

I INTRODUCTION

Regardless of whether your landlord is a friendly, likable person or an intimidating one, you should always remember that you have a right to decent living conditions and fair treatment with respect to your legal rights.

YOU HAVE FEWER RIGHTS THAN YOU NEED. YOU HAVE MORE RIGHTS THAN YOU KNOW.

Read this green section for tenants lawyers' views of your rights. Consult your lawyer, legal aid society or tenants union lawyers whenever you have a specific legal problem.

II YOUR RELATIONS WITH YOUR LANDLORD

Landlords usually know much more about landlord/tenant law and economics than tenants. This is because landlords are in business and need to know the limits of their rights and obligations.

Tenants, on the other hand, are often uninformed or misinformed about their rights and duties. A survey conducted for the City of Ann Arbor by the Institute for Social Research in 1976 showed that over 60 percent of Ann Arbor tenants were unable to answer each of five elementary questions on tenants' rights.

When you have a problem or potential problem with your landlord, it therefore makes good sense, whenever possible, to:

CONTACT A TENANT ADVISOR, SUCH AS A LAWYER OR TENANTS UNION REPRESENTATIVE, BEFORE YOU ENTER INTO DISCUSSIONS WITH YOUR LANDLORD.

You have nothing to lose by contacting a tenant advisor and this advisor may be able to prevent you from making costly mistakes, such as accidentally waiving rights or settling your dispute on disadvantageous terms, when you do talk to your landlord.

Bargaining with Your Landlord for Your Rights

Occasionally as a tenant you will have to bargain with your landlord to enforce your legal rights. Here are some things to remember which may help.

- (1) It is usually easier to bargain when you have the formal or informal help of other tenants from your dwelling or building or a tenants union who want to help bargain for the same rights.
- (2) You are paying rent, usually a lot of rent, for your dwelling. When you buy a product from a store, you want it to be free from defects and you expect the store to treat you fairly. You also have the right to a dwelling free of defects and to be treated fairly by your landlord.

- (3) A landlord will often try to use an economic justification for his bargaining position on your legal rights. In other words, a landlord will often say his/her allegedly low profits are the reason for the unconscionably high rent, lack of sufficient repairs or for keeping your security deposit on questionable grounds.

In order to deal with this kind of argument, you should know that a landlord makes money in many ways, most of which he/she will not bring up on an argument. Here are some of the ways:

- (a) **Appreciation:** A landlord makes money on the rise in value of his/her building. In Ann Arbor, property values can appreciate as much as 10-15 percent each year. On a \$30,000 building, this would be a profit of \$3,000 to \$4,500 in a single year. If the landlord's downpayment was \$6,000, the profit by appreciation alone may be 50-75 percent of the landlord's investment in a year.
- (b) **Building:** Unless your landlord has purchased your building for cash, a very rare occurrence, part of your rent dollar goes to pay your landlord's mortgage, so that the tenant buys the building for the landlord, the same way as your rent dollar helps the landlord buy clothes or a new car. When the landlord sells the building, he/she owns the part he/she paid for with the down payment and the part you bought for him/her with the rent.
- (c) **Cash flow profit:** This is the profit the landlord makes each month. It is the rent for that month minus the costs (for the plumber, the mortgage, the taxes, etc.) of each month. This is the only profit most tenants know the landlords earn, but the other profits are often much larger.

Landlords sometimes may claim that they have a negative cash flow. If this is their attempted justification for depriving you of your legal rights, you should (a) explain that, even if true, this is not lawful justification for their actions; (b) ask about their other profits and the level of those profits; and (c) say you would like to see proof of their other profits. (Remember, appreciation does not get realized until the building is sold.)

- (d) **Depreciation allowance:** A landlord is given numerous tax breaks. The most important is the one that allows the landlord to claim a deduction to the Internal Revenue Service as if he were losing money by the depreciation of his or her building when the market value is, in fact, going up. This pretend "loss" is offset against the landlord's other income. The landlord usually saves about half the taxes on the income offset. That "tax shelter" is a profit the landlord gets from his income before taxes are applied. Other breaks also exist.

When your landlord makes economic arguments trying to justify a deprivation of your legal rights, use ones of your own.

