BNI

Working for Justice in Housing Since 1959!

BNI's Landlord Introduction Packet

Tenant-Landlord Hotline:
410-243-6007 (Baltimore Region)
800-487-6007 (Maryland Only)

Baltimore Neighborhoods, Inc.

Providing Education and Resources since 1979
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Working for Justice in Housing Since 1959!

An Introduction to Tenant & Landlord Rights and Responsibilities

Baltimore Neighborhoods, Inc. (BNI), is a private, nonprofit organization that has been operating in Maryland since 1959. Its mission is to lessen neighborhood tensions, eliminate prejudice and discrimination, defend human and civil rights secured by law, and combat community deterioration. To continue that mission, BNI provides counseling services to both tenants and landlords that explains their rights and responsibilities under the law, promotes fair housing practices and fights discriminatory housing practices.

BNI's Tenant Introduction Packet is a summarized version of BNI's popular *Guide to Local, State, and Federal Laws Governing Tenant-Landlord Relations*. As the name suggests, this is only an introduction – an attempt to simplify the wording of the law. The information provided is not legal advice; it should not be interpreted as such. Readers are cautioned to call BNI or seek the advice of an attorney if involved in any tenant-landlord dispute, which cannot be resolved.

If you have, any additional question or concerns not covered in this packet call us:

Tenant Landlord Counseling Hotline	410-243-4468 1-800-487-6007 (Within Maryland)
Fair Housing Department	410-243-4400

BNI's Landlord Introduction Packet
Table of Contents

Contents

Being a Landlord

The business of owning and managing residential rental property is much like any business. It takes research, planning and knowledge. As a Maryland Landlord, it is important that you know the federal, state and local laws governing the tenant-landlord relationship. If the opportunity and inclination arise to be a landlord, here are some things to keep in mind:

- The property should be in good condition in regards to plumbing, electrical system, furnace, roof, etc.

- Baltimore City, and many counties, does not require a landlord to provide a stove and refrigerator (check with your County or city). However, most tenants expect to have them in an apartment and a good-looking stove and refrigerator will help rent it.

- Establish a reasonable rent that takes into consideration the current value of your property and at what price similar properties are renting.

- Both oral and written leases are considered binding contracts between the landlord and the tenant.

- Many landlords want the assurance of a year's written lease, but for new landlords, a month-to-month written lease might be easier, especially if the tenant becomes a problem. Oral leases are enforceable in Maryland for landlords who own less than five rental units in the state, but it wouldn't hurt to have a written lease. Leases for a period of more than one year must be in writing. Make sure your lease covers points of concern to you, such as late charges, pets, sub-leasing, persons who can occupy the apartment other than tenant, etc. If your lease contains an automatic renewal clause, make sure the tenant reads the clause and signs it. BNI has single and multi-family leases available for sale.

- Check to see if your City/County requires you to have a license to rent the property or to register the rental property.

- Research your rights and responsibilities under tenant-landlord law. Check the library for books on being a landlord. Check the internet also. BNI has tenant-landlord law manuals available by mail.

- Before you rent, be sure you understand the laws against housing discrimination.

- If you require a security deposit and the first month's rent before allowing the tenant to move in, make sure it is written in the lease. Be aware that the security deposit law limits a security deposit to no more than the equivalent of two months rent. It also requires the landlord to inform the tenant in writing, at the time the tenant pays the security deposit of the right to be present at an inspection of the property at the beginning and end of the tenancy.

- As a rule of thumb, yearly rent should not exceed 30% of a tenant's gross income. For example, if the yearly rent is $3,000, the tenant's gross income should be $10,000.

- Request that an applicant obtain a credit report to give to you. If you run your own credit check, you may charge the applicant a fee for your actual costs.

- Confirm the applicant's employment. Hopefully, he will have worked several years for a good company.

- Ask the tenant's previous landlord specific questions as to rent record, conduct, and care of the property. If there are problems, discuss the specifics with the tenant.

- Keep accurate records -- especially for rent. Give rent receipts. The law requires you to give receipts to tenants who pay by cash and to any tenant who requests them.

- Establish good communication with your tenant, respect his privacy and treat him with dignity.

- If you want to terminate a lease, even if the lease has a termination date on it, you must given written notice to the tenant. This is also true if you intend to change any terms of the lease when it terminates such as the amount of rent charged or services included with the rental.

- Never take the law into your own hands. You may not lock a tenant out or diminish essential services to which the tenant is entitled without going through the court process to obtain a legal eviction. This is true even if the tenant is behind in rent, has failed to move after the expiration of the lease, has failed to move after the date the tenant has stated he would move, or after the date you have told the tenant to move in a properly drafted notice to vacate.

When is a Refusal-To-Rent Illegal Housing Discrimination?

People often wrongly assume that any discrimination by a landlord is illegal. "To discriminate" means simply to distinguish among available choices. Some of these distinctions are lawful; others are not. Thus, in deciding to whom to rent, a landlord may lawfully reject someone with a bad rental, credit, or employment record or someone whose income suggests that s/he will be unable to pay the rent. A landlord may also refuse to rent to a person whose rental history suggests that s/he will not take care of the property or in other ways be irresponsible. These are all legal bases for discriminating among rental applicants and selecting those likely to be "good" tenants.

Unlawful discrimination is that which is not based upon merit but upon a person being one of a particular group to which a landlord, for whatever reason, does not want to rent.

The Fair Housing Act, which is Federal law, protects seven groups ("protected classes") from housing discrimination:

- *race*
- *color*
- *religion*
- *sex*
- *national origin*
- *disability (physical or mental)*
- *familial "family" status (a household that includes one or more children who are under 18 years of age in which one or more minor children live with, a parent, a person who has legal custody (including guardianship) of a minor child or children; or the designee of a parent or legal custodian, with the written permission of the parent or legal custodian. It also extends to pregnant women and any person in the process of securing legal custody of a minor child (including adoptive or foster parents.))*

HOUSING COVERED UNDER THE FAIR HOUSING ACT AND EXEMPTIONS

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker and housing operated by organizations and private clubs that limit occupancy to members.

The "Housing for Older Persons" Exemption: The Fair Housing Act specifically exempts some senior housing facilities and communities from liability for familial status discrimination. Exempt senior housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children. In order to qualify for the "housing for older persons " exemption, For more information on which senior housing facilities and communities qualify for the "housing for older persons" exemption, please see the Fair Housing – Equal Opportunity For All Pamphlet, available at: http://portal.hud.gov/hudportal/documents/huddoc?id=1686.pdf.

What is prohibited?

In the sale and rental of housing: No one may take any of the following actions based on race, color, religion, sex, disability, familial status or national origin:

- Refusing to rent or sell housing
- Refusing to negotiate for housing
- Make housing unavailable
- Otherwise deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale or rental
- For profit, persuade, or try to persuade homeowners to sell or rent dwellings by suggesting that people of a particular race, etc. have moved, or about to move into the neighborhood (blockbusting) or
- Deny any person access to, or membership or participation in, any organization, facility or service (such as a multiple listing service) related to the sale or rental of dwellings, or discriminates against any person in the terms or conditions of such access, membership or participation.
- Discriminatory advertising

In addition, Maryland law prohibits housing discrimination based on marital status, sexual orientation, genetic information and gender identity or expression. Local jurisdictions provide protection for other groups, such as *age, source of income, occupation, personal appearance, and matriculation*.

If a landlord or rental agent does or says something which suggests that s/he has refused to rent or has falsely stated that nothing is available because of a

person's race, color, religion, sex or national origin, that person *may* be the victim of illegal housing discrimination.

