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Introduction

Chances are that you purchased this book because either your landlord or your roommates are giving you problems and you don't know how to fight back. This book gets down to the nitty gritty of what your rights are in Ohio in regard to residential rental housing. It is important to note that very little of this book is concerned with commercial tenants (defined as persons who run a business out of the rental space rather than those who live there). This work further does not cover rental arrangements outside of the State of Ohio, nor does it cover mini-storage issues. Lastly, while many of the laws and cases cited herein are analogous to persons who rent mobile homes, there is a different statutory section of the Ohio Revised Code that applies to them, and there are some differences. This book is not addressed to them and should only be used by them as a very general guide to their rights.

This book is organized along the same lines as the chronology of a typical landlord tenant relationship; hunting for apartments, lease signing, move in, problems during the tenancy, move out, eviction, and recovery of security deposit. This causes a lot of hopping around within the various sections of the Ohio Landlord Tenant Act of 1974, but I decided that it was still the best way for the layman to understand the law.

As you read through this book, you will notice a lot of references to college students. This book is primarily focused upon college students who are in their first apartments after getting out of the dorms. If that does not describe you, have no fear. The lessons in this book apply to anyone renting anywhere in the State of Ohio. I focus upon the college students because that is the area where there are the most abuses.

Landlords in the college and university areas tend to take advantage of students for many reasons. Firstly, they know that most students lead a transient lifestyle, meaning that they move often from place to place, either because they are transferring, leaving school, graduating, or taking on a promising employment prospect in a far away state. These factors combine to make it unlikely that many students will carry through on litigation against the landlord.

Secondly, most college students are without the resources to fight against the landlord. Hiring a lawyer, even to find out what your legal rights are, can be expensive, and landlords know that the kids don’t have the cash. But you will find in reality that there are lawyers out there who will sit down in an office with you and review your situation for an hour for as little as One Hundred Dollars ($100.00).

Thirdly, most college students do not have great experience in rental property, and they don’t know when something is normal or when something is a rip off. Many college students tend to be somewhat disorganized in their lifestyle and this can work to the landlord’s advantage when the student can’t produce receipts for all of the rent that was paid under the lease or copies of letters of complaint sent to the landlord about the conditions of the place.
Most of my legal experience in this area comes from helping out college kids who are getting ripped off for the above reasons. Just remember that even though I am talking to them in this work, if you are getting screwed by your landlord, you can get the same useful information by eavesdropping on our conversation.
Chapter I: Bare Bones Summary/Overview

Here’s a fast summary of the most frequently arising issues in landlord tenant law. Leases can be written or oral. If you have a written lease, your landlord’s oral promises at or before the lease signing which are not in the lease are not enforceable. Just because your lease says something, doesn’t mean that a court will enforce it if it is unconscionable (meaning completely unfair), or if it violates the Ohio Landlord Tenant Act of 1974. In most cases, if your roommate runs out on you, your landlord will be able to come after the persons on the lease who stayed behind. Getting a job in another city does not allow you to break your lease.

You will be responsible for returning your apartment to your landlord in the same condition you got it, reasonable wear and tear excepted. When you move into an apartment, you should videotape the place. When you move out of an apartment, you should videotape the place. That way it’s not your word against the landlord on damages.

If you have problems during the year with your apartment, you need to communicate them in writing to the landlord. Keep copies of anything your landlord sends you or that you send your landlord. If your landlord fails to fix serious problems within 30 days of getting your written notices, you have the right to escrow your rent with the Court, and you may even have the right to move out. Your landlord will typically not be responsible for break ins and crime in the area. Your landlord is not allowed to retaliate against you by evicting you for reporting him to the authorities for violations, nor can he evict you for organizing tenants in your building.

Your landlord can only evict you via the statutorily authorized process found in Ohio Revised Code Section 1923 which involves giving you a chance to show up in Court to contest the landlord’s allegations. This means that he can’t just change the locks while you are at work without violating the law. If your landlord wishes to enter and inspect the premises, he can do so, but he has to give you reasonable advance notice, usually at least 24 hours.

When you move out, if your landlord wrongfully keeps your security deposit, you can sue the landlord for double damages (twice the wrongfully withheld amount) plus attorneys fees if you gave him written notice of your forwarding address.

Don’t assume that your landlord knows anything more about landlord tenant law than you do, especially after reading this work. He will try to come off like he knows the law and your case is hopeless, but a great lawyer once told me never to take legal advice from opposing counsel.
Chapter II: Hunting Apartments

You’re not going to see much law in this section, it’s mostly just practical advice. There are many different types of landlords and apartments. Some are good, and some are bad. The first rule is that size does not matter. A big complex can have a dishonest property manager just as easily as a guy who rents out the other side of his duplex for few extra bucks. Large complexes can also have abysmal repair records. How can you tell whether the apartment manager fixes things on time and is cool about the rent being three hours late? Ask the people who are living there right now. It’s a good bet that they have some experience living there and they are likely to be happy to share it with you. Your landlord might ask you for a rental reference. Turn about is fair play when it comes to his present tenants. And don’t ask for an opinion in front of the landlord if you want a straight answer.

There are lots of great features about apartments. Off street parking is great, proximity to classes, on site washer and dryer, decks, etc. But the specifics are all up to you. In general, when looking for an apartment, the most important consideration is that you remember the first commandment that there are plenty of other empty apartments for rent out there and that there will always be plenty of empty apartments for rent. To reiterate the first commandment of apartment hunting, I will put it in its proper form:

THERE ARE PLENTY OF OTHER EMPTY APARTMENTS FOR RENT OUT THERE!

If you ignore this first commandment, you are doomed to the hell of slumlords with scant chance of redemption. If you choose to ignore this commandment because you are ga ga over an apartment that you simply must have because of the beautiful view of the nearby park, do you and me a favor and quit reading this portion of the book and wasting our time but thanks for the purchase price. There is no such thing as an indispensable apartment. There may be apartment complexes that are all full, but there are others nearby that are not.

You will find a place to live and a nice one no matter how late you get started looking. Don’t feel like you have to rent the first apartment that you see or like out of fear that the next group behind you will shark it from you, or that you won’t find a place for next year. In fact, you would do well to wait. If you are in the university area, the best deals are struck right before the school year starts.

Were I a university area landlord (and at the time of this writing I am), I would be asking for as much as I could get out of my apartment in March or April. At that point I have all the time in the world to get a good rental group in there. But as summer wears on and the place still is not rented for next September, I get nervous about making my mortgage payment when my present renters leave and I have no money coming in. I start thinking about that second job that I am going to have to work at night so the bank doesn’t foreclose on my retirement nest egg. As I show group after group through and no one takes it, I start thinking that a hundred or so bucks off the rent per month for a year is nothing really when it comes to the long run. If the tenants want pets, well, a bit of extra dog damage is cleaned up easily enough. Why is it that you would
bargain the hell out of someone from whom you are buying a used car, but you wouldn’t dream of bargaining for a used apartment?

Remember as well that you are likely going to live there for at least a year. As a student, you have enough things to deal with besides having to come home to a place you don’t want to be. Home is the key word. This will be your home away from home. Take the time to be choosy and find a place that you can call home. If you want the quiet life of dedicated study, don’t live near students. If you want to have some serious parties, do not live near families, working people, or older people.

Your next consideration should be concerning roommates but I’ll leave that up to you. Remember that the general rule of law is that you will be responsible for what your roommates do (as in setting fires and breaking windows) or do not do (as in paying the rent). Find someone with whom you are compatible and who is dependable around the first of every month. Chances are you will be stuck with them for at least a year in a very small space. If you can’t get along with your roommate, that isn’t the landlord’s fault. So if you have any doubt about whether you will get on with that fourth or fifth roommate, best not to chance it.

Avoid the old switcharoo. What's the old switcharoo, you ask? It’s when the landlord or the leasing agent at a large complex shows you their “model apartment” and promises that every other apartment in the building is just like this one with new appliances, a remodeled bathroom, new carpet, fresh paint, a loveseat and 27” color t.v. to boot. They always pick the one that has the view of the lake or the park to be the model, rather than the view of the stinking dumpster ‘round back. And, of course, you’ll hear, “Your apartment is rented right now and we can’t get in to see it without giving the current tenant a week's notice.”

One thing that you will notice about all model apartments is that no one is living in the model. The carpet is as new as the day it was laid down. There are no cracks in the window glass and the appliances work perfectly because they never get used. Landlords are banking on the fact that you have not purchased this work or have already ignored or violated the first commandment. They understand how to take advantage of college students who can’t wait to rent an apartment the day before yesterday. Landlords and their leasing agents will tell you everything you want to hear. This accommodating attitude will last only through the initial courting stage. Once you say, “I do,” the honeymoon is over before it ever began.

If you fall for the old switcharoo, you will only get to see your apartment after you have locked yourself into the lease and by then it will be too late. The lease will say nothing about all the promises the landlord or leasing agent made when they showed you the “model apartment.” Landlords have a very short memory and unless you can shove a piece of paper under their noses with your and their John Hancocks on the bottom to remind them that new carpet was supposed to have been installed before move-in, you are in the hurt locker.

If you heed our advice and insist upon seeing the apartment that you will be renting before making any deposit or signing any piece of paper there is hope for you yet. Becoming a Jedi Tenant is still a long way off but you have taken the first step.
When you are in the actual apartment which you will be renting and looking at it for the first time, it’s a good idea to someone with you who is outspoken and will not be living there, like your mother or some very outspoken friend who will spot every flaw and insist loudly that it be put in the lease that such imperfections be remedied.

What will the landlord say? “No problem, Mrs. Johnson. We’ll get right on that. We’ll have that taken care of before they move in. Not to worry.” But watch out. If those promises are not found in the lease, consider them gone with the next passing wind. We’ll tell you more about the Parol Evidence Rule as it applies to rental contracts in the next section.

Always remember that if the landlord isn’t giving you what you want, WALK. Walk away from that landlord and that lease as fast as you can and never come back. In the landlord’s eyes, he sees you as a giant checkbook that just sprouted legs and is walking out of his office. Empty apartments don’t pay rent. Giant checkbooks sprouting legs and walking out of offices are not good things in the eyes of a landlord. That landlord wants to see your rent check magically float out of your apartment down the hallway and into his office every month.

If you have ever wondered what landlords dream about, there you have it. Hundreds of checks floating through the air and into the landlord’s bank accounts. Chances are that the landlord knows the tenant’s first commandment better than you: THERE ARE PLENTY OF OTHER EMPTY APARTMENTS FOR RENT OUT THERE. And if he realizes that you know it, dreams of magical checks finding their way into his bank account suddenly disappear.

If you get up and walk out of a bad situation, you have already learned fast and well. Landlord’s are money-hungry by nature. Chances are they have a huge mortgage payment to make each month and they are counting on you to help make it. Once you sign on the dotted line, the chances of you getting out of helping to pay off the interest on that loan for the next year are Slim and None and Slim just left town with your best girl.

But some landlords will let you walk. Why? Always remember that some landlords are stupid. It’s not that they know something that you don’t. If you are a gift from heaven (a tenant looking to rent a five bedroom apartment in the middle of February) and the landlord won’t give you a break on the rent and addresses you in a rude and surly manner, it’s not because he has the inside scoop. It’s because he is a big fan of unrented property. He inherited the complex from his parents and has no mortgage payment. Walk. Leave him to his own devices.

When looking for apartments, make a day out it, not the latter part of the afternoon. If you have to select an apartment in three hours time, you will be unhappy. If you have all day set aside, you can really see places and do it right. Bring a notebook and a pen so that you can remember addresses, phone numbers and rental amounts. If you are looking at renting an older structure, you may want to call various utility companies to see what the monthly utility payments are going to be.
To sum up, The first commandment is **THERE ARE PLENTY OF OTHER EMPTY APARTMENTS FOR RENT OUT THERE!** Its first corollary is - **WALKING IS A VERY EFFECTIVE BARGAINING TOOL**, and good exercise to boot.
Chapter III: Understanding Rental Applications and Rental Agreements

A. Rental Applications

It is a common practice among landlords to have you fill out a rental application wherein you consent to have the landlord look into certain aspects of your background before he signs a rental agreement with you. The three types of checks that you see done most often are credit checks, arrest record checks, and rental history checks. It is not uncommon for the landlord to charge a non-refundable application fee for performing these checks on you. Generally this fee is around Twenty Five or Thirty Dollars per person.

Read these rental applications before signing them. Sometimes they have these little bombs hidden at the bottom near your signature wherein by signing you make a promise to enter into a contract regarding the rental property. The Eighth District Court of Appeals in the case of White v. Boyd 1993 Ohio App. LEXIS 5660 (November 24, 1993) Montgomery App. No. 13757, unreported, found that these clauses are unconscionable:

Under these circumstances, we agree with the referee’s conclusion that there was never a valid, binding, or enforceable lease agreement between the parties, even though the application signed by the Boyds contained their agreement “to sign a lease or rental agreement” on approval of the application. If no terms of the lease agreement, other than the monthly rental, were discussed with the Boyds, as the referee found upon conflicting evidence, then their open-ended agreement to sign a lease upon approval of the application was not supported by sufficient consideration, was unconscionable, and was, therefore, unenforceable. If we were to hold otherwise, then a landlord receiving such an application could require the applicants to sign a lease having a perpetual term and many onerous undertakings, none of which had been previously disclosed to the tenants. Id. at 7-8

I know that you’re not a lawyer, but there generally isn’t a lot of wording in a rental application. I have a good feeling that you understand English well enough to tell when there is wording that is trying to commit you to signing a lease. Here’s an easy rule. If it looks like a duck talks like a duck, and walks like a duck, it’s most likely going to swim in your pond, eat a lot of bread, and crap on your golf course. If you have a doubt about what you are signing, then don’t sign it. If the landlord protests that he just wants certain information, then fill out the information he wants on a blank sheet of paper. If what the landlord is explaining to you does not sound like what you are signing, then do not sign it. Listen to your gut feelings, they are rarely wrong. If it doesn’t sound right to you, WALK.

There are landlords who will try to get you to first put down a security deposit on an apartment in the amount of one month’s rent as a precondition for showing you the apartments that they have open. They will tell you orally that if you do not sign with them, then they will give you the security deposit back. It is unwise to do this. Think about it. You are about to give a perfect stranger one month’s rent. Hmmm.
If you read the rental application closely, it will probably tell you that the “security deposit” is really a non-refundable application fee. The landlord will argue in Court that your failure to sign a lease agreement for an apartment caused him damages in the amount of one month’s rent. Of course, he cannot point to any lease agreement that requires you to pay rent, but that is no matter. There is case law in Ohio that says that provisions in a rental contract charging such rates for an application fee is in reality a penalty clause. In the case of Robertson v. Rossing, 1999 Ohio App. LEXIS 365 (February 8, 1999) Butler App. No. CA98-02-035 (unreported) a tenant failed to disclose that she had been evicted on a past rental application. The landlord found it out, and refused to rent to her, but wanted to keep her one month’s rent/application fee [of $200.00] as per a clause in the contract. The Court stated as follows:

However, even if this had been an enforceable contract, the clause in issue would not have been enforceable because it is not a legitimate liquidated damages clause. Generally, contract clauses providing for reasonable liquidated damages are valid and enforceable. Samson Sales, Inc. v. Honeywell, Inc. (1984), 12 Ohio St. 3d 27, 28, 465 N.E.2d 392. However, reasonable compensation for actual damages is the legitimate objective of such a provision, and where the amount is manifestly inequitable and unrealistic, courts will ordinarily regard it as penalty and such a provision will not be enforced. Id. See, also, In re Graham Square, Inc. (C.A.6, 1997), 126 F.3d 823, 828.

