



Landlord Tenant Basics

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The Wyoming Residential Rental Property Act (the WRRPA) was passed by the Wyoming Legislature in 1999. It is codified at W.S. §§1-21-1201, et. seq.

- *Merrill v. Jansma*, 2004 WY 26, 86 P.3d270 (Wyo. 2004), a case interpreting the WRRPA, did abrogate the common law of landlord immunity in tort, but did not explicitly overrule any other common law doctrine (e.g., constructive eviction).

The Lease Agreement and Statutory Duties

There are no standardized lease forms in use in Wyoming, leaving the landlord free to draft her/his own.

Section §1-21-1202(a)-(c) defines the duties of owners and renters generally:

- Landlord has a duty to maintain units in a safe and sanitary condition fit for human habitation, including operational electrical, heating and plumbing, with hot and cold running water unless otherwise agreed upon in writing by both parties, or units are seasonal rental units which are not intended to have such amenities (specific duties defined at §1-21-1203);
- Renter has a duty to cooperate in maintaining the unit (specific duties defined at §102101294)
- HOWEVER, section (d) states, “any duty or obligation in the article may be assigned to a different party or modified by explicit written agreement, signed by the parties.”

If reviewing a lease, things to look for include (except from “My lease says what” by Elisabeth Goudy, Wyoming Lawyer, April 2008, Vol. 31, No. 2):

- Any provision that is contrary to the WRRPA such as a provision that assigns a duty set over to the landlord in the Act to the tenant or modifies the Act’s security deposit terms.
- Any ambiguity in the lease. Surprisingly, what initially appears to be a fixed term lease may contain some kind of provision that contradicts the expiration date. For instance, the lease may say that a tenant must give a 30-day notice to vacate. Of course, any ambiguity in a lease could be construed against its drafter and therefore may be favorable to a tenant.

- Any statement that the landlord may enter without consent or without reasonable notice. This is contrary to a tenant's most important right, i.e, the tenant's property right of possession.
- An acceleration of rent clause. Typically this type of clause says that upon a tenant's default upon any of the provisions of the lease, the entire balance of the rent will become immediately due and payable.
- An attorney's fees provisions that says the tenant will be responsible for landlord's attorney's fees incurred because of any dispute between the parties including any unsuccessful landlord outcome in litigation.
- Any provision that states that the tenant agrees to abide by any rules or regulations made subsequent to the time the least agreement is signed.
- A waiver of legal rights in regard to any defect in the rental unit.
- A Statement that, if evicted, the lease is still enforceable against the tenant and all rent post eviction is still due and payable.
- Any lead paint disclosures as required by current federal law.
- Assorted "fines" and fees, i.e., pet fines, party fines, right to sublease fees, unreasonable late rental penalties, etc.
- A careful assessment of what, if anything, the landlord s agreeing to do.

Eviction (Forcible Entry and Detainer) Basics

Adapted from "What Every Wyoming Lawyer Should Know About Forcible Entry and Detainer" by Monique J. Ojeda and "Forcible Entry and Detainer: A View from the Bench: by Hon. Roberta A. Coates, Wyoming Lawyer, April 2008, Vol.31, No. 2:

- Eviction in Wyoming is called "Forcible Entry and Detainer ("FED").
- Most FED cases involve landlords or real estate owners trying to evict a "tenant" from real property for failure to pay rent or failure to follow the lease. When the term "tenant" is used, it generally means any person residing upon real estate whether by an oral or written lease, a sales contract, or by any other means. However, an eviction action should not be brought to enforce a contract for deed. *Steffens v. Smith*, 477 P.2d 119, 1970 Wyo. LEXIS 207 (Wyo. 1970).
- FED actions are a purely statutory remedy pursuant to Wyo. Stat/ § 1-21-1201 et. seq., and the statute must be substantially complied with, or jurisdiction will fail

to attach and the proceeding will be “corum non judice and void”. *White v. Veitch*, 401 P.983 (Wyo. 1921).

