



**BOXWELL REAL ESTATE
PROPERTY MANAGEMENT**

**Property
Owner's
Handbook
For Residential Rental Property**

Used in conjunction with the Exclusive Leasing and Management Agreement

Welcome to BRE Property Management!

Our goal is to make your association with our company a pleasant experience and our hope is that you will consider Boxwell Real Estate, Inc Property Management for all of your real estate needs.

It is our belief that a description of our services and procedures in which you can use as a reference after your property management agreement is signed will simplify our business relationship. We have developed this Property Owner's Handbook to enhance the communication between you and your property manager and to detail some of the responsibilities of BRE Property Management as we take on the management of your investment property. If you understand the process, we can better serve your needs. This Property Owner's Handbook is designed to familiarize you with our administrative process.

The contractual relationship between you and BRE Property Management is defined by a written agreement. You should refer to your individual Property Management Agreement for terms and conditions and for actual fees for services rendered.

If this Booklet does not provide the answers you need, we are available to answer your questions or to address your concerns. Procedures in this handbook are subject to change as we grow and develop our services. You may not receive notice of such change or deletions.

A Company Overview

Boxwell Real Estate is a locally owned and operated company with over 25 years of combined real estate and property management experience. We offer a full range of real estate services while maintaining the highest degree of professional and ethical standards. Boxwell Real Estate is committed to excellence in all phases of real estate and we look forward to the future with great expectations.

Boxwell Real Estate Property Management

Personal relationships, experience and expertise.

- Knowledge of local markets.
- Competent, licensed and insured vendors for repairs and maintenance.
- Fair market rates for appliance, heat and air conditioner repair and general repairs.
- Our accounting is processed locally and each property manager is trained on their properties, no third party accounting layer to have your questions answered.
- Online Owner Statements monthly detailing income/expenses.
- Owner documents and invoices available online.
- Automated Funds Transfers provided
- Notification to owners of rental status monthly
- Prompt rent collection action with legally required notices.
- Annual Income and Expense report with IRS form 1099
- Our Property Managers are professional full associates and or broker associates.
- Internet exposure to over 200 sites
- Training and legal update sessions for property managers and rental associates.
- Photo and video service available to record property condition.
- Inventory services available.
- Lease renewal negotiations to keep rent in line with market rates.
- NC Commission approved leases.
- Access to legal advice during the lease term. (Some restrictions apply)
- Tenant Emergencies handled by property managers, and or Supervisors.
- Tenant screening: Credit, Eviction and Civil Records, Criminal check & Income Verification.
- Full compliance with state and local landlord/tenant laws.
- Full compliance with Fair Housing laws and regulations.
- Full Compliance with Fair Credit Reporting Law.
- Full Compliance with Lead Paint Disclosure on all properties built prior to 1978.
- Full Compliance with local Disclosure requirements such as superfund sites.
- FREE - no obligation investment property consultation.
- FREE - no obligation, sales market analysis

Frequently Asked Questions

Preparing the Property for Showing and Occupancy

Question: If I turn over my vacant property to Boxwell Real Estate to lease, will you order any repairs/painting and/or cleaning that may need to be done to get the property rent ready?

We will review with you the preparation needs of your rental property. If your property is in "rent ready" condition when you turn it over to us and nothing needs to be repaired, replaced or cleaned, we do not charge you any additional fees.

If you elect to have us oversee the preparation of the property before showings and new tenants, there is a charge for this service as outlined in your management agreement.

All roofing, major plumbing, air conditioning, heating, appliances and electrical repairs will be performed by licensed vendors. All vendors will be hired in your name and you will be obligated for all charges incurred.

Question: Can I let the tenant do the work that is needed at the property and take it off of the rent?

There can be a liability issue if tenants are injured while doing work authorized by you on your premises. We DO NOT recommend that a landlord give any concessions for reduced rent or purchase supplies for a tenant to do property repairs or decorating.

The physical condition of the property is the single most important factor in attracting quality tenants. Only vendors of good reputation and credentials should do property preparations. All properties offered for lease must comply with all applicable laws, regulations and codes.

Properties that are not in "rent ready" condition cause a loss of prospective tenants. They simply go down the street to another unit that is "rent ready" causing you to wait longer for income. A property that is in "rent ready" condition when we begin to market it for rent attracts a quality tenant that will cause less wear and tear on your unit, pay premium rents, stay longer and present fewer problems.

Tenants will promise you anything at the beginning of a lease to get a deep discount, but rarely do they do a professional job. At the end of the lease if there is a security deposit claim, tenants remember only the work they had to do and not that you gave them a break. If you waive any portion of the deposit or advance rent (which we don't recommend) then you don't have financial protection from the tenant, should the tenant decide to vacate early and not fulfill his contractual obligation to you. Trusting a new tenant to prepare your property after they lease it will cost you more in the long run.

Question: How will you handle property preparation between tenants?

If we have your property under an annual management agreement and a tenant vacates, we inspect the premises and get the property in "rent ready" condition ASAP!

We will consult with you on items that exceed \$300.00 or unless another amount has been agreed upon. Routine repairs items are ordered and done quickly, to allow for good quality showings. Since normal wear and tear is a consideration, not all repairs and preparation can be covered by the security deposit, as it is an owner's expense. We are in communication with the tenants 120 days from their lease termination and can increase your owner reserves gradually to cover any costs that may be unexpected if needed. Keeping your property in "rent ready" condition and maintaining your property while tenants occupy it is an essential requirement for us to continue managing your property. We reserve the right to cancel our agreement if we believe you are not willing or cooperating to keep your property properly maintained.

Question: Who is responsible for changes and maintenance of locks and keys?

Upon execution of the property management agreement you will be asked to provide 3 sets of keys at your expense for each door lock, plus security and pool keys, garage door openers, gate cards and security passes, if any. We use coded lock boxes and a key checkout system to allow access to cooperating real estate brokers, tenants and property managers to show the property and for vendors needing to accomplish work on the property. Tenants are responsible if they damage or lose those keys during tenancy.

We will change locks at the end of each tenancy and right before new tenants move in for the protection of future tenants and to protect you from liability. The cost for such change will be at Owner's expense, which is offset by a re-keying fee if charged to tenants as part of the lease agreement.

Marketing the Rental Property

Question: What will Boxwell Real Estate do to advertise my rental property?

Once your property is in rent-ready condition we will do the following:

We will place the property in the local multiple listing service ("MLS") (if available), which uploads to 200 other websites automatically

- We will place appropriate signs on the Property and remove all other signs.
- We will place your property on Boxwell Real Estate website which uploads to hundreds of other websites automatically through our property management software.
- We can advertise the property in newspapers and other print advertising sources at owner expense.
- We provide network connections with other Realtors through local board and affiliates.
- Being local and having the reputation we do, other agents and previous clients refer business to us on a consistent basis.
- Our associates also send associate to associate referrals of prospective tenants.
- If agreed to in your management contract, we will place a lock box on the door to allow for easy showings by multiple associates and other licensed brokerages.

Tenant Approval Process

Question: How do you decide if a tenant should be approved for residency?

