

Tenant's Rights

THIS HANDOUT WAS PREPARED BY
LEGAL SERVICES OF GREATER MIAMI, INC.

I. INTRODUCTION

This pamphlet is intended to provide you, the tenant, with an overview of your rights and obligations with respect to your landlord under Florida law. (The law on landlord and tenant rights and responsibilities is found in Part II of Chapter 83 of the Florida Statutes). This pamphlet is not, however, intended to take the place of legal advice.

II. WHO IS PROTECTED BY THE LAW?

Anyone who rents a dwelling (that is a place you rent as your RESIDENCE) is covered under the law. There are some exceptions which are outlined below:

- A. Temporary rental in a hotel, motel or rooming house. (But, the law does cover these places if the rental is permanent or indefinite and the tenant has no other residence.)
- B. Residence in an institution such as a prison, nursing home, a school, or a dormitory.
- C. Holder of a lease in a cooperative apartment or owner of a condominium unit.
- D. Occupancy under a contract of sale, unless there is a separate written Rental Agreement, individually executed from the sales purchase agreement.

III. TENANT'S RESPONSIBILITY TO THE LANDLORD

In addition to any responsibilities given to the tenant by the landlord under a written lease, you have the following obligations:

- A. To ensure that you do nothing to cause the landlord to be in violation of building, housing and health codes.
- B. To keep that part of the premises which you occupy clean and sanitary, remove garbage, and keep the plumbing clean and in working order. This includes not flushing anything down the toilet or washing foreign matter down the sink drain which would have a tendency to cause the plumbing to malfunction.
- C. To operate all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in a reasonable manner.

- D. Not to destroy, damage or remove any property belonging to the landlord.
- E. To conduct yourself, and require those who visit you to conduct themselves, in a manner which will not disturb others.
- F. To allow the landlord entrance to the premises for purpose of inspection, repairs, or to show the dwelling unit to someone else. You may not unreasonably withhold access to the unit. However, for routine repairs, the landlord must give at least 12 hours notice prior to entry and may come to repair only between the hours of 7:30 a.m. - 8:00 p.m.
- G. You may be required to temporarily vacate for the purpose of extermination for a period not to exceed 4 days but you must be given 7 days written notice. The landlord must abate (stop) the rent for the time you cannot be in the premises.
- H. You are allowed a flotation bedding system providing the bed does not violate applicable building codes. However, you must carry flotation insurance and the policy must carry a loss payable clause to the owner of the building.

IV. LANDLORD'S OBLIGATIONS

Landlords have the obligation to maintain rental units in compliance with the housing code. For example:

- A. The roof must not leak.
- B. The walls must be weather-tight; and watertight and in good repair.
- C. The stairs must be safe for normal use and maintained in good repair.
- D. Windows and doors must be basically weather-tight, water-tight, rodent-proof, and kept in good working condition.
- E. Outside doors must have proper locks and handles and keys.
- F. Windows cannot have cracks and holes.
- G. Inside floors, walls and ceiling must be rodent proof, kept in good repair, and must be safe.
- H. The house or apartment must have hot water, which is connected to the kitchen and bathroom sink, tub or shower.
- I. All houses and apartments must have a flush toilet in good working order.
- J. When cooking and heating equipment are provided by the landlord, they must be safely installed and in good working condition.

- K. There must be adequate garbage disposal facilities or storage containers.
- L. Every habitable room (room that people use for sleeping and living) must have at least two separate floor or wall electric outlets and, additionally, have a ceiling or wall-type lighting fixture, or an outlet controlled by a wall switch near the entrance to the room.
- M. All electrical systems must be in good repair and good working order.
- N. Outside windows must have screens.

If your unit is in a building with five or more units, then call the Division of Hotels and Restaurants for a housing inspection, at (305) 470-5680. If you rent a single home, or a duplex, or are in a building of 4 units or less, then call Miami-Dade County Team Metro Minimum Housing for an inspection at (305) 375-2338.

V. TENANT'S REMEDIES FOR VIOLATIONS BY THE LANDLORD

If your landlord is not in compliance with local building, housing, or health codes or is not maintaining the premises as required by law or is violating other provisions of the rental agreement, you should gather evidence concerning the violation. This may be done by contacting the local agencies charged with code enforcement to find out if there is a violation of a code.

If there are no local agencies that can investigate the violation, other methods which can be used to gather evidence are by taking pictures, gathering physical evidence, and obtaining statements from persons who have witnessed the alleged violation.

If there is a violation of a code or a breach of the rental agreement, then you may then seek to solve the problem by one of the remedies provided in the law, provided the damage was not caused by you.

