

LANDLORD/TENANT

When a person rents a residence as a tenant, he or she obtains an interest in the rented property concurrently with that of the landlord. Since however, the landlord typically designs the lease agreement, the lease will likely tend to favor the landlord and not necessarily protect the tenant.

In South Carolina, the law regulating landlord-tenant conduct is known as the Residential Landlord and Tenant Act of 1986. Its general contents are as follows:

Length of a Lease

Most leases extend over a period of a year or less. A written lease in such situations is thus not necessary. Without a written lease, the rental term is considered to be month to month, with the rent payable in monthly installments at the beginning of the month or term. Other terms may be established by written agreement, including the length of time that the tenant will occupy the property.

Military Clauses

While many leases contain a "military clause," such clauses vary in the protection they afford. A better clause allows the tenant to terminate early upon a showing of: 1) PCS out of the area; 2) release from active duty; or 3) assignment to government quarters. In most cases, an adequate military clause is an essential term, so you should not sign without one.

A minimum of thirty (30) days notice is usual for any termination. Provisions can also be made for military landlords.

Security Deposits

Most landlords require a security deposit of one month's rent. The landlord is then authorized to hold the security deposit until termination of the lease, at which time he must return it to the tenant within thirty (30) days of termination. The tenant is likewise required to provide a forwarding address.

In the event the tenant leaves with rent outstanding, the landlord can apply payment to the delinquent rent. If damages exist to the rental property, the landlord may deduct the amount of damages after providing an itemized list. Should he wrongfully withhold the deposit however, he is liable for an amount equal to three times (3x) the amount wrongfully withheld as well as attorney fees.

Landlord Responsibilities

The landlord is required to comply with applicable building and housing codes concerning health and safety. He must keep the premises fit, habitable, and safe. He must make running hot and cold water available, along with operable heating. He must maintain all facilities and appliances in reasonably good, safe working order.

Tenant Responsibilities

The tenant must comply with any obligations imposed upon tenants by building and housing codes. He must also keep the dwelling reasonably safe and clean, use the facilities and appliances in a reasonable

manner, and refrain from deliberately or negligently damaging the premises. Otherwise, the tenant is liable for repairs of damage to the property.

The landlord and tenant may agree that the tenant is responsible for repairs if the agreement is made in good faith. The landlord however, must not enter the agreement in order to evade his legal obligations.

Tenant Recourse

If the landlord is guilty of substantial noncompliance with building and safety codes affecting the tenant's health or safety, the tenant can give written notice of termination if the premises are not repaired within fourteen (14) days. The tenant may also obtain court-ordered relief for noncompliance. If the noncompliance is willful, the tenant may recover a reasonable attorney's fee.

In the case of essential services, the tenant may, upon written notice, procure reasonable services to repair and deduct those costs from the rent. He may additionally recover damages and a reasonable attorney's fee. A tenant may not make repairs himself and deduct that cost from the rent.

Should a tenant seek one of these remedies, or merely report the landlord to a government agency, the landlord may not retaliate with increased rent that exceeds fair rental value. He may neither withhold essential services nor maintain an action for possession.

Landlord Entry

Typically, the landlord may only enter the leased premises between 9 AM and 6 PM to furnish regularly scheduled services or those requested by the tenant. He must first notify the tenant of such expected entry. The landlord may however, enter the premises at any time for an emergency.

Unexpected Occurrences

A tenant may terminate the lease if the premises becomes inhabitable due to condemnation, fire, or other casualty.

In the event of the tenant's death, the lease is usually binding upon his or her heirs. You should therefore seek a clause permitting the surviving spouse or executor to terminate should death occur.

Should a third person incur injury on the premises due to negligent construction, the landlord is liable for his or her injuries. The tenant on the other hand, is liable for injury caused by negligent use of the premises.

Signing the Lease

Generally, a lease must be signed by both parties in order to take effect. Nonetheless, the Landlord and Tenant Act contains an exception for situations in which the tenant does not sign the lease, but moves in and pays rent which the landlord in turn accepts.

Specific Provisions

The following may be of interest:

- 1) Any oral agreement for the use of an apartment or house for more than one year is not enforceable.

2) Subleases entered without the written consent of the landlord are void as applied to the landlord.

3) Failure to pay rent terminates a tenancy, and the tenant must thereafter vacate without the standard thirty (30) days' notice.

4) A landlord may evict a tenant when the tenant has failed to pay the rent on time, when the term of the lease has ended, or when the conditions of the lease have been violated. In such cases, the landlord must serve notice upon the tenant to appear in Magistrate's Court within ten (10) days in order to show why he should not be ejected from the property.

5) Failure to vacate the premises after proper written notification by the landlord may subject the tenant to a separate claim for damages and attorney's fees.

DO NOT RELY EXCLUSIVELY ON THIS PAMPHLET. THIS HANDOUT PROVIDES ONLY A GENERAL EXPLANATION OF LANDLORD/TENANT GUIDELINES. ADDITIONAL LEGAL ADVICE IS AVAILABLE TO MILITARY MEMBERS, DEPENDENTS AND RETIREES AT THE BASE LEGAL OFFICE BY CALLING 895-1560.