

This section is written by tenant advocates. They are attorneys who have agreed to present a tenant's point of view on your rights and duties.

I INTRODUCTION

Regardless of whether your landlord is a friendly, likable person or an intimidating one, you should always remember that you have a right to decent living conditions and fair treatment with respect to your legal rights.

YOU HAVE FEWER RIGHTS THAN YOU NEED. YOU HAVE MORE RIGHTS THAN YOU KNOW.

Read this green section for tenants lawyers' views of your rights. Consult your lawyer, legal aid society or tenants union lawyers whenever you have a specific legal problem.

II YOUR RELATIONS WITH YOUR LANDLORD

Landlords usually know much more about landlord/tenant law and economics than tenants. This is because landlords are in business and need to know the limits of their rights and obligations.

Tenants, on the other hand, are often uninformed or misinformed about their rights and duties. A survey conducted for the City of Ann Arbor by the Institute for Social Research in 1976 showed that over 60 percent of Ann Arbor tenants were unable to answer each of five elementary questions on tenants' rights.

When you have a problem or potential problem with your landlord, it therefore makes good sense, whenever possible, to:

CONTACT A TENANT ADVISOR, SUCH AS A LAWYER OR TENANTS UNION REPRESENTATIVE, BEFORE YOU ENTER INTO DISCUSSIONS WITH YOUR LANDLORD.

You have nothing to lose by contacting a tenant advisor and this advisor may be able to prevent you from making costly mistakes, such as accidentally waiving rights or settling your dispute on disadvantageous terms, when you do talk to your landlord.

Bargaining with Your Landlord for Your Rights

Occasionally as a tenant you will have to bargain with your landlord to enforce your legal rights. Here are some things to remember which may help.

- (1) It is usually easier to bargain when you have the formal or informal help of other tenants from your dwelling or building or a tenants union who want to help bargain for the same rights.
- (2) You are paying rent, usually a lot of rent, for your dwelling. When you buy a product from a store, you want it to be free from defects and you expect the store to treat you fairly. You also have the right to a dwelling free of defects and to be treated fairly by your landlord
- (3) A landlord will often try to use an economic justification for his bargaining position on your legal rights. In other words, a landlord

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will often say his/her allegedly low profits are the reason for the unconscionably high rent, lack of sufficient repairs or for keeping your security deposit on questionable grounds.

In order to deal with this kind of argument, you should know that a landlord makes money in many ways, most of which he/she will not bring up on an argument. Here are some of the ways:

- (a) **Appreciation:** A landlord makes money on the rise in value of his/her building. In Ann Arbor, property values can appreciate as much as 10-15 percent each year. On a \$30,000 building, this would be a profit of \$3,000 to \$4,500 in a single year. If the landlord's downpayment was \$6,000, the profit by appreciation alone may be 50-75 percent of the landlord's investment in a year.
- (b) **Building:** Unless your landlord has purchased your building for cash, a very rare occurrence, part of your rent dollar goes to pay your landlord's mortgage, so that the tenant buys the building for the landlord, the same way as your rent dollar helps the landlord buy clothes or a new car. When the landlord sells the building, he/she owns the part he/she paid for with the down payment and the part you bought for him/her with the rent.
- (c) **Cash flow profit:** This is the profit the landlord makes each month. It is the rent for that month minus the costs (for the plumber, the mortgage, the taxes, etc.) of each month. This is the only profit most tenants know the landlords earn, but the other profits are often much larger.
Landlords sometimes may claim that they have a negative cash flow. If this is their attempted justification for depriving you of your legal rights, you should (a) explain that, even if true, this is not lawful justification for their actions; (b) ask about their other profits and the level of those profits; and (c) say you would like to see proof of their other profits. (Remember, appreciation does not get realized until the building is sold.)
- (d) **Depreciation allowance:** A landlord is given numerous tax breaks. The most important is the one that allows the landlord to claim a deduction to the Internal Revenue Service as if he were losing money by the depreciation of his or her building when the market value is, in fact, going up. This pretend "loss" is offset against the landlord's other income. The landlord usually saves about half the taxes on the income offset. That "tax shelter" is a profit the landlord gets from his income before taxes are applied. Other breaks also exist.

