

North Penn Legal Services



Landlord-Tenant Law & Fair Housing (Housing Discrimination) Law



EQUAL HOUSING
OPPORTUNITY



North Penn
LEGAL SERVICES

Issues for Renters



- Landlord Tenant Act
- Getting Repairs Made
- Security Deposits
- Eviction Process
- Protecting Tenants in Foreclosure Act

Landlord Tenant Act



- Landlord Tenant Act applies if landlord gives exclusive possession and control of the apartment or house to the tenant in exchange for money
- Landlord/tenant relationship based on agreement (contract) - either written lease or oral lease
- The Pennsylvania Innkeepers' Rights Act, applies to temporary lodging establishments (occupancy for less than 30 days or on a day-to-day basis if more than 30 days)

Tips for Tenants



- Read your lease before you sign it. A lease is a contract and a tenant is bound by the lease terms.
- Get receipts for rent and security deposit, or pay with a money order or check so you have proof.
- Keep the receipts, money order stubs, or canceled checks in a safe place.
- Don't move into a unit if repairs still need to be made.
- If you have to move into a unit before the repairs are made, make the landlord promise in writing to make the repairs by a certain date. Keep a copy.
- Don't agree to do anything in exchange for a reduction in the rent unless you get the landlord's promise in writing

Getting Repairs Made

- Tenant should notify landlord in writing of bad conditions (Date the letter and keep a copy to prove you sent it)
- Call Code Enforcement or Health Bureau
- Keep proof of the problems
 - Pictures of leak in ceiling, mold, holes in walls, etc.
 - Notes of day furnace stopped working & record of temperatures in the apartment
 - Notes of number of mice, cockroaches, etc. you see each day
 - Notes of when bed bug bites started



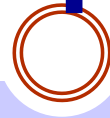
Getting Repairs Made

- Tenant has 4 options if tenant notifies landlord twice in writing of bad conditions & landlord does not make repairs.



- 1) Repair & Deduct
- 2) Sue Landlord for Back Rent & Other Expenses
- 3) Break Lease & Move Out
- 4) Withholding the Rent – not recommended

Getting Repairs Made



- Bad conditions must be very serious to either break lease and move out, or withhold the rent
- Very serious conditions include:
 - No heat in cold weather
 - No drinkable water
 - Sewer system does not work
 - Dangerous structural problems
 - Extreme rodent or insect infestation





Bed Bugs – What are they?



- Bed bugs are tiny insects about $\frac{1}{4}$ inch long.
- Adult bed bugs are reddish brown & oval-shaped, though they are lighter in color when they have not feed recently. They appear to have bands due to microscopic hairs.
- They survive on the blood of warm-blooded animals and typically feed every 3 days. But if they are dormant, they can survive a year without feeding.
- Bed bugs cannot fly or jump, but they can crawl very quickly (up to 100 feet a night).



Bed Bugs – How do they travel and where do they hide?

- Bed bugs can travel by hitchhiking on clothing or luggage.
- Bed bugs can also travel through electrical outlets in buildings.
- When they are not feeding, bed bugs can hide in small crevices in:
 - Mattresses and box springs
 - Furniture – including headboards, sofas, chairs
 - Curtains
 - Cracks and crevices in walls
 - Clothing



**Bed Bugs –
What should
a tenant do if
she finds bed
bugs?**

- Tenants should notify their landlord immediately if they see bed bugs or have bed bug bites.
- Tenants may not know what is biting them. Some people do not react to bed bug bites at all.
- Tenants should not try to deal with the bed bug infestation with store-bought pesticides.



Bed Bugs – What should a landlord do if there are bed bugs in the property?

- Hire a professional exterminator to treat the building as soon as possible.
- Notify all of the tenants in the building that an exterminator is coming to inspect & educate tenants about bed bugs.
- After the exterminator inspects the building, landlord should notify tenants of the treatment date(s) and what steps tenants must take to prepare their apartments.



Bed Bugs – What shouldn't a landlord do if there are bed bugs in the property?

