

COHHIO Conference Landlord-Tenant Law & Legal Issues

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DISCLAIMER

While Mr. Willis is very good looking and possesses a brilliant legal mind, this seminar is intended to provide general information and cannot substitute for proper and specific legal advice.

You can't believe everything you read,
especially in the era of fake news

In Ohio

88 different Counties
+12 different Appellate Districts
+1 Ohio Supreme Court
=Many different Local Rules, Policies, &
Quirks

Forcible Entry & Detainer ORC Chapter 1923

Contains:

- Definitions of Landlord, Tenant, Residential Premises, Rental Agreement, etc.
- Ground for Eviction Action
 - Violation of lease (non-payment of rent)
 - Violation of Tenant's duties under the Ohio Landlord-Tenant Law
 - Drug Offenses
 - Holdover Tenancy

Landlords & Tenants ORC Chapter 5321

Contains:

- Definitions – more extensive than 1923
- Obligations of Landlords (5321.04)
 - Keep common areas safe and sanitary
 - Comply with housing codes
 - Make repairs to keep fit and habitable
 - Supply hot and running water
 - Supply garbage cans & pick-up (4 or more units)
 - Maintain appliances provided by Landlord
 - Access (don't abuse)

Obligations of Tenant

RC 5321.05

- Keep unit safe & sanitary
- Comply with housing codes
- Operate electric & plumbing properly
- Don't destroy premises or appliances
- Don't disturb neighbors
- Don't sell drugs
- Access (must allow)
- "Guests, too!"

Violation of R.C. 5321.05 obligation requires a 30-day notice pursuant to RC 5321.11

and

a 3-day or 10-day notice

Question:

Finish this sentence. . . You must give a tenant a notice to cure if. . .

- ✓ A. The tenant has exhibited continually loud behavior late into the night.
- B. The tenant has committed robbery on the premises.
- C. The tenant has an illegal pet that he or she refuses to remove.

- Answer:

Violation of peaceful enjoyment is a 5321.05 violation

B and C are not

5321.11 NOTICE OF TERMINATION

“Notice to Cure”

- Tenant breaches 5321.05 obligation
- Keep premises safe and sanitary
- Dispose of trash and garbage
- Keep fixtures in good condition
- Use plumbing and electric properly
- Comply with housing, health & safety codes
- Refrain from and forbid tenant and others from intentional or negligent damage
- Maintain appliances in good working order
- Tenant and others – peaceful enjoyment of the premises
- Drugs
- Withhold consent to enter

5321.11 NOTICE OF TERMINATION

“Notice to Cure”

- Termination date specified in 5321.11 notice may not be less than thirty days after the date on which the notice has been served.

5321.11 NOTICE OF TERMINATION
"Notice to Cure"

- Notice and cure period are applicable to the termination of written lease when termination is based on conduct of the tenant that violates BOTH the lease and R. C. 5321.05.
- Why is this significant? LL cannot circumvent the law

- Note that evictions for
 - Unauthorized Occupants
 - Pets
 - Criminal Activityonly require a three day notice. However, more often than not, it will become a factual dispute to be determined on a case-by-case basis with the Court.
- A good paper trail should always be established.

Question:

A periodic tenancy in a market rate property can be month to month, week to week, or even day to day, and you must have a reason to terminate such a tenancy. . .

- A. True
✓ B. False

0% 0%
A. B.

10

- Answer: B False
- R.C. 5321.17- As long as it is not discriminatory

Retaliation vs. Discrimination

- These terms are often conflated, but have different legal meanings
- **Retaliation:** 3 ways in Ohio's statute for a landlord to commit retaliation:
 - (1)Landlord increases rent, (2) decreases services, or (3) threatens to bring/actually brings eviction action for these specific reasons:
 1. Tenant complained to government agency about code violation
 2. Tenant complained to landlord that landlord violated their legal duties
 3. Tenant organized with other tenants to negotiate/deal with landlord about lease terms

Retaliation vs. Discrimination

- **Discrimination:** Fair Housing Act issue
- FHA prohibits discrimination in the rental (including services), sale, advertising, design, insuring, and financing of dwellings, and in other housing-related transactions, based on membership in protected classes (race, skin color, familial status, religion, sex/gender, national origin, disability; Ohio state law adds ancestry & military status to list)

Question:
If a tenant is behind in their rent and files a city code violation, it may be viewed as an act of retaliation if you file an eviction

A. True
✓ B. False


0% 0%
A. B. 10

• Answer B. False

Ohio Retaliation (continued)

- Exceptions: R.C.5321.03(A)(1)-(4):
 - (1) Tenant in default of payment of rent;
 - (2) the condition about which the tenant complained was caused by the tenant or the tenant's guest;
 - (3) the performance of the repairs necessary to achieve code compliance would effectively deprive the tenant of the use of the premises;
 - (4) the tenant is a holdover for the tenant's term

- Escrow procedures (deposit and release – 5321.07-5321.10)
- Security deposits (5321.16)
- Contents of Rental Agreements (what is not allowed – 5321.13-5321.14)
- Utility shut off, lock-outs, and other bad acts (5321.15)



Repairs & 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). **Advice COHHIO gives tenants: 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.



Repairs & Remedies: 5321.07

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**
 - Court 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 & Deposits

- **ORC 5321 does not cover:**
 - Rent Increases (amount or frequency)
 - 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"

Question:
A landlord may retain a tenant's security deposit if:

- A. The tenant fails to provide a notice of forwarding address prior to vacating the unit and this is stated in the lease
- B. The landlord uses the security deposit to pay for carpet cleaning and painting for the next tenant as long as the lease expressly states that security deposit will be used for that purpose
- ✓ C. The tenant fails to pay for utility bills that were the tenant's responsibility during the term of the lease
- D. None of these
- E. All of these
- F. A & B, but not C



Answer

The correct answer is C.

No lease provision can expand what the landlord may retain from the security deposit beyond what the statute permits.

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 itemize deductions and charges
 - Tenant can sue for double amount believed to be **wrongfully withheld** if not returned
- **No penalty for landlord's failure to comply with notice requirement**

Question:

A landlord may require the tenant to do any of the following **as long as** the duty is specifically stated in the lease:

- A. Have the tenant purchase liability insurance and have the landlord covered if the landlord or the landlord's agents act negligently and cause harm to the tenant or the tenant's guests.
- B. Have the tenant pay for the landlord's attorney fees any time a landlord must appear in court vs. the tenant
- C. Have the tenant make repairs and do general cleanup upon moving in as long as the lease clearly states that the tenant accepts the unit "as is"
- ✓ D. None of the above
- E. B & C, but not A



Answer

The correct answer is D: none of the above.

All of those terms are barred by R.C. 5321.13

Prohibited in Rental Agreements

- **Prohibited Terms — ORC 5321.13**
 - 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
 - Can't modify or waive 5321
 - **Shifting landlord duties to the tenant**
 - Have tenant indemnify landlord from liability
- **Prohibited Actions — ORC 5321.15**
 - No self-help evictions (lockouts) or utility shut-offs

Rental Agreement Term That is "Bad"

- **Unconscionable terms—ORC 5321.14**
 - Unconscionable = unfair/illegal
 - 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)

Question

- Are oral contracts valid in Ohio?

Do you Agree?

- ✓ A. Yes
- B. No

0%
A.

0%
B.


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Answer

- The answer is Yes.

Oral contracts/leases can be valid.
Written leases are important because
people lie!

Question: In a "rent to own" agreement or a "lease with option to purchase" (where the parties start with a lease prior to transfer of ownership), which of the following is true?

- A. The landlord-tenant law doesn't apply because this is a form of land contract & Chapter 5313 applies
- B. The owner must foreclose & cannot evict
- C. The owner, by agreement, can have the occupant be responsible for all repairs, but only if it is clearly stated in the lease
-  D. None of the above
- E. A & C, but not B

A. 0% B. 0% C. 0% D. 0% E. 0%

A. B. C. D. E.

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The correct answer is...

NONE OF THE ABOVE

Because landlord-tenant law applies during the renting period of the agreement, the owner can still use FED and is also responsible for all repairs


Attorney's Fees as Damages

GENERALLY

- Agreements for tenant to pay landlord's attorney fees are prohibited by 5321.13
- Attorneys fees specifically authorized by statute may be awarded to prevailing party
- Attorneys fees proportionate for actual damages
- No attorney fees for breach of contract


Question:
A landlord may recover attorney's fees from a tenant if a tenant violates O.R.C. 5321.05 ?

