

# RENTER'S GUIDE

---



# Acknowledgments

The Renter's Guide was originally published by NMPIRG at the University of New Mexico in 1977. The Legal Aid Society of Albuquerque printed the second, third, and fourth editions in 1979, 1984 and 1986, respectively. NMPIRG published the fifth edition in 1989, with the assistance of the Legal Aid Society of Albuquerque. The Legal Aid Society of Albuquerque updated and published the sixth edition in 1995. The seventh edition was published in 2005 with funds provided by the New Mexico Mortgage Finance Authority. The eighth edition was published in 2009 with funding by the New Mexico State Bar Foundation Pro Hac Vice. This ninth edition is being printed with assistance in part from the Pro Hac Vice fund of the New Mexico State Bar Foundation and the State Bar of New Mexico.



The illustrations in this edition of the Renter's Guide are by Rini Templeton. Rini generously contributed her artwork to the advancement of social justice in our society. Many thanks for her beautiful, sensitive and thoughtful legacy. More of Rini's art and information about her life is available at [www.riniart.org](http://www.riniart.org).

© by New Mexico Legal Aid, Inc. 2011



# TABLE OF CONTENTS

<b>1. INTRODUCTION.....</b>	<b>1</b>
A. About this guide .....	1
B. The law that applies to rental housing.....	1
C. Exempt housing.....	2
D. Some thoughts on record keeping.....	3
 <b>2. FINDING A PLACE TO LIVE .....</b>	<b>5</b>
A. How to look for housing .....	5
B. The real cost of renting.....	6
C. Be aware of exactly what you are getting.....	8
D. The availability of public and government assisted housing.....	8
E. Discrimination in looking for housing .....	9
1. What is illegal discrimination? .....	9
2. What to do if you are a victim of discrimination. ....	10
 <b>3. WHEN THINGS GO WRONG BEFORE YOU MOVE IN.....</b>	<b>11</b>
 <b>4. RENTAL AGREEMENTS OR LEASES .....</b>	<b>13</b>
A. Periodic vs. fixed-term tenancies .....	13
B. Oral agreements.....	15
C. Written leases .....	16
D. Rules and regulations .....	17
E. Lease provisions .....	18
1. Form leases .....	18
2. Provisions against subleasing .....	18
3. Automatic renewal .....	20
4. Objectionable clauses in leases.....	21
5. Other important points to be checked in a rental agreement .....	23
a. Rent .....	23
b. Late charges .....	23
c. Utilities and appliances .....	23
d. Owner or authorized agent.....	25
e. Repairs and maintenance.....	25

f. Guests .....	26
g. Pets .....	26

## **5. DEPOSITS ..... 28**

A. Refundable deposits vs. non-refundable fees .....	28
B. The damage deposit.....	29
1. What is the most that can be charged for a damage deposit? .....	30
2. What does the deposit cover? .....	30
3. What is normal wear and tear? .....	31
4. When should the damage deposit be returned? .....	32
5. Getting back the full deposit. ....	33

## **6. PAYING RENT..... 36**

A. The tenant's duty to pay rent .....	37
B. Rent vs. deposits or damages .....	38
C. Agreements where the tenant's right to a dwelling is tied to a job. ....	38
D. When the tenant doesn't pay rent. ....	38
E. Keeping records .....	40
F. Rent increases .....	41

## **7. OBLIGATIONS OF LANDLORDS AND TENANTS FOR SAFETY, MAINTENANCE AND REPAIRS ..... 42**

A. Tenant obligations and responsibilities.....	42
1. A safe and clean place.....	42
2. Complying with the rental agreement and the landlord's rules .....	43
3. Allowing access to the rental unit .....	44
4. Informing the landlord of the tenant's absence for seven days or more .....	46
5. Using the rental unit as a residence.....	47
6. Obligations to neighbors--illegal conduct.....	48
7. What will happen if a tenant fails to live up to his/her obligations.....	50
a. Failure to pay rent.....	50
b. Seven day notice of lease violation.....	50

c. Three day notice of a substantial violation.....	51
8. Notice of termination generally .....	52
9. When the time on notices runs.....	53
10. Eviction .....	54
B. Landlord obligations and responsibilities.....	54
1. Basic responsibilities .....	54
2. Local housing codes.....	55
3. Repairs .....	57
4. Written rental agreement.....	58
5. Quiet enjoyment.....	58

## **8. WHAT TO DO WHEN REPAIRS ARE NEEDED..... 59**

A. Types of repairs.....	59
1. Tenant-caused damage .....	59
2. Wear and tear repairs .....	60
3. Material repairs .....	60
B. When the tenant requests repairs.....	61
1. Making a record of needed repairs.....	61
2. Health and safety violations.....	62
C. Tenant remedies .....	65
1. Damages and injunctive relief .....	65
2. Termination of the tenancy .....	66
3. Rent abatement.....	66
D. Limitations on the landlord's duty to make repairs and the tenant's remedies .....	70

## **9. MOVING OUT--BY CHOICE OR BY COURT ORDERED**

### **EVICTION ..... 71**

A. Voluntary cancellations of leases and rental agreements .....	71
1. How much notice do I have to give .....	72
2. Failure to give proper notice .....	72
3. Subletting.....	73
B. Eviction .....	74
C. Illegal evictions .....	75
1. Retaliatory evictions .....	76
2. Lock-outs .....	77

<b>10. THE TENANT'S PROPERTY .....</b>	<b>79</b>
A. The "Landlord's Lien" .....	79
B. Abandoned property .....	80
1. The tenant abandons the rental unit .....	80
2. The tenant moves out because the lease has ended...	81
3. The tenant has been evicted .....	81
4. Disposition of the property .....	82
<b>11. TENANTS IN SPECIAL SITUATIONS .....</b>	<b>83</b>
A. Sale of the rental property .....	83
B. Utility problems.....	84
C. Making structural changes in a rental unit .....	85
D. Foreclosure of the rental property .....	86
<b>12. MOBILE HOME PARKS.....</b>	<b>87</b>
A. What is a "Mobile Home Park?" .....	87
B. Eviction from mobile home parks.....	88
C. Utility service .....	90
<b>13. HOUSING DISCRIMINATION .....</b>	<b>92</b>
A. Your rights under the law.....	92
B. Protected classes.....	93
1. Race and color.....	93
2. National origin .....	94
3. Religion.....	94
4. Gender.....	95
5. Familial status .....	95
a. Occupancy limits.....	96
b. Senior housing .....	96
6. Disability.....	97
a. Modifications .....	98
b. Reasonable accommodation.....	98
c. Accessibility requirements .....	99
7. Sexual orientation .....	99
8. Spousal affiliation .....	99
9. Gender identity.....	99
C. Exemptions from the Fair Housing Act .....	100

D. What you can do.....	100
1. Statute of limitations .....	101
2. The HUD process.....	101
E. Resources/links .....	102
F. Applicable laws .....	103
<b>14. TENANTS OF FEDERAL HOUSING .....</b>	<b>104</b>
A. Subsidized apartment complexes .....	104
B. Section 8 "Existing Housing" vouchers .....	105
C. Public housing.....	107
<b>15. TENANT ORGANIZING.....</b>	<b>109</b>
<b>16. GOING TO COURT.....</b>	<b>112</b>
A. Legal counsel .....	113
B. Some definitions.....	113
C. Court procedures .....	114
D. Disqualifying a Judge.....	115
E. The trial .....	116
1. The record .....	116
2. Jury trials.....	117
3. Interpreters .....	117
4. Trial preparation.....	117
5. Trial presentation .....	117
6. The judgment .....	118
F. Appeal.....	119
G. After court.....	120
<b>17. TIRED OF RENTING? TIPS ON BUYING A HOME .....</b>	<b>122</b>
A. The basics of a real estate purchase .....	123
B. Refinancing your home .....	126
C. Purchasing a manufactured or mobile home .....	126
D. Buying on a real estate contract .....	128
E. Beware of predatory lenders .....	129
1. How to recognize predatory lenders .....	130
2. Warning signs of a predatory loan .....	131

**APPENDIX -- RESOURCES..... 133**

- A. Legal help..... 133
- B. Courts ..... 134
- C. Predatory lending ..... 134
- D. Housing resources ..... 135
- E. Forms and model letters ..... 136
  - 1. Thirty day notice to terminate lease.....136
  - 2. Three day notice of non-payment of rent..... 137
  - 3. Resident’s seven-day notice of abatement.....138
  - 4. Demand letter for return of security deposit.....140
  - 5. Move-in rental checklist..... 141



# Chapter 1



## INTRODUCTION

### A. About this guide

Renting a place to live presents many important questions and can have legal consequences. Landlords and tenants often suffer from inaccurate information. A lack of information, or the wrong information, may cause disputes that turn into eviction actions. When tenants do not have information about their rights and duties, it hurts their ability to provide their families with a safe and secure place to live. This guide will:

- (1) provide information about the landlord-tenant relationship;
- (2) tell you about your rights in that relationship; and
- (3) help you avoid some of the problems that sometimes occur in renting houses or apartments.

### B. The law that applies to rental housing

This guide is based on the New Mexico law that covers landlord-tenant relations for residential housing. The law is called the “Uniform Owner-Resident Relations Act” and may be found within the New Mexico Statutes Annotated (NMSA) at section 47-8-1 through Section 47-8-52. Under the Act, the landlord is referred to as “the owner”, and the tenant is

called "the resident." In this guide, we will use the terms "landlord" for "owner" and "tenant" for "resident."

There are other laws that are important to the landlord-tenant relationship, depending on the kind of housing the tenant rents. If you rent a mobile home space, many of your rights and duties will be covered by the "Mobile Home Park Act" which may be found at NMSA Section 47-10-1 through NMSA section 47-10-23. The Mobile Home Park Act is discussed in Chapter 12. If you live in public housing, or if your rent is subsidized by the government, you will want to look at Chapter 14 of the guide. Public housing and rent subsidies involve both federal law and New Mexico law, and your rights and duties are affected by those laws when the government is helping you pay for your rental housing. Particular issues affecting mobile home parks or public housing tenants will also be discussed as they come up in other sections of this guide.

The Fair Housing Act which may be found at United States Code Title 42 Chapter 45 (42 U.S.C. §§3601 et seq.) is a federal law that protects many tenants who are discriminated against based on race, color, national origin, religion, gender, family status or disability. The New Mexico Human Rights Act which may be found at NMSA §28-1-1 through §28-1-14 [28-1-15 is repealed] furthermore protects many tenants from discrimination based on sexual orientation, gender identity, or spousal affiliation. See Chapter 13.

There are also Federal laws that protect tenants if the police help a landlord evict tenants without a court order. These police are violating the tenants' constitutional rights.

### **C. Exempt housing**

The Uniform Owner-Resident Relations Act (UORRA) covers most kinds of residential rental housing. There are certain types of housing that are exempt from the UORRA. In exempt housing, you are not covered by the UORRA. For instance, the Act does not cover "transient" stays in a hotel or a motel (NMSA §47-8-9(D)). The Act also does not generally cover

dormitories, hospital rooms, or places where people stay while receiving medical or mental health treatment (NMSA §47-8-9(A)). It does not apply to religious or educational institutions (NMSA §47-8-9(A)). If you are buying a house or mobile home under a land or real estate contract the UORRA does not apply (NMSA §47-8-9(B)). Housing provided to an employee that is conditioned on employment is not covered, as long as the employment/housing agreement is in writing (NMSA §47-8-9(E)). Housing used primarily for agricultural purposes is exempt (NMSA §47-8-9(F)). This guide does not deal with those types of living arrangements.

Eviction from some of these exempt housing arrangements is covered by the Forcible Entry and Detainer statute (NMSA §35-10-1 through § 35-10-6). If the landlord believes the tenant no longer has the right to keep living in the home, s/he can file in court to have the tenant removed (NMSA §47-8-24). As with the UORRA, this statute does require court process before eviction. The Forcible Entry and Detainer statute would apply to housing provided to an employee and to properties that have been foreclosed. If you are renting a home that has been foreclosed on, you are protected by the Protecting Tenants at Foreclosure Act of 2009 which may be found at Public Law 111-22 Section 701 through section 704. See Chapter 11. If you are an occupant or an owner in one of the exempt categories of housing, you should consult a lawyer about your legal rights and responsibilities.

