

## Landlords and Tenants: Rules and Regulations<sup>1</sup>

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Problems in housing rental usually revolve around conflicts between landlord and tenant. Often tenants view their landlord as a heartless villain who lacks understanding of their situation. Landlords, on the other hand, describe their tenants as irresponsible and destructive. Both tenants and landlords have responsibilities and rights under Florida law. Conflicts frequently occur when the parties fail to clearly communicate their feelings or complaints. All complaints and requests should be made in writing in order to provide a good record.

The following is an overview of the Florida Residential Landlord and Tenant Act, which provides rules for the conduct of both landlords and tenants in the rental of any structure for use as a home, residence, or sleeping place. The Act does not apply to:

1. residence or detention which is incidental to the providing of medical, geriatric, educational, counseling, religious, or similar services;
2. occupancy under a contract for the sale of a dwelling unit;
3. *transient* (or temporary) *occupancy* in a hotel, condominium, motel, rooming house, or mobile home park;

4. occupancy under a proprietary lease in a cooperative apartment; or
5. occupancy by an owner of a condominium unit.

In the event of a serious disagreement or conflict, this document is no substitute for the advice and guidance of a qualified attorney.

### THE RENTAL AGREEMENT

Any agreement to rent a dwelling carries with it the obligation of good faith in its performance and enforcement. A rental agreement will be void and unenforceable to the extent it attempts to waive or preclude the rights, remedies, requirements, or liabilities which arise under the law.

Unless otherwise agreed, the tenant must pay rent at the beginning of each period without demand or notification. If the rental agreement contains no provision for the length of the tenancy, the duration is determined by the periods for which the rent is payable. For example, if the rent is paid weekly, the rental agreement is from week to week; if it is paid monthly, the rental agreement is from month to month.

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Some rental agreements are for specified periods of time. They are written and signed by the landlord and tenant. They are legal documents and are enforceable by law. Other agreements are informal, with no specified time or duration and limited terms. This leaflet addresses issues relating primarily to written rental agreements or leases.

### **LANDLORD'S OBLIGATION TO MAINTAIN PREMISES**

At all times during the tenancy, the landlord must comply with applicable building, housing, and health codes. If there are no applicable codes, the landlord shall maintain all structural components in good repair; this includes roofs, windows, screens, doors, floors, steps, porches, exterior walls and foundations. The landlord shall also keep the plumbing in reasonable working condition. With respect to single-family homes or duplexes, the landlord's obligations may be altered or modified in writing concerning structural components and plumbing.

Unless an alternate written agreement is made, the landlord of a dwelling unit (other than a duplex or single-family home) must make reasonable provisions for the following:

- The extermination of rats, mice, and roaches.
- Locks and keys.
- The clean and safe condition of common areas.
- Outside receptacles for garbage and its removal.
- Heat during the winter.
- Running water and hot water.

If applicable building, housing, or health codes require any of the duties listed above (extermination, locks and keys, common area maintenance, garbage removal, heat or running and hot water), then the landlord's duty is mandatory, and the rental agreement cannot waive those duties. Nothing prohibits the landlord from including in the rental

agreement that the tenant must pay for water, fuel, and utilities.

The landlord is not responsible to the tenant under the Florida Residential Landlord and Tenant Act for conditions caused by the wrongful act (abuse) or omission (neglect) of the tenant, a member of his family, or another person on the premises with his consent.

### **TENANT'S OBLIGATION TO MAINTAIN THE DWELLING UNIT**

At all times during the tenancy, the tenant shall:

- Comply with any building, housing, or health code provisions which are applicable to tenants.
- Keep the area he occupies clean and sanitary.
- Remove garbage in a clean and sanitary manner.
- Maintain plumbing fixtures.
- Use and operate electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances in a reasonable manner.
- Prevent the destruction, defacement, damage, or removal of any part of the premises of property which belongs to the landlord.
- Conduct himself and require his guests to conduct themselves in a manner that does not unreasonably disturb neighbors or constitute a breach of the peace.

