

Para 201-You & the Law

Chapter 6- Renting Residential Property

Wednesday- 9/30/09

** Rules in outline address renting property from private parties, not governmental agencies

- I. Choosing a Landlord:
 - A. most important question is whether LL will make necessary repairs
 - check with other tenants
 - ask LL specifically what repairs are covered—get it in writing
 - check public records regarding actions by city or local code inspection agency
- II. Choosing Tenants:
 - A. most important info is employment history & rental history
 - get for 3 to 5 years past
 - contact former employers and LL's
 - get prospective tenant to sign authorization to access credit bureau records
 - B. Treat potential tenants fairly and the same way or could open yourself to discrimination suit
- III. Leases: a contract (either written or oral) in which LL grants tenant exclusive possession of premises in exchange for rent for a period of time
 - A. Two categories:
 - (1) fixed period of time/term: tenancy for years; needs to be in writing if longer than one year
 - no notice required to terminate
 - (2) periodic tenancy: continues indefinitely; renewing from one period to the next
 - notice required to terminate
 - B. Oral -vs- Written:
 - advantage for oral month-to-month leases: can move out on short notice (usually 3 days)
 - oral lease: easy for LL to terminate lease OR raise rent
 - disadvantage of oral lease: possibility for misunderstandings because nothing in writing
 - advantage of written lease: LL can hold tenant to pay rent during term of lease; usually slanted toward LL's
 - C. Important lease clauses for LL's:
 - duty of tenant to pay in full & on time
 - right to charge late fee
 - right to enforce rules spelled out in lease
 - D. Important lease clauses for tenants:
 - duty of LL to maintain premises in good condition
 - right to terminate lease if needed repairs are not made
 - right to hire workers to repair & charge it to LL or deduct from rent
 - E. Tenants should negotiate for terms they want covering: pets; repairs/painting; utilities
 - mark out deletions and initial any changes

F. Laws regulating leases:

- (1) courts have struck down “as is” clauses b/c there is implied warranty of habitability
- (2) some local laws prohibit “confession of judgment” clauses- no prior notice required; tenant waives jury trial & agrees to use no defense

G. Lease clauses:

- (1) pet ownership: have it in writing
- (2) LL sells building or tenant dies: standard lease has “heirs & successors” clause
- (3) right of entry to make needed repairs: reasonable access
- (4) late fee clause-must include if it is to be enforced
- (5) exculpatory clauses: tenant automatically excuses LL from liability (about ½ states prohibit them); if LL plainly negligent, should be held liable; reasonable LL standard

- (6) LL loses building to foreclosure: leases are subordinate to mortgages (so bank can disregard and evict tenants)

- (7) eminent domain : LL entitled to be compensated for gov’t taking
- (8) business operation: may be governed by local zoning ordinances (allow white-collar type businesses like accountants, lawyers, insurance agents)

- (9) clauses governing fixtures: leases usually require LL’s approval to attach fixtures

- (10) laundry facilities, pools, garages, bike rooms, common areas, storage areas: state law or ordinance may define “premises”

- (11) right of quiet enjoyment: apartment can’t be rented out to two different tenants at same time

** Condo rentals: 2 obligations:

- (1) condo ass’n may seek to evict tenant who violates rules
- (2) condo ass’n may seek to evict tenant who fails to pay regular assessments

H. Maintenance:

--major source of conflict between LL & tenants :

- (1) LL required to make necessary repairs
- (2) tenant has duty not to “commit waste” (not to cause permanent, unreasonable damage to property)
- (3) LL must comply with housing codes
- (4) tenant must leave apartment in clean, repaired condition except for normal wear & tear

**express warranty of habitability: LL should maintain premises in good repair

--implied warranty of habitability: began in late ‘60’s: unwritten warranty of good condition

** Habitability: the minimum standard for decent, safe, sanitary housing specified in local housing code

I. Housing Codes:

--ordinances by city, county, township requiring LL/owner’s to maintain property & make repairs

--Do housing codes apply to people in slums ? Yes-applies to all equally

--See p. 11 for list of standards LL's must maintain:

** Tenant's options if LL doesn't repair: complain to city housing authority; sue LL; repair & deduct from rent; terminate lease

J. Municipal Code Enforcement:

(1) if city has housing code, it will have adopted mechanism for enforcing code

--could be city inspectors

(2) code enforcement: 2 basic types of inspections:

--complaints from residents

--pre-set planned inspections

** could cite LL for code violations & give # of days to repair; if LL doesn't, then usually goes to administrative hearing; after that can go to court

K. Tenant sues LL: 3 theories

(1) implied warranty of habitability

(2) local LL/Tenant ordinances regarding failure to maintain premises

(3) consumer fraud in LL/Tenant relationship

L. Repair & Deduct: serve written notice on LL

--local laws may limit the \$\$ amount tenant can spend or \$\$ amount tenant can reduce rent

--retroactive rent abatement: pay full rent but sue LL to collect damages

IV. Lease terminations for code violation:

--3 theories for terminating lease if LL doesn't maintain premises:

A. Illegal lease: lease is illegal b/c code makes it illegal to rent premises in defective condition

B. Constructive eviction: property in such disrepair that tenant can't live there

--tenant must actually move out here

C. Material non-compliance: premises don't meet minimum standards of local or state housing codes

V. Lease terminations by LL's:

A. Oral lease (month-to-month): LL serves written notice—usually 30 days

B. Written lease: automatically ends on last day of term

C. LL can terminate lease & evict tenant for good cause: non-payment of rent, damage to premises, violating terms of lease (pets, noise, extra occupants)

D. LL can't evict tenant for complaining about code violations, failure to make repairs

E. If tenant doesn't vacate, LL commences eviction action: can't just change the locks, turn off water, etc.

(1) eviction: action for forcible entry & unlawful detainer; serve S & C on tenant; usually a quick hearing

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- court usually orders tenants out in one to four weeks
- forcible eviction: sheriff
- if tenant is no-show at hearing, court can enter default judgment against tenant

VI. Other Lease Terminations by Tenants:

- A. Tenant moves out before lease is up: lease continues and tenant still obligated
- B. Terminating legal obligation:
 - (1) terminating for misconduct by LL
 - (2) replacement by new tenant (sublet)
 - (3) agreement between LL & tenant
- C. Sub-leasing -vs- re-letting:
 - subleasing: first tenant rents to another tenant
 - re-letting: LL signs new lease with new tenant