In this case, the face of the instrument bears no evidence that the stipulated amount constitutes reasonable compensation for actual, foreseeable damages. Generally, an instrument is to be strictly construed against the person who prepared it, and favorably to the person who had no voice in the selection of the language. See Davidson v. Bucklew, (1992) 90 Ohio App. 3d 328, 331, 629 N.E.2d 456. Thus, construing this clause strictly against appellant, we must conclude that the $200 amount bears no reasonable relation to actual damage suffered by appellant as a result of Harrison’s failure to fully disclose all of her prior evictions. Accordingly, even if the parties had formed a binding contract, we find that the clause at issue would not be enforced because it constitutes a penalty. Appellant’s first assignment of error is overruled. Id. at 6-7.

As such, these clauses will not be enforced by the courts, but you will still have to sue the landlord to get your deposit back. Whoopee! You are now the proud owner of a lawsuit upon which it will take you months to collect rather than having your rent money in hand. There are some cases which hold that in such suits, the double damages and attorneys fees provisions of the landlord tenant act do not apply. This effectively leaves you without an attorney when you argue your case. It’s also a real hassle to go to court over one month’s rent. There are filing fees and days of missed work for pre-trial hearings. There are motions and cross-motions which have to be filed. There are days when you will show up for the trial and the matter will be continued to another day without warning of any kind. It’s a huge hassle. Best to move on to another landlord if the one you are negotiating with tries to get you to put down a significant amount of money as an application fee.

B. The Nature of the Rental Agreement
If you were in law school, they would be teaching you that the landlord tenant relationship is part property law, and part contract law. You would also be drinking a lot of beer and having a great time except during exams. But you are probably not in law school, or you would have been paying a lot more for books that would tell you the same thing as this one, just in a more convoluted way. It is true that a tenancy is a type of estate in land, and it is also true that rental agreements in Ohio are interpreted and enforced by the courts pursuant to the law of contracts.

In Ohio, there are two sources of law which govern the terms of rental agreements (also known as leases). The first source of law is the Ohio Revised Code [this is what the Legislature gets together to vote on from time to time], specifically, the Ohio Landlord Tenant Act of 1974 and cases interpreting it. The second source of law is the rental agreement between the parties. Sometimes the two sources of law conflict. When that happens, the Code and cases interpreting the Code win over the rental agreement’s provisions. This only makes sense. If you are stupid enough, you can sign a contract with someone wherein you promise to kill a man for Five Hundred Dollars. But that doesn’t mean that the courts will enforce contractual provisions that are contrary to the laws of the State of Ohio.

Text taken from the Ohio Landlord Tenant Act of 1974 will appear in the chapters that deal with the applicable legal issues. You may not understand the statute perfectly upon first reading (I know I didn’t and I’m an attorney), but with luck as you read my explanation of it and see how it relates to your problem, the big picture will reveal itself to you. But in this section, I will deal with rental agreements, their important provisions, and how they work.

1. Rental Agreements Are Contracts

At their foundation, rental agreements are contracts, and they are interpreted the same as any other contracts. As the Eighth District Court of Appeals stated in the case of Kacik v. Paris, 1992 Ohio App. LEXIS 11671 (July 22, 1982) Cuyahoga App. No. 44271, unreported:

It is well established that a written lease is both a conveyance of a property interest and a contract, and that the rights and obligations of the parties are determined according to the law of contracts. 3A Corbin, Contracts Sec. 686 (3rd Ed. 1960).

A contract is a promise that Courts will enforce. A court will not enforce a promise to kill a man. Therefore, this is not a contract, despite mafia terminology wherein they “put out a contract on the guy.” The court will also not enforce a promise from your aunt to pay for your college education standing alone by itself. This will be found to be a gratuitous promise, not a contract.

You are probably wondering then what turns a promise into a contract. Promises become contracts when the three elements of any contract exist. The three elements of a contract are; offer, acceptance, and consideration. Sometimes, there is something called reliance that can be a substitute for consideration. When your landlord presents you with a rental agreement for your
signature, that is an offer. When you sign it, that is an acceptance. When you give her a security deposit and the first month’s rent, and she gives you the keys and possession, that is consideration (also known as the bargained for exchange between the parties). The three elements are present. Congratulations. You have a contract.

Another thing to know about contracts is that they can be either express or implied. An express contract arises when two people spell out their agreement in words, either spoken words (an oral contract) or written words (a written contract). Most of us are familiar with express contracts.

Implied contracts do not arise from an express (spoken or written) agreement between the parties, but rather they arise from the conduct of the parties. An example of this is if you walked into a barber shop, sat down in the chair without a word, and the barber cut your hair for you. At the end of the haircut, you couldn’t just get up and walk away. You wouldn’t be able to argue in court that you never had a spoken or written agreement with the barber. The Court would award the barber the fair price of the haircut if the barber sued you. The Court would find that there was an implied contract from your actions. The Court would find that your action of getting into the chair at the barbershop constituted an offer, and the barber cutting your hair constituted an acceptance. The service provided and received would serve as the consideration for the contract. Now you have the three elements of any contract, offer, acceptance and consideration.

An example of an implied contract that arises out of landlord tenant law would likely be found in the context of a holdover tenancy. When a tenant holds over beyond the lease term and pays rent according to the former terms, the law implies a contract on the tenant’s part to hold over for an additional term under the same conditions which governed the prior term. Bumiller v. Walker (1917), 95 Ohio St. 344, 348-349, 116 N.E. 797. But we’ll deal mostly with express contracts here.

As I stated before, there are two types of express contracts, oral and written. As you might have guessed, a rental agreement, also called a lease (herein these terms will be used interchangeably), is a contract between the parties, wherein the landlord makes an offer (to allow you to stay at the apartment for a certain time and a certain price) and your signature on the lease is an acceptance of those terms. The rent you pay and the space provided to you make up the consideration for the contract. Voila, the three elements.

Without a written agreement, the court is going to attempt to determine whether there is an oral contract. In doing this, it will listen to the testimony of both parties to see if there has been an offer, an acceptance, and consideration. The Court will also listen to the testimony of the parties to make findings as to the terms of the contract. Naturally, both parties might have different memories of what the agreed rent was, how much of the building gets to be used, what was promised to be fixed and by whom and when, and so on depending upon the circumstances of each individual case. To avoid these problems, it’s nice to have a written document that spells out the promises made by the parties. That is why most rental agreements are in writing.
An oral contract is just as enforceable as a written contract, it’s just harder (but not impossible) to prove the terms. An oral rental agreement is enforceable, but if the lease term is to run for three years or more, it has to be in writing. It also has to be witnessed by two persons and the signatures of those witnesses and the signatures of the parties on the rental agreement must be notarized. Ohio Revised Code Section 5301.05 requires this. Lastly, the lease has to be filed with the County Recorder. Most residential leases are for one year or less, and so if your lease is oral, it is likely still enforceable, provided of course, you can prove its terms and elements.

a. Written Rental Agreements and Their Clauses

Most rental agreements are in writing. For any writing to be enforceable, it must be signed by the party against whom it is to be enforced. The nice thing about having your lease in writing is that it is very simple to prove to the Judge what you and the landlord previously agreed. The problem with written leases is that they are usually drafted by the landlord and they contain language that favors the landlord in every way, shape and manner.

1) Ambiguities

But the party who does not draft the rental agreement (listen up, that’s you) does have some advantages. No matter how carefully a sneaky low down good for nothing just-breathing-my-air lawyer writes a contract for someone, there are always unforeseen circumstances or problems. This means that sometimes a contract can be ambiguous in its terms. If the contract states that the landlord will install new carpet in the living room within a reasonable time of the tenant’s moving in, how long does he have? Here you have an ambiguity. The tenant thinks that a reasonable time would be about a week (because he has to hold off on moving furniture into his living room until the new carpet is installed). The landlord thinks that a reasonable time is six months because that will give him time to find a good price on carpet, and free up his maintenance people to install it.

In the case of an ambiguity in a contract, the Court will first determine if the term really is ambiguous. This involves examining each party’s interpretation and seeing if those interpretations are reasonable or not. If the Court finds that both parties’ interpretations of the ambiguous clause are reasonable, the Court will then ask who drafted the contract (meaning, who provided the contract for the other party to sign). Usually, that’s the landlord.

Ambiguities in contracts are construed against their drafters. The reason is that the person who wrote the contract was in the best position to say what he meant. The court will not punish the person who didn’t write the contract just because the person who did draft it didn’t take enough time to be clear about things. As the Ohio Supreme Court so eloquently waxed in the case of Smith v. The Eliza Jennings Home (1964) 176 Ohio St. 351:

Under such circumstances, the well-established rule that where there is doubt or ambiguity in the language of a contract it will be construed strictly against the
party who prepared it is applicable. 11 Ohio Jurisprudence (2d), 391, Contracts, Section 147; 17A Corpus Juris Secundum, 217, Contracts, Section 324.

The good news for the tenant is that if there is something ambiguous in your contract, and you have taken a reasonable position on the matter, you will likely win the debate in front of a judge.

As another example of this, let’s say that your rental agreement allows only blue curtains to be displayed in the front windows. You put up a dark blue curtain with a lighter blue lightning bolt running down the middle of it. Your landlord complains to you that the lease says only blue curtains, and that this means solid blue curtains. You say that when you signed the lease, you took it to mean that so long as the curtains were blue, they could have any type of colors therein, so long as they were all blue. Here we have an ambiguity. If the Court finds that your interpretation of the ambiguous clause is reasonable, then your interpretation wins since the landlord was the one who drafted the contract, and he should have taken better care to say what he meant.

C. When Does Your Rental Agreement Become Enforceable?

Once you have signed your rental agreement and returned it to the landlord, it is a legally binding and enforceable contract. Your landlord can sue you if you fail to perform up to its terms. There is no three day cooling off period wherein you can rescind a rental agreement if you change your mind. But when is a rental agreement considered “signed”? I ask (and answer) this question in the following context. You are looking for apartments for next year for you and your roommate. You find one you really like, and you figure that your roommate will like it too. You and your landlord sign a rental agreement, and you take a copy of it to your roommate to sign as well. In the meantime, your roommate has had a change of heart and wants no further part in the apartment. In fact, she changes her mind about living with you at all and moves to Bora Bora. Your landlord wants to sue you under the rental agreement that you signed (he kept a copy).

If the rental agreement listed you and your roommate as the tenants and your roommate refused to sign it, then the rental agreement will not constitute an enforceable contract without the signature of the second person. In the case of Weizman v. Chapin (1948), 79 N.E.2d 668, a landlord (Weizman) gave a rental agreement for some commercial property to a tenant (Chapin) for Tenant Chapin and his partner (Longacre) to sign. Tenant Chapin signed it, but Partner Longacre refused. Landlord Weizman tried to sue the Tenant Chapin, relying upon the partially signed rental agreement.

The Eighth District Court of Appeals in Cuyahoga County held that the rental agreement was not enforceable against Tenant Chapin and reasoned as follows:

The lease was prepared in Mr. Glick’s [the lawyer’s] office and ran to two persons, Chapin and Longacre, as lessees [renters]. Chapin took one of the copies of the lease with him but afterwards returned the lease saying that Longacre
would not sign. If at that time the position of the parties had been reversed, that is if Chapin desired to take up the lease alone and Weizman was unwilling to do so on the ground that he had planned a lease with both Chapin and Longacre as lessees [renters] and not with Chapin alone, would any one contend that Weizman would have been bound? Clearly Chapin would have had no right to hold Weizman to the lease upon his failure to produce Longacre's signature. If Weizman was not bound neither was Chapin and until Longacre's signature was secured, neither Weizman as lessor [landlord] nor Chapin as one of the lessees was obligated under the lease. Id. at 7-8

So if your roommates will not sign onto a rental agreement that you have already signed, and the intent of the parties was that such persons would sign with you, then the landlord will not be able to enforce the rental agreement against those who did sign unless everybody signs.

D. Individual Clauses In Rental Agreements And How They Affect You

1. The Joint And Several Liability Clauses

When tenants agree to be jointly and severally liable in a rental agreement, they allow the landlord the choice to proceed against them all, or to proceed against them individually. Let’s break it down with an example. Tim, Deadbeat, and Bum (the Tenants) agree to lease an apartment from Leonard (the Landlord). The rent is $600.00 per month, and they agree to be jointly and severally liable for all obligations under the rental agreement for one year. With one month left to go on the rental agreement, Deadbeat and Bum decide to move out and they leave the state of Ohio without paying for the last month’s rent. Tim cannot afford to pay the entire $600.00 by himself. It isn’t his fault that his roommates ran out on him, but since he agreed to be jointly and severally liable for the actions of his roommates, Leonard the Landlord can sue Poor Tim for the entire amount of the rent. The only right to recovery Tim has is against his former roommates who are long gone and probably without any money to recover anyway. Good luck, Tim. You’re gonna need it.

The same thing is true if Deadbeat and Bum do a lot of damage to their bedrooms. Perhaps they kicked in their closet doors and broke some windows on the way out. It’s too bad, but Poor Tim is on the hook here too. Even if Deadbeat and Bum did the damage intentionally, and even if the damage runs into the thousands of dollars, Poor Tim is out of luck. He will have to pay for the damage if Leonard the Landlord sues him. So choose your roommates carefully. Most rental agreements have joint and several liability language in them.

So joint liability means that everyone is responsible for the actions of every other, and several liability means that you are only responsible for your own actions. What if your rental agreement does not have joint and several liability language, but does list several tenants? The presumption in Ohio is that if there is more than one tenant on a rental agreement, they will be jointly and severally liable (meaning that landlord can pick which one he wants). A presumption means that the Court will start off with the belief that the rental agreement is joint and several, and it will be the tenant’s burden of proof to show that it was not.
The case on this is that of *Spicer v. James* (1985), 21 Ohio App. 3d 222, wherein the Second Appellate District Court in Greene County Ohio held that:

Additionally, each appellant signed the lease agreement separately which established joint and several liability. Generally, an obligation entered into by more than one person is presumed to be joint, and several responsibility will not arise except by words of severance. 17 American Jurisprudence 2d (1964) 716, Contracts, Section 298. Therefore, appellants are liable jointly because no severance language appears in the body of the agreement. See *Western Ohio Bank & Trust Co. v. J's Restaurant* (Feb. 27, 1985), Miami App. No. 84-CA-22, unreported. Id. at 223.

2. **Co-signer Clauses**

Many landlords will ask that your rental agreement be guaranteed by your parents or by someone with sufficient funds to be collectible in the event of your breach of the rental agreement. Tenants take umbrage at this because they are on their own and they thought that they no longer needed their parents’ permission to do things. But it doesn’t have anything to do with permission from your parents. It has to do with finance. The landlord figures that most parents have money enough to cover for their kids if their kids run out on the rent or cause damage. The landlord figures that your parents own their own home, and if he wins his lawsuit and your parents still won’t pay, he can go and put a lien on your parents’ house. Legally, a co-signer stands behind a tenant to guarantee that all terms and conditions are met, and agrees to be liable in a lawsuit if the terms and conditions are not met just as if the co-signer were the tenant.

