

## DEPOSIT

When a landlord agrees to reserve rental property, the landlord will probably ask the tenant for a “deposit.” This transaction obligates the tenant to occupy the property on the agreed date, and obligates the landlord to have the property fit for occupancy on the agreed date. If the tenant fails to occupy the property on the agreed date, then the tenant could lose the deposit and be liable for damages. If the landlord fails to fulfill his obligation, the landlord will have to refund the deposit and may be liable for damages.

## SECURITY/DAMAGE DEPOSIT

A security or damage deposit may be required by the landlord to satisfy nonpayment of rent or any other default, including physical damage to the property. The landlord may keep the deposit for such defaults. However, normal wear and tear is not deductible. If the deposit is not enough to cover all damages, then the tenant may be responsible for additional damages.

## INSPECTION AND CHECKLIST

Before putting down a deposit on the property, the tenant should inspect the property for any visible defects, damage or missing items. When the tenant signs an agreement to lease the property, the landlord and the tenant should agree on what the problems are to be corrected before the tenant moves in.

Some landlords offer a pre-printed checklist for noting any existing faults present before occupancy. If a checklist is not provided, then the tenant may write one and make two copies, one for the landlord and one for the tenant. The checklist should be signed by both the landlord and the tenant to prevent future disputes.

The tenant should not sign the lease or leave a deposit unless there is an agreement in writing that the property will be in the agreed condition on the date of occupancy.

## WHAT IS A LEASE?

A lease is an agreement which legally binds both the landlord and the tenant to the terms for a specified period of time. The lease may be oral or written. However, oral agreements may be impossible to prove in court.

## TERMS & AUTOMATIC RENEWAL CLAUSES

The terms and conditions of the lease are usually regulated by the lease agreement.

**Fixed Term Lease:** The duration of the lease may be agreed upon by both the landlord and the tenant for a fixed period of time. A fixed term lease usually runs for a year but can be for any time period stipulated in the agreement not to exceed ninety-nine (99) years.

**Month-to-Month Lease:** If the duration of the lease is not stated in the agreement, then it is presumed by law to be month-to-month. The tenant or the landlord may terminate or change the terms of the lease with a ten (10) days written notice before the end of the month.

**Renewal Clauses:** Some leases contain automatic renewal clauses, which renew the lease for another term equal to the original term. For example, if the tenant has a one year lease that expires on December 31, then the lease will automatically renew for another full year with the same terms.

\*Either the tenant or the landlord can avoid automatic renewal by giving written notice of his/her intent to vacate.

\*Most leases require written notice for termination at least 30 days prior to the current lease's expiration.

Other leases contain automatic month-to-month renewal clauses. Again, all lease terms will remain the same. Any alteration to the terms (i.e. changes in the amount of rent, termination of the lease, etc.) must be made with the proper notice as provided for in the lease.

**Without a Renewal Clause:** if the tenant remains in the apartment for one week after the lease expires and there is no renewal clause, then the lease will automatically renew on a month-to-month basis. In this situation, any change to the terms of the lease must be made with a ten day written notice prior to the end of the monthly period.

## CO-SIGNING A LEASE

Tenants can co-sign a lease with a roommate(s). In this case, either or both tenants can be held responsible for the entire rent, damage, or any other breach of agreement. Therefore, if a roommate moves out or causes damage to the apartment, then the remaining roommate can be held responsible for all damages.

## NON-PAYMENT OF RENT

Some lease agreements allow for the landlord to charge a fee for the late payment of rent. Late fees cannot be charged unless they are provided for in the lease agreement. If no written lease exists, fees cannot be charged unless they are agreed upon orally. The law sets no specific amount for late fees; however, unreasonably high fees can be contested.

## SPECIAL RULES GOVERNING THE LEASE

- A tenant should ask the landlord about the written rules governing the conduct of the tenant and his/her guest. Before signing the lease, the tenant should request a copy of the rules and study them carefully.
- The death of either the landlord or the tenant does not dissolve the lease agreement. The lease is continued, and both the landlord and the tenant's respective heirs are bound by the agreement.
- The destruction of the property without fault of either the landlord or the tenant does terminate the lease obligations. (i.e. hurricane damage, fire, or flood, Katrina)

## OBLIGATIONS OF THE LANDLORD

- To deliver the property to the tenant at the agreed time and in good condition for its leased purpose.
- To maintain the property in a suitable condition for the purpose for which it was leased.
- To protect the tenant's right to peaceful possession for the duration of the lease.
- To refrain from making any alterations to the property.
- To pay taxes, assessments and other charges to the property.
- If the landlord sells the property during the term of the lease, then the new owner may change the lease terms or evict the tenant. In order to prevent this, the lease must be

**recorded** in the parish where the property is located. The tenant may have an action against the landlord for loss sustained as a result of the sale.

