

NEW YORK CITY CIVIL COURT

Tenants' Rights and Responsibilities

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MS. CAROL E. MAYSE: Hello. I'm Carol Mayse. I'm a Senior Court Clerk with the Queens Civil Court, and we're here to speak today about private unregulated housing.

One of the most frequent questions that litigants come into our resource centers to ask about is private unregulated housing. They come in - "I'm a tenant. I would like to know my rights". The rights that you have depend very much upon the type of housing that you live in. Here in New York City there are several types of housing that a person might live in. There is New York City Housing Authority, there are co-ops, there are [unintelligible] co-ops, there is Section Eight housing, HUD housing, and the type that we're going to talk about today, which is private unregulated housing.

Private unregulated housing could be a private house that has apartments, less than six apartments in the building. It could be a rent stabilized apartment, a formerly rent stabilized apartment that has become deregulated due to coming - legal rent of over \$2,000.00. It could also be a unit that you rent from the owner of a condominium or that you sublet from a shareholder in a co-op.

Rent regulated tenants have a lot of rights. Private unregulated tenants don't have quite as many. And the majority of the rights you have as a tenant of a private unregulated unit comes from your lease. Now, the only problem with that is, in private unregulated housing there is no requirement that a landlord give you a lease. So if you do not have a lease or a rental agreement, the only rights that you're left with are the ones that are afforded to you by the

local government laws.

Now, certain problems tenants have with their landlord come from things that you can avoid before you even take an apartment. If you're taking an apartment that's private unregulated housing, one of the first things you should do, if your landlord is going to offer you a lease, is sit down and read the lease. You need to read all the clauses. You need to make sure that you fully understand everything that they're saying to you because when it comes time down the road, if the landlord/tenant relationship is no longer quite as amiable, you're going to be held responsible for complying with everything that's in that lease, and if you fail to do that and violate any of those lease terms, that would be grounds for the landlord to evict you. So if you speak with the landlord and he says that you can keep your pet and if it's not a problem,

if that lease says you can't have a pet you would need to sit down with your landlord, cross out that term in the lease, initial it by both parties, and put in whatever language that conforms with the agreement in your mind so that when you leave there, before you sign that lease, everything that lease says you're sure you're going to be able to cooperate with. Because otherwise, it can result in problems in the long run. Okay.

Now, a lot of new housing that's being built - it used to be that landlords were responsible for the heat and hot water in buildings. It used to be that landlords were responsible for providing heat and hot water in all residential buildings. That's no longer the case. There are a lot of new buildings that are being built now where there's a separate heating system and a separate hot water system for each of the apartment units.

In those type of buildings you might be responsible for providing your own heat and hot water. The landlord is still responsible for maintaining the units, but if you're paying for it, you're responsible for actually paying the cost of the heating oil or the gas or whatever it is, whatever is used to provide that heating and hot water.

This is something you need to discuss with your landlord prior to moving in. Don't assume that the landlord will be doing this. You need to sit down with him. It says I pay for my utilities. Are my utilities including my heat and hot water or not? And if it's something where it's not, you need to specify that in your lease or rental agreement, if you have one, so that you're aware, because otherwise it can add a large cost to you that you're really not going to be expecting if you're assuming the landlord

is picking up the tab.

[Break in audio] condition. If there are any areas that need repair, you need to take pictures of it, along with a newspaper headline of the day, keep those pictures and the headline with you for the entire time that you live in that home. Now, minor damage is not a problem, but if there's a condition there that would be considered damage, you need to document that because when you leave you want to make sure that you get your security back.

Your security deposit is supposed to cover any damage other than normal wear and tear. If this was there when you moved in, you want to make sure that you document it for your own benefit so that when it comes time to get your security back, the landlord doesn't try to accuse you of damaging his premises.

Now we're going to talk a little bit about rent and security deposits. In

a private unregulated housing there is no limit as to what rent can be charged. Basically, the rent decision is between the landlord and the tenant. Whatever the landlord feels that he can get on the open market, that's what he charges. As far as security, he can ask one month, he can ask two months, he can ask one and a half months. He can ask any amount of security that he feels will be necessary in order to insure that he gets his apartment back in a condition similar to the one that he rented it to you.

Now security deposits are in the custody of the landlord, but they belong to the tenant. The landlord is not to commingle your funds with his, and he's supposed to keep it in a separate account. Now, in small buildings, the landlord is not required to put it in a interest-bearing account. But if the money is placed in an interest-bearing

account, any interest earned belongs to the tenant. So as a tenant you have a right to ask your landlord, which bank is my security money being held and if he cannot tell you where that is, you also have a right to go and start a small claims suit to get your money back because you're saying that the landlord is not maintaining my security separately from his. Okay?

