

Landlord / Tenant Law

Carnegie Mellon University

November 29, 2018

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Introduction

The information contained in these slides and made available during the presentation are for educational purposes only. If you have legal concerns that you would like to discuss, please visit:

<https://www.cmu.edu/student-affairs/dean/student-legal-consultation/index.html>

Any information provided today should not be perceived as legal advice or the formation of an attorney-client privilege.

As of the Fall 2018 semester, Carnegie Mellon University has engaged private attorneys in order to provide legal consultations to its student body. In addition to facilitating direct meetings between student and lawyer, a series of presentations have been scheduled. This presentation is part of a series of Landlord/Tenant law. The theme of this presentation will be on preparing graduates and other students to complete a lease term and recover escrowed security deposits.

We will begin by a brief overview of Landlord/Tenant law from the perspective of Contract law. With an emphasis on security deposits, we will then introduce the Pennsylvania Landlord-Tenant Act of 1951. Finally, we will briefly address the standards for terminating a lease early.

There are so many laws... Which ones apply?

Back when I was studying for the bar exam I would routinely call my father, a retired attorney himself, to air my grievances regarding the difficulty of the questions. I would read him a test question and then hurl out the multiple choice options to see if he could identify the nuanced correct answer. Without fail he would quickly respond with, “Well, that would be...” and he be right. Eventually, I had to know his secret. “Dad, this is tough stuff, stuff that you haven’t studied for a very long time, if ever! How could you be so accurate in your answers, how do you know?” “Because it’s right...” Yes, his choices were accurate but more importantly was his perspective on the law, that the correct answer is the morally and ethically sound one.

I share this story and insight to frame our discussion on the law. While there are many laws that control this subject, this a good perspective for a student to have when considering their Landlord/Tenant legal concerns. If a landlord is doing something harmful, something wrong, then it is likely that there is legal recourse available.

The Four Corners of the Contract

It is surprising that when many students sit down to discuss Landlord/Tenant matters they already have all their answers in black and white in front of them. While there are many rules about what constitutes a contract, as long as the formation and content is morally and ethically sound, the terms of the lease apply and control. Here are some common terms that everyone should know about their lease.

- PARTIES
- LENGTH OF TENANCY
- SECURITY DEPOSIT / LAST MONTH
- RENT
- UTILITIES
- REPAIR / MAINTENANCE
- TERMINATION OF LEASE

Common Lease Terms, Common Lease Pitfalls

Termination of Lease

A typical residential lease terminates naturally after a year without additional efforts. However, there are two problems that students commonly encounter regarding the termination.

- The first is that they don't plan early enough in advance to extend their lease which often occurs six months in advance.
- The second is that they intend to terminate the lease but the paperwork requires advance notice.

Security Deposit

A landlord has thirty days from the termination of a lease to provide a written list of reductions from the security deposit and any amount remaining. There are two steps that I advise every tenant to take.

- Keys returned and a forwarding address must be provided to the landlord upon termination of the lease in writing.
- Photographic evidence of the condition of the leasehold premise to refute improperly withheld escrowed funds.

Natural Conclusion of a Lease and Return of Security Deposit

When a residential lease terminates by its own conditions detailed in the contract the most common legal issues encountered are in regard to the tenant's recovery of their security deposit. While the terms of the contract will control how and when the lease terminates, the rules for return of security deposit have been promulgated as law.

THE LANDLORD AND TENANT ACT OF 1951
68 P.S. §§250.512(a)-(f)

Ultimately, this section provides that a landlord has thirty days to return a security deposit or a detailed list of why the full amount was not returned. The section also specifies the legal recourse that may be taken if the landlord does not timely or properly return the security deposit.

§ 250.512. Recovery of improperly held escrow funds

(a) Every landlord shall within thirty days of termination of a lease or upon surrender and acceptance of the leasehold premises, whichever first occurs, provide a tenant with a written list of any damages to the leasehold premises for which the landlord claims the tenant is liable. Delivery of the list shall be accompanied by payment of the difference between any sum deposited in escrow, including any unpaid interest thereon, for the payment of damages to the leasehold premises and the actual amount of damages to the leasehold premises caused by the tenant. Nothing in this section shall preclude the landlord from refusing to return the escrow fund, including any unpaid interest thereon, for nonpayment of rent or for the breach of any other condition in the lease by the tenant.

(b) Any landlord who fails to provide a written list within thirty days as required in subsection (a), above, shall forfeit all rights to withhold any portion of sums held in escrow, including any unpaid interest thereon, or to bring suit against the tenant for damages to the leasehold premises.

(c) If the landlord fails to pay the tenant the difference between the sum deposited, including any unpaid interest thereon, and the actual damages to the leasehold premises caused by the tenant within thirty days after termination of the lease or surrender and acceptance of the leasehold premises, the landlord shall be liable in assumpsit to double the amount by which the sum deposited in escrow, including any unpaid interest thereon, exceeds the actual damages to the leasehold premises caused by the tenant as determined by any court of record or court not of record having jurisdiction in civil actions at law. The burden of proof of actual damages caused by the tenant to the leasehold premises shall be on the landlord.

(d) Any attempted waiver of this section by a tenant by contract or otherwise shall be void and unenforceable.

(e) Failure of the tenant to provide the landlord with his new address in writing upon termination of the lease or upon surrender and acceptance of the leasehold premises shall relieve the landlord from any liability under this section.

(f) This section shall apply only to residential leaseholds and not to commercial leaseholds.

August 1 - Keys have been returned and forwarding address provided in writing.

August

September 1 - A demand letter is sent to the landlord.

