



Region Legal Service Office Hawaii
Legal Assistance Department
850 Willamette Street
Pearl Harbor, HI 96860

Preventative Law Series

Landlord & Tenant Law

Landlord/Tenant Overview

Renting is a common manner of living, especially as single-family housing costs soar and the requirements of military service often require members and their families to move. Living in a rental unit frequently can be hassle free and avoids the responsibilities of ownership. Nevertheless, landlords and tenants have rights, responsibilities and obligations. Once one understands their rights and responsibilities and obligations as a tenant, leasing is relatively easy. Understanding the rights of the landlord will also help the tenant better comply with the terms of the tenancy and facilitate interaction with the landlord and the unit management. Landlord-tenant law is based upon state statutory, common law (real property and contract law) and the terms of the specific lease. Federal law prohibits discrimination in renting (42 US Code Chapter 45, Federal Fair Housing Act). Many insurance companies offer tenant policies providing for general liability, med pay, temporary lodging and personal property protections.

A lease, also referred to as a rental agreement, is an agreement between a landlord and a tenant. In consideration paid by the tenant, usually in the form of rent, the tenant gets the right to use and occupy the rental for a period of time. Subleases, often disliked and declined by landlords, are rentals where the tenant turns over his right to use and occupy the rental to a subtenant. A lease can be an oral agreement, or it can be in writing. If the term of the lease is to extend beyond one year, most states require a lease be written in order to be enforceable. A written lease avoids misunderstandings over the terms, the timing and duration of events such as when and how much rent is due, when and how the premises are to be returned to the landlord and how potential problems are to be handled and avoided without breaking the lease, as well as, many of the rights and responsibilities of the landlord and tenant should the tenancy terminate before the end of its term. A holdover tenant who does not vacate the premises may have certain residual rights under the lease and may be allowed to continue on in occupancy as a tenant at will with no specific term for the lease, but merely a general tenancy. A tenant no longer with any right of possession is a tenant at sufferance. In matters of residential housing, due to the historic unequal bargaining power of landlords over tenants, most states have specific Landlord-Tenant Acts. Generally, they will not apply to business or commercial leases. These statutes provide certain barebones protections for tenants with the terms of actual leases able to protect tenants more and usually not less. Most statutes require notice and actions by the tenant to be performed in writing. Good practice suggests, keeping copies and using certified and/or receipted mail, as appropriate.

A lease will usually at the minimum include the following:

- * the names of the landlord and tenant

- * description of the rental unit as well as related descriptions to use such areas as parking lots, utility/wash rooms and mail rooms

- * addresses for providing notice to the landlord and tenant
- * the term of the lease (month-to-month, one year, five years, etc.)
- * amount of rent and when payable (late fees and forms of payment accepted)
- * particulars of the security deposit, how it is to be held (separate not co-mingled, interest bearing account, etc.) and how it is to be returned at the end of the lease
- * damage fees, how they are to be applied, exclusive of normal wear and tear.
- * how to handle defaults (tenant fails to pay rent or landlord fails to provide habitable unit)
- * use(s) of premises other than residential (e.g. any business operation allowed or not)
- * whether the tenant is in default if he disrupts the right of quiet enjoyment of other tenants
- * tenant's rights to make repairs and deduct the costs from the rent or other self-help remedies
- * eviction/abandonment for health and safety
- * landlord's reasonable right of inspection and repair
- * duties of both the landlord and tenant regarding maintenance
- * at end of lease (options of renewal, reversion to month-to-month or some other term, notice of termination by tenant, increases in rent, etc.)
- * how attorney's fees and costs are to be paid if incurred due to a lawsuit filed to enforce the terms of the lease or statutes related to the rental
- * are pets (size/type/number) allowed and are there additional fees associated with them
- * how the responsibilities for utilities are to be provided, calculated and paid
- * number and types of vehicles allowed
- * whether the lease can be assigned, how a sale of the premises impacts the tenancy, how the death of the landlord impacts the tenancy, and if subleases are allowed

Pre-printed leases are often helpful/easy, but were most likely prepared by and for landlords. Lease terms unless guaranteed by statute may be negotiated and changed. Mobile Home lot leases often have additional/specific statutes addressing them. The Federal Fair Housing Act requires that landlords not discriminate based upon age, sex, race, color, creed, marital status, etc.