All lease holding adult residents 18 years of age or older are required to complete a residency application and pay an application fee for verification of credit references and criminal and civil background checks. Photo identification (typically a driver's license, sometimes a passport) is required from each applicant. We are consistent with qualifying each prospective tenant and therefore have qualified tenants throughout the tenancy. Additional criteria include, but is not limited to the following:

- Applicants have a combined gross income of 3 times monthly rent
- Credit background must not reveal eviction filings, collection liens
- Self-employed applicants may be required to produce two (2) years of tax returns
- All sources of income must be verifiable. If the income is not verifiable, additional advance funds and/or a guarantor will be considered.
- Criminal records must not contain any felony convictions. Adjudication withheld or misdemeanors pertaining to offenses regarding illegal drugs or crimes against persons or property.
- Any exceptions to the criteria required by Boxwell Real Estate will be submitted to the owner for the owner's consideration. We may ask for additional security and/or advance rent. Sometimes for people without any credit history, or people from out of the country, we ask for a co-signer who must also go through the application process.
- The verification report may not provide information from all jurisdictions within the U.S. and does not provide information from jurisdictions outside the U.S. Boxwell Real Estate does not warrant the completeness or accuracy of the reporting agencies.

Question: Who gives the final approval for a tenant?

The property management supervisor or the broker in charge will give final approval after reviewing all information and will sign the lease on your behalf according to your property management agreement. We have residency criteria for the tenant application that is listed on our printed information for tenant's accessibility. We obtain increased amounts of monies up front if there are credit or past rental issues.

NON-DISCRIMINATION

We offer all rental property in accordance with the **CIVIL RIGHTS ACT OF 1968, TITLE VIII FAIR HOUSING**, and any amendments thereto, which provides that it shall be unlawful to refuse to rent after making a bona fide offer, or refuse to negotiate for the rental of or otherwise make unavailable or deny a dwelling to a person because of race, color, age, religion, sex, national origin, familial status or disability.

LONG-TERM RENT COLLECTION PROCESS

Question: How will Boxwell Real Estate collect the tenant's rent?

We will make every reasonable effort to collect the rents according to the terms and conditions of the lease. We will also deliver the required "Three-day Notice", which is mailed to the rental unit when the tenant's rent has not been received by the 5th of the month. This notice delivery is the beginning of the eviction process.

The property management agreement gives us full authority to collect rents and deposit and hold all funds received on your behalf as escrow agent. We will disburse monthly rent proceeds when the tenant's rent check clears our bank account. We disburse security funds according to Chapter 42 North Carolina Statutes.

Boxwell Real Estate is not liable in the event the tenant presents bad checks or fails to pay. Additionally, Boxwell Real Estate does not guarantee the payment of rents, deposits or any other sums by tenants. The tenant guarantees those payments by executing the lease. There are legal remedies available which will incur additional legal expense for attorney fees and court costs. These fees will be charged back to the tenant. Note: these fees may not be all paid by the security deposit and will rest on the owner to pay any fees in excess of the security deposit.

The lease makes provisions for Boxwell Real Estate to charge the tenant for bad check processing, credit reports, pet application fees, late fees, administrative fees and such other matters as may be necessary to enforce the tenants' compliance with the lease. Boxwell Real Estate makes every attempt to collect those charges from the tenant so that we do not have to look to the owner to pay for the notice and enforcement process.

Late fees on your mortgage and association payments are not the responsibility of Boxwell Real Estate. Our company will not make any mortgage, escrow, insurance, tax, etc payment on behalf.

We encourage owners to not solely depend on the rental proceeds for your mortgage payments. The tenants may be late, not pay, give notice or skip and the security deposit minus any repairs, late fees or legal fees may be enough to cover the mortgage.

Tenant/Landlord Lease Compliance

Question: Do I need to give the tenant my phone number and address?

Although your name, as owner, will appear on the lease your address and phone number will not. The tenants are instructed to call their property manager. **We ask that you do not give your phone number to your tenants. Having one line of communication minimizes the potential for misunderstandings with tenants.** The relationship with a tenant is a business relationship and contact with the tenant directly without the property manager's presence is unwise. Tenants will always try to circumvent the system if they believe they can call and persuade an owner into getting more concessions than their property manager is willing to give.

We will handle all Tenant requests and negotiations that may arise from time to time. We will call you only if we need your opinion on an issue that is not clear or on a repair that exceeds your reserve amount. If a tenant does contact you, please refer them specifically to your property manager or our office in general so we can best protect your interests as a landlord.

You do not have to comply with all tenant requests. Some are merely matters of decorative taste, but those relating to appliance repairs, heat and air, and any structural defects that create a health or safety issue, we must take care of it immediately due to government code requirements. Prompt and experienced handling of repairs protects you from landlord liability.

Question: What if the tenant leaves earlier than the lease expiration?

Under the terms and conditions of the real estate commission prepared lease, you may receive payment for months of vacancy after a tenant leaves early until a new tenant starts paying rent if the tenant breaks his lease without notice. If the tenant gives 30 days' notice prior to vacating early, we must follow the security deposit claim procedure of Chapter 42, North Carolina Statutes. Any dispute of such claim by the tenant will be handled through the proper legal process.

You may elect to sue the tenant in small claims court for any damage above the amount of security deposit and for any months of vacancy suffered because of the early termination. However, a lot of times it has been our experience that landlords do not fare well in court against a tenant who leaves due to a certain hardship. Even if the landlord is lucky enough to get a judgment, the tenant rarely has any assets to satisfy an unpaid judgment. State law prohibits the collection of double rents, so that if we re-rent the unit, then the tenant only has the liability for vacant months and any penalty payments specified in the lease.

We attempt to negotiate a satisfactory resolution for everyone involved, which is why tenant relations is such an important part of our property management process.

In the event the tenant is military, as long as they receive military orders we must honor those orders. Even if the tenant is still in a lease agreement the military orders cancel out the lease and the tenant is not in breach of the lease.

Question: What if I want to see the property with the tenant in the unit?

You will need to contact your property manager so that appropriate notice can be served to the tenant of the inspection. We must give 24-48 hours written notice. We strongly recommend that you do not meet with the tenant without your property manager present. Tenants frequently interpret such a visit to be an indication that the landlord wishes to deal directly with the tenant and not through the property manager. Some tenants will take advantage of this situation, if the event occurs, to ask you for items they think you will approve that your property manager may not.

In the event a visit with the tenant occurs without your property manager, any items agreed upon during a landlord visit should be in writing and each should have a reasonable time frame for accomplishment included. If improvements are needed to the property, do not make promises to the tenant until you have had a chance to discuss estimates for work with your property manager. You may find that the cost for such items is higher than you thought and then if you don't proceed with the work, the tenant becomes unhappy and difficult to satisfy.

Please do not give your phone numbers to a tenant or you may get calls you are unable to handle or do not want.

Security Deposit and Last Month Rent

Question: Who will hold the tenant's last month's rent and security deposit?

Boxwell Real Estate will hold all security deposits and advance rent in an escrow account set up for our Owners in accordance with chapter 42, North Carolina Statutes on all managed properties.

Question: Can the security deposit be used for anything other than damages, and may I be present at the move-out inspection?