✓ A. True
B. False



Landlord's Recovery of Attorney's Fees

- Tenant's breach of statutory duties under 5321.05
- 5321.09D – Tenant Escrow is in bad faith



Tenant's Recovery of Attorneys Fees

- Retaliation 5321.02(B)
- Lock Out 5321.15
- Security Deposits 5321.16
- Illegal Entry 5321.04(B)



Consideration When Awarding Fees

- Time and Labor involved
- Novelty, complexity and difficulty of issues
- Professional skill needed to provide services
- Fees customarily charged for similar service
- Miscellaneous expense of litigation
- Amount of actual damages
- Results obtained

The Ohio Eviction Process

Self-Help Evictions are illegal (5321.15)

- Cannot shut off utilities
- Cannot change the locks
- Cannot hold tenant belongings for ransom

The Ohio eviction process allows landlords to legally evict a tenant for a number of reasons:

- Nonpayment of rent
- Tenant's failure to comply with health & safety codes
- Violation of material terms of lease
 - Rules and Regulations
- Criminal Activity / Drugs
- Denying the landlord access upon reasonable notice (at least 24 hours)
- Others

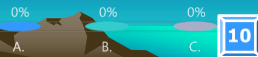
R.C. 1923.04

- Mandatory & Jurisdictional
- Combination of 3-day into 10-day
- Check with your local Attorney

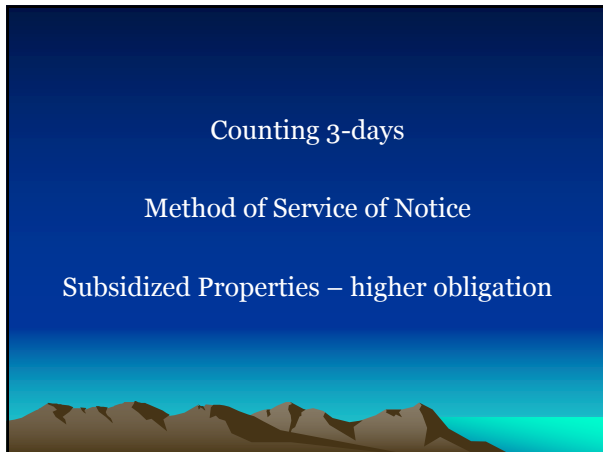
Question:

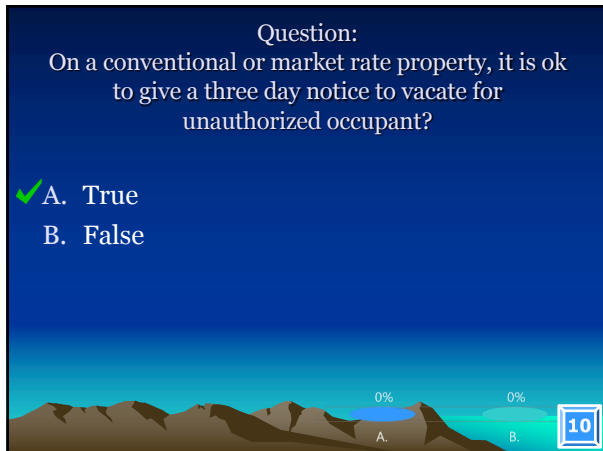
The most conservative way to calculate service on a 1923.04 3 day Notice is to . . .

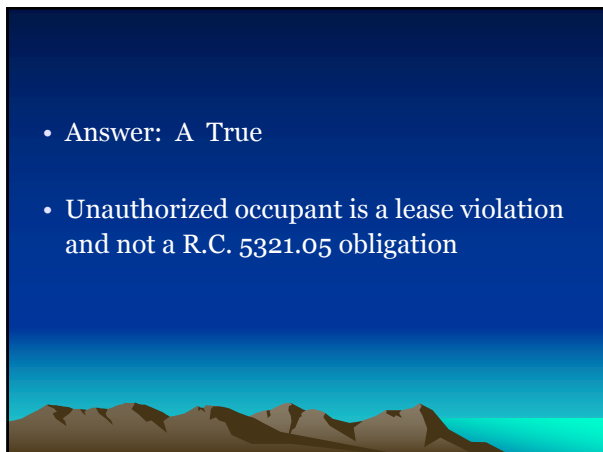
- ✓ A. Don't count 1st day, Holidays, or weekends
- B. Don't count 1st day or last day
- C. Don't count 1st day, last day, or any day that ends in "y"



- Answer: Civil Rule 6(A)
 - Follow A, don't count first day, weekends or holidays.







Question:
A three day notice is sufficiently delivered in Ohio
if it has been taped to the resident's door?

✓ A. True
B. False

0% 0%
A. B. 10

• Answer: A. True

– Affix to door

COMPLAINT - TRIAL

• Most landlords file a two-count eviction.

– The first count is normally for restitution of the property.
– The second count is for money damages.
– Normally, in Franklin County, the restitution hearing is scheduled fourteen (14) to twenty-one (21) days from the date of filing the complaint.

- At the hearing, the court will first determine:
 - Whether the statutory three-day notice has been served upon the tenant;
 - Whether three or more days have lapsed from the service of three-day notice to the filing of the action, and
 - Whether there is proper service of the summons and complaint.
- All three procedural requirements must be met before the matter may proceed to a hearing.

- At least seven (7) days prior to the restitution hearing, the landlord must perfect service on his/her complaint on the tenant by certified mail, bailiff service, or bailiff/ordinary mail service (S.B. 83). If service on the complaint is not perfected before the original restitution hearing date, the case will be continued.

Showe Management Corporation v. Virgil Cunningham February 1, 2011 (10th District)

- Bailiff posted service
- Mail service of complaint returned to Court “Return to Sender-Attempted- Not Known-Unable to Forward”
- Eviction hearing found no service

Tenth Appellate District: Found that

- Landlord complied with R.C. 1923.06(G)
- Jurisdiction to proceed with FE&D portion of action, but not with respect to monetary damages.

Question:

Is a controller or president of a corporation permitted to file an eviction for the corporation or limited liability company?

A. Yes

✓ B. No

0% 0%
A. B.

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- Answer: B No

- Corporations must be represented by an attorney – yes! We wrote the rules.

- * Small claims

Question:
If you file evictions under the name of the apartment community, are you 100% certain that name is registered with the Ohio Secretary of State?

✓ A. Yes
B. No
C. I have no idea what you are talking about

0% 0% 0%
A. B. C.

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• Answer: Should be Yes!!

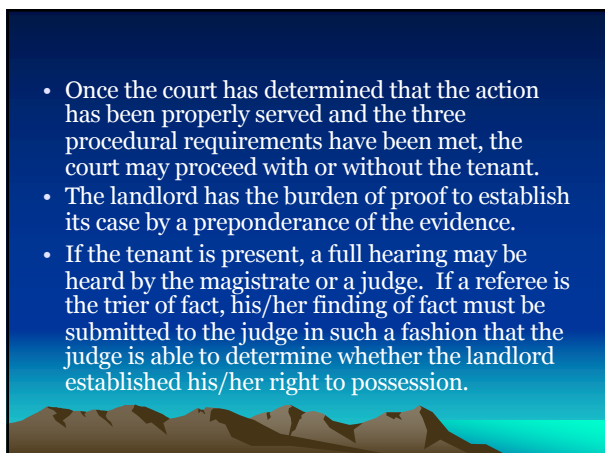
– However, you had better check!!