When your landlord makes economic arguments trying to justify a deprivation of your legal rights, use ones of your own.

III Discrimination

If a landlord won't rent to you because of your race, color, religion, sex, sexual preference, welfare status, age, handicap, marital status or educational status, see a tenant lawyer or tenants union immediately.

One way of preventing illegal discrimination (similar to that used in race discrimination cases in the sale of real estate when a white person would buy the house for a black friend) may be to have a friend move in and sublet from the friend. It is unlawful for a landlord to evict you in retaliation for subletting to prevent unlawful discrimination. However, the tenant should be sure there's illegal discrimination and should contact a tenant lawyer before he/she tries this.

There are special rules for one- and two-family dwellings, if the landlord lives there, and for dwellings solely for older people, for members of only one sex and for members of only one religion. Some discrimination in these instances is allowed.

IV THE LEASE OR RENTAL AGREEMENT

The white section of this booklet contains information on this area.

It should be emphasized, however, that leases can be written by tenants or landlords, or freely negotiated. In communities with housing shortages (like Ann Arbor), they are almost always written by the landlord or the landlord's attorney. Such leases are often more than a lawful agreement. They often contain clauses that are misleading or unenforceable to intimidate tenants who don't know the law.

Landlords don't usually try to enforce the invalid clauses in court, but show them to the tenant when there's a dispute to scare the tenant into giving up the dispute or giving up some of the tenant's rights. These invalid clauses are discussed below.

V UNENFORCEABLE LEASE CLAUSES

There is an unlimited variety of ways in which lease clauses can be written to make them misleading and confusing to tenants. Since there is such a variety of misleading clauses, a good rule of thumb is this:

IF YOU THINK THAT A LEASE CLAUSE IS UNFAIR, IT MAY ALSO BE UNENFORCEABLE. CHECK WITH A TENANT LAWYER.

Even though a clause is unenforceable, a landlord may try to use such a clause to convince you to give up a dispute with him or to give up rights of yours. For example, a tenant is less likely to start a lawsuit to obtain repairs or withhold rent if that tenant believes he/she has waived the right to a jury trial or must pay the landlord's attorney fees.

Read your lease with a grain of salt and a dash of pepper.

Another point: If you spot illegal and unenforceable clauses in a lease before you sign it, it may be unwise to argue with the landlord who may then think you are a trouble-maker and refuse to rent to you.

TENANT LAWYERS USUAL ADVICE IS: IF YOU WANT THE PLACE, SIGN THE LEASE AND MOVE IN, IF THE RENT IS ACCEPTABLE. IF A LEASE CLAUSE SEEMS UNFAIR AND IS BEING USED AGAINST YOU, SEE A TENANTS LAWYER OR TENANTS UNION FOR ADVICE AND INFORMATION.

Once in your dwelling, if you want to bargain about lease terms, it may still be difficult to work by yourself. Tenants unions and collectively bargaining with other tenants of the same landlord may help you, however, and you should keep them in mind.

VI IF YOU PAY A DEPOSIT AND DECIDE NOT TO MOVE IN

If the place was not ready when it was supposed to be, you should be entitled to all of your deposit back and maybe more.

If you change your mind through no fault of the landlord, you may have to pay part or all of the deposit to the landlord. Look to your lawyer and not to your lease for what your rights are here. If the landlord rerents the place immediately, you should get the entire deposit back minus a few dollars fee. You should also be permitted to sublet the place for the landlord if you want to and not lose any of your deposit.

VII The Condition and Upkeep of Your Dwelling

CLEANING

You have a right to a clean and sanitary apartment when you move in. This is part of what you pay rent for.

"Cleaning waivers" are clauses in leases which supposedly give up this right. They may or may not be valid. "Cleaning waivers," coupled with "nonrefundable cleaning fees," seem particularly unfair.

If your place is filthy when you move in, you should not complain until you move in; then complain, take photos, do the cleaning, if the landlord won't, and negotiate for compensation for your work. See a tenant lawyer or tenants union for help, if you need it.

