



**Ohio Landlord Tenant Law
PATH QUARTERLY MEETING**
November 16, 2016

Joe Maskovyak
Affordable and Fair Housing Coordinator
Coalition on Homelessness and Housing in Ohio

About COHHIO & the Presenter

Coalition on Homelessness and Housing in Ohio

- www.cohhio.org
- Mission of ending homelessness and promoting affordable housing through public policy advocacy, training and technical assistance, research, hotline advice, and public education

Joe Maskovyak

- Affordable and Fair Housing Coordinator

Overview

Training will provide a general overview of:

- Ohio's Landlord Tenant Law (Ohio Revised Code or ORC 5321)
- Review of ORC 1923- Eviction Law
- Legal Advice and Tips in dealing with landlords

Overview

Training is NOT intended to cover:

- Housing Affordability & Availability Issues
- Fair Housing Act
- Violence Against Women Act (VAWA)
- Affordable/subsidized housing programs
- Tenant Organizing
- Bed Bugs

Agenda Details

Part 1: Introduction to Terms and Duties

- General Applicability of ORC 5321

- Basic Tenant, Landlord, Residential Premises definitions

- Rental Agreement definition and requirements

- Selected Duties and Rights of Landlords and Tenants

Agenda Details

Part 2: Understanding Common Issues

- Entry and Right of Access

- Repairs and Remedies

- Fees and Deposits

- Termination and Eviction

Agenda Details

Part 3: Preventing and Addressing Problems

- Landlord Tenant Relationship
- Tips on how to Avoid Problems While Renting



Part 1: Introduction to Terms and Definitions

Important Principles

- Landlord Tenant Relationship is a business relationship



- Legal Advice can only be given by an attorney
 - Can be a fine line between legal advice and education/information

Tenant

- A person entitled under a **rental agreement** to the use and occupancy of residential premises to the **exclusion of others**
- Some circumstances can be tricky:
 - Guest, visitor
 - Living at premises, but not on the lease
 - Unclear rental agreement (ambiguity/conflicting terms)

A lease/rental agreement is a binding legal contract. One should never sign a a contract without 1st reading and understanding its contents

Landlord

- The owner, lessor, or sublessor of residential premises, OR
- The agent of the owner... or any person authorized by the owner... to manage the premises or to receive rent from a tenant under a rental agreement

• **Tip: Be sure the landlord is really the landlord**

Residential Premises

- A dwelling unit for residential use and occupancy and the structure
 - Does not include: prisons, jails, hospitals, tourist homes, hotels, motels, boarding schools, most shelters (homeless, domestic violence, juvenile, generally <60 days)
 - Mobile Homes are covered by ORC 4781
 - May include transitional housing



Rental Agreement

- “Rental Agreement” means any agreement or lease, **written or oral**, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties

- **Tip: Put agreement in writing or have a neutral 3rd party witness to oral agreement**

Types of Rental Agreements

- **Month-to-Month**
 - Benefits: flexibility
 - Detriments: Not protected from rent increases &
 - No guarantee of long term availability
 - May also be weekly, bi-weekly, etc.
- **Lease for a term**
 - Guarantee of premises for specific term (1 yr. typically)
 - Benefits: no rent increases during term
 - Detriment: locked in for 1 year, no flexibility
- **Subsidized programs: HUD, USDA, LIHTC, etc.**
 - “Good Cause” for termination
 - Income-based or ceiling rent, restrictions on rent increases



Prohibited in Rental Agreements

- **Prohibited Terms**
 - Confess Judgment
 - Tenant gives up the right to a defense against a claim
 - Tenant required to pay landlord’s attorney’s fees no matter the outcome of a legal dispute
 - **Shifting landlord duties to the tenant**
 - Have tenant indemnify landlord from liability
- **Prohibited Actions**
 - No self-help evictions (lockouts) or utility shut-offs

Rental Agreement term that is "bad"

- **Unconscionable (unfair, illegal) terms**
 - A court may rule to refuse to enforce a rental agreement
 - OR (more likely)-
 - A court may elect to enforce the rental agreement without the unconscionable clause
 - There is no definition of "unconscionable"
 - Often used to attack unreasonable late fees (but reasonable late fees are OK)

Duties of Landlords and Tenants

<p>Landlord Duties 5321.04</p> <ul style="list-style-type: none"> • Put and keep premises in a fit and habitable condition • Keep all electrical, plumbing, heating, and ventilation systems in good working order • Maintain all appliances and equipment supplied or required to be supplied by him/her (no duty to supply appliances) 	 	<p>Tenant Duties 5321.05</p> <ul style="list-style-type: none"> • Keep the premises safe & sanitary • Use electrical and plumbing fixtures properly • Keep the plumbing fixtures as clean as their condition permits <p>Maintain the appliances supplied by the landlord in good working order</p>
--	---	---