A. If the violation is material (this is a legal term that means important, or significant or substantial), you may write a letter to the landlord, the landlord's representative, a resident manager, or the person responsible for collecting rent, stating what the problem is, and that if it is not corrected, you will end the rental agreement. This letter should be sent to the landlord certified mail, return receipt requested, and you should retain a copy of it. The landlord should then be given 7 days from receipt of the letter to correct the problem. If it is not corrected in the 7 days, you may consider the rental agreement ended and move out.

B. If the violation is material and you wish to remain in the dwelling, you may write a letter to the landlord, the landlord's representative, a resident manager, or the person responsible for collecting rent, stating what the problem is, and if it is not corrected that you will withhold a portion of or all of your rent. This letter should be sent certified mail, return receipt requested and the landlord must receive it seven days prior to the time rent is due. Again, you should retain a copy of the letter. You should outline all of the

problems to be corrected. On the day the rent is due, if the problem has not been corrected, you may withhold portion or all of your rent.

It is very important that you place the unpaid rent somewhere readily available because in the event the landlord takes the case to Court, you will be required to pay the withheld rent into the Court Registry while the matter is being resolved. If you win in court all or part of the money may be returned.

C. You may file a civil action in the county court to enforce the law and to recover any and all damages caused by the violation.

D. If the rental unit is damaged so badly that the use of it is substantially impaired, you may end the rental agreement immediately.

There are many unclear areas within the law pertaining to this section. Therefore, it is recommended that before you bring any legal action against the landlord that you discuss the situation with an attorney before action is taken.

VI. TERMINATING / MODIFYING THE RENTAL AGREEMENT

Unless there is a written rental agreement which specifically states otherwise, a rental agreement without a specific duration (set length of time) may be terminated (ended) or modified by either the landlord or the tenant by giving written notice as follows:

A. When the rental agreement is from week to week, by giving not less than 7 days notice prior to the end of any weekly period.

B. When the rental agreement is from month to month, by giving not less than 15 days notice prior to the end of any monthly period.

C. When the rental agreement is from quarter to quarter, by giving not less than 30 days notice prior to the end of any quarterly period.

D. When the rental agreement is from year to year, by giving not less than 60 days notice prior to the end of any annual period.

Miami Beach has a special law that requires landlords to give tenants 30 days written notice if the tenant has an oral month to month agreement, or has a written agreement without a specific duration.

Note: If the landlord wants to increase the rent, he/she must follow these same procedures. Oral notice to increase your rent is not valid. For instance, if you do not have a written lease and you pay your rent monthly, your landlord has to give you a written notice 15 days before the next rent is due telling you that the rental agreement where you pay \$350 a month for rent is terminated, and the new rental agreement is \$400 a month.

VII. TERMINATING THE RENTAL AGREEMENT FOR CAUSE

The landlord can terminate the rental agreement upon a breach of the rental agreement as follows:

A. If you breach the rental agreement by not paying the rent, your landlord must give you a 3 day written notice demanding the rent (exact amount owed) or possession of the dwelling within 3 days of receipt, excluding weekends and legal holidays. The notice must state the date of the third day. A legal holiday is only a court observed holiday.

B. If you breach the rental agreement by violating some portion of the written agreement, other than payment of rent, or you violate a tenant's obligation within the law (See Part III), the landlord must give you a 7 day written notice demanding correction of the breach or possession of the dwelling.

NOTE: If the violation of the rental agreement referred to in (B) is material and/or was willfully caused by you, or it is repeated violation, the landlord may send you a 7 day notice to vacate without an opportunity to cure and this will terminate the rental agreement. Furthermore, the landlord may petition the county or circuit court for an injunction which acts to stop you from any continuous violations.

VIII. EVICTION PROCEDURES

If your rental agreement has ended or has been breached by you and you do not leave at the end of your rental agreement or correct the breach after the landlord has asked you to, the landlord can have you evicted. This is the procedure:

A. Your landlord must file a lawsuit (also called complaint) for eviction in county court. The landlord must attach to the court papers a copy of your lease if you have one, and a copy of the notice given to you asking you to leave: 3 day notice to pay rent, 7 day notice, or 15 day termination notice.

NOTE: If you do not pay the rent or you do not move when asked to by the landlord, your landlord cannot change the locks, turn off the utilities, or do anything else which forces you to move out. This is called an illegal eviction or a "prohibited practice" and is a violation of the Landlord/Tenant Act. It can make your landlord liable to you for three times your rent, or actual damages, whichever is higher, and attorney's fees and costs. Each time the landlord commits a prohibited act, it is a separate violation. For instance, if your landlord turns off your water one day, and then turns it on, and three days later changes your locks, that is two separate violations which you can sue for. Turning off the water makes the landlord liable for three times the rent and changing the locks makes the landlord liable for an additional three times your rent amount.

