

Landlord and Tenant Rights and Responsibilities
Under the
Rhode Island Landlord-Tenant
Act



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LANDLORD AND TENANT RIGHTS & OBLIGATIONS UNDER THE RHODE ISLAND LANDLORD TENANT ACT

I. SCREENING TENANTS

- A. Credit Report-Join credit bureau if you manage a large number of units.
- B. Review court (District and Municipal) records or contact a screening service.
- C. Meet the tenants (face to face)
 - 1. Get copies of driver's licenses
 - 2. Get employment and bank account information.
- D. Corporations & Partnerships
 - 1. Corporations: get personal guarantees, Certificates of Good Standing, Corporate votes and authorizations.
 - 2. Partnerships-all partners should sign individually and as partner.
- E. Discrimination
 - 1. What you can and can't ask
 - 2. Bases for rejecting a prospective tenant
- F. Fair Housing Rules
 - 1. What is a disability?
 - 2. Duty to make "reasonable" accommodations
- G. Section 8 and Subsidized Rentals

II. LEASE PROVISIONS

- A. Prohibited provisions (RIGL §34-18-17)
 - 1. Can't require tenant to waive rights
 - 2. Can't require tenant to confess to a Judgment
 - 3. Can't agree to limit Landlord's liability
 - 4. Can't agree to pay attorney's fees inconsistent with the Act.
- B. Landlords who try to enforce prohibited provisions may be liable for 3 times periodic rent (RIGL §34-18-17(b)).
- C. Lease provisions should contain do's and dont's and who pays for what.
- D. Suggested Provisions:
 - 1. Attorney's Fees
 - 2. Statement regarding ordinance provisions
 - 3. Indemnity agreement
 - 4. Assignment & subletting

5. Pets
6. Termination & renewal

E. Unsigned leases (RIGL §34-18-16):

1. If Landlord does not sign lease, but accepts rent, then lease is given same force and effect as if it had been signed.
2. If Tenant does not sign, but takes possession and pays rent, then lease is in effect.

F. Make Sure to Document the condition of the premises *prior* to the tenant taking possession! Use a move-in checklist.

III. SECURITY DEPOSITS (RIGL§34-18-19)

- A. Definition: "...a sum of money given by a tenant to a landlord at the outset of the tenancy or shortly thereafter, as a deposit against physical damage to the tenant's dwelling unit during said tenancy." (RIGL§34-18-11(16))
- B. Landlord may not collect a security deposit, however denominated; in excess of one month's rent. First and last month's rent, *plus* a security deposit violates the Act!
- C. Prepaid rent vs. Security Deposit
- D. Landlord must account for the deposit in writing and return the appropriate amount due within 20 days after tenant vacates the dwelling or provides a forwarding address, whichever is later. Failure to comply makes Landlord liable for 3 times the amount wrongfully withheld, plus attorneys' fees. (What if the tenant gives no forwarding address? Mail the notice to the dwelling and the Post Office will forward to tenant or return.)
- E. Landlord may retain the security deposit for unpaid rent and physical damage beyond ordinary wear and tear.
- F. On foreclosed properties, the new owner is not responsible to account for the deposit. Tenant has a breach of contract action against old Landlord.

IV. DISCLOSURE AND REGISTRATION REQUIREMENTS

A. Prior to tenancy, the Landlord must give the tenant the following(§34-18-20):

1. Name, address and number of the person authorized to manage premises.
2. Name, address and number of the owner, or a person authorized to act on behalf of the owner for purposes of service of process, receiving notices and demands.

3. If requirements are not met, then the person signing the lease becomes the Landlord's agent to receive service, and notices, and is liable for all of the Landlord's obligations.
4. Information must be kept current. (Practice tip: Put all required information in the lease agreement.)

B. Registration by Out-of State Landlords(RIGL§34-18-22.3):

1. Out-of-state Landlords **must** register in writing with the RI Secretary of State and the municipality where the dwelling is located.
2. Out-of-state Landlords must also appoint an in-state agent for service.
3. Rent abates until forms are filed, providing a defense to non-payment!
4. Possible \$500.00 fine payable to municipality.

