

## **RIGHTS AND DUTIES OF TENANTS**

When a person pays rent to live in a house, apartment, condominium or mobile home, the renter becomes a tenant governed by Florida law. It doesn't matter whether payment is made weekly, monthly or at other regular periods. Also, it doesn't matter whether the apartment, house, condominium or mobile home is rented from a private person, a corporation or most governmental units. These facts are true even when there is no written "lease" agreement.

A tenant has certain rights and responsibilities under Florida law. These are specified in the Florida Statutes at Part II, Chapter 83, the Florida Residential Landlord Tenant Act. A tenant in federally subsidized rental housing has rights under federal law, as well. If there is no written lease, these laws regulate the tenant's rights. There may also be a written lease that could affect a tenant's rights. If there is a written lease, it should be carefully reviewed. The Florida Residential Landlord Tenant Act prevails over what the lease says.

A tenant is entitled to the right of private, peaceful possession of the dwelling. Once rented, the dwelling is the tenant's to lawfully use. The landlord may only enter the dwelling in order to inspect the premises or to make necessary or agreed repairs, but then only if he or she first gives the tenant reasonable notice and comes at a convenient time. If an emergency exists, the requirement for notice may be shortened or waived.

The landlord is required to rent a dwelling that is fit to be lived in. It must have working plumbing, hot water and heating, be structurally sound and have reasonable security, including working and locking doors and windows, and it must be free of pests. The landlord must also comply with local health, building, and safety codes. If the landlord has to make repairs to make the dwelling fit to live in, the landlord must pay.

If the landlord claims the tenant has violated the rental agreement, he or she must inform the tenant in writing of the specific problem and give the tenant time to correct the problem – even if the problem is non-payment of rent – before the landlord can go to court to have the tenant removed. Tenants receiving a nonpayment of rent notice should be aware that a landlord may accept part of the rent owed and still evict the tenant. Tenants renting condominiums should be aware that in certain circumstances the condominium association may demand that the tenant pay his or her rent to the association instead of the landlord. Tenants should consult an attorney in this case. If the tenant commits a serious act endangering the property (such as committing a crime on the premises) or the tenant fails to correct a problem after written notice from the landlord, the landlord must still go to court to be permitted to evict the tenant. In any court proceeding, the tenant has the absolute right to be present, argue his or her case and be represented by an attorney.

If the landlord requires the tenant to pay a security deposit, the landlord must preserve the deposit during the tenancy. In addition, the landlord must return the full amount of the deposit within 15 days after the tenant leaves the dwelling or give the tenant written notice of why some or all of it won't be returned within 30 days after the tenant leaves the dwelling. The tenant then has the right to object in writing within 15 days of receipt of the notice. Under some circumstances, the tenant may receive the security deposit plus interest. Before moving out, the tenant must provide the landlord with an address for receipt of the security deposit, or else the tenant may lose the right to object if the landlord claims the right to keep the deposit money.

The tenant has the right, under certain very aggravated circumstances caused by the landlord's neglect, to withhold rent. This can only be done when the landlord fails to comply with an important responsibility, such as providing a safe and habitable home in compliance with local housing codes. Before rent is withheld, the tenant must give the landlord seven days written notice of the problem so the landlord can fix it. Even after withholding rent, the tenant should save the money and seek court permission to spend part of it to do what the landlord should have done. If the tenant does not preserve the money and seek court assistance, the tenant may be evicted for nonpayment.

Finally, the tenant has the right to move out. If there is a written lease, the tenant should read the lease closely to see if he or she must give up to 60 days notice that the tenant does not intend to stay after the lease ends. If there is no written lease, the tenant may move out for no reason by giving written notice of his or her intent to leave no less than seven days before the next rent payment is due if the rent is paid weekly or 15 days if the rent is paid monthly. The tenant may terminate the rental agreement if the landlord has failed to live up to one of his or her major obligations, provided the tenant has sent written notice to the landlord, seven days before the rent is due (there are some exceptions to the right to move out).

