

Tenant Rights & Responsibilities



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CHOOSING YOUR NEW APARTMENT

Federal and New York State fair housing laws protect all of us from illegal discrimination. Fair housing laws apply to all housing providers, including realtors, home sellers, lenders, insurance agents, appraisers, and, yes, landlords and apartment complex managers. Knowing your fair housing rights ensures your housing choice by enabling you to identify discriminatory acts and get help in filing a formal fair housing complaint.

Fair Housing and Discrimination

Under state and federal laws, it is illegal to refuse to rent or to renew a lease based on race, color, religion, national origin, age, sex, marital status, disabilities, sexual orientation, military status or children. These categories are referred to as “protected classes” in federal and state fair housing laws.

Landlords may not refuse to lease an apartment or discriminate against any person in the terms of the rental because a person has children living with them. The law also protects those who act as foster parents, legal guardians or give birth to children during the term of a rental agreement. A clause that prohibits child bearing or acting as a foster parent or legal guardian is illegal and not enforceable.

Although overcrowding is a concern due to public health, a blanket policy limiting the number of occupants based on the number of bedrooms may be in violation of Fair Housing laws. Occupancy standards in New York State are determined by the square footage of the apartment and bedrooms, among other factors.

Disability is defined as having a physical or mental impairment to one’s life activities as documented by a doctor. People who are in or have completed treatment for alcohol or drug addiction are considered to have a disability.

Landlords have an obligation under federal and state fair housing laws to make reasonable accommodations and to allow reasonable modifications to be made for people with disabilities. For example, if a current or prospective tenant with a disability needs to park closer to the building entrance and the landlord provides off-street parking, the landlord must designate a suitable parking space for the exclusive use of that tenant. Similarly, if a landlord maintains a “no pets” policy, an exception to the policy must be granted to a disabled person who requires a service animal.

Modifications to a dwelling, such as the installation of grab bars in a bathroom or a wheelchair ramp, must also be allowed. In private housing that does not receive any government subsidies, it is the tenant’s obligation to pay for such alterations.

Tenants must also return the apartment to its original state when they leave, if required to do so by the landlord.

Marital status protection under the law covers all adults 18 years and older, whether they are single, married, divorced, separated, or widowed.

Age protection applies to everyone 18 years and over. A landlord may refuse to rent to someone who is under 18 because leases and other agreements made with a person under the age of 18 are not enforceable.

Illegal Activities Under Federal and State Fair Housing Laws

Examples of illegal activities include, but are not limited to:

- Misrepresenting the availability of an apartment
- Discriminatory advertising
- Using rental applications that discriminate
- Refusing to rent to tenants with children under the age of six who have known elevated blood lead levels

If you feel that a landlord has violated your fair housing rights, call the Housing Council Hotline at 546-3700. Counselors will discuss your situation and may be able to help you file a formal complaint with HUD and/or the New York State Division of Human Rights. These agencies can investigate your claim and act on your behalf if they determine actual discrimination by a landlord.

Truth in Heating

Before signing a lease requiring payment of individual heating and cooling bills, prospective tenants are entitled to receive a complete set or summary of the past two years bills. These copies must be provided free upon written request. If the landlord does not give you this information, the utility company will give you this information.

RENTING YOUR APARTMENT

The Rental Application

Rental applications are important to a landlord when choosing new tenants. The landlord is looking for responsible tenants who will take care of the property, respect the rights of other tenants and pay the rent on time. A landlord may reject you for poor credit history, insufficient income, a negative reference from a previous landlord or employer, a criminal conviction, or a prior eviction lawsuit. As long as they don't discriminate, a landlord can basically choose whomever they want.

The landlord may ask for a variety of information before agreeing to rent to you, including your Social Security number and driver's license number. Be sure to fill out the application completely. If you don't want to give the landlord your Social Security number, you can try asking the landlord to process your application with

your own printed credit and background reports. The landlord may not agree to this and has the right to simply deny your application. You are your own worst enemy if you lie on your rental application, so don't.

LEASES AND RENTAL AGREEMENTS

The State of New York defines a lease as any agreement to rent between landlord and tenant. A lease can be either a written or an oral agreement. Oral lease agreements may not last longer than 12 months, and restrictions or agreements reached cannot be legally enforced unless they are part of the written lease. Verbal promises made by the landlord, for example, "I'll fix those screens," or "I'll put in a new stove," do not count unless they are written into the lease. Having a lease in place is important to protect the rights of both the tenant and the landlord. A lease spells out the specific terms of the rental agreement. Terms include:

- The amount of the rent and when it is due
- The name and address of the landlord and where rent payments are made
- The responsibilities of both parties
- The length of the agreement/lease
- What each party (the landlord and the tenant) must do if either party wishes to terminate the lease prior to its expiration
- An acknowledgement of the receipt of security deposit and the dollar amount by the landlord
- Any conditions which must be met for the tenant to receive the full security deposit back at the termination of the agreement

The landlord cannot raise the rent or change the terms of the agreement during the lease term unless the tenant agrees in writing. When a lease expires, it does not automatically renew itself. A tenant who stays in the rental with the landlord's consent becomes a month-to-month tenant, subject to the rental terms that were in the original lease.

