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Volunteer Lawyers Project  
Nebraska State Bar Association

# Landlord-Tenant Act

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Nebraska's Residential Landlord and Tenant Act (the Act) sets forth the rights and duties of landlords and tenants who are renting residential living space located in Nebraska. The Act also prohibits certain unfair terms in rental agreements.

The Act does not apply to institutions where occupancy involves another service, for example: hospitals, boarding schools, alcohol treatment facilities, fraternities or sororities. The Act also does not apply to hotels, motels, mobile homes or farms.

This pamphlet cannot explain every aspect of the Act or the relationship between landlords and tenants. **If you still have questions after reading this pamphlet, you should speak with an attorney familiar with the Act.**

### **What is a lease?**

A lease is the written contract between a landlord and tenant that spells out the terms and conditions for renting property. If you sign a lease you agree to its terms and conditions. You are legally bound to the obligations in the lease.

The terms of a lease should always be written so that every person's obligations are clearly spelled out and misunderstandings are avoided. Before you enter into a handshake-deal, be advised: proving the terms of an oral agreement will be difficult if there is ever a disagreement and the parties wind up in court.

Always read your lease in its entirety to make sure you know the full extent of what you are agreeing to. Do not rely on promises made by a landlord that are not written down in your lease. Make sure to always keep a copy of your lease.

### **What terms should be included in a lease?**

All leases should include the following basic information and terms:

- the address of the property being rented
- the name and address of the landlord
- the names of all occupants allowed to reside at the property
- the amount charged for rent, late fees and security deposits
- the date rent is to be paid each month (otherwise rent is due on the first of each month)
- the initial term of the lease (otherwise leases run on a month-to-month basis)
- the notice required to end the lease (30 days advance notice on a month-to-month lease)
- which party is responsible for paying for electric, gas and water utilities
- which party is responsible for repairs and maintenance items

### **What cannot be included in a lease?**

The Act gives tenants certain rights that cannot be waived, contracted away or given up. It doesn't matter what the lease says, some terms are unfair and are not legally enforceable. A lease may not require you to:

- waive any of your rights or remedies under the Act,
- 'confess judgment' and give up the right to defend against a lawsuit,
- agree to pay anyone's attorney's fees, or
- limit a landlord's liability for negligence.

### **What are a tenant's rights?**

#### *Exclusive Possession*

A tenant has the right to live in and occupy the leased premises to the exclusion of all others. Once a landlord has signed a lease and accepted a security deposit from a tenant, the landlord must deliver possession of the premises to the tenant on the 'move in' date in the lease. A landlord is not free to cancel a lease if someone else offers to pay more money to rent the same space. Similarly, a landlord may not decide to move someone else into part of your leased space and tell you to 'take it or leave it'.

#### *Safe Housing Fit for Habitation*

Every residential tenant has the right to a house or apartment that is safe to live in and fit for habitation. The Act requires landlords to comply with the community's minimum housing codes for health and safety. Once a landlord receives notice of a defect affecting health and safety, the landlord must substantially comply with the minimum housing code to correct the problem.

### **Who must maintain the property?**

A landlord has the following duties:

- to follow minimum housing codes affecting health and safety,
- to make repairs to keep the premises in a fit and habitable condition,
- to keep any common areas clean and safe, and
- to keep mechanical systems (i.e. electrical, plumbing, and HVAC) in good working order.

A tenant is only responsible for specific repairs, maintenance, or alterations if this responsibility is in a written agreement with the landlord. When renting a single-family house, this 'agreement' may be in the lease itself. In all other cases, such as apartments, any agreement requiring a tenant to perform specified repairs or other improvements must be in a separate written agreement signed by landlord and tenant. A landlord may not use these agreements to avoid any obligations under the Act.

## What is a 14 Day Notice?

If your landlord ignores maintenance issues that affect your health and safety, the proper course of action is to mail your landlord a 14 Day Notice. A '14 Day Notice' is a letter that describes the unsafe condition and gives formal notice that you are terminating the rental agreement in 30 days unless the condition is fixed within 14 days. If 14 days runs and the safety issue is not corrected, a tenant may end the lease and move out on the date designated in the notice. The move-out date must be at least 30 days from the date that the landlord received the 14 Day Notice.