REPAIR

If your place needs repair, you are almost always entitled to **both** the repairs **and** the money to compensate you for the inconvenience and other damages caused by the period of disrepair, unless your inconvenience was trivial. If it was severe, you may be entitled to large recoveries.

CERTIFICATE OF COMPLIANCE

The landlord must have and show you one on request. But it is not conclusive proof that the place is in good repair. Your own observation is usually more accurate proof and is acceptable in court.

VIII WITHHOLDING RENT

If your landlord will not make needed repairs when requested to do so, by far the most effective way to get the landlord to repair is to **WITHHOLD THE RENT UNTIL THE REPAIR IS MADE**. Then, negotiate compensation of the part of the rent "excused" for the inconvenience you suffered due to the lack of repair. (EXAMPLE: The refrigerator was broken for a month and you had to eat out. Negotiate for the extra price you paid for meals.) If you find that other tenants in your dwelling and/or building are experiencing similar hardships due to the landlord's lack of repair, tenant lawyers recommend that you negotiate as a group in order to maximize your bargaining strength.

Rent withholding is quite legal, covered by both statute and appellate case law. If you have been unsuccessful in negotiating an acceptable settlement, your landlord will most likely take you to court in order to recover what he/she claims is the rent not "excused" due to the lack of repair. With this in mind, it is recommended that, in addition to following the procedures outlined in Section VIII(b) of the white section of this booklet, you consult with your lawyer or tenant advocate. (NOTE: In some cases, this person's assistance in contacting your landlord and/or city inspectors may resolve your problem without further court proceedings.)

The court may "excuse" part of the rent that you have withheld, on rare occasions may "excuse" all of the rent, and may even order the landlord to pay you money in excess of the rent (for example, if lack of heat caused you to get sick and be hospitalized or if there were defects so serious, multiple or prolonged that your damages were severe).

Since the court may order that you pay some or all of the rents you have withheld, it is recommended, although not required, that you set up a separate rent fund (i.e., "escrow account") so that the money will be available when and if payment is required. (Your own bank or credit union will usually be the best place to start an escrow account. No special procedures are required; just set up a separate savings or checking account and begin depositing your rent money there each month.) During the course of the court proceedings, the judge may require that you deposit some of your withheld rent in a COURT escrow account until your case is tried or settled. It is not required that you deposit your rents in the CITY escrow account. In fact, tenant lawyers advise never to use the CITY escrow account, since the landlord can sometimes get the money out after the repair is made without compensating you for your inconvenience or other damages.

IX SUING YOUR LANDLORD FOR REPAIRS

You can sue in small claims court yourself for damages up to \$1,500 or in District Court or Circuit Court for damages up to \$10,000 or over \$10,000, respectively. Circuit Court can grant an injunction against your landlord or put the building in receivership if the landlord won't repair. Judges usually award less money to tenants than juries do, so ask for a jury trial and pay the jury fee on the first court date. The jury fee in District Court is \$30.

X THE TENANT'S RIGHT TO PRIVACY

The law in this area is cloudy. Your right to privacy depends not only on your lease, but how it was negotiated, whether it is unconscionable, the landlord's motive for entry and numerous other factors. Tenant lawyer authors have been virtually 100 percent successful in preventing landlord retaliation for tenants' insistence on reasonable privacy.

Unless your landlord is your close friend and you feel fine about his/her entry without permission, tenant lawyers usually urge tenants to:

- (1) Insist on appointments at your mutual convenience for entry by landlord, repair persons, city inspectors.
- (2) Be reasonable in allowing reasonable entry by appointment for reasonable purposes.
- (3) Peaceably but firmly resist invasions of your privacy. Tell the landlord, "This is my home. It is only your investment. You can't come in now, but how about coming next Tuesday?" Then negotiate a reasonable time. Show them this book.
- (4) If there is a catastrophe (such as fire or flood), do again what seems reasonable. This may often call for open and free entry to your place by the landlord or even strangers. If you are unreasonable at such times, you may incur **very heavy** liability for damages to your landlord or other community members which you may have caused.
- (5) See a tenant union or attorney if your landlord, repair person or city inspector enters without permission. You may be able to recover damages.