- Ignore the problem
- Attempt to treat the bed bug infestation with store-bought pesticides, which cause bed bugs to move to other areas and will make the professional extermination treatments less effective
- Tell the tenants they must deal with the infestation themselves
- Blame or penalize the tenant who notified the landlord of the infestation

Return of Security Deposit



Tenant must:

- Give landlord forwarding address in writing
 - Surrender possession of property (move out, turn in keys)
-
- Within 30 days, Landlord must return the security deposit in full or give the tenant an itemized list of damages and return the balance
 - If Landlord fails to comply, loses right to keep deposit or sue for damages.
 - Tenant cannot waive these rights in the lease.

Return of Security Deposit



Tenant can sue Landlord for twice the security deposit at Magisterial District Court for area where the unit is located if:

- Tenant gave Landlord his or her forwarding address in writing
- Landlord does not return security deposit or send itemized list of damages within the 30 days



Eviction Process

The most important things to remember about the eviction process:

- A landlord cannot lock a tenant out or make the unit unlivable to force the tenant to move out (by turning off the heat, water, electricity).
- A landlord must take a tenant to court to evict the tenant.
- If the landlord wins, the sheriff or constable can lock the tenant's doors no less than 21 days after the eviction hearing.



Eviction Process – Notice to Quit

- Notice to Quit (NTQ)
 - Landlord must give notice to tenant before filing eviction action, but tenant may waive right to NTQ in lease
 - 10 day notice for non-payment of Rent
 - 15 day notice required for breach of other terms and conditions and expiration of lease
 - Public & subsidized housing tenants cannot waive right to NTQ in lease and length of notice stated in lease and/or regulations governing the program
- Tenant should attend eviction hearing even if tenant did not receive NTQ
- Eviction hearing scheduled within 7-15 days of filing complaint



Magisterial District Court Process – Hearing

Before the hearing:

- If tenant wants to file a claim against landlord that is related to the tenant's occupancy of home, tenant should file a cross-complaint at any time before the hearing (No fee for filing a cross complaint)

At the hearing:

- Landlord or his agent must be present at hearing and present evidence
- Tenant must appear if tenant wants to raise a defense to the eviction
- Tenant should bring proof such as rent receipts, pictures, letters written to landlord, witnesses to events in question



Magisterial District Court Process – Judgment

2 Types of Judgments

- Possession Granted: Tenant must move out of the apartment unless tenant files an appeal at Court of Common Pleas within 10 days.
- Possession Granted If Money Judgment Is Not Satisfied: If tenant only owes money to the landlord and did not violate the lease, tenant can stay in the apartment if tenant pays rent owed and court costs before constable comes to lock the doors. (sometimes called “pay and stay”)



Magisterial District Court Process – Appealing MDJ's Judgment

- Landlord or Tenant may appeal Magisterial District Judge's decision to Court of Common Pleas
- Deadline to File Appeal
 - 10 days if tenant wants to live in unit during appeal
 - 30 days to appeal if tenant only challenging amount of money judgment

Protecting Tenants in Foreclosure Act



- After foreclosure, the new owner (person or bank) must give Bona Fide Tenant at least **90 days' notice** to leave before ending the tenancy.
- The 90 day period begins when the new owner provides written eviction notice (a notice to quit).
- If the lease (oral or written) with the former owner extends beyond 90 days, Tenant may be able to stay in home until the end of the lease, unless the new owner plans to live in the property and gives 90 days' notice to vacate.
 - For Section 8 Voucher tenants, the new owner must assume the HAP contract and lease, unless the new owner plans to live in the property and gives 90 days' notice to vacate.





