

Chapter 3

THE RENTAL AGREEMENT *(Otherwise Known As the Lease)*

A lease is a contract containing promises between you and the landlord. There are two types: a written lease and a spoken or oral agreement. Both are recognized by the courts and can be legally binding. Understanding what you are agreeing to when signing a lease or what you are agreeing to orally with your landlord is very important. The most common written lease is the standardized form lease. A standardized written lease may contain certain clauses that are considered illegal in Chicago and, therefore, cannot be enforced by a court. Also, an oral promise (to make repairs, for example) made by the landlord prior to signing the lease may not be binding if it is not added to the written lease.

Take the time to read the lease and be prepared to ask your landlord questions. Compare the terms given to you by your landlord with Chicago's Residential Landlord and Tenant Ordinance Summary ("the Summary"). The landlord must give you this Summary when you enter or renew a rental agreement. While renters may not be in the best position to negotiate terms in the rental agreement, reading the Summary of the Ordinance that your landlord should give you will alert you to rights that you may not even know you have. You may never have any problems with your landlord, but if you do, the more educated you are about your rights and what your lease contains, the better prepared you will be to handle them. Remember, knowledge is power! Read on for more detailed information.
[For information on Housing Choice Voucher Program Leases, please see Chapter 13.]

Oral Leases

1. Oral Leases (Spoken Agreements) Are Contracts

Oral leases are legal. There is no law requiring a written lease. The only exception to this rule is an agreement to rent an apartment for more than one year. Leases over a year must be in writing. If you and your landlord decide to have an oral agreement for a length of less than one year, it can be made for any length of time. In Chicago, these are sometimes week to week leases but are most commonly month to month leases. In a month-to-month, you agree to pay rent every month on or before a set date. Your tenancy continues automatically each month until you or your landlord properly terminate it.

2. Notice is Required to End the Lease or Change the Terms

If you, as a party to an oral lease, want to end the tenancy, you must give written notice to the landlord. Likewise, if your landlord wants to end your tenancy, he must notify you in writing. The length of notice required is at least thirty (30) days for month-to-month tenancies. The courts are very strict in enforcing the length of time provided by the notice. A judge will find a twenty-nine (29) day notice insufficient, and any eviction case based on an insufficient notice will be dismissed. Similarly, if the tenant fails to give sufficient notice prior to vacating the apartment, the tenant may be liable for additional rent.

If the landlord wants to change any of the agreed upon terms or conditions of the oral agreement, the law also requires that thirty (30) days written notice be given to the tenant before any change can take place. Common changes include a rent increase, use of storage areas, or moving the rent payment date.

3. Notice Must Be Served at the Proper Time

A notice to end or change an oral lease must be served within the proper time for the notice to be legally effective. For example, in a month-to-month agreement, if the rent is due on the first day of the month and the landlord wants to terminate your tenancy or raise your rent at the end of that month, the landlord must serve the notice on or before the last day of the prior month in a month of 30 days. This means that to terminate a tenancy or raise the rent at the end of June, for example, the landlord must serve the notice no later than the last day in May. If the landlord wants to end the tenancy or change one of the terms or conditions for the end of a month that contained 31 days the law requires that s/he serve the notice on or before the first day of the month.

4. Tenant Must Give Notice to Landlord before Terminating

The law also requires that you give the landlord at least a thirty- (30) day notice if you want to end you month-to-month lease. Failure on your part to provide the proper notice could allow the landlord to deduct one month's rent from your security deposit or allow your landlord to sue you for an additional one month's rent. If you are a week-to-week or month-to-month tenant, keep copies of all the notices you send to the landlord and records of the dates you served the notices. Send them by certified mail, if possible.

5. Retaliation Is Illegal!

Neither party is required to state a reason for the termination of a month-to-month tenancy. However, you should always analyze the landlord's possible motivation for wanting you to move out or increasing the rent. The Chicago Residential Landlord and Tenant Ordinance, as well as Illinois Law, makes it illegal to retaliate against you for making a complaint to City officials about the condition of your apartment, seeking assistance of a community organization regarding building code violations, or exceeding other legal rights or remedies. Chapter 10 contains information regarding landlord retaliation.

