



LEGAL SERVICES
of North Dakota

LANDLORD - TENANT LAW IN NORTH DAKOTA



This handout is intended to provide information about the rights and responsibilities between landlords and tenants in North Dakota. This handout is NOT intended to be a substitute for professional legal advice. Because factual circumstances vary in each case, detailed legal research or opinions may be necessary.

It is important to remember as you read this handout that many of the law's provisions may be changed by agreement between landlord and tenant. That is why it is always a good practice to have a written lease and to be familiar with its provisions before signing it.

PRE-LEASE CONSIDERATIONS

Landlords will often require a prospective tenant to complete an application. Landlords can also require prospective tenants to pay an application fee (which may be non-refundable). The fee is customarily used to cover the cost of checking a tenant's references (past landlords, employment, credit bureau, etc). Tenants should ask if such fees are refundable and can request a receipt for payment. These fees should not be mistaken for security deposits.

LEASE AGREEMENT

When a tenant agrees to rent a house, apartment, room, or other living quarters from a landlord for a specific monthly rent, the two have entered into a contract most often referred to as a lease agreement. The agreement can be oral or written. It is an agreement to rent, and that means there are certain terms and rights defined by law.

A lease is legally binding on both the landlord and the tenant and cannot be changed without both the landlord and tenant's consent. For the protection of both the landlord and tenant it is best that the lease agreement be in writing. A written lease outlines the terms such as the beginning and ending time of the lease the amount of the rent the amount of the security deposit etc. A written lease is important should a dispute arise. When entering into a lease agreement all verbal promises (repairs, number of parking spots, etc.) should be put in writing or they may not be enforceable.

There are two basic types of leases—"periodic leases" and "term leases".

Periodic Lease: If the lease has no specific ending date, it is a periodic lease. Generally these leases are month-to-month. A periodic lease is automatically renewed each time the tenant pays rent to the landlord.

Term Lease: If the lease states how long the tenancy will last (i.e., six months or a year), it is a term lease. These leases are usually written. If the lease term is for a year or more it must be in writing. The tenant is liable for rent the entire term of the lease and the landlord cannot increase the rent during the term of the lease.

Landlords and tenants can negotiate the terms of the lease provided both agree to the changes. If the written lease form is changed, both landlord and tenant should mark their initials next to any changes, additions, or deletions made on the lease forms.

Before you sign a lease, you should carefully read and understand the terms, especially any requirements for terminating the lease. If you have any questions, ask for an explanation. Most landlords are glad to help clarify points to avoid future misunderstandings. A tenant should receive a copy of the lease and any other signed forms upon signing the lease.

It is strongly recommended that the tenant keep a file that includes copies of all lease agreements, notices, letters, receipts and other correspondence between tenant and landlord. These records will be necessary should a dispute arise later.

UNCONSCIONABILITY

A court may refuse to enforce part or all of a lease. If the court finds the terms in the lease so unfair and one-sided, it may not enforce them. This does not happen very often because the lease term must be very offensive and against public policy. The tenant must demonstrate he/she had no real choice but to accept the offending provision. Landlords should take care not to go overboard in drafting lease provisions in their favor.

INSPECTION OF UNIT BEFORE LEASING

Prospective tenants should visit the rental unit before they give the landlord any money. They should be allowed to inspect the entire rental unit including appliances, plumbing, light fixtures, carpeting, locks, linoleum, windows, etc.

A landlord shall provide the tenant with a statement (check-in sheet) describing the condition of the facilities in and about the premises to be rented at the time of entering into a lease agreement. The statement shall be agreed to and signed by both the landlord and the tenant. The statement shall provide proof as to the condition of the facilities and the premises at the beginning of the rental agreement. Make sure all the conditions are correctly stated on the check-in sheet. An accurate statement at the time the tenant moves in, will lessen the chance of misunderstanding and future disagreements.

SECURITY DEPOSITS

Landlords have the right to require tenants to pay a security deposit (damage deposit). This money is held by the landlord. The security deposit cannot exceed the amount of one month's rent. If the tenant owns a pet, the landlord may require a "pet deposit" not to exceed the greater of \$2,500 or two months to cover any pet related property damage. This amount includes the regular deposit.

