniform Resident Relation Act, 47-8-1 et seq. NMSA 1978, stated that the Act only applied when a landlord-tenant relationship existed, the Act did not provide any basis of relief to the

private employee regarding the police-assisted removal of him from the barn in which he was living as an incident of his employment for the employer since the employee was not a tenant because he did not pay rent or any other expenses and because he did not have an oral or a written lease. *Collins v. Storment*, 1993 U.S. Dist. LEXIS 20156, Civ. No. 91-1010-HB (D.N.M. Apr. 23, 1993).

Incidental to employment

(Unpublished) Where a tenant's occupation of premises was incidental to his employment, the relationship of landlord and tenant did not exist and the Uniform Resident Relation Act,

47-8-8 NMSA 1978, was inapplicable to the tenant's claim of illegal eviction against certain law enforcement officers. *Collins v. Storment*, 1993 U.S. Dist. LEXIS 20156, Civ. No. 91-1010-HB (D.N.M. Apr. 23, 1993)

47-8-9 Exemptions

Unless created to avoid the application of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], 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.

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 [47-8-1 NMSA 1978] 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 [47-8-1 NMSA 1978], 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.

47-8-11 Obligation of good faith

Every duty under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] 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.

JUDICIAL DECISIONS

Reasonableness

Reversal of decision that found lessor had right to refuse to allow sublease but could only do so reasonably and in good faith was improper because 47-8-11 NMSA 1978 required

commercial transaction to be guided by right dealing and fairness. *Boss Barbara, Inc. v. Newbill*, 97 N.M. 239, 638 P.2d 1084 (1982)

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.

JUDICIAL DECISIONS

Generally

Review — Standards

Generally

In an action brought by a lessee against a lessor to recover a security deposit, the trial court's conclusion that the lessee should not be forced to pay \$850 per month where the apartment in question was occupied by another party at

fair market value throughout the duration of the lease was appropriate; there was authority and substantial evidence upon which the trial court could have found that the lessee's agreement to pay \$850 per month, \$125 over the market value, was inequitable and should not have been enforced. *Ramirez-Eames v. Hover*, 108 N.M. 520, 775 P.2d 722 (1989)

Review — Standards

Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., specifically 47-8-12 NMSA 1978, modifies common law unconscionability principles by allowing a trial court in its discretion to make a determination of the underlying fairness of a rental agreement when made and by allowing

selective enforcement of the contract to bring about an equitable result. However, appellate courts should not be de novo courts of equity in landlord-tenant disputes and should uphold the trial court's determination if it is supported by substantial evidence. *Ramirez-eames v. Hover*, 108 N.M. 520, 775 P.2d 722 (1989).

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 [47-8-1 NMSA 1978], 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

JUDICIAL DECISIONS

Requirements

“Former 70-7-13A, 1953 Comp. (now 47-8-13 NMSA 1978)” controls any notice requirement under the Uniform

Owner-Resident Relations Act, “former 70-7-1, 1953 Comp. (now 47-8-1 NMSA 1978)”, except for the written notice specifically required by 70-7-29, 1953 Comp. *Kepler v. Covarrubia*, 91 N.M. 443, 575 P.2d 952 (1978)

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 [47-8-1 NMSA 1978] 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.

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 ten percent of the total rent payment for each rental period that the resident is in default. 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.

JUDICIAL DECISIONS

Holdover period

Pursuant to 47-8-35 NMSA 1978 of the Uni- form Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, a landowner was entitled to rent during a holdover period; because there was no rental agreement after a particular date, the

tenant was required to pay the fair rental value of the premises as they existed during these months, under 47-8-15 NMSA 1978 and defined by 47-8-3 NMSA 1978., Inc. v. Rhudy, 96 N.M. 354, 630 P.2d 753 (1981).

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.

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.

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 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.

STATUTORY NOTES

Cross reference — Breach of agreement by owner and relief by resident, 47-8-27.1 NMSA 1978.

