

## CHAPTER 118A - LANDLORD AND TENANT: DWELLINGS

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## GENERAL PROVISIONS

**SECTION 118A.010 Short title.** This chapter may be cited as the Residential Landlord and Tenant Act.

**SECTION 118A.020 Definitions.** As used in this chapter, unless the context otherwise requires, the terms defined in [SECTION 118A.030](#) to [118A.170](#), inclusive, have the meanings ascribed to them in those sections.

**SECTION 118A.030 "Abandoned property" defined.** "Abandoned property" means property which is left unattended on the premises after the termination of the tenancy, unless the owner of the property has expressed an intent to return for the property.

**SECTION 118A.040 "Action" defined.** "Action" includes counterclaim, crossclaim, third-party claim or any other proceeding in which rights are determined.

**SECTION 118A.050 "Building, housing and health codes" defined.** "Building, housing and health codes" include any law, ordinance or governmental regulation concerning:

1. Health, safety, sanitation or fitness for habitation; or
2. The construction, maintenance, operation, occupancy, use or appearance,  
↳ of any premises or dwelling unit.

**SECTION 118A.060 “Cause” defined.** A tenancy is terminated with “cause” for:

1. Nonpayment of rent.
2. Nonpayment of utility charges if the landlord customarily pays such charges and submits a separate bill to the tenant.
3. Failure of the tenant to comply with:
  - (a) Basic obligations imposed on the tenant by this chapter;
  - (b) Valid rules or regulations established pursuant to this chapter; or
  - (c) Valid provisions of the rental agreement.
4. Condemnation of the dwelling unit.

**SECTION 118A.070 “Court” defined.** “Court” means the tribal court,

**SECTION 118A.080 “Dwelling” and “dwelling unit” defined.** “Dwelling” or “dwelling unit” means a structure or the part of a structure that is occupied as, or designed or intended for occupancy as, a residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

**SECTION 118A.090 “Exclude” defined.** “Exclude” means to evict or to prohibit entry by locking doors or by otherwise blocking or attempting to block entry, or to make a dwelling unit uninhabitable by interrupting or causing the interruption of electric, gas, water or other essential services.

**SECTION 118A.100 “Landlord” defined.** “Landlord” means a person who provides a dwelling unit for occupancy by another pursuant to a rental agreement.

**SECTION 118A.110 “Normal wear” defined.** “Normal wear” means that deterioration which occurs without negligence, carelessness or abuse of the premises, equipment or chattels by the tenant, a member of his household or other person on the premises with his consent.

**SECTION 118A.120 “Owner” defined.** “Owner” means one or more persons, jointly or severally, in whom is vested:

1. All or part of the legal title to property, except a trustee under a deed of trust who is not in possession of the property; or
2. All or part of the beneficial ownership, and a right to present use and enjoyment of the premises.

**SECTION 118A.130 “Person” defined.** “Person” includes Ely Shoshone Tribe.

**SECTION 118A.140 “Premises” defined.** “Premises” means a dwelling unit and the structure of which it is a part, facilities, furniture, utilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants.

**SECTION 118A.150 “Rent” defined.** “Rent” means all periodic payments to be made to the landlord for occupancy of a dwelling unit, including, without limitation, all reasonable and actual late fees set forth in the rental agreement.

**SECTION 118A.160 “Rental agreement” defined.** “Rental agreement” means any oral or written agreement for the use and occupancy of a dwelling unit or premises.

**SECTION 118A.170 “Tenant” defined.** “Tenant” means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

**SECTION 118A.180 Applicability.**

1. Except as otherwise provided in subsection 2, this chapter applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit or premises located within this Reservation.

2. This chapter does not apply to:

- (a) A rental agreement subject to the provisions of [chapter 118B](#) of Ely Shoshone Tribal Code;
- (b) Low-rent housing programs operated by public housing authorities and established pursuant to the United States Housing Act of 1937, 42 U.S.C. §§ 1437 et seq.;
- (c) Residence in an institution, public or private, incident to detention or the provision of medical, geriatric, educational, counseling, religious or similar service;
- (d) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or his successor in interest;
- (e) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;
- (f) Occupancy in a hotel or motel for less than 30 consecutive days unless the occupant clearly manifests an intent to remain for a longer continuous period;
- (g) Occupancy by an employee of a landlord whose right to occupancy is solely conditional upon employment in or about the premises;
- (h) Occupancy by an owner of a condominium unit or by a holder of a proprietary lease in a cooperative apartment; or
- (i) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

**SECTION 118A.190 Notice: Definition; service.**

1. A person has notice of a fact if:

- (a) He has actual knowledge of it;
- (b) He has received a notice or notification of it; or
- (c) From all the facts and circumstances he reasonably should know that it exists.

2. Written notices to the tenant prescribed by this chapter shall be served in the manner provided by [SECTION 40.280](#).

3. Written notices to the landlord prescribed by this chapter may be delivered or mailed to the place of business of the landlord designated in the rental agreement or to any place held out by the landlord as the place for the receipt of rental payments from the tenant and are effective from the date of delivery or mailing.

**SECTION 118A.200 Rental agreements: Signing; copies; required provisions; disputable presumptions; use of nonconforming agreement unlawful.**

1. Any written agreement for the use and occupancy of a dwelling unit or premises must be signed by the landlord or his agent and the tenant or his agent.

