



# Tenants and Landlords

*A Practical Guide*

*Dear Friend:*

*This booklet is designed to inform tenants and landlords about their rights and responsibilities in rental relationships. It serves as a useful reference—complete with the following:*

- *An in-depth discussion about rental-housing law in an easy-to-read question-and-answer format;*
- *Important timelines that outline the eviction process and recovering or keeping a security deposit;*
- *A sample lease, sublease, roommate agreement, lead-based paint disclosure form, and inventory checklist;*
- *Sample letters about repair and maintenance, termination of occupancy, and notice of forwarding address; and*
- *Approved court forms.*

*Whether you are a tenant or a landlord, when you sign a lease agreement, you sign a contract. You are contractually obligated to perform certain duties and assume certain responsibilities. You are also granted certain rights and protections under the lease agreement. This informational booklet is intended only as a practical guide—it is not a substitute for competent legal advice.*

*Rental-housing law is complex. We are grateful to the faculty and students of the Rental Housing Clinic at Michigan State University–Detroit College of Law for writing this booklet. Their good work is greatly appreciated.*

*Owners of mobile-home parks, owners of mobile homes who rent spaces in the parks, and renters of mobile homes may have additional rights. For more information, please contact the Building Division of the Michigan Department of Consumer and Industry Services at (517) 241-9347.*

*It is our pleasure to provide this information to you. We hope that you find it useful.*

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# Creating and Terminating Tenancies and Understanding the Lease

Read the lease. Read the lease. Read the lease. When most people hear the term “lease” they think of the long sheets of paper written in very small type that they sign when they agree to move in and rent an apartment or house. A lease contains a variety of legal terms. It is important to recognize and know the following terms of a lease and to understand the substance of the agreement.

■ **Landlord:** The party agreeing to transfer possession and use of the rental property, usually the owner (but may also include an agent or employee of the owner, or a management company).

■ **Tenant:** The party taking possession and use of the rental property from the landlord under a lease. A tenant’s right to possession and use is called a tenancy or leasehold.

■ **Lease (or Rental Agreement):** The contract between the tenant and landlord, transferring possession and use of the rental property. (See Sample Residential Lease Agreement, page 32.) A lease can be written or oral, but a written lease provides the best protection for both the landlord and the tenant.

■ **Joint and Several Liability.** If more than one person signs the lease as a tenant, the lease may state that their obligations are “joint and several.” This means that each person is responsible not only for his or her individual obligations, but also for the obligations of all other tenants. This includes paying rent and performing all other terms of the lease.

■ **Escrow Account:** A bank account or other account held by a third party, generally established in the name of the tenant, into which whole or partial rent payments are deposited to show that the tenant was ready, willing, and able to pay the rent—but is withholding the rent until a certain problem is fixed that the landlord is legally responsible for fixing. Once the problem is fixed, the escrowed rent amount will be released to the landlord.

■ **Plaintiff:** A person who files a civil action to seek judicial relief for some injury or damage caused in violation of his or her rights.

■ **Defendant:** A person against whom relief or recovery is sought in a civil action.

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## A. THE TENANCY

### Q1 What are the types of tenancies?

While the lease refers to the written (or oral) agreement, the “tenancy” refers to the actual property right a tenant receives under the lease. When the owner conveys to another a lesser interest in the property for a term less than that of the owner’s for valuable consideration (generally rent), thereby granting another use and enjoyment of his or her property during the period stipulated, that creates a tenancy. In Michigan, there are three types of tenancies:

**1. Fixed-Term Tenancy.** This type of tenancy is created when the lease agreement specifies when the tenancy begins and when it ends. It terminates automatically at the end of the period specified. Generally, a written lease provides that if a tenant holds over after the fixed term expires, the tenancy shall be considered a month-to-month tenancy. On the other hand, if the lease does not so provide, and the parties acquiesce—i.e., tenant stays in possession and landlord accepts the rent—the lease is considered renewed for the same fixed term upon the same conditions.

