

NEW YORK CITY CIVIL COURT

Community Seminar Series

Landlord 101

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MS. CAROL E. MAYSE: Good

afternoon. Thank you for joining us for Landlord 101. My name is Carol Mayse and I'm a senior court clerk working in the Queens resource center. This seminar is for people who are already landlords who might be first time landlords, are not familiar with the process of what happens when you come into court, and also with some tips to keep you from having to come into court. In addition to that, there is a couple of things that I also have to direct to people who might not yet be landlords, who are contemplating buying a small property.

When one contemplates purchasing a house, the first thing is, buying a house is a very large expenditure. So prior to doing that you really need to look at your finances and see how much house you can afford. If you cannot pay

every bill in your house without anyone paying you a dime, you cannot afford that house. One of the things you'll realize very quickly as being a landlord is you cannot depend upon the tenant's to pay you rent.

Yes, in a perfect world everyone pays their rent on time and everything works well that way. But if you don't receive your rent money by the first of the month or by the fifth of the month and it's going to impair your being able to pay your mortgage, it's going to be a problem for you. So you need to be aware of that before you even contemplate purchasing a property.

We're talking now to people who've already purchased properties and you want to rent them out. Prior to renting an apartment, there are certain things that every landlord should do. One of those things is take pictures of the

apartment using either a newspaper headline or something to date the pictures of the condition of the apartment prior to anyone moving in. You keep that newspaper headline with you and those pictures with you for as long as the tenancy continues. This is your baseline photos for your normal wear and tear.

 If sometime during the course of the rental when it comes time when the tenants go to leave and you want to say, "Well, you owe me money because you did damage to my apartment," how are you going to show what condition the apartment was in if you have nothing to show? So even though you don't have a tenant yet, you want to prepare just in case it's necessary.

 Now, in private houses, which is what we're talking about today, private houses, the court, when we say that we mean buildings that have less than six

apartments that are not subject to any type of rent regulations. In addition to that, the other definition I want you to understand when I say this is, multiple dwelling. A multiple dwelling is considered any building that has three apartments or more. So it can be a private house and a multiple dwelling. That's always a possibility. But in private houses, buildings of less than six apartments, there are no requirements for leases. That's the first thing every landlord needs to understand.

If you choose to give a lease or if that's something that makes you comfortable, it's perfectly okay for you to do so but there is no requirement that a lease be given. Now, one of the things you might want to a few thoughts about is, leasing versus rental agreements. A lease and a rental agreement are very similar. They both state the terms and conditions

for living in the apartment. If you don't want pets or if you don't want washing machines, these are important things that you should put in some type of a written agreement.

The difference between the two, the lease has a term. Any lease that is a term of one year or more is required to be in writing. And if you choose to give a written lease, you need to make sure that everything that could possibly come up should be in that lease. So part of the thing that people have problems with is they go buy a standard lease, they don't read it, okay, sign this. Before you sign a lease, before you give a lease to a tenant to be signed, you need to read the entire lease and make sure that every clause in there is not only applicable to you and your building but also enforceable.

There are some things that you

might find in the lease that might not be enforceable in New York City, so you always need to consult a legal professional if you're going to initiate your tenancy with a lease. One of the things that specifically needs to be mentioned, now, there's a new--I know in Queens, I don't know about too much in this Borough--but there's a lot of new buildings that are being built that have separate heat and hot water systems for the tenant for each apartment.

That's not something that used to be. It used to be the landlord was responsible for heat and hot water in the building, but if you have separate heating and hot water units, the tenant might be responsible for paying their own heating. But what you need to do is clearly make sure that that is listed in your lease, that the tenant pays their own heat and hot water. And you might even want to

have them initial it so that it's understood because one of the biggest complaints we get in the resource centers are from tenants who really weren't aware at the time they rented the apartment that they're going to be responsible for another \$300 or \$400 a month for their heat and hot water and it very quickly becomes a source of contention between landlords and tenants. So you want to make sure that everybody is aware of what their responsibilities are prior to them taking your apartment over.

Also, one of the things when you write up a lease, if you insist on giving a lease and you want to do that, you need to fill out the lease completely. A lease should have the name and address of both the landlord and the prospective tenant and that's very important. Not an address where you get a Post Office box or the address of the building, unless you

actually live there. A lot of landlords give tenants a cell phone number or a home number, "Oh, this is how you can contact me." Landlords should give the tenant an actual address where they can be reached. Hopefully, it will never come to it, but if a tenant needs to file any type of a court proceeding or a complaint, they need to be able to find you, and if they don't have access to that information and they come into court, we're going to check the records for your property tax, for your water tax. If you use the address of the building but you don't actually live there, the court's going to consider that your address.

So any papers that are served on that home, even if you don't receive them because you don't actually live there, you're going to be held responsible for because that's the only address that you've given the tenant to contact you.

So you need to make sure that that information is filled in properly on your lease. The lease should also have the term of the lease both in numbers and in words. If there's any discrepancy, what's written is what takes precedence. So if you write one year lease in one place but if you put the date of a two year lease, they're going to go by what you wrote in words, which was one year.