If your parents are on your rental agreement as co-signers, don’t think that you can just disappear with impunity and run out on your obligations. Your parents will be left holding the bag, and they will probably deduct their losses from your eventual inheritance, if any.

3. **Merger and Integration Clauses and the Parol Evidence Rule**

Whenever you have a written contract, there is something that comes into play called the Parol Evidence Rule. I call this the Rule of the Lying Landlord. This rule states that if there is a written contract, a Court will not listen to testimony that contradicts the written provisions of the contract. Example time. If the landlord and the tenant orally agree that the landlord will put in new carpet, but sign a rental agreement saying that the tenant agrees to accept the apartment as is, the Court will not listen to the tenant’s testimony regarding the contradictory spoken terms at signing. The Court will not even listen to a tape recording of the conversation wherein the landlord promised the carpet orally. Landlords use this trick to orally promise you the moon and the stars, and a winning lottery ticket, knowing full well that you can’t get them on it because it’s not in the contract.

But if the Court finds that the oral statements cover an area that the rental agreement does not address, and that the situation is ambiguous, then the Court will listen to the testimony of the witnesses regarding what the landlord said. This is because the oral statements of the landlord at
the signing do not contradict any provision of the rental agreement. They rather in this instance
explain an unclear term. This is especially true when the lease does not have one of the “as is”
provisions in it.

Landlords hate being held to their promises, so this is where the merger and integration
clauses come in and rescue the landlord. Merger and integration clauses are both the same thing,
they just go by different labels.

These clauses are usually found near the end of the rental agreement, and they state that
the writing in the contract comprises the “entire agreement between the parties”, and that “no
other promises or representations have been made between the parties.” If this clause is in your
rental agreement, it is tough to get in any spoken promises which your landlord may have told
you about at the signing or showing regarding new dishwashers or carpet that aren’t in the
writing. Any oral statements are automatically in direct contradiction with the
merger/integration clause. The Parol Evidence Rule will keep them out.

The word to the wise then is get it in writing. No careful Jedi Tenant signs a rental
agreement which doesn’t have the promises in writing. If the landlord won’t put it in the rental
agreement, then understand that it will never be done. If you put a condition into the rental
agreement (for a new living room carpet for example) you should also insist upon a deadline (
specified in writing in the rental agreement) for doing something that is promised in writing.

My personal favorite is the landlord who suddenly whips out his cereal box law degree
and says that there is no way that he can change the printed words in the contract, and that just
writing something by hand on the face of the rental agreement wouldn’t be official anyway.
Well I got my law degree from a more expensive cereal box than your landlord, and I am telling
you that handwriting on a rental agreement is not only permissible, it’s binding. In fact, if the
pre-printed words on a rental agreement (often called the “boilerplate”) conflict with the
handwritten words, the hand written words win out because the Court will see them as a better
indication of the intent of the parties than the standard format language that appears in every
contract.

Be careful even when you get a landlord who is willing to handwrite something on the
rental agreement. When you do handwriting something in or cross something out, everyone,
including the landlord should initial each addition or deletion. Some rental agreements will have
little bombs in them in the form of clauses saying that the owner’s agent has no power to modify
the rental agreement. If that’s the case, then there is a good argument that your additions and
deletions won’t be enforceable unless they are signed off by the owner. At that point you must
realize that you are dealing with a flunky and you need to get the owner to initial the changes. If
you can’t get the owner, then walk.

4. Penalty Clauses/Liquidated Damages

Your rental agreement may require that you pay a pre-defined amount of damages if you
breach it. For example, your rental agreement states that there are no pets allowed. It further
states that if a pet is found in the apartment, then you will pay Two Thousand Dollars to the landlord.

The good news is that penalty clauses are unenforceable. Penalty clauses are also referred to sometimes as stipulated damages clauses or liquidated damages clauses. If you are trying to get one of these clauses declared unenforceable by the Court, you want to consistently refer to it as a “penalty clause.” If you are trying to get the clause to be found enforceable, you want to consistently refer to it as a “liquidated damages clause.” Penalty clauses are invalid and unenforceable. Liquidated damages clauses are valid and enforceable.

In Lake Ridge Academy v. Carney (1993), 66 Ohio St. 3d 376, 613 N.E.2d 183, the Ohio Supreme Court illustrated the differences between penalty clauses and liquidated damages clauses. The Lake Ridge Academy Court recited the following three part test to determine whether such a provision constitutes an invalid penalty or an enforceable liquidated damages provision:

Where the parties have agreed on the amount of damages, ascertained by estimation and adjustment, and have expressed this agreement in clear and unambiguous terms, the amount so fixed should be treated as liquidated damages and not a penalty, if the damages would be (1) uncertain as to amount and difficult of proof, and if (2) the contract as a whole is not so manifestly unconscionable, unreasonable, and disproportionate in amount as to justify the conclusion that it does not express the true intention of the parties, and if (3) the contract is consistent with the conclusion that it was the intention of the parties that damages in the amount stated should follow the breach thereof. Id., quoting Samson Sales, Inc. v. Honeywell, Inc. (1984), 12 Ohio St. 3d 27, 465 N.E.2d 392, at paragraph two of the syllabus.

I know. I know. You got halfway through that little treat of wording and the eyes glazed over. In layman’s terms, the above passage says that firstly, the court will look to see if the damages from a breach of this penalty/liquidated damages clause are hard to calculate with exactness. If they are vague and difficult to specifically figure, then the Court will move on to the next part of the test. If they are easy to calculate, then the Court will throw out the clause as a penalty clause and only award the landlord the amount that he was actually damaged.

Under the second prong of the above test, liquidated damages must be "proportionate" (but not “exactly equivalent”) to the actual damages a party suffers. Lake Ridge Academy, supra, at 383-384. Otherwise, as the Lake Ridge Academy Court explained, a stipulated damages clause should be construed as an invalid penalty. Id. at 382. So the damages, even though they are difficult to ascertain, must bear some reasonable relationship to the losses that the landlord actually incurred. In the case of the example we started with, that dog would have to be pretty huge to damage the apartment in the amount of Two Thousand Bucks.

Lastly, under the third prong of the test, a reading of the rental agreement must indicate to the Court that the parties intended to be bound by this damages clause and pay the amounts
required. Usually, there has to be some evidence that the landlord and the tenant sat down together and talked about the fact that certain things were prohibited, and that if the tenant did them, it would cost the tenant a certain amount of money. There must be evidence that the tenant understood this and agreed to it. Now if you re-read the above passage from Lake Ridge Academy, it might make a little more sense.

Looking at another particular example from real life, in the case of Berlinger v. Suburban Mgmt., the rental agreement contained a clause that stated as follows:

NO ANIMALS, BIRDS, PETS, MOTORCYCLES, WATER BEDS, TRUCKS, JEEPS OR VANS shall be kept on the premises at any time. . . I agree that if I bring a pet, truck, motorcycle or van onto the property I will be charged by management and pay to it the sum of $50.00 each time.

When the tenant moved out at the end of the lease, he sent his landlord his forwarding address, and the landlord sent a notice charging him $300 for having kept a motorcycle on the premises pursuant to the above clause. But the Court of Appeals found that this was a penalty clause. First, the Court looked at whether the damages were difficult to ascertain and determined that they were. This got the landlord past the first of the three hurdles, but the second hurdle proved impassable for the landlord:

However, the sum of $50 per day (which in a thirty-day month would amount to $1,500) does not bear a reasonable relationship to any loss which might foreseeably be sustained. A court could take judicial notice that the operation of a motorcycle might cause great damage to a landlord, because tenants who object to loud noise might move out. However, no evidence was introduced tending to show the amount of damages which might foreseeably result from the mere presence of a motorcycle.

Since the Court found that the landlord did not get past the second prong of the test, it did not have to go further and consider the last prong of the test, whether the landlord and tenant actually agreed that this was the amount that would be paid upon a breach of the lease agreement.

E. The Doctrine of Substantial Performance

If you have complied with the terms of your rental agreement, but the landlord is alleging that you are in breach because you did not perform in exact accordance with the terms of the rental agreement, you can argue that you have substantially performed under the contract. For example, your rental agreement states that you will mow the grass at your apartment every week. At the end of the rental term, the landlord points out that there is a tiny area behind the garage that never got mowed. You go back there, and it is a small gravel area with one or two weeds poking up near the garage. You can argue that you substantially performed the lawn mowing duties under the rental agreement.
In the case of Burlington Resources Oil & Gas Co. v. Cox (2000), 133 Ohio App.3d 543, the Fourth District Court of Appeals in Jackson County stated that:

A party does not breach a contract when that party substantially performs the terms of the contract. Ohio Farmers' Ins. Co. v. Cochran (1922), 104 Ohio St. 427, 135 N.E. 537, paragraph two of the syllabus. Nominal, trifling, or technical departures from the terms of a contract are not sufficient to breach it. Id. A court should confine the application of the doctrine of substantial performance to cases where the party has made a honest or good faith effort to perform the terms of the contract. Ashley v. Henahan (1897), 56 Ohio St. 559, 47 N.E. 573, paragraph one of the syllabus.

This last bit about an honest and good faith effort means that you must be seen by the Judge as the good guy who tried her best, but it just wasn’t barely enough to be in strict compliance with the terms of the contract. So be conscientious as to your responsibilities if you want to gain the benefit of the doctrine of substantial performance.

F. The Doctrine of Waiver

Even though your rental agreement says something in clear language, if you can prove that after the rental agreement was signed, the parties acted in a way that was different than the express terms of the rental agreement, then there may be an issue of waiver. This is because of our old friend the implied contract. One most commonly sees this in the context of late fees.

For example, your rental agreement might say that the rent must be paid by the end of the first day of each month, and that failure to pay the rent by the first day of each month will give the landlord the right to start eviction proceedings. On the first month, the landlord accepts the rent four days late. On the second month the landlord accepts the rent eight days late. The third month, the rent is paid on time, but then on the fourth month, the rent is five days late. This course of conduct continues on for several months. On the eighth month, the rent is two days late, and the landlord starts eviction proceedings.

The tenant will be able to come into court at the eviction hearing and argue that the landlord has no right to evict him for paying the rent late. The landlord will hop up and down and read the language of the rental agreement giving him that very right over and over again to the Judge until the landlord is blue in the face. But the Judge will look at the landlord’s actions and find that there was a course of conduct established between the parties that led the tenant to rely upon it. The landlord’s actions in constantly failing to insist on strict enforcement of the rental agreement’s terms lulled the tenant into a false sense of security in making payments a few days late. Thus the landlord will not have the right to strict enforcement of the rental agreement’s terms in this regard.

In the case of Lauch v. Moning (1968) 15 Ohio App. 2d 112, the First Appellate District Court held as follows:
Summarizing defendant’s assignments of error defendant claims that a course of dealing in accepting overdue rent had been established between the parties whereby the plaintiff had waived any right to claim forfeiture for late payment of the rent installments without giving the defendant advance notice of his intention to require strict compliance with the terms of the lease. That is the well settled law of Ohio. See Bates & Springer, Inc., v. Nay, 91 Ohio Law Abs. 425, and Milbourn v. Aska, 81 Ohio App. 79, and authorities in each case cited. The undisputed evidence here establishes that the defendant was entitled to the protection of this rule of law. Id. at 113

How many months does it take to sufficiently establish this course of conduct? That’s a crap-shoot. I can’t guarantee that any period of time will be sufficient. I can only say that the longer the better, and it’s better to try this argument and fail than to not ever try it at all.

1. Two Ways To Defeat Waiver

a. Letter of Strict Compliance

The landlord can defeat the effects of waiver in two ways. Firstly, she can send a letter of strict compliance. In the letter, she will say something like: “Dear tenant, I know that in the past, I have accepted the rent late. Those days are now over, and in the future, I will insist upon prompt payments of all rental amounts as soon as they are due, and if they are late, I will exercise all of my rights under the lease.” This puts the tenant on notice that the past course of conduct will no longer be the rule. Once the tenant receives this letter, no Judge is going to allow the tenant to assert the waiver argument on the next late payment.

b. Anti-Waiver Clauses in Rental Agreement

Landlords also insert anti-waiver clauses in their rental agreements. These clauses say something like: “No course of conduct between the parties shall be relied upon if it is in conflict with the provisions of this rental agreement. No course of conduct on the part of either party shall be deemed a waiver by the other of any term or condition of this lease.”

The problem with these clauses is that they are a restriction upon an individual’s freedom to contract. Remember that there are two types of contracts, express contracts (by words, whether written or oral) and implied contracts (by deeds of the parties). The landlord’s consistent waiver of an express term of the rental agreement can be seen by the Court as an implied contract.

Whether the Court will enforce the anti-waiver provision is dependent upon certain factors. One Ohio Court has addressed the enforceability of anti-waiver provisions, but not in the context of landlord tenant law. However, the wording below is a strong argument against anti-waiver clauses in landlord/tenant law by analogy. The Seventh District Court of Appeals in Belmont County stated in the case of Van Dyne v. Fidelity-Phenix Ins. Co. (1969), 17 Ohio App. 2d 116, as follows:
An insurance company cannot, by a nonwaiver provision in its policy, disable itself from subsequently modifying its own contract, or prevent its future conduct from having the force and effect which the law says it shall have. Attempts of parties, including insurers, to tie up by contract their freedom of dealing with each other are futile, and such a nonwaiver provision does not prohibit or limit the company issuing the policy, or its duly authorized agent, from subsequently entering into a valid oral agreement with its insured, modifying the policy's terms. Coletta v. Ohio Casualty Ins. Co. (Court of Appeals, Summit County, 1953), 96 Ohio App. 70 (see paragraphs two and three of the syllabus, and pages 77, 79, 80, 81 in the opinion); Union Mutual Life Ins. Co. v. McMillen, 24 Ohio St. 67; 30 Ohio Jurisprudence 2d 703, 704, Sections 765, 766. Id. at 123-124.

If an insurance company cannot preclude a waiver of its contract by its actions that follow the contract in time, why should a landlord be able to do so? Also, the language above, which says “attempts of parties, including insurers” speaks to parties to contracts in general as well as insurers in particular, and so further indicates that the rule applies to all.
Chapter IV: Moving Into Your Apartment

You will be responsible for returning your apartment to your landlord in the same condition that you got it, reasonable wear and tear excepted. It would behoove you then to do what you can to document the condition of the apartment when you first take it over, before you have moved your stuff in. You don’t want to get blamed for damage that was there from the previous tenants or that was made up by the landlord, or was the result of ordinary wear and tear. Some dishonest landlords will charge different tenants for the same damage year after year and just pocket the money. There are several ways to protect yourself from such persons, and it is not rocket science.

A. Video Your Apartment

As soon as you get your keys from your landlord on that first day of your lease term, go out and purchase that day’s newspaper. Then go get a video camera and a tape. As you approach the door of your apartment for the first time with your keys, hold up the newspaper so that the headline date can be seen by the video camera. This will show a Court later on what day you took the video. It will also show the Court what kind of shape the apartment was in on the first day of the rental term.

