

Landlords and Tenants – Provided by the Office of Attorney General Lori Swanson

Entering Into The Agreement

According to Minnesota law, when the owner of a house or apartment agrees to give to someone else - for money or labor - the temporary use of that place, the two have entered into a legally binding rental contract. It doesn't matter if the agreement is oral or in writing. It is an agreement to rent, and that means some of its most important terms are automatically defined by law. Some of these terms are fixed - that is, neither landlord nor tenant can change them. Other terms can be whatever the landlord and tenant want if both parties agree. The following pages describe what the law requires of both landlords and tenants in a typical rental agreement.

1. INSPECTING THE UNIT BEFORE SIGNING A LEASE

Prospective tenants should be allowed to see the rental unit before they pay any money. They should also be allowed to inspect the utilities, the appliances, the electrical system, the plumbing, heating, and lights. Landlords with single-metered residential buildings must provide prospective tenants with the total utility costs for the building for the most recent calendar year. Potential tenants may, if they choose, list the problems they discover and may request the landlord sign the list before the potential tenants sign a lease. Landlords can refuse to cooperate (these are not "rights" legally enforceable in court), but cooperation is advised. To have a list of problems is in the best interest of both landlord and tenant, since it protects all parties if there is a disagreement about who is responsible for any repairs.

Some cities in Minnesota require landlords to get licenses for their apartments. In these cities, landlords who rent an unlicensed apartment may not be able to accept or keep rent. Prospective tenants and landlords should check with their local government authorities to determine if apartments need to be licensed.

2. REQUIRED MANAGEMENT BACKGROUND CHECK

The law requires landlords to do a background check on every manager employed, or applying to be employed, by the landlord. (1) A manager is anyone who is hired, or applying to be hired, by a landlord and would have access to tenants' units when necessary. (2) Background checks are done by the Superintendent of the Minnesota Bureau of Criminal Apprehension (BCA) to find out if the manager has a criminal history. The following guidelines have been established by law for landlords to follow when hiring a manager.

If a person is convicted of first or second degree murder; first degree manslaughter; first, second or third degree assault; kidnapping; first, second, third or fourth degree criminal sexual conduct; first degree arson; harassment or stalking, (3) the person may never be hired as a residential manager and may be fired if the manager was hired pending the background check. (4)

If a person is convicted of third degree murder; second degree manslaughter; criminal vehicular homicide or injury; fourth or fifth degree assault; simple or aggravated robbery;

false imprisonment; theft; burglary; terrorist threat; or non-felony harassment or stalking, (5) the person may not be hired as a manager unless it has been ten years since the conviction. (6)

The person also cannot be hired as a manager if there was a conviction for an attempt to commit one of these crimes or a conviction for a crime in another state that would be a crime under Minnesota's background check law. (7)

All landlords must request background checks on all currently employed managers. (8) For a sample form, to obtain information regarding a background check, or to begin the background check process, owners and landlords can contact the Minnesota BCA, Criminal Justice Information System, 1430 Maryland Avenue East, St. Paul, MN 55106, or call 651-793-2400. Landlords must pay a fee for each background check. (9)

3. SCREENING FEES AND PRE-LEASE FEES

Many landlords, particularly in urban areas, require prospective tenants to pay a screening fee. Some landlords do not. If required, the screening fee is used to cover the cost of checking the tenant's references. Prospective tenants should ask if a screening fee is required and, if so, the amount of the fee. Tenants should also ask if screening fees are refundable.

A landlord may not:

1. charge an applicant a screening fee when the landlord knows or should have known that no rental unit is available at that time or will be available within a reasonable future time;
2. collect or hold an applicant screening fee without giving the applicant a written receipt for the fee, which may be incorporated into the application form, upon request of the applicant; or
3. use, cash, or deposit an applicant screening fee until all prior applicants have either been screened and rejected, or offered the unit and declined to enter into a rental agreement. (10)

A landlord must return the applicant screening fee if:

1. the applicant is rejected for any reason not listed in the required disclosed criteria; or
2. a prior applicant is offered the unit and agrees to enter into a rental agreement.