If a landlord loses in court, the landlord may be held liable for any costs and attorney's fees incurred by the tenant. If the tenant loses in court, the tenant may be liable for the landlord's costs and attorney's fees.

A tenant also has responsibilities, which if not observed can lead to eviction. The tenant must pay the agreed upon rent and do so on time. The tenant must comply with building, housing and health codes. The tenant must maintain the dwelling without damage, other than ordinary wear and tear, keep the dwelling clean and maintain the plumbing. The tenant must not violate the law or disturb the peace, nor allow guests to do so.

In trying to evict a tenant, a landlord will try to prove the tenant violated a tenant responsibility. However, the landlord may not seek to evict a tenant in retaliation for legitimate complaints about housing conditions to proper authorities. No eviction can occur, though, until the landlord first gives the tenant notice of the problem,

and then gets a court order. Without the court order, the landlord has no power to interfere with the tenant. The landlord cannot, for instance, lock a tenant out or cutoff tenant's utilities. A landlord engaging in this type of prohibited practice may be liable to the tenant for damages in the amount of three months' rent or actual damages whichever is higher. The landlord must get a court order of eviction before he or she can interfere with the tenant's occupancy. If a tenant is served with papers seeking eviction, the tenant should immediately seek legal assistance. The tenant may have legal defenses. For instance, the landlord cannot try to get even with a tenant by evicting him or her when the tenant has not violated tenant responsibilities. To raise defenses in an eviction proceeding, a tenant normally must pay into the court registry past due rent if any is owed and rent which comes due during the proceeding. If the tenant disputes the amount of rent claimed to be due, he or she may ask the court to determine the correct amount, but the tenant must show why he or she believes the amount is wrong. In an eviction proceeding, a tenant has very little time to respond, so quick action is extremely important.

The landlord can never remove the tenant's property or lock the tenant out. Only the sheriff's office may do this after a Court Order and Writ of Possession.

If you believe you need legal advice, call your attorney. If you do not have an attorney, call The Florida Bar Lawyer Referral Service at (800) 342-8011, or the local lawyer referral service or legal aid office listed in the yellow pages of your telephone book.

## **RIGHTS AND DUTIES OF LANDLORDS**

If you rent a house, apartment, condominium or mobile home to another person, you enter into a legal contract known as a rental agreement. This rental agreement need not be in writing. If the rental agreement is in writing, it is a "lease." This agreement has certain basic conditions specified by law which you should understand before you enter into the agreement. As a landlord you have certain rights; you also have certain duties. Even in the absence of a written lease, the law imposes duties and gives rights to the parties.

Your obvious right as a landlord is to receive rent for the use of the property.

Another important right is to have your property returned to you undamaged at the end of the agreement. It should be returned in the same condition in which it was received, except for ordinary wear and tear.

In return for these rights, it is your duty to provide a home that is safe, meets housing code requirements, and to make reasonable repairs when necessary. The

obligations can be limited sometimes under the lease. It is also your duty to respect the tenant's rights. One of the most important of these is the right of peaceful possession. By renting to the tenant, you give that tenant the possession and use of your property free from interference. That means that you may not enter the home frequently, at odd hours, or without notice. Rights relating to reasonable inspection are often set forth in a written rental agreement, as well as in Florida law. You have a right to protect your property through inspection, but you must give reasonable notice, at least 12 hours notice. You don't have the right to show the property to possible buyers without notice to and agreement of the tenants.

It is unlawful for a landlord to in a discriminatory manner increase a tenant's rent or decrease services to a tenant, or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. Retaliation may be presumed if it occurs after a tenant has complained about housing conditions. It is also unlawful for a landlord to lock the tenant out, intercept or shut off utilities, water or electric services to the tenant, or to remove tenant's property, doors or appliances from the home. A landlord who does this can be ordered to pay a tenant damages in the amount of three months' rent, or actual damages, whichever is greater.