2. The landlord shall provide one copy of any written agreement described in subsection 1 to the tenant free of cost at the time the agreement is executed and, upon request of the tenant, provide additional copies of any such agreement to the tenant within a reasonable time. The landlord may charge a reasonable fee for providing the additional copies.

3. Any written rental agreement must contain, but is not limited to, provisions relating to the following subjects:

- (a) Duration of the agreement.
- (b) Amount of rent and the manner and time of its payment.
- (c) Occupancy by children or pets.
- (d) Services included with the dwelling rental.
- (e) Fees which are required and the purposes for which they are required.
- (f) Deposits which are required and the conditions for their refund.

- (g) Charges which may be required for late or partial payment of rent or for return of any dishonored check.
  - (h) Inspection rights of the landlord.
  - (i) A listing of persons or numbers of persons who are to occupy the dwelling.
  - (j) Respective responsibilities of the landlord and the tenant as to the payment of utility charges.
  - (k) A signed record of the inventory and condition of the premises under the exclusive custody and control of the tenant.
  - (l) A summary of the provisions of [SECTION 202.470](#).
  - (m) Information regarding the procedure pursuant to which a tenant may report to the appropriate authorities:
    - (1) A nuisance.
    - (2) A violation of a building, safety or health code or regulation.
  - (n) Information regarding the right of the tenant to engage in the display of the flag of the United States, as set forth in [SECTION 118A.325](#).
4. The absence of a written agreement raises a disputable presumption that:
- (a) There are no restrictions on occupancy by children or pets.
  - (b) Maintenance and waste removal services are provided without charge to the tenant.
  - (c) No charges for partial or late payments of rent or for dishonored checks are paid by the tenant.
  - (d) Other than normal wear, the premises will be returned in the same condition as when the tenancy began.
5. It is unlawful for a landlord or any person authorized to enter into a rental agreement on his behalf to use any written agreement which does not conform to the provisions of this section, and any provision in an agreement which contravenes the provisions of this section is void.

**SECTION 118A.210 Rental agreements: Payment of rent; term of tenancy.**

- 1. Rent is payable without demand or notice at the time and place agreed upon by the parties.
- 2. Unless the rental agreement establishes a definite term, the tenancy is from week to week in the case of a tenant who pays weekly rent and in all other cases the tenancy is from month to month.
- 3. In the absence of an agreement, either written or oral:
  - (a) Rent is payable at the beginning of the tenancy; and
  - (b) Rent for the use and occupancy of a dwelling is the fair rental value for the use and occupancy.

**SECTION 118A.220 Rental agreements: Prohibited provisions.**

- 1. A rental agreement shall not provide that the tenant:
  - (a) Agrees to waive or forego rights or remedies afforded by this chapter;
  - (b) Authorizes any person to confess judgment on any claim arising out of the rental agreement;
  - (c) Agrees to pay the landlord's attorney's fees, except that the agreement may provide that reasonable attorney's fees may be awarded to the prevailing party in the event of court action;
  - (d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith if the liability is based upon an act or omission of the landlord or any agent or employee of the landlord; or
  - (e) Agrees to give the landlord a different notice of termination than that required to be given by the landlord to the tenant.
- 2. Any provision prohibited by subsection 1 is void as contrary to public policy and the tenant may recover any actual damages incurred through the inclusion of the prohibited provision.

**SECTION 118A.230 Rental agreements: Unconscionability.**

- 1. If the court as a matter of law finds that a rental agreement or any of its provisions was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision or limit the application of any unconscionable provision to avoid an unconscionable result.

2. If unconscionability is put in issue by a party or by the court upon its own motion, the parties 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 its determination.

## **OBLIGATIONS OF LANDLORD**

### **SECTION 118A.240 “Security” defined.**

1. Any payment, deposit, fee or charge that is to be used for any of the following purposes is “security” and is governed by the provisions of this section and [SECTION 118A.242](#) and [118A.244](#):

- (a) Remediating any default of the tenant in the payments of rent.
- (b) Repairing damages to the premises other than normal wear caused by the tenant.
- (c) Cleaning the dwelling unit.

2. “Security” does not include any payment, deposit or fee to secure an option to purchase the premises.

### **SECTION 118A.242 Security: Limitation on amount or value; duties and liability of landlord; damages; prohibited provisions.**

1. The landlord may not demand or receive security, including the last month’s rent, whose total amount or value exceeds 3 months’ periodic rent.

2. Upon termination of the tenancy by either party for any reason, the landlord may claim of the security only such amounts as are reasonably necessary to remedy any default of the tenant in the payment of rent, to repair damages to the premises caused by the tenant other than normal wear and to pay the reasonable costs of cleaning the premises. The landlord shall provide the tenant with an itemized written accounting of the disposition of the security and return any remaining portion of the security to the tenant no later than 30 days after the termination of the tenancy by handing it to him personally at the place where the rent is paid, or by mailing it to him at his present address, or if that address is unknown, at the tenant’s last known address.

3. If the landlord fails or refuses to return the remainder of a security deposit within 30 days after the end of a tenancy, he is liable to the tenant for damages:

- (a) In an amount equal to the entire deposit; and
- (b) For a sum to be fixed by the court of not more than the amount of the entire deposit.

4. In determining the sum, if any, to be awarded under paragraph (b) of subsection 3, the court shall consider:

- (a) Whether the landlord acted in good faith;
- (b) The course of conduct between the landlord and the tenant; and
- (c) The degree of harm to the tenant caused by the landlord’s conduct.