A verbal agreement is often used for a month-to-month tenancy. Both written and verbal agreements are legally binding, but there are some different requirements. A landlord can change the terms of the verbal agreement or terminate the tenancy with one calendar month's notice.

Before signing a lease, read it carefully. If you sign a lease, make sure that two copies are present and you witness each other's signatures on both copies. The Housing Council can also review a lease with you. Call the Hotline at 585-546-3700 Monday thru Friday, 10 AM- 4 PM. The tenant is entitled to receive a copy of the lease. After both you and the landlord sign the lease, keep your copy in a safe place.

New York State's Plain Language law requires landlords to use wording that is clear, simple, and understandable. Some clauses are illegal. Here are some examples:

- Waiver of the landlord's duty to make normal repairs
- Waiver of the tenant's right to privacy or right to a court ordered eviction
- Waiver of the tenant's right to sublet in rentals with 6 or more units
- Restrictions on childbearing, foster parenting, or legal guardianship of children under the age of 18.

The Court can nullify lease clauses that are illegal, although this would not necessarily nullify the entire lease. Any additions or deletions to an existing lease must be in writing, mutually agreed upon, and signed by both parties.

Month-to-Month Tenancy

Tenants who do not have leases and pay rent on a monthly basis are called month-to-month tenants. Tenants who stay past the end of a lease become month-to-month tenants if the landlord continues to accept their rent after the lease expires.

Either party may terminate a month-to-month tenancy by giving at least one month's notice before the expiration of the term. If the rent is due on the first of each month, the landlord must inform the tenant by the last day of the month *before* the landlord wants the tenant to vacate the apartment. For example, if the landlord wants the tenant to leave by September 30, he must inform the tenant on or before August 31. Informing the tenant on September 1 that he must move out by September 30 is too late. In that case, the tenant would not be required to move until October 31.

The same is true when a month-to-month tenant gives notice to a landlord. One full month's notice is necessary, and it must be given to the landlord on or before the end of the month *preceding* the month in which the tenant plans to move. If the tenant gives notice on the first day of the month in which he intends to move, the tenant will owe the landlord for the following month as well. Both landlords and tenants in a month-to-month rental must give each other one full month's notice to terminate the agreement. Other important facts:

- The termination notice need not specify why the landlord seeks possession of the apartment.
- A landlord may raise the rent of a month-to-month tenant with the consent of the tenant. If the tenant does not consent, the landlord can terminate the tenancy by giving the tenant one full calendar month's notice.
- A month-to-month tenancy can be in writing. Landlords can have a list of provisions that both parties sign.
- Federal, state and local codes apply to all rental agreements, whether written or verbal.

- All rental agreements are binding once entered into by a tenant and landlord. There is no grace period to withdraw. If you agree to rent an apartment, then change your mind, the landlord can hold you liable for his losses, which can include losing your security deposit.

Security Deposits

Almost all leases and month-to-month rentals require tenants to give the landlord a security deposit. The landlord must return the security deposit to the tenant at the end of the lease or within a reasonable time, minus any deductions for damages and/or unpaid rent. It is generally understood that one month is a reasonable amount of time to return a tenant's security deposit.

The law requires all landlords, regardless of the number of units in the building, to treat the deposit as trust funds belonging to their tenants. Landlords are prohibited from co-mingling the deposits with their own money.

Landlords must put all security deposits in New York State bank accounts earning interest at the prevailing rate. Each tenant must be informed in writing of the bank's name and address and the amount of the deposit. Landlords are entitled to annual administrative expenses of 1% of the deposit. All other interest earned on the deposit belongs to the tenants. Tenants must be given the option of having this interest paid to them annually, applied to rent, or paid at the end of the lease.

If the building is sold, the landlord must transfer all security deposits to the new owner or return the security deposit to the tenants within five days. Landlords must give the tenants the name and address of the new owner by registered or certified mail.

A landlord can require a tenant to increase the amount of the security deposit as rent increases so that the deposit remains equal to one month's rent.

Landlord's Duty to Deliver Possession

The landlord has a duty to deliver the apartment to the tenant on the date agreed. Failure to deliver gives the tenant the right to declare the rental agreement or lease null and void with no obligation to move in at a later time. If the landlord refuses to return funds, the tenant can file a claim against the landlord in small claims court for first and/or last month's rent and security deposit.

The Difference Between Tenants and Occupants

New York State law defines a tenant as one who has the landlord's permission to stay on the property with a written or verbal agreement. The tenant is required to make rent payments as long as he/she remains in the unit.

An occupant is a person who stays in the apartment with the tenant's permission but has no financial or legal responsibility to the landlord. The tenant remains entirely responsible for paying rent and maintaining the condition of the apartment. The tenant must inform the landlord of the name(s) of any occupant(s) within 30 days of occupancy, or within 30 days after a specific request by the landlord.

There is no law that limits occupancy of an apartment to a tenant named on a written lease or to that tenant and his/her immediate family. When one person is named on a written lease, that tenant may share the apartment with immediate family, one additional occupant, and that occupant's children, provided that the total number of occupants does not create legal overcrowding.