XI EVICTION PROCEDURE

No matter what excuse your landlord uses to try to evict you, you may have one or many defenses or countersuits. Here are just a few defenses:

- (1) You are lawfully withholding rent.
- (2) Your landlord is illegally attempting to evict in retaliation for your complaining to authorities to enforce a right (such as right to repairs) or because you are lawfully attempting to secure rights under the lease or laws of the state or of the United States (as through the political process).
- (3) You haven't breached the lease, or your breach is not material, is waived by the landlord's conduct, or doesn't give rise to eviction.
- (4) Your lease is over but your landlord refuses to renew in retaliation for your lawful acts.

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It is illegal for a landlord to try to evict you or shut off utilities to get you to move without a court order. It is also unlawful for your landlord to try to evict you for attempting to obtain repairs or for doing any other lawful acts.

To lawfully evict you, a landlord must usually give you an "eviction notice" and then "start suit," i.e., give you a "summons" to go to court. You can go to court and, if you don't have a lawyer, you can usually get a week's extension while you get legal aid or a private lawyer. The lawyer can file a "countersuit" and ask for a jury trial. Most cases defended by lawyers are settled. Rent reductions, repairs, extensions of time for payment are commonplace. Every case is different, so you should not let the landlord scare you, but see your lawyer for your best procedure.

You should enforce your rights to repair against landlords. Seek legal help to prevent retaliatory attempts at eviction.

XII LEASE ASSIGNMENT AND SUBLETTING

If your landlord won't let you sublet or charges you a fee, see your tenant union or lawyer immediately. They can almost always help you. Unreasonable restrictions on subletting are likely to be an "unreasonable restraint on alienation of property," frowned upon by the courts.

XIII YOUR SECURITY DEPOSIT

Follow the steps outlined in the white section to get your security deposit returned to you.

Some important points to remember are:

- (1) You can only lawfully be charged for damage resulting from conduct "not reasonably to be expected in the course of a tenancy."
- (2) You should be charged the market value of any damaged items at the time of the damage, not the cost of a new item. For example, if you unreasonably break a chair worth \$5 when you broke it, you should be charged \$5, not the cost of a new \$30 chair.
- (3) If you paid a cleaning fee, you should not be charged twice for the same cleaning by having additional money taken from the security deposit.
- (4) You can use small claims court, a quick and simple procedure requiring no attorney, to sue to recover improperly withheld security deposit money.
- (5) You may be able to sue for twice the amount improperly withheld if you have disputed the amount improperly withheld in accordance with the procedures outlined in the white section and your landlord has failed to sue you to retain the disputed amount. See a tenant advisor about this.
- (6) If you do not follow all the procedures outlined in the white section, you may still have a right to the return of improperly withheld amounts. See a tenant advisor.

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XIV LIABILITY FOR DAMAGES

In the event you think you have a claim against your landlord for damages caused by his/her negligence, you can sue with or without legal help. Small claims court for cases under \$1,500 is easy to use without a lawyer. It is located at the County Courthouse, 101 East Huron Street.

In addition to code violations, some examples of successful tenant suits against landlords include:

- (1) Falling on ice the landlord negligently failed to clear.
- (2) Being robbed or raped or burglarized when landlord security is unreasonably poor.
- (3) A tire is ruined by a pothole left in a driveway.
- (4) You fall through rotted stairs and break your ankle.

In larger cases, you should seek legal counsel. Often a lawyer will represent you without payment, except part of the verdict or settlement if you win.

If your landlord sues you or threatens to sue for damages, you should seek legal help.

Landlords reading this section should take care to maximize building security, ice clearing and other maintenance that could cause damage or injury.

XV YOUR RIGHT TO A FAIR RENT

You have no right to fair rent in Ann Arbor.

However, you have the right to attempt to secure new rights.

You also have a few very limited rights now as to rent level.