Written Leases

1. Tenants Should Read Written Leases Carefully

A written lease is a contract (much like any other contract) between the tenancy and the landlord. Its purpose is to express the intentions of the parties to the agreement. Experienced renters know too well that tenants have little, if any, bargaining power with landlords. You should always read the entire lease carefully before signing it because the clauses contained in it may be legally binding. The law does make some residential lease clauses unenforceable, whether or not you sign the lease, but the best safeguard is to read the contract and know what you are signing. The Chicago Residential Landlord and Tenant Ordinance list several of these unenforceable clauses and further discussion of them follows.

2. Written Leases Can Be Modified

When the landlord presents a lease, an offer is being made. Every clause in the lease can be negotiated and changed. You should not hesitate to ask about provisions or clauses that you do not fully understand. If there is a provision that is unacceptable, attempt to have the landlord cross it out or modify it. Just remember that if you recognize an illegal clause in your lease (which is a real possibility once you have become familiar with this booklet!), it is unenforceable even if you accept the lease and sign it.

3. Promises Not in the Written Lease May Not be Binding

If the landlord makes an oral promise to repair or provide other services, or to reduce your rent in exchange for your working on the building or paying part of the building's utilities, make sure that these promises are put in writing. You can either write these directly on the lease or on an attached piece of paper called either a rider or an addendum. Once you sign the lease, the deal is done. The courts may not recognize any promise by the landlord made before you signed the written agreement. Make certain that all agreements are either written into the lease or that any rider is signed by both parties and attached to the lease.

4. Make a Copy Of The Written Lease

You should make a copy of the lease after you sign it and before you give it back to the landlord. You are entitled to a signed copy of your lease, but many landlords fail (and even refuse) to return copies of the signed lease to the tenant. Insist on this. It is your right.

5. Unenforceable Lease Clauses

The Municipal Code of the City of Chicago recognizes that landlords—due to the scarcity of decent affordable housing—have superior bargaining power over tenants when it comes to negotiating rental housing. As mentioned previously, the Ordinance prohibits landlords from enforcing certain clauses that they put in leases. You may be able to recover actual damages sustained because of the enforcement of a prohibited provision. If the landlord attempts to enforce a prohibited provision, the tenant may recover two months' rent as damages under the Ordinance. For dwelling units located in the City of Chicago and covered by the Residential Landlord and Tenant Ordinance, **the following types of lease clauses may not be enforced:**

a. Waiver Clauses

Any clause that WAIVES, or forgoes, the RIGHTS, remedies, or obligations of the Ordinance is unenforceable. For example, the landlord cannot waive his obligation to maintain the premises in compliance with the building code. Tenants can use the remedies provided in the Ordinance, such as repair and deduct, even if the lease says they cannot.

b. Confession Clauses

Any clause that authorizes any person to CONFESS JUDGMENT on a claim arising out of the rental agreement is unenforceable. A confession of judgment clause allows the landlord to go into court, without notifying the tenant, and obtain a judgment for rent or possession against the tenant by showing the judge the lease clause in which the tenant “admits” that the landlord deserves to obtain the judgment. State law also renders such clauses null and void in consumer transactions.

c. Liability Limitation Clauses

Any clause that LIMITS the legal LIABILITY of the landlord or Tenant is unenforceable. The landlord cannot limit his or her responsibility for injury or damage suffered by the tenant due to the landlord’s intentional or negligent actions. State law, as well as the Ordinance, prohibits landlords from using these clauses.

d. Waiver of Proper Service Clauses

Any clause that waives the proper service of any written TERMINATION OF TENANCY NOTICE required by law is unenforceable. The law requires a written termination of tenancy notice to be served on the tenant in the proper manner before the landlord can begin an eviction lawsuit. A landlord cannot change any of these requirements with a clause in the lease. In apartments not covered by the Ordinance, the landlord can put in a clause that waives your right to the proper manner of termination as described in the Ordinance. However, if the landlord elects to give you notice, he or she must still follow legal requirements set out by state law.

e. No Jury Trial Clauses

Any clause that WAIVES a person’s right to a way JURY TRIAL is unenforceable. Tenants must make their request for a jury trial – called a jury demand – on or before the date the court hears the case for the first time. If the tenant fails to do so, the tenant risks losing the right to a jury trial.

f. Attorney’s Fees Payment Clause

Any clause that provides that the TENANT will PAY the landlord’s ATTORNEY’S FEES for a lawsuit arising out of the tenancy, except as provided by court rules, statute, or ordinance, is unenforceable. Landlords use such a clause to make you pay his or her attorney fees even if you as the tenant win the case.

