

# INTRODUCTION

Renting apartments and houses presents many questions and potential difficulties to tenants. Tenants are often the victims of insufficient and/or incorrect information that can cost time and money. The objective of this handbook is to provide the basic information to answer many of these questions and to help prevent any problems that may happen. This handbook is based on the New Mexico law which governs landlord/tenant relations and obligations.

There are aspects of renting that are not covered by this guide; dormitory, hotel/motel facilities or commercial rentals are not covered under the law on which this handbook is based. This Handbook is written from the perspective of a private landlord/tenant relationship so if you received public assistance such as a section 8 voucher which pays the majority of your rent, there are special rules outside the scope of this handbook.

## Notice

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All rental advertising and listings are subject to the Fair Housing Act, which makes it illegal to advertise any preference, limitation or discrimination based on race, color, religion, sex, handicap, family status, or national origin, or any intention to make such preferences, limitation or discrimination.

ASNMSU will not knowingly accept any advertising or apartment listings which are in violation of the law. All listings and advertisements in this handbook should be available on an equal opportunity basis. To complain of discrimination call HUD, toll free at 1-800-669-9777. The toll free number for the hearing impaired is 1-800-927-9275. To visit the HUD Fair Housing and Equal Opportunity website, go to <http://www.hud.gov/offices/fheo/> and click on the "Housing Discrimination Complaint Form" link.

ASNMSU is committed to providing services for the students of this university in order to promote a better quality of life.

This handbook is available online at:

[http://www.asnmsu.nmsu.edu/the\\_renters\\_handbook.htm](http://www.asnmsu.nmsu.edu/the_renters_handbook.htm)

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# FINDING A PLACE TO LIVE

Choosing a place to live can be a difficult and time consuming process. Before beginning your search, make a list of features you want/need in a house or apartment, such as number of bedrooms, proximity to campus, and the range of rent and deposit that you are willing to pay. Also, consider whether you want to rent from a landlord or a rental company. Landlords may be more flexible and responsive to your needs, but companies can sometimes offer more stable, reliable service. Below is a list of places you may begin your search for a new residence:

1. Newspaper classified ads
2. Bulletin boards
3. Real Estate Businesses
4. “For Rent” signs in front of houses or apartments
5. Commercial rental agencies
6. Web sites and apps like Yelp
7. Check the Landlords/Properties to Avoid section on the Student Legal Aid web site:  
<http://studentlegalaid.nmsu.edu/?p=93>

## Real Costs

When calculating the cost of a new home, **look at all of the costs**, not just the rent. Usually you will be required to put down a deposit, which should not exceed one month’s rent; an additional deposit may be required for pets. You may also be required to pay both the first and last months’ rent. As for utilities, you will probably be paying a combination of a city utility bill (water, waste disposal, sewage, and gas), an electricity bill and an internet/phone bill, if you desire the service. Ask what you will or won’t have to pay for, especially in an apartment. If you are planning on installing cable TV, ask if the house is wired for it and always check with the landlord before running cable, installing a dish, etc. If you can, ask the previous tenants what they usually paid for their utilities each month. Another consideration is appliances; does the unit come with a refrigerator, microwave, washer and dryer? If not, you may have to purchase them.

You should also look into renters’ insurance. Ask your landlord if he/she has the property insured. Usually the property/building itself will be insured in the event of an accident but your personal possessions will not be covered by the landlord’s policy. Ask your insurance company about the cost of renters’ insurance; it is often surprisingly cheap.

Finally, ask if your new landlord will be performing a credit check or background check on you before you move in. There may be fees associated with these checks that you will have to cover. A background check usually will not incur a cost to the landlord however some landlords will charge a fee for their time. Decide whether you are willing to undergo these checks and pay these fees.

## **Know What You Are Getting**

Carefully examine the house or apartment that is available, not just a show unit. Perhaps the best protection is to ask your prospective neighbors about the utilities, the general noise level and any other specific concerns with the apartment or area. Don't be shy; other tenants are often very willing to discuss broken promises of the landlord. Maintenance personnel are also usually willing to talk. If possible, find out why the previous tenants moved out. You can also check with the local Code Enforcement Agency to see if they have any records of code violations by the landlord. If the leased premises are not ready at the date promised or agreed upon for your tenancy to begin, you may proceed to act on the following options:

1. Reduce all rent for that rental period until possession is delivered.
2. Terminate the agreement all together upon written notice to the owner; in this case the owner must return all pre-paid rent and deposits.
3. Go to court for possession of the dwelling unit and receive any damages sustained.
4. Recover other damages and attorney fees.

## **Renting with a Roommate**

If you're thinking of renting an apartment or house with a roommate or roommates, keep in mind that no matter how well you think it's going to work out, it is a common source of complaints to Student Legal Aid here at NMSU. In other words, it doesn't always work out.

### *Liability*

A lease spells out the landlord's and tenants' agreement of what they will do. The tenants agree both individually and jointly to pay the rent and any other obligations. Any tenant can be held responsible for the entire rent if the other tenant(s) fail to pay. Likewise, you may lose your entire damage deposit if they cause damage before they leave.

If you're a renter, don't use forms that list you as the owner to ask someone to sign as your roommate. Everyone living in the unit needs to be on the lease as tenants, with the owner listed as the landlord. Don't expect the roommate to pay you back for their share if things don't work out.

## **Discrimination in Housing**

Federal law prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents of legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability). This means that a landlord cannot tell you there are not any units available when in fact there are, refuse to rent to you, or give you an unfair lease that is different from other tenant leases because you fall within a protected class.

If you feel that you have a victim of discrimination, contact HUD toll free at 1-800-669-9777. The toll free number for the hearing impaired is 1-800-927-9275. To visit the HUD Fair Housing and Equal Opportunity website, go to <http://www.hud.gov/offices/fheo/> and click on the “Housing Discrimination Complaint Form” link. The New Mexico Human Rights law also makes discrimination based on sexual orientation or gender identity illegal.

## **RENTAL AGREEMENTS AND LEASES**

Once the tenant has found an apartment or house to rent, an agreement must be reached with the landlord. Remember the terms of such an agreement are part of the “deal” between the tenant and the landlord, and the terms should be negotiated in the same way as the purchase of a car. The agreement will cover the amount of time you may live in the rental unit, how much you must pay and how much advance notice you must give before leaving or that your landlord must give you before asking you to leave.

### **Periodic vs. Fixed Term Tenancy**

There are several important things to remember about the contract for the rental dwelling. The first thing is that the tenant and landlord are agreeing to rent for some length of time. It may be a week, two weeks, a month, six months, or even a year. The tenant and the landlord need to know what that length of time--the term--will be.

The most common type of rental agreement is a month-to-month tenancy, which is often called a “periodic tenancy.” This type of agreement allows the tenant to live in the dwelling for a month at a time. At the end of the month, the landlord may decide that s/he wants the tenant to move out or wants to raise the rent or change other conditions of the tenancy. In a month-to-month tenancy, the landlord must give the tenant a written notice at least thirty days in advance for any changes in the rent or conditions, or to end the tenancy. If the tenant wants to move, s/he must give the landlord at least thirty days written notice. If the tenant gives less than thirty days’ notice, the tenant can be held responsible for the following month’s rent.

