

TENANTS' RIGHTS AND RESPONSIBILITIES

A Guide for Tenants and Advocates

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INTRODUCTION

Tenants' Rights and Responsibilities is a collection of informational materials designed to assist tenants and tenant advocates in finding and maintaining safe and affordable housing. This manual addresses many of the concerns and issues tenants, especially low-income tenants, face in the course of renting a home. The various sections illustrate the chronological evolution of some, although certainly not all, landlord/tenant relationships.

The materials contained within this manual represent the work of many past and present members of the Neighborhood Legal Services (NLS) Housing Unit.

We hope the information contained within these pages is useful and relevant. Your comments and suggestions are always welcome. For further information or to schedule a Tenants' Rights and Responsibilities Workshop, contact the NLS Housing Unit at 847-0650.



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This booklet, which is based upon New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid or advice of an attorney.

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Chapter 1
FINDING AN APARTMENT

APARTMENT HUNTING

If you allow yourself very little time to locate a suitable apartment, it is less likely that you will go through the proper steps to assure yourself of safe, healthy, habitable housing. You are in the best position to bargain with a potential landlord *before* you have paid a security deposit or have moved your belongings into an apartment. Any major repairs should be completed by the landlord before you move in or give the landlord your security deposit. Always get promises to make repairs by a certain date in writing.

The first step after you decide to move and you decide how much you can afford to pay as rent is to find a safe and affordable area to begin your housing search. Visit different areas of the city to see which you like best. Visit the area you may want to move to a couple of times and at different times of the day and night. This may alert you to any potential problems.

Look at the houses in the neighborhood where you would like to live. Are they being kept up? Does it look like the people who live there care enough to keep things cleaned up?

Talk to the local police. Ask them about the area you want to live in. Are there gangs? Are there drugs? Walk around the neighborhood and talk with residents. Ask them if there are any problems in the neighborhood.

During the search.....

After selecting an area, it is time to actually visit potential places to live. Call the landlord and set up an appointment to view the available apartment. Ask the landlord if the taxes and water bill are paid. Ask who must pay the utilities, water bill, and the garbage tax. Are pets allowed? Walk around the outer perimeter of the house. Expensive exterior repairs that need to be made to the home you want to rent may divert money away from making repairs inside.

Do you need basement access? Do you have a washer and dryer? Will they fit down the basement stairs? Are the stairs and railings in good shape? Examine the hot water tank. Look for signs of mold and moisture. Check to see that every furnace is vented to the outside. If the tenant must pay for utilities, check to see that there are separate meters. Tenants should not agree to share the gas, electric or water bills.

When examining the living quarters, check all lights and light switches. Bring a bulb to put in the light sockets as needed to make sure the lights are working. Bring a small plug-in item, such as a clock radio or alarm clock. Plug it in electrical outlets to make sure the outlets are working.

Make sure the thermostat is working. Have someone turn it all the way up and have someone downstairs make sure the furnace comes on. If there are missing switch covers or wall outlet covers, ask when they will be replaced. Is there exposed electrical wiring? Make sure all the windows open and lock when closed. Check for cracked/broken windows. Make sure windows have screens and storm windows. Open and close all doors. All entry doors need a sturdy lock that works properly. Open and look very closely at all cabinets. Look for signs of

roaches, mice or rats. Turn on all faucets full blast. Is the water pressure high? Are there any leaks from the faucets? Does the water smell bad or look brown?

Check drainage from sinks to make sure the water drains properly and quickly. If the drain is slow it could be a sign of a clogged drain. Examine the drains under the sinks. Are there any signs of leaks? Turn on all showers and bathtubs. Is there good water pressure? Are there any leaks? Examine the heating registers and check to see that they are secured to the wall.

Examine the paint and wallpaper. Is the paint in good shape? Ask about possible lead paint. The paint should not be chipping or peeling. Any loose tiles or floorboards should be secured. Check for stained carpets, tears in linoleum and cracked or chipped tiles.

If appliances come with the apartment, check to see that they work. All the burners should function properly. The freezer should freeze properly. If the appliances are not working properly, write a note to remind yourself and the landlord what parts of the appliances were not working as of the date of your inspection.

Open all doors, inspect all closet spaces. Examine the ceiling and walls for water spots. If you see signs of water damage, find out if there have been water leaks. Ask the landlord what has been done to correct the problem. Check all smoke and carbon monoxide detectors. Also, measure the biggest items you have and make sure you can get them in the door. If your largest items will not fit through the doors, you probably have to find a different apartment. If the apartment has a storage area or garage make sure it is cleaned out and the locks are secure.

Some things to ask *before* you agree to rent the apartment: When will the apartment be available? Does the landlord require a security deposit? How much is the security deposit and when is it due? How much is the rent and when is it payable? Are there any late fees? Is there access to the garage or driveway? Is there a pet policy? Who can you contact for emergency repairs? Make sure you get the landlord's full name, address and telephone number before you pay the landlord the security deposit or agree to rent the apartment.

Once you've found your new home....

Read any lease or rental agreement carefully **before** you sign it. Make sure you understand what you are signing. Once you sign the lease, you will be bound to its terms. If you do not understand any paragraph in the lease agreement your new landlord wants you to sign, tell the prospective landlord that you need some time to review it. Contact Neighborhood Legal Services, and we can review your lease and answer any questions you may have.

Keep copies of all correspondence to and from your landlord.

Always get a receipt from your landlord when you pay your rent.

Enjoy your new home!

APARTMENT CONDITIONS CHECKLIST

1. All windows and doors should have a secured, properly installed working lock.
2. The living room and bedrooms have at least one window.
3. All windows should be secure in their frames, should open and should be free of cracked or broken glass.
4. No cracked, chipping or peeling paint on walls or ceiling.
5. Each apartment should have at least one smoke detector, as should the basement and attic.
6. If appliances are included, make sure they are in good working order with no missing knobs or frayed electrical cords.
7. The kitchen should have a permanently attached sink that has hot and cold running water and is free of rust and leaks.
8. The bathroom should have a permanently attached sink that has hot and cold running water and is free of rust and leaks.
9. The apartment should have either a bathtub or shower that has hot and cold running water free of rust and leaks.
10. The apartment should have a working toilet.
11. The heating system must be capable of providing sufficient heat.
12. The apartment should have a working water heater with on/off control knobs and pressure relief valves.
13. There should be at least one permanently attached light fixture in all bedrooms, kitchen, bathroom and living room.
14. Check to see that there is no exposed electrical wiring or exposed fuse box connections.
15. Check for rodent or insect infestation.

SECURITY DEPOSITS

A security deposit is a landlord's way of guaranteeing that he or she will be compensated for any damages caused by a tenant. The amount of the deposit is usually equal to one month's rent, but landlords may decide to charge more.

Where does my deposit money go once I give it to my landlord?

If the building in which you are moving into has more than six units in it, the landlord must put your money into an interest bearing savings account. The interest which this money may accumulate will belong to you, the tenant. If your building is less than six units, your landlord may still deposit your money into an interest bearing account. If your landlord does so, he or she should pay you the interest. The landlord in either situation is allowed to keep 1% of the interest for expenses.

Can I use my security deposit to pay my last month's rent when I plan to move?

You cannot use your security deposit for the last month's rent unless the landlord agrees to it. Your security deposit is intended to pay for damages that you may cause while moving in, living in or moving out of the landlord's property.

How long can my landlord hold my security deposit after I move out?

The landlord does not have to give you your security deposit back the day you move out. Your landlord may hold your security deposit for a reasonable time after you move out of the house. A reasonable time to return a security deposit is generally considered to be within 30 days after the tenant moves.

What happens if I damage the landlord's property?

The landlord may deduct a portion of the security deposit to cover the cost of the damages. The balance of the security deposit should be given back to you. If the cost of repairing the damages is greater than the amount of your security deposit, it is likely that the landlord will keep the entire security deposit.

What if the damages done to the property are more than what my security deposit can cover?

If this happens, the landlord may take you to Small Claims Court to recover the total cost of repairing the damages.

Can my landlord keep my security deposit even if I did not cause any damage to the property and I do not owe any rent?

The answer is no. Your landlord cannot keep your security deposit if you have not caused any damage to the property and you don't owe rent when you leave. If this does happen, you should

file a claim in Small Claims Court against your landlord to recover your deposit.

SECURITY DEPOSIT CHECKLIST

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>LIVING ROOM</u>			
Walls & Ceiling			
Floors			
Carpeting			
Windows			
Storm/Screen Windows			
Electrical Outlets			
Light Fixtures			
Doors			
Other (specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>DINING ROOM</u>			
Walls & Ceiling			
Floors			
Carpeting			
Windows			
Storm/Screen Windows			
Electrical Outlets			
Light Fixtures			
Other (Specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>KITCHEN</u>			
Walls & Ceiling			
Floor			
Windows			
Storm/Screen Windows			
Sink			
Cabinets			
Refrigerator			
Oven			
Electrical Outlets			
Light Fixtures			
Other (Specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>BATHROOM</u>			
Walls & Ceiling			
Floor			
Storm/Screen Windows			
Sink			
Tub/Shower			
Cabinets			
Mirrors			
Towel Racks			
Other (Specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>BEDROOM #1</u>			
Walls & Ceilings			
Floors/Carpeting			
Windows			
Storm/Screen Windows			
Electrical Outlets			
Closets			
Doors			
Other (Specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>BEDROOM #2</u>			
Walls & Ceilings			
Floors/Carpeting			
Windows			
Storm/Screen Windows			
Electrical Outlets			
Closets			
Doors			
Other (Specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>BEDROOM #3</u>			
Walls & Ceilings			
Floors/Carpeting			
Windows			
Storm/Screen Windows			
Electrical Outlets			
Closets			
Doors			
Other (Specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>OTHER ROOMS</u>			
Walls & Ceilings			
Floors/Carpeting			
Windows			
Storm/Screen Windows			
Electrical Outlets			
Closets			
Doors			
Other (specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>BASEMENT</u>			
Windows			
Electrical Outlets			
Storage			
Washer/Dryer			
Other (specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>ATTIC</u>			
Windows			
Storage			
Electrical Outlets			
Other (specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>FRONT ENTRANCE</u>			
Storm/Screen Door			
Door Locks			
Hall Area			
Stairs			
Electrical Outlets			
Lighting			
Other (specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>REAR ENTRANCE</u>			
Storm/Screen Door			
Door Locks			
Hall Area			
Lighting			
Other (specify)			

	INITIAL CONDITIONS (new, used, clean, dirty, specific damages)	MOVE OUT CONDITIONS (new, used, clean, dirty, specific damages)	COMMENTS
<u>EXTERIOR</u>			
Lighting			
Front/Rear Porch			
Front/Rear Stairs			
Front/Rear Yard			
Other (specify)			

Tenant's Signature & Date _____

Landlord's Signature & Date _____

HOUSING DISCRIMINATION

What is unlawful housing discrimination in New York State?

