Questions and Answers on:
RENTING RESIDENTIAL REAL ESTATE

The relationship between you (the tenant) and a landlord begins when you enter into a contract—typically a lease. The terms of a lease generally are not dictated by law. However, many of the duties that you owe to each other are controlled by statutory law and cannot be "bargained away."

This pamphlet focuses on questions that frequently arise during the landlord-tenant relationship. Although the term "apartment" is used throughout, you should be aware that the questions and answers apply equally to other types of residential rental properties.

For information on tenant security deposits, unlawful discrimination in rental housing, condominiums and townhouses, and other consumer housing issues, contact the North Carolina Real Estate Commission (919/875-3700) and request a free copy of a "Questions and Answers" brochure on any of these topics or visit the Commission's Web site (www.ncrec.gov) for a pdf version. Other written materials are available from the Consumer Protection Section of the Attorney General's Office (919/716-6000). And for fair housing (discrimination) issues, call the North Carolina Human Relations Commission (919/807-4420) or your local fair housing agency. In addition, you may wish to review Chapter 42 of the N.C. General Statutes and consult a private attorney.

Q: In North Carolina, must a lease agreement be in writing?

A: No. An oral agreement can establish a landlord-tenant relationship if it is for a term of less than three years from the time the agreement is made and includes the • names of the landlord and tenant(s), • location of the property to be leased, • time period of the lease, and • amount of rent to be paid. *[Note: If the lease is required to be in writing, the signature of the party against whom you seek to enforce the lease is required.]*

Q: I filled out an application to rent an apartment and gave the landlord money to "hold" the apartment for me. Now I have found another place that I like better. Can I get my money back?

A: Probably not. Money you give to "hold" an apartment generally can be kept by the landlord. It is the price you pay to ensure that the landlord does not rent the apartment to someone else. Furthermore, if you have already agreed to rent a particular apartment for a particular term at a particular price, you may have created an oral lease; if so, the money may be considered a security deposit which can be retained by the landlord to the extent necessary to compensate him for your failure to pay rent. And, you may have to pay rent until the lease expires or until the landlord re-rents the property, whichever occurs first.

Q: My landlord gave me a written lease but it does not include his earlier oral promise to replace worn carpet.
Can I rely on his oral promise?

A: No. Do not rely on a prior oral agreement with the landlord. To make it "legal," have it written into the lease and initialled by both of you.

Q: Does the landlord have to repaint the apartment or steam clean the carpets before I move in?

A: No. The landlord has no obligation to paint an apartment or steam clean the carpets each time it is rented.

Q: May a landlord refuse to rent to someone who smokes, has a criminal conviction or who is under a certain age?

A: Yes. A landlord may lawfully refuse to rent to anyone for any reason other than those specified in the Fair Housing Act. However, the landlord should apply his or her selection criteria consistently with all prospective tenants.

Q: Can the landlord charge me more because I have a pet?

A: Yes. The landlord may charge extra rent and/or a nonrefundable pet fee in exchange for allowing you to keep a pet in the apartment. Furthermore, the landlord may charge more for some types or sizes of pets than for others; or, may prohibit pets completely. Any agreement you have with the landlord about pets should be included in the written lease.

Q: If my personal property is damaged by fire or theft while I am a tenant, will the landlord have to compensate me for my loss?

A: Not necessarily. Many tenants assume that their belongings are protected under the landlord's insurance. But unless the fire or theft was the result of a negligent act by the landlord, he is not responsible for your loss. Therefore, it is generally a good idea for you to purchase renter's insurance for your protection.

Q: Can my landlord come into my apartment periodically just to check its condition?

A: Maybe. Many leases give the landlord the right to enter the property to inspect it to see if the tenant is complying with his obligations, to make necessary repairs, to place "for sale" or "for rent" signs on it, or to show it to prospective purchasers or tenants. Still, entry must be at reasonable times and upon reasonable notice. If your lease doesn't address it, the landlord has no right to enter your apartment during the term of your lease.

Q: Does the landlord have to repair anything in my apartment that breaks down? What if I signed a lease accepting the apartment "as is"?

