



LANDLORD-TENANT RIGHTS IN TEXAS

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The information displayed in this handout is meant for the sole use of Active duty service members, retirees, their families and other personnel eligible for legal assistance from the Goodfellow AFB Legal Office. The information is general in nature and presented to assist those eligible persons prepare for a legal assistance appointment with a professional in the legal office. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

LANDLORD-TENANT ISSUES FOR MILITARY MEMBERS

Many people have problems with their landlord after they have rented or leased a house or an apartment. A careful reading and a clear understanding of the agreement before signing it can help you avoid several of these difficulties. Leasing contracts are often hard to comprehend because of their complex language. Therefore, it is very important that you read any agreement closely. Make sure you and the landlord have the same understanding of any questionable language before you sign the lease.

Realize that every state has its own landlord-tenant laws. What you experienced at your previous duty location may not be the same at your new location.

BEFORE SIGNING A LEASE

- NEVER sign a lease or put a deposit down on an apartment or a house until you have seen the exact place you will be renting, not merely a “model.”
- When you inspect an apartment or house, look it over carefully. Check to make sure all appliances that will be included work properly. Also, look over the outside of the building as well, including roofs, stairs, parking areas.
- If you know someone who lives in the same complex or rents from the same person, ask him or her about the landlord and how well the premises are maintained and repaired. If you do not know anyone, ask around and try to find someone who does.
- If after your inspection the landlord promises to make repairs on items, have them done before you sign the lease, or at least have him put such an agreement in writing.
- Always read the lease carefully before signing it. The lease becomes valid upon signing it and you cannot back out of it later if you change your mind.
- Changes in a lease (even in a pre-printed “standard” form) can be made before signing it as long as both parties agree. Don’t be afraid to propose any changes. Make any such changes in ink and have both parties initial each change. Be aware that oral leases or modifications are usually not enforceable.
- If the lease references other “house rules” or apartment regulations that are not within the lease itself, ask for a copy of them and review them before signing the lease.
- Study the lease carefully to determine the circumstances under which the landlord may enter your home.
- Look at the lease to see what types of repairs your landlord will make in your home. If the type of repairs stated does not seem adequate, suggest a clause that does. Also, check to see what types of repairs you are responsible to make.
- Determine how long the lease period will run. If it is for a fixed period time (i.e. 6 months or 1 year), the landlord will not be able to raise the rent during that period unless the lease allows it. If it is a month-to-month lease, either party will be able terminate the lease at the end of each month, with the proper amount of advance notice. Also, on these types of leases, the landlord can raise the rent for later months.
- Ask that the following military clause be added: *“Under the following circumstances, you may terminate the lease contract by giving us written notice:*

- 1. If you or your spouse are or become a member of the Armed Forces of any nation on extended active duty and receive change-of-station orders to permanently depart the local area or if you are relieved from active duty; or*
 - 2. If you or your spouse are deployed to a foreign country as a member of the U. S. Armed Forces and are not continuing to receive quarter allowances from the military.*
- After move-out, you are entitled to the return of your security deposit, less any lawful deductions.

BEFORE MOVING IN

Some managers require a non-refundable application fee. This means that if you apply and then decide not to move into that particular complex you will not get that application fee back. In addition, most landlords expect a security deposit before they let you occupy your new residence. This amount may range from about \$150 to one month's rent or more. The deposit is designed to cover any back rent owed upon moving out as well as any damages to the dwelling unit.

Therefore, before paying the deposit you should conduct a thorough move-in inspection of your new residence with your landlord or the representing agent. Note every problem you observe in writing and get a copy of the inspection signed by both you and the landlord. Consider that you are expected to return the house or apartment in the same condition as you found it - (this inspection is used as a guideline for possible damage upon move-out) - except for normal wear and tear. If existing problems have not been recorded in this document, you may be held responsible for damages you did not cause. If you do not agree with your prospective landlord about the problems present, you should put your disagreement in writing and submit this signed statement to your manager.

WHILE LIVING ON THE PREMISES

After you have moved into your new home, both you and your landlord have certain responsibilities that you have to consider.