I know what you’re saying: “My video camera has a time and date stamp on it, I’ll just skip the part about the newspaper.” That’s nice. I also know what your landlord will argue in Court a year later: “Your Honor, the time and date stamp in the corner of the video can be set like a watch and so we really don’t know when the video was taken.” Some Judge might believe the landlord. Don’t give him this out. Make it as hard on him as possible and as easy on yourself as possible down the road. Get a newspaper. The landlord might still try to argue that the newspaper could be old, but old newspapers get yellow fast. If your paper in the video is still not yellow, the Judge will likely believe you.

Walk through the apartment. Be careful to go slowly and note all the conditions with the camera. Make sure that you get all the floors, walls and ceilings. People always forget the ceilings. Replacing ceiling damage can be very expensive, so don’t forget to video the ceilings. Do this in a systematized manner and do it the same way for every room. Don’t just jump right to the obvious things that are wrong with the apartment. Be organized. Video the damages as you come to them. Don’t make editorial comments or jokes while the tape is running. You will sound like a biased fool on the tape. Let the images on the tape speak for themselves.

Be thorough. Get inside the closets, drawers, cabinets, appliances, bathrooms, showers and so on. Show the windows behind the curtains (windows can have cracks and holes in them). Remember that any place that you miss will be the place that your landlord will say the damage you caused was. When you are finished, review the tape in your VCR machine, and if it is acceptable to you, then send it to a safe place for storage. I suggest your parents’ house for safe keeping, or the equivalent.
Don’t tell me that you can’t get a video camera. If you don’t own one, rent or borrow one. Somebody you know has one that they can loan you. If you are stuck with just photographs, well, it’s better than nothing, but how do you time stamp a photograph? If you’ve ever seen a Judge watch a video when its one person’s word against another and compare that to a Judge looking at a few photographs, give me the video every time.

B. Ameliorative Waste

Remember that you must return the apartment in the same condition in which you got it, reasonable wear and tear excepted. Do not make improvements to the apartment without the landlord’s signed, written consent. Read your lease carefully on this one. Some leases provide that the rental agent has no authority to make any changes or important decisions regarding the apartment, and the owner of the property must be contacted. Improvements made without the landlord’s consent are called ameliorative waste, and if the landlord does not like them, then you will be liable for their removal.

You may think that the landlord would love it if you installed a wooden deck in the back of the place. But the argument that the property’s value is actually increased by a bay window in the front, a garbage disposal in the kitchen, or a wooden deck on the back does not win in Court. The argument that you had the landlord’s written consent to install such window, disposal or deck does. A real life example of this can be found in campus area apartments. Most landlords in campus areas (if they are wise) block off the fire places in the older houses that they rent to the students. This is because the students cannot be trusted to maintain a fire without it getting out of control or going unsupervised. Since the landlord does not want his house to burn down because of the actions of drunken tenants, then it makes perfect sense. But you come along and rent the apartment, and want to have romantic fire light discussions with your significant other. You pay some contractor to come in and unblock the fire place and re-connect the gas lines.

You may think that you are doing the landlord a big favor in that the apartment will now be a lot more rentable with a working fire place for those cold winter nights. But in reality, you have tweaked the landlord by committing ameliorative waste, and a court will likely hold you responsible for returning the apartment in the condition that you found it. So the bottom line is, don’t do the landlord any favors unless you have his permission in writing.

C. Fixtures

If you do make improvements (with or without the landlord’s permission), you should realize that you will not be able to take them with you when you leave. There is a sometimes fuzzy line between personal possessions (which are yours before, during and after the rental agreement and can be brought in and taken out at will) and fixtures. For instance, if you purchase a gas grill and sit it out on the back deck, then it will likely remain your property. But if you purchase a gas grill and build it into the deck, and run an underground gas line from the house out to it, it starts to look more like a fixture, and it may become the landlord’s property at the end of the rental term.
When does something become a fixture versus a piece of personal property? In *Teaff v. Hewitt* (1853), 1 Ohio St. 511, the Ohio Supreme Court adopted the following definition of fixtures:

A fixture is an article which was a chattel [personal possession], but which by being physically annexed or affixed to the realty, became accessory to it and part and parcel of it. But the precise point in the connection with the realty, where the article loses the legal qualities of a chattel and acquires those of the realty, often presents a question of great nicety and sometimes difficult determination." Id. at 527.

In *Teaff*, the Court stated that three criterion are used to commonly find whether or not something is a fixture or a piece of personal property:

1st. Actual annexation to the realty, or something appurtenant thereto.

2d. Appropriation to the use or purpose of that part of the realty with which it is connected.

3d. The intention of the party making the annexation, to make the article a permanent accession to the freehold -- this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation, the structure and mode of annexation, and the purpose or use for which the annexation has been made." 1 Ohio St. at 529-530.

So be careful when you buy something that you do not integrally connect it to the apartment, or a court might someday later see it as a fixture and hence the property of the landlord. For instance, if you have a small refrigerator for your room, don’t go building it into the wall. The same with a dishwasher that you might buy. Buy the ones that roll around on wheels in the kitchen.

D. Delay In Delivery of Possession

Just because your rental agreement gives a definite starting date as to when you can move in, this does not mean that the apartment will be ready at that time. Landlords sometimes have problems delivering up the premises to you in a timely manner. Sometimes this is the landlord’s fault for not being on the stick and scheduling needed repairs, or cleaning and painting in a prompt fashion. But sometimes the problems are outside of the landlord’s control. An example of this would be if the previous tenants refuse to move out when their lease ends. If the landlord has to go through the eviction process, then this could cause up to a one month delay which can hardly be blamed upon the landlord. But at the same time, the new tenants will want to argue why the landlord’s problems should be theirs.

The question becomes one of substantial performance. If the apartment is ready except for a few tiny trivial matters (like the back fence needs painting) then a Court will probably buy
the landlord’s substantial performance argument. But if the windows are not in yet and the front door is not attached to the house, the landlord is going to have a harder time making a substantial performance argument. In the case of Belmont Properties Inc., v. Euclid Spiral Paper Tube Corp., 1979 Ohio App. LEXIS 9444 (April 19, 1979), Cuyahoga App. No 38313 (unreported), the Court of Appeals for the Eighth Appellate District quoted from the Ohio Supreme Court and stated as follows:

In Ashley v. Henahan (1897), 56 Ohio St. 559, the Ohio Supreme Court set forth in its syllabus the general rule that “one who seeks to recover on a contract must show substantial performance on his part. . . . But slight omissions and inadvertences [sic] should be disregarded. Where there has been an honest effort by the contractor to perform, and not a willful omission, substantial performance is all that is required.” The decision as to what measure of performance may be considered substantial necessarily rests upon consideration of the facts of each case.

So the decision of the Judge will depend upon the facts of each case, and I am afraid that no hard and fast rule can be laid down.

Your lease will likely have a clause in it that covers what happens if the landlord cannot deliver the premises on time. Some clauses say that the landlord is responsible to deliver alternate housing until the premises are ready and that the tenants must accept such housing until that time. Other leases say that if the premises aren’t ready within 30 days of the start date of the lease, then the tenants can elect to terminate.

You can argue that such clauses are unconscionable, but there is no law either for or against this argument at the time of the writing of this work. In any case, you would be well-served to document your damages from the delay in possession. When you get a hotel room, pay for it by credit card so that the charges show up on your monthly statement. If you must pay cash, then get a receipt from the hotel. Pay for the storage area for your own personal items in the same way. If your present landlord allows you to stay, get receipts for the extra amount of rent that you are paying. If you have to hire a moving van twice, then get receipts for that. A Court will not want to take your word that you had to expend money because of the landlord’s breach. The Court will want to take your word if you have documents to back up what you say.
Chapter V: Problems During Your Tenancy

A. Problems Caused By The Landlord

1. The Way Things Used To Be

The way the law used to be a long time ago was that once the landlord was out of possession of the rented property, all of his obligations to the tenant ceased. The tenant had to make all repairs and improvements. It was as if the tenant owned the property completely during the term of the tenancy. If the furnace went out, too bad, the tenant must pay for repairs or be cold. And if the cold burst the pipes, the tenant was responsible for that too.

2. Implied Warranty of Habitability

Eventually the law evolved so that there was an implied warranty of habitability construed in every lease. This meant that even if the lease says that the landlord makes no promises regarding the habitability of the apartment, he still is responsible to keep it in a condition that allows the tenants to live in it. The term “implied” means that even though the term is not in the lease, the Court will pretend that it is. Thus, if the furnace goes out in January, the landlord’s failure to promptly remedy the situation will amount to a breach of the implied warranty of habitability found in all leases.

Ohio landlord-tenant law traces its roots to the English Common Law. In 1863, an English court applying the common law held:


Gradually though, courts began to imply into every contract a warranty of habitability. The problem with this was that things had to be so bad at the apartment that they amounted to constructive eviction. Until 1974, Ohio adhered to the common law view. Burdick v. Cheadle (1875), 26 Ohio St. 393; Shinkle, Wilson, and Kreis Co. v. Birney and Seymour (1903), 68 Ohio St. 328, syllabus; Rotte v. Meierjohan (1946), 78 Ohio App. 387, 389; Branham v. Fordyce (1957), 103 Ohio App. 379, paragraph two of the syllabus. However, in 1974, Ohio abandoned the common law when the Ohio General Assembly enacted comprehensive legislation in R.C. Chapter 5321 which dramatically altered the relationship between landlords and tenants in residential rental agreements. Shroades v. Rental Homes (1981), 68 Ohio St. 2d 20, 22.

All this is important when it comes to dealing with problems at the apartment. When you have serious problems at your apartment that aren’t getting fixed, you will want to leave the apartment and find some other place to live where the landlord fixes things. But back in the bad old days where the tenant’s only protection was the implied warranty of habitability, the only way to cut short a lease term before its end on account of the landlord’s failure to fix the apartment was if the conditions at the apartment were so bad they amounted to constructive
eviction. But the Landlord Tenant Act of 1974 changed a lot of things and balanced this area of the law so that landlords do not have so many advantages over tenants anymore.

a. Constructive Eviction

Constructive eviction is when the landlord takes an action or engages in a course of inaction which makes it impossible for the tenant to live in the premises. It is another way of saying that there has been a breach on the part of the landlord of the Implied Warranty of Habitability. An example of this might be a condition which results in no running water at the apartment. This constructively evicts the tenant because no one can live in an apartment in this day and age without running water (despite your landlord’s arguments to the contrary). If the landlord fails to fix the furnace in January, this amounts to constructive eviction via his inaction.

Conditions had to be pretty harsh before a court would find a constructive eviction. No heat in July wouldn’t do it. Ugly stains on the ceilings and walls wouldn’t do it. Lack of hot water might not do it. A ceiling fan that emitted a constant loud buzzing noise wouldn’t do it. The conditions had to be so bad that it was almost as if the landlord had changed the locks on the door of your house. The condition had to be so bad that it actually and dangerously affected your health and safety to live there.

3. Landlord Tenant Act of 1974

Then the law evolved again, into its present form, this time at the behest of the Ohio Legislature in 1974’s Landlord Tenant Act. There are several provisions to R.C. 5321. They range from 5321.01 (the definitional section of the act) to 5321.18. The provision of the Act in question here that covers your landlord’s breach of the implied warranty of habitability is Ohio Revised Code Section 5321.07 and it is reprinted directly below:

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TITLE LIII [53] REAL PROPERTY

CHAPTER 5321: LANDLORDS AND TENANTS


§ 5321.07 Notice to landlord to remedy condition; deposit of rent with court or other remedies.
(A) If a landlord fails to fulfill any obligation imposed upon him by section 5321.04 of the Revised Code, other than the obligation specified in division (A)(9) of that section, or any obligation imposed upon him by the rental agreement, if the conditions of the residential premises are such that the tenant reasonably believes that a landlord has failed to fulfill any such obligations, or if a governmental agency has found that the premises are not in compliance with building, housing, health, or safety codes that apply to any condition of the premises that could materially affect the health and safety of an occupant, the tenant may give notice in writing to the landlord, specifying the acts, omissions, or code violations that constitute noncompliance. The notice shall be sent to the person or place where rent is normally paid.

(B) If a landlord receives the notice described in division (A) of this section and after receipt of the notice fails to remedy the condition within a reasonable time considering the severity of the condition and the time necessary to remedy it, or within thirty days, whichever is sooner, and if the tenant is current in rent payments due under the rental agreement, the tenant may do one of the following:

(1) Deposit all rent that is due and thereafter becomes due the landlord with the clerk of the municipal or county court having jurisdiction in the territory in which the residential premises are located;

(2) Apply to the court for an order directing the landlord to remedy the condition. As part of the application, the tenant may deposit rent pursuant to division (B)(1) of this section, may apply for an order reducing the periodic rent due the landlord until the landlord remedies the condition, and may apply for an order to use the rent deposited to remedy the condition. In any order issued pursuant to this division, the court may require the tenant to deposit rent with the clerk of court as provided in division (B)(1) of this section.

(3) Terminate the rental agreement.

(C) This section does not apply to any landlord who is a party to rental agreements that cover three or fewer dwelling units and who provides notice of that fact in a written rental agreement or, in the case of an oral tenancy, delivers written notice of that fact to the tenant at the time of initial occupancy by the tenant.
(D) This section does not apply to a dwelling unit occupied by a student tenant. [Don’t freak out about this Section D if you are in school. I’ll explain later].

Some landlords will point to the provisions of Ohio Revised Code Section 5321.07(C) that state that this section does not apply to landlords who own three or fewer rental units. But this only works for the landlord if the rental agreement specifically identifies that landlord as fitting into this category. I have seen very few rental agreements containing this language. This is primarily because most leases are form leases, meaning that they were pulled out a book and reprinted word for word. Since the author of the book had no idea whether the user of the lease has more than three dwelling units, they typically leave this out.

In short form, if there is something that the landlord promised to do in the rental agreement (for example, your landlord’s promise to fence in the back yard) or if there is a condition at the apartment that materially affects the health and safety of the tenants (for example a sparking outlet), the tenant should give written notice to the landlord describing the problems.

If the landlord has not remedied the problems within 30 days from receipt of written notice of the problem, then the tenant has three options if he is current on his rent. The first option involves going down to the courthouse and escrowing his rent with the Clerk of Courts. The Clerk will then send a notice to the landlord that the rent is being escrowed, and the rent will not be released to the landlord until the problems are fixed. The landlord will, of course, be allowed a hearing before the Court to argue that you have either not complied with the statute (perhaps he will argue that you were late on rent when you first started escrowing, or that you never sent written notice) or he will argue that he has taken care of the problems.

The second option is that the tenant can file a motion to compel repairs with the Court. The Court may require the tenant to start depositing his rent like in option number one as a condition of this option.

The third option available to the tenant is that she may terminate her lease and move out. Even though the statute doesn’t say it, my experiences have informed me that if you wish to exercise this third option, conditions at your apartment better be pretty bad. Courts will not require such bad conditions to exercise the first two options. You also better stand ready to prove what you are saying with documentation. Don’t worry about the part about it not applying to a student tenant. The definition of a “student tenant” only includes those people who live in housing that is provided by a learning institution (such as a dormitory). So don’t think that your landlord can evade your remedies under R.C. 5321.07 because you are in school.

A. Escrowing the Rent

The long and short of all of this is that your remedy for a landlord’s failure to fix the apartment is not to simply quit paying rent until the items are fixed. Do this, and you will be without significant legal rights. Do this, and the judge will tend to view you in the same dim
light that she views the landlord. Do this, and lose your case. Follow the dictates of the statute instead. You will be happier in the long run and your landlord will be unhappy in the long run.