FAIR HOUSING

The most important things to remember about fair housing laws:

- 1) Discrimination must be because of a protected class
- 2) Federal law sets the minimum protections - states, cities and municipalities can pass laws to provide more protections (but not fewer protections)
- 3) Housing providers must comply with fair housing laws regardless of their personal beliefs



FAIR HOUSING LAWS

- Fair Housing Act
- Section 504 of Rehabilitation Act of 1973
(applies to individuals with disabilities in federally-assisted housing programs)
- Pennsylvania Human Relations Act
- Local Ordinances

Fair Housing Act & Pennsylvania Human Relations Act



Protected Classes:

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Disability
- Age (people 40 years old and older)
(only under Pennsylvania Human Relations Act)





Local Ordinances

- Cities & municipalities may pass ordinances that cover additional protected classes
- Allentown, Bethlehem and Easton added the protected classes of:
 - Sexual orientation
 - Gender identity and gender expression
 - Marital status



Fair Housing Act



The Fair Housing Act makes it illegal, in the sale and rental of housing, to take any of the following actions based on any of the protected characteristics:

- Refusing to rent or sell housing
- Refusing to negotiate for housing
- Making housing unavailable

- Setting different terms, conditions or privileges for sale or rental of a dwelling
- Providing different housing services or facilities
- Falsely denying that housing is available for inspection, sale, or rental
- For profit, persuading owners to sell or rent dwellings by suggesting that people of a particular race or other protected class have moved or are about to move into a neighborhood (called “blockbusting”).



What types of housing do fair housing laws cover?

- Private housing
- Public housing and subsidized housing
- Manufactured home communities
- Homeless shelters
- Group homes
- Rooming or boarding houses
- Nursing homes and assisted living centers
- University housing (dorms)
- Vacant land offered for sale or lease

Examples of Illegal Housing Discrimination



- Race Discrimination: Refusing to rent to a biracial couple
- National Origin Discrimination: Refusing to rent to potential tenants who do not speak English
- National Origin Discrimination: Evicting tenants because landlord does not like the smell of the food they cook
- Religious Discrimination: Charging a higher rent to tenants who are Muslim

Sex Discrimination



- Discrimination on the basis of sex is prohibited
- Sex discrimination includes claims of sexual harassment
 - Ex. tenant's refusal to have sex with landlord results in adverse action or landlord creates a hostile housing environment
- May include discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals if discrimination is based on gender nonconformity or sex stereotyping

Familial Status



Definition of Familial Status:

- Children under 18 living with parents or legal custodians
- People securing custody of children under 18
- Pregnant women



Examples of Illegal Housing Discrimination on the Basis of Familial Status



- Examples of Obvious Discrimination
 - Advertisement that says “no kids”
 - Requiring families with children live on a particular floor or in a particular part of the development
 - Charging high security deposits for families with kids

Examples of Illegal Housing Discrimination on the Basis of Familial Status



- Example of Subtle Discrimination
 - Refusing to rent apartment because concerned about kids' safety (lead paint, busy highway)
 - Telling pregnant woman that 2nd floor apartment wouldn't be good for her because she would have to climb stairs



Discrimination on the Basis of Familial Status



- Housing provider should not charge per person for rent or other fees
- Housing provider can only set the number of people who can live in a unit
- Housing provider cannot decide who sleeps where
- Housing provider cannot restrict a girl and a boy from sharing a bedroom, or a parent and a child from sharing a bedroom



Discrimination on the Basis of Familial Status



- HUD's default rule is 2 people per bedroom but it recognizes a lot of exceptions to this rule, such as:
 - Size of unit
 - Configuration of unit
 - Age of occupants



Sexual Orientation, Gender Identity, and Gender Expression



- Federal rules prohibit discrimination on the basis of sexual orientation or gender identity in:
 - HUD-assisted housing (e.g. public housing, Section 8 Housing Choice Vouchers, project-based Section 8)
 - Housing whose financing is insured by HUD
 - FHA-insured mortgage financing
- Allentown, Bethlehem & Easton - Cannot discriminate on the basis of sexual orientation, gender identity and gender expression



Disability



- A person is considered disabled if he or she is an:
 - Individual with a physical or mental impairment that substantially limits one or more major life activities, or
 - Individual who is regarded as having such an impairment, or
 - Individual with a record of such an impairment



42 U.S.C. § 3602(h)

Major life activities include activities of central importance to daily life – seeing, hearing, speaking, walking, breathing, caring for self, performing manual tasks and learning. 24 C.F.R. § 100.201(b)



