

LEASES & RENTAL AGREEMENTS

Kay Simmons
HUD Certified Housing Counselor
Oakland Livingston Human Service Agency



What is a lease?

A legal contract between the tenant and landlord, transferring possession and use of the rental property.

It specifies the duties of each party and is enforceable by both the tenant and landlord.

A lease can be written or oral. It will define the type of tenancy being transferred.

What is Tenancy?



The right to occupy and use a property under the lease or rental agreement



Different types of tenancy have different legal rights and obligations.



Types of Tenancy

Fixed Term Tenancy

- The lease agreement specifies when the tenancy begins and when it ends.
- It terminates automatically at the end of the period specified.

At the end of a fixed term tenancy

- Generally, a written lease states that if a tenant remains after the fixed term expires, the tenancy shall be considered a month-to-month tenancy.
- If the lease does not address additional time, and the tenant stays in possession and the landlord accepts the rent, the lease is considered renewed for the same fixed term upon the same conditions.

Pros & Cons of Fixed Term Tenancy

- PRO: The rental period is fixed, and the rental amount is stable; the landlord may not regain possession or raise the rent, with few exceptions.
- CON: The tenant is bound by the lease term and may not simply move without remaining liable for the rent, permitting fewer changes in arrangements.

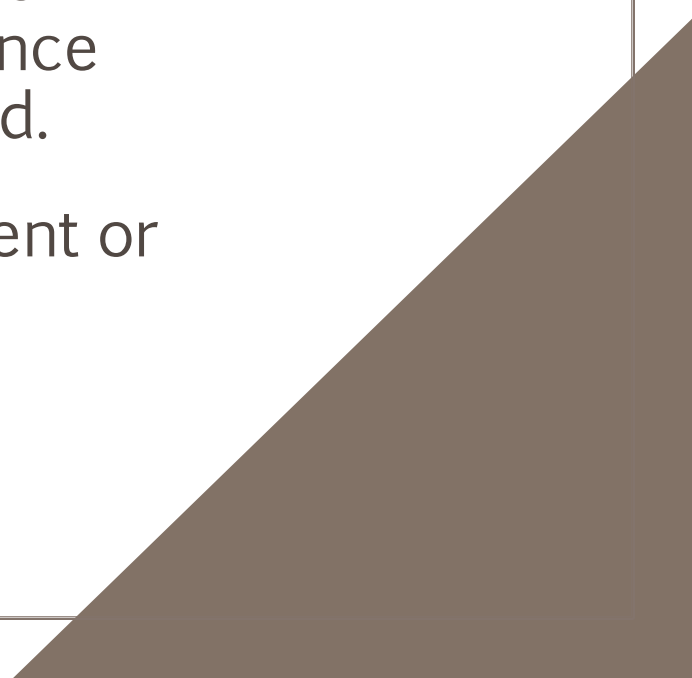


Types of Tenancy

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
- Termination procedure is governed by statute and requires notice.

Pros & Cons of Tenancy at Will

- PRO: Different housing arrangements can be made quickly; the tenant is free from further obligation once proper notice of termination is given to the landlord.
 - CON: With proper notice, the landlord can raise rent or change conditions within the rental agreement.
- 



Types of Tenancy

Tenancy at Sufferance OR Holdover Tenancy

- 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 elements:
 - tenant entered into possession lawfully,
 - tenant's legal right to possession has ended,
 - tenant remains without the landlord's consent.

Joint and Several Liability

- If more than one person signs the lease as a tenant, the lease may state that the tenants' 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.

Truth in Renting Act

- Enacted in 1979, ensures fair dealing between landlords and tenants in lease agreements.
- Requires landlords to disclose certain information in every lease
- Guarantees tenants certain rights under the law, and prohibits lease provisions that attempt to waive a tenant's guaranteed rights
- Prevents eviction without going through the judicial process



What Should Be Included In the Lease?