A security deposit can be used for cleaning, damages and unpaid tenant charges such as late fees, tenant repair responsibilities, utility charges or missing items. The tenant's Security deposit must be returned within 30-60 days regardless. If a claim is made against the tenant's security deposit, it must be made within 30-60 days of vacancy. Unless you instruct us in writing within 24 hours of the vacancy of your intent to view the property before the prescribed 30-60 day claim period ends, a move-out inspection will be done and your property manager will obtain vendor estimates and determine what claims need to be made. Decisions of your property manager are final and Boxwell Real Estate shall not be held liable for any failure to make claim(s) on any damages, which were not readily apparent to your property manager at time of the move-out inspection. Any unclaimed funds (security deposit refunds) will be returned to the tenant within the prescribed claim period. Boxwell Real Estate will arrange to have utilities turned on at owner's expense to be able to show or make repairs as needed until a new tenant moves into the property.

Question: May I claim the vendor's estimate and then do the work myself?

Certainly you may work on your unit, but Chapter 42 NC. Statutes gives tenants the right to see the actual paid invoices for materials and labor. Your labor is not a billable item for a security claim. Therefore, if you end up in court on a security deposit dispute and the judge rules that you owe even one dollar back to the tenant, the tenant may be the prevailing party and the legal costs of the case will be charged to you.

Repairs and Maintenance

Question: Who does my tenant call if there are repairs needed on my property?

The tenant can call our office and speak to the property manager or complete the preferred on-line maintenance request located on our web page. The tenant should never be contacting you directly for repairs/maintenance requests. You have hired us to run interference between you and your tenant, PLEASE let us do our job. (If you have notified our office that you have a preferred vendor note we will use that vendor).

Question: What if there is an emergency request after business hours or on a weekend?

Our property managers are available through cell phones, text messages and voice mail. Tenants are given instructions at the time of move-in for cases of emergencies. Only true emergencies will be handled after hours and on weekends to save you overtime charges from vendors.

Question: Who will be responsible for ordering repairs to my rental unit?

If a repair is a true emergency (water leaking, flood, septic/sewer back up, no running water, no hot water, electrical hazard, refrigerator failure, air conditioner or heat failure or some other condition which threatens the safety or health of your tenant), we will order a vendor to fix the problem as quickly as possible. Your property manager will attempt to notify you, but you may not know of the repair until your monthly statement arrives.

If a non-emergency repair exceeds \$300.00 or the amount of money that we have agreed upon in the property management agreement for your property, then the property manager will contact you to determine what steps you wish to take to correct the deficiency in the unit. As Owner, you give Boxwell Real Estate the right to authorize access as necessary to your property to make repairs and to protect the property and the tenant's rights.

There may be times when the initial repairs appear to be within the \$300 allowable expenditure. But the actual amount may exceed due to unforeseen items related to the repair. We will work to keep you abreast of all repair items.

Question: How will I pay for repairs and services ordered on my rental unit?

We encourage owners to maintain an operating reserve account with Boxwell Real Estate for repairs and recurring maintenance expenses such as pool, lawn, and extermination. This is normally \$300 but in no way does that limit Boxwell Real Estate expenditure to that amount if the cost to maintain the property exceeds that amount. If you choose to have reserve account that balance will be replenished from rental proceeds or we will contact you for funds as needed. If you choose not to have a reserve fund all invoices will be paid from your rental proceeds before any funds are disbursed. We strongly encourage you to begin a reserve fund. This fund can be held in an escrow account and you can add funds until the \$300 is reached. By having this account, you do not have to worry about your rental proceeds being touched when repairs are needed.

As your property manager, Boxwell Real Estate shall have full authority to have repairs made, to purchase necessary supplies, to hire and discharge on your behalf (unless otherwise informed) any and all vendors necessary to the maintenance and operation of the property and to pay all bills and charge your operating account accordingly. Any vendors hired to make repairs or improvements shall not be deemed employees of Boxwell Real Estate and Boxwell Real Estate shall not be responsible for their acts or omissions. On occasion our in house maintenance department may complete repairs. The owner of Boxwell Real Estate has an interest in this company.

Accounting will mail or direct deposit rental proceeds less any deductions for repairs once the rental proceeds have been paid and cleared the bank each month. At the end of each month, you can access a full accounting statement showing all transactions during the month through the owner's portal on our web page at www.promascentral.com. In January of each year you will receive a full year to date statement and your IRS income report form (1099 for U.S. citizens or 1042S for non-resident aliens) showing your total gross income.

Vendor invoices are available, but as a general rule are not included in your statements. The IRS may require copies of such invoices if you are ever audited, but your statements of income and expenses are sufficient for your tax accountant to complete your tax return.

Question: What happens if I go on vacation or you can't reach me?

In the event you cannot be contacted, when repairs are necessary, we will take whatever action an owner of reasonable prudence and concern would be expected to undertake for the protection of the owner's property and/or for the fulfillment of the owner's legal obligation to the tenant. Messages will be left by phone, email or regular mail with information about the problem we needed to handle in your absence.

Question: What if you can't reach me and I don't have any funds in my account?

We will try to make arrangements with vendors who will wait 30 days for payment or until we can replenish from the tenant's rent. However, if you do not make the payment in a timely manner, the vendor may place a lien on your property.

Question: In what order are my bills paid from the operating account?

We pay your rental expenses in the following order: leasing and management fees, utility, vendor bills, and association fees. This is why it is encouraged for you to have a reserve account.

Question: What if I have a service contract/Warranty on my property/appliances?

You are responsible for delivering us copies of any Service Contract or Warranty that exists, within 5 business days of signing the property management agreement. If we don't receive copies during that time, we will assume none exist. If you should purchase a service contract at any time during the term of the property management agreement, you must notify us immediately in writing and send a copy. Please know that repair or maintenance warranties are not always the most cost effective and your property manager should always be consulted if you are considering in purchasing one. (Note warranty companies do not handle emergency or afterhours calls.)

Question: In the event of a hurricane will Boxwell Real Estate put up my shutters?

The short answer is No, as we are not responsible for preparation of property or installation of shutters or securing the property in case of natural disaster or Acts of God. We can however, recommend vendors that can assist you in making arrangements in advance with a professional in this type of disaster or emergency.

Question: Do you have any limit of an amount you can spend on my behalf?

We will not spend more than \$300 without your consent. Additionally, even with your consent, we cannot, by law, order any services that exceed \$5,000. If such an expense is required, we will put you in contact with a licensed contractor suited for the type of work necessary. We can assist in monitoring the significant costly work.

Question: Who is responsible for items that are taken or are damaged?

If your unit is furnished, it is your responsibility to provide us with a complete written inventory of personal items and furnishings. This also includes items left in unfurnished units like washer/dryer, ceiling fans, pool equipment, yard equipment etc. If you do not have a written inventory, there will be a charge for your property manager to complete an inventory. A copy of such inventory may be provided to the tenants. Boxwell Real Estate is not responsible for damage to the premises, missing, lost or damaged items or furnishings under any circumstances, including but not limited to, theft, switching out of items, vandalism or negligence of tenant(s), their guests or third parties. Boxwell Real Estate is not responsible for personal items left in the property such as curtain rods, lawn mowers, paint, tools, curtains, surround sound, pools, pools equipment, toys, dog kennels or furniture.

Additional Owner Responsibilities

Question: Will I have special requirements for any insurance policies?

Yes. You are required to maintain, at your expense, a rental dwelling insurance policy which includes public liability and compensation insurance in an amount not less than \$100,000.00 per person and \$300,000.00 per occurrence to protect the interests of Boxwell Real Estate the same manner and to the same extent as it does the owner.

