



LEGALEase

Rights of Residential Owners and Tenants



NEW YORK STATE BAR ASSOCIATION

Caution

The information in this pamphlet is intended as a general guide for informational purposes only, not as legal advice. Special, and at times, different, rules apply in areas of the state which are subject to rent control, rent stabilization or The Emergency Tenant Protection Act or similar laws. Consult with a lawyer or the appropriate government agency to find out what “special” rules apply to your area. This pamphlet is based on New York law. If you have any questions about your particular situation, you should consult a lawyer.

An owner or landlord may not evict a tenant without first beginning a legal proceeding against a tenant. The actual removal of the tenant from the premises may not be done by anyone other than a Constable, Marshal or Sheriff who has a court order.

It should be noted that in some instances the discussion of tenants’ rights is not applicable to tenant-shareholders of cooperative apartments.

Owner Not to Discriminate

An owner of residential property may rent it to anyone for legal purposes upon almost any terms that the owner and tenant agree subject to laws governing rental rates. The owner may refuse to rent to anyone; however, that refusal cannot be based on race, age, religion, gender, disability, marital status, sexual orientation, or because the tenant has children or in some jurisdictions, because of occupation or source of income.

Rent

An owner is entitled to receive the rent on time and is not required to send a bill for rent to the tenant. Most lease agreements provide that rent is payable in advance at the beginning of the month. Owners may resort to an expedited proceeding in court to remove a non-paying tenant from possession of the premises after notice of the owner’s failure to receive the rent is given by certified mail and a written demand for rent is served. If rent is

paid in cash, the owner is obligated to provide a written receipt. Where a tenant pays rent by personal check, the owner or its agent is obligated to issue a receipt upon the request of the tenant.

An owner may not require payment of rent exclusively by electronic means and may not impose an additional fee upon a tenant who does not utilize an electronic billing and/or payment system.

Owner's Right to Access

The owner may enter the premises without tenant's consent if there is an emergency or if the tenant has abandoned the premises.

An owner may enter a rented unit to inspect the premises, make repairs, supply services and, if the lease so provides, to show the property to prospective purchasers, tenants and others. The owner may only enter at reasonable times and, if the lease so provides, only after advance notice. The owner may enter the premises without tenant's consent if there is an emergency or if the tenant has abandoned the premises. Tenants in multiple dwellings in cities with a population of 325,000 or more, by law, have the right to install a lock on the entry door to the dwelling unit, provided a duplicate key is given to the owner.

Maintenance of Property

By law (called the "warranty of habitability"), every written or oral lease or rental agreement for residential premises, including a mobile home, is deemed to contain a covenant and warranty by the owner or mobile home park operator that the premises leased or rented and all areas used in connection therewith in common with other tenants are fit for human habitation and for the uses reasonably intended. Also, the occupants of the premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety. If the condition is caused by misconduct of the tenant, it is tenant's responsibility to correct the condition.

Unless the lease provides otherwise, however, repair of conditions not covered by the warranty of habitability is the tenant's obligation, unless the apartment is in a "multiple dwelling" (a building with three or more residential units). Then the owner by law is required to keep the dwelling in good repair and condition. Owners of multiple dwellings must also provide heat and hot water, and local laws may require the furnishing of other services.

Tenants are responsible for all damages they, their guests or invitees cause to the premises.

Where the owner has breached the warranty of habitability, the tenant may be entitled to make the repair at owner's expense and to a reduction in rent or even possibly to terminate his or her tenancy. Before any tenant resorts to self-help or to a set-off against rent or termination of tenancy, the tenant may want to consult an attorney and notify the landlord of conditions requiring repair.

In all multiple dwellings there must be at least one smoke detector and a carbon monoxide detector which the landlord is obligated to install (although in New York City, tenants may be required to contribute to the cost).