The landlord is obligated to deposit the money in a federally insured interest-bearing savings or passbook account. The landlord may apply the security deposit money and accrued interest upon termination of the lease toward any damages suffered through the negligence of the tenant or his/her guest, any unpaid rent, or the costs of cleaning and repairs which were the tenant's responsibility. The pet deposit money should only be utilized to correct problems created or

caused by the pet living on the premises. If the deposit is \$100, but the tenant causes \$300 damages, the landlord can sue for the difference. The deposit may not be used by the tenant to pay rent without the landlord's consent.

RENT

Tenants must pay the rent on time, whether they have a verbal or written lease. Due dates and amounts are determined by the provisions of the lease. Failure to pay the rent on time is considered a breach of the lease and a legal basis for eviction. There is no legal defense to non payment of rent. A landlord's failure to make timely repairs is not a legal defense to non payment of rent.

LATE FEES

The rent must be paid on the date it is due. If a tenant misses the due date, landlords will often require the tenant to pay a late fee. But, in order for a landlord to charge a late fee, it must be a provision of the lease (verbal or written) or it is not legal. In addition, the lease must state how much the late fee will be and on what date it will be effective.

RENT INCREASES

Periodic Lease: If you have a month-to-month periodic lease, the landlord may raise your rent by any amount by providing a notice, in writing, at least 30 days before the end of the month. If the landlord changes the terms of a periodic lease, and gives the required 30-day notice of change, the tenant has the option to terminate the lease at the end of the month by giving a 25-day termination notice. It is important to remember that a 25-day termination notice can only be given after the landlord has first given a notice of intent to change any term of the lease. If the tenant does not give the 25-day termination notice to vacate, the changes specified in the landlord's 30-day notice become a part of the lease agreement.

Term Lease: Generally a term lease has a fixed rent for the entire lease term and cannot be changed during the lease term unless the landlord and tenant agree to do so. However, the landlord can increase the tenant's rent any amount at the end of the lease period. Usually, any notice requirements will be outlined in the lease, if not the rules of changing a periodic lease apply.

Automatic Lease Renewals: Landlords may not enforce an automatic renewal clause in a residential lease without giving the tenant at least a 30-day written notice before the end of the current lease period that the lease will automatically renew. Notice may be delivered personally or by first class mail. If such notice is not given by the landlord, the lease will convert to a month-to-month tenancy.

If the landlord gives notice of an upcoming automatic renewal and does NOT ask for a rent increase after the expiration of the lease, and rent is offered and accepted, the lease is presumed to be renewed at the same rent and for the same period of time as the original lease.

ROOMMATES

If more than one person rents a house or apartment, each person is responsible for paying the whole rent. If disagreements come up between persons sharing an apartment and one person moves out, the remaining tenants are responsible for paying the entire monthly rent amount. However, the remaining tenants can sue the vacating tenant if he/she left without paying his/her share of the rent, or failed to give proper notice.

The security deposit paid will normally stay with the rental unit until all tenants on the lease have vacated. If a tenant vacates early, arrangements should be made between the tenants for recovering that person's share of the deposit.

Responsibility for paying the rent in a roommate situation may be altered by the terms of the lease.

DISCRIMINATION

Both Federal and State law prohibit discrimination based on race, color, national origin, religion, sex, family status or handicap in the sale, rental or advertising of dwellings; in the provision of brokerage services; or in the availability of residential real estate-related transactions. In addition it is a violation of state law to discriminate on the basis of marital status or status with respect to public assistance. It is against Federal and State law to:

- refuse to rent or sell housing.
- refuse to negotiate for housing.
- make housing unavailable.
- deny a dwelling.
- set different terms, conditions or privileges for sale or rental of a dwelling.
- provide different housing services or facilities.
- falsely deny that housing is available for inspection, sale or rental.
- for profit, persuade owners to sell or rent (blockbusting).
- deny access to or membership in a facility or service related to the sale or rental of housing.

In addition to the above prohibitions, a landlord, with respect to persons with disabilities, may not:

- refuse to allow reasonable modifications to a dwelling or common area at the person's expense to use the housing.
- refuse to make reasonable accommodations in rules, policies, practices or services if necessary to use the housing.

