

TENANT PROTECTIONS

It is against the law (RSA 540-A) for a landlord to:

- Shut off your utilities;
- Lock you out of your rented premises without a court order;
- Enter your residence without permission, except to make emergency repairs. (You should not refuse your landlord's reasonable request to enter with enough notice);
- Take any other action to force you out of your home without going through the eviction process.

If your landlord has done any of the things listed, you can get an order to make your landlord stop, and to award you damages, by filing a 540-A petition at your local district court. You do not need a lawyer nor to pay a fee to file the petition; simply ask the clerk to help you. You can ask for a temporary order if there is an immediate threat of serious harm. The court will schedule a hearing to hear from both sides, and will then decide if you should get damages and if the order should be continued. Contact LARC for more information on filing a petition.

EVICITION RIGHTS

In most cases your landlord has to have good cause to evict you. Please read our pamphlet *The Eviction Process* for a description of the reasons you can be evicted.

RETALIATORY EVICTIONS

You cannot be evicted in retaliation for exercising any of the following legal rights:

- Reporting a serious code violation to a landlord or public official;
- Lawfully withholding rent;
- Meeting with or organizing other tenants.

Your landlord cannot evict you if you can prove the reason for the eviction was that you exercised one of these legal rights. If an eviction is begun within six months after one of these actions, it will be considered retaliatory unless your landlord can show some other good reason for the eviction, for example, if you owe more than one weeks rent at the time of the eviction. Keep copies of everything that you give to your landlord or to officials.

Landlords cannot refuse to rent to anyone because of race, creed, age, sex, color, national origin, marital status, sexual orientation, physical or mental handicap, or to families with children.

For more information, contact the Fair Housing Project at NH Legal Assistance (1-800-921-1115) or the NH Human Rights Commission (271-2767).

This pamphlet is based on the law in effect at the time of publication. It is issued as a public service for general information only, and is not a substitute for legal advice about the facts of your particular situation.

1-800-639-5290

or

603-224-3333

CALL FOR OTHER BROCHURES:

- Debt Crisis
- Security Deposits
- Custody Rights
- Domestic Violence
- Eviction Process
- Town Welfare
- Divorce/Separation
- Child Support
- Auto Repair
- Auto Repossession

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Para pedir una copia, llame al
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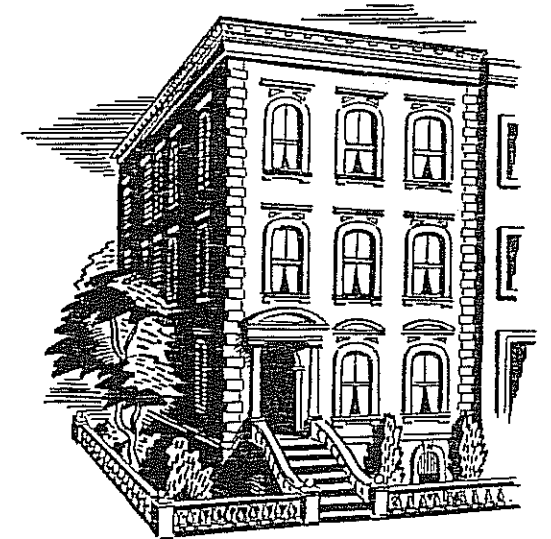
LEGAL ADVICE &
REFERRAL CENTER

Mailing address:

LARC
48 S. Main Street
Concord, NH 03301
www.larcnh.org

LEGAL ADVICE &
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Tenant Rights



1-800-639-5290

or

603-224-3333

When you rent housing, there are many laws that affect your relationship as a tenant with the landlord. This pamphlet is about some of those laws.

RENTAL AGREEMENTS

• *Leases*

Although a rental agreement can be written or oral, "lease" usually means a written rental agreement for a specific time, usually one year.

For a tenant, the main advantage of a written lease is that your rent cannot be raised and you cannot be evicted during that year, as long as you follow by the lease. The main disadvantage is that you may have to pay the rent for extra months even if you move.

