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THE LEGALPAD

News You Can Use
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Editor's Note: I am pleased to publish the first issue of the second volume of "The LegalPad," a quarterly newsletter for clients, associates, and friends of THE LAW OFFICE OF WESLEY SCOTT JONES, P.C.

This newsletter is intended to address basic aspects of the ever-changing and often complex topics of law that affect our everyday lives. I hope that you will enjoy this newsletter, and hopefully it will be "news you can use."

This quarter's legal focus is on LANDLORD-TENANT LAW (Part I).

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Introduction.

All of us at some time in our lives have been either a tenant or landlord under a residential lease agreement.

This issue of The Legal Pad, Part I, will highlight the basic rights and responsibilities of a tenant and landlord, as governed by North Carolina law, with respect to residential lease agreements.

The next issue of The Legal Pad, Part II, will address what remedies are available to an aggrieved tenant or landlord; that is, what you can do when the other party fails to meet their responsibilities under a residential lease agreement. Part II will specifically address the topic of summary ejection of residential tenants.

The following discussion is based in large part upon Chapter 42 of the North Carolina General Statutes, which determines the rights, obligations, and remedies of the parties to a rental agreement for a dwelling unit within this State.

What Are The Landlord's Obligations?

The following is a summary of the Landlord's obligations as set out in Section 42-42 of the General Statutes. It provides "The landlord shall: (1) Comply with the current applicable building and housing codes ...; (2) Make all repairs and

do whatever is necessary to put and keep the premises in a fit and habitable condition; (3) Keep all common areas of the premises in safe condition; (4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by him provided that notification of needed repairs is made to the landlord in writing by the tenant except in emergency situations; and (5) Provide operable smoke detectors, either battery-operated or electrical ... The landlord must replace or repair the smoke detectors provided the landlord is notified of needed replacement or repairs in writing by the tenant." Unless the landlord and the tenant have a written agreement to the contrary, the landlord must place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant must replace the batteries as needed during the tenancy.

Section 42-42 further states "The landlord is not released of his obligations under any part of this section by the tenant's explicit or implicit acceptance of the landlord's failure to provide premises complying with this section, whether done before the lease was made, when it was made, or after it was made..."

What Are The Tenant's Obligations?

The following is a summary of the Tenant's obligations as set forth in Section 42-43 of the General Statutes. It provides "The tenant shall: (1) Keep that part of the premises which he occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises which he uses; (2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner; (3) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits; (4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises, nor render inoperable the smoke detector provided by the landlord, or knowingly permit any person to do so; (5) Comply with any and all obligations imposed upon the tenant by current applicable building and housing codes; (6) Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in his exclusive control unless said damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or his agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces; and (7) Notify the landlord of the need for replacement of or repairs to a smoke detector."

Section 42-43 further states that "The landlord shall notify the tenant in writing of any breaches of the tenant's obligations under this section except in emergency situations."

What Is The Tenant Security Deposit Act?

Section 42-50 of the General Statutes provides that "Security deposits from the tenant in residential dwelling units shall be deposited in a trust account with a licensed and insured bank or savings institution located in the State of North Carolina or the landlord may, at his option, furnish a bond from an insurance company licensed to do business in North Carolina. The landlord or his agent shall notify the tenant within 30 days after the beginning of the lease term of the name and address of the bank or institution where his deposit is currently located or the name of the insurance company providing the bond."

Section 42-51 provides that "Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of rent, damage to the premises, nonfulfillment of rental period, any unpaid bills which become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejection proceeding or court costs in connection with terminating a tenancy. Such security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52."

Section 42-52 provides that "Upon termination of the tenancy, money held by the landlord as security may be applied as permitted in G.S. 42-51 or, if not so applied,

shall be refunded to the tenant. In either case the landlord in writing shall itemize any damage and mail or deliver same to the tenant, together with the balance of the security deposit, no later than 30 days after termination of the tenancy and delivery of possession by the tenant. If the tenant's address is unknown the landlord shall apply the deposit as permitted in G.S. 42-51 after a period of 30 days and the landlord shall hold the balance of the deposit for collection by the tenant for at least six months. The landlord may not withhold as damages part of the security deposit for conditions that are due to normal wear and tear nor may the landlord retain an amount from the security deposit which exceeds his actual damages."

What Happens If The Other Party Breaches The Agreement?