It is also a discriminatory practice:

- to refuse to transfer an interest in housing accommodations based on a person's status with respect to public assistance.

- to alter the terms, conditions, or privileges of the housing accommodations based on a person's status with respect to public assistance.
- for lenders who provide financial assistance for the purchase or lease of real property to discriminate based on a person's status with respect to public assistance.

If a tenant has a physical or mental disability that limits one or more major life activities, has a record of such a disability, or is regarded as having a disability, the landlord may not:

- refuse to let the tenant make reasonable modifications to the dwelling or common use areas at the tenant's expense or refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the handicapped person to use the housing.

The Fair Housing Act generally exempts owner occupied buildings with no more than four units, single family homes sold or rented without the use of a broker or housing operated by organizations and private clubs that limit occupancy to members. However, before assuming the exemption, the landlord may want to contact an attorney, or HUD.

If a tenant believes his/her rights have been violated, he/she may get an attorney who can go directly to court with the case, or they may write or telephone HUD or the Department of Labor within one year of the discrimination's occurrence. If the complaint is filed with the Department of Labor, the Department will notify all the parties, conduct an investigation into the alleged discrimination, and may grant temporary relief. The Department will then issue an investigative report and if necessary conduct an Administrative hearing on the issue of discrimination. If discrimination has occurred, the Department of Labor may impose penalties.

UTILITIES

The responsibility of paying for the utility services such as electricity, natural or LP gas, oil, water, wastewater and garbage is generally specified in the lease or rental agreement. The party (landlord or tenant) agreeing to pay for part or all of the utility services should advise the municipal service or utility company who will be receiving the services and who will be paying for those services.



LANDLORD OBLIGATIONS

The obligation of the landlord may be altered somewhat by a contractual agreement (generally a written lease) between the landlord and the tenant. However, a landlord must:

- Comply with the requirements of building and housing codes relating to health and safety.
- Arrange for or make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
- Keep all common areas in a clean and safe condition.
- Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning systems and other facilities and

appliances, including elevators, supplied or required to be supplied by the landlord.

- Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.
- Provide running water and reasonable amounts of hot water and heat.
- Provide smoke detectors in each unit.



TENANT OBLIGATIONS

The obligation of the tenant may be altered somewhat by a contractual agreement (generally a written lease) between the landlord and the tenant. However, the tenant must:

- Comply with all duties imposed upon tenants by building and housing codes relating to health and safety.
- Keep the occupied unit as clean and safe as the condition of the premises permit.
- Regularly remove all ashes, garbage, rubbish, and other waste from the dwelling unit and dispose of them in a clean and safe manner.
- Keep all plumbing fixtures as clean as their condition permits.
- Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning systems and other facilities and appliances including elevators on the premises.
- Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so.
- Conduct him/herself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb the tenant's neighbors peaceful enjoyment of the premises.

REPAIRS

Tenants should promptly notify the landlord when repairs become necessary. If the landlord does not respond to verbal notice of need for repairs, the tenant should send a written notice to the landlord of necessary repairs. The tenant should keep a copy of this notice. The tenant must give the landlord reasonable notice and a reasonable amount of time in which to make repairs. What is "reasonable" depends on the needed repair. If repairs are still not made, the tenant has three options under the law:

- Repair the defect and deduct the expense from the rent (N.D.Cent.Code. § 47-16-13). It is always a good idea for the tenant to notify the landlord in writing that he/she intends to do this. Some landlords have given tenants a 30-day notice (if the tenant is on a month-to-month lease), or attempted to sue for loss of rent.
- Sue the landlord in Small Claims Court for the costs of the repairs and other expenses incurred as a result of the failure to make repairs.
- The tenant may elect, after notice (preferably written), to vacate the premises which would terminate the lease. Vacating the premises should be considered a measure of last resort, and only if there is a serious repair problem or code violation. The tenant should notify the housing or health inspector to confirm that a serious problem or code violation exists.



