LANDLORD–TENANT DISPUTES

Landlord-tenant disputes are a common occurrence in the renting process. The Attorney General's role in landlord-tenant disputes is limited. We are not authorized by law to provide legal advice or private legal services to individual citizens. We can, however, offer you general information to explain your rights regarding a landlord-tenant relationship that may help you.

The rights and duties of landlords and tenants in South Dakota are spelled out in federal law, state statutes, local ordinances, safety and housing codes, common law, contract law and a number of court decisions. These responsibilities can vary from place to place around the state.

Tenants in federal housing and other forms of subsidized housing may have additional rights under federal law not covered in this summary. Those tenants should check their leases for further information regarding federal statutes or mandates.

The local building inspector, or state or local health department, are the authorities to contact if your complaint relates to the health or safety of the tenant(s). The name, address, and telephone number of those organizations can be found in your local telephone book under city, county or state government.

If you feel your grievance merits legal action, we suggest that you consult with a private attorney regarding the merit of your case. You also have the option of using small claims court. Additional information about this procedure is available from the Clerk of Courts office located at your county courthouse.

Many disputes could be avoided if landlords and tenants were aware of their rights and responsibilities to each other.

INSPECT THE UNIT

Prospective tenants should be allowed to see the rental unit before they put their money down. They should also be allowed to inspect the appliances, electrical system, plumbing, heating and lights as well as locks and windows. Prospective tenants may, if they choose, make a list of any problems they discover, and may request that the landlord sign the list before the potential tenants sign a lease. This will assist in determining contested damages by the tenant during moving out inspections.

Landlords can refuse to cooperate (these are not "rights" legally enforceable in court), but cooperation is advised. To have a list is in the best interest of both parties, since it protects all if there is a disagreement over who is responsible for the repairs.

RENTAL AGREEMENTS

A rental agreement is a legally binding contract between tenant and landlord of the rights and responsibilities of both parties. Renters are bound either by written leases or oral rental agreements **although it is best to have your agreement in writing.** A written lease can be for any length of time. It can be for a week, month, or a year or longer. A lease will normally include the rental period, the amount of monthly payment, rent due date, fees for late payment, security deposit requirement and conditions for its return. It may also include duties to repair, responsibility for utilities, pet policies, yard care, snow removal and other conditions the landlord or tenant may wish to include.

When a lease is signed by both parties, it becomes a binding legal contract. If any party does not fulfill the terms of the lease, the person who defaults can be sued.

Before signing a lease consider the following suggestions:

- Read the entire contract and ask questions or obtain a legal opinion about unclear provisions.
- Do not move in or pay rent before lease is signed. Ask for changes. If tenants dislike certain provisions in the lease, they have the right to ask the landlord to amend the lease with written changes. However, if a landlord refuses, which he has a right to do, a tenant must decide whether to sign the lease. If changes are made, both the tenant and landlord should initial the changes.
- Do not rely on verbal statements. All promises and agreements should be in writing for your protection.
- Make sure all the blanks are filled or drawn through if they do not apply and the date is correct before signing.
- It is possible to make changes in a lease if they are agreed upon by both the landlord and the tenant. Either delete the agreed upon change by drawing a line through it or add the desired clause to both the landlord and tenant copy and initial and date each change on both copies. If there is not enough room on the lease you will need to add another page entitled “Addendum to Lease.” Write whatever additions to the lease that are agreed to and each party needs to sign and date the Addendum. Make sure both parties receive complete signed copies of any revised contract and Addendum.
- Remember, you need a **written** agreement to cancel your lease.