The responsibility to obtain and maintain the proper insurance rests solely with you. You agree to indemnify Boxwell Real Estate for any damages suffered as a result of any lapse in or failure by you to maintain insurance coverage.

Question: What about taxes or assessments that I may owe?

Boxwell Real Estate will not pay monies owed to any governmental authority, condominium or homeowners association. The obligation to pay those expenses will be solely on the home owner. If we manage a property that is in a home owners association, we manage we can make arrangements for those funds to be held in that instance only.

Question: Must I maintain the condition of the property to any specific standard?

All heating, cooling, plumbing, electrical systems and all appliances must be kept in good working condition. The Owner is responsible for the cost of maintenance of these items during the lease unless it can be shown that the need for repair was caused by tenant negligence. Unless otherwise exempted from Owner repair responsibilities, all appliances (including washer and dryers) and mechanical devices must be repaired or replaced as they become inoperable. Examples: Garage door openers, pool equipment, spa equipment, etc.

The roof must be maintained as watertight and ensure that water does not enter living areas either from rain or subterranean sources during the term of your management agreement and any lease in effect during that period. Doors and windows must work and have no broken glass. Windows must have screens. You must maintain the property in good habitable condition and in compliance with all applicable laws, ordinances and regulations.

Question: When do I have to give written notice to my property manager?

You will need to notify your property manager in writing if any of the following occur:

- Your mailing address and/or telephone numbers change.
- Your home owners association changes its rules or its management company.
- If your home owners association fee changes to avoid errors in payment.
- Your home owners association has notified you of a need to gain access to the interior of your unit.
- Your bank information, where funds are being deposited, changes or account number.
- You receive a notice from any government agency that affects your property or your tenants lease rights.

You may phone in changes, but the accuracy of our records is important and written notice is preferred. E-mail can be used but a follow-up letter is recommended, as e-mail sometimes does not go through to its proper destination.

ASSOCIATION FEES AND RULES

Question: How do you work with my homeowner or condo association?

If the rental unit is a condominium or is governed by a Homeowner's Association, any lease negotiated shall be subject to the Association Rules and Regulations. As the owner of the property you agree to pay all federal, state or local taxes or assessments that are due or may become due. You will be required to provide Boxwell Real Estate with home owners association application forms and a copy of the Rules and Regulations.

As owner of the property you are responsible for any monthly maintenance or recreation fees and to keep them current. In the event that your tenant(s) fails to comply with the rules and regulations of your association, the association may force you to evict them and/or may hold you liable for fines, fees or assessments from the homeowner's association. If you receive notices from your association regarding the condition of your property or your tenant's failure to comply with community regulations, please forward to your property manager so that appropriate action may be taken

If Boxwell Real Estate is notified of such failure to comply, your property manager will deliver the appropriate legal notice to your tenant. If the tenant resists taking corrective action, an attorney will need to be consulted for further action.

MORTGAGE PAYMENTS

Question: Who will pay for my Mortgage payment and when will it be paid?

As owner of the property you are responsible for paying any mortgage, condominium, maintenance fees, taxes, insurance and charges related to your property. Boxwell Real Estate is not held liable for payments not paid by the home owner.

IRS Withholding Requirements and Local Tax and Registration Requirements

US citizens may provide a Tax ID number with a US physical address or a citizenship statement and W -9 to be exempt from IRS withholding tax.

Non-US citizens (non-resident aliens) may provide a signed form W8-EIC with their U.S. tax ID number, but are advised to seek the advice of a tax professional before signing IRS form W8-EIC which states that the signer is exempt from U.S. tax withholding because their rental property is a business.

All income will be reported to the IRS by form 1099 for U.S. citizens or form 1042S for nonresident aliens. Without the proper owner tax information, our accounting department will have two options: (1) hold all owner funds in escrow for a period not to exceed 3 months waiting for the withholding exemption paperwork; or (2) release funds to owner after paying 31 % withholding tax to IRS until withholding exemption paperwork is complete and submitted to accounting

Question: Do I have to have any type of license to rent my property?

Some local jurisdictions require that you have a real estate license before renting anyone else's property. It is your sole responsibility to check with your city and county regulatory agencies for their direction as the responsibility to obtain any required licenses rest with you.

Boxwell Real Estate Management Fees

Question: What are leasing and renewal fees and when are they due?

When we procure a qualified tenant and all advance funds are collected, we will debit your owner operating account for the initial leasing commission. (Please refer to your Agreement)

If a tenant does not renew the lease on an annual basis it will automatically rollover on a month to month lease.

Approximately 120 days prior to the lease end date your property manager writes your tenant to determine what their intentions are regarding a new lease term. We need to determine the length of any renewal, any changes needed in the terms of the lease, and what increase, if any, in market rent may be requested.

Question: What does my management fee cover?

The rent collection process, paying of related vendor expenses, and an account statement available on our website showing all of your income and expenses in an organized report form.

At the end of the year we provide a mailed annual statement of income and expense, along with the IRS required 1099 or 1042S form whichever applies to your citizenship status. Your property manager and associated support staff stand ready to serve both routine and emergency needs for your tenants. They handle emergencies as they occur and routine matters are handled during normal business hours. This includes coordinating vendor appointments and obtaining estimates for property expenses greater than \$300.00. Routine move-in and move-out inspections are done as a written record for tenant security issues. Tri-annual property condition inspections with pictures are done. **Requests can be made for comparative market value of your managed property at no additional charge.**

Question: What if the property manager assigned to my account leaves Boxwell Real Estate

In this ever changing economy and sometimes unforeseen change can happen during your relationship with Boxwell Real Estate. For whatever reason, your original property manager may not always be there to serve you. While the Broker prefers to contact you on an individual basis, it may not always be possible. If a change should occur or becomes necessary, we take the following steps:

1. Notify owners and tenants by letter of the newly assigned property manager.
2. New qualified Property Manager reviews the file and, if necessary, inspects the property.

At any time during a change period, please feel free to call us. Our main objective is to give you continuous professional service.

Question: What if my property is vacant? Do I still incur a full management fee per month?

No. For any vacancy period other than initial vacancy period at time of listing, you will receive a \$125.00 vacancy fee per month. Other fees may include supervision of repairs if we receive the property and it needs repairs, eviction if the property has a current tenant and we need to evict, etc. Please note the \$125 will be charged until the repairs are completed and supervision is no longer needed or the eviction is complete. Large repair supervision fee is based upon the size and scope of work with a minimum of \$125 project cost.

Question: What if I change my mind and don't want to rent the property after I have signed the management contract?

We do have a cancellation fee policy in your contract to allow for unexpected circumstances before a tenant is secured. After we have secured a tenant you will owe management fees for the full term of that tenancy (lease), plus lease and renewal commissions for the duration of that tenancy.

Question: What if I want to sell the property with the tenant in the unit?

The lease will prevail and the property must be sold subject to the lease. Our real estate commission prepared lease provides for showings anytime during the lease term, but gaining tenant cooperation much sooner than 60 days from the end date is difficult. Lock boxes cannot be placed on a tenant occupied property without the specific written consent of the tenant.