There are no laws limiting the number of people who can occupy a unit based strictly on the number of bedrooms. There are no laws that prohibit children of the opposite sex or of different ages from sharing a bedroom in a private market rental.

Overcrowding of an apartment is based on the square footage of the dwelling and the square footage of its bedrooms. NYS property codes and zoning ordinances define the maximum number of occupants of a residential dwelling per square feet. Check with your local zoning or property code department.

If there is more than one tenant named in a lease and one of the named tenants moves out during the lease term, the tenant may be replaced without the landlord's consent, provided that the landlord is given the name of the new occupant within 30 days of their move-in date. At least one of the original tenants named in the lease *must continue to occupy* the apartment during the lease term. The new occupant is not a tenant, and the tenant remains responsible for the full amount of the rent and the condition of the apartment.

PAYING YOUR RENT

Rent Receipts

Landlords must provide tenants with a written receipt when rent is paid in cash, with a money order, a cashier's check, or in any form other than a tenant's personal check. The receipt must state the payment date, the amount, the period for which rent was paid and the apartment number. The person receiving the payment must state his or her title in writing and sign the receipt.

Rent Withholding

With the advice of an attorney, a tenant may withhold rent when severe code violations exist. Generally, proof of the violations can be used as a defense in a nonpayment of rent eviction proceeding. A judge will then decide whether to uphold rent withholding. A landlord could be ordered by the court to make repairs as a condition for getting the rent. A judge may also require that the tenant deposit the rent with the court. A judge may release these funds to pay for necessary repairs, or

to release funds when the repairs are completed. The burden of proof is on the landlord to show that the repairs have been made.

Social Services Law 143-b allows the Monroe County Department of Human Services (DHS) to withhold rent for welfare recipients when severe code violations exist. Generally, these tenants are protected from an eviction for nonpayment of rent. The landlord must correct the code violations before DHS will release the rental funds.

Special Note: For all tenants who are not receiving public assistance, rent withholding should only be done with advice from a lawyer.

Rent Abatement

Tenants can seek a reduced rent when portions of their dwelling are unusable due to lack of basic services or when serious life, health and safety hazards exist. When full rent has already been paid, a tenant can take a landlord to small claims court or arbitration to seek a lowering of the rent. Tenants must supply documented proof of the problems. A judge can also order a reduced rent for the period of the time that severe code violations exist.

There is no set formula for reducing the rent. Only the court has the right to determine the amount. Factors a court may use in determining the reduced rent are:

- The severity of the repair problems and conditions
- The length of time the conditions have existed
- The amount of effort the landlord made to correct the defects.

Late Charges on Rent

Landlords can charge tenants late fees that are reasonable. Under New York law, a tenant is not legally liable for late fees unless their original lease contains a late fee clause. The amount of the late fee and when it can be assessed must be included as part of the lease.

LIVING IN YOUR APARTMENT

Privacy

Tenants have the right to privacy within their apartment. This is called *Doctrine of Quiet Enjoyment*. However, a landlord may enter a tenant's apartment with reasonable prior notice. Courts generally define twenty-four hours before entering as reasonable prior notice. The landlord must also choose a reasonable time to enter, for example, the middle of the night or 5 am are not reasonable times. The Doctrine of Quiet Enjoyment also applies to real estate agents, repairmen, building managers and anyone representing or working for a landlord who may have reason to enter. A tenant cannot unreasonably withhold the landlord's limited right of entry. The law implies compromise by both the landlord and the tenant.

It's a good idea to discuss the issue of entry with the landlord. Let the landlord know that you will allow entry into your dwelling at reasonable times according to the law. If you prefer to be present when the landlord enters, schedule times accordingly.

A lease clause that waives the tenant's right to privacy is not enforceable. If the landlord or anyone representing the landlord violates your right of privacy, you can file a trespass complaint with the local police department.

Appliances

Landlords can rent an apartment without a stove or a refrigerator providing that they make it clear to the tenants applying for the apartment that they will have to furnish their own. However, if landlords supply appliances, they have a duty to keep them in good working order. It is not a code requirement that appliances be supplied in a rental agreement and if they are in disrepair, they cannot be cited as a code violation by a building inspector. To protect yourself you should:

- Check the appliances carefully when you first look at an apartment to make sure they are working.
- Get the landlord to give you a written statement that the appliances will be supplied and maintained whether you have a written lease or verbal agreement.
- Submit requests for repairs in writing. Take common sense steps to make sure food does not spoil if your refrigerator is in disrepair.
- Consider taking the repair and deduct steps discussed in the previous section. Remember that there are some risks involved. Always try to negotiate with the landlord.

Utilities

The Warranty of Habitability requires landlords to maintain all utility systems up to code and in safe working order. It is a criminal offense for a landlord to shut off a tenant's utility service. If the landlord shuts off utility service, call 311 in the City or the Sheriff's Department outside of the City. Landlord's refusal of a police order to turn the utilities back on can result in the arrest of the landlord. Make sure you document your calls to authorities in case you need to follow through with a constructive eviction.