Some rental agreements are for less than a month. They are still “periodic tenancies,” but all the time limits for notice are based on the length of this term. For example, if the tenant and the landlord agree that the term is two weeks at a time, the landlord must give the tenant two week’s notice to move or to raise the rent. The tenant must give the landlord two week’s notice if the tenant intends to move.

A definite term, or fixed-term tenancy, is one where the tenant and the landlord have agreed that the tenant will be renting for a specific period of time. This type of agreement is usually for 6 months or a year. The tenant may still be paying rent each month, but the tenant has the right to stay for the full period without a rental increase or other changes. In this type of tenancy, the landlord cannot make the tenant move out during the term of the lease unless the tenant violates the agreement. The landlord cannot raise the rent during the period of the lease. If the tenant and the landlord agree that the tenant will be staying for an additional fixed term when the lease ends, the landlord must give notice of any rent increase in the new agreement at least thirty days before end of the current lease.

In thinking about whether a “periodic tenancy” or a “fixed-term tenancy” is best, the parties should consider several issues. In a fixed term tenancy, the tenant has a right to stay for the full term and the rent will not be increased during that term. However, in a fixed-term tenancy, the tenant may owe the landlord rent for some of the rental term if the tenant decides to move out before the term ends. The landlord will not be able to terminate the lease until the end of the lease term and loses flexibility in how the property is used. In a periodic tenancy, the tenant has more flexibility in ending the tenancy, but neither party has the security of a fixed-term agreement.

## **Oral Agreements**

An oral agreement or oral lease is made without writing anything down and without signatures. Such oral tenancies are periodic and renew themselves for the specified period (Weekly or monthly) automatically. Although New Mexico law requires a written rental agreement (or “lease”), some landlords don’t use them. Usually, a landlord that refuses to give the tenant a written rental agreement is a landlord that the tenant will have trouble with down the road.

### *Advantages of an Oral Lease*

1. Short-term oral agreements are easy to begin and end.
2. Oral leases are uncomplicated and do not burden the tenant with many restrictions typically found in a written lease.

### *Disadvantages of an Oral Lease*

1. Without a written agreement, disputes regarding the tenancy are difficult to resolve. If either the tenant or the landlord is in error regarding the rental agreement, there is no way to check and see what the initial agreement entailed.

Generally, an oral lease is not a very good idea unless you are very well acquainted with the person whom you are renting from. Even then, it is not recommended.

## Written Leases

A written lease is an agreement between you and your landlord which sets out the promises that you make to each other; it is a useful record of all your agreements. If the landlord has promised to produce new locks or fix a fence, make the promise part of the lease. Always take time to go over the lease with your landlord. If a rental company is involved, do not accept a generic form that is not specific to your dwelling unit with only the representative's word that your specific needs will be guaranteed.

### *Advantages of a Written Lease*

1. Stabilization of rent costs.
2. Continued occupancy-the landlord is prevented from changing the terms of the agreement or from evicting the tenant (without good reason).
3. Minimize disputes (without an agreement, there is no record of what has been argued).

A written fixed-term lease is usually the best deal for the tenant and the landlord. It offers both the security of continued occupancy and unchanged rent. When the tenant and the landlord agree to a fixed-term lease, the parties have made a commitment to each other for an agreed upon time.

At the same time, it is important to remember that the tenant's promises are also part of the agreement, and a written lease sets out what the tenant has agreed to do. For example, when two roommates co-sign a lease, either one can be held entirely responsible for the entire rental agreement.

## Lease Provisions

Many forms of leases often contain provisions which could be harmful to tenants. A lease, like a contract, is meant to be negotiated. You should try to get the landlord to delete, date and/or add provisions accurately. Both of you should date and initial any changes. Once you have agreed on the terms of your lease, have a copy made for yourself. Do not leave without a copy of the lease in your possession. A landlord's promise to mail the lease may be well-intentioned, but is usually a mistake for the tenant. **Insist on taking a copy of the lease when you both have signed.**

## **Provisions Against Subleasing**

Many leases contain provisions against subleasing (or assigning) your rental to others. Often, these provisions require the landlord's approval before you may sublet/assign. This means you cannot allow anyone else to live in your apartment for rent or take over your lease unless the landlord agrees. It does not mean that you cannot have guests visit/stay with you for a reasonable period of time. It likely means that you cannot have roommates or friends share your responsibility for paying the rent without first obtaining the landlord's approval.

A landlord has a right to know who is renting from him/her and adding individuals to leases insures all occupants share legal rights and responsibilities. If your lease requires the landlord's approval before you can sublease, make sure it also states that consent may not be unreasonably withheld.

## **Automatic Renewal Provisions**

A lease may contain language that provides for the automatic renewal of the term of the lease. Such a provision usually states that if the lease is not canceled in advance (usually 30 days) of its termination date, then it will renew itself for another term, or it may turn into a month lease. The tenant should be aware of the language in the lease or rental agreement. Such language may commit the tenant to stay an extra year, or whatever term is in the agreement, when the tenant might not want to stay that long. The tenant should also remember this language when the lease term is about to run out. The tenant must decide whether to stay over for another full term. If the tenant doesn't want to stay, written notice must generally be given to the landlord.

Most leases renew on a month-to-month basis. This means that either the tenant or the landlord can end the lease by giving at least a 30-day notice.

If the tenant leaves when a lease has been automatically renewed, the tenant may owe the landlord rent. The tenant may also lose some of the deposits.

## Objectionable Clauses

A landlord may want to put many different conditions in the lease, but remember that the tenant has the right to negotiate the best deal possible. Being sure that you understand what is in the written agreement is part of that negotiating process. There are certain things that may not legally be included in a lease agreement. For example, a lease may not include terms and conditions that are prohibited by the Owner-Resident Relations Act or other laws governing the use of property. The lease may also not require the tenant to give up rights under the law. If a lease contains such illegal provisions, the tenant may be able to collect damages and get attorney's fees in a lawsuit if the tenant is harmed by the landlord's attempt to enforce the illegal provision.

Here are some examples of lease provisions that are illegal:

- A provision that says the tenant does not get a refund of prepaid rent or a deposit;
- A provision that charges a late fee greater than 10% of the monthly rent;
- A provision that forces the tenant to give up the right to defend him/herself in court if the landlord seeks to evict the tenant or files suit against the tenant for damages;
- A provision that says the tenant must give up the right to receive notice of termination or notice of a court action;
- A provision that says the tenant must give up the right to take the landlord to court;
- A provision that says the tenant has to move out without court action if the landlord breaks the lease;
- A provision that allows the landlord to change the locks at the apartment or otherwise deny the tenant access to the apartment when the tenant owes rent;
- A provision that allows the landlord to hold the tenant's personal property after an eviction or when the landlord claims the tenant owes rent.

A lease that requires the tenant to perform all the landlord's duties to maintain the rental property in a safe condition means that the landlord has no duties. Such a lease clause is illegal, unless the agreement on repairs is in writing and the tenant gets something of value in return (such as reduced rent, special privileges or wages).

Some lease clauses are not illegal, but they turn out to be very unfair. Courts have the power to change, or limit, any lease provisions that the tenant can show are "inequitable" (very unfair to one party in the lease agreement). If the tenant feels that the lease may contain unfair or illegal provisions, the tenant should quickly seek legal advice.

