

FOR RENT

FUNDAMENTALS OF RESIDENTIAL LANDLORD-TENANT LAW

by Angie M. Dorsch

Housing is a basic necessity. The gravity of having inadequate housing or being evicted from a home makes it particularly important to understand the rights and duties of both landlords and tenants in residential rental agreements. This article will provide an overview of a few fundamentals of residential landlord-tenant law, but will only cover situations involving private residential rental units that are not part of any public housing or federally subsidized housing program. It is always important to determine if a rental unit is covered as public housing, federally subsidized housing, or a tax credit housing program. Tenants renting units covered by these programs have many more rights and protections, and landlords must follow additional procedures before a lease may be terminated or a tenant evicted.

Entering into a Lease

A residential rental agreement is any agreement, either written or oral, setting forth the terms, conditions, and rules regarding the use and occupancy of a residential rental unit.¹ Although oral agreements are allowed by law, it is by far a better practice for a lease to be in writing. This protects both the landlord and tenant from misunderstandings, which can easily arise in oral agreements. If any portion of a deposit is nonrefundable, that provision must be contained in a written agreement and the renter must be given notice of it at the time the deposit is made.²

Rights and Duties of Landlords and Tenants

Under the Residential Rental Property Act, there are certain rights and duties of both landlords and tenants when leasing property to be used as a residential rental unit, which is defined as a renter's principal place of residence.³ An owner shall not rent a unit

unless it is reasonably safe, sanitary and fit for human occupancy. The owner is required to maintain operational electrical systems, plumbing, heating, hot and cold water, common areas, and other appliances and facilities provided under the lease unless the parties agree otherwise.⁴

The renter has a duty to cooperate in maintaining the residential rental unit in a clean and safe condition, dispose of all waste, use the utilities and appliances in a reasonable manner, be current on all payments required by the lease, and comply with the lawful requirements of the rental agreement. The tenant may not increase the number of occupants in the unit above what is specified in the rental agreement without written permission of the owner.⁵ Renters may not destroy or damage the property, interfere with other persons' peaceful enjoyment of the property, or unreasonably deny access to the rental unit to the owner or owner's agent for the purpose of making repairs, inspecting the unit, or showing the unit for rent or sale.⁶

Repairs

A landlord must make repairs and maintain the habitability of the rental unit only if the tenant is current on all payments required under the lease.⁷ A common misconception many tenants have is that they may withhold rent payments if there is a problem with the rental unit. This is not allowed and can create a situation where the landlord no longer has a duty to make the repairs.

If a tenant is current on all payments under the lease and a repair is needed, unless the lease provides otherwise, the renter must request repairs in writing and serve the request on the landlord by certified mail.⁸ Within a reasonable time the landlord must either make the repairs or notify the tenant in writing that the landlord disputes the renter's request and serve the notice on the tenant by certified mail. If the cost of a repair exceeds an amount that would be reasonable in light of the amount of rent charged and the nature of the rental property, the landlord may refuse to correct the condition and terminate the lease. If the landlord refuses to make the repairs under this provision, the tenant must be given a minimum of ten days' notice prior to the termination of the lease.⁹

Terminating a Lease

Upon termination of a lease, the landlord may apply the deposit to the payment of accrued rent, damage beyond reasonable wear and tear, the cost to clean the unit to the condition it was in at the beginning of the tenancy, and any other costs provided in the lease. The balance of the deposit along with a written itemization and explanation of any deductions must be delivered or mailed to the tenant within 30 days of the termination of the lease or within 15 days of the receipt of the renter's new mailing address, whichever is later. There are different time periods for returning utilities deposits. If the landlord unreasonably fails to comply with the requirements for returning a deposit, the renter may bring an action and may recover the full deposit plus court costs.¹⁰

Forcible Entry and Detainer

The most common reason for a forcible entry and detainer action (FED) is a tenant's failure to pay rent for three or more days after it is due, but an action can also be commenced after the termination of a lease for

the breach of any terms of the lease or to remove a holdover tenant after a lease has expired.¹¹

A notice to quit must be served on a tenant at least three days before an FED may be filed.¹² After the three day notice to quit, if the tenant has not vacated the unit, an FED may be initiated. A common mistake is failure to properly serve the tenant with a notice to quit prior to commencing an FED. The FED procedures must be strictly followed and if a tenant was not given notice to quit, he or she may move to have the FED dismissed.

Tenants are no longer required to file a written answer to a complaint for FED.¹³ When tenants are served with the summons, they receive notice of the place and time of the trial, which will be between three to twelve days after service of the notice.¹⁴ The tenant may respond by simply appearing at the hearing to defend the FED.

The only issue that may be raised in an FED action is possession of the property, and if the action is based on failure to pay rent, the court must also find the amount of rent due and enter a judgment for rent due together with costs and attorney's fees as provided by the lease.¹⁵ No cross claims or offsets may be granted in an FED. A separate action must be filed to pursue any damages sought by the tenant. The landlord must also file a separate action to raise any other claims, such as damage to the rental unit.

Issues related to title or other disputes are not allowed in an FED. An action to enforce an executory contract for deed, commonly referred to as a rent-to-own contract, may not be brought as an FED action.¹⁶

Victims of Domestic Abuse or Sexual Violence

In certain circumstances victims of domestic abuse or sexual violence who breach a lease in order to escape abuse, or a threat of abuse, may raise an affirmative defense and, if successful, are not liable for rent for the period after they vacate the property.¹⁷

The victim must provide evidence that at the time he or she vacated the premises, the tenant or a member of the tenant's household was under a credible imminent threat of domestic abuse or sexual assault at the premises, or that the tenant was the victim of abuse on the rental property (if the

assault occurred not more than 60 days prior to the date of the notice to the landlord), and the tenant gave seven days written notice to the landlord prior to vacating stating the reason for vacating was due to a threat of domestic abuse or sexual violence or an assault on the premises.¹⁸

ENDNOTES

- 1 Wyo. Stat. § 1-21-1201(a)(ii)
- 2 Wyo. Stat. § 1-21-1207
- 3 Wyo. Stat. § 1-21-1201(a)(iv)
- 4 Wyo. Stat. § 1-21-1203(a)
- 5 Wyo. Stat. § 1-21-1204
- 6 Wyo. Stat. § 1-21-1205
- 7 Wyo. Stat. § 1-21-1203(b)
- 8 *Id.*
- 9 *Id.*
- 10 Wyo. Stat. § 1-21-1208
- 11 Wyo. Stat. § 1-21-1002
- 12 Wyo. Stat. § 1-21-1003
- 13 Wyo. Stat. § 1-21-1006
- 14 Wyo. Stat. § 1-21-1004
- 15 Wyo. Stat. § 1-21-1008
- 16 *Steffens v. Smith*, 477 P.2d 119, (Wyo. 1970).
- 17 Wyo. Stat. § 1-21-1303
- 18 *Id.*

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