Heating Code for the City of Rochester and Monroe County

New York State Property Maintenance Code 602.3 – "Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from September 15 to May 31 to maintain a temperature of not less than 68 degrees in all habitable rooms, bathrooms, and toilet rooms."

Violations of this code in the city can be reported to the City Bureau of Buildings and Property Conservation at (585) 428-6520. Outside of the City of Rochester, call the town or village local code inspector. For heat stoppages during the evening hours after 5 pm or on weekends, tenants should call 311.

Repairs and Maintenance

Under New York State Real Property Law 235-b, landlords have a duty to make all repairs necessary to keep rental units free of health and safety hazards (Warranty of Habitability).

This law is enforced through state and local property codes. If you live in an apartment that has repair needs, we suggest taking the following steps:

- Always put your request for repairs in writing to the landlord. Sign and date the letter and make a photocopy for your records.
- If your landlord does not make the repairs you requested in what you consider to be a reasonable amount of time, you have a right to call a building inspector.

For property located in the city of Rochester, call 311. Ask for the phone number for the Neighborhood Service Center (NSC) closest to your rental. For properties outside of the city, call the Town code enforcement department. Check the phone book for the phone number.

A building inspector will look at the problems and note code violations. The landlord will be sent a "Notice and Order" that will list the code violations and a time frame for repair.

If you receive full or partial public assistance, be sure to let the inspector know. The Monroe County Department of Human Services (DHS) will be notified of the repair problems. In cases where the code violations are serious (life, health or safety hazards), DHS may withhold the rent from the landlord until such repairs are made.

If you do not receive public assistance, you should never withhold rent unless you have been advised by an attorney to do so.

Landlords are prohibited from harassment or retaliation against tenants who exercise their housing rights. For example, landlords may not seek to evict tenants, unreasonably raise the rent, or curtail services required in the lease agreement solely because tenants:

- Make good faith complaints to a government agency about violation of any health or safety laws.

- Take good faith actions to protect rights under their lease.
- Participate in tenant organizations.

In all cases mentioned above, the tenant must continue to pay rent unless legally advised to withhold it. The tenant must abide by the terms of the rental agreement. If you feel that the retaliation is based on illegal discrimination, call The Housing Council Hotline, Monday thru Friday, 10 am- 4pm, at 585-546-3700.

Use of Common Areas of the Dwelling and Property

A landlord has no legal obligation to supply a tenant with:

- Off-street parking
- Storage space
- Use of a garage
- Use of yard and common areas
- Use of basement

If a landlord is willing to supply certain amenities be sure to get it in writing.

Pets

Tenants have no legal right to have pets. A landlord may refuse to rent to tenants with pets and may prohibit the acquisition of pets. If a landlord allows you to have a pet, make sure to get that in writing. If you acquire a pet without the landlord's permission, it is grounds for the landlord to terminate you for objectionable tenancy.

Landlords can allow certain kinds of pets and not others. They can grant some tenants permission to have pets, yet refuse others. Landlords can charge an extra security deposit for a pet. The requirement for an extra pet deposit should be included in the lease. That deposit may or may not be refundable. Tenants can be held liable for damage a pet causes both inside the apartment and on the property.

Federal and state fair housing laws protect persons with a disability. A landlord cannot deny a tenant with a documented disability the right to have a service animal, even if the landlord has a "no pets" policy. The animal may be a dog or a cat or some other domestic animal, such as a bird. The landlord may not collect an extra security deposit for a service animal.

A tenant with a service animal must keep the animal under control at all times and must clean up after the animal both inside the apartment and on the grounds.

Guests

Tenants have the right to have guests in their apartment without the landlord's consent. This includes overnight guests. A guest can stay in an apartment for up to 30 days before a landlord can consider that the person has moved in permanently.

After 30 days, a guest is considered an occupant, and the landlord has the right to know the name of that person. See Tenants and Occupants section.

Keys

A landlord has a right to a key to the tenant's rental at all times. Tenants in multiple dwellings have a right to install additional locks for security. The landlord has a right to any additional locks.

Security Surveys – City of Rochester Only

The City of Rochester offers a security survey done by the police. You can request a security survey by calling your nearest Neighborhood Service Center (NSC). The officer will inspect a tenant's rental unit, looking for problems with the property that may lead to a crime. The officer will then give the tenant the survey listing the possible problems the property may have. Tenants should make a copy and give it to the landlord suggesting that problems may need to be fixed. There is no cost for this service for tenants. NSC locations and phone numbers are listed on the last page. Be sure to keep a copy for yourself.

Repair and Deduct

There is no "repair and deduct" law in New York State. The right to deduct the cost of repairs from the rent is not guaranteed by law. The tenant will need to show that he/she made repeated written requests to the landlord for the repairs, along with a notice of the tenant's intention to make repairs and deduct the cost from the rent. Be sure to keep receipts of all costs. Depending on the repair request, it may be necessary to also have a code inspector cite for code violations, which did not result in repairs being made.

If you have repairs made and deduct the cost from your rent, you take the risk of a landlord suing for the amount of rent you deducted in eviction court, small claims court, or taking the amount out of your security deposit when you move. If you end up in court, the court would then decide if your action was justified. It is advisable to consult with an attorney.

