

THE LANDLORD / TENANT RELATIONSHIP

THE LEASE:

The landlord / tenant relationship is created by an agreement between the property owner and the prospective tenant(s). This agreement is generally known as a lease. The agreement can be either oral or written. A lease term of more than one year must be in writing to be enforceable, but in most other cases an oral agreement is legally sufficient.

In most cases, a landlord will want a written lease. The advantages are obvious, all of the conditions are spelled out and there can be no dispute at a later date about what these conditions are. Read the lease form and make sure you understand all the terms. If you have any questions contact your attorney, the **Court cannot provide legal advice**. If you understand the terms of your lease, you will understand your obligations and be prepared to meet them.

If you want a lease that reflects your special requirements, ask your attorney to prepare one for you. They will be able to draw the lease to adequately protect your interests by incorporating the provisions that you want. While there are some provisions that the laws of the State of Texas will not allow; for the most part, you can have the lease drawn up to your specifications.

SIGNING THE LEASE:

Once a prospective tenant(s) have looked at the property and have decided they want to rent, the landlord should present them with the lease. Fill in all the blanks provided for names, dates, etc. Prospective tenants should read the entire lease. **Areas of frequent misunderstanding are notice of intention to vacate and Security deposits.** Make sure the prospective tenants understand these provisions. The tenant may ask to vary some provisions. If you decide to do so, be sure to include the changes on the written lease. Both landlord and tenant should sign two copies of the lease and initial any written changes. One copy is for the landlord and one is for the tenant. **Keep your signed copy.**

TERMS OF THE LEASE:

As noted above, with a few exceptions your lease can contain almost any provision both parties agree upon. Most will provide for a lease term. The lease term is a period of time that the tenancy will last. If the lease does not set out any specific term, but does provide for a monthly rent, the lease will have a month-to-month term. A month-to-month lease is one that provides for consecutive monthly terms. You may want your lease to provide for an initial term of a longer period (for example, six months or one year) to be followed by a month-to-month term unless either party gives notice of termination.

NOTICE OF TERMINATION:

You will want your lease to provide for some form of notice of termination. It is practical to require this notice to be in writing; a written instrument is more difficult to dispute than the spoken word. If you do not make provisions for notice of termination in your written lease, Texas law provides that month to month leases may be terminated with one's month notice. On leases providing for more frequent rent payments, the notice is sufficient if equal to the time between payments. For example, if the tenant(s) pay weekly and there is no notice provision in the lease, one week's notice is sufficient. If the notice set by law falls between rent periods, the tenant is responsible for paying rent up to the date of termination. For example, if the rent is to be paid on the 1st of each month and the tenant(s) give notice of termination on the 15th, the tenant(s) are only responsible for rent through the 15th of the month. The rent should be prorated.

SECURITY DEPOSIT:

Almost all leases require that the tenant(s), before they move in, pay the landlord a sum of money to be held as a security against unpaid rent or damages to the premises. This should be set out in the lease and collected prior to entry of any Tenant(s) into the premises. The lease should set out clearly the purpose of the deposit, as an example, cleaning or for damages that occurred during the tenant(s) stay).

A special Texas Security Deposit Law, which can not be waived, requires the landlord to return the tenant(s) security deposits within 30 days after they deliver the premises back to the landlord. **If the landlord keeps all or part of the tenant(s) deposit claiming unpaid rent or damage to the premises, the landlord must furnish a list describing all of the deductions within a 30 day period.**

If the dispute goes to court, the burden of proof will be on the landlord to establish that the charges were proper and that the alleged damages to the premises exceeded the normal wear and tear. (a check in - check out list may be helpful)

If the landlord neither returned the deposit nor sent the tenant(s) the list of charges and damages within 30 days, the landlord will also have the burden of providing that they were not acting in bad faith and may lose the right to make any deductions from the deposit. If the court finds that the landlord was acting in bad faith, the tenant(s) may recover \$100.00 plus three times the amount of the security deposit improperly withheld, plus reasonable attorney's fees. In addition, the landlord may lose the right to recover charges and damages against the tenant(s). However, if the court finds that the landlord was wrong but not acting in bad faith, the tenant(s) would only be entitled to recover the amount wrongfully withheld plus the cost of the court.