Address of the rental
property

Starting and ending dates if
it is a fixed-term tenancy

Rent amount to be paid, how
frequently, and when and
where it is to be paid

Name and signature of the
landlord & tenant

Landlord's mailing address

Landlord and tenant
responsibilities, such as who
pays utilities, pet policies,
repair and maintenance
responsibilities, etc.

Consequences for breach
of contract, and eviction
procedures

Provisions in Truth in Renting Act

The landlord must provide written notice of the following within 14 days from the day the tenant moves in:

- The landlord's name and address for receipt of communications regarding the tenancy; AND
- 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
- The tenant's obligation to provide a forwarding address, in writing, within 4 days after the tenant moves out.

Notice of Truth in Renting Act



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.”

Violating the Truth in Renting Act

- The entire lease is not void—only the prohibited provision.
- A landlord may 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

Changes to a Lease

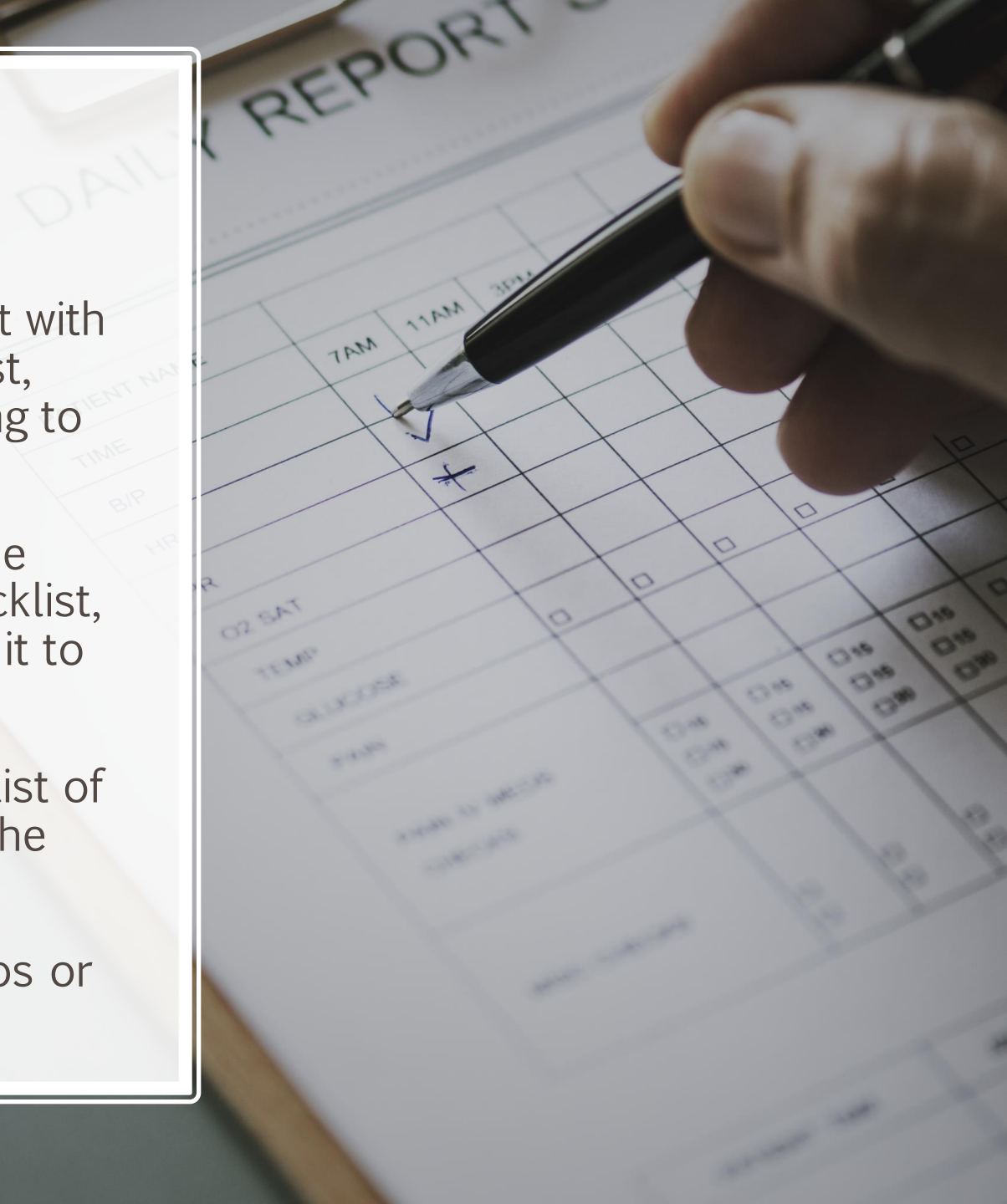
Generally, the landlord may not alter a lease without the tenant's written consent.