The ordinance only gives attorney fees to the prevailing plaintiff in lawsuits brought to enforce the rights and remedies protected by the ordinance.

g. Unequal Cancellation Clauses

Any clause that permits either you or your landlord to CANCEL or TERMINATE the rental agreement at a DIFFERENT TIME or within a shorter period than the other

party-unless you agree to it on a separate written document – is unenforceable. Under the Ordinance, a landlord may not enforce a lease clause that allows him or her to cancel the lease without giving the tenant the equal right to cancel.

For example, landlords may not use a clause that allows them to terminate the lease upon the sale of property unless they give tenants the same right, or unless they disclose this clause in another written document that is clear and unconditional. Be aware that if you live in an apartment not covered by the Ordinance (an owner-occupied building with six or less apartments). This type of clause may be allowed, However, any such one-sided clause must be clear, absolute, and unconditional.

h. Excess Late Fee Clauses

Any lease clause that authorizes the landlord to assess a LATE FEE or RENT DISCOUNT for early payment in EXCESS of the amount set by the Ordinance is unenforceable. The Ordinance originally prohibited landlords from charging a late fee over \$10.00 per month. However, some unscrupulous landlords attempted to get around this by offering tenants a “discount” of \$25.00, for example, if they paid the rent before the first month. This proved to be nothing more than a hidden and excessive late fee. The Ordinance was amended to prevent this practice.

Now, the maximum late fee or discount for early payment is \$10.00 per month for tenants who pay \$500.00 or less in monthly rent. For those tenants who pay more than \$500.00, the maximum late fee is \$10.00 plus 5% for any amount of monthly rent in excess of \$500.00. For example, a tenant who pays \$600.00 in rent per month could be legally assessed a late fee of \$15.00 per month: \$10.00 for the first \$500.00, plus 5% of the additional \$100.00 or \$5.00; $\$10.00 + 5.00 = \15.00 .

i. No Subletting Clauses

Under the Ordinance, any clause in your lease that does not allow you to sublet your apartment is unenforceable. Tenants have the right to rent out their apartments for part or all the remaining time on the lease. However, the subtenant must meet the same qualifications applicable to all tenants.

6. Lease End On The Stated Termination Date

If you have a lease with a specified termination date (rather than one that renews automatically each month), it will automatically end on that date unless some event – such as a breach of the lease you may move out, the landlord may choose to treat you as a holdover tenant and may file an eviction against you.

7. New Tenancy Created if Rent is Accepted After Termination

If you stay beyond the termination date and the landlord accepts rent from you, a new month – to – month tenancy is created, and must be terminated as set out in the oral lease section of this chapter.

8. Landlord Is Required To Give Notice of Non-Renewal

The Ordinance requires your landlord to give you notice in writing at least thirty (30) days prior to the termination date of the rental agreement if the landlord intends not to renew the existing rental agreement. If the landlord fails to provide the written notice, you may remain in the dwelling unit for up to (60) sixty days after the date the landlord gives you written notice of non-renewal. The terms and conditions

of tenancy during this 60-day period remain as they were under the previous rental agreement before it ended.

9. The Ordinance Limits the Renewal Period

The Ordinance prohibits the landlord from requiring you to renew a rental Agreement more than ninety (90) days prior to the termination date of your current rental agreement. If the landlord violates this provision, you can recover one month's rent or actual damages, whichever is greater.

Unfortunately, the Ordinance is silent on the amount of time a landlord must allow you to accept the new lease. During the lawful (90) ninety day period, the landlord can still pressure you to sign the new agreement quickly, for example, by allowing you only one week to accept the new lease or face non-renewal.