

## **LEASES**

Please be advised that the information presented is for reference only. You should contact an attorney relative to any legal questions you may have.

A lease is a contract. A residential lease is a contract between an owner or lesser of a premises (hereinafter referred to as the "Landlord") who rents, leases or otherwise gives possession of a premises (apartment, house, etc.) to a lessee (usually known as the "Tenant") generally in exchange for payment of rent.

A residential lease may be oral, or in a writing which is commonly referred to as a written lease. A common misconception is that when there is an oral agreement there is no lease. To the contrary, once the Landlord gives possession of the premises to the Tenant, (i.e. the keys have been handed over), a residential lease exists.

### **Advantages of a written lease.**

The Ossining Landlord Tenant Relations Council strongly encourages that both parties to enter into a written lease. This clearly defines the relationship between the Landlord and Tenant. A written lease establishes who is the Landlord is and/or the contact information, managing agent, etc. The lease will establish who the Tenant is, and/or if additional Tenants are liable to the lease, or any guarantors to the lease. The lease can clarify the rent obligation owed, when the rent is to be paid, the duration of the lease, and what is included in the rent, (e.g. heat, hot water, utilities, parking, etc. A tremendous advantage of executing a written lease is that the duties and obligations of both the Landlord and Tenant are outlined. Leases can be very simple and can be complex depending on the parties' execution of the document.

### **Duration of leases**

Generally, in an Oral lease, the duration of the lease coincides with the payment terms. Usually, tenants pay rent on a monthly basis. This is commonly referred to as a "month-to-month" lease. Parties could agree, as exists in some temporary boarding facilities, such as a YMCA/YWCA, to have weekly rentals, and the duration would be for a week. This is important, because as will be discussed below, parties' notice to vacate the premises coincides with the durational period.

Generally, written leases establish the durational period for the possession of the premises. A written lease could specify a month-to-month arrangement as discussed above. It is a common practice to enter into a one-year or two-year lease. However, there are many leases that are designed for shorter periods, to accommodate school terms, or temporary employment (e.g. for a six (6) months period). A written lease may arrange longer periods when arranging rental of a house (e.g. five (5) year period). A written lease will establish an expiration date. The written lease may also establish the terms and procedures that require notices of vacating the lease, or early termination of the written lease, procedures to commence legal action to take back possession, and any penalties (late fees, legal fees, costs, etc.) that may apply. So it is very important that you read through the written lease before signing the same. Many leases may have provisions where tenants will actually initial certain paragraphs for the purpose of ensuring what is expected of that specific provision.

### **A written lease protects the parties**

Under NY State Laws, there are various protections and requirements that protect and obligate the Landlord and Tenant. However, there is no better protection between parties than a written lease. All parties know exactly what is required of each other. But be aware of a common misconception. Once a written lease period has expired, and the parties have NOT executed a written lease renewal, and the tenant remains in possession of the premises thereafter, all

the terms of the written lease apply, except duration. If no written lease renewal is executed, the durational period resorts to a month-to-month term. There still exists a residential lease between the parties.

### **Security Deposit**

When any doubt arises on this subject, use the adage “Rent is rent...Security is security”. Generally, a written lease will outline if a security deposit is required, and should outline where the money is held in trust for the Tenant.

### **Landlord’s obligation for the Security Deposit**

Security is the Tenant’s money. The Landlord MUST treat this as a Tenant’s trust. The Landlord must maintain any security deposit in a separate and distinct account, and cannot be commingled with other rent, or other personal accounts. In NY State, if the building has six (6) or more units, the Landlord must deposit security into an interest-bearing account. Generally, a written lease may provide notice as to the receipt of the security deposited, and may even set forth the banking institution where the security is held. The Security Deposit cannot be non-refundable.

Upon return of the possession of the premises (i.e. tenant’s returning the keys, or by Court Order), the Security MUST be returned to the Tenant promptly. However, Landlord’s can further protect their rights in the written lease by outlining how the security deposit may be applied after Tenant’s vacate. (e.g., security may be applied to unpaid rent, actual damages to the apartment, legal fees and costs to obtain possession, etc.). However, general wear and tear will not suffice to keep any security. The Security Deposit cannot be non-refundable. It is strongly advised that Landlord’s NOT apply any Security to rent arrears while Tenant’s remain in possession of the premises.

If the lease is oral, the Landlord should provide a written receipt or notice that the Security has been received. Upon return of the possession of the premises (i.e. tenant’s returning the keys, or by Court Order), if the Security Deposit is going to be applied to rental arrears, or actual damages, the Landlord should provide a written notice to the Tenant accounting for the reduction of any Security being returned.

### **Tenant’s obligation for the Security Deposit**

The premise is the Landlord’s property. The Tenant should treat the premises as a Landlord’s trust. You are obligated to return the premises in the same condition you took possession of the premises. This is commonly referred to as a “broom-clean condition”. If you, your family or guests cause actual damages in the premises, you may be responsible for the costs to repair damages. If parties agree, and the same should be in writing, the Landlord may use security to replace and repair the damage. However, a Tenant may then be obligated to replenish the balance of the security deposit. You must pay the rent and always deem this as separate and distinct from security. Once you have vacated the premises, and left the premises in a broom-clean manner, without rental arrears due, etc., the Landlord is required to return your security promptly along with interest if that applies. It is common for a new Tenant to pay up front a broker’s fee, first month’s rent (and/or along with last month’s rent), as well as, the security deposit. A written lease should outline this specifically to avoid any confusion as to what is being held and deposited as your Security.

A common misconception is a Tenant’s belief that they can apply their security deposit to any portion of their rent during the leasehold period. This is common when leaving the premises and attempting to apply the security to their last month’s rent. Security is security, rent is rent. The Landlord holds your deposit as Security that the premises entrusted to you is returned in a broom-clean undamaged condition. Only after you have actually vacated the premises and returned of the keys to the Landlord, should the Security be returned to you.

While a walk-through inspection of the premises is not required by law, this is well advised to be completed by both parties to ensure proper return or application of any security deposited.