If you wish to list the property for sale, contact your property manager who will assist, along with an in-house qualified sales associate, to perform a comparative market analysis and help you determine a reasonable asking price. Tenants often feel insecure when the property is listed and may ask for an early termination. You will need to be prepared to work with them to terminate without penalty or to make concessions for the inconvenience of placing the property on the market.

Question: What if the tenant purchases the property?

Our in-house sales team can/will assist with the offer and acceptance process, including preparing necessary transaction paperwork. We will also assist the tenant in obtaining financing opportunities. Once the transaction is completed, ReMax Infinity is entitled to a reasonable sales commission.

Boxwell Real Estate values each home owner and we thank you for choosing our company to manage your property. This handbook is just a brief synopsis of some of the issues we face as managers of your investment. Attached you will find more information for your review on security deposits, rental agreement and the landlord's maintenance and repair duties. Please feel free to contact your property manager if you need further assistance.

Addenda attached for your review

- NC Rental Agreement Act
- NC Security Deposit Act
- NC Landlord's Maintenance and Repair Duties
- Normal Wear and Tear

Revised
2/20/2016

Boxwell Real Estate

4310 Cumberland Road
Fayetteville, NC 28306
Office (910)764-1622 Fax (910)764-1633

Boxwellrealestate@gmail.com
Boxwellrealestate.com

Addendum to Lease

Boxwell Real Estate agrees to allow tenant to pay \$100.00 a month for 3 months to pay for \$300.00 Pet Fee. The tenant understands if this is not paid by June 1, 2016, tenant will incur \$25.00 additional per month until pet fee is paid.

Tenant ~ Daniel J Horne

Date

Landlord ~ Boxwell Real Estate

Date

Cc: Drew Boxwell
File
Tenant

RENTAL PROPERTY MINIMUM STANDARDS:

BRE Property Management believes in assisting the investor to make well informed decisions when preparing a property for the rental market. Homes in the right condition, with the right improvements will attract the best tenants, rent easier and help to turnover costs to a minimum.

- ❖ Unfurnished properties. Don't leave any personal items at the property that will wear out or break down. Items not recommended are Barbeques, yard maintenance power tools, patio furniture.
- ❖ Front & back yards must be landscaped with desert rock, grass, shrubbery, and trees as appropriate.
- ❖ If your home has a yard watering system is it required and should be automated with a timer.
- ❖ All street facing and bedroom windows must have window coverings. We recommend that all windows have coverings. Mini-blinds and Vertical blinds are preferred over cloth draperies.
- ❖ All flooring must be in good clean condition. Neutral colors such as light brown or tan are preferred by tenants.
- ❖ Interior surfaces of kitchens, baths, walls, etc, must be clean and disinfected. Tenants won't clean before they move in.
- ❖ Paint must appear fresh by either touching up or repainting
- ❖ Appliances such as a refrigerator and stove are required in all rental homes. If the home is marketed with said appliances, they are required at all times during the tenancy to function and be repaired.
- ❖ Washer and Dryers are not required but should be included in properties that only have hookups for the smaller stack units as no tenants will have these.
- ❖ Above ground portable spas and evaporative coolers are not recommended due to the high maintenance cost to maintain. Removal is best option prior to placing onto the rental market.
- ❖ Pools: Must include chemical service and if the pool does not have an in pool cleaning system, cleaning service is recommended. A child safety barrier is required between the

pool and property. These can be of many types, fences, covers, or auto door closers. PRS will assist in making sure this done to the City safety codes.

- ❖ Garages are recommended to have an auto opener with 1 or 2 remotes Remove any keyless pads that may be mounted on exterior.
- ❖ Home Warranty Policies are often included in a purchase of an investment home which can provide a protective hedge against mechanical defects during the first year of ownership. We administer many of these policies for our clients and can assist you in picking the right company. Some are not reputable and do not provide prompt service.



**Roy Cooper
North Carolina Attorney General**

**LANDLORDS' MAINTENANCE AND REPAIR DUTIES:
YOUR RIGHTS AS A RESIDENTIAL TENANT IN NORTH CAROLINA**

CONTENTS

Introduction	2
Part One: The Residential Rental Agreements Act	2
Part Two: Duties of the Tenant	3
Part Three: Duties of the Landlord.....	3
Part Four: Duties of the Landlord Cannot be Waived.....	4
Part Five: Written Notice to the Landlord	4
Part Six: Landlord Duties to Repair that Do Not Depend Upon Written Notice from the Tenant	5
Part Seven: Duty to Keep All Common Areas and Facilities in a Safe Condition.....	5
Part Eight: Duty to Comply with Applicable Local Building and Housing Codes.....	5
Part Nine: Obtaining Government Help on Code Violations	6
Part Ten: Duty to Put and Keep Premises in a Fit and Habitable Condition	6
Part Eleven: Legal Remedies Against Landlords Who Will Not Repair.....	6
Part Twelve: Court Orders for Rent Abatement	7
Part Thirteen: Court Order for Rent Recoupment.....	8
Part Fourteen: Other Legal Claims	8
Part Fifteen: Should You Contact an Attorney?.....	8

LANDLORD AND TENANT: REPAIRS

INTRODUCTION

Each year the Office of the Attorney General receives hundreds of complaints and inquiries from tenants regarding disputes they are having with their landlords. The laws governing the relationship between a landlord and a tenant are complex and come from several sources. Those sources include the law of contracts (leases are a type of contract), the law of negligence, the North Carolina General Statutes, local health, safety and building codes, federal laws and regulations governing subsidized rental housing, and the Constitutions of the United States and the State of North Carolina.

What follows is not a complete discussion of North Carolina landlord-tenant law. Instead, it is a discussion of the problems involving the landlord's failure to maintain or repair the rental property. Also available from the Office of the Attorney General, Consumer Protection Section, is another information booklet similar to this one discussing security deposit disputes between landlords and tenants.

It is hoped that the information provided here will be helpful to you. It can be surprising how just a little bit of knowledge of your rights as a tenant can help you resolve disputes with your landlord, and maybe even avoid them altogether.

PART ONE: THE RESIDENTIAL RENTAL AGREEMENTS ACT. Up until 1977 there was very little in the law of this state requiring landlords to make repairs to rental premises. Legal scholars say that the laws governing leases up until 1977 were based upon North Carolina's history as an agricultural state. When people entered into leases for land a hundred years ago, the most important thing was usually the value of the farmland itself, not the condition and up-keep of the farmhouse or other buildings on the land. By 1977 the economy of North Carolina was changing. Most leases by that time dealt with houses or mobile homes or apartments, and the condition and use of the living quarters had become primary concerns of tenants signing such leases.

The North Carolina Residential Rental Agreements Act of 1977 was passed by the General Assembly because of these changes in our economy. The Act defines the duties of both the landlord and the tenant with respect to the maintenance and repair of the premises. For the landlord, at least, many of these legal duties never existed before.

PART TWO: DUTIES OF THE TENANT. The tenant must pay all rent legally due under the lease and perform certain day-to-day maintenance duties in order to enforce the landlord's duties under the Residential Rental Agreements Act. The tenant's duties under the Act are as follows:

North Carolina General Statute 42-43(a)

- (1) Keep that part of the premises which he occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises which he uses;
- (2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner;
- (3) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises or knowingly permit any person to do so;
- (5) Comply with any and all obligations imposed upon the tenant by current applicable building and housing codes;
- (6) Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in his exclusive control unless said damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or his agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces.
- (7) Notify the landlord, in writing, of the need for replacement of or repairs to a smoke detector. The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery operated smoke detector at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord.

