

Rental Agreements

Tenants and Leases

Leases

Leases are agreements between landlord(s) and tenant(s) to transfer possession of property to the tenant for a certain period of time in exchange for rent payments. Leases may be verbal or written.

Written leases are preferable because they give both tenant and landlord a permanent record of their agreement. Even month-to-month rental agreements can be made in writing. Leases are binding contracts and are difficult to break once signed. You should understand and be comfortable with all provisions of a lease before signing.

A written lease for a term fixes all terms of the agreement so that no changes can be made for a given period of time. All obligations are set out clearly, rent cannot be increased during that period of time and tenants may not be evicted unless they violate a term of the lease.

The disadvantage is that if a tenant has to move before the end of the period, he/she may be liable for the entire period. Be sure to read the lease *carefully* before you sign. Whether you have an oral or written agreement, when you plan to move out, **you must give written notice**, usually at least 30 days before the agreement ends.

Before signing your lease

Landlords usually ask for a security deposit at the time the lease is signed. You may be asked to pay the last month's rent, as well. Regardless of what it is called in the lease or rental agreement, any sum you pay the landlord to hold as security for damages to the premises or unpaid rent is considered "security."

Make sure the charges you pay at the beginning of your tenancy are clearly explained in your lease or rental agreement.

Before you move in

You may be held legally responsible for any damages you or your roommates and guests do to the premises while living there. However, you are not responsible for normal "wear and tear." To protect yourself, insist that the landlord inspect the premises before you move in.

Write down any damage or problems on a sheet of paper that both you and the landlord sign, along with an acknowledgement that these damages or problems existed before moving in and you were not responsible for them. If the premises are not clean when first moving in and you have to clean it yourself, ask the landlord to adjust your first month's rent or change the lease to indicate that you do not have to clean before you move out.

Keep in mind that by not cleaning the premises, the landlord has saved time and/or money.

Cosigners

Some landlords require tenants to have co-signers, a person who does not live in the apartment but who agrees to pay rent if the tenant does not. Parents are usually the

co-signers for students but some adults can also be a co-signer. A requirement that parents co-sign a lease may be discriminatory. Before you agree to a co-signed lease, learn why it is required. Landlords must have clear, consistent standards for requiring co-signers. It cannot be required because you are a student or from a foreign country. These standards are discrimination.

Oral agreements

Oral agreements have the advantage of being less formal than written agreements. Unless you have otherwise agreed to a specific term (three months, six months, etc.) it is considered a month-to-month agreement, and you can move out with proper notice (30 days on or before your periodic rental date if hand delivered, 33 days if notice is mailed registered or certified). The obvious disadvantage is the lack of clarity. If either side ends up in court it is now based on your word against theirs. If you have a month-to-month agreement, the landlord can raise the rent or evict you with proper notice (30 days on or before the periodic rental date).

Leasing sight unseen

Some apartment complexes have model apartments that they show prospective tenants. You should ask to see the actual unit you will be renting. If you are not able to see it for some reason, ask the landlord to add the following addendum to the lease and sign it: "Tenant has not had the opportunity to inspect the unit covered by this lease. Landlord warrants that the unit to be occupied by tenant will be in good, habitable condition and will conform to any model units shown to Tenant in all material respects, except as agreed to by the parties in writing. If the Tenant finds the unit is not in good condition or does not conform to the model unit in some material respect, he/she may give written notice to Landlord that unless the deficiency is corrected within a specific reasonable time, the lease will be void. If Landlord fails to correct the deficiency within the specified time, Tenant has no further obligations under the lease and Landlord must return all monies previously paid to him/her by Tenant regardless of how denominated."

This will give you protection in case the unit you are given is substandard or not as represented.

Separate leases

Roommates with separate leases have an agreement similar to tenants who live in separate apartments in the same building. Landlords are responsible for solving any serious problems between roommates. Because other roommates have separate leases they do not need to worry about being evicted along with the other roommate or being required to make up the departed roommate's rent payment. You should still document serious problems in writing to both the landlord and other roommates requesting actions they take.