To benefit from this security deposit law, the tenant(s) must give the landlord a written notice of their forwarding address when they move out, and they must live up to all of their obligations under the lease.

A provision in the lease that requires tenant(s) to give advance notice of surrender before their security deposit will be returned must be underlined or in bold print.

The tenant(s) may not refuse to pay all or part of the last month's rent by telling the to apply their security deposit to what they owe. If they do, they may be liable to landlord for penalties and attorney's fees.

PET DEPOSITS:

Landlords who allow pets usually require additional security deposits for damages that may be caused by the tenant(s) pet. As stated previously, pet deposit arrangements should be clearly spelled out in the lease contract. The law pertaining to general security deposits also applies to pet deposits.

UTILITIES:

Sometimes it is more practical for landlords to provide utilities for the tenant(s) and include the cost in the rent. In other situations, the tenant(s) may be responsible for arranging for and paying for utilities. The lease should clearly set out which utilities the landlord will provide (if any) and which will be provided by the tenant(s). If the tenant(s) pay for their utilities directly to the utility company, it is illegal for the landlord to cause the utilities to be interrupted. Violation of this law can result in an award on money damages to the tenant(s), plus a month's rent and the tenant(s) attorney's fees. However, any delinquent rent would be deducted from this amount.

RENT:

The lease should clearly set out the amount of rent. The lease should set out what date the rent is due, where it is to be paid, and provide for penalties for late payment.

SUBLETTING:

Subletting occurs when the tenant(s) move out of the property and rents the property to another. The third tenant(s) pays rent to the original tenant who continues to pay rent to the landlord for the term of the lease. Texas law provides that there can be no subletting without the consent of the landlord. Since this is the law, it is not necessary to put it in the lease. However, to avoid confusion, the landlord will find it to their advantage to include such a term in the lease. Of course, like most other provisions, the lease can overrule this law and eliminate the requirements of the landlord's consent. It is highly unlikely that the landlord would want to dispense with this protection.

WARRANTIES:

Texas law provides that when there is no contrary lease provision in the rental of dwelling unit, there is an **“implied warranty of habitability”**. This means that even if the landlord does not actually say that the property is in livable condition, the law will imply from the renting of the property that the landlord is guaranteeing that there are not hidden defects in the property that are vital to the use of the property as a residence.

REPAIR AND REMEDIES FOR NON-REPAIR:

Generally, unless otherwise agreed by the parties, the landlord has no duty to repair the rented property. However, there is a law requiring the landlord upon notice, to make diligent effort to repair any condition **“which materially affect the physical health or safety of an ordinary tenant”**. This duty does not extend to any conditions caused by the tenant(s), their family or guests, but does not include conditions caused by normal wear and tear. The law does not require the landlord to repair conditions that do not materially affect the health or safety of an ordinary tenant. These remain the duty of the tenant(s). As a practical matter, the landlord may want to provide these additional repairs upon proper notice in order to assure that the property is well maintained.

Texas law provides that the tenant(s) obligation to pay rent and the landlord’s obligation to repair are independent of one another. In other words, tenant(s) cannot withhold rent if they feel needed repairs have not been made. If the landlord fails to make repairs of those conditions which materially affect the physical health or safety of an ordinary tenant, the law provides several remedies for the tenant(s). After a reasonable period of time to make the needed repairs, tenant(s) can give written notice that they will terminate the lease if the condition is not remedied in seven days. In case of termination, the tenant(s) would be entitled to the refund of any rent already paid for the period after the move out date and their security deposit.

The law also provides judicial remedies for tenant(s) occupying premises requiring repairs which materially affect the physical health or safety of an ordinary tenant, as described above. Tenant(s) may give notice that they intend to file suit if the conditions are not remedied within seven days. The court could order the landlord to make the needed repairs, order the rent reduced, impose a penalty of one month’s rent plus \$100.00, award money damages to the tenant and assess the landlord the court cost and attorney’s fees.