Blatant refusal to rent because of race, color, etc. seldom occurs these days. Unlawful discrimination usually assumes more subtle forms.

- If, for example, you inquire about renting at an apartment complex and are told nothing is available, when there are available units, but are referred to another development, this **may be** illegal racial steering. Similarly, if you ask about renting a home in a particular community but are told there are no rentals in that particular community, when there are rental homes available and are referred to another community, this could also be racial steering.

- If you are looking for a 3-bedroom apartment for you and your four minor children and are told that the development has a policy of placing all families with children on the first floor or in a separate building, this **could be** unlawful discrimination against families with children. If you are told that the landlord has a policy of allowing no more than one child per bedroom, that policy **may** also be an illegal form of discrimination.

In addition to the other protections provided, the federal Fair Housing Act contains special protections for *people with disabilities:*

- Landlords are required to make any *reasonable* exceptions to their usual rules, policies, practices, and services needed to permit a person with a disability to use and enjoy his or her home. These are called "reasonable accommodations" and must be made at the landlord's expense. They include such things as making an exception to a "no pets" policy for a person who needs a service animal or providing a reserved, designated parking place for a person with a mobility impairment. The kinds of "reasonable accommodations" which may be requested would depend upon individual need and would be limited only the "reasonableness" of the request. Whether an accommodation would involve the expenditure of a large amount of money or cause undue inconvenience for other tenants are the kinds of things that would determine the "reasonableness" of a particular request.

- Landlords are also required to allow a tenant, *at tenant's own expense,* to make such "reasonable modifications" in the premises as are necessary to permit him/her to live in and enjoy his/her dwelling place. These include such things as widening a doorway to accommodate a wheelchair, lowering kitchen cabinets to make them

accessible to a person in a wheelchair, installing grab bars in a bathroom or constructing a ramp to provide access to an entrance.

- Apartments and condominiums constructed for first occupancy after March 13, 1991, must be designed and constructed so as to be fully accessible to people with disabilities. If there is no elevator, all ground floor units must be accessible. If there is an elevator, all units must be accessible. In addition, all public and common use areas must be accessible, there must be an accessible building entrance on an accessible path, doorways must be wide enough to accommodate a wheelchair, environmental controls must be accessible, and kitchens and bathrooms must be usable.

Source: *Fair Housing Equal Opportunity for All* pamphlet

If you suspect that you have been the victim of illegal housing discrimination or need assistance in determining whether you have been, call BNI's Fair Housing Staff at 410-243-4400.

Lease Can Be Oral or Written

According to Maryland law, a lease means any oral or written agreement, express or implied, creating a tenant-landlord relationship. It includes subleases (Real Property Article, Section 1-101(h)).

The fact that a lease can be oral is a surprise to many tenants and landlords who contact BNI. If they do not have a written contract, a tenant may believe they can leave at will and the landlords believe they can evict at will, i.e., tell the tenant to leave immediately.

Landlords ask us, "How can the occupant prove that he/she is a tenant without proof of a written document?" We point out the obvious: the tenant has possession, usually has been there for several months, is in possession of rent receipts and many times, witnesses who can attest to the tenancy. We also point out when one has an oral lease, the tenant/landlord law of Maryland is the lease.

Occasionally, the situation is not clear. Recently, a landlord complained to BNI that he gave keys to a tenant to view an apartment. The tenant liked the apartment, gave the keys back, and was to come back with the first month's rent and the security deposit. The next thing the landlord knew was that the tenant had moved into the property--having made an extra set of keys!

Since the landlord's position that a lease does not exist would be difficult to prove, probably the best thing for the landlord to do is to file in Rent Court and give proper notice ending the tenancy. Then in the future, the landlord should go with a prospective tenant to view the property keeping the keys in hand.

Most oral leases are month-to-month tenancies, but one can have an oral lease for a year or less. Any lease for more than a year, if it is to be enforced, must be written. (Real Property Article, Sections 5-101 and 5-102).

A landlord who owns five or more rental units in the state must offer a new tenant a written lease. If a landlord fails to do so, it is presumed that there is a one-year lease from the date of the tenant's first occupancy unless the tenant does not wish to remain in the rental unit for one year. In that event, the tenant may terminate the lease by giving the landlord a one-month written notice. (See information on Proper Notice.)

We have come across very few oral leases for a year, but the concept can be useful. A tenant signed a year's lease with a landlord who stated that he would later sign the lease and send a copy to the tenant. The landlord then gave the keys to the tenant who moved in. The landlord did not give a copy of the signed lease to the tenant. A month later, they got in an argument. The landlord told the tenant that he would not sign the lease, that the tenant was on a month-to-month basis, and the landlord was giving him a month's notice to move. Our lawyers pointed out that the intent was to have a year's lease, possession was given, and while the landlord could not be forced to sign the lease, the lease, which the tenant signed, was proof of what was intended and that tenant could claim a year's oral tenancy.

Written leases can run from one page to many pages. Simply because a written lease is many pages does not make it a better lease. Such a lease may be simply outlining Maryland law, which governs the tenant/landlord relationship and which is binding whether or not it, is mentioned in the lease.

Written leases, to be effective and without controversy, should be signed by the tenant and by the landlord, or the landlord's representative. Witnesses to signing a lease (or the notarizing of a lease) are not necessary, but could be a valuable asset if one party to the lease denies signing it.

The basic written lease usually outlines the relationship between the landlord and the tenant covering such items such as amount of rent and security deposit, rent due date, beginning and end of the tenancy, notice requirement to end or renew the lease, late charges, proper means of giving notice, landlord and tenant rights and responsibilities, etc.

Security Deposits

(Maryland Code, Real Property, Section 8-203)

This law applies to all residential tenancies, whether the lease is written or oral.

(a) **Definition -** a "security deposit" is any payment of money, including the final month's rent paid in advance, which is given to the landlord by the tenant in order to protect the landlord against non-payment of rent or damage to the leased premises, common areas, major appliances, and furnishings.

(b) **Maximum amount**- the maximum amount a landlord may require as a security deposit for each dwelling unit is the equivalent of two month's rent or $50, whichever is greater. This is regardless of the number of tenants in the unit. If the landlord charges more than this, the tenant may recover up to three times the excess amount plus reasonable attorney's fees. The tenant's action to recover this amount may be brought at any time during the tenancy or within two years after termination.

(c) **Receipt**- the landlord must give to tenant a written receipt for the security deposit as specified in section 8-203.1 and is liable to the tenant for $25 if he fails to do so. The receipt may be included in the written lease.

(d) **List of existing damages**- either the lease or the receipt must contain language informing the tenant of his right to receive from the landlord a written list of all existing damage to the leased premises if the tenant so requests in writing within the first 15 days of his occupancy.

If the landlord imposes a security deposit and receives a written request, the landlord must provide the list of damages. If he does not, he is liable to the tenant for three times the amount of the security deposit. This liability of the landlord may be reduced by any damages or unpaid rent which he is entitled to under this section.

(e) **Bank account**- the landlord shall maintain all security deposits in federally insured financial institutions, as defined in section 1-101 of the Maryland Financial Institutions Article, which do business in the state. The account must be devoted exclusively to security deposits and bear interest. The landlord must deposit the amount of each security deposit in that account within 30 days after receiving it. The security deposit account cannot be attached by the landlord's creditors. In the event of sales or transfer of any sort, including receivership or bankruptcy, the security deposit is binding on the successor in interest to the person to whom the deposit is given.

