

When you rent housing, there are many laws that affect your relationship as a tenant with the landlord. This pamphlet is about some of those laws.

## RENTAL AGREEMENTS

### Leases

Although a rental agreement can be written or oral, “lease” usually means a written rental agreement for a specific time, usually one year.

For a tenant, the main advantage of a written lease is that your rent cannot be raised and you cannot be evicted during that year, as long as you abide by the lease. The main disadvantage is that you may have to pay the rent for extra months if you move before the lease ends.

Read the lease carefully before you sign, and ask about anything you do not understand. If rent is shared, anyone who signs the lease may have to pay the total rent, not just his or her portion. If your lease expires and you are not offered a new one, you become a month-to-month tenant.

### Month-to-month tenant

If you do not have a lease, the landlord can increase the rent, but must give written notice of the increase (or any other significant change) 30 days in advance. Likewise, you can leave without continuing to owe rent as long as you give the landlord 30 days’ notice

In most situations a month-to-month tenant cannot be evicted without good cause. Please read our pamphlet *The Eviction Process* for a list of the reasons that you can be evicted.

## SECURITY DEPOSITS

Your landlord may require you to pay a security deposit. The amount of the security deposit cannot be more than what you pay for one month’s rent. Your landlord must return your deposit within 30 days after you leave. Please see our pamphlet *Security Deposits* for more information about the laws affecting your security deposit.

**BE SURE TO GET RECEIPTS FOR ALL PAYMENTS YOU MAKE,  
ESPECIALLY IF YOU PAY IN CASH.**

## HOUSING STANDARDS

New Hampshire law requires landlords to provide safe, sanitary housing for tenants. A state law (RSA 48–A:14) spells out minimum standards for rental property. You have the right to a home that has:

- No infestation of bugs, mice, or rats.
- Internal plumbing that works without a back-up of sewage caused by a faulty septic or sewage system.
- Safe wiring without exposed wires, the wrong connectors, bad switches or outlets, or other conditions that create a danger of electrical shock or fire.
- Roofs and walls that do not leak.
- Plaster that is not falling from the walls or ceilings.
- Floors, walls, or ceilings with no large holes.
- Porches, stairs, and railings which are structurally sound.

- No garbage or rubbish in common areas due to the landlord's failure to remove it or to provide enough containers for storage before the trash is to be taken away. This is a code violation unless you have accepted responsibility for trash removal under the lease.
- Enough water, and a water heater that works properly.
- No leaks in the gas lines, or leaks or defective pilot lights in any appliance furnished by the landlord.
- Heating facilities that are properly installed, safely maintained, and in good working condition, and that can safely and adequately heat all livable rooms and bathrooms to an average temperature of at least 65 degrees. Or if heat is included in the rent, the premises must be kept at a minimum average temperature of 65 degrees in all livable rooms.

Your local community, particularly a city or larger town, may have its own housing code, which can require your landlord to do more. Ask at your town or city hall if your town has a housing code.

## LEAD PAINT

You have a right to live in housing that is free from lead paint hazards. To find out if your apartment is safe, contact your town code enforcement officer. To find out more about the hazards of lead paint, call the Childhood Lead Poisoning Prevention Program at 271-4507

## REQUESTS FOR REPAIRS

Make all requests for repairs in writing (be sure to date it), make a copy for yourself, and give it to the landlord. If the landlord fails to make the proper repairs, report any serious problems to the town. The town or city clerk can direct you to the proper officials, usually the code enforcement officer, health officer, or building inspector. Report fire hazards to the local fire chief.

If these problems are ignored by the town, contact the State Office of Community and Public Health (271-4781) or the State Fire Marshall (271-3294). Landlords may not evict you for making complaints.

## Withholding rent

If the violations (problems with your apartment) are serious, you may want to consider rent withholding in order to get your landlord to correct code violations.

ALWAYS PUT THE RENT MONEY ASIDE AND KEEP IT IN A SAFE PLACE BECAUSE IT IS LIKELY THAT SOME OR ALL OF IT WILL HAVE TO BE PAID TO THE LANDLORD ONCE THE REPAIRS ARE MADE.