Remember that you can’t escrow your rent by opening up a checking account at a bank and depositing it there. You must pay the Clerk of Courts. Also, you need to be on time with your rental payments. Do not pay the rent late to the Clerk of Courts. Do not bounce checks to the Clerk of Courts. The best way to avoid bouncing checks to the Clerk of Courts is for all of your roommates to pay you, and then you go down to the Clerk of Court’s office with a Money Order or a Cashier’s Check for the proper amount. Cashier’s checks are preferable to your personal checks because if your roommate bounces a check to you, then yours to the Clerk will likely bounce as well. If you go down with five checks from five different people, one of your roommates will eventually bounce one. Also, be advised that you must be current on your rent to invoke the escrow option. If your landlord can prove that you owed money from before, then he can get the money in escrow released to him and you have to start over again.

B. The Thirty Day Rule

Thirty days is a long time to wait to get some things fixed. Be advised that the landlord only has a reasonable time to fix the problem, or thirty days, whichever is sooner. This means that 30 days is the longest that he can take to fix the place. If the Court determines that 14 days is a reasonable time to fix the lack of air conditioning in July, then so be it. The problem here is that “reasonable” is a term that is open to many possible constructions depending upon the Judge that you get in your case. There aren’t a whole lot of ways to interpret the term “Thirty days.”

For example, the sink in your kitchen gets clogged up and the landlord ignores your letter on the subject for 21 days. There is rotting food/water in the sink that is stinking up the kitchen. You can’t stand it anymore so you move out. Your landlord sues you for not paying your next month’s rent under the lease and you get before a Judge. You tell the Judge that you waited 21 days for the landlord to fix the sink. The Judge tells you that 27 days was a reasonable time to wait. You lose.

Now if you had stuck it out for 30 days, you wouldn’t have this problem. Thirty days is what is termed in law as a “bright line test.” The Ohio Legislature gave you this bright line test so that you would never be faced with a Judge telling you that you should have waited 33 days. You tell the Judge that you waited thirty days and the landlord still didn’t fix it. The Judge’s hands are tied. He and the landlord could be old golfing buddies, and the Judge will still have to find in your favor. So do yourself a favor. Stick it out if you can.

C. Termination Of The Rental Agreement

To get the Court to uphold your rights to do this, you had better be able to prove that conditions at your apartment are absolutely unlivable. You’d be shocked at what a Judge thinks you could have put up with. Use this option as a last resort if escrowing or the motion to compel doesn’t work. We’re getting back to the old constructive eviction standard on this one. It shouldn’t be that way. The statute itself makes no distinction between the seriousness of the
conditions and your rights to choose any of the three options, but it is in my experience that a judge won’t let you out of the lease unless things are intolerable.

D. Calling the Health Department

There are various governmental agencies that can help you with problems with your landlord. Some are at the County level, and some are at the City level. A call to the local governmental authority that oversees apartments can be a very powerful tool. Since this agency is known by many names, I shall collectively refer to all such departments as the “Health Department.”

Even a new apartment building, or one that has just recently been refurbished can have several code violations within it. These can range from something rather minor (to repair, at least) like not having a sufficient number of working smoke detectors, to something more substantial, like insufficient window space (window space is important in any sleeping room as there always has to be two ways to escape the room in case of a fire).

Landlords know that the Health Department is not an agency that they want to mess around with. The Health Department has the ability to force the landlord to make repairs within a limited amount of time, or face an emergency eviction order placed upon the apartment. At that point the tenants will be kicked out and it will be the landlord’s breach of the lease. Often, the tenant will call about a very minor but annoying problem (one that they would not have wanted to leave the apartment over) and the Health Department comes in and finds several unrelated code violations. There have been examples where the tenant gets evicted by the Health Department because the landlord didn’t fix all of the Health Department’s concerns quickly enough and the tenant has to go off looking for a new place to live. Naturally the tenant does not have further liability to the landlord in such a case, but that is cold comfort to someone that did not expect to have to move in the middle of January. Cold comfort indeed.

So the moral of the story where the Health Department is concerned is to use this tool judiciously. Often the threat of calling the Health Department is much more effective than actually calling them. If you do actually call them, you should be prepared to have to leave the apartment on short notice if the Health Department finds various violations.

E. Required Renovations

Many people wonder whether there is any law that requires a landlord to do monthly maintenance or certain renovations from time to time. They wonder if the law requires the landlord to clean or paint the apartment prior to their move in. They wonder if the landlord is required to put in new carpet every so often. Lots of landlords let their properties go from year to year without doing anything. They see the property as a cash cow that is giving out the money without having to be fed, and they are going to milk it for as long as they can.

This is especially true of landlords who have long term tenants rather than those who turn over from year to year. If you live at an apartment for three years, and renew your lease for a
fourth, don’t expect the landlord to come in and paint the place. Such landlords always run into problems in the end because when you put off regular repairs and upgrades, it just gets more expensive to do them down the road. As a landlord myself, I try to do one major project to my apartment building per year. One year it might be new carpet, the next year it might be a new deck on the back, a new roof for the garage, etc.

While good sense requires that I do this, the law does not. The landlord is not required to do anything except keep the apartment in a safe and habitable condition. If the carpet is fraying badly and could be easily tripped over, then this might rise to the level of a health hazard. But dingy paint is hard to argue as a health hazard. The long and short of the story is that if you want something done and it either was not promised in the lease or does not threaten your health and safety, then your remedy is to look for another apartment.

Be advised that you will have some bargaining power if your lease is coming up for renewal. This is especially true if you have always paid the rent on time and not caused any problems for the landlord. The landlord does not want to replace a good tenant with an unknown. The landlord will also go through expenses to advertise and show the apartment, as well as other customary costs of getting the apartment ready for a new tenant. He may figure if he is going to have to incur these costs anyway, why not just spend some money and keep the rent checks rolling in? But of course some landlords don’t think the way I do. Go figure.

F. Appliances

It is an open question as to who has the duty to repair your stove or refrigerator if it stops working. While Ohio Revised Code Section 5321.04(A)(4) states that the landlord shall “Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by him,” it is also true that Ohio Revised Code Section 5321.05(A)(7) states that the tenant shall “Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliances supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement.” These two statutory sections seem to conflict.

There aren’t any Ohio law cases that decide this issue. Judges will then be guided by their own senses of fairness. What will likely happen in a dispute over repair of a stove is that the Judge will ask whether the tenant broke it through some improper action, or whether it just stopped working because it is old and in need of repair.
Chapter VI: Landlord Retaliation

One thing that your landlord cannot do to you is retaliate against you for asserting your rights as a tenant. As soon as you start complaining about substandard conditions at your apartment, the landlord’s natural inclination is to say that if you don’t like it, get out. Move. And if you won’t move voluntarily, here’s an eviction notice. The Ohio Landlord/Tenant Act of 1974 gives you some protections against such landlords and it is reprinted directly below:

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TITLE LIII [53] REAL PROPERTY

CHAPTER 5321: LANDLORDS AND TENANTS

ORC Ann. 5321.02 (Anderson 1999)

§ 5321.02 Retaliatory conduct of landlord prohibited.

(A) Subject to section 5321.03 of the Revised Code, a landlord may not retaliate against a tenant by increasing the tenant's rent, decreasing services that are due to the tenant, or bringing or threatening to bring an action for possession of the tenant's premises because:

   (1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety;

   (2) The tenant has complained to the landlord of any violation of section 5321.04 of the Revised Code;

   (3) The tenant joined with other tenants for the purpose of negotiating or dealing collectively with the landlord on any of the terms and conditions of a rental agreement.

(B) If a landlord acts in violation of division (A) of this section the tenant may:

   (1) Use the retaliatory action of the landlord as a defense to an action by the landlord to recover possession of the premises;
(2) Recover possession of the premises; or

(3) Terminate the rental agreement.

In addition, the tenant may recover from the landlord any actual damages together with reasonable attorneys' fees.

(C) Nothing in division (A) of this section shall prohibit a landlord from increasing the rent to reflect the cost of improvements installed by the landlord in or about the premises or to reflect an increase in other costs of operation of the premises.

So what do you do if a landlord retaliates against you? The first thing is to figure out if the action that the landlord took is illegal. You are only protected under the statute if the retaliation is in the nature of an increase in rent, a decrease in services required to be provided, or a threatened eviction. Your landlord’s refusal to go through with his plans to paint the garage after your complaints on other matters will probably not be sufficient. Your landlord’s unfriendliness to you after a complaint will probably not be sufficient.

The second hurdle that you must get over is that you must show that the action that your landlord took was motivated by the desire to retaliate against you. It’s troublesome to prove intent. Intent is by its nature a subjective, rather than an objective thing. The Judge will never be able to look into your landlord’s mind and see undeniable evidence of retaliatory intent. This means that in the end it will be the Judge or the jury (if you have asked for one) who makes the call on what your landlord’s mind set is. There are no guarantees when you are dealing with a subjective intent determination. You complain about a sparking outlet, the next thing you know the landlord has someone else that he wants to move into your apartment and you receive a thirty day notice terminating your month to month tenancy. The landlord argues to the Court that he just likes this new person better as a tenant.

Not knowing how the Judge is going to rule works for you and against you. It works against you because you are uncertain. Every piece of evidence might point in your direction, but you still lose because the Judge just doesn’t see it your way. But it works for you as well because there is no way that the other side can tell what is going to happen either. They are in that same scary boat as you are on those same high seas. None of this means you are going to lose or going to win. Just remember that no matter how good your case is, it is, in the end, a crap shoot. So if the other side is hanging out a good decent settlement offer that is fair, take it.

It will be your burden of proof to show that your landlord was motivated by a desire to retaliate against you when he hung that three day notice of eviction on your door or increased the rent by one third. Although RC § 5321.02(A)(1) provides that a landlord may not retaliate because of a complaint made to a government agency, the finder of fact must independently determine the reasons behind a landlord’s action. A tenant must, therefore, show by a preponderance of the evidence, that the relationship between the complaint and action resulted from a retaliatory motive: Weishaar v. Strimbu (1991), 76 OApp3d 276, 601 NE2d 587; Howard v. Simon (1984), 18 OApp3d 14, 18 OBR 38, 480 NE2d 99.

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Once a tenant has met his burden of proof under RC § 5321.02 by showing, by a preponderance of the evidence, that the landlord's decision to evict was in response to the tenant's complaints regarding housing code violations, then it becomes the landlord's duty to prove that he brought the eviction action in accordance with RC § 5321.03(A): Karas v. Floyd (1981), 2 Ohio App.3d 4, 440 NE2d 563. Just because a tenant’s complaint to a landlord is closely followed by the landlord’s retaliatory action, this does not create a presumption that the landlord’s conduct was retaliatory under the statute. While the temporal proximity of the actions of the parties may be a substantial factor in the Judge’s analysis of a landlord’s motives in desiring to regain possession of a rental unit, such evidence does not create a presumption of retaliatory motive under Ohio law. Karas v. Floyd (1981), 2 Ohio App.3d 4. In other words, proximity in time between the complaint and the adverse action taken against you by the landlord is darn good evidence, and you’re glad as heck to have it, but it does not decide the case unless the Judge or Jury thinks it does.

Evidence of the circumstances of the action may be used to prove that a rent increase was retaliatory: Blue v. Castlerock Properties, Inc. (1996), 77 OMisc2d 1, 665 NE2d 295. The fact that your landlord had never before complained about the noise your dog supposedly makes and then suddenly starts writing you a bunch of letters threatening eviction because it barked last night is circumstantial evidence of your landlord’s intent. In fact, circumstantial evidence is all you usually have when you are trying to show someone’s intent.

One quick note here. There are two types of evidence, direct evidence and circumstantial evidence. Direct evidence is evidence that, if believed, decides the matter. For example, Jim testifies that he has known Joe all of his life, and he saw Joe rob the bank. If you believe Jim, then Joe is guilty. That’s direct evidence. Circumstantial evidence is evidence that even if you believe it, it doesn’t necessarily mean that something happened. A gun that looked like the one used in the bank robbery was in Joe’s apartment. You can believe the gun was there, and even that it looks like the one that robbed the bank, and still believe that Joe is innocent.
Chapter VII: Landlord’s Duties to the Tenant

The Ohio Legislature also enacted another section of the Landlord Tenant Act besides Ohio Revised Code Section 5321.07 which also impacts upon problems during the tenancy, and this section is reprinted directly below:

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TITLE LIII [53] REAL PROPERTY

CHAPTER 5321: LANDLORDS AND TENANTS

ORC Ann. 5321.04 (1998)

§ 5321.04 Obligations of landlord.

(A) A landlord who is a party to a rental agreement shall do all of the following:

(1) Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety;

(2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(3) Keep all common areas of the premises in a safe and sanitary condition;

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by him;

(5) When he is a party to any rental agreements that cover four or more dwelling units in the same structure, provide and maintain appropriate receptacles for the removal of ashes, garbage, rubbish, and other waste incidental to the
occupancy of a dwelling unit, and arrange for their removal;

(6) Supply running water, reasonable amounts of hot water and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(7) Not abuse the right of access conferred by division (B) of section 5321.05 of the Revised Code;

(8) Except in the case of emergency or if it is impracticable to do so, give the tenant reasonable notice of his intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.

(9) Promptly commence an action under Chapter 1923. of the Revised Code, after complying with division (C) of section 5321.17 of the Revised Code, to remove a tenant from particular residential premises, if the tenant fails to vacate the premises within three days after the giving of the notice required by that division and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(I) of section 1923.02 of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division. Such actual knowledge or reasonable cause to believe shall be determined in accordance with that division.

(B) If the landlord makes an entry in violation of division (A)(8) of this section, makes a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages resulting from the entry or demands, obtain injunctive relief to prevent the recurrence of the conduct, and obtain a judgment for reasonable attorney's fees, or may terminate the rental agreement.
A. Lease Agreements To Transfer These Duties

Your landlord may attempt through provisions in the rental agreement to get rid of some of these duties mentioned in Ohio Revised Code Section 5321.04. Such clauses will not be effective and will be ignored by the Court where they conflict with any portion of the Landlord Tenant Act, including that which is printed directly above. So if your rental agreement states in clear language that the landlord shall not be responsible for providing water to the premises, the Court will ignore that clause because it conflicts with the provisions of the Landlord Tenant Act of 1974. If your landlord does not perform the duties that he owes to you under the statute, then your remedy is found in 5321.07 also reprinted in a previous chapter.

B. Documentation

Some words about documentation and ground work here. When you have a bad condition at your apartment, or a failure of the landlord to fulfill his duties under 5321.04, you should document it on video camera with a newspaper to time stamp it. What works in Court is a combination of oral testimony and tangible evidence. The Court will want to see and hear things for itself, rather than just experiencing things through your own words months after they occurred. For instance, if the temperature in your apartment will not exceed 55 degrees in January no matter how high you blast the heat, go buy a thermometer and put it next to the thermostat in the house. Set the thermostat at its highest setting. Focus the camera on the thermometer, the newspaper, and the thermostat and let the camera run for an hour. The court may not want to sit there for an hour and watch the tape, but it can fast forward to different parts of the tape to see how things are going.