C. Housing or Zoning violations (RIGL§34-18-22.1)

1. Landlords must notify Tenant of any housing code violations prior to the tenancy and within 30 days after receiving notice of a violation from the housing authority/municipality. Note: The Act prohibits a Landlord from requiring a tenant, at the tenant's expense, to restore property to present code requirements. State Water Resources Bd. V. Howard, 729 A.2nd 712(R.I.1999).
2. Can't sell premises with existing housing code violations without notice to new owner. Violations should be noted in the P&S.
3. Landlords who make renovations to the premises which create illegal dwelling units are liable for tenant's moving fees to another location in the same municipality (RIGL §34-18-22.2).

D. Notice of Sale (RIGL §34-18-23)

1. In the event of a sale, the Landlord must notify the tenant in writing, giving the name, address, and phone number of the new owner. Proper notice will relieve the Landlord of further liability under the rental agreement as of the time of conveyance.
2. Property Managers should also send notice listing new property manager/owner.

E. Lead Paint (RIGL §23-24.6-16)

1. The owner must provide the tenant with copies of any lead inspection performed in the dwelling unit, together with copies of educational materials providing information about the hazards of lead paint. The Rhode Island law incorporates the requirements of the Federal Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. § 4852d).
2. How to comply with the Rhode Island Lead Hazard Mitigation Law.

V. LANDLORD'S OBLIGATIONS

- A. Don't demand a security deposit in excess of one month's rent. Account for the security deposit and return the balance due within the required time frame.
- B. Provide tenant with the name, address and number of the property manager and the owner or a person to receive notices and service of process. In case of a sale, provide tenant with the name, address and number of the buyer.
- C. Where required by municipality, post copies of city or town ordinances in a conspicuous place in the dwelling. Include an acknowledgment in the lease.
- D. Deliver possession of the premises in compliance with the rental agreement. (Practice tip: Photograph or video condition of the unit prior to rental... Add a statement to lease re: condition of premises.)
- E. Maintain the Premises (RIGL §34-18-22); this means:
 - (1) Comply with building and housing codes affecting health and safety;

- (2) Make repairs necessary to keep the premises in fit and habitable condition;
- (3) Keep all common areas in a clean and safe condition;
- (4) Maintain all building systems, utilities and appliances in good and safe condition; lease should clearly state who pays for each utility.
- (5) Provide garbage receptacles w/a lid.
- (6) Supply running water, reasonable amounts of hot water and heat.

Failure to maintain the dwelling unit may make the landlord liable for tenant injuries suffered as a result. See, Errico v. LaMountain, 713 A.2d 791 (RI 1998). Under the Act, The Landlord may shift responsibility for performing ordinary specified repairs and maintenance to the tenant, provided the parties act in good faith, they agree in writing, the agreement is supported by adequate consideration and the agreement is not for work to cure noncompliance with building and housing codes affecting health and safety. State Water Resources Bd. V. Howard, 729 A.2d 712 (R.I. 1999).

F. Comply with terms and conditions of the rental agreement.

G. Comply with zoning code.

H. Don't abuse access to the dwelling (RIGL §34-18-26): Provide the tenant with reasonable notice before entering the dwelling unit- at least 2 days' notice unless there is an emergency, it is impracticable, or it is necessary to protect the property in the tenant's absence. Remember, it's *their* dwelling. The tenant may terminate the lease for unlawful or unreasonable entry (RIGL §34-18-45).

VI. TENANT'S OBLIGATIONS

A. Maintain the dwelling unit (RIGL §34-18-24); this means:

- (1) Comply with housing and building codes affecting health and safety;
- (2) Keep dwelling unit as clean and safe as the condition permits;
- (3) Properly dispose of garbage;
- (4) Keep all plumbing fixtures as clean as their condition permits;
- (5) Use house systems, utilities and appliances in a reasonable manner;
- (6) Don't deliberately or negligently destroy, deface, or damage the premises;
- (7) Don't disturb neighbors' peaceful enjoyment of the premises;
- (8) Refrain from using the premises to manufacture, sell or use illegal drugs;
- (9) Refrain from any crime of violation on the premises.