You can lawfully withhold your rent if **all** of the following conditions are met:

1. You gave your landlord written notice of the violations while you were not behind in rent. (Written notice is not an absolute requirement, but is always a good idea); AND
2. The landlord failed to take corrective action within 14 days of your written complaint. In an emergency, you may not have to wait 14 days before you begin withholding. Consult an attorney before you withhold rent in less than 14 days; AND
3. Your family or guests did not cause the violation; AND
4. Extreme weather conditions did not prevent the repairs; AND
5. You did not refuse to let the landlord into your apartment to make the repairs.

If your landlord tries to evict you for nonpayment and you can prove you withheld your rent under the above conditions, the court can postpone the hearing to give the landlord time to make repairs, and eventually dismiss the eviction.

## **Tenant protections**

It is against the law (RSA 540-A) for a landlord to:

- Shut off your utilities;
- Lock you out of your rented premises without a court order;
- Enter your residence without permission, except to make emergency repairs.  
(You should not refuse your landlord's reasonable request to enter with enough notice);
- Take any other action to force you out of your home without going through the eviction process.

If your landlord has done any of the things listed, you can get an order to make your landlord stop, and to award you damages, by filing a 540-A petition at your local district court. You do not need a lawyer nor to pay a fee to file the petition; simply ask the clerk to help you. You can ask for a temporary order if there is an immediate threat of serious harm. The court will schedule a hearing to hear from both sides, and will then decide if you should get damages and if the order should be continued. Contact LARC for more information on filing a petition.

## **Eviction rights**

In most cases your landlord has to have good cause to evict you. Please read our pamphlet *The Eviction Process* for a description of the reasons you can be evicted.

## **Retaliatory evictions**

You cannot be evicted in retaliation for exercising any of the following legal rights:

Reporting a serious code violation to a landlord or public official;

Lawfully withholding rent;

Meeting with or organizing other tenants.

Your landlord cannot evict you if you can prove the reason for the eviction was that you exercised one of these legal rights. If an eviction is begun within six months after one of these actions, it will be considered retaliatory unless your landlord can show some other good reason for the eviction, for example, if you owe more than one week's rent at the time of the eviction. Keep copies of everything that you give to your landlord or to officials.

**LANDLORDS CANNOT REFUSE TO RENT TO ANYONE BECAUSE OF RACE, CREED, AGE, SEX, COLOR, NATIONAL ORIGIN, MARITAL STATUS, PHYSICAL OR MENTAL HANDICAP, OR TO FAMILIES WITH CHILDREN.**

**FOR MORE INFORMATION, CONTACT THE FAIR HOUSING PROJECT AT NH LEGAL ASSISTANCE (1-800-921-1115) OR THE NH HUMAN RIGHTS COMMISSION (271-2767).**

This pamphlet is based on the law in effect at the time of publication. It is issued as a public service for general information only, and is not a substitute for legal advice about the facts of your particular situation.

## What is a security deposit?

A security deposit is any money that you give to your landlord, other than your monthly rental payment. Even if your landlord calls the money a deposit for cleaning, pets, or keys, or the last month's rent, the law considers it to be a security deposit.

Security deposits are regulated by state law (RSA 540-A:5-8).

## Who is protected?

All tenants are protected by this law EXCEPT:

- tenants who rent a single family home from a landlord who does not own any other rental property;
- tenants under the age of 60 who live in a building with less than six apartments and whose landlord lives in the same building; and
- tenants in business, vacation, or recreational rentals.

Even if your tenancy is not covered under the law, your landlord is still obligated to return your deposit after you move out, minus unpaid rent and/or repair costs. If your security deposit is not returned, you still may sue your landlord, although you may not be entitled to the special penalties provided by New Hampshire's security deposit law

## What is the maximum deposit a landlord can require?

A landlord cannot require you to pay a security deposit greater than one month's rent or \$100, whichever amount is larger.

If your landlord demands first and last month's rent, plus a security deposit, this may be a violation of the law.

## Your landlord is required to give you a receipt

When you pay a security deposit, the landlord is required to give you a signed receipt. The receipt must inform you:

- at which bank your deposit is kept; and
- that you have five days to give your landlord a list of defects and damages that were in the apartment when you moved in.

