

WHAT IS A LEASE?

A lease is a contract between a landlord and tenant which contains the terms and conditions of the rental. It cannot be changed while it is in effect unless both parties agree. Leases for apartments which are not rent stabilized may be oral or written. However, to avoid disputes the parties may wish to enter into a written agreement. An oral lease for more than one year cannot be legally enforced. (General Obligations Law § 5-701)

At a minimum, leases should specify the names and addresses of the parties, the amount and due dates of the rent, the duration of the rental, the conditions of occupancy, and the rights and obligations of both parties. Except where the law provides otherwise, a landlord may rent on such terms and conditions as are agreed to by the parties.

Leases must use words with common and everyday meanings and must be clear and coherent. Sections of leases must be appropriately captioned and the print must be large enough to read easily. (General Obligations Law § 5-702; C.P.L.R. § 4544)

Unless the lease states otherwise, the apartment must be made available to the tenant at the beginning of the tenancy. If the apartment is not available when agreed, the tenant has the right to cancel the lease and obtain a full refund of any deposit. (Real Property Law § 223-a)

Lease provisions which exempt landlords from liability for injuries to persons or property caused by the landlord's negligence -- or that of his employees -- are null and void. Further, a lease provision that waives the tenant's right to a jury trial in any lawsuit brought by either of the parties against the other for personal injury or property damage is also null and void. (General Obligations Law § 5-321; Real Property Law § 259-c)

If the court finds a lease or any lease clause to have been unconscionable at the time it was made, the court may refuse to enforce the lease or the clause in question. (Real Property Law § 235-c) A lease provision which requires a tenant to pledge his/her household furniture as security for rent is void. (Real Property Law § 231)

RENEWAL LEASES

Except for rent-regulated apartments, a tenant may only renew the lease with the consent of the landlord. A lease may contain an automatic renewal clause. In such case, the landlord must give the tenant advance notice of the existence of this clause between 15 and 30 days before the tenant is required to notify the landlord of an intention not to renew the lease. (General Obligations Law § 5-905)

MONTH-TO-MONTH TENANTS

Tenants who do not have leases and pay rent on a monthly basis are called "month-to-month" tenants. In localities without rent regulations, tenants who stay past the end of a lease are treated as month-to-month tenants if the landlord accepts their rent. (Real Property Law § 232-c)

A month-to-month tenancy outside New York City may be terminated by either party by giving at least one month's notice before the expiration of the term. For example, if the rent is due on the first of each month, the landlord must inform the tenant by September 30th before the October rent is due that he wants the tenant to move out by November 1st. The termination notice need not specify why the landlord seeks possession of the apartment. Such notice does not automatically allow the landlord to evict the tenant. A landlord may raise the rent of a month-to-month tenant with the consent of the tenant. If the tenant does not consent, however, the landlord can terminate the tenancy by giving appropriate notice. (Real Property Law § 232-b)

RENT

RENT CHARGES

Where an apartment is not subject to rent stabilization or rent control or other rent regulation, a landlord is free to charge any rent agreed upon by the parties.

Landlords must provide tenants with a written receipt when rent is paid in cash, a money order, a cashier's check or in any form other than the personal check of a tenant. Where a tenant pays the rent by personal check, (s)he may request in writing a rent receipt from the landlord. The receipt must state the payment date, the amount, the period for which the rent was paid, and the apartment number. The receipt must be signed by the person receiving the payment and state his or her title. (Real Property Law § 235-e)

It is illegal for any person to require a prospective tenant to pay a bonus -- commonly called "key money" -- above the lawful rent and security deposit -- for preference in renting a vacant apartment. (Penal Law § 180.55) Key money is not to be confused with fees that may be legally charged by a licensed real estate broker. (See the section below on "Real Estate Brokers")

RENT SECURITY DEPOSITS

Virtually all leases require tenants to give their landlords a security deposit. The security deposit is usually one month's rent. The landlord must return the security deposit, less any lawful deduction, to the tenant at the end of the lease or within a reasonable time thereafter. A landlord may use the security deposit: (a) as reimbursement for the reasonable cost of repairs beyond normal wear and tear, if the tenant damages the apartment; or (b) as reimbursement for any unpaid rent.