I can’t address every situation and how to document it, just be creative. Always put yourself in the landlord’s shoes as you look at your proof and try to knock holes in it. Try to argue to yourself that it was somehow faked because of this or that. Then redocument the evidence so that such arguments cannot be made.

Document the conditions when you first send the letter advising the landlord of the problem, and document the conditions again after the landlord fails to fix the problem at the end of the thirty days.

Remember that you will need to prove that your landlord got your letter advising him of the problems at the apartment. This means sending the letter certified mail, return receipt requested. If you do this your landlord will have to sign for the letter, and then the document that he signed will get sent back to you, showing the date that he received it. Staple this return receipt to a photocopy of the letter you sent and you will have pretty good proof not just that the landlord got the letter, but also when he got it for the purposes of counting the thirty days.

C. Landlord Liability For Injuries To The Tenant

1. Three Types of Torts
Let’s start with a little first year tort law. When one person injures another, it is called a tort. A tort is a civil remedy wherein you can sue the other person for money to compensate you for the damages that you have suffered. There are three types of torts. They are Intentional Torts, Negligent Torts, and Strict Liability Torts.

a. **Intentional Torts**

Intentional Torts rarely arise in the landlord tenant arena. Assault would be an intentional tort. False imprisonment would be an intentional tort. These types of torts are the civil wrongs in which the Defendant acted with malice, hatred, or ill will in taking an action that he knew would injure the Plaintiff. I guess there are landlords who have hit their tenants in the nose, but there is nothing particular to the landlord tenant relationship that makes such a thing a legally remarkable part of landlord tenant law. It would be handled just like any other intentional tort, with a good personal injury lawyer, and therefore is beyond the scope of this work. Because these torts involve evil intent, the law provides for punitive damages as a deterrent to keep the wrongdoer from so acting again.

The only intentional torts that usually appear in the landlord tenant context come from trespass, trespass to chattels, and conversion. These will be dealt with under the chapter on evictions, specifically the section of that chapter on Self-Help Evictions.

b. **Strict Liability**

Strict Liability torts are the exact opposite of Intentional Torts. There are certain activities that make a person automatically liable for damages that they do to others, no matter how careful and considerate they were at the time. An example of this might be ultra-hazardous activity, like blasting the support structures out of an office building during a demolition project. If someone miles away gets hurt by a falling chunk of concrete, that person can sue the demolition company and recover his damages regardless of the care taken by the company to prevent injury. There are very few ultra-hazardous activities that landlords undertake.

Another type of strict liability is when someone manufactures a product and places it into the stream of commerce for sale and resale. If that product turns out to be defective, then the manufacturer is strictly liable for the damages done no matter how well-built the product was or how careful the manufacturer was in trying to prevent defects. But you don’t see many landlords manufacturing items and putting them into the stream of commerce. About the only area where strict liability comes into play in the landlord tenant context in Ohio is dog or animal bites.

The law in Ohio is that if your dog bites someone, you are strictly liable for the damages that were done. You can have your dog firmly tied up and somehow the darn thing got away. It still doesn’t matter. You can be sued. Think about this when you let your dog run around in the park. If your dog is mean, be careful. If another tenant in the building has a dog, and the dog bites you, you may have an action against the landlord. In Ohio, the law says if you own or “harbor” a dog that bites someone else, then you are strictly liable (unless you are on your own
property and it can be shown that the person bitten was mistreating the dog). There are cases that interpret the landlord letting the dog stay at the building as “harboring” the dog.

In Thompson v. Irwin, 1997 Ohio App. LEXIS 4728 (Oct. 27, 1997), Butler App. No. CA97-101, unreported, the Twelfth Appellate District Court decided a case involving a dog which had broken loose from its chain and had bitten the plaintiff while in a common area (an area not under the control of the tenant like a courtyard or a hallway upon which many apartment doors open). The owner of the dog leased a mobile home from the landlord on an oral month-to-month tenancy. The injured party therefore contended that the park retained some control over the premises.

The Court rejected that contention, noting that in determining whether a landlord is liable as a harborer, the focus shifts from possession and control over the dog to possession and control of the premises where the dog lives. A “‘harborer’ is one who is in possession and control of the premises and silently acquiesces in the dog being kept there by the owner.” 1997 Ohio App. LEXIS 4728 at 6. A lease transfers both possession and control of the leased premises to the tenant. Riley v. Cincinnati Metro. Hous. Auth. (1973), 36 Ohio App. 2d 44, 48, 301 N.E.2d 884. Thus, a landlord's liability as a harborer for injuries inflicted by a tenant's dog is limited to those situations in which the landlord permitted the tenant's dog in common areas. The Court quoted extensively in Thompson from Godsey v. Franz, 1992 Ohio App. LEXIS 1087 (Mar. 13, 1992), Williams App. No. 91WM0008, unreported, as follows:

Whether a landlord is liable as a harborer for . . . injury inflicted by a tenant's dog depends upon whether the landlord permitted or acquiesced in the tenant's dog being kept in common areas or in an area shared by both the landlord and tenant. If the tenant's dog is confined only to the tenant's premises, the landlord cannot be said to have possession and control of the premises on which the dog is kept. If the dog gets loose and roams onto common areas without the landlord's permission, the landlord cannot be said to have acquiesced. Further, if the landlord has established rules for the maintenance of pets by his tenants, such rules militate against the finding of acquiescence. On the other hand, where the landlord acquiesces in the keeping of the tenant's dog in common or joint areas, by allowing it to use or roam freely over such areas, the two elements of acquiescence and possession and control are present, and the landlord may be held liable as a harborer. Id. at 11-12.

Applying this analysis, the Court stated in Thompson that “a failure to properly enforce park rules does not constitute harboring an animal since the requisite mental intent is lacking. Further, establishing park rules for the maintenance of animals or pets of one's tenants or residents, does not make one an owner, keeper, or harborer of a dog.” Thompson at 5.

So if the landlord knows that the dog is being kept in the common areas of the apartment and does not protest, and the dog later bites another tenant or guest while in the common area, then the landlord can be sued and will have strict liability for the damages that are caused. The reason that all this is important is that the owner of the dog will rarely have sufficient money to
pay for plastic surgery to repair or conceal the damage to the face of a young child, but the landlord, or more likely his premises insurance policy, well might.

c. Negligence

1) Four Elements of Negligence

Negligent torts happen quite often in the landlord tenant area. Negligence is where someone had a duty to be careful but failed in that duty and someone else was accidentally hurt. Most car accidents are negligence. Medical malpractice is negligence. There are four distinct elements to negligence: Duty, Breach, Proximate Causation, and Damage.

It must first be shown that the Defendant owed a duty to the Plaintiff to prevent a certain kind of harm. Then it must be shown that the defendant breached that duty. The Defendant’s breach of that duty must have proximately caused the damages suffered by the Plaintiff. Let’s look at this in the context of real life for some application.

In the case of a car accident, all operators of motor vehicles owe a duty to other drivers to maintain an assured clear distance ahead of their own vehicles. This means that you owe a duty to the person driving in front of you not to get so close to him that you can’t stop in time. When you hit someone from behind, you have breached your duty. Your breach of the duty has probably caused damages to the rear bumper of the car ahead of you. Now you have the four elements: Duty, Breach, Proximate Causation, and Damages.

2) Landlord Negligence In The Old Days

In the context of the landlord tenant relationship, it used to be that the landlord was immune from liability once he was no longer in possession of the premises. This comported with the old fashioned idea that the tenant, during the term of his tenancy was in control of the premises and therefore in the same shoes as the owner of the property. But this rule slowly began to change.

3) The New Standard

Nowadays, in Ohio, the landlord can be liable for negligence. In order to fulfill the first element though, that of duty, the tenant must have first put the landlord on notice that there is something dangerous at the premises. Once the landlord has notice of the problem, a duty has arisen on the part of the landlord to the tenant. The case on point here is Shroades v. Rental Homes (1981), 68 Ohio St. 2d 20.

As an example, if you notice that one of the steps in your stair way is loose, there is no duty upon the part of your landlord to fix the step until you inform him of the problem. Once you inform him, the duty to fix it arises. If the landlord fails to fix the loose step after being told about it, then he has breached his duty. If the failure to fix the step after being told about it
causes the tenant to slip and fall down the stairway, then we have the third element, proximate causation. If the tenant suffers a broken leg as a result of the fall, then the tenant has damages.

So the important thing is to put your landlord on notice of problems at your apartment. Without such notice, there can be no recovery for your injuries. This is true whether the tenant is inside the apartment or in a common area leading up to his apartment. The notice can be oral or written, but since you have read this work, you will know to do things in writing. If you ever do communicate with the landlord orally regarding an important topic, it is wise to send the landlord a letter to the following effect:

Dear Mr. Landlord, the purpose of this letter is to confirm the contents of our conversation on May 21, 2000 wherein you said_______, and I said________. If that is not your recollection of our conversation, please contact me in writing so we can clarify what was discussed.

If a landlord undertakes to make repairs, she must make them in a safe and non-negligent fashion. In the case of Davis-Blunt v. Myatt (2000), 134 Ohio App.3d 213, a landlord negligently repaired a piece of carpet on the stairs. The First District Court of Appeals in Hamilton County held that whether or not the landlord was negligent was a question that should have been decided by the jury, and that the trial court’s dismissal of the case was improper. The Court reasoned that:

Pursuant to R.C. 5321.04(A)(2), a landlord who is party to a rental agreement shall “make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition.” Liability is contingent upon the tenant’s proof of proximate cause and “that the landlord received notice of the defective condition of the rental premises, that the landlord knew of the defect, or that the tenant had made reasonable, but unsuccessful, attempts to notify the landlord.” Shroades v. Rental Homes, Inc. (1981), 68 Ohio St. 2d 20, 25, 427 N.E.2d 774, 778 (emphasis added). The landlord’s violation of the duty to repair is negligence per se. Id.

Aside from the statutory remedy in R.C. Chapter 5321, at common law a “lessor [can] be held liable for the condition of premises if there were an agreement to repair or a violation of a duty imposed by statute.” Shroades, supra, at 24, 427 N.E. 2d at 776-777. Furthermore, at common law it has always been the rule that a landlord who undertakes and negligently makes repairs to the premises incurs liability for injuries to tenants or their invitees that are proximately caused by the negligent repair. See Simpson v. Delta Property Management, Inc., 1986 Ohio App. LEXIS 7326 (June 25, 1986), Hamilton App. Nos. C-850562 and C-850575, unreported.

In this case, the landlord had pointed out the carpet problem to the tenant before the lease was signed, and told the tenant that the carpet would be repaired before she moved in. The landlord merely glued the carpet into place (the carpet has previously come loose and it had been
stapled but this repair did not hold). The carpet had come loose again and the tenant fell over the loose piece. One dissenting justice on the First District Court of Appeals felt that unless the landlord had notice that the new repair had come loose, then the landlord could not as a matter of law be held liable. But the majority did not agree.
Chapter VIII: The Notification Process

A word about Notices. Firstly, whenever I say that you need to give written notice to the landlord, you need to follow what I call The Process. The Process consists of

1) Drafting and signing the letter that you are going to send;

2) You must then make a photocopy of the signed document (it is not enough just to keep a copy on your computer);

3) Send the original to the landlord via certified mail, return receipt requested. This means that the landlord or someone who works for him must sign for the letter. The green certified mail return receipt will then get sent back to you;

4) You will then staple the return receipt to the photocopy that you kept behind; and

5) store the letter at a safe place like your parents’ house.

The Process yields you two important advantages. The first and obvious advantage is that you can prove that your landlord got the notice. But the second and equally important advantage is that you can prove exactly when your landlord got the notice. “When” is important when you have a thirty day time line to consider. You should count the thirty days from the day after your landlord got the notice, not the date that you mailed it. For example, if your landlord got the notice on January 15, then he should have until February 16 to remedy the condition. If you fail to follow The Process, you may still win, but you give the landlord a chance to beat you if he gets in front of a sympathetic judge.

Sometimes your landlord, if he is a real dirtbag, will duck his certified mail, and the return receipts will come back to you marked either “refused” or “unclaimed.” If this happens, don’t worry. Just send another copy of the letter out by registered mail. This is a step down from certified mail, and it is basically a certificate of mailing from the post office showing that you mailed it on a certain date. Very few Judges will believe that the landlord never got such notice after he refused it once, then claims that the Post Office must have lost the registered mail.

A. The Importance of Notice in Writing

There are cases in Ohio that say that the notice about the problems must be in writing. There are also cases that say that the notice may be in writing, but a writing is not required if the landlord had actual notice of the problems. Why take a chance that you are in an appellate jurisdiction that requires a writing? How hard is it to write a letter and keep a copy? Be on the safe side of this issue. Follow The Process.
Chapter IX: Problems with Roommates

One place that I generally can’t help you against your landlord is if you are having problems with your roommates. If your roommate turns out to be a real jerk, and you can’t live with him anymore, that’s not your landlord’s fault, and the law is not going to punish the landlord because you made a bad choice with to live. Your landlord has no responsibility to see that your roommate cleans up his messes or stops playing his radio too loud at night. You are going to have to find a way to deal with that one by yourself.

If your roommate runs out on the lease, you will have a cause of action against your roommate or his co-signer. But the landlord will have a cause of action against you for your roommate’s end of the rent if you signed a rental agreement containing a joint and several liability clause (see the section on interpretation of rental agreements). These clauses make each tenant responsible for the acts and omissions of the other tenants. The landlord is hoping that one of your roommates or his co-signer is an extremely wealthy person. The landlord will then collect all of the money owed from this one, and leave that extremely wealthy person with nothing more than a cause of action against the other tenants.

The good news is that you will probably win your case against your roommate and the co-signer. But the bad news is that you may not be able to recover any money. There is an old saying among lawyers: “Winning a judgment is easy. Collecting on it is hard.” If your roommate is penniless, you can’t get blood out of a stone. It has been my experience that people with a lot of money don’t do really stupid things that subject them to liability wherein they might lose their money. People without any money are generally free to act the fool, wreaking havoc upon anyone they please, so long as they do not run afoul of the criminal law. Even if they do run afoul of the criminal law, you cannot threaten criminal prosecution to obtain an advantage in a civil dispute, and your attorney can be disbarred for trying.

A lot of tenants will try to use the remedies mentioned in this book as camouflage for the fact that they are really just not getting along with their roommate. My advice to you is not to try it. Judges have an uncanny way of seeing through all of that stuff. Though you may technically have a right to get out of your lease, if the Judge senses that you have an ulterior motive, he will bend over backwards to find against you.
Chapter X: Problems With Crime

A. Your Landlord Is Not An Insurer Against Crime.

Your landlord is not an insurer against crime at your apartment. If your apartment gets broken into and your stuff gets stolen, this will not serve as the basis for terminating your rental agreement. In fact, you generally will not be able to sue your landlord for the lost value of your stolen possessions. I know what it is like to have come home and found my apartment burglarized. It is hard to get to sleep over the next few weeks because every little noise that you hear sounds like someone is breaking in. The first element in any tort action brought against your landlord is that of duty. You must show that under the law, the landlord had a duty to protect you. The duty of any defendant arises from how foreseeable the harm might have been. Ohio law has taken the position that crime is not very foreseeable to landlords.