## Where will your money be kept?

Any security deposit you pay remains your property. The landlord is required to hold your money in trust for you. The landlord must not mix the landlord's personal funds with your security deposit, but may mix the security deposits of all tenants in a single account.

## Earning interest on your deposit

If your landlord holds your deposit for more than one year, he or she must pay you the amount of interest earned on the money in the savings account where it was deposited. You should get this money when your deposit is returned.

Every three years you can ask your landlord to pay you the interest earned on your deposit. You must do this at least 30 days before the end of the three-year anniversary of your tenancy. The landlord then has 15 days after the end of that year's tenancy to give you the interest earned on your deposit.

## When your landlord sells the property, files for bankruptcy or is in foreclosure

Your security deposit is still your money, held in trust by the landlord. Any landlord who sells the property you are renting, files for bankruptcy, or is in foreclosure, must turn over all security deposits to the new owner.

Contact the buyer, the foreclosing bank, or the bankruptcy court as soon as you hear that a sale, foreclosure, or bankruptcy is in process. This will alert the new owner, the bank, or the bankruptcy attorney of the need to collect the security deposit from the original landlord for you.

## What happens when you move?

When you move out, you must notify your landlord in writing of your new address as soon as possible and in any event within a reasonable time. To avoid problems, it is a good practice to give this notice on or before the day you move.

The landlord has 30 days from the end of the tenancy to:

1. return your full deposit with any interest owed; or
2. return your deposit minus any permitted deductions.

### **What may a landlord deduct from your deposit?**

Your landlord may deduct any or all of the following expenses from your security deposit:

- any rent that is still owed;
- the cost to repair any damages to the apartment or leased premises caused by you or your guests; and
- the tenant's share of increases in real estate taxes (but only if a written agreement requires this).

Your landlord is required to provide you with an itemized list of any damages deducted from your deposit.

An itemized list of damages deducted from your deposit must state the exact repairs necessary to correct any damage. The landlord is further required to provide evidence or proof that the repairs have been or will be completed.

Examples of evidence are: receipts for materials purchased to make repairs, labor estimates, actual invoices.

### **Normal wear and tear**

The landlord is not permitted to charge you for "normal wear and tear" to the premises. Whether or not something is considered damages or the result of normal wear depends on all the facts. Certain things like crayon marks, holes in the walls, and broken windows will usually be considered damages. Other things, such as worn carpeting or linoleum, usually will be considered normal wear and tear. If you go to court, the judge will decide whether something is normal wear and tear.

### **Protecting yourself**

You can protect yourself best by making a complete inspection of the apartment, with a friend as a witness, and writing down all of the problems in the apartment. Send a copy of this list to your landlord within 5 days of when you move in. Do the same thing when you move out.

Whether or not the law protects you, you can take steps to protect yourself.

### **Remember to:**

- Get a receipt for your deposit.
- Make a list of defects and damages when you move in.
- Give a copy of the list to your landlord and keep one for yourself.
- Give as much notice as possible of the date you intend to vacate.
- Clean your apartment and remove excess trash when you move out so the landlord cannot claim damages for "cleaning."
- Make a list of the conditions when you leave. Have a friend go through the apartment with you so you have a witness in case you have to go to court. (If possible, go through the apartment with your landlord.)
- Leave your new address with the landlord so he or she can return your deposit.

### **Suing to get your money back**

Within 30 days from when your tenancy ends, your landlord must return your full security deposit, or the portion left after deductions for unpaid rent and/or the cost of repairs.

You can sue your landlord in small claims court if you do not get your security deposit back within 30 days. Before you file a lawsuit, send your landlord a letter asking for your money back. Make sure that the letter contains your new address, and that you keep a copy for yourself.

If you decide to sue, call LARC to request the **How To Sue In Small Claims Court** pamphlet. Remember, your suit could give your landlord the chance to claim that you owe him or her additional money. You should be prepared to go to court with evidence in support of your

case, including proof that you paid your rent, and that you and your guests did not cause damage to the apartment.

### **Double Damages**

You may sue your landlord for twice the amount of your security deposit for failing to:

- pay interest;
- return your security deposit (in order to recover double damages, you must have notified the landlord of your new address within a “reasonable time” – reasonable time has not been defined, but you should probably send notice within 30 days of moving out);
- provide an itemized list of damages deducted from your deposit.