## **D. Some thoughts on record keeping**

There are two very important points to remember as you use this guide. First, the information contained in the guide is general, and it is not a substitute for getting legal advice. Second, there are steps tenants and landlords should take that are not always mentioned in this guide, and they usually involve the need to keep careful records of your dealings. For example, it is particularly important that there be a written lease when renting an apartment or house. Not only is this required by the law (NMSA §47-8-20 (G)), but it ensures the tenant and landlord know exactly what the rental agreement is. Whenever possible, put all of your

communications with your tenant or landlord in writing and keep copies of everything!

We have tried to help you with both of these important issues. At the end of the guide is an appendix called “Resources” and you should look at it when you need to find legal help. The appendix also has a form called “Records: Important things to write down and documents to keep” as a reminder there are many papers that may not seem important at the time you get them but will be important to have if you wind up with a problem in your rental housing.

One final word of advice to both landlords/owners and tenants: you should always keep receipts or some other form of proof of payments. Many disputes arise from the failure to maintain written proof of payment or rent, deposit or damages.



## Chapter 2



### FINDING A PLACE TO LIVE

#### A. How to look for housing

There are many ways to find apartments, rooms, or houses to rent. Looking for housing can take a lot of time, and you need to think about what you are doing. For example, you need to think about the kind of place you want, its size, its cost, and the services you would like to have. Looking for housing is a lot like buying a car, and you should approach a rental deal like you would approach dealing for a car. You should always try to get the best deal you can. This means you will have to be prepared to negotiate your deal. Always remember, most items in a housing rental agreement are negotiable.

There are a number of ways to find out about available housing. Some of the common ways are:

1. Newspaper classified ads;
2. "For rent" signs on houses and apartment buildings;
3. Internet and Yellow Pages listings for property management companies;
4. Craig's List;

5. Rent.com and rentals.com;
6. Commercial rental agencies;
7. Public Housing Authorities;
8. HUD lists of subsidized housing;
9. College and University bulletin boards; and
10. Word of mouth.

With all the other ways to find housing, you don't need to bother paying a broker or an agency any money just to look through an agency's listings. It is usually not a good idea to pay any fee to an agency to find your rental housing, because most of their listings are available elsewhere at no charge. No agency guarantees it will find you a place.

An agency's reputation for honesty in dealing with people can be checked through the Better Business Bureau or the Consumer Protection Division of the Attorney General's Office. You can find out if realtors or property managers have had complaints against them by checking with the Board of Realtors.

Landlords are permitted to check on a tenant's background, including credit or criminal background checks. Landlords can turn down a tenant for housing for bad credit or a criminal history. A landlord does not have to accept a tenant with a HUD Section 8 voucher. Also, a landlord with three or more rental units cannot refuse to rent to someone because of a disability, ethnicity, sexual orientation or other reasons protected by the Fair Housing Act or New Mexico Human Rights law.

## **B. The real cost of renting**

There are several questions to answer about the cost of rental housing besides the monthly rent. You need to consider your own costs, such as the cost of traveling to work or school from the rental house, the costs of utilities not included in the rent, and whether you plan to have renter's insurance. If you can afford it, renter's insurance is a good thing to have.

Insuring your own property against fire, theft, and the possibility of personal injury liability will help protect you should damage or loss occur

to your property. A landlord's insurance policy seldom provides coverage for loss of the tenant's property.

If you have a disability and will need to modify the rental housing to make it accessible, you will need to figure out the costs of making the alterations. You will ordinarily have to pay both to make the changes and to have them removed when you leave. See Chapter 13 of this guide on the fair housing rights of people with disabilities to make modifications in a rental dwelling.



Be careful to find out about any costs the landlord may charge you in addition to the rent. Will you have to pay for water, sewer and trash? Find out if utilities are included in the rent. If not, talk to other tenants and the landlord about the cost of utilities, how the costs are figured, and how utilities are metered. Ask the landlord to see a list of rules and regulations because there may be "extra" charges noted in the rules. This is especially important in renting space in a mobile home park, because rules and regulations for the park may require you to skirt the mobile home or perform other requirements that cost money beyond the rent charged.

Be sure to check on deposits. A damage deposit, as well as payment of the last month's rent may be required. Also, find out whether you will have to pay a deposit to hold the rental dwelling and whether the deposit is refundable if you change your mind about renting.

## **C. Be aware of exactly what you are getting**

When you are looking, be sure you actually see the apartment or house that is available for rent. Don't settle for looking at a "model" apartment, which may not be the one you and your family will be living in. If you notice things you don't like about the condition of the unit, you may be able to get the landlord to make repairs or changes. It is easier to do this while you are looking, because you have some bargaining power. You should also do a move-in inspection (see Chapter 5).

It is also important to learn about the location. Ask other tenants about the neighborhood, the general noise level around the apartment or house, schools your children will attend, and any other concerns you have. It is also wise to find out how other tenants feel about the landlord and how the landlord generally deals with tenants. If you can, try to find out why the previous tenants moved out. You may want to drive by the neighborhood at night to make any observations of possible dangers.

## **D. The availability of public and government assisted housing**

While you are looking, remember that there are several different kinds of government housing programs which offer rental assistance or rents to tenants with low incomes that are less than current market rents. Federal regulations provide extra rights and protection to tenants in these programs. These programs include public housing, HUD-subsidized apartment complexes, and Section 8 rental assistance vouchers. Public housing is owned and managed by Public Housing Authorities, run by cities, counties or regions of the state. Section 8 voucher assistance is also administered by Public Housing Authorities. Subsidized apartment complexes are privately owned but subsidized by HUD or the USDA. These programs are discussed in Chapter 14 of this guide.

## E. Discrimination in looking for housing

### 1. What is illegal discrimination?

Looking for housing is a demanding task for anyone, but it is especially hard and frustrating when a person is not treated fairly because of discrimination. Discrimination includes refusing to show a person an apartment or house for rent, telling a person that the apartment or house is not available when it is, quoting a higher rent to one person than to another, or having different terms and conditions for renting to certain people (42 U.S.C. §3604). A landlord may not discriminate based on someone's race, religion, national origin, ancestry, sex, or because a family has children (42 U.S.C. §3604). A landlord may also not discriminate against a person because the person has a physical or mental disability (NMSA §28-1-7 (G) (I)). New Mexico forbids discrimination based on sexual orientation or gender identity (NMSA §28-1-7 (G) (I)).



Housing discrimination based on race, national origin, religion, sex, family status (families with children), and disability is illegal under federal law (42 U.S.C. §3604). The federal law forbids practices that, for example, deny tenants with children rental units because of an "adults only" or a "no children" policy. The law prohibits denying people with mental or physical disabilities housing, either because the landlord is concerned about "what other tenants might think" or because the landlord simply feels it might be easier to rent to someone who didn't have a disability. New Mexico state law makes housing discrimination based on

most of the same reasons illegal. This law is called the New Mexico Human Rights Act and may be found at NMSA §28-1-1 through NMSA §28-1-14. The New Mexico Human Rights Act also protects persons who are discriminated against because of sexual orientation, gender identity or spousal affiliation. Many cities such as Albuquerque (Albuquerque Code of Ordinances Section 11-3-7), Santa Fe (Fair Housing Ordinance, City Code Chapter XXVI Section 26-4 Subsection 26-4.8), and Las Cruces (Las Cruces Code of Ordinances Part II Article I Section 13-5.) also have local ordinances prohibiting housing discrimination.

## **2. What to do if you are a victim of discrimination.**

If you feel a landlord or someone else you have contacted in your search for housing has discriminated against you because of your race, religion, national origin or ancestry, sex, family status (with children), or because of your disability, you should seek legal advice. It is important to seek help soon after the discrimination occurs. Housing discrimination cases are difficult to prove and it helps when you are able to explain what happened while the facts are clear in your mind. Also, you will need advice about which laws have been violated and the time limits for filing complaints under the various laws.

In the "Resources: Legal help" appendix to this guide you will find, under "fair housing", the names of offices and agencies that deal with housing discrimination at the local, state, and federal levels. You should also look at Chapter 13 of this guide, which provides additional information on fair housing law.



## Chapter 3



### WHEN THINGS GO WRONG BEFORE YOU MOVE IN

There are some things that can go wrong even before the tenant moves in. For example, the tenant may have lost his or her job and simply can't afford to rent the apartment or the house. Or, the tenant may have found a better apartment after agreeing to rent the apartment. If you have signed a written agreement to rent and you have paid a deposit, you may lose your deposit. Landlords have the right to retain deposits under certain situations, and the law usually protects the landlord who winds up in this situation. The landlord may also be entitled to some rent or other damages for having to re-advertise the apartment (NMSA §47-8-35).

Sometimes, you will be ready to move in on the date you agreed with the landlord, but the apartment or the house is not ready. If you have signed a rental agreement or have paid deposits, you have rights where you were not able to move in on the date you and the landlord agreed to if it is the landlord's fault for the unavailability of the apartment or house. First, you are not required to pay any rent for the days that pass until you actually move in (NMSA §47-8-26 (B)). In addition, you may give a *written notice* to the landlord saying you want to terminate the rental agreement (NMSA §47-8-26 (B) (1)). If you give the landlord the notice, you are entitled to the return of all prepaid rent and deposits (NMSA §47-8-8 (B) (1)).

If you do not want to terminate the agreement, you may demand that the landlord make the rental unit available immediately (NMSA §47-8-26 (B) (2)). If the landlord fails, you may bring an action in court to get possession of the apartment or the house. You may also ask for damages as well as for possession in the lawsuit (NMSA §47-8-26 (B) (2)). Unless the landlord returns everything you have paid and makes a reasonable effort to get you possession within seven days of your written demand, you are entitled to damages (NMSA §47-8-48) as well as possession.

Obviously, before filing a lawsuit, you should make every effort to seek legal advice. While you can do the lawsuit yourself, you will need more information than is contained in this guide to know all the issues such a lawsuit will involve.



## Chapter 4



### RENTAL AGREEMENTS OR LEASES

Once the tenant has found an apartment or house to rent, an agreement must be reached with the landlord. Remember, the terms of such an agreement are part of the "deal" between the tenant and the landlord, and the terms should be negotiated in the same way as the purchase of a car. When a car is bought or sold, the agreement is set out in a written contract. In the landlord-tenant world, that contract is called a "rental agreement" or a "lease." The law requires the landlord to provide a signed written rental agreement to the tenant (NMSA §47-8-20 (G)).

The next sections of this guide will describe things to watch out for in negotiating and signing a "rental agreement" or a "lease."

#### A. Periodic vs. fixed-term tenancies

There are several important things to remember about the contract for the rental dwelling. The first thing is that the tenant and landlord are agreeing to rent for some length of time. It may be a week, two weeks, a month, six months, a year, or even longer. The tenant and the landlord need to know what that length of time-- the **term**--will be.

The most common type of rental agreement is a month-to-month tenancy, which is often called a "periodic tenancy." This type of agreement allows the tenant to live in the dwelling for a month at a time. At the end of the month, the landlord may decide s/he wants the tenant to move out or wants to raise the rent or change other conditions of the tenancy. In a month-to-month tenancy, the landlord must give the tenant a written notice at least thirty days in advance for any changes in the rent or conditions (NMSA §47-8-15 (F)), or to end the tenancy(NMSA §47-8-37 (B)). If the tenant wants to move, s/he must give the landlord at least thirty days written notice (NMSA 47-8-37 (B)). If the tenant gives less

than thirty days notice, the tenant can be held responsible for the following month's rent (NMSA §47-8-35).



Some rental agreements are for less than a month. They are still "periodic tenancies," but all the time limits for notice are equal to the length of the term (NMSA §47-8-15 (F)). For example, if the tenant and the landlord agree the term is two weeks at a time, the landlord must give the tenant two weeks notice to move or to raise the rent. The tenant must give the landlord two weeks notice if the tenant intends to move.

