When is rent payable?

Rent is payable at the time designated in the lease. The landlord does not need to give any demand or notice for the rent to be paid. If there is no written lease, the rent is due at the beginning of the term. If the term is longer than one month, rent is payable in equal monthly installments at the beginning of the month.

May the landlord lock out a tenant if the rent is not paid?

If the rent is not paid on time, the landlord must follow certain notice requirements as spelled out in the Landlord-Tenant Act. The landlord must demand in writing that the rent be paid within three days, and that if it is not paid, the rental agreement will be terminated. If the tenant pays within the three days, the landlord may not end the rental agreement.

If the rent is not paid after three days, the landlord may terminate the rental agreement. If the tenant refuses to leave voluntarily, the landlord must file suit to have the tenant evicted. The landlord may not lock out a tenant who has not paid rent, and may not take possession of the tenant's property or remove the tenant's belongings. A court order of eviction is required before a tenant can be forced to move.

Can the landlord raise the rent?

If the landlord and tenant have a written lease specifying the amount of rent, the rent cannot be raised during the term of the lease. In a month-to-month lease, oral or written, the landlord cannot raise the rent without giving the tenant 30-day notice that the rent will be raised on or before a rental payment date, beginning at the next rental payment date or later. For example, if the landlord wishes to raise the rent effective October 1, notice must be given to the tenant on or before September 1.

A provision in the lease allowing the landlord to raise the rent without notice, or with less than 30 days' notice, would be an example of a clause which is unenforceable under the law, even if the tenant agreed to it at the time the lease was signed.

There is no limit under state law on the amount of rent a landlord may charge or the number of times it can be raised, provided proper notice is given. However, if the landlord makes frequent, unreasonable increases in the rent, the tenant may wish to consult a lawyer to see if there are any legal remedies available.

When may rent be withheld?

There are very few circumstances in which a tenant is legally justified in withholding rent. To protect yourself it is best to talk to a lawyer before withholding rent.

The law provides that if the landlord fails to provide essential services such as reasonable heat or running water, the tenant may give written notice to the landlord of the condition, and may arrange for reasonable amounts of these services and deduct their actual cost from the rent. The tenant may also be entitled to reduced rent during the time these services are not provided, or may find other housing and be excused from paying rent during the time alternate housing was necessary. There are other situations, such as damage by fire or other casualty, in which rent may be reduced or the lease terminated.

ENDING A LEASE

Is notice required to end a lease?

A month-to-month lease may be terminated by either party giving written notice to the other at least 30 days prior to a rental payment date. The lease would then end on the designated rental payment date. For example: If you rent an apartment on a month-to-month basis, paying rent on the first day of each month, and you wish to move out on October 1, you must give notice on or before September 1. You may not give notice on September 15 that you intend to move on October 15. If you gave notice on September 15, the first day you could move out without penalty would be November 1. Likewise, if the landlord wants you to move out on October 1, he or she must give you notice on or before September 1. Unless the lease states a definite term, a lease is week-to-week in the case of a roomer paying weekly rent, and in all other cases is month-to-month. However, not all leases with monthly payments are month-to-month leases. The lease may be for a set period of time, with special notice required to terminate.

If you have a lease with a fixed term, be sure to read it carefully for any special requirements to terminate the lease. In some cases, the lease will simply end after the six months or one year is up. If the lease does not provide for this, however (and most do not), it will automatically convert to a month-to-month tenancy after the term is up. The notice requirements noted above (30 days prior to a rental payment date) would then take effect.

Can the lease be canceled before it expires?

If one of the parties violates important conditions of the lease or of the landlord-tenant law, the lease may be terminated. The lease itself may state certain circumstances under which the tenancy will end.

As previously noted, if the tenant fails to pay the rent, the landlord may notify the tenant the lease will end if the rent is not paid within three days. If a tenant fails to comply with terms and conditions other than the payment of rent, he or she must be given 14 days in which to correct the offending behavior. Similarly, if the tenant believes the landlord is not fulfilling his or her duties under the lease or under the landlord-tenant act, the tenant must give the landlord notice of the problem and l4 days in which to correct it. In either case, the notice may state if the condition is not taken care of within l4 days, the lease will end in not less than 30 days.

