

# YOUR RIGHTS AS A TENANT

## **The Landlord-Tenant Relationship**

The landlord/tenant relationship is one generally created by agreement and, therefore, involves both rights and responsibilities on both sides of the transaction. The tenant has certain rights, including the right to possession and quiet enjoyment, as well as additional rights described by statute and by the lease terms. These rights are balanced against the tenant's responsibilities to pay rent, and to reasonably maintain the property in a clean manner. The same is true of the landlord's rights, which are to receive rent, and weighed against his responsibility to maintain the property and perform repairs. This brochure is directed primarily to residential tenants.

## **The Lease Agreement**

Preferably, the landlord/tenant agreement should be placed in writing, and signed by both parties. A written lease specifically sets forth the rights and responsibilities of the landlord and the tenant. A well-written lease will resolve most foreseeable disputes between the landlord and tenant. Any verbal or oral lease will be interpreted as a month-to-month lease. A month-to-month lease is, in essence, only a lease for 30 days, whereas a written lease can extend for a longer time. However, a month-to-month lease can only be terminated by notice, provided by either the landlord or the tenant on or around the date that the rent is due, stating that the lease will terminate 30 days after the notice.

Tenants should realize that the terms of a written lease with a landlord are negotiable. All negotiations are subject to the issue of bargaining power. In a tenant's market, a tenant may have more bargaining power to negotiate favorable terms in a written lease. Obviously, the important terms to negotiate include the amount of rent, but also include any right to have pets, the security deposit, and the duty to make repairs. Who pays for utilities can also have a significant economic impact. Of course, a landlord has no obligation to negotiate terms, but a reliable tenant with the ability to pay rent and a good credit rating may have greater bargaining power. A tenant may want to have an attorney look at the written lease before signing it. If your landlord does not want your attorney to look at the lease, you may have some cause for concern.

## **The Security Deposit**

A landlord will generally require a security deposit, which by law cannot exceed the amount of two months' rent. The security deposit is returnable at the end of the lease. The security deposit is not intended to be applied to the last month's rent, but rather is intended to protect the landlord against any damages to the property. One way for a tenant to avoid disputes with the landlord over damages to the property is to create a list, before the tenant takes occupancy of the property, identifying any damages evident in the property. These damages may vary from marks on the floor or carpet to appliances that do not work or windows that will not open. It is best to document any deficient conditions to the property in advance.

Similarly, at the close of the tenancy, the tenant has a right to notice of a walk-through with the landlord within 30 days of the termination of the tenancy to review any damage to the property. Ordinary wear and tear on the property should not be deducted from the security deposit. However, a tenant must return the premises in a reasonably clean condition. If a landlord wrongfully fails to return a security deposit, a tenant may be entitled to double damages for the wrongful retention of the deposit.

## **Who Makes Repairs?**

One of the most critical clauses of the written lease agreement is the issue of who makes repairs. Generally, in apartment leases the landlord retains the obligation to make virtually all repairs, including interior repairs and appliances. However, in house leases the duty to make repairs, including repairing appliances, is sometimes placed upon the tenant. Furthermore, the duty to maintain the yard and grounds may be delegated to the tenant in a house lease. These issues should be discussed in advance, because they frequently lead to disputes between the parties. Obviously, the duty to make repairs can be expensive.

Assuming that a lease does provide that the landlord is to make all repairs, it is rare that a landlord makes all repairs in as timely a fashion as the tenant would expect. Even if the duty to perform repairs is upon the landlord, the tenant has a duty to avoid "waste" of the property and as a result, in an emergency, has a duty to remedy conditions that will cause additional damage to the property itself or to neighboring properties or tenants. For example, if there is a plumbing leak, a weather leak, or gas leak, the tenant has a duty to turn off the water or gas and to call a roofer to temporarily stop any leaking. In the event of such incidents, the landlord generally disclaims any obligation to repair or replace the tenant's personal property. Obviously, if there is a leak or sprinkler malfunction,

a tenant's electronics and other property can suffer severe damages. The landlord has no responsibility to cover those damages unless the landlord can be demonstrated to be negligent. As a result, a tenant should consider obtaining renter's insurance to protect them against property damage, theft, and other casualty losses that may occur in connection with their tenancy.

### **What If the Landlord Does Not Make Needed Repairs?**

If a landlord fails to make repairs that they are obligated to make, unfortunately, the tenant's remedies are limited and, to some extent, cost-prohibitive. Under the law, a tenant is not able to terminate the lease due to a landlord's failure to make repairs, unless the problem is such that it makes the property "untenantable," which means uninhabitable. In other words, if you can live there, the property is not untenable. Generally, the tenant does not have the right to make the repairs and charge them back to the landlord, and the tenant does not have the right to withhold rent. The preferred remedy under the law is that the tenant pays rent and brings a claim against the landlord for the damages. Unfortunately, the cost and inconvenience of bringing a claim to court against a landlord is frequently more trouble than the cost of the repair is worth.

### **What Happens If a Tenant Does Not Pay Rent When Due?**

A landlord cannot terminate utilities to the premises, even if the tenant ceases to pay rent. In the event of a default, a landlord is prohibited from removing a tenant or the tenant's personal property from the premises without obtaining a court order, except under certain circumstances. In the event that a tenant abandons the property, Missouri statutes do set forth a procedure for the landlord to post notice on the property and give the tenant notice of their right to recover the property. If a landlord removes or excludes a tenant from the property without judicial process, the tenant may have a claim against the landlord for forcible entry and detainer. The same is true if a landlord changes the locks.

### **What Other Rights Do Tenants Have?**

Tenants do have a right of quiet enjoyment, which is sometimes overlooked by landlords. The right to possession and quiet enjoyment includes the right to be free from unlimited and unreasonable intrusions by the landlord. In other words, the landlord should not come and go frequently, and should give reasonable notice prior to entering upon the premises. Furthermore, the tenant should not be subjected to unreasonably

loud noise from neighboring tenants or the landlord, and should be free from noxious odors or other intrusions upon the premises. Consistent with the mutual rights and obligations under the lease, a tenant, likewise, may not unreasonably emit loud noises or noxious odors into the premises of other tenants or the landlord.

In most jurisdictions, the tenant will need to apply for and obtain an occupancy permit, which requires that the property be subjected to a city inspection, or the payment of a fee. However, the tenant is entitled to have the property comply with local municipal, county, and state building codes. Of course, all tenants and applicants for a tenancy have a right to be free from discrimination based upon race, color, religion, sex, familial status, national origin, or disability.

### **What Happens If a Landlord and Tenant Have a Dispute?**

Most landlord/tenant disputes can be avoided by both parties negotiating and discussing the terms of the lease agreement in advance. Once the lease is established, if both parties honor and acknowledge the rights and obligations of the parties under the lease, and act reasonably, no disputes should arise. If a tenant believes they are being strong-armed into a lease, or the landlord gives them a bad impression from the start, the tenant should walk away and seek other property. Most importantly, when presented with a written lease, every potential tenant should read the entire document and, if they do not understand something, should consult an attorney. Every tenant should ensure that they read and understand their lease.