MAYO																	
D	L	M	M	J	V	S											
			1	2	3	4	5										
6	7	8	9	10	11	12											
13	14	15	16	17	18	19											
20	21	22	23	24	25	26											
27	28	29	30	31													

The term the tenant agrees to, is always important and the parties should have a clear understanding of what the tenant and the landlord have agreed on. This is very important when someone is renting a room in a hotel or a motel. If the tenant is renting a hotel or motel room for more than a week as their main place to live and the tenant pays rent on a weekly basis, the tenant has a periodic tenancy (NMSA §47-8-15 (C) and NMSA §47-8-3 (F). This can be important in giving the tenant rights under the Uniform Owner-Resident Relations Act. A person who is simply stopping at a hotel or motel while visiting or passing through town is not a tenant, and the person has few rights if the owner decides to have the person leave

(NMSA §47-8-3 (V)). If you intend to stay in a hotel or motel for a more extended time than a couple of days, be sure to inform the hotel or motel you intend to be living there as a resident and not just a short term visitor. A hotel or motel is not required to allow you to establish a residency. A hotel or motel can require daily payment in order to ensure that the occupancy remains temporary.

A definite term, or fixed-term tenancy, is one where the tenant and the landlord have agreed the tenant will be renting for a specific period of time. This type of agreement is usually for six months or a year. The tenant may still be paying rent each month, but the tenant has the right to stay for the full period without a rental increase or other changes (NMSA §47-8-15 (F)). In this type of tenancy, the landlord cannot make the tenant move out during the term of the lease unless the tenant violates the agreement (NMSA §47-8-40). The landlord cannot raise the rent during the period of the lease. If the tenant and the landlord agree the tenant will be staying for an additional fixed term when the lease ends, the landlord must give notice of any rent increase in the new agreement at least thirty days before end of the current lease (NMSA §47-8-15 (F)).

In thinking about whether a "periodic tenancy" or a "fixed-term tenancy" is best, the parties should consider several issues. In a fixed term tenancy, the tenant has a right to stay for the full term and the rent will not be increased during that term. However, in a fixed-term tenancy, the tenant may owe the landlord rent for some of the rental term if the tenant decides to move out before the term ends. The landlord will not be able to terminate the lease until the end of the lease term and loses flexibility in how the property is used. In a periodic tenancy, the tenant has more flexibility in ending the tenancy, but neither party has the security of a fixed-term agreement.

## **B. Oral agreements**

There are a lot of important legal issues about the rental agreement even in an area as simple as how long the rental term is. If the agreement is not in writing, there can be serious misunderstandings between the tenant and

the landlord. For example, the landlord rents a place to the tenant for a month at a time, and the tenant tells the landlord s/he will be there for six months. If the agreement about the term is not in writing, then it will be difficult to prove in court the term was six months as opposed to month-to-month.

It is possible to have enforceable oral agreements but certain agreements, such as an agreement that the tenant will make repairs to the property, must be in writing to be enforceable (NMSA §47-8-20 (C)).

Although New Mexico law requires a written rental agreement (NMSA §47-8-20 (G)) (or "lease"), some landlords don't use them. Usually, a landlord who refuses to give the tenant a written rental agreement is a landlord the tenant may have trouble with down the road. While the law is designed to give the tenant all the rights and protections discussed in this guide even if the tenant does not have a written rental agreement, it is often difficult to enforce those rights when the tenant does not have the rental agreement in *writing and signed* by the tenant and the landlord. If the tenant starts to have problems with the landlord, and the tenant does not have a written rental agreement, it is very important that the tenant immediately seek legal advice. It is also important for both the landlord and the tenant to have a copy of the signed agreement. Although this does not happen frequently, landlords have called the police and claimed tenants were trespassers when the tenant did not have a written rental agreement.

## **C. Written leases**

A written rental agreement sets out the promises the landlord and the tenant make to each other. In most cases, promises the landlord made at the time the tenant moved in or afterward will be difficult to enforce if they are not in the written lease or in an attachment to the lease. The tenant should make sure all agreements that were important to the tenant are put in the lease. For example, if the landlord promised to provide new locks or fix a fence, the promise should be made part of the lease. Think of putting promises in writing as a way to avoid disputes later on.

A written fixed-term lease is usually the best deal for the tenant and the landlord. It offers both the security of continued occupancy and unchanged rent. When the tenant and the landlord agree to a fixed-term lease, the parties have made a commitment to each other for an agreed upon time.

At the same time, it is important to remember that the tenant's promises are also part of the agreement, and a written lease sets out what the tenant has agreed to do. For example, when two roommates co-sign a lease, either one can be held responsible for the entire rental agreement.



#### **D. Rules and regulations**

Many landlords, especially in large apartment complexes or mobile home parks, will have Rules and Regulations in addition to the lease. The Rules and Regulations are part of the lease and should be read just as carefully as the lease agreement. If there are Rules and Regulations, the tenant should receive a copy at the same time as s/he receives a copy of the lease (NMSA §47-8-23 (F)). Violations of the Rules and Regulations can be the basis for notices of termination of the tenancy. The landlord can change the Rules and Regulations during the lease term but must give reasonable notice to the tenant of the proposed change and the proposed change must not substantially modify the tenancy (NMSA §47-8-23 (F)).

## **E. Lease provisions**

One of the main reasons to insist on a written lease is that there is so much involved in an agreement to rent a house or apartment. However, just because there is a written lease does not mean the tenant's worries are over. The tenant needs to read the lease, be sure s/he understands everything in it, and try to make the best deal the tenant can.

### **1. Form leases**

Most landlords use form leases. These are preprinted forms that have been prepared for a landlord to use with all tenants. These forms will have blank spaces to be filled in for rent, deposits, number of occupants, etc. Make sure all of the blank spaces are filled in or appropriately marked "N/A" (not applicable). While leases are often difficult to read, it is still important both the landlord and the tenant read the lease and sign it. Also, if there are provisions in the lease the tenant did not agree to or the tenant does not want, the tenant should try to get those provisions removed before signing the lease. If the lease is signed with those provisions still included, the tenant will be bound by them. When any changes are made on the lease form, both the landlord and the tenant should initial the changes.

Landlords can obtain information about leases from the Apartment Association of New Mexico, located in Albuquerque (505-822-1114 or 800-687-0993 and on-line at [www.aanm.org](http://www.aanm.org)).

### **2. Provisions against subleasing**

Most form leases contain language that prohibits subleasing or assigning a house, mobile home or apartment to other people. Often something like the following wording will appear in a lease:

*The lessee herein further covenants and agrees that s/he will not sell, assign, transfer, relinquish, encumber or in any manner dispose of this lease or any part of it; also*

*lessee further covenants and agrees for himself and others not to sublet the demised premises or any part or portion thereof nor in any manner permit the occupancy and use thereof by another or others.*

Quite a mouthful, isn't it? It means the tenant cannot allow anyone else to rent the apartment or to take over the lease. Provisions like this usually are understood to mean that the landlord can agree to a "sublease" agreement or to having someone else take over the lease. If the landlord does agree to a sublease, it will have to be in writing. It is very important that the tenant contacts his/her landlord if the tenant wants to sublease, reach agreement on the sublease, and have the agreement put in writing and signed by everyone concerned (including the person the tenant wants to sublet to). This agreement needs to specify who is responsible if the subtenant does not pay the rent or damages the property. If the landlord does not agree to the sublease, the tenant will be responsible. Even if the landlord does agree, the agreement could still hold the tenant responsible for the subtenant.

If the lease requires landlord approval before subleasing a house or apartment, the tenant should make sure it also states "consent may not be unreasonably withheld for any suitable tenant." Try to get this language in the lease or rental agreement, because it will protect the tenant in the event of a situation where the landlord decides to be unreasonable about the people who can move in or about new terms and conditions for a sublease. Mobile home parks generally require that the buyer of a mobile home located in the park must apply to lease the space the mobile home is on. The buyer does not automatically take over the lease the seller had for the mobile home space.

Remember that a provision prohibiting subleasing does not prevent the tenant from having friends visit as guests in the tenant's apartment or rental house. The tenant is entitled to have a reasonable number of guests stay for a reasonable time. The lease may specify the length of time guests may stay with the tenant in the rental unit. The tenant may not permit roommates or friends to use the unit as a place of permanent residence when the lease prohibits subleasing.

### 3. Automatic renewal

A lease may contain language that provides for the automatic renewal of the term of the lease. Such a provision usually states if the lease is not canceled in advance (usually thirty days) of its termination date, then it will renew itself for another term, or it may turn into a month-to-month lease. The tenant should be aware of the language in the lease or rental agreement. Such language may commit the tenant to stay an extra year, or whatever term is in the agreement, when the tenant might not want to stay that long. The tenant should also remember this language when the lease term is about to run out. The tenant must decide whether to stay over for another full term. If the tenant doesn't want to stay, written notice must generally be given to the landlord.

Most leases renew on a month-to-month basis. This means that either the tenant or the landlord can end the lease by giving at least a thirty-day notice.

If the tenant leaves when a lease has been automatically renewed, the tenant may owe the landlord rent. The tenant may also lose some of the deposits. (See the Chapter on "Moving out" in this guide for more information on rights and duties when the rental agreement ends) (NMSA §47-8-35)





#### **4. Objectionable clauses in leases**

A landlord may want to put many different conditions in the lease, but remember, the tenant has the right to negotiate the best deal possible. Being sure you understand what is in the written agreement is part of that negotiating process. There are certain things that may not legally be included in a lease agreement. For example, a lease may not include terms and conditions that are prohibited by the Owner-Resident Relations Act or other laws governing the use of property (NMSA §47-8-14). The lease may also not require the tenant to give up rights under the law (NMSA §47-8-16). If a lease contains such illegal provisions, the tenant may be able to collect damages and get attorneys fees in a lawsuit if the tenant is harmed by the landlord's attempt to enforce the illegal provision (NMSA §47-8-48).

#### **Here are some examples of lease provisions that are illegal:**

- A provision that says the tenant does not get a refund of prepaid rent or a deposit (NMSA §47-8-18 (C));
- A provision that charges a late fee greater than 10% of the monthly rent (NMSA §47-8-15 (D));

-A provision that forces the tenant to give up the right to defend him/herself in court if the landlord seeks to evict the tenant or files suit against the tenant for damages (NMSA §47-8-30 (A));

-A provision that says the tenant must give up the right to receive notice of termination or notice of a court action (NMSA §47-8-33);

-A provision that says the tenant must give up the right to take the landlord to court (NMSA §47-8-27.1);

-A provision that says the tenant has to move out without court action if the landlord breaks the lease (NMSA §47-8-42);

-A provision that allows the landlord to change the locks at the apartment or otherwise deny the tenant access to the apartment when the tenant owes rent (NMSA §47-8-36 (A) (2)) or;

-A provision that allows the landlord to hold the tenant's personal property after an eviction or when the landlord claims the tenant owes rent (NMSA §47-8-34.1).

A lease that requires the tenant to perform all the landlord's duties to maintain the rental property in a safe condition does not mean the landlord has no duties (NMSA §47-8-20 (E)). Such a lease clause is illegal, unless the agreement on repairs is in writing (NMSA §47-8-20 (D)) and the tenant gets something of value in return (such as reduced rent, special privileges or wages).

Some lease clauses are not illegal, but they turn out to be very unfair. Courts have the power to change, or limit, any lease provisions that the tenant can show are "inequitable" (very unfair to one party in the lease agreement) (NMSA §47-8-12). If the tenant feels the lease may contain unfair or illegal provisions, the tenant should quickly seek legal advice.

## **5. Other important points in a rental agreement**

### **a. Rent**

What is the amount of the rent? When is it due? Where, how, and to whom is it to be paid? Be sure what is written in the agreement is what was agreed to. Be mindful that some of these terms may not be in the agreement. If they are not there, the law has its own rules for filling in the missing terms. For example, if there is no rent stated, the rent will be the fair market rental value (NMSA §47-8-15 (A)). If the agreement does not say where or when the rent is to be paid, the law requires it be paid at the rental unit on the first day of each month (or the first day of each week, if the rent is paid weekly) (NMSA § 47-8-15 (B)).