Housing discrimination occurs when someone is denied the opportunity to rent or buy a house because of their race, color, national origin, religion, gender, disability, marital status, children, age, military status, or sexual preference. It is illegal to make decisions about housing based on race, color, national origin, religion, gender, disability, marital status, children, age, military status, or sexual preference. In some cities and towns in New York, it is unlawful to discriminate against someone based upon their lawful source of income, or the way in which they express their gender.

Can someone refuse to rent to me because of my race or color?

No one can refuse to rent or sell housing to someone because of their race or color. No one can change the conditions of a rental or sale because of someone's race or color. For example, a landlord cannot charge you more rent than your white neighbor just because you are African-American.

Can someone refuse to rent to me because of my national origin, religion, disability, gender, marital status, age, military status, sexual orientation, or because I have children?

Generally speaking, the answer is no. No one can refuse to rent to you for those reasons. However, the laws about discrimination based on these classifications do have some exceptions. Certain housing, such as apartments in owner-occupied doubles, may not be covered by these laws.

Does the law protect people with disabilities from discrimination?

If you are a person with a disability, the same law that says that your landlord cannot discriminate against you, also requires that your landlord allow you to make reasonable changes to your apartment so that you can fully use and enjoy it. For example, if you are hearing impaired, you might want to have a lighted doorbell installed. There are some rules you must follow when requesting permission to make changes or when making changes to an apartment. You may want to contact Neighborhood Legal Services for more information.

Does the law protect me against discrimination if I have children?

The law also says that a landlord cannot discriminate against you because you have children. There are some exceptions, but usually a landlord cannot refuse to rent to you or raise your rent because you have children, or become pregnant. In addition, your landlord cannot generally evict you because you have someone move in with you.

Can my landlord discriminate against me because of my lawful source of income?

No, not if you live in Buffalo, West Seneca or Hamburg. The state and federal laws do not

protect against discrimination based on your source of income. But if you live in Buffalo, West Seneca or Hamburg, there are local laws that say the landlord cannot discriminate against you if you don't work but have enough money coming in from another source to allow you to afford the apartment. For example, if your income is from the Department of Social Services or if you receive Section 8, a landlord cannot refuse to rent to you for that reason as long as your income is enough to afford to rent the apartment.

Can my landlord discriminate against me due to my sexual preference or sexual orientation?

New York State passed the Sexual Orientation Non Discrimination Act which protects individuals against discrimination based upon sexual preference.

What can I do if my landlord sexually harasses me?

Sexual harassment by your landlord is also a form of illegal discrimination. If you experience sexual harassment, you should call Neighborhood Legal Services or any of the other agencies listed below.

Can my landlord discriminate against me because of my gender identity or expression?

No, not if you live in Buffalo. The Buffalo Fair Housing Ordinance says that a landlord may not refuse to rent to you or treat you differently than other tenants based on how you express your gender. That means if you dress or act in a way that is different from what is traditionally associated with your birth gender, you are protected against housing discrimination.

How can I tell if I have been a victim of housing discrimination?

It is often very hard to tell whether you have been the victim of discrimination. For example, very few landlords will tell you that they will not rent to you because of your race or your children or your sexual orientation. The landlord may just tell you that the apartment has already been rented. One way to tell is to keep an eye on the advertisements. If an ad for an apartment continues to run even after the landlord says the apartment is taken, keep copies of those newspapers. Housing Opportunities Made Equal (HOME) may be able to help you prove your discrimination case if you are told that an apartment has already been rented and you think it still may be available.

Another way to tell is to compare notes with your neighbors. If you are paying a much larger security deposit than your neighbor, and you have three children and she has none, you may be the victim of discrimination.

What should I do if I believe I have been discriminated against?

You should act quickly. The laws regarding discrimination vary, but in many cases you have as little as **one year** to file a claim. Also, any investigation of your claim by the following agencies will be most helpful if conducted soon after the discrimination occurs.

You may contact the Housing Unit of **Neighborhood Legal Services, Inc.** at **847-0650** for more information. The Housing Unit accepts a limited number of calls every day, Monday through Friday between the hours of 9:00 a.m. to 12:00 p.m.

Other agencies that handle housing discrimination claims are Housing Opportunities Made Equal (HOME) at 854-1400; New York State Division of Human Rights at 847- 7632, the United States Department of Housing and Urban Development (HUD) at 1- 800-669-9777 or at the HUD website at www.hud.gov/complaints/housediscrim.cfm, or Independent Living Center at 836-0822.

GENDER DISCRIMINATION

Together, state and federal fair housing laws prohibit discrimination in housing on the basis of race, color, national origin, gender (or sex), disability, familial status, religion, marital status, age, military status and sexual orientation. In the City of Buffalo, discrimination based upon gender identity and expression is also unlawful.

What is “gender identity and expression”?

Under the City of Buffalo’s fair housing law, gender identity and expression includes a person’s actual or perceived gender, as well as a person’s gender identity, self-image, appearance, expression, or behavior whether or not that gender identity, self-image, appearance, expression, or behavior is different than traditionally associated with the person’s sex at birth. If you dress or act in a way that is different from the traditional way people born with your gender dress or act, you are protected from discrimination in the City of Buffalo.

What kind of protections are there against gender based discrimination in the federal and state law?

Suppose Landlord A says, “I would never rent to young women because their personal products clog up the toilet.” Suppose Landlord B says, “Well, I never rent to young men because they are terrible housekeepers and they don’t take care of the place.” Both of these landlords are refusing to rent to certain people because of their gender and their refusal may be considered unlawful discrimination.

Gender discrimination in housing takes other forms as well. Let’s say a landlord tells a female tenant that she could exchange sex for the rental of her apartment. The landlord serves an eviction notice when the tenant refuses. Courts have held that an offer to exchange sex for the use of an apartment is illegal discrimination based on gender. Other examples of unlawful gender based discrimination might include an apartment manager who launches into a string of X-rated comments each month when he picks up the rent, or a manager who engages one of his workers in a loud conversation about the a tenant’s anatomy or sexual habits in the tenant’s presence. Some courts have held that this kind of behavior creates a “*hostile living environment*” and therefore is also unlawful discrimination.

Suppose a rental agent always has a big smile and hello when he sees a certain prospective tenant walk into his agency. On the prospective tenant’s third visit to check out apartment listings, the rental agent asks her if she would like to go to a movie sometime. The woman explains that she has a boyfriend and turns him down. However, she feels uncomfortable and so switches to another rental agency for her apartment search. This probably would not be found to rise to the level of unlawful gender discrimination. The fact that a person is made to feel uncomfortable about attention that may be sexually based would probably by itself not constitute discrimination based on gender.

Incidents between these extremes present more difficult issues. The courts have indicated that “trivial” incidents are not unlawful, but serious ones are. In cases of “hostile living

environments,” the courts look for repeated rather than single or minor incidents. Even the courts disagree on the level of conduct needed to find unlawful discrimination based on gender.

The activity complained of must also be unwanted. A tenant could not, for example, encourage frequent joking with sexual innuendo with her manager, and then claim sexual discrimination when the manager lawfully raises her rent.

Who do the laws prohibiting gender based discrimination in housing apply to?

These laws apply to apartment owners, real estate agents, apartment managers, and other employees such as maintenance personnel, as well as anyone else involved in the sale or rental of housing. There are exceptions. In New York State, some prohibitions do not apply to owner-occupied, two-family homes.

What should a victim of sexual harassment related to housing do?

It is a good idea to call an attorney or an agency such as Housing Opportunities Made Equal (HOME) at 854-1400 to discuss the offensive behavior as soon after it occurs as possible.

The victim should also keep notes. These notes should include the date, time, what occurred, who engaged in the offensive behavior, what was said, and whether there were any witnesses. These records will assist the victim in the future should he or she decide to take action. Memories about particular details will often fade. The victim should also keep records showing that there were no problems with the tenancy. Many landlords respond to a sex harassment claim by, bringing an eviction action. The tenant would have to show that the reason for the eviction is the landlord’s discriminatory behavior to prevail.

The tenant may want to speak to other sympathetic tenants. The tenant should first consider very carefully whether other tenants have a friendly relationship with the landlord. Sometimes a tenant will find that other tenants have experienced similar situations with the landlord.

The victim should also try to arrange to have someone present when dealing with the offender. For example, if a manager makes a routine of picking up the rent on a certain day, the tenant should try to arrange to have someone else there to both witness what happens and to prevent further harassment.

When should a victim take action against the landlord?

In deciding whether to take formal action against a landlord, the victim will need to consider several factors. The victim will need to decide whether to remain in the housing or move. Does the victim feel safe in the housing? The landlord will usually have a key to the apartment. Particularly in the case of owner-occupied housing, the victim may be placed in an extremely uncomfortable situation by taking action against the landlord while still living in the premises. Seeking advice from an attorney or an agency such as HOME may be very helpful in deciding what to do.

What action can be taken?

This also depends on the particular circumstances involved. If unwanted sexual touching is involved, the victim may call the police. It may be particularly helpful to discuss the matter with an attorney, HOME, or similar agency first. Sometimes a letter to the landlord will correct the situation. The letter could be written by the victim, a legal services office, or by an agency such as HOME.

Whether or not the landlord is first contacted to correct the situation, the victim may file a formal complaint against the landlord. Complaints may be filed with the United States Department of Housing and Urban Development or the NYS Division of Human Rights. Each of these government agencies will investigate the victim's claims. If the agency determines that reasonable cause exists to believe that discrimination has occurred, the matter will go to a hearing. A victim does not need an attorney to file with these agencies.

Alternatively, the victim could choose to file a complaint directly in state or federal court. Generally an attorney is needed to do this. The complaint will then be heard by a judge or jury.

It is very important to take action quickly. In some cases, the complaint must be filed within one (1) year of the date the discrimination occurred.

WHO TO CONTACT IF YOU ARE A VICTIM OF SEX DISCRIMINATION IN HOUSING

NEIGHBORHOOD LEGAL SERVICES
716-847-0650

HOUSING OPPORTUNITIES MADE EQUAL (HOME)
716-854-1400

US DEPT. OF HOUSING AND URBAN DEVELOPMENT
1-800-424-8590

NYS DIVISION OF HUMAN RIGHTS
716-847-7632

BUFFALO FAIR HOUSING OFFICE
716-851-4212

ERIE COUNTY BAR ASSOCIATION LAWYER REFERRAL.
716-852-3100

IS MY LEASE LEGAL?

What is a lease?

A lease is a written agreement between a tenant and a landlord. The lease agreement explains the tenant's rights and responsibilities, and the landlord's rights and responsibilities.

The words used in a lease should have everyday meanings. Landlords must use leases that their tenants will be able to read and understand without difficulty.

All written residential leases must be written in plain English and organized so that they are easy to follow.

Is print size important?

Yes. The print size in a lease should be large enough so that the lease can be read easily. A tenant should not have to use a magnifying glass or other instrument to read it. The print size must be no less than 8 points in depth. The text below contains a sample of 8 point print.

Landlord Agrees Not to Discriminate Based
Upon Race, Creed, National Origin, Sex,
Age, Handicap, Membership.....