**2. Periodic Tenancy OR Tenancy at Will.** This type of tenancy is indefinite in duration. It is created by actual or implied consent. Usually a month-to-month tenancy, the lease is considered renewed at the end of each rental period (month-to-month or week-to-week, depending on how often rent must be paid). Termination procedure is governed by statute and requires notice.

**3. Tenancy at sufferance OR holdover tenancy.** This type of tenancy is created by operation of law only. A tenant holds possession after his or her legal right to

possession has ended (oftentimes based on landlord's failure to act). The person is just short of being considered a trespasser. The elements: (a) the tenant entered possession lawfully, (b) the tenant's legal right to possession has ended, and (c) the tenant remains without the landlord's consent.

## ***Q2 Are there advantages and disadvantages to the different types of tenancies?***

### **Fixed-Term Tenancy**

*Advantages.* The advantage to the tenant is that the rental period is fixed and the rental amount is stable; the landlord may not regain possession or raise the rent, with few exceptions. The advantage to the landlord is that the tenant is committed to pay rent for a specified period of time; the tenant is bound by the lease terms, with few exceptions.

*Disadvantages.* The disadvantage to the tenant is that he or she is bound by the lease term and may not simply move without remaining liable for the rent, permitting fewer changes in arrangements. The disadvantage to the landlord is that he or she is stuck with the tenant until the lease term ends.

### **Periodic Tenancy OR Tenancy at Will**

*Advantages.* The advantage to the tenant is that he or she is free from any further obligation once proper notice of termination is given to the landlord—different housing arrangements can be made more quickly. The same advantage is true for the landlord; he or she may decide to no longer rent to the tenant if the same proper notice is given.

*Disadvantages.* The disadvantage to the tenant is that the landlord, with proper notice, can also raise rent. The disadvantage to the landlord is that he or she is not provided with any certainty as to how long the tenant will remain.

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## **B. THE LEASE**

### ***Q1 Are there advantages to a written lease?***

Although it is common for tenants to sign some type of written agreement, a lease is not always put in writing. Sometimes it is nothing more than an oral agreement as to the move-in and move-out dates, the address of the rental

property itself, and the amount of the rent and when it must be paid. However, if the lease agreement is for a period of more than one year, an oral lease is not an option—it must be put in writing to comply with the Statute of Frauds (MCL 566.106).

Whether there is a fixed-term tenancy or a periodic tenancy, it is best to have a written record of the rental agreement. A written record is a permanent record that may be used for reference if misunderstandings arise—and they do. In the absence of a written lease, signed by both the landlord and the tenant, it is advisable to keep a personal written record of the agreement.

### ***Q2 What provisions should be included in the lease?***

The Michigan Truth in Renting Act (Act 454 of 1978, MCL 554.631 to 554.641) regulates residential leases—requiring the landlord to disclose certain information. Leases differ somewhat in terms, but **a written lease agreement should include:**

1. Name and signature of the landlord;
2. Name and signature of the tenant;
3. Rent amount to be paid, how frequently, and when and where it is to be paid;
4. Address of the rental property;
5. Starting and ending dates if it is a fixed-term tenancy;
6. Landlord's mailing address;
7. Amount of the security deposit, if any;
8. Name and address of the financial institution holding the security deposit;
9. Notice of the tenant's obligation to provide a forwarding address to the landlord within 4 days of terminating the tenancy;
10. Who is responsible for paying utilities;
11. Repair and maintenance responsibilities;
12. Eviction procedures;
13. Any other terms and conditions that the landlord and tenant agreed to; and
14. This statement *must be provided* in a prominent place in the lease, in at least a 12-point font size:

**“NOTICE: Michigan law establishes rights and obligations for parties to rental agreements. This agreement is required to comply with the Truth in Renting Act. If you have a question about the interpretation or legality of a provision of this agreement, you may want to seek assistance from a lawyer or other qualified person.”**

*Note:* Two copies of an inventory checklist must be provided to the tenant when he or she takes possession of the rental property. (See Sample Inventory Checklist, page 41.)