### **b. Late charges**

What are the charges, if any, for late payment of rent? When do the late charges begin? Many leases provide a three or five day grace period. This means the late fee is not charged until the third or fifth day of the rental period. If the agreement provides for late charges, the charge may not legally be for more than 10% of the rent for the period that is overdue (NMSA §47-8-15 (D)). For example, if the rent is \$500 per month, a charge for late payment may not exceed \$50. In addition, the landlord may charge a reasonable fee for returned checks.

### **c. Utilities and appliances**

Who is responsible for the utilities? If the tenant is responsible, what is the metering system? Will the tenant have a separate meter, a meter shared with other tenants, or a sub-meter? How will utility costs between tenants on shared meters be divided? If the tenant will be paying for the utilities, it is important to know the date by which the tenant is responsible for transferring the utilities to his/her name. Sometimes the landlord will have the utilities in his/her name while the apartment is vacant. This can frequently lead to confusion about who is responsible for the utilities and sometimes results in a utility shut-off. The responsibility for the utilities should be spelled out very specifically in the rental agreement.

Sometimes the utilities are included in the rent. If the landlord fails to pay the utility or water bills and the utilities or water are shut off, the tenant may be entitled to a rent abatement (NMSA §47-8-27.2 (A)). The tenant can also choose to pay to have the utilities turned back on. The tenant may be entitled to deduct all costs from the rent, and may also be entitled to damages. If the landlord fails to comply with his/her obligation to provide utilities, the local code enforcement agency can also be contacted. In multi-unit housing, if there is separate utility metering for each unit, a resident is allowed to request a copy of the utility bill for his/her unit. If the unit is submetered, the resident shall then be entitled to



receive a copy of the apartment's utility bill. When utility bills for common areas divided between units and the costs are passed on to the residents, a resident is entitled to request a copy of all utility bills being charged to the unit. The calculations used as the basis for dividing the cost of utilities for common areas and submetered apartments must be made available to any resident upon request. However, the owner may charge an administrative fee not more

than five dollars for each requested item (NMSA §47-8-20 (F)).

The landlord is not required to supply any appliances, including stoves, refrigerators, dishwashers, air conditioners or swamp coolers. If the landlord does supply an appliance, then it is the landlord's obligation to

make sure that the appliance is in good working condition (NMSA §47-8-20 (A) (4)). The landlord is also responsible for any repairs to the appliances. Again, it is a good idea to make sure the lease is specific about the appliances, including any appliances to be supplied by the tenant. If the tenant wishes to install a washer and dryer, or a dishwasher, s/he should get the agreement of the landlord. It is then the tenant's responsibility to remove the appliance at the end of the lease term and restore the premises to their original condition.

If the landlord shuts off the utilities, or removes appliances, as a way to evict the tenant, that is illegal and the tenant may be entitled to a statutory penalty and damages (NMSA §47-8-36). See Chapter 9 on lock-outs.

#### **d. Owner or authorized agent**

What is the name, address, and telephone number of the person authorized to manage the rental property? What is the name, address, and telephone number of the owner and/or an agent who is authorized to receive notices or service of court papers? The law requires the landlord to provide this information (NMSA §47-8-19). If the landlord fails to provide it, the tenant does not have to give certain notices to the landlord (for example, a notice of termination or of rent abatement) (NMSA §47-8-19 (D)).

It is important to have information about where the tenant can reach the landlord or the landlord's agent. If necessary, the tenant can get property ownership information at the county tax assessor's office. (In Bernalillo County: One Civic Plaza NW, Albuquerque, NM 87102, Phone: (505)768-4031; or at the State Corporation Commission in Santa Fe, at (505)827-4500, if the owner is a corporation). Many county and state agencies now have this kind of information available through websites.

#### **e. Repairs and maintenance**

What does the rental agreement say about the responsibilities for repairs, yard work, trash removal, snow removal, and general maintenance around

the apartment or house? Is the tenant being asked to do work or take responsibility in areas that should be part of the landlord's duties to tenants? Are the responsibilities spelled out in the written rental agreement? This is particularly important if the agreement shifts the responsibility for the landlord's duties to the tenant.

Rentals of houses are often treated differently than apartments in this regard. The yard of the house is often considered part of the premises (NMSA §47-8-3 (N)) and thus its maintenance is the tenant's responsibility. Tenants may have to pay for the water necessary to maintain the landscaping around the house. Rentals of apartments, however, almost never include an outdoor area.

### **f. Guests**

A landlord may not charge a "guest fee" for the tenant to have a reasonable number of guests visit for a reasonable time (NMSA §47-8-15 (E)). Remember though, what may seem "reasonable" to one person might not be so "reasonable" to someone else. The lease may contain a provision about guests. Some landlords also have Rules and Regulations in addition to the lease. The Rules and Regulations may contain a policy on guests even if the lease does not. The tenant should also check to see whether the landlord charges a fee for the guests' use of facilities at the rental unit (e.g. laundry facilities, pool, and parking). Fees for these types of things are allowed, and the tenant should find out what the charge will be for guests who want to use these facilities.

### **g. Pets**

A landlord may prohibit the tenant from having pets. If pets are not permitted, the lease should specifically say so. If pets are allowed, the landlord may charge a pet fee (either a lump sum or a monthly amount) and a pet deposit. This is part of the rental agreement and should be set out in the lease. Landlords can have rules about the size, number or type of pets that are allowed.

Landlords must allow service animals for persons with disabilities. Service animals can include, for example, seeing-eye dogs, assistive animals for people with mobility impairments and therapeutic animals for people with mental disabilities (42 U.S.C. 3604 (f) (3) (B)). If a landlord will not allow a tenant to have a service animal, that is a violation of the Fair Housing Act. See Chapter 13 on Housing Discrimination.



## Chapter 5



### DEPOSITS

Deposits are a very important part of every rental agreement. The landlord can ask for the first month's rent, the last month's rent, and a number of deposits. Remember these deposits and prepaid rents are negotiable.

The law provides the tenant a number of protections for the return of the deposits and this section will talk about those protections.

#### A. Refundable deposits vs. non-refundable fees

Remember that a **deposit** is **money the tenant pays in advance to protect the landlord**. The law is clear that if the property is not damaged, the tenant is entitled to get his/her deposit back (NMSA §47-8-18 (C)). For example, if the landlord charges a "pet deposit," the deposit is to protect the landlord for the additional wear and tear the pet may cause at the apartment. If, however, the pet does not cause any unusual wear and tear, the tenant is entitled to the return of the pet deposit.

If the landlord charges the tenant a **holding deposit**, that deposit is to protect the landlord if the tenant doesn't move in. However, the landlord is not entitled to double rent (NMSA §47-8-18 (B)). So, if the tenant does move in, the tenant is entitled to the return of the deposit or to have it

applied to the first month's rent. Similarly, if the landlord is able to rent to someone else right away, the tenant is entitled to the return of the portion of the holding deposit equal to the rent the landlord received from the tenant who did move in.

A **fee**, however, is different. It is a charge for something the landlord does for the tenant or for the tenants generally. A landlord, for example, may charge an "application fee" when someone applies for an apartment. This fee is supposed to cover the landlord's costs in doing credit and background checks and other investigations to determine whether the tenant is an acceptable renter. Even if the tenant decides not to take the apartment, the tenant will not necessarily be entitled to the return of the fee, unless the tenant can convince a court that the fee is wholly unreasonable given the landlord's actual costs.

Sometimes, landlords will call something a fee that is really a deposit. The most common example is a "cleaning fee" to cover costs of making the apartment ready for the next renter after the tenant leaves. This is really a deposit, because if the tenant cleans the place before moving out, the landlord will not have performed any service to earn the "fee." When the tenant moves out, the tenant should treat the cleaning fee as a damage deposit. If it is not returned to the tenant, follow the guidelines on "damage deposits" in the next chapter.

## **B. The damage deposit**

A damage deposit is the money paid to protect the landlord against tenant-caused damage to the rental housing that goes beyond normal wear and tear (NMSA §47-8-18 (C)). Usually the deposit money is turned over to the landlord at the time the rental agreement is finalized, and it is returned or accounted for after the tenant moves out. Although the landlord may also use the damage deposit to cover unpaid rent, damages and advertising costs if the tenant violates the terms of the tenant rental agreement (NMSA §47-8-35), this deposit is not the same as the last month's prepaid rent required by the landlord (NMSA §47-8- 18 (B)). A landlord may not have any obligation to refund the prepaid rent if the tenant voluntarily moves out before the lease ends or if the tenant is

evicted. The landlord must, however, return that portion of the tenant damage deposit which exceeds the damages the landlord actually suffered.

## **1. What is the most that can be charged for a damage deposit?**

A landlord may not charge a tenant more than one month's rent as a damage deposit on any kind of lease with a term of less than one year (NMSA §47-8-18 (A) (2)). Remember, prepaid rent for the last month is not the same as a damage deposit, so the tenant can be charged both prepaid rent and the deposit, even though the total amount is more than one month's rent. The deposit cannot be treated as the last month's rent.

If there is a written lease for a term of a year or more, the landlord may charge any amount as a damage deposit. However, if the landlord charges a deposit that amounts to more than one month's rent, the landlord must pay interest on the full amount of deposit for as long as the landlord keeps it ((NMSA §47-8-18 (A) (1)).

## **2. What does the deposit cover?**

Many tenants are surprised when the landlord won't give them back their deposit when they move out. Sometimes a landlord will keep it even when the tenant has done no damage. The problem often comes from what is legally looked at as damage.

The damage deposit covers only those damages the tenant has caused the landlord to actually suffer. These damages may be lost rent, physical damage to the apartment requiring repairs or replacements, or other business related costs the landlord had because the tenant violated terms of the lease (NMSA §47-8-35). If, for example, the tenant moves out without giving proper notice, and the landlord has trouble getting a new tenant, the landlord may withhold that portion of the deposit covering lost rent and costs involved in getting the place ready to rent to someone else.

The most common situation involving damage deposits, however, is where the landlord claims the tenant did real damage to the rental unit. Broken furniture, torn or heavily soiled carpeting, and other problems



requiring costly repairs often are claimed by landlords as the basis for keeping damage deposits rather than returning them. Often, however, the tenant caused nothing more than **normal wear and tear**, which is not the chargeable against the deposit (NMSA §47-8-18 (C)).

### 3. What is normal wear and tear?

Normal wear and tear is damage or deterioration by ordinary and reasonable use of the property. It is the normal loss in value that occurs when something is used. A landlord, for example, should expect to have to repaint walls every few years, especially in the kitchen. Furniture normally gets worn with age. Walls acquire small nail holes, and carpets get worn. Some rental agreements do, however, prohibit putting nails into the walls. If the rental agreement does prohibit any nail holes, then nail holes would be an item of damage.

The law requires the landlord pays to fix ordinary wear and tear. Normal use of the property by the tenant and guests of the tenant is not something the landlord can claim as damages. However, the tenant must pay for accidental damages done to the property. If the landlord can prove the

tenant intentionally damaged the property, the tenant may be charged for the cost of repairs, plus two times the monthly rent as a penalty (NMSA §47-8-48 (C)). Wear and tear does not include cleaning made necessary by a tenant's failure to clean when moving out or other failure to keep the rental unit clean. A tenant's obligation to clean (NMSA § 47-8-22) generally includes sweeping and washing floors, shampooing carpets, disposing of all trash and making sure that the kitchen, bathroom and all appliances are properly cleaned. The tenant should take pictures when moving in and moving out to show the condition of the rental. Pictures should include the tops and insides of sinks, stoves, cabinets, refrigerators, and toilets. Having a witness look at the place at move-out time is helpful, too.

