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The Utah Unlawful Detainer Statute: A Call for Reform

Margaret Kelly¹

An 82-year-old woman with health issues, Irene Parker, was evicted from her home in the winter. Immediately after the eviction, all of Irene's possessions were placed on the curb. With no money to move and store her belongings, Irene had no choice but to leave most of her property in front of her former home, where the items were slowly stolen until they were gone.² Incidents like this are not isolated. Although Irene Parker was living in Washington, circumstances like Irene's are found throughout the country. Because Utah has laws that are particularly landlord friendly, victims of eviction are given little time to vacate a property, and as a result must find a way to move and rent a new property in a short amount of time. For many, this task is unfeasible.

Utah's Unlawful Detainer Statute largely favors landlords in cases of eviction. The preference toward landlords is indicated through sections of the statute which give tenants only three days to vacate a property after being evicted,³ force tenants to pay potentially large sums of money to recover their property,⁴ and impose high penalties on tenants who are not able to make it to court.⁵ For these reasons, this paper makes an appeal to remedy the Utah Unlawful Detainer Statute through examining ways in which the statute can be more beneficial to tenants while still recognizing the important rights of landlords. This can be accomplished through patterning the statute after the many states which have more tenant-friendly laws, as well as the Uniform Law Commission's "Uniform Residential Landlord and Tenant Act."⁶

Renters in Utah feel high levels of stress as they are forced out of their homes, pressured to find a new home, required to pay rent with money they likely do not have, and burdened with paying to get their belongings out of storage in just 15 days.⁷ For many, this is an impossible expectation. Researchers from the Center for Disease Control and Prevention (CDC) found a link between eviction and suicide. According to the CDC, 929 suicides between 2005 and 2010 were related to eviction and foreclosure. Nearly 51% of those 929 suicides were

¹ Margaret Kelly is a senior at BYU studying American Studies with a minor in Art History. Special thanks to Elizabeth Ellison and Jason Gardiner for their time and effort in editing this paper.

² *Irene Parker, Appellant, v. Glenn Taylor et al., Respondents.*, 136 Wn. App. 524, 150 P.3d 127, 2007 Wash. App. LEXIS 18 (Court of Appeals of Washington, Division Three January 4, 2007, Filed), available at <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4MRN-W680-TVXC-G31F-00000-00&context=1516831>.

³ UTAH CODE ANN. § 78B-6-810 (3)(e) (Lexis Nexis 2018).

⁴ See *supra* note 3, § 78B-6-816 (2)(a).

⁵ See *supra* note 3, § 78B-6-810 (4)(a),(4)(b).

⁶ UNIF. RESIDENTIAL AND LANDLORD TENANT ACT (UNIFORM LAW COMM'N 2015).

⁷ See *supra* note 3, § 78B-6-816 (2)(b)(ii).

directly related to eviction.⁸ Additionally, researchers from Rice University and Harvard conducted a study finding that “mothers who were evicted in the previous year experienced about 20% higher levels of material hardship and parenting stress.” Some of these side effects include “depression, poorer health, and higher stress.” Lower-income families and children face difficult consequences that prevent them from breaking the cycle of poverty and instability.⁹ These side effects can be alleviated through laws that are reasonable to tenants.

While the aim of this paper is to discuss ways in which the Utah Unlawful Detainer Statute is unfair to tenants, landlord and tenant rights need a healthy balance. We recognize that some of the actions prescribed in this paper will negatively affect landlords, but the benefit of these changes for tenants far outweigh the small cost to landlords.

This paper deals specifically with Title 78B, Chapter 6 of Utah’s Judicial Code. Specific focus will be on Part 8, with emphasis on sections 78B-6-810, 78B-6-811, 78B-6-812, and 78B-6-816. These sections give relevant background to understand the context of these needed changes. Next the paper will detail different parts of the Utah Unlawful Detainer statute: first will be the amount of time a tenant is given to vacate a premise, second is the court proceedings, third is the order of restitution, fourth is attorney fees, and fifth is the removal of property.

I. Background

Many people in the state of Utah have committed an unlawful detainer, which is staying on a property without legal right, and have been served with eviction notices at a rate of 7.61 evictions per day.¹⁰ Of those evicted—over 2,700 a year—fewer than 20% of individuals make it to their assigned court date to resolve issues associated with the eviction.¹¹ While the rate of evictions in Utah is proportionally less when compared with the rest of the United States (in 2016, 0.93% of Utahns were evicted, while 2.34% of Americans as a whole were evicted),¹² there nevertheless is cause for concern. The statistic that is most relevant to this paper is the small percentage of people who make it to court when they are served with an eviction notice: many individuals do not take the opportunity, or may find it difficult to overcome a number of obstacles that prevent them from making it to court, such as inability to get work off, lack of transportation, unexpected emergencies, or finding child care. This harsh law is especially straining for lower income families, who already struggle enough that they cannot pay rent.