PART THREE: DUTIES OF THE LANDLORD. The landlord's maintenance and repair duties under the Residential Rental Agreements Act are as follows:

North Carolina General Statute 42-42(a)

- (1) Comply with the current applicable building and housing codes, whether enacted before or after October 1, 1977, to the extent required by the operation of such codes: no new requirement is imposed by this subdivision(a)(1) if a structure is exempt from a current building code;
- (2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

- (3) Keep all common areas of the premise in safe condition; and
- (4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by him provided that notification of needed repairs is made to the landlord in writing by the tenant except in emergency situations.
- (5) Provide operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc. , listing or other equivalent national testing laboratory approval, and install the smoke detectors in accordance with either the standards of the National Fire Protection Association or the minimum protection designed in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. The landlord shall replace or repair the smoke detectors within 15 days of receipt of notification if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord.

PART FOUR: DUTIES OF THE LANDLORD CANNOT BE WAIVED. North Carolina General Statute 42-42(b) states that a landlord cannot excuse himself from these duties through a special clause inserted into the lease. As discussed below, many leases contain such clauses, and tenants should not be fooled into thinking that such clauses are binding.

A landlord and a tenant can enter into an agreement separate from the lease through which the tenant will perform the landlord's maintenance duties, but only if the tenant is to receive reasonable and just compensation for it. Such would be the case when a carpenter, plumber or painter rents from the landlord, and the landlord wants to hire that tenant to help with the upkeep and repair of the rental property.

PART FIVE: WRITTEN NOTICE TO THE LANDLORD. The landlord's duty to repair promptly all plumbing, heating, air conditioning, and other appliances and facilities does not begin until the tenant has given written notice to the landlord of needed repairs. The written notice requirement does not apply in emergency situations, such as loss of heat in mid-winter or sudden leaks in the plumbing that are going to cause damage to the premises or injury to the tenant if a repair service is not called right away.

As a practical matter, the best thing to do when a refrigerator, oven, or air conditioner breaks down is to call or visit the landlord immediately to report the problem. Follow up the conversation with a note or letter to the landlord which mentions the earlier oral request for

repairs. For instance, "Dear Landlord: This is just a reminder of the request I made by phone this morning for repairs to the furnace at 344 Center Drive." Sign and date the note and **keep a copy**. If you have to hire a repair person yourself because the landlord will not do anything, a copy of the written notice will be very helpful if you go to Small Claims Court seeking reimbursement for the repair bill you paid.

PART SIX: LANDLORD DUTIES TO REPAIR THAT DO NOT DEPEND UPON WRITTEN NOTICE FROM THE TENANT. The other duties of the landlord under the Residential Rental Agreements Act do not depend upon the receipt of written notice of a problem. These other duties involve routine maintenance and repair obligations that exist prior to or throughout the tenancy, or are the subject of local health and building codes, or concern "common areas" of apartments or condominium projects.

PART SEVEN: DUTY TO KEEP ALL COMMON AREAS AND FACILITIES IN A SAFE CONDITION. Common areas and facilities, such as hallways serving several apartment units, parking lots, play areas, laundry rooms, swimming pools open to tenants, sewage or plumbing systems serving more than one rental unit, and similar areas and facilities on the grounds of multi-family rental properties, must be maintained in a safe condition by the landlord. Injuries caused by landlords' failure to safely maintain such areas and facilities have entitled tenants to recover money from their landlords in lawsuits. In situations where landlords' failures to maintain these facilities have not caused injury, courts have allowed tenants to reduce the amount of monthly rent due under their leases.

PART EIGHT: DUTY TO COMPLY WITH APPLICABLE LOCAL BUILDING AND HOUSING CODES. In most North Carolina cities and large towns, landlords have additional duties to maintain the rental premises because of the requirements of local building and housing codes. Failure by the landlord to comply with these codes gives a tenant the right to take legal action under the Residential Rental Agreement Act. These local codes also allow the tenant to seek the help of local authorities who can use their own legal powers to force a landlord to comply with the requirements of the codes.

Housing Codes. Most local building and housing codes contain a long list of maintenance and safety requirements for rental property. Under these codes, owners of such property must provide safe and properly functioning heating and plumbing systems. Heating systems in many communities must be capable of heating every habitable room in a dwelling to at least 65-70 degrees. Most local codes also require that all walls, doors and windows be weather tight. Walls, ceilings and floors must be free of holes, cracks, and peeling paint, according to many local codes. Similarly, most local codes require landlords to rid multi-family (but not necessarily single family) dwellings of infestations of rodents or bugs. Under many codes, all doors and windows opening to the outside of the dwelling must have locks on them, and unless the dwelling has air conditioning, most codes require that all windows in the dwelling

be equipped with screens.

Fire Codes. Malfunctioning heating systems, electrical systems, or appliances may pose a fire hazard, which may be a violation of the local fire code in addition to violating the housing code. Anything giving off shocks, sparks, or smoke should be reported to the landlord immediately, and if not fixed promptly, reported to the local fire safety inspector. Such officers usually have legal authority to force the landlord to repair such problems quickly.

Health Codes. Malfunctioning sewage disposal systems can also constitute violations of local health codes. County or city health departments usually can force landlords to fix malfunctioning sewage disposal systems or clean contaminated well water systems.

PART NINE: OBTAINING GOVERNMENT HELP ON CODE VIOLATIONS.

To obtain the assistance of local building inspectors, fire marshals, or county health officers, little more than a phone call to the local city hall, fire department, or county health department is required.

PART TEN: DUTY TO PUT AND KEEP PREMISES IN A FIT AND HABITABLE CONDITION. This part of the Residential Rental Agreements Act requires the landlord to have the premises in good and fit condition when the tenant first moves in, and it also requires the landlord to maintain the premises so that they stay that way. This is a “catch-all” requirement that covers repair and maintenance duties not specifically described elsewhere in the Residential Rental Agreements Act.

PART ELEVEN: LEGAL REMEDIES AGAINST LANDLORDS WHO WILL NOT REPAIR. If your landlord will not make repairs required under these codes and the Residential Rental Agreements Act, **DO NOT WITHHOLD RENT PAYMENTS.** Many other states have laws allowing tenants to put their rent payments in a special “escrow” account until their landlords make needed repairs. North Carolina law does not allow tenants to withhold rent payments in this or any other way, with two exceptions: when the landlord consents to it *in writing* or when a judge or civil magistrate allows you to withhold rent pursuant to a court order.

Some landlords really will consent to a tenant’s withholding rent payments, or at least part of their rent payments. Consent usually comes through *written* agreements such as this: “Send me a receipt for whatever you paid the plumber to fix the drains and then deduct that amount from next month’s rent;” or, “knock 10% off your next month’s rent payment because of the problems with the broken air conditioner.”

PART TWELVE: COURT ORDER FOR “RENT ABATEMENT” (reduction in rent).