Read the lease carefully before you sign, and ask about anything you do not understand. If rent is shared, anyone who signs the lease may have to pay the total rent, not just his or her portion. If your lease expires and you are not offered a new one, you become a month-to-month tenant.

• *Month-to-month tenant*

If you do not have a lease, the landlord can increase the rent, but must give written notice of the increase (or any other significant change) 30 days in advance. Likewise, you can leave without continuing to owe rent as long as you give the landlord 30 days notice.

In most situations a month-to-month tenant cannot be evicted without good cause. Please read our pamphlet *The Eviction Process* for a list of the reasons that you can be evicted.

SECURITY DEPOSITS

Your landlord may require you to pay

a security deposit. The amount of the security deposit cannot be more than you pay for one month's rent. Your landlord must return your deposit within 30 days after you leave. Please see our pamphlet *Security Deposits* for more information about the laws affecting your security deposit.

BE SURE TO GET RECEIPTS FOR **ALL** PAYMENTS YOU MAKE, ESPECIALLY IF YOU PAY IN CASH.

HOUSING STANDARDS

New Hampshire law requires landlords to provide safe, sanitary housing for tenants. A state law (RSA 48-A:14) spells out minimum standards for rental property. You have the right to a home that has:

- No infestation of bugs, mice, or rats.
- Internal plumbing that works without a back-up of sewage caused by a faulty septic or sewage system.
- Safe wiring without exposed wires, the wrong connectors, bad switches or outlets, or other conditions that create a danger of electrical shock or fire.
- Roofs and walls that do not leak.
- Plaster that is not falling from the walls or ceilings.
- Floors, walls, or ceilings with no large holes.
- Porches, stairs, and railings which are safe.
- No garbage or rubbish in common areas due to the landlord's failure to remove it or to provide enough containers for storage before the trash is to be taken away. This is a code violation unless you have accepted responsibility for trash removal under the lease.

- Enough water and a water heater that works properly.
- No leaks in the gas lines, or leaks or defective pilot lights in any appliance furnished by the landlord.
- Heating facilities that are properly installed, safely maintained, and in good working condition, and that can safely and adequately heat all livable rooms and bathrooms to an average temperature of at least 65 degrees. Or if heat is included in the rent, the premises must be kept at a minimum average temperature of 65 degrees in all livable rooms.

Your local community, particularly a city or larger town, may have its own housing code, which can require your landlord to do more. Ask at your town hall whether your town has a housing code.

LEAD PAINT

You have a right to live in housing that is free from lead paint hazards. To find out if your apartment is safe, contact your town code enforcement officer. To find out more about the hazards of lead paint, call the Childhood Lead Poisoning Prevention Program at 271-4507.

REQUESTS FOR REPAIRS

Make all requests for repairs in writing (be sure to date it), make a copy for yourself, and give it to the landlord. If the landlord fails to make the proper repairs, report any serious problems to the town. The town or city clerk can direct you to the proper officials, usually the code enforcement officer, health officer, or building inspector. Report fire hazards to the local fire chief.

If these problems are ignored by the town, contact the State Office of

Community and Public Health (271-4781) or the State Fire Marshall (271-3294). Landlords may not evict you for making complaints.

WITHHOLDING RENT

If the violations (problems with your apartment) are serious, you may want to consider rent withholding in order to get your landlord to correct code violations.

ALWAYS PUT THE RENT MONEY ASIDE AND KEEP IT IN A SAFE PLACE BECAUSE IT IS LIKELY THAT SOME OR ALL OF IT WILL HAVE TO BE PAID TO THE LANDLORD ONCE THE REPAIRS ARE MADE.