- (1) The Michigan Consumer Protection Act says that rent cannot be grossly out of proportion to rents charged by other landlords. This doesn't help you if they all charge too much, but it can help if your landlord is worse than most.
- (2) Your rent cannot be raised in retaliation for your withholding rent or other lawful acts arising out of the tenancy. If your landlord attempts to raise the rent in retaliation for your lawful acts, see a tenant lawyer or advocate for advice.

THE THREE SECTIONS OF THIS BOOKLET ON THE RIGHTS AND DUTIES OF TENANTS ARE THE OPINIONS OF THEIR AUTHORS. IF YOU HAVE ANY QUESTIONS CONCERNING YOUR RIGHTS AND DUTIES AS A TENANT, CONSULT YOUR LAWYER, FREE LEGAL AID SOCIETY, OR TENANTS UNION LAWYER.

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PLEASE READ THE WHITE PAGES OF THIS BOOKLET PRIOR TO READING THIS SECTION.

I INTRODUCTION

It is the opinion of the landlord advocate authors that most problems may be resolved between lessors and tenants without the use of courts or attorneys. Only when there is a problem that is not resolved satisfactorily between lessor and tenant should either party resort to legal action.

In this section of the book, the advocate authors are allowed to present their opinions regarding different interpretations in the various sections. This section will represent the opinions of the attorneys representing the landlords in the preparation of this book.

II YOUR RELATIONS WITH YOUR LESSOR

Both lessors and tenants stand to gain from a good relationship where there is mutual respect and neither party tries to take advantage of the other. Most lessors are honest and competent and try to treat tenants fairly. As in most cases, the bad reputation is generated by the few. Do not assume your lessor is out to cheat you; give them a chance to solve the problems. Most problems are more easily and quickly solved before they end up in court. If you are unable to reach a settlement with the lessor, then all of your legal rights and remedies are still available.

III DISCRIMINATION

See the white section.

IV THE LEASE OR RENTAL AGREEMENT

See the white section.

V UNENFORCEABLE LEASE CLAUSES

As indicated in the white section of this booklet, "some clauses contained in some leases are not enforceable." While some clauses may be unenforceable, most lease clauses are enforceable.

The question of the enforceability of lease clauses is a very serious and technical matter requiring considerable legal expertise. For this reason, it is very important that any decision to ignore certain provisions of a lease as being unenforceable be based upon a legal opinion to that effect.

VI IF YOU PAY A DEPOSIT AND DECIDE NOT TO MOVE IN

As mentioned in the white section and in other parts of these comments, a lease is a contract. In addition, some applications and other documents signed in anticipation of entering into a lease are also contracts enforceable under the laws of the State of Michigan. Most documents, such as applications, deposit agreements and lease agreements, set forth what will happen to a deposit that is made on a rental unit in the event you decide not to move into the unit. Please carefully read the documents that you execute prior to signing.

VII THE CONDITION AND UPKEEP OF YOUR DWELLING

A. YOUR RIGHT TO A CLEAN APARTMENT ON ARRIVAL

You do have the right to a clean apartment when you move in just as you have a responsibility to leave a clean apartment when you leave. Problems sometimes arise when a tenant fails to leave a clean apartment and even fails to vacate when obligated to do so by lease. If you wish to occupy the premises before it is clean, you may waive your rights to a clean apartment. It is recommended that any agreement regarding cleaning be put in writing prior to taking occupancy so there will be no misunderstanding.

B. YOUR RIGHT TO HAVE THE LESSOR REPAIR

Your lessor is limited as to his right to enter your apartment. Therefore, you must notify your lessor of needed repairs. Give your lessor reasonable time to make the needed repairs. What constitutes a reasonable time depends on the type of repair. If you are unable to obtain the needed repairs from the lessor, consult the white section as to your rights and remedies.

C. THE CERTIFICATE OF COMPLIANCE

Your lessor's certificate is valid until it is actively revoked by the City of Ann Arbor. The fact that there are code violations does not automatically revoke the certificate. The City of Ann Arbor may revoke the certificate if the lessor does not make the needed repairs within a time considered reasonable by the City.