Joint and Several Liability

It is important to note that under most leases roommates are jointly liable for the lease. This means any of the roommates can be held responsible for the actions of any or all the damage done by another roommate. All roommates can be evicted or sued if one

roommate fails to pay rent or break the lease. Make sure before signing your lease your roommates are capable of paying rent and are responsible for their share of responsibilities and expenses. To protect them, prepare and write a written roommate contract between all roommates.

Breaking your lease

If you have to leave your place before your lease has expired, it does not automatically mean you lose every penny of your deposit. There are some legitimate, legally acceptable reasons for leaving during the term of your lease.

What to do if you break a lease?

Send your landlord a letter by certified mail, return receipt requested, giving notice that you intend to break your lease early. When you send this notice, you have in theory violated your lease contract, therefore, it is wise to stop by and talk to your landlord before doing this. The landlord may have another tenant ready to move in and not be concerned about your moving. In some cases, the landlord may want compensation for the trouble of re-renting the place. If the amount of money he or she wants is small, it may be easier to pay rather than to become involved in a dispute. If your landlord has a security/cleaning deposit, you may want to offer to let him/her keep part of this in the settlement for any damages arising from you leaving before the end of your lease agreement.

If it is not possible to deal rationally with your landlord, or he/she will not make a written release, you should take steps to protect yourself. To alleviate this you may want to put an advertisement in the local paper or school rental board. You can search for a renter that will pay the same price you are paying and be sure to clarify that the lease must be agreed upon with the landlord. Of course, you run the risk of your landlord not wanting you to find a tenant either.

Another possibility would be subleasing your place if your lease allows or your landlord agrees. But you are still responsible for damages and rent if your subleasee fails to perform under the agreement. Having the new tenant sign a new lease is the best way to go.

Rental Insurance

When you rent a house or apartment, it is wise to insure your personal belongings. Most people are not covered by their landlord's insurance so it is in your best interest to invest in your own. If your parents claim you as a dependent, first check to see if you might be covered under their policy. Usually, students are covered up to ten percent of their parents' insurance. Different rules apply for different policies, be sure to check with your parents about your coverage.

If you are not covered by their policy, it is recommended that you get a policy of your own. Most policies for students are based upon renting an unfurnished residence. This type of policy covers high theft or target items like watches, televisions and computers. Usually, a minimum coverage must be purchased (\$15,000-\$25,000). The average cost for this type of policy can range from \$120-\$210 a year with a possible deductible. If you have roommates some companies require that each roommate sign a policy in order to cover everyone. All policies are different and there are many variables;

therefore, when shopping for a policy call and get three to four quotes. Be sure to give each agent the same information and be sure it is accurate so you get the best quotes to compare. Agents also recommend that students ask about replacement costs. For an additional fee, the insurance company will pay a depreciated value for your possessions. After you find the rates and coverage that suit your needs double-check the prices you were quoted.

Insurance

The landlord is liable for damage to tenant property if the damage occurred because of landlord negligence or noncompliance with habitability standards. The liability cannot be waived.

Being a good tenant

As a good tenant and neighbor, remember the responsibilities of being a renter.

- **Pay your rent on time.**
If you cannot, contact the landlord to explain the situation and give the date you can pay.
- **Respect the property.**
Keep your apartment or house reasonably clean and avoid causing damage.
- **Obey the law and apartment rules.**
- **Do not disturb the neighbors.**
- **Excessive noise is a valid reason for eviction.**
- **Keep accurate organized records** of all requests and transactions between you and your landlord.
- **Let the property owner know when anything needs to be repaired.** Put this in writing and hand deliver it with a witness or send by certified mail with return receipt. (US Post Office can explain these services) Keep a copy.

Rental Applications

Most landlords ask tenants to fill out a rental application with information like the names of past landlords, personal references and banks where the tenant has accounts. Landlords use rental applications to evaluate potential tenants.