If the landlord does not perform a personal reference check or does not obtain a consumer credit report or tenant screening report, the landlord must return any amount of the applicant screening fee that is not used for these purposes. (11)

If a landlord accepts an applicant screening fee from a prospective tenant, the landlord must:

1. disclose in writing prior to accepting the applicant screening fee:
2. the name, address and telephone number of the tenant screening service the landlord will use, unless the landlord does not use a tenant screening service; and
3. the criteria on which the decision to rent the prospective tenant will be based; and
4. notify the applicant within 14 days of rejecting a rental application, identifying the criteria the applicant failed to meet. (11.1)

A prospective tenant who provides materially false information on the application or omits material information requested is liable to the landlord for damages, plus a civil penalty of up to \$500, civil court costs and reasonable attorney fees. (11.2)

Landlords are also permitted to take pre-lease deposits. These deposits are required to be in writing and the document must completely explain when the money will be retained or returned. A landlord who violates this statute is liable for the amount of the deposit plus one-half that amount as a penalty. If the landlord and the prospective tenant enter into a rental agreement, the pre-lease deposit must be applied to the tenant's security deposit or rent. (12)

4. SECURITY DEPOSITS

Landlords have the right to require tenants to pay a security deposit (sometimes called a "damage deposit"). This is money paid by the tenant and held by the landlord to pay for any damage, beyond ordinary wear and tear, the tenant might do to the rental unit. It can be used to pay for any unpaid rent or any money the tenant owes to the landlord under the lease or another agreement (e.g. water utility bills). (13) The security deposit cannot be used by the tenant to pay the rent, except that a tenant may withhold payment of rent for the last month of a contract for deed cancellation period or mortgage foreclosure redemption period. A mortgage foreclosure redemption period is the time following the sheriff's sale during which the owner of the property can pay the sale price plus interest and certain costs and avoid losing his or her ownership interest in the property. Similarly, a contract for deed cancellation period is the time during which the buyer of property can avoid cancellation by paying the amount due and certain costs. (14)

Security deposits are attached to those whose names are stated within the lease, and are returned to the leaseholder(s) who has remained until the end of the rental term. This means that, for example, if three individuals share a unit as roommates and two renters vacate prior to the end of the tenancy, the security deposit only has to be returned to the tenant who has remained. Of course, the landlord may choose to locate the tenants who had vacated and remit to each individual the divided security deposit.

Amount of the Deposit

Minnesota law does not limit the amount a landlord may require as a security deposit. A landlord can increase the amount of the security deposit at any time during a "periodic tenancy" (a rental agreement in which no final date is mentioned), but only if the tenant is given proper advance written notice. Generally, this notice period is one rental period plus a day. (See page 10 for an explanation of "periodic leases.")

If the deposit amount is stated in the rental agreement and the rental agreement has a definite ending date, no changes in the deposit can be made unless both parties agree to the changes or the lease allows for changes. At the end of the tenancy, the landlord must return the deposit to the tenant with interest. Presently, the required interest rate is one percent, which is calculated as simple noncompounded interest. (15) The landlord may keep the amount necessary to repair any damage done to the unit by the tenant (beyond ordinary wear and tear) or to pay off other debts related to the tenancy, including any unpaid rent. (16) (See page 23 for landlord and tenant rights in the refund of security deposits.)

5. TENANT REPORTS

A "Tenant Report" is defined by Minnesota law as a written or oral report by a tenant screening service. A tenant report consists of information about an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal

characteristics or lifestyle. It is collected and used to approve or deny a tenancy. (17) The federal "Fair Credit Reporting Act" (18) also governs tenant-screening reports. (19) Agencies that compile tenant reports are called "Tenant Screening Services." This term applies to anyone who gathers, stores and disseminates information about tenants or assembles tenant reports for a fee or on a cooperative nonprofit basis. (20)

The law requires tenant-screening services to disclose to consumers upon request:

1. All information in the individual's file at the time of the request.
2. The source of information.
3. A list of all people who received a copy of the report in the past year.
4. A statement of the tenant's rights regarding these reports. (21) Upon furnishing proper identification (photo ID, date of birth, Social Security number, etc.), individuals may get a copy of their report by mail, phone, in person or any other means available to the screening agency. (22)

