

MOVING IN: A GUIDE TO LANDLORD-TENANT LAW

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THIS PACKET INCLUDES:

- **GENERAL QUESTIONS TO ASK**
- **THE LEASE AND LEASE TERMINATION**
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- **REPAIRS**
- **EVICCTIONS**
 - IF THE LANDLORD WANTS TO EVICT THE TENANT
 - TENANT'S DEFENSES
 - WHAT WILL HAPPEN IF THE LANDLORD WINS
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GENERAL QUESTIONS TO ASK:

- **How long is the lease? Start date? End date?**
- **Does the tenant need a co-signer or guarantor?**
 - If the tenant doesn't have an established credit record, some landlords require someone else, called a guarantor, to agree to cover the tenant's rent if for some reason the tenant is unable to pay it. In the case of young tenants, this person is often a parent.
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- **Does the apartment require renter's insurance? If so, how much is it?**
 - Renter's insurance is like house insurance: it may partially reimburse the tenant if a fire, flood, or another unavoidable act of nature damages the apartment. Some renter's insurance will protect against theft as well.
- **When can the tenant pick up the keys?**
- **When is rent due?**
- **What forms of payment will the landlord accept for rent?**
- **How is rent to be paid?**
- **How much are late fees, and when are they applied?**
- **How quickly will maintenance requests be handled?**
- **What is the proper way to make a maintenance request?**
- **Is it possible to cancel the lease early?**
- **What is the cost of breaking the lease?**
- **How much is the deposit?**
- **How much of the deposit is refundable?**
- **Is there an application fee?**
- **What is the policy on guests?**
- **Does this apartment take pets?**
- **Is there a parking permit required? Are there covered or reserved spaces?**
- **What are the pool hours?**

- **What utilities are included in the rent?**
- **Are there hook-ups for washers and dryers in the apartments? If not, is there a laundry facility? How much does it cost? When is it open?**
- **Is there a gym? What are the hours? Are there charges for use?**
- **May the tenant sublease the apartment?**
- **Are there any limitations on decorating the apartment?**
- **Is the water heater shared between apartments? How large is it?**
- **Is there an emergency maintenance contact?**
- **How long did the last tenant stay, and what rent did she or he pay?**
- **Are there other students living in the building?**
- **Have there been any major repairs or renovations done in the past year?**
- **Are any major repairs anticipated for the upcoming year?**
- **Who will be responsible for repairs, including small ones?**
- **Will any repairs, including small ones, that are to be completed before I move in, be put in writing?**
- **When does the landlord have access to the apartment?**
 - A landlord has no right to enter a tenant's apartment unless that right is reserved in the lease. Check the lease to see whether the landlord has reserved a right to enter.
- **Can my landlord change rules such as pet regulations in the middle of my lease?**
 - A landlord can make reasonable rules and regulations, but a new rule is effective during the middle of a lease only if the rule does not substantially modify the agreement. A new rule such as a no-pet rule or a pet deposit rule would appear to substantially change the lease and would therefore be effective only when a lease is renewed.
- **When can the landlord increase the rent?**
 - The amount of rent in a month-to-month tenancy (one without a fixed ending date) can be increased by giving 30 days notice. In a fixed term lease, the rent cannot be increased until the lease is renewed, unless there is a provision in the lease providing for rent increases.

THE LEASE (RENTAL AGREEMENT)

A proper rental agreement should include:

- the address of the rented property,
- the landlord's name and address,
- the dwelling unit leased,
- the amount of rent,
- the persons(s) who will occupy the unit,
- the amount and nature of the deposit,
- the rent payment dates,
- the term of the lease,
- whether the landlord or tenant will pay the utilities,
- whether the landlord or tenant will be responsible for property maintenance,
- and a list of the dwelling's defects at the time of rental so responsibility is clear at the beginning.

LEASE TERMINATION

When does the lease end?

- It depends on the type of lease. A fixed-term lease is one that has a specific ending date (such as a lease for one year). In this kind of lease, the tenancy automatically ends on the fixed date. The lease cannot be terminated before that date by either landlord or tenant except in case of a breach such as non-payment by the tenant or failure to repair by the landlord.
- If a tenant leases a property without a fixed ending date, it is probably a month-to-month tenancy. In that case, either the landlord or tenant may terminate the lease by giving 30 days written notice. No reason is required for the termination.

What happens if the tenant stays on after the ending date of the lease?

- If a landlord accepts rent after the lease expires, the tenant becomes a month-to-month tenant, and a 30 day notice is required to terminate. Miss. Code Ann. § 89-8-17. Or, the landlord may refuse to accept rent and file an action to remove the tenant as a holdover tenant.

