

LANDLORD - TENNANT

When you rent a house or apartment, you create a legal relationship between yourself and the landlord. Sometimes this relationship is embodied in a written contract called a lease and sometimes there is no written contract at all. A lease is an agreement between the landlord and tenant outlining the duties of each. You can avoid future problems by carefully choosing where you rent or lease. Make sure you can afford the house or apartment. Take your time when looking for a place; shop around. When you find a place you like, walk around the entire area. If it is an apartment complex, talk with other tenants about the landlord, maintenance and repairs, and the condition of the various complex facilities. Check out the local schools, stores, and neighborhood. View everything twice, once during the day and once at night. The local police can provide crime statistics for the neighborhood you're interested in. If you have a problem that is not answered below, contact Legal Assistance for professional advice.

ORAL AGREEMENTS

An oral agreement between the landlord and tenant usually provides that the tenant occupy the premises on a "month-to-month" basis. Either party can terminate the agreement by notifying the other party in advance in an amount of time equal to 28 days. For example, notification of termination would be required in advance if the agreement provides 28 days for rental on a month-to-month basis. You are also entitled to a 45-day notice if the landlord wishes to raise the rent and if the agreement is month-to-month. The notice of rent increase must be in writing. Oral agreements are more difficult to prove than written ones and thus, are, highly discouraged. A written agreement can also provide for a month-to-month term lease.

WRITTEN LEASES

A lease allows the tenant to occupy the premises for a fixed period of time. A lease generally terminates on the date specified in the lease itself. Some leases require the tenant to provide notice of the termination; so always read the lease carefully. During the term of the lease, the landlord may not raise the rent unless the lease contains a provision giving him/her the right to do so.

Study your lease carefully. If you don't understand something or have problems with certain lease provisions, contact the Legal Assistance Office. Leases are difficult to invalidate once signed. If you leave before the end of your lease term, you are liable for the remaining payments on the lease. This may become a problem for military members who may, unexpectedly, be required to leave the area. Including a "military clause" in the lease can alleviate this problem.

MILITARY CLAUSES

For service members, no lease or rental agreement should be signed without a military clause. A military clause permits you to cancel the lease in the event of orders to move

into government housing, transfer orders, or an early discharge. The following is a sample military clause:

"It is expressly agreed that the tenant or the landlord may terminate this lease upon a 28-day written notice, without any penalty, in the event the tenant receives permanent change of station military orders directing him/her to leave the MCB Hawaii, the tenant receives an early discharge from the military service, the tenant is designated and accepts orders to move into government quarters or if the member is ordered by his/her command to vacate his/her present housing and to move into a military barracks."

A recently enacted federal law, the Servicemembers' Civil Relief Act (SCRA), provides some, but not all, of the protections that are afforded in the military clause of a residential property lease. Please see the above referenced link for additional information.

DEPOSITS

A landlord will frequently request various "cleaning", security and other deposits before accepting a tenant. The landlord must return your deposit no later than 21 days after you have moved out. However, there are circumstances when a landlord can keep all or part of your deposit:

To remedy defaults in rent payment;

To repair damage to premises caused by the tenant (this does not apply to repair of damage due to "ordinary wear and tear");

To clean the premises, if necessary, when the tenant leaves; and

If the rental agreement allows it, to pay for the tenant's failure to restore or replace personal property. In order to protect your deposit, you will want to take an inventory of damages you observe on the premises before you move in. Sign this inventory, give a copy to the landlord and retain the original. By doing this, you will ensure that your deposit is not used to repair damage you did not do. Also, no deposit can automatically be made "non-refundable". The landlord must return the security deposit within 21 days. If the landlord intends to retain any moneys, he has to notify the tenant within 21 days, in writing. The landlord must explain why he is retaining money. A tenant must be provided with copies of all bills for damages, etc., when he requests those bills.

REPAIRS

The landlord must provide a place that is fit for human occupancy. This is called an "implied warranty of habitability" and is present in every lease and rental agreement. The landlord's minimum obligation is as follows:

There must be no leaks when it rains, no broken doors, and no broken windows;

The plumbing must work, including sewer hook-up and running hot and cold water;

The heater must work and be safe;

The lights and wiring must work and be safe;

Floors, stairways, and railings must be in good repair; and

The premises must be clean, with no trash or garbage and no rats, mice, roaches, or other pests.

When one of the above situations arises you must notify your landlord, preferably in writing. You must give the landlord a reasonable time to make repairs. If the landlord does not make repairs in a reasonable time, you may be able to make them yourself and deduct the repair expenses from the future rental payments. The maximum amount allowable is \$300.00 that may be deducted from your rent for repairs. However, never move out or withhold rental payments without consulting Legal Assistance or a private attorney.

EVICTION

A landlord cannot physically remove a tenant without following a strict legal procedure. The procedure is known as an "Unlawful Detainer Action," and it requires four steps before it is proper:

- The landlord must have a legal reason to want an eviction, such as failure to pay rent or live up to a term of your agreement;

- The landlord must notify the tenant of the breach of the contract;

- The landlord must give the tenant at least 10 days to remedy the breach; and

- If the tenant fails to respond, the landlord may bring a summary proceeding for possession of the rental unit.

There are certain actions that landlords may not practice to remove a tenant from the premises:

- The landlord cannot disturb the tenant's quiet enjoyment of the premises by playing loud music at all hours or other similar methods of disturbance;

- The landlord cannot cut-off utilities, unhinge doors, or chop down stairways;

- The landlord cannot enter the premises and rummage through your personal belongings (except in emergencies or with your consent); and

- The landlord cannot hire private individuals to physically remove you from the premises.