### **Special Damages**

You may sue your landlord for actual damages or \$1,000, whichever is greater, plus costs and attorney's fees, for the following violations:

- requiring a security deposit greater than permitted by law;
- failing to provide a signed receipt and notice that tenant has five days to notify landlord of defects in the apartment;
- mixing your security deposit with the landlord's own money;
- failing to transfer your deposit and notify you of the transfer when the property is sold, foreclosed or goes into bankruptcy.

If you can prove that the act was a willful or knowing violation, the court may award as much as three times the amount of damages.

### **Landlord's rights**

Your landlord can sue you if the deposit was not enough to pay for damages and/or rent owed. Your deposit could become the landlord's property after 6 months if you fail to communicate your new address.

### **If you are facing eviction**

If your landlord tries to evict you and sues for back rent in the same action, you can make a counterclaim for any damages you are owed for security deposit violations (and other possible counterclaims). When you file your appearance in the eviction action, you need to notify the court and your landlord, on the appearance form, of your counterclaim for damages. Then, when the eviction case is decided, the court will also decide on your security deposit damages. Any damages you are entitled to will be deducted from any award your landlord gets for back rent, and if your damages are greater than the rent claim, you might even win the eviction. See our pamphlet *The Eviction Process*.

Remember, before you sue:

- NOTIFY the landlord or your new address.
- SEND the landlord a letter asking for your money back.
- CONSIDER the claims the landlord could make against you.
- CALL LARC to request the *Small Claims Court* pamphlet.

## Your Site Printable Page



### The Eviction Process

If you rent, your landlord cannot force you to leave your unit unless he goes through the court system and uses the eviction process.

- In order to evict, a landlord must always follow the correct procedure.
- In most situations, he must prove that he has good cause to evict.
- You must be given written notice at the beginning.
- You have a right to a court hearing.

**Click on any of the topics listed below to go directly to the information you need about the eviction process. Remember, more housing information is available in LARC's other pamphlets and information sheets — if your question is not answered here close this window, or [click here](#), to go back to the self-help information list in the Housing section of this website.**

- [Written notice](#)
- [Notice to quit](#)
- [The Court Process](#)
- [Landlord/Tenant Writ](#)
- [Appearance Form](#)
- [Discovery](#)
- [Going to Court](#)
- [What the landlord must do to evict](#)
- [Tenants defenses](#)
- [Non-Payment Evictions](#)
- [Demand for rent](#)
- [Notice to quit in non-payment cases](#)
- [Retaliation](#)
- [Discrimination](#)
- [Discretionary Stay](#)
- [Writ of Possession](#)
- [Personal Property](#)
- [Appeal](#)

## WRITTEN NOTICE

### Notice to quit

In all evictions your landlord must serve you with a notice to quit. This is the actual eviction notice. If the eviction is for non-payment, you will first receive a demand for rent ♦ see [Non-payment Evictions](#) below. Both notices must be in writing.

- The notice must be handed to you or to someone in your family, or left at your home (a sheriff does not have to serve it).

- The notice must tell you the specific reason for the eviction.
- The notice must tell you the day you have to leave.
- The notice must give you at least 7 days to leave if the reason for the eviction is because:
  - your rent is unpaid;
  - you or your guests have done something that threatens the health or safety of other tenants or the landlord; or
  - you or your guests have caused substantial damage to the premises.
- If the reason is anything else, the notice must give you at least 30 days to leave.
- If the reason is nonpayment of rent, the notice to quit must tell you of your right to avoid eviction by paying the rent that is owed, plus \$15.

**If a landlord fails to take any of the steps described above, a tenant can ask the court to dismiss (drop) the eviction.**

[\[return to top\]](#)

## THE COURT PROCESS

**You do not have to move out by the date the notice to quit expires.** Only a judge can issue an order requiring you to move out, and a landlord cannot force you to leave against your will without a court order.

### Landlord/Tenant Writ

If you have not left by the time the notice to quit expires, the landlord can begin the legal process at the District Court.

- The sheriff will serve a writ, either by handing it to you or to someone in your family, or by leaving it at your home.
- Read the entire writ carefully. The first paragraph will tell you the deadline for requesting a hearing ♦ you do **NOT** have to leave by this date, and this is **NOT** the date of your hearing.