If the print size in your lease is smaller than what is shown above, it is too small. This may mean that your landlord can not use this lease against you.

Are all lease requirements legal?

No. The law says that certain rules or requirements included in a lease may be illegal (or non-enforceable), even if both the landlord and tenant signed the agreement. If something in a lease is illegal, the landlord cannot enforce that rule or requirement. The rest of the lease is still good and the landlord can enforce the other terms of the lease.

How can I tell if any part of my lease is unenforceable?

The following is a list of unenforceable lease provisions:

- Provisions which prohibit a tenant from raising any defenses in a legal proceeding.
- Provisions that require tenants to remain single or childless
- Provisions which require a tenant to deposit all rents alleged to be due with a court before asserting a defense
- Provisions that are unclear or confusing or are not written in plain language
- Provisions that limit occupancy to one person
- Excessive late fee provisions

- Provisions that allow the landlord to take a tenant's personal property if the tenant fails to pay rent
- Provisions that allow the landlord to collect attorney fees from the tenant when tenant wins a legal action
- Provisions waiving a tenant's rights to an apartment that is safe and liveable

The following lease provisions have been determined enforceable or lawful:

- Provisions that waive a tenant's right to trial by jury
- Provisions that provide that the landlord's acceptance of keys, re-renting or taking back the apartment are not considered a surrender of the lease

Can a lease limit the people who live in my apartment?

Sometimes a lease says that only certain people, or a certain number of people, can live in the home. This may be illegal.

A tenant may allow the following people to move into his/her apartment as long as the tenant continues to live in the apartment:

1. The tenant's immediate family.
2. One other person (an occupant), and the occupant's dependent children.

For example, if you and your brother live in an apartment, you may let your friend and her two children move in, too. If your brother also signed the lease (as a co-tenant), he may allow his girlfriend and her children to move in as well. Your landlord cannot evict you for the extra people, as long as you are not violating any federal, state, or local laws or housing or building codes that regulate overcrowding. The tenant is required to give the landlord the names of any additional occupants. More information about your right to bring additional occupants into your home is included in the section *Can I Have a Housemate*.

Can a lease require that I rent an apartment "as is?"

No. Sometimes a landlord will tell a tenant that he or she can take an apartment "as is," and that the tenant may not complain about any bad or dangerous conditions. This is not true. Every lease, written or oral, has a "warranty of habitability," whether it is written or not. This "warranty" is a guarantee that the apartment does not have any dangerous or unhealthy conditions, and that it is safe to use as a home. This law gives tenants whose homes are in bad shape and unsafe the right to take action to force the landlord to make repairs.

Can a lease prohibit me from subletting my apartment?

In a building with less than four apartments, a landlord can include a clause in the lease prohibiting the tenant from subletting.

In a building with four or more apartments, the tenant has a right to sublet, under certain conditions.

This is true even if the lease says that the tenant cannot sublet the apartment. The tenant must tell the landlord that he or she wants to sublet the apartment, and get the landlord's approval first.

If the landlord refuses to approve the sublet without good reasons, the tenant may be able to challenge this in court. If the tenant does want to sublet the apartment, it is important to speak to a lawyer first, especially if the landlord says no.

What should I do if I have questions about my lease?

If you believe that there may be a problem with your lease, you should have it reviewed by a lawyer. The Housing Unit at Neighborhood Legal Services may be able to review your lease for you.

Remember that even if there is an unlawful clause in your lease, it only becomes important if your landlord tries to use it against you. For example, if your lease illegally restricts who can live in your apartment, as long as you are living alone and want to continue to live alone, there is no need for you to take action.

Also, even when one part of your lease is unlawful, the rest of the lease is unaffected. That means that you must continue to pay rent and follow the lease requirements even if one part of it is illegal.

The best way to protect yourself is to closely read your lease before you sign it, together with any extra papers your landlord may want to attach to the lease. Make sure that the whole agreement is in the lease, and do not rely on verbal, side agreements that you will not be able to prove or enforce. If you and your landlord do decide to change the terms of your written lease agreement, you should do it in writing and both the landlord and the tenant should sign the changed agreement.

WHEN CAN I MOVE INTO MY APARTMENT?

When can I move into my apartment?

You can move into the apartment on the date that you and the landlord agree to. You should get the landlord to put the date you can move into the apartment in writing. You should also get receipts for any money you pay to the landlord before moving into the apartment.

What should I do if my apartment is not ready and I cannot move in?

The landlord is responsible for making the apartment available to you on the day you agreed that you could move in. If the two of you cannot come to a new agreement about when you will be able to move in, you should demand back all the money you paid the landlord for the apartment.

What can I do if the owner refuses to give me my money?

You can file a claim against the owner in Small Claims Court. Read the section on *Small Claims Court* for more information.

CAN I HAVE A HOUSEMATE?

I want someone to move in with me, but my landlord says I can't. Can the landlord stop me?

Under New York State law, a tenant may bring in one additional person and that person's dependent children.

My lease says I can't have a housemate. Am I still protected by this law?

It is unlawful for a landlord to restrict occupancy by the terms of a lease agreement.

Is there a limit to the number of people who can move in with me?

Yes. If you rented the apartment by yourself, you can also allow your immediate family, one additional person and their dependent children to move in. You or your spouse must continue to live in the premises.

If you rented the apartment with one or more other people, you can allow the immediate family, additional occupants and dependent children of those occupants to move into the apartment as long as the total number of tenants and occupants (not including your occupant's dependent children) does not exceed the total number of tenants specified in the lease agreement. At least one tenant or the spouse of one tenant must continue to live in the premises.

Do I have to tell my landlord that I am going to have a new housemate?

Yes. You must tell the landlord the name of any new occupant within 30 days from the time that person moves in, or within 30 days following a request by the landlord.

I live in public housing. Am I still protected by this law?

Yes. However, when you live in public housing, you have a responsibility to tell your housing manager about any changes in your household composition (i.e., who lives with you) or in your household income. This is because your rent is based on your total household income.

I live in subsidized housing. Am I protected by this law?

Yes. Again, if your rent is based on your income, you must report your housemate's income to your caseworker or manager. You have a responsibility to tell your housing manager about any changes in your household composition (i.e., who lives with you) or in your household income.

What should I do if my landlord tries to evict me because I have a new housemate?

Contact Neighborhood Legal Services. A court can stop your landlord from violating your rights under this law.

WHAT LANDLORDS MUST TELL YOU ABOUT LEAD IN YOUR HOME

What is the lead disclosure rule?

Landlords must tell tenants about any paint that has lead in it (called lead-based paint) and/or any lead-based paint hazards that the landlord knows about. Landlords must give tenants a brochure with information about lead hazards in the home. Leases must also have a lead warning statement. The purpose of this rule is to protect renters from lead poisoning.

If I live in a house or apartment covered by the rule, what must my landlord tell me about lead in my home?

Your landlord must give you the following information:

- You must be given a **Lead Warning Statement**. The statement should have the same information as this example:

A house built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.
- You must be told about any **lead-based paint hazards** that your landlord knows about. If your landlord doesn't know about any lead-based paint hazards in the house or apartment, the landlord must tell you that he or she does not know of any.
- Your landlord must give you any **records and reports** that he or she has about lead-based paint hazards in the home. If the landlord doesn't have any records or reports, the landlord must tell you that he or she doesn't have any.
- Your landlord must give you a **lead hazard information pamphlet**. This pamphlet may be the federal pamphlet called *Protect Your Family from Lead in Your Home*, or you may get a pamphlet New York State helped to write.

Your landlord will also ask you to sign a statement that you have received the above information.

What houses and apartments are affected by this rule?

Almost all housing is covered including private and public housing, housing which gets federal assistance, and federally owned housing built before 1978.

What types of housing are *not* covered by this rule?

Housing which is not covered by this rule includes:

- Housing built after 1978;
- Housing that doesn't have bedrooms separated from the rest of the apartment, like efficiencies, dorm rooms, studios, and single rooms rented in a larger apartment;

- Housing specifically for the elderly or the handicapped, unless children live there; and
- Housing that is inspected by a certified inspector and is found to contain no dangerous levels of lead.

Why doesn't the rule apply to housing built after 1978?

In 1978, lead-based paint was banned for use in housing, so this rule does not apply to housing built after 1978.

Can I sue my landlord if he or she doesn't give me this information about lead in my house?

Maybe. If you or your family are injured because of lead-based paint hazards in your home, and your landlord did not give you the information about lead that he or she was supposed to give to you, you may be able to sue your landlord for damages. You may be able to get three times the amount of damages, as well as court costs and attorney's fees. You may want to contact Neighborhood Legal Services, Inc. for more information about this.

Does this rule apply if I don't have a written lease?

Yes. As long as you live in housing covered by the Disclosure Rule, the rule applies even if you do not have a written lease.

Chapter 2
LIVING IN YOUR APARTMENT

QUIET ENJOYMENT

What is the right to “quiet enjoyment”?

The right to quiet enjoyment of an apartment is the right to be left alone. It is the right not to be disturbed or to be told by the landlord or anybody else what you can and cannot do in your apartment. However, you must follow the law and not violate the terms of your lease agreement, if you have one. You must also follow agreed upon rules regarding the use of your apartment and you must respect the rights of the tenants and neighbors around you. For example, if you are playing music too loudly, or if your guests are disruptive, you can be told to stop.

Does every tenant have a right to the quiet enjoyment of his or her apartment?

Yes. Unless you and your landlord agree otherwise, it is assumed to exist when you rent your apartment. Your lease agreement may limit your right to use your apartment in certain ways.

Can my landlord tell me what I can do outside of my apartment such as in the hallway, in my backyard or on the sidewalk?

Your right to “quiet enjoyment” also applies to those places you use to get to your apartment like the hallway, backyard and sidewalk.

What should I do if my landlord improperly tries to limit what I can and cannot do in my apartment?

You should keep a record of what your landlord has said and the date and time. Remember that there are some things the landlord can request. You should not violate any terms of your lease agreement and you should always respect your neighbors’ rights to quiet enjoyment. However, if you have been a good and considerate tenant, and you believe that your landlord is harassing you unreasonably, you can write your landlord a letter telling him that he is interfering with your right to the “quiet enjoyment” of your apartment. You may also want to contact the Dispute Settlement Center at 883- 5050.

A LANDLORD'S RIGHT TO ENTER

I do not have a written lease agreement. Can my landlord enter my apartment with his key at any time?

Generally speaking, when you have rented an apartment, no one may enter without your permission. If your landlord enters the apartment without your permission, your landlord is trespassing.

Can my landlord ever enter my apartment without permission when I am not home?

As a tenant you are generally entitled to prior notice before your landlord may enter the apartment. If there is an emergency situation that needs to be dealt with immediately (for example bursting pipes, an electrical problem affecting other apartments or an extreme sanitation problem), your landlord may enter without your permission.

If my landlord wants to come in and make repairs, do I have the right to insist that no one enter unless I am at home?