### ***Q3 What provisions are prohibited by law from being included in the lease?***

The Michigan Truth in Renting Act regulates residential leases—prohibiting certain clauses or provisions and prescribing penalties. A provision or clause in a lease that violates the Truth in Renting Act is void. In particular, **a written lease shall not include** a provision which:

1. Waives or alters a remedy available to a party when the rental property is in a condition which violates the covenants of fitness and habitability;
2. Waives a right established under the laws that regulate security deposits;
3. Unlawfully excludes or discriminates against a person in violation of the laws relating to civil rights;
4. Provides for a confession of judgment, e.g., requiring a person to give up certain legal rights in advance;
5. Relieves the landlord from liability for the landlord's failure to perform a duty or for negligent performance of a duty imposed by law (however, the landlord's duty could be waived to the extent a tenant was able to recover under an insurance policy for loss, damage, or injury caused by fire or other casualty);
6. Waives or alters a party's right to demand a jury trial or any other right of notice or procedure required by law;
7. Provides that a party is liable for legal cost or attorney fees incurred by the other party in excess of costs or fees specifically permitted by statute;
8. Provides for the landlord to take a security interest in any of the tenant's personal property to assure payment of rent or other charges, except as specifically permitted by statute;
9. Provides that rental payments may be accelerated if the tenant violates a lease provision unless the amount is determined by the court;
10. Waives or alters a party's rights with respect to possession or eviction proceedings;
11. Releases a party from the duty to mitigate (or minimize) damages;

12. Provides that the landlord may alter a lease provision after the lease begins without the tenant's written consent, *EXCEPT: with 30 days' written notice, the landlord may make the following types of adjustments, as long as there is a clause in the lease allowing for the adjustments:*
  - changes required by federal, state, or local law, rule, or regulation;
  - changes in rules relating to the property meant to protect health, safety, and peaceful enjoyment; and
  - changes in the amount of rental payments to cover additional costs incurred by the landlord because of increases in property taxes, increases in utilities, and increases in property insurance premiums.
13. Violates the Consumer Protection Act (Act 331 of 1976, MCL 445.901 to 445.922), which lists 34 unfair trade practices; or
14. Requires the tenant to give the landlord a power of attorney.

### ***Q4 What if the lease contains a provision that is prohibited by law or is missing the required disclosure language?***

A provision or clause in a lease that violates the Truth in Renting Act is void. The lease is not void—only the prohibited provision. However, a landlord must fix the prohibited provision or add the required disclosure language within 20 days after the tenant brings the deficiency to the landlord's attention in writing. If the landlord fails to fix it within the time specified, the tenant may bring an action to:

- void the entire lease agreement;
- make the landlord remove the prohibited provision from all lease agreements in which it is included; and
- recover \$250 per action (for prohibited provisions) or \$500 per action (for missing disclosure provisions required by law), or actual damages, whichever is greater.

### ***Q5 What other provisions can be included in the lease?***

As long as a provision or clause does not violate federal, state, or local laws, rules, or regulations, the parties can agree to almost anything and include it in the lease. It can be as outlandish as stating, "Only blue cars can

be parked in the driveway.” Some special provisions to be aware of include:

■ **Smoking:** A landlord is free to prohibit smoking in the rental property, as this would not violate any state, federal, or local laws.

■ **Pet Restrictions:** A landlord may prohibit all pets in a rental unit. A landlord may charge a fee for having a pet. An exception here is that a landlord may not prohibit a disabled individual relying on a service animal from housing the animal.

### Q6 How can a lease be terminated?

**Fixed-term tenancy:** This type of tenancy is created when the lease agreement specifies when the tenancy begins and when it ends. **It terminates automatically at the end of the period specified.** A fixed-term lease ends on its own without further action. However, many leases include the provision that the lease converts to a month-to-month tenancy at the end of the fixed term. Other leases state a sky-high increase in rent—sometimes double—if the tenant stays beyond the fixed term.

**Periodic tenancy OR tenancy at will:** This type of tenancy is indefinite in duration. It is created by actual or implied consent. Usually a month-to-month tenancy, the lease is considered renewed at the end of each rental period (month-to-month or week-to-week, depending on how often rent must be paid). **Termination procedure is governed by statute and requires notice.**

Additionally, there are special termination rights for senior citizens or persons incapable of independent living.