## THE SECURITY DEPOSIT

A security or damage deposit is any money that is given to the landlord by the tenant to protect the landlord against unpaid rent or damages to the premises. The damage deposit is specifically to cover any “extraordinary” wear and tear or damages caused by the tenant. The security deposit usually refers to prepaid rent. Usually the money is deposited with the landlord at the time the rental agreement is finalized and returned after the tenant moves out. A landlord cannot charge the tenant more than one month’s rent as a damage deposit on any kind of oral or written lease which is for less than one (1) year. If there is a written lease for one (1) year or more, the landlord can charge any amount as a deposit but must pay the current passbook interest rate on the whole amount. **Always get a receipt for your deposit, as well as for the rent you pay each month.**

### Withholding or Returning the Deposit

The landlord is entitled to keep all or part of the deposit for expenses incurred by the landlord due to the fault of the tenant in one of the following situations:

1. If you have damaged the apartment or furniture beyond normal wear and tear.
2. If anything is missing from the apartment when you move out that was present when you moved in and your landlord did not remove. The landlord can deduct the value of the item.
3. If you leave your apartment dirty or messy, the landlord can deduct reasonable cleaning costs from the deposit.
4. If you are behind in your rent your landlord can deduct what you owe from your deposit.
5. If you break your lease and your landlord cannot rent the place right away, the landlord can deduct from your deposit any damages he or she has suffered.

If you have done some damage to your residence, it would be wise to fix the damages before handing it over to your landlord. You could probably arrange for it to be fixed for less than your landlord would charge. Should your damages exceed the deposit, the landlord can sue you for those damages he/she can prove.

### Normal Wear and Tear

Normal wear and tear is normal deterioration by ordinary and reasonable use of property; it is normal depreciation in value of the dwelling. This constitutes wear such as faded paint, worn carpet, and depends on the age of the unit and the length of your tenancy. **Your landlord cannot legally deduct money from your deposit for normal wear and tear.**

## **ENSURING DEPOSIT RETURNS**

Many tenants are surprised when the landlord will not give their deposit back when they move out. Sometimes the landlord will keep the deposit even when the tenant has done no damage. If the landlord fails to provide a written list of the deductions within thirty (30) days after you move out, they forfeit the right to keep any part of the deposit, to assert any counter claims against you and will be liable to you for court costs and reasonable attorney fees. If however a tenant leaves owing rent or fails to give appropriate notice of their intent to vacate, New Mexico case law has held the landlord is not required to itemize and may apply the deposit to cover the deficiency in rent. It is important to remember that New Mexico law provides the tenant protections when it comes to return of deposits.<sup>1</sup>

**IMPORTANT:** In order to be entitled to your full deposit if you do not receive an itemized list of deductions within thirty (30) days you **MUST** inform your landlord of your new address or a forwarding address when you move out. Do this by certified mail.<sup>2</sup>

## **Moving In**

When moving into a new residence, make sure you have keys to all doors, and that you know where your mailbox is, that you have a garage door opener if one is provided, and that you have arranged your mail to be forwarded from your old residence with a change of address slip from the post office. It is a good idea to introduce yourself to neighbors right away; they can let you know when garbage day is and when the mailman usually comes.

As for your utilities, some services can be set up over the phone, like electricity, and some require deposits. Others, such as your city services may require a technician to come by if services are not currently provided to the dwelling. Do not attempt to turn on water or gas yourself! Call or go by City Hall ahead of time so you aren't stuck without water or gas.

Once the appropriate technician has come by and activated the services, he or she may leave a note instructing you to open a water or gas valve. The connection to the water main is usually located in the unit's front yard, under a green or black plastic hatch. The gas is usually turned on at either the water heater, or on a pipe connected to the gas meter outside, or both.

Before you move your furniture in, take pictures of the dwelling unit. Open closets; take pictures of light fixtures, doors, appliances and the exterior of the dwelling. Highlight any damage no matter how slight. Any damage that you miss might be assumed to be caused by you. Record any damage on a list; lists are provided at the end of this handbook. Set your camera to timestamp the photos. Print two (2) copies of these photos. Give one copy to your landlord and have him/her sign yours. Keep your pictures until you have successfully moved

<sup>1</sup> <http://www.lawhelpnewmexico.org/content/going-court>

<sup>2</sup> <http://www.lawhelpnewmexico.org/content/going-court>

out, as they may be necessary in a deposit dispute or in Court. Taking a comprehensive set of photographs of the residence is one of your best defenses against a landlord if a dispute about the unit arises.

When a tenant moves in, the tenant should receive a receipt for every deposit the tenant has paid to the landlord. With a receipt it will be easier for the tenant to get the deposit back if a need to go to court arises.

## **During the Tenancy**

Keep your list of defects/needed repairs and all pictures. Document, in writing, all requests for repairs, even when a landlord has a repair “hotline.” Get and keep a receipt for every rent payment, including prepaid rent. If you pay by check, mark on the check the month being paid for before giving it to the landlord. Keep the canceled check. Also keep an envelope for all papers regarding your tenancy. Document every contact with the landlord in writing. Finally, keep these documents for at least several years following your departure, in the event you must take legal action or the landlord sues you.

## **Moving Out**

Notify the landlord well in advance that you will not be renewing the lease. This notification must be in writing, at least thirty (30) days in advance of a rental payment, in order to be effective; this is true for ALL leases, even month-to-month tenancies. Repair any damage and make sure the house is completely clean. Also be sure that your utility companies have notice as to when you will be leaving. They can often shut off your utilities on a specified day; but don't get stuck cleaning the house when the water and/or power have been turned off already.

Have your mail forwarded to your new residence and make sure that all keys are returned to the landlord.

If you have lost or broken a key, it may be wise to make a new copy, as one missing key could mean that you have to pay for all the locks to be rekeyed. When you are ready to leave make sure that the house is locked up, the garage door is disconnected, all lights and appliances are off, and everything is clean. Take time-stamped pictures to show the condition in which you left the rental.

Be sure to leave the apartment in the same condition, as it was when you moved in other than normal wear and tear. Settling the issue of damages can be a tiring and lengthy battle. It is your word against the landlords unless you have proof of the condition of the apartment when you moved in. Re-inspect the apartment with the landlord before you vacate. If you agree on what damages, if any, you have caused, have the landlord sign a list. If you disagree, make a separate list of items you disagree upon and have it signed. In this manner, you can prevent unwarranted charging. Again, take pictures and have witnesses inspect your apartment. At best, this will mean you will get the entire deposit back. At worst, you can use the list as evidence in court. If

your lease has the provision that the landlord's inspection will be made after you vacate, insist that it be crossed out and amended to read "at the time tenant vacates." This is so that the tenant does not get stuck paying for damage that the landlord makes after the tenant moves out.

## **Non-refundable Deposits**

Legally and logically a deposit should be refundable. However, many landlords charge non-refundable fees. This may not be legal. Be careful when noting any non-refundable charges in a lease. However, be aware that most judges will support a provision in a lease that charges cleaning fees if you signed off on the lease; their reasoning is that you agreed to these fees up front. Non-refundable deposits are really fees. Fees are supposed to cover what costs the landlord to do something for the tenants. For example an application fee is for the cost of the landlord to do a background check and any other investigations that they might need to do to make sure that the tenant will be a good renter. It is important to watch the fees that the landlord charges because sometimes the landlord will not do any service to earn the fee. For example if the landlord charges a cleaning fee to clean after the tenant moves out, but the tenant has already cleaned when they move out then the landlord does not need to do so and the tenant may be entitled to get the money for the fee back.