(f) **Return of deposit to tenant; interest**- the landlord must, within 45 days after the end of tenancy, return to tenant the security deposit minus any amount, which he may rightfully withhold. Simple interest of 3% per year must be paid on security deposits of $50 or more and must accrue at 6-month intervals from the day the security deposit was given. Interest is not compounded. If the landlord, without good reason, fails to return any part of the security deposit within 45 days after the end of the tenancy, he is liable to the tenant for up to three times the withheld amount of the security deposit plus reasonable attorney's fees.

(g) **Withholding of deposit**- the security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guest or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord.

If the tenant notifies the landlord by certified mail that he intends to move out, the date of moving and his new address, he will have the right to be present when the landlord inspects the premises to determine if any damage was done. The notice must be mailed at least 15 days prior to date of moving. Landlord must then notify tenant by certified mail of the time and date of inspection, which must be within 5 days before or 5 days after tenant's move.

If the landlord fails to notify tenant in writing at the time of payment of the security deposit, of his rights under this subsection relating to the inspection, then the landlord forfeits the right to withhold any part of the security deposit for damages, including unpaid rent.

If the landlord attempts to use the deposit to compensate for breach of the lease agreement, he can only claim the actual amount of money lost due to the tenant's breach. If the landlord re-rents the property before the end of the tenant's term, his actual damages are reduced by the amount he gains from the new agreement.

(h) **Notice to tenant**- if the landlord withholds any part of the security deposit, he must send to the tenant's last known address, by first class mail, within 45 days after the termination of the lease, a written list of the damages he claims together with a statement of costs actually incurred. If the landlord fails to do this within 45 days after termination, he loses the right to use the deposit to offset damages, including unpaid rent.

(i) **Tenant ejected or evicted or abandoning**- where tenant has been evicted or ejected for breach of the lease, or has abandoned the premises prior to termination of the lease, the procedure for return of the security deposit is as follows:

1. Within 45 days after leaving the premises, tenant sends to landlord by first class mail a request for return of the security deposit, and informs landlord of tenant's new address.

2. Within 45 days of receipt of the notice, landlord sends to tenant, by first class mail, a list of damages deducted from the security deposit and a statement of costs actually incurred. Within 45 days of receipt of tenant's notice, landlord sends to tenant the security deposit with simple interest of 3% per year minus damages properly withheld.

3. If landlord fails to send the list of damages, he forfeits the right to withhold any part of the security deposit for damages. If he fails to return the security deposit as required, tenant may sue for up to three times the withheld amount, plus reasonable attorney's fees.

(j) **Waiver of section's provisions**- the provisions of this law cannot be waived in any lease.

Note: In PG County, the tenant is entitled to a 4% simple interest per year, payable on security deposits of $50 or more. Landlord may keep any interest earned above 4%. Interest accrues at 6- month intervals (Prince George's County Code, Subtitle 13, Section 13- 159 (d)).

Security deposits began to earn interest on March 5, 1973.
From March 5, 1973 to July 1, 1980, the rate was 3% per year.
From July 2, 1980 to September 30, 2004, the rate was 4% per year.
On October 1, 2004, the rate was decreased to 3% per year.
On January 1, 2015, the rate will decrease to the greater of 1.5% or the U.S. Treasury Yield curve rate for 1 year. (There may be a calculator on DHCD's website. http://www.dhcd.maryland.gov/) Contact BNI for more information about this upcoming change.

Co-Signers

There are times when a landlord might want a tenant to provide a co-signer for the lease. Perhaps the tenant is a minor or a person who has not yet established a rent or employment record, or the tenant's credit record is not good. Sometimes a tenant can actually pay the required rent but does not meet the basic income guidelines of the industry. Most professional landlords require that a tenant's yearly rent not exceed 30% of his/her gross income, i.e., salary before any deductions for taxes, etc. Thus, a landlord might require a tenant to have $20,000 gross income to qualify for an apartment renting for $6,000 per year.

A co-signer, to be acceptable, usually has to meet all the qualifications of a tenant who would normally qualify for the apartment: good credit and employment record and sufficient income. A landlord does not have to accept a co-signer, but many do. It helps to have a co-signer who lives in Maryland, though some landlords will accept co-signers who live out of state.

Co-signing a lease is a serious responsibility that should not be taken lightly. Tenants seeking a co-signer should not underestimate the risk that they are asking someone to assume. If a tenant cannot afford or cannot budget his/her money properly and defaults on the lease, then most landlords will seek payment from the co-signer even if they have to take him/her to court. Simply because a co-signer does not reside in the property does not mean that he or she cannot be held accountable for the rent.

Furthermore, a co-signer should make it clear whether he or she is responsible for only the first year of the lease or for renewals thereafter, as well. If tenants have been paying their rent on time during the first year or if their incomes improved enough to qualify for a lease on their own, then before their current leases renew, they could seek to have non-co-signed leases for the future. If the tenants are unwilling to do this and the co-signer wants to be relieved of future potential liability, then the co-signer should send a written notice to the landlord, before the lease renews, that at the end of the current lease he or she will no longer be a co-signer.

Sometimes, especially in the case of students renting an apartment together, there may more than one co-signer, with several residing out of state. Any Maryland co-signer should be aware that the landlord can sue one or all of the co-signers, and it is easier to sue locally than out of state. If the Maryland co-signer has income and assets enough, he/she may be the only one sued (and then he/she would have to sue the other co-signers to recover).

Using a co-signer may enable a tenant to rent the apartment they really want. However, a tenant seeking a co-signer should understand the risk they are asking another person to take for them and may want to consider seeking more modest accommodations where the landlord does not require a co-signer.

Smoke Detectors

Smoke is deadly. More people die from smoke than from the fire itself. Therefore, Maryland requires that each sleeping area in a residential occupancy be equipped with at least one approved smoke detector installed in a manner and location approved by the Maryland Fire Prevention Commission.

Dwellings built after January 1, 1989 must have at least one smoke detector on each level including the basement, but not the attic. Dwellings built after July 1, 1990 must have smoke detectors that operate off the electrical system, but which also have a battery as back-up.

In a one, two, or three family dwelling units built before July 1, 1975, the tenant of each unit must provide and maintain at least one approved battery or electric power smoke detector.

In all other rental occupancies, the landlord is responsible for installing the smoke detector, and upon notice in person or upon written notice by certified mail from the tenant, the landlord is responsible for repair or replacement of the detector. If the tenant personally notifies the landlord of a mechanical failure, the landlord must acknowledge this by written receipt. The tenant may not remove a smoke detector or make it inoperative.

Upon written request, a deaf or hearing-impaired tenant may require a landlord to provide a smoke detector which can emit a signal that is approved by a nationally recognized testing laboratory for electrical appliances, and is sufficient to warn the deaf or hearing-impaired person.

Every manufacturer whose smoke detectors are sold in Maryland must get product approval from the State Fire Marshall.

Where approved by the Fire Prevention Commission, an approved automatic sprinkler system may be installed in place of a smoke detector system.

A person who knowingly violates this law may be fined up to $1,000 or be imprisoned up to ten days, or both.

Local counties may have additional laws covering smoke detectors. For example, Baltimore County requires that the owners (and not the tenants) of any building containing one, two, or three residential units must have at least one direct-wired

electrically operated smoke detector in each unit. In buildings constructed before 1976, the owner must provide battery powered back-up systems. Every three years, the owner must submit to the County written verification by a licensed electrician or the county Fire Department that the required smoke detectors have been properly installed and are operational.

For additional information on smoke detectors and fire safety, call the office of the State Fire Marshall 410-764-4324 (long distance 1-800-525-3124).

Landlord's Right of Entry vs. Tenant's Right of Privacy

Rented property is no longer the exclusive domain of the landlord. The landlord has given possession to the tenant for the duration of the tenancy. The tenant has a reasonable right of privacy; that is, the landlord does not have the right to enter the premises anytime and for any reason. If the landlord insists on this, he or she may be guilty of trespassing and in violation of the covenant of quiet enjoyment.