III Discrimination

If a landlord won't rent to you because of your race, color, religion, sex, sexual preference, welfare status, age, handicap, marital status or educational status, see a tenant lawyer or tenants union immediately.

One way of preventing illegal discrimination (similar to that used in race discrimination cases in the sale of real estate when a white person would buy the house for a black friend) may be to have a friend move in and sublet from the friend. It is unlawful for a landlord to evict you in retaliation for subletting to prevent unlawful discrimination. However, the tenant should be sure there's illegal discrimination and should contact a tenant lawyer before he/she tries this.

There are special rules for one- and two-family dwellings, if the landlord lives there, and for dwellings solely for older people, for members of only one sex and for members of only one religion. Some discrimination in these instances is allowed.

IV THE LEASE OR RENTAL AGREEMENT

The white section of this booklet contains information on this area.

It should be emphasized, however, that leases can be written by tenants or landlords, or freely negotiated. In communities with housing shortages (like Ann Arbor), they are almost always written by the landlord or the landlord's attorney. Such leases are often more than a lawful agreement. They often contain clauses that are misleading or unenforceable to intimidate tenants who don't know the law.

Landlords don't usually try to enforce the invalid clauses in court, but show them to the tenant when there's a dispute to scare the tenant into giving up the dispute or giving up some of the tenant's rights. These invalid clauses are discussed below.

V UNENFORCEABLE LEASE CLAUSES

There is an unlimited variety of ways in which lease clauses can be written to make them misleading and confusing to tenants. Since there is such a variety of misleading clauses, a good rule of thumb is this:

**IF YOU THINK THAT A LEASE CLAUSE IS UNFAIR, IT MAY ALSO BE UNENFORCEABLE.
CHECK WITH A TENANT LAWYER.**

Even though a clause is unenforceable, a landlord may try to use such a clause to convince you to give up a dispute with him or to give up rights of yours. For example, a tenant is less likely to start a lawsuit to obtain repairs or withhold rent if that tenant believes he/she has waived the right to a jury trial or must pay the landlord's attorney fees.

Read your lease with a grain of salt and a dash of pepper.

Another point: If you spot illegal and unenforceable clauses in a lease before you sign it, it may be unwise to argue with the landlord who may then think you are a trouble-maker and refuse to rent to you.

TENANT LAWYERS USUAL ADVICE IS: IF YOU WANT THE PLACE, SIGN THE LEASE AND MOVE IN, IF THE RENT IS ACCEPTABLE. IF A LEASE CLAUSE SEEMS UNFAIR AND IS BEING USED AGAINST YOU, SEE A TENANTS LAWYER OR TENANTS UNION FOR ADVICE AND INFORMATION.

Once in your dwelling, if you want to bargain about lease terms, it may still be difficult to work by yourself. Tenants unions and collectively bargaining with other tenants of the same landlord may help you, however, and you should keep them in mind.

VI IF YOU PAY A DEPOSIT AND DECIDE NOT TO MOVE IN

If the place was not ready when it was supposed to be, you should be entitled to all of your deposit back and maybe more.

If you change your mind through no fault of the landlord, you may have to pay part or all of the deposit to the landlord. Look to your lawyer and not to your lease for what your rights are here. If the landlord rerents the place immediately, you should get the entire deposit back minus a few dollars fee. You should also be permitted to sublet the place for the landlord if you want to and not lose any of your deposit.

VII The Condition and Upkeep of Your Dwelling

CLEANING

You have a right to a clean and sanitary apartment when you move in. This is part of what you pay rent for.

"Cleaning waivers" are clauses in leases which supposedly give up this right. They may or may not be valid. "Cleaning waivers," coupled with "nonrefundable cleaning fees," seem particularly unfair.

If your place is filthy when you move in, you should not complain until you move in; then complain, take photos, do the cleaning, if the landlord won't, and negotiate for compensation for your work. See a tenant lawyer or tenants union for help, if you need it.

REPAIR

If your place needs repair, you are almost always entitled to **both** the repairs **and** the money to compensate you for the inconvenience and other damages caused by the period of disrepair, unless your inconvenience was trivial. If it was severe, you may be entitled to large recoveries.

CERTIFICATE OF COMPLIANCE

The landlord must have and show you one on request. But it is not conclusive proof that the place is in good repair. Your own observation is usually more accurate proof and is acceptable in court.

