

# LANDLORD / TENANT { RELATIONS }



EQUAL HOUSING  
OPPORTUNITY



**City of Las Cruces**<sup>®</sup>  
PEOPLE HELPING PEOPLE

# THE RENTAL AGREEMENT

## { written and/or verbal }



When a landlord rents a residence to a tenant, it is highly recommended that the two parties enter into a rental agreement. This agreement determines the amount of rent and when it is to be paid, the length of the tenancy and how much advance notice either party must give to end the agreement. In the Uniform Owner-Resident Relations Act, "rental agreement" is defined as all agreements between an owner and resident and valid rules and regulations concerning the use and occupancy of a dwelling unit or premises. The rental agreement

may be verbal, with no written rules or signatures. Such verbal arrangement for tenant's occupancy of the dwelling unit (also known as "tenancy") are periodic and automatically renew themselves for the specified period (weekly or monthly), or the rental agreement could be in writing that specifies all or most issues with the units use and occupancy.

A written rental agreement also helps to protect both parties. If a dispute between a landlord and tenant needs to be resolved by a court, it is difficult to proceed without some kind of written documentation of the rental agreement. Without a written rental agreement, it is the tenant's word against the landlord's. Additionally, verbal rental agreements seldom cover all circumstances that may arise. For example: Are pets allowed? Who is responsible for paying the utilities? Is there a penalty if the rent is not paid on time? These are just a few of the many issues that may arise when there is no written rental agreement.

Generally speaking, a written rental agreement will provide for a fixed term, commonly six or 12 months. At the end of the term, the rental agreement reverts to a month-to-month tenancy. If the rental agreement is for a fixed term, a tenant may not move out before the end of the term without risking a financial penalty, unless the landlord has breached the rental agreement in some way. Likewise, a landlord may not evict a tenant before the end of the term, unless the tenant has breached the rental agreement in some way. At the end of the term of the rental agreement, the landlord and tenant may sign a new rental agreement for a new term, or the expired rental agreement reverts to a month-to-month tenancy.

To end a month-to-month tenancy, the landlord or the tenant must give 30-days advance notice at the beginning of the next rental period. Similarly, seven-days advance notice is necessary to end a week-to-week tenancy. A written, fixed-term rental agreement may or may not require giving notice before the termination date.

# RULES AND REGULATIONS

## { deposits & obligations }

Beside the basic obligations of landlords and tenants listed below, rental agreements may include rules dealing with special situations, such as pets, subletting and charges for late rent. New Mexico law requires a landlord give each tenant a written copy of any rules and regulations in order for them to be enforceable. The rules and regulations may be part of the rental agreement. New rules or changes, including rent increases in a month-to-month rental agreement, require a 30-day notice at the beginning of the rental period. Modifications during a fixed-term tenancy depend upon the terms of the rental agreement.

### Deposits

The landlord may require the tenant to pay a security or damage deposit before moving in. This is money to be held by the landlord during the tenancy to protect against losses from unpaid rent or damage to the property, excluding normal wear and tear.

A landlord cannot charge a tenant more than one month's rent as a deposit on any rental agreement of less than a year. If the rental agreement is for a year or more, the landlord may collect a deposit of more than one month's rent; however, if he or she does so, he or she must pay the tenant current passbook interest on the whole deposit.

To avoid disputes at the end of the tenancy, the landlord and the tenant should, at the move-in, inventory the furnishing and condition of the unit, and both should sign such a list.

The tenant may not use the deposit to cover the last month's rent, although the landlord may apply it toward unpaid rent. A deposit, by definition, is refundable. The landlord must have suffered actual losses in order to withhold any part of the deposit.

Then landlord has 30 days from the end of the tenancy in which to return the deposit or an itemized list of deductions plus any balance remaining from the deposit. The tenant must provide a forwarding address where he or she may receive this return of deposit/balance.

If a landlord does not send an itemized statement and deposit balance to the tenant within 30 days of the date the rental agreement is terminated or the tenant moves out, whichever is later, the landlord forfeits all rights to any of the deposit and may take further legal action against the tenant in a court of a law. Thus, even if the tenant has incurred \$10,000 in damages, the landlord loses the right to claim the damage if he or she has not acted within the 30 days. If the landlord fails to provide an itemized statement and return the balance of the deposit within the required time, the tenant may sue the landlord to recover the entire deposit, plus attorney's fees and court costs, and in some cases, civil penalty in the amount of \$250. As noted above, the tenant is required to leave the landlord a forwarding address. If the tenant fails to do so, the landlord must send the balance of the deposit and itemized statement to the tenant's last known address.



## The Landlord's Obligations

The landlord must:

- Comply with applicable housing codes materially affecting health and safety.
- Make repairs and do whatever is necessary to put and keep the premises in safe condition.
- Keep the common areas in a safe condition.
- Maintain a good and safe working condition in electrical, plumbing, sanitary, heating, ventilation, air conditioning and other facilities and appliances, if any, supplied or required to be supplied by the landlord.
- Provide and maintain receptacles for the removal of trash.
- Supply running water, a reasonable amount of hot water and reasonable heat in the dwelling unit at all times.