To end the tenancy, if the unit has no written rental agreement or if the lease does not state otherwise and is rented on a month to month basis, you must give at least 15 days notice in writing prior to the end of any monthly period to terminate the tenancy; a week to week rental period requires seven days notice prior to the end of any weekly period. Any such notice must be in writing and should be delivered personally to the tenant, but may be posted at the door if tenant is absent from the premises. If the written rental agreement requires that the tenant give notice of up to 60 days before leaving the unit, the landlord is also required to give the tenant the same notice period that the landlord does not intend to renew the lease.

Finally, both the landlord and the tenant have the duty to observe state and local laws concerning the use and condition of the property.

The basic rights and duties which have been mentioned apply whether or not the agreement between you and the tenant is in writing. A written agreement is best because it serves as a memorandum of other terms and conditions you may wish to include, such as restrictions on the number of adults or children or types of pets to be allowed. And if you wish to provide for lease terms of one year or more the agreement must be in writing to be enforceable.

If the tenant permanently moves out before the end of the rental term and leaves your property vacant, this is usually considered as an abandonment of his or her rights. The law presumes an abandonment if the tenant is absent for at least 15

days without previously notifying you of his or her intent to be absent. After abandonment, the landlord may then re-enter the dwelling unit. The rights and remedies often are complex, and legal advice or assistance should be considered.

The situation is more complicated if the tenant seems to have gone away but has left some of his or her personal property on the premises or there is a considerable amount of unpaid rent. In such a case, you should consult an attorney before trying to dispose of the tenant's possessions or re-renting the property.

Another complicated problem is the situation in which a tenant fails to pay the rent or refuses to move out at the end of the rental term. Under these circumstances you may evict the tenant, but only after you have taken the proper legal steps to commence an action for possession according to a very specific timetable. You must serve proper notice or notices on the tenant to terminate this rental agreement. If the tenant ignores these notices, you are next required to file a complaint in Court and have the tenant properly served with a summons and complaint. Five business days after the complaint is served, you may request the court to set a date for a hearing. However, if the tenant fails to answer the complaint within the five business days or fails to pay the rent that is due then, you can proceed to evict him/her without having a hearing first, though you must get a court order before evicting the tenant. If the tenant disputes the amount of rent that is due, the rent does not have to be deposited at the court and a hearing must be held. If you wish to collect money damages from the tenant, you must wait 20 days to set a hearing on damages. At the hearing, you can ask that the tenant be evicted. If the judge agrees that the tenant has violated the terms of the agreement, a sheriff will serve an eviction notice on the tenant. The tenant now has 24 hours to get out of your property, or the sheriff can return to remove the tenant and supervise the removal of the tenant's belongings. Because these proceedings are so technical, it is wise to have them handled by an attorney. Even if you decide to file the claim yourself in county court, you should have an attorney review the notices you have given and the ways you have served them to make sure you have properly observed all of the necessary requirements of the timetable. A single mistake can result in serious delay in your regaining possession of your property.

Because the landlord/tenant relationship is a legal contract, you should understand its various provisions before you rent your property to anyone. Remember that as a landlord you will be required to provide living quarters that are safe and keep them in good repair. Your obligations for repairs can sometimes be limited under the lease. You will have to turn over possession of the property to the tenant, free from unnecessary interference from you. In return, you may collect rent, and on reasonable notice you may inspect the property or in cases of emergency. At the end of the rental term, the property must be returned to you with no damage beyond ordinary wear and tear. The landlord has certain duties to account for or refund tenant deposits upon termination of the tenancy. Many of these basic

conditions apply whether or not there is a written agreement.

If you believe you need legal advice, call your attorney. If you do not have an attorney, call The Florida Bar Lawyer Referral Service at (800) 342-8011, or the local lawyer referral service or legal aid office listed in the yellow pages of your telephone book.