Landlord's Responsibilities: Your landlord is liable for any improvements to the property made by you, provided you had the landlord's consent. Also, generally, the law requires your landlord to repair any damage to your apartment that is beyond normal wear and tear. This includes structural problems as well as any trouble with appliances essential to the occupancy of the residence. It does not apply to damages caused by you or through your occupancy. Therefore, take good care of the premises and instruct your household members and guests to do the same. You should inform your manager immediately of any problems and insist on prompt repair. If you allow the conditions to linger, the landlord may not be liable. Be insistent; this is your legal right.

In the rare instances where the landlord's failure to repair causes the dwelling unit to become uninhabitable, you can be constructively evicted. This means that you are no longer contractually bound by your lease or rent agreement until the landlord restores your home. Be sure to check with attorney to establish your rights and responsibilities in a constructive eviction.

Tenant's Responsibilities: As a tenant you have certain responsibilities. These include (but are not limited to) your duty to pay your rent on time, to prevent disorderly conduct by anyone on your premises, to obey the rules and regulations you signed in your lease, and to disallow criminal conduct.

Your most important obligation to your landlord is timely rent payment. Landlords rely on their projected income to meet their responsibilities. If you make a late payment or don't pay at all, a serious problem is created. The courts have given landlords certain remedies to assure the coverage of any potential losses, and eviction may follow.

You are bound by the rules and regulations you signed in your lease or rental agreement. Continuous violation of these rules, as well as disorderly conduct, may result in an eviction. You are also responsible for the actions of your household members and your guests. Any criminal conduct on the premises is sure grounds for eviction. For example, any drug use or sale in your residence can result in legal actions that cause you to lose your home.

Renters Insurance: The landlord's insurance policy will not cover a tenant's losses due to theft or damage, so renters insurance is important. Renters insurance will also cover the tenant if the tenant is sued by someone who claims to have been injured in the rental due to the tenant's carelessness.

AT THE END OF THE LEASE

ALWAYS give written notice that you intend to vacate the premises. Do not assume that the landlord knows you are leaving because the lease is expiring. You must give written notice of your plans to vacate or the lease may automatically renew or become month-to-month lease.

Clean the house or apartment thoroughly (including the stove, oven, and refrigerator). After you have moved out and cleaned the apartment, ask the landlord to walk through and inspect the premises with you. After the inspection, ask the landlord if the apartment is satisfactory to have your full deposit returned. If not, this will give you a chance to rectify any problems. Have a prepared document for the landlord to sign indicating that he/she is satisfied with the condition of the apartment and no deductions will be made from the security deposit.

Make sure you return the keys to the landlord immediately. The landlord may be able to charge you rent for each day you have the keys. You MUST give your landlord a written forwarding address where your security deposit can be sent.

SECURITY DEPOSITS

When you rent an apartment or a house, you are generally required to pay a security deposit. A security deposit is any advance of money, other than advance rent, intended primarily to secure the performance of a rental agreement.

Problems often arise when the tenant moves out and tries to get the security deposit back. The Texas Landlord and Tenant Act establishes rules governing the return of security deposits. It specifically addresses the landlord and tenant's responsibilities and the penalties for noncompliance by either party.

The landlord can only deduct damages and charges from the security deposit for which you are legally liable under the lease agreement, or for physical damages to the property. Your landlord cannot retain part of your security deposit to cover normal wear and tear, which is deterioration or damage which occurs based upon the normal intended use of the premises and which is not due to the tenant's negligence, carelessness, accident, or abuse.

Your security deposit must be refunded to you within 30 days after you move out. If your landlord is keeping all or part of your security deposit, he/she must provide you with the balance of the deposit, if any, along with a written description and itemized list of all deductions. The tenant must provide the landlord with written notice of a forwarding address. If the tenant does not provide this notice, the landlord is not obligated to return the deposit or provide a list of deductions, but the tenant does not forfeit the right to obtain these items at a later time.

Do not use your security deposit as the last month's rent. If you do so, you may be liable to the landlord for three times the amount of the rent plus attorney's fees.