Summons and Complaints

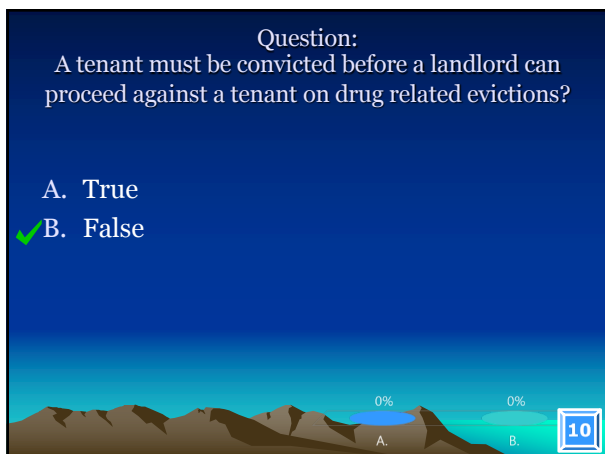
- Must be served 7-days to hearing
- Continuances



- Court Date
- Judgment / Writ of Restitution



- Once the court has determined that the action has been properly served and the three procedural requirements have been met, the court may proceed with or without the tenant.
- The landlord has the burden of proof to establish its case by a preponderance of the evidence.
- If the tenant is present, a full hearing may be heard by the magistrate or a judge. If a referee is the trier of fact, his/her finding of fact must be submitted to the judge in such a fashion that the judge is able to determine whether the landlord established his/her right to possession.



Question:
A tenant must be convicted before a landlord can proceed against a tenant on drug related evictions?

A. True
✓ B. False

0% 0%
A. B.

10

- Answer: B. False
- Standard: Actual knowledge or has reasonable cause to believe

Question:
Drug related evictions are the easiest and quickest way to evict a problem tenant?

- A. True
- ✓ B. False

0%
A.

0%
B.

10

- Answer: False
- It may actually take longer to evict than other grounds for eviction.

- Once the judgment in a forcible entry and detainer action has been granted to the landlord for restitution, it is a final appealable order.

- Once judgment has been granted for restitution, a landlord must file a writ of restitution with the court to restore the premises to the landlord.

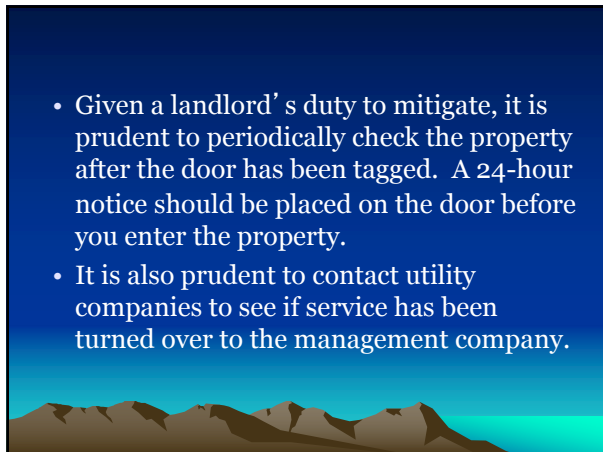
Franklin County Local Rule 6.08

- “...some set outs present circumstances such as an infestation or the existence of illegal or harmful substances that make it hazardous to conduct the set out. In those cases in which the set-out presents hazardous circumstances, the chief service bailiff, or his/her designee, shall have authority to determine the most appropriate means of conducting the set out and restoring possession of the premises to the plaintiff...”
- May include disposal

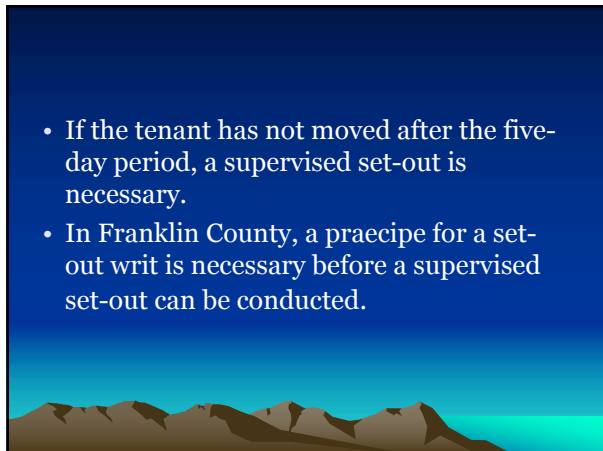
- The procedures and rules concerning execution on judgment for restitution vary from county to county and court to court. You should familiarize yourself with your local rules and procedures.

- In Franklin County, pursuant to Local Rule 9.06(4), no writ of restitution shall be issued after 30 days from the date of the judgment. Therefore, you have 30 days to act on your judgment if you seek restitution of the property.

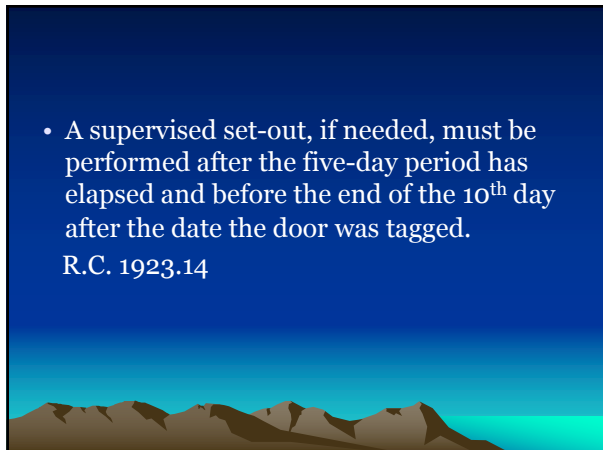
- The service bailiff will tag the property on the day he/she receives the writ of restitution. (This might take as long as two days after filing of the writ of restitution.) Beginning the day property is tagged, defendant (tenant) will have five days, including weekends and holidays, in which to vacate. This five-day grace period is promulgated by local rule.



- Given a landlord's duty to mitigate, it is prudent to periodically check the property after the door has been tagged. A 24-hour notice should be placed on the door before you enter the property.
- It is also prudent to contact utility companies to see if service has been turned over to the management company.



- If the tenant has not moved after the five-day period, a supervised set-out is necessary.
- In Franklin County, a praecipe for a set-out writ is necessary before a supervised set-out can be conducted.



- A supervised set-out, if needed, must be performed after the five-day period has elapsed and before the end of the 10th day after the date the door was tagged.
R.C. 1923.14

- On the sixth day after the door is tagged, a landlord can contact the service bailiff's office to schedule the date and time of the set-out.
- Set-outs will be performed on a "first scheduled-first served" basis.
- If the landlord fails to contact the service bailiff's office once a set-out form has been filed, the bailiff may be unable to perform the set-out within the statutory deadline.

Question:
It would be prudent for a landlord to contact a bailiff prior to set out if:

- A. tenant voluntarily vacates
- B. tenant leaves small children left alone in their apartment
- C. tenant is a giant ass and has made physical threats to management
- ✓ D. All of the above




• Answer : D

– That's right, all of the above

Question:


In most counties outside of Franklin County, the Bailiffs will help landlords with the set out if the landlord does not have enough people on hand.

A. True
✓ B. False




• Answer: False

– YEAH RIGHT !!



- A landlord should provide sufficient manpower to accomplish the set-out within one and one-half hours.
- In the event of inclement weather or other circumstances, special provisions for protecting the defendant's property shall be made in cooperation with the service bailiff's office.
- It is very helpful to inform the bailiff how long you think a particular set-out is going to take.
- Also inform the service bailiff if the tenant has children and/or pets.



Question:

Once judgment has been granted and a landlord properly performs a set-out where the jurisdiction requires the landlord to place the possessions on the curb, those possessions can be legally claimed by:

Please make your selection...

- A. Only the bailiff, because the government has exercised dominion & control over the possessions by supervising the set out
- B. Only by the landlord, because the property is deemed abandoned by Ohio law & therefore the right of possession passes to the landlord
- C. Anyone, since the property is abandoned and it now belongs to anyone who seizes it, since possession is 9/10 of the law
- ✓ D. None of the above

0% 0% 0% 0%

A. B. C. D.

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Answer

D. None of the above

The property still legally belongs to the tenant.

Anyone else who takes the property is stealing.

- Although defendant's property has been removed from the apartment unit, he/she still possesses legal interest in the personal property.
- Never authorize or condone taking of this property by management company personnel.

- Many local ordinances and codes permit the discarding of personal property as refuse if it is not claimed within a certain amount of time. You should familiarize yourself with these ordinances and codes.

Common Defenses to all Kinds of Properties

- Waiver Defenses
 - Waiver by acceptance of future rent
 - Accepting partial rent
 - Accepting rent after knowledge of breach of tenant
 - Cashing check or money order, even if Landlord tenders back

Holding of Rent May Equal Acceptance

- Evidentiary purpose of holding
- Notice to tenant that rent is being held, but not accepted

Question:

You are a property manager with a tenant delinquent for August and September's rent. You 3-day on September 5 and the tenant comes in on September 7 and offers you August's rent. Can you accept and still evict?

