

Tenants Have Rights as Renters: Know Your Rights and Responsibilities



Joe Maskovyak, *Affordable and Fair Housing Coordinator*
June 23, 2020

Part 2:

Understanding Common Issues

Agenda Details

Part 2: Understanding Common Issues

- Entry and Right of Access
- Repairs and Remedies
- Fees and Deposits
- Termination and Eviction
- Preventing and Addressing Problems

Entry & Access

Landlord

5321.04

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

Tenant

5321.05

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

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



What is “reasonable” entry?



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

COVID-19

- Has Ohio made any laws that affect the rights of tenants or landlords re: entry into the unit due to the virus?
- When may a tenant reasonably refuse entry?
- Can a tenant require those entering to wear face masks?
- Or vice versa?



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 may count) to the landlord (person or place where rent is normally paid) **Advice we give 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

If Landlord Does Not Remedy

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

General Escrow Requirements

- **Have to be current in rent**
- Have to deposit your **full amount of rent** with local Clerk of Courts **at time rent is due**
 - 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

COVID-19

- Maintenance issues during COVID-19:
 - “Emergency” repairs only (no state definition of emergency)
- Access to courts to escrow
- Contacting Code Enforcement/County Health Depts.



Rent Amount, Fees and Deposits

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

Security Deposits: 5321.16

- **NO LIMIT on amount**

- If amount is more than one month's rent, 5% annual interest on surplus



- **LL's have 30 days to return it after tenant leaves**

- Tenant must give written notice of forwarding address
- LL must itemize deductions and charges
- Tenant can sue for double amount believed to be **wrongfully withheld** if not returned

Security Deposits Continued

- Leave unit in same condition as at time of move-in, except for normal wear and tear (also not defined)
- Not responsible for:
 - Normal wear and tear
 - Painting
 - Carpet cleaning
- Responsible for:
 - Damage or cleaning beyond normal wear and tear
 - Unpaid rent
 - Unpaid late fees
 - Unpaid maintenance charges
 - Unpaid utilities



Tenant Failure to Maintain Property: ORC 5321.11

- Notice to cure from Landlord to Tenant to cure problem because Tenant not fulfilling duties
- Tenant's breach of 5321.05 (tenant duties) is "materially affecting health and safety"
- Must give 30 days to cure
- If Tenant cures, then no grounds to pursue in court
- Anomaly in the law
- This is probably not happening as much, because many landlord's are not entering units

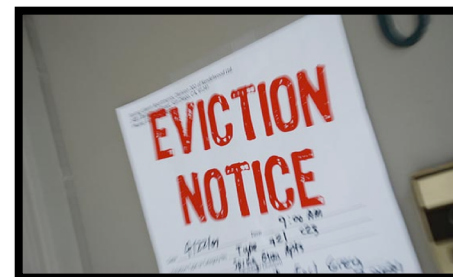
Termination vs. Eviction

Termination ORC 5321.17

- 30 day notice for month-to-month
 - Runs with rent cycle
 - No reason required

Eviction ORC Chapter 1923

- A landlord can bring an eviction action:
 - Tenant failed to pay rent on time
 - Stayed in the unit after the termination or expiration of rental agreement (holdover)
 - Tenant breaches lease or law



Eviction Process

- 1. Termination event**
- 2. Notice to leave premises**
- 3. Complaint**
- 4. Hearing**

Notice Tenant Must Give at end of Lease

- Give proper notice per lease of date of move-out (usually 30 days, but can be longer—read your lease!)
- Send notice by certified mail, or certificate of mailing
- Keep Copy of Notice with proof of mailing

Eviction Notice 1923.04

- **Serve Notice to Vacate (3 Day Notice)**
- Magic language: "You are being asked to leave the premises. If you do not leave an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."
 - Must wait 3 days to file
 - Magic language must be “conspicuous”
 - Counting: Include Saturdays, Sundays, Holidays???
- Local courts may have sample forms for landlords

Sample 3 Day notice

NOTICE TO LEAVE PREMISES, NO. 1 A
(RC § 1923.04(A) Eff. 9-22-90)

