




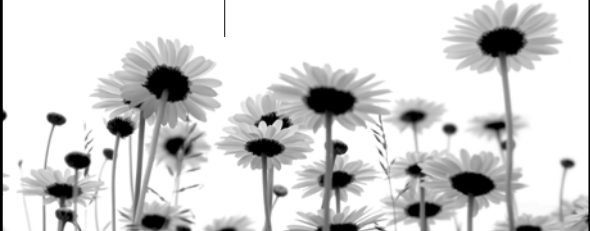

**Landlord
Information
Seminar**

September 20, 2011


Welcome

Michael P. Summers
Mayor





A View from the Bench

Hon. Patrick Carroll
Judge, Lakewood Municipal Court



**Landlord/Tenant, Evictions and
Housing Court**



Prepared by Judge Patrick Carroll
September 20, 2011

Lakewood Municipal Court
12650 Detroit Avenue
Lakewood, Ohio 44107
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**Application of Statutory Provision –
Ohio R. Code Chap. 5321**

- **Residential** - Governed by Chapter 5321.
 - Sets out rights and responsibilities of landlord and tenant.
 - Statutory provisions may not be modified by lease or contract.
R.C. Sec. 5321.06

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Landlord/Tenant Relationship.

A landlord/tenant relationship must exist between the parties for the application of the statutory provisions of R.C. Chapter 5321.

- 1) Delivery of possessions of rental property
- 2) Execution of rental agreement.

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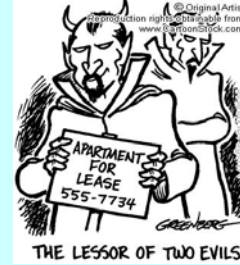
Rental Agreement may be written or oral, as long as it establishes or modifies the terms, conditions, rules, regulations or any other provisions concerning the use or occupancy of residential premises.
R.C. Sec. 5321.01 (D).

Terms barred from rental agreement. R.C. Sec. 5321.13

- a) No modification or waiver of statutory duties, except that landlord may agree to assume duties imposed upon tenant by R.C. Sec. 5321.05.
- b) No warrant of attorney to confess judgment.
- c) No agreement to pay other party's attorney's fees.
- d) No agreement to exculpate or limit landlord's liability or indemnification to landlord for such liability.
- e) No agreement to modify landlord's statutory duties under R.C. Sec. 5321.04.

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Unconscionable agreement. R.C. 5321.14.



Unconscionable agreement. R.C. Sec. 5321.14.

If agreement or specific clause found to be unconscionable the court may:

- a. Refuse to enforce rental agreement.
- b. Enforce remainder of agreement without unconscionable clause.
- c. Limit application of clause to avoid unconscionable result.

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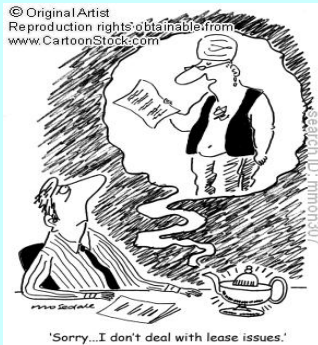
Rent – Money paid in exchange for use of occupancy of premises.

Rental terms.

- Terms in rental agreement should include amount due and time and place of payment.
- Generally, rent is due at beginning of term and is not pro-rated unless by agreement of parties.
- Continued acceptance of late or partial payment may be a waiver of timeliness of rent.

Rent for services. Warning!

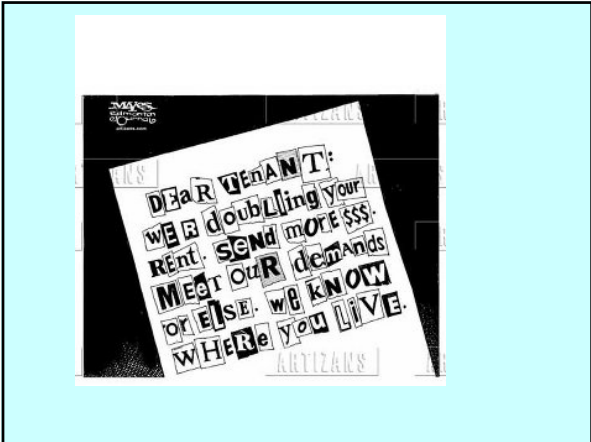
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Retaliatory Conduct – Landlord may not increase rent due to tenant's:

- complaint to governmental agency of violation of building, housing, health or safety code which materially effects health and safety.
- complaint to landlord for violation of landlord's statutory obligations.
- joining with other tenants to negotiate or deal collectively with the landlord.

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R.C. Sec. 5321.04 – Obligations of Landlord.

- Set out by statute and may not be modified by agreement of parties.

HERMAN[®] by Jim Unger

APARTMENT FOR RENT

“Do we really need a kitchen?”

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Tenant’s Claims or remedies for breach may include:

- Constructive eviction/termination of rental agreement.
- Injunctive relief.
- Deposit of rent.
- Monetary damages.
 - Diminution of rent.
 - Negligence/injury to tenant or third party.
 - Breach of Contract.
 - Emotional distress.
- Attorney’s fees.