### Q7 What are the termination rights for senior citizens or persons incapable of independent living?

Lease agreements entered into, renewed, or renegotiated after June 15, 1995, must provide special termination rights for senior citizens and persons incapable of independent living. These leases must allow the tenant who has already occupied a rental unit for more than 13 months to terminate the lease with 60 days' written notice if either of the following occurs:

1. Tenant becomes eligible to move into a rental unit in senior-citizen housing subsidized by a federal, state, or local government program, OR
2. Tenant becomes incapable of living independently, as certified by a physician in a notarized statement.

### Q8 What does “joint and several liability” mean?

If more than one person signs the lease as a tenant, the lease may state that their obligations are “joint and several.” This means that each person is responsible not only for his or her individual obligations, but also for the obligations of all other tenants. This includes paying rent and performing all other terms of the lease.

### Q9 Can a landlord raise the rent once the lease has started?

Generally, the landlord may not alter a lease provision after the lease begins without the tenant's written consent. There are, of course, exceptions to this. With 30 days' written notice, the landlord may make the following types of adjustments, as long as there is a clause in the lease allowing for the adjustments:

- changes required by federal, state, or local law, rule, or regulation;
- changes in rules relating to the property meant to protect health, safety, and peaceful enjoyment; and
- changes in the amount of rental payments to cover additional costs incurred by the landlord because of increases in property taxes, increases in utilities, and increases in property insurance premiums.



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# The Security Deposit

The security deposit is an amount of money paid by the tenant to the landlord—other than the first rent payment (whatever period is established in the lease: weekly rent payment, monthly rent payment, semiannual rent payment, and so on). The security deposit remains the tenant's property, but is held by the landlord for the term of the lease to ensure that the tenant pays the rent due, pays the utility bills, and returns the rented property in proper condition, as required by the lease. It is held as security as the name implies.

Once the lease is terminated, the tenant has the right to have the entire security deposit returned *unless* the landlord can substantiate a claim to it because the tenant:

1. Owes unpaid rent;
2. Owes unpaid utility bills; or
3. Caused damage to the rented property beyond reasonable wear and tear.

Under Michigan law, both a tenant and a landlord have duties and must perform specific acts regarding the security deposit. Understanding the duties and taking action are crucial. The law requires mandatory notice provisions, written communications, mailings, and strict compliance with time limits. If the duties are not performed precisely, the tenant risks losing the return of his or her security deposit and the landlord risks losing a claim to it. This chapter explains the duties and the necessary actions that must be taken.

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## A. COLLECTING THE SECURITY DEPOSIT AT THE BEGINNING OF THE TENANCY

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### **Q1 Is there a limit on the amount that a landlord may collect as a security deposit?**

**Yes.** The law states that a security deposit shall not exceed  $1\frac{1}{2}$  times the monthly rent.

**Example:** If a landlord charges \$500 a month for rental property, the maximum the landlord may collect as a security deposit is \$750 ( $\$500 \times 1.5 = \$750$ ).

### **Q2 What exactly is considered a security deposit?**

Any prepayment of rent—other than for the first full rental payment period established in the lease—and any refundable fee or deposit are considered by law to be part of the security deposit.

Sometimes the lease requires that both the first and last months' rent be paid before a tenant moves in. If this is the case, the last month's rent would be considered a security deposit. Sometimes, too, additional fees or deposits are charged to hold the rental property, for credit checks, for pets, for cleaning, for keys, for mailboxes, for storage, and for many other reasons. While these fees or deposits may not be called "security deposits" in the lease, if they are otherwise refundable, they are still considered by law to be part of the security deposit and subject to the strict rules that Michigan has adopted—including the limit on the total amount that a landlord may collect.

### **Q3 Is there a difference between a fee and a deposit?**

**Yes.** The law defines the term "security deposit" and limits the amount that may be collected (not to exceed  $1\frac{1}{2}$  times the monthly rent). *Refundable* fees are deemed—by definition—to be security deposits. *Nonrefundable* fees are not; and they can be assessed in any amount for any reason but the reason and matters covered by the fee must be clear. A nonrefundable fee may not cover matters also covered by refundable fees.