Now, I don't know how much of a problem it might be here, but in a lot of the outer boroughs there's what we would term to be illegal apartments. A lot of private houses might have a basement unit that has never been certified for occupancy by the Department of Buildings. If you go to look at a basement or an attic and the landlord cannot show you a Certificate of Occupancy that shows that it's legal for someone to inhabit that residence, do not take that apartment.

Once you move in, saying I didn't know it was illegal will not be grounds for getting your money back because basically the court expects everyone in this city, as much as its told about illegal occupancies, to know that in all likelihood if it's underground, if there's only one exit to the street, if there's any type of bars or encumbrance on the windows and doors so that you would not be able to get out in the event of a fire, in all likelihood it's illegal.

Now you moved in your private unregulated house and you notice that there's a problem. You need a repair, and you need the repair to be done. A landlord is supposed to maintain a properly repaired apartment at all times. The landlord is responsible for maintaining a clean environment, well lit, the windows and things should be secure, it's supposed to be habitable. You're

supposed to be able to live there peacefully and comfortably. That's part of the landlord's responsibility.

The tenant's responsibility is to pay their rent, to pay their rent on time, and to safeguard the property of the landlord by not making any undue damage to his property. Now, that includes you, your family, or any guests that might come to your home. If someone who comes to visit you causes damage to the landlord, yes, as the owner he will be responsible for repairing that damage, but he would also have a right to come and turn around and sue you to obtain the money back that he had to spend because you failed to safeguard his property.

Landlords who are responsible for heat and hot water, they are required to maintain certain levels of service. During the winter months between October 1st and May 31st, that's the heating

season, during the hours of 6:00 a.m. in the morning and 10:00 p.m. in the evening, if the temperature outside is 55 degrees or less, the landlord is required to maintain an indoor temperature of at least 68 degrees Fahrenheit. At night between the hours of 10:00 p.m. and 6:00 a.m. in the morning, if the temperature outside is 40 degrees or less, the landlord is required to maintain a temperature of 55 degrees Fahrenheit.

Now you need to be aware, neither of these temperatures are hot. The landlord is not required to maintain a tropical environment. The landlord is required to maintain a comfortable temperature. So you might need to wear a sweater or put a blanket on your bed at night. But these are the minimum requirements that he must meet.

In addition to that, hot water is required to be provided 24 hours a day,

seven days a week, at a minimum temperature of 120 degrees Fahrenheit. So if you have a problem with heating or hot water, the first thing you need to do is get a piece of paper and start a chart for yourself. The date, what the outdoor temperature is, what the indoor temperature is so that that way if you have to come to court later on you can show the Judge that this is the day I was required to have heat and my heat was not sufficient.

If you call your landlord and speak to him and tell him I don't have sufficient heat or I don't have sufficient hot water or there's another repair that needs to be done, you should also give him at the same time a date at which you will be available for him to come in and make the necessary repair. If you do that and the landlord doesn't come in within a reasonable time frame to make the repair,

put it in writing. Write a letter, as per our conversation on whatever date, I explained to you about a condition that exists in my apartment. I gave you days that I will be able to be available. Please come in as soon as possible at your convenience. These are some additional days I will be available so that you can make the necessary repair.

If the landlord still fails to fulfill his obligation at this point, if it's something that's not too serious, you can pick up the phone and dial 311. You can speak to someone from HPD, which is Housing Preservation and Development. That's the agency that's responsible for making sure that buildings are maintained in a properly habitable fashion and they will call up your landlord and let him know that New York City law requires that you maintain your building. The tenant is complaining about these conditions. You

need to fix them.

If you still get no response, you have a right to come to Housing Court. In the Housing Court we have what's called an HP case. An HP case is where you bring your landlord and HPD to court, basically saying that your landlord is not fulfilling his obligation and HPD is not fulfilling their obligation in that they did not get him to make the necessary repairs. Starting this case costs \$45.00, but if you're on social services or limited income you can ask for a fee waiver form so that you'll be able to start the case for free.

You will be given forms that you would fill out and you would list on these forms every condition that you want the inspector for HPD to come and look at. Once the inspector comes to your home, he will inspect your apartment and all of the conditions that you have listed. Any of

them that he determines to be a violation he will give a letter to.

The most severe violations are C violations. Those are things that are expected to be fixed within 24 hours to a week.

B violations, they're serious, but not quite as severe as a C. They will be given 30 days to make repairs on B violations.