A copy of a tenant's report must be given to the tenant without charge if, in the past 60 days, this information was used to deny a rental application or to increase the rent or security deposit of a residential housing unit. A person may also obtain a free copy of the tenant report if the person receives public assistance, intends to seek employment within the next 60 days, or has reason to believe that his or her file contains inaccurate information due to fraud. Otherwise, the agency may charge a fee of \$3 for the report. (23)

If a person feels the tenant report is incomplete or inaccurate, the person can require the tenant screening service to reinvestigate and record the current status of the information. If the information is found to be inaccurate or cannot be verified within 30 days, it must be deleted from the tenant's file. The agency must give the tenant written notice of the resolution of the dispute, and, if information was changed, the tenant can require that notice of the change also be sent to anyone who received the report within the last six months. If the reinvestigation does not resolve the dispute, the tenant may write an "explanation" of the problem to be included in the report. The screening service may limit this explanation to 100 words. (24) If a landlord uses information in a tenant report to deny rental, increase the security deposit, or increase rent of a residential housing unit, the landlord is required to:

1. Provide oral, written, or electronic notice of the adverse action to the tenant.
2. Provide the name, address, and phone number of the screening service that prepared the report.
3. Inform the tenant of the right to obtain a free copy of the report from the screening service. (25) Also, a landlord could disclose the contents of the report to the tenant directly. A tenant screening service may not prohibit a landlord from doing this. (26)

Some landlords will be willing to work with prospective tenants with a bad credit rating or landlord history if the tenant will assure them that they will get paid. Many landlords will take double or triple damage deposits to cover them for their lost rent if they are concerned about a prospective tenant. Another option is to have someone co-sign the lease. Religious leaders and community leaders might be willing to act as references and talk to a prospective landlord on a tenant's behalf.

In limited situations, tenants who have been named as defendants in eviction cases may ask a court to remove the case from the court record. This procedure is called "expungement." In most situations, the law permits, but does not require, a judge to

expunge an eviction case from the court's records. The court must find that the landlord's case was "sufficiently without basis in fact or law," and that expungement is "in the interests of justice and those interests are not outweighed by the public's interest in knowing the record." (27) Expungement is sometimes mandatory if the tenant was evicted due to a mortgage foreclosure or contract for deed cancellation. The court will expunge the record of the eviction if the tenant vacated the property before the eviction action was started or the tenant did not receive a proper notice to vacate on a date prior to the start of the eviction action. (28) If a judge orders expungement, the tenant reporting company should be notified so its reports will be updated.

6. THE LEASE

The terms of any rental agreement are stated in the lease. This can be either a signed, written document or an oral agreement. The landlord may ask for the tenant's full name and date of birth on the lease. (29) If a building contains 12 or more residential units, the owner must use a written lease. (30) An owner who fails to provide a written lease as required is guilty of a petty misdemeanor. (31) If there are fewer than 12 residential units, the owner may use an oral agreement without violating the law.

Any tenant with a written lease must be given a copy of the written lease. If legal action is taken to enforce a written lease (except for the nonpayment of rent, disturbing the peace, malicious destruction of property, or illegal activities; see page 28 for an explanation of "illegal activities"), it is a defense for the tenant to show that the landlord did not give the tenant a lease. The landlord can argue against this defense by showing that the tenant had actual knowledge of the terms of the lease. (32)

If the lease allows the landlord to recover attorney fees in an action between the landlord and tenant, the tenant is also entitled to recover attorney fees in the same situations. This is effective for leases entered into on or after August 1, 2011, and for leases renewed on or after August 1, 2012. (32.1)

If a tenant builds or buys a home, changes jobs, or has health problems that require relocation, a tenant does not have a legal right to get out of a lease, unless the lease itself contains other provisions which allow a tenant to break the lease or the landlord agrees to release the tenant from the terms of the lease.

The "personal representative" of a renter's estate may terminate a lease upon the death of the renter after two full months' written notice. (33) A tenant may vacate a unit if it becomes uninhabitable or unfit for occupancy (see page 20). In certain circumstances, a renter called to duty in the armed forces can give 30 days notice. The military service member/tenant should contact his/her Judge Advocate General Office for information.