**Example:** The monthly rent is \$500 and the lease calls for a \$750 security deposit. In addition to the security deposit, the lease calls for a \$100 refundable snow removal fee for "removing snow from any common area" and a nonrefundable \$250 community fee for "costs of landlord-sponsored social events and common-area snow removal." Because the \$100 snow removal fee is refundable, it would be considered part of the security deposit and violate Michigan law because the amount

collected for a security deposit would exceed the 1½ times monthly rent limit. The nonrefundable \$250 fee violates Michigan law because it covers a matter also covered by a refundable fee. If the lease, instead, required a nonrefundable snow removal fee and a nonrefundable community fee for “cost of landlord-sponsored social events,” it would, absent other contrary or confusing lease terms, be allowed.

**Q4 Once collected, what must the landlord do with the security deposit?**

The landlord must either:

- a) Deposit the money with a regulated financial institution (e.g., bank), OR
- b) Deposit a cash bond or surety bond, to secure the entire deposit, with the Secretary of State. (Note: If the landlord does this, he or she may use the money at any time, for any purpose.) The bond ensures that there is money available to repay the tenant’s security deposit.

**Q5 Whose money is it anyway?**

The security deposit is considered the lawful property of the tenant, until the landlord establishes a right to it—generally by obtaining a judgment in a court of law.

If the landlord sells the rental property, he or she remains liable with respect to the tenant’s security deposit until any ONE of the following occurs:

- a) The landlord returns the deposit to the tenant, OR
- b) The landlord transfers the deposit to the new owner and sends notice—by mail—to the tenant informing him or her of the new owner’s name and address, OR
- c) The new owner sends written notice of their name and address to the tenant AND the name and address of the financial institution where the deposit is held AND the tenant’s obligation to provide a forwarding address within 4 days of terminating occupancy.

**Q6 What rights and responsibilities does the landlord have with regard to the tenant’s security deposit?**

The landlord must provide the tenant with certain notices. Within 14 days from the day

the tenant moves in, the landlord must provide written notice of the following:

- a) The landlord’s name and address for receipt of communications regarding the tenancy;
- b) The name and address of the financial institution where the security deposit is held, OR the name and address of the surety company; and who filed the bond with the Secretary of State; and
- c) The tenant’s obligation to provide a forwarding address—in writing—within 4 days after the tenant moves out.

Generally these notices are found in the lease itself. (See The Lease section; see also the model lease in the Appendices, which displays all of these notices with the correct form and wording.)

**Q7 What is the point of the inventory checklist?**

The checklist preserves some proof of the condition of the property when the tenant moved in. The landlord must provide the tenant with 2 blank copies of an inventory checklist, referencing all items in the rental unit. The landlord must provide written notice on the first page of the checklist that the tenant must properly complete the checklist, noting the condition of the property, and return it to the landlord within 7 days after moving in. (See sample, page 41.)

The tenant may request a copy of the termination inventory checklist (generally referred to as the itemized list of damages caused by the previous tenant). If requested, the landlord must provide a copy to the tenant.

**Q8 Is it important to properly complete the inventory checklist?**

**Yes.** The checklist preserves some proof of the condition of the property when the tenant moves in. If the tenant fails to properly fill out the checklist, or fails to return it, and a dispute over damages to the property occurs at the end of the lease, it becomes the tenant’s word against the landlord’s word.

**Further recommendation:**

*Take photos or video tape recordings of the rental unit before tenant moves in.*

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## **B. RECOVERING THE SECURITY DEPOSIT AT THE END OF THE TENANCY**

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### **Q1 What must the TENANT do at the end of the lease?**

The tenant **MUST** provide his or her forwarding address—in writing—to the landlord within 4 days of moving out. Calling or telling the landlord, or landlord’s agent, won’t do. While the landlord must inform a tenant of this at the beginning of the lease, all too often a tenant forgets to do this when he or she moves out. Without a forwarding address, the landlord has no duty to make arrangements for returning the deposit. If the forwarding address is provided within the 4 days, the landlord has 30 days from move out to respond.

