

13.2: RESIDENTIAL LEASES

Leases are contracts between landlords and tenants, (also referred to as lessors and lessees) which can be in writing or verbal, allowing the tenant to take possession of the landlord's property for a specific term and for a specified rent. All leases can be in writing, but do not have to be. However, all leases that are for a term of one year or more must be in writing. An oral lease for more than one year cannot be legally enforced. (General Obligations Law § 5-701) Leases that are not in writing are called month-to-month leases.

Written leases that are for a term of one year or more can become month-to-month leases. For example, take a tenant who has a written lease for a term of one year. After one year, the written lease now expires, but the landlord allows the tenant to remain in the rental unit without signing a lease renewal or new lease. All the terms of the written lease will remain intact except that the lease is now a month-to-month lease, meaning the term is one month. If the tenant wants to move out, or the landlord wants to raise the rent, the law regarding month-to-month leases applies.

The law regarding month-to-month leases allows tenants to terminate their lease with one month's notice. (30 days in NYC.) However, the one month's notice must be given before the first of the month of termination. For example, if a tenant wants to move out at the end of June, the one-month notice would have to be given to the landlord no later than May 31st. If the notice was given to the landlord on June 1st, the tenant would be responsible for both the June and July rent. The lease would not terminate until the end of July.

The law for landlords of month-to-month leases is very much the same. If a landlord wants to terminate the tenancy of a tenant, the same rules regarding one month's notice apply. The same one month's notice applies if the landlord wants to raise the rent.

Terminating a month-to-month lease is much easier as no cause needs to be established, only proof of proper notice. Not so if a tenant or landlord attempts to terminate a longer term lease before the end of the term. In those situations, cause must be alleged and proven.

Plain English: The law in New York requires that all leases must be in plain English. The language in residential leases must be clear, simple, and understandable. (General Obligations Law § 5-702; NY CPLR § 4544)

At a minimum, a lease should identify the premises to be leased, specify the names and addresses of the parties, the amount and due dates of the rent, the term or duration of the lease, conditions of occupancy, and the rights and obligations of both parties.

Rent: As long as an apartment is not subject to Rent Control or Rent Stabilization, a landlord can charge any amount of rent agreed upon by the parties. Rent is usually paid monthly and usually is due the first of the month. Some leases give a grace period that the rent can be paid before a late fee applies.

Rent Control: Rent control limits the rent a landlord may charge for an apartment. It also restricts the right of the landlord to evict tenants. Rent control is still in effect in New York City and parts of Albany, Erie, Nassau, Rensselaer, Schenectady, and Westchester counties.

Rent Stabilization: Rent stabilization generally covers buildings built after 1947 and before 1974, along with some buildings built with tax incentives. Rent stabilization limits the ability of landlords to raise rent. It also entitles tenants to have their leases renewed, and tenants may not be evicted except on legal grounds. You will find rent stabilization laws in NYC and in certain localities located in Nassau, Westchester, and Rockland counties.

Security Deposit: This is money paid by a tenant that is held in escrow by a landlord as collateral in the event the tenant damages the property they are leasing, or fails to pay all the rent that is due. The amount of a security deposit is whatever the parties agree to. Generally, it is an amount that equals between one and two months' rent. Non-refundable security deposits are unlawful.

Landlords of buildings with six or more apartments must put all security deposits in a New York bank accounts earning interest at the prevailing rate. Each tenant must be informed in writing of the bank's name and address and the amount of the deposit. Landlords are entitled to collect annual administrative expenses of one percent of the deposit. All other interest earned on the deposits belongs to the tenants. (General Obligations Law § 7-103)

New York State law requires that security deposits must be returned in a reasonable amount of time. There is no specific time frame set by statute. Generally speaking, courts have interpreted 30 days to be a reasonable amount of time.

A landlord can use a security deposit to make repairs caused by the tenant. A landlord can also use the security deposit for any rent or fees that are unpaid. If a landlord does keep any amount of a security deposit, they must inform the tenant in writing on why and

how they calculated their expenditures.

While a landlord can deduct from the deposit actual cost of damages including labor costs, they cannot deduct for repairs that are considered normal wear and tear. However, if a tenant leaves the apartment unclean, the costs of cleaning can be deducted from the security deposit.

