

GOING TO COURT

In Otero County, the Magistrate Court handles landlord/tenant issues. Magistrate courts are like small claims courts; it is not necessary to be represented by an attorney, and the courts provide forms for filing actions and answers. Evidence necessary for presenting a case may include documents (such as leases, receipts, bills, and copies of notices), photographs, and witnesses.

Otero County Magistrate Courthouse
263 Robert H Bradley Dr.
Alamogordo, NM 88310
575.437.9000

Referrals to legal assistance may be obtained through local lawyer referral services or through the State Bar of New Mexico (see web site at <http://www.nmbar.org>). Persons of low income may consult with their local branch of Legal Services or Legal Aid.

MILITARY CLAUSE

Every military tenant should insist that a "military clause" be included in their lease agreement. Generally, the clause states that the tenant can terminate their lease prematurely with a 30 day notice for reasons connected with the military. There is no standard military clause. The wording is a matter for negotiation between you and your prospective landlord. The following is just one example of the military clause:

"In the event the resident is or becomes a member of the Armed Forces on extended active duty and receives a change-of-duty order to depart the local area, or is relieved from such active duty, then resident may terminate this rental contract by giving 30 days written notice, provided resident is not otherwise in default. In such event, resident agrees to furnish owner a certified copy of the official orders that warrant the termination of the rental contract."

Note: You may not use the military clause to break your lease so that you may move into base housing.

GUIDANCE FOR OFF BASE TENANTS

The following tips can assist you in avoiding common problems experienced between military tenants and landlords:

1. Check your lease **before** you sign it. Be sure you understand the terms involved. If you have doubts about some of the lease terms, you can take it to the Housing Referral Specialist for review and possible referral to the base legal office.

2. Record all discrepancies. Give one copy of the discrepancies to the landlord and you keep the other.

3. Submit requests for maintenance or repair of leaks, heating/cooling deficiencies, etc., in writing. Be sure to date all copies, and keep a copy for yourself. If repairs are not made within a reasonable time, approach management with a cooperative attitude.

4. You should have the protection of personal property and liability insurance (these policies may be sold as renter's policies or comprehensive personal liability policies).

5. If you are unable to meet an obligation to management, discuss the problem with him/her in advance and work out an agreeable arrangement.

6. Thoroughly check the rental unit to be sure you and your family will be happy there.

Housing Referral Specialist
2300 Alamogordo Blvd, Holloman AFB
at the Soaring Heights Welcome Home Center
575.572.7832

DISCLAIMER:

The information contained in this pamphlet is meant for the sole use of active duty members, retirees, their families, and other persons eligible for Legal Assistance from the Holloman AFB, NM, 49 WG/JA Office. The information is general in nature and presented to assist eligible persons in preparing for a Legal Assistance appointment with an attorney in the legal office. It is not an all-inclusive guide to federal or New Mexico law. It is not a substitute for legal advice from an attorney regarding individual situations. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general statements of background information presented here without discussing your specific situation with an attorney prior to taking any action in court. (As of January 2017)



Holloman Legal
Assistance Program
Law Guide
Preventive Law Series
49 WG/JA
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LANDLORD-TENANT RELATIONS IN NEW MEXICO

THE RENTAL AGREEMENT

The Uniform Owner-Resident Relations Act governs landlord/tenant relations in New Mexico. When a landlord rents a residence to a tenant, the two parties enter into a rental agreement. This agreement determines the amount of rent and when it must be paid, the length of the tenancy, and how much advance notice either party must give to end the agreement. Generally, it is good practice to have your rental agreement in writing. According to the Uniform Owner-Resident Relations Act and Definitions section of New Mexico Statutes Annotated (NMSA) 47-8-3, paragraph P, "rental agreement" means all agreements between an owner and resident and valid rules and regulations adopted under Section 47-8-23 NMSA 1978 embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises." This does not specify that agreement needs to be in writing.

There are conflicting opinions among the judiciary and some believe that without a written lease agreement, the Uniform Owner-Resident Relations Act cannot be enforced. Others honor verbal agreements. Nonetheless, it is important to have a written lease agreement because both parties are better protected. To go to court without a paper trail is risky. Examples: Can I have pets? Who's responsible for paying the utilities? Am I allowed or entitled to a grace period for paying my rent? These are only some of the issues that can arise from not having a written contract.

A written agreement, or the lease, may provide for a fixed definite term such as a six-month or one-year lease. **Unless the rental agreement fixes a definite term**, the residency is week-to-week in the case of a person who pays weekly rent and in **all other cases** month-to-month.

LANDLORD-TENANT RELATIONS IN NEW MEXICO

RULES AND REGULATIONS

Besides the basic obligations of landlords and tenants that are listed below, rental agreements may include rules dealing with special situations, such as pets, subletting, and charges for late rent. New Mexico law requires a landlord to give each tenant a written copy of any rules and regulations in order for them to be enforceable. They may be part of the lease. New rules or changes (including rent increases) in a month-to-month agreement require a 30-day notice at the beginning of the rental period. Whether modifications to a fixed-term tenancy agreement can be made or not, as well as the procedures and requirements for such modifications, depends on the terms of the agreement.

DEPOSITS

The landlord may require the tenant to pay a security or damage deposit before moving in. This money is to be held by the landlord during the tenancy to protect against losses from unpaid rent or damage to the property (normal wear and tear excepted). A landlord cannot charge a tenant more than one month's rent as a deposit on any lease of less than a year. If the lease is for a year or more, the landlord may collect a deposit of more than one month's rent; but if he does so, he must pay the tenant current interest on the whole deposit. The tenant may not use the deposit to cover the last month's rent, although the landlord may apply it toward rent unpaid. A deposit, by definition, is refundable. The landlord must have suffered actual losses in order to withhold any part of the deposit.