VIII WITHHOLDING RENT

As set forth in the text of the booklet, you do, under Michigan law, have the right to withhold rent. This is an extremely strong tool and should be used by you only as a "last resort." The withholding of rent nearly always **requires** that your lessor start a lawsuit in District Court. This generally involves the payment of fees to an attorney, which often reduces the amount of money available for "settlement" between the parties. Please make every attempt short of withholding your rent to remedy your problem with your lessor.

IX SUING THE LESSOR TO OBTAIN REPAIRS

Proper repairs can be made much quicker and with less inconvenience when the

tenant notifies the lessor and the details are worked out between the two of them. The courts should be used after direct discussions have failed and the proper repairs have not been made.

X RIGHT TO ENTER

The lessor's right to enter your dwelling is a matter of contract rights. You should consult your lease to determine what rights your lessor has. If your lease is silent as to your lessor's rights to enter, then your lessor may only enter with your permission or in the event of emergency to protect property or life.

It is strongly recommended that the lessor respect the tenant's right to privacy and that the tenant cooperate so the lessor can make needed repairs and show the apartment to prospective tenants.

XI EVICTION PROCEDURE

The eviction procedure is established by state law and is set forth in detail in the white pages. It is quite formal and established procedures must be followed. You will generally receive a notice from your lessor if there is a problem. The notice will be entitled "Notice to Terminate" or "Notice to Quit." The Notice to Quit requires that you pay rent or take some other action, which action will be specified on the notice within seven days of receipt by you or the lessor will have the right to start a lawsuit against you. The Notice to Terminate, often referred to as a "30-Day Notice," informs you that your lessor feels that you have been violating the terms and conditions of the lease and that you must cease such violation. The Notice to Terminate may also be used to terminate a month-to-month lease regardless of whether there are violations of lease terms. In the event you fail to remedy any of the items set forth in the notice or fail to vacate the dwelling, your lessor has the right to bring a lawsuit against you.

You would next be served with a summons and complaint personally or they will be affixed to your dwelling unit by an officer of the court. The documents tell you when and where you must appear and what claim is being placed against you by your lessor. It is in your best interest to appear at the court hearing to attempt to resolve the problem. You will be advised in the court hearing that you have the right to an attorney. At this stage of your relationship, it is advisable to be assisted with your legal rights. Several agencies capable of assisting you with your legal rights are listed elsewhere in this booklet.

Should the court find against you and you fail to make payment or remedy the problem within the court-allocated time, your lessor will have the right to evict you. This eviction procedure is currently accomplished with the assistance of a Washtenaw County Sheriff's deputy who assists in maintaining the peace.

XII COMMON SENSE OBLIGATIONS AND DUTIES OF THE TENANT

- A. In no way is the list of legal duties a complete list of all duties. It is an attempt to list a few of the most obvious and important. Your lease most likely will create numerous other duties which are your legal obligation.
- B. The common sense items may also be legal duties and failure to comply with some of these items may also create a liability on you.
- C. Third parties may also have a claim against a tenant who fails to vacate properly or who damages their rights or property by a failure to properly perform either the legal duties or the common sense items.

XIII LEASE ASSIGNMENT AND SUBLETTING

See the white section.

XIV YOUR SECURITY DEPOSIT

The date of termination of your occupancy is the last day of your lease unless you have agreed with the lessor in writing to some other date. (Subletting does not automatically terminate your lease.)

The lessor is entitled to deduct from your security deposit the amount of your unpaid rent for the period of your actual or constructive possession without filing a lawsuit.

XV LIABILITY FOR DAMAGES

In order for the lessor to be held liable for damages to the tenant or the tenant's belongings, it must be established that the lessor was negligent or breached the lease. The opposite is also true; negligence or breach of lease must be found before the tenant can be held responsible for damages to the lessor or the lessor's property.

XVI CODES

The code requirements as previously listed may be changed by the Housing Board of Appeals for due cause and a variance granted to alter the code requirement for a specific location. The Housing Bureau of the Building Department in the Ann Arbor City Hall has records of variances which have been granted.

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