Applications have only one legitimate purpose: To give the landlord information about whether the tenant is responsible and able to pay the rent. If any information requested does not serve this purpose, ask why the information is needed. Don't provide the information until you have received a satisfactory explanation. *You are not required to provide information about your age, sex, race, student status, marital status or other potential discriminatory information. Landlords cannot use such information to decide whether to rent to you.*

Subletting

Subletting involves finding another renter to pay your rent and live in your dwelling for an agreed-upon length of time. The “original renter” is the *sublessor* and the “new renter” is the *sublessee*.

In a sublet agreement, the sublessor remains on the lease and retains the obligations of the lease. A similar procedure, an *assignment*, occurs when the original tenant, the new tenant and the landlord agree to have the new tenant take over the lease and its obligations from the original tenant. If you sublet your dwelling, try to make an assignment agreement so you cannot be held responsible for the condition of the place.

Rental Records

Many renters have unforeseen problems that can be alleviated by keeping good records of important information. Lack of knowledge regarding leases or other rental agreements can cause a variety of problems. By keeping records of rental repair requests, security deposit disputes and other important issues related to rental agreements you can alleviate many of these types of problems. The most frustrating problems occur when the tenant cannot document their grievances. To prevent this, start a file as soon as you sign the lease and add to it throughout your lease term. A rental file is easy to keep, considering the money you may recover through rental modification or qualifying for full return on your security deposit. If a rental problem arises, it is easier to negotiate a solution with the landlord when you have written records that show the extent of the problem, what you asked the landlord to do about it and how the landlord responded.

Your Rental File Should Include:

- **Lease & all Addenda:**
Keep a copy of everything you signed.
- **A Rental Log:**
Use a simple notebook to write all dates and times you contacted or tried to contact your landlord; make a note of any discussion. Logs are useful permanent records of how the landlord did or did not respond to problems.
- **Check-in & Check-out Forms:**
This is proof of the condition of the apartment when you move in and out. Keep copies and send the originals to the landlord by certified mail with return receipt.
- **Letters to or from the Landlord:**
Make any complaints or serious communications in writing and keep copies on file. All verbal requests should be followed up in writing with copies in your file.
- **Reports:**
Keep copies of building inspection reports, police reports and reports of other government agencies.
- **Photographs:**
Photos may be the evidence you need to document a repair or security deposit problem. Photos should be dated and signed by a witness.

Move-in Condition Inventory Report

As soon as you arrive at your new “home,” it is crucial that you complete a move-in condition inventory report that lists the condition of the property and everything in it

(furniture, appliances, etc). The report should be as detailed as possible; for example, the number of ice cube trays, nail holes or other marks on the walls, and condition of the floor, ceilings, fixtures, furniture, appliances, etc. In addition, check all the security features such as locks, windows and smoke detectors. If you notice any pests or vermin, and your lease states that management is responsible for pest control, bring it to their attention IMMEDIATELY. Once you have completed a thorough check of the premises, have the landlord or manager sign and date the report and keep a signed copy for your files.

Inventory Valuables

Keep an updated inventory of your valuables by writing down serial numbers with descriptions of each item. Photographs should be taken of everything, but especially items that cannot be marked. Mark your social security or driver's license numbers in two places, one visible and the other hidden. Keep a list of your valuables in a safe deposit box or another secure place. You can also give one to your insurance agent.

A Rental Agreement Can Include...

The ORLTA identifies what a rental agreement should contain and what the landlord must disclose to the tenant. If a written agreement is signed, a copy shall be given to the tenant as well as any changes, additions or amendments. Even if you have no rental agreement at all, the law sets out a few basic terms.

“Good Faith” means honesty in the conduct of transactions. The law imposes an obligation of “good faith” on every duty and remedy in the performance of a rental contract. (90.130)

Occupancy Limits- Landlords are free to set reasonable occupancy limits. The tenant must have written notice of the limits when the agreement is signed, or must agree to such limits in writing if they are adopted afterwards. A minimum of two people per bedroom must be allowed. (90.262(3)) Other factors may determine occupancy limits a landlord may set on individual dwellings. These factors may include: size of a bedroom, overall size of dwelling, or possible discrimination on a protected class. If the landlord imposes any unreasonable limitations seek legal advice.

