

Tenant Rights & Responsibilities



The
HOUSING
COUNCIL

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INTRODUCTION

The purpose of this booklet is to inform tenants of their rights and responsibilities when they enter a rental agreement with a landlord. The rights the responsibilities covered are based on state and federal laws as well as state and local codes.

It is advantageous for all tenants to gain an understanding of their rights and responsibilities. This will help prevent disputes and misunderstandings with a landlord, as well as give tenants direction on how to solve problems and enforce their rights. Landlords and tenants should reach a mutual understanding of their various rights and responsibilities. With any type of problem or dispute, the first step should be direct communication between the landlord and tenant. Keeping the lines of communication open will prevent many problems from occurring.

The Housing Council staff is available to answer questions you may have concerning tenant-landlord issues and problems. Our hotline is open for calls weekdays from Monday thru Friday, 10:00 a.m. to 2:00 p.m. The hotline does not settle disputes. Emphasis is on individual counseling, stressing problem-solving techniques. Hotline counselors are not attorneys and do not give legal advice. Certain problems or questions may require consulting with an attorney.

Special Note: The information discussed generally applies to all rental housing, however, government subsidized complexes have special regulations. Tenants who live in these complexes have additional rights not covered in this booklet. The Housing Council provides brochures on tenants' rights in subsidized housing. Call our office at (585) 546-3700 for copies.

LEASES AND RENTAL AGREEMENTS

A rental agreement with a landlord is a contract. It can be written or verbal. A written contract is referred to as a lease. A verbal contract is either a month-to-month or week-to-week tenancy. All are legally binding to both parties.

The Lease

A lease is a contract for a term. That is, a set period of time, for example, one year. It will have a beginning and an ending date usually stated in the first paragraph. The amount of rent is also usually stated in the first paragraph. Unless the lease has an "escalator clause" giving the landlord the right to raise the rent during the term, the amount of rent listed will be the rent for the term of the lease.

If you are going to rent an apartment with a lease, be sure that you can live there for the amount of time that the lease requires. If you break a lease, you can be sued in court for breach of contract.

Before signing a lease read it carefully. If you do not understand parts of it, ask the landlord to review it with you. The Housing Council hotline staff can also review a lease with you.

Be sure to obtain a copy of the lease. If you sign a lease but do not have a copy, it is still a contract and you are bound by the terms. When you sign a lease with a landlord, make sure that two copies are present and that you witness each other's signatures on both copies.

Leases are regulated by law. New York State's Plain Language Law requires landlords to use wording that is simple and understandable. The intent of any lease clause must be easily understood in the wording. The Law also defines certain lease clauses as illegal; waiver of a landlords duties to make normal repairs, waiver of a tenant's right to privacy or a court eviction, waiver of tenant's right to sublet, restrictions on child-bearing or acquiring, etc. The Court can nullify lease clauses that are illegal, although this would not necessarily nullify the entire lease. Any additions or deletions to a lease once it is signed by both parties and in effect must be mutually agreed upon by both parties, otherwise such changes cannot be made.

Subletting and Breaking a Lease:

If you have to move out of an apartment before your lease expires, one way to limit your liability is to sublet the apartment. If you live in a building, which has four or more residential rental units, New York State law gives you the right to sublet. In a building with less than four units a landlord does not have to allow a sublet.

Subletting an apartment means that you find someone to take your place. Landlords have a right to screen any family or individual you propose as they would any other applicant. If the family or individual is acceptable, then the sublet can be completed. You still remain liable under the lease, as does the “subtenant” who is taking your place.

If you are considering subletting an apartment and need to advertise for a subtenant, The Housing Council’s Rental Registry can advertise the apartment for you. Please call for information.

An alternative to subletting is a lease assignment. Under a lease assignment you find someone to take your place. If that party is acceptable to the landlord, you can request that the lease be assigned to them and that you be released from all liability under the contract. However, the landlord does not have a legal obligation to grant you a lease assignment. You can be held to subletting.

Special Note: Subletting an apartment is illegal in all government-subsidized complexes.

Another way to get out of a lease is a buyout. You can offer to forfeit your security deposit if the landlord will give you a written release from the contract. However, the landlord may ask for a larger buyout than just the deposit.

Always read a lease carefully and see if it says anything about early termination. It may have clauses, which set conditions for ending it early (such as forfeiting the security deposit, relocating due to a job transfer, or giving notice, such as sixty days). If you meet certain conditions and the landlord is willing to let you out of the lease, make sure to get a written statement from the landlord stating that you are released from the contract.

If your lease sets no conditions for early termination then it is strictly a negotiable issue (whatever can be worked out with the landlord). If you break a lease without the landlord’s consent the landlord could sue you in Small Claims Court for losses, lost rent during the time you move out and a new tenant moves in, advertising costs to find a new tenant etc. If a landlord is not willing to negotiate and let you out of a lease, you may want to consider subletting.