5. Except for an agreement which provides for a nonrefundable charge for cleaning, in a reasonable amount, no rental agreement may contain any provision characterizing any security under this section as nonrefundable or any provision waiving or modifying a tenant’s rights under this section. Any such provision is void as contrary to public policy.

6. The claim of a tenant to security to which he is entitled under this chapter takes precedence over the claim of any creditor of the landlord.

### **SECTION 118A.244 Notice or transfer of security to tenant and successor in interest required upon transfer of dwelling unit.**

1. Upon termination of the landlord’s interest in the dwelling unit, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within a reasonable time, do one of the following, which relieves him of further liability with respect to the security:

(a) Notify the tenant in writing of the name, address and telephone number of his successor in interest, and that he has transferred to his successor in interest the portion of the security remaining after making any deductions allowed under [SECTION 118A.242](#).

(b) Return to the tenant the portion of the security remaining after making any deductions allowed under [SECTION 118A.242](#).

↳ The successor has the rights, obligations and liabilities of the former landlord as to any securities which are owed under this section or [SECTION 118A.242](#) at the time of transfer.

2. The landlord shall, before he records a deed transferring any dwelling unit:

(a) Transfer to his successor, in writing, the portion of any tenant's security deposit or other money held by him which remains after making any deductions allowed under [SECTION 118A.242](#); or

(b) Notify his successor in writing that he has returned all such deposits or portions thereof to the tenant.

**SECTION 118A.250 Receipts for security, rent and other payments.** The landlord shall deliver to the tenant upon his request a signed written receipt for security and any other payments, deposits or fees, including rent, paid by the tenant and received by the landlord. The tenant may refuse to make rent payments until the landlord tenders the requested receipt.

**SECTION 118A.260 Disclosure of names and addresses of managers and owners; emergency telephone number; service of process.**

1. The landlord, or any person authorized to enter into a rental agreement on his behalf, shall disclose to the tenant in writing at or before the commencement of the tenancy:

(a) The name and address of:

(1) The persons authorized to manage the premises;

(2) A person within this Reservation authorized to act for and on behalf of the landlord for the purpose of service of process and receiving notices and demands; and

(3) The principal or corporate owner.

(b) A telephone number at which a responsible person who resides in the county or within 60 miles of where the premises are located may be called in case of emergency.

2. The information required to be furnished by this section must be kept current, and this section is enforceable against any successor landlord or manager of the premises.

3. A party who enters into a rental agreement on behalf of the landlord and fails to comply with this section is an agent of the landlord for purposes of:

(a) Service of process and receiving notices and demands; and

(b) Performing the obligations of the landlord under law and under the rental agreement.

4. In any action against a landlord which involves his rental property, service of process upon the manager of the property or a person described in paragraph (a) of subsection 1 shall be deemed to be service upon the landlord. The obligations of the landlord devolve upon the persons authorized to enter into a rental agreement on his behalf.

5. This section does not limit or remove the liability of an undisclosed landlord.

**SECTION 118A.270 Alternative method of disclosure.** Instead of the manner of disclosure provided in [SECTION 118A.260](#), the landlord may:

1. In each dwelling structure containing an elevator, place a printed or typewritten notice containing the information required by that section in every elevator and in one other conspicuous place; or

2. In each dwelling structure not containing an elevator, place a printed or typewritten notice containing that information in at least two conspicuous places.

↳ The notices shall be kept current and reasonable efforts shall be made to maintain them in a visible position and legible condition.

**SECTION 118A.280 Delivery of possession of premises.** At the commencement of the rental term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and in a habitable condition as provided in this chapter.

**SECTION 118A.290 Habitability of dwelling unit.**

1. The landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition. A dwelling unit is not habitable if it violates provisions of housing or health codes concerning the health, safety, sanitation or fitness for habitation of the dwelling unit or if it substantially lacks:

(a) Effective waterproofing and weather protection of the roof and exterior walls, including windows and doors.

(b) Plumbing facilities which conformed to applicable law when installed and which are maintained in good working order.

(c) A water supply approved under applicable law, which is:

(1) Under the control of the tenant or landlord and is capable of producing hot and cold running water;

(2) Furnished to appropriate fixtures; and

(3) Connected to a sewage disposal system approved under applicable law and maintained in good working order to the extent that the system can be controlled by the landlord.

(d) Adequate heating facilities which conformed to applicable law when installed and are maintained in good working order.

(e) Electrical lighting, outlets, wiring and electrical equipment which conformed to applicable law when installed and are maintained in good working order.

(f) An adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the commencement of the tenancy. The landlord shall arrange for the removal of garbage and rubbish from the premises unless the parties by written agreement provide otherwise.

(g) Building, grounds, appurtenances and all other areas under the landlord's control at the time of the commencement of the tenancy in every part clean, sanitary and reasonably free from all accumulations of debris, filth, rubbish, garbage, rodents, insects and vermin.

(h) Floors, walls, ceilings, stairways and railings maintained in good repair.

(i) Ventilating, air-conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord.

2. The landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks and minor remodeling only if:

(a) The agreement of the parties is entered into in good faith; and

(b) The agreement does not diminish the obligations of the landlord to other tenants in the premises.