Who May Occupy

Owners may not restrict occupancy of residential premises to a tenant and tenant's immediate family. Residential premises may be occupied by the named tenant, the immediate family of the tenant, one additional occupant and dependent children of the occupant, provided the tenant or tenant's spouse occupies the premises as his or her primary residence. If the premises are rented to more than one tenant, then occupancy is permitted by tenants, immediate family of tenants, occupants and dependent children of occupants, provided that the total number of tenants and occupants, excluding occupant's dependent's children, does not exceed the number of tenants specified in the current lease or rental agreement, and that at least one tenant or a tenant's spouse occupies the premises

as his or her primary residence. The apartment must have enough space for the extra occupants, and the tenant needs to give the landlord written notice and names of all occupants on landlord's request.

Right to Assign

If a lease says nothing about assignment it may be assigned with no consent required. If the lease prohibits assignment or allows assignment only with landlord consent the owner may unconditionally withhold consent without cause provided the owner releases tenant from the lease, upon the tenant's request made on thirty (30) days' notice. If the owner withholds consent for a good reason, the tenant may not assign the lease and the tenant is not released from the lease. If the lease is assigned with consent, then, unless the lease or document granting consent provides otherwise, tenant-assignor remains liable for performance of the lease by the assignee.

Right to Sublease

A tenant of a residential unit pursuant to a lease in a dwelling having four or more residential units has the right to sublet the premises subject to the tenant obtaining the owner's prior written consent, which consent the owner must not unreasonably withhold. This does not apply to tenants in public housing, housing for which there are constitutional or statutory criteria covering admission or to tenants under proprietary leases for cooperative apartments. A tenant of a residential unit in a dwelling having less than four residential units may sublet the unit without consent of the owner unless the lease provides otherwise (and most leases prohibit subletting), in which event, the terms of the lease must be complied with. A tenant-sublessor remains liable for performance of the lease notwithstanding the subletting. The executor, administrator or legal representative of a deceased tenant may request owner's consent to assign or sublet. The owner may consent, deny consent or terminate the lease. If the owner unreasonably denies consent, the lease is deemed terminated. If

the lease is thus terminated, the tenant's estate has no further liability in connection with the lease.

Lease and Rental Agreements

A lease is a contract between an owner (landlord) and a tenant in which the parties agree to certain terms for the rental of property. Except as otherwise provided by law, the parties are bound by the agreed terms. A lease may be oral or written, but if it is for a term of one (1) year or more, it must be written. A written lease may avoid misunderstandings.

A lease containing uncompleted blank spaces should not be signed. Oral promises that are not included in the written lease should not be relied upon. Leases should be signed at least in duplicate, and all changes in the printed or typed form should be initialed by both parties. The owner and the tenant should each receive a complete signed copy.

A written lease should set forth, at minimum, the following provisions:

- a) Name and address of the owner (landlord);
- b) Name and address of the tenant(s);
- c) The purposes for which the unit may be used;
- d) The address and, if appropriate, the number of the unit being leased;
- e) The amount of rent;
- f) The date payment of rent is due;
- g) The commencement and expiration dates of the lease term;
- h) Any renewal or termination options;
- i) Amount of security, if any;
- j) Who provides and pays for utilities;
- k) Who is responsible for repairs not covered by the "warranty of habitability";
- l) What, if any, alterations or changes tenant is permitted to make to the unit; and
- m) What services, if any, in addition to those required by law, owner will provide.

Changes to Agreements

Changes to rental agreements are not enforceable unless both sides agree. Rent regulation may also

prohibit or require changes to the agreement. If the tenancy is a month-to-month unregulated tenancy, the owner can either accept the current rent, raise the rent or give notice to terminate the tenancy in the manner described in section on Termination of Tenancy.

Lead Paint Disclosure

Federal Government regulation of residential leases began in 1995. By order of Congress, and as required by the Residential Lead-Based Paint Hazard Reduction Act of 1992, the government created regulations requiring disclosure of lead-based hazards in most dwellings built before 1978. In such dwellings, upon signing a lease, the owner must provide tenants with both a lead-paint disclosure form and an information pamphlet prepared by an agency of the federal government.