- ✓ A. Yes
- B. No

0%
A.

0%
B.

10

- Answer: Yes
- Can't accept future payments
- However, use a forbearance agreement

Caution: Holding rent might equal acceptance. Landlord may have to show:

- Held for evidentiary purpose
- Tenant was given notice that rent was being held but not accepted

Other Waiver Defenses Waiver of Breach by Landlord Action

- When a landlord has knowledge of the tenant's breach of the rental agreement, the landlord waives the breach if the landlord takes action that is inconsistent with a termination of the tenancy
- I.e. accepts rent

Other Waiver Defenses Waiver of Breach by Landlord Action

- Tenant & Landlord make sweat equity agreement where tenant agrees to paint in lieu of paying rent, but landlord fails to buy paint supplies and then files eviction for failure to pay rent
- Landlord tells tenant not to pay rent because landlord intends to evict tenant for some other reason, but then files eviction for nonpayment

Waiver of the Ohio R.C. 5321.11 or 5321.17 Notice of Termination

- If the landlord accepts future rent after the expiration of the thirty-day period of an R.C. 5321.11 or R.C. 5321.17(B) notice of termination, it may constitute waiver of the notice or create a new periodic tenancy

Question:

Does A or B provide the best possible defense to an eviction action?

- A. the tenant can prove that the landlord has failed to maintain the heating and plumbing in the unit
- ✓ B. the tenant can prove that the landlord always allowed the tenant to pay late on various dates

0% 0%

A.

B.


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- At the time of the hearing, the tenant may bring any defense in an action for forcible entry and detainer. However, the court may exclude evidence concerning the condition of the premises if offered by the tenant as a defense to the landlord's actions for restitution where the tenant admits not being current in rental payments and had not put the rent in escrow with the court.

OHIO


Conditions Counterclaims: R.C.1923.061

- Must be a claim for nonpayment and tenant must file an answer & counterclaim on or before the day of trial
- Tenant defense premised on landlord's breach of duties under R.C.5321.04 or the lease
 - This breach is usually related to conditions and/or failure to repair that cause damages to tenant and/or tenant's possessions and/or reduces fair market value of rent
- Tenant not required to use escrow process under R.C.5321.07. R.C.1923.061 allows tenants another option to protect themselves if they fail to use R.C.5321.07
- Rent in escrow should be defense to eviction for nonpayment



Waiver of timely tender of rent by
Pattern & Practice


There is sufficient pattern and practice between the parties of late rent payment and acceptance that changes the due date as a matter of law

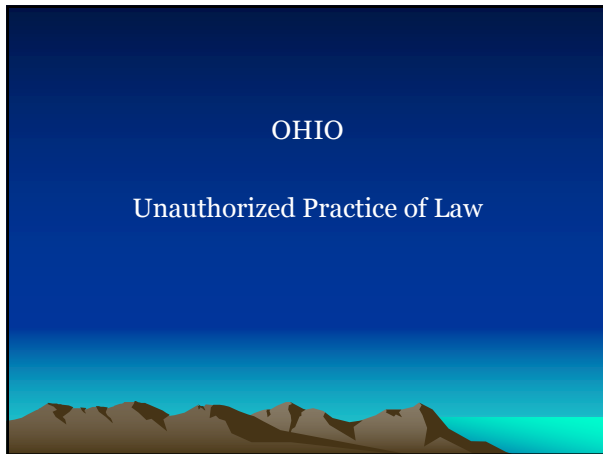


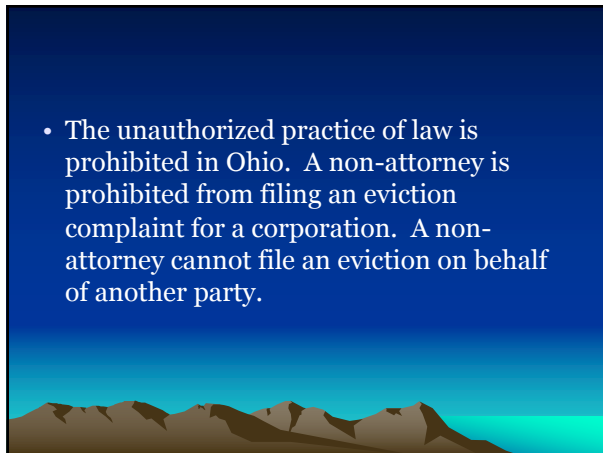
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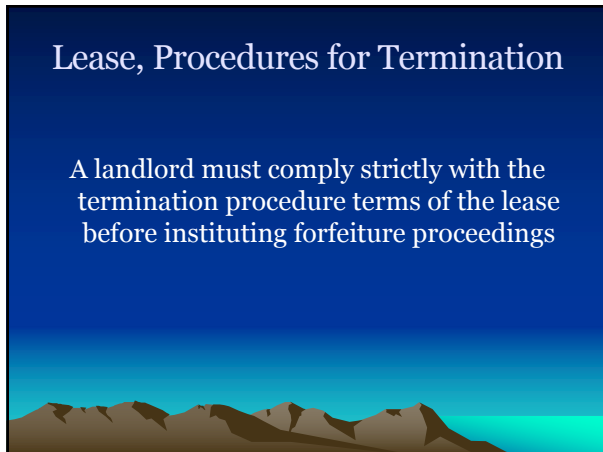
Fictitious/Trade Name Registration

If the landlord is doing business under a fictitious name that has not been properly registered, the landlord is barred from commencing or maintaining an eviction action



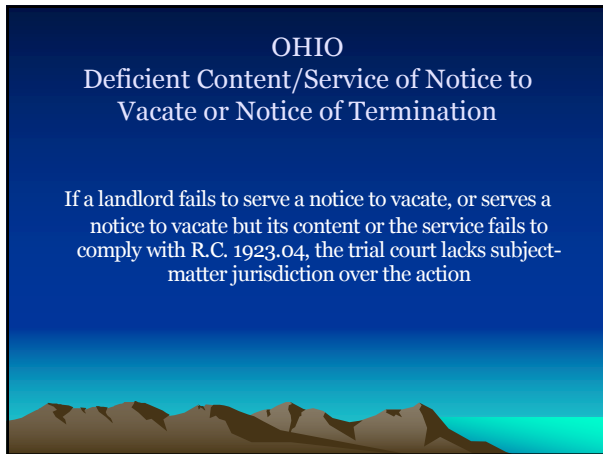






OHIO
Deficient Content/Service of Notice to
Vacate or Notice of Termination

If a landlord fails to serve a notice to vacate, or serves a
notice to vacate but its content or the service fails to
comply with R.C. 1923.04, the trial court lacks subject-
matter jurisdiction over the action

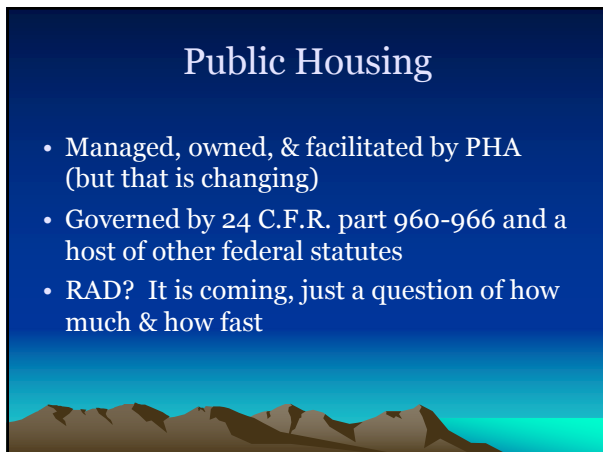


**Many Different
Types of Housing**



Public Housing

- Managed, owned, & facilitated by PHA
(but that is changing)
- Governed by 24 C.F.R. part 960-966 and a
host of other federal statutes
- RAD? It is coming, just a question of how
much & how fast



Project Based Subsidized Housing

- Section 221(d)(3) and (d)(4)
- Section 236 and 202
- Project Based Subsidized Housing

**And others...receiving benefits of subsidy in the form of: below market interest rates, rent supplement payments, & Housing Assistance payments (Project Section 8) 24 C.F.R. Part 247


Tenant-Based Rental Assistance

- Section 8 Housing Choice Voucher (HCV)
- Project Based Vouchers (PBV)
- Housing Assistance Payment (HAP) Contract


LOW INCOME HOUSING TAX CREDIT

Question:
The easiest way to evict someone in a tax credit property is simply not renew his or her lease?