Wyo. Stat. §1-21-1002(2) lists the cases where FED actions are appropriate:

- Tenants are holding over part their terms (be careful if the lease has a holdover provision to give notice that provision is not in place);
- Rent is not paid for three days after it is due;
- When a purchaser demands possession after a legal sale;
- In cases where the defendant is a settler or occupier of lands or tenements, without color of title;
- Other instances listed in Wyoming Statute §1-21-1002.
- In instances where the tenant violates a term of the lease (such as loud parties, violations of the law at the premises or pets on the premises that are not allowed), notice of the violation and notice to terminate the lease should first be given and then the procedures for a forcible entry and detainer may be put in place.

Notice to Quit

The FED statute must be strictly complied with and the first statutory requirement involves the providing of a “notice to Quit.” The Notice to Quit provides for the following:

- Written notice to leave. The Notice must give the tenant at least three (3) days to move out.
- The Notice must be “served”, although it is not clear the definition of service contained in the WRCP applies. This Notice can be given to the tenant in person, left at his home or office or taped (posted) to his front door. However, there should be a good faith attempt to personally serve the tenant prior to posting.
- The Notice can be utilized in the Court hearing for a couple of months and does not generally expire, but there may be arguments available if a significant amount of time has passed.
- The Sheriff does not have to serve the Notice. However, it is probably a safe practice to use a neutral process server.
- The Notice must be served or posted at least three (3) days before the complainant can commence the FED action.

- If the tenant pays the rent (or otherwise cures the defect) before three (3) days (or whatever time he has been given) has passed, he will be able to stay.

Summons

- A summons is an action for forcible entry and detainer is different from the form of the summons that is normally served (available from the Clerk of Circuit Court):
- The summons must give a time and place for trial. The trial has to occur not less than three days after service and not more than 12 days. Under Wyoming Statute §1-21-1004, the service as defined by the Wyoming Rules of Civil Procedure is required. A complaint for the relief requested must be served with the summons.
- The trial is often set within two weeks of filing. If service is not made during the required time frame, an alias summons can be issued.
- With the Court's permission, service may be done by "posting" on some conspicuous place on the premises. However, in consideration of due process, Courts should be reluctant to do this unless service is very difficult or impossible. Also, a money judgment for any rents due, costs of the lawsuit and reasonable attorneys' fees will not be ordered in a Notice posting case (the only remedy is a Writ of Restitution, for the return of the right of possession).

Trial

- Even if the Defendant does not appear, the Owner must prove its case to the court before judgment can be entered. Wyoming Statute §1-21-1005.
- Wyoming Statute §1-21-1006 provides that the defendant must file an answer to present his case. If the defendant does not answer, he may only cross-examine the plaintiff's witnesses. As a courtesy, some courts allow pro-se defendants to argue even though a formal answer has not been filed.
- Defendants are not to receive a continuance for more than two days unless a sufficient surety bond is posted. Wyoming Statute §1-21-1007.
- There is a right to a jury trial.
- Defendant tenants often mistakenly believe that actions by the property owner somehow offset or excuse the tenant from paying rent. Also the Defendant tenant may want to address the deposition or other contractual items. However, these items are not generally within the court's jurisdiction in an FED action.

- A judgment may be entered for restitution and costs. If rent is due, then the court may also enter a judgment for the rent. The court will also enter judgments for late fees if the lease is clear those sums are part of the rent. An award of reasonable attorneys' fees may also be ordered, as provided by the lease.
- Courts will not enter a judgment for damages, damage deposit or the anticipated sums to remove the defendant's property. Damages must be brought in a separate action.
- A Writ of Restitution to repossess the property is issued after a judgment is entered and after it is requested by the plaintiff. Frequently, the writ may issue days after the judgment is entered (may be up to 30 days) thereby giving time for the defendant to vacate the premises. The defendant tenant will have a better chance of getting additional time if he attends the hearing. The cost for the writ to be served may be included in the costs awarded in the judgment.
- Unless the Tenant files an appeal, the officer receiving the Writ must execute within two days of its receipt. After the Writ is served, the Sheriff can meet the property owner and locksmith at the premises and they will allow 15 minutes to remove all possessions before the locks are changed. The property owner may allow the tenant back into the premises to remove the rest of his possessions, however, that action is discretionary.