State Statutes and local codes should be reviewed for possible violations and/or requirements concerning conditions of habitability (e.g. heat, water/hot water, sewage disposal, exterminating, fire codes, building codes, etc.), prohibited and retaliatory practices, rent controls, protections for early lease terminations for military members (PCS, deployments, mobilization of reservists, etc) such as Florida. State Statutes should be reviewed for special procedures for summary proceedings such as expedited eviction

Servicemember's Civil Relief Act

Eviction and Distress

The SCRA protects against the eviction of servicemembers (50 U.S.C. app. § 531). This section protects servicemembers and their dependents from eviction for nonpayment of rent. It does not preclude eviction, but it does set up the process through which that remedy must pass. Notwithstanding any process that might be permitted under state law, the landlord must obtain a court order. Upon the servicemember's or family member's request and upon a showing that there is material effect, the court must stay the proceeding for roughly ninety days. (The SCRA is a bit open-ended on this point indicating that the court shall "stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time." Id. app. § 531(b)(1)(A)). Additionally, the court may "adjust the obligation under the lease to preserve the interests of all parties" (Id. app. § 531(b)(1)(B)). and if it grants a stay it "may grant to the landlord (or other person with paramount title) such relief as equity may require." (Id. app. § 531(b)(2). It is not entirely clear how these last two provisions are meant to work. Obviously, the court might adjust the obligation so that the landlord is not at some complete loss. Perhaps if a mobilization were to be of short duration, the equitable relief might be for the servicemember/tenant to pay the difference off over a period of time when s/he returns from active duty. In one case, the court stayed the eviction. During the period of the eviction, the servicemember did not pay any rent, but offered to pay the fourth month's rent; that is, the rent due for the month following the stay. The court accepted this offer rather than grant the landlord the eviction, but ordered that the rent for the period of the stay was still due and owing. See *Jonda Realty Corp. v. Marabotto*, 34 N.Y.S.2d 301 (Sup. Ct. 1942)).

The SCRA does not define "eviction" or "distress," but "[t]here is nothing to indicate that the terms . . . are used to imply anything other than the usually and commonly accepted meaning[s]. (*Lesh v. Louisville Gas & Elec. Co.*, 49 F. Supp. 88, 89 (W.D. Ky. 1943)). "Eviction," then, simply enough, "is dispossession of a tenant by a landlord." (Id.) As of January 2006, servicemembers were protected if the rent did not exceed \$2615.16. As originally enacted, the rent could not exceed \$2400.00 in order for the protection to apply.(50 U.S.C. app. § 531(a)(1)(A)(ii)).

The \$2615.16 figure represents the annual adjustment for inflation as published annually in the Federal Register. This annual increase will obviously warrant attention.

Section 531 provides criminal sanctions against those who knowingly take part in the eviction or attempted eviction of the spouse, children, or other dependents of a servicemember from any

premises occupied as a dwelling and rented for less than \$2615.16. This sanction is in addition to "other rights and remedies" that may be available to the servicemember. In fact, a violation of this section may also support an action for damages for wrongful eviction to include an award of punitive damages. (See, e.g., *Prather v. Clover Spinning Mills, Inc.*, 54 S.E.2d 529, 535 (1949)("Defendants' failure to follow the Federal statute, with knowledge of plaintiff's dependence upon her son in the service, to which she testified, fully justified the verdict for punitive damages").

Courts have required that a landlord-tenant relationship exist as this section contemplates a disturbance of that relationship. The extension of these provisions beyond landlords to include "other person[s] with paramount title"²³ is interesting. It evinces Congress's perceived need "to eliminate the conflict between courts regarding the relationship required to invoke the eviction protections of this section." H.R. Rep. No. 108-81, at 40 (2003). In doing so, Congress meant to adopt the more liberal, if not realistic, approach taken in *Clinton Cotton Mills v. United States* 164 F.2d 173 (4th Cir. 1947). In that case, the servicemember, Charles Thomas, had worked for Clinton Cotton Mills and had rented company housing from the mill prior to his induction into the armed forces. The trial court convicted the defendant cotton mill for the misdemeanor crime of wrongful eviction, when it evicted Thomas's family from company housing following the termination of his employment and induction. *Id.* at 174-5. Following the first eviction, the servicemember's family began residing at the home of another company employee, Roy Ramsey, who rented company housing from the mill. This meant that Ramsey was technically the Thomas' landlord. The company was held liable for this second count of wrongful eviction when it threatened to evict Ramsey if the Thomases did not leave. The court stated that "a tenant can be evicted only by his landlord, but this is not true when a tenant is deprived of possession by one who has title paramount to the tenant's immediate landlord . . ." (*Id.* at 176). Congress highlighted its choice of outcome by contrasting the result in *Clinton* to that in *Arkless v. Kilstein* 61 F. Supp. 886 (E.D. Pa. 1944). See also H.R. REP. NO.108-81, at 40. In *Arkless*, the district court had held that "the Act refers to, in its commonly accepted legal interpretation, to a dispossession of a tenant by a landlord, and not to any disturbance of the tenant's right to possession and quiet enjoyment of the premises by a third party." *Arkless*, 61 F. Supp. at 888.