#### **4. When should the damage deposit be returned?**

Within thirty days after the tenant moves out, the landlord must make an itemized list of all deductions from the deposit that s/he claims were damages caused by the tenant. The landlord must send this list of deductions to the tenant. The landlord must also send any part of the deposit remaining after deducting the cost of the damages listed (NMSA §47-8-18 (C)). If the landlord does not do this, the tenant is entitled to the full deposit and the landlord loses any right to compensation for damages the landlord claims the tenant caused to the property (NMSA §47-8-18 (D)).

Remember, the landlord must mail the list of deductions and the deposit to the tenant's last known address (NMSA §47-8-13 (C) (3)). If the tenant has not provided a new address, the landlord will use the old apartment address. If the landlord has any other addresses, such as a work address or emergency contact, the landlord should also send the notice to those places. If the notice of damages only goes to the old apartment address, the tenant might not receive it. If the tenant is not going to have a permanent address after moving out, give the landlord a forwarding address such as the tenant's employer or someone the tenant trusts to receive his/her mail. The tenant should also file a "change of address" with the Post Office if s/he knows where s/he is going to be living.

If the tenant receives a list of deductions claiming damages the tenant feels are unreasonable or that are simply a result of normal wear and tear, the tenant should demand the full deposit back. If the tenant does not receive a deduction list or the full deposit, make a demand for the deposit.

We have attached a "Model Demand Letter for Security Deposit" in the appendix. Use the model letter to demand the return of the deposit.

If the landlord still does not return the tenant's deposit, the tenant may take the landlord to small claims (Magistrate or Metropolitan) Court and sue for the deposit (NMSA §47-8-18 (D)). The judge should order the landlord who has not complied with the law to turn over the full deposit and pay the tenant's court costs and attorney fees. In a lawsuit for the return of the tenant's deposit, the landlord who has not complied with the law cannot claim any damages against the tenant in a counterclaim. If the judge finds that the landlord kept all or part of the deposit in bad faith (not just by mistake), the judge must award the tenant an additional \$250 civil penalty (NMSA §47-8-18 (E)). For more information on how to bring a lawsuit for the tenant deposit, see Chapter 16 on "Going to Court."

The landlord can keep the deposit to cover unpaid rent without having to send the notice regarding deductions.

## 5. Getting back the full deposit

At the time the tenant moves in, the tenant should get a **receipt** for each deposit the tenant has paid to the landlord. With a receipt, or at least a canceled check, the tenant will have evidence he/she paid the deposit, and that will make it easier to get the deposit back if the tenant has to go to court to get it.

**Before the tenant actually moves in, the tenant should inspect the rental dwelling.** Look for damaged furniture, dents or holes in the walls, broken glass, spots on the floors or carpeting, and generally look the place over for anything that might be looked at as damage to the place. The tenant can use the checklist in the appendix to this guide to list everything that seems to be wrong in the rental unit. It is a good idea to do this walk-

through with the landlord and reach agreement on the checklist. Both the tenant and the landlord should initial the checklist and keep a copy of it. The checklist can be used to negotiate with the landlord to get repairs, but more importantly, the list will give the tenant a record of the condition of the rental dwelling at the time the tenant moved in. If the apartment is furnished, the tenant should also make a list of all the furniture in the place at the time the tenant move in, so that later the landlord can't claim something is missing.



If it isn't possible to have the landlord sign off on the checklist, get a couple of witnesses to inspect the rental unit and sign the list. It is also a good idea to take photographs and date them (use the date function on the camera or have the developer do this when the film is processed).

If the tenant discovers more damages after living there for a few weeks, make an additional list. Keep a copy of the new list and send a copy to the landlord.

If the tenant later gets into a dispute with the landlord over the condition of the rental unit when the tenant moved in, the tenant's lists and photographs could be important evidence to use in showing the tenant's side of the story. Keep the checklist, photographs, and the deposit receipts together, so that they can be found easily.

The tenant should get and keep a receipt for every rent payment the tenant makes, including prepaid rent. Just like with the deposit receipt and checklists the tenant kept when moving in, the tenant should keep all of the rent receipts together in one place. If the tenant gets in a dispute with the landlord over rent, these receipts will be extremely important.

The tenant should leave the rental unit clean and in the same condition as it was when the tenant moved in. **The best way to ensure the damage claim is accurate is to take photographs at the time the tenant moves out.** Also, take the checklist made when the tenant first moved in and go over it again, making sure everything is in pretty much the same condition. If the landlord and the tenant agree there are no damages, get the landlord to sign the checklist when the tenant moves out, showing the place is in the same condition it was when the tenant moved in.

If the tenant and the landlord agree about whether something has been damaged while the tenant lived in the place, they can sign a list of the agreed damages (NMSA §47-8-7). The list should set out the amount of damages the landlord claims. If the tenant disagrees on certain damages, make a separate list showing the damages the tenant and the landlord disagree over.

It is best to get all disagreements set out before the tenant leaves, so the landlord will not later claim more damages. If the tenant's lease has language stating the landlord's inspection will be made **after the tenant vacates**, that language should be crossed out and changed to read **"at the time the tenant vacates."** If the tenant doesn't make this change, the tenant may find him/herself stuck with a larger damage estimate made by the landlord. Get the landlord to initial any change in the lease language.

The hints in this section may seem complicated, but they are important. Issues involving damages to a rental dwelling are often difficult and at times involve going to court. Disputes over damages usually wind up being the landlord's word against the tenant's word. If the tenant has photographs, written evidence and protects him/herself by getting the landlord to agree about damages in advance of moving out, the tenant will have a much better chance of getting back the deposits.



## Chapter 6



### PAYING RENT

#### A. The tenant's duty to pay rent

In a landlord-tenant relationship, the tenant's main responsibility is to pay rent. The tenant must pay the landlord the amount of rent agreed upon, and the rent must be paid at the time and place agreed in the lease (NMSA §47-8-15(B)). If the tenant and the landlord have not agreed on a time and place, the law says the rent is due on the first day of the rental period (a week or a month), and it is payable at the rental residence. If the rental period is longer than one month (for example, a one year lease), and the rent is paid monthly, rent is due on the first day of the month unless the tenant and the landlord have agreed on a different day (NMSA §47-8-15 (B)).

The lease may require that the rent be paid by cash, check or money order.

**The best way to pay rent is by check.** Money orders are time-consuming and expensive to trace. If rent is paid with cash, then a receipt is very important.

If the tenant is having trouble paying rent, but the tenant wants to stay in the rental unit, the tenant **must** talk to the landlord. It is possible to modify a rental agreement, but the tenant can't expect the landlord to be willing to agree to a change if he/she doesn't know the tenant's problem.

It may also be possible to make agreements with the landlord on the way to pay rent. For example, if the tenant gets a government check each month on the third of the month, the tenant will probably not want to have the rent due on the first of the month. If the tenant is having financial problems, it might be possible to arrange to pay part of the rent on the first of the month and the rest on the fifteenth. If a landlord knows the tenant is trying to pay the rent, it is less likely the landlord will immediately move to evict the tenant when the rent is a little behind.

## **B. Rent vs. deposits or damages**

Because paying rent is the tenant's most important duty, the law gives it certain protections. Rent may not be used by the landlord for deposits or to pay for damages, unless the tenant agrees to this kind of use in a written rental agreement (NMSA §47-8-15 (G)). The tenant should check the lease or rental agreement to see whether it contains such a provision.

If the tenant has caused some damage to the property, the landlord may allocate a portion of the rent to cover the damages only if the lease specifically allows such an allocation (NMSA §47-8-15 (G)). If the landlord then sues the tenant for eviction, and if the landlord wins, the tenant can still stay in the rental unit. The court will issue a 'conditional writ' which gives the tenant three days to pay the amount of unpaid rent. If the tenant pays within the three days, then the tenant can keep possession of the rental unit (NMSA §47-8-33 (E) (2)).

## **C. Agreements where the tenant's right to a dwelling is tied to a job**

Sometimes, a landlord will rent to a tenant in exchange for the tenant agreeing to manage the property or make repairs around the property. In other situations, an employer may give an employee a place to live as part of working for the employer. If the agreement is that the housing is directly tied to the job and the tenant gets fired or laid off, the housing can be lost at the same time. If the agreement connecting the job to the

housing is in writing, the tenant will not have the rights provided by the Owner-Resident Relations Act (NMSA §47-8-9 (E)). The landlord can use a quicker legal action called Forcible Entry and Detainer to evict the employee (NMSA §35-10-1). If the job-housing connection is not spelled out in writing, the employer/landlord must give the tenant the notices, and recognize the rights required by the Owner-Resident Relations Act (NMSA §47-8-9 (E)).

## **D. When the tenant doesn't pay the rent**

If the tenant does not pay the full rent on time, the landlord may evict the tenant (NMSA §47-8-33 (D)). Eviction must be done through a court action. The landlord does not have the right to simply throw a tenant out of the apartment without going to court first (NMSA §47-8-36 (A)). Until a judge orders the tenant to move out, the tenant may stay in the rental dwelling and the landlord cannot force the tenant to leave or cut off necessary utilities (see Chapter 9, "Lock-outs") (NMSA §47-8-36 (A)).

Before a landlord can go to court to evict a tenant for non-payment of rent, the landlord must give the tenant a **written three-day notice of non-payment**. If the tenant does not pay the rent (including late charges if the rental agreement provides for late charges) within three days of receiving the notice, the tenant loses the right to stay and may be evicted. If the tenant pays the rent within the three day period, the tenancy is reinstated and the landlord may not try to evict the tenant for non-payment of rent. (NMSA §47-8-33 (D))

The law also requires that the landlord delivers the notice to the tenant, mails it to the tenant, or "post" it (NMSA §47-8-13 (D)). Unfortunately, even with these requirements, a tenant may sometimes not find out about the notice during the three-day period. For example, the notice may be given to someone who is living with the tenant. Mail may arrive late. And "posting" only requires that the notice be taped to the tenant's door or placed in a fixture or receptacle designed for notices or mail (like a tenant's "box" at the apartment entrance or a covered bulletin board) (NMSA §47-8-13). After the three days pass, there is not much the tenant can do to avoid going to court to defend him or herself in an eviction

action. If the tenant did not properly receive the notice, that can act as a defense in the eviction action.

Sometimes, a tenant will try to pay the rent during this three-day period, but the landlord won't accept it. If the tenant finds him/herself in this situation, make a second offer of the rent in the presence of witnesses. The tenant can ask the witnesses to testify in court. If the tenant can show the judge that s/he tried to pay but the landlord refused the payment, the tenant should be able to win the eviction case.

If the tenant faces an eviction action for non-payment of rent, the tenant will owe the rent for each day the tenant stays in the rental unit (NMSA §47-8-30 (A)). The court will enter a judgment for the amount of rent due through the move-out day. The day set by the court for moving out will be *three to seven* days from the court hearing. If the tenant does not move out by the day ordered by the court, the landlord can take the order to the sheriff who can force the tenant to move out and change the locks (NMSA §47-8-46 (A)). This court order is called a Writ of Restitution.

## **E. Keeping records**

**It is very important for the tenant to receive and keep all rent receipts.** If the tenant pays by check, mark on the check the month for which the rent is being paid before giving the check to the landlord. Keep the canceled check when it comes back with the bank statement. The tenant should get a receipt from the landlord when paying by check or money order just as when the tenant pays cash, but at least the canceled check will be evidence of payment if the tenant doesn't get a receipt. Money order receipt forms are not as good evidence of payment as are canceled checks. In order to prove a landlord received and cashed a money order, the tenant will have to order the records from the money order company, pay a fee (about \$15-35) and wait several weeks.

The tenant and landlord should keep complete records of rent payments. They may be necessary at some point as proof about what rent was paid or not paid.

## **F. Rent increases**

If the tenant has a written lease covering a specified period of time (for example, a six-month or a year lease) the landlord may not raise the rent during that period. If a fixed term lease is for more than a month, and the lease automatically renews itself, the landlord must give the tenant notice of a rent increase at least thirty days before the current lease expires (NMSA §47-8-15 (F)).