The landlord does have a right of reasonable entry to make repairs, to show the premises to a prospective new tenant, or to address an emergency. Except in the case of an emergency, landlords are advised to notify the tenant and reach a mutually acceptable agreement about the specific time of entry.

Some county/and municipal housing or livability codes provide that upon receiving reasonable notice, tenants must give the owner or operator access to the premises at reasonable times for making inspections, repairs, alterations, etc., as needed to comply with the provisions of the code.

The balance between tenant's right to privacy and landlord's right of entry can usually be reached by a fair and reasonable agreement between the tenant and landlord.

NOTE: In Prince George's County, landlords are required to give tenants 24 hours written or oral notice of their intent to enter. Entry is allowed only during normal business hours or at a time that has been mutually agreed upon by both landlord and tenant.

SOME POINTS TO CONSIDER

Tenants should seek rentals that have leases giving them the right to be notified before a landlord's entry (except in an emergency) and, if possible, restricts the right of the landlord or his/her agent to show the property while the tenant lives in the property.

Unless there is an emergency or a surprise inspection necessary to uncover a breach of lease, such as having pets when the lease prohibits pets, the landlord should always contact the tenant ahead of time. The landlord should knock loudly and give time for the tenant to answer. If no one appears to be home, the landlord should give a loud yell identifying him/her before entering.

Landlords can and should make needed repairs. Nevertheless, the landlord cannot renovate the premises while the tenant is still there, i.e., repaint the apartment for a new

tenant before the old tenant has moved out. If repairs are being made, the landlord should be sure that the tenant's property is treated with respect, that there is a proper clean up afterwards, and that the door is locked when leaving.

If the landlord wants to sell the property, he or she should realize that the tenant is paying full rent for privacy. People wanting to inspect the property should understand that appointments need to be made with the occupants.

Above all else, put yourself in the other person's position. Ask yourself, how would you like to be treated if you were the tenant or the landlord in this situation?

Landlord's Responsibility to Control Noise or Other Activity of Tenant Who Disturbs Other Tenants; Constructive Eviction

(Maryland Code, Real Property, Section 2-115)

Unless the lease provides otherwise, there is an implied warranty or obligation by the landlord that during the term of the tenancy, the tenant is entitled to "quiet enjoyment" of the premises. The Maryland Court of Special Appeals has held that even when the disruption to tenant's quiet enjoyment is caused not by the landlord but by another tenant, the disruption is attributable to the landlord because the landlord could take action (such as notification and, if necessary, eviction) against the offending tenant.

When the landlord fails to correct or terminate the disturbance, and the disturbance seriously interferes with the tenant's use and enjoyment of the leased premises, the tenant is justified in abandoning the premises. The tenant who leaves under these conditions will have no further obligation to pay rent. In the eyes of the law, the landlord has breached the covenant of quiet enjoyment and has "constructively evicted" the tenant. Landlord may be required to compensate tenant for moving expenses, attorney's fees, and other expenses resulting from the constructive eviction. (The Court of Special Appeals case is *Bocchini v. Gorn Management Co.*, 69 Md. App.1 (1986)).

NOTE: The facts in Bocchini v. Gorn, mentioned above, were that the landlord knew about the problem and failed to take action against a tenant who persisted over a period of several months in making very disturbing noises and also threatened the complaining tenant after she asked him to modify his behavior and after she asked the landlord for help. The court stated that these facts constituted a breach of the covenant of quiet enjoyment and supported the tenant's claim that she had been constructively evicted.

We suggest that a tenant who finds that his or her use and enjoyment of the premises are seriously impaired by the landlord or by another tenant, should make every reasonable effort to communicate the problem to the landlord in writing, give the landlord reasonable opportunity to resolve the situation, and have witnesses to the situation, if possible.

If all efforts fail, if the disturbance persists and the tenant decides to move out before the end of the lease term, there is still a risk to the tenant that the landlord will file suit for loss of rent due for the remainder of the lease term. For the tenant to prevail, he or she will need to prove to the court that the disturbance was substantial enough to constitute "constructive eviction."

Essential Services/Illegal Lockout

A tenant may come home to his or her apartment to find that the landlord has changed the locks or cut off an essential service such as gas, heat, water, electricity, etc., to which the tenant is entitled. Such action usually follows a tenant being behind in rent, staying after the day the tenant was to vacate the apartment, or having an argument with the landlord. Sometimes it is the result of the landlord's failure to pay a utility bill that he or she is responsible for under the terms of the lease. The tenant has the right to have the utility bill put in his name when the gas or electric bill is in the landlord's name and the landlord's failure to pay the bill will or has resulted in the utility service to be shut off. In this situation, the tenant may deduct the amount of the utility from the rent amount.

Maryland state law prohibits the landlord from taking possession of the premises or tenant's property without legal process. A landlord may take **temporary measures**, including changing the locks, to secure an unsecured property as long as he makes a good faith effort to provide reasonable notice to the tenant that the tenant may be promptly restored possession of the property. Should a lockout occur, the tenant has the right to hire a locksmith, change the locks, re-enter the premises, and hold the landlord responsible for the cost involved. Landlords cannot legally cut off or diminish essential services such as gas, electricity, water, heat, etc., to which tenant is entitled. A landlord may take possession of the dwelling unit from a tenant or tenant holding over in accordance with a warrant of restitution issued by a court and executed by a sheriff or constable or if the tenant has abandoned or surrendered possession of the dwelling unit.

Although the landlord's failure to provide an essential service does not give tenant the right to stop payment of rent, it may make tenant eligible for rent escrow relief (see Rent Escrow) and in Baltimore City, for relief under the warranty of habitability. In addition, the tenant can sue a landlord who locks out a tenant or reduces essential services for a breach of the covenant of quiet enjoyment. The tenant would be able to ask for damages including, but not limited to, lost or damaged property, cost of a motel and food, storage fees, and reasonable attorney's fees. A tenant who is denied entry may also sue the landlord for similar damages for constructive eviction. The landlord could also be held liable for the difference the tenant must pay for rent in a new property.

In Baltimore City, any person who, in an attempt to deprive tenant of the protection of the laws relating to continuation or termination of tenancies, makes false representations about tenant's rights or willfully prevents tenant from entering or leaving his or her dwelling or without the consent of the tenant, diminishes essential

services to the tenant, such as the providing of gas, electricity, water, heat, light, furniture, furnishings, or similar services, which under the expressed or implied terms of the tenancy the tenant may be entitled, shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine not exceeding $500 and imprisonment of not more than ten (10) days, or both, in the discretion of the court, for each and every offense (Public Local Laws of Baltimore City, Sec. 9-15).

The tenant can file a complaint with the Court Commissioner at 500 North Calvert Street, Baltimore, MD.

In addition, Baltimore County Code, Title 18 - Housing, Sections 18-1 and 18-2 provides that a landlord may not reduce or withhold essential services such as means of ingress or egress, gas, electricity, water, heat, light, furniture, furnishings, or similar services to which tenant may be entitled under the express or implied terms of the tenancy. A violation of this law is a misdemeanor and is punishable by a fine of not more than $100. The tenant may file a complaint with the Livability Enforcement Office at 111 W. Chesapeake Avenue, Towson, MD (410-887-4032).

The tenant may also go to any of the court commissioners in the county to have the landlord charged with a criminal violation of the code.

The tenant or landlord can also call BNI for information.

The basic principle is that a landlord cannot take the law into his or her own hands. If the tenant's rent is past due or the tenant has not vacated the premises when he or she should have, the landlord's remedy is to take the tenant to court.