B. The sheriff must personally give you or an adult member of your household a copy of the lawsuit. In certain cases the sheriff can leave a copy of the eviction lawsuit on the door of the place where you live. In addition, a copy of the lawsuit must be mailed to you by either the landlord or the court.

C. You have 5 days, not including weekends and holidays, to send an answer in writing, to the Court where the lawsuit was filed and to the landlord. An answer is a response to the landlord's lawsuit and includes any defenses that you may have. If you defend an eviction based on the landlord's noncompliance with the rental agreement or relevant statutes you must comply with the following:

(1) You must pay into the registry of the court the rent that is due or ask the Court in writing as part of your answer, to determine how much rent is due. You must also ask the Court in writing to give you a hearing to determine how much rent should be paid into the court registry. If you are doing this, you would title your answer "Answer, Motion to Determine Rent and Request for Hearing."

(2) You must continue to pay the rent when due into the court registry, while the lawsuit continues.

NOTE: If you fail to pay the rent into the registry of the court or fail to file a written request (motion) to determine the amount of rent due and request for hearing, within (5) days, excluding Saturdays, Sundays and legal holidays after the date you receive the eviction lawsuit, you have waived your defenses other than payment and the landlord automatically wins.

If you do file a motion to determine the amount of rent due, documentation is required to support your argument that the rent that the landlord is seeking is an error. For instance, if you say you paid, then attach a copy of your receipt. If you say you are withholding rent to force repairs, then attach a copy of your rent withholding letter to your landlord.

If you live in Section 8 or other government subsidized housing, you are required to deposit only that portion of the rent you are responsible for under your subsidized program.

If you are being evicted for nonpayment of rent and you asked the Court to determine how much rent you owe or you answered that you paid, the Court may hold a hearing to decide how much rent should be posted or may issue an order based on what the Court reads in your answer.

If you are being evicted for some other type of breach of the lease and you filed an answer, the Court will hold a hearing. Before seeing the Judge, you and your landlord usually first see a mediator. A mediator is a person trained to help you and the landlord work out a settlement to avoid a hearing. If you make a settlement, the landlord and you will both sign a paper stating all the conditions you have agreed on. If you cannot make an agreement with the landlord (sometimes called a stipulation), then you and the landlord will have a final hearing (trial). The court will listen to all the evidence given by both sides and decide who is right.

(1) If you win the court hearing, you can stay in the rented property.

(2) If you win a case where you held back rent because the landlord did not keep up the property, the Court will decide what rent would be fair to pay for the damaged property. The Court will give that amount to the landlord and give the rest of

the money back to the tenant. The Court may also order the landlord to make repairs.

(3) If you lose the Court hearing or if you did not answer the lawsuit in the first place, the Court will enter a final judgment of eviction. If you do not move out the Court will tell the Sheriff's Office to move you and your family and everything you own out of the place where you are living.

The notice that the Sheriff gives you is called Writ of Possession. It gives you 24 hours notice to move out. If have not moved out by the time the Sheriff comes back, the landlord or the landlord's agent may remove any property of yours to the property line. They can do this whether you are home or not, have children, or are sick.

IX. SECURITY DEPOSIT

A. HOLDING REQUIREMENT

The law defines a security deposit as, "any monies held by the landlord as security for performance of the rental agreement including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof." The law defines advance rent as "monies paid to the landlord to be applied to future rent payment periods." The landlord must hold security deposits and advance rents as follows:

A. Hold the money in a separate non-interest bearing account in a Florida bank; the landlord cannot commingle (mix) the deposits with other funds; or

B. Hold the money in a separate interest bearing account in a Florida bank, and the tenant shall collect 75% of the average annual interest rate or 5%, whichever the landlord decides; or

C. Post a security bond with clerk of the court in the county where the dwelling unit is located. The bond must be for the total amount of deposits the landlord holds, or \$50,000 whichever is less. If the landlord chooses to post a bond, the landlord must still pay the tenant 5% interest a year.

B. NOTICE REQUIREMENT

Within 30 days of receiving the deposit the landlord must notify the tenant in writing of the following:

A. The rate of interest, if any, being earned.

B. When interest earned if any, will be paid to the tenant.

C. Name and address of bank where the deposit is being held.

D. Whether the deposit is held in a separate account or is commingled with

other funds of the landlord.

E. Send a copy of Section 83.49(3) of the Florida Statutes, which states landlord and tenant rights and obligations in returning the deposit.

Your landlord has 15 days after you move out to return your security deposit to you. If your landlord is not going to return your deposit or intends to make a claim on part of your deposit, the landlord must send you a written notice by certified mail, within 30 days after you vacate, stating his intention to keep all or part of your security deposit and the reason why.

If your landlord sends you a notice that he intends to make a claim on your deposit, then you have 15 days after you receive the notice to object to the claim.