A. True
✓ B. False




- Answer B. False
- Although non-renewal would be the easiest method, IRS Rule 2004-82 and Revenue Procedure 2005-37 requires evictions for good cause in tax credit properties
- You may only terminate or refuse to renew only for material non-compliance with lease, or other good cause.
- OHFA mandatory lease addendum also now prohibits termination based on nonrenewal



**All of the above types of housing
require “Good Cause Evictions”**

Exception: Housing Choice Voucher



Question:

A landlord for a LIHTC property may only evict for "good cause." An example of good cause would be:

- ✓ A. A failure of the tenant to recertify as being an income-eligible tenant
- B. Anything stated in the lease as long as the tenant is given notice that a violation of such provisions constitutes good cause
- C. A tenant failing to vacate after being properly served with a 30 day notice prior to the end of the lease term telling the tenant that the lease will end on a specific date.
- D. B & C, but not A
- E. None of the above
- F. All of the above

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A. B. C. D. E. F.

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Answer

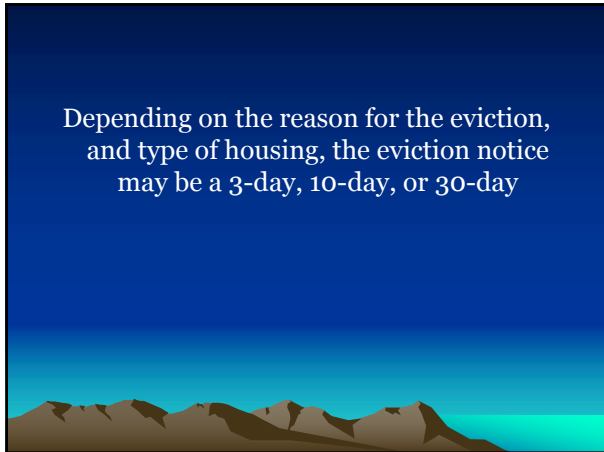
The correct answer is A.

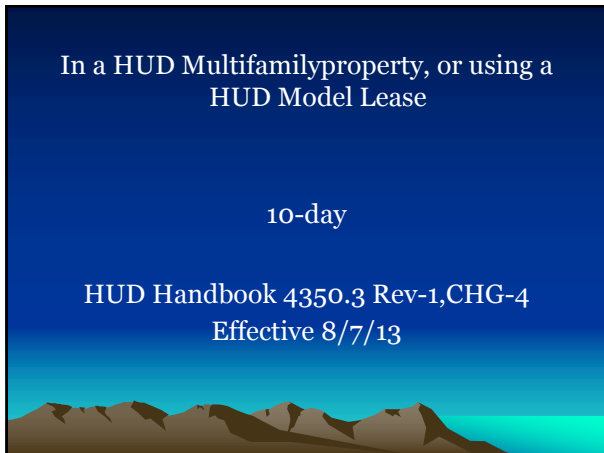
A landlord cannot define "good cause."

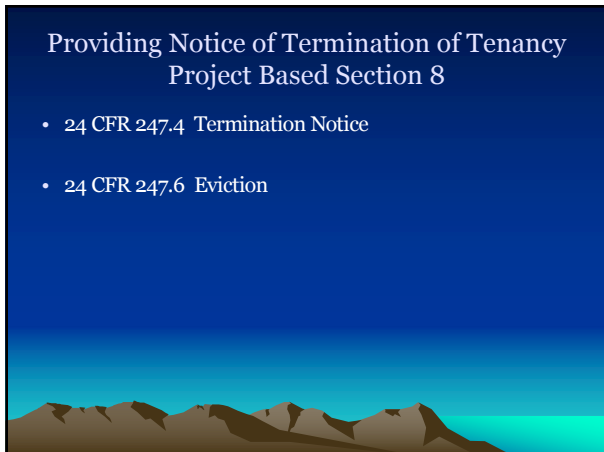
Nonrenewal is not "good cause."

A Landlord's termination of an assisted housing tenancy is subject to a good cause requirement

Good cause constitutes any material noncompliance with the rental agreement, material failure to carry out an obligation under any state landlord and tenant act, certain criminal activity, certain alcohol abuse, or "other good cause"







- **** Housing Choice Voucher/Tenant Based Section 8, landlord must also serve PHA with notice to vacate prior to filing eviction action**

24CFR982.310(e)(2)(ii)

Termination of HUD – Subsidized Housing

See HUD Handbook 4350.3 Chapter 8

- It is important to remember that subsidized housing is an entitlement and not a privilege
- Therefore, a tenant must receive due process before his/her rights are deprived
- The procedures for the establishment of an action under the Federal Subsidized Housing Laws are set forth in 24CFR Part 247 (Project Based Section 8)

Termination of HUD – Subsidized Housing

- Due process means a tenant in PBS8 housing is entitled to a meeting to discuss termination prior to the filing of an FED
- In public housing and the HCV program, the tenant is almost always entitled to an administrative grievance hearing conducted by the PHA

Termination of Tenancy

1. 24 CFR 5.850-5.852, 5.858-5.861, 5.901-5.903, and 5.905 (Termination of tenancy in Screening & Eviction for Drug Abuse & other Criminal Activity; Final Rule)
2. 24 CFR 247.3, 880.607, 881.601, & 883.701 (Fraud, minor violations, nonpayment of rent, state or local Landlord and Tenant Act)
3. 24 CFR 247.3, 880.607, 881.701, & 884.216 (Substantial lease violations)
4. 24 CFR 880.607, 881.601, 883.701, & 247.3 (Other good cause)
5. 24 CFR 880.607, 881.601, 883.701, & 884.216 (Lease Expiration)

Eviction for Drug Abuse
& Other Criminal Activity

- 24 CFR 5.850-5.852, 5.858-5.861, 5.901, 5.903, and 5.905 (Eviction in Screening and Other Criminal Activity; Final Rule)
- Note: These regulatory requirements do not apply to owners of housing assisted by the Rural Housing Service under Section 514 or Section 515 of the Housing Act of 1949

Allowable Circumstances for Terminating
Tenancy

- Material noncompliance
 - Substantial lease violations
 - Fraud
 - Repeated minor violations
 - Nonpayment of rent
- Drug abuse & other criminal activity
- Material failure to carry out obligations under a State Landlord and Tenant Act
- Other Good Cause

Nonpayment of Rent

- Improperly Calculated Rent
 - Nonpayment of improperly calculated rent by the property owner is not good cause for termination of subsidized tenancy

Nonpayment of a Charge

- Nonpayment of a small charge may be a minor violation of the lease and, for that reason, might not be good cause to terminate an assisted housing tenancy
- Nonpayment of a disputed charge may be good cause to evict an assisted tenant, but certain procedural requirements should be satisfied

Recertification Violations

Failing to furnish accurate information at recertification is only good cause to terminate a project-based subsidized housing tenancy if the omission/misrepresentation was fraudulent. See HUD Handbook 4350.3, pages 5-18 & 8-13

Unauthorized Occupant/Authorized Guest

- Regulatory definition of guest-
 - “Guest, only for purposes of 24 CFR, part 5, subparts A and I, and parts 882, 960, 966, & 982, means a person temporarily staying in the unit with the consent of a tenant or other members of the household who has expressed or implied authority to so consent on behalf of the tenant. The requirements of parts 966 & 982 apply to a guest as so defined.” 24 CFR § 5.100

Unauthorized Occupant/Authorized Guest

- Factors to consider in distinguishing between an occupant and a guest include (1) number of days per week or length of stay, (2) any use of another residence, (3) where clothes & other personal belongings are maintained, (4) where meals are eaten, (5) where mail is received, (6) address used for driver's license & other documents, (7) where one sleeps, (8) whether one contributes to rent or utilities, & (9) other indicia of residency

Non-Criminal Conduct of a Tenant's Child

In determining good cause to evict, courts distinguish between children of tenants and children who are non-household members, non-guests