ELIGIBILITY TO INVOKE REMEDIES:

Before tenant(s) can avail themselves of any of the remedies outlined above:

- they must give notice of their complaint at the place where they pay the rent.
- they must be current on their rent;
- the condition complained of must materially affect the physical health or

- safety of the tenant(s);
- the landlord must have failed to make diligent efforts to repair; the landlord must have had a reasonable time after notice to repair, considering the nature of the problem and availability of labor and material for repair.

The law provides that if the tenant(s) avail themselves of any of these remedies, that the landlord may not retaliate. For a period of six months, any notices of termination or eviction suits will be closely scrutinized. Further, the landlord cannot decrease services to the tenant. Penalties may also be imposed against a tenant for retaliation. If the tenant, after written notice of the possible penalties, withhold, payment of any portion of the rent due in retaliation for a supposed failure to repair conditions complained of, the landlord may recover a penalty from the tenant of one month's rent and \$100.00.

In any lawsuit brought under these laws providing for repair, the winning party may recover attorney's fees. Either party may recover penalties for suits brought merely for harassment.

CHANGING THE LOCKS -- LOCK OUT:

When tenants become delinquent in their rent, the landlord cannot lock them out of the premises without complying with certain requirements. If the landlord changes the locks, they must leave written notice on the tenant(s) front door describing where the tenant may obtain a new key at any hour and the name of the person who will provide the key. The person must give the tenant a new key regardless of whether or not the rent is paid. Failure to strictly follow the above procedure can result in a recovery against the landlord of the tenant(s) actual damages, one month's rent, reasonable attorney's fees and court cost, less the amount of any delinquent rentals owed by the tenant. The tenant cannot give up this right (not to be locked out) therefore any waiver provision in a lease would be invalid.

THE LANDLORD'S LIEN:

If the tenant(s) become delinquent in their rent, the landlord can have a lien on some of the tenant(s) property. This means that the landlord can seize the property and hold it for the rent owed. **The following property cannot be seized:**

- all clothes
- all tools and books for trade or profession
- school books
- one automobile and one truck
- family library and all family portraits or pictures
- one couch, two living room chairs, dining room tables and chairs
- all beds and bedding
- all kitchen furniture and utensils
- food
- medicine

- agricultural implements

Further, the landlord cannot seize property that belongs to someone other than the tenant(s) or items that are mortgaged.

This contractual landlord's lien must be printed on the lease and be underlined or be in bold print.

If there is no written agreement, the landlord cannot avail themselves of this remedy. The parties can waive none of the protections of this law. A landlord's violation of the lien law can result in an award of damages to the tenant(s) including attorney's fees.

THE EVICTION PROCESS:

Sometimes, usually for failure to pay rent, it becomes necessary to evict tenant(s). The landlord cannot personally evict a tenant. They must seek and obtain a court order, which may be enforced only by a Constable or Sheriff Deputy. For a court to order an eviction, the following steps must first occur:

- The landlord must first give the tenant(s) a written notice to vacate demanding the tenant(s) leave the property within a specified time.
- If the tenant(s) refuse to vacate, the landlord must go to a Justice of the Peace Court and file a lawsuit against the tenant(s), asking the Judge to order their eviction.
- The court must have the tenant(s) served with an official notice telling them when the court hearing will take place.
- At the court hearing, both sides will have the right to present their side of the case, including witnesses, receipts, cancelled checks, photographs, and all other evidence.

You are not required to be represented by a lawyer at the court hearing, but you may have one if you choose. The Judge will decide who has the right to the property after hearing both sides and will render a judgment. (The landlord and or the tenant(s) may ask for a jury to decide the suit).

If you lose in the Justice Court, you may appeal for a new trial in County Court, however, at this point you will probably need the assistance of a lawyer.

If the landlord wins in Justice Court and there is no appeal filed, the tenant(s) will have five days after the Court enters its order of eviction and ten days to pay if rent is due. If the tenant(s) do not move out in that five-day period, the landlord can return to Court and file for a Writ of Possession. The Writ gives the Tenant(s) 24 hours to vacate. If the tenant(s) do not vacate the premises the Constable and or the Sheriff's Deputy will supervise the removal of the occupants' belongings to the street.