### **Q2 What must the LANDLORD do at end of the lease?**

If the landlord receives the tenant’s forwarding address within 4 days of move out, the landlord has 30 days from move out to either:

- a) Return the entire amount of the deposit by check or money order, OR
- b) Send—by mail—an itemized list of damages lawfully assessed against the deposit and a check or money order for the remaining balance of the deposit (if any).

The itemized list must also contain the following notice: *“You must respond to this notice by mail within 7 days after receipt of same. Otherwise you will forfeit the amount claimed for damages.”* (See example, page 49.)

### **Q3 What must the tenant do when he or she receives the itemized list of damages?**

If the tenant disputes any of the items on the itemized list, the tenant **MUST** respond—in detail, by mail—within 7 days of his or her receipt of that list. “Responding in detail” means giving reasons why the tenant disputes each item of damage and the amount assessed against his or her security deposit, and why he or she should not be responsible. *Simply making a blanket statement that the tenant does not agree will not do; the tenant*

*must address each item on the list individually. The tenant’s detailed response must be sent to the landlord by mail.*

### **Q4 What must the landlord do once he or she receives notice of the tenant’s dispute of the itemized list of damages?**

If the tenant disputes all or part of the itemized list of damages, the landlord is left with two choices:

- a) Negotiate or mediate an agreement in writing with the tenant, OR
- b) Commence an action in court for a money judgment for damages that he or she claimed against the tenant’s security deposit, which the tenant disputes.

Remember, the security deposit remains the tenant’s property until the landlord perfects a claim to it—either by agreement or by court order. If the landlord and tenant cannot agree and if the landlord goes to court, he or she **MUST** prove that the tenant is actually responsible for the damages.

### **Q5 Who must file suit—the landlord or the tenant—for the security deposit?**

Either the landlord or the tenant can be the plaintiff in a security deposit suit.

**The landlord may file suit** within 45 days from termination of occupancy. If both the tenant and the landlord have followed the security deposit timeline perfectly and there still remains a dispute on the amount of damages assessed against the tenant’s security deposit, the landlord **MUST** file suit to retain the deposit. If the landlord does not file suit, he or she may be liable to the tenant for **double** the amount of the security deposit retained.

**The tenant may be required to file suit** in certain circumstances. The burden of filing suit shifts to the tenant if:

- a) The tenant failed to provide his or her forwarding address in writing within 4 days of terminating occupancy, OR
- b) The tenant failed to respond—by mail—to the itemized list of damages within 7 days of receiving it, OR
- c) The landlord failed to return the tenant’s deposit after receiving the tenant’s response disputing the amount assessed against it.