B. Pay rent as provided in the rental agreement. In the absence of an agreement, pay a fair rental value for the use and occupancy of the premises.

C. Comply with the terms and conditions of the rental agreement.

- D. Comply with reasonable rules and regulations adopted by the landlord (RIGL §34-18-25).
- E. Provide landlord with reasonable access to the dwelling to inspect, make repairs, or show to prospective purchasers and tenants (RIGL §34-18-26).
- F. Use the dwelling unit only as a residence, unless otherwise agreed.
- G. Notify the landlord of any absence in excess of 10 days, if required by the rental agreement.

VII. LANDLORD'S REMEDIES

A. Non Payment (RIGL§34-18-35):

1. If any part of the rent due is 15 days late, send the tenant a 5-Day Demand Notice on the 17th day, specifying the rent in arrears and notifying tenant that an eviction action may be filed in 5 days. If the rent is not paid within 5 days, the Landlord may file a 9-day eviction action in District Court using a (Complaint for Eviction of Nonpayment of Rent". The Landlord may recover possession, rent due through the date of the eviction hearing and court costs. If the nonpayment was willful, attorney fees may be recovered (not likely to happen).
2. The 5-Day Notice should only reference the past due rent, not attorneys fees, utilities, etc. Failure to do so will render the notice void.
3. The tenant has the right to cure the default in payment by paying the full amount of rent due, plus court costs, at the eviction hearing. However, if the tenant has received a previous 5-day notice within the last 6 months, the right to cure after ends once suit has been filed.
4. At the eviction hearing, the landlord, owner or property manager must be present to testify as to: (a) ownership of the dwelling, (b) terms of the lease, (c) the rent arrearage, and (d) service of the 5-Day Demand Notice. Make sure to have a copy of the current deed to the property.
5. The tenant may appeal to Superior Court for a *de novo* trial; however, rent must be paid pending the appeal. (See, Russo v. Fleetwood, 713 A.2d 775 (RI 1998). If the tenant fails to pay while the appeal is pending, the appeal will be dismissed.
6. **NOTE:** Self-help (eviction w/out court process) is strictly prohibited. If a Landlord unlawfully excludes the tenant from the premises or diminishes services or utilities, the tenant may recover:

- (a) Possession of the premises;
- (b) An amount not more than 3 months periodic rent; and
- (c) Attorneys' fees.

7. Government subsidized leases may contain additional requirements, restrictions and time frames that will impact the eviction process- read the lease!

B. Non-Compliance with Rental Agreement (RIGL §34-18-36):

1. If the tenant breaches the rental agreement or breaches an obligation affecting health and safety, send a 20-Day Demand Notice specifying (a) the breach, (b) the corrective action required, (c) that is the breach is not cured within 20 days, the tenancy will terminate and an eviction action may be filed.
2. For tenants who violate RIGL §34-18-24(8), (9) or (10), or for seasonal tenants who violate municipal noise and overcrowding ordinances, no 20-day notice is required before filing suit for eviction (RIGL §34-18-36(f)).
3. If the breach is not cured, file an eviction action in District Court using "Complaint for Eviction for Reason Other Than Nonpayment of Rent" While this type of case is commonly referred to as a "20-day action", it will take a minimum of 5 weeks if the tenant answers the complaint. The Landlord may recover possession, actual damages, injunctive relief, and attorney's fee if non-compliance is willful.
4. If tenant fails to pay rent while the action is pending, proceed as with an eviction for non-payment of rent.
5. The tenant may appeal to superior Court; rent must be paid pending the appeal.

C. Termination (RIGL §34-18-37):

1. The Landlord, or tenant, may terminate a month-to month tenancy by providing a written "Notice of Termination of Tenancy" at least 30 days prior to the termination date. You don't need a reason, as long as the landlord is not termination for an illegal reason.
2. A year to year tenancy may be terminated by providing written notice at least 3 months prior to the end of the occupation year.

3. Make sure to review any additional termination or notice provisions contained in the lease! If these provide for additional notice, they will control. Government subsidized leases often contain additional notice provisions and restrictions on terminations.
4. If the tenant fails to vacate after termination. Proceed with process for unlawful holdovers.

