

10 Tips Lawyers Use to Avoid Landlord-Tenant Problems

Declining home values and a sluggish if not comatose housing market have had at least one obvious impact: Many people are becoming landlords for the first time. A spin around the neighborhood, with rentals on every block, speaks volumes about the shared wisdom of your fellow homeowners. Now *does not* appear to be the time to sell, so the logic goes. Rent until times get better, and at a minimum, such rental will cover the mortgage, insurance and taxes.

I cannot say whether such logic will bear fruit or not. Like so many other things, if you and 100 other people came to this conclusion, it might turn out that simply too many people are fishing in the same pond. What I can say is that being a landlord is a lot more work and worry than most people imagine. And when things go bad you may wish you took that last offer on your house, even though it was 30K less than you paid for it two years ago.

Still I think that I can help you avoid your worst nightmares. As a lawyer for landlords, I have pretty much lived through every type of bad dream there is. I won't say that the list below will save you from every problem, but I am guessing that a few of these tips might save you from the worst of things.

1. Have a good lease. Sure, you can pick up something that looks like a universal lease at Office Depot for next to nothing. Forget it. Have an attorney draft a lease that keys in Florida Law and your concerns and tell him/her to leave it with blanks for things like rental amount, names, etc., which you can later fill in and use with numerous

tenancies. Bad leases lead to disputes, which lead to court, which lead to lawyers who cost too much money. Spend a couple of hundred dollars up front, get a lease you can reuse, and thank the attorney who drafted it each time you can point to a specific clause that helps get your tenant to perform as written. And if you ever do have to go to court, you'll be glad your lease isn't built around the logic of Idaho law or someplace other than Florida.

2. Get it up front. There is no law that prohibits you from collecting a large security deposit up front, the first or last month's rent or both . . . or even the whole rent for the entire rental period. Nothing leads to a better night's sleep than the security of knowing you are holding these sums in escrow. It is the marketplace alone that put limits on such demands. Understandably, some people will go elsewhere if the up-front payment is too steep. But then again some won't, and when you find such people and you have real and certain dollars to use as per the lease you will sleep like a baby.

3. Make it short. Lengthy terms in leases benefit only the tenant . . . and by lengthy I mean even yearly leases. It is often the case that when the Landlord wishes to terminate his relationship with a tenant he finds himself stuck in a lengthy lease from which there is no escape.

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Sadly, many tenants (though not all) do not always feel similarly bound. When the time comes, the tenant may (more often than you might imagine), leave in the middle of the night with no forwarding address. Even when a new address is known, many tenants are judgment proof. The wise landlord knows this is so. Thus he evens the playing field by committing himself to short terms leases, month to month arrangements that give him the same flexibility the tenant has. Such leases may drive away a few prospective tenants, but may encourage others to sign on. It is a mistake to believe that a long term lease will assure that the tenant will stay and perform as directed by the lease.

4. Beware of Uncle Fred. Let's put it this way. Once you let anyone stay in your house, with or without paying rent, it is not going to be simple to get them out. Generosity and a concern for the welfare of others is a good thing, no doubt about it. But understand what you are getting into when you give possession of your premises to another person. Florida law permits only three ways for you to get your property back; The tenant gives it back to you (surrender), they split for a significant period of time (abandonment), or you get it back by a law suit (eviction). If you do have to evict, a good lease at the outset might help you expedite this unpleasant process. So you might think twice

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about a casual decision to let Uncle Fred use the house.

5. No rent on the Installment Plan. Times are tough, and sooner or later a tenant will ask you, or more likely inform you, that he intends to pay only a part of the rent on time, and give the rest to you later on. Unless you have a properly drafted Florida lease (see tip one), you may be waiving your right to the remainder of the rent. You may also be slowly getting further and further behind in your collection of the rent. You'll have to be the final judge of such good intentions. I can only say expecting the rent on time is no sin and using your knowledge of the law to keep a tight rein on late paying tenants, no crime. This is, after all, a business, and the sooner you make it clear that you will meet your obligations, but expect likewise from your tenants, the sooner they will meet those expectations. If they don't, you'll know, early on, that it may be time for them to leave.

