

has **only four business days** to respond to the Summons/Complaint of the landlord by serving a document—called an **Answer**.

3. If the tenant does not Answer within four days of receiving the Summons and Complaint, the landlord can get a Court Order which orders the County Sheriff to move the tenant out of the rental unit.

4. If the tenant obtains an attorney and Answers, claiming that he/she has a right to stay in the rental unit, a trial will be held in Court. The judge or a jury will then listen to both the landlord's side and the tenant's side and decide if the tenant should be evicted or if she/he can remain.

If the tenant moves out before a trial, the eviction action may end, but the landlord can continue the action for any rent and/or damages caused by the tenant to the rental unit, as well as monetary damages caused by the tenant's failure to move.

If the landlord wins the eviction action at the trial, the Court will Order the tenant to leave the rental unit and to pay any rent due. The tenant may also be ordered to pay the landlord's attorney's fees and costs of the court action (filing and service fees, etc.) In some cases, the landlord can recover double rent for the time the tenant had remained in the rental unit after the end of the three day notice to vacate time period.

If the tenant wins the eviction action, he/she will be allowed to remain living in the rental unit for the length of the rental agreement. This would not prevent the landlord from giving the tenant a month's notice to move, if the lease is month-to-month and not a subsidized housing lease. Even if the tenant wins, she/he will still have to pay rent.

RETALIATORY EVICTIONS

A retaliatory eviction is when a landlord greatly increases rent, or decreases or disconnects utilities, or demands that the tenant move simply because the tenant has done any of the following:

1. The tenant complained to a government agency, such as a County Housing Authority or City Building Inspector's Office, regarding housing or building code violations that effect the health and safety of the rental unit. The complaint must be "in good faith" (made honestly); or,

2. The tenant gave the landlord **written notice** of repairs that are needed on the rental unit. (See page above); or,

3. The tenant started or joined a tenant's rights group or a "tenant's union".

The following are **not** considered a retaliatory eviction under law: If the landlord gives tenant a notice to move

180 days (6 months) or more after the tenant does one of the above (1-3), or the landlord does not renew a written lease when it ends. Example: Tenant has a written, month-to-month lease. Tenant joins a tenant's union in early June. In late June, the landlord serves tenant notice that lease will end on July 31st. This is not retaliation under the law.

If the landlord does violate the retaliation law, the tenant has the right to sue the landlord for damages as if the tenant had been locked out by the landlord (see page above), plus sue for up to \$500.00 in fees for the tenant's attorney.

REMEMBER: To fight an eviction, a tenant needs to contact an attorney as soon as they are served with a Three Day Notice or a Summons and Complaint.

DEPOSITS

HOW CAN A TENANT PREVENT DEPOSIT HASSLES?

Most landlords require a security deposit (also called damage deposit, rent deposit, etc.) to be paid by a tenant at the beginning of the lease. Before moving in, the tenant should inspect the rental unit with the landlord and write out a list of any damages, whether large or small, that have already been done to the rental unit (such as spots on the carpet, broken windows, marks on walls, stove heating coils not working, etc.) Both the landlord and tenant should sign this paper and each should keep a copy. This will protect both parties from later misunderstandings about what damage the tenant caused.

If the landlord is unwilling to make the move-in inspection, the tenant should make one anyway and mail a copy of the damage list to the landlord. The best way to mail is by a Certified Letter (return receipt). By keeping the return receipt card and a copy of the letter, the tenant can prove, if she/he needs to, that the landlord knew of the old damages to the rental unit when the tenant moved in. At the very least, a tenant should make a move-in damage list, date it and keep in with the lease.

A landlord cannot require a security deposit in excess of one month's rent unless "special conditions" exist which pose a danger to the condition of the premises. This may include large or many pets or other things which may likely cause damage, by the tenant, to the rental unit.

HOW CAN A TENANT GET THE SECURITY DEPOSIT BACK?

When a tenant moves out, the landlord must return the deposit or send a written statement, to the tenant, showing the specific reason(s) for not returning the deposit. The refund or statement must be sent within two (2) weeks after the tenant has moved out and the landlord has received the tenant's mailing address or delivery instructions. The landlord may keep from the deposit only such money as is necessary to either cover unpaid rent or to return the rental unit to the way it was at the start of the tenant's leasing of the rental unit. Costs to repair "ordinary wear and tear" cannot be included in the money the landlord may keep. The tenant may also demand a listing of how the deposit money was spent by the landlord. This must be given to the tenant within forty-five (45) days after the tenant moves out.

Every time a tenant moves, he/she should write a letter to the landlord notifying the landlord of the tenant's new address and demanding the return of the deposit. The letter should also ask for a listing of how any of the deposit money kept by the landlord was used. This letter should be sent by Certified Mail (return receipt), the tenant keeping a copy of the letter and the return receipt card.