VIII WITHHOLDING RENT

If your landlord will not make needed repairs when requested to do so, by far the most effective way to get the landlord to repair is to WITHHOLD THE RENT UNTIL THE REPAIR IS MADE. Then, negotiate compensation of the part of the rent "excused" for the inconvenience you suffered due to the lack of repair. (EXAMPLE: The refrigerator was broken for a month and you had to eat out. Negotiate for the extra price you paid for meals.) If you find that other tenants in your dwelling and/or building are experiencing similar hardships due to the landlord's lack of repair, tenant lawyers recommend that you negotiate as a group in order to maximize your bargaining strength.

Rent withholding is quite legal, covered by both statute and appellate case law. If you have been unsuccessful in negotiating an acceptable settlement, your landlord will most likely take you to court in order to recover what he/she claims is the rent not "excused" due to the lack of repair. With this in mind, it is recommended that, in addition to following the procedures outlined in Section VIII(b) of the white section of this booklet, you consult with your lawyer or tenant advocate. (NOTE: In some cases, this person's assistance in contacting your landlord and/or city inspectors may resolve your problem without further court proceedings.)

The court may "excuse" part of the rent that you have withheld, on rare occasions may "excuse" all of the rent, and may even order the landlord to pay you money in excess of the rent (for example, if lack of heat caused you to get sick and be hospitalized or if there were defects so serious, multiple or prolonged that your damages were severe).

Since the court may order that you pay some or all of the rents you have withheld, it is recommended, although not required, that you set up a separate rent fund (i.e., "escrow account") so that the money will be available when and if payment is required. (Your own bank or credit union will usually be the best place to start an escrow account. No special procedures are required; just set up a separate savings or checking account and begin depositing your rent money there each month.) During the course of the court proceedings, the judge may require that you deposit some of your withheld rent in a COURT escrow account until your case is tried or settled. It is not required that you deposit your rents in the CITY escrow account. In fact, tenant lawyers advise never to use the CITY escrow account, since the landlord can sometimes get the money out after the repair is made without compensating you for your inconvenience or other damages.

IX SUING YOUR LANDLORD FOR REPAIRS

You can sue in small claims court yourself for damages up to \$1,500 or in District Court or Circuit Court for damages up to \$10,000 or over \$10,000, respectively. Circuit Court can grant an injunction against your landlord or put the building in receivership if the landlord won't repair. Judges usually award less money to tenants than juries do, so ask for a jury trial and pay the jury fee on the first court date. The jury fee in District Court is \$30.

X THE TENANT'S RIGHT TO PRIVACY

The law in this area is cloudy. Your right to privacy depends not only on your lease, but how it was negotiated, whether it is unconscionable, the landlord's motive for entry and numerous other factors. Tenant lawyer authors have been virtually 100 percent successful in preventing landlord retaliation for tenants' insistence on reasonable privacy.

Unless your landlord is your close friend and you feel fine about his/her entry without permission, tenant lawyers usually urge tenants to:

- (1) Insist on appointments at your mutual convenience for entry by landlord, repair persons, city inspectors.
- (2) Be reasonable in allowing reasonable entry by appointment for reasonable purposes.
- (3) Peaceably but firmly resist invasions of your privacy. Tell the landlord, "This is my home. It is only your investment. You can't come in now, but how about coming next Tuesday?" Then negotiate a reasonable time. Show them this book.
- (4) If there is a catastrophe (such as fire or flood), do again what seems reasonable. This may often call for open and free entry to your place by the landlord or even strangers. If you are unreasonable at such times, you may incur **very heavy** liability for damages to your landlord or other community members which you may have caused.
- (5) See a tenant union or attorney if your landlord, repair person or city inspector enters without permission. You may be able to recover damages.

XI EVICTION PROCEDURE

No matter what excuse your landlord uses to try to evict you, you may have one or many defenses or countersuits. Here are just a few defenses:

- (1) You are lawfully withholding rent.
- (2) Your landlord is illegally attempting to evict in retaliation for your complaining to authorities to enforce a right (such as right to repairs) or because you are lawfully attempting to secure rights under the lease or laws of the state or of the United States (as through the political process).
- (3) You haven't breached the lease, or your breach is not material, is waived by the landlord's conduct, or doesn't give rise to eviction.
- (4) Your lease is over but your landlord refuses to renew in retaliation for your lawful acts.