Duties of Landlords and Tenants

<p>Landlord Duties ORC 5321.04</p> <ul style="list-style-type: none"> • Provide garbage cans and arrange for trash removal, if the landlord owns four or more residential units in the same building • Comply with building, housing, health and safety codes • Give at least 24 hours notice, unless it is an emergency, before entering a tenant's unit and enter only at reasonable times and in a reasonable manner 	 	<p>Tenant Duties ORC 5321.05</p> <ul style="list-style-type: none"> • Dispose of rubbish properly • Comply with housing, health, and safety codes that apply to tenants • Permit landlord to enter the dwelling unit, if the request is reasonable and proper notice is given
--	--	--

Duties of Landlords and Tenants

Landlord Duties

- Evict the tenant when the landlord has “actual knowledge” of drug activity by the tenant, a member of the tenant’s household or a guest of the tenant occurring in or otherwise connected with the tenant’s premises

Tenant Duties

- Comply with state or municipal drug Laws in connection with the premises and require household members and guests to do likewise



Duties of Landlord

- Supply running water, reasonable amounts of hot water and heat, unless the hot water and heat are supplied by an installation that is under the exclusive control of the tenant and supplied by a direct public utility hook-up



Duties of Tenant

- Refrain from damaging the premises and keep guests from damaging
- Refrain from disturbing any neighbors and require guests to do the same



Part 1 Summary

- Definitions: rental agreement, landlord, tenant, residential premises
- Types of Rental Agreements & Requirements
- Identify and distinguish duties of landlord and tenant



Part 2: Understanding Common Issues

*None of the information in this presentation is legal advice. For legal advice, contact an attorney.

Entry and Access

Landlord 5321.04

Give at least 24 hours notice, unless it is an emergency, before entering a tenant's unit and enter only at reasonable times and in a reasonable manner

Tenant 5321.05

Permit landlord to enter the dwelling unit, if the request is reasonable and proper notice is given

Entry permitted for: repairs, inspections, show the unit, etc.



What is "reasonable" entry?



- Reasonable not defined in ORC 5321
- General Principles
 - 24 hours notice is presumed reasonable
 - Knock before entering
 - Announce presence before opening door/crossing the threshold
 - Timing can be negotiated
 - Purpose and time of day must also be reasonable

Repairs and Remedies: 5321.07

If a tenant reasonably believes that a landlord has failed to fulfill an obligation under the law or lease:

1. Give **written notice** (emails & texts count) to the landlord (person or place where rent is normally paid) **Tenant should date, sign, & keep a copy for their own records**
2. After LL receives notice, wait reasonable time, considering the severity of the condition and time necessary to remedy it, not more than 30 days

If Landlord Does Not Remedy

- **Tenant may take legal action**
 - Escrow with local Clerk of Courts (pay rent to court at time rent is due)
 - Apply to the court for an order to compel the repairs (find an attorney)
 - Terminate the rental agreement
- **Exceptions:** If landlord gives written notices that s/he owns 3 or fewer units, a tenant may not take legal action; also N/A to student housing

General Escrow Requirements

- **Have to be current in rent**
- Have to deposit your full amount of rent with local Clerk of Courts at time rent is due
 - May have specific procedures or requirements
- Can't deposit in "bad faith"
- If LL (Owner AND Agent) doesn't disclose his/her name and address to the tenant, then they give up the right to a notice before the tenant takes legal action

Rent Amount, Fees and Deposits

- **ORC 5321 does not cover:**
 - Rent Increases
 - Late fees specifically (no defined limit)
 - Application Fees
 - Deposit to "hold" the unit (NOT a security deposit)
- **ORC 5321 only covers:**
 - Security Deposits (no limit on amount)
 - Late fees cannot be "unconscionable"

Security Deposits: 5321.16

- **NO LIMIT on amount**
 - If amount is more than one month's rent, 5% annual interest on surplus



- **LL's have 30 days to return it after tenant leaves**
 - Tenant must give written notice of forwarding address
 - LL must itemized deductions and charges
 - Tenant can sue for double amount believed to be **wrongfully withheld** if not returned