⁸ Amy McCaig, *Eviction can result in depression, poorer health, and higher stress*, RICE NEWS (Jan. 15, 2019), <http://news.rice.edu/2015/03/09/eviction-can-result-in-depression-poorer-health-and-higher-stress-according-to-new-rice-and-harvard-study-2/>.

⁹ Terry Gross, *First-Ever Evictions Database Shows: ‘We’re in the Middle of a Housing Crisis’*, NPR (April 12, 2018), <https://www.npr.org/2018/04/12/601783346/first-ever-evictions-database-shows-were-in-the-middle-of-a-housing-crisis>.

¹⁰ *Maps & Data—Utah*, EVICTION LAB, <https://evictionlab.org> (last visited Jan. 16, 2019).

¹¹ *BYU Law and University of Arizona Law Join Forces to Tackle Eviction*, PR NEWSWIRE, August 14, 2018,

<https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5T1S-DNK1-JB72-104S-00000-00&context=1516831>.

¹² EVICTION LAB, <https://evictionlab.org> (last visited Jan. 16, 2019).

Another issue that has plagued victims of eviction is the retrieval of property. Just as Irene Parker's circumstance illustrated, retrieving property can be difficult in cases of eviction, and many times those being evicted cannot afford to have their items stored or moved. In cases of immediate eviction, individuals and families do not have the luxury of moving their belongings off the premise, but instead are often forced to pay large fees for personal property to be put into storage facilities by the landlord. A local attorney who specializes in cases of eviction stated that a low-end estimate of moving and storage is \$2,000-\$3,000, and that tenants are almost never able to retrieve their property because of the cost.¹³ Utah's current statute does little to protect evicted tenants from unreasonably high moving costs and storage fees.

On the spectrum of state laws, Utah's Unlawful Detainer Statute is likely among the most landlord friendly in the nation. The Uniform Residential Landlord and Tenant Act seeks to strike a balance between landlord and tenant rights. This legislation was drafted by the Uniform Law Commission (ULC), a group of practicing lawyers, judges, legislators, and law professors who have been appointed by state governments. The Uniform Residential Landlord and Tenant Act was drafted in 2015, and it contains helpful insights on the complicated issue of eviction legislation in the United States. Compared to Utah's current statute, the ULC has suggested a more moderate approach in dealing with the process of eviction, such as allowing a longer period of time for a tenant to vacate a property. Although the 2015 version of the "Uniform Residential Landlord and Tenant Act" has not yet been adopted by any states, likely because it is fairly recent and states may choose to only adopt part of the act, it still proves to be a helpful resource in understanding what experts believe should be done about evictions.¹⁴

II. Subsection 78B-6-810: Time to Vacate

One challenge with the Utah Unlawful Detainer Statute rests in section 78B-6-810, subpart (3)(e). The section, which explains what happens to a tenant's property when a tenant is found guilty of an unlawful detainer, states, "The court may allow a period of up to 72 hours before restitution should be made."¹⁵ This statement builds on subpart (3)(d) of the same section, which states that if a tenant commits an unlawful detainer, they must return the possession of property to the landlord immediately. The concern with subparts (3)(d) and (3)(e) is the limited time period the tenant is allowed to move off the premises.

First, as is made clear in subpart (3)(d), the court is under no obligation to give a tenant any time to move off the premises. The wording is clear in stating the tenant "shall return possession of the property to the plaintiff immediately."¹⁶ For many tenants, having no allotment of time to move off a property is unreasonable. It is difficult to imagine that those being evicted because of an inability to pay rent will be in a financial position to move their property immediately. While subpart (3)(e) is helpful in giving a tenant at least some time to retrieve their belongings, three days is still constraining. In addition, the only clarification in the statute is ambiguous, stating that the three days should be allowed "if the court determines the time is

¹³ Telephone Interview with Marty Blaustein, Attorney, Utah Legal Services (Nov. 7, 2018).

¹⁴ Devon Thorsby, *Does Your State Have Fair Eviction Laws?*, U.S. NEWS, June 1, 2018, <https://realestate.usnews.com/real-estate/slideshows/does-your-state-have-fair-eviction-laws>.

¹⁵ See *supra* note 3, § 78B-6-810 (3)(e).