JUDICIAL DECISIONS

Generally Attorney fees Breach of lease

Generally

In a landlord-tenant dispute, the trial court did not err in granting directed verdicts on the claims for interest and for conversion since there was no security deposit upon which interest could accrue or conversion could be committed because no reasonable jury could have found that \$50,000 was merely a security deposit; 47-8-18A NMSA 1978 required the deposit to be reasonable and there would have been no circumstance under which a landlord would ask for, or a tenant would agree to, a security deposit that was nearly 32 times greater than the monthly rent. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516 (2003). Landlord was entitled to apply tenant's security deposit to tenant's unpaid rent without sending a written itemization where tenant failed to provide landlord with 30 days' notice of his intent to terminate their rental agreement as required by 47-8-37 NMSA 1978.

Bruce v. Attaway, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341. If a landlord does not provide a former tenant with an itemized listing of damages to the property within 30 days of vacancy, the landlord forfeits any right to withhold any portion of the deposit or to file suit for the alleged damages to the property. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341. Section 47-8-18D NMSA 1978 provides that if an owner fails to provide a resident with a written statement of deductions from a deposit and the balance

Attorney fees

Landlord, who did not comply with the requirement of 47-8-18 NMSA 1978 to give an itemized account of damages pursuant to 47-8-22 NMSA 1978, forfeited the deposit and

Breach of lease

Metropolitan court committed legal error by terminating a lease under the Section 8 Housing Choice Voucher Program, 42 U.S.C.S. § 1437f(o), because the tenant failed to timely pay rent for two months and delayed in the payment of a portion of her security deposit under Subsection A of this section. Under the terms of the lease, no date was identified

shown by the statement to be due, within 30 days of the termination of the tenancy, the owner shall forfeit the right to withhold any portion of the deposit, shall forfeit the right to assert any counterclaim in any action brought to recover that deposit, shall be liable to the resident for court costs and reasonable attorneys' fees, and shall forfeit the right to assert an independent action against the resident for damages to the rental property. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341. Owner is deemed to have complied with 47-8-18C NMSA 1978 by mailing a statement and any payment required to the last known address of resident; nothing in 47-8-18 NMSA 1978 shall preclude an owner from retaining portions of a deposit for nonpayment of rent or utilities, repair work, or other legitimate damages. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

Section 47-8-18C NMSA 1978 provides that upon termination of 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 non-compliance with the rental agreement or of 47-8-22 NMSA 1978; no deposit shall be retained to cover normal wear and tear, and 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 30 days of the date of termination of the rental agreement or resident departure, whichever is later. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

the rights to recover additional damages, and owed the tenant attorney fees pursuant to 47-8-18D(3) NMSA 1978. *Garcia v. Thong*, 119 N.M. 704, 895 P.2d 226 (1995).

regarding when the tenant would pay the security deposit or whether partial payments could be made; given the ambiguous language of the lease and the lack of any evidence identifying a significant or materially adverse effect on landlord, he could not establish a serious violation based upon the tenant's three-month delay in paying the balance of

the security deposit. *Serna v. Gutierrez*, 2013-NMCA-026, | N.M.,297 P.3d 1238.

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 [47-8-1 NMSA 1978] 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 [47-8-1 NMSA 1978].

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

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 [47-8-1 NMSA 1978] 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 sub-metered, 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 sub-metered 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.

STATUTORY NOTES

Cross-reference — Delivery of possession, 47-8-26 NMSA 1978. Breach of agreement by owner and relief by resident, 47-8-27.1 NMSA 1978. Abatement, 47-8-

27.2 NMSA 1978. Owner retaliation prohibited, 47-8-39 NMSA 1978. Action for possession by owner, 47-8-40 NMSA 1978.

JUDICIAL DECISIONS

Applicability
Burden of proof
Construction with other law
Negligence
Negligence *per se*
Statute of limitations

Applicability
 Contention of a tenant that the implied warranty of habitability was in effect in New Mexico and that he had a

Burden of proof
 Section 47-8-20A(6), B NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, places the burden upon the landlord to show that a law

right to abate rent because the landlord did not supply reasonable heat for his rental unit was remanded to the trial court for determination of the applicability of 47-8-20 NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, which encompassed the issue and which was adopted after the court held that there was no implied warranty of habitability in New Mexico. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

exists that exempts him from providing reasonable heat for a tenant. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Construction with other law