What will happen if a tenant leaves before the lease is up?

- If the landlord has not agreed to release the tenant from the rental obligation and has not breached the lease so that the tenant has a right to cancel the lease, the tenant is liable for the rent for the remaining period of the lease. If the landlord relets the apartment, the tenant's obligation will be reduced by the amount paid by the new tenant.
- *Warning:* The tenant should not assume that the landlord is releasing the tenant from his obligation just because the tenant tells the landlord he is leaving, even if the landlord does not object. The tenant is still liable for the remaining rent during the lease unless the landlord expressly releases him from that obligation.

What is the tenant's responsibility if his roommates move out?

- In most leases, tenants are jointly and severally liable, meaning that each tenant is responsible for the entire rent. If the tenant's roommate moves out, the tenant may still be liable for all remaining rent. The tenant should check the lease to see if he is jointly and severally liable.

Can the landlord evict the tenant without taking him to court?

- In some cases, yes. This is called "self-help" eviction. Landlords occasionally attempt to evict tenants without going through the court eviction process, either by locking the tenant out or by putting the tenant's belongings on the street. Self-help eviction is permitted in Mississippi **ONLY** if
 - (1) the landlord has a written lease which explicitly states that the landlord reserves this right; and
 - (2) the eviction can be accomplished without breach of the peace. Furthermore, the landlord must still give the proper written notice as set out above. If the landlord evicts by self-help without a provision in the lease, or without giving proper notice, the landlord has wrongfully evicted the tenant and may be liable for damages.

How does self-help eviction work? What can the landlord do?

- Landlords may try to accomplish self-help eviction by padlocking the tenant out of the apartment, keeping the tenant's furniture and personal belongings. A landlord is NOT permitted to do this. The only way to lawfully use self-help is for the landlord to put the tenant's belongings out on the sidewalk or in the yard prior to locking the tenant out.

SECURITY DEPOSITS

What is a Security Deposit?

- Most residential properties require a security deposit when the tenant signs the lease. This can range anywhere from \$50 to the amount of one month's rent, or more. Upon moving out of the property, the tenant may request the return of his security deposit.
- If the landlord improperly retains a security deposit without reason, the tenant has the right to file an action in court for the return of the deposit. If the landlord acted in bad faith in retaining the security deposit, the tenant may be entitled to an additional \$200.00, along with the complete return of the deposit.

What steps can the tenant take to get the security deposit back?

- A tenant must simply make a written request that the landlord return the deposit. The landlord has 45 days after the end of the tenancy and demand by the tenant to return the deposit.

When can a landlord keep a security deposit?

- The landlord does have the right to deduct any rent owed or reasonable costs for cleaning the unit or repairing any damage caused by the tenant beyond ordinary wear and tear. However, the landlord is responsible for providing the tenant with a written notice itemizing the reasons for keeping the deposit within forty-five days of the termination of the tenancy and demand by the tenant.

What can the tenant do if the landlord improperly retains the security deposit?

- If the landlord fails to return the deposit without reason or compliance with the statute, the tenant may file an action in justice court for return of the deposit. If the landlord acted in bad faith, the tenant may get \$200.00 in addition to the returned deposit.
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GENERAL QUESTIONS ABOUT REPAIRS

When must a landlord make repairs to a rental unit?

- A landlord must make repairs to a rental unit under the following circumstances:
 1. *By agreement.* A landlord must make repairs if the rental agreement states that the landlord will make repairs. Check the lease to see if the landlord has agreed to make repairs.
 2. *In common areas.* A landlord must make repairs in common areas, such as the grounds and buildings used by all tenants.
 3. *To comply with codes.* A landlord is required to comply with all building and housing codes. Miss. Code Ann. § 89-8-23. Building and housing codes are defined as any law, ordinance, or governmental regulation concerning fitness for habitation, construction, maintenance, operation, occupancy or use of any premises or dwelling unit.
 4. *To maintain the unit.* Landlords are required to maintain a unit in substantially the same condition as at the beginning of the lease, reasonable wear and tear excepted. Miss. Code Ann. § 89-8-23. A landlord must repair anything that was working at the beginning of the lease.
 5. *To avoid dangerous defects.* Landlords have a duty to provide premises free of dangerous defects, to repair dangerously defective conditions, *O’Cain v. Freeman*, 603 So.2d 824 (Miss. 1992) and to provide a habitable home.

What should I do to get my landlord to repair?