3. An agreement pursuant to subsection 2 is not entered into in good faith if the landlord has a duty under subsection 1 to perform the specified repairs, maintenance tasks or minor remodeling and the tenant enters into the agreement because the landlord or his agent has refused to perform them.

**SECTION 118A.300 Advance notice of increase of rent.** The landlord may not increase the rent payable by a tenant unless it serves the tenant with a written notice, 45 days or, in the case of any periodic tenancy of less than 1 month, 15 days in advance of the first rental payment to be increased, advising him of the increase.

**OBLIGATIONS OF TENANT**

**SECTION 118A.310 Basic obligations.** A tenant shall, as basic obligations under this chapter:

1. Comply with the terms of the rental agreement;

2. Keep that part of the premises which is occupied and used as clean and safe as the condition of the premises permit;

3. Dispose of all ashes, garbage, rubbish and other waste from the dwelling unit in a clean and safe manner;

4. Keep all plumbing fixtures in the dwelling unit as clean as their condition permits;

5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, in the premises;

6. Not deliberately or negligently render the premises uninhabitable or destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so; and



7. Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb a neighbor's peaceful enjoyment of the premises.

## **MISCELLANEOUS RIGHTS AND OBLIGATIONS OF LANDLORD AND TENANT**

### **SECTION 118A.320 Rules or regulations of landlord.**

1. The landlord, from time to time, may adopt rules or regulations concerning the tenant's use and occupancy of the premises. Such a rule or regulation is enforceable against the tenant only if:

(a) Its purpose is to promote the convenience, safety or welfare of the landlord or tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for the tenants generally;

(b) It is reasonably related to the purpose for which it is adopted;

(c) It applies to all tenants in the premises in a fair manner;

(d) It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct fairly to inform the tenant of what must or must not be done to comply;

(e) It is in good faith and not for the purpose of evading an obligation of the landlord;

(f) It does not affect the tenant's obligation to pay rent, utilities or other charges;

(g) It does not affect, before the end of the duration of the rental agreement, any right the tenant may have under the rental agreement to keep a pet; and

(h) The tenant has notice of the rule or regulation at the time he enters into the rental agreement or after the rule or regulation is adopted by the landlord.

2. A rule or regulation adopted after the tenant enters into the rental agreement which works a material modification of the bargain is enforceable against a tenant:

(a) Who expressly consents to the rule or regulation in writing; or

(b) Who has 30 days' advance written notice of the rule or regulation.

### **SECTION 118A.325 Right of tenant to display flag of the United States in certain areas; conditions and limitations on exercise of right.**

1. Except as otherwise provided in subsection 2, a landlord or an agent or employee of a landlord shall not prohibit a tenant from engaging in the display of the flag of the United States within such physical portion of the premises as that tenant has a right to occupy and use exclusively.

2. The provisions of this section do not:

(a) Apply to the display of the flag of the United States for commercial advertising purposes.

(b) Preclude a landlord or an agent or employee of a landlord from adopting rules that reasonably restrict the placement and manner of the display of the flag of the United States by a tenant.

3. In any action commenced to enforce the provisions of this section, the prevailing party is entitled to recover reasonable attorney's fees and costs.

4. As used in this section, "display of the flag of the United States" means a flag of the United States that is:

(a) Made of cloth, fabric or paper;

(b) Displayed from a pole or staff or in a window; and

(c) Displayed in a manner that is consistent with 4 U.S.C. Chapter 1.

➤ The term does not include a depiction or emblem of the flag of the United States that is made of balloons, flora, lights, paint, paving materials, roofing, siding or any other similar building, decorative or landscaping component.

### **SECTION 118A.330 Landlord's access to dwelling unit.**

1. A tenant shall not unreasonably withhold consent for the landlord peaceably to enter into the dwelling unit to:

(a) Inspect the premises;

(b) Make necessary or agreed repairs, decorating, alterations or improvements;

(c) Supply necessary or agreed services; or

- (d) Exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, contractors or other persons with a bona fide interest in inspecting the premises.
- 2. The landlord may enter the dwelling unit without consent of the tenant in case of emergency.
- 3. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency, the landlord shall give the tenant at least 24 hours' notice of intent to enter and may enter only at reasonable times during normal business hours unless the tenant expressly consents to shorter notice or to entry during nonbusiness hours with respect to the particular entry.
- 4. The landlord has no other right of access except:
  - (a) Pursuant to court order;
  - (b) Where the tenant has abandoned or surrendered the premises; or
  - (c) Where permitted under [SECTION 118A.440](#).

**SECTION 118A.340 Right of tenant or cotenant to terminate lease due to physical or mental disability or death.**

1. Notwithstanding any provision in a lease of a dwelling to the contrary, if a physical or mental condition of a tenant requires the relocation of the tenant from his dwelling because of a need for care or treatment that cannot be provided in the dwelling and the tenant is 60 years of age or older or has a physical or mental disability:

- (a) That tenant may terminate the lease by giving the landlord 30 days' written notice within 60 days after the tenant relocates; and
- (b) A cotenant of that tenant may terminate the lease by giving the landlord 30 days' written notice within 60 days after the tenant relocates if:
  - (1) The cotenant became a tenant of the dwelling before the date on which the lease was signed by the tenant who is relocating and the cotenant is 60 years of age or older or has a physical or mental disability; or
  - (2) The cotenant became a tenant of the dwelling on or after the date on which the lease was signed by the tenant who is relocating.

