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Landlord-Tenant

At some point during their lives most people will be involved with the rental of real estate, either as landlord or tenant. Although the problems facing a landlord are just as perplexing at times as those facing the tenant, the problems facing the tenant are the general subject matter of this pamphlet.

A Lease

The relationship between landlord and tenant arises from an agreement called a lease by which one party occupies the real estate of another with the owner's consent.

No particular words are necessary to create a lease, but generally the terms of a lease include a description of the real estate, the duration of the agreement, the rent, and the time of payment. In Illinois, a lease need not be in writing unless it is for a term greater than one year. Although the terms of an oral lease may be difficult to ascertain, a party may be bound to the terms of an oral agreement just as much as a written one.

Types Of Leases

The most common form of lease is a written agreement which spells out all of the terms and conditions binding upon both parties.

If a lease is not in writing, it will probably be a periodic lease, which is one without a definite term. The period is generally determined by the frequency of the rental payments; for example: week to week, month to month, year to year.

Termination Of The Lease

If a lease is not for a specific term, it may be terminated by either party with proper notice.

a) For year-to-year tenancies, other than a lease of farmland, either party may terminate the lease by giving sixty days' written notice at any time within the four months preceding the last sixty days of the lease.

b) A week-to-week tenancy may be terminated by either party by giving seven days' written notice to the other party.

c) Farm leases generally run for one year. Customarily, they begin and end in March of each year. Notice to terminate must be given at least four months before the end of the term.

d) In all other lease agreements for a period of less than one year, a party must give thirty days' written notice. Any notice given should call for termination on the last day of that rental period.

When a lease is written, the expiration date is usually stated in the document. No termination notice is necessary in such a case.

Termination For Breach

The most common breach of a lease is non-payment of rent. In this case the landlord must serve a five-day notice upon the delinquent tenant. Five days after such notice, the landlord may commence eviction proceedings against the tenant. If, however, the tenant pays the rent within those five days the landlord may not proceed with an eviction. The landlord is not required, however, to accept rent that is less than the exact amount due. If the landlord accepts a tender, it may effect the rights to proceed under the notice, even though the statute provides that

"Notice made pursuant to this Section shall . . . not be invalidated by payments of past due rent demanded in the notice, when the payments do not, at the end of the notice period, total the amount demanded in the notice."

The notice itself does not end the lease but merely states that the landlord can consider the lease ended and bring a suit for possession.

Service Of Demand Notice

Notice may be served upon tenant by delivering a written or printed copy to the tenant or by leaving the same with some person above the age of thirteen (13) years who lives at the party's residence or by sending a copy of the notice to the party by certified or registered mail with a return receipt from the addressee. If no one is in the actual possession of the premises, then posting notice on the premise is sufficient.

Subletting Or Assigning The Lease

Often printed leases prohibit the tenant from subletting the premises without the written consent of the landlord.

Such consent cannot be withheld unreasonably, but the prohibition is enforceable under the law. If there is no such prohibition, then a tenant may sublease or assign his lease to another. In such cases, however, the tenant will remain responsible to the landlord unless the landlord releases the original tenant. A breach of the sub-lease will not change the initial relationship between the landlord and tenant.

Remedies Of A Tenant

If the landlord has breached the lease by failing to meet the duties as a landlord under the lease, certain remedies arise in favor of the tenant.

- a) The tenant may sue the landlord for damages sustained as a result of the breach.
- b) If a landlord fails to maintain a leased residence in a livable condition, the tenant may be able to vacate the premises and terminate the lease under the theory of "constructive eviction".
- c) Also, the failure of a landlord to comply substantially with local housing codes may be a breach of the landlord's "implied warranty of habitability" (independent of any written lease provisions or oral promises) which the tenant may assert as a defense to an eviction based on the non-payment of rent. However, breach by landlord of local housing codes does not automatically entitle a tenant to withhold rent. The obligation to pay rent continues as long as the tenant remains in the leased premises and to assert this defense successfully, the tenant will have to show that his damages resulting from landlord's breach of this "implied warranty" equal or exceed the rent claimed due.

A landlord's breach and tenant's damages may be difficult to prove and because of the limited and technical nature of these rules tenants should be extremely cautious in withholding rent and should probably only do so after consulting an attorney.

Breach By The Tenant

If rent is not paid the landlord may (1) sue for the rent due or to become due in the future or (2) terminate the lease and collect any past rent due.

If a tenant fails to vacate leased premise at the end of the lease term, the tenant may become liable for double rent for the period of holdover if the holdover is deemed to be willful. The tenant can also be evicted.

If the tenant damages the premises, the landlord may sue for the repair of such damages.

Lease Provisions

It is unlawful for a landlord to discriminate in the leasing of a dwelling house, flat or apartment against prospective tenants who have children under the age of 14 years.

Provisions in a lease agreement which exempt a landlord from liability for damages to persons or property caused by the negligence of the landlord are viewed as being against public policy and are therefore unenforceable. Under certain circumstances in the event of non-payment of rent the landlord may hold the furniture and personal property of the tenant until past rent is paid by the tenant.

Security Deposits

A tenant is usually required to deposit with the landlord a sum of money prior to occupying the premises. This is usually referred to as a security deposit. This money is deemed to be security for any damage to the premises or non-payment of rent. The security deposit does not relieve the tenant of the duty to pay the last month's rent. It must be returned to the tenant upon vacating the premises, if no damage has been done beyond normal wear and tear and the rent is fully paid.

If a landlord fails to return the security deposit promptly, the tenant can sue to recover that portion of the security deposit to which the tenant is entitled.

A landlord leasing residential real estate containing five or more units who receives a security deposit may not withhold any part of that deposit as compensation for property damage unless he furnishes to the tenant, within thirty days of the date the tenant vacates, a statement of damage allegedly caused by the tenant and the estimated or actual cost of repairing or replacing each item on that statement. If no such statement is furnished within 30 days, the landlord must return the security deposit in full within 45 days of the date the tenant vacated.

If a building contains 25 or more residential units, the landlord must also pay interest on the deposit from the date it was paid, if held more than 67 months. (Interest is calculated at the rate paid by the largest bank in Illinois, as determined by total assets, on a passbook security account.) Landlord and tenant matters can become complex. Both landlord and tenant should consult an attorney for assistance with particular problems.