

LANDLORD AND TENANT RIGHTS AND RESPONSIBILITIES

This brochure was prepared by Idaho Legal Aid Services, Inc. for the purpose of informing landlords and tenants of their rights and responsibilities. It attempts to summarize current Idaho law. It does not include legal theories which have been adopted by other states but as of yet not accepted by Idaho's courts. At several points in the brochure, the tenant is advised to seek the legal assistance of an attorney. If you are a tenant who is having difficulties with your landlord, it is best to see an attorney. If you are a tenant, cannot afford an attorney, and meet certain income guidelines, you may be entitled to free legal assistance from Idaho Legal Aid Services. The addresses and phone numbers of the area offices are listed at the end of this brochure.

The advice in this pamphlet is very general. There might be special factors in your case, or you might have questions after reading this pamphlet. We urge you to consult an attorney about landlord-tenant problems, especially if you have suffered very large losses or somebody has been injured.

THE LANDLORD-TENANT RELATIONSHIP

Whether there is a written contract or not, there is a contract between the tenant and the landlord. If there is a written contract, the contract will govern how the landlord and tenant should act during the tenancy, unless the contract is contrary to the law or public policy. If the landlord or tenant have questions regarding their rights or duties, they should first look to the lease or rental agreement for the answer, then contact an attorney if they have questions.

RIGHTS AND DUTIES OF TENANTS AND LANDLORDS

A. Tenant's Rights

1. The tenant has the right to possession and use of the premises.
2. The tenant has the right to quiet use and enjoyment, meaning the landlord should control the noise of other tenants and give the tenant reasonable notice before coming onto the property.
3. Any rights spelled out in the lease/rental agreement or under state or federal law.

B. Landlord's Rights

1. The landlord has the right to receive rent from the tenant.
2. The landlord has the right to receive the return of the premises at the end of the lease/rental agreement.
3. Any rights spelled out in the lease/rental agreement or under state or federal law.

C. Landlord's Duties

1. Provide reasonable waterproofing and weather protection of premises. Idaho Code Sec. 6-320(1).
2. Maintain electrical, plumbing, heating, ventilation, and sanitary facilities in good working condition. Idaho Code Sec. 6-320(2).
3. Maintain the premises as to ensure tenant's safety and health. Idaho Code Sec. 6-320(3).

4. Return any portion of the security deposit that is not used to repair damages described in the deposit agreement. See Idaho Legal Aid's brochure "Advice for Renters: Security Deposits."
5. Comply with the terms of the lease and Idaho's Landlord-Tenant law. Idaho Code Sec. 6-320(5).
6. Comply with the city, county, and state code regarding conditions of the housing.
7. Examples of violations:
 - a. Structural deterioration: cracked and crumbling walls and ceilings, leaking roof, broken or missing doors and windows.
 - b. Defective plumbing, wiring, or heating: nonworking toilet; plumbing leaks; electrical wires exposed; no heat; no hot and cold running water; no sink or bath facilities.
 - c. No means to remove or store garbage.
 - d. Presence of rats or insects due to landlord's neglect in maintaining a safe and healthful premise.
 - e. Landlord does not attempt to make repairs when requested.
 - f. Discrimination based on sex, race, color, religion, disability, familial status (presence of children under the age of 18), or national origin. Contact the Intermountain Fair Housing Council or HUD Fair Housing Office.
 - g. Unlawful entry and/or taking of possessions.
 - h. Unlawful eviction.
 - i. Failure to provide a working smoke detector. Idaho Code Sec. 6-320(6)

D. Tenant's Duties.

1. Pay rent on time, even if repairs are needed.
2. Maintain clean and sanitary premises.
3. Properly dispose of garbage.
4. Properly use all appliances, electrical fixtures, and plumbing facilities.
5. Do not carelessly, negligently, or accidentally destroy or deface the premises or its contents. You are responsible for the actions of your family and friends.
6. Comply with the terms of the lease.
7. Examples of violations:
 - a. Breaking windows or fixtures.
 - b. Burns in carpets or on fixtures.
 - c. Making excessive noise.
 - d. Abandoning the premises.
 - e. Failure to pay your rent when due.

ENFORCING RIGHTS/MEETING RESPONSIBILITIES

It can be difficult for a tenant to enforce his/her rights, so consider a landlord's practices or reputation before renting. The landlord and tenant should make sure a tenant can afford the monthly rent and any other possible expenses before moving into a rental property.