¹⁶ See *supra* note 3, § 78B-6-810 (3)(d).

appropriate under the circumstances.”¹⁷ Subparts (3)(d) and (3)(e) illustrate that there is nothing in Utah’s current statute to advocate for a minimum amount of time for a tenant to vacate.

Compared to other states, Utah’s Unlawful Detainer Statute exhibits harsh requirements for evicted tenants. Utah’s neighbor to west, Nevada, allows a tenant 5 days to vacate or pay rent after a notice of eviction.¹⁸ While Nevada only allows two more days than Utah, those 48 hours can make a significant difference for evicted tenants, especially in allowing individuals to collect their property before being forced off a premise. More liberal states, such as Tennessee, Massachusetts, and Vermont offer more significant amounts of time, even giving tenants 14 days to vacate after a notice of eviction. The District of Columbia, an anomaly among any region in the United States, requires a notice of 30 days for a tenant to vacate.¹⁹

As previously stated, this paper does not attempt to radically change Utah eviction laws but instead seeks to modify them to be more reasonable to tenants throughout the state. Consequently, this paper proposes a ten-day maximum amount of time for a tenant to move, leaving it up to the discretion of the judge whether or not a tenant’s circumstance warrants the full ten days. This allows for individuals like Irene, who struggled to move out within Washington state’s seven-day allowance, to have a reasonable amount of time to vacate. Leaving the amount of time up to the discretion of the judge also allows for renters to be given a shorter amount of time to move if the judge feels it is appropriate under the circumstance. In addition, this paper prescribes that the judge gives at least 24 hours for a tenant to move out. A judge may decide that 24 hours would not be enough time for an elderly tenant to vacate a property, and in other cases a day may be all a tenant requires. While this is not a radical change to the current statute, it will be beneficial for tenants who are likely already experiencing the trauma associated with eviction.

III. Section 78B-6-810 Subpart 4: Court Proceedings for Evictions

Another problematic feature of the current Utah Unlawful Detainer statute is found in section 78-B-6-810. This section deals with actual court proceedings of an unlawful detainer. Subpart (4)(a) of section 78B-6-810 states that if a tenant fails to appear at their hearing, the court will issue an order of restitution.²⁰ In the case of evictions, restitution is the culmination of everything a tenant owes to the landlord, including damages made to a property, back rent owed, and the return of a property to the landlord.²¹

Nowhere in subpart 4 does it state that a judge may give the tenant three days to vacate before an issue of restitution is ordered, meaning that if a tenant does not appear at their hearing, they will be served with an immediate notice to vacate. An immediate notice to vacate leaves the tenant no time to collect their belongings and move out. Subpart 4 contrasts with subpart (3)(e)

¹⁷ See *supra* note 3, § 78B-6-810 (3)(e).

¹⁸ Devon Thorsby, *Does Your State Have Fair Eviction Laws?* USNEWS.com, June 1, 2018 Friday, available at <https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5SGG-C981-JCKG-J4G4-00000-00&context=1516831>.

¹⁹ *Id.*

²⁰ See *supra* note 3, § 78B-6-810 (4)(a).

²¹ See *supra* note 3, § 78B-6-810.

of the same section, in which a judge may allow up to 72 hours before a restitution may be made if the tenant appears in court.²²

The story of Margarita, a renter who was evicted in Boston, illustrates the need for a judge to have the option to allow a renter adequate time to gather their possessions before being issued an order of restitution. In accordance with Massachusetts state laws, Margarita was given a week to vacate after being evicted. She could not afford to pay anyone to help her move, which left her no choice but to move her belongings on her own. Even with a one-week time allotment, it was difficult for Margarita to move everything.²³ If Margarita had been living in Utah, however, she would have had, at most, three days to move her property, with no hope of extra time being granted. The difficulty that Margarita faced in moving from her home is a difficulty that many Utahns may face.

The majority of individuals who are served with notices of eviction are likely low-income wage earners like Margarita. Many may face obstacles that jeopardize their chances of making it to court, such as difficulties getting work off or finding transportation to the courthouse. In cases of an unlawful detainer, the court is required to hold a hearing within ten days after the suit is filed.²⁴ While ten days is probably a reasonable amount of time in most situations, especially considering that landlords will face losses when they cannot rent out their space, it can nonetheless be a time crunch for renters to find a replacement at work or a transportation to court. This paper does not propose a modification to the ten-day advanced notice, but the rapid eviction process should allow for up to ten days for tenants to move out of a space before they are forced off a property, leaving the specific amount of time to the discretion of the judge. With the strict language in subpart (4)(b) of section 78B-6-810, it is not currently a possibility for judges to even grant a 72-hour cushion period when a tenant does not make it to court.

