

wishes to keep pets on the premises, the landlord may charge a reasonable, nonrefundable fee as a pet deposit in addition to the security deposit.

If a tenant breaks a lease, the landlord may use the security deposit to protect himself from loss if: (1) a tenant fails to pay rent; (2) damages the rental property; (3) leaves before the end of the rental term or without proper notice; (4) the landlord incurs court costs evicting the tenant or other costs of re-renting the rental property; or (5) a lien is created on the rental property because of the tenant's use.

A landlord who receives a security deposit from a residential tenant must either deposit the money in a trust account with a licensed and insured bank or savings and loan institution located in North Carolina, or obtain a bond from an insurance company licensed in North Carolina to secure repayment of the security deposit to any tenant who is entitled to its return. The landlord must tell the tenant within 30 days after the beginning of the lease the name and address of the institution holding the account or the insurance company providing the bond.

Within 30 days after the end of any lease the landlord must either refund the security deposit to the tenant or deliver an itemized statement of any damage or injury together with any balance of the security deposit. If the landlord does not know the tenant's address he must hold the balance of any security deposit for at least six months. Landlords are not required by law to pay interest on security deposits to the tenant. Landlords may not withhold any part of the security deposit for conditions due to normal wear and tear. The landlord may keep the deposit only to the extent necessary to cover his losses.

If a landlord sells the rental property, he must, within 30 days thereafter, either return the deposit balance in the manner set out above or transfer it to the new owner and notify the tenant of this fact.

Tenants may sue landlords for accountings, the return of security deposits or for actual damages if the landlord fails to comply with his duties concerning such deposits. If a landlord is found by a court to have willfully failed to comply with the law concerning security deposits, the court has authority to require the landlord to pay the tenant a reasonable attorney's fee.

LATE FEES • A landlord may impose, if the rental agreement allows, a late charge on any

rental payment which is late by five days or more. If the rent is due in monthly installments the late charge can either be five percent of the rental payment or \$15, whichever is greater. A late fee may be imposed only one time for each late rental payment and may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

WHO OWNS WHAT • Tenants should be aware that unless they have an agreement with their landlord saying otherwise, any improvement the tenant makes to the rental property may become a part of the real estate, thus belonging to the landlord at the end of the rental term. Tenants should be aware of this before they install or affix anything to the real estate such as carpeting, bathroom fixtures, light fixtures, shutters, shrubs, etc. Tenants should also know that their personal property is not covered by the landlord's insurance policy and that the tenant can buy insurance for his or her personal property.

EVICTION • In North Carolina a landlord may evict tenants by a special court procedure called Summary Ejectment if the lease is breached or terminated. A landlord in North Carolina may not use self help such as cutting off utilities or locking tenants out of their homes in lieu of Summary Ejectment. The Clerk of Superior Court in your county has the forms and information you need to bring a Summary Ejectment action in Small Claims Court.

RESIDENTIAL LEASE WITH OPTION TO PURCHASE / INSTALLMENT SALES CONTRACTS

If the rental agreement includes an "option to purchase" component, where the tenant has the right to purchase the property from the landlord at some time during the lease (or at the end of the term); or, if the rental agreement includes an "installment sale" component, where the tenant is effectively leasing-to-own the property, there are laws which may require very specific language to be included in the document and also impose additional duties upon the parties. It is strongly recommended that you contact a licensed North Carolina attorney to advise you and to ensure that any such agreement is drafted in accordance with the North Carolina General Statutes, which may affect its validity, and to make certain that both landlord and tenant understand their rights and obligations with respect to such agreements.

THIS IS THE LAW

LANDLORDS AND TENANTS

This pamphlet was prepared as a public service by the Communications Committee and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and could affect the information in this pamphlet. If you have specific questions with regard to any matters contained in this pamphlet, you are encouraged to consult an attorney. If you need an attorney, please contact the North Carolina Lawyer Referral Service, a nonprofit public service project of the North Carolina Bar Association, via phone (1.800.662.7660) or online (www.ncfindalawyer.org).

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LANDLORDS AND TENANTS • Landlords and tenants are free to bargain about many terms of rental agreements, and those who rent houses, apartments or mobile homes should feel free to seek changes in terms or conditions which they feel are not in their best interest before signing any rental agreement.

Once the bargaining is over and both landlord and tenant have agreed to a set of conditions or terms, both parties are required to carry out these terms and conditions.

However, the landlord and the tenant have duties and rights established by law, and while the law provides great leeway for landlords and tenants to bargain about terms, the law does not permit either to surrender certain rights or fail to carry out certain duties established by law.

(Note: This pamphlet refers to residential leases. The law is different for commercial leases. We recommend you consult an attorney for more information concerning either a residential or commercial lease to fully understand your legal rights and obligations.)

YOUR RIGHTS AS A TENANT • As long as you fulfill your legal duties and the requirements of your rental agreement, you have the right to exclusive possession of property you rent or lease for the term of the rental agreement. However, even as you exercise your basic right to privacy, your landlord may retain in the lease a right to inspect your dwelling at reasonable times and in a reasonable manner.