The landlord should also:

1. Conduct a criminal, financial, credit, and rental background check, if possible and necessary.
2. Conduct an inspection with the tenant before s/he moves in and after s/he moves out.
3. Take pictures or videotape the rental before the tenant moves in and after the tenant moves out.

4. Provide copies of the lease/rental agreement to the tenant.
5. Provide receipts to tenants when they pay their rent or other monies.
6. Keep an accurate account of all monies the tenant paid or owes.
7. Make sure the tenant clearly understands his/ her duties under the lease/rental agreement.

The tenant should also:

1. Talk to current and/or former tenants of the prospective landlord regarding the landlord's practices.
2. Conduct an inspection with the landlord before moving in and after moving out. Keep a copy.
3. Take pictures or videotape the rental before moving move in and after moving out.
4. Obtain copies of the lease/rental agreement and keep all copies of notices/letters served by the landlord or given to you.
5. Obtain receipts when paying rent or other monies.
6. Keep an accurate account of all monies paid or owed to the landlord. Keep copies of records.
7. Clearly understand her/his duties under the lease/rental agreement. If the language of the lease/rental agreement is unclear, the tenant should ask questions until the agreement is fully understood or seek the assistance of an attorney.

EVICCTIONS AND TERMINATIONS OF TENANCY

A. When can a landlord evict a tenant?

1. A tenant can be evicted if s/he:
 - violates the terms of the lease agreement;
 - is late in paying the rent;
 - rents month-to-month and is given one months' notice asking him/her to move.
 - engages in the unlawful use, delivery, or production of a controlled substance on the premises of the leased property during the tenancy.
2. A tenant cannot be evicted if s/he has:
 - paid the rent and the eviction is in retaliation for the exercise of a legal right such as requesting repairs be made or organizing a tenants' association.

B. How can a tenant be legally evicted?

1. A tenant must be given notice by a landlord prior to the eviction. The notice can be 3 days or one month. (A 3 day notice means 3 "working days" and does not include the day it was served, weekends, or holidays.)
 - a. A 3 day written notice is permissible only if a tenant is behind in the rent; violated the terms of the lease agreement; or engaged in the unlawful delivery, production, or use of a controlled substance on the premises of the leased property during the tenancy. The 3 day notice must include the amount of rent the tenant owes (if s/he is behind), the lease provisions the tenant has violated, or that s/he has engaged in the unlawful delivery, production, or use of a controlled substance on the premises, and advise the tenant that s/he has 3 days to either pay the rent, cure the lease violation, or leave. If the tenant complies within the 3 day period, the landlord may not evict him/her. There is no opportunity to cure for engaging in illegal drug activity. A landlord cannot use the 3 day notice where the tenant is current in the rent and has complied with the terms of

the lease, and the landlord simply wants to rent to another person. Idaho Code Section 6-303.

b. A one month written notice is permissible when a tenant is renting for an open-ended period of time. Idaho Code Section 55-208.

c. A lease can provide for notice other than 3 days or one month as long as it is reasonable. The requirement of notice cannot be waived.

d. If a tenant is living in government subsidized or public housing, or receives government housing assistance, and s/he receives one month's notice, it must be for good cause. See Idaho Legal Aid Services' Federal Housing Programs brochure.

e. If the tenant owns a mobile home and rents the space, s/he should consult Idaho Legal Aid Services' Manufactured Home brochure regarding his/her rights.

C. What if a tenant refuses to move?

1. If the tenant feels s/he is being treated unfairly or illegally evicted, consult an attorney immediately.

2. Once a tenant receives a legal 3 day or one months' written notice, a landlord may commence a legal proceeding called an "unlawful detainer" action to regain possession of the premises and/or collect the rent which is due.

3. **Expedited Proceedings.** In those cases where the rent is past due; the tenant is or has been engaged in the unlawful delivery, production, or use of a controlled substance on the premises of the leased property; or the tenant is a "tenant at sufferance" pursuant to Idaho Code Section 45-1506(11), a summary trial procedure is available to the landlord to regain possession within 5 to 12 days after the tenant receives notice of the court action. However, the tenant may also be required to pay the landlord's attorney fees if the eviction notice states that attorney fees will be awarded, and the landlord wins. No notice is required for tenants at sufferance as described in Idaho Code Section 45-1506(11).