Evictions do not only affect renters in Utah, but renters throughout the country. With eviction rates skyrocketing in the last several decades, eviction now affects as many as 1 in 8 poor renting families throughout the nation.²⁵ It is now more critical than ever to give this marginalized group the time required to vacate a property with dignity. Because the allotment of three or even five days is a time crunch for many renters, it is necessary that renters be given up to ten days to vacate a property. Less than 20% of those served with eviction notices in Utah actually make it to court²⁶, which illustrates the need for this change.

IV. Section 78B-6-811 Subsection 3: Order of Restitution

The amount of time granted to tenants to move out of a given property becomes particularly important when considering section 78B-6-811 of the Utah Unlawful Detainer

²² See *supra* note 3, § 78B-6-810 (3)(e).

²³ JUST SHELTER, <https://justshelter.org/stories/#stories-image-3> (last visited Jan. 16, 2019).

²⁴ See *supra* note 3, § 78B-6-810 (2)(a).

²⁵ MATTHEW DESMOND, *EVICTED 5* (Penguin Random House, 1st ed. 2017).

²⁶ *BYU Law and University of Arizona Law Join Forces to Tackle Eviction; A new collaboration between LawX and Innovation for Justice will address legal service gaps in Utah, Arizona and beyond*, PR Newswire, August 14, 2018 Tuesday, available at <https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5TIS-DNK1-JB72-104S-00000-00&context=1516831>.

statute. Section 78B-6-811 explains the types of restitution owed to the landlord. One of the most concerning parts of section 78B-6-811 is stated in subsection 3, which explains that “the judgement shall be entered against the defendant for the rent, for three times the amount of the damages assessed under Subsections (2)(a) through (2)(e).”²⁷ These subsections simply explain that Section 811 applies to damages created by different groups, including those who are unlawful detainers. The consequence of not vacating a premise within the three days, or in many cases with no notice at all, is extreme. The triple damages clause in subsection (3) means that evicted renters, a largely marginalized group, must pay three times the amount of rent they owe for every day they do not move out.²⁸ For example, if a day’s rent is \$40, a tenant would pay \$120 for each day they remain on a property. Subsection (3) would negatively influence individuals who, for whatever reason, are not able to make it to their court date and are thus immediately charged with restitution and given no time to move out of their property.

Section 78B-6-811 of the Utah Unlawful Detainer Statute is another example of how the legislation favors landlords in cases of eviction. It is unnecessarily harsh for a tenant to pay three times what they actually owe. Because of the strict statute, this paper proposes that the landlord only be given power to recover actual damages, including unpaid rent. This suggestion is in line with the Uniform Law Commission’s suggestion that a landlord can recover only actual damages, rather than triple damages, whether or not a tenant’s lease is terminated as a result of noncompliance (49).²⁹ It is also worth noting that subsection (4)(b) of the Utah Unlawful Detainer Statute states that “in all cases, the judgement may be issued and enforced immediately.”³⁰ This addition to the statute makes it possible for judges to allow, even in cases where it is not necessary, immediate restitution, rather than giving a tenant three days notice.

Landlords must receive compensation for the money they lose as a result of evictions. While no longer allowing triple damages to be awarded to landlords will cause many to lose money, the benefit to the tenant outweighs the loss of the landlord. The landlord may lose some of the money he or she would have received from the allowance of triple damages, but the tenant could easily fall into financial ruin as a result.

Bankruptcy can easily befall a tenant in Utah due to the wording in the Utah Unlawful Detainer Statute. Take the situation of Margarita, who was mentioned earlier, as an example. If Margarita was a renter in Utah, she would only have three days to move off her rented property. Because it was extremely difficult for her to move in the one week she was allotted, it would be nearly impossible for her to move in only three days. Margarita, who was already in enough financial trouble to be evicted from her apartment, would now be forced to pay three times what she owed for her rent. On top of that, she would have to find a way to pay for a new rental property with money she does not have. For many Utah renters this leads to bankruptcy, and in some cases, homelessness.³¹

In order to find a solution that is both fair to the landlord and does not cause an undue burden on the renter, triple damages should be taken out of the statute, or at least not made an automatic penalty for being evicted. Arizona, for example, only awards triple damages in

²⁷ See *supra* note 3, § 78B-6-811.

²⁸ *Id.*

²⁹ UNIF. RESIDENTIAL AND LANDLORD TENANT ACT § 601 (d)(2) (UNIFORM LAW COMM’N 2015).

³⁰ See *supra* note 3, § 78B-6-811 (4)(b).