Common attempted defenses

- Many defendants think if there were problems with the dwelling they have a defense to a complaint for forcible entry and detainer. This defense only works if the defendants have followed the procedures as outlined in Wyoming Statutes §1-21-1203. If the statutory procedure has not been followed, the condition of the premises is not a defense.
- The "I fell on hard times" defense is too late when the defendant tries it to the Court. This is a better argument for the defendant to attempt with the plaintiff and negotiate directly.
- "The landlord came into my apartment", is usually ineffective because most leases allow entry at reasonable times. The entry may be stalking or other activities better addressed in a separate action.

Property remaining on the premises

- If the renter does not vacate in accordance with the judgment, the Sheriff may remove the personal property and prevent the renter from re-entry. The owner

cannot do this on her/his own. Property left in the premises is presumed abandoned and valueless and can be disposed by the Owner. However, any valuable property may be removed and disposed only if the owner has provided written notice in accordance with Wyoming Statute §1-21-1210.

- The property owner is entitled to payment of storage costs for the period the property remains in safekeeping plus the cost of removal of the property to the place of storage.

Mobile Homes

- Mobile home park owners who charge lot rent to tenants utilize FED proceedings regularly.
- To actually lock a tenant out of his/her mobile home, the park owner must receive permission from the mortgage finance company. If the finance company fails to give permission to the park owner, he can force the finance company to remove the mobile home from the park.
- The removal process can cost as much as \$5,000.00 and additional storage fees may be imposed by the park owner for the period before removal.

Security Deposits

- Wyoming Statute §1-21-1208 provides a procedure that the owner must follow if the damage deposit or utility deposit is not going to be returned. **If the damage deposit is non-refundable, it must be in the rental agreement** and that agreement presented to the court. It is important to remember when suing for damages, that “normal wear and tear” is accepted.
- Damages for rent amounts for the remainder of the lease or until the premises are re-rented are tricky. The Court will look to see if the plaintiff has attempted to mitigate damages by using reasonable attempts to rent the premises.’

Repairs

- Tenant and owners must follow the procedures as outlined in Wyoming Statutes §1-21-1203. The Court usually asks for the certified mailing to determine if the defendant actually followed the statutory procedure to address issues of uninhabitable conditions.
- The procedure involves:

- A written notice to the owner, advising the owner of the uninhabitable condition, and specifying the remedial action the renter requests. **This letter must be sent via certified mail, or in the manner specified by W.S. §1-21-1003 (Notice to Quit).**
- Within a reasonable time, the owner is required to either repair the problem or inform the tenant in a certified letter (or other service under W.S. §1-21-1003) that she/he is disputing the claim. A reasonable time will depend on the urgency of the services or repairs.
- The tenant must be current on rent payments in order to force the owner to repair a problem. W. S. 1-21-10203(b). If the tenant walks out on the lease without following the proper steps, the owner may sue for the rent remaining on the lease.
- **If the owner determines that the costs of repairs are not reasonable compared to the amount paid for rent, the nature of the rental property, or the rental agreement, she/he can refuse to fix the problem and terminate the lease.** If he or she decides to terminate the lease for this reason, the owner must notify the tenant in writing within a reasonable time after your repair request.
- If the owner chooses to terminate the lease under this provision, she/he must provide the tenant **at least ten (10) days, but no more than (20) days**, from the date of notice to find substitute housing. The owner must also refund rent already paid for the days the tenant will not be living there, along with any deposit due .

Wyoming Safe Homes Act

- Wyoming Statute §1-21-1301, et seq.
- Allows a victim of sexual or domestic violence to terminate a lease, and allows for a tenant to require the landlord to change locks if requirements are met.