Landlords, regardless of the number of units in the building, must treat the deposits as trust funds belonging to their tenants and they may not co-mingle deposits with their own money. Landlords of buildings with six or more apartments must put all security deposits in New York bank accounts earning interest at the prevailing rate. Each tenant must be informed in writing of the bank's name and address and the amount of the deposit. Landlords are entitled to annual administrative expenses of 1% of the deposit. All other interest earned on the deposits belongs to the tenants. Tenants must be given the option of having this interest paid to them annually, applied to rent, or paid at the end of the lease term. If the building has fewer than six apartments, a landlord who voluntarily places the security deposits in an interest bearing bank account must also follow these rules. ***For example:** A tenant pays a security deposit of \$400. The landlord places the deposit in an interest bearing bank account paying 2.5%. At the end of the year the account will have earned interest of \$10.00. The tenant is entitled to \$6.00 and the landlord may retain \$4.00, 1% of the deposit, as an administrative fee. ***the interest is the prevailing actual interest.**

If the building is sold, the landlord must transfer all security deposits to the new owner within five days, or return the security deposits to the tenants. Landlords must notify the tenants, by registered or certified mail, of the name and address of the new owner. Purchasers of rent stabilized buildings are directly responsible to tenants for the return of security deposits and any interest. This responsibility exists whether or not the new owner received the security deposits from the former landlord.

Purchasers of rent-controlled buildings or buildings containing six or more apartments where tenants have written leases are directly responsible to tenants for the return of security deposits and interest in cases where the purchaser has "actual knowledge" of the security deposits. The law defines specifically when a new owner is deemed to have "actual knowledge" of the security deposits.

When problems arise, tenants should first try to resolve them with the

landlord before taking other action. If a dispute cannot be resolved, tenants may contact the nearest local office of the Attorney General, listed at the end of this booklet. (General Obligations Law, Article 7)

LEASE SUCCESSION OR TERMINATION SUBLETTING OR ASSIGNING LEASES

Subletting and assignment are methods of transferring the tenant's legal interest in an apartment to another person. A sublet transfers less than the tenant's entire interest while an assignment transfers the entire interest. A tenant's right to assign the lease is much more restricted than the right to sublet.

A tenant may not assign the lease without the landlord's written consent. The landlord may withhold consent without cause. If the landlord reasonably refuses consent, the tenant cannot assign and is not entitled to be released from the lease. If the landlord unreasonably refuses consent, the tenant is entitled to be released from the lease after 30 days notice.

Tenants with leases who live in buildings with four or more apartments have the right to sublet with the landlord's advance consent. The landlord cannot unreasonably withhold consent. If the landlord consents to the sublet, the tenant remains liable to the landlord for the obligations of the lease. If the landlord denies the sublet on reasonable grounds, the tenant cannot sublet and the landlord is not required to release the tenant from the lease. If the landlord denies the sublet on unreasonable grounds, the tenant may sublet. If a lawsuit results, the tenant may recover court costs and attorney's fees if a judge rules that the landlord denied the sublet in bad faith.

These steps must be followed by tenants wishing to sublet:

- 1) The tenant must send a written request to the landlord by certified mail, return-receipt requested. The request must contain the following information: (a) the length of the sublease; (b) the name, home and business address of the proposed subtenant; (c) the reason for subletting; (d) the tenant's address during the sublet; (e) the written consent of any co-tenant or guarantor; (f) a copy of the proposed sublease together with a copy of the tenant's own lease, if available.
- 2) Within 10 days after the mailing of this request, the landlord may ask the tenant for additional information to help make a decision. Any request for additional information may not be unduly burdensome.
- 3) Within 30 days after the mailing of the tenant's request to sublet or the additional information requested by the landlord, whichever is later, the landlord must send the tenant a notice of consent, or if consent is denied, the reasons for denial. A landlord's failure to send this written notice is considered consent to sublet.
- 4) A sublet or assignment which does not comply with the law may be grounds for eviction.

