

CHAPTER 1 - Justifiable Reasons for Lease Termination by the Tenant

I. Technicalities.

Generally, technicalities will not work to get you out of a lease, but there are some rare exceptions.

A. Leases for Certain Periods of Time.

Many states have laws that certain contracts must be in writing. These laws are usually referred to as Statutes of Frauds. Many say that if a contract cannot be performed within one year, then it must be in writing. If your lease is oral and for more than one year, you should carefully check your state's laws, especially any that you come across which are labeled "Statute of Frauds."

Some states have laws which impose special requirements beyond mere writings upon certain written leases. For instance, in some states, if a rental agreement is for more than three years, then it must be in writing and must also be witnessed by two persons and notarized. To have a document notarized means that a notary public must acknowledge by signature thereon that all of the signatures appearing on the document were signed in front of him and that all were signed freely. Such leases must then be recorded with the County Recorder's Office. But if the lease is for three years or less, then it can be in writing (with no need of witnesses or notaries).

B. Leases Everyone Did Not Sign

Did everyone that is listed in the front part of the lease (under the definition of tenants) actually sign at the end? If not, then the person seeking to enforce the rental agreement may have a problem. Naturally, if the landlord tries to enforce the rental agreement against the person or persons who did sign it he will have problems.

But what about the persons who did sign it? A court in your state may decide that since the rental agreement was intended to be signed by all persons intending to be tenants, that the signature of only one of them was ineffective to bind all of them to the lease. So if you and four other roommates were looking to sign a lease and one backs out, then the whole thing may be off as only the signatures of all tenants who intended to move in will bind any of them.

Note however, that the situation may change drastically here if you have already moved in. In that case, it will be hard for you to go back and argue that you never meant to be bound by the lease terms without all signatories (all tenants who were supposed to sign the lease). This is because all signatories failed to sign and yet you moved in anyway. The court might well find that you have an implied contractor a verbal contract for a year's lease. On the other hand, if you are lucky, then the court will find that you are on a month to month tenancy and you only owe the landlord 30 days notice from the beginning of a rental period before moving out.

1. Failure of Co-Signers to Sign

A similar argument may be made if the tenants intended to sign with co-signers, and then a co-signer refused to sign, it is possible to argue that the lease is unenforceable. A co-signer or guarantor is someone who signs the lease in order to guarantee the performance of the obligations of the tenant(s). The cosigner does not live in the apartment as a tenant. For example, a parent may cosign a lease for their child that is renting the apartment. Their child may not have established any credit and the landlord wants the parents to guarantee that the rent will be paid. In a case where a cosigner refuses to sign, the tenants will have to argue that they would never have signed the lease without co-signers because they did not want to alone take on the responsibility of all those thousands of dollars in rent without someone to stand behind them and guarantee their payment.

The landlord will counter that the guarantors of the lease were for his benefit, not the tenants, and the failure of the guarantors to sign should not affect the enforceability of the rental agreement. But the tenant may counter that he would never have signed the lease without each tenant having a co-signer, given the fact that each tenant's financial position is usually quite doubtful and that joint and several liability extends to all.

Joint and several liability can best be understood like the motto of the Three Musketeers: "All for one and one for all." Among roommates, one roommate's failure to pay his share of the rent means that all the other roommates are responsible for the one roommate's failure to pay. So your landlord can hold you liable for the nonpayment of rent of your roommate or damages done to the apartment by your roommate. You would have to go after your roommate for the money you are out because the landlord chose to sue you and not your roommate.

II. Substantive Defenses

A. Landlord's failure to comply with his obligations under state law

Many states have specified that landlords must meet certain obligations. In Appendix I at the end of this publication, I have compiled a directory of state statutes that specify a landlord's obligations. To illustrate my point here, I am just going to reference Ohio law because the Ohio Landlord Tenant Act has served as the model act for many other state statutes.

Ohio Revised Code Section 5321.04 specifies a landlord's duties to the tenant. If the landlord has failed to perform his obligations under Ohio Revised Code Section 5321.04 (describing the landlord's duties to the tenant, including his duty to keep the apartment in a fit and habitable condition as well as his duty to abide by the terms of the lease), then Ohio Revised Code Section 5321.07 says that the tenant must send the landlord notice in writing of the problems. Generally, this procedure is followed when a landlord fails to make repairs at the apartment.

If after receiving your written notice requesting that certain repairs be made (which I recommend be sent by certified mail, return receipt requested so that there is no doubt

about when or if the landlord received the notice), the landlord fails to remedy the problem within 30 days or a reasonable time (whichever is sooner -meaning that the landlord can take only a maximum of 30 days to fix any problem covered by Ohio Revised Code Section 5321.04) then the tenant who is at that time **current** on his rent has three options.

Firstly, the tenant can start to escrow his rent with the Clerk of Courts. It is important that the escrow be done through the Clerk's office. Simply putting the money in a bank account in the tenant's name will not suffice. The money must be paid on time every month to the Clerk and in the entire amount. If not, the tenant can face eviction for failure to pay rent. The Clerk of Courts will not release such funds to the landlord until the tenant tells the Clerk that the problem has been fixed, or until the Court decides at a hearing that the problem has been fixed.

There are a few escape methods for the landlord here. If the landlord can prove to the Court that he cannot make the repairs without the money, then the Court will release some or all of the escrowed money to him for the repairs. Also, if the landlord shows that he will lose the building without the money because he is otherwise unable to make the mortgage payments, then the court may release some or all of the money to him.

Secondly, the tenant may petition the Court with a Motion to Compel/Force Repairs in accordance with Ohio Revised Code Section 5321.07.(B)(2). As a part of this Motion, the court may require that the tenant begin to escrow the rent. Once the rent has piled up sufficiently in the Clerk's account, then the Court may instruct the tenant to pay for the repairs himself and then the court will reimburse the tenant for those costs out of the escrowed rent.

Thirdly, under Ohio Revised Code Section 5321.07(B)(3), the tenant may elect to terminate the rental agreement. Although the law does not say it, it has been my experience that the court will require the conditions at the apartment be pretty darn bad before it will rule that the rental agreement is terminated. It would behoove anyone asserting these remedies to have proof of the conditions in the form of pictures or video to show the court (while the court could do so, the court is very unlikely to travel out to the apartment to look for itself). Do not rely on your word against the landlord's.

1. Examples

a. Landlord's Duty to Repair

If the furnace has gone out in the middle of the winter and the landlord has not repaired it in a reasonable time (a few days to a week) then the tenant can claim that this is a failure to repair within a reasonable time and can move out and terminate the lease agreement. Note that this is a very serious problem that the landlord has refused to repair in a reasonable amount of time. To justify terminating a lease, the failure to repair must involve problems of a similar degree of seriousness.

b. Failure to Comply with Lease Provision