There are two kinds of leases and the laws are different for each:

1. The periodic lease (generally a month-to-month tenancy). (34)
2. The lease for a definite term (a rental agreement specifying a definite rental period, generally six months or a year).

Periodic Leases

If there is nothing mentioned about the length of the tenancy in the rental agreement, the lease is periodic. This means the rental period runs from one rent payment to the next. (35) For example, if the rent is due once a month on the first of every month, the rental period runs from that day through the day before the next rent payment. In this case, that would be on the last day of each month.

A periodic tenancy is continued until it is ended by either the landlord or the tenant. The person ending the tenancy must give the other party proper notice. The length of notice and the form it must take may be stated in the lease. (36) If the lease does not state a notice requirement, state law requires that written notice be given one full rental period plus one day before the tenancy ends. (37) For example, a tenant with a month-to-month tenancy who wishes to leave at the end of June would have to give written notice no later than May 31. (See page 21 for a more complete explanation of proper notice.)

Definite Term Leases

If the lease states how long the tenancy will last (usually six months or a year), the agreement is a definite term lease. This type of lease is usually in writing. (If the lease is for more than a year or will end more than a year after it is formed, it must be in writing.) Definite term leases generally state what kind of notice is required to end the tenancy. Definite term leases may have automatic renewal clauses, discussed on page 21. If there is no notice requirement, the tenancy ends on the day the lease says it does, unless the landlord and tenant agree (preferably in writing) to some other kind of arrangement. (38)

Length Restrictions for Some Leases

If an owner has received notice of a contract for deed cancellation, mortgage foreclosure sale, or a summons and complaint to foreclosure by action, generally the owner may not enter into a long-term lease with a tenant until one of several events happens: the contract for deed is reinstated, payments under the mortgage are caught up, the mortgage is reinstated or paid off, or a receiver is appointed for the property. Instead, the owner or landlord may enter into a periodic tenancy lease with a term of two months or the time remaining in the owner's contract for deed cancellation or mortgage foreclosure redemption period, whichever is less, or a definite term lease with a term not extending beyond the cancellation or redemption period. (39) (Page 7 describes a contract for deed cancellation period and mortgage redemption period.) The owner must notify a prospective tenant of the notice of contract for deed cancellation or notice of mortgage foreclosure sale prior to entering into a lease or accepting any rent or a security deposit. (40)

A longer term lease is permitted if the bank holding the mortgage on the property, the seller under the contract for deed, or the purchaser at the sheriff's sale, whichever is applicable, agrees not to terminate the lease (except in the case of lease violations) for at least one year. The lease cannot require the tenant to prepay any rent which would be due after the expiration of the cancellation or redemption period. The contract for deed seller or purchaser at the sheriff's sale must provide written notice to the tenant of the expiration of the cancellation or redemption period and the tenant is then obligated to pay rent to the seller or purchaser as his or her new landlord. (41)

Sale of the Building

If the landlord sells the house or apartment (as opposed to foreclosure by a bank), the lease transfers to the new owner (buyer). (42)

7. DISCLOSURE TO THE TENANT

Before signing a lease, paying rent, or paying a security deposit, a prospective tenant must be given a copy of all outstanding inspection orders for which a citation has been issued. (Citations are issued by a housing inspector when a housing code is violated

and the health or safety of tenants is threatened.) In addition, a tenant or prospective tenant must be given a copy of all outstanding condemnation orders and declarations that the property is unfit for human habitation. (43)

If the inspection order results in a citation but does not involve violations that threaten the health and safety of the tenant, the landlord (or person acting for the landlord) must post a summary of the inspection order in an obvious place in each building affected by the order. The landlord (or person acting for the landlord) must also post a notice that the inspection order is available for review by tenants and prospective tenants. (44)

A landlord has not violated these requirements if the housing inspector has not issued a citation, the landlord has received only an initial order to make repairs, the time allowed to finish the repairs has not run out, or less than 60 days has passed since the deadline for making the repairs. (45)

Additionally, landlords who rent units built before 1978 must disclose all known lead-based paint and lead-based paint hazards in the unit, include a warning in the lease, and give renters a copy of the Environmental Protection Agency's pamphlet Protect Your Family from Lead in Your Home. Lead-based paint that is peeling (or its dust) may be especially hazardous to children's health. Tenants who suspect that they have a lead paint problem or would like to get more information should call the National Lead Information Center at 800-424-5323 and request a copy of the EPA's pamphlet Protect Your Family from Lead in Your Home.