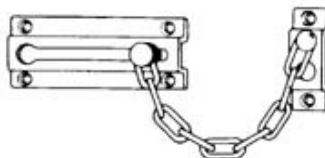
LANDLORD RIGHT OF ENTRY

A landlord may enter a dwelling unit:

- At any time in case of emergency or if the landlord reasonably believes the tenant has abandoned the premises, or the tenant is in substantial violation of the provisions of the lease or rental agreement.
- During reasonable hours, and in a reasonable manner for the purpose of inspecting the premises, making necessary or general repairs, decorations, alterations, improvements, or agreed services.
- During reasonable hours and in a reasonable manner for the purpose of showing the rental unit to actual or potential purchasers, insurers, mortgagees, real estate agents, potential tenants, workers or contractors.

Unless it is impractical to do so, the landlord must attempt to get the tenant's consent for an agreed time of entry. The landlord may not abuse the right of access or use it to harass or intimidate the tenant.

NOTE: Consent may be presumed from the tenant's failure to object to access after reasonable notice is given. The tenant may not unreasonably deny access to the dwelling unit.



TERMINATING THE LEASE

Periodic Lease: If there is no provision in the month-to-month periodic lease stating how much advance notice must be given to end the lease (written or verbal), either party may terminate the lease by giving at least one calendar month's written notice at any time.

The rent is due and payable through the date of termination. However, many written periodic leases may require tenants to give notice on the first of the month, or a longer notice (60 days). Failure to give proper notice required by the written lease could result in loss of security deposit and liability for rent for that period.

Term Lease: A term lease terminates automatically at the end of the lease period without the need of any notice from either landlord or tenant. Procedures for ending a written term lease are generally outlined in the lease. Typically, it will require a written notice prior to the lease expiring. Generally the notice has to be received by the first of the month. Tenants are well-advised to **carefully** read the termination and renewal provisions of their lease.

If a tenant moves out before the lease expires, he/she is still responsible for paying rent for the remaining term of the lease. Another tenant may be found to fulfill the balance of the lease. A landlord's consent may be necessary if the lease agreement is transferred to a new tenant.

The lease may require a fee for the landlord to re-rent the unit. If a fee is required it should be outlined in the lease agreement. The landlord may be entitled to recover actual costs to re-rent. In no event, may the landlord recover both a re-renting fee and the actual costs of re-renting.

Even though the tenant remains liable for the rent until the expiration of the lease or a new tenant is found, landlords have a legal obligation to try to find a new tenant and may only collect rent from a single tenant. Thus, if the new tenant moves in and pays rent for a period for which the departing tenant has already paid, the landlord must refund the appropriate portion of the pre-paid rent to the departing tenant.

ABANDONED PROPERTY

Tenant's property with a total estimated value of \$2,500 or less, which has been left for at least 28 days after the landlord received actual notice the tenant has vacated the premises, or after it reasonably appears to the landlord that the tenant has vacated the premises, becomes the property of the landlord to dispose of or sell, without notice, in whatever manner the landlord chooses. The landlord can keep the money from the sale. Expenses for storing or moving the property which exceed proceeds from the sale can be deducted from the security deposit.

If the landlord removes abandoned property from the premises after a judgement of eviction has been obtained and served, the landlord may retain possession of the property until charges for the reasonable amount of any storage and moving expenses have been paid.

SECURITY DEPOSIT REFUND

At the end of a lease, a landlord must return a tenant's security deposit (plus interest if the unit was occupied nine months or longer), or give the tenant a written accounting as to why the deposit (or any part of the deposit) will not be returned. The landlord must mail or deliver the deposit within 30 days after the day the tenant vacated and the lease expired. As a practical matter, actual receipt of the security deposit may be delayed by several days if the tenant fails to provide the landlord with accurate forwarding address information. The landlord may deduct, from the security deposit, amounts to cover damage from tenants or their guests, unpaid rent, and /or costs of cleaning or other repairs, with the exception of reasonable wear and tear. The landlord must provide an itemized list of any deductions.

If a landlord sells a rental property, the new owner has the same rights and obligations. The security deposits and interest must be transferred to the new owner or the seller remains liable. The new owner is bound by the provisions of N.D.Cent.Code § 47-16-07.1.4 even though he/she did not receive the original security deposit.

If a tenant does not receive the security deposit back, or is not satisfied with the landlord's accounting, the tenant can take the matter to Small Claims Court. There, it is up to the landlord to justify the amounts withheld. The court can award damages to the tenant up to three times the amount withheld without reasonable justification from the tenant's security deposit. This is called "treble damages." Treble damages need to be requested when completing court papers.