ARTICLE 12
RESIDENTIAL RENTAL PROPERTY

1-21-1201. Definitions.

(a) As used in this article:

(i) "Owner" means the owner, lessor or sublessor of a residential rental unit and for purposes of notice and other communication required or allowed under this article, "owner" includes a managing agent, leasing agent or resident manager unless the agent or manager specifies otherwise in writing in the rental agreement;

(ii) "Rental agreement" means any agreement, written or oral, which establishes or modifies the terms, conditions, rules or any other provisions regarding the use and occupancy of a residential rental unit;

(iii) "Renter" means any renter, lessee, tenant or other person entitled under a rental agreement to occupy a residential rental unit to the exclusion of others;

(iv) "Residential rental unit" means a renter's principal place of residence and includes the appurtenances, grounds, common areas and facilities held out for the occupancy of the residential renter generally and any other area or facility provided to the renter in the rental agreement, excluding a mobile home lot or recreational property rented on an occasional basis;

(v) "Termination" means the lawful ending or cessation of a rental agreement for any reason including expiration of the rental period, voluntary termination by mutual agreement of the parties, termination in accordance with W.S. 1-21-1203(d), abandonment of the leased premises by the renter prior to expiration of the rental period or termination resulting from court order.

1-21-1202. Duties of owners and renters; generally.

(a) Each owner and his agent renting or leasing a residential rental unit shall maintain that unit in a safe and sanitary condition fit for human habitation. Each residential rental unit shall have operational electrical, heating and plumbing, with hot and cold running water unless otherwise agreed upon in writing by both parties. Provided, however, this section shall not prevent the rental of seasonal rental units such as summer cabins which are not intended to have such amenities.

(b) Each renter shall cooperate in maintaining his residential rental unit in accordance with this article.

(c) This article does not apply to breakage, malfunctions or other conditions which do not materially affect the physical health or safety of the ordinary renter.

(d) Any duty or obligation in this article may be assigned to a different party or modified by explicit written agreement signed by the parties.

1-21-1203. Owner's duties; notice by renter of noncompliance; duty to correct; exceptions; termination of rental agreement; liability limited.

(a) To protect the physical health and safety of the renter, each owner shall:

(i) Not rent the residential rental unit unless it is reasonably safe, sanitary and fit for human occupancy;

(ii) Maintain common areas of the residential rental unit in a sanitary and reasonably safe condition;

(iii) Maintain electrical systems, plumbing, heating and hot and cold water; and

(iv) Maintain other appliances and facilities as specifically contracted in the rental agreement.

(b) If the renter is current on all payments required by the rental agreement and has reasonable cause supported by evidence to believe the residential rental unit does not comply with the standards for health and safety required under this article, the renter shall advise the owner in writing of the condition and specify the remedial action the renter requests be taken by the owner. Within a reasonable time after receipt of this notice, the owner shall either commence action to correct the condition of the residential rental unit or notify the renter in writing that the owner disputes the renter's claim. The notices required by this subsection shall be served by certified mail or in the manner specified by W.S. 1-21-1003.

(c) The owner shall not be required to correct or remedy any condition caused by the renter, the renter's family or the renter's guests or invitees by inappropriate use or misuse of the property during the rental term or any extension of it.

(d) The owner may refuse to correct the condition of the residential rental unit and terminate the rental agreement if the costs of repairs exceeds an amount which would be reasonable in light of the rent charged, the nature of the rental property or rental agreement. If the owner refuses to correct the condition and intends to terminate the rental agreement, he shall notify the renter in writing within a reasonable time after receipt of the notice of noncompliance and shall provide the renter with sufficient time to find substitute housing, which shall be no less than ten (10) days nor more than twenty (20) days from the date of the notice. If the rental agreement is terminated, the rent paid shall be prorated to the date the renter vacates the unit and any balance shall be refunded to the renter along with any deposit due in accordance with W.S. 1-21-1208.

(e) The owner is not liable under this article for claims for mental suffering or anguish.

1-21-1204. Renter's duties.