WHEN YOU MOVE OUT

Proper Notice

In parts of New York State outside New York City, proper notice is one full month – not 30 days. Why? Because some months have more than 30 days, and one month (February) has less.

If you are a month-to-month tenant and the landlord does not want to renew your month-to-month agreement, he must give you one full month's notice. And if you decide to move, you must give your landlord one full month's notice.

Proper notice is written notice that is given *on or before* the last day of the month *previous* to the month the landlord will require you to vacate the apartment. The same is

true for the tenant. If you intend to move, you must give your landlord notice *on or before* the last day of the month *before* the month you intend to move. For example, if you are going to vacate your apartment at the end of July, you must give your landlord notice on or before the last day of June. If you give notice on July 1 or after, you will owe the landlord all of August rent, and he can sue in small claims court for that amount.

Moving Before Your Lease or Rental Agreement Expires

Subletting

If you have to move out of an apartment before your lease expires, one way to limit your liability is to sublet the apartment. Subletting means that you find someone to take your place living in the apartment and paying the rent for the duration of the lease. If you live in a building with four or more rental units, New York law gives you the right to sublet. The landlord with less than four units in a single building does not have to allow a sublet. Landlords have the right to screen any individual or family you propose as they would any other applicant. Once the landlord accepts new tenant, the sublet is completed. Note: You still are liable under the lease as is the subtenant for the terms of the lease.

Special Note: Subletting an apartment is prohibited in government subsidized housing.

Assigning Your Lease

A lease assignment transfers all of the rights and obligations that a tenant has under a lease to another tenant for the remainder of the lease term. The landlord does not have to agree to assign a lease to another tenant.

Breaking Your Lease

Consider talking to your landlord about an early termination. Some of the options that you could present are as follows:

- A lease buyout: You can offer to forfeit your security deposit. However, the landlord may ask for a larger buyout than just the deposit. Courts sometimes limit the amount a tenant must pay due to early termination, so check with a lawyer before agreeing to a large sum of money.
- Reread your lease to see if there is a clause that sets conditions for ending a lease early. If you meet certain conditions and the landlord is willing to let you out of the lease, make sure to get a written statement from the landlord that you are released from the contract, including the conditions for the release.
- Some complexes will release a tenant for a set fee plus the cost of advertising the apartment.

If there are no conditions for early termination then your issue to terminate is strictly negotiable. If you break a lease without the Landlord's consent, you could

find yourself in small claims court for lost rent during the time between when you moved out and a new tenant moves in, and advertising costs to find a new tenant.

Constructive Eviction

Constructive eviction occurs when residential rental property is not in habitable condition, forcing the tenant to leave the property. To claim constructive eviction, the tenant must serve the landlord with written notice of the constructive eviction and provide the landlord with a reasonable amount of time to clear up the problem. Some repairs will obviously take longer, such as a minor dripping faucet or replacing a window screen, but the repair must be done within a “reasonable” time period. It is wise to take photographs and have a code inspector view the property. The court will decide what is reasonable on a case-by-case basis.

If the landlord does not remedy the conditions within a reasonable amount of time, the tenant may be able to vacate the property and not be responsible for the remaining balance of the lease. The tenant must physically move out of the property and then sue for damages in civil court. The court will determine the tenant’s liability, if any. If you think your situation is constructive eviction, you should discuss the situation with an attorney before proceeding.

Termination of a Lease by a Senior Citizen

Under New York State Real Property Law 227-a, a tenant or tenant’s spouse who is 62 or older or who will become 62 during the term of the lease has the right to terminate an existing residential lease in certain situations. They include relocating to:

- An adult care facility
- A residential health care facility
- Subsidized low income housing
- Senior citizen housing
- The residence of a relative or family member

A senior tenant terminating the lease must give notice more than 30 days before the last day of a month corresponding to the rent due date. For additional requirements, consult an attorney. A landlord who does not allow a qualified tenant to move without penalty is guilty of a misdemeanor.

Special Note: A lease clause that waives rights for a senior tenant to terminate a lease is not enforceable.

Termination of a Lease by a Person with a Disability

The Fair Housing Act allows for early termination of a lease as a reasonable accommodation for a tenant with a disability under specific circumstances. There must be a connection between the request for reasonable accommodation and the person’s

disability. For example: a tenant is no longer able to navigate steps and the housing provider is not able to find a more suitable apartment to accommodate the person's disability. Contact The Housing Council at 585-546-3700 to discuss rights under the Fair Housing Act.

Termination of a Lease for Military Duty

Individuals entering or called to active duty in the military service may terminate a lease if the lease was signed before the tenant entered active duty, and the service member has occupied the premises. Proper notice must be given on or before the last day of the month previous to the month that the lease is to be terminated.

Landlords are prohibited from evicting the spouse, children or other dependents of a service member on active duty, except with permission of the court.

Termination of a Lease by Victims of Domestic Violence

Any tenant that has an order of protection issued by a court shall be permitted to terminate a lease or rental agreement by giving ten days notice to the landlord.