REVISED 11/02



Registered in U.S. Patent and Trademark Office
Anderson Publishing Co. Cincinnati, Ohio 45202

NOTICE TO LEAVE THE PREMISES

(For Residential Property Only)

To: [Redacted] Tenant:

You will please notice that We want you on or before Sept 1st 2015
to leave the premises you now occupy, and which you have rented of Margaret Masley & Rebecca Lalla
situated and described as follows: (Landlord)

1088 Lockbourne Rd

In Columbus County of Franklin and State of Ohio
Grounds: behind in rent and utilities

YOU ARE BEING ASKED TO LEAVE THE PREMISES
IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY
BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT
REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS
AS A TENANT, IT IS RECOMMENDED THAT YOU
SEEK LEGAL ASSISTANCE.

Sept 8th 2015

Margaret Masley & Rebecca Lalla
Landlord's Address 1935 E Dublin Granville Rd
PMB 299 Columbus OH 43229
614-537-7331



10 Day Notices

- HUD subsidized housing must get 10 day notice
- Must notify of right to meeting with in 10 days
 - If meeting requested, must provide meeting where issues are discussed and attempt to resolve situation
 - Can't just meet and refuse to talk
- Must notify of right to request reasonable accommodation for meeting
- Must give information about alleged lease violation that is specific enough for tenant to know exactly what landlord says tenant is doing wrong

Sample 10 Day Notice

10 DAY NOTICE TO LEAVE THE PREMISES

To: [REDACTED] and all other occupants:

You are hereby notified that we want you on or before 11:59 PM on February 28, 2019 to leave the premises you now occupy and which you have rented from us, situated and describe as follows:

266 E. Main Street, Apt. [REDACTED]
Columbus, OH 43215

together with the lot of land which said unit is situated.

Grounds: **MATERIAL NON-COMPLIANCE OF LEASE AND OHIO LAW**, to wit:

On or 2/18/2019, we received the first of many complaints from a neighboring unit, who complained [REDACTED]

[REDACTED] Your failure to keep the premises in a health, safe and sanitary condition has not only damaged our property but has disturbed the peaceful, quiet and enjoyment of the premises.

YOU ARE HEREBY ADVISED THAT YOU HAVE TEN (10) DAYS WITHIN WHICH TO DISCUSS THIS PROPOSED TERMINATION WITH THE LANDLORD. THE TEN (10) DAY PERIOD WILL BEGIN ON THE EARLIER OF THE DATE THIS NOTICE IS HAND-DELIVERED TO YOUR UNIT OR THE DAY AFTER THIS NOTICE WAS MAILED. IF YOU REQUEST SUCH A MEETING, THE LANDLORD AGREES TO DISCUSS THE TERMINATION WITH YOU AND WILL PROMPTLY ADVISE YOU IN WRITING OF ITS DECISION. THE MEETING CAN BE ARRANGED BY CONTACTING THE LANDLORD AT THE ABOVE PROVIDED ADDRESS. IF YOU OR ANY OTHER HOUSEHOLD MEMBER LISTED ON THE LEASE AGREEMENT HAVE A DISABILITY, YOU HAVE THE RIGHT TO REQUEST A REASONABLE ACCOMMODATION TO PARTICIPATE IN THIS MEETING. IF YOU REMAIN IN THE LEASED UNIT ON THE DATE SPECIFIED FOR TERMINATION LISTED ABOVE, THE LANDLORD MAY SEEK TO ENFORCE THE TERMINATION ONLY BY BRINGING A JUDICIAL ACTION, AT WHICH TIME YOU MAY PRESENT A DEFENSE.

Your compliance with this notice on or before the TENTH day from the date listed below will prevent any legal measure being taken by us to obtain possession.

YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE. YOU ARE ALSO ADVISED THAT YOU HAVE THE RIGHT TO DEFEND THIS ACTION IN COURT.

On the 18th day of February, 2019, I served the above notice on the above-named tenant by both hand delivery and ordinary U.S. Mail.