Rent Escrow

Ineffective or slow maintenance seems to be a common complaint from tenants. Tenants have complained of receiving hostile and indifferent attitudes from property managers when requesting assistance.

Therefore, many tenants feel that they have the right to withhold rent (by keeping it in their own bank accounts) until the repairs are made. This is not the legal way to establish rent escrow.

Rent escrow is a procedure established by a judge and involves paying rent to the court until repairs are made. In Maryland, the rent escrow process was first established in Baltimore City. Later, Baltimore County and the State of Maryland passed similar laws.

Rent escrow laws cover situations that could threaten the life, health and safety of the tenant: defective heating equipment, bad plumbing, lack of heat and hot water (when the landlord is required by the lease to provide them), bad wiring, and structural defects such as a leaking roof, defective stairs, etc., and, in multi-family dwellings, rodent and vermin infestation. Such laws do not cover items like lack of fresh paint, worn wall-to-wall carpeting, small cracks in walls and ceiling, etc.

The first step in the rent escrow procedure is for the tenant to inform the landlord of the needed repair by sending a letter of complaint to the landlord about the issues and send if by certified mail. A written notice from a housing inspector is also sufficient. The landlord must be given reasonable time to make the repair -- beyond 30 days is normally considered unreasonable.

If the landlord does not make the repair, then the tenant may file for a rent escrow hearing. Affirmative rent escrow allows the tenant to seek rent escrow before having to withhold rent. Alternately, after giving the landlord reasonable time to make the repair, the tenant can withhold rent and wait to be taken to Rent Court by the landlord. At that point, the tenant may request rent escrow. Although this is normally a faster process, it does involve some risk for the tenant, in that some judges may not allow Rent Escrow to be used as a defense.

If the judge does not grant escrow, the tenant may have to pay late charges and court costs.

To establish rent escrow, the tenant must have a case, which would include the following:

- A written notice to the landlord, informing him about the problem
- A violation notice from housing inspector
- Damages which were not caused by the tenant
- A condition which has not been remedied, which could affect life, health and safety
- Allowance of reasonable entry by the tenant for the landlord to make repair
- A good rent record

The tenant must also have the full rent to pay to the court.

If the decision is in favor of the tenant, the judge may order the landlord to:

- Make the needed repair
- Reduce the rent to an amount that fairly represents the condition of the premises
- Order the rent to be paid to the court with a refund of part of the rent to be given to the tenant when the repairs are made

If the tenant desires, the judge may also end the tenancy.

- The hope in a rent escrow situation is that the landlord will make the necessary repairs after receiving the tenant's certified letter and that the tenant will not have to go to court. This is more likely if the tenant also files a complaint with a local housing inspector.

Baltimore City law now allows rent escrow to be used to cover items not essential to health and safety, if such were promised in the written lease or in a written inducement to rent.

Proper Notice

The failure to give a proper notice can be a frustrating and painful experience. Most landlords will not excuse failure to give a proper notice.

Many tenants and landlords, especially those involved with month to month oral tenancies, have no idea that a proper written notice may be required to terminate the tenancy. Many tenants and landlords fail to read the lease carefully or have forgotten the requirements for notice.

The following scenarios are just a few of the problems landlords and tenants face, when they are not informed about the proper notice required by law:

- "I have been a good tenant here for over 10 years. Recently, I gave my landlord a written notice to vacate, 88 days before my lease expired. My landlord pointed out that my lease requires a 90 day notice, and the lease has now renewed for another year."

- "I told my landlord when I gave him the rent over a month ago that I was leaving at the end of the month. He said okay. Now he tells me that I will owe him a month's rent because I didn't give him the notice in writing."

Baltimore City law requires the landlord to give at least 60 days' written notice before the end of the year, month, or week when the tenant is to leave. The tenant normally has to give only a 30-day written notice.

[For example, a tenant on a monthly tenancy, deciding in December that he wants to leave, should give the landlord a written notice by December 31st and vacate by January 31st, if their rental due date is the 1st of each month.]

Outside of Baltimore City, the state law requires the landlord to give a minimum written notice of a week for a weekly tenancy and a month for a monthly tenancy. Under the common law, the tenant must generally give notice equal to the period of the tenancy (i.e. when rent is due), such as one month or one week.

However, both parties may agree to a longer period, so long as the tenant is not required to give more notice than the landlord must give.

The day of delivery is not counted as part of the notice time. Notices should always be given with time to spare, because being one day late can invalidate the notice.

The notice may be hand delivered or sent by mail early enough to be delivered in time. Many people send notices by first class mail and at the time of mailing get from the post office a "certificate of mailing." Another option is to send the notice by certified mail with return receipt requested. The courts generally presume delivery three days after mailing. It is best to get proof that the notice was received by the intended party so they cannot deny receiving it.

When a landlord feels a tenant has violated the lease, the landlord may give a written 30-day breach of lease notice, which states the alleged cause, anytime during the tenancy. A landlord may give a written 14-day notice if the tenant or other person poses a clear and eminent danger to himself/herself, other tenants or to the property, and the landlord wishes to repossess the premises. In Baltimore City, the notice must be given before the end of the week or month that the landlord wants the tenant to leave. Outside of Baltimore City, the landlord can give an immediate written 30-day breach notice. The tenant, of course, can contest the notice.

Breaking a Lease

Tenants frequently desire or need to break a lease. Breaking a lease means to end a lease prior to its termination date. For residential leases, it usually applies to written leases with a term of one year, but it can be for a written or oral lease of a longer or shorter duration.

Leases are binding contracts between the landlord and the tenant. Maryland law imposes certain conditions on that contract such as limiting late fees to 5% of a monthly rental payment, but in those areas where the law does not impose limits, the landlord and tenant are free to negotiate their own agreement. This is true as to the early termination of a lease agreement.

Some written leases have a clause, which provides a mechanism for tenants to cancel the lease. For example, some leases contain a clause indicating that a tenant who wants to terminate the lease before the end of the lease term may pay the equivalent of two months rent in advance of moving, give sixty days written notice of the moving date, and then the lease will be terminated.

Many leases have no clause providing for the cancellation of the lease. If a tenant wants to break a lease that does not have a cancellation provision, he/she should be aware that Maryland only permits early termination of a lease because the tenant has been called to military duty, the tenant is a victim of domestic violence or sexual assault, the tenant needs to move for medical reasons certified by a doctor or the conditions of the premises are so severe as to make the continuation of the tenancy untenable (constructive eviction). If you desire or need to break your lease, and you do not meet the conditions for early cancellation of the lease, you may try to negotiate an early termination agreement with your landlord.

Frequently asked questions regarding breaking a lease shall be discussed below in a question and answer format:

Question One
"I signed a lease in the morning. That afternoon, I asked that the lease be cancelled. The landlord refused. Doesn't the law give me time to change my mind?"

Answer
No. The law does not give you time to change your mind. [Maryland law allowing for a three-day contract cancellation period only covers activities of door-to-door salespeople, health club memberships and certain credit transactions.]

Question Two
"The landlord and I signed the lease, but I haven't moved in yet. The landlord has found someone who is willing to pay more rent and has told me I can get my money back, but I can't move in. Can the landlord do this to me?"

Answer
No. The landlord would be breaching his/her obligations to you under the lease. If the landlord refused to let you into the property, you could sue for a breach of the covenant of quiet enjoyment and obtain damages including the difference in what you will pay in rent and what you would have paid in rent under the lease.

Question Three
"Can I break the lease if management doesn't properly maintain the property?"