Conditions of the termination include:

- All rent due under the lease or rental agreement through the termination date is paid in full
- The apartment is delivered to the landlord free of all tenants and occupants, and in accordance with the terms of the lease
- Rent must be prorated to the termination date of the lease and any outstanding balance of funds paid in advance must be returned to the tenant

THE EVICTION PROCESS

Eviction Definitions

A landlord does not have the legal power to forcefully evict a tenant. Only a judge in a court of law can evict a tenant. An eviction is an action by a City or Town court. Landlords must petition a tenant to appear in court and ask the court to evict the tenant. There are multiple grounds upon which a landlord may attempt to evict a tenant in court; two examples include nonpayment of rent and holdover tenancy. These are described below:

Nonpayment of Rent

Prior to commencing a nonpayment court proceeding, a landlord must first make a demand for rent. This demand may be verbal. However, the demand must be in writing if the landlord wants to give the tenant the option to pay within three days the rent owed or surrender the rental property. This is called a "Notice to Pay the Rent or Quit." If the tenant pays, he/she can stay. Late fees as indicated in written agreements may be included in the demand notice. If the tenant leaves, he/she must take all of his/her belongings and provide a vacant apartment. If the tenant either pays all arrears and late fees in full or vacates the apartment and takes his belongings with him, it is not necessary for the landlord to start a nonpayment eviction proceeding. If the tenant

remains in the property without paying past due rent, the landlord can file a Petition and Notice of Petition and have papers served on the tenant to appear in eviction court.

Holdover Tenancy

A holdover tenant is a tenant who has been given proper notice vacate the rental property, but continues to occupy the rental unit past the end date of the lease or rental agreement.

A landlord cannot physically remove a tenant, but can have papers served on the tenant to appear in court as a holdover tenant. The court would then decide when the tenant has to be out and how much rent is to be paid.

Special Note: Tenant Liability in Holdover – If a tenant gives proper notice of their intention to leave and does not leave at the time and date specified in the notice, the landlord may ask for double rent, which the tenant must pay in the same manner as single rent. Landlords may sue in court for this rent amount.

Going to Court

You must be served with a Petition and a Notice of Petition before you can be required to go to court. The petition gives the reason for the eviction and must be signed by the landlord and notarized. The Notice of Petition gives the date, time and location of the court date and is signed by the court clerk. A third party, not the landlord, must serve the tenant with papers. You can be served directly (papers handed to you) or indirectly if you were not at home when the server came. Papers can be attached to the entrance door of your apartment, put under the door, or given to a family member or someone else of age and discretion in your household.

Always appear in court at the date and time given. The only exception would be an emergency. If you have an emergency, call the court at least one day before your court date. If you do not appear in court, and the court date has not been cancelled due to an emergency, the landlord will be granted an immediate Warrant. In other words, a court enforcer may serve the Warrant on the tenant to vacate the rental property in three days.

Personally appearing in court gives you a chance to tell your side of the story. At the very least it will buy you more time than the minimum three days to be out as required by law. A judge will always consider the tenant's ability to find another place to live before giving a date to be out if the tenant is present.

Eviction Caused by Foreclosure

You have special protections in the event the landlord is faced with foreclosure of the rental property in which you live.

Protecting Tenants at Foreclosure Act (PTFA)

In 2009, Congress passed the *Protecting Tenants at Foreclosure Act* (PTFA). This legislation requires that leases remain in place in the event of a foreclosure. The

tenant can remain in the living unit at least until the end of the lease, and month-to-month tenants are entitled to 90 days notice before having to move out.

PTFA provides an exception for a buyer who intends to live in the property. A buyer who intends to occupy the property may terminate any existing lease with 90 days notice. Importantly, this federal law **cannot** preempt any state legislation that is more generous to tenants. These protections apply to private market rentals, including Section 8 tenants. The protections provided by PTFA **apply only until December 31, 2014**.

New York State Foreclosure Notice to Tenants

The State of New York requires the foreclosing party to notify tenants of an impending foreclosure through a notice delivered by both certified and first-class mail.

New York State law also grants tenants protections **in addition** to those provided by the federal PTFA discussed above. Specifically, New York State law protects tenants in properties that were disposed of through other means, such as a short sale or deed in lieu of foreclosure, if the property is transferred **during the process of a foreclosure proceeding**. The New York State law has **no expiration date**.

New York State law requires lenders to maintain foreclosed properties during the time period between the entry of a judgment of foreclosure and the date of transfer of title at a foreclosure sale.

What You Can Do If the Property You Are Renting Is Foreclosed

A lease-holding tenant who has to move out so that new owners may move in may decide to sue their former landlord in small claims court. Here's how it works: After signing a lease, the landlord is legally bound to deliver the rental for the entire term of the lease. This duty is known as the "covenant of quiet enjoyment." A landlord who defaults on a mortgage, which sets in motion the loss of the lease, violates this covenant, and the tenant can sue for the damages it causes. If you are considering this action, you should discuss your options with a lawyer before proceeding. Income qualified tenants can consult the Legal Aid Society or MCLAC. Information on these legal services agencies is provided at the end of this publication.