An **oral rental agreement** is the verbal relationship between a landlord and tenant(s). Just because the agreement is not down on paper, doesn’t make the lease any less binding. However, oral agreements at times can be subject to misunderstandings resulting in the word of one against the other. The maximum length of time that an oral lease can be made is for one year. If there is no lease, the rental period is determined by the time period for which the rent is paid. If rent is paid every month, the tenancy is on a month-to-month basis. The tenant or the landlord must then give the other party one month’s notice before leaving or ending a rental agreement. While the landlord is allowed to raise the rent or change other conditions of the agreement upon thirty (30) days notice, the tenant may terminate the lease on the first day of the next month by giving notice to the landlord within fifteen (15) days of receipt of the landlord’s notice of modification. Whether there is a written agreement or not, the landlord and the tenant are subject to the laws of the State of South Dakota and cannot put something contrary to the laws into the lease or rental agreement. There are a number of clauses which are very undesirable and often illegal, including:

- Clauses which say the landlord will never be liable for damage or personal injury to you or your guests;
- Clauses in which a party admits responsibility, in advance, for any charge for damages;
- Clauses which allow the landlord to disregard responsibility for any repairs;
- Clauses which permit the landlord to enter the apartment at anytime and without notice;
- Clauses which give the landlord the right to evict you without proper notice;
- Clauses in which allow the landlord to take your possessions if you don’t pay rent;
- Any clause which you agree to give up any rights you have under South Dakota or federal law.
- Clauses which differ from returning a security deposit or providing written statement showing specific reasons for not returning it within two weeks after termination by the tenant.

ADVANCE RENT REQUIREMENTS

A landlord has the discretion to collect various deposits as well as some rent in advance. These advance payments generally vary in amount. You should be careful about making any deposit unless a definite

decision has been made to move into the unit. A tenant who puts down a deposit, but then decides not to occupy the unit, may not be entitled to a refund.

APPLICATION FEES

Some landlords require prospective tenants to pay an application fee. If required, the fee is used to cover the cost of checking the tenant's references. Prospective tenants should ask if an application fee is required and, if so, the amount of the fee. This should be considered when deciding where to rent. Tenants should also ask if application fees are refundable and request a receipt for payment.

SECURITY DEPOSITS

A security or damage deposit is the most common requirement of landlords. Many landlords require a security or damage deposit from the tenant at the start of the rental period. This is money paid by the tenant and held by the landlord to pay for any damage beyond ordinary wear and tear the tenant or his guests might do to the rental unit, any unpaid rent, or any money the tenant owed to the landlord under some agreement. Before giving a security deposit, the tenant should inspect the premises and prepare a statement as to its condition during a pre-rental walk through with the landlord. A statement should be made and signed by both landlord and tenant of such things as damaged areas or items, worn rugs, stains in the carpeting, broken fixtures, holes in the walls, screens, etc.

The term “ordinary wear and tear” is vague and this will help protect both parties from misunderstandings later about what damage the tenant caused. A landlord may not require a security deposit in excess of one month’s rent unless “special conditions” exist which “pose danger to maintenance of the premises.” One example would be having an additional deposit for a pet.

When a tenant moves out, the landlord is required either to return the deposit or to provide a written statement showing the specific reason for his failure to return it. This statement must be furnished within two weeks after the termination of the tenancy and the landlord’s receipt of the tenant’s mailing address or delivery instruction. The landlord may withhold from the deposit only such amounts as are necessary either to remedy defaults in the payment of rent or to restore the premises to its condition at the beginning of the tenancy (ordinary “wear and tear” excepted). If the landlord withholds the deposit, the tenant may also demand an itemized account of the deposit withheld. This must be provided within forty-five (45) days of the termination of the tenancy. If the landlord does not follow these rules for returning the deposit he or she forfeits all rights to the deposit. Any bad faith or malicious retention of a deposit by landlord of residential premises could also subject the landlord to punitive damages not to exceed two hundred dollars.