If the lease allows the tenant to renew by giving notice, the landlord must also give the tenant thirty days notice of a rent increase on the new lease. If the lease runs out, the landlord cannot raise the rent until s/he gives the tenant thirty days notice or unless a new lease is signed (NMSA §47-8-15 (F)).

Under a month-to-month rental agreement, a landlord must give thirty days written notice before the increase in rent can be effective. If a rental agreement is week-to-week, the landlord must give seven days notice before the beginning of the week the rental increase is to be effective (NMSA §47-8-15 (F)).

All written notices of a rent increase must either be hand delivered to the tenant or mailed to the tenant (NMSA §47-8-13 (C) (3)). Posting the rental increase at the apartment is not enough.



## Chapter 7



### **OBLIGATIONS OF LANDLORDS AND TENANTS FOR SAFETY, MAINTENANCE AND REPAIRS**

Landlords and tenants both have duties in taking care of the rental unit and the areas around the rental unit (NMSA §47-8-20 and NMSA § 47-8-22). The Owner-Resident Relations Act contains some of these duties, and other duties are imposed by local housing codes or by the lease agreement.

#### **A. Tenant obligations and responsibilities**

##### **1. A safe and clean place**

The tenant's responsibilities to the landlord and to other tenants are based on the law, the rental agreement, and from the rules the landlord makes for tenants. When the tenant fails to meet these responsibilities, the landlord may end the tenancy and evict the tenant. The tenant also has responsibilities to other tenants so that they may enjoy a decent and safe place to live, and in certain cases the landlord may take action to protect the rights of the other tenants.

Beyond paying rent, the tenant's most important obligations are to keep the rental unit clean, safe, and free from unnecessary damage (NMSA §47-8-22). The tenant is not responsible to pay for normal wear and tear

on the rental unit while living in it. The tenant will, however, have to pay for repairs for any damage caused by the tenant's, or by guests', abuse or neglect of the rental unit.

In addition, local housing codes make rules for the use of property (Albuquerque Code of Ordinances Chapter 14 Article 3) which add to the tenant's responsibilities. For example, the Albuquerque Housing Code prohibits: (1) unhealthy conditions in the residence, particularly in the bathroom and kitchen, which might cause disease, attract rodents, or breed insects; (2) dangerous structures or objects, especially those that attract children; and (3) overcrowding the residence.

The tenant is responsible for disposing of ashes, rubbish, and garbage in a clean and safe way (NMSA §47-8-22(C)). The landlord is responsible for providing the tenant with suitable containers and a means of disposal (NMSA §47-8-20 (A) (5)).

## **2. Complying with the rental agreement and the landlord's rules**

The law makes the agreement between the tenant and the landlord a contract. Both the tenant and the landlord are normally required to live up to the responsibilities set out in their agreement. There are exceptions to this rule of law where the agreement contains illegal or grossly unfair ("inequitable") terms (NMSA §47-8-12).

Similarly, if the landlord makes rules about the use of rental facilities, the tenant must follow the rules if they are fair, reasonable, and if the tenant gets a copy of the rules at the time the tenant enters into the rental agreement (NMSA §47-8-23). If the landlord makes a new rule or changes a current rule after the tenant begins renting, the landlord must give the tenant reasonable notice of the rule change. Rule changes should not be made on less notice than the rental term (for example, seven days notice on a week-to-week, thirty days notice on a month-to-month), and the rule change must be in a written notice delivered to or mailed to the tenant. The rule change may also be posted, but if it is posted the

landlord must also mail the notice to the tenant (NMSA §47-8-23 and NMSA § 47-8-13 (D)).

If the landlord makes a rule change (such as prohibiting pets or limiting access to certain facilities), that creates a major change in what the tenant agreed to initially, the rule change cannot be enforced against the tenant for the period of the lease (NMSA §47-8-23 (F)).

There are other limits on the rules a landlord may make:

- ✓The rules must be designed to improve the property's appearance, aid the tenants' safety, convenience, and welfare; or generally provide for equitable and efficient delivery of services to all tenants (NMSA §47-8-23 (A));
- ✓The rules must be required to fulfill a reasonable purpose (NMSA §47-8-23 (B));
- ✓The rules must apply to all tenants in a fair manner (NMSA §47-8-23 (C));
- ✓The rules must be clear and understandable (NMSA §47-8-23 (D));
- ✓The rules are not made for the purpose of avoiding the landlord's legal obligations (NMSA §47-8-23 (E)).

### **3. Allowing access to the rental unit**

A tenant must allow the landlord to have reasonable access to the rental unit in order to perform the landlord's duties. However, a landlord may not abuse this right of access, and the law has placed some restrictions on a landlord's right to enter the rental unit.

The law allows the landlord entry to inspect the unit, to make necessary and agreed upon repairs, to decorate, to make alterations or improvements, and to supply necessary or agreed upon services. The law

also allows the landlord to enter the unit to show it to someone who plans to buy or rent the property. The landlord may also bring in contractors or workers when the landlord properly enters the rental unit (NMSA §47-8-24 (A)).

In order for the landlord to enter the rental unit to do any of the work listed above, the landlord must give the tenant notice. Unless the landlord and the tenant agree to less notice, the landlord must give *twenty-four hours written notice* to the tenant in order to enter the rental unit. The notice must tell the tenant what time the landlord will be entering, how long the landlord will be inside, and why the landlord will be going in ((NMSA §47-8-24 (A) (1)).

The landlord does not need to give the twenty-four hour notice if the entry is to perform repairs or services that have been requested by the tenant within the past seven days, or when the landlord is with a public official conducting an inspection or a utility company representative or cable TV installer (NMSA §47-8-24 (A) (2)).

The rental agreement may provide for other specified conditions that require the landlord to enter the tenant's rental unit. The rental agreement may not, however, take away the notice rights of the tenant. The law does recognize that the landlord and the tenant may, from time to time, agree to other arrangements (NMSA §47-8-24 (A)). For example, a tenant may agree to let the landlord in on less than twenty-four hours notice, and the landlord may give the tenant options about the most convenient time to have the gas man look over the apartment (NMSA §47-8-24 (A) (3)).

While the law allows the landlord and the tenant to work entry problems out, there are some times when a landlord's right of entry isn't open for negotiation. The landlord has the right of entry without any notice in case of an emergency (NMSA §47-8-24 (B)), or when the tenant has been gone from the rental unit for more than seven days without telling the landlord (NMSA §47-8-24 (D)).

If the tenant refuses to let the landlord in when the landlord is acting properly, the tenant's denial of access is a violation of the law. The

landlord may terminate the tenancy, get a court order to enter the rental unit, and sue for damages (NMSA §47-8-24 (E)).

If the tenant feels the landlord is entering the apartment unreasonably, the tenant should seek legal advice. This is one area where a simple misunderstanding might lead to a very real dispute. If the landlord abuses the right of entry and is interfering with the tenant's right to peaceably occupy the rental unit, the tenant can also terminate the tenancy and go to court. The tenant can get an order keeping the landlord out and sue for damages (NMSA §47-8-24 (F)).

#### **4. Informing the landlord of the tenant's absence for seven days or more**

As we discussed in the section on entry, if the tenant is gone for more than seven days without telling the landlord, the landlord has the right to enter the apartment (NMSA §47-8-24 (D)). There are good reasons to tell the landlord about an absence. Some of these reasons are practical and help the tenant. Other reasons include the tenant's right to have a place to stay and what happens to the tenant's property.

- ✓ First, the rental agreement may require the tenant to notify the landlord if the tenant is going to be gone for some period of time (NMSA § 47-8-25). If the tenant doesn't notify the landlord, the tenant will have broken the rental agreement and may be subject to having the tenancy terminated.
- ✓ Second, it is a good idea to let the landlord know the tenant will be gone, because s/he will know to watch the rental unit for vandalism, fire, freezing pipes, and to be aware that the tenant's property is more vulnerable to burglars. The tenant's chances of having insurance cover any losses that occur to the tenant's property may also be affected by whether the landlord was informed about the tenant's absence.
- ✓ Third, the law states if the tenant is behind in the rent and is gone for more than seven days without telling the landlord, the tenant

has **abandoned** the rental unit (NMSA §47-8-3(A)). Once the tenant has legally abandoned the unit, the landlord can treat the tenancy as over and re-rent the apartment. The landlord can also store and sell any property the tenant leaves in the apartment, subject only to the tenant rights to claim the property from storage (NMSA §47-8-34.1). (See Chapter 10, "The Tenant's Property").

## 5. Using the rental unit as a residence

Unless the landlord agrees that the tenant may use the rental unit for other purposes, the tenant may only use it as a residence. For example, if the tenant plans to rent a place to use for a business, the tenant must discuss that with the landlord. If the tenant runs a business from the rental unit without the landlord's permission, the tenant could be in violation of the rental agreement (NMSA §47-8-25).

The issue of whether the tenant is maintaining a residence is also very important when the tenant rents a room in a hotel or a motel. If the tenant is going to be living there, rather than just staying for a time, it is important the tenant let the landlord know. If the owner doesn't rent for

residential purposes, the occupant has no rights under the landlord-tenant laws (NMSA § 47-8-9 (D) and NMSA § 47-8-3 (V)). However, there are many hotel/motel owners who do rent to people they know are residents, and they take rent for

more than a week at a time. These owners, however, like to avoid the obligations the law places on landlords, and they may try to claim the tenant is not really a tenant. Be careful in such situations, and take steps to make it clear to the owner the tenant intends to reside in the place.



## **6. Obligations to neighbors--illegal conduct**

The tenant has a duty not to disturb a neighbor's peace and quiet (NMSA §47-8-22(G)). This duty prohibits such disturbances as those caused by excessive noise, inconsiderate visitors, and uncontrolled pets. Also, while a landlord may not refuse to rent to the tenant because the tenant has children (42 U.S.C. §3604), the tenant must still make sure s/he supervises his/her children so they do not unreasonably bother other tenants. The tenant must also conform to any rules of a joint housing unit or neighborhood association where the tenant lives (NMSA §47-8-22 (H)).

This duty to neighbors is important under the Owner-Resident Relations Act. The law states if a tenant knowingly does certain acts (or allows others in the tenant's unit to do certain acts) which are against the law, the tenant may be evicted with very little notice. A tenant may be quickly evicted if the tenant allows:

- drug use or selling on the premises;
- uses, or allows someone else to use, a deadly weapon (except in self defense);
- sexual assault or sexual molestation of another person;
- theft or attempted theft of the property of another person;
- intentional or reckless damage to property in excess of \$1,000;
- is involved in committing any other serious crime at the apartment complex or property (NMSA §47-8-3 (T) and NMSA §47-8-33 (I)).

A tenant does not have to be convicted of a crime to face eviction under this "substantial violation" provision of the law.

The only general exceptions to the "substantial violation" prohibition are where the tenant is the victim of the illegal conduct or where the tenant does not know about the conduct and has not done anything to allow the illegal conduct (NMSA §47-8-33 (K)). It is important to remember this part of the law also applies to the tenant's guests and others living in the unit with the tenant. Each tenant has a personal responsibility to control

the conduct of people in his/her rental unit. Under the law, it is possible that the tenant and the tenant's family may be faced with eviction if only one person is involved in the illegal conduct.

Conduct that occurs on the premises, or within 300 feet of the premises, can be the basis of a termination for substantial violation (NMSA §47-8-3 (T)).

There is a special exception for victims of domestic violence. If a spouse or parent abuses his/her partner or children, the family may not be subject to eviction for that conduct (NMSA §47-8-33 (J)). This part of the law will usually only protect the tenants if they get a domestic violence order against the abuser. If the tenant is the victim of domestic abuse, the tenant should seek legal advice immediately, both because of the abuse itself and because it may have an effect on the landlord-tenant rights. There is also an exception for self-defense (NMSA §47-8-33 (L)). If the landlord tries to evict the tenant for conduct that was domestic violence or in self-defense, it is very important the judge knows what happened.