Termination vs. Eviction

<p>Termination ORC 5321.17</p> <ul style="list-style-type: none"> • 30 DAY NOTICE FOR MONTH-TO-MONTH <ul style="list-style-type: none"> – RUNS WITH RENT CYCLE <p>NOTICE TO CURE FROM LANDLORD TO TENANT TO CURE PROBLEM BECAUSE TENANT NOT FULFILLING DUTIES (ORC 5321.11)</p>	<p>Eviction ORC 1923</p> <ul style="list-style-type: none"> • A landlord can bring an eviction action: <ul style="list-style-type: none"> – Tenant failed to pay rent on time – Stayed in the unit after the termination or expiration of rental agreement (holdover) – Tenant breaches lease or law 
--	--

Eviction Eviction Notice 1923.04

- **Serve Notice to Vacate (3 Day Notice)**
- Magic language: "You are being asked to leave the premises. If you do not leave an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."

- Must wait 3 days to file
- Magic language must be "conspicuous"
- Counting: Include Saturdays, Sundays, Holidays???

- Local courts may have sample forms for landlords

General Eviction Procedures

- Landlord or attorney files an eviction action at the local court where property is located
- The local Court will schedule a hearing and send a summons to the tenant
 - **First Cause-** Right to the Possession of the Property
 - **Second Cause-** Recovery of Damages
 - Often NOT done at same time
 - First Cause is an "expedited proceeding"
- If landlord gets favorable decision, tenant has to move
 - Landlord can arrange to have tenant's belonging removed by executing (set out) on the writ of restitution

Possible Eviction Defenses

****Treat this info as general information, and a cue to contact an attorney**

- Landlord gave the tenant a 3 Day Notice after filing an eviction action in court or did not wait 3 days
- The Notice didn't include language required by law
- 3 Day Notice served during "grace period"
- Landlord accepted "current" rent after giving 3 Day Notice
- Landlord routinely accepted late rent (pattern & practice)
- Tenant offered rent in full on time, but landlord refused
- Landlord(agent) is not the owner, and attorney didn't file

Cleveland Tenants Organization, <https://sites.google.com/a/clevelandtenants.org/cleveland-tenants-organization/home/cio-programs/eviction-diversion-services/legal-defenses-that-might-stop-an-eviction>

Self-Help Eviction: ORC 5321.15

• Any action of landlord outside of court approval to remove tenant, or:

- Shut off utilities
- Change the locks
- Seize the tenant's possessions



Consequences: Landlords who violate the prohibition on self help evictions and utility shut-offs are liable for damages and attorney fees and may be subject to injunctive relief

Part 2 Summary

- **Common Issues:**
 - Entry and Access
 - Repairs and Remedy
 - Security Deposits and Fees
 - Termination and Eviction
 - Eviction procedure and rights



**Part 3:
Preventing and Addressing
Problems**

Landlord Tenant Relationship

Treat as a Business Relationship

- Landlord is responsible for providing a housing in exchange for rent money



Tip: Avoid rental agreements with friends and family

Preventing Common Problems

Document the following information:

- Landlord's Name, Address, Phone Number(s)
- Rent Amount \$___ and Due Date___
- Late fee of \$___ after ___
- Lease Date from ___ to ___
- Security Deposit: \$___
- Utilities paid by Tenant: ___ Landlord: ___

Preventing Common Problems

- Communicate in writing
- Get receipts (but can't demand) for all rent paid (checks are better than money orders)
- Keep all correspondence for records
- Don't wait to address a problem



Dealing with Existing Problems

- **Tenants are encouraged to communicate in writing and document conditions and problems**
 - Writing typically means on paper (ink pen, typed best)
 - Email may be acceptable (keep electronic file)
 - Pictures
 - Video
 - Keep records/logs



Tip: Be persistent!

Legal Advice v. General Info

- **Do not provide legal advice unless you are an attorney**
 - Legal advice: advising people what to do in specific situations governed by the law
 - Provide general information is not legal advice
 - Use disclaimers every time and often (ex. "I'm not an attorney and can't provide legal advice")
 - Let the tenant make their own decisions

Resources

- **Rental Rights Questions**
 - COHHIO
 - 888-485-7999 (Housing Information line) or rentinfo@cohhio.org
 - Information available for individuals and organizations
- **Eviction Court Mediation (where available)**
- **Local Code Enforcement**
- **County Health Department**
- **Legal Aid**

Part 3 Summary

- **Landlord Tenant Relationship**
- **Preventing and Dealing with Common Issues**
- **Legal Advice vs. General Information**

Questions?

- Joe Maskovyak
- Affordable & Fair Housing Coordinator
- joemaskovyak@cohhio.org
- 614-280-1984x133