Generally, a landlord must ask permission before coming in to make repairs. An exception exists if emergency repairs are necessary. If you have a lease, you must read it to see whether it says that your landlord has the right to make repairs at any time and without permission. Some leases specify when a landlord may enter the apartment; others do not.

I have a written lease agreement that says that my landlord can enter my apartment to make repairs and improvements. Does the landlord need my permission before he can enter?

Your lease should say whether your landlord needs your permission to come in to make repairs. If it does not specifically state that your landlord needs your permission, your landlord may have an absolute right to enter, even without permission, to make reasonable and necessary repairs.

My apartment was inspected by the Building Inspector and my landlord was put on notice that he has to complete certain repairs by the end of the month. Can my landlord enter my apartment without permission to make the repairs?

In certain circumstances a landlord may have a duty to make repairs and alterations as ordered by a court or public agency and may enter to make repairs without permission. Your landlord should, however, make reasonable efforts to get your permission to enter before doing so.

I am temporarily staying somewhere else but I have made all of my rent payments. Can my landlord retake possession, or enter my apartment while I am not there?

Even if you are temporarily staying with someone else, you are still legally in possession of your apartment. Your landlord may only retake possession temporarily if it is necessary to protect the apartment from damage.

My landlord has been entering my apartment without my permission when I am not home despite the fact that he is not allowed to. What should I do?

Send your landlord a letter telling him that he has no right to enter your apartment without your permission and that you intend to call the police if he enters again. Keep a copy of your letter. If your landlord continues to go into your apartment without your permission, you may want to call the Dispute Settlement Center at 883-5050 to see whether they can help you work out a solution to your problem. You may also try calling your local police precinct.

I do not have a written lease and have not paid my rent, and my landlord has threatened to enter my apartment and take possession of it. Does my landlord have the right to do this?

Landlords may not take the law into their own hands and forcibly retake possession of their apartments. If the tenant does not leave voluntarily, the landlord must file a court action to regain possession of the apartment. Without a court order, your landlord may not take your apartment back.

WITHHOLDING RENT DUE TO BAD CONDITIONS

Do I have to live with bad conditions in my apartment?

No. In New York State, every lease or rental agreement (oral or written) contains a guarantee that your landlord will rent you a safe and decent place to live. This guarantee does not have to be in writing; it is implied. It is called the Warranty of Habitability. Your landlord cannot make you agree to rent your apartment “as is.” Even if you have rented an apartment “as is,” you do not have to live with bad conditions.

What are examples of bad conditions?

Some common examples of conditions that might violate the Warranty of Habitability include:

1. Roach, rat or mice infestation
2. No heat or inadequate or unsafe heaters
3. Faulty plumbing or electrical systems
4. No hot water, or no water at all

There are many other conditions that would violate the Warranty of Habitability. The Warranty of Habitability does not cover conditions that only make the apartment look bad, like a dirty wall or bad paint job. But, if these conditions are unsanitary, or dangerous to you or your family, the Warranty of Habitability protects you.

What if I caused the bad conditions?

If you, a member of your family or your guest has caused the problem, your landlord has not violated the Warranty of Habitability.

Can I make my landlord fix the bad conditions in the apartment?

Yes, but it is not always easy. There are several steps you must take.

First, tell your landlord about the problem things in your apartment that you want fixed. If you have talked to him, and nothing is done, write a letter to your landlord. This letter is very important and should include:

1. A list of how many times, where and when you have spoken to him about the problem.
2. A description of the problem and how it harms you. For example, if the back bedroom cannot be used because of a falling ceiling, and your children have had to sleep in your room, let the landlord know.
3. A request that the problem be fixed. Give your landlord a date, within a reasonable time, by when you want the repairs done.

Be sure to keep a copy of this letter for your own records. This will be important if you end up in court.

I have notified my landlord of the problems in the apartment, but nothing has been done. Now what?

It's time to get some help. Call the Erie County Department of Health and the Building Inspectors. The inspectors will look at your apartment and make a report. Don't miss your appointment with the inspectors and be sure to show them the problems that concern you.

What can my landlord do to me if I call an inspector?

Sometimes tenants are afraid to call an inspector because their landlord may try to evict them when he hears from the inspector. New York State law gives you some protection. If your landlord tries to evict you after hearing from the inspectors, you should call Neighborhood Legal Services.

I receive Section 8 Benefits. Can I withhold rent?

No. If you have a Section 8 voucher, you should call the Section 8 program and talk to someone there about the problems in your home. The Section 8 program will send out an inspector and will stop paying the Section 8 portion of the rent if your landlord refused to make repairs. **You must continue to pay your share of the rent or you will risk losing your Section 8 benefits.**

Can I refuse to pay my rent until the landlord fixes my apartment?

Generally the answer is "Yes," but only if you follow the instructions below. **RENT WITHHOLDING IS A VERY SERIOUS STEP AND YOU COULD BE EVICTED IF YOU DO NOT DO IT CORRECTLY.** You should talk to Neighborhood Legal Services first. You should only withhold rent if there are serious health or safety problems. **If you are on Section 8, you should not withhold rent** (see above). If you have a lease, you may want Neighborhood Legal Services to review it for you before you withhold rent.

What should I do before I withhold rent?

BEFORE you withhold any rent money, make sure you have taken the following steps:

1. Write to your landlord about the unsafe conditions in your apartment. Be sure to include the information on the list above. **BE SURE TO KEEP A COPY OF THE LETTER.**
2. Obtain copies of building and health inspection reports.
3. If the inspection reports show serious violations, you should write a letter to your landlord and tell him or her that you plan to withhold rent until the repairs are completed. **KEEP A COPY OF THE LETTER.**

What should I do with the rent money after I've withheld it?

DO NOT SPEND THE RENT MONEY. Keep the money in a bank account or in another safe place. If your landlord tries to evict you for not paying the rent, you may have to show that you have the rent money and that you withheld the rent because of the condition of your

apartment.

Can I spend the withheld rent money on a new apartment?

You should spend the rent money you withheld on a new apartment only if you can move into that apartment very quickly or if you have another place to stay if you are evicted. Your landlord may attempt to have you evicted for not paying the rent. If he wins in court, you could be put out of your apartment in as few as twelve (12) days after your rent is due. Unless you can move into your new apartment in twelve days, you should not spend the withheld rent on a new home.

What should I do if my landlord tries to evict me for withholding rent?

Never ignore any legal or court papers you receive. If you receive court papers, you should contact Neighborhood Legal Services, or another attorney for assistance.

What if I can't get a lawyer?

Go to court and tell the judge in a clear and precise manner that you have the money and why you have withheld the rent. Show the judge the copies of your letters, any building and/or health inspection reports as well as any pictures or other proof you may have.

What will happen next?

The judge will decide based upon the information presented to him or her whether you had a good reason for withholding the rent. If the judge decides that you did not have good cause for withholding rent, you may be ordered to pay the full amount of the rent.

REPAIRING YOUR APARTMENT AND DEDUCTING IT FROM THE RENT

What can I do if my landlord refuses to make repairs to my apartment?

If your landlord refuses to make repairs in your apartment, you can make the repairs yourself and deduct the cost from your rent. Because your landlord may attempt to evict you for not paying the rent, YOU SHOULD TALK TO A LEGAL REPRESENTATIVE BEFORE YOU TAKE THIS STEP. If you have a written lease agreement, you should have your lease reviewed by an attorney before you decide to deduct money from your rent.

What should I do first?

1. If the problem is serious but not a safety problem or an emergency, you should tell your landlord about the problem and give him a chance to fix it. Do this with a letter and remember to keep copies of any letters you send.
You also can call the building inspector or the health inspector and ask for an inspection. Get copies of their reports so that you will have proof of what repairs need to be made. Write a letter to your landlord letting him know that you intend to make the repairs and deduct the cost from the rent if the problem is not resolved within a reasonable time. Keep a copy your letter. Get two or three written estimates of the cost for the repair. Use the cheapest one. Get and save receipts.
2. If the problem requires immediate attention, such as no heat or water, you should attempt to contact your landlord first. If you are unable to reach your landlord or if your landlord refuses to make the repairs, you may contact a reputable service or repair company to correct the problem. If time permits, get two or three estimates before you have the repairs made. Get a detailed receipt from the person who does the repair work that explains what the problem was, the steps taken to correct it, and the total charge. Send your landlord a copy of the receipt. If your landlord does not reimburse you for the repair cost, you may be able to deduct the cost from your rent.
Also, if time permits, call the building or health inspector before the repair is made. Request copies of their reports so that you will have additional proof that something was wrong.

I receive Section 8 benefits. Can I make repairs and deduct the cost of the repairs from the rent?

No. If you have a Section 8 voucher, you should call your Section 8 program and talk to someone there about the repairs that need to be made in your apartment.

The Section 8 program will send out an inspector and may stop paying the Section 8 portion of the rent if your landlord does not make the repairs in a timely manner. **You must continue to pay your share of the rent or you may risk losing your Section 8 benefits.**

What can happen after I have deducted the repair cost from the rent?

Your landlord may try to evict you for non-payment of rent. It will be important to have copies of letters, receipts, etc. to show the judge that the repairs were necessary and fairly priced.

What should I do if I get a court petition?

Never ignore legal or court papers. Contact your local legal service agency. If you are unable to obtain legal representation, you should appear at the hearing, ready to have the judge decide if your actions were proper.

What should I do at the hearing?

Present your case in a clear and concise manner. Show the judge copies of your letters, estimates, inspection reports, photographs, witnesses, receipts and any other supporting evidence you may have. Remember, the judge's decision will be based upon the information presented at the hearing.

Will the judge make a decision the same day?

Usually the judge will tell you at the end of the hearing if you had good reason for deducting the repair cost from the rent. If the judge decides you did not have good reason, you may be ordered to pay the balance of the rent, often immediately. You should ask the judge how soon you must pay. If you do not pay the money or you refuse to pay it, you may be evicted from your apartment.

INSPECTION REPORTS

When would I want to have my apartment inspected?

If there are things wrong with your apartment that may be dangerous to your health and safety, you may want to have your apartment inspected.

Who should I call to get my home or apartment inspected?

The Erie County Health Department and your local building inspection department conducts inspections of homes and apartments. Because the Health Department and the building inspectors look at different kinds of problems, call them both.

What does the Health Department look for?

The Health Department looks for problems like rodents, lead paint, not enough heat or hot water, or unsanitary conditions. The Erie County Health Department's general information number is **858-7690**.

What does the building inspector look for?

The building inspector looks at structural problems such as holes in the walls, exposed wires, improper insulation, broken sinks or toilets.

What is the building inspector's number in Buffalo?

In Buffalo, the building inspector's number is **851-4949**. If you live in a building with three or more apartments and there are problems throughout the building, you may want to call the multiple dwelling inspector at **851-4933**. If you have serious problems with the electrical or plumbing systems in your home, you may want to call the electrical inspector at **851-5902** or the plumbing inspector at 851-5067.

What about outside of Buffalo?