Equal Enjoyment

Reasonable Modifications

- Structural change to
 - Interior
 - Exterior
 - Common areas



Reasonable Accommodations

- Change, exception, or adjustment to a rule, practice, or service



Reasonable Modification Examples



- Individual with mobility issues may install a ramp or stair glide
- Resident with hearing disability may install a peep hole in door
- Resident who is sensitive to loud or persistent noise may install acoustic tiles to reduce noise
- Individual who cannot remember to turn off water may install automatic faucet



Reasonable Modification - Costs



- Private housing: Tenant is responsible for paying for modification, unless structural changes should have been included in the unit or public or common area because multi-family dwelling constructed after 1991.
 - When reasonable, the private landlord may require the tenant to restore the interior of the unit to the pre-modification condition before moving out.



Reasonable Modification - Costs



- Federally-funded housing provider: Housing provider responsible for the costs associated with a reasonable modification, unless:
 - Undue financial or administrative burden,
 - Fundamental alteration of the program, or
 - Housing provider can accommodate the individual's needs through other means.



Reasonable Accommodation Examples



- Housing provider allows tenant with mobility impairment to move from third floor to ground floor
- Housing provider notifies tenant with chemical sensitivities in advance of painting and exterminations
- Tenant is allowed to transfer to different unit to get away from conditions that amplify effects of disability (e.g. loud noise)
- Housing provider reserves a parking space near the ramp for a tenant who uses a wheelchair



Reasonable Accommodation Examples



- Management delays eviction proceedings so tenant (whose mental health disability causes her to have poor housekeeping or hoard belongings) can obtain necessary services to be able to pass a re-inspection of the unit
- Housing provider allows tenant's family member or aide to move into the unit as a live-in caregiver
- Tenant with a mental health disability requesting an emotional support animal in a building that doesn't allow pets



Necessary & Nexus



- Housing provider must allow a disabled tenant to make reasonable modification or housing provider must grant reasonable accommodation if such modification or accommodation is necessary to allow the tenant full enjoyment of the unit.
- RA/RM is necessary if identifiable relationship, or nexus, between the requested modification or accommodation and tenant's disability.
- E.g. Tenant with a mobility impairment can show a nexus between disability and RA request of additional time to clean the apartment.
- E.g. Tenant with a mental health disability cannot show a nexus between disability and RM request of a ramp.

When can a tenant request a RA?



Tenant can request a reasonable accommodation at any time prior to actually being evicted, including:

- During application process,
- While living in unit,
- When housing provider changes a rule or policy,
- In response to housing provider's complaint or adverse action,
- At informal hearing,
- At eviction hearing,
- In appeal to a higher court.

What counts as a RA/RM request?




- Any request asking for modification or accommodation because of a disability
 - E.g. Lease says tenant must pay rent in person. Tenant tells housing provider: “Sometimes I get really anxious about leaving my apartment. Can I pay my rent another way? Can I mail a money order?”
- Does not have to use the magic words “reasonable accommodation”
- May be oral or in writing
- Does not have to use housing provider’s request form

What information can the housing provider request?



- Can ask tenant, medical provider or social service provider to confirm tenant has a disability
- Cannot ask for tenant's diagnosis
- Cannot ask tenant for more information or medical verification if:
 - Disability is obvious, or
 - Housing provider already knows tenant has a disability and need for reasonable accommodation is clear

What information can the housing provider request? - Examples



- E.g. Tenant use a wheelchair & requests an assigned parking spot close to the entrance – no information necessary
- E.g. Tenant has a respiratory problem & requests a transfer because his neighbor's smoking makes it difficult for him to breathe – documentation of respiratory problem or effect of smoke may be necessary

What makes an RA/RM request unreasonable?