## C. Security Deposit Timeline

<b>Security Deposit Timeline</b>	<b>Landlord's Duties</b>	<b>Tenant's Duties</b>
<b>Beginning of Lease</b> (generally move in) MCL 554.602, 554.604, 554.605, 554.608(2)	Ensure that any security deposit, if required, does not exceed 1½ months' rent. Deposit tenant's security deposit in a regulated financial institution OR file a surety bond with the state. Provide tenant: 1. A copy of the lease, and 2. <u>Two blank copies</u> of the inventory checklist.	The security deposit is the lawful property of the tenant. <i>Recommendation:</i> Read the lease (preferably before signing it) and all other information provided to you by the landlord. Request from landlord the inventory checklist and/or itemized list of damage report from previous tenancy.
<b>Within 7 days from move in</b> (landlord and tenant may agree to a shorter period, but not a longer period) MCL 554.608(3)	<i>Recommendation:</i> Keep tenant's completed checklist.	Return to landlord the completed inventory checklist, noting condition of rental unit (add pages if necessary); be sure to keep a copy yourself.
<b>Within 14 days from move in</b> MCL 554.603	Provide tenant in writing: 1. Landlord's name and address for receipt of rent and communications; 2. Where tenant's security deposit will be held (name and address of the financial institution or surety bond company); and 3. Include specific statutory notice of tenant's duty to provide forwarding address within 4 days of move out.	<i>Recommendation:</i> Read the information provided to you by the landlord.
<b>Move out</b> (not necessarily the end of the lease) MCL 554.608(5)	Complete a termination inventory checklist, noting condition of rental unit.	<i>Recommendation:</i> Remove all personal property; clean the rental unit; turn in keys.
<b>Within 4 day after move out</b> MCL 554.611	<i>Recommendation:</i> Keep a copy of tenant's forwarding address.	Provide landlord in writing (not orally) your forwarding address.
<b>Within 30 days after move out</b> MCL 554.609	Mail to tenant an itemized list of damages, with proper statutory notice provision claimed against tenant's security deposit accompanied by a check or money order for the difference. Only unpaid rent, unpaid utility bills, and damages to the rental unit beyond reasonable wear and tear caused by tenant may be claimed against the deposit (not cleaning fees).	<i>Recommendation:</i> Watch for the itemized list of damages in the mail.
<b>Within 7 days of tenant's receipt of landlord's itemized list of damages</b> MCL 554.612	Watch for tenant's mailed response to the itemized list of damages.	Respond in detail, by ordinary mail, indicating agreement or disagreement to the damages charged. Be sure to count the days; the date of mailing is considered the date of response.
<b>Within 45 days—not thereafter—of move out</b> MCL 554.613	To be entitled to keep the disputed amount of security deposit, file suit against tenant for damages—unless an exception applies.	If suit is filed, appear in court and defend. <i>Note:</i> If suit is not filed, you may file suit for recovery of your security deposit.

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# Subleasing

Subleasing occurs when a tenant permits another party to lease the rental property that the tenant has leased from the landlord. (Note: The lease must allow the original tenant to sublease, and most leases specify that the landlord must approve of the subtenant.) The tenant, then, assumes the position of landlord in relation to his or her subtenant. Subleasing usually occurs because the tenant has signed a fixed-term lease and wants—for whatever reason—to get out of the lease before it expires. Since the original tenant is bound by the terms of the lease, he or she cannot simply leave the property and stop paying rent. To avoid the financial burden of the unexpired portion of the lease, the tenant usually tries to find a subtenant who will assume that burden.

**Word of warning:** Subleasing is not without its problems—so put it in writing. Under a sublease, the original tenant is still bound by contract to the landlord by the terms of the lease. If the subtenant stops paying rent or causes damage to the rental property, the original tenant—not the subtenant—must answer to the landlord. Of course, the original tenant may have a legal cause of action against the subtenant for a violation of the sublease.

The following are important terms to understand:

■ **Landlord:** The party agreeing to transfer possession and use of the rental property, usually the owner.

■ **Tenant:** The party taking possession and use of the rental property from the landlord under a lease contract.

■ **Subtenant:** A third party who takes possession and use of the rental property from the original tenant, under a sublease contract. The subtenant contracts with the original tenant—not the landlord—but generally with the landlord's permission.

■ **Sublease:** The contract between the original tenant and subtenant, transferring, again, possession and use of the rental property. (See Sample Sublease, page 37.) A written sublease contract provides the best protection. Because a sublease can only transfer what is left of the rights given to the tenant in the original lease, it is important that

the tenant provide the subtenant with a copy of the original lease.

## ***Q1 Does the landlord have to agree to the sublease?***

**Generally, yes.** Most leases specify that subleasing or assigning an interest in the rental property is not allowed without the landlord's consent, OR that subleasing or assigning is not allowed at all. But if the original lease agreement is silent, then the tenant need not seek the landlord's permission before entering into a sublease. First check the terms of the original lease. Then, if permission is required, check with the landlord.

## ***Q2 If the tenant is allowed to sublease, what exactly can be subleased?***

The tenant can only sublease the rights he or she has been given in the original lease—no more. For example, if the tenant has only three months left on a one-year lease, the tenant can only sublease up to three months. The same holds true with any restrictions contained in the original lease—they all apply to the subtenant and cannot be waived by the original tenant. On the other hand, the tenant may decide to sublet less than all of the rights he or she has been given in the original lease (e.g., he or she may decide to return to the rental property).