Look in the blue pages of your telephone book under the city, town or village that you live in. If there is not a listing for a building inspector, call the town clerk for a phone number.

Should I get a copy of the inspection report?

Yes. Ask the inspector what you need to do to get a copy of the report. Be sure to get the inspector's name, in case you have any problems or questions.

LANDLORD RETALIATION

I have been living in my apartment for almost a year. Two months ago I noticed that there was black mold under my sink. I told my landlord about the problem right away. After about a month I realized that he was not going to do anything about it so, I called the Health Department. Two weeks later my landlord sent me a notice telling me that I have to move. The notice said the reason I have to move is because my neighbors have been complaining about noise. I think the real reason he wants me to move is because I reported him to the Health Department. What can I do?

The situation described is considered to be landlord retaliation. When a landlord tries to evict the tenant or changes the terms of a lease because the tenant has tried to protect their rights under the lease or the law, it is considered retaliation. However, as described below, retaliation is not a complete defense to an eviction or a change in the lease. In other words, you might still be evicted even though your landlord is retaliating against you.

What types of actions are protected from retaliation?

If you have complained of health or safety violations or reported that your landlord has broken any building regulations or laws, or if you have participated in a tenant's rights group, the law can help protect you.

What can I do if my landlord is attempting to retaliate against me?

If you believe that the reason your landlord is attempting to evict you or change your lease is because of one of the protected actions listed above you should bring that to the attention of your attorney or the judge.

You may contact the Housing Unit of Neighborhood Legal Services, Inc. at 847-0650 for more information. The Housing Unit accepts a limited number of calls every day, Monday through Thursday beginning at 9:00 a.m.

How does the law against retaliation work?

If your landlord attempts to evict you within six months of the time you complained about conditions that affect your health and safety or you were doing things to enforce your rights under your lease, a court will assume that the retaliation is the reason. The judge will then shift the burden of proof to them. Shifting the burden of proof means the judge will give your landlord the opportunity to show that the reason for eviction is something other than retaliation. This means that even if the landlord is attempting to retaliate but can show a believable reason why he has a legal right to evict you, the Court may still evict you.

Are all tenants protected from retaliation?

The laws about retaliation have some exceptions. These laws do not apply to apartments in owner-occupied buildings with less than four units. The laws will also not protect tenants who

have caused the condition, or whose guests have caused the condition, complained about.

If my landlord is retaliating against me do I still have to pay rent?

Yes, the law clearly states that even if your landlord is attempting to retaliate against you for one of the acts listed above, you are responsible to continue paying rent. However, if your landlord has increased your rent or attempted to fine you in retaliation, you are not required to pay the extra charges.

MY LANDLORD WANTS TO CHANGE OUR AGREEMENT

Can my landlord change the terms of my tenancy?

If you have a written lease, you should read it to see if and how your landlord can change your agreement. Generally, a written lease cannot be changed unless both parties agree to the change. If you don't have a lease and your landlord wants to change the terms of your tenancy, for example, by increasing the rent, or making you pay the utility bills, he must give you proper notice of the new changes.

What is proper notice?

Tenants without a written lease have a month-to-month tenancy and a landlord must give one full month's notice (often called a 30 day notice) of any changes he wants to make regarding the tenancy. For example, if the landlord no longer wants to pay the gas bills, he must tell you before on or March 31st, if he wants you to pay the gas bills as of May 1st.

What happens if I don't agree with the new changes?

If you don't agree to the changes, your landlord can give you a new full months' notice telling you to move out of your apartment.

Can my landlord tell me that I can't use the sidewalk anymore or that I can't let my children play in front of the house?

When you rent an apartment, you are generally entitled to the quiet use and enjoyment of that apartment including those things that usually come along with renting an apartment. You may still use the sidewalk or let your children play in the front of the house after your landlord tells you that you cannot, but your landlord may also give you a 30 day notice telling you to move as explained above if you don't agree to the changes he has requested. You may want to speak with a lawyer or call Neighborhood Legal Services at 847-0650 to see if the changes your landlord has proposed are legal.

Can my lease be changed if I live in public or subsidized housing or if I receive Section 8 assistance?

If you live in public or subsidized housing, or if you receive Section 8 housing assistance, the federal law must be followed before your lease can be changed.

What should I do if I receive a notice about a change in my public or subsidized housing lease?

1. Review your lease.
2. Talk informally to your landlord or manager about the changes.
3. Pay your rent while you attempt to resolve the matter.
4. Request a hearing with your landlord/manager to attempt to resolve the matter.

What should I do if my landlord/manager still wants to change my public or subsidized housing lease after I have taken these steps?

You may be able to request a hearing in an attempt to resolve the matter. For information on how to request a hearing, contact Neighborhood Legal Services, Inc.

PROVING I PAID MY RENT

How do I pay my rent?

The best way to pay rent is by personal check. If you have a checking account with a bank, then you can simply write a check from that account to your landlord. This may be the best option because your bank statement keeps an accurate and credible record which you can use to show when and how much rent you paid to your landlord.

The second option is to pay by cashier's check. A cashier's check is check made out by a bank guaranteeing a certain amount of money will be paid to the person who the check is given to. A cashier's check may cost approximately five dollars and you may have to be a customer of the bank already to obtain one. The bank maintains cashier's checks and can give you a document showing who cashed the check and when.

Be aware that **money order stubs are not proof that your rent has been paid**. It can also take many weeks to find out whether a money order has been cashed.

How do I prove I have paid my rent?

The best way to prove that you paid your rent is with a receipt given to you by your landlord. Unless you paid with a personal check, your landlord is required by law to give you a receipt. If you pay your landlord with a personal check, then you must request a receipt before the landlord is obligated to give you one. This request must be in writing.

If my landlord writes a receipt, what should be on it?

The following information should be on the receipt:

1. The date the rent is being paid
2. The amount paid
3. The address of the property you are renting
4. The month for which the rent is for
5. The signature of the landlord or person in charge of collecting the rent

What if my landlord refuses to give a receipt?

You should first explain to your landlord that they have to give one to you by law. If your landlord refuses, make a photocopy of your payment (the money order, certified check or personal check you will pay your rent with), write the receipt information (given above) yourself, and have your landlord sign it. **Do not pay your landlord cash if your landlord refuses to provide you with or to sign a receipt.**

What if I pay my rent by mail?

If you are using a money order, make a copy of the completed money order and keep this copy

for your records. Then go to the Post Office and, for an additional fee, send the money order by **Certified Mail** or purchase a **Certificate of Mailing**.

Certified Mail: You receive a receipt stamped with the date of mailing. A unique article number allows you to verify delivery online. As an additional security feature, the recipient's signature is obtained at the time of delivery and a record is kept by the Post Office. For an additional fee, you can request a copy of this signature record before or after delivery.

Certificate of Mailing: A receipt that provides evidence of the date that your mail was presented to the Post Office for mailing. It can only be purchased at the time of mailing. Although the cost is less expensive than Certified Mail, the Post Office does not keep a record of these receipts. No other official record is available if you lose it!

Keep all these documents in a safe place. When sending your check in the mail, include a written request that your landlord provide you with a receipt.

LATE FEES

Can my landlord charge me late fees if I do not pay my rent on time?

Your landlord can ask you to pay late fees only if you have agreed to pay them and he or she does not ask you to pay an amount that is too high.

How might I have agreed to pay late fees?

You may have agreed to pay late fees in one of several ways:

1. Your lease or a rental agreement may allow the landlord to charge a late fee. Look carefully at the agreement you signed.
2. Even if you don't have a lease (or your lease doesn't say anything about late fees), if your landlord has charged you late fees before and you have paid them, you may have agreed to pay late fees.
3. If your landlord told you before you moved in that he or she would charge late fees, you may have agreed to pay late fees.

If your landlord has never mentioned late fees before and you have never paid them, you probably have not agreed to pay late fees.

If I have agreed to pay late fees, can my landlord charge me any amount he wants?

No. Your landlord can only charge the amount you have agreed to pay. Even if you have agreed to pay late fees, your landlord can only charge you an amount that is reasonable.

What is a reasonable amount to charge as late fees?

A judge can decide whether the amount you are being charged as a late fee is unreasonable. If you have agreed to pay more than \$1.00 a day, the amount may be unreasonable.

Can my landlord evict me if I do not pay late fees?

Your landlord can evict you for nonpayment of late fees only if

1. You have agreed to pay a late fee; **AND**
2. The amount of the late fee is reasonable; **AND**
3. You have a lease or written agreement that says late fees could be charged as additional rent; **AND**
4. Your landlord takes you to court.

If the above situation applies to me, can I pay late fees in court and stop the eviction?

If the court decides that your landlord can evict you for nonpayment of rent for not paying late fees, you should be able to stop the eviction by paying the money you owe your landlord on the day you go to court. You may also have to pay court costs. You should bring cash or a

money order to court with you.

Are there other ways my landlord may evict me if I do not pay late fees?

Yes. If you have a lease, read it carefully to see what your landlord may do if you refuse to pay late fees.

If you do not have a lease, your landlord may give you a one month notice to vacate for refusing to pay late fees.

Call your local legal services office if you have questions about late fees or if you receive a notice of eviction or court papers from your landlord.

If you get a notice from your landlord, or court papers, **DO NOT IGNORE THEM.** Contact Neighborhood Legal Services for assistance.

RENT INCREASES

Is there any limit to the amount of rent a landlord can charge?

Generally speaking, a landlord can charge any amount for rent.

Can a landlord increase the rent after I move in?

If you have a lease, the landlord cannot increase your rent while the lease is in effect unless the lease allows it. If you don't have a lease, the landlord also can raise the rent to whatever amount he or she wants after you move in, as long as it is done correctly.

Does my landlord have to tell me in advance of a rent increase?

If you have a lease, read it over to see whether the landlord can increase the rent and how it must be done. If you do not have a lease, your landlord has to tell you one month before the month of the rent increase. For example, if your landlord wants to raise your rent on January 1, he must give you notice on or before November 30. The notice does not have to be in writing.

Are there reasons why a landlord cannot increase my rent?

Yes. Your rent cannot be increased for the wrong reasons. Your rent cannot be raised because you called a building inspector, joined a tenant's rights group, or tried to enforce any other rights that a tenant has. Your rent cannot be raised because you have a new child or, in most cases, because someone else has moved in with you. Your rent cannot be raised because your landlord doesn't like the race of your visitors or, in most cases, the sex, religion or disability of your friends or family. If your landlord tries to do this, it may be illegal discrimination for which your landlord may be sued.

What will happen if I don't want to pay the rent increase?

If you do not want to pay the increase, pay your landlord the old amount. As long as you pay the originally agreed upon amount and you have not agreed to pay the new amount, your landlord may not evict you for nonpayment of rent. However, your landlord may decide to give you a one month notice to move.

Can the landlord try to evict me if I don't pay the increase?

Your landlord may not start a nonpayment eviction against you just for the additional rent. Some landlords do not understand this though. If you do get court papers for the increased rent you refused to pay, you should contact Neighborhood Legal Services immediately.