2. Notwithstanding any provision in a lease of a dwelling to the contrary, upon the death of the spouse or cotenant of:

- (a) A tenant who is 60 years of age or older; or
  - (b) A tenant who has a physical or mental disability,
- the tenant may terminate the lease by giving the landlord 60 days' written notice within 3 months after the death.

3. The written notice provided to a landlord pursuant to subsection 1 or 2 must set forth the facts which demonstrate that the tenant or cotenant is entitled to terminate the lease. If the tenant or cotenant is terminating the lease pursuant to subsection 1, the tenant or cotenant shall include reasonable verification:

- (a) Of the existence of the physical or mental condition of the tenant; and
- (b) That the physical or mental condition requires the relocation of the tenant from his dwelling because of a need for care or treatment that cannot be provided in the dwelling.

4. This section does not give a landlord the right to terminate a lease solely because of the death of one of the tenants.

5. As used in this section, "cotenant" means a tenant who, pursuant to a lease, is entitled to occupy a dwelling that another tenant who is 60 years of age or older or who has a physical or mental disability is also entitled to occupy pursuant to the same lease.

**REMEDIES**

**SECTION 118A.350 Failure of landlord to comply with rental agreement.**

1. Except as otherwise provided in this chapter, if the landlord fails to comply with the rental agreement, the tenant shall deliver a written notice to the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate as provided in this section. If the breach is remediable and the landlord adequately remedies the breach or uses his best efforts to remedy the breach within 14 days after receipt of the notice, the rental agreement does not terminate by reason of the

breach. If the landlord fails to remedy the breach or make a reasonable effort to do so within the prescribed time, the tenant may:

- (a) Terminate the rental agreement immediately.
- (b) Recover actual damages.
- (c) Apply to the court for such relief as the court deems proper under the circumstances.

2. The tenant may not terminate the rental agreement for a condition caused by his own deliberate or negligent act or omission or that of a member of his household or other person on the premises with his consent.

3. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under this chapter.

4. A tenant may not proceed under this section unless he has given notice as required by subsection 1, except that the tenant may, without giving that notice, recover damages under paragraph (b) of subsection 1 if the landlord:

- (a) Admits to the court that he had knowledge of the condition constituting the breach; or
- (b) Has received written notice of that condition from a governmental agency authorized to inspect for violations of building, housing or health codes.

### **SECTION 118A.355 Failure of landlord to maintain dwelling unit in habitable condition.**

1. Except as otherwise provided in this chapter, if a landlord fails to maintain a dwelling unit in a habitable condition as required by this chapter, the tenant shall deliver a written notice to the landlord specifying each failure by the landlord to maintain the dwelling unit in a habitable condition and requesting that the landlord remedy the failures. If a failure is remediable and the landlord adequately remedies the failure or uses his best efforts to remedy the failure within 14 days after receipt of the notice, the tenant may not proceed under this section. If the landlord fails to remedy a material failure to maintain the dwelling unit in a habitable condition or to make a reasonable effort to do so within the prescribed time, the tenant may:

- (a) Terminate the rental agreement immediately.
- (b) Recover actual damages.
- (c) Apply to the court for such relief as the court deems proper under the circumstances.
- (d) Withhold any rent that becomes due without incurring late fees, charges for notice or any other charge or fee authorized by this chapter or the rental agreement until the landlord has remedied, or has attempted in good faith to remedy, the failure.

2. The tenant may not proceed under this section:

- (a) For a condition caused by his own deliberate or negligent act or omission or that of a member of his household or other person on the premises with his consent; or
- (b) If the landlord's inability to adequately remedy the failure or use his best efforts to remedy the failure within 14 days is due to the tenant's refusal to allow lawful access to the dwelling unit as required by the rental agreement or this chapter.

3. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under this chapter.

4. A tenant may not proceed under this section unless he has given notice as required by subsection 1, except that the tenant may, without giving that notice:

- (a) Recover damages under paragraph (b) of subsection 1 if the landlord:
  - (1) Admits to the court that he had knowledge of the condition constituting the failure to maintain the dwelling in a habitable condition; or
  - (2) Has received written notice of that condition from a governmental agency authorized to inspect for violations of building, housing or health codes.
- (b) Withhold rent under paragraph (d) of subsection 1 if the landlord:
  - (1) Has received written notice of the condition constituting the failure to maintain the dwelling in a habitable condition from a governmental agency authorized to inspect for violations of building, housing or health codes; and
  - (2) Fails to remedy or attempt in good faith to remedy the failure within the time prescribed in the written notice of that condition from the governmental agency.

5. Tribal courts shall establish by local rule a mechanism by which tenants may deposit rent withheld under paragraph (d) of subsection 1 into an escrow account maintained or approved by the court. A tenant

does not have a defense to an eviction under paragraph (d) of subsection 1 unless the tenant has deposited the withheld rent into an escrow account pursuant to this subsection.

**SECTION 118A.360 Failure of landlord to comply with rental agreement or maintain dwelling unit in habitable condition where cost of compliance less than specified amount.**

1. If the landlord fails to comply with the rental agreement or his obligation to maintain the dwelling unit in a habitable condition as required by this chapter, and the reasonable cost of compliance or repair is less than \$100 or an amount equal to one month's periodic rent, whichever amount is greater, the tenant may recover damages for the breach or notify the landlord of the tenant's intention to correct the condition at the landlord's expense. If the landlord fails to use his best efforts to comply within 14 days after being notified by the tenant in writing or more promptly if conditions require in case of emergency, the tenant may cause the work to be done in a workmanlike manner and after submitting to the landlord an itemized statement, the tenant may deduct from his rent the actual and reasonable cost or the fair or reasonable value of the work, not exceeding the amount specified in this subsection.