## ***Q3 What duties does the original tenant have when subleasing?***

Generally, when a tenant subleases, he or she assumes the position of landlord in relation to his or her subtenant. Accordingly, all of the laws that apply to landlords apply to a tenant who subleases. These duties are explained in other parts of this book. They include the following:

- Complying with the duties to maintain a habitable rental property and to make reasonable repairs, when necessary;
- Complying with the duties to register or license the rental property under local ordinance (check with the local housing office);
- Complying with duties imposed under the security deposit laws and procedures; and

- Complying with the eviction laws and procedures, in the event the original tenant wants to remove the subtenant from the rental property.

Repair and maintenance still remain the ultimate duty of the original landlord. Because the subtenant, in a sublease, has no relationship with the original landlord, repair requests will usually be made by the original tenant. The original tenant makes a repair request to the landlord. This is not always the case; many times, the landlord, in granting the original tenant permission to sublease, will be aware of the subtenant's presence and will respond to his or her requests.

#### ***Q4 What about the security deposit?***

Because nothing in the original lease agreement changes when a tenant subleases to a subtenant, the original tenant's security deposit will remain with the landlord. The tenant may decide to collect a security deposit from the subtenant to insure against nonpayment of rent or utility charges or damage to the rental property beyond reasonable wear and tear caused by the subtenant. Remember that the original tenant remains responsible to the landlord under the original lease. The original tenant's security deposit could be at stake.

**Collecting a security deposit from the subtenant.** If the original tenant decides to collect a security deposit from the subtenant, he or she would simply follow all of the normal steps that any landlord would in collecting a security deposit. These include being timely in providing proper notice, placing the security deposit in a financial institution, providing inventory checklists, and providing the itemized list of damages. (See The Security Deposit section.)

#### ***Q5 What if the subtenant stops paying rent?***

Two things may be done to help protect against this:

- (1) Require the subtenant to sign a written sublease agreement that includes the same language as the original lease agreement; and
- (2) Require the subtenant to pay a security deposit to the original tenant.

If the original tenant permits the subtenant to pay rent directly to the landlord, the tenant

runs the risk of not knowing if the subtenant is continuing to meet the rental obligations. When the subtenant is required to pay rent directly to the original tenant—and the tenant pays the usual rent to the landlord—there is much less risk.

If the subtenant stops paying the rent, the landlord can hold the original tenant responsible for missed payments. This amount can be withheld from the original tenant's security deposit, as can charges for unpaid utility bills and damages beyond reasonable wear and tear caused by the subtenant. The landlord's recourse is with the tenant under the original lease, not the subtenant. The tenant's recourse is with the subtenant, under the sublease.

For this reason, it is risky to sublease rental property. Therefore, tenants should take all necessary precautions to ensure that they are subleasing to a financially responsible subtenant (e.g., running a credit check, asking for a reference from a previous landlord).

#### ***Q6 Can the original tenant be released from the obligations under the lease?***

Sometimes, yes. Subleasing can be a complicated procedure, particularly if the tenant is leaving the area for the period of the sublease. There are two ways that a tenant can be released from the obligations under the lease:

1. **By mutual agreement.** Though it is rare, a landlord sometimes allows a tenant to terminate the lease early. Therefore, it is a good idea to talk to your landlord before looking for someone to sublease. (*Note:* If the landlord does allow the tenant to break the lease, the tenant should be sure to receive from the landlord a signed document describing the agreement.)
2. **By assignment.** Under an assignment, the new tenant is substituted for the original tenant. When this is done, the original tenant is "cut-out" of the entire lease agreement and the new person steps into his or her shoes. Accordingly, the new tenant will be responsible for all obligations under the original lease, including rent, utilities, and damages—the original tenant will be released of all obligations. (*Note:* If the landlord does allow an assignment, the tenant should be sure to receive from the landlord a signed document describing the assignment and the release of obligations.)

