

# **WHAT SHOULD AND SHOULD NOT BE IN A MAINE RESIDENTIAL LEASE**

*From the desk of David P. Chamberlain, Esq.*

Before we begin a discussion of what is required to be in a residential lease, it is imperative that the landlord is aware of what must be *excluded* from the lease under state law.

1. **Illegal Lease Provisions** - Title 14 M.R.S.A. §6030 specifically states that certain provisions in a rental agreement or lease for a dwelling unit are specifically unenforceable and are considered to be an unfair and deceptive trade practice under Title 5 M.R.S.A. §207. The statute specifically provides that **the following provisions are unenforceable:**

- **Any provision that absolves the landlord from the liability for the negligence of the landlord or the landlord's agent;**
- **Any provision that requires the tenant to pay the landlord's legal fees in enforcing the rental agreement;**
- **Any provision that requires the tenant to give a lien upon the tenant's property for the amount of any rent or other sums due the landlord; and**
- **Any provision that requires the tenant to acknowledge that the provisions of the rental agreement, including tenant rules, are fair and reasonable.**

It is quite common for archaic and older leases that have been utilized over the years to contain such provisions. The provision that can be the most problematic of the above referenced provisions is the provisions relating to legal fees. The statute in §6030(3) provides an exception that states that it is permissible for a lease, rental agreement or rule provision to allow for the award of attorney's fees to the prevailing party after a contested hearing to enforce the rental agreement in cases of *wanton disregard* of the terms of the rental agreement. The statute specifically states that such a provision is not a violation of the Unfair Trade Practices Act.

Thus, a landlord should include a provision within the lease to state that the prevailing party is entitled to an award of attorney's fees after a contested hearing to enforce the rental agreement in cases of *wanton disregard* of the terms of the rental agreement. That provision can prove to be problematic in that it will allow for the tenant to obtain attorney's fees in the event that the landlord is in *wanton disregard* of the terms of the rental agreement. It should be emphasized that payment of attorney's fees cannot be had until after a contested hearing where the court finds a *wanton disregard* of the terms of the rental agreement.

Examples of *wanton disregard* of the terms of the lease can include such things a loud, rowdy parties, damages to the premises, termination of the lease earlier than is required and other such intentional acts by the tenant. As such, the landlord must make a business decision as to whether the landlord wants to include a provision that cuts both ways. However, it is specifically illegal for a landlord to include within the lease a provision that requires the tenant to pay the landlord's legal fees in enforcing the rental agreement. The Maine Unfair Trade Practices Act allows a tenant to obtain damages against the landlord, including legal fees. Accordingly, a landlord must review the lease to determine that the above prior mentioned illegal provisions are not contained within the lease. It is also considered to be an unfair trade practice for the landlord to require the tenant to enter into a lease or rule provision that has the effect of waiving a tenant right established in the forcible entry and detainer statute, including the security deposit chapter of 710-A. This section of the law does not apply when the law specifically allows the tenant to waive a statutory right during negotiations with the landlord. For example, the statutory

provisions related to security deposits cannot be waived. However, a tenant can waive the warranty of habitability in exchange for a reduced rental.

2. **Termination** - The most important language to be included within a residential lease is the termination language. **Maine case law provides that if a residential lease does not have termination language, the landlord cannot terminate the lease.** Rubin v. Josephson, 478 A.2d. 665 (Me. 1984) and MacKerron v. MacKerron, 571 A.2d 810 (Me 1990). If a lease is in effect for one year and the tenant stops paying rent in month two and the lease has no termination language, the landlord will be unable to terminate the lease. The landlord can otherwise pursue the tenant in court in a civil action for amounts due under the lease, but will be unable to terminate it pursuant to the Maine forcible entry and detainer statute and evict the tenant. The default and termination language must set forth the various eventualities and lease violations for which a landlord can terminate the lease. It is a precondition under Maine law that to maintain an eviction action the landlord must be able to terminate the lease. **Landlords should have termination language for non-payment or rent, nuisance, damage, criminal activity, dangerous acts and any other breaches of the lease, which warrant termination.**

3. **Identity of the Parties** – Clearly, the lease should specifically delineate the owners of the property as landlord and the full name and address of the tenant. The landlord should not use nicknames or shortened names of tenants. It is imperative for the landlord to obtain the full name and so list it in the lease.

4. **Term** – A lease should further contain the length of the lease and provide for a commencement date and a termination date. The language should indicate that nothing prevents the landlord from terminating the lease for breaches of the lease agreement during the term thereof. The landlord has a choice of having the lease contain renewal language, an option to renew or provide for none of the above so that the lease will automatically terminate. If a lease contains automatic renewal language, it should continue to have the lease in effect on a month-to-month periodic basis thereafter. It should not allow for automatic renewal for another year. If the landlord elects to have this optional language in the lease, the language should indicate that the terms of the rent and other monetary terms can be negotiated by the parties. If the parties do not have a meeting of the minds, the lease will terminate.

