

Landlord-Tenant and Eviction Issues in Georgia

April 12, 2010

Landlord-Tenant and eviction law can quickly become complicated due to emotions and various protections afforded both the tenant and the landlord under Georgia law. Below are some of the common areas of dispute in the landlord-tenant relationship:

Type of Tenancy: According to **Georgia tenant law**, just because a person lives in the residence (home, room, apartment, condo), does not make them a tenant. A person that rents a hotel or motel, even on a long terms basis, is usually considered a guest and not a tenant. A person that has his home foreclosed upon and still lives there, is not a tenant, but a Tenant at Sufferance. A Tenant at Sufferance is a person that lawfully entered the property, but unlawfully remained and has no claim of right. Heirs at law to an estate have certain rights unless and until an administrator of an estate follows proper probate procedures. According to **Georgia tenant law**, a Tenant at Will is the default tenancy when another tenancy does not describe the relationship. At Will basically comes from 'at the will of the landlord (or the will of the tenant). A Tenancy at Will can be terminated by the landlord with 60 days notice or by the tenant with 30 days notice.

Written Lease: Usually, a written **Georgia lease agreement** will address almost all issues that arise during a tenancy. However, many leases have gaps that must be filled by Georgia law or have contradictory language that must be sorted out. When a written **Georgia lease agreement** exists, the parties should read it several times and see if any provisions apply to the situation in dispute.

Damage Deposit: The deposit amount that is paid to the landlord is many times withheld once the tenant moves out either due to trumped-up damages or the landlord's belief of entitlement to the funds. Commonly, a breach of the lease will cause the landlord to attempt to keep the damage deposit and not credit the deposit towards damages. For example if a landlord has a \$1,000.00 deposit and claims \$2,000.00 in damages, then \$1,000.00 should be applied to any alleged damage. Unfortunately, many landlords believe they can keep the damage deposit for any lease breach including relatively minor ones. A landlord must provide an accounting of the deductions.

Eviction: In order to properly evict someone, the landlord must send a letter advising the tenant that the landlord demands possession of the property along with other fact specific notifications. **Georgia eviction law** states that a Notice of Termination is notice that the tenant has breached the lease. A Notice to Quit is a

notice demanding possession. Any notice should be sent in a form such as certified mail with return receipt requested.

The next step in the eviction process, according to the **eviction law in Georgia**, is to apply for a Dispossessory Warrant, which is commonly shortened to Dispossessory or Dispo. The Dispossessory is basically a lawsuit asking for the judge to award the property back to the possession of the landlord, plus past due rent, if applicable. The period to answer is usually 7 days, which is far shorter than the 30 days for most court filings. Importantly, the landlord has two options for service upon the tenant, the first is personal service, which is when the Dispo is handed to the tenant. The second is tack and mail, which is literally nailing the Dispo notice to the rental property and sending a copy via mail. The main legal difference is that under tack and mail the landlord can attempt to get possession of the property, but will be likely prevented from recovery of back rent due to lack of personal service upon the tenant.

Eviction law in Georgia states that if the landlord wins either in court or as a result of the tenant not responding, then a Writ of Possession is issued to the landlord and the landlord should get the Sheriff's Department to execute the Writ by going to the property.

A common mistake landlords make is to begin the eviction process and not follow through due to either promises of the tenant to leave, or assumed abandonment. In keeping with the **Georgia eviction law**, not obtaining a Writ of Possession or not having it executed are a sure fire ways to eventually be sued for Wrongful Eviction and claims of valuable being taken when the landlord cleared out the tenant's personal items.

Marketing the Property: Usually a written lease will have a provision covering this issue, but if there is not a written lease there is a good argument that marketing cannot occur on the property. Then again, if push came to shove, all the landlord would need to do is provide 60 days notice to vacate.

Duty to Repair: When the tenant takes possession of the property, he generally takes the property in the condition that it is in regarding defects like stained carpet or creaky floors. However, safety issues such as missing floor boards cannot be waived by the tenant and must be fixed by the landlord. (It is always recommended to document safety issues with written correspondence.)

Generally, a lease will have provisions regarding repairs and prohibitions against the tenant deducting the cost of repairs from the rent. It is always recommended to have an open discussion about the repairs as most landlords will do the right

thing. If that does not work, then the tenant might be able to sue the landlord in small claims court for the reasonable cost of reasonable repairs performed.

Constructive Eviction: If things get so bad that a reasonable person would be forced to leave the property, then this is called a Constructive Eviction. It is constructive because circumstances have lead to the eviction, not a legal proceeding. In an extreme example, if the rental home burns to the ground, the tenant has been constructively evicted due to the circumstances of the home burning down. Usually, Constructive Evictions are on a case by case basis, and not all problems are a constructive eviction, but common issues of dispute are leaky roofs, busted front doors, unrepaired stairs, insects, noisy neighbors, fallen trees, criminal acts and water. Again, these issues are not necessarily constructive evictions just examples of common issues.

Move-In/ Move-Out: In order to protect both the landlord and the tenant, a move-in check list should document the condition of the property and any problem areas. For example if there is a 3 foot stain in the middle of the living room carpet, then it should be noted so the landlord cannot claim the tenant did it. Likewise, if no 3 foot stain is present at move-in, but there is one at move-out, then it is likely the tenant's responsibility. Similarly, at move-out, both the tenant and landlord should be present to verify if any damage has occurred during the tenancy and document damages or lack of damage. With modern technology and the common availability of camera phones and videos a visual record of move-in and move-out is highly advisable.

In conclusion, many landlord/ tenant issues can be resolved by open communication and a letter or two, but sometimes the problems require legal action. The various laws regarding the landlord/ tenant relationship are best navigated with a lawyer in order to help minimize any missteps that may occur due to an individual's lack of knowledge in the area.

This information is not intended to replace legal advice but instead to serve as a reference for further investigation. Landlord-Tenant Laws vary from state to state. It is provided as a courtesy, and the publisher will not be held liable for the correctness or legality of the provided information.