(a) Each renter shall:

(i) Maintain the residential rental unit occupied in a clean and safe condition and not unreasonably burden any common area;

(ii) Dispose of all garbage and other waste in a clean and safe manner;

(iii) Maintain all plumbing fixtures in a condition as sanitary as the fixtures permit;

(iv) Use all electrical, plumbing, sanitary, heating and other facilities and appliances in a reasonable manner;

(v) Occupy the residential rental unit in the manner for which it was designed and shall not increase the number of occupants above that specified in the rental agreement without written permission of the owner;

(vi) Be current on all payments required by the rental agreement;

(vii) Comply with all lawful requirements of the rental agreement between the owner and the renter; and

(viii) Remove all property and garbage either owned or placed within the residential rental unit by the renter or his guests prior to termination of the rental agreement and clean the rental unit to the condition at the beginning of the rental agreement.

1-21-1205. Prohibited acts by renter.

(a) No renter shall:

(i) Intentionally or negligently destroy, deface, damage, impair or remove any part of the residential rental unit or knowingly permit any person to do so;

(ii) Interfere with another person's peaceful enjoyment of the residential property; or

(iii) Unreasonably deny access to, refuse entry to or withhold consent to enter the residential rental unit to the owner, agent or manager for the purpose of making repairs to or inspecting the unit, and showing the unit for rent or sale.

1-21-1206. Renter's remedies; notice to owner or agent; judicial remedy; rights under termination of rental agreement.

(a) The remedies set forth in this section are available to a renter in compliance with all provisions of W.S. 1-21-1204 and 1-21-1205 when the rental agreement has not been lawfully terminated pursuant to W.S. 1-21-1203(d).

(b) If a reasonable time has elapsed after the renter has served written notice on the owner under W.S. 1-21-1203 and the owner has failed to respond or to correct the condition described in the notice, the renter may cause a "notice to repair or correct condition" to be prepared and served on the owner by certified mail or in the manner specified by W.S. 1-21-1003. This notice shall:

(i) Recite the previous notice served under W.S. 1-21-1203(b);

(ii) State the number of days that have elapsed since the notice was served and that under the circumstances the period of time constitutes the reasonable time allowed under W.S. 1-21-1203(b);

(iii) State the conditions included in the previous notice which have not been corrected;

(iv) Demand that the uncorrected conditions be corrected; and

(v) State that if the owner fails to commence reasonable corrective action within three (3) days he will seek redress in the courts.

(c) If the owner has not corrected or used due diligence to correct the conditions following notice under this section, or if the owner has notified the renter that the claim is disputed, the renter may commence a civil action in circuit court. The court shall endorse on the summons the number of days within which the owner is required to appear and defend the action, which shall not be less than three (3) nor more than twenty (20) days from the date of service. Upon a showing of an unreasonable refusal to correct or the failure to use due diligence to correct a condition described in this article, the renter may be awarded costs, damages and affirmative relief as determined by the court. Damages awarded to the renter may include rent improperly retained or collected. Affirmative relief may include a declaration terminating the rental agreement, or an order directing the owner to make reasonable repairs.

(d) If the court terminates the rental agreement pursuant to subsection (c) of this section, the renter is entitled to receive a refund of the balance of the rent and the deposit on the rental unit within thirty (30) days of the date the agreement is ordered terminated. The renter shall be required to vacate the rental unit no sooner than ten (10) days nor later than twenty (20) days after termination of the rental agreement by a court.

1-21-1207. Required notice of nonrefundable deposit.

Any rental agreement shall state whether any portion of a deposit is nonrefundable and written notice of this fact shall also be provided to the renter at the time the deposit is taken by the owner or his designated agent.

1-21-1208. Deductions from deposit; written itemization; time limits; failure to give notice; recovery by renter; utilities deposit; penalty.