Non-Criminal Conduct of a Guest

- The conduct of a guest might not be good cause to terminate an assisted housing tenancy if (1) the tenant neither knows nor has reason to know that the guest is inclined to engage in improper conduct, (2) the tenant had no knowledge of the guest's improper conduct, and/or (3) the tenant could not reasonably have foreseen or prevented the guest's improper conduct
- R.C.5321.05(A)(6) does not impose a strict liability standard on a tenant for a guest's improper conduct

Criminal Conduct of Tenant, Household Member, or Guest

- In general, HUD regulations define the criminal activities that are grounds for terminating an assisted housing tenancy
- Discretion of Landlord
 - With one exception – the conviction of a tenant or household member of manufacture of methamphetamine on the premises of assisted housing – landlords have discretion in terminated assisted tenancies for criminal activities of tenant, household member, or guests

Criminal Conduct of Tenant, Household Member, or Guest

- To constitute good cause to evict, certain criminal activity must be engaged "on or near the premises"
 - Drug related criminal activity must occur on or near the premises for project-based subsidized housing or Section 8 voucher tenancy. See 24 CFR § 5.858, 247.3(a)(3), 880.607(b)(1)(iii)(project-based); 982.310(c)(1)(voucher)
 - Violent criminal activity must occur on or near premises to constitute good cause to terminate Section 8 voucher tenancy. 24 CFR § 982.31(c)(2)(i)(c)

Criminal Conduct of Tenant, Household Member, or Guest

What= on or near?

Next door?

1/4 mile away?

1/2 mile away?

1 mile away?

Other side of town?

Criminal Conduct of Tenant, Household Member, or Guest

- To constitute good cause to evict, certain criminal activity must be a “threat to health, safety, or peaceful enjoyment of the premises of other residents”

Dayton Metropolitan Housing Authority
Rhonda Kilgore 2011-Ohio-3283

- Public Housing
- Drugs found on premises
- Kilgore testified unaware of drugs
- Kilgore allowed people into her apartment while she was away
- Kilgore cooperated with police and was not charged

- At Magistrate level-Court found tenant did not breach the lease
- Court overruled objections of DMHA

- On appeal
- Tenant argued Cuyahoga Metropolitan Housing v. Harris and Equity
- Court found although Kilgore might not have been “innocent” of criminal activity, by making her apartment open and available she furthered her guests criminal purposes

Innocent Tenant

- Equity Defense: Cuyahoga Metropolitan Housing v. Harris—similar facts to Kilgore, different result. Harris, like Kilgore did not know of the criminal activity
- Conduct of an uninvited person

Minor Violations of the Lease

- One minor violation of the lease is not good cause to terminate an assisted housing tenancy. 24 CFR § 247.3(c)(2), 880.607(b)(3)(ii), 966.4(1)(2)(i), 982.310(a)(1)
- Although repeated minor violations of lease can be good cause to terminate an assisted housing tenancy, for project-based subsidized housing, repeated minor violations are only good cause to terminate if...

Question:
The Fair Housing Act (FHA) applies to:

- A. Subsidized housing providers
- B. Public Housing Agencies including landlords who accept Housing Choice Vouchers (HCV)
- C. Low-Income Housing Tax Credit
- D. A & C, but not B
- ✓ E. All of the above

0% 0% 0% 0% 0%
Subsidized housing providers
Public Housing Agencies including landlords who accept Housing Choice Vouchers (HCV)
Low-Income Housing Tax Credit
A & C, but not B
All of the above

The correct answer is...

ALL OF THE ABOVE

Each of these actors engage in the rental of dwellings, and the FHA was created to prohibit discrimination against protected classes in housing-related transactions. Do not confuse the FHA with 504

Discrimination

When a tenant's race, color, religion, sex, handicap, familial status, or national origin is a significant factor in the landlord's decision to terminate the tenancy, a defense to the action may exist under one or more of the following statutes:

- a) The Federal Fair Housing Act, 42 U.S.C. § 3604
- b) Section 504 of the Rehabilitation Act of 1973 if handicap discrimination is alleged and the landlord receives federal financial assistance
- c) Title II of the Americans with Disabilities Act if handicap discrimination is alleged & the landlord receives state or local government financial assistance
- d) The Civil Rights Act of 1866, race discrimination
- e) The Ohio Civil Rights Act, R.C. 4112.02(H)

Question:

The Fair Housing Amendments Act could be a defense even if you can prove reason to evict?

- ✓ A. True
- B. False

0%
A. 0%
B.

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- Answer: True

– When the threat or violation could be removed by applying a reasonable accommodation, the landlord must base their decision on current objective data, not on supposition that the tenant may or could pose a harm or threat to other persons or property.

Question:
It is permissible for a landlord to use screening criteria that ends up discriminating against a protected class as long as the landlord had no intent to discriminate and applied the criteria to all applicants.

A. True
✓ B. False

0% 0%
A. B. 10

Answer

False.

This is what The Supreme Court case, *ICP v. TDCHA* (2015) was all about.

Question:
Which of the following statistics is true?

A. The U.S. prison population equals 2.2 million
B. The U.S. houses 1/4 of all the world's prisoners
C. Over the last 10 years, the U.S. has averaged greater than 650,000 individuals released from incarceration per year
✓ D. All of the above
E. None of the above

0% 0% 0% 0% 0%
A. B. C. D. E. 10

Answer

- D. All of the above
- Thus HUD's concern regarding the re-entry population and the ability of applicants being released from incarceration to be able to find adequate housing

Sources:


- Nat'l Acad. Sci., Nat'l Res. Couns., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 2 (Jeremy Travis, et al. eds., 2014), available at: <http://www.nap.edu/catalog/18614/the-growth-of-incarceration-in-the-united-states-exploring-causes>
- E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at 29, appendix tbls. 1 and 2, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>.

Question:

You are a property manager of public housing or HUD housing. In a recent notice HUD issued guidance on screening criteria for property managers. HUD stated that:

Please make your selection...

- A. A landlord may use arrest records alone as a basis for denial as long as the arrest was for a felony
- B. A landlord may use arrest records alone as a basis for denial as long as the arrest was for a "serious" crime
- C. A landlord may use arrest records alone as a basis for denial as long as there is a reasonable look back period
- ✓ D. None of the above



Answer

D. None of the above

Question:

In 2016 HUD released guidance on the use of criminal records in screening by ANY housing provider. Regarding the sole use of arrest records as a basis for denial, the guidance states:

Please make your selection...

- A. A landlord can bar an applicant for being arrested as long as the person was arrested for a 'serious' crime
- B. A landlord can bar an individual for being arrested for ANY crime as long as there were multiple arrests
- C. A landlord can bar an individual for being arrested for any crime as long as there are multiple arrests, BUT ONLY if it was for the same crime
- ✓ D. None of the above
- E. All of the above

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A B C D E

10

Answer

D. None of the above

HUD makes it clear that arrest records alone are insufficient probative evidence that any crime has actually been committed and has a disparate impact based on race

Question:

Which of the following is true?

The Violence Against Women Act (VAWA) applies to:

- A. Only women, by virtue of its title
- B. Same sex couples
- C. Sexual assault victims
- D. All of the above
- ✓ E. B & C, but not A


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Only women by virtue of its title
Same sex couples
Sexual assault victims
All of the above
B & C, but not A

The correct answer is....

D. B & C, but not A


Vawa applies to survivors of DV, dating violence, sexual assault, and stalking, regardless of age, SEX, gender, identity, or sexual orientation



Question:
A landlord can choose to allow a tenant to qualify as a domestic violence victim & be entitled to the protections under the act simply by accepting the tenant's oral statement that they are a victim

✓ A. True
B. False


0% True 0% False



The correct answer is...


TRUE

A housing provider is free to take tenant at their word, but the provider can also ask tenant to provide written documentation



Question: A landlord may determine which form of written documentation the tenant must provide as proof of DV, as long as the options include HUD's self-certification form, a court order, a police report, or a doctors report


A. True
 ✓ B. False



The correct answer is...