## What are a landlord's rights?

### *Freedom to choose terms and conditions*

A landlord is free to rent out the property at a price and on terms of the landlord's own choosing subject to the limitations of the Act. A landlord has the right to receive rent, receive repayment for damage to the property over normal wear and tear, and establish terms and conditions for the tenant's conduct.

### *Reasonable entry*

Upon one day's advance notice, a landlord may enter a leased residence to perform an inspection, make necessary repairs and improvements, or supply necessary services. A landlord may also enter a leased residence for the legitimate business purpose of showing the dwelling to a potential buyer, mortgage lender, future tenant, handyman or contractor.

Except in cases where an emergency exists, a landlord is required to give at least one day's advance notice before entering a tenant's house or apartment. The landlord may only enter during reasonable hours. A landlord may not abuse this right of access, for example, to harass a tenant. A tenant may not unreasonably withhold consent for the landlord to enter the premises for a legitimate business purpose.

## What is a 7 Day Notice?

To evict a tenant for nonpayment of rent, a landlord must first mail or hand deliver a written 7 Day Notice to the tenant informing the tenant of the delinquent rental balance. The 7 Day Notice must also inform the tenant of the landlord's intention to terminate the rental agreement if rent is not paid within seven days after service of notice. A landlord must accept payment from a tenant that is made in compliance with the notice. A landlord is under no duty to accept a partial payment or a payment made past the seven-day time period specified in the notice.

### **Prohibited Actions: retaliation, utility shut-off, self-help**

A landlord may not retaliate against a tenant who has complained about the condition of the premises by increasing rent or decreasing services.

A landlord may not shut off electric, gas, water or other essential services to the tenant. A landlord also may not attempt to recover possession of a dwelling unit by interrupting such services.

A landlord may not use "self-help" and lock out a tenant who has not paid rent. A court order of eviction is required before a tenant can be forced to move.

### **Security Deposits**

A landlord may require a tenant to pay a security deposit equal to (but not greater than) one month's rent. A landlord may additionally require payment of a pet deposit equal to (but not greater than) twenty-five percent of one month's rent.

When a lease ends, a landlord may apply the security deposit to unpaid rent and any damage to the premises over normal wear and tear. Within 14 days after the lease ends, the landlord must deliver the following to the tenant:

- the balance of the security deposit (if any), and
- a written itemization of the amount of the security deposit not returned to the tenant.

The landlord sends these items to the tenant's last known address or to an address that the tenant provides to the landlord. If the landlord fails to deliver the written itemization and balance of the security deposit, the tenant may recover the money due, court costs, reasonable attorney fees and other monetary damages. If your landlord refuses to supply a written inventory and the balance of your security deposit, consult with an attorney.

### **Rent Increases**

A landlord may not raise the amount of rent charged before the specified term of a written lease ends. For example, a one-year lease locks in the amount a tenant may be charged for rent for twelve months.

Once an initial lease term runs, a lease runs on a month-to-month basis until a new lease is signed. When a lease runs on a month-to-month basis, a landlord must give a tenant at least 30 day's advance notice that rent will increase. As long as proper notice is given, a landlord may increase rent in an amount of the landlord's own choosing.

If you do not agree to an increase in rent, your only option is to give your landlord a 30 Day Notice and move out. A month-to-month lease is terminated by giving your landlord written notice at least 30 days in advance of a new monthly term that you are ending your lease. Unless otherwise specified in a lease, a monthly term starts on the first day of the month.

### **What happens if I move out before my lease runs?**

If you move out before your lease expires, you are still responsible for paying rent. You may be required to pay rent until the space is re-rented or the remaining term of the lease runs. When a tenant moves out early, a landlord is obligated to take steps to lease the premises to new tenants.

### **Does notice have to be in writing?**

To prevent misunderstandings, all notices should be in writing and clearly dated. You should keep a copy. Certain notices must be in writing: any notice to pay rent, to make necessary repairs, or to end a lease must be in writing to be effective.

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The information in this brochure is for educational purposes only. It is not legal advice or a substitute for legal advice by a lawyer. If you want legal advice, you should contact a lawyer licensed to practice law in Nebraska.

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