Crime in the area is not your landlord’s fault. As a general rule, landlords have no duty to protect their tenants from the criminal acts of third persons. Thomas v. Hart Realty, Inc. (1984), 17 Ohio App. 3d 83, 86, 477 N.E.2d 668; Sciascia v. Riverpark Apts. (1981), 3 Ohio App. 3d 164, 166, 444 N.E.2d 40; Johnson v. Monroe Realty Co., 1995 Ohio App. LEXIS 2138 (May 25, 1995), Cuyahoga App. No. 67964, unreported. The duty of a landlord in such cases was set forth in Carmichael v. Colonial Square Apartments (1987), 38 Ohio App. 3d 131, 528 N.E.2d 585. Carmichael dealt with a tenant who had been assaulted in his own apartment and brought suit against his landlord alleging that he was negligent in failing to provide adequate security in the common areas (hallways and stairs open to all residents) of the building. The court in that case determined that the landlord had complied with his duty to provide reasonable security:

[W]hile the landlord has some duty to provide secure common areas in an apartment complex, he is not an insurer of the premises against criminal activity. Thus, the duty on the landlord is only to take some reasonable precautions to provide reasonable security. Id. at 132.

In Kelly v. Bear Creek Invest. Co., 1991 Ohio App. LEXIS 631 (Feb. 14, 1991), Cuyahoga App. No. 58011, unreported, the Court of Appeals in Cuyahoga County determined that liability only arises where the landlord should have reasonably foreseen the criminal activity in question and failed to take reasonable precautions to prevent such activity, and this failure was the proximate cause of the tenant's harm. Foreseeability is based upon whether a reasonably prudent person would have anticipated that an injury was likely to result from the performance or nonperformance of the act. Menifee v. Ohio Welding Products, Inc. (1984), 15 Ohio St. 3d 75, 77, 472 N.E.2d 707, 710; Eagle v. Mathews-Click-Bauman, Inc. (1995), 104 Ohio App. 3d 792, 797, 663 N.E.2d 399.

It doesn’t take a lot on your landlord’s part to be found to have provided reasonable security. The landlord probably does not have to provide security systems, nor high quality double key deadbolt locks. If there is no lock on a door or window, and you inform the landlord
about it in writing, demanding that it be fixed, and the landlord fails to fix it and someone comes into the apartment through that unsecured opening, then you may have a better case.

This concept of the landlord not being responsible for crime in the area is true even if you feel that your landlord really should have told you about criminal activity in the area. You need to use your common sense. If all of the houses around you look run down and there are people sitting out on the front porch drinking during working hours, you may not want to park your new Mercedes in back of the house and be seen moving your jewelry collection in at noon.

So remember that your landlord only has to take “reasonable precautions” against criminal activity. Keep in mind that the more warning that you can show that you gave your landlord about crime in the area (especially about the crime which you suffered) and the need to secure the premises better before the break in, the more sympathetic a judge might be to your plight. The judge might raise the bar on what constitutes a reasonable precaution if you can show three or four letters from you complaining to the landlord about suspicious characters who left pry marks on the back door and suggesting that he take some reasonable security precaution that would deter a break in like installing a flood light or an alarm. These letters serve the purpose of putting the landlord on notice of the problem. Remember that it is the foreseeability of the harm that gives rise to a duty upon the landlord’s part to protect you.

I would suggest getting renter’s insurance if you have valuables that you want to be secured. It’s pretty cheap compared to what you could lose and it’s the only way to completely protect yourself from monetary loss. For your personal protection, it’s also not difficult to obtain a rudimentary burglar alarm like a battery powered portable motion detector that you put in front of a door and activate when you leave or go to sleep. If your rental agreement allows dogs, get one that is ill tempered except to his owner and keep him on a tight leash.

Of course turn about is fair play. If your landlord is not responsible for crime in the area, neither are you. So if burglars break in and do thousand of dollars worth of damage, and you had no part or role in the break in, then you will not have to pay for any of the damage done.

B. Guns In Rental Housing

At the time of this writing, the Second Amendment still guarantees your right to bear arms, and Smith & Wesson still makes fine products in the .44 and .357 caliber range. Remember that the Constitution (as amended by the Second Amendment) protects you from government action. Your landlord is free to insert a clause in your rental agreement that says no guns and a Court will enforce it if you signed the document.

I know that a lot of you namby pamrys disapprove of guns, but when you hear an intruder coming up the stairs to your bedroom at four in the morning and you are still waiting for the police to arrive, your political beliefs about guns will seem a little silly to you. Benjamin Franklin warned us all that those who would give away their freedoms in exchange for safety will end up with neither.
You may not care about holding onto your belongings, but at 4:00 in the morning when these things typically happen, you face the possibility of an intruder who might not care about your belongings either. And you will face that possibility alone. When Daniel Rolling entered the houses of college girls in Gainesville, Florida, in the early 1980s, he wasn’t after possessions, he was after lives. The police arrived in time to do some excellent chalk outlines (sometimes more than one even though only one body was involved). The police eventually caught the guy and put him in the electric chair. But that really didn’t help the people he killed. There is nothing evil about a gun. It is a piece of metal, just like a hammer or a screwdriver.

You don’t even have to hit anything for the gun to be effective. It is a rare criminal indeed who keeps approaching you after hearing a gun shot rip through a bedroom door. I suggest a revolver rather than an automatic, because they are easier to use in a panic situation.

Keep in mind that guns constitute deadly force, and the law says that you cannot use deadly force to protect property, only life. There is a presumption that if someone is in your house uninvited, then he is a danger to you. Remember that a presumption is something that the judge starts the case out with. Normally if you were asserting self-defense, that would be your burden of proof, but in Ohio, if the lawbreaker is in your house, it is the prosecutor’s burden of proof to show that the lawbreaker was not a danger to you when you shot him.

But this presumption ends when the guy is walking back across your lawn to his car with your TV in both hands and you shoot him in the back. While it is certainly better to be tried by twelve jurors than carried by six pallbearers, think about what you are doing. Are you protecting life or property?

But I digress, so thus endeth the sermon.
Chapter XI: Problems Caused by Third Parties or Guests

Sometimes you will have landlords who will blame you for the acts of others. If those others are third parties to whom you have no connection (like thieves in the night), then your landlord will bear the burden of any damages caused by such persons. But if you know the persons who damaged the property and they were there as your guests, then things get a little stickier. In the case of Allstate v. Dorsey (1988), 46 Ohio App. 3d 66, a woman’s adult son was visiting her at her apartment and damaged the apartment by foolishly allowing some french fries he was cooking to catch fire. The Ninth Appellate District Court stated as follows:

In order for Dorsey [the tenant] to be held liable under the statute for damages caused by the negligent acts of a third person, it must be shown that Dorsey was at least cognizant of the third person's presence, and of his intentions or actions. See Ohio Cas. Ins. Co. v. Wills (1985), 29 Ohio App. 3d 219, 221-222, 29 OBR 264, 267, 504 N.E. 2d 1164, 1168. At trial, Allstate and the Riddifords appear to have proceeded upon the proposition that R.C. 5321.05(A)(6) imposes strict liability upon a tenant for the negligent acts of a guest. Thus, there were no allegations, nor was there evidence presented, to indicate that Dorsey observed or was otherwise aware of the actions of her son. Consequently, the facts presented to the trial court do not support a finding that Dorsey failed to fulfill her obligations under R.C. 5321.05(A)(6). The granting of summary judgment on this basis was improper. Id. at 67-68.

So in order for a tenant to be held liable to the landlord under R.C. 5321.05(A) for damages caused by the negligent acts of a third person, the landlord must show that the tenant was at least cognizant of the third person's presence, and of his intentions or actions. This also means that if a burglar breaks into your house and causes damage, you will not be responsible for repairing the damage.
Chapter XII: Unauthorized Entries By The Landlord

Unfortunately, there are a lot of landlords out there that think that because they own the place, they can come and go as they please. To be sure, there are a lot of legitimate reasons why landlords need to make entries into the apartment while you are living there. One is because you are not going to be living there forever, and they need to show the apartment at times to prospective new tenants. They also may want to make improvements and repairs while you are there.

A. What is an Unauthorized Entry?

First, we must define the meaning of the word “entry.” You may live in a multi unit apartment building. There is probably a common area in the apartment, like a hallway or stairs that leads to one or more of the units. Your landlord is free to enter such areas as often as he wishes with no notice to you. You only have a right to be free from his intrusions into your apartment.

The law says that the landlord must give reasonable notice of his intent to enter the premises unless it is impracticable to do so or there is an emergency. Ohio Revised Code Section 5321.04(A)(8) requires this. The law will presume that 24 hours notice is reasonable, but there may be certain factual situations that would require the landlord to give you more or less notice than this. Obviously, if you are away on vacation and the tenant who lives below you is complaining that a pipe has burst in your bathroom, the landlord is not going to wait a week until you get back from Florida to ask permission to enter your apartment. But just because the landlord thinks that something is an emergency does not necessarily make it so. The landlord bears the risk of making a poor decision later in Court.

What happens if the landlord enters your apartment improperly? The law says that you can terminate your lease and/or sue for damages. In reality, the results are mixed. Many judges don’t think it’s a big deal if your landlord walks into your apartment without warning at 9:00 on a Saturday morning while you are showering with Friday night’s conquest. Try walking into the Judge’s house under the same conditions and you will find yourself at the police station answering some rather pointed questions from a Prosecutor. Some judges don’t seem to mind if it’s your apartment. This sucks, but that’s life. The lesson is, don’t believe it when someone tells you that you can terminate your lease upon your landlord’s unauthorized entry into your apartment. They are technically correct, but it doesn’t always work that way.

In the case of T.K.D. Enterprises v. Zimmerman, 1998 Ohio App. LEXIS 3167(July 2, 1998) Fourth Appellate District (unreported) the trial court ruled that even though the landlord had made several unauthorized entries in violation of the rental agreement, these entries were minor violations of the rental agreement, and for repairing the problems that the tenant complained about. Thus, the trial court reasoned, the tenant had no right to terminate the lease. But the Fourth District Court of Appeals in Athens County disagreed and stated as follows:
However, taking the facts as found by the trial court, we find a different legal conclusion is required here. The legal question raised on these facts is not whether the unauthorized entries by T.K.D.'s repairmen violated the "lease" (as the trial court ruled). R.C. 5321.13(A) generally provides no statutory provision of the Landlord/Tenant Act may be waived or modified by the parties' agreement, except in prescribed limited circumstances which do not apply here. Thus, even if the parties' written lease agreement had permitted unannounced entries by the landlord, their written agreement could not supersede Ohio's statutory mandates.

Thus, our first consideration is whether these unannounced entries violated the statutory prohibition of R.C. 5321.04(A)(8).

We begin by observing that the Landlord-Tenant Act balances the legitimate rights of each party. R.C. 5321.05(B) confers on the landlord a right of access to the property for the very purpose these parties contemplated - specifically, making needed or agreed repairs:

"The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations, or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors."

But, in accessing the property, the landlord must comply with the reasonable notice requirements of R.C. 5321.04(A)(8), and enter only at reasonable times, unless there is an emergency or it is impracticable to do so.

If a landlord abuses the right of access, the tenant may give written notice to the landlord specifying the acts or omissions which constitute noncompliance. If, after receiving this notice, the landlord enters again without reasonable notice and the tenant is current in rent, then the tenant may elect to terminate the lease agreement as one of several remedies under R.C. 5321.07(B). See White, Baldwins, Ohio Landlord Tenant Law, § 16.6. n2 R.C. 5321.04(B) also provides termination of the rental agreement is an option for a tenant where a landlord makes an entry without reasonable notice as required by R.C. 5321.04(A)(8). TKD pp. 10-12

The Fourth District Court of Appeals, while making a ruling that generally follows the letter of the law, did add a little something to the law when it stated in its footnote:

While the statute does not expressly provide that the right to terminate arises only after notice and a second violation, we join commentator White in implying such a condition. A single unintentional or good faith violation of the
notice requirement which arises from an honest effort to repair or improve the
property should not give rise to an absolute right of termination of the rental
agreement. We are hesitant to punish a landlord for making sure that the
property is in good repair. Yet, we cannot encourage landlords to enter without
notice even if repairs are needed and requested. We believe this approach strikes
a reasonable balance.

Thus in the Fourth Appellate District, the landlord gets one free unauthorized entry into
your apartment if they are coming in to make repairs or for a “good faith” reason. The statute
does not state that you have to first complain before you can assert your rights under R.C. 5321.04(A)(8), nor does the statute discuss “good faith” efforts, but the Fourth Appellate District Court feels that this is what the Ohio Legislature must have meant and would have said if they had only thought of it.

B. Waiver or Ratification of the Unauthorized Entry

If you are going to assert your rights to terminate your lease pursuant to an unauthorized
entry of your apartment, you don’t want to wait too long after the entry occurs. If you wait too
long, the judge might find that you have ratified the behavior of the landlord. This means that
you have acted in a way that indicates that the wrong doing on the part of the landlord was no
big deal to you, so you may not later go back and dredge up past events as a basis for a
present termination.

This is only fair if you think about it. If you are in your third year of a rental agreement,
and you have proof that your landlord made an unauthorized entry into your apartment during
your first week of occupancy long ago, not too many people would be sympathetic to you if
you suddenly asserted that long ago entry as giving you a basis in the present to move out. It
would look too much like you were using it as an excuse for some other reason.

So how long do you have to assert your rights to terminate the rental agreement after an
unauthorized entry? In the case of Limage v. Citiscene 1992 Ohio App. LEXIS 3055 (June
9, 1992) Franklin App. No. 92AP-190, unreported:

The trial court found that an agent of appellant made an entry into 1382 1/2
Indianola Avenue which was not lawful, apparently because no advance notice
of the entry was received by the tenants. The stipulation of the parties
indicated that the entry occurred, but that nothing was disturbed. The purpose of
the entry was to show the premises to prospective tenants.

The tenants did not attempt to terminate the lease instantaneously, but almost
immediately informed appellant that they were terminating the lease at the end
of the three-month period for which they had already paid. Apparently they
vacated the premises by that date.
The landlord, Citiscene, tried to argue that the tenants should not be able to wait three months before terminating their lease, and that the three month delay between the time they complained and the time that they moved out constituted a ratification of the landlord’s unauthorized entry.

The Tenth Appellate District Court in Franklin County rejected this argument as follows:

R.C. 5321.04(B) does not set forth a precise date for the termination of a lease, so termination within a reasonable time should be implied. A termination at the end of the period for which the tenants have already paid rent certainly qualifies as reasonable.

Keep in mind that the Court here focused upon the fact that the tenants stayed through the period for which they had already paid rent. These tenants were in an atypical situation wherein they paid their rent every three months. As most people pay their rent every month, a tenant who complains at the beginning of a month about an unauthorized entry into the apartment and elects to terminate his rental agreement can probably stay at the apartment until the end of the month that he had paid for without having to worry about a successful ratification argument on the part of the landlord. Remember also that the tenants in Limage informed the landlord almost immediately that they would be terminating the lease at the later date. So don’t wait around to tell your landlord of your plans.

Another important thing to take away from the Limage case is that it is not necessary that somebody be disturbed or something be broken by the landlord’s unauthorized entry. In Limage:

The stipulation of the parties indicated that the entry occurred, but that nothing was disturbed. The purpose of the entry was to show the premises to prospective tenants.