Any security deposit unclaimed by the owner for more than one year is presumed abandoned. N.D.Cent.Code § 47-30.1-08.

EVICITION

According to state law, landlords can evict tenants for non-payment of rent, or in cases where the tenant refuses to leave after "Notice to Vacate" has been properly served and the tenant's last day has passed. A tenant can also be evicted if the tenant or any person on the premises with the tenant's consent acts in a manner that unreasonably disturbs other tenants peaceful enjoyment of the premises. N.D.Cent.Code § 47-32-01.

A tenant may also be evicted for violating a material term of the lease. In addition to unreasonable peace disturbances, three situations potentially violate the material terms of a lease; drug use, distribution, or other illegal activity conducted on the property; unreported pets; or too many occupants in violation of the lease. These material violations must be proven by the landlord in a court of law.

In order to evict, a landlord must:

1. Serve the resident with a "Notice of Intention to Evict" (often called a Notice to Quit or Notice to Vacate) ordering the resident to vacate the premises within three

days. The sheriff or a process server may post the Notice of Intention to Evict conspicuously at the rented premises, if the tenant cannot be found. The Notice of Intention to Evict does not require the resident to vacate. It is the first step required by law for an owner to proceed with the eviction, and proof that the Notice was properly served must be presented to the court. N.D.Cent.Code § 47-32-02.

2. If the resident has not vacated after the three-day period, a “Summons and Complaint” (begins legal action) may be served on the resident. The “Summons and Complaint” will give notice to the resident as to the date and time he/she will need to appear in District Court. A court hearing must take place within three to fifteen days after service of the Summons and Complaint on the tenant. If the tenant cannot be found in the county by proof of sheriff or process server, and the attempt to serve the Summons has been made at least once between the hours of 6 p.m. and 10 p.m., and an affidavit has been filed stating that the tenant cannot be found or the belief that the tenant is not in this state and copy of the summons has been mailed to the last known address of the tenant, service of the summons may be made by the sheriff or process server by posting (the summons) on the door of the unit.
3. At the hearing, both landlord and tenant will be asked to give their respective side of the story. The judge will then deliver his/her decision. If the judge decides the tenant has no legal reason for refusing to leave, the judge will order the tenant to vacate. If the tenant fails to vacate, after being court ordered to do so, the judge will order the sheriff to force the tenant out. The tenant’s property will be placed in storage. To get the property back, the tenant must pay the sheriff’s fee, moving and storage costs. If the tenant shows the court that vacating immediately is a substantial hardship on the tenant or the tenant’s family, and eviction is not based on a disturbance of the peace, the court may allow reasonable time for the tenant to vacate, not to exceed five days. The judge can also find that the landlord has no legal reason to evict the tenant.

It should be understood that ONLY the sheriff and his/her staff can legally remove a tenant’s belongings from a rental unit during the process of eviction. The landlord cannot do this on his/her own.



4. Contrary to popular belief, tenants may be evicted during the winter months.

LOCKOUTS & PROPERTY CONFISCATION

It is illegal for a landlord to physically lock a tenant out of his/her unit. See Kipp v. Lipp, 495 N.W.2d 056 (N.D. 1993). If a landlord locks a tenant out or confiscates a tenant's belongings, the tenant should notify the sheriff's department, a private attorney, or Legal Services of North Dakota. It is also illegal for a landlord to cut off the utilities in an attempt to get the tenant to move. Tenants should call the building inspector if this happens.

FOR FURTHER INFORMATION, CONTACT:

HUD Housing Complaint Line

1-800-669-9777

Fair Housing and Enforcement Center

1-800-877-7353

ND Department of Labor - Human Rights Division

1-800-582-8032 www.discovernd.com/humanrights

Community Action Program

(Emergency rental assistance money - call for availability)

Bismarck, 258-2240

Devils Lake, 662-6500

Dickinson, 227-0131

Fargo, 232-2452

Grand Forks, 746-5431

Jamestown, 252-1821

Minot, 839-7221

Williston, 572-8191

Legal Services of North Dakota

Senior Hotline = Age 60+ 1-866-621-9886

Central Intake = All others 1-800-634-5263

Apply Online @ www.legalassist.org