(a) Upon termination of the rental agreement, property or money held as a deposit may be applied by the owner or his agent to the payment of accrued rent, damages to the residential rental unit beyond reasonable wear and tear, the cost to clean the unit to the condition at the beginning of the rental agreement and to other costs provided by any contract. The balance of any deposit and prepaid rent and a written itemization of any deductions from

the deposit together with reasons therefor, shall be delivered or mailed without interest to the renter within thirty (30) days after termination of the rental agreement or within fifteen (15) days after receipt of the renter's new mailing address, whichever is later. If there is damage to the residential rental unit, this period shall be extended by thirty (30) days. The renter shall within thirty (30) days of termination of the rental agreement, notify the owner or designated agent of the location where payment and notice may be made or mailed.

(b) After termination of the rental agreement, property or money held and separately identified as a utilities deposit shall be refunded by the owner to the renter within ten (10) days of a satisfactory showing that all utility charges incurred by the renter have been paid. Absent such showing within forty-five (45) days of termination, the owner shall within fifteen (15) days thereafter, apply the utilities deposit to the outstanding utility debt incurred by the renter. Any refund due to the renter shall be paid within seven (7) days after the utility deposit has been applied to the renter's utility debt, or within fifteen (15) days after receipt of the renter's new mailing address, whichever is later.

(c) If the owner of a residential rental unit or his agent unreasonably fails to comply with subsection (a) or (b) of this section, the renter may recover the full deposit and court costs. In an action by a renter pursuant to this section, if the owner is the prevailing party and the court finds the renter acted unreasonably in bringing the action, the owner may be awarded court costs in addition to any other relief available.

1-21-1209. Holder of owner's interest bound by provisions.

The holder of the interest of the owner or designated agent in the residential rental unit at the time of termination of the rental agreement shall be bound by the provisions of W.S. 1-21-1207 and 1-21-1208.

1-21-1210. Possession of premises and disposition of personal property abandoned by renter after termination of rental agreement.

(a) Upon regaining lawful possession of the rental unit following termination of the rental agreement, the owner may immediately dispose of any trash or property the owner reasonably believes to be hazardous, perishable or valueless and abandoned. Any property remaining within the rental unit after termination of the rental agreement shall be presumed to be both valueless and abandoned. Any valuable property may be removed from the residential rental unit and shall thereafter be disposed of as follows:

(i) The owner shall provide written notice to the renter in accordance with this paragraph, describing the property claimed to be abandoned and stating that the property shall

be disposed of after seven (7) days from the date of service of the notice if the renter or his agent does not, within the seven (7) day period, take possession of the property or notify the owner in writing of the renter's intent to take possession of the property. The notice provided by the owner under this paragraph shall be deemed served:

(A) On the date the notice is mailed by certified mail to the renter at an address furnished to the owner by the renter in writing specifically for this purpose;

(B) On the date notice is served on the renter in accordance with Rule 4 of the Wyoming Rules of Civil Procedure provided a copy of the written notice is delivered to the individual renter personally; or

(C) On the date the notice is published in a newspaper published in the county or widely circulated in the county where the residential rental unit is located.

(ii) If the owner does not receive a written response from the renter within seven (7) days after service of notice under paragraph (i) of this subsection, the property shall be conclusively deemed abandoned and the owner may retain or dispose of the property;

(iii) If the renter responds in writing to the owner on or before seven (7) days after service of notice under paragraph (i) of this subsection that he intends to take possession of the property, the property shall be held for an additional period of seven (7) days after the written response is received. If the renter fails to take possession of the property within the additional fifteen (15) day period, the property shall be conclusively deemed abandoned and the owner may retain or dispose of the property.

(b) The owner is entitled to payment of storage costs for the period the property remains in safekeeping plus the cost of removal of the property to the place of storage. An owner shall be allowed reasonable storage costs if he stores the property himself or actual storage costs if the property is stored commercially. Payment of storage costs shall be made before the renter removes the property.

(c) The owner is not responsible for any loss to the renter resulting from storage.

1-21-1211. Owner's remedies; eviction; judicial remedies; damages.