2. The landlord may specify in the rental agreement or otherwise that work done under this section and [SECTION 118A.380](#) must be performed by a named person or firm or class of persons or firms qualified to do the work and the tenant must comply with the specifications. If the person qualified to do the work is unavailable or unable to perform the repairs the tenant shall use another qualified repairman.

3. A tenant may not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his household or other person on the premises with his consent.

4. The landlord's liability under this section is limited to \$100 or an amount equal to one month's periodic rent, whichever amount is greater, within any 12-month period.

5. A tenant may not proceed under this section unless he has given notice to the landlord that the dwelling is not in a habitable condition as required by this chapter.

**SECTION 118A.370 Failure of landlord to deliver possession of dwelling unit.** If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in this chapter, rent abates until possession is delivered as required, and the tenant may:

1. Terminate the rental agreement upon at least 5 days' written notice to the landlord and upon termination the landlord shall return all prepaid rent, security recoverable under this chapter, and any payment, deposit, fee or charge to secure the execution of the rental agreement; or

2. Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the actual damages sustained. If the landlord has exercised due diligence to evict the holdover tenant or remedy the condition keeping the new tenant from taking possession, the landlord is not liable for damages; or

3. Pursue any other remedies to which the tenant is entitled, including the right to recover any actual damages suffered.

**SECTION 118A.380 Failure of landlord to supply essential services.**

1. If the landlord is required by the rental agreement or this chapter to supply heat, air-conditioning, running water, hot water, electricity, gas, or another essential service and he willfully or negligently fails to do so, causing the premises to become unfit for habitation, the tenant shall give written notice to the landlord specifying the breach. If the landlord does not adequately remedy the breach, or use his best efforts to remedy the breach within 48 hours, except a Saturday, Sunday or legal holiday, after it is received by the landlord, the tenant may, in addition to any other remedy:

(a) Procure reasonable amounts of such essential services during the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) Recover actual damages, including damages based upon the lack of use of the premises or the diminution of the fair rental value of the dwelling unit;

(c) Withhold any rent that becomes due during the landlord's noncompliance without incurring late fees, charges for notice or any other charge or fee authorized by this chapter or the rental agreement, until the landlord has attempted in good faith to restore the essential services; or

(d) Procure other housing which is comparable during the landlord's noncompliance, and the rent for the original premises fully abates during this period. The tenant may recover the actual and reasonable cost of that other housing which is in excess of the amount of rent which is abated.

2. If the tenant proceeds under this section, he may not proceed under [SECTION 118A.350](#) and [118A.360](#) as to that breach.

3. The rights of the tenant under this section do not arise until he has given written notice as required by subsection 1, except that the tenant may, without having given that notice:

(a) Recover damages as authorized under paragraph (b) of subsection 1 if the landlord:

(1) Admits to the court that he had knowledge of the lack of such essential services; or

(2) Has received written notice of the uninhabitable condition caused by such a lack from a governmental agency authorized to inspect for violations of building, housing or health codes.

(b) Withhold rent under paragraph (c) of subsection 1 if the landlord:

(1) Has received written notice of the condition constituting the breach from a governmental agency authorized to inspect for violations of building, housing or health codes; and

(2) Fails to remedy or attempt in good faith to remedy the breach within the time prescribed in the written notice of that condition from the governmental agency.

4. The rights of the tenant under paragraph (c) of subsection 1 do not arise unless the tenant is current in the payment of rent at the time of giving written notice pursuant to subsection 1.

5. If such a condition was caused by the deliberate or negligent act or omission of the tenant, a member of his household or other person on the premises with his consent, the tenant has no rights under this section.

#### **SECTION 118A.390 Unlawful removal or exclusion of tenant or willful interruption of essential services; procedure for expedited relief.**

1. If the landlord unlawfully removes the tenant from the premises or excludes the tenant by blocking or attempting to block his entry upon the premises or willfully interrupts or causes or permits the interruption of any essential service required by the rental agreement or this chapter, the tenant may recover immediate possession pursuant to subsection 4, proceed under [SECTION 118A.380](#) or terminate the rental agreement and, in addition to any other remedy, recover his actual damages, receive an amount not greater than \$1,000 to be fixed by the court, or both.

2. In determining the amount, if any, to be awarded under subsection 1, the court shall consider:

(a) Whether the landlord acted in good faith;

(b) The course of conduct between the landlord and the tenant; and

(c) The degree of harm to the tenant caused by the landlord's conduct.

3. If the rental agreement is terminated pursuant to subsection 1, the landlord shall return all prepaid rent and security recoverable under this chapter.

4. Except as otherwise provided in subsection 5, the tenant may recover immediate possession of the premises from the landlord by filing a verified complaint for expedited relief for the unlawful removal or exclusion of the tenant from the premises or the willful interruption of essential services.

5. A verified complaint for expedited relief:

(a) Must be filed with the court within 5 judicial days after the date of the unlawful act by the landlord, and the verified complaint must be dismissed if it is not timely filed. If the verified complaint for expedited relief is dismissed pursuant to this paragraph, the tenant retains the right to pursue all other available remedies against the landlord.