## **If You And Your Landlord Disagree**

You have the right to get your deposit back unless your landlord has given you an itemized list of deductions that justifies their withholding all or portions of your deposit. They must provide this itemization within thirty (30) days of the termination of the lease or after you move out, whichever date/event is later. Even when a landlord provides a timely itemization, you may still dispute the landlord's itemization. An owner who in bad faith retains the deposit in violation of the law is liable for a civil penalty of \$250.00 to the tenant. If you think your landlord has wrongfully deducted too much from your deposit then you should write and demand your deposit back from the landlord and dispute the itemization (a sample letter is provided at the end of this handbook). Make sure and let the landlord know where he or she can mail your deposit once you have moved out. If your landlord still won't return your deposit you can take him/her to court (See going to court section).

# **TENANT OBLIGATIONS AND RESPONSIBILITIES**

There are general provisions under the state law, as well as local housing codes, that both you and your landlord are expected to honor. The responsibilities your landlord owes to you are exchanged for the responsibilities you owe to your landlord. The most important obligations owed by a tenant are to pay your rent, keep your rental unit clean and sanitary and do no damage to the rental unit beyond normal wear and tear. Your responsibilities come from the law, the oral or written agreement between you and your landlord, and in some cases, from rules your landlord creates for tenants living in units he or she owns.

When you fail to meet your obligations, your landlord can terminate your lease. If your landlord creates rules about the use of rental facilities you must follow them if they are fair and just. If the landlord changes a rule after you have begun renting from him, then he or she must give you a written notice of the change. If a major change is made after you have become a tenant, it cannot be used against you and again, you must be notified by a written document.

## **Paying Rent**

You must pay your landlord the amount agreed at the time and place that it was agreed. If you and your landlord have not agreed on a time and place, your rent is due on the first day of your rental period at your residence. If your rental period is longer than one month (for example a one (1) year lease) and you pay rent by the month, your rent is due on the first day of the month.

If you have trouble paying rent one month then talk to your landlord and explain the situation. You may be able to work out an alternative way of paying that month back to the landlord. This way the landlord will be less likely to evict you if you show that you are striving to pay your rent and you are doing what you can. An empty unit is bad business for a landlord, and most landlords will be willing to compromise with you.

If you do not pay the rent, the landlord may give you a written notice of nonpayment. If you fail to pay within three (3) days of receiving this notice you may be expected to immediately end the rental agreement and the landlord can request that you move out. This request is not mandatory; only a Court may evict a tenant. For more information see Moving Out, Breaking a Lease, Evictions, and Landlord Liens.

## **Rent Increase**

If the tenant has a written lease covering a specified period of time (for example, a 6 month or a year lease) the landlord may not raise the rent during that period. If a fixed term lease is for more than a month, and the lease automatically renews itself, the landlord must give the tenant notice of a rent increase at least thirty days before the current lease expires.

If the lease allows the tenant to renew by giving notice, the landlord must also give the tenant thirty day's notice of a rent increase on the new lease. If the lease runs out, the landlord cannot raise the rent until s/he gives the tenant 30 days' notice or unless a new lease is signed.

Under a month-to-month rental agreement, a landlord must give thirty days written notice before the increase in rent can be effective. If a rental agreement is week-to-week, the landlord must give seven days' notice before the beginning of the week that the rental increase is to be effective.

All written notices of a rent increase must either be hand delivered to the tenant or mailed to the tenant. Posting the rental increase at the apartment is not enough.

## **Late Fees**

Your lease may allow the landlord to charge a late fee if your rent is not paid on time. Such a fee may not exceed 10% of the total rent payment for each rental period the tenant is at in default. The landlord must provide notice of the late fee in order to collect such a fee.

## **Disposal of Garbage**

You are responsible for disposing of your garbage in a clean and safe way. Your landlord is responsible for providing you with containers and means of disposal if you live in an area that the city does not service. If you live within the city and your unit does not have a garbage container, call city hall and request one. It will be delivered free of charge, usually within three (3) days.

## **Obligation to Allow Landlord Access**

Your landlord may enter your residence without your permission if there is an emergency or if you have previously given your consent in the rental agreement. Most rental agreements have a clause in which you give broad consent of entry by your landlord. Read this clause carefully. If it is not acceptable to you, ask your landlord to change it or take it out. In general, your landlord has the right to enter and inspect the premises, make necessary repairs, decorate, make alterations or improvements, supply necessary or agreed services or to show the rental unit to workers, a possible buyer, a mortgagor (the borrower in a mortgage agreement) or a new tenant. The landlord may not abuse this right of access.

If there is no agreement regarding entry, the landlord must give written notice 24 hours in advance of their intent to enter, purpose for entering, and the date and reasonable estimate of the time frame of entry. A landlord who abuses their right of access can be taken to court and the tenant can recover damages.

You may choose to invite your landlord over when rent is due so he or she can see personally that you are keeping the unit in good condition. This can help your relationship with your landlord, especially if you are a student.

## **Your Responsibilities If You Are Leaving on a Trip**

The rental agreement may obligate you to notify your landlord when you will be leaving your home for extended periods. The landlord can look after the home for prevention of vandalism, fire, freezing pipes etc. Remember to lock the residence, turn off or unplug all appliances, and arrange for your newspaper and mail to be collected (or not delivered). If you are going to be gone during the time rent is due then arrange to pay it early. If you cannot afford to do this then talk to you landlord; often times he or she will agree to allow you to pay rent late if you are out of town.

If you are absent from your residence for seven (7) days without paying your rent and without telling your landlord you will be gone, you have abandoned your residence. Your landlord can then enter your residence and remove and store your belongings. Under some circumstances your landlord can sell your possessions. In general, you will be able to get your residence back after you pay what you owe unless the landlord has already rented out the unit to another person. Once it has been rented out to another person, your agreement is terminated.

## **Obligation to Use Rental as a Residence**

Unless you agree with your landlord that you may use the rental unit for other purposes, you can only use it as a residence, home and sleeping place. You may not use it as a business (e.g., daycare).

## **Obligation to Your Neighbors**

You have a duty not to disturb your neighbor's peace and quiet. This includes disturbances caused by noise, pets and odor. This includes obeying any rules specific to a neighborhood you live in, such as those established by an organization within the area. And don't forget that in a small town your neighbors may very well know your landlord.

Violations and disturbances may result in you being cited by the city codes enforcement or by the police. They will often contact your landlord regarding violations of city ordinances. This can come back to you the next time you rent, as your new landlord will often contact your old one as part of the rental agreement.

## **Failing to Fulfill Your Obligations**

Your landlord can give you a written notice giving you seven (7) days to correct any breach of the rental agreement you may have made. If you do not correct the problem, the landlord may terminate your rental agreement. If you refuse to leave, the landlord may then take you to court and have you evicted. If you correct the problem within seven (7) days, but it reoccurs within six (6) months of having the first notice, then the landlord can terminate the agreement within seven (7) days, with no chance for you to correct the situation.