- RA/RM request is reasonable unless:
 - Undue financial burden on housing provider,
 - Undue administrative burden on housing provider, or
 - Fundamental alteration of housing provider's operations.
- E.g. Asking housing provider to notify tenant of all cleaning supplies used in entire building is unreasonable
- E.g. Asking housing provider to provide tenant ride to doctor or grocery store due to tenant's mobility impairment is unreasonable

Other reasons for denying RA/RM request



- Accommodation not required if:
 - Tenant poses a direct threat to the health or safety of other residents or housing provider's staff
 - Tenant would cause substantial physical damage to another person's property
- Housing provider has the burden to show tenant is a direct threat or will cause substantial physical damage – high burden

Open a Dialogue



- Tenant's RA/RM request should open a dialogue between the housing provider and the tenant about the tenant's needs
- If housing provider refuses tenant's request, housing provider should suggest an alternative RA/RM
- If housing provider does not respond to the tenant for an extended time or does not respond to tenant's request at all, housing provider may be in violation of fair housing laws

Service & Emotional Support Animals



- Service and emotional support animals are not “pets”
- Person with disability may request accommodation for service or assistance animal, if person can show relationship between needing animal & disability
- Housing provider cannot charge pet deposit or extra monthly rent for service & assistance animals
- HUD guidelines allow all dogs to be assistance animals, even if breed is considered dangerous or dog is larger than housing provider allows for pet dogs
- Different rules for service animals under fair housing laws & ADA



Emotional Support Animals (ESAs)



- ESAs can be any type of animal, not just a dog
- ESAs do not need to have special training
- Person with disability must show relationship to disability
 - E.g. Wheelchair bound tenant who does not need service animal must show ESA assists him with mental health disability, not physical disability
 - E.g. Tenant with PTSD must have documentation that ESA calms him



Emotional Support Animals (ESAs)



- Most likely will need letter from doctor or therapist to support request for ESA
 - Have letter ready before making request
- Need to show support for each ESA
 - Requesting multiple animals for one person can be complicated
- If tenant had animal as pet prior to onset of disability, it may be difficult to prove animal is an ESA



How the Fair Housing Act is Enforced



- Tenant Raising a Defense in Eviction Action
- Complaint Filed with:
 - Dept. of Housing & Urban Development (HUD): 1 year
 - PA Human Relations Commission (PHRC): 180 days
 - City Human Relations Commission:
 - Allentown & Bethlehem: 180 days
 - Easton: 300 days
- Lawsuit Filed in State or Federal Court: 2 years

Violation of Fair Housing Laws - Consequences



Types of Relief Ordered by Courts:

- Money Damages to Victims
- Fines
- Injunctive Relief
- Mandatory Fair Housing Training for Housing Provider, Landlord, Management Company or Realty Company
- Attorney's Fees

Violation of Fair Housing Laws - Consequences



- Disability discrimination (refusing to allow tenant to make reasonable modifications, such as widening doorway to bathroom to make it wheelchair accessible)

Outcome: \$200,000 in damages to tenant; mandatory training & changes to procedures for handling reasonable modification and reasonable accommodation requests

- Sex discrimination (landlord & property manager sexually harassed tenants & retaliated against tenants who complained)

Outcome: over \$2 million in damages to tenants; \$55,000 fine; property owner cannot have contact with tenants, must hire independent manager

Violation of Fair Housing Laws - Consequences



- Racial discrimination against tenants' potential subletter

Outcome: \$32,000 in damages to tenants; \$44,000 in damages to potential subletter; plus attorney's fees

- National origin discrimination (segregating tenants of South Asian or Middle Eastern descent into only two buildings in the apartment complex because manager didn't like the smell of the ethnic cuisine the tenants cooked)

Outcome: \$210,000 in damages to tenants; \$107,000 in civil fines; manager fired; mandated fair housing training

Violation of Fair Housing Laws - Consequences



- Disability discrimination (maintaining “no pet” policy & not granting reasonable accommodation for emotional support animal)
Outcome: \$15,000 in damages to tenant; \$10,000 fine; \$15,000 fund for other tenants who were also discriminated against; mandatory training & policy changes
- Familial status discrimination (refusing to grant a 2-bedroom apartment to a married couple with 3 children)
Outcome: \$50,000 in damages to family and mandatory fair housing training for housing provider

North Penn Legal Services

www.northpennlegal.org

Information on self-help legal topics, latest news & events updated regularly



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