These disclosure rules apply to virtually all housing units built before 1978 (when use of lead-based paint was banned).

The federal Environmental Protection Agency's lead paint notice rules for renovation require owners of buildings built before 1978 to give tenants certain information about lead paint sixty (60) days before renovating an apartment or common area in the building. When leasing or renovating an apartment, owners must give a pamphlet entitled "Protect Your Family From Lead in Your Home" to one adult occupant of the apartment.

New York City Lead Paint Rules

The City of New York has adopted, effective August 2, 2004, by Local Law 1 of 2004, the New York City Childhood Poisoning Prevention Act of 2003, which repeals all prior city laws regulating Lead Paint in Apartment Houses constructed prior to January 1, 1960. Owners of buildings subject to the Law must send annual notices in English and Spanish, between January 1 and January 15, to every tenant to determine if there is a Lead Based Paint Hazard in the apartment or the public areas of the building and/or whether a child under the

age of 6 resides in the apartment. If the Tenant does not respond to the survey, the Law requires the Owner to make an inspection of the Apartment to determine if there are small children and/or Lead-Based Hazards in the dwelling. Procedures are set forth for testing and removal of Lead Paint-Based Conditions by the Landlord. For more details, visit the City of New York Department of Health and Mental Hygiene's website at www1.nyc.gov/site/doh/index.page, or the Department of Housing and Preservation and Development at www1.nyc.gov/site/hpd/index.page.

Security

An owner may require a tenant to deposit money as security for performance of the rental agreement or lease. The deposit must be held in trust for the tenant during the time it is held by the owner and remains the property of the tenant. The owner may not commingle a security deposit with its personal funds. Commingling of the security deposit with the owner's funds may entitle the tenant to the return of the deposit during the term of the lease or rental agreement. Unless the unit rented is located in a building with six or more dwelling units, the security deposit need not be deposited in an interest-bearing account. Where the security deposit is maintained in an interest-bearing account, the owner may retain one percent (1%) interest per year as an administrative fee. If the owner transfers or sells the building to another individual or entity, the owner must transfer the security deposit to the new owner.

The owner may only insist upon a security deposit no greater than one month's rent and cannot collect rent for more than one month. The tenant is usually required to pay additional security to bring up the deposit to one month's rent upon renewal of the lease or rental agreement.

Right of Tenant to Participate in Tenant's Groups

Tenants have the right to form, join or participate in the lawful activities of any group, committee or

other organization formed to protect the rights of tenants, without interference, harassment, punishment, or penalty by owner. Tenants' groups have the right to meet in any location on the premises that is devoted to the common use of all tenants, in a peaceful manner, at reasonable times provided they do not obstruct access to the premises or facility. This right does not protect wrongful conduct designed to damage the business interests of the owner or activities conducted in an unsafe fashion.

Termination of Tenancy

Outside of New York City, a tenant may terminate a month to month or monthly tenancy by notifying the landlord at least one month before the end of the term. This notice need not be given in a particular manner. Statewide, where an owner seeks to terminate a monthly tenancy or tenancy from month to month, or does not intend to renew a lease or wishes to offer a renewal lease containing a rent increase of five (5) percent or more, the owner must provide written notice as follows: a) 30 days' notice if the tenant has been in occupancy for less than one year and does not have a lease term of at least one year; b) 60 days' notice if the tenancy or lease term has been more than one year but less than two years; and c) 90 days' notice if the tenant has been in occupancy for more than two years or has a lease term of at least two years. If such notice is being given to terminate a month to month tenancy in New York City, it must be served in the same manner as a notice of petition to commence an eviction proceeding. A tenancy for a fixed duration does not require notice to terminate, except as noted above. Leases may contain provisions for termination sooner than the date fixed for expiration of the term. Such provisions generally require specification of the reasons for earlier termination of the lease and the date on which the lease is to terminate. After such date or after expiration of the time permitted in the Notice of Termination, an eviction proceeding may be commenced.