If the landlord keeps all or part of the deposit without good reason or fails to send the tenant the proper notices, the landlord can be sued in Small Claims Court for the deposit's return. Two Hundred Dollars in punitive (punishment) damages can also be awarded to the tenant if, the Landlord, in bad faith, fails to return all or part of the deposit, or if the landlord does not provide the tenant with the 2-week statement or 45-day itemized listing, as required by law. "Bad faith" means the landlord knew or should have known the laws on notice but still failed to give the tenant proper notice, or knew she/he had no right to some or all of the deposit, but did not return it.

WHAT HAPPENS TO PROPERTY LEFT ON RENTAL PREMISES?

The landlord must handle property left on the rental premises, by a tenant who has moved, as follows: Property having a total reasonable value **which does not exceed \$100.00** is, under law, abandoned by the tenant after ten (10) days of the tenant's move from the rental unit. The property may then be disposed of by the landlord according to abandoned property laws. Property with a total reasonable value of **over \$100.00** must be stored by the landlord for thirty (30) days after the tenant moves. If the tenant does not claim the property during the thirty days, the landlord may treat the property as abandoned and dispose of it according to law. If the property is claimed by the tenant during the thirty days, the landlord can make the tenant pay reasonable handling and storage costs.

LANDLORD- TENANT

RIGHTS & RESPONSIBILITIES



**DAKOTA PLAINS
LEGAL SERVICES**



REMEMBER: This pamphlet restates South Dakota Landlord/Tenant law. Each legal problem depends on the unique facts of that case. The explanations of the law in this pamphlet are not meant as advice on your legal problem. If you have a landlord/tenant problem you cannot solve, see an attorney.

INTRODUCTION

Anyone who rents a house, apartment, or mobile home is a tenant. Renting, also called leasing, is an arrangement by which a landlord gives a tenant temporary possession and use of property for rent, and the tenant agrees to pay rent and to return the property to the landlord at a future time. If a person rents a sleeping, motel or hotel room for four (4) weeks in a row or more, you are a "tenant" under law.

The law stated in this pamphlet applies to private, as well as public housing (such as Lakota Home, Section 8 and HUD housing) landlord/tenant relationships. Public Housing tenants also need to look to their lease, as they have added rights and duties under Federal law.

WHAT ABOUT DISCRIMINATION BY A LANDLORD?

Persons leasing a dwelling should also be aware that Federal law prohibits, with few exceptions, a landlord from discriminating against any person in the rental of a dwelling, or the terms, conditions or services of the rental, on the basis of race, color, religion, sex or national origin of the tenant. There are also added legal rights for disabled tenants. If you believe you have been discriminated against, see an attorney or contact the Federal Department of Housing and Urban Development (HUD).

THE LEASE

WHAT IS A WRITTEN LEASE?

Written leases usually state the most important terms of a rental agreement, including the length of the rental period, the amount of rent, and the notice necessary to end the lease. Tenants need to read **each word** of any paper he/she signs. Make sure it states the terms of the lease to which the tenant and landlord agreed. The tenant needs to decide if she/he is willing to rent the unit under the lease's terms. If the tenant has questions, they need to ask the landlord or see an attorney. If the tenant does not like the answers or does not like the lease, he/she can refuse to rent the unit or get the landlord to change the lease before it is signed. Generally any changes in the terms of the lease must be initialled by both the landlord and the tenant to be effective. The tenant should be sure to keep a

copy of the lease in a safe place, where it can be found when needed.

HOW DO ORAL (UNWRITTEN) LEASES WORK?

Sometimes, there is no written lease. Then the rental period runs for the period of time for which rent is paid. If no rental period is stated in a written lease, this also applies. For example, if rent is paid once a month, then the lease is on a "month-to-month" basis. This means that the tenant must give the landlord one month's notice prior to moving out, and the landlord must give the tenant one month's notice in order to end the lease and have the tenant move.

HOW CAN A LANDLORD CHANGE THE LEASE?

Under a monthly-to-month tenancy agreement, the landlord may, upon giving notice in writing at least thirty days before the expiration of the month, modify the terms of the lease (such as increase the rent) to take effect at the expiration of the month. The tenant may refuse to agree with the change and move from the premises. To do so, the tenant may terminate the lease effective the first day of the next month by providing notice of termination to the landlord **within fifteen days** of receipt by the tenant of the notice of modification.

REMEMBER: If you do not understand the terms of a lease, written or oral, be sure to ask questions and, if needed, get legal advice from an attorney.

CAN THE LANDLORD ENTER THE UNIT?