- A tenant must give the landlord 30 days notice, in writing, stating the specific defect that needs repair. First, call the landlord. Tell him what the problem is and that it needs to be repaired immediately. After calling, write a detailed letter to the landlord, which includes a detailed description of the problem, the request, and the date and time of the

phone call. Then mail the letter to the landlord. You should date the notice, keep a copy, and make a note on your copy of the day and manner of delivery of the notice to the landlord.

What should I do if the landlord does not repair after 30 days?

- If the landlord does not repair after 30 days, a tenant may (1) cancel the lease, (2) use the repair and deduct remedy in Miss. Code Ann. 89-8-15; or (3) bring suit against the landlord in justice court to make the repairs.
- *Notice:* No notice is required to terminate a tenancy if the landlord has committed a substantial violation that materially affects health and safety. Miss. Code Ann. 89-8-19(4).
- *Repair and deduct:* If, thirty days after the repair request (and the written notice), the landlord has not repaired the problem, the tenant:
 - May repair the problem himself, which entitles the tenant to reimbursement within 45 days after the tenant submits his receipts to the landlord. However, be aware that the bills cannot exceed the usual and customary charges for such repairs. The expense of the repair can also not exceed or be equal to one month of rent payment.
 - **The tenant should be sure to keep a copy of all receipts and bills and be prepared to prove to a court that the cost of the repairs is not out of the ordinary for that type of repair.** Before using this remedy, the tenant should obtain two estimates, notify the landlord of the estimates, and ask the landlord to make the repair if he can do it for less than the estimates.
- In order to use this remedy, the tenant must have met the following statutory obligations:
 - Keeping premises safe and clean;
 - Disposing of all garbage and waste in a clean and safe manner in compliance with community standards;
 - Keeping all plumbing fixtures clean;
 - Reasonably using all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators;

- Not deliberately or negligently destroying or damaging any part of the premises;
 - Conducting himself or herself in a way that will not disturb neighbors' enjoyment of their property;
 - Informing the landlord of any condition that may cause damage;
 - Maintaining the property in substantially the same condition as it was in when the tenant moved in;
 - The tenant also cannot have used this remedy in the prior six months
- The tenant **MUST** be current in his or her rental payments in order to exercise this right.
 - The tenant also has the right to offset the cost of the repairs against future rent.
 - *Warning:* If the problem was caused by a tenant or his guest, or if notice was not properly given, a tenant may be in breach of the lease by canceling or using repair and deduct.

EVICTIONS

When can a landlord evict a tenant for nonpayment of rent?

- The landlord must give the tenant a three-day notice, in writing, to evict for nonpayment of rent. The notice must state that the tenant must pay rent or vacate possession. Miss. Code Ann. § 89-7-27. If the tenant does not pay in three days, the landlord may file an eviction action in justice court and obtain an order of eviction.

What can I do if the landlord files an eviction action?

- If the tenant brings the rent current and pays court costs before the court enters judgment, the landlord may not evict the tenant. The landlord may not refuse to accept full rent payment prior to the court order. Miss. Code Ann. § 89-7-45.

When can the landlord evict a tenant for reasons other than nonpayment of rent?

- A landlord may evict a tenant for other breaches of the lease or for damages to the property or disturbances. The landlord must give the tenant a thirty-day written notice of eviction which must (1) state specifically what the tenant has done that is a breach of the lease or the landlord-tenant act; (2) state that the lease will terminate in 30 days if the tenant has not remedied the breach in some way. Miss. Code Ann. § 89-8-13(3).
- The landlord must give the tenant notice of his right to cure the breach, and if the tenant does cure the breach, the landlord may not seek eviction.

What should the tenant do if the landlord tries to evict him for a breach of the lease?

- If the tenant wants to stay in the unit, he should try to remedy the breach by payment of damages or by providing the landlord with some assurance that the breach will not occur again. Make a written offer of remedy or assurance to the landlord and keep a copy of the offer.
- *Warning:* No notice is required to terminate a tenancy if the tenant has committed a substantial violation that materially affects health and safety. Miss. Code Ann. 89-8-19(4).

IF THE LANDLORD WANTS TO EVICT A TENANT:

The Tenant may be evicted for the following reasons:

- For nonpayment of rent, if:
 - The required 3-day notice has been given;
 - The Tenant owes the Landlord rent;
 - The Tenant has no defense to nonpayment; and
 - The Tenant has not paid rent by the time of the actual eviction.
- For “material noncompliance” other than rent default, if:
 - The required notice has been given; and
 - The Tenant has violated an obligation
 - The Tenant has not remedied the violation.