In the case of serious violations (such as shutting off utilities or essential services), or repeated violations, either party may choose to end the lease under the provisions of the law. Terminating a lease is a serious matter which may have financial consequences for both parties. Talk to your lawyer before deciding to proceed.

Depending upon the circumstances and the reasons the lease was terminated, either the landlord or the tenant may be able to recover damages and attorney fees as a result of the termination.

Does notice have to be in writing?

In most cases, yes. For example, a notice that rent is past due or that certain repairs are required must be in writing. Notices to terminate the tenancy must be in writing. In some situations, the landlord-tenant law states that "written or actual" notice must be given. In other cases, the law states only that one party must give the other "notice" before entering the premises (for example, the law says the landlord must give "one day's notice" to the tenant).

To be on the safe side, and to prevent misunderstandings, it is generally best to put in writing all notices between the landlord and the tenant, and to date the notice and keep a copy. For specific situations, you may wish to consult the landlord-tenant law.

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VOLUNTEER LAWYERS PROJECT
NEBRASKA STATE BAR ASSOCIATION

Landlord-Tenant Law

The Landlord - Tenant Act

In 1974, the Nebraska Legislature passed the Uniform Residential Landlord and Tenant Act. This law governs oral and written agreements for residential property, and restricts what may be included in a lease. It also defines minimum duties of landlords and tenants.

The act does not apply to living arrangements such as occupancy of an institution, a fraternity or sorority, condominium units, premises used primarily for agricultural purposes and temporary occupancy in a hotel or motel. There is also a landlord-tenant act relating to mobile homes, which is not covered in this pamphlet.

What is a lease?

A lease is a contract between a landlord and a tenant, in which the parties agree on terms for renting property. Once the parties enter into a lease, they are usually legally bound by its terms and provisions, as long as these terms are not contrary to the landlord-tenant law.

Rental agreements are sometimes oral rather than written, particularly for situations like the month-to-month rental of an apartment. While an oral lease may be legally binding, it is better to have it in writing so both parties' obligations are clearly spelled out, and misunderstandings are avoided.

What should be included in the lease?

The lease should include:

- the address of the property being rented.
- the name and address of the landlord.
- the amount of rent.
- the amount and nature of any deposits required.
- the date rent is to be paid each month.
- the term of the lease (for example, some leases obligate the tenant to rent the property for six months or for a full year, while other leases specify a month-to-month tenancy).
- the notification requirements for ending the lease.

The lease should state who is responsible for paying the various utility bills and may spell out each party's responsibility for caring for the premises. Some leases also state the names or the number of people who may live in the house or apartment.

Many landlords choose to use a form or pre-printed lease agreement. Like any legal document, such an agreement should be reviewed carefully to make certain all relevant provisions are included, and that both parties understand what is being agreed upon. Do not sign a lease with blank spaces, and do not rely on promises made by one party but not included in the lease.

What cannot be included in a lease?

Leases sometimes include clauses which are not legally enforceable (for example, provisions allowing the landlord to take possession of the tenant's property or to lock the tenant out if the tenant fails to pay the rent on time). The fact they are in the lease does not make them legal. In addition, both landlords and tenants may have other rights and obligations not spelled out in the lease. The fact they are not in the lease does not take those rights away.

Some provisions that are prohibited in a lease include:

- Agreements to pay attorney fees
- Waivers of any rights or remedies under the Landlord and Tenant Act
- Confessions of judgment on claims from the rental agreement
- Limits on liability for the landlord's negligence

If you have a question about the provisions of a lease, talk to your attorney before you sign it. If a landlord uses provisions that he/she knows to be prohibited, the tenant may be able to recover actual damages and attorney fees.

What are the landlord's rights?

An owner of residential property may rent it on almost any terms and for such legal uses as he or she desires, subject to the restrictions in the landlord-tenant act. If the owner sells the premises, the new owner is bound by the existing lease.

The landlord has the right to:

- receive rent and collect damages for misuse or negligent destruction of the property; including damages in excess of the tenant's deposit.
- charge whatever rent the landlord desires (unless your community has rent control laws).
- establish terms and conditions governing the tenant's conduct.

Rules must be applied to all tenants in a fair manner, and notice of those rules must be given to the tenant at the time the lease is signed. Rules adopted after the tenant signs the lease are enforceable if notice is given to the tenant, and if the rule does not substantially change the rental agreement. Rules must promote the appearance, convenience or safety of the property or the welfare of the tenants, preserve the property from abuse, or make a fair distribution of services and facilities for tenants. The landlord's right to establish such rules does not give him or her the right to discriminate against prospective tenants on the basis of such factors as race, religion, or national origin.

