

1) What laws outline the rights of both landlords and tenants?

The Tennessee Uniform Residential Landlord and Tenant Act, Title 66, Chapter 28, (the "Act", which may be found online at <http://www.lexisnexis.com/hottopics/tncode/>) was enacted in 1975. It, and subsequent case law interpretations of the Act, have established the rights and obligations of landlords and tenants involving the rental of dwelling units, including mobile homes.

The Act does not apply to commercial property, and there is no state statute outlining the rights and obligations of parties to these contracts. Rather, the terms of the lease and contract law apply.

The Act applies only to rental agreements where the dwelling is located in a county having a population of more than 75,000 residents according to the 2010 census or a subsequent census. As of the 2010 census, those counties are:

Anderson
Blount
Bradley
Davidson
Hamilton
Knox
Madison
Maury
Montgomery
Rutherford
Sevier
Shelby
Sullivan
Sumner
Washington
Williamson
Wilson

If the dwelling is located in a county where the population does not surpass that threshold, the terms of lease agreement outline the rights and obligations of the parties. In those counties, where there is no written lease agreement, a court will apply contract law regarding the verbal contract and might look to the Tennessee Uniform Residential Landlord and Tenant Act for persuasive authority only. As such, the answers below may contain information that is only applicable if the dwelling is in an applicable county.

2) Should I ask for a written rental agreement before moving in?

Yes. This memorializes the expectations of both parties and can prevent future disputes. It is important for tenants to keep a copy of their signed rental agreement. It is also wise to document in writing any repairs or renovations the landlord promises to make and anticipated dates for completion. In addition, it is advisable to make a written list and/or take photographs of any damage or visible wear and tear on the property upon moving in and submit a copy to the landlord. Many landlords will request this of all tenants. This will help ensure that repairs for damage and wear and tear not caused by the tenant are not deducted from the tenant's security deposit after moving out of the property. It is also advisable for a tenant to request to see the unit the tenant will be renting before signing a lease.

A lease is a binding contract and should include information regarding the duration of the lease, the amount and date rent is due, as well as any other pertinent information.

Under the Act, if the landlord does not sign a written rental agreement, acceptance of rent without reservation by the landlord binds the parties on a month-to-month tenancy.

3) How do security deposits work under the Act?

All landlords of residential property requiring security deposits prior to occupancy are required to deposit all tenants' security deposits in an account used only for that purpose and must disclose the location of the account at the time of receiving the deposit. Landlords may not retain any portion of the security deposit if it has not been deposited in such an account.

Upon request by the landlord for a tenant to vacate or within five (5) days after the landlord receives written notice of a tenant's intent to vacate, the landlord may provide notice to the tenant of his or her right to be present at the inspection of the premises. Such notice may advise the tenant that he or she may request a time of inspection to be set by the landlord during normal working hours.

The landlord may require the inspection take place after the tenant has vacated, provided that the inspection must be either on the day the tenant completely vacates the premises or within four (4) calendar days. If a tenant agrees to the mutual inspection, the landlord and tenant must then inspect the premises and prepare a comprehensive listing of any damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing such damage. The landlord and tenant must both sign the listing or the tenant must specifically state in writing any items that the tenant does not agree with. A tenant who disputes the accuracy of the listing may bring a lawsuit in the appropriate court for the county that the property is located in. If the tenant does not inspect the premises, the tenant can request in writing a written list of damages and the estimated cost of repair be sent to the tenant via certified mail.

Security deposits may be applied to any unpaid rent or other amounts due and owing.

A landlord may recover the costs of any and all contractual damages plus the cost of any additional physical damages to the premises that are discovered after an inspection. Such sums may be recovered if the damage was discovered by the landlord prior to the earlier of thirty (30) days after the tenant vacated or abandoned the premises or seven days after a new tenant moves in.

The landlord is required to notify the tenant in writing of any refund due and may retain unclaimed refunds after sixty (60) days of notification.

4) Under the Act, can the landlord enter my rental unit without my permission?

The Act states that tenants shall not unreasonably withhold consent to the landlord to enter in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply services, or exhibit the property to prospective or actual purchasers, mortgagees, workers or contractors. The landlord shall not abuse the right of access or use it to harass the tenant.

The landlord may enter the dwelling without consent in the event of an emergency, defined as a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Where no emergency exists, if any utilities have been turned off due to no fault of the landlord, the landlord may enter the premises for the purpose of ascertaining any damages and making any necessary repairs resulting from the lack of utilities. The landlord may also enter the premises if there is a court order, the tenant has abandoned or surrendered the premises, or the tenant is deceased, incapacitated or incarcerated.

The landlord may show the premises to prospective tenants within the final thirty (30) days of the termination of the rental agreement provided that this right of access is set out in the rental agreement and the tenant is given notice at least twenty-four (24) hours prior to entry.

If the tenant does not comply with the tenant's general maintenance or conduct obligations and that failure materially affects health and safety as specified in the Act and the noncompliance can be remedied by repair, replacement of item, or cleaning, the landlord may enter the premises and cause the work to be done in a workmanlike manner after providing appropriate requests and notice.

