

PRIVATE LANDLORD-TENANT RIGHTS¹ AND OBLIGATIONS IN CENTRAL NEW YORK

RENTING

BACKGROUND CHECKS

- ❖ A landlord cannot charge more than \$20 for a credit and background check. If the actual cost is less than \$ 20, a landlord may only charge the actual cost. Real Property Law § 238-a(1)(b).
- ❖ A landlord must give the prospective tenant a copy of the background/credit check, as well as an invoice from the company that performed the check. If the landlord does not provide the invoice, a tenant cannot be charged for it.
- ❖ A tenant can provide a background and credit check to avoid any fees. The background/credit check, however, can be no older than 30 days.
- ❖ A landlord may refuse to rent to a tenant for a non-discriminatory reason that is not related to the tenant's membership in a protected class.

LEASES

- ❖ Leases for rental units **may be oral or written**. A written lease may help avoid disputes. A party must sign a written lease to be bound by its terms. A landlord should deliver a copy of a written lease to the tenant(s) after it is executed.
- ❖ Leases should identify the premises, specify the names and addresses of the parties (landlord and tenant(s)), the amount and due dates of the rent, the duration of the lease (start and end date), the conditions of occupancy, and the rights and obligations of the parties. Any **changes to a lease should be initialed** and dated by all parties.
- ❖ Leases must use words with **common and everyday meanings** and must be **clear** and coherent. Sections of leases must be appropriately captioned and the print **must be large enough to be read easily**. General Obligations Law § 5-702; CPLR § 4544.

¹ In some situations, different rules may apply to tenants who reside in manufactured home parks or in public housing and to tenants who receive rental subsidies.

- ❖ The parties may generally agree to such terms and conditions as are mutually agreeable, but the law places some limits on what terms and conditions are enforceable. If the court finds a lease or any lease clause to have been **unconscionable** at the time it was made, the court **may refuse to enforce** the entire lease or a specific clause(s). Real Property Law § 235-c. In addition, **the law specifically prohibits some provisions** such as ones that:
 - **Exempt a landlord from liability for injuries** to persons or property caused by the landlord’s negligence, or that of the landlord’s employees or agents. General Obligations Law § 5-321.
 - Exempt a landlord from mitigating the damages of a tenant vacating the premises before the lease expires. Real Property Law § 227-e.
 - **Require a tenant to pledge household furniture** as security for rent. Real Property Law § 231(4).
 - **Waive the Warranty of Habitability.** Real Property Law § 235-b.
 - Restrict a tenant from living with immediate family members and/or one additional occupant and the occupant’s dependent children. Real Property Law § 235-f.
- ❖ After a tenant signs a lease, **the landlord must allow the tenant(s) to inspect the apartment before moving in.** After inspection, the landlord is required to make a written agreement with the tenant about the condition of the property. The agreement should include a list of any existing defects or damages.

MONTH-TO-MONTH TENANCIES

- ❖ Renters who do not have leases and pay rent on a monthly basis are called “month-to-month” tenants. **Tenants who stay past the end of a lease are treated as month-to-month tenants if the landlord accepts a rent payment.** Real Property Law § 232-c.

SECURITY DEPOSITS

- ❖ Tenants can be required to pay a security deposit, but the maximum amount for a security deposit is one month’s rent. The one-month limit means that a **landlord cannot ask for a security deposit and last month’s rent.** If the lease is renewed at a greater amount or the rent is increased during the term of the lease, the landlord may collect additional money from the tenant to bring the security deposit up to the new monthly rent amount.
- ❖ Landlords cannot co-mingle deposits with their own money.

- ❖ Landlords of buildings with **six or more apartments must put all security deposits in a New York bank account earning interest** at the prevailing rate. Each tenant must be informed in writing of the bank's name and address and the amount of the deposit. Landlords may collect annual administrative expenses of 1% of the deposit. All other interest earned on the deposits belongs to the tenant. Landlords must give tenants the option of having this interest paid to them annually, applied to rent, or paid at the end of the lease term.
- ❖ If the building has fewer than six apartments, a landlord may voluntarily place security deposits in an interest-bearing bank account. If the landlord voluntarily places a security deposit in an interest-bearing account, the landlord must also follow the above rules.
- ❖ If the building is sold, the landlord must **transfer all security deposits to the new owner** within five days **or return the security deposits to the tenant(s)**.

DURING TENANCY

RENT & RECEIPTS

- ❖ A landlord **must provide tenants with a written receipt when rent is paid by cash, money order, cashier's check**, or in any form other than the personal check of a tenant. Tenants paying rent by personal check may request in writing a rent receipt from the landlord. Real Property Law § 235-e.
- ❖ After a tenant requests a receipt, the landlord must provide a receipt every month.
- ❖ The receipt must state the payment date, the amount, the address for the apartment, and the period for which the rent was paid. The receipt must be signed by the person receiving the payment and state his or her title.
- ❖ The landlord must keep **proof of cash rent receipts for 3 years**.
- ❖ A rent payment can only be considered **late if it is received more than five days after it is due**. In a written lease, the parties can agree to a **late fee of \$50 or 5% of the monthly rent**, whichever is less. Real Property Law § 238-a.
- ❖ If rent is not received **“within five days” of its due date**, the landlord must provide a written notice, **by certified mail**, to the tenants. If rent is due on the first of the month, the five-day notice cannot be given until the seventh day of the month.

