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EXCERPT - LANDLORD - TENANT

Bankruptcy Court.

What All Landlords and Tenants Should Know

- 1) Local housing ordinances and public housing laws create both rights and duties for landlords and tenants and those laws and regulations should be understood where they apply.
- 2) Oral lease agreements are enforceable, but there are fewer disputes about the terms of the lease when it is written and when all parties have read it carefully before signing.
- 3) Unless the lease terms provide otherwise, the general rule is that a month-to-month lease, written or oral, requires advance notice of a least 30 days for termination by either party. There are certain statutorily prescribed circumstances (IC 32-31-1-8) where advance notice or notice to quit is not necessary. For example, if the rent has not been paid the landlord can ask the tenant to vacate without advance notice. However, actual eviction with the sheriff's participation will require a prior court order. The better practice is to give advance notice in case of doubt, and/or consult an attorney if you are not sure whether advance notice is required in the particular situation.
- 4) If a landlord has accepted late rent payment in the past the landlord must give the tenant reasonable notice, preferably in writing that in the future late payments will no longer be accepted and will be considered a breach.
- 5) Reasonable charges for late rent payments may be assessed by the landlord but ONLY if agreed to in advance.
- 6) Landlords are entitled to come onto or enter the premises at reasonable times and with reasonable notice to make repairs and inspections; they are entitled to immediate access to make emergency repairs and inspections. Otherwise, the tenant is entitled to peaceful enjoyment and if the landlord wrongfully violates the peaceful enjoyment the landlord is in violation of the lease.
- 7) As a general rule a landlord has no duty to make repairs to leased premises unless the landlord agrees to do so by the lease terms or otherwise. However, a landlord must maintain electrical systems, plumbing systems, sanitary systems, heating, ventilating and air conditioning system, elevators, and appliances if supplied as an incentive to the rental agreement if such items were provided on the lease premises when the rental agreement was entered into. Tenants must inform the landlord promptly and, if possible, in

writing when essential repairs or those agreed on are needed. If the landlord fails to make agreed repairs within a reasonable time after notice, the tenant may have them completed and deduct the cost from rent BUT ONLY FOR ESSENTIAL REPAIRS THAT THE LANDLORD HAS AGREED TO MAKE, AND ONLY IF A PRIOR REQUEST HAS BEEN MADE.

- 8) Recovery of a money judgment by landlords is allowed only for damages in excess of normal wear and tear. Tenants are expected to leave the premises in as clean a condition as when they took possession and the landlord can claim damages for the cost of cleaning to return the premises to that condition.
- 9) The measure of damages to personal property and fixtures is the difference between the fair market value before and after the damage; estimates of the cost of repairs and actual proof of actual costs of repairs are admissible at trial to prove damages.
- 10) There are far fewer disputes about damages if the landlord and the tenants go through the premises together either BEFORE OR IMMEDIATELY AFTER the tenants move in and list in writing all damages evident at that time. When the tenants are moving out, the parties should go through again so that they are more likely to agree about what, if any, damages are the fault of the present tenants.
- 11) Photographs of the premises and of the damages claimed are very helpful if the dispute goes to trial, whether the damages are claimed by the tenant to have been there when he or she moved in, or claimed by the landlord to be due to the negligence of the tenant.
- 12) The landlord may not keep any portion of a damage or security deposit unless there is back rent due or damages to the premises.
- 13) For rental agreements entered into after June 30, 1989, the landlord must, within forty-five (45) days of receiving from the tenant a forwarding address, either refund in full any security or damage deposit or deliver to the tenant an itemized, written statement showing why all or part of the deposit is being kept by the landlord. The law imposed potentially harsh consequences upon a landlord who fails to comply with this requirement. If a tenant believes the landlord is unfairly keeping the deposit, the tenant may want to contact a lawyer since a tenant has certain rights with respect to the return of a security deposit under Indiana law.

- 14) Landlords should keep complete records of all rent payments received, security deposits paid, etc. Tenants should demand rent receipts and should keep those receipts and all canceled rent checks.
- 15) All keys should be returned to the landlord as soon as the premises have been vacated. Additional rent may be charged until the keys are returned or until the locks have been changed, in which case the cost of the new locks may be deducted from the security deposit.
- 16) I.C. 32-31-7 sets out certain duties of a tenant with regard to the care and maintenance of leased premises and provides remedies to a landlord where the tenant fails to fulfill these duties. I.C. 32-31-8 sets out certain duties of a landlord with regard to the care and maintenance of leased premises and provides remedies to a tenant where a landlord fails to fulfill these duties.
- 17) Generally, utility shut-offs by the landlord are permitted only when the premises have been abandoned by the tenant and the utilities are in the landlord's name; lockouts are not permitted unless the tenant has abandoned the premises and illegal lockouts or utility shut offs could result in a judgment for punitive damages against the landlord.
- 18) Landlords cannot hold the tenants' personal property as security for unpaid rent UNLESS a court has found the property abandoned or the court permits the landlord to attach the property, in which case the property may be disposed of or its value applied against any judgment in favor of the landlord. Illegal conversion of another's property is a crime and in a civil suit could result in punitive damages. If a landlord is awarded possession of the dwelling or property in a court action, the landlord may seek a court order allowing the landlord to remove and deliver the tenant's personal property to a warehouseman for storage. In such event, the warehouse has a lien or claim against the property for expenses. The tenant is responsible for the expenses associated with the storage of the property.
- 19) Landlords are required to mitigate any damages. For example, if the tenant has left the premises before the lease was up, the landlord must make every reasonable effort to re-let the premises and thereby reduce the rent due from the tenant for the remainder of the lease term.
- 20) Landlords' efforts to obtain information about the tenants' credit history and information from prior landlords, and tenants' efforts to obtain information about the reliability of the landlord BEFORE the lease is agreed to reduces problems after the lease is in effect.

- 21) Under I.C. 32-31-6 a landlord is entitled to file a small claims action to obtain emergency possessory relief if a tenant is committing or threatening to commit waste to the premises. Similarly under I.C. 32-31-6 a tenant is entitled to file a small claims action to obtain emergency possessory relief if a landlord has unlawfully interfered with the tenant's access on possession of the premises by for example changing locks or interrupting or shutting off utilities or other essential services.