TENANT RIGHTS & RESPONSIBILITIES

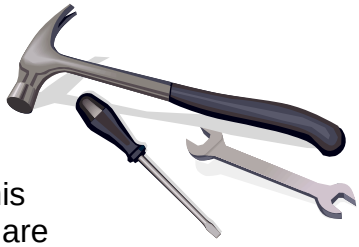
If you rent or lease a house, apartment, mobile home or storage space, you are a tenant. A tenant must pay their rent on time. Late payment or nonpayment of rent is the most common reason for eviction. A tenant must repair all damage to the premises caused by his or her ordinary negligence or that of their family, guests or pets (excludes ordinary wear and tear). Tenants must use ordinary care to preserve the premises in a good and safe condition and are responsible for the actions of their family, guests and pets within the premises or grounds.

QUIET ENJOYMENT

A tenant has the right to possession and “quiet enjoyment” of the property he or she is renting - that is, to be free from unreasonable interference by the landlord or other persons. The landlord has the right to make a reasonable inspection, but only with prior notice to the tenant and at a reasonable time. Only in the event of an emergency may a landlord lawfully enter your apartment without notice to you. If it is impossible for you and your landlord to arrange a time he can come over then you may need to leave your key with a friend or relative or let the landlord make repairs when you are gone. If your time schedule forces your landlord to pay more for repairs (such as having to pay weekend rates to a plumber who could have come over during working hours) that cost could be passed on to you. Also, if your landlord is selling your rental unit, real estate agents are subject to the same rules about entering your property as your landlord. If a tenant continues to refuse reasonable entry to a landlord, the landlord can get a court order allowing entry or evicting the tenant and recovering actual money losses.

HABITABILITY/RIGHT TO REPAIR

A landlord is required to keep rental premises in reasonable repair and fit for human habitation (except for damage caused by the tenant). This includes maintaining all electrical, plumbing and heating systems in a good and safe working order. This warranty of habitability cannot be waived or modified by the parties to the rental agreement. The parties, however, can agree to hold the tenant responsible for certain repairs instead of rent. When the landlord fails to repair the tenant’s dwelling, the tenant may pursue either of two remedies. The first is to vacate the premises, in which case the tenant will be discharged from all further obligations under the lease. The second is to have the tenant make the repairs on his or her own, in which case the tenant may deduct the expense of the repairs from the rent. These measures must be strictly followed. A tenant may wish to speak with a private attorney or legal aid office for advice before proceeding. Before the tenant can take either of these measures, he or she must give the landlord notice of the repairs that are needed, wait a reasonable length of time and act only when the landlord neglects to do so. This notice to the landlord should always be in writing, should state the repairs that are needed, and should give a specific reasonable deadline for making the repairs. You may need proof that you requested repairs if there is a dispute. Make sure you are specific about what needs repair and refer to the lease or rules if possible and it is best to send the notice to the landlord by registered/certified mail.



You should also keep a copy of such correspondence. If the costs of the necessary repairs exceed one months rent, the tenant may withhold his rent and deposit it in a separate bank account maintained for the purposes of making the repairs. If the rent is going to be deposited in a separate bank account the tenant must **FIRST** give written notice to the landlord stating the specific reason for withholding the rent and then provide the landlord written evidence of the deposit. The account is be maintained until either the landlord makes the repairs or enough money accumulates to pay for the repairs. These repairs must be necessary to maintain the habitability of the premises such as plumbing, heating, security, electricity, etc.

Another option that might be available to a tenant is checking with their local housing inspector in the city that they live, or with health, energy or fire inspectors to see if there are possible code violations. If code violations are detected generally the inspector will give the landlord a specific amount of time to fix them. A landlord cannot retaliate (strike back) by filing an eviction notice, or by increasing rent, or decreasing services, because a tenant contacts a governmental agency charged with the responsibility of enforcing a building and housing code.

LANDLORD RIGHTS & RESPONSIBILITIES

The responsibilities of the landlord are to keep the premises in habitable condition, and leave the tenant to the quiet enjoyment of the property. The landlord has the right to the rent money (provided premises have been kept in good condition) and also the right to the premises, in good condition, after the rental period has ended. The landlord may also have other rights, as provided by a written rental agreement. A landlord has certain rights under certain circumstances, including the right to require a security deposit and the right to evict a tenant. A landlord may neither lock out a tenant nor interrupt the services, such as electric, gas, water or other essential services. Doing so could subject the landlord to damages of two months free rent and return of any advance rent and deposit paid to the landlord.