You can lawfully withhold your rent if **all** of the following conditions are met:

1. You gave your landlord written notice of the violations while you were not behind in rent. (Written notice is not an absolute requirement, but is always a good idea); AND
2. The landlord failed to take corrective action within 14 days of your written complaint. In an emergency, you may not have to wait 14 days before you begin withholding. Consult an attorney before you withhold rent in less than 14 days; AND
3. Your family or guests did not cause the violation; AND
4. Extreme weather conditions did not prevent the repairs; AND
5. You did not refuse to let the landlord into your apartment to make the repairs.

If your landlord tries to evict you for nonpayment and you can prove you withheld your rent under the above conditions, the court can postpone the hearing to give the landlord time to make repairs, and eventually dismiss the eviction.

poor conditions in your apartment which made it worth less than the rent your landlord charged; violations of RSA 540-A, for locking you out or shutting off your utilities (see our Tenant Rights pamphlet); money your landlord owes you for any other reason.

You must notify the court and the landlord by the return date on the writ if you want to raise defenses (counterclaims) that will reduce the amount of money you owe the landlord. You do this by writing on the appearance form that the landlord owes you money and why (see the section "Appearance form").

Before you raise any of these defenses, please call LARC for further assistance.

DISCRETIONARY STAY

In all evictions, the court has the authority to grant a stay of up to 90 days, during which time the writ of possession is "stayed" (delayed) by the court. The judge may grant all, none, or part of the 90 days allowed by law. You must pay rent weekly in advance during the stay period. If you miss a payment, the landlord can immediately go back to the court and get a writ of possession.

You should request a stay prior to the end of the hearing. You should tell the judge how difficult it will be for you to move, whether your children will have to change schools, that you can pay rent during the stay, whether you have a date for moving, and whether a delay will harm the landlord. If the court grants a stay, at the end of the stay period the landlord still must serve you with a writ of possession.

WRIT OF POSSESSION

If the court finds against you or if you are defaulted, the court will issue a **writ of possession**. This writ authorizes your landlord to remove you from the property. You may receive a warning or a visit from the sheriff first, and then the sheriff will return to remove you from the property.

Until the writ of possession is served on you by the sheriff, it is unlawful for your landlord to force you to leave the property. If your landlord locks you out, shuts off your utilities, or tries in any way to make you leave without using the eviction process, you can go to your District Court, ask for a 540-A petition, and request the court to order your landlord to stop. See our Tenant Rights pamphlet for more information.

If you cannot take your belongings with you when you move, your landlord must take care of your personal property for 7 days after you move out. During this period, the landlord must allow you to return for your property upon request without requiring you to pay rent or storage fees. After 7 days the landlord may dispose of your belongings without notice to you.

APPEAL

You can appeal your case to the NH Supreme Court. To be able to appeal, you must file a notice of intent to appeal with the District Court within 7 days of the date on the notice of judgment, followed by a formal appeal to the Supreme Court within 30 days of the judgement. You must be prepared to pay your rent during the appeal period. Please call LARC for more information.

Call for other brochures:

- Debt Crisis
- Domestic Violence
- Town Welfare
- Auto Repossession
- Security Deposits
- Tenant Rights
- Auto Repair



2 Pillsbury Street, Suite 300, Concord, NH 03301-3502



48 South Main Street, Concord, NH 03301

Call Us or Apply for Assistance On-Line:

1-800-639-5290

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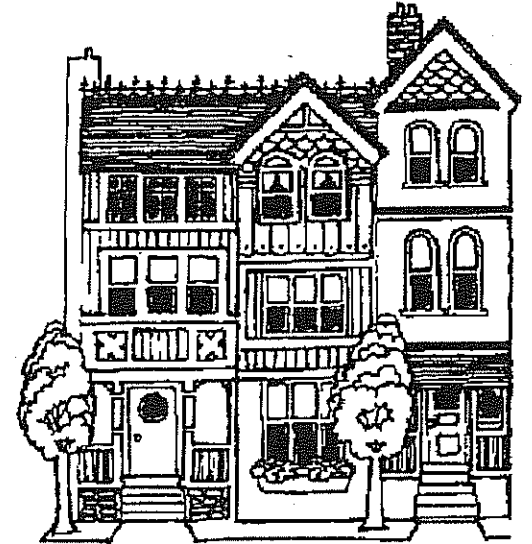
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LEGAL ADVICE &
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The Eviction Process



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In order to evict, a landlord must go through the court system, must always follow the correct procedure, and in most situations must prove that there is good cause to evict. The tenant must receive written notice and may ask for a court hearing.