Renewal Clauses: Leases may contain automatic renewal clauses. However, to be enforceable, the landlord must give the tenant advance notice of the existence of this clause between 15 and 30 days before the tenant is required to notify the landlord of an intention not to renew the lease. (General Obligations Law § 5-905)

Senior Citizen Rights: Senior citizens have the right to terminate their leases with thirty days' notice to their landlord if they are at least 62-year-old, and accepted into: 1) an adult care facility; 2) a residential health care facility; 3) subsidized low income housing; 4) other senior housing; or 5) move into the residence of a relative or family member if certified by a physician as no longer able to live independently. (Real Property Law § 227-a)

Active Duty Military: Tenants that are on active duty with the military and transferred out of the area, may terminate their lease with a thirty-day notice corresponding to the rent due date. (NY Military Law § 310)

Victims of Domestic Violence: Tenants that are victims of domestic violence and are shielded by a court order of protection are permitted, with ten days' notice to their landlord, to seek a court order terminating their lease. If the lease is terminated by court order, the tenant will be released from any further rental payments. (Real Property Law § 227-c)

Sharing Occupancy: A landlord cannot restrict the occupancy of an apartment strictly to the named tenant or tenants in a lease. Tenants may share the rental unit with immediate family, one additional occupant, and the occupant's dependent children, provided that the tenant or the tenant's spouse occupies the premises as their primary residence.

When a lease names more than one tenant, and one of the tenants named in the lease moves out, that tenant may be replaced with another occupant and the dependent children of the occupant.

Tenants have the obligation to give the landlord notice of the additional occupants within 30 days. If the tenant moves out, the occupants have no right of occupancy.

Landlords may limit the total number of people living in rental based on state and local occupancy laws.

Heat Bills: The law in New York requires that a landlord or heat supplier must furnish, upon request by a prospective tenant, the cost of heating and cooling for the past two years. (Energy Law § 17-103)

Providing Heat: A landlord must provide heating, plumbing, and electrical apparatus in good and safe working order, even if the tenant pays the utility bills. State law requires that landlords who supply heat to tenants must do so between October 1 and May 31. Multiple Dwelling Law § 79 links the outside temperature to the required indoor temperature as follows:

Time	Outside	Inside
6 a.m. to 10 p.m.	55 degrees or less	68 degrees
10 p.m. to 6 a.m.	40 degrees or less	55 degrees

Municipalities may require higher, but not lower, indoor temperatures.

Hot Water: Landlords must provide both hot and cold water. (Multiple Dwelling Law § 75) Hot water should have a constant temperature of 120 degrees or greater at the tap.

Safety: Landlords are required to follow all Certificate of Occupancy requirements. They must install and maintain the proper number of smoke detectors and carbon monoxide detectors. They must abide by all state and local lead paint laws. The apartment must be secured with functioning window and door locks. Some buildings require functioning intercom systems and access to fire escapes. Landlords are required to take reasonable measures to keep their property safe from crime.

Assignment of Lease: "Unless a greater right to assign is conferred by the lease, a tenant renting a residence may not assign his lease without the written consent of the owner, which consent may be unconditionally withheld without cause provided that the owner shall release the tenant from the lease upon request of the tenant upon thirty days' notice if the owner unreasonably withholds consent which release shall be the sole remedy of the tenant. If the owner reasonably withholds consent, there shall be no assignment and the tenant shall not be released from the lease." (Real Property Law § 226-b(1)).

Sublet: “A tenant renting a residence pursuant to an existing lease in a dwelling having four or more residential units shall have the right to sublease his premises subject to the written consent of the landlord in advance of the subletting. Such consent shall not be unreasonably withheld.”

(Real Property Law § 226-b(2)(a))

“If the landlord consents, the premises may be sublet in accordance with the request, but the tenant thereunder, shall nevertheless remain liable for the performance of tenant’s obligations under said lease. If the landlord reasonably withholds consent, there shall be no subletting and the tenant shall not be released from the lease. If the landlord unreasonably withholds consent, the tenant may sublet in accordance with the request and may recover the costs of the proceeding and attorney’s fees if it is found that the owner acted in bad faith by withholding consent.”

(Real Property Law § 226-b(2)(c))

Pets: Whether a landlord will allow a tenant to have pets is a lease term that is negotiated between the parties. Landlord are allowed to charge more rent and fees, including higher security deposits with tenants that want to have pets.

Snow Removal and Lawn Cutting: Tenants of single family and two-family dwellings are responsible for cutting the grass and shoveling the snow unless the landlord and tenant(s) agree otherwise. Some local laws even require that the first-floor tenant is responsible for snow removal on the public sidewalk in front of the rented premises.