### **LANDLORD'S ACCESS TO THE DWELLING UNIT**

Even though the dwelling is rented, the landlord may enter the premises under certain conditions. He/she may enter at any time to protect or preserve the premises. He/she may also enter from time to time to inspect the premises, to make necessary or agreed upon repairs, decorate or make alterations or improvements; supply services agreed upon; or to

show the dwelling to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.

The landlord may also enter for other reasons under certain conditions:

- with the tenant's consent.
- when the tenant is absent from the premises for a period equal to 1/2 the time for periodic rental payments, if rent is not current, and the tenant has not notified the landlord of the intended absence.
- when the tenant unreasonably withholds consent.

The landlord must not abuse the right of access or use it to harass the tenant.

## **FLOTATION BEDDING SYSTEMS**

The landlord may not prohibit a tenant from using a flotation bedding system (water bed) unless its use violates applicable building codes. The landlord may require the tenant to purchase insurance to protect the tenant and landlord against personal injury and property damage to the dwelling units.

## **DEPOSIT MONEY OR ADVANCE RENT**

Whenever the tenant deposits or advances money to the landlord as a security deposit for performance of the rental agreement, or as advance rent, the landlord must either hold the money in a separate account for the benefit of the tenant or post a security bond. If the landlord holds the money in a separate account, that account may be either interest-bearing or noninterest-bearing. In that case, the landlord must not commingle the deposited funds with any other of his funds, nor in any way make use of the money until the money is actually due him (the landlord).

When the landlord posts a security bond with the clerk of the circuit court in the county in which the dwelling unit is located, he may commingle the funds with his own. The tenant shall then receive and collect 75 percent of the interest earned and paid on his money deposited in the account. If the commingle

funds are used in any other manner, the tenant shall receive and collect interest at the rate of 5 percent per year simple interest. S.83.49(1)

Within 30 days after receiving the advance rent or security deposit, the landlord must notify the tenant in writing of the manner in which he is holding the money. That notice shall include:

1. the rate of interest, if any, which the tenant is to receive.
2. the time the interest payments will be made to the tenant;
3. the name and address of the depository; and
4. the disposition, as provided by statute, of the moneys upon termination of the lease.

If the landlord changes the location where the money is deposited or the manner in which it is held, he must notify the tenant within 30 days. The landlord shall either make interest payments, if due, directly to the tenant or credit the amount against the current month's rent. The interest due shall be paid at least once a year.

## **REFUND OF DEPOSIT**

The landlord has 15 days after the tenant vacates the premises for termination of the lease to return the security deposit with interest or 30 days to give the tenant written notice by certified mail of his intention to impose a claim and reasons why. If the landlord fails to give the required notice within the 30-day period, he forfeits his right to impose a claim upon the security deposit even if the premises sustained damages. If the landlord gives the required 30-day notice, the landlord may deduct the amount of his claim and pay the balance to the tenant unless the tenant objects within 15 days of his receipt of the landlord's notice. The landlord then has 30 days from the date of the notice of intention to impose a claim to remit the balance to the tenant. If the tenant does not object to the imposition of the claim within 15 days of receipt of the landlord's notice, the landlord is entitled to keep the amount of his claim. (If the tenant does object to the claim, he would be wise to put his objection in writing and send it by certified mail so that it reaches the landlord within the 15-day

period.) S.83.49(3) The landlord does not have to follow the notice requirements concerning deposited money if:

- A tenant vacates or abandons the premises before the expiration date of the term specified in the written lease (breaks the lease).
- • The tenant vacates or abandons premises which are subject to periodic tenancy without giving the required notice by certified mail. (Periodic tenancy may be: week to week, which requires 7 days notice; month to month, requiring 15 days notice; quarter to quarter, requiring 30 days notice; or year to year, requiring at least 60 days notice. These rental agreements may be written or unwritten.) S.83.49(3)

## ENDING THE RENTAL AGREEMENT

The tenant has the right to terminate the rental agreement when the landlord *materially* fails either to:

1. comply with applicable building, housing, and health codes, or
2. if there is no applicable code, to maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair.