NOTE: In order to preserve the right to actually get the money back, you must send a letter to the landlord by certified mail stating the date on which you will be out, and giving your new address. The landlord needs to get the letter at least 7 days before you move out. However, you should always give your landlord your new address so they know where to mail your deposit or the letter stating they are withholding all or part of the deposit.

If the landlord keeps the deposit money more than 30 days after you move out, without sending you a written explanation of why the money is being withheld, or if the reasons the deposit is being withheld are not true, you can try to get the money back by filing a claim in County Court.

If you are suing for less than \$5,000 you can file the lawsuit yourself in Small Claims Court. You can ask the Court Clerk to help you fill out a "Statement of Claim" where you explain how much money the landlord is wrongfully keeping from you, and why the landlord should not be able to keep it. If you are low income and cannot pay the court filing fee without hardship, you should ask to have the fee waived by filing an "Affidavit of Insolvency". Ask the Clerk to explain all the steps that you will need to take to proceed with your case against the landlord and to get a hearing before the Judge.

X. SOME COMMON QUESTIONS ABOUT HOUSING DISCRIMINATION

1. What is discrimination?

Discrimination means any difference in the treatment you have received based on your race, color, religion, sex, national origin, ancestry, age, handicap, marital status, HIV status, or because you have children. This is a violation of fair housing laws and is illegal.

2. What can I do against discrimination?

You may file a complaint with the Metro Dade Equal Opportunity Board. The Board

has the power to investigate complaints of discrimination in the areas of housing and employment, and to order those who have violated the laws to correct their actions.

3. Who may file a complaint?

Any person who has been subjected to discrimination based on the above reasons.

4. How may you file a complaint?

You may file a complaint by telephoning the Board at 375-5272 and requesting that a complaint form be mailed to you. You may also visit their office or send a letter to the Dade County Equal Opportunity Board, Metro Dade County, 111 N.W. 1st Street, #2140, Miami, FL 33128-1912. You can go in person or phone between hours of 8:00 a.m. to 2:00 p.m. Monday to Friday.

5. When should you file a complaint?

You should file a complaint as soon as possible after someone has discriminated against you. The law requires that you file your housing charge no later than 180 days after the alleged unlawful housing practice occurs.

6. What will happen if you file a complaint?

The Board will investigate your case and determine whether you have been unlawfully discriminated against. If the Board finds discrimination, it will use its powers to correct the situation and, if necessary, start legal proceedings against the discriminator at the county court level.

7. Is there any expense involved in filing a complaint?

There is no expense at all for any person filing a complaint with the Board. All expenses for the investigation and legal proceedings involved in processing your case are paid for by the Board.

NOTE: HOPE, Inc., is private non profit organization which also investigates complaints of violations of the fair housing laws. The organization may file a lawsuit on behalf of the person discriminated against. Call them at 571-8522, Monday through Friday, 9:00 a.m. to 5:00 p.m., to file a complaint.

BRANCH COURTS

The numbers in parentheses are the branch court numbers

Miami Beach Branch (24)
(East District)
1130 Washington Avenue
Miami Beach, Florida 33139

Dade County Courthouse (05)
(Central District)
73 West Flagler Street
Miami, Florida 33130

North Dade Justice Center (23)
(North District)
15555 Biscayne Boulevard
Miami, Florida 33160

Caleb Center (20)
(North Central District)
5400 NW 22 Avenue
Miami, Florida 33142

Coral Gables Branch (25)
(South Central District)
3100 Ponce De Leon Blvd.
Coral Gables, Florida 33134

South Dade Justice Center (26)
(South District)
10710 SW 211 Street
Miami, Florida 33169

LEGAL SERVICES OF GREATER MIAMI OFFICES

MAIN OFFICE

3000 Biscayne Boulevard,
Suite 500
Miami, Florida 33137
Telephone (305) 576-0080

LIBERTY CITY OFFICE

Miami Workers Center
6100 A Northwest 7th Avenue
Miami, Florida 33127
Phone (305) 751-5362
Call for times when clients are seen

REGIONAL OFFICES

SOUTH DADE LAW CENTER
10720 Caribbean Boulevard #400
Miami, Florida 33189
Telephone 232-9680
Fax (305) 232-3616

KEY WEST OFFICE
600 White Street
Key West, Florida 33040
Telephone (305) 292-3566
Fax(305) 295-3622

NEIGHBORHOOD OFFICES

HIALEAH NEIGHBORHOOD OFFICE
BLANCHE MORTON-CITY OF HIALEAH
NEIGHBORHOOD OFFICE
300 East 1st Avenue, Room 109
Hialeah, Florida 33010
Phone (305) 884-1376
Call for times when clients are seen