It is illegal for a landlord to try to evict you or shut off utilities to get you to move without a court order. It is also unlawful for your landlord to try to evict you for attempting to obtain repairs or for doing any other lawful acts.

To lawfully evict you, a landlord must usually give you an "eviction notice" and then "start suit," i.e., give you a "summons" to go to court. You can go to court and, if you don't have a lawyer, you can usually get a week's extension while you get legal aid or a private lawyer. The lawyer can file a "countersuit" and ask for a jury trial. Most cases defended by lawyers are settled. Rent reductions, repairs, extensions of time for payment are commonplace. Every case is different, so you should not let the landlord scare you, but see your lawyer for your best procedure.

You should enforce your rights to repair against landlords. Seek legal help to prevent retaliatory attempts at eviction.

XII LEASE ASSIGNMENT AND SUBLETTING

If your landlord won't let you sublet or charges you a fee, see your tenant union or lawyer immediately. They can almost always help you. Unreasonable restrictions on subletting are likely to be an "unreasonable restraint on alienation of property," frowned upon by the courts.

XIII YOUR SECURITY DEPOSIT

Follow the steps outlined in the white section to get your security deposit returned to you.

Some important points to remember are:

- (1) You can only lawfully be charged for damage resulting from conduct "not reasonably to be expected in the course of a tenancy."
- (2) You should be charged the market value of any damaged items at the time of the damage, not the cost of a new item. For example, if you unreasonably break a chair worth \$5 when you broke it, you should be charged \$5, not the cost of a new \$30 chair.
- (3) If you paid a cleaning fee, you should not be charged twice for the same cleaning by having additional money taken from the security deposit.
- (4) You can use small claims court, a quick and simple procedure requiring no attorney, to sue to recover improperly withheld security deposit money.
- (5) You may be able to sue for twice the amount improperly withheld if you have disputed the amount improperly withheld in accordance with the procedures outlined in the white section and your landlord has failed to sue you to retain the disputed amount. See a tenant advisor about this.
- (6) If you do not follow all the procedures outlined in the white section, you may still have a right to the return of improperly withheld amounts. See a tenant advisor.

XIV LIABILITY FOR DAMAGES

In the event you think you have a claim against your landlord for damages caused by his/her negligence, you can sue with or without legal help. Small claims court for cases under \$1,500 is easy to use without a lawyer. It is located at the County Courthouse, 101 East Huron Street.

In addition to code violations, some examples of successful tenant suits against landlords include:

- (1) Falling on ice the landlord negligently failed to clear.
- (2) Being robbed or raped or burglarized when landlord security is unreasonably poor.
- (3) A tire is ruined by a pothole left in a driveway.
- (4) You fall through rotted stairs and break your ankle.

In larger cases, you should seek legal counsel. Often a lawyer will represent you without payment, except part of the verdict or settlement if you win.

If your landlord sues you or threatens to sue for damages, you should seek legal help.

Landlords reading this section should take care to maximize building security, ice clearing and other maintenance that could cause damage or injury.

XV YOUR RIGHT TO A FAIR RENT

You have no right to fair rent in Ann Arbor.

However, you have the right to attempt to secure new rights.

You also have a few very limited rights now as to rent level.

- (1) The Michigan Consumer Protection Act says that rent cannot be grossly out of proportion to rents charged by other landlords. This doesn't help you if they all charge too much, but it can help if your landlord is worse than most.
- (2) Your rent cannot be raised in retaliation for your withholding rent or other lawful acts arising out of the tenancy. If your landlord attempts to raise the rent in retaliation for your lawful acts, see a tenant lawyer or advocate for advice.

THE THREE SECTIONS OF THIS BOOKLET ON THE RIGHTS AND DUTIES OF TENANTS ARE THE OPINIONS OF THEIR AUTHORS. IF YOU HAVE ANY QUESTIONS CONCERNING YOUR RIGHTS AND DUTIES AS A TENANT, CONSULT YOUR LAWYER, FREE LEGAL AID SOCIETY, OR TENANTS UNION LAWYER.