

Housing Forum Conference

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Outline of Eviction Process

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Establishment of the landlord/tenant relationship

The foundation of the landlord/tenant relationship is the residential dwelling lease. This lease is a contract between the landlord and tenant detailing obligations of both parties. In the assisted housing industry, the lease also stipulates requirements of the U.S. Department of Housing & Urban Development in reference to such matters as rent determination and computation, the "One Strike and Your Out" provision pertaining to drug related criminal activity, lease violation notice requirements, and due process rights of the tenants.

The main lease obligation of the landlord is described as an "implied warranty of habitability". This is a warranty of the landlord to the tenant that the leased property is fit to live in and will remain so through the duration of the lease period.

Lease obligations of the tenant are, but not limited to:

1. Agrees to pay monthly rent amount as stated in the lease by the time prescribed.
2. Agrees to annual recertification of household income and composition.
3. Agrees to report changes in household composition within 10 days.
4. Agrees to perform community service if not exempt from said requirement.
5. Agrees to maintain unit in a decent, safe, clean and sanitary condition.
6. Agrees to abide by rules and requirement of the established pet policy.
7. Not to destroy, deface, damage and/or remove any part of the unit or property within the unit.
8. Not to make repairs or alterations to the unit without written consent of landlord.
9. Not to provide accommodations to boarders and/or lodgers.
10. Behave and cause household members and guests to act in such a manner which will not disturb other tenant's peaceful enjoyment of their accommodations.
11. Tenant, any member of the tenant household, any guest of the tenant's household or other person under the tenant's control shall not engage in drug related criminal activity on or off the premises.
12. Tenant, any member of the tenant household, any guest of the tenant's household or other person under the tenant's control shall not engage in violent criminal activity which threatens the health, safety or right to peaceful enjoyment of the premises by other residents, or threatens the health and safety of employees or agents of the landlord.

Termination of lease and surrender of unit

Tenant may terminate lease by providing a 15 day written notice, and by returning the keys to the landlord.

Landlord must provide prior written notice of lease termination to the tenant including grounds for termination and shall inform tenant of tenant's rights to reply. Time frames of notice requirement are based upon HUD and/or State law requirements and are as follows:

1. 14 days for failure to pay rent;
2. 15 days for any drug related criminal activity violation;
3. A reasonable time commensurate with the exigencies of the situation in the case of creation or maintenance of a threat to the health or safety of other residents or employees and agents of the landlord; and
4. 30 days in all other cases.

Chronology of eviction process

1. Issuance of a notice of lease violation - tenant is given a 5 day period to correct violation.
2. Issuance of a Notice to Vacate - time frames of notice are detailed above.
3. Provision of due process rights of tenant to request an informal hearing.
4. Convening of informal hearing, if requested.
5. If matter not resolved at informal hearing, filing of a landlord/tenant complaint at the District Magistrate Office.
6. Scheduling of hearing before district magistrate judge. Hearing must be scheduled no sooner than 7 days but no later than 14 days of when complaint was filed.
7. Appear at hearing and present case before district magistrate judge. Preponderance of the evidence is threshold that must be met by the landlord/plaintiff, not beyond a reasonable doubt. Reason is that the case is a civil matter, not a criminal matter.
8. Decision rendered by district magistrate judge is one of the following:
 - a. Case dismissed without prejudice
 - b. Possession granted
 - c. Possession granted if money judgment is not satisfied by time of eviction
 - d. Possession not granted
9. Appeal rights of tenant/defendant:
 - a. For judgment for possession, must file appeal within 10 days
 - b. For money judgment, must file appeal within 30 days
10. If tenant/defendant has not filed an appeal within 10 days of the date of the district magistrate judge's decision, landlord/plaintiff may file a request for an order of possession.
11. If tenant/defendant has not vacated the premises after the issuance of the order of possession, landlord/plaintiff may request execution of the order of possession.
12. In the execution of the order of possession, the district magistrate's office engages a constable to proceed to the premises to forcefully evict the tenant from the premises.