WRITTEN NOTICE

• Demand for rent

If you are being evicted for not paying rent, your landlord must serve you with a demand for rent. The demand tells you how much rent you owe, and cannot ask for more than you actually owe.

• Notice to quit

In all evictions your landlord must serve you with a notice to quit. This is the actual eviction notice, and must:

- Be in writing;
- State the specific reason for the eviction;
- Give you at least 7 days notice if the reason for the eviction is nonpayment, a threat to the health or safety of other tenants or the landlord, or substantial damage to the premises;
- Give you at least 30 days notice in all other cases;
- Tell you of your right to cure, if the eviction is for nonpayment of rent. The right to cure means that you can avoid eviction by paying all of the back rent – plus \$15 – by the date the notice to quit expires. If you pay in time you do not have to move. You can only cure three times in a calendar year.
- Both the demand for rent and the Notice to Quit must be either

handed to you directly or left at your home.

If a landlord fails to take any of the steps described above, a tenant can ask the court to dismiss the eviction.

THE COURT PROCESS

You do not have to move out by the date the notice to quit expires. Only a judge can issue an order requiring you to move.

• Landlord/tenant writ

If you have not left by the time the **notice to quit expires**, the landlord can begin the legal process at the District Court. The sheriff will serve a **writ**, either on you personally or at your home.

The first paragraph will indicate the **return date**. If you want to challenge the eviction or to ask for more time, you must ask for a hearing by the **return date**.

THERE WILL NOT BE A HEARING ON THE RETURN DATE.

If your landlord has asked for unpaid rent on the **writ**, the hearing may also result in a money judgment which can be enforced against you- up to \$1500. Unless you agree with the amount the landlord claims you owe, you should ask for a hearing, even if you have already moved.

• Appearance form

You ask for a hearing by filing an appearance form by the return date. This is a simple form that you get from the court. You need to fill out the appearance form, leave it with the clerk, and send a copy to the landlord or the landlord's attorney.

You must state your counterclaims on the appearance form. After you file your appearance, you will receive a notice in the mail telling you the date of your hearing, usually within 10 days.

Ask to have your hearing recorded by checking the box on the appearance form.

IF YOU DO NOT FILE AN APPEARANCE, YOU WILL LOSE YOUR EVICTION.

DISCOVERY

Discovery is how you find out about the evidence your landlord has against you. You do this by asking the landlord written questions (interrogatories) about your case. For more information about using the discovery process, please call LARC or visit our website.

GOING TO COURT

IF YOU MAKE AN AGREEMENT BEFORE THE HEARING, PROTECT YOURSELF BY GETTING IT IN WRITING OR BY MAKING SURE THE CASE IS WITHDRAWN.

Landlord's Burden of Proof

In most cases your landlord has to have good cause to evict you, and the reason must be stated specifically on the notice to quit. At the eviction hearing, your landlord must prove that you are being evicted for the reason stated in the notice to quit. Your landlord may evict you for one of the following reasons:

- Nonpayment of rent;
- Serious damage to the rental property;
- Violation of the lease;
- Behavior of the tenant or members of tenant's family that harms the health or safety of others;

- Lead paint hazard (call LARC if this is the reason given);
- Other good cause. Before beginning an eviction for other good cause based on something you did or failed to do, the landlord must first give you a written warning.

• Retaliation & discrimination

Your landlord may be prevented from evicting you for some types of retaliation, for nonpayment when you are rent withholding, and for discrimination on the basis of race, age, or other protected category. See our Tenant Rights pamphlet for details.