If you want a court hearing to challenge the eviction or to ask for more time, you must ask for a hearing before the date on the writ.

If the writ says that your landlord is asking for unpaid rent, the hearing may also result in a money judgment which can be enforced against you. The most your landlord can ask for at this point is \$1500. Unless you agree with the amount the landlord claims you owe, you should ask for a hearing, even if you have already moved.

### Appearance form

You request a hearing by filing an appearance form on or before the date stated on the writ. This is a simple form that you get from the court. You need to fill out the appearance form, leave it with the clerk, and send a copy to the landlord or the landlord's attorney.

After you file your appearance, the court will notify you by mail telling you the date of your hearing, which will usually be within the next 10 days.

If you want your hearing recorded you can check a box on the appearance form.

### Discovery

Discovery is how you find out more about the evidence your landlord has against you. You do this

by asking the landlord written questions (interrogatories) about your case, which he is required to answer. If you have sent interrogatories and your landlord has not responded in time, you have the right to ask the court to postpone the date of your eviction hearing until your questions have been answered. For more information about using discovery, please call LARC, or visit the Housing section of our website and click on "Discovery Information Sheet."

[\[return to top\]](#)

## GOING TO COURT

**IF YOU MAKE AN AGREEMENT BEFORE THE HEARING, PROTECT YOURSELF BY GETTING IT IN WRITING. IF YOUR LANDLORD HAS AGREED TO WITHDRAW THE CASE, CHECK WITH THE COURT BEFORE THE DEADLINE TO MAKE SURE.**

### What the landlord must do to evict

In most cases your landlord has to have good cause to evict you. The notice to quit must state the specific reason for the eviction. At the eviction hearing, your landlord must prove that you are being evicted for one of the reasons stated in the notice to quit. If he cannot prove the reason that was stated on the notice to quit, or if the reason is really something else, the court should not allow the eviction. Your landlord may only evict you by proving one of the following reasons:

- Nonpayment of rent;
- Substantial damage to the premises;
- Violation of the lease;
- Behavior of the tenant or members of the tenant's family that harms the health or safety of others;
- Lead paint hazard [call LARC if this is the stated reason];
- Other good cause (when you don't have a written lease). Before beginning an eviction for something that you did wrong, the landlord must first give you a written warning.

Generally, "good cause" evictions only apply to month-to-month tenancies. Good cause does not always mean something that you did wrong. The landlord can have a legitimate business reason for needing you to move; in that case, a warning is not required. If you have a written lease, you generally cannot be evicted for good cause during the term of the lease, but only for violations of the written lease itself.

### Tenant's defenses

To win the right to stay in your rental property, you must convince the court:

- that the reasons stated on the notice to quit are not true; or
- that the landlord has not followed the correct procedure (see the section [WRITTEN NOTICE](#));  
or
- that the landlord does not have good cause to evict you; or
- in an eviction for nonpayment of rent, that you do not owe the money.

[\[return to top\]](#)

## NON-PAYMENT EVICTIONS

### Demand for rent

If you are being evicted for not paying rent, the first notice you should receive is a demand for

rent.

- The demand tells you how much rent you owe.
- The demand cannot ask for more rent than you actually owe.
- The demand must be handed to you or to someone in your family, or left at your home
- You should receive the demand before the notice to quit or at the same time.

### **Notice to quit in non-payment cases**

After the demand for rent, you should still receive a notice to quit. The notice must tell you:

- the day you have to leave
- the specific reason for the eviction
- that you have the right to avoid the eviction by paying the rent owed plus \$15 by the time the notice to quit expires.

In a non-payment eviction, the only money a landlord can ask for is unpaid rent. To prove that you do not owe the landlord money, and to be able to stay, there are several defenses that you may raise. The defenses include that:

- you do not owe the rent the landlord claims you owe; or
- you were rent withholding (see our "Tenant Rights" pamphlet for details); or
- the landlord owes you more than you owe the landlord. Your landlord might owe you money due to:
  - violations of the security deposit law (see our "Security Deposit" pamphlet);
  - poor conditions in your apartment which made it worth much less than the rent your landlord charged;
  - violations of RSA 540-A, for locking you out or shutting off your utilities (see our Tenant Rights pamphlet);
  - money your landlord owes you for any other reason.

