

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 461

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO FORCIBLE ENTRY AND UNLAWFUL DETAINER; AMENDING SECTION 6-303, IDAHO CODE, TO PROVIDE NOTICE OF A CERTAIN ACTION AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 6-316, IDAHO CODE, TO PROVIDE FOR CERTAIN PROCEDURES UPON A FINDING IN FAVOR OF A LANDLORD AND TO PROVIDE THAT A COURT MAY AWARD CERTAIN COSTS AND EXPENSES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 6-303, Idaho Code, be, and the same is hereby amended to read as follows:

6-303. UNLAWFUL DETAINER DEFINED. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

1. When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the civil code.

2. Where he continues in possession, in person or by subtenant, without permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three (3) days' notice, in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a subtenant in actual occupation of the premises, also upon such subtenant. Such notice shall also notify the tenant that if a court enters judgment against him, then he will have seventy-two (72) hours, if he is a residential tenant, and seven (7) days, or longer if granted by the court, if he is a commercial tenant or a tenant with a tract of land five (5) acres or more, to remove his belongings from the premises before the landlord may remove and dispose of such property pursuant to section 6-316, Idaho Code. Such notice may be served at any time within one (1) year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty (60) days after the expiration of his term without any demand of possession or notice to quit by the landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. Where he continues in possession in person, or by subtenants, after a neglect or failure to perform other conditions or covenants of the lease or

1 agreement under which the property is held, including any covenant not to as-
 2 sign or sublet, than the one for payment of rent, and three (3) days' notice,
 3 in writing, requiring the performance of such conditions or covenants, or
 4 the possession of the property, shall have been served upon him, and if there
 5 be a subtenant in actual occupation of the premises, also upon such sub-
 6 tenant. Within three (3) days after the service of the notice, the tenant, or
 7 any subtenant in actual occupation of the premises, or any mortgagee of the
 8 term, or other person interested in its continuance, may perform the condi-
 9 tions or covenants of the lease, or pay the stipulated rent, as the case may
 10 be, and thereby save the lease from forfeiture: provided, if the covenants
 11 and conditions of the lease, violated by the lessee, ~~can not~~ cannot after-
 12 ward be performed, then no notice, as last prescribed herein, need be given
 13 to said lessee or his subtenant demanding the performance of the violated
 14 covenant or conditions of the lease. A tenant may take proceedings similar
 15 to those prescribed in this chapter, to obtain possession of premises let to
 16 an undertenant, in case of his unlawful detention of the premises underlet
 17 to him.

18 4. A tenant or subtenant, assigning or subletting, or committing waste
 19 upon, the demised premises contrary to the covenants of his lease, thereby
 20 terminates the lease, and the landlord, or his successor in estate, shall,
 21 upon service of three (3) days' notice to quit upon the person or persons
 22 in possession, be entitled to restitution of possession of such demised
 23 premises under the provisions of this chapter.

24 5. If any person is, or has been, engaged in the unlawful delivery, pro-
 25 duction or use of a controlled substance on the premises of the leased prop-
 26 erty during the term for which the premises are let to the tenant. For pur-
 27 poses of this chapter, the terms "delivery," "production," and "controlled
 28 substance" shall be defined as set forth in section 37-2701, Idaho Code.

29 SECTION 2. That Section 6-316, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 6-316. JUDGMENT -- RESTITUTION. (1) If, upon the trial, the verdict of
 32 the jury, or, if the case be tried without a jury, the finding of the court,
 33 be in favor of the plaintiff and against the defendant, judgment shall be
 34 entered for the restitution of the premises; and if the proceeding be for
 35 an unlawful detainer after neglect or failure to perform the conditions or
 36 covenants of the lease or agreement under which the property is held, or af-
 37 ter default in the payment of rent or based upon a finding that a landlord had
 38 reasonable grounds to believe that a person is, or has been, engaged in the
 39 unlawful distribution, production, or use of a controlled substance on the
 40 leased premises during the term for which the premises are let to the ten-
 41 ant, the judgment shall also declare the forfeiture of such lease or agree-
 42 ment. The jury, or the court, if the proceeding be tried without a jury,
 43 shall also assess the damages occasioned to the plaintiff by any forcible en-
 44 try, or by any forcible or unlawful detainer, alleged in the complaint and
 45 proved on the trial, and find the amount of any rent due, if the alleged un-
 46 lawful detainer be after default in the payment of rent or, after default,
 47 based upon a finding that a landlord had reasonable grounds to believe that
 48 a person is, or has been, engaged in the unlawful distribution, production,
 49 or use of a controlled substance on the leased premises during the term for

1 which the premises are let to the tenant, and the judgment shall be rendered
2 against the defendant guilty of the forcible entry, or forcible or unlawful
3 detainer, for the amount of the damages thus assessed, and of the rent found
4 due. When the proceeding is for an unlawful detainer after default in pay-
5 ment of rent where the tract of land is larger than five (5) acres, and the
6 lease or agreement under which the rent is payable has not by its terms ex-
7 pired, execution upon the judgment shall not be issued until the expiration
8 of five (5) days after the entry of the judgment, within which time the ten-
9 ant, or any subtenant, or any mortgagee of the term, or other party inter-
10 ested in its continuance, may pay into court, for the landlord, the amount
11 found due as rent, with interest thereon, and the amount of the damages found
12 by the jury or the court for the unlawful detainer, and the costs of the pro-
13 ceeding, and thereupon the judgment shall be satisfied and the tenant be re-
14 stored to his estate; but if payment as here provided be not made within the
15 five (5) days, the judgment may be enforced for its full amount, and for the
16 possession of the premises. In all other cases the judgment may be enforced
17 immediately.

18 (2) If, upon the trial, the verdict of the jury or, if the case is tried
19 without a jury, the finding of the court is in favor of the landlord and for
20 the possession of the premises, a residential tenant shall have seventy-two
21 (72) hours to remove his belongings from the premises, and a commercial ten-
22 ant or a tenant with a tract of land five (5) acres or more shall have seven
23 (7) days to remove his belongings from the premises; provided however, that
24 upon a finding of good cause shown, a court may grant a commercial tenant
25 longer than seven (7) days to remove his belongings. After the time required
26 for a tenant to remove his belongings under this subsection, the landlord or
27 his agents may, subject to any security interests under chapter 9, title 28,
28 Idaho Code, remove and dispose of all remaining property of the tenant, in-
29 cluding any motor vehicle that may be removed pursuant to section 49-1806,
30 Idaho Code, that remains on or about the premises without any further compen-
31 sation or consideration to the tenant. Removal of such property by the land-
32 lord or his agents may be done in the presence of the county sheriff who shall
33 be there only to keep the peace. Upon a finding of good cause shown, the court
34 may award to the landlord reasonable costs and expenses not otherwise pro-
35 vided for in this chapter for the removal of property pursuant to this sub-
36 section and for restoration of the premises.