## **LANDLORD OBLIGATIONS AND RESPONSIBILITIES**

State law requires that the landlord do the following:

1. Substantially comply with the requirements of the applicable minimum housing codes materially affecting health and safety.
2. Make repairs and do whatever is necessary to keep the premises in a safe condition as provided by applicable law and rules and regulations as provided in Section 47-8-23 NMSA 1978
3. Maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, if any, supplied or required to be supplied by him/her
4. Provide and maintain appropriate receptacles and conveniences for the removal of any waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle
5. Supply running water and a reasonable amount of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the resident and supplied by a direct public utility connection.

In general, the landlord is obligated to insure that his tenants are able to enjoy their rental property without improper disturbance from others. Where a neighboring tenant is too noisy, talk to your neighbor and document with your landlord your concerns. Unfortunately, many landlords refuse to involve themselves in tenant-tenant disputes. Where such disputes are significant and materially affect the use and enjoyment of the rental, a tenant can argue that the landlord has breached the lease. As with most matters, proper and accurate documentation is essential, especially if the matter ends up in Court.

## **Sale of the Rental Property**

Normally, a voluntary sale of the leased premises by the landlord will not terminate the lease. The buyer is bound by the same terms and conditions of the lease. The landlord/tenant relationship continues at the same rental rate and for the same period with the buyer merely substituting for the new landlord. If you receive a notice that your property has been turned over to a different landlord, always check with your old landlord before sending your rent payment to someone else. Verify that your deposit is now with the new landlord too. Also be aware that sometimes the owner of a house you are renting may claim this residence as their own for tax reasons or insurance reasons, especially if they live out of state. If this happens, speak with an attorney.

## **Getting Repairs Done**

If you live in a substandard apartment where there is a violation of the local housing code of the New Mexico laws on health and safety then you must decide if you want to move out or stay and get the repairs done. In each case you should take the following steps:

### **Write the Landlord**

The first step is always to inform the landlord by writing and asking the landlord to repair the problem(s). A sample letter is included at the back of this handbook. If the apartment has a manager and an owner, the request letter should be sent to both. The tenant should always keep a copy of any correspondence between them and the landlord or owner. To prove that your landlord received the letter it is best to send it certified mail, return receipt requested or to hand deliver it with a witness.

The letter should clearly state the nature of the problem and that the condition violates the housing code or is a material breach of the rental contract. The tenant should allow a reasonable amount of time for the landlord to reply (seven days) and make the repairs, depending on the seriousness of the repairs needed. If the landlord still will not make the repairs and you want to stay in the residence, New Mexico law provides several remedies to get the landlord to make the repairs needed.

The most important remedy is abatement. This means you can withhold a percentage of your rent payments if your landlord is not keeping up with requested repairs; this does not apply, however to amenities. You must first write to the landlord about the problem requiring repair and your intention to withhold that portion from the rent allowed by statute if the landlord does not fix the problem. If the landlord fails to act within seven (7) days, you can begin to withhold one-third of the pro rata daily rent from the date of the notice until the problem is fixed. The letter will usually be enough incentive for the landlord to make the repair. If the landlord still refuses, you may be able to use that rent money you had not paid and fix the problem yourself. Be sure to keep all receipts.

## **Contact Housing Agencies**

It is important to have an official record of the needed repairs for two reasons:

1. As evidence of the violation in case it is later needed in court.
2. To help prevent retaliation on the part of the landlord for you exercising your rights as a renter.

The best thing to do is write your local housing authority, or in Las Cruces, the Codes Enforcement Division. Describe the problem in the letter and keep a copy yourself. You can find their contact information in the telephone quick list.

## **Changes and Improvements**

The tenant must not make any structural changes to the property, for example, breaking down a wall to enlarge a room without the landlord's express written consent. Neither should the tenant make decorative changes which the landlord may have to undo to rent the property again. If the tenant wants to make such improvements, he/she should get the landlord's consent in writing with a provision that the tenant will not be charged for remodeling the apartment to original condition when it's time to move out.

It is a good idea to check before making any changes to the property, even improvements. It is not unheard of for landlords to raise a tenant's rent after the tenant made improvements to the property on the basis that the property is "now improved" and therefore worth more.

## **Personal Injuries on the Property**

A landlord is responsible for personal injuries to all persons on the premises having the right to be there which are caused by conditions under control of the landlord, due to the landlord's negligence. Generally if a landlord knew or should have known of a dangerous condition which threatened life, health or safety of the occupants but failed to repair it within a reasonable time, the landlord may be found negligent. Whether or not the landlord can be found negligent is a question for a court of law. A tenant who has been injured has the right to bring a lawsuit against the landlord if the tenant believes it is a question of negligence. Remember, a clause in a lease which denies the landlord liability for negligence is illegal.

## Having to End the Lease

New Mexico law provides two (2) ways in which to terminate your lease. One way is by giving written notice to your landlord that if a reasonable attempt to make a repair is not made within seven (7) days after receiving the letter, the lease or rental agreement will be considered terminated by you. This may give the landlord incentive to make the repair. This may be used when the landlord either fails to live up to the health and safety codes or materially fails to live up to the rental agreement. Where a landlord fails to act after notification, a tenant can claim the landlord has breached the lease and move. In such instances, it is recommended that the tenant provide clear notice of their intent to vacate, based upon the landlord's failure to properly act, despite written notice.

The other way is to give your landlord written notice that the lease will be terminated in seven (7) days with no chance to make the repairs to avoid termination of the rental agreement. This is valid only where the landlord has violated New Mexico laws on health and safety, but not for a breach of the rental agreement. Mail your letter to the landlord by certified mail, return receipt requested, or hand deliver it with a witness making sure to keep a copy. When you terminate your rental agreement this way, your landlord is required to return any prepaid rent or deposits that you are due.

## Moving Out

Before the tenant can move out or be asked to move, the following legal notice requirements must be satisfied:

### *Oral Agreements (Periodic Tenancy)*

Oral leases with no specific termination date continue automatically until ended by a written notice from either party. The landlord does not need to give a reason for ending the agreement, but he still must give a written notice. The same goes for the tenant. If the tenant does not give the landlord a written notice, the tenant may be liable for rent after moving out. The tenant should keep copies of all notices and transactions while residing in the unit. The length of notice required depends on how often the tenant pays the rent:

Week-to-week tenancy: notice must be given seven (7) days in advance.

Month-to-month tenancy: notice must be given thirty (30) days in advance.

A written lease that states the tenancy is for a specific term ends automatically at the end of that term. However, notice is still customarily given and such notice is a good idea to make sure the lease is not automatically renewed. Some leases have an automatic renewal clause if a written notice is not given. When terminating your tenancy, provide written notice at least thirty (30) days in advance of moving out.

## **If The Tenant Does Not Give Proper Notice**

The tenant will be liable for damages the landlord suffers because of failure to give proper notice. In a monthly agreement, the tenant can be liable for the next month's rent. In a six (6) month or yearly agreement, the rest of the term may be at stake. However, the landlord must make an honest effort to re-rent the residence. After the apartment is rented the landlord cannot continue to charge you rent. If you fail to write a written notice before moving out, you will most likely lose your deposit as well.