You must notify the court and the landlord by the return date on the writ if you want to raise defenses that will reduce the amount of money you owe the landlord. You do this by writing on the appearance form that you intend to raise these defenses (see the section [Appearance form](#)).

Before you raise any of these defenses, please call LARC for further assistance.

### **Retaliation**

Your landlord cannot evict you in retaliation for:

- organizing other tenants,
- reporting housing code violations, or
- withholding your rent in order to get repairs made.

### **Discrimination**

It is unlawful for your landlord to evict you if you are being treated differently because of your:

- age

- sex
- race
- creed
- color
- marital status
- familial status
- physical disability
- mental disability
- national origin.

Retaliation or discrimination can be defenses that can defeat an eviction. See our "Tenant Rights" pamphlet for details.

### **Discretionary stay**

In all evictions, the court has the authority to grant a stay of up to 90 days -- during that time the writ of possession is "stayed" (delayed) by the court. The judge may grant all, none, or part of the 90 days allowed by law. You **MUST** pay rent weekly in advance during the stay period. **If you miss a payment, the landlord can immediately go back to the court and obtain a writ of possession.**

If you want to ask the judge for more time, you should do so before the hearing is over. Try to give the judge good reasons for letting you stay - among other things, the judge can consider:

- how hard you have tried to find a new place
- how difficult it will be for you to move right away
- whether your children will have to change schools
- whether you can pay rent during the stay
- whether you have a definite date for moving
- whether a delay will harm the landlord.

If the court grants a delay, at the end of the stay period the landlord still must serve you with a writ of possession.

[\[return to top\]](#)

## **WRIT OF POSSESSION**

If you lose at the hearing or if you are defaulted (for not filing an appearance or for not coming to the hearing), the court will issue a writ of possession. This writ gives your landlord the right to remove you from the property. You may receive a warning or a visit from the sheriff first, and then the sheriff will return to remove you from the property. It is best to remove your personal property before this happens.

Until the writ of possession is served on you by the sheriff, it is unlawful for your landlord to force you to leave the property. If your landlord locks you out, shuts off your utilities, or tries to make you leave without going through the eviction process, he is violating the law -- you can go to your District Court, ask for a 540-A petition, and request the court to order your landlord to stop. See our "Tenant Rights" pamphlet for more information.

## **PERSONAL PROPERTY**

If you leave any of your property behind when you move, your landlord is still legally obligated to

take care of your personal property for 28 days after you move out. After the writ of possession, you can no longer come and go as you please, but your landlord must cooperate in making arrangements for you to come back to get your belongings. This usually means calling your landlord for an appointment to pick up your property. During these 28 days, the landlord must allow you to return for your property upon request, without requiring payment of any rent or storage fees. After 28 days, the landlord may dispose of your belongings without notice to you.

[\[return to top\]](#)

## APPEAL

You can appeal your case to the NH Supreme Court. To be able to appeal, you must file a notice of intent to appeal with the District Court within 7 days of the date on the notice of judgment, followed by a formal appeal to the Supreme Court within 30 days of the judgment.

Please call [LARC](#) for more information.

---

**Call LARC at  
1-800-639-5290 or 603-224-3333**

### Mailing Address

LARC  
48 South Main St.  
Concord, NH 03301

### Other brochures

Child Support	Security Deposit
Divorce/Separation	Tenant Rights
Domestic Violence	Town Welfare
Eviction Process	Child Custody
Auto Repair	Debt Crisis
Small Claims	Auto Repossession

**Call LARC at 1-800-639-5290 or 603-224-3333**

Este panfleto esta' obtenible en Espanol.  
Para pedir una copia, llame al  
1-800-639-5290 o al 603-224-3333.

This information is based on the law in effect at the time of publication. It is issued as a public service for general information only, and is not a substitute for legal advice about the facts of your particular situation.

HOME

GET LEGAL ASSISTANCE

AGENCY DIRECTORY



© Copyright, 2008 Legal Advice & Referral Center 48  
South Main St., Concord, NH 03301.  
Telephone: 1-800-639-5290 or (603) 224-3333 | FAX:  
(603) 224-6067 | [webmaster email](#)