## The Tenant's Obligations

The tenant must:

- Comply with minimal housing codes imposed upon residents which materially affect health and safety.
- Keep the premises in as clean and safe condition as the premises permit, and return the dwelling in the same condition as when the tenant moved in, except for reasonable wear and tear.
- Dispose of trash in a clean and safe manner.
- Keep plumbing fixtures as clean as their condition permits.
- Use all plumbing, electrical, sanitary, heating, ventilation, air conditioning and other facilities and appliances in a reasonable manner.
- Not deliberately destroy or allow anyone to destroy any part of the premises.
- Not disturb the neighbor's peace, and
- Abide by all rules and regulations that do not conflict with the owner's or tenant's rights or obligations mandated by the law.

# REMEDIES/CORRECTIONS

## Available to the Tenant

If the landlord has failed to comply with his or her obligations under the law or the rental agreement, the tenant may give the landlord a written notice describing the problem and stating that if no reasonable attempt is made to correct the problem within seven days, the agreement will end at the conclusion of that seven-day period. The tenant is then entitled to a refund of prepaid rent and deposits.

If the landlord has violated a local housing code or any other obligations as listed above, the tenant may give a written notice describing the problem, and stating that if no reasonable attempt is made to remedy the problem within seven days, the tenant will abate (reduce) the rent. The Uniform Owner-Resident Relations Act clearly defines what type of compensation a tenant may be entitled to. For example, if the dwelling unit is habitable (can be lived in), then the tenant may abate only one third (1/3) of the rental amount per month on a pro-rata basis until all things are corrected. If the dwelling unit is uninhabitable (cannot be lived in) and the tenant is in fact not staying in the dwelling unit, the tenant may abate all of the rent (at 100 percent). In either case, the tenant has to give the landlord proper written notification indicating what needs repair or service, and give the landlord the opportunity, seven days, to perform the repairs or services.

Under some circumstances, with legal assistance, the tenant may wish to seek an injunction to force compliance by the landlord or to restrain him or her from some action. As noted above, the tenant may also sue for recovery of the deposit.

## Available to the Landlord

When the rent payment is past due, the landlord may give notice to the tenant that he or she has three days in which to pay or move out. If the tenant has breached the rental agreement in some other way, the landlord may give notice that the tenant has seven days in which to correct the breach or move out. If the tenant does correct the breach, but is served a second seven-day notice of breach within six months, he or she must move at the end of the seven days, without opportunity to correct the problem. In the event that the tenant fails to move when required by proper notice (including proper 30-day notice), the landlord must seek a court order, or "Writ of Restitution," for a legally authorized eviction. In all cases, a landlord may not evict a tenant without first going through the notice process, whether it be three, seven or 30 days, and obtaining a court order. If a landlord receives a judgment from the courts that includes money owed by a tenant, the landlord can pursue a number of different avenues to collect his/her money from the tenants, i.e., collection service, credit bureau or file for garnishment of wages, if possible.

Law prohibits certain landlord's remedies. The landlord may not lock a tenant out or remove his or her property without a court order, nor may the landlord shut off the tenant's utilities to enforce compliance with the rental agreement. If within the past six months a tenant has complained to a government agency responsible for enforcing housing standards; organized

or joined a tenants' organization; made a fair housing complaint; prevailed in a lawsuit relating to the tenancy; testified on behalf of another tenant; or lawfully abated rent, the landlord may not retaliate by raising the rent, decreasing services or threatening to evict the tenant.

## RIGHT OF ENTRY

The landlord must provide a tenant with a 24-hour written notice before entering the premises. This does not apply if the tenant has requested repairs or services be performed or in the case of an emergency.

## GOING TO COURT

Magistrate Court routinely handles Landlord/tenant issues in Dona Ana County. In Albuquerque and Bernalillo County, Metropolitan Court handles landlord/tenant issues. These courts are small claims courts – it is not necessary to be represented by an attorney. The courts may provide forms for the filing of actions and answers. Evidence necessary for presenting a case may include documents, such as leases, receipts, bills and copies of notices, photographs and witnesses.



Referrals for legal assistance may be obtained through local lawyer referral services. Persons of low income may consult with their local legal aid office (look in the yellow pages under "Attorneys"), or contact Law Access New Mexico at (800) 340-9771. New Mexico residents who are 55 years and older, may contact Lawyer Referral for the Elderly Program at (800) 876-6657.

## FAIR HOUSING LAWS/DISCRIMINATION PROHIBITED

The Federal government has enacted a fair housing law that prohibits discrimination in rental housing based on: race, ethnicity, color, ancestry, or national origin, religion, sex (or gender), familial status (having children), and disability.

The State of New Mexico provides protection against discrimination in housing to the categories listed above under its human rights law, with the addition of the following categories: marital status (being married, being in a domestic partnership, or being an unmarried couple), sexual orientation, and gender identity.

There are certain types of housing projects that were built or receive operating assistance to serve specific groups of people (i.e. the elderly or the disabled), which would allow them to restrict the availability of rental housing to residents that meet their qualifying criteria.

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**SPECIAL NOTE:** This information has been issued to inform and not to advise. It is based on New Mexico law in effect at the time of writing. The statements are general and individual facts in any given situation may alter their application or involve other laws not referred to here. You should always seek advice from an attorney if any questions arise. This document is intended as a public service and is not an endorsement of any attorney or law firm.