## **Subletting**

If a tenant with a fixed term lease must leave early, he or she could try to arrange a sublet agreement to minimize the risk of being charged for months they are not living at the residence. A sublet is when the original tenant rents out the apartment to someone else. The only time the landlord is likely to allow the tenant to break the lease with no penalty is if the tenant has found a suitable tenant to take his or her place.

If you do not notify the landlord of your sublease agreement and it is required in your lease (it usually is), the new tenant may be evicted immediately. A sublease includes the continued risk of still being responsible for the residence should the new tenant/sub-lease damage the residence. The original tenant and the new tenant/sublease should itemize any existing damages before the sublease begins. The original tenant may consider charging a deposit to guarantee performance.

## **Renewal of a Written Lease**

This applies only to a lease with a fixed termination date. This may be done in one of four (4) ways:

1. Automatically – if the lease contains a clause that allows for this, the lease with the same conditions will renew itself.
2. Written Agreement – a new lease can be signed or an addition to the old lease may be negotiated.
3. Oral Agreement – the landlord and the tenant may orally agree to continue
4. Payment accepted after lease ends – a new month-to-month tenancy is created if the tenant remains and the landlord accepts rent.

## **SUBSTANTIAL VIOLATION OF LEASE OR RULES AND REGULATIONS**

New Mexico law defines as a substantial violation to be a violation of the rental agreement or rules and regulations by the tenant or with the tenant's consent that occurs in the dwelling unit, on the premises, or within 300 feet of the premises, including the following conduct:

1. Possession, use, sale, distribution, or manufacture of a controlled substance excluding misdemeanor possession and use;
2. Unlawful use of a deadly weapon;
3. Unlawful action causing serious physical harm to another person;
4. Sexual assault or sexual molestation of another person;
5. Entry into the dwelling unit or vehicle of another person without that person's permission and with the intent to commit theft or assault;
6. Theft or attempted theft of property of another person by use or threatened use of force; or
7. Intentional or reckless damage to the property in excess of one thousand (1,000) dollars;

A substantial violation by the tenant authorizes the landlord to file an action for possession (eviction).

### **Injunctive Relief and Damages Recovered**

Tenants may also obtain monetary damages because of a landlord's material non-compliance with the rental agreement, or the violation of the health and safety codes. You must go to the Magistrate Court, 110 Calle de Alegria, Las Cruces, NM 88005, and file against your landlord, if you are not able to reach a settlement out of court (see section of going to court). Injunctive relief is when the court orders the landlord to do something. In addition to the injunction, the tenant may be entitled to money for any injury or damage to his or her person or property caused by the landlord's violation. If the landlord willfully fails to live up to his or her obligations, the court may also award you money to cover court and attorney fees. If, as a result of casualty (fire, flood, etc.) the dwelling unit is substantially damaged, the tenant may:

1. Leave the premises and terminate the rental agreement; you must notify the landlord in writing within seven (7) days of vacating and the rental agreement terminates effective the date you vacate the premises.
2. If occupation of the residence is still lawful, you may stay and reduce your rent in proportion to the diminution in the fair rental value of the dwelling unit.

## **Limitations to These Remedies**

If the repairs that are needed are because of something which you, your family or a guest did, or because of negligence on your part, then you cannot terminate your lease, make your landlord pay for the repair, abate rent, or seek injunctive relief or damages. You should also remember that one consequence of trying to enforce your rights is that your landlord might tell you to vacate the unit. However you do not have to move out just because your landlord says you have to. He must give you proper notice and get a court order.

The law provides a prohibition against your landlord retaliating against you if you complain about a violation to the proper agency that deals with such violations or if you are organizing with other tenants. A landlord who retaliates against a tenant by seeking to evict, by increasing rent, or diminishing services, can be sued for damages and the Court can award a civil penalty of twice the monthly rent. The more evidence you possess reflecting retaliation, the stronger your case; this is why it is important to get an inspector's report from the Codes Enforcement Division or other agency, or have proof that the landlord knows you are organizing, if that is the case. Remember, you cannot be in violation of the landlord-tenant law or rental agreement in order to be protected by this part of the statute.

## **EVICCTIONS**

### **Eviction of a Holdover Tenant**

If the tenant fails/refuses to move out after proper notice to vacate, the landlord must file a suit in court. The tenant will then receive a summons with a court date. If the tenant does not appear at the hearing on that date, he/she can be liable for court costs and repossession costs. If the court finds in favor of the landlord, the tenant will likely pay these costs. There are other damages for which the tenant may also be held responsible, such as additional rent if the landlord has already signed a lease with a new tenant who was unable to move in due to the prior tenant's holdover, and who had agreed to pay a higher rent.

### **Eviction for Non-Payment**

If you fail to pay rent, the landlord must first give you a written notice telling you that your tenancy will end in three (3) days if you refuse to pay. The summons for the court hearing date will arrive three (3) days after that. At this point, the tenant should seek legal advice. If the landlord wins at the hearing, the tenant will have to pay the court costs and back rent. Never ignore a summons to appear in court. *This will likely result in a default, or automatic judgment in favor of the landlord.*

## **Eviction for Breaking the Rental Agreement**

If you do not keep your residence clean and safe, if you disturb your neighbors or if you do not follow your rental agreement and other rules made by your landlord, and if the problem you cause is a serious one, your landlord may terminate your rental agreement. To terminate your rental agreement for one of these reasons your landlord must:

1. Give you a written notice.
2. Inform you of how you did not meet your responsibility.
3. Inform you that if the problem is not corrected within seven (7) days of the notice the rental agreement will terminate thereafter.

If you can correct the problem by repair, getting rid of a pet, or taking another action that gets rid of the problem within those seven (7) days, you can stop the termination. If you cannot solve the problem within those seven (7) days, try to work out an agreement with the landlord. If no agreement can be reached, fix what you can so that less money will be taken out of your damage deposit.

Take the rules and regulations that your landlord sets seriously, especially those involving pets, smoking and noise. Many tenants are surprised when their landlord discovers violations from neighbors, police, codes enforcement, or by visiting the property. These can lead to serious consequences, including eviction. Also, remember that your actions affect your roommates, and not just yourself.

## **GOING TO COURT**

### **Filing a Complaint**

The first step is to go to the Magistrate Court and explain your situation to the Magistrate Court clerk. A large amount of cases in the Magistrate Court are landlord/tenant issues. There are several different complaint forms that might be used depending upon the type of problem you have. The clerk will direct you to the appropriate form. Also, ask the clerk if you are required to submit a witness list if you intend to call witnesses to speak on your behalf. If the Clerk can't answer these questions, contact Student Legal Aid on campus.

There will be a service or process fee that will vary according to whom you utilize, a filing fee, and a jury fee, the last of which applies **ONLY** if you specifically requested a jury trial (this is unusual in a landlord/tenant dispute). When you file a complaint, always ask that your landlord repay to you the court costs in addition to other damages that you seek.

In some cases you do not have the right to a jury trial. A jury may be more sympathetic to a tenant than a judge might be, so if you can clearly prove that the landlord is wrong you do not need a jury. If a jury is present then the judge may require more formal procedure, so a lawyer might be helpful. All costs associated with this will be paid back to you if you win your case against the landlord.

When going to court, the person who brings the suit against another person is the plaintiff. The person who is being sued is the defendant.