Answer
The answer is that it depends. If the property is poorly maintained that it is no longer tenable to live there, a tenant may be able to go into District Court under the Rent Escrow Law (and in Baltimore City, under the Warranty of Habitability) and have a judge void the lease. In addition, if a tenant vacates a property because of the severity of the conditions, the tenant may be able to sue the landlord for constructive eviction and have the court void the lease and give the tenant money damages. The remedies of Rent Escrow, Warranty of Habitability and Constructive Eviction are somewhat complicated and it is advisable to seek assistance before proceeding. BNI, the Legal Aid Bureau (for income eligible clients), Maryland Volunteer Lawyers Service (for income eligible clients), or a private attorney may be able to provide you with more detailed information tailored to your particular situation. [Normally, the remedy for poor maintenance is to file a complaint with the local housing inspectors and/or to send a letter by certified mail to the landlord noting the items you want repaired. If the landlord has not complied with the violation notice or repaired the property within a reasonable time, and if the repairs needed are substantial, it is possible to petition the court, in a rent escrow process, (and/or warranty of habitability process in Baltimore City) to have the rent money placed into an escrow account until all repairs are completed.]

Question Four
"I am continually disturbed by noisy tenants, and the landlord refuses to remedy the situation. Is this grounds for me to break the lease?"

Answer

It may be grounds to break the lease if you have given your landlord notice of the problem, an opportunity to remedy the problem, and the problem still continues. In all Maryland leases, the landlord covenants the quiet enjoyment of his/her rental property. If other tenants are disturbing you by their noise, you should contact your landlord in writing about the situation specifying when the tenants have disturbed you and the nature of the disturbances. Then, you must give the landlord a reasonable time to remedy the situation. If the landlord contacts the tenants about the noise, but the tenants do not voluntarily stop disturbing you, the landlord may be obligated to send the tenants a notice to vacate for breach of the lease. If the tenants do not vacate and do not stop disturbing you, the landlord would then have to take the tenants to court for breach of the lease. This process could take several months. A court may require you to give the landlord at least that much time to remedy the situation. If however, after a reasonable time has passed, the landlord has not moved to have the tenants vacated, you may file an action in District Court for the landlord's failure to assure quiet enjoyment of the premises. The tenant can then decide to stay in the property and get money damages or the tenant can ask the court to end the lease and award damages to cover moving expenses. Obviously, the outcome of the case will depend upon the tenant's ability to prove the situation. This is certainly a less risky procedure than moving and then arguing constructive eviction either in a suit you bring against the landlord or as a defense against the landlord's suit for lost rent. However, if you find it impossible to continue your tenancy because of conditions in the property or because of a breach of your quiet enjoyment, you may move and argue that you were constructively evicted.

Question Five

"I have been transferred some distance away and it takes too long to commute. Does the law allow me to break the lease?"

Answer

Unfortunately, you are still bound by the lease unless your lease provides for early termination because of job dislocation or under certain circumstances, such as the military. Some leases have a specific clause that addresses this issue, but many do not. For example, some leases will allow for termination of the lease if you change jobs to a location more than fifty miles away.

Question Six

"I am in the military and have been stationed in another part of the country. May I break my lease?

Answer
Maryland law does allow a person on active military duty who has received a temporary duty order for a period of more than three months or an order for permanent change of station to end a lease by providing written notice and proof of assignment. The tenant who provides the proper notice will be responsible for no more than 30 days rent and the cost of repairing any damage to the premises caused by the tenant.

Question Seven
"I am buying a house. Can I break the lease?"

Answer
You may still be obligated for lost rent. Very rarely can tenants make the ending of the lease coincide with the purchase of a house. Unless you reach an agreement with your landlord or there is a cancellation clause in your lease or a clause in your lease which provides for this contingency (which is unlikely), you will be responsible for the rent which is due for the remainder of the lease. However, the landlord will be obligated to make a good faith effort to re rent the property after you leave, thereby mitigating his/her damages. If the landlord re rents the property after you leave and before your lease term expires, you will be responsible for the rent up until the time of re rental and any costs the landlord sustained in having to re rent. Those costs may include the cost of advertising, for example. In addition, if the new tenants do not pay their rent during the time your lease would be in effect, you may also be responsible for this lost rent. You may wish to view the breaking of your lease as part of the cost of buying a house.

Question Eight & Question Nine
"I need to break my lease in order to find a cheaper apartment. What will happen?" or "I have lost my job and simply cannot afford to stay in the apartment. What will happen?"

Answer
You may have trouble obtaining another apartment if your proposed new landlord checks with your current landlord. Since your landlord can hold you responsible for payments due under the lease until he re rents the property, a prospective landlord may question whether you can afford to pay both the old rent and the new. Even if you find a new rental, the original landlord can sue you for lost rent, as well as the costs of re-renting the property. Furthermore, a judgment against you may be reported to a credit agency. If you are working, or when you get a job, the landlord who has a judgment against you may be able to garnish your wages. However, if you can no longer afford to pay the rent, you can try to negotiate with your landlord a cancellation of the lease agreement.

Question Ten
"What is the responsibility of the landlord when a lease is broken?"

Answer
The landlord must make a reasonable effort to mitigate his/her damages by trying to rent the apartment as soon as possible. He or she cannot hide the fact that your apartment is now available, but your apartment does not have to be placed ahead of other vacancies.

Question Eleven
"May the landlord refuse to allow me to sublet the property?"

Answer
A tenant is free to sublet the property unless it is prohibited in the lease. Even if the lease provides restrictions on subletting, the landlord should not arbitrarily refuse to allow subletting or leasing to another qualified tenant as this would not be mitigating his/her damages.

Question Twelve
"What if I become ill and have to move to a nursing home or relative's house?"

Answer
You may be eligible to have your lease broken under the Termination of Lease – Limitation of Liability for Rent law. If the law applies to your situation, then your liability could not exceed 2 months rent. Contact our hotline for more information.

Question Thirteen
"What if the landlord sells the property during the term of my lease?"

Answer
The new owner takes over all the rights and responsibilities of the former owner under the lease agreement.

Question Fourteen
"What happens if a tenant or landlord dies?"

Answer
Unless the lease provides otherwise, the death of a tenant or landlord does not terminate the lease and does not terminate the responsibilities under the lease. Thus, the landlord's successor continues as landlord and a tenant's estate becomes responsible for

lost rent if the tenant's heirs end the lease. There are special provisions for Baltimore City tenants.

Question Fifteen
"What if the property is foreclosed?"

Answer
The tenant *may* have the right to stay in the property for an additional 90 days after the foreclosure has taken place. The tenant still must pay the rent. We suggest you consult an attorney or Public Justice Center, Inc. at 410-625-9409 or 1-877-625-9409.

Rent Court

It is easy to conclude that, more actions are filed against a tenant who does not pay their rent timely, then any other civil court action. Yet most tenants, and many landlords, are unaware of rent court process when a tenant is taken to court for paying their rent late.

Landlords cannot lockout a tenant or evict a tenant without a court order. He or she must take the tenant to court. The court process involving late rent is speedy and straightforward. If the lease does not have a grace period provision, then the landlord can file for late rent the day after the rent is due, no matter the reason the rent is late. The court will summon the tenant to trial in a "summary ejectment proceeding," normally within five court days after the complaint was filed. (Court days are weekdays except legal holidays.)

It is best for the tenant to have the rent paid prior to the court hearing and to show up with proof the rent has been paid (a receipt from the landlord, not a money order stub). If the tenant is seeking to put rent in escrow and has the rent money to give to the court if rent escrow is granted or to the landlord if rent escrow is denied, then the tenant may not face eviction. Note that some judges are not allowing tenant's to use rent escrow as a defense in Rent Court. If, however, the rent is due and the tenant either does not have the money or fails to show, then the court will decide in favor of the landlord. The tenant then has four days to pay or leave. If neither happens, then the landlord can seek a "warrant of restitution," which allows the landlord to make arrangements with the constable or sheriff to recover possession of the premises and evict the tenant.