DEFENDING YOURSELF IN EVICTION COURT

It is always better to have legal representation if you face eviction. If you cannot afford a lawyer, check the *Help When You Need It* section at the end of this booklet for sources of free legal help. The following are common defenses available to you:

Non-payment of Rent Defenses

- If you appear in court with the full rent payment, the judge will most likely dismiss your case

- If there are severe code violations in your apartment, it may be possible to withhold rent
- If you were advised by an attorney to withhold the rent you will need to show the court proof of the severe code violations and proof that you are holding all the rent money due
- If you are receiving public assistance and Monroe County DHS is withholding the rent money for you, show the court a copy of the letter from DHS stating that DHS is withholding the rent from the landlord until repairs are made. The judge will decide whether to evict.

Holdover Tenant Defense

If you can show that the landlord did not give you proper notice to move in a month-to-month tenancy, or did not give you the notice to move required in a written lease, you should present proof of this in court.

- If you are given notice to move within six months of when a “Notice and Order” was received from a building inspector listing code violations, you may be able to claim retaliation as a defense.
- If you are given notice to move within six months of when a “Notice and Order” was received from a building inspector listing code violations that your lease would not be renewed, you may be able to claim retaliation as a defense.

Court Decisions

When you and the landlord appear in eviction court, the judge will listen to both you and the landlord briefly and then make a decision. The three basic decisions, eviction, no eviction, and stay of eviction, are described below.

1. **Eviction:** If you are evicted, the judge ruled in favor of the landlord. A Warrant of Eviction is issued, signed by the judge and posted on the property by a marshal of the court. A judge generally gives at least three days from the court date for the tenant to be out but my grant more time.

A Warrant of Eviction terminates a tenancy. Only a court enforcer can enforce the Warrant. If you are evicted and leave possessions behind, the court enforcer and landlord will discuss storage options. It is advisable for the tenant to set up a date to retrieve possessions with the landlord at this time. It is illegal for a landlord to throw them out or to refuse to give them to you until you pay the rent you owe. Generally, a court will not require a landlord to hold your possessions for more than 30 days from the date of eviction.

If you are evicted and need emergency housing, you may fill out an application for assistance with the Department of Human Services at 691 St. Paul or 111 Westfall Road. Important: you must present the Warrant of Eviction served by the marshal in order to apply. Don't wait till the marshal

removes you from the rental. A client who already has active or pending Temporary Assistance should contact his/her housing team.

2. **No Eviction:** The judge rules in favor of the tenant, and the matter is dismissed. The tenant remains in possession of the apartment.
3. **Stay of Eviction:** A judge may grant a “stay” of eviction by delaying the issuing of a Warrant if a tenant meets certain conditions within a period of time set by the courts. For example, if you were in court on September 10 for nonpayment of rent, a judge could give you until September 20 to pay the rent. If the rent is not paid by that date, a Warrant of Eviction is issued.

If you feel that a landlord may go to court to try to evict you, call The Housing Council Hotline at 585-546-3700 for help. Low-income tenants who live in the city may qualify for free legal assistance through the Legal Aid Society, 585-232-4090. Monroe County Legal Assistance Center (MCLAC), 585-325-2520, represents income-qualified tenants living in both the city and the suburbs.

HELP WHEN YOU NEED IT

Assistance with Utility Bill Payments

If you are having problems paying a heating bill, contact RG&E at 1-877-266-3492. New York State law requires that a utility company offer you a Deferred Payment Agreement (DPA). The agreement must be based on your ability to pay and will allow you to pay your outstanding bill over a period of time. No large down payment is required. **DO NOT WAIT UNTIL YOU GET A SHUT-OFF NOTICE TO DEAL WITH A PAYMENT PROBLEM.**

Low-to-Moderate Income Tenants with Delinquent Utility Bills

Home Energy Assistance Program (HEAP)

This federally funded program assists low-income households in meeting the high costs of home heating. Program funding dates change every year.

- If you are currently receiving temporary assistance or food stamps, contact your worker directly
- If you are a Monroe County resident age 60 years or older and currently not receiving temporary assistance or food stamps, call the Senior Citizen’s HEAP office at Lifespan, 585-244-8400 ext. 102, for assistance
- If you are a Monroe County resident who is under 60 years old and facing an emergency situation, the HEAP office at 111 Westfall Road accepts walk-ins from 8 am to 9 am weekdays
- For general questions or to apply for HEAP assistance, call 585-753-6477 between the hours of 9 am and 3 pm, Monday through Friday

Red Cross/RG&E Heating Fund

For those who do not qualify for HEAP funds, this program may provide assistance. Call the American Red Cross at 585-241-4474. Income guidelines apply.

Eldersource

This agency can help eligible senior citizens with a variety of life issues. The address is 1900 Clinton Avenue South. Call 585-325-2800.

Diversion of Utility Service

By law, tenants are required to pay only for the electricity or natural gas they use. If you find that you are paying for utilities beyond the walls of your apartment, you have a "shared meter." Where a shared meter exists, the landlord must either:

- Enter into an agreement with the tenant to compensate the tenant for any energy the tenant did not use, or
- Place the dwelling unit's electricity or natural gas account in the landlord's name.