By: 
Agent for the Landlord (Yvette Young, Manager)

Landlord's Address:
266 E. Main Street
Columbus, OH 43215



General Eviction Procedures

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



Local Practice

- Examples from Franklin & Hamilton Counties
- Evictions heard each day at 9:00 AM
- Heard by Magistrates
- If tenant loses, a 7-Day Writ (Hamilton) (5 days in Franklin Cty.) issues unless evidence of criminal activity or destruction of property, in which case even less time may be given to vacate
- 20-70 cases per morning, usually done in one hour in Hamilton, 75 cases average in Franklin, often done by noon



COVID-19

- Eviction court dockets in major urban centers have been backed up, some for months
 - Franklin Cty. = 100/day; Cleveland Housing Court =125/day; Hamilton Cty. = 75/day
- Normally FED's are "expedited proceedings"
 - Local court moratoriums, where they were instituted, changed that
- A landlord filing an FED in Franklin Cty. today under normal circumstances would have a hearing on July 7.
 - Now, it's likely more
- The backlog in Cincinnati is 1,200 cases.
 - Normally a hearing is set in 16-20 days, but now it's sometime in August
- Not all municipal courts had moratoriums



COVID-19



- Federal moratoriums are still in effect
- Most federal moratoriums expire July 27
- Federal moratoriums apply basically to 2 types of situations:
 - Federally subsidized properties (PHA, HCV, PBS8, USDA, LIHTC, and more) where VAWA applies, OR
 - Where the property has an FHA mortgage or a mortgage purchased by Fannie Mae or Freddie Mac
- Moratoriums apply to nonpayment of rent and other charges (late fees) and maybe more
- Upon expiration, landlords must serve 30-day notices (not 3- or 10-day notices)

Possible Eviction Defenses

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

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

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

Myths

Reasons why you cannot be evicted:

- pregnant/small children
- hospital
- no 30-day notice
- only behind one month (one day is enough)
- Christmas season



*** NONE OF THESE ARE TRUE**

Self-Help Eviction: ORC 5312.15

- Any action of landlord outside of court approval to remove tenant, or:
 - Shut off utilities
 - Change the locks
 - Seize the tenant's possessions



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

Preventing and Addressing Problems

It is always better to address problems before moving in and/or signing a lease.



Landlord Tenant Relationship

- **Treat as a business relationship**
 - Landlord is responsible for providing housing in exchange for rent money



**Tip: Avoid rental agreements
with friends and family**

PRIOR TO MOVE-IN OR SIGNING THE LEASE



- Always view the unit you will be renting, not one like it
- Be specific about the when keys will be delivered, unit will be ready for occupancy (v. moving in things to store there until move-in)
- Specify what the remedy will be if the landlord fails to deliver the unit by the date specified
- ALWAYS incorporate any repairs/refurbishments/updates into the actual lease agreement

Preventing Common Problems

Document the following information:

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

Preventing Common Problems

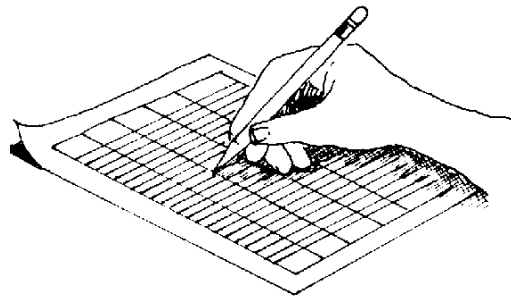
- Communicate in writing
- Get receipts, if possible, for all rent paid (checks are better than money orders)
- Keep all correspondence for records
- Don't wait to address a problem



Dealing with Existing Problems

- **We encourage tenants to communicate in writing and document conditions and problems**
 - Writing typically means on paper
 - Email/text may be acceptable (keep electronic file)
 - Pictures
 - Video
 - Keep records/logs

Tip: Be persistent!



Part 2 Summary

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

Resources

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

How to Stay in Touch

Joe Maskovyak, COHHIO

joemaskovyak@cohhio.org

Direct: 614-280-1984 x133

Toll Free: 888-485-7999 (Housing Information Line)
or Email: rentinfo@cohhio.org

Thank you!