6. Don't touch the light switch. Here's the deal. When you rent property to someone, they have the right to possession of it. That right is superior to yours. With some limited exceptions, you don't have the right to go into the place, to have others tramp through the place, to do unannounced inspections and other creative entries, too numerous for me to imagine. Check out Florida law and the lease for some ways you

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can legally arrange any entry. In particular, you cannot shut off utilities or lock the premises or engage in other "self help" practices to get the tenants to leave. There are penalties for this type of illegal behavior. Don't do it.

7. Don't draft your own Three Day Notices. Now that you're an experienced Landlord, you have become familiar with the "Three Day Notice," a rather simple document which must be served on tenants before you can evict them. A failure to do this right, whether in terms of its drafting, calculations, or service of same, can bring your eviction to a dead end. And when it does, you will have wasted time, attorney's fees, court fees, and sheriff's fees . . . and the tenant will still be a tenant. Let me tell you, I get paid to find errors in Three Day Notices, and I rarely have trouble doing so. That's because the courts have set forth various technical requirements for doing these properly. When the Notices are not done properly, the jurisdiction of the court terminates. That's lawyer talk for "you lost the case." Where do you do find these technical requirements? You become an expert in decided cases of Landlord Tenant law. Don't want to become an expert? Then spend a few bucks on an attorney who knows how to do this properly.

8. Security Deposits are just that . . . deposits. You do not own a tenant's security deposit, and thus you are not entitled to dip into same to pay the rent that the tenant only partially paid at the beginning of the month. Get on line, find Florida Statutes (our office has a link at www.tropa.com), and go to Statute 83.49. Become an expert in this much of LT law. It does not make for particularly lively dinner conversation, but it will make it possible for you to understand the specific requirements of the law. This much you need to know now. Security Deposits become an issue at the termination of the rental, not during it. At that point, be prepared to follow the law precisely, both its procedures and the timing of those procedures. The tenant who has caused damage or failed to pay the rent will hope you didn't do your homework about the requirements of this law. Make sure you disappoint him.

9. Be a good landlord. When you show fidelity to the terms of the lease by promptly and competently performing your obligations, you set an example for the tenant to do likewise. Being a good landlord is different than being a pushover. No landlord has the legal duty to accept late rent, to accept an early departure from the lease, or to permit uses and abuses of the premises not permitted by the lease. It is, of course, your choice to indulge in this kind of generosity. But a wise

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landlord, at a minimum, understands that the day might come, perhaps in a court of law, when his demands for action will be considered in light of his own previous actions. In legalese this is called "having clean hands." And just like your mom would say, it's best to wash your hands frequently.

10. Never lose an eviction case. When faced with the need to evict, you and your attorney need to do things right. This sometime means, when faced with a legal dilemma, taking the most conservative route...making sure that a claim cannot later be made that proper procedures were not followed and the eviction must be tossed out. Suffice it to say, you will not feel good when, as a result of sloppy work, the case is tossed and you lose filing fees, sheriff fees, your own attorney's fees and several weeks or months of time. And just when you thought the pain had ended, you discover that the loser in a LT case can be charged with paying the winner their attorney's fees. Here you discover how reality and the law do not always coincide. Why, you ask yourself, when you are successful in a LT case can't you collect attorney's fees from the tenant? Conversely, why can the tenant collect them from you when he wins? *In truth*, either winner may be entitled to a judgment for such fees. *In reality*, collecting attorney's fees from a tenant may prove to be an exercise in futility. This is generally not the

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case when the tenant wants to collect from the landlord, since we know the landlord possesses property (the rental). Philosophize as you will about this state of affairs, but, as my kids would say, "Deal with it." The best way to deal with it is to do it right and make sure you prevail.

There it is. Ten tips to help you avoid a dip into the muddy waters of Landlord Tenant law. At the very least, I hope these insights lead to early and focused attention on the rights and responsibilities you have as landlord.

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