The only direct way out of a lease would be if there were severe code violations in your apartment. At this point, you would need to consult an attorney as to if your lease is valid and show proof of severe repair problems. (See section on Repairs and Maintenance for more information).

Senior Citizen Termination of Leases:

Under New York State Real Property Law 227-a, senior citizens 62 and older can terminate a lease if they are accepted into: 1) an adult care facility; 2) a residential health care facility; 3) subsidized low income housing; 4) other senior housing; 5) move into the residence of a relative or family member if certified by a physician as no longer able to live independently.

A senior tenant must give a thirty (30) day written notice corresponding to a rent due date, of their intention to terminate. The notice must be accompanied by documentation of acceptance into one of the above-mentioned facilities.

A senior citizen moving into a family’s residence, in addition to providing a doctor’s note, must also provide the landlord with a notarized letter from the family member that he/she is related and will be moving into their residence for at least six (6) months.

Military Termination of a Lease:

If a tenant is on active duty with the military is transferred out of the area, they may terminate a private market lease with a sixty (60) day notice corresponding to the rent due date.

Lease Renewal and Non-Renewal:

A landlord is under no legal obligation to renew a private market lease. The only exceptions to this are situations involving retaliation and discrimination (see sections on Repairs & Maintenance and Discrimination for detailed information). Otherwise, a landlord can refuse to renew a lease and not give a reason.

A landlord and tenant are required to give notice of renewal or non-renewal as specified in the lease. The law of giving a one-month's notice applies to a "no lease" tenancy only. Always read a lease carefully to find the notice clause. Usually it will either be a one or two-month's notice corresponding to the day the lease ends.

Month-to-Month Tenancy Termination or Changes to Verbal Agreements:

A "no lease" tenancy is sometimes referred to as an oral, verbal, or periodic agreement. It is often a month-to-month or week-to-week rental agreement. (It will almost always be a month-to-month arrangement.)

A month-to-month tenancy is based on proper notice. With proper notice, either the landlord or tenant can end the agreement. Under New York State Real Property Law 232-b, proper notice is a one-month notice, corresponding to the rent due date. For example if the first of the month is the rent due date, notice to end the agreement can be given before September 1st, effective October 1st, by either the landlord or tenant. No reason for terminating the agreement needs to be given.

Proper notice must also be given if a landlord wants to raise the rent or alter certain terms of the agreement. There are no rent control laws in this part of New York State, however all rent increases require the proper notice described above.

Other Written Agreements:

A month-to-month tenancy can be in writing. A landlord can have a list of provisions that both parties sign. Also, there can be a month-to-month lease (a document which is similar to a long-term lease but has a clause in it allowing for termination with a one-month notice).

Special Note: Federal, state and local codes apply to all rental agreements written or verbal.

A Final Word on Rental Agreements:

All rental agreements, written or verbal, are binding once entered by a tenant and landlord. There is no grace period to withdraw. If you agree to rent an apartment and change your mind, the landlord can hold you liable for their losses, which can include losing a security deposit. Before entering into a rental agreement make sure you can be committed to the time specified in such agreement.

REPAIRS AND MAINTENANCE

Under New York State Real Property Law 235-b, landlords have a duty to make all repairs that are not a result of damage or negligence by tenants, their family members or their guests. Landlords are required to keep rental units free of life, health and safety hazards (Warranty of Habitability).

This law is enforced through state and local property codes. If you live in an apartment that has repair needs we suggest taking the following steps:

1. Always put your request for repairs in writing to the landlord. Sign and date the letter and make a photocopy for your records.
2. If your landlord does not make the repairs you requested in what you consider to be a reasonable amount of time you have a right to call a building inspector. For property located in the City of Rochester, the number is (585) 428-6520. They will give you the number for the NET Office closest to your rental.
3. A building inspector will look at the problems and note code violations. The landlord will be sent a "Notice and Order" which will list the code violations and a time frame for repair.
4. If you are on public assistance be sure to let the inspector know. The Department of Human and Health Services (DHHS) will be notified of the repair problems. In cases where the code violations are serious (life, health or safety hazards), if your rent is paid by voucher, DHHS may withhold the rent from the landlord until such repairs are made.
5. If you are not on public assistance the rent should never be withheld unless you have been advised by an attorney to do so. Any legal advice to withhold rent would have to be based on severe code violations.

Special Note: State law protects tenants from retaliation by a landlord for exercising their right to contact a building inspector, health inspector or any government code enforcement officer. A landlord may not serve a notice to move on a tenant or commence an eviction proceeding within six months of the date of an inspector's report of code violations. It is also illegal for a landlord to substantially alter the terms of a tenancy in retaliation, including raising the rent with the intention to retaliate. Tenants, however, must continue to pay rent unless legally advised to withhold it and abide by the terms of the rental agreement. The law protecting tenants from retaliation also applies to situations where tenant started or joined tenants' union or organization.