While a detailed discussion of the respective remedies available to a landlord or tenant in the event of breach of the lease agreement will be discussed in the next issue, certain basic points deserve discussion.

The main point to remember is that the aggrieved party cannot take the law into their own hands. For instance, Section 42-44 provides that "Any right or obligation declared by this Chapter is enforceable by civil action, in addition to other remedies of law and in equity," and further provides that "the tenant may not unilaterally withhold rent prior to a judicial determination of a right to do so."

Also, Section 42-25.6 provides "It is the public policy of the State of North Carolina, in order to maintain the public peace, that a residential tenant shall be evicted,

dispossessed or otherwise constructively or actually removed from his dwelling unit only in accordance with the procedure prescribed in Article 3 of this Chapter (Summary Ejectment of Tenants - covered in the next issue)."

Basically, this means that a landlord cannot padlock or change the lock on the tenant's door, or otherwise dispossess the tenant, prior to a judicial determination of the right to do so.

Miscellaneous Landlord-Tenant Provisions.

Section 42-46 of the General Statutes provides that "In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the rental payment, whichever is greater, to be charged by the lessor if any rental payment is five days or more late."

This section further states "A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default."

Also, Section 42-53 provides that "The landlord may charge a reasonable, non-refundable fee for pets kept by the tenant on the premises."

Section 42-11 provides that "If any tenant shall, during his term or after its expiration, willfully and unlawfully demolish, destroy, deface, injure or damage any tenement house, uninhabited house or other outhouse, belonging to his landlord or upon his premises by removing

parts thereof or by burning, or in any other manner, or shall unlawfully and willfully burn, destroy, pull down, injure or remove any fence, wall or other inclosure or any part thereof, built or standing upon the premises of such landlord, or shall willfully and unlawfully cut down or destroy any timber, fruit, shade or ornamental tree belonging to said landlord, he shall be guilty of a Class 1 misdemeanor. "

Section 42-14 provides "A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. Provided, however, where the tenancy involves only the rental of a space for a manufactured home as defined in G.S. 143-143.9(6), a notice to quit must be given at least 30 days before the end of the current rental period, regardless of the term of the tenancy."

Section 14-395.1 of the General Statutes provides for criminal sanctions for certain proscribed conduct relating to sexual harassment. It states "Any lessor of residential real property or the agent of any lessor of residential real property who shall harass on the basis of sex any lessee or prospective lessee of the property shall be guilty of a Class 2 misdemeanor For purposes of this section: (1) `Harass on the basis of sex' means unsolicited overt requests or demands for sexual acts when (I) submission to such conduct is made a term of the execution or continuation of the lease agreement, or (ii) submission to or rejection of such conduct by an individual is used to determine whether rights under the lease are accorded; (2) `Lessee' means a

person who enters into a residential rental agreement with the lessor and all other persons residing in the lessee's rental unit; and (3) `Prospective lessee' means a person seeking to enter into a residential rental agreement with a lessor."

Final Thoughts.

It is important to note that the information discussed above is only a summary of the rules and regulations governing the rights of landlords and tenants. Often the terms of a written lease will govern your particular situation. If you are currently either a landlord or tenant, you should not only review all of the pertinent law applicable to your situation, but you should also review the terms of any written lease that may be applicable.

My office will be happy to provide you with a complete copy of Chapter 42 of the North Carolina General Statutes, as well as a copy of a standard Residential Lease Agreement as approved by the North Carolina State Bar Association.

I hope the information provided above is helpful. And remember, please be on the look out for Part II of this discussion in my next issue.

Previous topics covered in The Legal Pad:

- 1) Corporations**
- 2) Small Claims Actions**
- 3) Social Host Liability**

Note: To request free copies of previous issues, please call and leave your name and mailing address.

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This newsletter was prepared by THE LAW OFFICE OF WESLEY SCOTT JONES, P.C. as a courtesy for my clients, associates and friends and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and such changes could affect the information in the newsletter. If you have specific questions with regard to any matter contained in this newsletter, I encourage you to consult with me or another attorney. An attorney-client relationship will be created only by individualized and personalized advice from me to a current or prospective client, and only after the signing of a Contract for Legal Services by all parties affected thereby.

If you do not wish to receive this quarterly newsletter, or if you know of a friend or associate who would like to receive a copy of this newsletter, please contact my office either by phone, fax or mail. Thank you.