If your landlord fails to properly return your security deposit, you can sue him/her. Such suits can easily be filed without an attorney in Justice of the Peace court. If the landlord retains any portion of the deposit in bad faith, he or she is liable for three times the amount wrongly withheld, plus \$100.00, attorney's fees and court costs. If no bad faith is involved, the tenant may only recover the amount wrongfully withheld and court costs. If the landlord fails to provide a list of itemized deductions in bad faith, the landlord forfeits the right to withhold any portion of the deposit and must pay attorney's fees and court costs. "Bad faith" is presumed on the failure to provide a description of the damages or to return the security deposit within 30 days of the tenant's surrender of the premises.

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

Generally. As a member of the military, there are special laws that can have a substantial influence on your rights in property rental. Perhaps one of the most important areas affected by these laws is that of landlord-tenant law. A landlord-tenant relationship is contractual in nature, and exists where a person agrees that a residential or commercial dwelling will be used by another person for a certain amount of money and period of time. Such legal relationships are normally covered by formal (usually written) agreements called leases and are strictly controlled by the terms of the lease, as well as various state and Federal laws that apply. As each state has different laws that affect a military member's rights in the landlord-tenant relationship, each case is unique, and requires individual attention from a qualified attorney. However, general information regarding individual rights in such cases is provided below, and should be considered in any military landlord-tenant matter.

Right to terminate leases early. Under section 535 of the Servicemembers Civil Relief Act (50 USC App. §§ 501-596, "SCRA"), a military member has the right to terminate a lease, if after

signing the lease: the tenant enters military service (which includes a reservist being called to active duty); or the tenant signs the lease while in military service, and then receives military orders for a PCS move, or to deploy, or as an individual in support of a military operation, with a military unit for a period of not less than 90 days.

1. **How to terminate leases under the SCRA.** The military tenant who terminates a lease under the SCRA must do so by giving the landlord written notice of termination of the lease, accompanied by a copy of the military tenant's orders. The notice must be "delivered" to the landlord by hand, private business carrier, or by U.S. mail, return receipt requested.
2. **Effective date of lease termination.** The SCRA says that the lease terminates "30 days after the first date on which the next rental payment is due and payable after the date on which the notice...is delivered." For example, if a tenant delivers notice to the landlord on the 20th of the January, and normally pays rent on the 1st of each month, the lease ends on 1 March (the tenant must pay for February's rent).
3. **What about family members who are also tenants?** In cases where both a military member and a non-military spouse are tenants (have signed the lease), the military member's notice of termination is good for the non-military tenant as well. In other words, the landlord cannot sue the non-military tenant for nonperformance under the lease where the military tenant has given proper notice under the SCRA.
4. **Criminal penalties for violations.** The SCRA provides that any person (landlord) who knowingly and wrongfully holds a security deposit, or other property of a tenant who has lawfully terminated a lease under the SCRA is subject to a fine under title 18 of the US Code, and imprisonment for not more than one year.

Evictions. Under the SCRA (§ 531), a military tenant and dependents may not be evicted from a rented residence (during a period of military service) without a court order. Note that this protection only applies to leases covering the principal residence of the military member, and for leases less than a certain amount specified in the statute (\$3,991.90 per month in 2020, adjusted annually). If an eviction case is started against a servicemember whose ability to pay the agreed rent is materially affected by military service (for example, a reservist that suffers a pay decrease after being called to active duty), then the court can delay the proceedings, or adjust the rent under the lease to accommodate the interests of the parties.

Public-Private Venture (PPV) Housing. The Department of Defense has increasingly contracted base housing management functions to private contractors since approximately 2002. In so doing, the actual ownership of the houses aboard many installations has been transferred to corporations and other organizations, under agreement with the Federal Government. Accordingly, installations that have PPV housing units are using written leases to govern the relationship between the military tenants and the civilian management. Some installations have had such leases reviewed by legal assistance attorneys, while others have not. Keep in mind that you may contact your local legal assistance office with any questions about such leases.

NOTE: This handout is for general informational purposes only. For additional information concerning your specific situation, you should seek counsel from an attorney. If you have any questions, please call the Legal Office at 325-654-3203 to make an appointment with a legal assistance attorney.

References:

Texas Property Code § 91 and 92 at <http://www.statutes.legis.state.tx.us/>

Attachment from Texas Attorney General website at
<http://www.oag.state.tx.us/consumer/tenants.shtml>

Attachment from Austin Tenants' Council website at
<http://www.housing-rights.org/brochures.html>

TexasLawHelp.org