In such cases the tenant must notify the landlord in writing of the landlord's failure and of the tenant's intention to terminate the rental agreement. If the landlord failed to comply due to causes beyond his control (example: hurricane) and continues to make reasonable efforts to correct the problems, the rental agreement may be terminated or altered by the parties. If the dwelling unit is not uninhabitable. If the landlord's failure to comply does not cause the dwelling unit to be uninhabitable, the rent shall be reduced until the residence is fixed. The rent reduction shall be equal to the loss of rental value.

If the tenant fails to uphold his obligation to maintain the dwelling unit the landlord shall notify the tenant in writing of the noncompliance and either give the tenant an opportunity to remedy his failure (correct the violation) or terminate the rental agreement. If the defect is of a nature that the tenant

should not be given an opportunity to correct his behavior, example, intentional destruction or unreasonable disturbance, the tenant shall be given 7 days from the date of the delivery of the notice to vacate. If the tenant's noncompliance is of a nature that he shall be given an opportunity to correct it, for example, keeping unauthorized pets or failure to keep the premises clean and sanitary, and if the tenant does not correct the defect within 7 days, or if the violation is repeated or continued after the written notice, the landlord may terminate the rental agreement. The tenant shall have 7 days from the date of the receipt of the notice to correct the noncompliance.

If the tenant fails to pay the rent when due, and the default continues for 3 business days, the landlord shall notify the tenant and demand that payment be made by the tenant within 3 days of the receipt of the notice. If the tenant fails to pay rent within 3 days, the landlord may terminate the rental agreement.

A periodic tenancy, that is, a rental agreement with no specific duration, may be terminated by either party as follows:

1. If the tenancy is from year to year, the party wishing to end the tenancy shall provide at least 60 days notice before the end of the year.
2. If the tenancy is from quarter to quarter, the notice shall be at least 30 days before the end of the quarter.
3. If the tenancy is from month to month, proper notice is at least 15 days before the end of the month.
4. If the tenancy is from week to week, notice of 7 days is required.

After the rental agreement is terminated, the landlord shall provide the tenant with proper written notice concerning the deposit moneys.

## LANDLORD'S RIGHT TO REPOSSESSION

The landlord may only recover possession of the dwelling unit when the tenant has surrendered possession of the premises, when the tenant has abandoned the premises, or by civil court action in

which the right to possession has been determined. If the tenant holds over (remains in the dwelling) without permission of the landlord, the landlord may recover possession of the dwelling unit through court action. The landlord may also recover double rent for the period during which the tenant fails to surrender possession.

### **TERMINATION OF RENTAL AGREEMENT BY A SERVICE MEMBER**

Any service member may terminate his/her rental agreement by providing the landlord with a written notice and the appropriate documentation. The landlord must be notified at least 30 days before the rental agreement is cancelled. The rental agreement can be terminated for the following reasons.

- The service member has been permanently reassigned to another location more than 35 miles away.
- The service person has been prematurely or involuntarily discharged from active duty.
- The service member has been released from active duty and his/her home is more than 35 miles from the rental unit.
- After signing the rental lease the service member receives orders to move into government quarters or has become eligible to live in government quarters and chooses to do so.
- The service member has received temporary orders to report to a location more than 35 miles away for longer than 60 days.

The request for the termination of the lease must be in writing and contain a copy of the official military orders verified by the service person's commanding officer.

The lease can also be terminated in case the service person dies or is killed. The family should put the request in writing and attach a copy of the official military orders showing the person was on active duty, or include a verification from the service

person's commanding officer and a copy of the death certificate.

### **CONCLUSION**

Disputes in rental agreements often occur when one or both parties do not understand or inflate their rights and responsibilities. Conflicts usually can be avoided when both parties talk openly about what they expect and are willing for others to do. All correspondence should be in writing to provide a proper record. Review the rights and responsibilities of both renter and landlord listed in the Florida Residential Landlord and Tenant Act. If serious problems or complaints develop into conflict or deadlock between landlord and tenant, the services of a qualified lawyer should be obtained. This publication contains general information but it is not intended to be used as a legal document.

### **REFERENCE**

Chapter 83: Landlord and Tenant, Florida Statutes, 2005.