Because the landlord has the right to terminate the tenancy on only three days notice where such serious violations occur (NMSA §47-8-33 (I)), the law has several important tenant protections. If the landlord tries to use this section to evict a tenant, the landlord must give a very specific notice of what the bad conduct was, explaining exactly when and where the bad conduct occurred (NMSA §47-8-33 (I)). If the landlord has no real basis for seeking an eviction for a "substantial violation," the tenant may be awarded a civil penalty in a court action equal to two times the monthly rent (NMSA §47-8-33 (M)). For example, if the landlord simply claims someone was selling drugs in a tenant's apartment without any real evidence, the tenant might be entitled to stay in the apartment and receive an award of damages.

This section of the law is there to protect innocent people, so they can live in decent and safe places. If the tenant suspects a neighbor is involved in illegal activity, the tenant should call the police. At the same time, the tenant should let the landlord know about the conduct.

## 7. What will happen if a tenant fails to live up to his/her obligations

Depending on the type of violation, the tenant will get a notice. Again, the type of violation affects the number of days' notice the tenant is entitled to and what the tenant can do to cure the problem described in the notice.

### a. Failure to pay rent

If the notice is for a failure to pay rent, the tenant will have three days to pay the rent. If the tenant does not pay the rent in three days, the tenancy may end (NMSA §47-8-33 (D)). Then the landlord may go to court to evict the tenant. This type of notice may be hand delivered or mailed to the tenant or posted (NMSA §47-8-13 (D)).



### b. Seven-day notice of lease violation

If the notice is for a failure to live up to obligations under the rental agreement, failure to follow the landlord's rules and regulations, or for failure to perform duties the law requires of tenants, the landlord must give a seven-day notice of the problem (NMSA §47-8-33 (A)). The notice must clearly set out the problem (including dates and specific facts), so the tenant can have the chance to "cure" (fix) the problem. The seven-day notice of violation must be given within thirty days of when the problem occurred or the landlord learned of it (NMSA §47-8-33 (C)).



If, for example, the landlord claims the tenant has a junk car on the property, and the rules prohibit inoperable vehicles, the tenant should get a notice of this violation. The tenant will have seven days from getting the notice to either fix the car or move it. If a tenant does not fix the problem within the seven days, the tenancy will end and the landlord can

then go to court for an eviction. The landlord will have to prove the tenant violated the lease and the seven day notice was properly given. The tenant would need to prove s/he did not violate the lease and the seven-day notice was inadequate or that the problem was fixed.

If the tenant does fix or "cure" the problem, the tenancy will not end. But, if there are any other problems within six months after the first notice, the landlord can give a second seven-day notice. The tenant does not have the right to fix the problem in the second notice, and after seven days the tenancy will end (NMSA §47-8-33 (B)). If there are no problems for six months after the first notice, then the next notice the landlord gives the tenant is treated as a new first notice. The tenant then has the right to fix the problem and stay in the rental unit (NMSA §47-8-33 (B)).

Remember the seven-day notice is for "material" (important) failures to live up to the tenant obligations. If the tenant feels a landlord is simply sending the notices to harass the tenant, and the problems raised in the notice are minor things, the tenant should seek legal advice.

A seven-day notice must either be delivered to the tenant personally or mailed to the tenant. If the notice is posted, it must also be mailed to the tenant in order to be effective. However, if the notice is posted, the date of posting will start the seven days running, not the date the tenant receives the notice in the mail (NMSA §47-8-13 (D)).

### **c. Three day notice of substantial violation**

If the landlord claims the tenant, or someone living with or visiting the tenant, has done something that would be considered a serious crime (a "substantial violation"), the landlord can end the tenancy with a Three-Day Notice of Substantial Violation (NMSA §47-8-33 (I)). With this kind of notice, the tenant has no right to "cure" the problem (for example, telling the landlord "it will never happen again"). If the tenant receives this type of notice, it is very important to immediately get legal advice.

A Three-Day Notice of Substantial Violation must be hand delivered to the tenant or mailed to the tenant. As with a seven-day notice, if the notice is posted it must also be mailed. The date of posting, not the date

the mail is received, will be the date that the time in the notice starts running (NMSA §47-8-13 (D)). Once the three days are up, the landlord can file an eviction action in court to get possession of the rental unit.

There are similar issues presented by such violations in public housing. Ordinarily, a public housing tenant is entitled to a grievance hearing before the housing authority may seek to evict the public housing tenant. However, evictions for criminal activity that is drug-related or threatens the safety of other tenants or housing authority employees may be exempt from the grievance procedure (24 CFR 966.51). In those cases, the housing authority may go directly to the local court process to evict. Check with HUD or an attorney to determine whether the tenant housing authority is exempt from the grievance procedure in those cases.

## **8. Notice of termination generally**

Except in rental agreements in mobile home parks and in fixed term leases, a landlord may terminate a tenancy without giving a reason using a thirty-day notice in a month-to-month tenancy (NMSA §47-8- 37 (B)) (or a seven-day notice in a week-to-week tenancy (NMSA §47-8-37 (A))). If the tenant has a month-to-month tenancy, the landlord must give the tenant notice of termination at least thirty days before the beginning of the next full month (NMSA §47-8-37 (B)). In a fixed term lease, the landlord does not have to give notice of termination, unless the lease provides that it will automatically renew unless terminated. Leases often will state the landlord and the tenant must give a thirty day notice if the lease will not be renewed.

In the case of mobile home parks, a notice of termination must be "for cause" (NMSA §47-10-5). This means a mobile home space rental agreement cannot be terminated just because the initial lease term has ended or because it is a month-to-month tenancy.

Subsidized housing tenants may have additional rights. See Chapter 14 of this guide for more information on the rights of rent-assisted and public housing tenants. Landlords can decide not to renew Section 8 leases and the tenant must move or can be evicted.

Notices of termination must be hand delivered or mailed to the tenant. If the notice is posted, it must also be mailed. However, the date of a posted notice starts the time in the notice running, not the date the mailed notice was received by the tenant (NMSA §47-8-13 (D)).

There are times when a landlord is upset with a tenant because the tenant has exercised certain rights, and the landlord will send the tenant a termination notice. This type of landlord action may be what the law calls “retaliation.” Such actions are illegal, and there are specific provisions of the law protecting tenants against retaliation (NMSA §47-8-39). (See the section of this guide on "Retaliatory Eviction" at Chapter 9).



## **9. When the time on notices runs out**

Because notices are important in creating a landlord's right to terminate a rental agreement, it is crucial to know when the times in these notices start and end. As we have seen, the time required for a notice begins running when it is delivered or mailed to the tenant (NMSA §47-8- 13 (C) (3)). Most landlords will post notices, i.e., tape the notice to the tenant's door. Remember, even when the posted notice is also mailed, it is the date the notice was posted that starts the time running (NMSA §47-8-13 (D)). If the last day of a notice falls on a weekend or a federal holiday, its effective ending date will be the next day that is not a weekend or a holiday (NMSA §47-8-33(H)).

For example, if a Three-Day Notice for Nonpayment of Rent is posted on the tenant's door on a Thursday, the third day for paying the rent would

be Sunday. Since Sunday is a weekend, the tenant would have until Monday to pay the rent.

## **10. Eviction**

In any situation where the landlord has terminated the tenancy, the tenant can voluntarily move out or stay in the rental unit and see if the court will order the tenant to move out. If the tenant does not move out voluntarily, the next step will be the court action for eviction. A landlord may not try to remove a tenant from a rental unit without getting an eviction order from a judge unless the tenant has abandoned the unit (NMSA §47-8-36 (A)). Sometimes, landlords try to force a tenant out without going to court, but this type of self-enforcement is illegal. (See Chapter 9 on "Lock-outs").

Court actions for eviction are serious lawsuits, and the tenant should seek legal advice if the landlord has terminated the tenancy and the tenant does not wish to move. The tenant should also review the section in this guide about "Evictions" at Chapter 9.

## **B. Landlord obligations and responsibilities**

The responsibilities in a landlord-tenant relationship are not just the tenant's. Landlords have very real duties, and tenants have rights to enforce. The landlord's most important duty is to maintain the property the tenant is renting so that the property will be a safe, decent, and healthy place for the tenant and his/her family to live.

### **1. Basic responsibilities**

A landlord must at least do the following things:

- ✓ Make repairs and do whatever is required to put and keep the property in a safe condition (NMSA §47-8-20 (A) (2));

✓Maintain in good working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances supplied, or required to be supplied, by the landlord( NMSA §47-8-20 (A) (4));

✓Provide and maintain containers for the removal of ashes, garbage, rubbish or other waste, and to arrange for their removal (NMSA §47-8-20 (A) (5));

✓Supply running water and a reasonable amount of hot water at all times (NMSA § 47-8-20 (A) (6)), unless the tenant is responsible for the water bill;

✓Supply heat, unless this is under the tenant's exclusive control (for example, where the tenant is responsible by agreement separately to contract for and to pay for gas and electrical utilities) (NMSA §47-8-20 (A) (6)).

## **2. Local housing codes**

In addition to the basic landlord responsibilities set out above, local housing codes also impose duties on landlords that tenants may enforce. For example, in Albuquerque the city housing code requires landlords to ensure that:

✓Public or shared areas are in a clean, sanitary and safe condition (ACO §14-3-5-11 (B));

✓Insect and rodent infestations are prevented (where such infestations occur, the landlord is responsible for extermination, unless the tenant is the cause of the infestation); the landlord is always responsible for extermination when an infestation is caused by the landlord's poor maintenance, or is in the common areas of an apartment building (ACO §14-3-4-2 (N));

✓General dilapidation is prevented by regular maintenance (ACO §14-3-4-2 (L));

- ✓ The foundation, floors, walls, ceilings, and roof are reasonably weather-tight, in good repair (ACO §14-3-4-8 (A)) and are capable of affording privacy to the tenants (ACO §14-3-2-3 (G));
- ✓ The windows and doors are reasonably weather-tight and, and are kept in sound working condition (ACO §14-3-4-8 (A));
- ✓ Stairs and porches are safe to use and capable of supporting the load that normal use requires (ACO §14-3-4-3 (J));
- ✓ Bathroom and toilet compartment floor surfaces are reasonably resistant to water absorption and capable of being kept clean (ACO §14-3-2-3 (D));
- ✓ Any appliances or fixtures supplied by the landlord (such as a stove, refrigerator, or hot water heater) are in safe working condition (ACO §14-3-3-2).

Under the Albuquerque Municipal Code, the landlord must also provide the tenant with:

- ✓ properly vented heater (capable of keeping the dwelling heated to 70 degrees) (ACO §14-3-3-2);
- ✓ an adequate toilet, sink, and bathtub (or shower) (ACO §14-3-2-3 (B));
- ✓ an adequate (non-absorbent) kitchen sink (ACO §14-3-2-3 (C) (2));
- ✓ hot (110 degrees) and cold running water to appropriate plumbing fixtures (ACO §14-3-2-3 (C) (1));
- ✓ working windows or other ventilating equipment (ACO §14-3-3-2 (A)(3));
- ✓ electrical outlets and lighting fixtures (ACO §14-3-3-2 (A) (2) (b));
- ✓ adequate sewage disposal connections (ACO §14-3-4-2 (M)).

The requirements in the Albuquerque code may not be the same in your local housing code, but most cities and towns have some local laws setting housing standards. The tenant should check to see what the local code requires, because the landlord will be required to maintain the property up to that standard.

### 3. Repairs

If a tenant lives in an apartment where there is a problem with any of the things a landlord is required to maintain, the tenant has a right to request that necessary repairs be made. Sometimes, a simple request will do the trick. However, it occasionally happens that the landlord will ignore the tenant requests, and the tenant will need to do more. **Requests for repairs should be made in writing and a copy kept.** If the landlord refuses to make necessary repairs, the tenant will have to think very seriously about enforcing the tenant rights to have repairs done. (See Chapter 8 of this guide on "What to do when repairs are needed.")