Your landlord may serve you a one month notice to move if you do not agree to pay the rent increase. If you get notices from your landlord or court papers and you would like more information, call Neighborhood Legal Services.

Chapter 3
MOVING FROM YOUR APARTMENT

I CAN'T PAY THE RENT

I can't pay my rent. Can my landlord ask me to leave?

If you don't pay your rent, your landlord can ask you to leave. Your landlord must first ask for the rent. If he asks for the rent you owe in writing, he must give you three days to pay it.

If your landlord tells you to pay or move and you don't have the money, **STAY CALM**. Your landlord must still take you to court and have a judge order you to move from your apartment.

What will happen if I still don't have the money after 3 days?

If you haven't paid your rent or moved from the apartment after the three days, your landlord may take you to court. You will receive court papers called a **NOTICE OF PETITION AND PETITION**.

What will the court papers tell me?

The Notice of Petition will tell you when to go to court. The Petition will tell you why the landlord is taking you to court. Usually you will get the papers 5 to 12 days before your court date. **NEVER IGNORE COURT PAPERS. TALK TO A LAWYER.**

What should I do after I get court papers?

Go to the Department of Social Services located on the first floor in the Rath Building at 95 Franklin Street, Buffalo, New York. It is best to be there at 8:00 a.m. When you go, be sure to bring your court papers or a letter from your landlord saying exactly how much rent you owe.

You may also contact the Community Action Organization (CAO) at 881-5150 or the Salvation Army at 883-9800 to see if they can help you pay the back rent.

What else should I do?

The following organizations give free legal assistance to low income tenants in eviction cases:

- Neighborhood Legal Services (847-0650)
- Legal Aid Bureau (853-9555)
- Volunteer Lawyers Project (847-0662)
- Legal Services for the Elderly (853-3087)

What will happen when I go to court?

Be sure to get to court on time. You may be asked to sign in with the court clerk. If you are in Buffalo City Court, tell the clerk that you would like to speak with the "Attorney of the Morning." The Attorney of the Morning can review your court papers and may be able to represent you.

What will happen next?

When the judge comes out, the court clerk will call your case. You should go up in front of the judge with your landlord. Your landlord will then tell the judge why he is there. After your landlord talks, you will have a chance to tell the judge your side of the story and perhaps why you shouldn't have to pay the rent.

What if I have all the rent I owe with me in court?

If you are being evicted for not paying the rent, you may be able to pay the rent you owe in court on the court date. Bring all the rent you owe plus \$45.00 for court costs to the court. Tell the judge you have all the rent you owe with you. Show the judge the money. The judge will probably tell your landlord that he must take the rent. If the judge orders this, your landlord cannot refuse it. Be sure to get a rent receipt if you pay the rent. Sometimes the judge will not make the landlord take the rent. If this happens, call Neighborhood Legal Services.

What happens after I pay the rent to my landlord in court?

If you pay all the rent and court costs you owe in court on the court day, by New York State Law, your eviction should be stopped (stayed) and you should not be evicted.

What happens after my landlord and I tell our sides of the story to the judge?

The judge will make a decision based upon what you and your landlord have said. The judge may decide to grant your landlord a judgment of eviction and order you to move, or the judge may dismiss your landlord's case so that you are not evicted.

What if I don't have all the rent with me in court on the court date?

If you don't have all the rent with you on the court date, you should first try to arrange with your landlord to pay the rent later. If you and your landlord agree that you will pay the rent due at a later date, you should tell the judge what the agreement is. Make sure you get a receipt when the rent is paid.

If your landlord won't agree to wait for the money he can have you evicted.

What happens if the judge tells me I have to move?

After court, a notice, usually from the Marshal or Sheriff's office, telling you to move out of your apartment in 72 hours will be posted on your door. You can call the phone number on that notice to ask exactly how much time you have before you will be put out.

What happens if I'm still in the apartment when the Marshal or civil officer comes back?

If you are still in the apartment when the Marshal appears, he will make you leave the apartment. Your landlord then has the right to change the locks on the apartment door. If you still have

things in the apartment, you must contact the landlord to arrange to remove them. To find out more about this, read the section on the *Storage of Households Goods and Protecting Your Property after You Are Evicted*. It is illegal for your landlord to sell or keep any of your property because you owe rent. If this should happen, you should contact a lawyer for further advice and assistance.

MY LANDLORD WANTS ME TO MOVE

I don't have a lease and my landlord wants me to move. What should I do?

Generally speaking, if you do not have a lease, your landlord must give you a full month's notice if s/he wants you to move. This notice may be verbal or in writing. The "one-month" rule applies to tenants. There are special circumstances in which you may get only 10 days' notice. If you think your situation may not be a normal landlord-tenant relationship, be sure to contact Neighborhood Legal Services or another attorney.

What is a good notice to move?

If you do not have a lease agreement, the notice to move must be given at least the day before the rent is due.

For example, if your rent is due on the first and your landlord wants you to move before March 1st, you must receive the notice BEFORE February 1st. If you receive the notice AFTER February 1st, the notice is not good.

What will happen if my landlord gives me a notice to move?

Your landlord may try to evict you if you remain in the apartment after the date by which your landlord has asked you to move. If you receive court papers, call the Housing Unit at Neighborhood Legal Services. It is illegal for a landlord to change the locks, remove the door, or remove your property without serving you with court papers and getting a court order. Call Neighborhood Legal Services or an attorney if this happens.

Does the landlord have to have a good reason for wanting me to move?

No. If you do not have a lease or rental agreement, your landlord does not have to have or give a reason for wanting you to move. Your landlord does NOT have to have a reason for wanting you to move or a notice to move if your lease has ended. However, your landlord cannot evict you for an illegal reason. An illegal reason would be one that is discriminatory, or one that is in retaliation for you asserting your rights as a tenant. You should talk to a lawyer if you think you are being evicted for an illegal reason. You can contact Neighborhood Legal Services for more information.

What happens if I don't move out after I receive a full month's notice from my landlord?

Your landlord may take you to court and ask a judge to order you to move. Legally, your landlord cannot lock you out.

What should I do if my landlord tries to evict me in court?

Call Neighborhood Legal Services or another attorney for help. **NEVER IGNORE LEGAL PAPERS.**

What will happen when I go to court?

Be sure to get to court on time, and, if you are in Buffalo City Court, ask for the “Attorney of the Morning” before you check in. This attorney can review your court papers, and may be able to represent you. Your name and your landlord’s name will be called out by the court clerk. After the court clerk calls out your name, both you and your landlord will go up to the front of the courtroom and stand in front of the judge.

What will the judge do?

The judge will ask your landlord why he is in court. After your landlord tells the judge his side of the story and why he wants you to move, you will have a chance to tell the judge your side of the story.

Should I tell the judge if I was not given proper notice to move?

Yes. If the notice your landlord gave you was not proper, you should not have to move. If you have a copy of your written notice, show it to the judge. Tell the judge that the eviction case against you should be dismissed because you did not receive proper notice. You should read the section on *Defending Yourself in an Eviction Proceeding* for more information. If the judge does not dismiss the case, you should contact Neighborhood Legal Services.

What happens after the judge listens to both my landlord and I tell our side of the story?

The judge will make a decision. The judge could order you to move (grant your landlord a judgment of eviction), or the judge could throw out your landlord’s case.

What happens if the judge orders me to move?

You will receive a notice from a civil officer (usually from the Buffalo City Court Marshals or the Erie County Sheriffs) telling you to move in 72 hours. The notice should have a telephone number on it. The 72 hour notice is counted differently in different towns and cities. You should call the number on the notice to find out exactly how much time you have. If you are still in the apartment after the 72 hours are up, the civil officer will make you leave the apartment and will allow your landlord to change the locks. You will have to arrange a time with your landlord to pick up those things you left behind. To protect your possessions, you should try to have everything moved out of the apartment before the civil officer comes to put you out. To find out more about protecting your possessions, read the section on the *Storage of Household Goods* and *Protecting Your Property after an Eviction*.

If I win in court and have my eviction stopped, what can my landlord do?

Your landlord can try to evict you again. However, if the judge threw the case out because the notice to move was not proper, your landlord will probably have to serve you with a new notice.

I WANT TO MOVE

Do I have to tell my landlord that I plan to move if I do not have a lease?

Yes! Even if you do not have a lease, you must tell your landlord that you plan to move.

When should I tell my landlord that I plan to move?

You must give your landlord a full calendar months' notice that you plan to move. For example, if you plan to move December 1, tell your landlord by October 31.

Do I have to tell the landlord in writing?

No. You can tell the landlord orally or in writing. We suggest that you put it in writing and keep a copy of the notice for your records.

Do I have to pay rent after I give my notice to move?

Yes! You are still responsible for paying the month's rent for any time you stay in the apartment during that month. If you are moving because your apartment is in bad shape and you believe you should not have to pay rent, read the section on *Withholding Rent Due To Bad Conditions* and *Inspection Reports*.

If you stay in your apartment after the day you told your landlord you would move, you may be responsible for paying that full month's rent as well. Under New York State law, your landlord may even be entitled to double your usual rent if he demands it.

What could happen if I don't have a lease and I don't give my landlord proper notice?

If you do not give proper notice, your landlord could hold you responsible for the rent for the month after you move if he is unable to rent the apartment.

How could my landlord try to collect money from me if I do not give proper notice?

Your landlord could keep your security deposit. Your landlord could also take you to court and try to get a money judgment against you.

What happens if I give notice to move and I do not move when I said I would?

Your landlord may bring you to court and try to have you evicted. If you are a month to month tenant, your landlord may be able to collect double the rent for the time you stay over.

What should I do if I give notice to move and for some reason I cannot move?

Let your landlord know as soon as possible. Your landlord may be able to charge you **double** the rent if you do not tell him or her before the date you promised to move.

If your landlord refuses to let you stay, he or she must bring an eviction proceeding in court before you can be forced to move. Only a judge can order you to move.

DEFENDING YOURSELF IN AN EVICTION PROCEEDING

Going to court to defend yourself in an eviction proceeding can be a stressful experience.

Preparing before you go increases the chance that you will win your case and be able to continue your tenancy. The following is a list of defenses you can use to try to get the judge to throw the landlord's case out.

Before you go to court, you should read through these defenses to see if any apply to your case. Bring to court any evidence you have to support your case. It is unlikely that you will be given an adjournment to get receipts, notices from your landlord, building inspection reports, etc., so have them with you in court. If you have witnesses, bring them. The court will not accept written statements from your witnesses. If you owe your landlord money, bring it with you either in cash or in the form of a money order.

Read through the defenses that apply to your case (the general defenses that follow, as well as the defenses that apply specifically to non-payment and holdover cases). If any of them apply to you, as soon as you can after your case is called, say to the judge "***I think this case should be dismissed because....***" and then explain, using the defenses listed below, what your landlord failed to do and why the eviction case against you should be dismissed.

GENERAL DEFENSES

The following defenses apply to all eviction proceedings, both nonpayment cases and holdovers. Read through them to see that your landlord followed all the necessary requirements.