If your landlord does not live up to his duties as set by law and the terms of the rental agreement, you have the right to:

- complain to him;
- complain to appropriate government agencies, such as your local building and health departments;
- exercise your rights under law or the rental agreement which you have signed; and
- join with other tenants to secure your rights. These rights should be exercised without fear of eviction.

In addition, if after reasonable notice, your landlord fails to carry out his legal duties, you have the right to seek relief in court. If you seek relief in court and the court decides in your favor, it may reduce the amount of rent you must pay until the landlord fulfills his duties, and/or award you mon-

etary damages; or, it may allow you to terminate your rental agreement. If the court decides in the landlord's favor, you may be responsible for court costs and expenses.

Tenants may not withhold rent payments in order to force the landlord to fulfill his duties without the permission of the court.

If your rental agreement was prepared by your landlord, the law provides that in the event of a dispute between you and the landlord, any ambiguous terms or conditions should be interpreted in your favor.

In certain factual circumstances, a tenant who falls into one of the following categories may have the legal right to terminate their rental agreement early:

- Members of the United States Armed Forces;
- Victims of domestic violence, sexual assault, or stalking;
- Tenants residing in certain foreclosed property.

YOUR DUTIES AS A TENANT • As a tenant you have an obligation to:

- pay your rent as agreed and do other things required by your lease;
- keep your home clean and safe, dispose of trash and garbage in a clean and safe way, and use the toilet, sinks and baths in proper ways and keep them clean;
- prevent damage to your home (other than ordinary wear and tear), prevent your family or guests from damaging your home
- comply with any and all obligations imposed upon tenants by current applicable building and housing codes;
- replace the batteries as needed in a battery-operated smoke detector, notify the landlord if the smoke detector needs to be repaired or replaced, and prevent anyone from rendering the smoke detector inoperable; and
- vacate the premises at the end of the term, leaving them in good, clean condition. If you hold over at the end of the term and the landlord continues to accept rental payments from you, unless your rental agreement otherwise provides, the law may deem you to have entered a new term of lease according to the same terms as your rental agreement. For example, if you have a lease agreement for a one-year term and hold over at the end of

the term you may be bound to an additional one-year term.

To protect yourself you should make a thorough inspection of premises you intend to rent and set out in writing any damages or defects in the premises existing when you take occupancy, so that you will not be held responsible for them at the end of the term.

If something goes wrong with your home which is the landlord's duty to fix, you should let him know in writing what needs to be repaired and you must give him a reasonable amount of time to get the repairs done. What amount of time is reasonable depends on the nature of the problem. Leaks, a broken furnace in winter, and bad wiring, etc., should be corrected promptly. It may be reasonable, however, for a landlord to take a few weeks to repair other problems.

If the problem is a real emergency, your notice to the landlord does not have to be written, but it is always wise to give a dated written notice and keep a copy for yourself.

REMEMBER: The landlord's obligation to perform his duties is dependent on your performance of your duties as a tenant.

YOUR RIGHTS AS A LANDLORD • If you are a landlord, you can rent your property for whatever amount you choose, although you may not raise rent during the term of a lease and you must give proper notice to your tenant of any change if there is a periodic tenancy (week-to-week or month-to-month). You may rent to whomever you wish and you may set any terms in your rental agreement you wish, provided that they are not contrary to local, state or federal laws. You do not have the right to relieve yourself of duties imposed on landlords by the law. While generally you may refuse to rent to anyone, you may not discriminate against a tenant or prospective tenant because of his race, color, religion, ancestry, sex, country of birth, handicap, or familial status. The prohibition against discrimination based on familial status makes it illegal, in most circumstances, to refuse to allow children to live in a residential unit.

You may evict a tenant who violates any provision of your rental agreement which you and the tenant have agreed is a ground for eviction. Failure to pay rent is always a ground for eviction.

You may reserve the right to enter, inspect,

and make repairs on or show the rental property at reasonable times and in a reasonable manner.

You have the right to have your property returned to you in the same condition as it was when the tenant took possession, with the exception of ordinary wear and tear and damage done by natural forces or people other than the tenant or his guests.

YOUR DUTIES AS A LANDLORD • As a landlord you have a duty to:

- comply with current applicable building and housing codes;
- make all repairs and do whatever is necessary to put and keep the rental premises in a fit and habitable condition;
- keep all common areas in safe condition;
- maintain in good, safe working order, and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances which you have supplied or are required by your agreement or any law to supply after you have been notified by the tenant of any defects in writing (in emergencies such notice does not have to be in writing);
- provide and install battery-operated or electric smoke detectors and place new batteries in a battery-operated smoke detector at the beginning of the lease;
- provide and install battery-operated or electric operable carbon monoxide detectors and place new batteries in a battery-operated carbon monoxide detector at the beginning of the lease

You must perform any other duties required by your rental agreement.

You may also be required to allow a tenant with a disability to modify the premises and reasonably accommodate that tenant's needs.

Except in emergencies, you must notify your tenants in writing of any breaches by the tenant of duties imposed on him by law.

SECURITY DEPOSITS • A landlord is permitted by law to charge his tenants, as a security deposit, up to two weeks' rent if the tenancy is week-to-week, up to one and a half month's rent if the tenancy is month-to-month, and up to two months' rent for tenancies of longer periods. If the tenant