³¹ See *supra* note 13.

specific circumstances, such as when a tenant prematurely terminates the lease or a tenant falsely files a departmental report.³²

V. Section 78B-6-811 Subpart 5: Attorney Fees

Subsection 5 of section 78B-6-811 presents another cause for concern. It explains that when an unlawful detainer case is taken to court, “the court shall award costs and reasonable attorney fees to the prevailing party.”³³ The main concern of subsection 5 does not come from the fact that the prevailing party is awarded attorney fees, but the ambiguity of the statement. While the cost of hiring an attorney is likely to vary from year to year, there is cause for the statute to be clearer in what “reasonable” means. Allowing for an ambiguous definition of “reasonable” may discourage renters who received a notice of eviction to challenge their case in court if they feel that they were wrongly evicted. It is already evident that evicted tenants have problems making it to court, given that less than half of evicted tenants make it to their court hearing.³⁴ With fear of losing a case in court, wrongfully evicted tenants are less likely to engage in the judicial process due to the threat of high attorney fees. In some cases, the culmination of rent, triple damages, and attorney fees results in tenants submitting to unfair or unlawful accusations of landlords.

VI. Section 78B-6-816: Removal of Property

As a result of the time constraint that is placed on evicted renters, many have to leave some, if not all, of their belongings on the property they are renting. If a renter moves away from a property without taking all their items, the space is then considered an “abandoned premise.” Section 78B-6-816 of the Utah Unlawful Detainer Statute deals with abandoned premises, specifically when it comes to a renter’s property left on the premise.

While the statute allows a landlord to remove the evicted tenant’s property and requires the landlord to store it,³⁵ it creates difficult hurdles for the tenant to retrieve anything but a few essential items of property.³⁶ This is a severe problem because, as examined earlier, tenants are given only a small window of time to completely move their belongings out of their former residences.

Section 816 requires that renters pay high prices to retrieve their property, but only gives them a short time to claim it. When an evicted tenant’s property is left in a rented unit, the owner is entitled to move it and collect the costs associated with moving and storing from the tenant.³⁷ These costs are often too high for a recently evicted tenant to afford, and the prohibitive price

³² ARIZ. REV. STAT. ANN. § 33-1318 (2)(h) (2019).

³³ See *supra* note 3, § 78B-6-811 (5).

³⁴ *BYU Law and University of Arizona Law Join Forces to Tackle Eviction*, PR NEWSWIRE, August 14, 2018, <https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5T1S-DNK1-JB72-104S-00000-00&context=1516831>.

³⁵ See *supra* note 3, § 78B-6-812(3)(b).

³⁶ See *supra* note 3, § 78B-6-812(3)(c).

³⁷ See *supra* note 3, § 78B-6-816.

makes retrieving storage extremely difficult.³⁸ If a tenant does not make the proper payments to retrieve their property in the 15 days allotted, then the landlord has the explicit right to sell or donate the property in question.³⁹ Simply moving from a property in 15 days is a difficult task, but to leave one's home in 0-3 days and then come up with the money to retrieve one's property seems nearly impossible. Thus, section 78B-6-816 coupled with the short time to vacate a property, as outlined in section 78B-6-810, makes it difficult for evicted tenants to keep all their property. For many displaced Utahns it is impossible to come up with the money to retrieve their property within 15 days, forcing many to deal with the loss of their belongings. Because of the difficulties associated with retrieving personal property, this paper proposes that evicted tenants be given a 30-day period to retrieve their belongings from storage. While this change will not provide every evicted tenant with the ability to retrieve his or her property, it will allow more individuals to come up with the money to claim their belongings.

VII. Conclusion

Being a tenant in Utah comes with various difficulties. Many provisions in the Utah Unlawful Detainer Statute lead to unnecessarily severe punishments for tenants who have been evicted, such as unrealistically short amounts of time to move, loss of property as a result of the brief time allotted to move, and the burden of paying triple rent for every day a person does not vacate a property. On paper these consequences appear harsh, and in reality, they can ruin lives. Perhaps the most common ruin is financial trouble from eviction fees such as triple damages, moving fees, legal fees, and the additional rent tenants already owe. For many, this financial ruin makes it exceedingly difficult to find a new property. With many areas of the United States becoming less affordable, more evictions could lead to higher rates of homelessness. For the greater good of Utah society, Utah's Unlawful Detainer Statute should be remedied through allotting tenants more time to move out. By giving tenants more time to move out, secondary issues would be resolved, such as tenants dealing with the retrieval of property which they could not take in the short moving process, and courts granting triple damages only in extreme conditions in order to bring more equality to lower-income tenants.

³⁸ See *supra* note 13.

³⁹ See *supra* note 3, § 78B-6-816.