Rules and Regulations- A landlord may adopt rules concerning the tenant's use and occupancy of the premises. (90.262) It is best to have all agreements in writing for future reference. Rules and regulations are enforceable only if:

- their purpose is to promote the convenience, safety or welfare of tenants; to protect the landlord's property from abuse; or to provide for the fair distribution of services or facilities to tenants;
- they are reasonably related to their purposes;
- they apply to all tenants fairly;
- they are clear enough to inform the tenant of what is expected;
- they are not for the purpose of evading the landlord's obligations; and
- the tenant has notice of the rules or regulations when making the rental agreement or when the rules are adopted.

If a rule is adopted after the tenant has entered into the rental agreement, or if it makes a “substantial modification” to the tenant's “bargain” (i.e., it makes a real difference in the value of the tenancy to the tenant), the rule is not effective unless the tenant has

consented to it *in writing*. (90.262(2)) If the tenant does not disagree to the rule in writing and pays rent to the landlord, the courts have ruled that the tenant tacitly agrees to the rule. *Note: A month-to-month tenant can be evicted with a 30 day “no cause” notice for refusing to consent to a new rule, unless the eviction is retaliatory or otherwise unlawful.*

Disclosures

The following items must be disclosed to both applicants and tenants before entering into a rental agreement:

Ownership

Tenants must be informed in writing of the name and address of:

- any person authorized to manage the premises; and
- the owner or person authorized to act on behalf of the owner to receive tenant’s notices and demands, and to be served with summons and complaint.

This information must be kept current. If this disclosure is not made, the person who acted as landlord, (i.e., the manager or agent) may be held liable for the landlord’s obligations under the ORLTA. (90.305) That person is also deemed a “landlord” under the ORLTA. (90.100(19))

Utilities

The landlord must disclose in writing whether the tenant will be paying for any utilities or services (i.e., electricity, gas, oil, water, hot water, heat, air conditioning, garbage collection or disposal), which will benefit the landlord and tenant(s). Services that benefit the landlord or other tenants are if a utility or service that is paid for by the tenant and is delivered to any area other than the tenant’s unit. (90.315(2))

A Rental Agreement Cannot Include...

The ORLTA prohibits anything that waives the rights given to the tenant by the ORLTA. Landlords cannot rent a unit “as is” to get out of their legal obligations. (90.245) The ORLTA also provides remedies for other “unconscionable” or grossly unfair provisions. The following types of terms are unenforceable and illegal:

- any and all terms that waive any of the tenant’s rights or remedies under the ORLTA; (90.245(1)(a))
- “lockout:” switching locks while a tenant is out of the unit. The only way to evict a tenant is through the courts; (90.400(2), (90.435), (90.375))
- “landlord lien:” a lien in which the landlord may hold a tenant’s property if the tenant defaults on the rent; (90.420)
- “confession of judgment:” a clause in which the tenant gives up the right to be heard in court by granting the landlord the right to a judgment against the tenant before the landlord has even filed a lawsuit; (90.245(1)(b))
- “exculpation or limitation of liability:” the tenant agrees not to sue the landlord for negligence or not to sue for more than a given amount; (90.245(1)(c))
- agreement to pay attorney fees if a dispute ends up in court: the ORLTA already provides that attorney fees and court costs may be charged against the losing party. (90.255)

Penalty: The tenant may recover actual damages and a penalty of up to 3 months' rent if the landlord deliberately includes such a provision(s) in the rental agreement and attempts to enforce it. (90.245(2))

Transfer of Possession

Transferring possession is when access to the property is given either from the landlord to the tenant or vice versa. (90.147) Transfer of possession may be different from the ending date of a rental agreement (i.e., if a tenant abandons the property or if there is an eviction proceeding). Transfer of possession from the landlord to the tenant occurs when the landlord gives actual notice (written or verbal) that the tenant has the right to occupy the rental. The notice may include delivery of the keys.

Transfer of possession from the tenant to the landlord occurs when:

- the tenant gives actual notice that he/she has given up the right to occupy the rental. The notice may include the return of keys;
- the landlord reasonably believes that the tenant no longer claims the right to live in the rental after the ending date of the tenancy;
- the landlord reasonably knows that the tenant has abandoned the rental.