REPAIRS

- ❖ Tenants have the right to a livable, safe, and sanitary apartment. This right, called the Warranty of Habitability, is implied in every written or oral residential lease. Real Property Law § 235-b.
- ❖ Any lease provision that waives the Warranty of Habitability is contrary to public policy and is therefore unenforceable.
- ❖ Examples of a breach of the Warranty of Habitability, include the failure to provide heat or hot water regularly, the failure to rid an apartment of an insect or rodent infestation, and the failure to repair collapsing porches or floors.
- ❖ If the landlord breaches the Warranty of Habitability, the tenant may either: (1) make the repairs and deduct the cost from the rent; or (2) withhold the rent until the landlord makes the repair.
- ❖ Landlords cannot retaliate by increasing rent or evicting the tenant. Real Property Law § 223-b(2).

LANDLORD ENTRY

- ❖ Tenants have the **right to exclusive possession** of the apartment during their tenancy. A landlord may enter a tenant's apartment with **reasonable prior notice**, at a reasonable time, and with the tenant's consent, either to provide routine or agreed-upon repairs or services, or at such intervals or in such circumstances that are provided for in a lease.
- ❖ If the tenant unreasonably withholds consent, the landlord may seek a court order to permit entry.
- ❖ In an **emergency**, such as a fire or flood, **the landlord may enter the apartment without the tenant's consent or prior notice.**

RAISING RENT OR TERMINATING TENANCY

- ❖ If the landlord wants to **raise the rent by 5% or more or not renew the lease**, the amount of notice required depends on the length of the lease or, if no lease, on the length of occupancy (Real Property Law § 226-c):
 - If the tenant has **occupied the unit for less than one year and does not have a lease term of at least one year**, the landlord must give at least **thirty days' notice.**

- If the tenant has **occupied the unit for more than one year but less than two years, or has a lease term of at least one year but less than two years**, the landlord must give at least **sixty days' notice**.
- If the tenant has **occupied the unit for more than two years or has a lease term of at least two years**, the landlord must give at least **ninety days' notice**.
- ❖ If the landlord fails to give proper notice, the tenancy continues under the existing lease or rental agreement. The required notice period must pass before the rent increase or non-renewal of the tenancy takes effect.
- ❖ If the tenant refuses to pay a rent increase, the landlord may go to court to evict the tenant. In court, the **landlord cannot force the tenant to pay a rent increase** if the tenant did not accept it. Instead, the landlord can only ask the court for the tenant to pay **“use and occupancy”** for the pendency of the case, and the court will set this amount.
- ❖ A tenant accepts a rent increase by, for example, signing a lease with a new rent amount or paying the increased amount.
- ❖ A tenant who decides not to renew at the end of a fixed-term lease does not need to give any notice. **A tenant with a month-to-month tenancy must give the landlord one month's notice** that the tenant is not renewing the tenancy.

SELF-HELP EVICTIONS

- ❖ A landlord who tries to evict a tenant without going through court to obtain a warrant of eviction may be found guilty of a criminal misdemeanor. RPAPL § 768.
- ❖ It is illegal for a landlord to try to evict a tenant by changing the locks, removing the entry door, turning off utilities, or removing personal property from an apartment.
- ❖ If a landlord wants to evict a tenant, the landlord must take the tenant to court. If the court orders the tenant to move, a law enforcement officer will serve the tenant with a warrant of eviction, which gives the tenant at least 14 days to move.

MOVE OUT

INSPECTION

- ❖ The landlord must give written notice of a tenant's right to an inspection. If the tenant asks for an inspection, the **landlord must then give at least a 48-hour written notice** with information about the date and time of the inspection. **The landlord must allow the tenant to be present** during the inspection. General Obligations Law § 7-108.

- ❖ The inspection must be conducted between 1 and 2 weeks before move-out. After the inspection, the landlord must give the tenant a list of repairs or cleaning that needs to be done. The repairs **listed cannot include damages related to normal wear and tear** or damages caused by a prior tenant. Carpet cleaning and painting, for example, are normal wear and tear.
- ❖ The **tenant can “cure” any issue** discovered during the inspection.
- ❖ Anything on the repair list that the tenant doesn’t fix can be deducted from their security deposit. Repairs and damages noted at a move-in inspection, however, cannot be charged to the tenant and/or deducted from a security deposit.

RETURN OF SECURITY DEPOSIT

- ❖ Within 14 days of move-out, the landlord must return the security deposit. If the landlord plans to keep some or all of the deposit, **the landlord must give the tenant an itemized statement explaining the deductions within 14 days of the move-out.**
- ❖ If the landlord does not provide the itemized statement, the landlord forfeits any right to keep any part of the deposit.

Legal Aid Society of Mid-New York, Inc.

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