A: The landlord is responsible for some repairs, and the tenant for others. For example,

The landlord must

- Comply with local housing and building codes;
- Do whatever is necessary to put and keep your apartment in fit and habitable condition;
- Maintain in good, safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances which he has provided, and promptly repair them when you notify him in writing they are in need of repair (except in cases of emergencies);
- Keep all common areas in safe condition; and
- Provide and install smoke detectors and carbon monoxide detectors and replace batteries at the beginning of your tenancy.

[Note: After the tenancy begins, the landlord may enter a written agreement with you to pay you or reduce your rent in exchange for repairs.]

The tenant must

- Keep the rental unit clean (including toilet, sinks, and baths) and as safe as conditions permit;
- Dispose of trash and garbage in a clean and safe manner;
- Pay the rent as promised and otherwise comply with the lease;
- Not damage (or knowingly let anyone else damage) or remove any part of the property;
- Comply with any duties imposed by local building and housing codes;
- Replace batteries in smoke detectors and carbon monoxide detectors as needed and tell the landlord if a detector

needs to be repaired; and

- Leave the unit clean at the end of the lease and in as good condition as when you moved in, except for reasonable wear and tear. *[Note: It is important at the beginning of your lease to note the condition of your apartment on a checklist and ask the landlord to initial it. That way, you will not be held responsible for damage that existed when you moved in.]*

Q: Can I withhold my rent if the landlord does not do the repairs?

A: No, not without a court order or the permission of the landlord. Give the landlord a written request for repairs, and keep a copy. If a reasonable time passes and the repairs are not properly done, you may seek a rent reduction in Small Claims Court for the decreased value of your apartment. If the landlord ignores your request to fix the problem and your apartment is uninhabitable, you may be able to vacate the apartment and terminate the lease under a legal theory called "constructive eviction." Consult a private attorney for advice.

Q: Can the landlord charge a late fee?

A: Yes. If the landlord receives your rent five days or more after it is due, then he may charge a late fee. The maximum late fee is $15.00 or 5% of the rent, whichever is higher.

Q: Can the landlord evict me for complaining?

A: No. Under North Carolina law, you can do the following things without fear of eviction:

- Complain to the landlord;
- Complain to government agencies (such as housing inspectors and health departments);
- Assert your rights under the lease;
- Organize with other tenants to assert your rights; and
- Sue the landlord to enforce the lease.

However, a landlord may choose not to renew the lease at the end of the current term.

Q: Can the landlord raise my rent during the term of my lease?

A: No. Unless the lease states otherwise, you are guaranteed the agreed-upon monthly rent for the agreed-upon term of the lease. However, you also give the landlord your guarantee to pay the agreed-upon rent, on time, for that period.

Q: Can't I always terminate my lease with a 30-day notice to the landlord?

A: No. If your lease provides for a definite termination date, you are typically obligated for the entire lease term, even if you have a good reason for leaving such as illness or a job transfer. Early termination is only excused due to certain military transfers, foreclosures of the property or, in certain instances where the tenant is a victim of domestic violence, sexual assault, or stalking. So, if you leave early and the landlord is unable to re-rent your apartment, the landlord may sue you for the unpaid rent and costs, and/or file a negative credit report against you.

Some leases allow a tenant to terminate the lease early under certain circumstances by giving notice. Check your lease to determine if it permits early termination and the amount of notice it requires. If, for example, your lease allows you to give a 30-day notice to terminate it, typically, you must notify the landlord in writing at least 30 days before the end of the month in which you propose to leave and pay rent through the end of that month.

Q: I'm renting on a month-to-month basis. What notice must I give to terminate my lease?

A: Renting month-to-month is a form of "periodic tenancy." A periodic tenancy often occurs when a tenant remains in the apartment after the expiration of the initial lease term. Periodic tenancies have no termination date and may be terminated by either the landlord or tenant giving notice to the other. The amount of notice required will usually be set forth in the lease. If there is no written lease, or if the lease does not contain a notice provision, then North Carolina law allows you to terminate a year-to-year tenancy by giving notice to the landlord at least one month before the end of the year; a month-to-month tenancy by giving notice at least seven days before the end of the month; and a week-to-week tenancy by giving notice at least two days before the end of the week.

Q: My one-year lease has expired, but I still live in the property and pay rent on a monthly basis. Now the landlord says he is increasing my rent. Must I pay the increase?