Section 531(d) provides for the possibility that allotments may be taken from a servicemember's pay. (50 U.S.C. app. § 531(d)). This requires secretarial implementation and currently there is no procedure authorized. (U.S. DEP'T OF DEFENSE, REG. 7000.14-R, FINANCIAL MANAGEMENT REGULATION vol. 7A, ch. 50 (July 2005)).

Residential Leases

In addition to the protections against evictions, the SCRA allows servicemembers to terminate residential leases (50 U.S.C. app. § 535). In fact, the SCRA, in contrast to the SSCRA, has expanded this gamut of protections and added similar protections for servicemembers who lease automobiles. Practitioners will undoubtedly conclude that this section must be read with a degree of care. The portions which deal with residential leases and those concerning automobile leases are similar, but they operate under different timelines. Thus, care must be taken to avoid using or advocating from the wrong timeline.

This section of the Act differs from the section concerning evictions. It provides a method by which the servicemember-lessee rather than the lessor, may terminate a lease. Its scope is not limited by either the amount of the agreed rent or the nature of the premises. In further contrast, this section does not require that the lessee's ability to perform be materially affected by his/her military service.

Servicemembers who come to active duty from the reserve components or those who join the armed forces are allowed to terminate their "residential, professional, business, [or] agricultural" leases. They must do this in writing, however. As a concession to the lessor, the termination "is effective 30 days after the first date on which the next rental payment is due and payable" and after the notice has been delivered. For example, in the case of a month-to-month rental, the termination becomes effective 30 days after the first date on which the next rental payment is due subsequent to the date when the notice of termination is delivered. If the rent is due on the first day of each month, and notice is mailed on 1 August, then "the next rental payment is due and payable" on 1 September. Thirty days after that date would be 1 October.

There is also the possibility that a lessor may obtain equitable relief, the lessor may, during the period from his/her receipt of notice to the effective date of termination, petition the appropriate court for relief from the lease termination. Landlords may petition the court on grounds of "undue hardship" or countervailing equitable consideration or for an "equitable offset" for lease termination. Such an "equitable offset" would most likely be granted in commercial or professional lease terminations. "Equitable offset" could include lost rent, realty fees for re-rental, depreciation in rental value of premises because of tenant-requested fixtures, and attorney fees and costs. (*Omega Indus. v. Raffaele*, 894 F. Supp. 1425, 1430 (D. Nev., 1995) ("For example, if a military person who knows that he or she will soon be invoking [50 U.S.C. app. § 535] to terminate an existing lease – wrongfully induces a lessor to make tenant improvements, a court may find that equity requires that an equitable remedy be granted in an amount equal to both the cost of those improvements and the monthly rental obligations of that military person")). In addition, if the servicemember requires the lessor to modify the property and subsequently terminates the lease, the lessor may charge the lessee for the alterations. This occurs only if the lessee knew of the impending call to active duty at the time the lessee requested the modifications.

Although there is a possibility that equity will require relief to the lessor, the servicemember's ability to terminate a lease is a clearly defined protection. Thus, "a court in equity must exercise extreme caution in withholding the protection." (*Id.* at 1434). The law makes it clear that prepaid rents, for instance, are to be returned to the lessee 30 days after "the effective date of termination." As with other Title III protections, violations can be criminally sanctioned and damages from a lessor's actions, to include punitive damages, can also be obtained.

Perhaps the most important thing to note about this provision is that it is applicable when a servicemember is transferred from one duty location to another or when ordered to deploy "for a period of not less than 90 days." In the past, legal assistance practitioners have been concerned to see that members of their command execute leases with so called "military clauses." Leases with these provisions allow for the early termination of a lease when a servicemember is notified of a

transfer to a new duty assignment. Even though a servicemember would be well advised to still include such a clause, the SCRA obviates the need to contract for this relief.

Another very important aspect of the protection concerns the fact that it applies to joint leases. This provision is important for those servicemembers who deploy with a unit and who leave a spouse behind who wishes to reside somewhere other than near the servicemember's duty station. That spouse's obligation is terminated along with that of the servicemember's.

Taking this a step further, it should be noted as well that one would normally think of a servicemember's co-tenant spouse as the person with a need to terminate the lease. The law, as it turns out, is a bit broader allowing for the termination by not just a spouse, but by any dependent who has signed the lease with the servicemember. A "dependent" includes a spouse, but also "an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief." One can certainly imagine situations involving an elderly parent who needs to terminate a lease while the servicemember is deployed.

For more information, please visit your local Region Legal Service Office.