FALSE

The survivor gets to choose documentation; the housing provider must accept the documentation that the survivor gives, unless there is conflicting evidence, in which case the housing provider can request third-party documentation



Question:
 The 2013 Reauthorization Act included the following provisions:

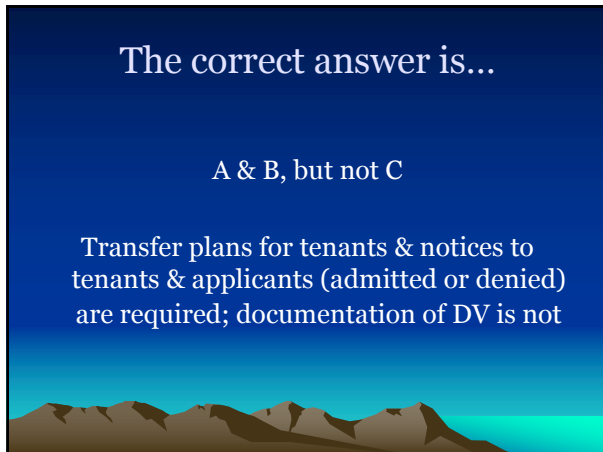
A. Mandatory notices of VAWA protections to tenants & applicants on specific occasions
 B. Mandatory transfer plans
 C. Mandatory documentation requirement
 ✓ D. A & B, but not C
 E. All of the above



The correct answer is...

A & B, but not C

Transfer plans for tenants & notices to tenants & applicants (admitted or denied) are required; documentation of DV is not

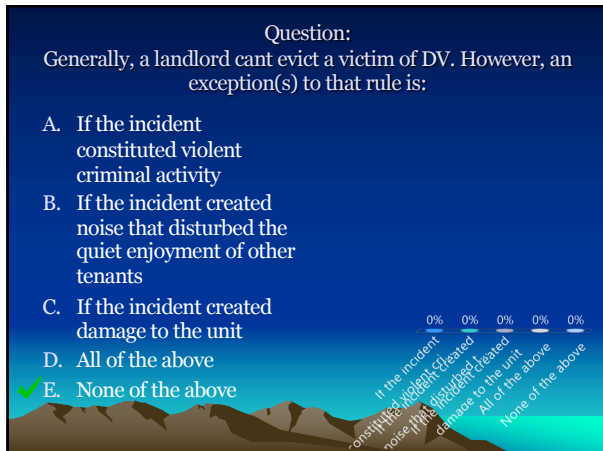


Question:
Generally, a landlord cant evict a victim of DV. However, an exception(s) to that rule is:

- A. If the incident constituted violent criminal activity
- B. If the incident created noise that disturbed the quiet enjoyment of other tenants
- C. If the incident created damage to the unit
- D. All of the above
- ☒ E. None of the above

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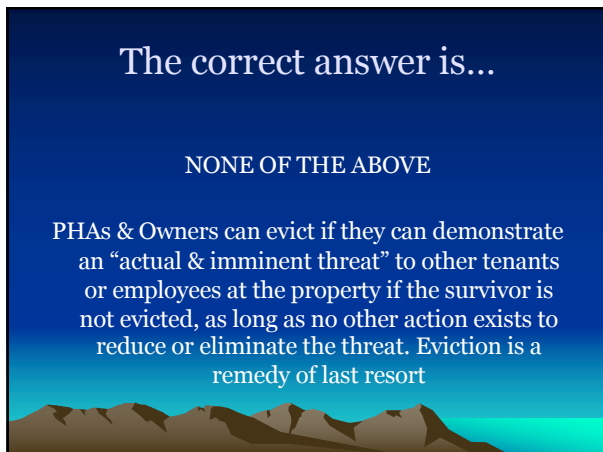
If the incident constituted violent criminal activity
If the incident created noise that disturbed the quiet enjoyment of other tenants
If the incident created damage to the unit
All of the above
None of the above



The correct answer is...

NONE OF THE ABOVE

PHAs & Owners can evict if they can demonstrate an “actual & imminent threat” to other tenants or employees at the property if the survivor is not evicted, as long as no other action exists to reduce or eliminate the threat. Eviction is a remedy of last resort



Question

- A resident's ex-boyfriend damaged the apartment front door and broke a front window. The resident did not invite the ex-boyfriend to the apartment or participate in the damage, in fact, she is the one who called the police. The landlord seeks to hold the resident responsible for the damages.

What will the result be?

- A. The landlord will win, tenant cannot cause damage to the apartment
- B. Tenant will win since she did not actually cause the damage.
- C. It depends on how the lease was drafted.

Please make your selection...

- A. Landlord will win
- ✓ B. Tenant will win
- C. Depends on the lease



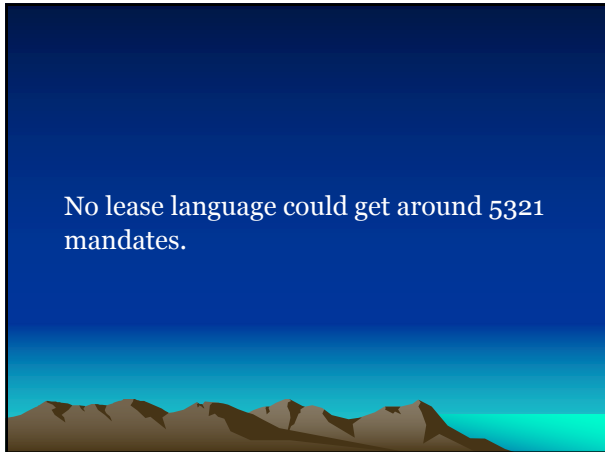
Answer

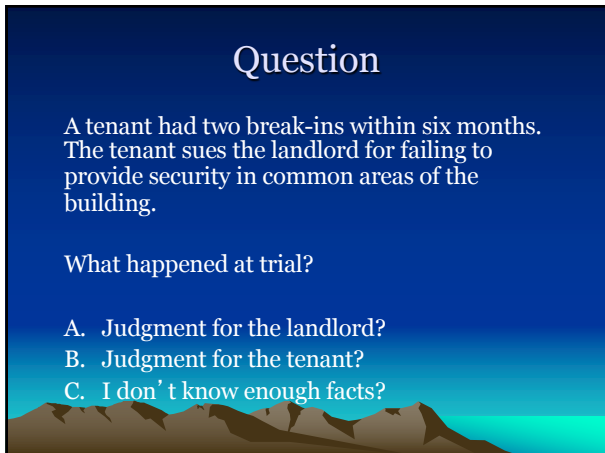
The correct answer is B based on the facts from *DAK, PLL v. Borgerding* Franklin Cty. 2003

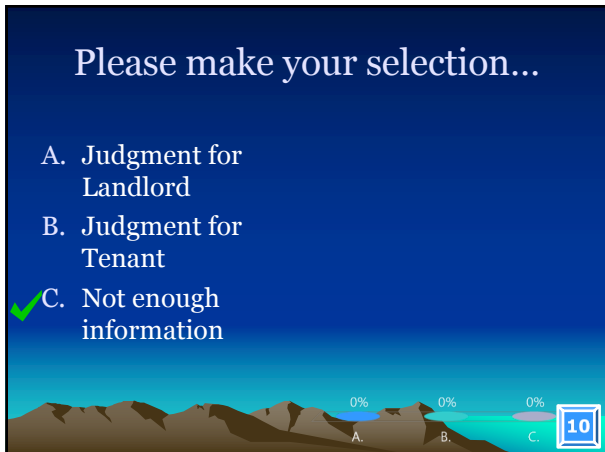
5321.05(A)(6)

“...personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance or other part of the premises.” The Court found that the resident did not invite or encourage/condone the violence

The Court noted R.C. 5321.05(A)(6) which does not require the tenant to prevent damage to the leased premises, but rather personally to refrain from such activity and to forbid others from engaging in it.







Answer

The landlord won at trial but C is probably the best answer.

Question

A tenant falls moving furniture into a unit and claims the carpet was worn with rips and tears which caught his heel. The landlord said he was sorry but he was unaware of any carpet damage. Is the landlord liable?

A. Yes - the landlord is liable

B. No - the landlord is not liable

Yes or No?

A. Yes

✓ B. No



Answer

Pine v. Hall ; Hamilton City (July 2005)

NO!

Although a violation of R.C. 5321.04 constitutes negligence per se, a landlord may be excused from liability if he/she neither knew nor should have known of the factual circumstances that caused the violations.

- Negligence per se \neq liability per se

Question

You are in a dispute with a tenant regarding money owed. The tenant sends you a check for $\frac{3}{4}$ of the amount owed marked “payment in full”. Under Ohio law you can cash the check and pursue the balance.

