



LEASE AGREEMENTS

KNOW YOUR RIGHTS

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UTA has found that issues with leases are among the most common concerns of tenants. The landlord/tenant relationship tends to empower the landlord, and the lease often reinforces this power dynamic. Lease issues can often be avoided if the tenant enters into a lease agreement with some understanding of the legal aspect of leases. Outlined is some information that all tenants should know before signing, or considering taking action, while under a lease.

****MANY LEASE QUESTIONS REQUIRE LEGAL ADVICE. FOR LEGAL HELP, CALL LEGAL AID AT (518)462-6765. This handout NOT intended to substitute legal advice!****

A written lease is a common means for the landlord/tenant relationship to be created. However, a written lease is not necessary in NYS for a landlord/tenant relationship to exist. Upon receiving keys to a unit, paying rent, and residing in the unit for more than 30-days, an individual will typically be considered a lawful tenant and will fall under the "month to month" tenant category. See the Month to Month tenant handout for more information.

THE BASICS:

A written lease is a CONTRACT. Look to see if your lease agreement is "fixed-term", meaning the terms are fixed for a duration of time defined in the contract. For any contract to be legally binding, it must cover these essentials at minimum:

- The tenant must be at least 18 years old, contracts signed by someone under 18 years of age are not enforceable.
- The lease must, at minimum, identify the landlord, the tenant, the rent per month, the premises, & the duration of the term.

****In New York State, some lease provisions are void as "contradictory to public policy", meaning the lease clause is in direct opposition to a written law & cannot supersede that law. These are commonly referred to as "unenforceable" lease terms. Some common examples of unenforceable terms are:****

- ADDED RENT CLAUSES (new, 2019): A tenant cannot be evicted for nonpayment of fees and charges as "rent". Rent can only be the agreed upon cost and use for the apartment (the actual monthly rent)
- The entire security deposit cannot be used as a penalty (see Security Deposit handout for more information about what the security deposit *can* be used for, etc)
- Tenant cannot waive their right to legal fees in a court proceeding the tenant wins, if the lease allows the landlord to collect legal fees in a court proceeding the landlord wins.
- Tenant cannot waive their right to a "summary proceeding", meaning a hearing in court for eviction. Every tenant has the right to be summoned to court before losing possession of their apartment.
- Landlord cannot exempt themselves/their agents from liability for damage or personal injury to tenant if responsible for the damage or personal injury
- Landlord or their agents cannot give themselves right to enter property at any time. They should only do so with tenant permission or in an emergency.
- Landlord cannot restrict basic right to apartment sharing (see Apartment Sharing handout)
- Landlord cannot exempt self from responsibility to keep tenants belongings safe and dry for reasonable time after eviction. Landlord also cannot hold "lien" on tenant property for unpaid rent or to cover the cost of damages. This means that the landlord cannot take or hold the tenant's property for money the landlord may be owed.

****SEE BACK****

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WHEN CONSIDERING SIGNING A LEASE, MAKE SURE TO LOOK CLOSELY FOR THESE ITEMS IN PARTICULAR:

- What is the duration of this lease? Consider if you will be able to commit to the timeframe.
- Does the lease entitle you to use the laundry, or backyard, or storage space?
- Who pays for which utilities?
- Are the utilities electric or gas? Who pays for what?
- Make sure the lease clearly describes who pays the bills for electricity, gas, heat and water.
- Are there penalties for late rent payment? Remember that there is no law that limits allowable late fees in a lease, and the landlord could technically write that the rent is late after the 1st of the month, there is no grace period in the law.
- How often is the landlord required to paint the apartment? There is no law stating the apartment must get repainted, so it is a good idea to specify this in your lease.
- What kinds of changes are you allowed to make to the apartment?
- What kind of repairs does the landlord require you to make? (Some may be enforceable, some may not - but be aware of what you are signing up for!)
- Is there a clause allowing the landlord to increase the rent if taxes or heating costs increase?
- Are pets allowed? What are the terms surrounding pets? Is there a fee or a deposit you must pay?
- Who cuts the grass?
- Who installs the storm windows or screens?
- Is the apartment going to be furnished by the landlord?

Many tenants are told by the landlord to ignore certain parts of the lease, only to have it thrown at them at a later date. READ THE LEASE BEFORE SIGNING IT. BE COMFORTABLE WITH THE TERMS UPON SIGNING, BECAUSE YOU MAY NOT HAVE AN OPPORTUNITY TO NEGOTIATE CHANGES AFTERWORD'S. GET ALL CHANGES TO THE LEASE SIGNED AND IN WRITING. ALL LEASES MUST BE AT LEAST EIGHT POINTS IN DEPTH IN PRINT SIZE AS OF JULY 1, 1976. NO MORE FINE PRINT.