Warranty of Habitability: “In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety. When any such condition has been caused by the misconduct of the tenant or lessee or persons under his direction or control, it shall not constitute a breach of such covenants and warranties.” (Real Property Law § 235-b(1))

“Any agreement by a lessee or tenant of a dwelling waiving or modifying his rights as set forth in this section shall be void as contrary to public policy.” (Real Property Law § 235-b(2))

The warrant of habitability does not have to be stated in the lease. It applies to all residential leases by law.

Tenant Repair and Deduct Law: When a tenant has repeatedly requested repairs in writing over an extended period of time, the tenant may, under common law, make the repairs and deduct the costs of said repairs from the rent. There is no written law that allows this remedy in NYS. Therefore, there is no guaranteed protection given a tenant who decides to take the course of action.

Appliances: Landlords are not required to provide appliances in an apartment. However, if they do not provide a stove or refrigerator with the apartment, they must notify the tenant before finalizing the lease. If the landlord does supply appliances, they must keep them in good working order.

Privacy Rights of a Tenant: Tenants are entitled to what is referred to as quiet enjoyment of their leased premises. This doctrine limits a landlord’s access to a tenant’s apartment so as to protect the privacy of a tenant. If a landlord wants to enter the tenant’s apartment, they must give reasonable notice (24 hours) before doing so. However, a landlord may enter without notice for emergencies. Fire, gas or water leaks, and burglary are considered emergencies. A lease often details how the tenant’s right to privacy will be protected.

Unlawful Lease Terms: Certain terms in a lease are void by law. A term that exempt the landlord from liability for injuries to persons or property caused by the landlord’s negligence, or that of the landlord’s employees or agents would be void pursuant to General Obligations Law § 5-321. Waiving the tenant’s right to a jury trial in any lawsuit brought by either of the parties against the other for personal injury or property damage would be void pursuant to Real Property Law § 259-c. Requiring tenants to pledge their household furniture as security for rent is void pursuant to Real Property Law § 231.

Renters Insurance: Tenants often purchase renter’s insurance to cover their risk of loss if their personal property in their apartment is damaged. Landlord’s carry insurance that covers the risks to the landlord’s property, not to damage or losses incurred to a tenant’s personal property in a rental unit. When damage results to a tenant’s personal property from something like water damage due to a broken water supply line, or burglary, the landlord will not be responsible for said damages. That is when renters insurance would help a tenant recover from their loss. If the landlord were in some way legally responsible, a tenant may be able to sue the landlord for said damages but that is often not easy to prove, can be expensive, and is time consuming.

Evictions: Evictions are legal proceedings where a landlord is asking a civil court to issue an order for removal of the tenant from an apartment. Typically, when a tenant has not paid the rent (is in arrears), or violated terms of the lease (like having a pet in an apartment where the lease specifically prohibits such), or is a hold over tenant (when a tenant remains in possession of a property without the landlords consent after their lease has expired), a landlord must first give three days' written notice of the violations, then serve a tenant with a Notice of Petition and Petition to appear in court for a Summary Proceeding for eviction. The Petition sets out the grounds for the eviction, while the Notice of Petition sets out the date, location of the court, and time of appearance for the Summary Proceeding. A Summary Proceeding is an expedited court proceeding.

At the Summary Proceeding, if a judge finds there that no triable issues exist, there is no hearing. The landlord then obtains an order for eviction and judgment for rent due. If the judge finds there is a triable issue of fact (like a warrant of habitability violation claim), then the judge can set a hearing date to get testimony from both parties before rendering an order of eviction or dismissing the case.

Landlords may not use self-help to evict a tenant. A landlord cannot do things like change the locks, remove a tenant's possessions, or shut off the utilities to force a tenant out. These actions are criminal acts under New York State Real Property Law § 235.

If a judge issues a judgment of eviction known as a Warrant of Eviction, the tenant will have 72 hours to vacate the premises. If the tenant fails to abide by the Warrant of Eviction, only a marshal of the court can enforce the Warrant. The landlord would hire the marshal to enforce the Warrant and remove the tenant.

If the tenant leaves their personal belongings behind in an apartment, whether the tenant is evicted or not, unless the tenant has given notice to the landlord that they do not want said personal property, the landlord must place those items in a secure storage area for 30 days before disposing of them. The tenant has the right retrieve said items of personal property within the 30-day period of time as long as they pay the landlord for the reasonable cost of the storage. After the 30-day period expires, the landlord can sell any remaining personal property in storage and apply those funds to any monies owed to the landlord by the tenant.

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