

TENANCY-AT-WILL OR LEASE?

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Landlords often ask whether I think they should have a written lease agreement, or go with a simple tenancy-at-will. If I ask them why they would consider a tenancy-at-will, and the usual response is that they like the simplicity, and the fact that they can terminate a tenancy-at-will for no cause with a 30-day notice. I have rarely heard any other reason why a landlord would favor a tenancy-at-will, and if that is the only, or the major factor in a landlord's decision to have a tenancy at will as opposed to a written lease, then I would advise that landlord to forget the tenancy-at-will.

By statute in the State of Maine, an estate in land cannot be greater than a tenancy at will, unless it is in writing. Therefore, anyone occupying the premises of another by agreement, without the benefit of a written lease agreement is a tenant at will. As such, the right to terminate that relationship is governed by State law (Title 14 M.R.S.A. Section 6002). There are a number of drawbacks to the procedure for terminating a tenancy-at-will. Most notably, if the termination is for nonpayment of rent, the landlord **must** give the tenant a right to cure the nonpayment violation, not only during the seven-day notice period but until the date the Court issues a Writ of Possession. The right to reinstate the tenancy even after a court hearing allows the tenant to avoid an eviction by paying all rent currently due, including all arrearages, as well as the landlord's court costs and service fees incurred in the eviction action. It does not provide the requirement that the tenant reimburse the landlord for any legal fees that may have been incurred in the eviction. In other words, the landlord could have spent hundreds or even thousands of dollars attempting to evict a tenant, and received a judgment, only to have the tenant pay the rental arrearage, and the small court costs (\$60.00 filing fee) and service fee (\$40.00 to \$70.00) and reinstate their tenancy.

The statute also provides additional reasons for termination of a tenancy at will with only a 7-day notice. These include causing or permitting a nuisance within the premises, causing or permitting the dwelling unit to become unfit for human habitation, or violating or permitting a violation of the law regarding the tenancy. Very few evictions are attempted pursuant to these causes. More often than not, the landlord simply opts to give the tenant a 30-day no cause notice of termination of a tenancy at will.

A written lease agreement can provide for the right of a landlord to terminate that lease agreement with a 30-day written notice for no cause. The lease could be a month-to-month tenancy, or could be a tenancy for a definite term that simply allows either party to terminate it early. The advantages of having a written lease are that the landlord can include any number of clauses to protect their property, and to provide additional requirements for the tenant to follow. These clauses can clarify the rights and obligations of the parties for such items as utilities, repair and maintenance, what is and is not accepted behavior, payment of insurance, taxes, snow removal, trash collection, other

fees (including legal fees), and when and how the tenancy can be terminated and with what notice requirements.

In deciding what length of term to include in a lease agreement, one of the major factors for the landlord to consider is the current rental market. If there are more apartments than tenants, then the landlord would likely want a lease of at least a one year term, without the right of the tenant to terminate that lease early. That way, you can be reasonably confident that you will have the property rented for the full term of the lease, or at the very least, if the tenant vacates early, you would have a cause of action against that tenant for any lost rental. When the rental market is more in the landlord's favor, then a month-to-month tenancy may be more appropriate, as it allows you to remove any undesirable tenant fairly quickly and easily, and presumably there is a pool of replacement tenants looking for apartments. With a small investment, a landlord can have a comprehensive and well drafted lease agreement prepared which can be adapted for any circumstance that might arise, and can be reused as often as needed. In the long run, it will most likely save the landlord money in lost rent, and possibly lost evictions. It will provide both the landlord and the tenant a clear base of understanding of what is required by each party in any rental transaction.

As always, each and every landlord should review this issue with their own legal counsel, and by all means have your attorney prepare, or at least review, any lease agreement you intend to use.

For further information please contact Shankman Associates Legal Centers:
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