What happens when your lease term ends?

When the term of a lease agreement ends, both parties are free to discuss renewal if they so desire. If the lease is not immediately renewed, and the tenant remains in the apartment, the landlord could file court papers for "holdover" to seek eviction of the tenant (often the landlord is within their rights to begin the court process the very next day after the lease expires). When the lease expires, the tenant may remain in the apartment and is still entitled to the court process before they can be forced to move. See EVICTION - COURT PROCESS handout for more information.

If the landlord does not file in court and instead accepts the next month's rent, they would be allowing the tenant to stay on a **month-to month** basis with the same provisions in terms of rent, etc. as specified in the former lease. See MONTH TO MONTH TENANTS handout for more information.

Sometimes leases have **automatic re-newal clauses**. By law, these renewal clauses are effective only if the landlord gives the tenant written notice (personally or by certified mail) calling the tenant's attention to the automatic renewal clause at least fifteen days but no more than thirty days prior to the time the tenant has to give notice to renew under the lease. If the landlord fails to serve such notice, the tenant cannot be held to an automatic renewal of the lease. If the landlord does not want to renew, he/she must tell the tenant that the lease will not be renewed automatically. If the tenant wants to move out, he/she should, upon receipt of the notice from the landlord, tell the landlord that the lease will not be renewed.

****Note** that on September 1, 1979, NYS law became effective which forbids a landlord from denying a tenant a lease renewal in retaliation for a tenant's good faith complaint to a code enforcement agency, actions taken to secure or enforce his rights, or activities in a tenant organization. See RETALIATION handout for more information about this. **

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One of the most difficult issues that tenants face involve making decisions about breaking a lease.

THERE ARE ONLY THREE LEGAL REASONS IN NYS FOR TENANTS TO BREAK A WRITTEN LEASE.

1. **DOMESTIC VIOLENCE:** In instances where victim has temporary or final order of protection against abuser and are still unsafe in their apartments, victim may request from family court an order allowing the tenant to end the tenancy early without penalty. This law was created to protect victims of domestic violence.
2. **MILITARY SERVICE:** Persons entering active duty may terminate their lease if the lease was executed by the services member prior to entering active duty, and the leased premises has been occupied by the member/member's dependents.
3. **SENIOR CITIZEN:** Persons over the age of 62, or turning age 62 during the lease term, are entitled to termination of their lease when certified by physician as being no longer able to live independently, or if person age 62 or older will relocate to any type of housing for seniors.

If a tenant breaks a lease for any other reason, or even for no reason at all, they should be prepared for the following:

- The landlord must make good faith attempts at finding a new tenant. A new tenant's lease cancels the old lease.
- The landlord may be successful in that lawsuit and get a judgment against the tenant for the unpaid rent that is lost until the landlord is able to get the apartment re-rented

UTA understands that there are numerous circumstances leading tenants to feel compelled to break their lease agreement, beyond the three lawful reasons that are described above. Tenants should always seek legal advice before making the decision to break a lease.

Are you considering breaking your lease agreement due to issues in your apartment/your landlord's failure to make repairs? This is, unfortunately, a very common issue in the City of Albany. Note that this circumstance does not fall under the 3 lawful reasons to break a lease, and as a result you as the tenant will need to be very prepared to defend your decision thoroughly in court. In the event your landlord sues you for the rent money due for the duration of your lease agreement, as they will have the right to try to do, the court will look to you to illustrate exactly why you chose to leave the apartment, as well as what efforts you took in good faith to attempt to resolve any issues.

To understand more about how to take the proper steps in asserting your rights to a safe, habitable environment, see the REPAIR ISSUES handout. The court will look to you as the tenant to illustrate clearly, with evidence, why it was absolutely necessary for you to break your lease, & even with a great deal of evidence, you could still be held responsible for all or part of the remaining lease term.

If an apartment becomes uninhabitable due to fire or other damage not caused by the tenant, and the lease does not expressly provide otherwise, the tenant should be within their rights to vacate the property and cancel the lease. The tenant should not be held liable for subsequent rental payments, the landlord shall be responsible to refund any rent paid in advance as well as rent security held by the landlord (Real Property Law, Section 227).

If you believe that your apartment is unsafe to the point that it is uninhabitable and as a result you are considering breaking your lease agreement, you should call your local code enforcement department IMMEDIATELY to arrange for an inspection. Code enforcement will assess the situation & will provide you with documentation that proves the state of the apartment if it is in fact unsafe/uninhabitable. City of Albany code enforcement can be reached at (518)434-5995.