Things that are primarily cosmetic as opposed to actually damaging the home, like painting, that would be given an A violation. They have 90 days from the time they come into court to make a report on an A violation. Once this report comes to the court, the Judge and the HPD attorney will sit you down with your landlord and they will give access dates to the landlord when he can come in and make the necessary repairs to your apartment. If the landlord is given days

to come in and make the repairs - repairs are scheduled Monday through Friday between 9:00 and 5:00. Now, if your landlord wants to be amiable and work out a time schedule or a time frame with you on a weekend or a late night, that's up to him. But basically, the court requires 9:00 to 5:00, Monday through Friday. And you would need to have someone over the age of 18 who's responsible to be home so that the inspector can come in - so that the landlord or his building employees or whatever workmen he has needed to make the necessary repair can gain access to you.

Now, that's another question that a lot of people have as far as, do I have to give my landlord access to make repairs? Yes, you do. Your landlord owns his property and his property is valuable to him. He needs to be able to know that the apartment is being taken care of well and that there's no damage there that

could cause further damage if it's left untreated. But do you have to just let him in, walk up to the door and have him come in any time he feels like? No, he doesn't. I mean, any type of work that needs to be done, if it's an emergency, by all means. If it's an emergency situation, if water is cascading out of your apartment over electrical lines or if they smell smoke or smell gas, the landlord can gain access to your apartment any way he has to, whether that's a key, if he has a key, or whether that's calling the Fire Department and having them knock the door down. And if he has to do that and your lease or your agreement requires that he have a key, then you would be liable for him suing you to recoup the cost of replacing the door.

If the landlord fails to make the proper repairs after coming into court, then what you would have to do is restore

the case by Order to Show Cause to the court calendar in order for the Court to ask for civil penalties. Civil penalties is when the landlord is fined every day until the necessary repairs are made.

On occasion, even after a landlord has been brought to court and been given civil penalties for failing to make the necessary and proper repairs, on occasion there will be a landlord who still will not make the necessary repairs. At this point you would be forced to restore the case yet again and ask that the Judge hold him in contempt, meaning that he is willfully failing to obey the judge's order and therefore, should be fined and, if necessary, HPD can go in and make the necessary repairs and bill the landlord for any work that they need to do.

There's also questions about security. The security deposit is not

rent. If you move out of the apartment and the apartment is in the same condition the landlord rented it to you in other than normal wear and tear, he has 30 days from the time you vacate to give you back your security.

Now if the landlord feels that you damaged his apartment, he would send you an invoice, invoicing all of the things he had to repair and the amount of those repairs and he would refund you the difference. If, when you receive this invoice you don't agree that the repairs were made or you don't agree that these repairs were necessary, then you might be forced to start a civil suit in Small Claims to get your security money back from your landlord.

That's why it's very important to keep those pictures that you took when you first moved into the apartment. How else are you going to be able to indicate what

was normal were and tear if you don't have any basis for which to judge that from?

Let's talk a little bit about evictions. In private unregulated housing if you don't have a lease, the landlord can ask you to leave his premises at any time. He can ask you to leave his premises at any time, but him asking you to leave is not sufficient. In order to terminate your month-to-month tenancy you would have to be served with a written notice prior to the start of a rental term, asking you to vacate by that rental term.

If you didn't voluntarily vacate by that time, then the following month you would receive papers from the court. Once you receive those papers you would come in on that date, and you would sit down with your landlord or his attorney and determine exactly how much longer you would be able to continue to live in that

apartment. If the landlord is not waiving any money and you're going to be responsible for paying your use and occupancy for the entire term that you remain there, the most amount of time that you would be able to ask for to find somewhere else to move to the court would be six months. It doesn't mean that you will automatically get six months, but if you have a certain amount of time and you're unable to find anything, you do have a right to come back to court and ask for additional time up to a maximum of six months from when your case was heard in court.

There are other reasons why a landlord can start eviction proceedings. If you have a lease and you violate those lease terms, that would also be ground for eviction. If the house is sold and you have a lease, basically you go with the house. The new owner would be required to

honor your lease until it expires and at that time they could start the eviction proceedings from you.

The only other thing we have to talk about today would be illegal lockouts. Now illegal lockout is when your landlord either locks you out, changes the locks on the doors, illegally cuts off your utilities, water, gas, electricity, in the purpose of trying to get you to vacate his premises.

If the landlord does that, you need to contact the police. And if the police are unable to gain - have you restored to tenancy, you would have to come in the next business day the court is open and start what's called an illegal lockout case. And once that happens if the landlord cannot demonstrate that he legally removed you from the premises, then the court would order you to be restored to your housing.

Thank you very much for joining us today and we hope that we were able to help you a little understand private unregulated housing a little better.

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