Exceptions are allowed if there is a clause in the lease allowing for adjustments and 30 days written notice is provided:

- Changes required by federal, state, or local law
- Changes in rules relating to the property meant to protect health, safety, and peaceful enjoyment
- 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.

Inventory Checklist

- At move-in, the landlord must provide the tenant with 2 identical blank copies of an inventory checklist, referencing all items in the rental unit that belong to the landlord.
- The first page of the checklist must state that the tenant is required to properly complete the checklist, noting the condition of the property, and return it to the landlord within 7 days after moving in.
- The tenant may request a copy of the itemized list of damages for the previous tenant. If requested, the landlord must provide a copy to the tenant.
- It is highly recommended the tenant takes photos or video recordings of the rental unit at move in.



Security Deposits

All refundable fees are considered part of the security deposit, as well as rent payments past the first month.

By law, the maximum total security deposit can be no more than one and a half month's rent.

If there is a security deposit, the following must be provided in writing:

- Amount of any security deposit
- Name and address of the financial institution holding the security deposit
- Notice of the tenant's obligation to provide a forwarding address to the landlord within 4 days of terminating the tenancy

Early Termination of Lease

Some leases have early termination clauses that allow tenants to terminate the lease under a specific set of conditions.

Tenants who need to break their leases must often:

- negotiate with their landlords
- provide ample notice or forfeit the security deposit
- seek legal counsel



Special Protections to Terminate Lease Early

- **Servicemembers Civil Relief Act** allows active military to break their leases if they receive orders requiring them to relocate for more than 90 days.
- **Violence Against Women Act** allow domestic violence victims to break leases without negative consequences.
 - Not just for women
 - The abuse must have been fairly recent (normally within the last year) and usually requires some proof, such as a court order of protection or a police report documenting the violence.
 - There may be an addendum added to leases stating this act, or separate statement provided
- **Senior Citizens or Those Incapable of Independent Living** applies to a tenant who has occupied a rental unit for more than 13 months and becomes eligible to move into senior-citizen housing subsidized by a federal, state, or local government program, OR becomes incapable of living independently, as certified by a physician in a notarized statement
 - Must provide 60 days written notice

The End of a Lease Term

- Use the tenant's copy of the move-in checklist to assess damages. If possible, the tenant should request a final walkthrough with the landlord and obtain a signed copy of the move-out check list.
- Return all keys and obtain receipt.
- The tenant **MUST** provide a forwarding address, in writing, to the landlord within 4 days of moving out.



Security Deposit

The tenant has the right to have the entire security deposit returned unless the tenant:

- Owes unpaid rent
- Owes unpaid utility bills
- Caused damage to the rented property beyond reasonable wear and tear

A close-up photograph showing a person's hands holding a stack of US twenty-dollar bills. The bills are fanned out, and the top bill is clearly visible, showing the portrait of Andrew Jackson and the number '20'. The background is a light-colored tiled floor with dark grout lines. The image is partially overlaid by a white semi-transparent box containing text.

Refunding A Security Deposit

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.

Landlord has 30 days from move-out to either:

- Return the entire amount of the deposit by check or money order, or
- Mail an itemized list of damages, and a check or money order for the remaining balance of the deposit.
- 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."