If you feel that you have been retaliated against for exercising the above-mentioned rights, call The Housing Council hotline at 546-3700.

Constructive Eviction:

If severe code violations exist such as serious heating, plumbing or electrical problems, severe fire or health hazards or lack of basic services in the dwelling, a tenant can terminate their rental agreement even if there is a written lease. This is sometimes referred to as "constructive eviction". This step should never be taken without first getting legal advice from an attorney and having documented proof of serious code violations (a building inspector's Notice and Order).

Repair and Deduct:

With this remedy, tenants who have repeatedly asked for repairs in writing over a long period of time take steps to have the repairs made. Receipts of the exact cost of repairs are saved and this cost is deducted from the rent. If you decide to "repair and deduct" it is wise to inform your landlord before doing so. Just a word of caution, there is no "repair and deduct" law in New York State. Your right to make repairs and deduct the cost from rent is not guaranteed by law. Therefore, you need to show that you made repeated written requests to the landlord for repairs and also had a building inspector cite code violations, which did not result in the repairs being made.

If you repair and deduct, you take the risk of a landlord suing for the rent deducted or taking it out of your security deposit when you move. If your actions result in a court dispute, the court would then decide if your action was justified. Before trying this approach it is advisable to consult with an attorney.

Rent Withholding:

When severe code violations exist (life, health and safety hazards), an attorney may advise a tenant to withhold rent. Proof of severe code violations can be used as a defense in an eviction proceeding over nonpayment of rent. A judge will then decide whether to uphold rent withholding. If upheld, a landlord could be ordered by the court to make repairs as a condition for getting the rent. In addition, a judge can require that the tenant deposit the rent with the court. The court can release these monies to pay for necessary repairs, or release them when the repairs are completed. Burden of proof is on the landlord to show that the repairs have been made.

Social Services Law 143-b allows the Department of Human and Health Services (DHHS) to withhold rent for welfare recipients when severe code violations exist. Such tenants are protected from an eviction proceeding for nonpayment of rent. Landlords must correct the code violations in order for DHHS to release the rent monies.

Special Note: For all tenants who are not receiving public assistance, rent withholding should only be done with advice from a lawyer.

Rent Abatement:

Tenants can seek a reduced rent when portions of their dwelling are unusable due to lack of basic service or when serious life, health and safety hazards exist. When full rent has already been paid, a tenant can take a landlord to Small Claims Court or arbitration to seek a lowering of the rent. In an eviction proceeding for nonpayment of rent a judge can order a reduced rent for the period of the time that severe code violations exist.

There is no set formula for reducing the rent. It can range from 0% to 99% of the monthly rent. Factors a court may use in determining the reduced rent are 1) the severity of the repair problems and conditions, 2) the length of time the conditions have existed and 3) the amount of effort the landlord made to correct the defects. Tenants must supply documented proof of the problems in any court proceeding.

Repairs and Appliances:

Landlords can rent an apartment without appliances (stove and refrigerator) provided that they make it clear to the tenants applying for the apartment that they will have to furnish their own.

If landlords supply appliances they have a duty to keep them in good working order. However, an appliance in disrepair cannot be cited as a code violation by a building inspector. It is not a code requirement that appliances be supplied in a rental agreement.

To protect yourself from appliance repair problems you should:

1. Inspect them carefully when you first look at an apartment to make sure they are in working condition.
2. When you rent an apartment, speak to the landlord about what steps will be taken if there is an appliance repair problem. Always try to get the landlord to give you a written statement that the appliances will be supplied and maintained whether you have a written lease or not.
3. Submit requests for repairs in writing. Make repeated written requests if necessary. Take common sense steps to make sure food does not spoil if your refrigerator is in disrepair. Offer to arrange for the repair or to check on getting a used appliance that works if the landlord will pay for the repair or replacement.

4. If efforts to get the landlord to make repairs fail over a long period of time, you can consider taking the “repair and deduct” steps discussed in the previous section. However, remember that there are some risks involved. A less risky step would be to pay for the repairs, save a receipt and negotiate with the landlord to reimburse you for the cost. If the landlord refuses to negotiate you could then pursue the matter in Small Claims Court.

PROVISION OF UTILITIES:

The warranty of Habitability (NYS Real Property Law 235-b) requires landlords to maintain all utility systems (heating, plumbing, electrical) up to code and in good and safe working order. This applies regardless of who pays the utility bills. For repair problems with utilities follow the steps discussed in the previous section.

It is a criminal offense for a landlord to shut off a tenant’s utility service (Real Property Law 235). Sometimes this is done to force a tenant to move. If this happens, contact the local police immediately. The police can get the utilities back on for you. If a landlord refuses a police order to turn them back on the landlord can be arrested.

Provision of heat for all of Monroe County and the City of Rochester is subject to the Property Maintenance Code of New York State.