(b) May not be filed with the court if an action for summary eviction or unlawful detainer is already pending between the landlord and tenant, but the tenant may seek similar relief before the judge presiding over the pending action.

6. The court shall conduct a hearing on the verified complaint for expedited relief within 3 judicial days after the filing of the verified complaint for expedited relief. Before or at the scheduled hearing, the tenant must provide proof that the landlord has been properly served with a copy of the verified complaint for expedited relief. Upon the hearing, if it is determined that the landlord has violated any of the provisions of subsection 1, the court may:

- (a) Order the landlord to restore to the tenant the premises or essential services, or both;
- (b) Award damages pursuant to subsection 1; and
- (c) Enjoin the landlord from violating the provisions of subsection 1 and, if the circumstances so warrant, hold the landlord in contempt of court.

7. The payment of all costs and official fees must be deferred for any tenant who files a verified complaint for expedited relief. After any hearing and not later than final disposition of the filing or order, the court shall assess the costs and fees against the party that does not prevail, except that the court may reduce them or waive them, as justice may require.

**SECTION 118A.400 Damage or destruction of dwelling unit by fire or casualty.**

1. 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 landlord may terminate the rental agreement and the tenant may, in addition to any other remedy:

(a) Immediately vacate the premises and notify the landlord within 7 days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating.

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

2. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable under this chapter. Accounting for rent in the event of termination or such continued occupancy shall be made as of the date the premises were vacated.

3. This section does not apply if it is determined that the fire or casualty were caused by deliberate or negligent acts of the tenant, a member of his household or other person on the premises with his consent.

**SECTION 118A.410 Failure of landlord to disclose required information to tenant.** After a demand by the tenant, if a landlord fails to disclose as provided in [SECTION 118A.260](#) or [SECTION 118A.270](#), the tenant may recover actual damages or \$25, whichever is greater.

**SECTION 118A.420 Failure of tenant to comply with rental agreement or perform basic obligations: Damages; injunctive relief.** Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for failure of the tenant to comply with the rental agreement or perform his basic obligations under this chapter.

**SECTION 118A.430 Failure of tenant to comply with rental agreement or perform basic obligations: Termination of rental agreement.**

1. Except as otherwise provided in this chapter, if the tenant fails to comply with the rental agreement or fails to perform his basic obligations under this chapter, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate as provided in this section. If the breach is remediable and the tenant does not adequately remedy the breach or use his best efforts to remedy the breach within 5 days after receipt of the notice, or if the breach cannot be remedied, the landlord may terminate the rental agreement.

2. If the tenant is not reasonably able to remedy the breach, the tenant may avoid termination of the rental agreement by authorizing the landlord to enter and remedy the breach and by paying any reasonable expenses or damages resulting from the breach or the remedy thereof.

**SECTION 118A.440 Failure of tenant to perform basic obligations: Remedial work by landlord may be charged to tenant.** If the tenant's failure to perform basic obligations under this chapter can be remedied by repair, replacement of a damaged item or cleaning, and the tenant fails to use his best efforts to comply within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time or more promptly if conditions require in case of emergency, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit the itemized bill for the actual and reasonable cost, or the fair and reasonable value of the work. The

itemized bill shall be paid as rent on the next date periodic rent is due, or if the rental agreement has terminated, may be submitted to the tenant for immediate payment or deducted from the security.

**SECTION 118A.450 Abandonment of dwelling unit by tenant: Remedies; presumption.** If the landlord has notice of the fact of abandonment by the tenant, the landlord may dispose of the tenant's personal property as provided in [SECTION 118A.460](#) and recover possession of the premises as provided by [SECTION 118A.480](#). In the absence of notice of the fact of abandonment, it is presumed that the tenant has abandoned a dwelling unit if he is absent from the premises for a period of time equal to one-half the time for periodic rental payments, unless the rent is current or the tenant has in writing notified the landlord of an intended absence.

**SECTION 118A.460 Procedure for disposal of personal property abandoned or left on premises.**

1. The landlord may dispose of personal property abandoned on the premises by a former tenant or left on the premises after eviction of the tenant without incurring civil or criminal liability in the following manner:

(a) The landlord shall reasonably provide for the safe storage of the property for 30 days after the abandonment or eviction or the end of the rental period and may charge and collect the reasonable and actual costs of inventory, moving and storage before releasing the property to the tenant or his authorized representative rightfully claiming the property within that period. The landlord is liable to the tenant only for his negligent or wrongful acts in storing the property.

(b) After the expiration of the 30-day period, the landlord may dispose of the property and recover his reasonable costs out of the property or the value thereof if he has made reasonable efforts to locate the tenant, has notified the tenant in writing of his intention to dispose of the property and 14 days have elapsed since the notice was given to the tenant. The notice must be mailed to the tenant at the tenant's present address, and if that address is unknown, then at the tenant's last known address.

(c) Vehicles must be disposed of in the manner provided in [chapter 487](#) of Ely Shoshone Tribal Code for abandoned vehicles.

2. Any dispute relating to the amount of the costs claimed by the landlord pursuant to paragraph (a) of subsection 1 may be resolved using the procedure provided in subsection 7 of [SECTION 40.253](#).