SENIOR CITIZEN LEASE TERMINATIONS

Tenants or their spouses living with them, who are sixty-two years or older, or who will attain such age during the term of their leases, are entitled to terminate their leases if they relocate to an adult care facility, a residential health care facility, subsidized low-income housing, or other senior citizen housing.

When such tenants give notice of their opportunity to move into one of the above facilities, the landlord must release the tenant from liability to pay rent for the balance of the lease and adjust any payments made in advance.

Senior citizens who wish to avail themselves of this option must do so by written notice to the landlord. The termination date must be effective no earlier than thirty days after the date on which the next rental payment (after the notice is delivered) is due. The notice is deemed delivered five days after mailing. The written notice must include documentation of admission or pending admission to one of the

above mentioned facilities. For example, a senior citizen mails a notice to the landlord of his or her intention to terminate the lease on April 5; the notice is deemed received April 10. Since the next rental payment (after April 10) is due May 1, the earliest lease termination date will be effective June 1.

Anyone who interferes with the tenant's or his or her spouse's removal of personal effects, clothing, furniture or other personal property from the premises to be vacated will be guilty of a misdemeanor.

Owners or lessors of a facility of a unit into which a senior citizen is entitled to move after terminating a lease, must advise such tenant, in the admission application form, of the tenant's rights under the law. (Real Property Law §227-a.)

LEASE TERMINATIONS FOR MILITARY PERSONNEL

Individuals entering or called to active duty in the military service may terminate a residential lease if: (1) the lease was executed by the service member before he/she entered active duty; and (2) the leased premises have been occupied by the member or his/her dependents. Any such lease may be terminated by written notice delivered to the landlord at any time following the beginning of military service. Termination of a lease requiring monthly payments is not effective until 30 days after the first date on which the next rent is due. For example, if rent is due on the first day of the month, and notice is mailed on January 1, then rent is next due on the first of February and the effective date of lease termination is the first of March (N.Y. Military Law § 309).

EVICITION

Following appropriate notice, a landlord may bring a summary non-payment court proceeding to evict a tenant who fails to pay the agreed rent when due and to recover outstanding rent. A landlord may also bring a summary holdover eviction proceeding if, for example, a tenant significantly violates a substantial obligation under the lease, such as using the premises for illegal purposes, committing or permitting a nuisance, or staying beyond the lease term without permission. (Real Property Actions Proceedings Law ("RPAPL") § 711)

To evict a tenant, a landlord must sue in court and win the case. Only a sheriff, marshal or constable can carry out a court ordered warrant to evict a tenant. (RPAPL §749) A landlord may not take the law into his/her own hands and evict a tenant by use of force or unlawful means. For example, a landlord cannot use threats of violence, remove a tenant's possessions, lock the tenant out of the apartment, or willfully discontinue essential services such as water or heat. (Real Property Law §235) When a tenant is evicted, the landlord may not retain the tenant's personal belongings or furniture.

A tenant who is put out of his/her apartment in a forcible or unlawful manner is entitled to recover triple damages in a legal action against the wrongdoer. Landlords in New York City who use illegal methods to force a tenant to move are also subject to both criminal and civil penalties. Further, the tenant is entitled to be restored to occupancy. (RPAPL §713, §853)

It is wise to consult an attorney to protect your legal rights if your landlord seeks possession of your apartment. Never ignore legal papers.

It is important for both landlords and tenants to understand their legal rights. For many years, I have represented both local landlords and tenants in finding solutions to their disputes, while protecting their rights. In doing so, I know how best to represent landlords.

If you feel as a landlord that your rights have been violated, call me to learn more about how we can approach the situation and work toward a resolution.

Lease terminations for victims of Domestic Violence. See link on resources page.