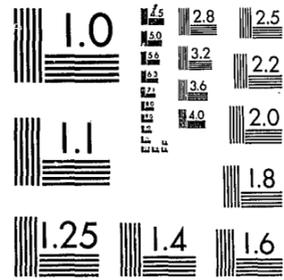


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Landlord-Tenant Relations



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Office of Attorney General
Division of Consumer Protection
State Capitol
Pierre, South Dakota 57501

July 1, 1979

U.S. Department of Justice
National Institute of Justice

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INTRODUCTION

Effective July 1, 1979, the Division of Consumer Protection will be transferred from the Department of Commerce and Consumer Affairs to the Office of the Attorney General. When this transfer of responsibility occurs, the Division of Consumer Protection will no longer intervene in disputes between landlords and tenants. In order to fulfill an informational responsibility, however, our office has produced this pamphlet to answer your general questions in the area of landlord-tenant relations. CAUTION: This pamphlet is informational in nature only. If you have any specific legal questions, contact your attorney, lawyer referral, student association legal counsel, or local office of East River Legal Services, Black Hills Legal Services or South Dakota Legal Services.

WHO IS A TENANT?

If you rent or lease a house, apartment, or mobile home, you are a tenant. Renting or leasing is an agreement by which a landlord gives to a tenant temporary possession and use of the property for rent, and a tenant agrees to return the property to the landlord at a future time.

WHAT KINDS OF LEASES ARE AVAILABLE?

There are two kinds of rental agreements: Written leases and oral rental agreements. A written lease will normally include the rental period, the amount of the rent, duties to repair, responsibility for damage, whether a security deposit is required, and other conditions the landlord or tenant may wish to include. An oral (unwritten) rental agreement is the relationship between a landlord and tenant(s) who do not have a written lease. The rental period is determined by the time period for which the rent is paid. If you pay every month, then the tenancy is on a month to month basis. This means that the tenant must give the landlord one month's notice prior to moving out and the landlord must give the tenant one month's notice in order to end the rental agreement, unless the parties agree on some other time frame. The landlord, however, is allowed to raise the rent or change other conditions of the rental agreement upon ~~fifteen (15)~~ ^{thirty (30)} days notice.

WHAT ARE THE TENANT'S RIGHTS AND RESPONSIBILITIES?

"Quiet Enjoyment"--A tenant has the right to possession and quiet enjoyment of the property he or she is renting; that is, to be free from

A tenant must be given three (3) days notice to vacate before a forcible entry and detainer action can be commenced by a landlord. If the tenant refuses to move after three days, the landlord can then file a lawsuit for eviction.

The action is started by serving a summons and a complaint upon the tenant. The tenant then has four (4) days in which to file an answer to the complaint. If he fails to do so, the Court will issue an order requiring the tenant to vacate the premises. If the tenant answers, claiming that he has the right to possession, the matter is brought before the Court for a hearing. Either side may request a jury trial.

If the landlord wins the case, the Court will order the tenant to vacate the premises and to pay any rent due. If the tenant wins, he will be entitled to retain possession of the premises for the term of the rental agreement subject to his obligation to pay rent in the future.

The party who wins will be permitted to recover attorney fees but only up to five dollars (\$5.00). If the action involves a claim for damages, the successful party could be entitled to an additional twenty one dollars (\$21.00). The losing party may also be required to pay such costs as the Clerk's filing fee and the Sheriff's fee for service of papers.

A tenant cannot be evicted under forcible entry and detainer for withholding rent to make repairs. (SDCL 43-32-9).

If the landlord and tenant have an unwritten rental agreement, either side can terminate the agreement on thirty (30) days notice to the other party. If this is the case, the landlord need not go through the time and cost of starting a forcible entry and detainer action. If, however, the tenant is still occupying the premises after 30 days, the landlord will have to use a forcible entry and detainer to have the tenant evicted.

A landlord could evict a month-to-month tenant or start a forcible entry and detainer action to retaliate against a tenant withholding rent to make repairs or reporting housing code violations. This is not prohibited by current state law. There is, however, case law in other states that does not permit such retaliatory evictions of tenants asserting their rights (Annot., 40 A.L.R.3d 753).

2. Security Deposits--Many landlords require a security or damage deposit to be furnished by the tenant at the start of the rental period. Before giving a security deposit, the tenant should inspect the premises and

prepare a statement as to their condition. This statement should be signed by both landlord and tenant. This will protect both parties from misunderstandings later about what damage the tenant caused.

A landlord may not require a security deposit in excess of one month's rent unless "special conditions" exist which "pose a danger to maintenance of the premises." An example of this is requiring extra deposit money to have a pet on the premises.

When a tenant moves out, the landlord is required either to return the deposit or to provide a written statement showing the specific reason for his failure to return it. This statement must be furnished within two weeks after the termination of the tenancy and the landlord's receipt of the tenant's mailing address or delivery instructions. The landlord may withhold from the deposit only such amounts as are necessary either to remedy defaults in the payment of rent or to restore the premises to their conditions at the beginning of the tenancy (ordinary "wear and tear" excepted). If the landlord withholds the deposit, the tenant may also demand an itemized account of the deposit withheld. This must be provided within forty-five (45) days of the termination of the tenancy. If the landlord does not follow these rules, he forfeits the deposit.

If the landlord withholds all or part of the security deposit, the tenant can sue the landlord in small claims court for its return. The Clerk of Courts will instruct a tenant how to file; no attorney is necessary.

3. Damages--A landlord may also sue the tenant for back rent or damage done to the premises. If the amount is less than \$1,000, the suit can be brought in Small Claims Court. Again, if you need any help in getting a suit started in Small Claims Court, contact your local Clerk of Courts.

WHAT HAPPENS IF PROPERTY IS LEFT ON THE PREMISES AFTER THE TENANT LEAVES?

The legal requirements for disposition of property left by a tenant on rental premises following the termination of a lease vary depending upon the property's value. Property with a total reasonable value of less than \$100 is presumed, after ten days, to have been abandoned by the tenant and may be disposed of by the landlord. Property with a total reasonable value of more than \$100 must be stored by the landlord for thirty (30) days, after which the landlord may treat it as abandoned and dispose of it accordingly.

If the property is claimed by the tenant during this period, the landlord is entitled to reimbursement for his handling and storage costs.

CONCLUSION

Many of the problems in the area of landlord-tenant relations can be averted by common sense. Put all agreements in writing, even if it seems insignificant. If you have any problems, consult the other party first. That is all that may be necessary to take care of the problem. Use the remedies listed in this pamphlet only as a last resort. If problems do develop, then contact your local attorney, lawyer referral service, Student Association legal counsel or branch office of:

East River Legal Services

Sioux Falls 336-9230

Vermillion 624-2014

Aberdeen

Black Hills Legal Services

Rapid City 342-7171

South Dakota Legal Services

McLaughlin 823-4557

Batesland 964-2175

Sisseton 698-3971

Fort Thompson 245-2341

Mission 856-4444

Wagner 384-5578

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Office of the Attorney General

END