• Tenant's defenses

- To win the right to stay in your rental property, you must convince the court:
- that the landlord has not followed the correct procedure; or
 - that the landlord does not have good cause to evict you; or
 - that you do not owe the money in an eviction for nonpayment of rent; or
 - the stated reasons are not true.

• Non-payment evictions

In a non-payment eviction, the only money a landlord can ask for is unpaid rent. To prove that you do not owe the landlord money, and to be able to stay, there are several defenses that you may raise. The defenses include: you do not owe the rent the landlord claims you owe; or you were rent withholding; or the landlord owes you more than you owe the landlord. Your landlord might owe you money due to:

- violations of the security deposit law (see our Security Deposit pamphlet)

deductions for unpaid rent and/or the cost of repairs. You can sue your landlord in small claims court if you do not get your security deposit back within 30 days. Before you file a lawsuit, send your landlord a letter asking for your money back. Make sure that the letter contains your new address, and that you keep a copy for yourself. If you decide to sue, call LARC to request the Small Claims Court pamphlet. Remember, your suit could give your landlord the chance to claim that you owe him or her additional money. You should be prepared to go to court with evidence in support of your case, including proof that you paid your rent, and that you and your guests did not cause damage to the apartment.

Double Damages

You may sue your landlord for twice the amount of your security deposit for failing to:

- pay interest;
- return your security deposit (in order to recover double damages, you must have notified the landlord of your new address within a “reasonable time” – reasonable time has not been defined, but you should probably send notice within 30 days of moving out);
- provide an itemized list of expenses deducted from your deposit.

Special Damages

You may sue your landlord for actual damages or \$1,000, whichever is greater, plus costs and attorney’s fees, for the following violations:

- requiring a security deposit greater than permitted by law;
- failing to provide a signed receipt and notice that tenant has five days to

notify landlord of defects in the apartment;

- mixing your security deposit with the landlord’s own money;
- failing to transfer your deposit and notify you of the transfer when the property is sold, foreclosed or goes into bankruptcy.

If you can prove that the act was a willful or knowing violation, the court may award as much as three times the amount of damages.

Landlord’s Rights

Your landlord can sue you if the deposit was not enough to pay for damages and/or rent owed. Your deposit could become the landlord’s property after 6 months if you fail to communicate your new address.

If You are Facing Eviction

If your landlord tries to evict you and sues for back rent in the same action, you can make a counterclaim for any damages you are owed for security deposit violations (and other possible counterclaims). When you file your appearance in the eviction action, you need to notify the court and your landlord, on the appearance form, of your counterclaim for damages. Then, when the eviction case is decided, the court will also decide on your security deposit damages. Any damages you are entitled to will be deducted from any award your landlord gets for back rent, and if your damages are greater than the rent claim, you might even win the eviction. See our pamphlet “The Eviction Process”.

Remember, before you sue:

- Notify the landlord of your new address.
- Send the landlord a letter asking for your money back.
- Consider the claims the landlord could make against you.
- Call LARC to request the Small Claims Court pamphlet.

Call for other brochures:

- Debt Crisis
- Domestic Violence
- Town Welfare
- Auto Repossession
- Eviction Process
- Tenant Rights
- Auto Repair



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Security Deposits



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What is a security deposit?

A security deposit is any money that you give to your landlord, other than your monthly rental payment. Even if your landlord calls the money a deposit for cleaning, pets, or keys, or the last month's rent, the law considers it to be a security deposit. Security deposits are regulated by state law (RSA 540-A:5-8).

Who is protected?

All tenants are protected by this law except:

- tenants who rent a single family home from a landlord who does not own any other rental property;
- tenants under the age of 60 who live in a building with less than six apartments and whose landlord lives in the same building;
- tenants in business, vacation, or recreational rentals.

Even if your tenancy is not covered under the law, your landlord is still obligated to return your deposit after you move out, minus unpaid rent and/or repair costs. If your security deposit is not returned, you still may sue your landlord, although you may not be entitled to the special penalties provided by New Hampshire's security deposit law.

