



OFFICE OF THE STAFF JUDGE ADVOCATE
101ST AIRBORNE DIVISION (AIR ASSAULT) AND FORT CAMPBELL
CLIENT SERVICES
(270) 798-0910/0918

LANDLORD /TENANT LAW

The Residential Lease Agreement. In renting a house or an apartment, an oral agreement can be enforced as a binding lease. However, it is strongly advised that you use a written lease to clearly define the contractual rights and obligations of both parties. You should look for certain clauses within the lease and be aware of the factors described below before you sign a lease.

Duration. Most leases will be for a duration of six months or one year. Anything different from these lengths of time will probably need to be negotiated with the landlord. With a little luck, you might be able to find a month to month “tenancy at will” which provides flexibility by allowing either party to terminate the lease upon one month’s notice.

Service Members’ Civil Relief Act (SCRA) /Military Clause. The SCRA allows early termination of leases upon the receipt of deployment orders over 90 days or PCS orders which include a change in permanent duty station; or separation due to discharge, resignation, or separation from the service under honorable conditions; or retirement. The act does not provide for early termination due to availability of Government housing. Upon receipt of these qualifying orders the soldier must deliver to the landlord, in person or by mail (return receipt requested), a thirty days written termination notice, saying it is pursuant to the SCRA, along with a copy of his military orders.

Security Deposit Clause. A security deposit is a payment made by the tenant to the landlord to cover the cost of any damages incurred by the landlord if the tenant defaults on the lease or damages the premises. It is fully refundable at the end of the lease unless the tenant has damaged the property or has breached the terms of the lease. Under those circumstances, the landlord is entitled to use the security deposit to repair damage or recover unpaid rent. Anything above these costs must be returned to you. Watch out for excessive security deposits. As a guideline, the security deposit normally should not exceed one month’s rent. **Be sure to get a receipt for the security deposit.** Make sure it says “security deposit” and shows the amount and date.

Inspection of Premises. Always inspect the premises jointly with your landlord before taking possession of the house or apartment and then again upon departing the premises. Failure to identify existing damages early on may result in your assuming liability for those damages upon your departure. However, the landlord generally cannot keep the deposit to pay for “normal wear and tear” such as faded paint, worn carpet, or a leaking roof.

Early Termination Clause. An early termination clause for reasons other than what is covered elsewhere in the lease allows the tenant to be released from the full requirements of the lease after giving the landlord notice and paying a penalty. For example, an early termination clause may provide that a “tenant may break the lease upon 30 days notice, forfeiture of the security deposit, and an additional one month’s rent.” **Importantly, in the absence of an early termination clause, you are required to continue paying rent for the full lease term even if you move out earlier.** It should be noted, however, that if you break a lease by moving out early, you are only required to pay rent until the property is rented by another tenant. Additionally, the landlord is required to make a good faith effort to re-rent the property as soon as possible. However, if the landlord rents the property at a lower rate, you will be required to pay the difference.

Fire or Casualty Clause. The lease should also contain a fire or casualty clause. This clause releases you from liability for rent if the premises are destroyed. The tenant may leave the dwelling

immediately but must give the landlord notice of intention to terminate the lease. The landlord must then return any unused portion of the prepaid rent.

Must ensure the contract includes a fire and casualty clause. Will only cover the amount specified in the lease and will only apply if the insured has an interest at the time of the loss.

Late Rental Payment. Usually you will have a 5-day grace period specified in the lease to make your rental payment. Once your grace period ends, the landlord has two options: (1) He will probably charge you a late fee which should be specified in the lease, in Tennessee the penalty cannot be more than 10% of rent past due, in Kentucky there is not a limit. (2) The landlord could ask a court to order the sheriff to evict you for breaching your lease contract (see Client Services Office information paper on Eviction Procedures for more information). If you anticipate not being able to pay your rent, discuss the problem with your landlord right away, and politely ask him to give you additional time to make the payment without incurring a late fee or more serious legal action.

Subletting. Subletting is when you rent your place to someone else. As a general rule, you must look to the terms of the lease to see if you are allowed to sublet. If not mentioned in the lease, you should obtain the written consent of the landlord before subletting. Without permission from your landlord, you could be breaching your first lease as well as breaching any contract with your new renter. Ensure the terms of the lease specify the subtenant is liable for late payments.

Warranty of Habitability and Right to Peaceful Possession. Tennessee and Kentucky laws require the landlord to keep the premises safe, sanitary, and habitable. Furthermore, you have the right to live peacefully in the place you rent. Your landlord cannot harass you. For example, the landlord cannot lock you out or shut off your electricity without a court order. Except in an emergency, the landlord cannot come into your place without asking you ahead of time. These requirements are in effect regardless of whether or not they are explained in the lease. If the landlord violates these requirements, the tenant may take certain actions to force the landlord to comply or to get out of the lease. As a first step, the tenant must give the landlord notice (written notice is preferred) of the defective conditions, plus a reasonable time to repair before seeking legal remedies. Before you take such action, however, you should consult with a Legal Assistance Attorney to ensure you are within legal bounds.

Unlawful Discrimination. It is against the law (Fair Housing Act) for a landlord to discriminate against you for any of these reasons: your race, color, or national origin; your gender; your religion; because you have children who live with you; or because you or someone you live with or associate with has a handicap. This law does not apply in every case. Consult with a Client Services Attorney for further information. If you have been treated unfairly by a landlord, you can file a Fair Housing complaint by calling the U.S Department of Housing and Urban Development's Housing Discrimination hotline at 1 (800) 669-9777. The Housing Services Office will also guide you regarding housing discrimination complaints (For more information about the Housing Services Office, see below).

Finally, be aware that by signing a lease, you are signing a legally binding contract. Read the lease carefully before signing it, making sure that everything you discussed and agreed upon orally is written down in the lease. Make sure you get a copy of the lease for your records. If you desire help interpreting the agreement, feel free to visit the Client Services Office, preferably *before* you sign the lease.

More Information: At the Fort Campbell Housing Services Office (HSO) you can find information and help with certain off post landlord/tenant issues. The services they provide are: assistance with rental negotiations and review of leases, inspect rentals for adequacy, mediate tenant/landlord complaints, assignment and termination inspections upon request, housing discrimination complaints, and special assistance to Service Members with rental challenges. Fort Campbell Housing Services Office is located at Bldg. 850 Georgia & 16th Fort Campbell, KY 42223, (270) 798-3808, (270) 798-4438. You may request further guidance at the Fort Campbell Client Services Office, Building 2765 Tennessee Avenue, at 29th Street, (270) 798-0910/0918 or www.sjaclientservices.setmore.com.