Who served you?

It is unlawful for your landlord to serve you the court papers himself. Someone else must do it. If your landlord gave you your court papers, say, "***Judge, I was not properly served and this case must be dismissed.***"

How were you served?

The papers can be served:

1. Personally (someone hands them to you); **OR**
2. Giving them to someone in your house or putting them on your door and then by sending them to you BOTH by regular AND certified mail.

Is the owner of the property or the owner's attorney present?

Managers or other agents of the landlord cannot appear in court for the landlord. This is considered the unauthorized practice of law. If the owner of the property or his or her attorney is not in the courtroom and only the manager or someone who works for the landlord is, tell the judge.

Were you living in the property when you got your court papers?

If you had already moved by the time you got your court papers, ask the judge to dismiss the case.

NONPAYMENT CASES

The following defenses apply only to cases where your landlord is bringing you to court for not paying the rent. Look in the upper right-hand corner of your court papers to see whether it says ‘**nonpayment**’ or ‘**holdover**’ or if the box next to one of these words is checked. If the nonpayment box is checked, you are going to court for a nonpayment proceeding.

Is your landlord asking for any money other than rent?

Late fees, attorney fees, security deposits, etc. may only be asked for in a nonpayment eviction if there is a written lease that says that these items will be considered rent if not paid. If your landlord is asking for any unpaid amounts besides rent, say: ***“Judge, my landlord is asking for money in addition to rent. I do not have a lease agreement” OR “My lease agreement does not say he can do this. For that reason, he cannot ask for money in addition to rent in this proceeding.”*** (This does not mean that the judge will dismiss your case. The judge should limit the case to the rent money you owe.)

Is the amount due and period for which rent is owed clearly stated?

Your landlord cannot simply say that you owe \$1525 in back rent. He must clearly set out how he arrived at this amount by listing all the amounts that you owe and what they are owed for. If your court papers do not specify which months you owe rent for and exactly how much is due for each of those months, say: ***“Judge, New York State law requires that the amount that is due and the period for which it is due be explained clearly in the court papers. My landlord did not do this and this case should be dismissed.”***

Did your landlord demand rent either orally or in writing?

If your landlord did not either 1) ask for the rent or 2) give you a note asking for rent or put a note on your door, and send copies by both regular and certified mail, tell the judge ***“I did not get a proper pay or quit notice and the case should be dismissed.”***

Is the proceeding premature?

Was the petition filed before the pay or quit ran out or before rent was due? If it was, the case should be dismissed or thrown out. Tell the judge: ***“This proceeding is premature because my rent is not due until _____ OR this proceeding is premature because the pay or quit notice says I have until _____ to pay my rent and I received my court papers before that day.”***

Is your landlord attempting to collect a rent increase?

You may not be evicted in a nonpayment proceeding because you did not pay a rent increase that you did not agree to pay and have never paid. Tell the judge: ***“My rent is only \$____. I have never paid \$____ (the increased amount) and my landlord cannot ask for that amount in this proceeding.”*** This does not mean that the judge will dismiss your case. The judge should limit the case to the rent money you owe).

Are there conditions that affect your life, health or safety?

If you did not cause these conditions and your landlord knows about these unsafe conditions, the judge should reduce the amount of rent you owe. Say to the judge: ***“I want to raise a “warranty of habitability defense” and I want a “rent abatement”*** (i.e., money off the rent). The judge should give you an opportunity to describe the dangerous conditions in your apartment and will give your landlord the opportunity to tell his side of the story. Read the section on *Preparing for a Warranty of Habitability Hearing* to learn more about what you will have to prove to win your case.

HOLDOVER CASES

The next group of defenses apply to holdover cases. Your landlord would bring a holdover proceeding against you if you were given a 30 day notice to vacate, if you broke your lease agreement in some way (perhaps by violating a rule) or if your lease came to an end and you did not move. Usually, your landlord can give you your notice of termination verbally or in writing.

Did the landlord give you a timely notice?

If your tenancy began on the first of the month and you have a month-to-month tenancy, your landlord must give you notice before the first day of the month that your tenancy will end the last day of the month. For Example, if your landlord did not give you this amount of time, say: ***“Judge, this case should be dismissed because I have a month-to-month tenancy and my landlord did not give me timely notice.”***

Did the landlord give you clear and unequivocal notice that you had to move?

The landlord’s notice to you must tell you clearly that you have to move. If the landlord gives you a choice, for example, “Unless you stop parking in my spot in the driveway you have to move at the end of the month,” you have not received unequivocal notice. If your landlord did not give you definite notice that you had to move, say: ***“Judge, my landlord never gave me a clear and unequivocal termination notice and this case should be dismissed.”***

Did you get court papers before the time for you to move arrived?

Your landlord can not start the court proceeding against you before the date you were supposed to be out. If you got your court papers before the day you were supposed to move, say: ***“Judge,***

this proceeding is premature and should be dismissed.”

Did your landlord take money from you (or from Section 8)?

If your landlord takes rent from you after the date you were supposed to move and before you received the court papers for the current month's rent, then your landlord has started your tenancy again. Tell the judge, ***“My landlord accepted rent from me (or from Section 8) after the day he told me to move and before I got the court papers. This eviction case should be dismissed.”***

72 HOUR NOTICES AND MONEY JUDGMENTS

What must a landlord do to have me evicted from my apartment?

In order to be evicted from an apartment, your landlord must serve you with papers, take you to court and get a warrant of eviction. A warrant of eviction is a piece of paper from the court that says your landlord can put you out of your apartment. **Your landlord can have you put out in as little as three days.**

Does it matter if I receive the court papers personally or in the mail?

If you receive the court papers personally and your landlord demanded money in the court papers, your landlord may get a money judgment along with possession of the apartment. If you disagree with the amount of rent asked for in the court papers, or if you want to stay in your apartment, you should go to court.

If you did not receive the court papers personally, i.e., if you got them through the mail or attached to your door, and you do not appear in court, your landlord will probably not get a money judgment. Your landlord will most likely get a warrant of eviction which can be used to put you out of your apartment. If you want to stay in your apartment, you should go to court. However, if you go to court, your landlord may get a money judgment against you.

You should always contact Neighborhood Legal Services if you get court papers. If you live in Buffalo, you can also go to Buffalo City Court on the day of your eviction case and speak with a representative from the Lawyer in the Morning Program. **You should speak with the representative before you tell the court clerk you are in court.**

How can I find out if my landlord has been awarded a money judgment against me?

You can find out whether there is a money judgment on record against you by calling the court.

How much time will I have if my landlord was awarded a warrant of eviction?

After your landlord is awarded a warrant of eviction, he or she must take the papers to a civil officer (usually a Marshal or a Sheriff). The civil officer will go to your apartment or home within the next day or so and place a notice on your door that states you have been evicted and that you have 72 hours to remove your possessions from the apartment.

Then, approximately three to five days later, the civil officer will return. If you have not moved by then, you will be put out of your home and your landlord will be allowed to change the locks on the doors. **Outside of the City of Buffalo, evictions may take place exactly 72 hours from the time that the 72-hour notice is posted on the door.** You can contact the civil officer to find out when they plan to remove you.

What will happen to my belongings if I have to leave them?

Legally a landlord is not allowed to keep a tenant's personal possessions. However, you should remove all your possessions, especially your valuable ones, before you are evicted.

What are my rights if I am properly evicted and my belongings are still in the apartment?

It is unlawful for your landlord to legally evict you and then refuse to give you back your possessions. You should contact the police and Neighborhood Legal Services if your landlord refuses to return your possessions to you.

Is my landlord responsible for my personal property if I move or I am evicted and they get left behind?

Your landlord is only under a duty not to intentionally damage or destroy your possessions. For that reason, you should remove all your possessions before you are evicted. If that is not possible, you should contact your landlord as soon after your eviction as possible to make arrangements to move your things. For more information, read the section on *Protecting Your Household Property after an Eviction* and *The Storage of Household Goods*.

Your landlord may decide to put your possessions in storage if they are still there after you are evicted, and you may have to pay the storage fee before the storage company will release them to you.

What can I do if my landlord loses, damages or destroys my belongings?

You can take your landlord to Small Claims Court for the value of your belongings. Read the section about *Small Claims Court* for more information about how this is done.

WHAT IS AN ILLEGAL LOCKOUT?

What is an illegal lockout?

A lockout is illegal when your landlord forces you to move or does not let you into your home without first going to court and having you served with a warrant of eviction. Changing the locks, removing the front door or turning off the heat, electricity or water would be considered illegal.

What should I do if I am locked out of my home illegally?

If your landlord locks you out of your apartment illegally, call the police either by dialing 853-2222 in Buffalo, or by calling your local precinct. When you call, make sure to write down the name of the person you talk to.

What happens next?

The police should send officers to the apartment. Make sure to get the names of the officers. When they respond, tell them that your landlord locked you out.

What if the police are not helpful?

If the police are not helpful, contact the Captain at the precinct that responded to your call. Explain the problem. If it is after 4:00 p.m. ask for the Duty Officer and ask that person to send in a Duty Inspector.

Is my landlord responsible for my expenses if I am illegally locked out?

Your landlord may be responsible for the money you have to spend because you were locked out. If you do spend money on a hotel or in a restaurant, save your receipts. You may be able to get some of your money back. Contact Neighborhood Legal Services for help.

What if the police can't help me?

If you cannot get back into your apartment after calling the police, call Neighborhood Legal Services.

What can I do to get my things back?

You may have to sue your landlord. See the section about *Small Claims Court* for more information.

Chapter4
AFTER YOU'VE MOVED

PROTECTING YOUR PERSONAL PROPERTY AFTER EVICTION

Going through an eviction proceeding is often a stressful event. If the landlord is successful with the eviction, the tenant's stressful event becomes a pressure-filled nightmare. Being forced to move is rarely a pleasant experience. Not only do you have to find a new place to live, you have to worry about what to do with all your personal belongings.

Sometimes no matter how hard you try, you simply can't take all your stuff with you on the day you move. What might happen to your furniture, television, clothing or any other personal property that you leave behind?

If you cannot take your personal belongings with you on the day you move, you need to tell your landlord that you will be returning for your belongings. If you do not tell your landlord that you plan to come to get your things, your landlord may consider your personal property abandoned, especially if it does not appear to be of any value. Within a reasonable time period, the landlord must allow you access to remove your personal property. If the landlord denies you access, he or she is committing what is called "conversion" of your belongings.

What is conversion?

Conversion is legally defined as any unauthorized exercise of dominion over property by one who is not the owner of the property which interferes with and is in defiance of a superior possessory right of another in the property.

Translation: if the landlord doesn't let you get your personal belongings, the landlord is committing a conversion of your personal property. Following an eviction proceeding, the landlord only has a right to the house or apartment, not to your personal belongings.

