

WHAT ALL LANDLORDS AND TENANTS SHOULD KNOW

1. Local housing ordinances and public housing laws create both rights and duties for landlords and tenants and those law and regulations should be understood where they apply;
2. Oral lease agreements are enforceable, but there are fewer disputes about the terms of the lease when it is written and when all parties have read it carefully before signing;
3. A month-to-month lease, written or oral, requires advance notice of at least 30 days for termination by either party
 - a. UNLESS the lease has been breached. If for example, the rent has not been paid the landlord can ask the tenant to vacate without advance notice. However, actual eviction with the constables participation will require a prior court order;
4. If a landlord has accepted late rent payment in the past the landlord must give the tenant reasonable notice, preferably in writing that in the future late payments will no longer be accepted and will be considered a breach;
5. Reasonable charges for late rent payments may be assessed by the landlord but ONLY if agreed to in advance;
6. Landlords are entitled to come onto or enter the premises at reasonable times and with reasonable notice to make repairs and inspections; they are entitled to immediate access to make emergency repairs and inspections. Otherwise, the tenant is entitled to peaceful enjoyment and if the landlord wrongfully violates the peaceful enjoyment the landlord is in violation of the lease;
7. Unless the lease provides for specific repairs, landlords have a duty to make only those repairs necessary to assure that the premises are habitable; that means the plumbing works, the roof does not leak, heat and water are available, and the premises are free of pests. Tenants must inform the landlord promptly and, if possible, in writing when essential repairs or those agreed on are needed. If the landlord fails to make those repairs within a reasonable time after notice, the tenant may have them completed and deduct the cost from rent BUT ONLY FOR ESSENTIAL REPAIRS THAT THE LANDLORD HAS AGREED TO MAKE, AND ONLY IF A PRIOR REQUEST HAS BEEN MADE.
8. Recovery of a money judgment by landlords is allowed only for damages in excess of normal wear and tear. Tenants are expected to leave the premises in as clean a condition as when they took possession and the landlord can claim damages for the cost of cleaning to return the premises to that condition;
9. The measure of damages to personal property and fixtures is the difference between the fair market value before and after the damage; estimates of the cost of repairs and actual proof of actual cost of repairs are admissible at trial to prove damages;
10. There are far fewer disputes about damages if the landlord and the tenants go through the premises together either BEFORE OR IMMEDIATELY AFTER the tenants move in and list in writing all damages evident at that time. When the tenants are moving out, the parties should go through the premises again as you are more likely to agree about what, if any, damages are the fault of the present tenants;

11. Photographs of the premises and of the damages claimed are very helpful if the dispute goes to trial, whether the damages are claimed by the tenant to have been there when he or she moved in, or claimed by the landlord to be due to the negligence of the tenant;
12. The landlord may not keep any portion of a damage or security deposit unless there is back rent due or damages to the premises;
13. For rental agreements entered into after June 30, 1989, the landlord must, within forty-five (45) days of receiving from the tenant a forwarding address, either refund in full any security or damage deposit or deliver to the tenant an itemized, written statement showing why all or part of the deposit is being kept by the landlord. If a tenant believes the landlord is unfairly keeping the deposit, the tenant may want to contact a lawyer since a tenant may sue to get the deposit and if the suit is successful the landlord would have to pay the court costs and the tenants attorney's fees;
14. Landlords should keep complete records of all rent payments received, security deposits paid, etc. Tenants should demand rent receipts, and should keep those receipts and all cancelled rent checks;
15. All keys should be returned to the landlord as soon as the premises have been vacated. Additional rent may be charged until the keys are returned or until the locks have been changed, in which case the cost of the new locks may be deducted from the security deposit;
16. No person shall cause or allow any utility service to be discontinued for any inhabited dwelling except for such temporary interruptions as may be necessary while repairs or replacement is in process or during temporary emergencies when discontinuance of service is approved; lockouts are not permitted if the tenant is not in breach of the lease and illegal lockouts or utility shutoffs could result in a judgment for punitive damages against the landlord;
17. In only two situations can a landlord hold the tenant's personal property as security for unpaid rent.
 - a. The Court has found the property abandoned or the court permits the landlord to attach the property, in which case the property may be disposed of or its value applied against any judgment in favor of the landlord. Illegal conversion of another's property is a crime in a civil suit could result in punitive damages.
 - b. The landlord and tenant may agree in a writing separate from the rental agreement that the landlord may hold property voluntarily tendered by the tenant as security in exchange for not filing an eviction.
18. Landlords are required to mitigate any damages. For example, if the tenant has left the premises before the lease was up, the landlord must make every reasonable effort to re-let the premises and thereby reduce the rent due from the tenant for the remainder of the lease term;
19. Landlords' efforts to obtain information about the tenants' credit history and information from prior landlords, and tenants' efforts to obtain information about the reliability of the landlord BEFORE the lease is agreed to reduces problems after the lease is in effect.

20. If a tenant does not voluntarily vacate the premises when ordered to do so, the landlord shall enforce the judgment of possession by obtaining a writ of ejectment/restitution from the Court. The landlord must pay a fee for the service of the writ on the tenant. The Constable of the Court is the only official who can enforce the order of possession by executing the writ. Enforcement of the writ is accomplished by the landlord making arrangements with a moving company to move and store the tenant's possessions. SINCE THE CONSTABLE IS THE ONLY OFFICIAL WHO CAN ENFORCE THE WRIT, THE LANDLORD MUST ARRANGE WITH THE CONSTABLE AND THE MOVING COMPANY A DATE AND TIME FOR THE MOVE OUT.
21. Landlords may contact Constable Mark Anthony "Tony" Duncan by calling 317-327-5058 on Mondays between 7:30 A.M. or on Tuesdays from 8:00 A.M. to 2 P.M. and on Thursdays from 2:30 P.M. to 4:30 P.M. The Court staff cannot make any move out arrangements on behalf of the Constable.

SECURITY DEPOSIT: WHAT CAN HAPPEN TO IT?

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The landlord must return the security deposit to the tenant if the tenant has not violated the terms of the rental agreement and has given the landlord a written forwarding address to which it can be sent.

If the tenant has violated the terms of the rental agreement, the landlord can use the security deposit as follows:

1. Damage to the rental unit beyond ordinary wear and tear;
2. Rent owed;
3. Rent due for the last period of occupancy if there was a written permitting landlord to apply the deposit in this way;
4. Reimburse landlord for sewer and utility bills if the rental agreement stipulates that the tenant is liable for these charges;

If the tenant has given the landlord a forwarding address in writing the landlord within 45 days after the end of the rental agreement, send to the tenant an itemized list of the charges the landlord believes are due. The landlord is entitled to deduct from these charges the amount of the security deposit and should note the deduction on the itemized list of charges. If the security deposit is greater than the damages, the landlord must include a check for the amount of difference.

The tenant is not entitled to apply the security deposit to rent due unless there is a prior agreement permitting such application.