Recovering the Deposit

A landlord must return any unused portions of a deposit within 31 days after the tenant has moved out, (90.300) provided that the tenant has done *all of the following*:

- paid all the rent on time;
- given suitable notice of termination;
- returned the keys; and
- left the unit in good repair.

The landlord must also deliver, within the same period, a written statement of the amounts and reasons for all deductions the landlord is taking from the deposit. *Note: If a tenant doesn't get a refund because the landlord or the post office did not have a forwarding address, the court will not hold the landlord responsible.*

The amount that the landlord can deduct from the deposit is limited to the reasonable amount needed to:

- remedy the tenant's defaults in the performance of the agreement (i.e., unpaid rent); and
- repair damages to the premises caused by the tenant, *not including normal wear and tear.* (90.300(4))

Unreturned or Misused Deposits

The landlord has 31 days to return the deposit or provide an accounting. If the landlord fails to do so, the tenant may get twice the amount withheld without a written accounting, or withheld in bad faith. If the landlord refuses to return the deposit or neglects to provide the tenant with an accounting within 31 days, the tenant may sue.

Contesting Use of the Deposit

If the tenant disagrees with the landlord's accounting, he/she should discuss it with the landlord. If a settlement cannot be reached, the tenant may contest it in court.

This situation could arise if: the landlord has provided what the tenant feels to be wrong accounting; or, the landlord introduces a wrong accounting in court to contest the tenant's claim that the deposit was not returned.

The tenant should be prepared to show exactly how the unit was left and to prove that the items claimed by the landlord were either: not done as claimed, not necessary because the tenant had already done them, or were not the tenant's responsibility because such work had not been done upon moving in.

Late Charges

Late Charges cannot be incurred unless the written rental agreement provides for late charges. When the agreement so provides, the landlord must specify the date rent is due, the date late charges begin to accrue, and the type and amount of the late charge. Late charges begin accruing after midnight of the 4th day after rent is due. For example, if rent is payable on the 1st, a landlord may charge a late fee on the 5th. Three types of late fees are:

- **a-per-rental period fee (flat fee):** a flat amount is charged only once per rental period, regardless of the date rent is due. The amount is based on the normal amount charged by landlords for that rental market;
- **a-per-day fee:** accrues every day until rent is paid, and is limited to 6% per day of the flat monthly late fee;
- **a 5-day period fee:** charged once for each late 5-day period and is limited to 5% of the rent payment.

Nonpayment of a late charge cannot alone be the basis of a "72 Hours" or "144 Hour" eviction notice for non-payment of rent. (90.260(6)) However, failure to pay a late fee can be a basis for eviction for cause. (90.260(6)), (90.400(1)) The landlord may also charge interest on unpaid fees.

Forcible Entry and Detainers (FED's)

A Forcible Entry and Detainer (FED) is the legal term for an eviction. A landlord *cannot* evict a tenant without a legal order (FED). If a tenant does not move by the date on the notice, then the landlord must file an FED at the county courthouse.

With any eviction notice, if the tenant does not leave within the specified time, the landlord must take the tenant to court to recover possession of the premises.

Types of Evictions

Warning: Evictions go on a tenant's record, making it difficult to find housing later.

With rare exceptions (i.e., when a lease expires on the given date), all evictions must start with a termination notice.

Serving Notices

All written notices from one party to another must by law be served by personal delivery or by "first class mail" only (**not** certified or registered mail). If a notice is served by mail, 3 days must be added before the notice will take effect. (90.155(2))

Note: The calculation of the notice period is from the date after the date of mailing or delivering the notice. (90.160)

Nail and Mail

The only exception to the above is for 72-hour and 144-hour nonpayment of rent notices, 48-hour notice of drug and alcohol free housing violations, and most 24-hour notices.

These notices may be served by “nail and mail” if it is so specified in a *written* rental agreement. The law requires that the agreement must also allow nail and mail service by the tenant to the landlord, and must describe a reasonable location for the tenant to nail and mail the notice to the landlord. One copy must be securely attached to the agreed upon location, and another is mailed first class.