## **4. Written rental agreement**

The law requires landlords to give the tenant a written contract containing the rental agreement (NMSA §47-8-20 (G)). Unfortunately, some landlords do not live up to this requirement. As we have stated earlier in this guide, the tenant should insist on a written agreement when the tenant moves in. If the landlord won't give the tenant a written agreement, the tenant should think seriously about looking for another place.

If the tenant does not have a written agreement with the landlord and the tenant finds him/herself in a dispute with the landlord, seek legal advice immediately.

## **5. Quiet enjoyment**

"Quiet enjoyment" means a lot more than limited noise. It means when a tenant rents property, the tenant has a right to reasonably use the property.

While the tenant must give the landlord access to the tenant's rental unit for certain purposes, the landlord has no right to interfere with the tenant's privacy by entering the rental unit whenever he/she chooses (see Chapter 7 of this guide on "allowing access to the rental unit" ) (NMSA §47-8-24 (F)). The landlord may not lock the tenant out of the rental unit (NMSA § 47-8-36 (A)) (see Chapter 9 on "Lock-outs"). The landlord may also not make rules and regulations that are unreasonable and that unreasonably limit the tenant's use of the rental property (see Chapter 7 of this guide on "complying with the rental agreement and the landlord's rules") (NMSA §47-8-23).



## Chapter 8



# WHAT TO DO WHEN REPAIRS ARE NEEDED

## A. Types of repairs

There are three kinds of repairs that may be needed at a rental unit:

- ❶ those required by something the tenant caused to happen (like accidentally breaking a lamp or a window);
- ❷ those required by normal wear and tear (like a leaky faucet or a stopped up drain); and
- ❸ those involving the landlord's obligation to adequately maintain the property (like faulty plumbing or electrical wiring problems).

The rights and obligations of the tenant are different for each type of repair.

### 1. Tenant-caused damage

Accidents will happen. If something breaks as a result of a tenant's negligence, or something goes wrong that is part of the tenant's responsibilities, the tenant will probably have to pay for the repairs. It is still a good idea to notify the landlord, because many landlords insist on controlling the repairs around their property. Often, lease agreements require notifying the landlord before doing any repairs. Also, if there is a

dispute over whether a particular repair was needed because of the tenant's negligence or was the landlord's responsibility, the tenant will want a record of what happened. If the tenant does a repair with the landlord's permission, the landlord will later have a hard time saying that the tenant had no business fixing something without the landlord's consent.

## **2. Wear and tear repairs**

Remember, the cost of wear and tear is the landlord's responsibility. If something needs repair simply because it is old or worn, the landlord should make the repair (NMSA §47-8-20 (A) (2)). Once again, the tenant should notify (preferably in writing) the landlord of any repairs needed by wear and tear. This will both provide the tenant with evidence that the landlord had notice that something needed fixing, and it will provide a record of wear and tear damage for the tenant to use if the landlord later claims the right to deduct such damage from a security or damage deposit.

Usually these kinds of repairs can be handled by agreement with the landlord. Either the tenant will get it fixed and give the bill to the landlord, or the landlord will have it fixed. Sometimes, the tenant will not care about the repair but will want the landlord to know that something is no longer working.

## **3. Material repairs**

A "material" repair is one of the basic obligations of a landlord. For example, bad plumbing or a leaky roof is something a landlord must fix and fix promptly, because they go to the health and safety of the rented property. The landlord's failures to make repairs that are material produce many of the conflicts that bring landlords and tenants into court. The next section will deal with the situation where important repairs are needed but are not done within seven days by the landlord (NMSA §47-8-27.1 (A) (1)).



## **B. When the tenant requests repairs**

### **1. Making a record of needed repairs**

**Whenever a major repair is needed, the tenant should notify the landlord or the landlord's agent in writing** (NMSA §47-8-27.1 (A) (1)). Sometimes, a tenant will think that a repair is so obviously needed (like in the case of a leaky roof or bad plumbing) that it isn't necessary to put the request in writing. However, these are just the kinds of repairs that it is most important to request in writing, because if the repairs aren't made the tenant will want to take drastic action. The written notice is necessary before the tenant can terminate the lease; seek to use the remedy of rent abatement, or, in some cases, to defend against an eviction action for non-payment of rent.

When the tenant sends a repair notice to the landlord, it should say what is wrong, and it should ask the landlord to fix it (a sample letter demanding repairs is in the Appendix) (NMSA §47-8-27.1 (A) (1)). If the landlord has an agent managing the property, the tenant should send the notice to the agent too. The tenant should always keep a copy of the letter or of any written note to the landlord or the landlord's manager. To be sure the tenant can show the landlord received the notice, it is a good idea to send it certified mail, return receipt requested. If that isn't possible, hand deliver it to the landlord or the manager in front of a witness who could testify in court if needed.



As part of the tenant's record, it is a good idea to take pictures of the problem, so the tenant will have evidence if he/she has to go to court as a result of the landlord's failure to make repairs. The tenant should also show the problem to witnesses, who will be able to support the tenant's argument that repairs were needed. It is best, however, to get an official report from an agency whose job it is to enforce housing and building codes.

## **2. Health and safety violations**

If the landlord does not make a reasonable attempt to correct a new problem within seven days, or if the landlord has ignored the tenant's requests to have a long-term problem corrected, the tenant should write or call the local housing authority or local code enforcement office. The tenant should send the office any correspondence on the repair problem with the landlord and any notices the tenant has sent demanding repairs. The tenant has the right to contact code enforcement agencies, and if the landlord tries to evict the tenant for doing so, the landlord is acting illegally (NMSA §47-8-39 (A) (1)). (See Chapter 9 in this guide on "retaliatory evictions").

In Albuquerque and many other cities, a tenant complaint will cause an inspector from the code enforcement office to come to the apartment or house and make an official record of the violations found. The official

report will be made and filed with the code enforcement agency. The landlord will generally be ordered to make repairs. It is important to notify code enforcement if the landlord fails to comply with the order. The tenant can get a copy of the report as evidence, and the tenant will be able to use the inspector as a witness in court if that becomes necessary.

## **Code Enforcement Offices**

Albuquerque Housing Code Enforcement Division  
505-924-3850

Bernalillo County Environmental Health Office  
505-314-0310

City of Carlsbad Code Enforcement  
575-887-1191 ext. 199

City of Clovis Code Enforcement  
575-763-9641

City of Deming  
575-546-8848

City of Gallup Code Enforcement  
505-863-1242

City of Hobbs Code Enforcement  
575-391-8158

City of Las Vegas  
505-454-1401

## **Code Enforcement Offices, cont.**

City of Lordsburg  
505-542-3421

City of Roswell Code Enforcement  
575-624-6700

City of Santa Fe Code Enforcement  
505-955-6560

County of Taos Code Compliance  
575-737-6445

Dona Ana County Codes Enforcement  
575-647-7719

Eddy County Code Enforcement  
575-887-9511

Grant County Code Enforcement  
575-574-0004

Las Cruces Code Enforcement  
575-528-4100

Los Lunas Building Inspector  
505-839-3842

Luna County Code Enforcement  
505-543-6620

Rio Rancho Planning Zoning and Code Enforcement  
505-891-5926

## **Code Enforcement Offices, cont.**

Santa Fe County Code Enforcement  
505-986-6225

Town of Silver City Code Enforcement  
575-534-6344 or 575-534-6367

Town of Taos Code Enforcement  
575-751-2016

Valencia County Code Enforcement  
505-866-2042 or 505-866-2043

## **C. Tenant remedies**

If a tenant has notified the landlord of a problem, and the landlord does nothing, the tenant will need to consider the remedies that the law allows.

### **1. Damages and Injunctive Relief**

A tenant may sue the landlord for money damages for any failure of the landlord to perform his duties under the law or the rental agreement. Once the tenant has given the landlord notice of the failure (the law calls this a "breach"), and the landlord has not corrected the problem, the tenant has the right to go to court seeking damages (NMSA §47-8-27.1 (C)). The tenant can raise a damage claim even when the tenant is sued for eviction (NMSA §47-8-30 (A)). (See Chapter 16 of this guide on "Going to Court"). In addition, the tenant may sue for damages even if the tenant uses any of the other remedies available to him/her (NMSA § 47-8-27.1 (C)).

The tenant may also go to court to get an order forcing the landlord to make repairs or do any other act necessary to make up for the breach. This

type of order is called "injunctive relief" and it is like a restraining order signed by a judge (NMSA §47-8-27.1 (C)). If the landlord doesn't follow the order, s/he can be held in contempt of the court.

## 2. Termination of the tenancy

If the problem needing repair is one that is a serious threat to the tenant's health or safety, the tenant may choose to move out. If the tenant chooses to do this, it will be necessary to give the landlord a written notice. The written notice must state the problem and make a demand that the landlord correct the problem within seven days. It must also state if the problem is not corrected within seven days the tenant will terminate the tenancy and move out. If the landlord does not make a reasonable attempt to correct the problem within the seven-day notice period, the tenant can consider the tenancy over and move out. The tenant is entitled to the return of all deposits and prepaid rent (NMSA §47-8-27.1 (A) (1)).

If the landlord does make a reasonable attempt to cure the problem within seven days, the tenant may not terminate the tenancy (NMSA §47-8-27.1 (A) (1)). However, the tenant may still be able to claim damages for any losses the tenant suffered from the time the tenant first notified the landlord of the need for repairs and/or get injunctive relief forcing the landlord to finish the repairs (NMSA §47-8-27.1 (C)).

## 3. Rent abatement

When a landlord has failed to meet obligations under the law, and particularly when the landlord fails to make important needed repairs, the tenant gets less from the rental agreement than s/he is paying rent to get. The law has created a remedy to correct this situation, and it is called "abatement of rent." While this guide will use the term "abatement," because that is the word the law uses, the tenant should think of abatement as deducting a part of the tenant's rent based on the reduced value of the rental unit due to the landlord's failure to make repairs.

To use the remedy of abatement, the tenant must be very careful. The tenant must give the landlord a **written notice** of the conditions that need to be corrected (NMSA §47-8-27.2 (A)). These conditions must involve

the landlord's basic duties to maintain the property and to keep the property up to the standards of the local building and housing codes. The notice does not need to say what the tenant will do if the repairs are not made, but it would be wise to state the tenant intends to abate rent if the repairs are not done. If the tenant plans to move out if repairs are not made, the tenant should give notice of termination as set forth in the previous section of this guide, because a tenant may not both terminate the rental agreement and use the abatement remedy at the same time.

Once the notice has been given to the landlord, and s/he does not make the repairs within seven days, the tenant may abate rent (NMSA §47-8-27.2 (A)). If the landlord has not made a reasonable effort to correct the problem within seven days, the tenant may abate rent starting from the date of the notice the tenant gave about the repair.

When the tenant abates rent, there are several things the tenant needs to think through in calculating the amount the tenant will abate. If the tenant cannot live in the rental unit because the problem is so bad, the tenant may abate 100% of the rent for each day the tenant is not living in the rental unit because of the needed repair (NMSA §47-8-27.2 (A) (2)). If the tenant continues to live in the rental unit while abating rent, the tenant may deduct 1/3 of the daily rent for each day the repairs are not made (NMSA §47-8-27.2 (A) (1)). There is a Rent Abatement Worksheet at the end of this chapter.

Remember a tenant usually pays rent in advance of the rental period. This is very important in dealing with abatement. Once the tenant gives the landlord a notice and the landlord fails to repair, the tenant will start figuring the abatement deduction. When it comes time to pay rent for the next month, make the rent payment after deducting the amount the abated rent from the last month. It is not wise to estimate how long it will take for the landlord to make the repairs, and abate the rent prospectively. If the landlord has committed to have the repairs done by a certain day, the tenant may figure the abatement amount up to that day and adjust the rent payment for the abatement. If the tenant does not know when the repairs will be done, the tenant will risk making too large a deduction if the landlord promptly makes the repairs. The best course to follow is to deduct the amount of rent that can be abated based on the prior month.

\* \* \* Free Preview End \* \* \*

Purchase Required To Gain Total Access

Visit [www.landlordleaseforms.com](http://www.landlordleaseforms.com) To Purchase *Landlord Lease Forms Package*