Further, as discussed above, a landlord must disclose to a prospective tenant that he or she has received a notice of contract for deed cancellation or notice of mortgage foreclosure prior to entering into a lease with a tenant or accepting payment of rent or a security deposit. In addition, a bank which forecloses on a landlord's property generally must provide a foreclosure advice notice to a tenant at the same time it serves the landlord with a notice of sale or a summons and complaint to foreclose by action. A bank may be liable to the tenant for \$500 if it violates this statute. (46)

8. UTILITIES

The lease should state who is responsible for paying which utility bills. In some cases, the landlord pays for heat, electricity and water. Sometimes the tenant is responsible for these bills. If this issue is not addressed in the lease, the tenant and landlord should work out their own understanding. It is good to put this agreement in writing and have it signed by both parties. Information about utility shut-offs is found on page 30.

Single-Metered Residential Buildings

Landlords are permitted to rent residential buildings with a single utility meter, if they comply with all the conditions in the law. (47) The landlord must provide prospective tenants with a notice of the total utility cost for the building by month for the most recent calendar year. (48) The landlord must have a fair and equitable method for dividing the utility bill and billing the tenants. (49) The method for apportioning the bill and billing tenants must be put in writing in all leases. The lease must include a provision that upon the tenant's request, the landlord will provide a copy of the actual utility bill for the building along with each portioned utility bill. Also, upon a tenant's request, the landlord must provide actual utility bills for any time a tenant has received a divided bill. The landlord must keep copies of utility bills for the last two years or from the time the landlord bought the building, whichever is longer. (49.1)

By September 30 of each year, a landlord with a single-metered residential building who bills for gas and electrical charges must inform tenants in writing of the possible availability of energy assistance from low-income home energy assistance programs. This notice must include the toll-free telephone number of the home energy assistance program. (50)

If a landlord violates this law, it is considered a violation of the landlord's duty to keep the property fit for its intended use. (51) (See pages 16-19 for a description of tenant remedies.) The law does not govern how tenants occupying a unit, such as roommates, divide the utility bill between themselves. If a landlord interrupts or causes the interruption of utility services, the tenant may recover from the landlord triple damages or \$500, whichever is greater, plus reasonable attorney's fees (see page 30 for information on "utility shutoffs"). (52)

9. MAINTENANCE

According to Minnesota law, the landlord is responsible to make sure that the rental unit is:

1. Fit to live in.
2. Kept in reasonable repair.
3. Kept in compliance with state and local health and housing codes.
4. Made reasonably energy efficient to the extent that energy savings will exceed the costs of upgrading efficiency.

These landlord obligations cannot be waived. (53) A tenant who experiences problems with a landlord who is not making necessary repairs or who is not providing a unit that is fit to live in should refer to Section 15 for details on how to resolve such issues.

Some repairs or maintenance duties (like yard work) can become the duty of the tenant if:

1. Both parties agree in writing that the tenant will do the work and
2. The tenant receives adequate consideration (payment), either by a reduction in rent or direct payment from the landlord. (See Section 15 for procedures to be followed in repair disputes.) (54)
- 3.

10. UNLAWFUL DESTRUCTION OF PROPERTY

The tenant must not abuse the rental property and must pay for any damage the tenant causes beyond normal wear and tear. A landlord may sue a tenant for the willful and malicious destruction of residential rental property. The party that wins may recover actual damages, costs, and reasonable attorney's fees, as well as other damages determined by the court. (55)

11. ALTERATIONS

Ordinarily, a tenant is not allowed to paper or paint walls, resurface floors, dismantle or install permanent fixtures, alter woodwork or carpet, or make other changes without the landlord's permission. Tenants should speak with a landlord before making any alterations.

Information updated and current as of March 7, 2014. For ongoing updates, click for [MN Landlord and Tenant Information](#).

Read the article by [Home Destination](#) titled [Twin Cities Homeowners Who Decide to Become Landlords](#). Published March 7, 2014