Eviction Without Cause: the 30-day Notice Without Cause

The landlord may terminate a week-to-week tenancy by giving the tenant 10-days’ *written* notice, and a month-to-month tenancy by giving the tenant at least 30-days’ *written* notice. This termination date occurs regardless of any prepaid rent, such as “last month’s rent.” If the termination date does not coincide with the day of rent payment, rent is prorated. (90.427(3))

The landlord is not required to state the reason for the eviction. However, the landlord cannot use eviction without cause to discriminate or retaliate against a tenant.

Eviction for Cause: the 30-day Notice For Cause

The landlord may serve a notice terminating the tenancy for cause when the tenant:

- “materially” breaches the rental agreement;
- violates the tenant’s obligations in a way which “materially” affects health or safety;
- fails to pay late charges.

The notice must specify how the tenant has violated the lease or obligations, and must state that the tenancy will end on a date which is at least 30 days after the receipt if the notice.

The tenant has 14 days to fix the problems if it can be fixed by repairs, by paying damages or late charges, by changing conduct or otherwise. This deadline must be stated in the notice. A timely remedy will prevent the landlord from evicting on that notice.

Recurring Problems

If basically the same problem recurs within 6 months, the landlord may deliver a written notice giving at least 10 days before the termination of the agreement. (90.400(1)(d)) No second opportunity to fix the problem is required. The law clarifies that the 10-day notice for recurring problems can only be issued after 30-day written notice for cause was issued to the tenant and the date of a termination specified in the 10-day notice can’t be earlier than the date of termination in the 30-day notice.

Eviction for Nonpayment of Rent: the 72-Hour or 144-hour Notice

In a week-to-week tenancy, if the tenant fails to pay rent within 5 days, (including the first day rent is due), the landlord may serve a 72-hour written notice. (90.400(2)(a))

In month-to-month tenancies or lease agreements, if the tenant fails to pay rent within 7 days (including the first day rent is due), the landlord may serve a 72-hour written notice no sooner than the 8th day. The notice must give the tenant at least 72 hours to pay or leave. (90.400(2)(b)(A))

If the rental agreement so provides, the landlord may serve a 144-hour written notice on or after the 5th day that rent is late. The notice must allow 144 hours (6 days) for the tenant to pay the rent or leave. (90.400(2)(b)(B))

Note: Both of these notices may be served by “nail and mail” if the rental agreement so provides.

Both forms of notice must specify the date and time by which the tenant must pay the rent. If the tenant pays the rent within the 72 or 144 hours, the landlord cannot evict based on that notice. The tenant can pay by mailing the rent within the allotted time unless:

- the notice is personally served;
- the rental agreement and the notice state that payment must be made at a specific location;
- the location is available to the tenant throughout the period of notice (e.g., mail slot in the manager’s door); and
- the location specified for payment is either on the premises or at a location at which the tenant has made all of the previous payments in person. (90.400(2)(d))

Eviction for Dangerous Tenants, Illegal Subtenants and Drug Dealers: the 24-Hour Notice

The ORLTA allows a landlord to end a tenancy on 24-hours written notice “specifying the cause” if the tenant, someone in the tenant’s control, or the tenant’s pet does any of the following:

- seriously threatens immediate personal injury or inflicts substantial injury upon another tenant, the landlord, or the landlord’s agent;
- inflicts substantial injury upon a neighbor or a person who has the landlord’s or another tenant’s permission to be on the premise (i.e., a repair person);
- intentionally inflicts substantial damage to the premises;
- commits any act that is “outrageous in the extreme.” (90.400(3)(e)) An act can be “outrageous in the extreme” even if it is not a crime. The landlord’s standard of proof is by preponderance.

Note: “Outrageous in the extreme” covers conduct that is well beyond merely annoying or obnoxious. The example that prompted the term was defecating off a balcony in an apartment complex. It also includes prostitution, delivery or manufacturing of illegal drugs, intimidation which includes gang activity and burglary.