In addition to that, any security deposit given to you by the tenant should be indicated on your lease because years later if you sell the house or when it's time for them to leave, you need to have some type of proof exactly how much money you received in security. There's one other thing I want to say to you about security deposits. In private houses, there is no limit. If you want two months security, if you feel that that's what you need necessary to cover yourself in case

of damages, you can ask for that. There's no limit as to how much you can ask for. But any security deposit that you receive from your tenant, that belongs to your tenant. They're depositing it with you, but it is not your money. You're not allowed to use that money to fix up another apartment or to fix up that apartment. That money should be deposited in a separate account.

Now, when you're dealing with apartment buildings that are less than six units, it's not required to be an interest bearing account. There are banks that you can go to and you tell them this is a tenant security deposit, and they will give you the information that you have to fill out and the things that you would need to submit to your tenant for them to fill out so that they will know that money will be credited under their income tax number, if there is any interest that's

earned on it. Security is to be kept for the entire time of a tenancy. Security is not rent. Security should not be applied to rent. Security is only to be used for damages that are created by the tenant, other than normal wear and tear, during the course of the tenancy.

One other little thing about leases and about rent payments that I'd like to discuss. A lot of landlords insist only on cash deposits and if you want money received only by cash or money order, that's something that should be put in whatever rental agreement or lease that you have. If you're going to accept personal checks, especially if you're going to accept it for the rent security and the initial payment for your apartment, make sure your check clears before you give the tenant the keys.

We get a lot of people who come in, the tenants come in, gave them a check

for the first month's rent and security, the check bounces, the tenant's there, now what do I have to do. Once a tenant has entered your premises, whether or not they've been there 30 days, if you have accepted money with the intention of them being there for at least 30 days, once they're there, now you have to start an eviction proceeding. So make sure that the money that you're receiving is in either secured funds, such as a money order or cash, but make sure that the money is going to be clear before you give the person the keys to move into your apartment.

And speaking of cash payments, cash payments are--if a tenant gives you a cash payment, you are required to give them a receipt. If you cannot show--if there ever comes a point where the tenant stops paying and you come into court and say that they owe you money, if you cannot

show that you've given receipts for previous cash payments, how are you going to show that they owe you money? And any time you come into court, the burden of proof is yours. If you've never given a receipt before and now you say they owe you money, the first thing the court's going to say is, how can you prove what they gave you, and you can't and that would make it very difficult for you to collect any money during a non-payment proceeding.

One of the things we're going to go into now very quickly is about lead paint. In houses that are built before 1960, there's a local lead paint law that basically says that your apartment should be free of any lead or any flaking paint or peeling paint anywhere where it could become airborne. If you have tenants who are moving in one of the first things you want to inquire, are there children under

seven who are living in the apartment. And if so, you're supposed to give them a form letting them know that there's no lead or if there were any areas that showed up possible for lead and give them a booklet that you can get a copy of from HPD explaining their rights under the lead law.

Preferably, if you have an older building and you have no tenant in it, it would probably be in your best interest to have a company that is licensed in lead abatement come check it out. If there's any lead, get it out because that could result in a very serious problem for you. If there is lead in the house that gets eaten or inhaled by any young children, if they have any brain damage or any learning difficulties due to this, they're going to come back and try to sue you.

So you want to make sure that when somebody's renting that apartment

that there's no lead. You only have to do it one time and that's the end of it. You don't have to worry about it again. But if the building is older than 1960, you would still give them the disclosure explaining that all lead abatement has been done and so that way they would know that their kids are safe in the apartment.

One of the problems that landlords and tenants have most are about violations and repairs. Now, it is a landlords responsibility to make sure that their building is being properly maintained. When you rent an apartment you want it to be clean. You want it to be well maintained. You don't want peeling paint. You don't want clogged up bathtubs. It's part of a landlord's job to make sure that when a person comes to look at that apartment, it's in a condition that it's rentable. I've had a lot of tenants come and say, "Oh, well,

when I got there, the paint was peeling, the sink was stopped up but the landlord told me they were going to fix it."

As I tell tenants when they come and tell me that, if the landlord does not care enough about their building to make sure it's in the proper condition before you rent it, what would lead you to believe that they're going to maintain it once you've rented. Certain things are just common sense. If you want someone to rent your apartment, you want to make sure that it's in a condition that's rentable so that when they come in they can move right in and, therefore, they'll be no problem between you or them having to wait for you to make necessary repairs.

Certain requirements of landlords, such as heat and hot water, those are things that everyone really needs to know. The heating season is considered between October 1st and May

31st, even though some years, not this one, but some years in May it's actually quite warm. But anytime the temperature between the hours of 6:00 a.m. and 10:00 p.m., if the temperature is 55 degrees or below, you're required to maintain the temperature indoors at at least 68 degrees. If the temperature at night between 10:00 p.m. and 6:00 a.m. goes below 40 degrees, you're required to maintain the indoor temperature at at least 55. So it doesn't matter what the calendar says, if the temperature outside falls below those levels, you have to make sure that the heat is on in the house.