True or False?

What is your opinion?

- A. True
- ✓ B. False



Answer

- False!

Ohio Revised Code 1303.40 (UCC) (accord & satisfaction):

payment + notice that payment = full payment

However:

There is a landlord/creditor safeguard that says you can re-tender repayment within ninety days of receiving payment.

Question

Most leases have a clause mandating that a tenant must provide at least 30 (45, 60, 90) days written notice of his/her intention to move-out. In Ohio, is written notice of a tenant's intention to move-out required?

Please make your selection...

- A. Written notice is required in Ohio
- B. No notice is required in Ohio
- ✓ C. It depends



Answer

The best answer is “C” - It depends.

- McGowan 7 Ohio App. 3d 349 (Franklin County)
- Seginak Ohio App. 11 Dist; 1987 WL 17258
- If oral notice is truly given do not ignore!

- Ohio law recognizes that a landlord is entitled to damages until the expiration of the tenants lease or until the premises are re-rented...which ever comes first. A landlord is also under a duty to mitigate damages and re-rent the premises using reasonable efforts.

- Until the Ohio Supreme Court decided *Dennis v. Morgan* in 2000, Ohio Appellate districts were split on whether a three day notice to vacate pursuant to R.C. 1923.04 terminated a tenant's obligation to pay rent for the remainder of the lease term or until a new tenant is secured.

Contract Law & liability

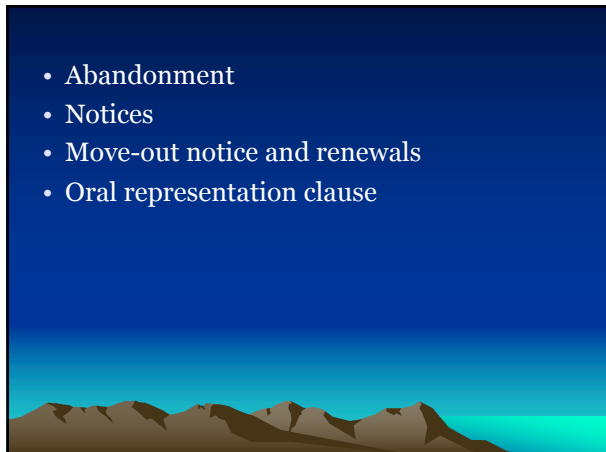
- Joint and several liability
- Contract law v. negligence



- Delinquent date vs. late fee date.
- Distinction between termination of tenancy vs. termination of the lease.
- Equity Issues
- Form of Payment
- Application of Monies
- Utilities-Material-Non-Compliance
- Prohibited conduct - “on or near language”



- Abandonment
- Notices
- Move-out notice and renewals
- Oral representation clause



Question:
If a tenant turns in keys but leaves personal belongings in the apartment, that means that they have vacated and it is ok to retake and trash the unit?

A. True
B. False
✓C. Maybe

0% A. 0% B. 0% C. 10

• ANSWER:

• C. Since there is no statutory definition of abandonment, this is one indication that the tenant has vacated.

RESIDENTIAL ABANDONMENT

• “No statutory definition”

• Reasonable man standard; must be judged case by case.

1. Forwarding Address
2. Return of keys
3. Utility shutoff
4. Lack of food, bedding and/or clothing
5. Written notice of intent to vacate.

Question:

Theft is defined by Ohio Revised Code Section 2913.02 as:

Knowingly obtain or exert control
over property or services with purpose
to deprive the owner thereof without consent
of the owner or person authorized to consent.

- ✓ A. True
- B. False

0% 0%
A. B.

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- Answer: A True

– Someone gets to go to jail!!!

- Length of time the premises appears to have been abandoned.
- Rental Application
 - Employment
 - Next of kin/Emergency Contact #
- Tape on the door trick
- Duty to mitigate
- Document, document, document

- Pictures
- Itemized list of belongings
- What do I do with the belongings?
 - discard
 - donate
- Material belongings
- Keep-sake belongings

- Lease language helpful
- Use of Abandonment Worksheet
- Attorney as sounding board
- 5321.15 – Holding belongings as ransom
- Conversion

Question:
When a resident dies, Ohio law allows a Landlord to provide keys and/or access to a family member?

A. True
✓ B. False

0%

0%

A.

B.

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- Answer: B False
- Only the administrator or executor appointed by the probate court has authority to act on behalf of the Tenant's Estate

DEATH OF A RESIDENT

- First contact
- Don't enter the apartment alone
- Clean up
- Application-locate Emergency #
- Security-changing the locks
- Giving out keys
- Burial clothing
- Liability for rent
- Evictions
- Removal of resident's property
- Indemnity Agreement


Question

A new Resident informs you that he/she is going to join the service, or has been called to active duty. Do you have to let him/her out of the lease agreement?

- A. Yes
- B. No
- C. Maybe


Please make your selection...

A. Yes
B. No
✓ C. Maybe




Answer

The best answer is: C. Maybe



Servicemembers Civil Relief Act
(December 2003)

- Court actions may be stayed
- Reducing interests to 6% on pre-service loan
- Court approval before eviction
- Termination of a residential lease



- A lease may only be terminated if entered into prior to active service or change of station or deployment orders over 90 days.
- Written notice with copy of military orders
- In month to month situations, 30 days after the first date on which the next rental payment is due after the date notice is delivered

- In the Lease Agreement, termination is effective on the last day of the month following the month in which the notice is delivered.
- Any advanced rent and security deposits paid by servicemember shall be due within 30 days of the effective date of the termination of the lease.

Dependent-SCRA protection is extended to:

Support for 180 days immediately preceding an application for relief under the act.

- 1) Spouse
- 2) Kids
- 3) An individual for whom the servicemember provided more than one-half of the individual's support

Question

Maintenance staff were replacing furnace filters yesterday and noticed that there were two (2) beds being used in an unfurnished basement. Can I evict the resident for a bedroom in the basement?

Yes or No?

Do you agree?

- ✓ A. Yes
- B. No



Answer

Yes!

Many municipalities including Columbus have local minimum space and use requirements.

4541.04 Basement or Cellar Occupancy

- Except as modified herein, no basement or cellar space shall be used as a sleeping room, dwelling unit or rooming unit unless it meets all standards as set fourth in this Housing Code and meets the following additional requirements:

- (a) The floors and walls shall be impervious to leakage or seepage of underground or surface water and shall be well drained and protected against dampness;
- (b) The total window area and openable window area of each room so used shall meet the requirements of Sections 4523.01 and 4523.02 respectively

- c) Access can be gained to each room so used without passage through a furnace room.
- (d) Each room so used shall have no pipes, ducts or other obstructions less than six feet and six inches above the floor level which interfere with normal use of the room or area.

- (e) Each room so used shall be separated from the heating equipment, incinerators, or other equally hazardous equipment by a standard partition when required by, and as specified in the Columbus Building Code. (Ord. 356-75)

4541.01 Sleeping Area Requirements

- Every room occupied for sleeping purposes by one occupant shall contain at least seventy (70) square feet of floor space, and every room occupied for sleeping purposes by more than one person shall contain at least fifty (50) square feet of floor space for each occupant thereof (ord. 595-96.)
 - * Unless space prohibits, 2 per bedroom

Keating Memo

Federal Register Vol. 63, No. 245 Dec. 22, 1998

Federal guidance

- General "rule" of occupancy policy of 2 person per bedroom
- NOT a national occupancy code

Keating Memo

Occupancy cases should be reviewed taking in multiple factors (exceptions)

- unit and bedroom size
- unit configuration
- physical limitations of housing
- state and local law
- age of children
- any other evidence of discrimination

Keating Memo

Blanket restrictions may be problematic

If using a 2 person/bedroom rule, one should be prepared to allow for exceptions based on the factors listed previously

Ohio Revised Code 5321.04(A)(3) states that a landlord must keep all common areas of the premises in a safe and sanitary condition. A violation of R.C. 5321.04 constitutes negligence per se.

Breach of Contract

- What does your lease say?
- Do you have a gated community?
- Do you advertise or promote that you have security?
- Do you maintain an alarm system?

Tort Theories

Negligence

Undertaking to Act

If a landlord either gratuitously or for consideration, undertakes to render services that would protect a person or person's property and harm results because of his failure to render such services, the landlord may be liable for negligence.