Disputing Itemized List of Damages

If the tenant disputes any of the items on the itemized list, the tenant MUST respond by mail within 7 days of receiving the list.

- The response must define reasons why the tenant disputes each individual item of damage, the amount assessed against the security deposit, and why the tenant should not be responsible.

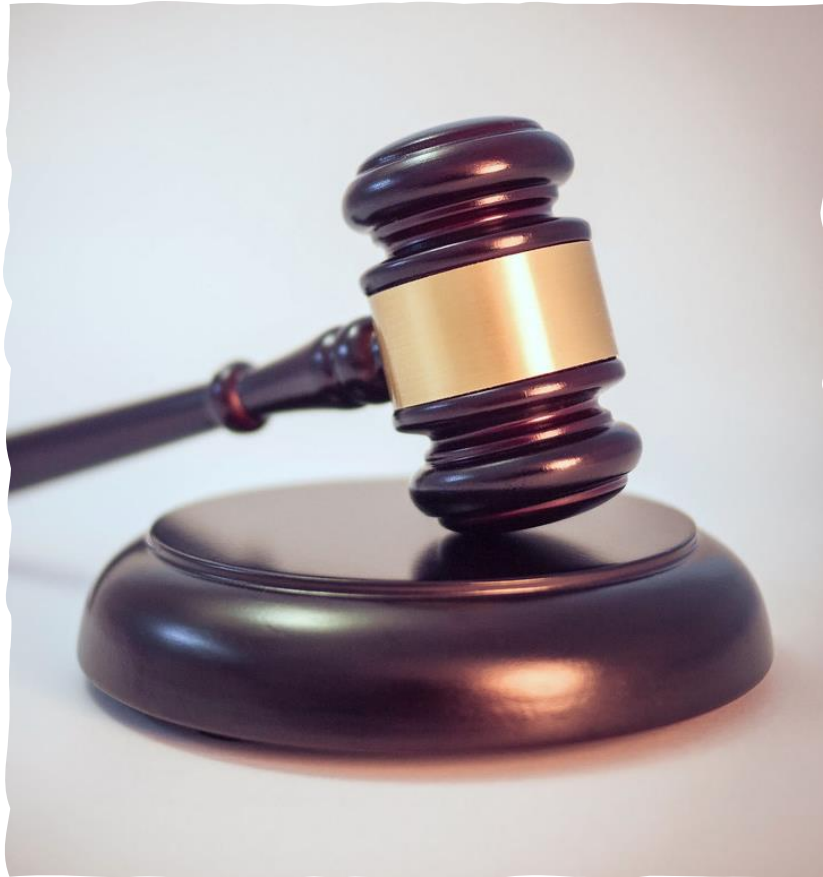
The landlord then has two options:

- Negotiate an agreement in writing with the tenant
- File for a money judgment for damages against the tenant's security deposit

Going to Court over Security Deposit

- If the landlord and tenant cannot agree and if the landlord goes to court, the landlord MUST prove that the tenant is responsible for the damages.
- 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.
- 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.

Court Legal Filing



The burden of filing suit shifts to the tenant if

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



Questions



A Practical Guide for
Tenants & Landlords

Revised 10/2021

Practical Guide for Tenants & Landlords

MSU College of Law Housing Law Clinic

<http://legislature.mi.gov/documents/Publications/tenantlandlord.pdf>

Additional Resources

**MI Department of Attorney
General Landlord/Tenant web page**

<https://www.michigan.gov/ag/about/landlord>

Michigan Legal Help Web Site

<https://michiganlegalhelp.org/>

Truth in Renting Act

[http://www.legislature.mi.gov/\(S\(3chdfusdsh50ab2da3cw5si5\)\)/mileg.aspx?page=getObject&objectname=mcl-act-348-of-1972](http://www.legislature.mi.gov/(S(3chdfusdsh50ab2da3cw5si5))/mileg.aspx?page=getObject&objectname=mcl-act-348-of-1972)

HUD Certified Housing Counselors

<https://www.michigan.gov/mshda/homownership/housing-education>