4. **Regular Eviction Proceedings.** In those cases where the landlord serves the tenant a one month notice or a 3-day notice for violating the lease, the landlord will serve the tenant a Summons and Complaint. The tenant has 20 days to file an Answer with the Court. This eviction process is not quick. However, the tenant may be ordered to pay damages if s/he should lose and attorney's fees and costs provided the notice asks for attorney's fees.

5. If the tenant is served with legal papers for any court action, consult an attorney immediately.

6. If the tenant does not move by the court-ordered time after the eviction proceeding, the Sheriff, through a Writ of Restitution, may remove the tenant and his/her property from the premises.

D. Unlawful Evictions.

1. If the landlord does not give the tenant written, legal notice and does not have a court order to have the Sheriff move him/her, the landlord cannot evict him/her by turning the utilities off, changing the locks, or any other adverse act to force him/her to leave. These types of self-help evictions are illegal under Idaho law.

2. If the landlord does use self-help to evict the tenant, the tenant may have a cause of action against the landlord. In that case, seek the assistance of an attorney immediately.

OTHER PROBLEMS

A. Invasion of privacy.

1. If a landlord enters a tenant's home at any time without permission, the tenant has the right to call the police. A tenant has a right to privacy without being unduly harassed by a landlord.
2. A landlord does have the right to enter a tenant's home:
 - a. To make necessary repairs;
 - b. To show future tenants the premises at convenient times; or
 - c. In case of an emergency involving life or property.

B. Can a landlord take a tenant's personal property?

1. A landlord cannot take a tenant's property. If this should happen, call the police and see an attorney.
2. A tenant is free to take all of his/her property when s/he moves out as long as the removal does not damage the landlord's premises or is not an integral part of the premises. In other words, remove property carefully from the walls and ceilings.

C. Can a landlord increase the rent?

1. If the tenancy is month-to-month, a tenant must receive a written notice of the increase in rent 15 days before the next rent is due. There are no limits on the number of times or the amount a landlord can increase the rent unless there is a provision in the lease. A tenant can move rather than pay the increase. Idaho Code Section 55-307.
2. If a lease agreement sets the amount of rent for a given period of time (such as 6 months, 1 year, etc.), a landlord cannot raise the rent during this time.

D. Can a tenant break the lease?

1. A tenant can break a lease if there is a termination clause in the lease, or if the landlord has violated the terms of the lease or agrees to release the tenant from the terms. Get the agreement in writing.
2. A tenant cannot break a lease without good cause. A lease is binding and a tenant could be forced to pay damages and the landlord's costs of re-renting the place. The landlord has the duty to re-rent the premises as soon as possible to mitigate his/her damages.

E. How much notice must be given before leaving if there is no lease agreement?

1. It is best to give a landlord at least one month's written notice before leaving.
2. If this is impossible, then notify the landlord as soon as possible.
3. If a tenant does not attempt to give reasonable notice, he could be responsible for the landlord's re-renting costs.

OTHER BROCHURES

In addition to the rights listed in this brochure, there may be other rights you are entitled to. Please see the following Idaho Legal Aid Services' brochures for additional information:

Advice for Renters: Repairs
Advice for Renters: Security Deposits
Federal Housing Programs
The Rights of Manufactured Home Tenants
Your Utility Bill and Your Rights

Fair Housing Legal Advice Line

Idaho Legal Aid Services Area Offices

310 N. 5 th Street, Boise	345-0106
1104 Blaine Street, Caldwell	454-2591
410 Sherman Ave., # 303, Coeur d’Alene	667-9559
482 Constitution Way, # 101, Idaho Falls	524-3660
633 Main Street, Lewiston	743-1556
150 S. Arthur, Pocatello	233-0079
475 Polk, Twin Falls	734-7024

Idaho Senior Legal Hotline	1-866-345-0106
Idaho Senior Legal Hotline (Spanish-speaking)	1-866-954-2591
Domestic Violence Legal Advice Line	1-877-500-2980
Fair Housing Legal Advice Line	1-866-345-0106
Email fair housing questions only to:	<i>fairhousing@idaholegalaid.org</i>

www.idaholegalaid.org

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To find Idaho rental assistance and properties, call 1-877-428-8844 or visit www.housingidaho.com