Section 47-8-20A(1),B of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, require owners to comply with housing and building codes; Section 47-8- 20A(2) — (6) NMSA 1978 remain as minimum standards if there is no applicable code. It does not make sense to read 47-8-20A (6)NMSA 1978 as requiring

reasonable heat unless there is a law requiring it and if a housing or building code applied, the court would never get to 47-8-20A(6) NMSA 1978 because 47-8-20A(1) NMSA 1978 would apply and this would make 47-8-20A(6) NMSA 1978 mere surplusage. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Negligence

A landlord owed a duty to his tenant, an eight-year-old child, to keep a fence that he erected around a common playground

area in reasonably safe condition. *Calkins v. Cox Estates*, 110 N.M. 59, 792 P.2d 36 (1990).

Negligence per se

In a negligence action against landlord by tenant whose son was injured when he fell through a gap in a balcony railing, trial court properly refused to hold landlord to higher standard than that of ordinary care, and refused tenant's

proffered negligence per se instruction. *Heath v. La Mariana Apts.*, 2007- NMCA-003, 141 N.M. 131,151 P.3d 903, aff 'd in part, rev'd in part on other grounds, 2008- NMSC-017, 143 N.M. 657, 180 P.3d 664, 2008 LEXIS 188

Statute of limitations

Where the tenant waited three years after he moved out of the rental property before suing the landlords for negligence in connection with mold and for a violation of their obligations under Subsection A(1)-(4), the tenant's claim was barred by the applicable three-year statute of limitations set forth in 37-1-8 NMSA 1978. Applying the

discovery rule, the tenant's cause of action accrued no later than the day he vacated the home; at that time, the tenant knew there was mold in the home, believed that the mold was causing his symptoms, and had been informed that mold could be dangerous to humans. *Gerke v. Romero*, 2010-NMCA-060, 148 N.M. 367, 237 P.3d 111

RESEARCH REFERENCES**New Mexico Law Review**

Note: The Continuing Debate Over Tort Duty in New Mexico: The Role of Foreseeability and Policy in *Herrera v.*

Quality Pontiac, Quinn M. Bumgarner-Kirby, 34 N.M.L. Rev. 433 (2004).

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 [47-8-1 NMSA 1978] 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 [47-8-1 NMSA 1978] 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.

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

STATUTORY NOTES

Cross reference — Deposits, 47-8-18 NMSA 1978.
Breach of agreement by resident and relief by owner, 47-8-

33 NMSA 1978. Prevailing party rights in law suit; civil penalties, 47-8-48 NMSA 1978.

JUDICIAL DECISIONS

Damages
Landlord, who did not comply with the requirement of 47-8-18 NMSA 1978 to give an itemized account of damages pursuant to 47- 8-22 NMSA 1978, forfeited the deposit and

the rights to recover additional damages, and owed the tenant attorney fees pursuant to 47-8- 18D(3) NMSA 1978. *Garcia v. Thong*, 119 N.M.704, 895 P.2d 226 (1995).

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;
- F. And 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.

STATUTORY NOTES

Cross reference — Definitions, 47-8-3 NMSA 1978.
Obligations of owner, 47-8-20 NMSA 1978.

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.

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

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.

47-8-27 Repealed

STATUTORY NOTES

Repeals — Laws 1995, ch. 195 § 27, repeals this section, as last affected by Laws 1975, ch. 38, § 27, relating to owner-resident relations and noncompliance by the owner.

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 [47-8-1 NMSA 1978] 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 [47-8-1 NMSA 1978] 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.

STATUTORY NOTES

Cross reference — Owner retaliation prohibited, 47-8-39 NMSA 1978.

JUDICIAL DECISIONS

Notice.

Where the resident did not give written notice of deficiencies to the landowner, the resident was not eligible for abatement

of rent and the trial court erred by abating after finding only that the landowner had actual notice of deficiencies. *Kepler v. Covarrubia*, 91 N.M. 443,575 P.2d 952 (1978)

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 [47-8-1 NMSA 1978]. 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 payer, either the payer 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

STATUTORY NOTES

Cross reference — Breach of agreement by owner and relief by resident, 47-8-27.1 NMSA 1978. Breach of agreement by resident and relief by owner, 47-8-33 NMSA 1978. Owner retaliation prohibited, 47-8-39 NMSA 1978.