D. Unlawful Holdover (RIGL §34-18-38):

1. If the tenant remains in possession after expiration of the lease or termination, file an eviction action in District Court using “Complaint for Eviction For Reason Other Than Nonpayment of Rent”.
2. The Landlord may recover possession, actual damages and court costs. If the holdover is willful, the Landlord may also recover an amount up to 3 months rent, or 3 times actual damages, whichever is greater, and attorney fees.

E. Failure to Maintain (RIGL §34-18-39):

1. If the tenant breaches an obligation to maintain the unit which breach can be remedied by repair, replacement of a damaged item, send notice to the tenant. If the tenant fails to comply within 20 days, or in less time in the case of an emergency, the Landlord may enter dwelling unit, make the repairs, and submit the bill to the tenant.
2. The bill is considered to be rent due and payable on next date rent is due. If unpaid, proceed as with non-payment of rent.

F. Abandonment (RIGL §34-18-40):

1. If the tenant abandons the unit, the Landlord “shall” send a certified letter, return receipt requested, to the tenant’s last known address giving notice that if no reply in 7 days, the Landlord will re-rent the premises.

2. If the Landlord makes reasonable efforts to re-rent, the tenancy (and tenant's rental obligation) terminates as of the date of the new tenancy. Otherwise, the tenancy terminates as of the date Landlord has notice of the abandonment

G. Holding or Destruction of Tenant's Property

1. Protect yourself
2. Include provision in lease
3. Inventory and photograph contents
4. Send notice to last known address

H. Failure to Allow Access (RIGL §34-18-45):

If the tenant refuses to allow lawful access, the Landlord may obtain injunctive relief to compel access, or terminate the rental agreement, and may recover actual damages and attorneys' fees.

VIII. GETTING PAID AND GETTING POSSESSION

A. Proving damages at trial

1. The owner, landlord or property manager testifies about ownership, terms of the lease, rent arrearage, lost future rent, and the costs to re-rent property. The Landlord has a duty to mitigate damages.
2. Damage to property should be proven by introduction of a video of the premises or pictures of damages and receipts. Professional contractors should be hired to make repairs. Typically, the Landlord is not entitled to be reimbursed for his own labor.

B. Obtain Judgment and Execution

1. If tenant refuses to move after Landlord has obtained a judgment for possession, arrangements need to be made to have sheriff or constable physically evict tenant from the premises. In such case, tenants' property is placed in storage and is not returned until the sheriff/constable fees and moving costs are paid.

2. If Tenant does not pay judgment for back rent after being served with execution by sheriff, additional court proceedings may be necessary. Landlord should first determine whether the judgment is collectable.
- C. Post Judgment Attachment options.
1. Attachment of assets. – After a Judgment is obtained and returned unsatisfied, Landlord has right to ask court permission to attach the Tenants assets, including, wages, cars, and bank accounts.
 2. Citation Hearing -- If Landlord is unsuccessful in locating any of the Tenant's assets, then he may ask for a court hearing to interrogate the Tenant on his assets and ability to pay the Judgment. Typically a Tenant at this point will enter into an agreed upon payment schedule.

IX. LIABILITY FOR TENANT'S ACTIONS

- A. Noise: Under the ordinances of certain municipalities, property owners may be cited for an ordinance violation upon a tenant's noise ordinance conviction. As a defense, the Landlord may assert reasonable efforts to take action against the tenants, including the initiation of eviction proceedings.
- B. Overcrowding: Under state enabling legislation (RIGL §45-24-31(34)) municipalities may enact zoning provisions which limit the number of unrelated persons who may reside together in a dwelling unit to 3 or more. Certain cities and towns have adopted such regulations and hold owners responsible for any violation. For example, The Newport maximum is 5 unrelated persons and property owners are liable up to \$250.00 for each day a violation occurs. A Narragansett provision limiting dwellings to no more than 3 unrelated persons was declared unconstitutional in Superior Court in 1994 (Distefano v. Haxton, C. A. No. WC92-0589 (R.I. Super. 1994)).
- C. Garbage: The City of Newport will cite property owners for tenants' failure to properly set out trash for collection.
- D. Steps landlords can take to avoid overcrowding violations:
1. Use a good realtor and review all registration forms filed with the City.
 2. *Always* check references.
 3. Insist on meeting summer tenants *before* signing a lease.
 4. Include city ordinance provisions and an indemnity agreement in your lease.
 5. Obtain an adequate security deposit.
 6. Post copies of ordinance provisions in conspicuous places in the dwelling unit. Take a photo of the posting.
 7. Don't provide more than five beds or pull-out sofas. Include a provision in the lease prohibiting the tenants from adding extra beds. Also, don't accept checks from people who are not on the lease.
 8. Inspect the property regularly, both during the week *and* on the weekends.