During any absence of the tenant in excess of seven (7) days, the landlord may enter the dwelling unit at times reasonably necessary.

5) Under the Act, who is responsible for maintenance and repairs?

The landlord must comply with applicable building and housing codes materially affecting health and safety; make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. The landlord is also required to keep all common areas clean and safe. In multi-unit complexes of four or more units, the landlord must provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste from common points of collection.

If the tenant has concerns about repairs and maintenance, express them to the landlord in writing, keep a copy and document the condition of the property with photos, video, or other documentation.

6) If I am not satisfied with my landlord's efforts to make repairs or maintain the dwelling, can I withhold rent or break the lease?

A tenant should consult an attorney before engaging in either conduct. In a subsequent lawsuit, it might be found that the landlord was in breach of the rental agreement; however, this is a determination that a judge makes on a case-by-case basis, considering the facts and law.

If it has become apparent that the relationship between the landlord and tenant has broken down irreparably, parties may wish to consider cancelling the lease and negotiating the terms of the tenant's exit.

7) What should I do if I discover mold or pests in my rental unit?

Mold is everywhere, both indoors and outdoors. Everyone is affected by mold differently. For some even in smaller amounts it presents a significant danger, while others can tolerate it well. A tenant who believes mold is responsible for ill health effects should contact a physician immediately.

For information and tips on how to prevent or clean up mold, go to the Tennessee Department of Health website at <http://tn.gov/health/article/mold1>. The Department also has useful information about common pests at <http://tn.gov/health/article/pests>.

The landlord should be notified when a tenant discovers mold or pests, to determine the extent of the problem and abate it if necessary. As previously noted, it is always wise to give written notice, keep a copy and document the problem. The local building codes and/or health department might also be of assistance. If a party has questions regarding their legal rights, obligations, or rights of action, then they should consult legal counsel.

8) Under the Act, what happens if my landlord fails to supply essential services?

"Essential services" are utilities including gas, heat, electricity and any other obligations imposed upon the landlord which materially affect the health and safety of the tenant.

The Act states that the tenant shall first give written notice to the landlord and then may do one of the following: (A) Procure essential services during the period of the landlord's noncompliance and deduct their actual and reasonable costs from the rent; (B) Recover damages based upon the diminution in the fair rental value of the dwelling unit, provided tenant continues to occupy premises; or (C) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

9) What are the tenant's obligations under the Act?

A tenant shall comply with all obligations primarily imposed by applicable provisions and housing codes materially affecting health and safety. A tenant is also required to keep the

space as clean and safe as it was when the tenant took possession. A tenant must dispose of all ashes, rubbish and other waste to designated collection areas and receptacles. In addition, a tenant may not deliberately destroy, deface, damage or impair any part of the premises or permit any person to do so, or engage in any illegal activity on the premises. Finally, a tenant may not disturb a neighbor's peaceful enjoyment of the premises.

10) What type of notice is required to terminate the tenancy under the Act?

Ten (10) days' written notice is required to terminate a week-to-week tenancy, and 30 days' written notice is required to terminate a month-to-month tenancy.

The Act states that if there is a material noncompliance by the tenant with the rental agreement or provisions in law which materially affect health and safety, the landlord shall give notice of termination to the tenant. If the breach is remediable by payment of rent, the cost of repairs, damages or any other amount due to the landlord pursuant to the rental agreement, the landlord may give the tenant fourteen (14) days to remedy the breach. If the breach is not remediable, the landlord may give the tenant fourteen (14) days' notice of termination. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the agreement with at least seven days written notice.

The landlord may terminate a rental agreement within three (3) days of written notice received by the tenant if the tenant or any person on the premises with the tenant's consent commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare or the life of property of other persons on the premises or creates a hazardous or unsanitary condition that affects the same.

11) Under the Act, can a landlord retaliate against a tenant by raising rent, decreasing services, or bringing or threatening to bring an action for possession because a tenant has asked for repairs or maintenance?

No. However, the landlord may bring an action for possession if the tenant is in default in rent, a violation of the applicable housing or building code was caused primarily by lack of reasonable care by the tenant or other person upon the premises with tenant's consent, or if complying with the applicable building or housing code requires work that would effectively deprive the tenant's use of the dwelling.

12) Who enforces the Landlord Tenant Act?

The Tennessee Division of Consumer Affairs does not enforce the Act. Rather, Consumer Affairs offers free mediation services for landlord and tenant disputes where a tenant has complained. Frequently these matters involve questions raised by the Act. However, the statute does not address every possible set of circumstances.

Mediation is a voluntary process where parties seek to reach agreements that are acceptable to both the landlord and tenant with the assistance of a neutral mediator. The Division of Consumer Affairs does not offer legal advice, inspect rental dwellings or enter orders, although the Division may investigate violations of the Tennessee Consumer Protection Act.

This article is for educational and informational purposes only, and is not legal advice. No action should be taken in reliance on this information. Both landlords and tenants should contact an attorney regarding any specific situation, their rights, and possible legal actions.

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