What are the tenant's rights?

The tenant may possess the rental property until the lease expires, as long as he or she performs all legal obligations. The tenant may use the property in any lawful way, subject to the restrictions in the lease.

The tenant must be given, in writing, the name and address of the property owner and the name and address of any person authorized to manage the premises. This information must be kept current to reflect any changes.

Can the tenant sub-let the property?

Unless prohibited by the lease, the tenant may sub-lease residential property. However, leases often prohibit sub-leasing, or require the landlord's consent to do so. Sub-leasing can cause problems, because the original tenant then becomes both a landlord and a tenant. The original tenant must fulfill his or her obligations under the original lease agreement, even if the property has been sub-let.

When can the landlord enter the property?

The landlord may enter a rental dwelling to inspect the premises, make repairs, supply services or exhibit the property to workers, prospective tenants or purchasers. In such instances, the landlord should give the tenant at least one day's notice that he or she intends to enter, and should enter only at reasonable times. The landlord may enter without the tenant's consent only if there is an emergency, or if the tenant has abandoned the premises.

The lease may require tenants who intend to be away from their apartment for a period of time more than seven days to notify the landlord of the absence, so the landlord does not assume the property has been abandoned.

LANDLORD-TENANT DUTIES

Who must maintain the property?

The Nebraska Landlord-Tenant Act requires landlords to comply with the community's minimum housing codes concerning health and safety. If repairs cannot be negotiated between the landlord and tenant, violations of the housing codes should be reported directly to the local housing office.

If the community does not have a housing code, the law imposes certain minimum responsibilities on the landlord. He or she must make all repairs to keep the premises in a fit and habitable condition; keep the common areas clean and safe; maintain whatever facilities are supplied, such as the furnace, plumbing and elevators; provide garbage cans and supply reasonable heat and hot and cold running water. A landlord and tenant can, under some circumstances, enter into a written contract providing for the tenant to take care of some of these duties, provided the tenant receives some benefit for doing so. But without such a contract, the landlord is responsible.

The tenant must comply with all community housing codes. He or she must keep the dwelling unit as clean and safe as conditions permit, dispose of garbage in a clean and safe manner, keep the plumbing clean and use the electrical, plumbing, heating and cooling facilities in a reasonable manner.

The tenant may not deliberately or negligently destroy, damage, or remove any part of the premises. The property must be left in as clean a condition, excepting ordinary wear and tear, as it was when the tenancy began. If the tenant independently does repairs, painting or fixing up, he or she usually has no legal claim for reimbursement from the landlord. Finally, tenants and guests must conduct themselves in a manner which will not disturb their neighbors.

May the landlord shut off services?

A landlord may not interrupt electric, gas, water or other essential services to the tenant, nor may he or she attempt to recover possession of a dwelling unit by interrupting such services.

A landlord may not take retaliatory action, such as increasing rent or decreasing services, if a tenant complains to a government agency about the condition of the premises, or organizes or participates in a tenant's group.

DEPOSITS AND RENT

Can the landlord require a deposit?

The landlord may require the tenant to pay as much as one month's rent as a security deposit, and as much as one-quarter of one month's rent as a pet deposit. For example, if the rent is $200 per month, the deposit required cannot exceed $200, plus $50 if the tenant has a pet.

When the lease ends, the landlord may apply the deposit to unpaid rent and to any damage done to the property. This may include the costs of cleaning the apartment, but it is not intended to cover normal wear and tear.

Upon demand, the tenant has a right to receive, within l4 days, the balance of the deposit and an itemization of any costs paid out of that deposit. (It is best to put the request in writing.) The tenant should give the landlord a forwarding address so the deposit may be refunded.

Many disputes over deposit refunds could be avoided if the tenant would make a list — preferably before moving in, or immediately after moving in — of any existing defects or damage in the apartment. The list should be dated, and if possible signed by the tenant and the landlord, indicating both parties agree on what damage already existed. Both parties should keep a copy of the list. It is also recommended to make a similar list upon moving out to help in settling disputes. Disputes over deposit refunds often must be resolved in small claims court if the parties cannot agree.