Heating Code for the City of Rochester & All of Monroe County:

Maintenance Code #602.3 states, “Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from September 15th to May 31st to maintain a temperature of not less than 68 degrees in all habitable rooms, bathrooms, and toilet rooms.” Violations of this code can be reported to the City Bureau of Buildings and Property Conservation, (585) 428-6520. Heat stoppages during the evening or on weekends can be reported to the City Fire Department (585) 528-2222.

Utility Bill Problems and Assistance:

If you are having problems paying a utility bill, the first step is to contact the utility company. In the Rochester area that is generally the RG&E Consumer Relations Department (585) 546-2700. State Law requires that a utility company offer you a Deferred Payment Agreement (DPA). This has to be based on your ability to pay and will allow you to pay your outstanding bill over a period of time. No large downpayment is required. **DO NOT WAIT UNTIL YOU GET A SHUT-OFF NOTICE TO DEAL WITH A PAYMENT PROBLEM.**

Listed below are programs to assist low-to-moderate income tenants with delinquent utility bills:

Home Energy Assistance Program (HEAP) – This program is funded by the federal government and administered by Monroe County. Benefits range from \$40 to \$735 a year. Furnace replacement or repair costs also may be covered. Call (585) 753-6477. For an appointment call (585) 292-3960.

Red Cross/RG& E Heating Fund – For those who do not qualify for assistance through HEAP this program can provide assistance. There are income guidelines. Call the American Red Cross at (585) 241-4474.

Monroe County Office for the Aging - This agency can help eligible senior citizens with utility payments. Call (585) 274-6280.

Diversion of Utility Service:

If you are a tenant who pays your own utilities and you find that you are paying for utilities outside of your apartment (in another apartment or in common areas of the building), contact your landlord and ask that it be corrected. If the landlord does not correct it contact the utility company (locally the RG&E at 546-2700). The company can send someone to inspect the utility lines. If they find your service to be diverted, ALL service affected by the diversion will be put in the landlord's name until it is corrected. The utility company can require the landlord to install a house meter for common areas of the dwelling such as lighting for a common hallway. The utility company can also 1) adjust your bill to reflect utility usage in your apartment only, and 2) help you determine the extra amount of money you spent on service outside of your apartment. With this information you can seek compensation from the landlord. If you are refused compensation you could file suit against the landlord in Small Claims Court.

Delinquent Landlord Utility Bills:

If you live in a multiple dwelling with utilities included in the rent and the landlord fails to pay their utility bills a shut-off notice will be posted in your building. There are steps you can take to prevent a shut-off of service. Contact the utility company. If you pay the current monthly bill (not the entire outstanding bill) to the company your service will not be shut off. This may involve getting together with other tenants in the building. THE AMOUNT YOU PAY TO KEEP THE SERVICE ON IS DEDUCTIBLE FROM YOUR RENT.

Truth in Heating:

When you are applying to rent an apartment where you will be paying for your own utilities landlords are obligated to show you the utility costs (bills) over the past two years. Be sure to look at these costs before you decide to rent the unit. If a landlord does not give you this information contact the utility company and they will give it to you.

Special Note: Your rights as a utility customer are defined by the New York State Home Energy Fair Practices Act (HEFPA). These laws are available in booklet form from RG& E. Call (585) 546-2700 to obtain a copy. With many utility problems The Public Service Commission can be of assistance. Call 1-(800) 342-3377.

SECURITY DEPOSITS

A security deposit is a sum of money paid to a landlord to insure the landlord against damages by the tenant, for example, physical damage to the property, back rent owed when the tenant moves and lack of proper notice in moving by the tenant which results in lost rent for the landlord.

New York State General Obligations Law defines a security deposit as a tenant trust fund. It must be put in escrow by the landlord and kept separate from all other funds and accounts of the landlord. In an apartment building with six or more residential rental units a landlord is required to put the deposit in an interest bearing account. A landlord may keep one percentage annually of the deposit as an administrative fee. A tenant is to be given the option of receiving this interest annually (once a year), having it applied to the rent, or getting it in full when they move.

In buildings with less than six units, a landlord is not required to earn interest on deposits. However, if the landlord chooses to earn interest the tenant is owed their share.

With any security deposit, a tenant has a right to know where it is being held. A landlord must give the tenant the name and address of the bank and the amount of the deposit.

When a property is sold the security deposit must either be returned to the tenant or transferred to the new owner within five (5) days of the sale of the property. It is usually transferred to the new owner.

There is no specific time frame for return of a security deposit under New York State Law. A deposit must be returned within a “reasonable” amount of time after a tenant moves out. If you move and more than three to four weeks go by without return of deposit it is probably not “reasonable”.

Most landlord-tenant disputes over deposits arise over the issue of damages versus normal wear and tear. A landlord can deduct from the deposit actual cost of damages including labor costs. If a tenant leaves an apartment unclean the cost of cleaning can be deducted. It is illegal to deduct repairs for normal wear and tear (repair needs or defects not caused by the tenant). You may contact the Attorney General’s Office in Rochester at 546-7430 to file a complaint against your Landlord if there are problems with your security deposit.