The 24-hour notice also applies if the tenant has vacated the premises and the person in possession occupies a place in violation of a written “no subletting or assigning” clause if the lawful tenant is going and the landlord has not knowingly accepted rent from the occupant. An occupant who claims that the original tenant is still in possession of the premises bears the burden of proving this to be true. (105.139)

Note: These notices may be served by “nail and mail.”

The following is also included in a reason a landlord may evict a tenant for dangerous or illegal activity:

1. If a tenant reasonably knows or should know (an objective standard) that a person is committing or is likely to commit an act that could cause the tenant to be subject to a 24-hour notice, the tenant has a duty to ask that person to leave. If the tenant fails to ask that person to leave, then that tenant can be held responsible for the acts of the other person.

Illegal Activity

If a tenant is aware of illegal activity in the premises, he/she should take steps to notify the landlord or proper authorities. The tenant may be considered part of the activity unless he/she can prove he/she was trying to stop it.

Waiver of Right to Evict

In general, a landlord waives the right to a “for cause” eviction if the landlord accepts rent or accepts performance by a tenant that varies from the terms of the rental agreement with knowledge of the breach. (90.415)

Example: If the rental agreement forbids parking in the driveway, you park in the driveway in January and the landlord was aware of it, yet accepts rent in early February, the landlord cannot evict you for parking in the driveway in January. The landlord’s acceptance of rent in early February does not protect the tenant from eviction for a breach committed after the landlord has accepted rent, such as parking in the driveway in mid-February.

There are important exceptions to this rule:

- If the landlord accepts partial rent before giving a nonpayment of rent notice because the tenant promised to pay the balance due by a certain date, the landlord can serve 72-hour or 144-hour nonpayment of rent notice to apply if the tenant doesn’t pay the balance when promised;
- If the landlord accepts partial rent after serving a nonpayment of rent notice, the parties can agree in writing that the landlord can proceed to court on that notice if the tenant doesn’t pay the balance when agreed;
- If the landlord accepts rent prorated to the time fixed for termination under a notice of eviction for cause (other than the “cause” of nonpayment of rent);
- There is no waiver if the landlord has accepted only the portion of rent paid from a public source under the Housing Act of 1937 (42 U.S.C. 1437) to supplement the tenant’s rent; and
- A landlord who has filed an eviction with (FED) based on a notice ending the tenancy for cause does not waive the right to evict by accepting rent (or serving a nonpayment of rent notice) while the tenant remains in possession of the rental, provided that the rent accepted does not cover time beyond the date it is accepted, and the tenant has written notice that acceptance of rent does not waive the landlord’s right to continue with the eviction which is under way. (90.415(13))
- If a landlord accepts rent but refunds it within 6 days, the landlord would not waive his/her right to evict. The refund may be made by personal delivery or first class mail (mailed within the 6 day period), and may be in the form of a check or cash from the landlord, or just a return of the tenant’s check.

- A landlord may accept regular weekly or bimonthly rent installments, without risking his/her right to evict.
- The landlord may also does not waive the right to evict when the landlord follows a court order to accept rent from the tenant and then pay it to the court.

Retaliation

Many tenants are hesitant to take actions to enforce their rights because they fear that the landlord will retaliate by evicting them. The ORLTA prohibits retaliatory conduct, (90.385) and retaliation may be a ground for fighting the eviction.

The landlord cannot increase rent, decrease services, serve a termination notice, evict, or threaten to evict if the motive is to retaliate against the tenant because the tenant complained, or threatened to complain in writing, to the appropriate agency for any of the following reasons:

- the premises have not been maintained according to law;
- discrimination;
- delivery of mail;
- a violation of building, health or housing codes;
- a violation of a term of a rental agreement, including failure to disclose ownership or utilities paid by the tenant;
- the landlord's abuse of access;
- interruption of service;

The landlord also cannot retaliate in response to the following actions:

- the tenant has joined or organized a tenant's union or organization;
- the tenant has asserted the right to 30-days' written notice before a rent increase;
- the tenant has testified against the landlord in any judicial, legislative or administrative proceedings, and
- the tenant has successfully defended against an eviction action brought by the landlord within the last 6 months.