TENANT'S DEFENSES

The Tenant may not owe rent, or may owe only reduced rent, because of defects in the property.

1. Failure to repair:

- The Tenant has made a request for repairs, and the Landlord has not repaired the unit within 30 days. The rent may be reduced to a reasonable amount considering the repairs that need to be made.
 - Example: The roof leaks in a house making 1 of the 3 bedrooms unusable. The Tenant requests in writing that the Landlord repair the roof, and after 30 days the Landlord has not fixed the roof. The rent may be reduced to a reasonable amount, perhaps 2/3s of the full rent.
 - Example: A Tenant is one month behind in her rent. For three months, the Landlord failed to repair burst pipes that flooded the bathroom and made it unusable. Although rent for the apartment is \$600, an apartment with no toilet is, in the court's judgment, worth only \$200 a month. The Tenant owes the Landlord \$200 for the last month, but the Landlord owes the Tenant \$800 for the two months she paid in full. The Tenant should not be evicted, and may be given a judgment for \$600.

2. Tenant made repairs:

- The Tenant has made a request in writing for repairs; the Landlord has not repaired the unit within 30 days, and the Tenant has made the repairs after the 30 days. The rent may be reduced by the reasonable costs of the repairs up to the amount of monthly rent. The request must be in writing to use this remedy.
 - Example: Using the same facts, except after 30 days the Tenant pays \$500 to have the roof repaired. The rent may be reduced by \$500 if the monthly rent is more, and the costs are reasonable.

3. Uninhabitability:

- If a unit was uninhabitable because of defects that the Landlord should have repaired, or because of natural disaster, no rent is owed for the time it was uninhabitable.

- Example: If a unit was uninhabitable for three months because of water damage after Hurricane Katrina, a Tenant does not owe rent for those three months.

4. Acceptance of rent:

- A Landlord may not seek eviction if he or she has accepted rent for a month after the month of nonpayment, or if he has accepted part payment, including a payment by Section 8.
 - Example: Tenant did not pay March rent, but paid April rent, and Landlord accepted April rent. The Tenant still owes the rent; he just can't be evicted for not paying it.

5. *No material noncompliance, or breach was remedied*:

- What is a "material noncompliance"?
 - Tenant intentionally or negligently destroyed or damaged any part of the rental unit or knowingly allowed anyone else to do it; or
 - Broke some other major requirement in the lease.
Miss. Code Ann. § 89-8-25
- If the Tenant remedies the breach within thirty days, he may not be evicted.
 - Example: If the breach is damage to the apartment, and the Tenant pays for the damage, he may not be evicted unless it is the second time he has damaged property in six months.

WHAT HAPPENS IF THE LANDLORD WINS?

- **If the judgment is for the Landlord:**
 - The court will issue a warrant to the sheriff or constable to put the Landlord back into possession of the rental unit.
 - The court can order the Tenant to pay the costs of the proceedings.
 - The court can also order the Tenant pay double rent for the time from when the Tenant first got the written notice of eviction to the time the Tenant actually was out of the rental unit, if the Tenant acted in bad faith. A Tenant who believes that he or she has a valid defense to the eviction is not acting in bad faith.

- **BUT, the warrant should not be issued and the Tenant should not be evicted, if:**
 - Before the warrant is actually issued, the Tenant pays the rent due and the costs of the proceedings.

 - **During the eviction:**
 - The constable puts the Tenant's belongings on the sidewalk or outside the house. The Tenant's belongings may not be locked into the house, stored without his permission, or given to the Landlord as payment for back rent.
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RENTAL DO'S AND DON'TS

Do:

- Keep a copy of the signed lease.
- Keep a bank deposit or other record that the security deposit was paid. Make sure the date and amount paid are included.
- Keep a record of rent payments.
- Keep a record or copy of any correspondence with the landlord.
- PAY RENT ON TIME!
- Contact the landlord for any repairs.
- Take pictures and do a thorough inspection before moving in.
- Make sure to read and understand the lease.
- Know the rules concerning pets.
- Be sure the Landlord writes into the lease any promised repairs.
- Get, read, and understand a copy of any other rules and regulations. Keep a copy for your records.

Don't:

- Damage the property in anyway other than normal wear and tear.
- Move out without telling the landlord.
- Do anything to unreasonably disturb neighbors.
- Hang pictures, paint, etc., if the lease says not to.
- Enter into a sublease (let someone else take over your lease) without the landlord's agreement, if your lease says you cannot sublease.