The best way to protect your security deposit is to do an inspection of the apartment with the landlord when you move in and when you move out. It is wise to use a “condition and inventory checklist” to note exact conditions of the apartment. A sample of such a checklist is available at The Housing Council upon request. If signed by both parties it is binding.

If you cannot resolve a dispute with your landlord over deductions or if a landlord simply neglects returning it in a reasonable amount of time you can seek arbitration as follows:

Small Claims Court

Taking someone to Small Claims Court is inexpensive (\$15 if claim is under \$1000 and \$20 if claim is over \$1000.) You must give the court the name and address of the person you are suing so that they can petition that person to appear. You can sue someone in the city or town of their home address or work address. The maximum amount of money allowed in small claims suit is currently \$5,000 within the city and \$3,000 outside of the city.

You will need to prove that the landlord is deducting for things that are not damages, withholding the deposit without cause, or deducting an unreasonable amount of money for actual damages, depending on your actual situation. Your best proof of how you left the apartment is the checklist discussed above. Pictures may also help your case. However, you would need to prove where they were taken and that is sometimes difficult. Another way of showing the condition is to bring a third part witness who saw the condition of the apartment when you moved. Small Claims Courts have booklets on procedure. Obtain one from a local court. In the City of Rochester call 428-2444.

Center for Dispute Settlement

This agency provides an alternative to Small Claims Court. The Center will arbitrate your case, however both parties (you and the landlord) must mutually agree to use the service and accept the results. You can call them at 546-5110. If the landlord does not consent, Small Claims Court may be the only alternative.

PRIVACY

Under the New York State Doctrine of Quiet Enjoyment a landlord has a limited right of access to a tenant’s apartment. The only exception to this is an emergency (fire, a water or gas leak, a robbery, etc.). In an emergency a landlord may enter randomly without notice. In all other situations a landlord must work out a mutually agreeable time to enter, which means giving notice or working out a schedule of times to enter. A reasonable period of notice is generally considered to be twenty-four hours.

The Doctrine of Quiet Enjoyment also applies to real estate agents, repairmen, building managers and anyone representing or working for a landlord who may have reason to enter. They too must respect a tenant's right of privacy.

A tenant cannot unreasonably withhold the landlord's limited right of entry (refuse to allow the landlord entry under any circumstances). The law implies compromise by both the landlord and tenant.

It is advisable to discuss the issue of entry with the landlord when you first move in. Let the landlord know that you will allow entry into your dwelling at reasonable times according to the law. If you prefer to be present when the landlord enters, schedule times accordingly.

Any lease clause that waives a tenant's right to privacy under the law is unenforceable.

If the landlord or anyone representing the landlord violates your right of privacy, one legal remedy is to file a trespass complaint with the local police department.

DISCRIMINATION

Under both state and federal laws it is illegal to refuse to rent or refuse to renew a lease based on race, color, religion, national origin, age, sex, marital status, disabilities, sexual orientation, military status and children. These are referred to as "protected categories" under the law.

Discrimination based on race is illegal in all rentals, including rental of a room in the landlord's own home. For all other protected categories under the laws, owner-occupant landlords are exempt in two cases. In owner-occupied, four units or less and in renting a room in a home in which the owner resides. Absentee landlords must follow the discrimination laws in all rentals.

The Fair Housing Act of 1968 was the first federal law to extend protection against discrimination beyond race. It added color, national origin, religion and sex as protected categories. The Fair Housing Amendments Act of 1988 extends protection to tenants with disabilities and families with children. The New York State Human Rights Act and Real Property laws contain all these protections mentioned above and add the categories of age, marital status, sexual orientation and military status.

Families with children include parents with children, adults with legal custody of children and adults securing legal custody of children. The laws also protect those who acquire or give birth to children during the term of a rental agreement. Any lease clause that prohibits child bearing or acquiring is illegal and unenforceable. However, if the number of people in a family would create legal overcrowding, based on the square footage of the apartment and its bedrooms size, a landlord can refuse to rent to such a family.

Disabilities are defined as having a physical or mental impairment to life's activities documented by a doctor. This includes people who are in or have completed treatment for alcohol or drug addiction.

Marital status protection under the law covers all adults 18 and above whether they are single, married, divorced, separated or widowed.

Age protection applies to everyone 18 and over. A landlord may refuse to rent to someone who is under 18, as minors are not protected by the law.

Illegal activities under the discrimination laws include misrepresenting the availability of an apartment (saying it is rented when it is not), running advertisements which discriminate (such as saying "no children") or using rental applications which discriminate.