Too often a landlord will not make repairs and will not consent to the withholding of part of the next rent payment. In this situation, a tenant may want to file a small claims suit against the landlord requesting the court’s permission to withhold part of the next month’s rent payment to cover the costs paid by the tenant for repairs or to compensate the tenant for the reduced rental value of the dwelling.

In seeking the court’s permission to withhold the amount of money paid by the tenant to have repairs done, the tenant will need to show the following:

- (1) that the tenant has either a written or oral lease agreement with the landlord;
- (2) that the problem needing repair was the responsibility of the landlord under the Residential Rental Agreements Act, local building codes, and/or the lease agreement. (Remember, lease provisions excusing landlords from their repair and maintenance responsibilities under the Residential Rental Agreements Act are **not** enforceable.);
- (3) if the problem involved broken heating, air conditioning, plumbing, or electrical appliances furnished with the rental unit, and if the situation was not an emergency, evidence that the landlord was given written notification of the need for such repairs and that the landlord then failed to make the needed repairs within a reasonable amount of time;
- (4) copies of the bill given the tenant by the repair service, plus a receipt or canceled check showing that the bill was paid by the tenant;
- (5) if the landlord denies that the problem even required repairs or claims that the cost of the repairs were too expensive, the tenant should make arrangements to bring the repairman to Small Claims Court.
- (6) some sort of evidence (usually the tenant’s own testimony) showing how much the rental value of the house or apartment was reduced by the landlord’s failure to make required repairs.

[Tenants needing information on how to file a small claims lawsuit can obtain a Small Claims Court information package similar to this one from the Consumer Protection Section of the North Carolina Attorney General’s Office, Old Education Building, 114 West Edenton Street, 9001 Mail Service Center, Raleigh, NC 27699-9001 (telephone 919-716-6000).]

Should the Small Claims Court Judge or Magistrate be satisfied that the tenant’s case has been proved, he or she may enter a “rent abatement” order allowing the tenant to withhold part of the next month’s rent, or part of the next several month’s rent, to reimburse the tenant for the repair bills. A tenant should read the court order carefully to make sure it grants permission to withhold rent. Some Small Claims Court Judges will just award a money judgment against the landlord, which is not the same as permission to withhold future rent payments.

Where a problem has not been repaired by either the landlord or the tenant, the Court can enter an order allowing the tenant to withhold a percentage of future rent payments until the

problem is repaired by the landlord. After hearing the evidence the Court will make a determination of how much the monthly rental value of the rental unit has been reduced by the problem needing repair. For example, if the monthly rent is \$600.00 and the Court determines that the problem reduces the value of the rental unit by one-third, the judge or civil magistrate will enter a "rent abatement" order allowing the tenant to reduce monthly rental payments to \$400.00 until the problem is corrected by the landlord.

PART THIRTEEN: COURT ORDER FOR "RENT RECOUPMENT" (recovery of rent paid). If the landlord simply took a very long time to make repairs, but eventually got around to making them, the tenant may be able to bring a Small Claims Court lawsuit seeking a money judgment for the reduced rental value of the rental unit during the months that the problem went unrepaired. This type of Small Claims suit, called a suit for "rent recoupment" (recovery of rent already paid), also requires that the tenant show the court the following:

- (1) that the tenant had a lease with the landlord when the problems occurred;
- (2) that the problem needing repair was the responsibility of the landlord under the Residential Rental Agreements Act, local building codes and/or the terms of the lease agreement;
- (3) if the problem involved broken heating, air conditioning, plumbing or electrical appliances furnished with the rental unit, and if the situation was not an emergency, copies of any written notice to the landlord requesting repairs, plus some sort of testimonial evidence showing that the landlord took an unreasonable amount of time to repair the problem;
- (4) some sort of evidence (usually the tenant's own testimony) showing how much the rental value of the house or apartment was reduced by the landlord's failure to make required repairs.

PART FOURTEEN: OTHER LEGAL CLAIMS. In addition to the rent abatement and rent recoupment claims mentioned above, a tenant whose personal property (furniture, stereo, clothing, etc.) was damaged or destroyed by the landlord's failure to maintain or repair the premises, as required by the Residential Rental Agreements Act, might be able to sue for either the value or the costs of repair of the damaged belongings. In some cases the tenant can recover moving expenses.

PART FIFTEEN: SHOULD YOU CONTACT AN ATTORNEY? If at all possible, an attorney should be consulted before bringing such claims against a landlord. The attorney may come up with additional claims to pursue, or the attorney may say that some claims are not proper in a particular case. Unless personal injuries or substantial property damage was involved, however, it may be financially impractical for a tenant to hire the attorney for representation in a Small Claims Court suit. Suits against landlords usually involve only a few hundred dollars, and the attorney's fee for representation in court may be equal to or greater than the amount of money a tenant is trying to recover from the landlord. Still, the advice an attorney

can provide during a brief consultation can be important, and a brief service by an attorney, such as a letter or phone call to the landlord, may take care of the problem without requiring anyone to go to court.

Tenants having trouble locating an attorney for a consultation on landlord-tenant questions may want to try the North Carolina Lawyers Referral Service. Their toll free number is 1-800-662-7660. The Lawyers Referral Service should be able to give you the name of an attorney to consult with on landlord-tenant matters for a relatively low consultation fee.

(Revised October 2007)



**Roy Cooper
North Carolina Attorney General**

**SECURITY DEPOSITS:
YOUR RIGHTS AS A TENANT
IN NORTH CAROLINA**

CONTENTS

Introduction.....2

The Tenant Security Deposit Act.....2

Where the Landlord Can Put the Deposit3

When the Deposit Must be Returned3

Security Deposit "Forfeiture"3

Normal Wear and Tear.....3

Damage4

Close Calls Between Damage and Normal Wear and Tear4

Pre-Existing Damage4

Whether to Hire an Attorney.....5

Dispute Settlement Centers.....5

Small Claims Court.....5

Introduction

Each year the office of the Attorney General receives many complaints and inquiries from tenants regarding disputes they are having with their landlords. The laws governing the relationship between a landlord and a tenant are complex and come from several sources. Those sources include the law of contracts (leases are a type of contract), the law of negligence, the North Carolina General Statutes, local health, safety and building codes, federal laws and regulations governing subsidized rental housing, and the Constitutions of the United States and the State of North Carolina.

What is printed here is not a complete discussion of North Carolina landlord-tenant law. Instead, it is a discussion of rental security deposit problems and the North Carolina laws concerning such problems. Also, available from the Attorney General's Office are two other information packages similar to this one discussing the landlord's repair and maintenance duties and Small Claims Court procedures.

We hope that the information provided here will be helpful to you. You might be surprised how much a little bit of knowledge of your rights as a tenant can help you resolve disputes with your landlord, and maybe even avoid them altogether.

THE TENANT SECURITY DEPOSIT ACT

Most landlords require their tenants to pay a rental or security deposit. The main purpose of the deposit is to protect the landlord from financial losses resulting from a tenant's damage to the premises or failure to pay rent. The deposit is refunded if the tenant completes his or her obligations under the lease and leaves the premises in an undamaged condition.

In the past, landlords too often failed to return security deposits at the end of a tenancy, even though their tenants had complied with their responsibilities. Also, some landlords kept the tenant's entire deposit, even though the problem caused by the tenant took only a few dollars to correct.