A: It depends upon the terms of the lease. Most leases provide that when the lease expires, you automatically become a month-to-month tenant and are no longer guaranteed a particular rental rate. In that case, the landlord can increase the rent by any amount by giving you the same notice of his intent to raise the rent that he would be required to give to terminate your tenancy. You may either stay and pay the higher rent or move out.

However, some leases automatically expire at the end of the lease term and have no renewal provision.

In that case, the landlord may demand a rent increase in order for you to remain in possession after the expiration of the lease. But if the landlord accepts your rent payment in the usual amount for the month following the expiration of your lease, he may have effectively renewed your lease for another year at the old rate.

Q: My landlord just sold the property I am renting to someone else. Can the new owner evict me?

A: Probably not. If you are a tenant in possession of the property, the law presumes that the purchaser is aware of your tenancy, and requires that purchaser to honor your lease until it expires. However, you could be evicted if you agreed in your lease that you would vacate the premises upon the sale of the property. The new owner will not have to renew your lease when it expires.

Q: The home I am currently renting is going to be sold at foreclosure. What are my rights and responsibilities?

A: Tenants residing in a property containing less than 15 rental units, which is being sold in a foreclosure proceeding, may terminate the lease and move out without penalty or breach of the lease. However, the tenant must set the termination date at least 10 days or more after the date of the formal notice of sale from the Superior Court.

Not all individuals who are renting a home want to move out immediately after the foreclosure sale. Since 2009, a federal law allows some leases to survive a foreclosure. In these cases, a tenant has the option to stay until the end of the lease. However, in cases where the tenant is renting month-to-month or the buyer of the foreclosed property intends to live in the property instead of buying it as an investment or rental property, the law allows the buyer to terminate the remaining lease term, but only after giving the tenant a 90-day notice to vacate the home.

Q: My roommates and I paid a tenant security deposit before we rented our house. Will I get a refund of this deposit for my fair share if I vacate the property before my roommates?

A: No, typically a landlord will not refund a portion of the tenant security deposit to a roommate who is moving out if other tenants on the lease remain in the residence.

In most cases, the tenant security deposit will be held in trust by the landlord until the last tenant leaves. At that time, the deposit will be refunded, less any lawful deductions, to any remaining tenants leaving the home.

If you vacate the residence before the end of your lease, or before your roommates, you should discuss any refund with your roommates directly.

Q: Am I responsible for paying my roommate's share of the rent if my name is on the lease?

A: Yes. If your name is on the lease, you are legally responsible for the performance of the lease—even if your roommate's name is also on it. Many written leases require each tenant to be responsible for all rent that is due, and landlords will usually take legal action against the remaining tenant if his roommate(s) move out and the full rent is not paid.

Q: What must a landlord do to evict me?

A: A landlord or his agent may evict you for violating a provision of your lease, but must do so according to lawful procedures. For example, unless your lease provides otherwise, when you do not pay your full rent, the landlord must first make a clear demand on you for payment of the past-due rent. Then, if you do not pay the rent within ten days (or if you have violated your lease in some other way), the landlord may file a formal "summary ejectment" complaint against you in court describing why you should be ejected. The landlord may recover unpaid rent, court fees and other damages from you.

Many leases permit the landlord to shorten the ten day notice period or avoid it altogether by including a "forfeiture" clause. Such clauses provide that the lease terminates if you do not pay your rent within a specified number of days after it is due and may require no notice or less than ten days' notice before the landlord is permitted to begin the summary ejectment proceeding in court.

At the court hearing, you can, of course, raise defenses. If the magistrate rules in favor of the landlord, you can appeal the decision within ten days. However, you must pay the appropriate rent to the clerk of court while the appeal is pending. If you do not appeal in time, or if the landlord wins the appeal, he can enlist the services of the county sheriff to execute the judgment and evict you. At all times throughout the process, the landlord must use peaceable means to regain his property. "Self-help eviction," such as changing the locks, removing your possessions, or padlocking your door, is not permitted.

Q: Can I pay rent to the landlord to stop an eviction proceeding?

A: Maybe. It depends on the terms of your lease. If your lease does not address the issue and you pay or offer to pay the rent due (and any costs the landlord has incurred), the eviction proceeding is automatically terminated. If the landlord continues the suit, he will be responsible for your future legal fees. But if your lease allows the landlord to terminate your tenancy if you don't pay your rent on time, he can accept your late rent and still seek to evict you. Most leases today give the landlord this right.

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