If you feel that you have been discriminated against in the rental of an apartment call The Housing Council hotline (585) 546-3700. Counselors will discuss your situation and may refer you to the New York State Division of Human Rights, (585) 238-8250. The Division of Human Rights can investigate your claim and act on your behalf if they determine actual discrimination by a landlord. Often times they can help you get the apartment you were denied. The Federal Government (HUD) can also get involved in discrimination cases and enforce the law.

In addition to government help tenants who are discriminated against can hire a private attorney and sue a landlord in state or federal court.

Under all the discrimination laws protection is limited to the categories listed. A person seeks protection under these laws must prove that they were denied a rental unit or treated differently or unfairly while renting because of race, color, national origin, religion, age, sex, disability, marital status, children, sexual orientation or military status.

EVICCTIONS

The word “eviction” is often misused and misunderstood. Above all an eviction is an action by a court not a landlord. A landlord does not have the legal power to evict a tenant. Landlords may petition a tenant to appear in Civil Court and ask the court to evict the tenant. **Any self-help eviction by a landlord without a court order is illegal.** Changing the locks, removing a tenant’s possessions, shutting off the utilities to force a tenant out etc. are criminal acts under New York State Real Property Law 235.

If you are **illegally evicted** call the local police immediately. The police can get the landlord to stop the illegal action and get you back in your apartment. If a landlord refuses a police order they can be arrested.

There are three grounds upon which a landlord can attempt to evict/terminate a tenant in court.

Nonpayment of Rent:

If a tenant is behind in the rent a landlord must first give the tenant a written notice to pay the rent in three (3) days. This is called a “Notice to Pay Rent or Quit”. If a tenant does not pay within the three days a landlord may have a Petition and Notice of Petition served on the tenant to appear in court.

If you get petitioned to appear in court over back rent you can seek emergency monies to pay the back rent through various emergency service agencies and settlement houses in the City of Rochester. For the most current information call The Housing Council hotline at (585) 546-3700.

The Holdover Tenant:

This is a tenant who has been given proper notice to move (one month in a month-to-month tenancy) or was told by a landlord that their lease would not be renewed and given the notice stated in the lease. For example if a tenant was notified properly to be out by October 1st but still occupies the unit on October 1st the law defines that tenant as a “holdover”. A landlord cannot put the tenant out physically but can have papers served on the tenant to appear in court as a holdover tenant. The court would then decide when the tenant had to be out.

Tenant Liability in Holdover:

If a tenant gives proper notice of their intention to leave the tenancy and does not leave at the time specified in the notice to the Landlord, the rent due to the Landlord will be double the amount, which the tenant should pay in the same manor as single rent. Landlords may sue in court for this rent amount. (Real Property Law Section 229)

Objectionable Tenancy:

An objectionable tenancy eviction involves a tenant whose behavior is undesirable. Some examples would include violation of terms of a lease or rental agreement, damage to the property, disruption of the lives of other tenants or neighbors, violation of the law on the property etc. **For this type of eviction there must be a written lease.** The lease also must have a termination clause giving the landlord the right to send a notice to a tenant, which terminates the tenancy, based on objectionable conduct. Such conduct must be frequent and continuous. If the tenant does not move the landlord can take the tenant to court for Holdover.

Eviction Court:

If you are being taken to court you must be served with a Petition and Notice of Petition. The Petition gives the reason for the eviction proceeding and must be signed by the landlord and notarized. The Notice of Petition gives the date, time and location of the court proceeding and is signed by the court clerk. You must be given at least five days notice of the court date, not counting the day the papers are served and the actual court date. You must be served by a third party, not the landlord. You can be served directly (papers handed to you) or indirectly if you were not at home when the server came. Papers can be attached to the entrance door to your apartment, put under the door, or given to a family member or some else in your household.

Always show up in court at the date and time given. The only exception would be an emergency (illness that requires hospitalization or a death in the family). In these cases call the court at least one day before your court date. If you do not show up in court and the court date has not been cancelled due to an emergency you will automatically be evicted and will have to be out within three days. Showing up in court gives you a chance to tell your side of the story. At the very least it will buy you more time than the minimum three days to be out required by law. A judge will always consider the tenant's ability to find another place to live before giving a date to be out.

Listed below are some examples of tenant defenses that may be used in an eviction proceeding.

Nonpayment of Rent:

If you appear in court with the rent payment you will not be evicted. Always try to get emergency rent before going to court if you need it. If there are severe code violations in your apartment (life, health or safety hazards) it may be possible to withhold rent (see section on Repairs and Maintenance). If you were advised by an attorney to withhold the rent you will need to show the court proof of the severe code violations (a copy of a "Notice and Order" from a building inspector) and proof that you are holding **all** the rent money due. If you are on public assistance and DHHS is withholding the rent money for you, show the court a copy of the letter from DHHS stating that the rent is being withheld from the landlord until repairs are made. You cannot be evicted when DHHS is withholding the rent.

The Holdover Tenant

If you can show that the landlord gave you less than a month's notice to move in a month-to-month tenancy or did not give you the notice to move required in a written lease you can present proof of this to the court.