47-8-28 Repealed

STATUTORY NOTES

Repeals — Laws 1999, ch. 91, §8 repeals this section, as last affected by Laws 1975, ch.38, §28, relating to owner-resident relations, failure to deliver possession.

47-8-29 Repealed

STATUTORY NOTES

Repeals — Laws 1995, ch. 195 § 27, repeals this section, as last affected by Laws 1975, ch. 38, §29, relating to owner-resident relations and resident rights in the event of breach.

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 [47-8-1 NMSA 1978], 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.

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

47-8-32 Repealed

STATUTORY NOTES

Repeals — Laws 1995, ch. 195 §27, repeals this section, as last affected by Laws 1975, ch. 38, §32, relating to owner-resident relations and injunctive relief.

47-8-33 Breach of agreement by resident and relief by owner

- A. Except as provided in the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], if there is noncompliance with Section 47-8-22 NMSA 1978 materially affecting health and safety or upon the initial material non-compliance 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 [47-8-1 NMSA 1978], 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 [47-8-1 NMSA 1978].
- H. When the last day for remedying any breach pursuant to written notice required under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] 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.

STATUTORY NOTES

Cross reference — Application of rules or regulations, 47-8-23 NMSA 1978. Delivery of possession, 47-8-26 NMSA 1978. Appeal stays execution, 47-8-47 NMSA 1978.

JUDICIAL DECISIONS

**Payment after notice
Restitution**

Payment after notice

Judgment was properly rendered in favor of a tenant in connection with a landlord's unlawful detainer action, which had been brought under former 1915 Code, § 2384 after the

tenant failed to pay the rent at the time stipulated for the payment thereof, because the tenant tendered his rent money to the landlord within three days after receiving notice of termination of the lease from the landlord as required under former N.M. Code § 2386. *El Dorado Inv. Co. v. Burrus*, 28 N.M. 551, 215 P. 819 (1923)

Restitution

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978, where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992).

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 [47-8-3 NMSA 1978] of the Uniform Owner-Resident Relations Act, the owner shall be entitled to make 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 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 of the new tenancy begins.

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

STATUTORY NOTES

Cross reference — Right of entry, 47-8-24 NMSA 1978. Disposition of property left on the premises, 47-8-34.1 NMSA 1978.

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 owing 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.

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 of this subsection;

(a) 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;

(b) May remove and store all property found in the dwelling unit;

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

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

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

ii. The contact person failed to remove the property within thirty days after the request is mailed; and

iii. 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.

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.

JUDICIAL DECISIONS

Holdover period Restitution

Holdover period

Pursuant to 47-8-35 NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, a landowner was entitled to rent during a holdover period; because there was no rental agreement after a particular date, the tenant was required to pay the fair rental value of the premises as they existed during these months, under 47-8-15 NMSA 1978 and defined by 47-8-3 NMSA 1978., Inc. v. Rhudy, 96 N.M. 354, 630 P.2d753 (1981).

Restitution

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., where the trial court found that the tenant was in default on rent. City of Albuquerque v. Brooks, 114 N.M. 572, 844 P.2d 822 (1992).

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 [47-8-1 NMSA 1978], 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 [repealed], 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 [47-8-1 NMSA 1978].

- 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.

STATUTORY NOTES

Cross reference — Prevailing party rights in law suit; civil penalties, 47-8-48 NMSA 1978.

Editor's notes — Section 47-8-32 NMSA 1978, referred to in Subsection A(4), was repealed Laws 1995, ch. 195, § 27.

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 [47-8-1 NMSA 1978] 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

JUDICIAL DECISIONS

Lien

A landlord who had a landlord's lien on the property of a lessee was found to have been wholly wrong in her procedure when she forcibly took possession of the property without first demanding the rent due and claiming the landlord's lien

as required under 1917 N.M. Laws ch. 65, § 26 (47-8-36.1 NMSA 1978); thus, the remedy of injunction was available to the lessee because the business of the lessee would be destroyed by way of legal remedies. *Ross v. Overton*, 29 N.M. 651, 226 P. 162 (1924).