In 1977 the North Carolina General Assembly passed the Tenant Security Deposit Act in order to take care of such problems. The Act states the purposes for which landlords may use tenant security deposits: (1) compensation for the tenant's possible nonpayment of rent; (2) damage to the premises; (3) nonfulfillment of the rental period, (tenant moves out early); (4) any unpaid bills which become a lien against the rental property due to the tenant's occupancy; (5) costs of re-renting the premises after breach by the tenant; (6) costs of removal and storage of the tenant's property after a summary ejectment ("eviction") proceeding; (7) court costs in connection with terminating the tenancy.

The act also states that a landlord may not use the deposit to cover normal wear and tear

to the premises. A landlord may not charge more than his actual losses against the security deposit. In other words, a landlord cannot keep the entire \$300.00 security deposit, or even \$100.00 of it, if he had to pay someone only \$10.00 to repair a broken window screen left behind by the tenants.

Where the Landlord Can Put the Deposit -- Landlords cannot put tenant security deposits in their own personal or business accounts. They must keep deposits in a separate "trust account" set up for security deposits only. The account must be with a licensed North Carolina bank or savings institution. The tenant must be given the name and address of the bank or savings institution within thirty days after the beginning of the lease period.

The reasons for the requirement of a separate tenant security deposit account are to keep landlords from using tenant security deposit money for their own purposes. Also, if the security deposits are kept in a separate trust account, it makes it easier for tenants to get their deposits back at the end of their lease periods even though the landlords might have died, filed for bankruptcy or been sued by someone else.

The one exception to the requirement of a separate bank account for tenant security deposits is when a landlord gets a special bond from a North Carolina insurance company to insure the proper return of all security deposits. Tenants who are due a return of their security deposit but do not receive one can make a claim against the bond for the amount of the security deposit due. Landlords who choose to purchase a security deposit bond rather than use a separate security deposit trust account must notify the tenant in writing of the name of the insurance company. This notification must be given to the tenant within thirty days after the beginning of the lease period.

When the Deposit Must be Returned -- The landlord must return the deposit to the tenant within thirty days of the end of the rental period. If the landlord makes charges against the deposit for damage to the property, or for unpaid rent, those charges must be described to the tenant in writing, and the writing (also referred to as an accounting) plus any portion of the deposit still due to the tenant must be delivered within that same thirty-day period.

Security Deposit "Forfeiture" -- Some leases will contain clauses stating that the tenant will forfeit, or give up, the entire deposit if certain things happen, such as failing to give the landlord enough advance notice that the tenant does not wish to renew his lease for another year, or failing to clean out the bathtub when moving out, or committing any other act or offense in violation of the lease. Lease forfeiture provisions such as this violate the Tenant Security Deposit Act and are unenforceable because they allow the landlord to keep more than his actual losses.

Normal Wear and Tear -- At the end of the lease period some landlords and tenants argue over whether a problem constitutes "normal wear and tear" rather than "damage." In the course of a one or two-year tenancy, all rental premises are going to suffer some wear, and things such as door handles, oven heating elements, curtain strings, toilet parts, faucet handles or electrical

switches may wear out and break without having been abused by the tenant. Paint will fade and become flyspecked over time despite reasonable care, and portions of the carpet may wear down and start to unravel. These sorts of things should not be charges to the tenant or the security deposit. These are normal expenses of being in the rental property business and they are to be borne by the landlord. Most landlords will incur such costs when they refurbish their rental units before leasing them out to new tenants.

Damage -- Window screens and window panes that were broken by the tenant because the keys were accidentally locked inside constitute damage. Coffee or soft drink stains on the carpet constitute damage. Large holes in the wall from where a tenant mounted bookshelves constitute damage. Crayon marks, dart holes, bizarre or unauthorized paint colors, also constitute damage and can be charged to the deposit based upon the actual cost of repairs.

Having to clean up filthy ovens, ranges, refrigerators, kitchen floors, cabinets and bathrooms are problems that go beyond normal wear and tear, unless the landlord provided the premises in that condition to begin with. Tenants leaving such problems behind, when they did not exist at the beginning of the tenancy, have essentially damaged the premises, and the reasonable costs of clean up can be charged against the deposit. If the costs are greater than the deposit, the landlord can sue the tenant for the additional amount.

Close Calls Between Damage and Normal Wear and Tear -- It is costly for landlords to refurbish apartments or rental houses between tenants, and the cost involved often tempts some landlords to call something damage when it is actually normal wear and tear. The tenant's best defense against this is to clean the premises thoroughly when moving out and to have some unbiased person inspect the premises before the landlord makes his inspection. Another good idea is for the tenant to ask to be present when the landlord is doing the inspection. It is harder for a landlord to tell tenants to their faces that an old, worn out refrigerator or carpet is "damaged."

Pre-existing Damage -- Some tenants complain of landlords charging their security deposits for damage or excessive dirtiness that existed before the tenancy began. This is not permitted under the Security Deposit Act. In court, however, this situation turns into a matter of the tenant's word versus the landlord's. The best way for a tenant to avoid this problem is to note on a piece of paper all problems in the premises when the tenancy begins. The paper should be dated and signed by the tenant and the landlord, and a copy kept by both of them. No problem should be ignored when preparing the list -- be sure to list such items as missing cabinet handles, mold around the bathtub, spots on the carpet, grease splatters inside the oven, dirty filters in the stove hood, and cracks on the face plates on electrical switches. In court the landlord will have to prove that the tenant caused these problems, but the type of list described here will make that proof more difficult.

Whether to Hire an Attorney -- In a security deposit dispute, consultation with an attorney is usually a good idea. The law allows the tenant to recover attorney's fees from the landlord when a landlord has deliberately failed to return the proper amount of the security

deposit within thirty days. Also, through a phone call or letter to the landlord, the lawyer may be able to convince the landlord to return the proper amount of the security deposit without anyone having to go to court.

Dispute Settlement Centers -- In many North Carolina cities and towns there are organizations known as dispute settlement centers. These are nonprofit organizations that were established as an alternative to the use of courts and lawsuits. Usually their services are free. The people at the dispute settlement centers who try to resolve disputes are called "mediators." Mediators do not act as judges. They do not try to find who is the "winner" or who is the "loser." In fact, they do not try to act as courts at all. Instead they try to get people either to realize the problems with the position they have taken or to compromise their position. One way mediators try to get people to compromise is to point out how expensive it is to try to take the matter to court.

Mediation sessions are usually face-to-face. Normally, the mediator starts out by talking with the two sides separately. Mediation sessions, unlike court, are usually at times convenient to both parties, such as in the evening when people are not at work.

Use of a dispute settlement center is voluntary. No one is forced to go there. People using the mediation services of such centers should have some willingness to compromise, or at least hear what the other side has to say.

Tenants who want to try mediation rather than Small Claims Court only need to call the local dispute settlement center. The dispute settlement center takes it from there, contacting the landlord, arranging mediation sessions, and trying to resolve the dispute.

Small Claims Court -- Small Claims Courts exist in every county in North Carolina. Compared to the other courts of this State, they are relatively informal. They often hear tenant security deposit claims, and often the tenants and landlords argue such claims themselves rather than hire attorneys.

Tenants wishing to use the Small Claims Courts to recover their security deposits can receive an information package on Small Claims Court from this office.

(Revised May 2000)