If a landlord give you notice to move within six months of when a "Notice and Order" was received from a building inspector listing code violations you reported, or notified you that your lease would not be renewed for this same reason, you can claim retaliation as a defense in an eviction proceeding. Refer to the Repairs and Maintenance section of this booklet for more information.

Objectionable Tenancy:

With this type of eviction a landlord must prove that a tenant is undesirable by showing the court facts such as a copy of a police arrest report, documented proof of property damages by the tenant, statements from witnesses about the tenant's undesirable behavior etc. If you can dispute the landlord's claims you must

present proof of your own to the court through documents, witnesses and statements. If you do not have a written lease a court cannot evict you on these grounds.

The Court Decision

When you and the landlord appear before the judge the court will listen to both you and the landlord briefly and then make a decision. There are three basic decisions a judge can make.

Eviction:

In this case a judge rules in favor of the landlord. A Warrant of Eviction is issued, signed by the judge and posted on the property by a marshal of the court. A judge must give at least three days from the court date for the tenant to be out but often grants more time.

Special Note: Only a Warrant of Eviction puts a tenant out. Only a marshal of the court can enforce the Warrant. If you get evicted and leave possessions behind the marshal will have the landlord store them outside of the apartment. It is illegal for a landlord to throw them out or hold them from you as ransom for unpaid rent. However, you have a responsibility to recover them. If you are on public assistance you may qualify for help to store your possessions. Call your DHHS caseworker.

If you receive SSI and have problems with possessions, call DHHS at 274-6463. This number does not deal with rental assistance or RG&E bills.

No Eviction:

In this situation the judge rules in favor of the tenant. The matter is dismissed. You remain in possession of your apartment.

Stay of Eviction:

A judge may “stay” an eviction by delaying issuing a Warrant of Eviction if a tenant meets certain conditions within a period of time set by the court. For example if you were in court on September 10th for nonpayment of rent, a judge could give you until September 20th to pay the rent. If it was not paid by that date a Warrant of Eviction would be issued. If a judge grants a stay of eviction be sure to listen closely to what you have to do to avoid being evicted.

If you feel that a landlord may go to court to try to evict you, call The Housing Council hotline for help. In some cases a hotline counselor may refer you to an attorney, Low-income tenants can sometimes qualify for free legal assistance through the Legal Aid Society (585) 232-4090 or through the Monroe County Legal Assistance Corporation (585) 325-2520.

OTHER THINGS YOU NEED TO KNOW !

Use Of Common Areas of the Dwelling and Property: A landlord has no legal obligation to supply a tenant with off-street parking, storage space, use of a garage, use of yard and common areas, snow removal, garbage cans or garbage pickup. However, because the rental market is competitive a landlord will usually supply tenants with certain services to attract tenants to rent. If a landlord is willing to supply you with certain amenities try to get it in writing. For instance if a landlord says you will have off-street parking and free garbage pickup ask the landlord if he would give you a written statement to that effect.

If you live in a dwelling with two or fewer units a landlord can require you to perform basic outside maintenance such as cutting the grass.

Late Charges on Rent: There is no law limiting the amount of late fees a landlord can charge. The law requires that late fee policies be “reasonable”. Late fees are meant to be administration cost and not a penalty. A late fee can be charged as soon as the rent is overdue. A landlord’s late fee policy has to be in writing, such as in a written lease. If you have a lease read it carefully to see if late fees are mentioned. If you have no lease ask that the landlord give you any late fee policy in writing.

Pets: Tenants have no legal right to have pets. It is strictly up to the landlord. A landlord can refuse to rent to tenants with pets and prohibit the acquiring of pets. If a landlord allows you to have a pet make sure to get that in writing. If you acquire a pet without the landlord’s permission it is grounds for the landlord to terminate your tenancy.

Landlords have full control over pet policy. They can allow certain kinds of pets and not others. They can grant some tenants permission to have pets. Many landlords who allow pets charge an extra security deposit often referred to as a “pet deposit”. It is legal to do so and there is no control over the amount. Tenants can be held liable for damages a pet causes both inside the apartment and on the property.

Guests: Tenants are allowed to have guests in their apartment without the landlord’s consent. This includes overnight guests. A guest can stay in an apartment for up to 30 days before a landlord can consider that the person has moved in permanently. If a guest causes a problem on the property a landlord can attempt to restrict that individual from returning to the property.

Keys: A landlord has a right to a key to the entrance door of a tenant’s dwelling at all times. Tenants in multiple dwellings have a right to install additional locks for security, however, a landlord has a right to a key to such a lock.

Apartment Sharing and Occupancy: There are no laws limiting the number of people who can occupy a unit based strictly on the number of bedrooms. The only exceptions are government-subsidized complexes. There are also no laws that prohibit children of the opposite sex from sharing a bedroom in a private market rental. Subsidized buildings have such regulations.