If the lease contains no renewal language or option to renew and is not renewed in any fashion, the lease will automatically terminate. If the tenant remains on the premises after the termination of the lease and the landlord accepts rent, a tenancy-at-will is created. Title 14 M.R.S.A. §6002 and other sections of the state law governing tenancies-at-will then apply.

5. **Rent Amount** – The lease should clearly spell out the full amount of rent due for the entire term and the fact that the lease will provide for monthly rental payments in the amount of one-twelfth (1/12) of the yearly rent.

6. **Late Fee** – The lease should provide that the landlord is entitled to four percent (4%) of the monthly rent as a late fee if the rental payment is not made within fifteen (15) days from the date the rental payment is due. The statute does not allow for the landlord to obtain anything greater than 4% of the monthly rent as a late fee.

7. **Security Deposit** – The lease should specifically state the amount of money being held by the landlord as a security deposit. As will be mentioned below in subsection G, the landlord should obtain two times the monthly rent as a security deposit. The landlord cannot keep any greater amount than two times the monthly rental. The security deposit should also provide that the landlord will have thirty days in which to refund the security deposit, any portion of it and/or provide a letter stating the reasons for the retention of the security deposit.

8. **Assignment and Occupancy** – The lease should clearly identify all other individuals that are to reside in the unit with the tenant. The lease should also provide that it is not assignable without the expressed written permission of the landlord.

9. **Utilities and Maintenance** – The lease should contain a utility grid which allows the landlord to delineate what utilities and services the landlord is required to pay for and provide and which utilities and services the tenants are required to pay.

10. **Use of the Premises/Damages/Liability** – The lease should specify that the premises is to be used for residential purposes, that the tenants should not engage in any illegal activity nor should they cause any damage to the property. The lease should further state that the tenants should not cause a nuisance or disturb the neighbors or other tenants. There should be a section indicating that a tenant is liable for damages that the tenant causes. Furthermore, there should be language setting out the liability of the parties for their respective actions.

11. **Sale of the Premises** – It is optional language to have a clause that allows the landlord to terminate the lease in the event that the property is sold. If a prospective buyer wants a unit or units vacant upon closing, the landlord will be able to do so by invoking such a clause and being able to evict them accordingly.

12. **Entry** – The lease should have specific language that sets forth the landlord's right to enter the premises. Typical language includes that the tenant agrees that the landlord or the landlord's agent may enter and inspect the leased premises after 24 hours written, verbal or telephonic notice to the tenant provided, however, that the landlord or his agent shall have the right to enter the apartment in an emergency without notice to the tenant.

13. **Lead Paint** – Federal law requires that the landlord disclose information concerning the presence of lead-based paint contained within the leased premises for all buildings built prior to 1987. A disclosure form is required to be completed by the landlord and/or manager and initialed and signed by the tenant concerning known lead-based paint hazards and/or reports of testing for lead paint. The language that can be utilized in a lease to demonstrate that the disclosure form is attached to your lease and that you are complying with this requirement is set forth below:

Lead-based paint disclosure: The Lessor is complying with Lessor's duty to provide disclosure to the Lessee under the Residential Lead-Based Paint Hazard Reduction Act and regulations codified in the Federal Code of Regulations adopted by the EPA and HUD by providing Lessee with the "*Disclosure of Information on Lead-Base Paint and Lead-Based Paint Hazards*" form that is attached hereto and incorporated herein as Addendum A and by providing Lessee with the Pamphlet entitled "*Protect Your Family From Lead In Your Home*".

When providing the tenant with the "Disclosure of Information on the Lead-Based Paint and Lead-Based Hazards" form, the landlord must also provide the tenant with a booklet published by HUD entitled "Protect Your Family From Lead in Your Home." The booklet provides information regarding detection of lead paint and how to respond to its presence. The lead-based paint disclosure form is set forth below and must be completed before entering into the rental relationship. These are examples of important and significant issues that must be addressed in residential leases. Theoretically, because you will be using your lease over time, it makes sense for the landlord to invest in the services of a competent attorney to provide advice on a lease that will comply with Maine law and will avoid making the landlord susceptible to §6030 that allows a tenant to sue the landlord for having provisions within the lease that are considered unfair and deceptive trade practices.

**An ounce of prevention is worth a pound of cure in this area alone!**

*David P. Chamberlain, Esq., (who only represents landlords), may be contacted at: Ainsworth & Thelin, P.A., 7 Ocean Street, P.O. Box 241, South Portland, Me. 04116-2412 Telephone # (207) 767-4824.*