## **Service of Process**

After your complaint is filed, the clerk will give you four (4) forms:

1. A summons: this document tells the defendant that a suit has been filed
2. A copy of the complaint
3. An answer form: this is where the defendant will tell his or her story and answer to the complaint
4. An affidavit/return of service

Either the sheriff or someone other than yourself must then deliver the summons, complaint and answer form to the landlord. The person who serves these documents is required to return the affidavit of service to the clerk swearing that the summons, the complaint and the answer form have been “served.” The landlord has twenty (20) days in which to answer your complaint. You will receive a copy of the answer and a notification of the trial date in the mail. If the landlord does not appear in court on that date after having been properly served, the Court will try the matter as though the landlord was present. In such instances, the tenant usually prevails, as there is no counter argument presented.

## **Preparing for Trial**

To prepare for trial you should write down a detailed summary of the history of your problem. Collect your rent receipts, lease, copies of notices, letters, housing violation reports, photographs and any other materials you have which support or help explain your side of the story. You will be allowed to call witnesses in your favor at the trial. If a witness refuses to appear upon request, you may have the Court issue a subpoena requiring their appearance. You can also ask the court clerk for a recording of the hearing and be prepared to present your case to the judge and the reasons why you should win.

Some basic rules: Though Magistrate Court has a limited dress code (if any), you should still look presentable. Wear a nice shirt, shoes, and long pants or a skirt. ALWAYS leave your cell phone in the car. Make sure that you do not have anything on you that could be considered a weapon, such as a pocketknife. Finally, address those who work in the court with respect; a judge should always be referred to as “Your Honor.”

## **Your Day in Court**

Magistrate Court is an informal court; it does not usually follow exact procedures or keep a written record of its judgments. As the person (usually called party) who has sued somebody else, you are called the “plaintiff.” The opposing side is the “defendant.” As the plaintiff, you present your case first. Explain your side of the story in a logical way. If you are seeking money from your landlord, be sure to show why you are entitled to the amount you asked for in the complaint. You may show the judge any of the materials you gathered to support your claim. Call your witnesses and ask them the questions you have prepared. The judge may ask you or any of your witnesses’ questions if you have left anything out. The landlord/defendant may also ask questions of your witnesses. When you are finished, the landlord, as the defendant, will present his or her case. You may question the landlord’s witnesses, as may the judge.

The judge or jury will then make a decision. It is important to remember that as the plaintiff you have the burden of proof. This means that you must show why you should win.

You may win all the money that you asked for, only part of it or none of it at all if you lose. If you win, the judge may include court costs in the judgment; again be sure that you ask that these be included in your initial complaint.

## **Judgment**

The court hands down its decision on a judgment form which tells you who wins, who loses, and what the loser must do or pay. If you lose you do have the option of an appeal. If you wish to do this you must do so within a few days; ask the court clerk exactly how many days you have as the number may be different depending on what type of case you are filing. Keep in mind that while you are almost always entitled to at least one appeal, appeals are generally expensive, time-consuming, and will likely require a lawyer. You may also have to file an appeal bond to guarantee payment of the underlying judgment.

If neither side appeals, the judgment must be honored or a writ of execution will be issued by the court instructing the sheriff to carry out the judgment. This may take time, as Magistrate executions are of low priority to the sheriff. You should get the sheriff’s contact information from the court clerk and contact the sheriff frequently to remind him or her of your problem. If nothing has happened within sixty (60) days you should contact the court clerk.

## **When the Landlord Sues You**

Your landlord can take you to court to get you evicted or to get money from you for damages. The process is the same as previously described, only you will receive the summons to come to court (as the defendant). You will also receive an answer form to respond to the chargers made against you. You may also file a counterclaim against the landlord for damages as part of your Answer. If the landlord wins a money judgment against you and you do not pay it, the sheriff can go to your home and pick up personal property to sell for payment of the judgments. This is called execution on the judgment. However, New Mexico law specifically exempts certain property from execution, including one motor vehicle worth \$4,000, clothing, furniture, books, tools of your trade (\$1,500), and up to \$500 worth of other personal property. You must file a Claim of Exemptions to avoid execution. Make sure to not ignore a lawsuit filed by your landlord against you. If you do then the landlord might be rewarded everything they are asking for and you will have to pay. If you do not show up to court you lose your ability to defend yourself.

Do not be afraid of going to court. The system is designed to handle problems just like these, and many people who have never been to court are surprised at how simple the process is. Despite this, most people do not show up when they are summoned to court, and therefore lose the case being brought against them. Don't be one of these people; know your rights as a tenant.

## **THE ASNMSU SUPREME COURT STUDENT LEGAL SERVICES (SLS)**

The Student Legal Services Program (S.L.S.) is a free program to NMSU students provided by ASNMSU. Student Legal Services operates much the same way as a traditional law practice, providing assistance with legal problems most frequently encountered by students. Some of these common problem areas are: family law, debtor-creditor relations, landlord-tenant relations, contracts, personal injury, property damage, and other simple civil or criminal matters.

The scope of the law has become increasingly specialized and many areas of legal concern require specialized training and experience. The volume of clients served by the program also prevents the S.L.S. attorney from becoming a specialist in all areas of law. For those matters involving complex issues or specialized knowledge, the S.L.S. attorney will refer clients to an appropriate specialist from ASNMSU's list of discounted legal services called the Attorney Referral Program. Such areas include, but are not limited to: taxation, patent and copyright law and immigration.

## **How can I make an appointment?**

Currently enrolled students can make an appointment with the Student Legal Aid Attorney, Karl Rysted, by calling us at (575) 646-4419. Because many students use this service, it is suggested that you call several days in advance. You can also walk into the ASNMSU office and schedule an appointment, it is likely that you can be seen the same day. You will need to fill out an intake sheet.

Appointments are for one hour. However, there is no limit on the number of times a student may consult with the attorney.

## **Questions?**

For general questions about the Student Legal Services, or to make an appointment, contact us at (575) 646-4419.

For updated information on this and other topics, visit [studentlegalaid.nmsu.edu](http://studentlegalaid.nmsu.edu)

## MODEL LETTERS

The following pages contain basic templates for letters which you may find helpful while renting.

### Model Letter Asking for Repairs

*(Tenant Name)*

*(Tenant Address)*

City, NM zip code

Date:

Mr. /Ms. *(Landlord Name)*

*(Landlord Address)*

Dear Landlord:

I live in apartment number (#) located at (***address***). This letter is to bring to your attention the following conditions requiring maintenance at my residence.

***(Describe the situation and list what repairs need to be made)***

As required under New Mexico law, this is a written request for you to correct the situation. If no reasonable efforts are made to correct these problems, then I may seek further recourse, including abatement of rent as outlined in Section 47-8-27.1, NMSA, 1978 as amended. Thank you for your attention to these concerns.