The landlord has 30 days from the end of the tenancy in which to return the deposit or an itemized list of deductions plus any balance. The tenant must provide a forwarding address where he or she may receive this accounting. If a landlord does not send an itemized statement to the tenant within the 30 days of the tenant properly moving out, i.e., giving proper notice, the landlord forfeits all rights to any of the deposit and to take further legal action against the tenant in a court of a law. The tenant could have incurred \$10,000 in damages, but if the landlord does not meet the 30-day requirement, he loses the right to claim the damage. If a tenant breaks the lease or does not give a proper 30-day notice, the landlord has 30 days from the day the rental unit is re-rented to send an itemized statement to the tenant. If not, the landlord forfeits the right to the deposit. In case there is no forwarding address, the law requires the itemized statement be sent to the last known address.

THE LANDLORD'S OBLIGATIONS

1. Substantially comply with applicable housing codes materially affecting health and safety;
2. Make repairs and do whatever is necessary to put and keep the premises in safe condition;
3. Keep the common areas in a safe condition;

4. Maintain electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, if any, supplied or required to be supplied by the landlord, in good and safe working order and condition;
5. Provide and maintain receptacles for the removal of trash; and
6. Supply running water and a reasonable amount of hot water and reasonable heat in the dwelling at all times.

THE TENANT'S OBLIGATIONS

1. Comply with minimal housing codes imposed upon residents that materially affect health or safety;
2. Keep the premises in as clean and safe condition as the premises permit, and return the dwelling in the same condition as when the tenant moved in, except for reasonable wear and tear;
3. Dispose of trash in a clean and safe manner;
4. Keep plumbing fixtures as clean as their condition permits;
5. Use all plumbing, electrical, sanitary, heating, ventilation, air conditioning, and other facilities and appliances in a reasonable manner;
6. Not deliberately destroy or allow anyone to destroy any part of the premises;
7. Not disturb the neighbors' peace; and
8. Abide by all rules and regulations not inconsistent with the owner's or tenant's rights or obligations.

THE TENANT'S REMEDIES

If the landlord has failed to comply with his or her obligations under the law or the rental agreement, the tenant may give the landlord **written notice** describing the problem and stating that if no reasonable attempt is made to remedy the problem within seven days, the agreement will terminate upon a date not less than seven days after receipt of the notice. (NMSA 47-8-27.1). If the rental agreement is terminated by the resident and possession restored to the landlord, the landlord shall return the balance, if any, of prepaid rent and deposit to which the tenant is entitled pursuant to the rental agreement. The tenant may also recover other damages and obtain injunctive relief for any material non-compliance by the landlord with the rental agreement or the landlord's other obligations.

Instead of terminating the lease, the tenant, after giving written notice describing the problem, and stating that if no reasonable attempt is made to remedy the problem within seven days, may abate (reduce) the rent under NMSA 47-8-27.2 as follows:

- (1) one-third of the pro-rata daily rent for each day from the date the tenant notified the landlord of the conditions needing repair, through the day the conditions in the notice are remedied. If the conditions complained of continue to exist without remedy through any portion of a subsequent rental period, the tenant may abate at the same rate for each day that the conditions are not remedied; and

- (2) one hundred percent of the rent for each day from the date the tenant notified the landlord of the conditions needing repair until the date the breach is cured if the dwelling is uninhabitable and the tenant does not inhabit the dwelling unit as a result of the condition. The tenant may also sue for recovery of the deposit.

THE LANDLORD'S REMEDIES

When rent payment is past due, the landlord may give notice to the tenant that he or she has three days in which to pay or the landlord will initiate an immediate termination. If the tenant has breached the rental agreement in some other way, the landlord may give notice that the tenant has seven days in which to correct the breach or move. If the tenant does remedy the breach, but is served a second seven-day notice of breach, for good reason, within six months, he or she may be terminated at the end of the seven days, without opportunity to correct the problem. In the event that the tenant fails to move when required by proper notice (including proper 30-day notice), the landlord must seek a court order, or "Writ of Restitution," for a legally authorized eviction. The law also entitles the landlord to sue for damages or injunctive relief when necessary.

On non-payment issues the landlord must give a three-day notice, then must file for a "writ of restitution of property" in Small Claims Court. After a landlord has received judgment for money owed from the courts, then the landlord can pursue other avenues to collect his/her money from the tenants (i.e., collection service, credit bureau, or file for garnishment of wages if possible). The revised state statute includes a NO LANDLORD LIEN STATUTE. (NMSA 47-8-36.1).

Certain landlord's remedies are prohibited by law. The landlord may not lock the tenant out or remove his or her property without a court order; nor may the landlord shut off the tenant's utilities to enforce compliance with the rental agreement. If a tenant has complained to a government agency responsible for enforcing housing standards, or if a tenant has organized or joined a tenants' organization, the landlord may not retaliate by raising the rent, decreasing services or threatening to evict the tenant.

RIGHT OF ENTRY

The Act states that if a tenant does not request any type of services to be performed in the residence, then the landlord must provide the tenant with a written 24 hour notice before entering the premises. Unless the tenant has asked the landlord to perform a certain task, the landlord only has to indicate to the tenant when he/she will be performing the task of remedying the situation.