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

Construction with other law
Equivocal
Payment after notice
Time limitations

Construction with other law

A court overturned a decision allowing a mobile home park to terminate some residents' month-to-month tenancy, as the court determined that (1) the mobile home park had failed to provide a statement of cause on the notice to quit served on the residents, and (2) even if the notice to quit complied with the requirements of the Owner-Resident Relations Act (ORRA) in 47-8-37B NMSA 1978, the Mobile Home Park Act (which, under 47-10-3A NMSA 1978, was found to require a statement of cause on the notice of quit) prevailed over the ORRA where the statutes were in direct conflict. *Green Valley Mobile Home Park v. Mulvaney*, 1996-NMSC-037, 121 N.M. 817, 918 P.2d 1317.

Equivocal

Tenant contended that a notice to quit was ineffective because it did not sufficiently notify him that he must terminate the tenancy, as required by 47-8-37 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978; the court found that the notice was not sufficiently definite to inform the tenants of the landlords desire that they vacate because it was equivocal and they could have

construed it to mean that they could remain at an increased rental, although a second notice that was unequivocal was sufficient. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Payment after notice

Judgment was properly rendered in favor of a tenant in connection with a landlord's unlawful detainer action, which had been brought under former 1915 Code, § 2384 after the tenant failed to pay the rent at the time stipulated for the payment thereof, because the tenant tendered his rent money to the landlord within three days after receiving notice of termination of the lease from the landlord as required under former 1915 Code, § 2386. *El Dorado Inv. Co. v. Burrus*, 28 N.M. 551, 215 P. 819 (1923).

Time limitations

Tenant contended that the landlord's notices to quit were not effective because they were not given at least 30 days prior to the periodic rental rate, as required by 47-8-37B of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978; the court held that a notice to quit which is ineffective because it did 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*, 96 N.M. 354, 630 P.2d 753 (1981).

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.

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 [47-8-1 NMSA 1978] 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 [47-8-1 NMSA 1978], 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.

STATUTORY NOTES

Cross reference — Action for possession by owner, 47-8-40 NMSA 1978. Prevailing party rights in law suit; civil penalties, 47-8-48 NMSA 1978.

JUDICIAL DECISIONS

Generally **Burden of proof** **Construction. Defenses**

Generally

Where an owner properly terminated a rental agreement and brought an action for possession motivated by retaliation for a resident's complaints about noisy neighbors, that retaliatory action was not barred by 47-8-39A(3) NMSA 1978 of the Uniform Owner-Resident Relations Act because no specific provision of the Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., gave a resident the right to complain about noisy neighbors or required the owner to keep residents from being too noisy. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542, cert. denied, 125 N.M. 322, 961 P.2d 167 (1998).

Burden of proof

Tenants' claim that a landlord's motion for restitution was retaliation against them for abating the rent and was therefore a violation of 47-8-39 NMSA 1978 failed because the tenants were living on the premises continuously until a fire occurred, and the premises were not uninhabitable for any of the 17 months that the tenants had not paid rent; therefore, the tenants were not permitted to abate their rent pursuant to the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 through 47-8-51 NMSA 1978. *Hedicke v. Gunville*,

2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516 (2003).

Construction

Where an owner properly terminated a rental agreement and brought an action for possession motivated by retaliation for a resident's complaints about noisy neighbors, that retaliatory action was not barred by 47-8-39A(3) NMSA 1978 of the Uniform Owner-Resident Relations Act; no specific provision of the Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., gave a resident the right to complain about noisy neighbors or required the owner to keep residents from being too noisy. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542, cert. denied, 125 N.M. 322, 961 P.2d 167 (1998).

Defenses

As landlord and tenant did not dispute that the apartment owner's decision to discontinue participation in the section-eight housing program was to be equally applied to each section-eight tenant upon expiration of the respective lease, the tenant could not ground her retaliation defense on the owner's discontinuance of participation in the section-eight program. *Carol Rickert & Assocs. v. Law*, 2002-NMCA-096, 132 N.M. 687, 54 P.3d 91

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.