The landlord cannot evict the tenant until the constable or sheriff is present to allow him or her to do so. Since the landlord must make arrangements for the tenant's property to be put on the street, it is a practical and decent thing for the landlord to make sure that the tenant knows the exact time of the eviction and has the opportunity to remove his or her property.

A copy of the "warrant of restitution" is sent to the tenant warning that the tenant may be evicted any time after the date of application. Since the landlord cannot schedule the eviction until the sheriff or constable is available, it is not known at the time of mailing when the eviction will take place. In most counties, the tenant can call the constable or sheriff's office with the case number to ask when the eviction will take place. However, if it is scheduled for a Friday and there is an opening because of

cancellations, then it can take place on Thursday without any necessity for the constable or sheriff or landlord to inform the tenant of the change. There are exceptions to this in Baltimore City.

A tenant or landlord may appeal the court order within four days after it has been issued. If a tenant appeals, he or she will be required to post bond. The judge may grant an extension of time for surrender of the premises up to fifteen days after the trial if an earlier eviction would endanger the health or life of the tenant. (Baltimore City Law puts no limit on the extension time.) In extreme weather conditions, the court may postpone scheduled evictions on a day-by-day basis.

The tenant has the right to redeem the premises by giving cash, a certified check, or money order to the landlord or his/her agent to cover all past due rent and late fees, plus court awarded costs and fees at any time before the eviction occurs. However, the tenant may be denied this right if three or more judgments for rent were entered against the tenant in the 12 months prior to the beginning of the pending eviction action. (Baltimore City requires four or more judgments.)

Obviously, if tenants know they will not be able to pay the rent, they should make every attempt to remove at least the best of their property ahead of time and seek to store it with friends, neighbors, family, a church, etc.

SUMMARY OF THE RENT COURT PROCESS

If a tenant receives a summons to a Failure to Pay Rent hearing (AKA "the yellow sheet"), the tenant should make sure that he reads and understand the landlord's claims. If any of the landlord's claims are disputed, the tenant MUST appear at the court hearing to tell the judge his disputes.

Read the back of the yellow summons for detailed information on what to expect in court and what to expect if the judge rules for the landlord.

If there is a dispute, do not miss the court date or the ruling can go in the opposing party’s favor. If the rent is paid before court, the tenant should get a receipt and bring that receipt to the court hearing. Some landlords may tell tenants that they do not need to go to court, but that is not true. Going to court is the best way to prevent an eviction. In addition, it is easier to dispute a claim during the hearing and avoid a judgment than to file a motion to have a judgment modified or vacated.

If line #8 of the court summons was filled out, then the landlord has requested to foreclosure the tenant's right to redemption. "Foreclosure of the right to redemption" means that, if the landlord wins in court, the tenant will no longer be able to stop the eviction by paying the rent. In this situation, it is crucial to pay the full amount due before court and appear in court with the receipts because avoiding a judgment is the only way to stop this type of eviction.

At the hearing the burden of proof is on the landlord. The landlord must prove there is an agreement to pay the rent. If the landlord wins a judgment, you still have an opportunity to stop the eviction (unless the judgment was without the right of redemption, as explained above). The sheriff will not conduct an eviction if the full amount of the court judgment plus filing fees is paid before the eviction begins. Be sure to get receipts in case you need proof of payment in the future.

DISTRICT COURT OF MARYLAND REQUIREMENTS

As of October 1, 2004, landlords with properties built before 1950 must register with Maryland Department of the Environment (MDE) for lead paint certification. If the property is not registered, the landlord cannot file for failure to pay rent. Please call MDE to register at 1-800-633-6101 or the Maryland Lead Poisoning Hotline 1-800-776-2706.

In order to evict a tenant from an "affected property" for failure to pay rent a landlord must have registered the property and renewed the registration as necessary and stated on the complaint for repossession that the property has been registered. In addition, the landlord must have performed the risk reduction measures needed to get an inspection certificate and provided the inspection certificate number on the complaint for repossession. The landlord may indicate on the complaint that he is unable to provide the inspection number if the tenant will not allow him access to perform the required work, or if he offered to relocate the tenant and pay for relocation expenses (if the work would disturb the paint on the interior services of the property) and the tenant refused to allow access or refused to vacate the property.

Some counties and incorporated cities require rental property registration. Check with your local government. As of May 9, 2011, if registration is required in your county you must have your property registered correctly to be successful in Rent Court. A

property owner who fails to obtain a rental license is not permitted to evict a tenant for failure to pay rent.

Failure to Pay Rent Requires Military Information (taken from the District Court of MD website)

- Federal law requires a landlord to provide information as to whether any Tenant is in the military or provide specific facts for the Court to conclude that each Tenant is not in the military. This information may be available from various sources including the Department of Defense Manpower Data Center https://www.dmdc.osd.mil/appj/scra/scraHome.do

- For more information regarding this Federal requirement, click on the following link: http://mdcourts.gov/scra/index.html

Deceased Tenant (taken from the District Court of MD website)

- If rent is unpaid and the tenant is deceased, intestate (not having made a legal will), and without next of kin, the landlord may file a Failure to Pay Rent action to lawfully dispose of the deceased tenant's belongings.

- Useful links from the district court website on lead paint and garnishment of wages: http://www.mdcourts.gov/district/forms/civil/dccv065br.pdf -- Wage Garnishment

  http://www.mdcourts.gov/district/forms/civil/dccv082brfs.pdf -- Lead Paint

Retaliatory Actions Prohibited

(Maryland Code, Real Property, Sec. 8-208.1 and 8-208.2)

A landlord may not bring an action to evict or threaten to evict, arbitrarily increase the rent or decrease services to which a tenant is entitled, or terminate a periodic tenancy, for any of the following reasons (Section 8-208.1(a)(1)):

1. Because the tenant or the tenant's agent has provided written or actual notice of a good faith complaint about an alleged violation of the lease, violation of law, or condition on the leased premises that is a substantial threat to the health or safety of occupants to either the landlord or any public agency against the landlord (Section 8-208.1(a)(2)(I)).

2. Because tenant or his agent has filed a lawsuit against the landlord or has testified or participated in a lawsuit against the landlord (Section 8-208.1(a)(2)(II)).

3. Because tenant has participated in a tenants' organization (Section 8-208.1(a)(3)).

Also, a landlord may not refuse to renew a lease, terminate a tenancy, increase rent or decrease services or constructively evict a tenant primarily as a result of the tenant informing the landlord of lead poisoning hazards (Section 8-208.2).

A tenant may raise a retaliatory action of a landlord in defense to an action for possession or as an affirmative claim for damages resulting from a retaliatory action of a landlord occurring during a tenancy (Section 8-208.1(b)(2)). If in any proceeding the court finds in favor of the tenant (i.e., that the landlord engaged in a retaliatory action), the court may enter judgment against the landlord for damages not to exceed the equivalent of 3 months' rent, reasonable attorney fees, and court costs (Section 8-208.1(c)(1)).

However, if the court finds that a tenant's assertion of a retaliatory action defense was in bad faith or without substantial justification, the court may enter a judgment against the tenant for damages not to exceed the equivalent of 3 months' rent, reasonable attorney fees and court costs (Section 8-208.1(c)(2)).