**SECTION 118A.470 Holding over by tenant.** If a tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and for rent and the landlord may also recover his actual damages. If the landlord consents to the tenant's continued occupancy, the tenancy is from week to week in the case of a tenant who pays weekly rent, and in all other cases the tenancy is from month to month. Such occupancy is otherwise on the same terms and conditions as were contained in the rental agreement unless specifically agreed otherwise.

**SECTION 118A.480 Landlord's recovery of possession of dwelling unit.** The landlord shall not recover or take possession of the dwelling unit by action or otherwise, including willful diminution or interruption or causing or permitting the diminution or interruption of any essential service required by the rental agreement or this chapter, except:

1. By an action for possession or other civil action or summary proceeding in which the issue of right of possession is determined;
2. When the tenant has surrendered possession of the dwelling unit to the landlord; or
3. When the tenant has abandoned the dwelling unit as provided in [SECTION 118A.450](#).

**SECTION 118A.490 Actions based upon nonpayment of rent: Counterclaim by tenant; deposit of rent with court; judgment for eviction.**

1. In an action for possession based upon nonpayment of rent or in an action for rent where the tenant is in possession, the tenant may defend and counterclaim for any amount which he may recover under the rental agreement, this chapter, or other applicable law. If it appears that there is money which may be due

to the landlord by the tenant after the day of the hearing or if a judgment is delayed for any reason, the court shall require a tenant who remains in possession of the premises to deposit with the court a just and reasonable amount to satisfy the obligation, but not more than 1 day's rent for each day until the new hearing date. The court shall order the tenant to pay the landlord any rent which is not in dispute and shall determine the amount due to each party. Upon the application of either party, the court, after notice and opportunity for a hearing, may for good cause release to either party all or any portion of the rent paid into court by the tenant. The court shall award the prevailing party the amount owed and shall give judgment for any other amount which is due.

2. In any action for rent where the tenant is not in possession, the tenant may counterclaim as provided in subsection 1 but is not required to pay any rent into court.

3. When the court renders a decision on the landlord's claim for possession, it shall distribute any rent paid into court under subsection 1 upon a determination of the amount due to each party.

4. If a tenant fails to deposit with the court within 24 hours after the original hearing the entire amount required pursuant to subsection 1, the tenant relinquishes his right to a hearing and the court shall at that time grant a judgment for eviction without further hearing.

#### **SECTION 118A.500 Tenant's refusal to allow lawful access to dwelling unit; landlord's abuse of access.**

1. If the tenant refuses to allow lawful access as required by the rental agreement or this chapter, the landlord may obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages.

2. If the landlord 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 tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

#### **SECTION 118A.510 Retaliatory conduct by landlord against tenant prohibited; remedies; exceptions.**

1. Except as otherwise provided in subsection 3, the landlord may not, in retaliation, terminate a tenancy, refuse to renew a tenancy, increase rent or decrease essential services required by the rental agreement or this chapter, or bring or threaten to bring an action for possession if:

(a) The tenant has complained in good faith of a violation of a building, housing or health code applicable to the premises and affecting health or safety to a governmental agency charged with the responsibility for the enforcement of that code;

(b) The tenant has complained in good faith to the landlord or a law enforcement agency of a violation of this chapter or of a specific statute that imposes a criminal penalty;

(c) The tenant has organized or become a member of a tenant's union or similar organization;

(d) A citation has been issued resulting from a complaint described in paragraph (a);

(e) The tenant has instituted or defended against a judicial or administrative proceeding or arbitration in which he raised an issue of compliance with the requirements of this chapter respecting the habitability of dwelling units;

(f) The tenant has failed or refused to give written consent to a regulation adopted by the landlord, after the tenant enters into the rental agreement, which requires the landlord to wait until the appropriate time has elapsed before it is enforceable against the tenant; or

(g) The tenant has complained in good faith to the landlord, a government agency, an attorney, a fair housing agency or any other appropriate body of a violation of [SECTION 118.010](#) to [118.120](#), inclusive, or the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 et seq., or has otherwise exercised rights which are guaranteed or protected under those laws.

2. If the landlord violates any provision of subsection 1, the tenant is entitled to the remedies provided in [SECTION 118A.390](#) and has a defense in any retaliatory action by the landlord for possession.

3. A landlord who acts under the circumstances described in subsection 1 does not violate that subsection if:



(a) The violation of the applicable building, housing or health code of which the tenant complained was caused primarily by the lack of reasonable care by the tenant, a member of his household or other person on the premises with his consent;

(b) The tenancy is terminated with cause;

(c) A citation has been issued and compliance with the applicable building, housing or health code requires alteration, remodeling or demolition and cannot be accomplished unless the tenant's dwelling unit is vacant; or

(d) The increase in rent applies in a uniform manner to all tenants.

↳ The maintenance of an action under this subsection does not prevent the tenant from seeking damages or injunctive relief for the landlord's failure to comply with the rental agreement or maintain the dwelling unit in a habitable condition as required by this chapter.

**SECTION 118A.520 When lien or security interest in tenant's household goods may be enforced; distraint for rent abolished; damages.**

1. Any lien or security interest in the tenant's household goods created in favor of the landlord to ensure the payment of rent is unenforceable unless created by attachment or garnishment.

2. Distraint for rent is abolished.

3. A landlord who retains the household goods or other personal property of a tenant in violation of this section is liable to the tenant for damages as provided in [SECTION 118A.390](#).