And what happens a lot of times is that people figure, "Okay. If I set it at exactly 68 that should be fine." But if there's more than one apartment, if there's three, if you own a three story or four story building, you're setting it at 68, by the time it reaches 68 on the first

floor, that doesn't necessarily mean that it's going to be at least 68 on the upper levels. Every apartment in the building must be maintained at least 68 during the daytime hours if the temperature falls below 55.

Now, hot water, hot water must be 120 degrees at all times, a minimum. You don't want it too much higher than that because, obviously, you don't want anyone to get scalded. Too hot is almost as bad as too cold, but you have to make sure that hot water is maintained all the time. Now, I know now that heating is very high, a lot of people are trying to save money. If everybody's out of the house during the day, I'll cut the heat down or I'll cut the hot water down. If one of those tenants happens to call in sick and decide that they're going to stay home and they have no heat or hot water, they're going to file a complaint against you. And the

most severe complaints that have the largest fines with HPD are for heat and hot water. If a tenant withholds rent and you have a long period of time where they don't get proper heat and hot water, it could result in half your rent that you're supposed to receive being abated. So as it is, you need every dime you can get, so you want to make sure that there's nothing that you're going to do that's going to cause you to lose your money.

Now, if a tenant has a problem with the apartment, basically in a perfect world what you do is, you call your landlord and you let them know. In a perfect world the landlord that you call will make every effort to fix the problem in a very quick manner. Sometimes it doesn't work that way. Tenants are required to notify you of necessary repairs. Sometimes what happens is, some tenants will go directly to HPD or call

311 without ever notifying you. If you receive a letter in the mail from 311 indicating that the tenant has said that there's some type of repair that's necessary in the house, then you make sure that you contact them and try to arrange for access so that you can fix it for them immediately because violations through HPD can come with big fines. If you don't or if you're not able to repair it within the timeframe they give you, they can fix it themselves and then they'll put a lien against your property for the value of the repair. You don't want that to happen.

Something else that's necessary in every apartment, carbon monoxide detectors and smoke detectors. All apartments, every house in New York is required to have one. So you want to make sure that they're there and that they're in working condition before you rent the apartment. And when you're taking your

pictures of the various things in the apartment, take the pictures of those as well. Check the batteries and make sure that they're working properly. That way if sometime during the course of your tenancy it disappears, you can show HPD it was there when I rented it to them.

Every now and again you'll have a tenant who will refuse to give you access to make repairs. If this is a serious repair, an emergency repair such as a leak that's causing damage to another floor or another apartment, you're going to try first to send them a letter telling them I need to make--I received notice of this violation. I need to get access on this date and giving them alternate dates if that's not available or telling them to contact you.

If you don't receive any acknowledgment from them in a short period of time, you may need to go into Supreme

Court and apply for an access order. Access orders are only for emergency repairs. I want to look at the apartment and see if the carpet still looks good, that's not an emergency. In order to get an access order, you're going to have to go into the Supreme Court, you're going to have to pay money, and you're going to have to convince a judge that this is something that's affecting the quality of your apartment and that it's something that needs to be fixed where the judge will give you access without the tenant's permission. So that's always your last resort.

If you have a situation where there's water cascading down and the tenant's not there or they won't let you in, the first thing you do, call the fire department. They'll solve the problem for you. If you have to have them break the door down, they will, but at that point,

once it comes time to repair that door, yes, you as the landlord will have to do that but you can always start a civil proceeding against the tenant to recover any damages that you had to suffer because they failed to let you in.

I'm going to say one little thing about keys. A lot of leases and rental agreements have a clause in it that the tenant is required to give landlords keys for access. Now, yes, if it's in there. Can you possibly try to proceed against the tenant if they fail to do so, yes. Have I ever seen anyone win on it, no. Usually if a tenant changes a lock on a door and you can't gain access to that premises, if you come into court, well, the first thing the tenant is usually going to say is that the landlord did not respect my privacy and came in and out of my house.

Now, the one thing I want to

say--I'm going to give you a little example. If anyone here who's ever leased a car, you know when you lease a car, the care belongs to the dealership. You have a lease for. You rent it. You have the use of it. Even though it belongs to them, you are the one is who paying the maintenance and you are the one who's maintaining that car. You wouldn't like it very much if the dealer, somebody from the dealership came into your house or came into your driveway or your parking garage in the middle of the night with their master key, opened up your car and decided to take a look around to see whether you're probably maintaining it.

How many people would want to lease a car if they knew that that was going to be a problem. They wouldn't. Same thing with an apartment. Don't enter your tenants apartment if they don't know you're coming unless it's an emergency

because to do so could create a lot of problems and rightfully so. I've heard cases where people have come in when they're in the shower, when they're sleeping, or when they're doing things other than that, which is even worse. So as far as privacy is concerned, as far as repairs, always try to get permission from the tenant and go in when they're aware so that that way there won't be any problem with them saying that you're not respecting their privacy.

These are just a few of the basic rights or basic responsibilities that landlords have. And you can find out other information about how you can proceed as far as evictions and other types of problems that you might have with your tenant by visiting the resource centers in any of the Boroughs. And at that point when you go there, we can also help you with various questions you might

have about rights that you might have with
your tenants.

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