(a) If the renter does not vacate the premises as required by a court order issued pursuant to W.S. 1-21-1001 et seq., the sheriff may remove the renter's possessions and prevent the renter from reentering the premises without further action by the court.

(b) If the renter damages the rental property, the owner may apply any property or money held as a deposit to the payment of damages as provided in W.S. 1-21-1208(a) and the renter shall remain liable for any damages beyond the damages paid by the deposit, plus interest at ten percent (10%) per annum on any unpaid amounts. The owner may take any legal action available to recover damages caused to the unit by the renter.

ARTICLE 13
WYOMING SAFE HOMES ACT

1-21-1301. Short title.

This act shall be known and may be cited as the "Wyoming Safe Homes Act."

1-21-1302. Definitions.

(a) As used in this act:

(i) "Domestic abuse" means as defined in W.S. 35-21-102(a)(iii);

(ii) "Landlord" means the owner of a building or the owner's agent with regard to matters concerning the landlord's renting or leasing of a dwelling;

(iii) "Sexual violence" means any act of sexual assault, sexual abuse or stalking of an adult or minor, including any nonconsensual sexual contact or intrusion as those terms are defined in the Wyoming Criminal Code;

(iv) "Tenant" means a person who has entered into an oral or written lease with a landlord whereby the person is the lessee under the lease;

(v) "This act" means W.S. 1-21-1301 through 1-21-1304.

1-21-1303. Breach of lease; recovery of rent; affirmative defense.

(a) In any action brought by a landlord against a tenant to recover rent for breach of lease, the tenant shall have an affirmative defense and not be liable for rent for the period after which a tenant vacates the premises owned by the landlord and covered by the lease, if by a preponderance of the evidence, the court finds that:

(i) At the time the tenant vacated the premises, the tenant or a member of the tenant's household was under a credible imminent threat of domestic abuse or sexual violence

at the premises, as demonstrated by medical, court or police evidence of domestic abuse or sexual violence; and

(ii) The tenant gave seven (7) days written notice to the landlord prior to vacating the premises stating that the reason for vacating the premises was because of a credible imminent threat of domestic abuse or sexual violence against the tenant or a member of the tenant's household.

(b) In any action brought by a landlord against a tenant to recover rent for breach of lease, the tenant shall have an affirmative defense and not be liable for rent for the period after which a tenant vacates the premises owned by the landlord and covered by the lease, if by a preponderance of the evidence, the court finds that:

(i) The tenant or a member of the tenant's household was a victim of domestic abuse or sexual violence on the premises that are owned or controlled by the landlord and the tenant has vacated the premises as a result of the sexual violence;

(ii) The tenant gave seven (7) days written notice to the landlord prior to vacating the premises stating that the reason for vacating the premises was because of the domestic abuse or sexual violence against the tenant or a member of the tenant's household, the date of the sexual violence, and that the tenant provided medical, court or police evidence of domestic abuse or sexual violence to the landlord supporting the claim of domestic abuse or sexual violence; and

(iii) The domestic abuse or sexual violence occurred not more than sixty (60) days prior to the date of giving the written notice to the landlord, or if circumstances are such that the tenant could not reasonably give notice within that time period because of reasons related to the domestic abuse or sexual violence, including, but not limited to, hospitalization or seeking assistance for shelter or counseling, then as soon thereafter as practicable.

(c) A landlord may not terminate a tenancy based solely on the tenant's or applicant's or a household member's status as a victim of domestic abuse or sexual violence. This subsection does not prohibit adverse housing decisions based upon other lawful factors within the landlord's knowledge.

(d) Nothing in this act shall be construed to be a defense against:

(i) An action for recovery of rent for the period of time before the tenant vacated the landlord's premises and gave notice to the landlord as required in this section; or

(ii) Forcible entry and detainer for failure to pay rent before the tenant gave notice to the landlord as required in this section and vacated the premises.

1-21-1304. Prohibition of waiver or modification.

The provisions of this act shall not be waived or modified in any lease or separate agreement between a landlord and tenant.