Overcrowding of an apartment is based on the square footage of the dwelling and the square footage of its bedrooms. Property codes and zoning ordinances define the maximum number of occupants of a dwelling per square feet. Check with the local zoning or property code department or The Housing Council hotline for specific information.

There is also no law that limits occupancy of an apartment to a tenant named on a written lease or that tenant and their immediate family. When one person is named on a written lease that tenant may share the apartment with immediate family, one additional occupant and that occupant’s children, provided that total number of occupants does not create legal overcrowding as discussed above. The tenant shall inform the landlord of the name(s) of any occupant within 30 days of commencement of occupancy or within 30 days following request by the landlord.

If there is more than one tenant named in a lease and one of the named tenants moves out during the term the tenant may be replaced without the landlords consent provided that the landlord is given the name of the new occupant within thirty days of their move-in date. At least one of the original tenants named in the lease must continue to occupy the apartment during the term.

Delivery of Possession: New York State law requires landlords to deliver possession of an apartment to a tenant on the date agreed upon whether there is a lease or no lease. Failure to deliver the possessions on the agreed move-in date gives the tenant the right to declare the rental agreement null and void with no obligation to move in at a future time. Sometimes possession is not delivered if the tenant scheduled to move out does not or if major repair needs are not completed by the move-in date.

Mediation of Disputes: Many landlord-tenant disputes and disputes between tenants can be resolved through mediation. Currently, the Legal Aid Society offers an Owner-Tenant Mediation Program which is designed to resolve disputes and problems concerning rent payment, repairs and code violations, relations with other tenants, harassment, inappropriate behavior, etc.

In order to qualify for the program you must rent within the City of Rochester and be within the income guidelines. Mediation takes place through an informal conference of the landlord, tenant and an arbitrator or two tenants having a dispute and an arbitrator. The service is free. The goal of the program is to settle disputes and keep tenants in their apartments. For information or to get involved in the program call (585) 232-4090 and ask for the Housing Department.

SUMMARY OF TENANTS RIGHTS AND RESPONSIBILITIES

Rights:

A rental unit free of life, health and safety hazards and the right to seek code enforcement without retaliation by the landlord.

Privacy in the rental unit as defined by law.

Proper notice of the termination of a tenancy and the raising of rent.

Utility service up to code and uninterrupted by the landlord.

A court eviction.

To have guests.

A refundable security deposit.

To rent a unit without regard to race, color, national origin, religion, age, sex, disability, marital status or children in the family.

Responsibilities:

To pay the rent when it is due.

To report all repair problems or damage to the landlord.

To respect the rights of other tenants and neighbors.

To keep the property free of damages and health hazards.

To not use the property for illegal purposes.

To give proper notice when moving.

To inform the landlord of all residents in the dwelling.

To have pets only with the landlord's consent.

To keep the exterior property free of debris and junked vehicles.

IMPORTANT AGENCIES AND PHONE NUMBERS TO KNOW:

| | |
|---|----------------|
| The Housing Council (Counseling & workshops for landlords & tenants) | 546-3700 |
| City of Rochester Civil Court (Eviction Proceedings) | 428-2444 |
| City of Rochester NET Code Enforcement | 428-6520 |
| City of Rochester Small Claims Court | 428-2444 |
| (Security deposit and other financial disputes) | |
| Division of Housing and Community Renewal (DHCR)..... | 1-866-275-3427 |
| Housing and Urban Development (HUD)..... | 716-551-5755 |
| HEAP | 753-6477 |
| Legal Aid Society (Free legal help to low income tenants in the City) | 232-4090 |
| Monroe County Legal Assistance (Free legal help to low income tenants and Seniors)..... | 325-2520 |
| Monroe County Department of Health Services..... | 753-5864 |
| Rodent Control | 753-5065 |
| Smoking Complaints | 274-6171 |
| Lead Poisoning..... | 753-5078 |
| Mold..... | 753-5075 |
| Monroe County Department of Human Services | |
| General Number | 753-6000 |
| Emergency Housing Unit..... | 753-6046 |
| Appointment/Application | 753-6960 |
| After Hours Housing Emergency (after 5:00pm) & Holidays..... | 442-1742 |
| New York State Attorney General Consumer Helpline | 1-800-771-7755 |
| Landlord-tenant information and complaints Local..... | 546-7430 |
| Consumer Fraud Hot Line | 327-3240 |
| NYS Division of Human Rights | 238-8250 |
| (To seek investigation of discrimination in rental housing) | |
| Public Service Commission | 1-800-342-3377 |
| (For information on utility problems and rights) | |
| Regional Center for Independent Living | 442-6470 |
| (Housing and related assistance for persons with disabilities) | |
| RG&E Consumer Relations Department..... | 1-800-743-2110 |
| The Center for Dispute Settlement (Mediation services - alternative to Court)..... | 546-5110 |