

THE IN'S AND OUT'S OF RENTAL HOUSING

By Attorney Michael H. Wald

With all the rental units in the Metroplex, it is worth taking a look into the law as it pertains to these properties, and the rights of tenants and landlords alike.

The rental agreement can either be oral or written with the same legal value, but a lease longer than one year has to be written to be enforceable.

It makes more sense to request a written lease, just to be able to spell out specific requirements and to be able to refer to them easier.

Whether you are leasing an apartment or renting one out, make sure to initial any changes on all copies of the lease form and sign all forms.

It is smart to provide for termination in the lease. Texas law states that if no provision for notice of termination is provided in the lease, then the lease can be terminated with one month's notice, if it is a month-to-month lease, or if the term of the lease has expired. But the length of time for notice of termination only has to be as long as the periods when rent is due -- in week-to-week leases, 7 days is enough time for the notice.

In Texas, the security deposit must be returned to the renter no more than 30 days after he's left the unit. And if the owner keeps the deposit for damages caused by the renter, he must explain why he kept the money within the same 30 days. The burden of proof in this case is on the shoulders of the property owner, who must explain that the charges were appropriate.

When not returning the deposit and not explaining why it was held, the owner must prove that he was not acting in bad faith. The renter can recover three times the part of the deposit withheld plus

\$100.00 and attorney's fees if bad faith is found.

The renter must provide a forwarding address (written) and must live up to all obligations of the lease in order to be able to charge the property owner with bad faith.

Many renters tell the property owners to use the security deposit to pay for the last month's rent. This is not lawful, and can result in penalties and payment of the owner's attorney's fees.

When it comes to having the landlord turn off the water if you are late in your rent, this is something he can do if he is paying the water bill and charging you for it in your rent. Landlords can't turn off utilities which the renter is paying for directly.

All subletting of an apartment must be done in Texas with the landlord's permission.

In terms of repairs, the landlord is only responsible for fixing problems that may affect the health or safety of the tenants, caused by normal wear and tear. Repairs do not have to be made when the problem was caused by the tenants or their guests.

The tenant does not have the right to withhold rent if he feels that there are repairs that need to be made. In this case, the tenant can, after a reasonable time has passed when the repairs should have been made, give notice of lease termination in seven days. The landlord must return all rent already paid for the time the tenants won't be living there.

If the court finds the tenant correct in stating that the apartment is unhealthy or unsafe, the tenant can force repairs to be made and stay put, and receive money from the landlord -- \$100.00, plus one month's rent, and additional sums.

When the landlord locks a tenant out for delinquency in rent, the landlord must obey several rules, such as providing a note to the tenant and telling him where to get a new key to get in, which he must be given.

Landlords can also seize tenants' property when rent has not been paid and when the "landlord's lien" is spelled out on the lease. Several items cannot be taken, such as: clothing, family photos, food, medicine, beds, tools, kitchen utensils, and others.

If it comes to eviction, the landlord cannot do it himself. He must get a court order, which is enforced by a sheriff or constable. But before the order is filled, the landlord must give notice to the tenants, file a lawsuit at the Justice of the Peace Court, go through a hearing against the tenants, win there, and not be presented with an appeal. Usually, the tenants choose to move out before this entire process takes place.

In essence, both the landlord and the renter enjoy protection against wrongs by the other, but in no case can either party take extreme action without going to court first. It is a fair system which regulates what can be an unfair business, for both involved.

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