If you suspect that your electricity or natural gas meter is registering service not used in your dwelling, call RG&E at 1-800-734-2110, and they will come to your home and investigate. A written summary of the findings will be sent to you. With this information you can seek compensation from the landlord. If you are refused compensation, you can sue the landlord in small claims court.

Delinquent Landlord Utility Bills

If you live in a multiple dwelling (3 or more units) with utilities included in the rent and the landlord fails to pay their utility bill, RG&E will post shut-off notices in the building. There is a process to prevent a shut-off of service. First, contact the utility company. Then, notify the other tenants. If you pay the current monthly bill directly to RG&E, your service will not be shut off. By law, the amount you pay to keep the service on is deductible from your rent.

Small Claims Court

Taking someone to small claims court is not expensive (\$15 if claim is under \$1,000, and \$20 if claim is over \$1,000). You must sue the landlord in city court or a town court, based on where the landlord lives, not based on the location of your apartment. The courts will then send the petition to the address you provide, summoning the person to appear in court. The maximum amount of money that a small claims court deals with is \$5,000 in the city and \$3,000 outside the city. All courts have booklets describing the correct procedures. In the city of Rochester, call 585-371-3412. If your landlord lives in a suburb, to get the correct procedure, call the offices of the Town in which the landlord resides.

Center for Dispute Settlement

The Center of Dispute Settlement (CDS) provides an alternative to small claims court. The Center will arbitrate your case, however both parties must mutually agree to use the service and to accept the results. Judges sometimes require tenants and landlords to work out a solution through CDS. You can call them at 585-546-5110. If the landlord does not consent, small claims court may be the only alternative.

Legal Aid Society

The Legal Aid Society offers a Rental Stabilization Program designed to resolve disputes and problems concerning rent payment, repairs and code violations, relations with other tenants, inappropriate behavior, etc. The goal of the program is to settle disputes and keep tenants in their apartments. Legal Aid also represents income-qualified city tenants in court proceedings.

To get help, the tenant must rent in the city of Rochester. Income guidelines apply. Mediation takes place through an informal conference that includes the landlord, the tenant and a Legal Aid employee, or between two tenants having a dispute and an employee, usually over the phone. This service is free. For more information, call the Legal Aid Society at 585-232-4090 and ask for the Housing Department.

Monroe County Legal Assistance Center (MCLAC)

Monroe County Legal Assistance Center (MCLAC) is a part of Legal Assistance of Western New York, Inc. MCLAC provides legal representation and advice throughout Monroe County in the following areas...

Evictions and Subsidized Housing Issues:

- Terminations from Rochester Housing Authority public housing units
- Section 8
- Subsidized housing issues
- Landlord problems

Fair Housing:

- Discrimination in renting
- Accommodation of disabled individuals (e.g., ramp or therapeutic animal)

Public Benefits:

- Welfare, Medicaid, SSI, Food Stamps
- Assistance to senior citizens in a variety of areas
- Assistance to grandparents raising grandchildren

You can reach MCLAC at 585-325-2520.

IMPORTANT AGENCIES & PHONE NUMBERS

Center for Dispute Settlement (*Mediation Services*)546-5110

CITY OF ROCHESTER

- Neighborhood Service Centers (*Code Enforcement*) 428-6524
- Northwest Quadrant – 71 Parkway.....428-7620
 - Northeast Quadrant – 500 Norton St428-7660
 - Southwest Quadrant – 923 Genesee St428-7630
 - Southeast Quadrant – 320 North Goodman / Suite 209428-7640

Normal operating hours for all NSC are Monday through Friday 8 am to 5 pm. Calls during off hours are taken by staff at the City's 311 One Call to City Hall Service Center.

- Civil Court (*Evictions*)371-3412
- Small Claims Court (*Security Deposit & other Financial Disputes*)371-3412

Housing Council (*Counseling & Workshops for Landlords & Tenants*).....546-3700

Legal Aid Society (*Legal Representation*) 232-4090

Monroe County Legal Assistance325-2520
(*Free legal representation and other help for low-income tenants & seniors*)

MONROE COUNTY

- Department of Human Services (DHS).....753-6298
- Customer Service753-3333
- Lead Poisoning.....753-5087
- Rodent Control.....753-5171
- Insect Infestation753-5171
- Mold.....753-5600

Regional Center for Independent Living (RCIL) 442-6470
(*Housing and Related Assistance for Persons with Disabilities*)

RG&E Consumer Relations Department.....1-800-743-2110

- Payment Arrangements.....1-877-266-3492
- Electricity Interruptions1-800-743-1701
- Emergency - Natural Gas Odors or Emergencies1-800-743-1702

STATE OF NEW YORK

Attorney General, 144 Exchange Blvd., Rm. 200546-7430

- Consumer Fraud Hotline – Security Deposits.....327-3240

General Consumer Helpline.....1-800-771-7755

Housing and Urban Development (HUD).....1-716-551-5755

NYS Homes and Community Renewal (NYSHCR).....1-866-275-3427

Division of Human Rights.....238-8250

(*Investigation of discrimination in rental housing*)

Public Service Commission 1-800-342-3377