Fortunately in Erie County, the Marshals and the Sheriff's Department will not physically remove your personal belongings. If you leave your personal property behind, a landlord must allow you a reasonable amount of time to come back for your belongings. Unfortunately, a reasonable amount of time has not been defined. It is determined by the courts on a case by case basis. So it is always in your best interest to pick up your belongings as quickly as possible. If the landlord chooses to put your personal property into storage, he can charge you the reasonable costs for the moving and storage of your personal belongings.

What happens if your landlord is angry with you and destroys or damages your personal property?

A landlord cannot take out their frustrations on your personal belongings. If a landlord destroys your property on purpose, a landlord is committing a conversion of your personal property and would owe you the fair market value of property. However, if your personal property is accidentally damaged, the landlord may not be responsible.

What happens if your landlord does not give you a reasonable amount of time to get your things and immediately gives your property away?

A landlord cannot simply give your property away. If a landlord does give your personal belongings away, the landlord is again committing a conversion of your personal property and would owe you the fair market value of your property.

Can a landlord hold onto your personal property as collateral if you owe money?

A landlord cannot withhold a tenant's personal property until the past rent is paid, unless, a written lease gives the landlord permission. If a written lease provides that a landlord can hold onto your personal property, then this creates a lien on the property until the rent is paid.

If you are ever evicted you should always make arrangements to move and store your personal property. The likelihood that something bad may happen to your personal belongings is far too great. Even if you take your landlord to court and the judge grants you a money judgment for the fair market value of your personal property, collecting that money may be very difficult.

Some items cannot be replaced and the fair market value of your belongings may not be the same as what they are worth to you.

The moral of the story? When you move, take as much of your personal property with you as you can. Get your valuables first. Let your landlord know (preferably verbally and in writing) when you will be back to get the rest of your things.

Enjoy your new home.

STORAGE OF HOUSEHOLD GOODS

If my landlord stores my property, how can I find out where it is being stored?

The storage company will mail a statement to your last known address telling you where your property is stored. Go to the Post Office and fill out a change of address card for your new address or temporary location. If you do not, you may not get the statement from the storage company. Also, your ex-landlord must tell you where your property is held.

How soon will the storage company notify me after accepting my belongings?

The storage company will notify you by registered or certified mail within 3 days after your goods are stored. Remember, the notice will be sent to your last known address.

How will I know what has been put in the storage facility?

The storage company will list and describe each item accepted from your ex-landlord for storage. This is called an inventory. The inventory will include written comments from your ex-landlord and a storage company employee noting the condition of each item before it is placed in storage.

How much will this cost me?

The statement from the storage company will include a reasonable estimate of the monthly storage charge. This charge will not include the cost of moving your goods from your former apartment to the warehouse. The statement may include a list of other charges (besides the estimated storage fees).

What happens if my property is lost or damaged while in storage?

The storage company may be responsible. The storage company will tell you if there are limits on what it is responsible for when it sends you the inventory. The storage company will also inform you that you can purchase additional insurance.

What can a landlord legally deduct from a security deposit?

A deposit secures the landlord against any damage a tenant may do to an apartment. The deposit is held in trust for the tenant until the tenancy terminates. At the end of the tenancy, the landlord should tell the tenant about any damage the tenant will be held responsible for. A landlord may use the security deposit to cover reasonable cost of repairs beyond normal wear and tear and/or any unpaid rent.

DAMAGE CLAIMS AGAINST SECURITY DEPOSITS

How will the landlord decide what damages in the apartment I will have to pay for?

Every landlord has their own way of handling damage claims. You may have a written lease agreement that establishes the process to be followed. You should talk to your landlord about what steps he or she plans to take.

After you decide when you will leave the apartment, you should attempt to schedule a time to inspect the apartment with your landlord. The best time to do this is after you have moved all of your belongings out of the apartment. You and your landlord can decide if there is any damage beyond normal wear and tear. If you have used the inspection checklist in the *Finding an Apartment* section, it will be easier for you and your landlord to agree on what may have been damaged during your tenancy.

If you cannot work something out with your landlord, you should get as many witnesses as you can to inspect the apartment with you and note the condition of each room in the apartment. You might consider taking pictures of each room in the apartment to show the condition you left the apartment in. These pictures together with your witnesses' testimony can be used in Small Claims Court if you have to sue the landlord for the return of your security deposit. You do not need an attorney in Small Claims Court. You can represent yourself.

If there is no damage claim against me and I owe no rent, when can I expect to receive my security deposit?

The landlord must return the security deposit to the tenant at the end of the tenancy or within a **reasonable** time thereafter. The landlord does not have to return your security deposit to you before you vacate the apartment. The landlord does not have to use the security deposit for your last month's rent unless he or she agrees to do so.

What should I do if my landlord refuses to return my security deposit?

If your landlord refuses to return your security deposit, you may consider filing a claim in Small Claims Court. However, before you file, be sure to read the section about *Small Claims Court* to learn more about filing a claim and about the pros and cons of bringing such a claim.

SMALL CLAIMS COURT

What is Small Claims Court?

Small Claims Court handles cases with claims of \$3,000.00 or less (**\$5,000.00 or less in Small Claims Court in Buffalo**). The judge in Small Claims Court only has the power to award money judgments.

How can I use Small Claims Court?

You can use Small Claims Court for many different types of cases. Some examples are given below:

1. Over money owed for security deposits, utility bills or rent;
2. For the value of damaged, lost or destroyed personal property;
3. Damages resulting from an unlawful eviction.

Small Claims Court is not a separate court, but part of your local City, Town, Village or Justice Court.

Do I need a lawyer to go to Small Claims Court?

No. **Lawyers are not necessary in Small Claims Court.** You can use a lawyer if you want to.

How do I start a case in Small Claims Court?

You may only sue in the Small Claims Court in the county where the person you are suing (“the defendant”) lives, has a place of business, or has a regular place of employment.

Call the Small Claims Court to find out how to file your claim. The number for Small Claims in Buffalo is 845-2663. Look in the blue pages of the phone book for the number to Small Claims Court in other areas of Erie County. If you are under 18, an adult must file for you. The filing fee is \$15.00 for claims under \$1,000.00. The filing fee for all claims over \$1,000.00 is \$20.00.

What should I take when I go to file my case?

When you go to file, make sure you have:

1. The name and the mailing address of the person you are suing (the defendant)
2. The reason you are suing
3. The date the problem occurred
4. The amount the defendant owes you
5. Any proof you have, such as letters, etc., showing your attempts to settle the dispute.

You will be given a hearing date. The court will contact the person you are suing.

Can the person I am suing try to sue me?

Yes! The person you are suing (the defendant) may decide to sue you for money owed from the same event. This is called a “counterclaim”. Before you sue someone in Small Claims Court, you should think carefully whether that person could prove that you owe them even more money. In Small Claims Court the limit on a counterclaim is \$3,000.00 (\$5,000.00 in Buffalo Small Claims Court).

What should I do if the case is settled before the hearing?

If you and the defendant settle your case before the hearing, put your agreement in writing, and tell the Small Claims Court clerk before the hearing date.

What do I do to prepare for the hearing?

To prepare for the hearing, plan what you want to say and show. If there are any witnesses, ask them to go to the hearing. If they will not go, ask the Small Claims Court clerk for a subpoena for the witness. You can ask the clerk for a subpoena when you go to court to file the claim or any time before the date of trial. The clerk will tell you how to serve the subpoena.

Decide what you need to bring to the hearing to prove your case. The following are examples of some evidence you might need for different kinds of cases:

My landlord won't return my security deposit.

If you sue your landlord because your security deposit was not returned, you must prove first how much security you paid. Then you must show that you do not owe your landlord for rent or damages if your landlord says you do.

- Bring your lease or rental agreement if you have one along with any receipts you have that show how much security deposit you paid.
- If your landlord might say you damaged the apartment, bring photographs or witnesses who can talk about the condition of your apartment on the day you moved in and on the day you moved out.
- If your landlord might say you moved out owing rent money, bring rent receipts to show that you paid your rent.

My landlord has kept my property.

Bring a list of your lost possessions and what they are worth. If possible, bring receipts or estimates that show how much you spent for your things. You can also bring pictures or witnesses who can describe what your possessions looked like and how much they were worth.

If you believe that your landlord still has your possessions, tell the judge. You must prove that your landlord took your possessions, what those possessions were and how much

they are worth.

I didn't pay my rent because the landlord refused to repair my apartment.

If your landlord has refused to make repairs, you may be able to get money back from the rent you have already paid. This is called a "rent abatement". If you want a rent abatement, call us and we will send you more information on how to prove your case.

Can I ask for a jury?

No, but if the defendant wants one, he or she may request one.

What will happen at the hearing?

Both sides tell their story to the judge.

The judge will probably ask questions. You and the defendant will have a chance to question each other and any witnesses. Don't try to act like a lawyer. Tell your story clearly and honestly. Show the judge any evidence (letters, bills, etc.) you have. Don't interrupt or argue with your opponent.

When will the judge or hearing officer make a decision?

The judge or hearing officer will make a decision after listening to both sides. The judge may tell you the decision in court or you may have to wait for it in the mail.

What happens if I miss my court date?

Your claim will be dismissed.

What happens if the defendant misses the court date?

If the defendant doesn't show up, you will most likely win by default.

Can I appeal if I lose?

If your case was heard by a hearing officer, you may demand a trial de novo (a new trial). Your request for a new trial must be made within 35 days from the time you receive the Court's decision. You will have to pay a filing fee of \$75.00 for the trial de novo. The case will then be heard by a judge.

If your case was heard by a judge the first time, you may need an attorney to appeal. You must file a notice of appeal and pay the required fee within 30 days after the judgment is entered. Technical mistakes would not be grounds for reversal of the decision. The court on appeal will only consider whether substantial justice was done.

If you are interested in requesting a trial de novo or in appealing a Small Claims Court decision, you should contact the Small Claims Court clerk for more information.

How do I collect my money if I win?

If the defendant has little or no money or property, it may be impossible.

In other cases, if the defendant does not pay you in a reasonable time, go to the Clerk of Small Claims Court for help. Take with you any information you have about the defendant's bank accounts, property and employment.

You will probably be directed to the Marshal's office or Sheriff's Department for assistance. There will be a fee for their services.

If I receive public benefits, will my Small Claims Court award affect my eligibility?

Yes. If you are successful in Small Claims Court, and you receive an award that is more than \$2,000.00, **AND** you actually collect more than \$2,000, you may become ineligible for some types of governmental programs including but not limited to food stamps, Medicaid, SSI, and cash assistance. For more information about this, you should contact the Public Benefits unit at Neighborhood Legal Services.

What should I do if I am sued in Small Claims Court?

Do not ignore a notice saying you are being sued, even if you think you have done nothing wrong.

If you don't know why you are being sued, call the person who sued you.

If you settle, put it in writing; if not, go to the hearing ready to tell your side of the story.

If you can't go to the hearing on the day you are supposed to, call your opponent and the Small Claims Court beforehand to change the date.

If you think your opponent owes you money, call the Small Claims Court clerk before the hearing for information on how to file a counterclaim.

You may request a jury. Call the Small Claims clerk in advance to request one. There will be some costs involved.