JUDICIAL DECISIONS

Restitution

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other forms of relief were available under the New Mexico

Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978, where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992)

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 [47-8-1 NMSA 1978] 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

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 [47-8-1 NMSA 1978].

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

STATUTORY NOTES

Cross reference—Unlawful removal and diminution of services prohibited, 47-8-36 NMSA 1978

JUDICIAL DECISIONS

Restitution

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other

forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978, where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992)

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.

STATUTORY NOTES

Cross reference — Action for termination, 47-10-4 NMSA 1978.

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.

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

JUDICIAL DECISIONS

Restitution

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114

N.M. 572, 844 P.2d 822 (1992). Metropolitan court had both equitable and legal jurisdiction under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., in the city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822(1992)

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

STATUTORY NOTES

Cross reference — Remedies, 47-10-9 NMSA 1978

JUDICIAL DECISIONS

Restitution

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992)

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

JUDICIAL DECISIONS

Negligence

Because 47-8-2 NMSA 1978 in the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, states that the Act's general purpose is to clarify the rights and the obligations of owners and residents and because it is not clear that the provision in 47-8-47 NMSA 1978, which gives a tenant a right to file an appeal to stay the execution of a writ of restitution regarding an eviction action, in the Act is intended to provide protection against sheriff's deputies who execute the writ due to not knowing of the appeal, the execution of the writ by the deputies did not entitle the tenants to a recovery as to the negligence claim that was filed against the County of Bernalillo (New Mexico), the sheriff and the deputies. *Runge v. Fox*, 110 N.M. 447, 796 P.2d 1143 (Ct. App.1990) Bernalillo County (New Mexico), the

sheriff, and the deputies were entitled to a favorable judgment regarding the tenants' negligence claim under 41-4-4 NMSA 1978 in the Tort Claims Act, 41-4-1 to 41-4-27 NMSA 1978, regarding executing the writ of restitution that was issued due to the landlord's desire to evict the tenants; the county was not negligent because the deputies were not negligent because the deputies were only meeting their duty under 4-41-14 NMSA 1978 in executing the facially valid writ of restitution and the deputies were not required to check with the magistrate clerk's office regarding the possibility of the tenants filing the appeal, which they did file, that had the intent under 47-8-47 NMSA 1978 in the Uniform Owner-Resident Relation Act, 47-8-1 to 47-8-51 NMSA 1978, of staying the execution of the writ. *Runge v. Fox*, 110 N.M. 447,796P.2d 1143 (Ct.App.1990)

47-8-48 Prevailing party rights in law suit; civil penalties

- A. If suit is brought by 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 [47-8-1 NMSA 1978], the

prevailing party shall be entitled to reasonable attorneys' fees and court costs to be assessed by the court.

- B. Any owner who violates a provision of Section 47-8-36 or 47-8-39 NMSA 1978 shall be subject to a civil penalty equal to two times the amount of the monthly rent.
- C. Any resident who intentionally violates a provision of Subsection F of Section 47-8-22 NMSA 1978 shall be subject to a civil penalty equal to two times the amount of the monthly rent.

History: 1953 Comp., §70-7-48, enacted by Laws 1975, ch. 38, §48; 1995, ch. 195, §2

STATUTORY NOTES

Cross reference — Delivery of possession, 47-8-26 NMSA 1978. Unlawful removal and diminution of services

prohibited, 47-8-36 NMSA 1978. Owner retaliation prohibited, 47-8-39 NMSA 1978.

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 [47-8-1 NMSA 1978] or the Mobile Home Park Act [47-10-1 NMSA 1978].

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

STATUTORY NOTES

Cross reference. — Action for termination, 47-10-4 NMSA 1978.

47-8-50. Prior transactions valid

Transactions entered into before the effective date of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], 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.

47-8-51. Applicability

The provisions of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] 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.

47-8-52. Conflicts; applicability of law

Unless a provision of the Mobile Home Park Act [47-10-1 NMSA 1978] directly conflicts with the provisions of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], the provisions of the Uniform Owner-Resident Relations Act shall apply to mobile home park owners and residents.

History: Laws 1989, ch. 253, § 3.