## OBLIGATIONS OF THE TENANT

- To pay the rent in accordance with the lease terms.
- To return the property in the same condition, except for normal “wear and tear” as it is leased.
- To refrain from altering the premises without first obtaining written consent from the landlord.
- To allow the landlord to make all necessary repairs that cannot be postponed until the end of the lease.
- To use the property for the purpose for which it was leased. Any misuse by the tenant may cause the lease to be dissolved.
- To inform the landlord promptly when the property has been damaged or needs repair.
- The tenant is liable for damages to the property that exceeds the normal “wear and tear” caused by the tenant or the tenant’s guests.

## MAINTENANCE & REPAIRS

Many leases require that requests for repairs be made in writing. Regardless, all requests should be made in writing and/or in presence of witnesses. Tenants are strongly advised to keep a record of all maintenance problems, repairs and failures to repair.

The landlord must maintain the property by making all necessary repairs. The tenant is responsible for the damages caused by his fault, the fault of his guests, and those exceeding normal wear and tear.

If the repair cannot be postponed until the end of the lease, then the tenant must allow the landlord to make these repairs, even if they are an inconvenience. However, a reduction in rent may be possible.

If the landlord refuses to maintain the property or to make necessary repairs after being notified, the tenant has several options:

- The tenant can file a complaint with the Attorney General’s Consumer Protection Section. The toll-free number is 1-800-351-4889

- If there is a structural or hazardous defect, then the tenant can complain to the local building officials.
- If a serious problem is ignored, then the tenant may terminate the lease. Terminating the lease requires **substantial proof** of the landlord's failure to perform his/her obligations. Terminating a lease without sufficient cause will result in serious financial and legal consequences. Therefore, the tenant should seek **legal advice** before terminating a lease due to improper maintenance.
- Louisiana law allows tenants to pay for "necessary" repairs and to deduct the repair cost from the rent due or demand immediate reimbursement from the landlord. In order to deduct repair cost, tenants must be able to prove each of the following:
  - A) The repair was necessary.
  - B) The landlord failed to act within a reasonable time after being notified.
  - C) The price paid was reasonable.

**The tenant should keep copies of estimates, letters, receipts and other documents which support his/her case.**

## **IMPROVEMENTS**

At the termination of the lease, absent a contrary agreement, improvements, attachments or additions made by the tenant to the property are dealt with as follows:

- The tenant may remove his/her improvements if he/she restores the property to its former condition.
- If the tenant fails to remove the improvements, then:
  - A) The landlord may pay the tenant for the cost of the improvements or for the enhanced value of the leased thing-whichever is less.
  - B) The landlord may demand that the tenant remove the improvements within a reasonable time and restore the property to its original condition.
- If the tenant fails to remove the improvements, the landlord may:
  - A) Remove the improvements and restore the property to its former condition at the expense of the tenant.
  - B) Acquire the improvements without any obligation to reimburse the tenant.

## LESSEE'S DEPOSIT ACT

The Lessee's Deposit Act requires the landlord to return deposits within one month after the end of the lease, provided the tenant fulfilled the lease obligations and left a forwarding address.

If any part of the deposit is retained, the landlord must send the tenant an itemized list of deductions and any remaining balance within one month. If the landlord fails to return the deposit or to send the itemized list within one month, the tenant may sue in Small Claims Court to recover the deposit.

If the landlord fails to account for the deposit within thirty (30) days of a tenant's written request for a refund, then the law allows the tenant to recover actual damages or \$200.00- whichever is greater. The Judge may also award court costs and attorney fees to the person who wins the suit. The law does not permit the tenant to give up, or waive, this right in a lease.

## PET DEPOSITS

Pets may or may not be permitted under the terms of the lease. However, most leases that allow pets require the tenant to pay a deposit for damages caused by the pet. Money held as a pet deposit is recoverable under the **Lessee's Deposit Act**. Money held as a "pet fee or charge" is not covered by the Act and may or may not be recoverable according to the terms of the lease. Tenants should apply for refunds of pet deposits in writing on the final day of occupancy, the same way they would request security or damage deposits.

## MOVING OUT

The tenant must give proper **written notice** of his /her intent to vacate the property in accordance with the provisions of the lease. If there is a month-to-month lease, then the tenant must give written notice of intent to vacate at least ten (10) days prior to the last day of the month for which the rent was paid.

## FINAL CLEANING & REPAIRS

If there is no clause in the lease which requires specific cleaning, then the tenant must return the property in the same condition in which it was rented, allowing for normal wear and tear. If the tenant fails to do so, then all or part of the deposit may be withheld.

