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Volunteer Lawyers Project  
Nebraska State Bar Association

# Landlord-Tenant Act

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The Landlord-Tenant Act (the Act) sets forth the rights and duties of landlords and tenants who are renting residential living space located in the State of Nebraska. The Act also prohibits certain unfair terms in rental agreements.

The Act does not apply to living arrangements at institutions where occupancy is incidental to receiving another service, for example: staying at a hospital; boarding school; alcohol treatment facility; fraternity or sorority. The Act also does not apply to hotels, motels, mobile homes or farms.

### What is a lease?

A lease is the written contract between a landlord and tenant that spells out the terms and conditions for renting property. If you sign a lease you agree to its terms and conditions and are legally bound to the obligations contained therein.

The terms of a rental agreement should always be committed to a writing so that every person's obligations are clearly spelled out and misunderstandings are avoided. Before you enter into that handshake-deal, be advised: proving the terms of an oral agreement will be difficult if there is ever a disagreement and parties wind up in court.

Always read your lease in its entirety to make sure you know the full extent of what is being agreed to. Do not rely on promises made by a landlord that are not written down and included in your lease. Make sure to always keep a copy of your lease.

### What terms should be included in a lease?

All leases should include the following basic information and terms:

- the address of the property being rented
- the name and address of the landlord
- the names of all occupants allowed to reside at the property
- the amount charged for rent, late fees and security deposits
- the date rent is to be paid each month (otherwise rent is due on the first of each month)
- the initial term of the lease (otherwise leases run on a month-to-month basis)
- the notice required to end the lease (30 days advance notice on a month-to-month lease)
- which party is responsible for paying for electric, gas and water utility
- which party is responsible for repairs and maintenance items

### What cannot be included in a lease?

Nebraska's Residential Landlord Tenant Act gives tenants certain rights that cannot be waived, contracted away or given up. It doesn't matter what the lease says, some terms are unfair and are not legally enforceable. A lease may not require a tenant to:

- waive any of his rights or remedies under the Act
- 'confess judgment' and give up the right to defend against a lawsuit
- agree to pay anyone's attorney's fees; or
- limit a landlord's liability for active and actionable negligence (i.e. carelessness)

### What are a tenant's rights?

#### Exclusive Possession

A tenant has the right to live in and occupy the leased premises to the exclusion of all others. Once a landlord has signed a lease and accepted a security deposit from a tenant he is legally bound to deliver up possession of the premises to the tenant on the 'move in' date as found in parties' rental agreement. A landlord is not free to cancel a rental agreement if someone else offers to pay more money to rent the same space. Similarly, a landlord may not decide to move his mother in law into part of your leased space and tell you to 'take it or leave it'.

#### Safe Housing Fit for Habitation

Every residential tenant has the right to a house or apartment that is safe to live in and fit for habitation. The Nebraska Landlord-Tenant Act requires landlords to comply with the community's minimum housing codes concerning health and safety. Once a landlord receives written or actual notice of a defect materially affecting health and safety he is under an obligation to substantially comply with applicable minimum housing codes in order to correct the problem.

#### Who must maintain the property?

A landlord with actual or written notice has a duty to follow minimum housing codes materially affecting health and safety, make repairs to keep the premises in a fit and habitable condition, keep any common areas clean and safe, and keep mechanical systems (i.e. electrical, plumbing, and HVAC) in good working order.

The responsibility for specified repairs, maintenance tasks, and alterations may be delegated to a tenant only by written agreement. When renting a single-family house, this 'agreement' may be in the lease itself. In all other cases, such as when renting an apartment, any agreement requiring a tenant to perform specified repairs or other improvements must be in a separate writing signed by landlord and tenant. A landlord may not use these agreements to evade his obligations under the Act.