9. Keep in contact with your neighbors. Encourage them to call you if problems arise.
10. If a problem arises, take legal action.

X. COMMERCIAL LEASES

A. In General

1. General contract law governs—may not contain unconscionable provisions.
2. U.S. Court decision supporting commercial lease provisions where tenant agrees to a default judgment.
3. No limitation on Security Deposits.
4. No disclosure or registration requirements.
5. No duty to maintain, unless lease states the landlord has a duty to maintain.

B. Evictions

1. Non-payment of rent-Summary Process (RIGL 34-18.1-9). Tenant must be 15 days in arrears. Process begun by filing complaint. Eviction remedy is available with or without a written lease and without written notice. There is no 5-Day demand period.
2. Seven (7) days between service and trial
3. Other than non-payment of rent- Trespass & Ejectment Action (34-18.1-36). Tenant has no right to cure.
4. On appeal, the tenant must continue to pay rent and post a bond pursuant to RIGL §9-12-10.
5. Most commercial leases have very detailed provisions governing notice to the other party, default provisions, and grace periods. Always read the lease first.

XI. BANKRUPTCY

- A. Automatic Stay: Upon filing of bankruptcy petition, all collection efforts including eviction actions must cease.
- B. Trustee must assume or reject a residential lease within 60 days of filing of petition. If no action is taken, then lease is deemed rejected. If trustee assumes the lease, then all back breaches including payment of rent must be cured.

- C. The tenant remains responsible for paying all rent that accrues after the bankruptcy filing. The Landlord may file a motion for relief from stay to proceed with eviction proceedings or may request an earlier date for the trustee to assume or reject the lease.

XII. DEALING WITH TENANTS & OWNERS POST FORECLOSURE

- A. Owners: Property owners who remain in possession after foreclosure are considered to be tenants at sufferance. As there is no rental agreement, the Residential Landlord and Tenant Act do not apply. Instead, eviction is through the Commercial Leasing statute. The process is typically a Notice to Quit (vacate), followed by an eviction action. In addition to possession, the judgment may also include an amount for the use and occupancy of the premises.

- B. The Notice to Quit- How Sent & By Whom
- C. How Much Notice is required?

- D. “Cash for Keys”

- E. Tenants: In most cases, foreclosure of the mortgage on the premises will wipe out all junior lien and rights, including all leases. As a result, any existing liens will be terminated and tenants will be converted to tenants at sufferance who are subject to eviction under the commercial leasing statute. Tenants are entitled to a Notice to Quit prior to eviction.

- F. The successful purchaser at the foreclosure sale is not obligated to pay the tenant’s security deposit. Instead, the tenant has a contractual claim against the prior owner.

XIII. CONDO CONVERSIONS

- A. Landlords who convert their apartments into condominiums must comply with the provisions of RIGL § 34-36.1-4.12.

- B. Notice of the conversion and a copy of the public offering statement must be provided to residential tenants no later than 120 days before the tenants are required to vacate. Rents may not be increased during the notice period.

- C. Any tenant who has continuously resided in the unit for 10 years or more or who has attained the age of 62 must be given one year notice.

- D. For 60 days after delivery of the notice, the tenant must be offered the opportunity to purchase their unit. If a tenant fails to purchase the unit during that 60 day period, the landlord may not offer to sell the unit at a more favorable price for period of 180 days.

- E. Tenants have the right to cancel their lease after receiving the notice without penalty, as long as all obligations of the lease have been met.