Sincerely,

*(Tenant Name)*

## Model Letter Giving Notice of Termination

*(Tenant Name)*

*(Tenant Address)*

City, NM zip code

Date:

Mr. /Ms. *(Landlord Name)*

*(Landlord Address)*

Dear Landlord:

I live in apartment number (#) located at (*address*). I plan to move out of this apartment on (*date of move*). This letter provides you with notice as required by New Mexico law. I will return my keys to you on (*date of move*). I expect the return of my deposit within 30 days of my moving out, as required by New Mexico law. You can forward my deposit to this address:

*(Your new address)*

I would appreciate it if you would inspect my apartment shortly before I move out with me present. Please notify me of a time convenient for you to do so. I will be taking pictures/videos of the apartment to memorialize its condition. Thank you,

Sincerely,

*(Tenant Name)*

## Model Demand Letter

**(for return of your deposit if unpaid within 30 days and no list of damages has been provided to you)**

*(Tenant Name)*

*(Tenant Address)*

City, NM zip code

Date:

Mr. /Ms. *(Landlord Name)*

*(Landlord Address)*

Dear Landlord:

On *(date of move)*, I vacated the apartment (#) at *(address)*. I also left you my forwarding address.

At that time, my rent was paid up and when I moved out I left the apartment as clean as it was when I moved in. There was no physical damage to the apartment beyond normal wear and tear.

The New Mexico Owner-Resident Relations Act requires landlords to return deposits or else supply the tenant a written list of repairs within 30 days after the tenant moves out. You have failed to do this.

If my deposit is not returned promptly, I will consider taking appropriate legal action.

Sincerely,

*(Tenant Name)*

# Miscellaneous Agreement Forms

## Release Agreement

This agreement is between (*tenant*) of (*address*). In consideration of (*amount*), landlord agrees to cancel the lease of tenant and agrees to return the tenant's damage deposit in the amount of (*amount*).

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Landlord	Date	Tenant	Date
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## Sublet Agreement

Definitions: Sublettor- Original tenant  
Subleasee- New tenant

It is mutually agreed on this (*day*) if (*month*), (*year*), by (*sublettor*) and (*subleasee*) and (*landlord or agent*) that the lease described below shall be assigned to (*subleasee*). Subleasee hereby acknowledges receiving a copy of the lease and agrees to be bound by the terms of the lease, effective (*date to begin*).

Choose between clause A or B. A and C usually go together and B and D usually go together.

- A. The sublettor is not liable for the terms of the lease and is relieved of any further responsibilities to the lease, effective (*date to begin*).
- B. The sublettor remains liable for the terms of the lease.

Choose between C and D.

- C. Subleasee agrees to pay sublettor (*amount*) security deposit. The landlord acknowledges the transfer of the security deposit and agrees to return the security deposit to the subleasee upon expiration of the lease if there are no damages to the rental unit.
- D. The security deposit of the sublettor will remain in the landlord's possession until the expiration of the lease.

Description of the premises:

Address of the rental unit:

Term of the lease being assigned (*starting date*) to (*ending date*). The date the lease was signed (*date of lease signing*).

Approved by:

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Landlord/Rental Agent

---

Date

# CHECKLIST

## *Living Room*

	# OF ITEMS	DIRTY	DAMAGED	COMMENTS
FLOOR				
WALLS/CEILING				
DOORS				
LIGHT FIXTURES				
CURTAINS				
WOODWORK				
WINDOWS				
CARPET/RUGS				
FURNISHINGS				
CABINETS				
OTHER				

## *Halls & Stairway*

	# OF ITEMS	DIRTY	DAMAGED	COMMENTS
FLOOR				
WALLS/CEILING				
DOORS				
LIGHT FIXTURES				
CURTAINS				
WOODWORK				
WINDOWS				
CARPET/RUGS				
CABINETS				
OTHER				

## *Kitchen*

	# OF ITEMS	DIRTY	DAMAGED	COMMENTS
FLOOR				
WALLS/CEILING				
DOORS				
LIGHT FIXTURES				
CURTAINS				
WOODWORK				
WINDOWS				
CARPET/RUGS				
FURNISHINGS				
CABINETS				
STOVETOP & OVEN				
FAN				
REFRIGERATOR				
SINKS & DRAINS				
GARBAGE DISPOSAL				
DISHWASHER				
OTHER				

## *Dining Room*

	# OF ITEMS	DIRTY	DAMAGED	COMMENTS
FLOOR				
WALLS/CEILING				
DOORS				
LIGHT FIXTURES				
CURTAINS				
WOODWORK				
WINDOWS				
CARPET/RUGS				
FURNISHINGS				
CABINETS				
OTHER				

***Bedroom I***

	# OF ITEMS	DIRTY	DAMAGED	COMMENTS
FLOOR				
WALLS/CEILING				
DOORS				
LIGHT FIXTURES				
CURTAINS				
WOODWORK				
WINDOWS				
CARPET/RUGS				
FURNISHINGS				
CLOSET(S)				
BED FRAME(S)				
MATTRESS				
CEILING FAN(S)				
OTHER				

***Bedroom II***

	# OF ITEMS	DIRTY	DAMAGED	COMMENTS
FLOOR				
WALLS/CEILING				
DOORS				
LIGHT FIXTURES				
CURTAINS				
WOODWORK				
WINDOWS				
CARPET/RUGS				
FURNISHINGS				
CLOSET(S)				
BED FRAME(S)				
MATTRESS				
CEILING FAN(S)				
OTHER				

***Bathroom I***

	# OF ITEMS	DIRTY	DAMAGED	COMMENTS
FLOOR				
WALLS/CEILING				
DOORS				
LIGHT FIXTURES				
CURTAINS				
WOODWORK				
WINDOWS				
CARPET/RUGS				
CABINETS				
COUNTERTOPS				
FAUCET(S)				
MIRROR(S)				
TOWEL RACK				
SINKS & DRAINS				
OTHER				

## *Bathroom II*

	# OF ITEMS	DIRTY	DAMAGED	COMMENTS
FLOOR				
WALLS/CEILING				
DOORS				
LIGHT FIXTURES				
CURTAINS				
WOODWORK				
WINDOWS				
CARPET/RUGS				
CABINETS				
COUNTERTOPS				
FAUCET(S)				
MIRROR(S)				
TOWEL RACK				
SINKS & DRAINS				
OTHER				

*Exterior*

	# OF ITEMS	DIRTY	DAMAGED	COMMENTS
FRONT YARD				
BACK YARD				
OUTDOOR WALLS				
RAILINGS				
GATES & LOCK(S)				
FENCE(S)				
ROOF				
WINDOW SCREENS				
ENTRANCE DOOR				
PORCH(ES)				
MAILBOX & KEY(S)				
DOOR LOCKS				
OTHER				
OTHER				
OTHER				

# NOTES

## QUICK TIPS

- Make sure contract between landlord and tenant is clear on all points, and you have a copy.
- Take before pictures the moment you receive the keys, and once everything has been removed from space.
- Receive receipts for all transactions with the landlord. Keep these handy in a folder.
- Pay rent on time or speak with landlord BEFORE rent is due.
- Make sure landlord knows everyone who lives with you.
- Keep up relationship with landlord during stay. Your reputation with them will go a long way in case problems do arise. Chances are, they don't want problems any more than you do.
- Be smart about renting, and think about the fact that a rental is just that, a rental, and not your own property.

If problems do arise that require a lawyer, check with Student Legal Aid for lawyers that are willing to work with and give discounts to students.

## FURTHER RESOURCES

### **Cornell Legal Information Institute: Landlord-Tenant Law**

[http://www.law.cornell.edu/wex/landlord-tenant\\_law](http://www.law.cornell.edu/wex/landlord-tenant_law)

### **“Law Help” New Mexico**

<http://www.lawhelpnewmexico.org/content/new-mexico-renters-guide-english>