Generally, the landlord may lawfully enter the rental unit without giving notice to the tenant in the event of an emergency. The landlord has the right to make an inspection of the rental unit at a reasonable time, but only after reasonable notice is given to the tenant. "Reasonable notice" is generally considered to be 24 hours in advance of entry into the rental.

REPAIRS

A landlord must keep the rental unit in reasonable repair and fit for humans to live in (except for damage caused by the tenant's fault). This reasonable repair includes keeping all electrical, plumbing, and heating systems in good and safe working order. This duty cannot be ended or changed by the landlord or tenant. However, the landlord and tenant can agree to let the tenant make certain repairs instead of paying some or all of the rent. The tenant should obtain such an agreement in writing.

WHAT CAN THE TENANT DO IF NO REPAIRS ARE MADE?

If a landlord fails or refuses to make needed repairs, the tenant must give written notice to the landlord of the specific repairs that are needed and then wait a reasonable time for the repairs to be made. The tenant then can act only if the landlord fails to make the repairs. If a tenant does not have heat or water or electric power, an emergency situation exists and the tenant should demand immediate action from the landlord. The tenant needs to keep a copy of any written notice given or mailed to the landlord.

Once the written notice has been given and a reasonable time passes, if the landlord has not made the repairs, the tenant can do one of two things:

1. The tenant may vacate the premises, in which case he shall be discharged from additional charges of rent or performance of other conditions; or
2. The tenant may make the needed repairs, in which case the tenant may subtract the cost of the needed repairs from the rent. If the cost of needed repairs is more than one month's rent, the tenant must put the rent in a bank account opened only for the purpose of depositing the withheld rent. The tenant must give the landlord written proof of the rent money deposits into the account. The bank account is to be kept until either the landlord makes the repairs (the rent in the account is then given to the landlord), or enough rent is in the account for the tenant to make the repairs. Then, the tenant uses the money for the repairs and gives copies of the receipts for the work, and any remaining rent money, to the landlord.

WHAT IF THE TENANT CAUSES DAMAGES?

In addition to the tenant's duty to pay rent, he/she is required to keep the rental unit in good condition. The tenant also is required to repair all damages to the rental unit caused by the tenant, her/his family members or invited guests. A tenant is not responsible for ordinary "wear and tear" to the rental unit.

LOCKOUTS AND LANDLORD UTILITY SHUT-OFFS

A landlord may seek an eviction order from a Court (see "Eviction", below), but a landlord cannot take matters into his/her own hands and lock a tenant out. If a landlord, without a court order, locks a tenant out of the rental unit or cuts off electricity, gas, water or other essential services to the rental unit, the tenant has the right to sue the landlord for:

1. Return of the rental unit to the tenant, terminate the agreement, and/or re-connection of any cut off utilities; and,

2. Three times the amount of the tenant's actual damages; and,

3. An amount equal to two months rent, plus advance rent paid and the amount of any security or damage deposit paid by the tenant.

A landlord also does not have the right to unlawfully keep or withhold personal property of the tenant **unless** it is abandoned (see below).

EVICCTIONS

WHEN CAN A TENANT BE EVICTED?

A landlord can bring an eviction ("forcible entry and detainer action") in Court if:

1. The tenant is not in lawful possession of the landlord's rental unit (for example, the tenant remains in the rental unit after the time stated in the lease has expired or the tenant fails to pay rent for more than three (3) days after it is due); or,
2. The tenant greatly damages the rental unit; or,
3. The tenant does something which the lease states cannot be done (for example, tenant has pets in the rental unit and the lease says the tenant can be evicted if he/she has pets); or,
4. The tenant fails to do something which the lease states must be done or the tenant will be evicted (for example, the tenant agrees, in the lease, to make certain repairs on the rental unit instead of paying the rent and then does not make the repairs); or,
5. In a monthly tenancy, the tenant fails to vacate the premises after receiving a one month notice from the landlord of an intent not to renew the lease even if the tenant has not violated any terms of the lease.

HOW DOES AN EVICTION WORK?

Under South Dakota law, these are the steps the landlord **must** take to remove a tenant, if the tenant will not move voluntarily from the rental unit:

1. In most cases, the landlord must provide the tenant with a **written Three Day Notice**; the notice tells the tenant that she/he has three days to leave the rental unit or a legal action will be begun to force the tenant out. The three days are three business days and do not include Saturdays, Sundays or legal holidays;

2. If the tenant remains in the rental unit after the three days, the landlord **must** have a **Summons and Complaint** personally served on the tenant. A Summons and Complaint are legal papers which begin legal action in Court. A tenant does not have to move at this time if he/she has a legal reason to fight the eviction; if so, the tenant should see an attorney immediately since she/he