What is the maximum deposit a landlord can require?

A landlord cannot require you to pay a security deposit greater than one month's rent or \$100, whichever amount is larger. If your landlord demands first and last month's rent, plus a security deposit, this may be a violation of the law.

Your landlord is required to give you a receipt

When you pay a security deposit, the landlord is required to give you a signed receipt.

The receipt must inform you:

- at which bank your deposit is kept; and
- that you have five days to give your landlord a list of defects and damages that were in the apartment when you moved in.

Where will your money be kept?

Any security deposit you pay remains your property. The landlord is required to hold your money in trust for you. The landlord must not mix the landlord's personal funds with your security deposit, but may mix the security deposits of all tenants in a single account.

Earning interest on your deposit

If your landlord holds your deposit for more than one year, he or she must pay you the amount of interest earned on the money in the savings account where it was deposited. You should get this money when your deposit is returned. Every three years you can ask your landlord to pay you the interest earned on your deposit. You must do this at least 30 days before the end of the three-year anniversary of your tenancy. The landlord then has 15 days after the end of that year's tenancy to give you the interest earned on your deposit.

When your landlord sells the property, files for bankruptcy or is in foreclosure

Your security deposit is still your money, held in trust by the landlord. Any landlord who sells the property you are renting, files for bankruptcy, or is in foreclosure, must turn over all security deposits to the new owner. Contact the buyer, the foreclosing bank, or the bankruptcy court as soon as you hear that a sale, foreclosure, or bankruptcy is in process. This will alert the new owner, the bank, or the bankruptcy attorney of the need to collect the security deposit from the original landlord for you.

What happens when you move?

When you move out, you must notify your landlord in writing of your new address as soon as possible, and in any event within a reasonable time. To avoid problems, it is a good practice to give this notice on or before the day you move. The landlord has 30 days from the end of the tenancy to:

1. return your full deposit with any interest owed; or
2. return your deposit minus any permitted deductions.

What may a landlord deduct from your deposit?

Your landlord may deduct any of the following expenses from your security deposit:

- any rent that is still owed;
- the cost to repair any damages to the apartment or leased premises caused by you or your guests; and
- the tenant's share of increases in real estate taxes (but only if a written agreement requires this).

Your landlord is required to provide you with an itemized list of any deductions from your deposit. An itemized list of damages deducted from your deposit must state the exact repairs necessary to correct any damage. The landlord is further required to provide evidence or proof that the repairs have been or will be completed. Examples of evidence are: receipts for materials purchased to make repairs, labor estimates, actual invoices.

Normal Wear and Tear

The landlord is not permitted to charge you for "normal wear and tear" to the premises. Whether or not something is considered damage or the result of normal wear depends on all the facts. Certain things like crayon marks, holes in the walls, and broken windows

will usually be considered damage. Other things, such as worn carpeting or linoleum, usually will be considered normal wear and tear. If you go to court, the judge will decide whether something is normal wear and tear.

Protecting Yourself

You can protect yourself best by making a complete inspection of the apartment, with a friend as a witness, and writing down all of the problems in the apartment. Send a copy of this list to your landlord within 5 days of when you move in. Do the same thing when you move out. Whether or not the law protects you, you can take steps to protect yourself.

Remember To

- Get a receipt for your deposit.
- Make a list of defects and damages when you move in.
- Give a copy of the list to your landlord and keep one for yourself.
- Give as much notice as possible of the date you intend to vacate.
- Clean your apartment and remove excess trash when you move out so the landlord cannot claim damages for "cleaning."
- Make a list of the conditions when you leave. Have a friend go through the apartment with you so you have a witness in case you have to go to court. (If possible, go through the apartment with your landlord).
- Leave your new address with the landlord so he or she can return your deposit.

Suing to get your Money Back

Within 30 days from when your tenancy ends, your landlord must return your full security deposit, or the portion left after