The protection against retaliatory evictions is conditioned upon the tenant being current on the rent due and owing to the landlord at the time of the alleged retaliatory action unless the tenant withholds rent in accordance with the lease, the rent escrow provisions of Md. Code, Real Property, Section 8–211 or a comparable local ordinance (Section 8-208.1(d)(1)).

An action by a landlord is not deemed retaliatory under this law if the alleged retaliatory action occurs more than 6 months after a tenant's action that is protected under this law (Section 8-208.1(e)). As long as a landlord's termination of a tenancy is not the result of a retaliatory action, these provisions do not affect either party's right to terminate or not renew a lease (Section 8-208.1(f)).

If any county enacts an ordinance comparable to these provisions in subject matter, this state law will supersede the local ordinance to the extent the ordinance provides less protection to a tenant (Section 8.208.1(g)).

Important Note: If tenant is in Breach of the Lease, this law will not protect tenant from eviction

Small Claims Court

If landlords or tenants have disputes that cannot be resolved and the sum involved is $5,000 or less (excluding court costs and attorney fees), they can sue in Small Claims Court, a division of the District Court of Maryland. This is a relatively informal and simple procedure in which most people are able to represent themselves without the aid of a lawyer.

One of the prime causes of dispute between tenants and landlords that ends up in Small Claims Court involves charges to the security deposit. Other causes are failure of tenants to pay utilities when they are required to do so under a lease agreement and damages to the rental property, which, cost more than that covered by a security deposit or when no security deposit was taken.

The discussion below centers on a suit brought in Small Claims Court by a tenant because of the landlord's withholding of all or a portion of a security deposit to which the tenant feels entitled. Other Small Claims Court cases have parallel considerations.

In a security deposit case, which involves or less, the suit should be filed as soon as possible, but within three years of the time, the dispute arises, in the County where the rental property is located. The landlord must be summoned to Court by use of certified mail, a sheriff or a private process server -- either a professional or someone, such as a friend or relative, not directly involved in the case.

SERVICE OF PROCESS

The first step is to obtain the correct name and address of the landlord -- not always available to a tenant. This may be obtained from the City/County office of Assessments and Taxation. If the landlord is a corporation, it needs to be sued care of its corporate Resident Agent, whose name and address can be obtained from the State's Corporate Charter Department (410-225-1340).

If the tenant is unable to obtain the landlord's address by the above method, the tenant will still be able to serve the landlord because of another section of Maryland Code, which is found in the Real Property Article, Section 8-210. Maryland law requires a landlord of a residential rental property to include his name, address, and phone number or the person authorized, if any, to accept notice or service of process on the landlord's behalf, in the written lease or on a posted sign conspicuously placed on the rental property. If the landlord fails to do so, then notice or service of process can be sent by the tenant to the person to whom rent is paid, the address where the rent is paid or to the address where the tax bill is sent.

CASE PREPARATION

The case should be prepared as carefully and concisely as possible, keeping to the essential points and not introducing past experiences or disputes, which have no relevancy as to the security deposit. Make an outline of your presentation. Visit the Small Claims Court before the trial to gain a feel for the situation.

Bring all relevant documents to court. File a subpoena duces tecum (the form can be obtained in the Clerks Office of the District Court) requiring the landlord to bring to court any documents that you believe to be relevant, such as repair bills, equipment invoices, etc. Do not assume that the landlord will bring the documents you want; without the subpoena duces tecum, he may not.

POINTS TO CONSIDER

- Should you have actually damaged an item beyond worthwhile repair, such as a refrigerator, be aware that many professional landlords depreciate moveable items, including wall-to-wall carpeting, in seven years.
- You should only be responsible for residual value.
- Be aware that the landlord can only charge reasonable fees for his labor such as what the average cleaning person might charge for cleaning a house.
- The landlord may want you to pay for redecorating the house. Unless you have marred the walls or painted the walls a different color, he should not have a valid claim.
- Have witnesses that will testify as to the condition of the house when you moved in and when you vacated the property.
- Be aware that the landlord must have informed you in writing, when he gave you the security deposit receipt, of your right to be present at the final inspection of the property. He must also send you an itemization of claims against the security deposit within 45 days of the end of the tenancy. If he fails to do this, he loses the right to charge the security deposit for any damage, including lost rent.

A pamphlet describing the Small Claims Court process in detail is available from your local District Court. You may read the brochure produced by the District Court of Maryland, which is located at http://www.courts.state.md.us/district/index.html.

Collecting a Judgment

The District Court is a useful tool for a tenant to use in obtaining the return of a security deposit and for a landlord to use in getting reimbursement for property damage or payment for lost rent or failure to return a security deposit. Sometimes, however, one will be awarded a judgment only to have the other party refuse to pay it.

The first step in obtaining the money owed is to record the judgment at the court. A recorded judgment will remain in force for 12 years and may damage the defendant's credit record. Sometimes this fact is enough to ensure payment.

After recording your judgment, you may ask the court to garnish the defendant's wages. Garnishment is a process which requires the employer to withhold a portion of the judgment debtor's wages each pay period until the judgment is "satisfied", i.e. paid in full, and forward the money to the holder of the judgment. The following rules apply.

a) In Baltimore City and all Maryland counties except Caroline, Kent, Queen Anne's and Worcester, 75% of the disposable wages due to the debtor, or earnings at the rate of $145 weekly, whichever is greater, are exempt.

b) In Caroline, Kent, Queen Anne's and Worcester counties, the greater of the 75% of the disposable wages due, or 30 times the federal minimum hourly wage under the Fair Labor Standards Act in Effect at the time the wages are due, is exempt.

c) Statewide, any medical insurance payment deducted from the employee's wages by the employer is exempt.

If the garnishment is approved, then the employer must send to the judgment creditor on a monthly basis the amount granted by the Court.

In turn, the judgment creditor must follow with a monthly report to the court of monies received.

Through a process known as an oral exam, a defendant may also be summoned to court in order to be compelled to disclose his income and assets. These assets may be sold to pay the debt (certain items are exempt such as necessary clothing, tools of trade or profession, small amounts of property including money, etc). A lien may be put on the defendant's land or buildings, which then may be sold to satisfy the judgment.

There is certain income that cannot be garnished such as social service and social security payments. It used to be that wages of federal employees were exempt, but this is no longer so.

Should the defendant reside in another state, the court for that state may be petitioned to enforce the Maryland Judgment by garnishing wages or implementing other forms of attachment.

There are small fees (court costs) for garnishment, registering the judgment, liens, etc., which are added to the judgment. The basic judgment also earns 10% interest per year except interest on a money judgment for rent of a residential property earns 6% per year.

Tips for Better Landlord and Tenant Relations

Landlords:

- Have the potential tenant fill out an application for the unit and ask for information such as employment, income, number of occupants, previous landlord, and any other relevant information.

- Consider doing a thorough background check on all potential tenants. Also, ask them in the application if they are in the military.

- Be prepared if your tenant breaks the lease or causes damage to your property. You may want to require a security deposit of up to two-month's rent. To collect a money judgment from a tenant, you will need to serve them personally. Also, the law requires that you attempt to mitigate any damages resulting from the broken lease.

- Put all rules and requirements in the lease. Note these terms cannot be contrary to Maryland law.

- Even though oral leases for one year or less are valid, written leases are always better, even for a month to month tenancy. This will clearly define the lease terms in the event of a disagreement.

- Do not allow a tenant to move in before the initial terms of the lease are met, such as getting the utilities in the tenant's name or paying the first month's rent. It is best to put any prerequisites in your lease.

- Do not give the keys to a person unless they have already gone through your application process, paid the required fees, security deposit or signed a lease. If you do, you will have to do proper eviction to remove the person from the house. In Maryland, even squatters have rights.