The Mechanics of a Landlord/Tenant Action

Holdover Versus Non-Payment Proceeding

Generally, an owner or landlord can bring two different kinds of landlord-tenant lawsuits: a) A non-payment proceeding, or b) a holdover proceeding. The legal papers that are served upon the tenant must clearly indicate whether the proceeding is a non-payment proceeding or a holdover proceeding.

Non-Payment Proceeding

In a non-payment proceeding, the landlord is demanding that the tenant pay back rent or vacate the premises (in which event the tenant remains liable for the rent). If the tenant pays the rent demanded, the tenant can remain. Before a non-payment proceeding is begun, the landlord must make a proper written demand for the rent by serving a notice requiring the tenant to pay within 14 days. The notice must state the amount of rent due to the landlord, and give a breakdown of the rent due by month. The notice cannot include any amount due for any other items such as utility bills or legal fees. The demand must state that a legal action might be started by the landlord in the event the monies are not paid.

Tenant's Defenses in a Non-Payment Proceeding

The tenant may have certain defenses to a non-payment proceeding. Common defenses to a non-payment proceeding are a) rent has been paid; b) the amount of rent owed is disputed; c) a breach of the warranty of habitability (see above); and d) service of the court papers was not made in the manner required by law. The payment of all of the rent owed is a complete defense to a non-payment action.

Holdover Proceeding

A "Holdover" is a Summary (expedited) Proceeding where the landlord has declared that the tenancy has

ended, either because a lease has ended or after applicable notice. Holdover proceedings are also brought to terminate a sublease. In some cases, the landlord does not have to have a reason for the termination. In most Holdover Proceedings, a tenant may “cure” and revive the tenancy, up to 30 days after Judgment.

A variety of notices are required for the different types of holdovers. A written Notice is required before or after the Lease expires. Before the tenancy may be terminated, a notice providing a certain number of days must be given. The number of days’ notice required varies depending upon the length of tenancy. If the tenant occupied the apartment for less than one (1) year, or if the lease for the apartment is less than one (1) year, the Notice Period is 30 days. If the tenant’s occupancy or the lease term is more than one (1) year, and less than two (2) years, the notice period is 60 days. If the tenant’s occupancy is more than two (2) years, or if the lease term was two (2) or more years, then the notice period is 90 days.

A notice to end a tenancy must be written and needs to be served using strict rules set out in the statutes. The termination notices for oral tenancies must end with a rental period (i.e., a notice terminating a monthly tenancy will demand that a tenant vacate on the last day of the tenancy).

After any required notice, a Notice of Petition and Petition is served at least ten (10) days but not more than seventeen (17) days before the date the parties are required to appear in court. If the tenant does not appear in Court, a judgment on default may be awarded to Landlord.

Warning to Tenants

A tenant should never ignore legal papers, even if the tenant believes that he or she has been improperly served. If a tenant ignores legal papers, the court might enter a default judgment against the tenant, award the owner a warrant of eviction, evict the tenant, and get a Marshal or Sheriff to evict the tenant and seize

the tenant's bank accounts, salary or other property. It is possible for the court to enter a money judgment and a judgment for possession of the premises against the tenant if the tenant does not appear in court when required. Tenants who are in active military service or dependent upon a person in active military service should inform the court immediately as federal and state law affords some protections from the entry of a default judgment. A tenant should be aware that it is important to consult with a lawyer with knowledge of landlord-tenant law in his or her locality and potential defenses as local laws and practices may vary. Local bar associations often have referral services to knowledgeable attorneys. Also, free legal advice may be available in your area. For example, in New York City the Housing Court provides "pro se" attorneys who provide advice on court procedures. Residents in certain areas of New York City may be eligible for assigned counsel under a program funded by the City of New York. Legal Aid and Legal Services organizations may also be available to provide assistance to qualified persons.

This pamphlet, which is based on New York law, is intended to inform, not advise. No one should attempt to interpret or apply any law without the aid of an Attorney. Produced by the New York State Bar Association in cooperation with the Real Property Law Section.



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