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R.C. 5321.05 – Obligations of Tenant.

- Set out by statute, but may be assumed by landlord.

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Tenant must maintain rental premises

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Quiet Enjoyment to other tenants

HERMAN[®] by Jim Unger

“I hear you have a room to rent.”

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Landlord's claims or remedies for breach may include:

1. Eviction of tenant, R.C. Sec. 5321.11
2. Monetary damages, R.C. Sec. 5321.05 (C) (1).
3. Attorney's fees, R.C. Sec. 5321.05 (C) (1).

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Rent Deposit. R.C. Secs. 5321.07-10



Rent Deposit. R.C. Secs. 5321.07-10

Requirements.

1. Landlord fails to comply with
 - Statutory obligations set out in R.C. Sec. 5321.04 or rental agreement, or
 - Governmental agency has found premises not to be in compliance with building, housing, health or safety codes.
2. Written notice of conditions provided to landlord.
3. The sooner of 30 days or a reasonable period of time necessary to make repairs, considering the severity of the condition. Reasonable period of time lapses without the conditions remedied.
4. Tenant is current in rent.

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Landlord's response to rent deposit.

- 1) Written application to court stating:
 - Conditions have been corrected.
 - Tenant did not provide written notice of conditions.
 - No violations exist.
- 2) Tenant to be named as a party.
- 3) Hearing to be conducted within 60 days.

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Remedies. R.C. 5321.07(B)(3).

- 1) If tenant prevails
 - Rent may continue to be impounded until repairs are complete.
 - Landlord may be ordered to complete repairs.
 - Rent may be released to complete repairs.
 - Rent may be reduced due to conditions of premises.
 - Refer case to governmental agency for enforcement of building, housing, health or safety code violations. R.C. 1923.15. If tenant has vacated the premises, the court may prohibit re-rental of premises until conditions are corrected.

Tenant may terminate rental agreement.

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Remedies. R.C. 5321.07(B)(3).

- 2) If landlord prevails
 - Release of rent to landlord.
 - Award reasonable attorney's fees if:
 - Condition was result of act or omission by tenant or
 - Tenant intentionally acted in bad faith.

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Forcible Entry and Detainer

Claim for Eviction– R.C. Chap. 1923.

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Termination of Tenancy.

- 1) Notice of termination of tenancy required.
 - A) Periodic tenancy (month to month) R.C. Sec. 5321.17 (B).
 - B) Violations of tenant's statutory obligations. R.C. Sec. 5321.11.
Note: Not required for non-statutory violations (e.g. non-payment of rent)
- C) Time for notice. Although generally referred to as "30 day notice", Computation of time, from first day of term if periodic tenancy.
Note: 30 day notice not required for termination due to illegal drug activity. R.C. Sec. 5321.05 (C) and 5321.17(C).

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Termination of Tenancy

- 2) 3 Day notice – separate and in addition to 30 day notice.
 - A) Jurisdictional requirement.
 - B) Mandatory statutory language: "You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."
 - C) Must be in writing – oral notice by telephone not sufficient.
 - D) Must be conspicuous. R.C. 192304.
 - E) Computation of time, Ohio Rules of Civ. P. 6(A) not applicable, intervening Saturday and Sunday included in 3 day computation.
 1. Additional time by Civ. R. 6(A) is clearly inapplicable to expeditious proceeding for forcible entry and detainer. Civ. R. 1(C).
 2. Civil Rules do not apply to pre-filing procedures

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Service of three day notice.

1. Certified mail,
2. Actual delivery to tenant,
3. Leaving notice at tenant's usual place of abode or subject premises.

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Service of summons and complaint

- 1) Ordinary mail required and by instructions from plaintiff, either:
 - 2) Personal or residential service.
 - a) Personal delivery to the tenant, or
 - b) Delivery to person of suitable age and discretion at rental premises if tenant is not available, or
 - c) Posted at premises in conspicuous place if tenant or other person of suitable age and discretion is not at premises.
- Or
- 3) Certified mail.

Pleadings.

1. Complaint for eviction.
 - A. Termination of tenancy (if applicable).
 - B. 3 day notice issued.
 - C. Grounds. Ohio Revised Code 5321.03 – Non payment of rent.
 - D. Acceptance of rent after 3 day notice.

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Time for hearing



Claim for monetary damages.

- 1) Unpaid rent.
 - Rent not pro-rated in absence of agreement by parties.
 - Duty to mitigate.
 - Landlord may also recover reasonable late fees if specified in rental agreement.
- 2) Damages to rental premises.
 - Ordinary or reasonable wear and tear.
 - Must show actual damages, not list of automatic deductions.
 - Liquidated damage clause prohibited.

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Landlord's duty to tenant's property after eviction.



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Landlord's duty to tenant's property after eviction.

1. Property disposed at time of eviction.
2. Property kept by Landlord for sale or use.
3. Abandonment of property by tenant.