## **What is a 14 Day Notice?**

If maintenance issues that materially affect your health and safety are ignored, the proper course of action is to mail your landlord a 14 Day Notice. A 14 Day Notice is a letter that describes the unsafe condition and gives formal notice that you are terminating the rental agreement in 30 days unless the condition is fixed within 14 days. If 14 days runs and the safety issue is not corrected, a tenant may end his lease and move out on the date designated in the notice (as long as the designated move out date is at least 30 days from the date notice was received).

## **What are a landlord's rights?**

### **Freedom to choose his own terms and conditions**

A landlord is free to rent out his property at a price and on terms of his own choosing subject to the limitations of the Act. A landlord has the right to receive rent, receive reimbursement for damage to the property over normal wear and tear, and establish terms and conditions governing the tenant's conduct.

### **Reasonable entry**

Upon one day's advance notice, a landlord may enter a leased residence to perform an inspection, make necessary repairs and improvements, or supply necessary services. A landlord may also enter a leased residence for the legitimate business purpose of showing the dwelling to a potential buyer, mortgage lender, future tenant, handyman or contractor.

Except in cases where an emergency exists, a landlord is required to give at least one day's advance notice before entering a tenant's house or apartment and may only enter during reasonable hours. A landlord may not abuse his right of access, for example, to harass a tenant; and, a tenant may not unreasonably withhold his consent for the landlord to enter the premises for a legitimate business purpose.

### **What is a 3 Day Notice?**

To evict a tenant for nonpayment of rent, a landlord must first mail or hand deliver to the tenant written notice informing of the delinquent rental balance and of the landlord's intention to terminate the rental agreement if rent is not paid within three days after service of notice. A landlord must accept payment from a tenant that is made in compliance with the notice. A landlord is under no duty to accept a partial payment or a payment made past the three day time period specified in the notice.

### **Prohibited Actions - retaliation, utility shut-off, self-help**

A landlord may not retaliate against a tenant who has complained to code enforcement about the condition of the premises by increasing rent or decreasing services.

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

A landlord may not use self-help and lock out a tenant who has not paid rent. A court order of eviction is required before a tenant can lawfully be forced to move.

## **Security Deposits**

A landlord may require a tenant to pay a security deposit equal to (but not greater than) one month's rent. A landlord may additionally require payment of a pet deposit equal to (but not greater than) twenty-five percent of one month's rent.

When a lease ends, a landlord may apply the deposit towards unpaid rent and any damage to the premises over normal wear and tear. Upon written demand, a tenant has a right to receive, within 14 days, an itemization of any costs that were deducted from his deposit and a refund of any balance.

## **Rent Increases**

A landlord may not raise the amount of rent charged before the specified term of a written lease ends. For example, a one year lease locks in the amount a tenant may be charged for rent for twelve months.

Once an initial lease term runs, a lease runs on a month-to-month basis by operation of law until a new lease is signed. When a lease runs on a month-to-month basis, a landlord must give a tenant at least 30 day's advance notice that rent will increase. As long as proper notice is given, a landlord may increase rent in an amount of his own choosing.

If you do not agree to an increase in rent, your only option is to give your landlord a 30 Day Notice and move out. A month-to-month lease is terminated by giving your landlord written notice at least 30 days in advance of a new monthly term that you are ending your lease. (Unless otherwise specified, a monthly term starts on the first day of the month, i.e. the day rent is due.)

## **What happens if I move out before my lease runs?**

Moving out prior to the expiration of a lease agreement will not absolve you of your responsibility to pay rent until the space is re-rented or the remaining months run. When a tenant moves out early, a landlord is obligated to mitigate his damages and take steps to lease the premises to new prospective tenants.

## **Does notice have to be in writing?**

To prevent misunderstandings all notices should be in writing and clearly dated with a copy kept for your safekeeping. Certain notices must be in writing: any notice to pay rent, make necessary repairs, or to end a lease must be in writing to be effective.

The information in this brochure is for educational purposes only. It is not legal advice or a substitute for legal advice by a lawyer. If you want legal advice, you should contact a lawyer licensed to practice law in Nebraska.

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