Tenant's Rights

Signing the Lease

When a lease is signed by both the landlord and the tenant, it becomes a legally binding contract. If one of the party members does not fulfill the terms of the lease they can be sued. Before signing the lease consider the following:

- Read the entire contract and ask questions about anything that is unclear
- Don't rely on verbal statements, write down any promises or agreements to keep you protected
- Changes can be made to the lease if they are agreed upon by both landlord and tenant

Security Deposits

Most landlords will require a security deposit at the beginning of the rental period. This money goes toward any damages beyond ordinary wear and tear the tenant or guests cause to the rental unit or any other money owed to the landlord.

- Before giving the security deposit, inspect the premises you will be renting for any damage. Go through each room and write down the condition/make a list (called an inspection report). Sometimes the landlord may have one to use. Make sure that both you and the landlord sign and date the list, but you can add a category/information if it is not on there. Make sure to keep the list in a safe place; you will want it when you are vacating the residence.
- In South Dakota, the security deposit cannot exceed one month's rent except when conditions exist which may lead to additional maintenance costs (i.e. having a pet).
- The landlord must either return the deposit (within two weeks after the tenant moves out) or provide a written statement giving the reason for not returning the deposit (within 45 days).

Basic Tenant Rights

As a tenant there are certain rights that you are entitled to. To protect these rights, it is crucial that you understand them:

- **Anti-Discrimination** – Landlords may not discriminate against tenants on the basis of race, gender, familial status, religion, ethnicity, national origin, or disability. To learn more about your rights or to file a complaint, visit HUD's Fair Housing webpage.

- **Right to a Habitable Home** – Landlords must keep rental property in reasonable repair, fit to be lived in and free from unsafe conditions, this includes ensuring adequate heating, water, electricity, cleanliness, etc.
  - There are minor problems that a landlord may not be required to fix. Check your rental agreement for specific details
  - As a tenant you have the responsibility of reporting any problems and waiting a reasonable amount of time for the landlord to make repairs.
  - If the landlord fails to make repairs, you may choose to vacate the premises or make the repairs on your own and deduct the cost of repairs from the rent. If costs exceed one month's rent, you may withhold rent, depositing it in a separate bank or savings account. Always provide written notice to the landlord before withholding rent.
  - Any damage caused by your negligence is your responsibility.
- **Right to Privacy** – Tenants have the right to be free from unreasonable interference from the landlord.
  - A landlord has the right to make an inspection or repair but only with prior 24-hour notice.
  - In the event of an emergency, a landlord may lawfully enter the apartment without prior notice.

Pets and Service Animals

Check your lease before getting a pet. Your lease may require permission or may prohibit animals. If you have an animal without permission, you may be evicted. However, if you have a disability and depend on a service or companion animal your landlord may be required to make accommodations, even if there is a "no pets" policy. For more information, see HUD's guidelines on assistance animals.

Eviction

To be evicted, your landlord must file an eviction lawsuit against you and must have legal cause. South Dakota defines legal cause as failure to pay rent and violation of the lease or rental agreement. Typically, the landlord will be required to give written notice terminating the tenancy before evicting the tenant. There are three basic types of termination notices:

- Pay Rent or Quit – if tenant fails to pay rent, notice is given that allows the tenant to pay the rent or move out
- Cure or Quit – if the tenant violates the lease or rental agreement such as a no-pets clause, typically a set amount of time will be given in which the tenant can correct the violation
- Unconditional Quit – issued if tenant has committed serious violations to the lease, has caused serious damages, engaged in illegal activity, or been late with rent on more than one occasion. Typically, no notice is given and there is no option to correct the behavior

Following notice of termination, if you decide not to move out or fix the violation, the landlord will serve you with a summons and complaint for eviction. You may go to court and if you lose the case you will be subject to a sheriff's escort in which a sheriff or marshal will escort you off the property.

Termination Without Cause

If the landlord wants a tenant to move but does not have legal cause to evict, they must wait until the tenancy has expired before expecting the tenant to move. Time frames depend on the lease:

- Month-to-Month Tenancy: must give tenant one month's notice
- Fixed Term Lease: landlord must wait until lease ends, not required to give notice to move unless required through the terms of the lease

Defending an Eviction

Eviction can make it hard to find housing, can affect credit and does not necessarily relieve you from paying rent. If you want to fight the eviction you may have good legal defense if you feel you have been discriminated against or the landlord has failed to maintain the habitability of the rental property. See HUD's Legal Assistance webpage or contact 211 for legal service and tenant's rights resources.

For more information on tenant's rights, call 211 or search our online database:

- helplinecenter.org/211database
  - Use the following keyword search terms:
    - Tenant's Rights Information/Counseling
    - Discrimination Assistance
    - Unsafe/Unhealthy Housing Inspection

Sources:

- HUD Fair Housing: https://www.hud.gov/program_offices/fair_housing_equal_opp
- HUD Inspection template: https://www.hud.gov/sites/documents/90106.PDF
- HUD Service Animal Guidelines: https://www.hud.gov/program_offices/fair_housing_equal_opp/assistance_animals
- HUD South Dakota Legal Assistance: https://www.hud.gov/states/south_dakota/homeless/legalaid
- South Dakota Consumer Protection: https://consumer.sd.gov/docs/LLTenGuide_2015-5.5×8.5_online2.pdf

Disclaimer: This HelpSheet is developed by the Helpline Center. HelpSheets provide a brief overview of the designated topic. For more information, call 211 or text your zip code to 898211.

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