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Security Deposit



Security Deposit

- A. Defined – R.C. Sec. 5321.01 Any deposit of money or property to secure performance by the tenant under the rental agreement.
 - B. Security deposit includes all funds held by the landlord (e.g., pet deposit, garage deposit).
 - C. If the security deposit is greater than one month's rent, then landlord must pay interest of 5.0% per annum, if the amount in excess of security deposit.
 - D. Duty of landlord to return upon termination of tenancy.
- Risk of double damages; R.C. 5321.16.

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Vardeman v Llewellyn,
(1985), 17 Ohio St. 3d 23.

- The Supreme Court construed the term “wrongfully withheld” 30 days as the balance of the security deposit after deduction for unpaid rent and damages to the leased property. The issue of good faith or written notice by the landlord is not applicable.

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VI. Housing Code Violations



General Purpose.

Promote the public health, safety and general welfare of the community.



The legislative intent inherent in the housing, building and zoning codes is to enforce compliance with those codes.



Judicial Initiative.

R. C. 1923.15. Eviction proceeding:

- 1) order governmental agency to inspect rental premises.
- 2) Prohibit re-rental of the premises if vacant.
- 3) Order repair of property if rental premises is occupied.

Defendants.

- 1) Owner. Statutory definition in state or local building code.
- 2) Person in control of property.
- 3) Property manager
- 4) Tenant

Nuisance Ordinances



Suppression issues.

Expectation of privacy.



Suppression issues.

In determining reasonable expectation of privacy, the following factors to be considered:

- a. The proximity of the area claimed to be curtilage to the home,
- b. If the area is included within an enclosure surrounding the home,
- c. The nature of the uses to which the area is put, and
- d. The steps taken by the resident to protect the area from observation from people passing by.

Impossibility of performance.

- 1) Bankruptcy/foreclosure
- 2) Permit not issued by city
- 3) Time for compliance
- 4) Adjacent property obstacle.
- 5) Adverse weather conditions.
- 6) Medical condition.
- 7) Financial condition.
- 8) Restraining order

ARGUING WITH AN INSPECTOR IS LIKE WRESTLING WITH A PIG IN THE MUD.
.. AFTER A WHILE YOU REALIZE THE PIG ENJOYS IT!



Selective Prosecution



Selective Prosecution

To support a defense of selective or discriminatory prosecution, a defendant bears the heavy burden of establishing, at least *prima facie*,

- (1) Singled out for prosecution instead of others similarly situated, and
- (2) Discriminatory selection for prosecution has been invidious or in bad faith, i.e., impermissible considerations as race, religion, or the desire to prevent exercise of constitutional rights.

Validity of restriction or code application.


- Strong presumption exists in favor of the validity of the ordinance.
- Presumed that the local legislative body is familiar with local conditions and is therefore better able than the courts to determine the character and degree of regulation required.

Double jeopardy


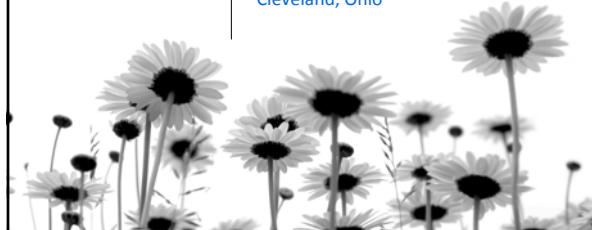
- Prior acquittal not bar to subsequent prosecution.
- Second prosecution after prior conviction for same violation on different date is not barred by double jeopardy. Although similar circumstances, different acts on different days.

Separate offenses


- Look to language of ordinance.
- Separate complaints needed for separate offenses.



Fair Housing
Hilary Mason King
Housing Research & Advocacy Center
Cleveland, Ohio



Lakewood Tenant Screening Program
Michael Bowen
Assistant to the Mayor



Lakewood's Discount Tenant Screening Program

- ❑ Provided by **CoreLogic SafeRent Inc.** in response to a City of Lakewood request for proposal
- ❑ SafeRent provides deeply discounted products designed to help you screen applicants for their **eviction, employment** and **criminal** histories
- ❑ Now accessible from the "Landlord Resources" page at **onelakewood.com**
- ❑ Continues the City's efforts to **attract stable tenants** and help maximize your profits



The Role of Housing & Building

Jeff Fillar

Asst. Building Commissioner



The Role of Housing & Building

Jeff Fillar
Assistant Building Commissioner for Residential Housing

INVESTMENT

Stocks & Bonds

Mutual Funds

401k's

RESPONSIBILITY

To your tenant

To your business

To the neighborhood

THE CITY'S RESPONSIBILITY

To your tenant

To the neighborhood

- Protect property values
- Maintain safe living for everyone



CURB APPEAL

Keeps your property value up
Keeps the neighborhood value up



UPGRADES

Computer receptacles
Dish washer
Clean laundry area
Safe garage
A/C & Furnaces



LIABILITIES

Wet basements
Shower areas
Electrical
Plumbing
Porches & Common Areas



Landlord Information Seminar

Thanks for attending!

*Please keep your programs
to confirm you attended.*