September

October 1 - File the Complaint.

October

November - December

November

Trial based on the court's availability.

December

Trial +30 days -
File Appeal.

January

Early Termination of a Lease

There are three ways that a lease may be terminated early with minimal liability.

- Breach of Contract

Within the four corners of the lease itself are the rules that the parties have agreed to. If a material breach by the landlord were to occur, there would be grounds to argue that the contract itself is no longer valid. If a material breach by the tenant occurs, they are typically liable for the remainder of the lease term for rent.

- Efficient Breach

A voluntary breach by a tenant in a manner that benefits everyone.

- Constructive Eviction

Breach of the Implied Warranty of Habitability
Pugh v. Holmes, 405 A.2d 897 (Pa. 1979)

Breach of Contract

Material Breach

- Breach of a major point of the Lease
 - By Landlord: Usually uninhabitable property, broken plumbing or electrical, or failure to give the property to the Tenant
 - By Tenant: Nonpayment of rent, major damage to property
- Remedies:
 - Breach by Landlord: Tenant can withhold rent, move out without penalty, and cancellation of the Lease
 - Breach by Tenant: Eviction, collection

Limited Breach

- Breach of a minor point in the Lease
 - Examples by Landlord: Leaky faucet, broken light fixture, drafty rooms
 - Examples by Tenant: Normal wear-and-tear, rent paid a day late
- Remedies:
 - Breach by Landlord: Possibly withhold rent until fixed, some fixes are required to be made by Tenant (if under a certain dollar amount). Does NOT reach the level of waived rent or breaking of lease without penalty
 - Breach by Tenant: Landlord can bill Tenants for damages

Efficient Breach

In law and economics there exists the theory of Efficient Breach. While the theory necessarily employs the breach of contract which as discussed above the policy and principles embodied in this theory are so valuable as to warrant their own discussion.

The theory works as follows:

Imagine I have a baseball bat. If you were to go to a store to purchase that bat, it would cost you \$50, but I am willing to sell you mine for \$40. We agree that you will buy it for \$40. You are saving \$10 from what you would have to pay at the baseball bat store. Before you give me the money, a baseball player comes up to me and says, "I heard that you have a baseball bat to sell. I am late for my game and I need that bat. I will give you \$60 for it." If I accept the \$60, I have breached my contract with you.

The idea of efficient breach is that by breaking the contract with you I am improving the economy and benefiting 4 people by doing so. The baseball player is benefited because he needed a bat and he got one. You are benefited because you wanted a baseball bat for \$40, and when I give you \$10 you will have the money to go to the store and purchase one. I benefit because I am able to sell my bat for extra money. The store benefits because they now get an extra customer they would not have had.

Not all breaches are bad. If everybody is able to get what they want, a breach can be good. We call that an efficient breach.

Constructive Eviction

There are two ways that a landlord can constructively evict a tenant. The first is by imposing limitations on the tenant's quiet enjoyment of the property. The second is by not taking actions which permit the deterioration and decay of the property so much that it interferes with the quiet enjoyment of the property. For example, if a landlord hires a construction company to do renovations to your apartment and that takes up the space in your apartment for 6 months, you will not be able to use your apartment for that time period and the landlord has constructively evicted you. On the other, consider that after moving in you discover that the water is polluted. You notified the landlord and he refused to fix it. You notify Allegheny County Code Enforcement. They inspect, agree that the water is polluted and order the landlord to fix the problem, but he still refuses.

In either of these situations, the landlord is said to have breached the implied warranty of habitability. Under these extreme circumstances, you may be entitled to terminate the lease agreement. The landlord might even owe you money to help you move.

Dwellings Unfit for Human Habitation

An "Unfit for Human Habitation" notice is issued when a dwelling unit has one (1) Class 1, or two (2) Class 2 and one (1) Class 3, or one (1) Class 2 and three (3) Class 3, or five (5) Class 3 violations.

- 1.1 Carbon Monoxide Hazard
- 1.2 Gas Leak
- 1.3 Severe Electrical Condition
- 1.4 No Heat
- 1.5 Severe Structural Deficiencies
- 1.6 Lead Hazards
- 1.7 Massive Rat Infestation

- 2.1 Carbon Monoxide Hazard
- 2.2 Missing or Inoperable Sanitary Facilities
- 2.3 Uncontained Sewage
- 2.4 Insufficient Heat
- 2.5 Polluted Water Supply
- 2.6 Massive Pest Vector Infestation
- 2.7 Discontinued Gas or Electrical Service
- 2.8 Lead Hazard
- 2.9 Major Structural Defect

- 3.1 Carbon Monoxide Hazard
- 3.2 Heating Problems
- 3.3 Improper Fuel Burning Appliance
- 3.4 Electrical Problems
- 3.5 Water Supply
- 3.6 Lack of Hot Water
- 3.7 Lead Hazards
- 3.8 Malfunctioning Sewage Facility
- 3.9 Defective Plumbing
- 3.10 Ventilation Deficiencies
- 3.11 Structural Defects
- 3.12 Defects and Openings
- 3.13 Major Pest Vector Problem
- 3.14 Inadequate Bathroom
- 3.15 Use and Occupancy
- 3.16 Obstructed Egress

QUESTIONS?

This general overview I presented today should not be construed as legal advice as it pertains to your personal situation.
If you are dealing with these issues, or any other, please see an attorney.

For questions pertaining to immigration issues, you can also reach out to:
Linda Gentile, Director Of International Education

Email: lgentile@cmu.edu

On Campus: Posner Hall, Room 149D

Phone: (412) 268 5231