TERMINATING THE TENANCY

Notice to Landlord:

Leases can vary as to the time required to terminate the lease agreement. Most leases that specify a definite term of tenancy (such as a 6 month or 1 year lease) state the amount of time required for notice to terminate or renew the lease or they expire upon the termination of the expired time. If you have a lease read it carefully for notice requirements. If a written lease does not give a specific time period for renewal or expiration of the lease, then advance notice must be given at least one full rental period before the tenancy's last day.

The same holds true in month-to-month tenancies. Notice should also be given to terminate the lease at least one full rental period before the last day of your tenancy. If you rent is due on the first of the month, the notice must be given one full rental period before the end of paid lease term. This means the day before the last rent payment is due. For example, if a tenant who pays rent on the first day of the each month wishes to leave at the end of June, the tenant must inform the landlord of the fact on or before May 31. No matter when during June the tenant actually leaves, the tenant is responsible for the entire month of June's rent. If the tenant misses the proper notice deadline – even by a day – the tenant is liable for an extra month's rent (July in this case).

Notice from the Landlord:

Unless a tenant is being evicted the landlord must give the same notice requirements as the tenant is required to give.

EVICTION

The only lawful way to evict a tenant is for the landlord to obtain a court order signed by the circuit court or magistrate judge. This is obtained in a lawsuit called a "forcible entry and detainer" action. After giving a three-day notice, a landlord can secure a court order to have a tenant evicted if:

- The person by force, intimidation, or fraud, goes onto the property of someone else that has rightful possession and takes over the possession. Or if they entered the property peacefully but by force, menace, or threat of violence, keeps possession of the property.
- The tenant is in unlawful possession of the landlord's property (by remaining on the property after the expiration of a rental agreement or failing to pay rent for more than three days after it is due);
- The tenant substantially damages the premises; or
- The tenant does or fails to do something which, under the terms of the lease, is identical to cancellation. A tenant must be given three (3) days notice to vacate before a forcible entry or detainer action can be commenced by a landlord. If the tenant refuses to move after three days, the landlord can then file a lawsuit (Forcible Entry and Detainer) for eviction. The lawsuit begins by serving the tenant with a Summons and Complaint which gives the tenant four days to file and serve a written answer. A telephone call does not constitute an answer nor does a letter written to the landlord. We

recommend that you contact an attorney immediately upon receipt of a Summons and Complaint. If you fail to file and serve proper answer, a court order will be issued requiring the tenant to move. If an Answer is properly filed and served, the matter is brought on for hearing before the court. A landlord cannot just lock a tenant out, take their property, shut off the electricity, gas, water or other essential services. If a landlord resorts to such measures, the tenant may recover possession or end the rental agreement. The tenant may also be entitled to damages for loss of use of the premises or property and for any out-of-pocket expenses caused by the landlord's illegal conduct.

RETALIATORY EVICTIONS PROHIBITED

It is unlawful for a landlord to force a tenant into moving by raising the rent, decreasing services, or starting an eviction because of any of the following:

- Complaints to the landlord because needed repairs are not being made.
- Complaining to a governmental agency who can make inspections or force the landlord to make repairs.
- Becoming active in a tenant organization. If the landlord should start a retaliatory action within 180 days of an event specified above the landlord can be sued for retaliation and recover up to two months rent, return of any security deposit and up to $500 in attorney fees. This is a summary of some of the various federal and state laws pertaining to landlord-tenant issues. It is considered educational material only. If you have questions regarding landlord-tenant issues contact the Division of Consumer Protection at 1-800-300-1986. But if you need legal advice we suggest that you contact a private attorney.