If the property is not cleaned, then the landlord may deduct all or part of the cleaning charges from the deposit. Clauses in a lease, which automatically deduct for cleaning, regardless of the property's condition, may be invalid.

## FINAL INSPECTION

During the final week of occupancy, the landlord should inspect the property. If the landlord refuses to perform the inspection, then the tenant should have a witness inspect and/or photograph the property and prepare a written statement of the property's condition. The tenant should date and sign the statement and have it witnessed.

## PROPER EVICTION PROCEDURES

- Proper procedure must be strictly followed!
- When the tenant breaches the lease agreement (i.e. failure to pay rent), the landlord must first deliver a written **Notice to Vacate** to the tenant.
- This notice gives the tenant five (5) day, not counting weekends or holidays, to vacate.
- If the tenant is not at home when the notice is given, then the notice may be posted on the door of the leased property. This has the same effect as delivering the notice to the tenant.
- If a tenant fails to vacate within five (5) days of the notice then the landlord will begin the eviction proceedings by filing a petition with the justice of the peace or city court.
- The eviction trial will be heard at least (3) days after the tenant is served.
- The tenant will then have to appear in court and state why he/she should or should not be ordered to vacate the property.
- If the justice of the peace or Judge finds the landlord entitled to evict the tenant, of if the tenant fails to appear at the trial, then the court will rule in favor of the landlord.
- The tenant will be ordered to vacate the property within twenty-four (24) hours.

- If the tenant fails to vacate the premises within twenty-four (24) hours after the landlord is granted a judgment of eviction, then the court must issue a warrant commanding the local sheriff, constable, or marshal to seize the leased property, remove the non-complying tenant, and return possession of the leased property to the landlord.
- Though not absolutely necessary, you may wish to have an attorney represent you at the time of the eviction proceeding. An attorney is recommended if you believe you have legally valid reasons to contest the eviction and/or wish to preserve your rights to appeal the judge's or justice's decision.
- A tenant who has appeared at the trial and argued defense can file an appeal. In addition, an appeal bond must be applied for, and filed within twenty-four (24) hours of judgment of eviction. A landlord cannot legally evict a tenant without this procedure.
- If the landlord locks the tenant out of the leased property, put the tenant's possessions on the street or otherwise takes the law into his/her own hands, the landlord may be liable for damages for wrongful eviction.

## COLLECTION OF PAST DUE RENT

A landlord may file a separate suit to collect past due rent and may seize personal items, such as furniture and appliances, found in the property. If the landlord is unable to locate the tenant, the court has a procedure which will still allow the landlord to get a judgment against the former tenant. The landlord may get a court order to seize personal property in the property without posting a bond or other security. If this happens, it is probably best to consult an attorney. If the landlord does not follow proper legal procedure, the tenant may be entitled to damages.

## TERMINATING A LEASE

Any active or reserve member of the armed forces, including the National Guard and US Coast Guard, may terminate his/her lease if any of the following occur:

- The member receives orders to depart thirty-five (35) miles or more from the location of the dwelling.
- The member receives orders to depart thirty-five (35) miles or more from the location of the dwelling for more than three (3) months.
- The member is discharged, released, or retires.

- The member is ordered to reside in government supplied quarters.
- The member is notified of the availability of government-supplied quarters which were not available at the time the lease was executed. The member should have notified the landlord in writing that he/she had a pending request for the government-supplied quarters before signing the lease.
- 

## LOUISIANA EQUAL HOUSING OPPORTUNITY ACT

The Louisiana Equal Housing Opportunity Act prohibits discrimination in housing and related activities because of a person's race, color, national origin, gender, religion, handicap, or family status.

## WARNING SIGNS OF HOUSING DISCRIMINATION

- Refusing to rent housing.
- Falsely denying that a house is available for inspection or rent.
- Differing term, conditions or privileges for certain people.
- Intimidating, interfering or coercing a person to prevent him/her from leasing/renting a home or apartment.
- Landlords "steering" tenants to or from certain areas of the complex

## FAIR HOUSING HOTLINE

If you feel you have been discriminated against or want more information about equal housing, please contact the **Louisiana Attorney General's Fair Housing Hotline** at **1-800-273-5718**. The Attorney General's Office must remain neutral throughout the investigation and resolution process.

The **Equal Housing Section of the Attorney General's Office** can assist landlords with understanding their responsibilities under the law and help tenants recognize and report unfair housing practices. Free education is provided through Fair Housing Seminars to the public.

## RESOURCES

**Louisiana Attorney General's Office**

**P.O. Box 94005**

**Baton Rouge, LA. 70804-9005**

**Consumer Protection Hotline**

**1-800-351-4889**

**Fair Housing Hotline**

**1-800-273-5718**