The Tenth Appellate District focused more on the fact that the entry was unauthorized rather than upon the fact that nothing was broken and no one was disturbed. In fact, the tenants were not even home when the unauthorized entry happened. It is important to note however that this case stands for what a court can rule, not for what it must rule. There are a lot of ways that a judge can find that the unauthorized entry was actually something else. The Judge may rule that the conditions in your case were such that the landlord had an emergency. The Judge may also rule that the facts in your case made it clear that it was impracticable to get notice to you of the planned entry. The Judge may also rule that you have not proved to his satisfaction that the unauthorized entry was ever made, or that maybe an entry was made, but that you had received adequate notice.

The last important thing to take away from Limage is that just because the landlord attempted an unsuccessful phone call that day and knocked on the door before he entered does not mean that he has given you reasonable notice:
We also affirm that the entry into the premises which occurred was not in accordance with R.C. 5321.04(A)(8). The efforts to notify the tenants consisted of a telephone call on the same date the entry occurred and knocking on the door shortly before entry. Since the telephone was unanswered and the knocking elicited no response, the rental agent certainly knew no notice had been received by the tenants. Giving reasonable notice to tenants for purposes of R.C. 5321.04(A)(8) implies that some sort of notice is received.

In both TKD and Limage, the landlords admitted that they had made unauthorized entries into the apartments. Your landlord may not be quite so honest. You should put some thought into how you are going to show the Judge that the landlord entered into your apartment without your permission. You may luck out and have a note signed and dated by the landlord saying: “Your apartment flunks our surprise inspection. The insides of your closets are filthy. Clean them up or you will be evicted.” But otherwise it might be your word against his.

Your landlord may argue that any time you make a maintenance request, you have given him carte blanche to enter your apartment whenever he wants to make those repairs. While there is no case law that I can find at the time of this writing that directly contradicts this argument, the TKD case seems to speak to those facts and reject the argument without really addressing it directly. Common sense will also tell you that if you call a plumber and leave a message that you need your sink fixed and for him to call you and set up a time, you will be able to maintain an action for trespass against him if you come home one day and there he is fixing your sink in the absence of a specific time set up for the repair.

The word to the wise then is that if you send a letter to your landlord requesting repairs to your apartment, you should spell out specifically in the letter that the landlord is not to interpret the request for repairs as permission to enter. The letter should specify that you wish to be present when repairs are made, and that the landlord should contact you regarding a convenient time to make the repairs.

Your landlord may argue that there is a clause in your lease which says that any request for repairs shall be deemed as permission to enter at any time. But this would be an example of a clause in the lease which conflicts with the provisions of the Ohio Landlord Tenant Act of 1974, and as we know from our earlier readings, any clauses in rental agreements which conflict with the Landlord Tenant Act of 1974 will not be enforced. Further, would the Judge be surprised if she came home from work and found a plumber in her house at 6:00 p.m. after merely leaving a message on the plumber’s answering machine inquiring about repairs?

C. Actual Methods of Preventing Unauthorized Entry

If your landlord consistently enters your apartment without giving you warning, there are some things that you can do. Obviously, you can chain the door while you are there. If your door does not have a chain, you can buy door stops that fit between the door knob and the floor or the frame and the floor to prevent entry.
If your landlord is making entries while you are not there, then the door stop trick won’t work, but there are other options. If your lease does not contain a provision that requires your landlord’s permission to alter or modify the premises, then you can install a new lock on your door and not give the landlord a key until you leave. In the case of *Spencer v. Blackmon* (1985), 22 Ohio Misc. 2d 52, the Municipal Court in Hamilton County stated:

Prior to the above events, on January 8, 1985 plaintiff had appeared at the apartment building with a carpenter in order to install smoke detectors as required by a new Cincinnati city ordinance, which was effective January 1, 1985. Plaintiff intended to install the smoke detectors in all sixteen units on that day. However, plaintiff had given no notice to defendant of his intention to enter the premises, as required by R.C. 5321.04(A)(8). Upon attempting to enter defendant's apartment by means of a passkey, plaintiff discovered that an additional lock had been installed by defendant and he could not gain access to her apartment.

A few days thereafter, plaintiff and defendant had a conversation to the effect that plaintiff demanded a key from defendant, and defendant refused, but stated that she would allow access to the apartment at any time that she had prior notice. Plaintiff again demanded a key to the apartment prior to handing defendant the eviction notice on January 19, 1985, stating that "if you do not give me a key you will have to move." Id. at 52-53.

Despite the landlord’s arguments to the contrary, the Municipal Court of Hamilton County ruled that:

The landlord has no right to enter a tenant's premises absent a bona fide emergency; and the “landlord’s belief or statement that a situation constitutes an emergency does not necessarily make it so. The consequences of a misjudgment may result in a successful action against the landlord by the tenant. The use of a passkey to enter leased premises should be limited to extreme circumstances.” White, Ohio Landlord Tenant Law (1984), at 19; R.C. 5321.04(A)(8)...

The landlord has no right to have passkeys to a tenant's apartment. “[T]here is neither a common-law nor a statutory requirement that tenants must provide passkeys to their landlords.” White, Ohio Landlord Tenant Law, supra, at 19.

In considering whether this was an “emergency situation” as the landlord argued, the Municipal Court disagreed when it stated that:

The installation of smoke detectors, which could have been done prior to the effective date of the ordinance, and should have been done by January 1, 1985, is not, on the 8th day of January, a sufficient “emergency” to entitle the landlord to enter tenant's premises without prior notice. R.C. 5321.04(A)(8).
Unfortunately, most landlords heard about this case and they incorporated terms into their new rental agreements that prevent modifications to the premises without their written consent. If you install a new lock without the landlord’s permission, then this will be a breach of that rental agreement provision and the landlord will have a right to evict you.

If your rental agreement has such terms preventing modification, all is not lost. You can go to your local department or electronics store and get a motion detector with siren for an small price. These are usually battery powered and about the size of a brick. Sit them about five feet back from any entrance to your apartment, and they will go off at 120 decibels when they detect the door opening. There is usually a device that can be attached to your key ring to turn it on and off as you approach. Your landlord may be greatly inconvenienced by such alarms and will probably avoid your apartment thereafter. If he destroys your alarm and is unwise enough to leave a note telling you not to get a new one, sue him for trespass and conversion of your property.

D. No Setting Traps

One thing that you cannot and must not do is to set traps for either a burglar or a landlord that could do physical harm to anyone. In law, these are known as “spring guns” (even though they may have nothing to do with guns). Almost every state, including Ohio, has cases or laws which prohibit the wiring of shotguns in a manner to go off when a door is opened without authorization. Similarly, you cannot rig a can of mace to do the same thing, or wire your door knob so as to give a harmful electric shock. If you do, you will face both criminal and civil liability.
Chapter XIII: Moving Out

You will only be responsible for returning the apartment in the same condition that you got it, reasonable wear and tear excepted. This is where it is important to have your video camera with a new tape cued up and ready to go. On the last day of your lease, after you have removed all of your furniture, cleaned the apartment, and repaired whatever damage you have done to the place, you should take the following steps.

A. Bring In The Professionals

First, you should call professional cleaning personnel to clean up the apartment. This has three advantages. First, you get to go out and play golf or shop while the cleaning people slave away at your mess. Secondly, they will do a much better job than you could ever do because they have the know how and the tools to get things done right. They have higher standards than you do and they do not lose their enthusiasm for the project as time wears on because they want your money at the end of the job. Lastly, they can provide you with a receipt for the work that was done. This can be very valuable to you when you go up against the landlord who claims in Court that you left the place a stinking mess. The Judge may believe that someone like you could leave the place a stinking mess, but that same Judge would be extremely disinclined to believe that professional cleaning personnel would leave the place a stinking mess once you have presented a paid in full receipt to him from the cleaning people.

So call in the professionals. They aren’t near as expensive as you think. Also, make sure that you give the cleaning people plenty of lead time, especially if you live in a campus area where all of the apartments are turning over at the same time. They are likely to be booked solid at certain times of the year. If you call them and expect them to come out within the week when they have thousands of jobs, you are fooling yourself.

B. Video Tape The Place At Move Out

Now that you have got your apartment down to the bare walls and all cleaned up to the point where it is “Grandma Clean,” you need to repeat the video tape process with the newspaper. You paid all this money to the cleaning people to get it in this shape. You might as well capture the moment for posterity and for the edification of a Judge in later Court proceedings. Be just as thorough this time as when you moved in. Get everything. Do not tell your landlord that you have made this video tape unless he makes a discovery request for it in Court. Send the video tape off to your parents’ house for safe keeping.

C. Written Notice Of Security Deposit Forwarding Address

You will want to write a letter to your landlord informing him of your forwarding address for the return of your security deposit. You want to send this letter to the landlord at the start of the last month that you will be staying at the apartment. If you have roommates, everyone should sign the letter and have the deposit sent to the same address. Every one signing is not
required, but it makes for simplicity rather than to have five different security deposits going
to five different addresses.

This forwarding address can be any address that you would like, your new address, a
friend’s house, a parent’s house, a P.O. Box, anything. But it must be a mailing address. You
can’t give a phone number in the letter and tell the landlord to call this number for an address.
Remember to use The Process described in Chapter 8 (via certified mail) to show that the
landlord got this notice and when.

The reason that you are giving this forwarding address in writing is because you wish to
get the powerful protections given to you by RC 5321.16. This statute covers the return of
security deposits. It is the statute that your landlord fears the most (if he has a brain in his
head) and is reprinted directly below:

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NOVEMBER 1, 1998 ***

TITLE LIII [53] REAL PROPERTY

CHAPTER 5321: LANDLORDS AND TENANTS

ORC Ann. 5321.16 (1998)

§ 5321.16 Security deposit procedures.

(A) Any security deposit in excess of fifty dollars or one month's
periodic rent, whichever is greater, shall bear interest on the
excess at the rate of five per cent per annum if the tenant
remains in possession of the premises for six months or more,
and shall be computed and paid annually by the landlord to the
tenant.

(B) Upon termination of the rental agreement any property or money
held by the landlord as a security deposit may be applied to the
payment of past due rent and to the payment of the amount of
damages that the landlord has suffered by reason of the tenant's
noncompliance with section 5321.05 of the Revised Code or the
rental agreement. Any deduction from the security deposit shall
be itemized and identified by the landlord in a written notice
delivered to the tenant together with the amount due, within thirty
days after termination of the rental agreement and

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delivery of possession. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address as required, the tenant shall not be entitled to damages or attorneys fees under division (C) of this section.

(C.) If the landlord fails to comply with division (B) of this section, the tenant may recover the property and money due him, together with damages in an amount equal to the amount wrongfully withheld, and reasonable attorneys fees.

In short form, it says that if you give the landlord written notice of your forwarding address for the return of your security deposit, then your landlord must return the deposit or a list of reasons why he is keeping your deposit within 30 days. If any portion of your deposit is later found by the courts to be wrongfully withheld, then your landlord will be very sad indeed. This is because you will be entitled to sue for the wrongfully withheld portion, that same amount again under the double damages provision of RC 5321.16(C ) and the landlord must pay your reasonable attorneys fees.

Attorneys fees are important here because few security deposits are hefty enough to justify the hiring of a lawyer for their recovery. The Ohio Legislature understood this and enacted 5321.16(C ) to give you a fighting chance. If you win, your attorney gets paid by the landlord. Some attorneys still will not take the case because they know that Judge’s have the discretion to award attorneys fees, and sometimes are extremely reluctant for a variety of reasons to do so. Lucky for you, the Ohio Supreme Court decided that the Judge doesn’t have any choice on the issue of whether or not to award attorneys fees and double damages. They are mandatory.

In the case of Smith v. Padgett (1987), 32 Ohio St. 3d 344, the Ohio Supreme Court stated that:

This court has not previously considered this precise issue. However, in Vardeman v. Llewellyn (1985), 17 Ohio St. 3d 24, 17 OBR 20, 476 N.E. 2d 1038, we held that a landlord who both wrongfully withholds a portion of a security deposit and fails to timely provide the tenant with an itemized list of deductions is liable for damages equal to twice the amount wrongfully withheld and for reasonable attorney fees. In so holding, we reasoned that part of the General Assembly's intent in enacting R.C. 5321.16(B) and (C ) was "to provide a penalty by way of damages and reasonable attorney fees against a noncomplying landlord for the wrongful withholding of any or all of the security deposit." Id. at 28, 17 OBR at 24, 476 N.E. 2d at 1042.

A landlord should not be allowed to escape the intent underlying the R.C. 5321.16(C ) penalties by making a list of deductions. A landlord will not be
deterred from making unfounded deductions from a security deposit if the penalties provided by R.C. 5321.16(C) can be avoided by tendering a list of facially justifiable reasons for the deductions. R.C. 5321.16(B) and (C) do not require bad faith on the part of the landlord. See *Forquer v. Colony Club* (1985), 26 Ohio App. 3d 178, 180, 26 OBR 398, 399, 499 N.E. 2d 7, 9; *Paxton v. McGranahan* (App. 1985), 25 OBR 352, 355. We will not inject a requirement of bad faith into this statute where the legislature has chosen not to do so.

Therefore, we hold that under R.C. 5321.16(B) and (C), a landlord who wrongfully withholds a portion of a tenant's security deposit is liable for damages equal to twice the amount wrongfully withheld and for reasonable attorney fees. Such liability is mandatory, even if the landlord gave the tenant an itemized list of deductions from the deposit pursuant to R.C. 5321.16(B).

If the trial court finds that a landlord has wrongfully withheld a portion of the tenant's security deposit, it shall determine the amount of reasonable attorney fees to be awarded on the basis of the evidence presented. Such determination shall not be reversed except upon abuse of discretion. See *Albrect v. Chen* (1983), 17 Ohio App. 3d 79, 83, 17 OBR 140, 144, 477 N.E. 2d 1150, 1155. Cf. *Nobis v. E. A. Zicka Co.* (1986), 31 Ohio App. 3d 104, 31 OBR 175, 508 N.E. 2d 980; *Forquer*, supra, at 180, 26 OBR at 400, 499 N.E. 2d at 10.

However, the award of attorney fees must relate solely to the fees attributable to the tenant's security deposit claim under R.C. 5321.16, and not to any additional claims. Where, as here, a tenant brings additional claims against the landlord, the tenant may not use R.C. 5321.16(C) to recover attorney fees attributable to the additional claims. Id. at 348-350 [footnotes omitted].

So it behooves you not to just run out on the last month’s rent. If you do that, he will sue you and your co-signers anyway for all of the damages to the apartment (real or imagined), plus late fees, and you and/or your co-signers will have to face him in court without the prospect of double damages recovery or recovery of your attorneys fees.

Though attorneys fees are mandatory, the Court still has the right to determine how much attorneys fees are reasonable (and will use the factors listed in *Bittner v. Tri-County Toyota, Inc.* (1991), 58 Ohio St. 3d 143, which are as follows:

When awarding reasonable attorney fees . . ., the trial court should first calculate the number of hours reasonably expended on the case times an hourly fee, and then may modify that calculation by application of the factors listed in DR 2-106(B). These factors are: the time and labor involved in maintaining the litigation; the novelty and difficulty of the questions involved; the
professional skill required to perform the necessary legal services; the attorney's inability to accept other cases; the fee customarily charged; the amount involved and the results obtained; any necessary time limitations; the nature and length of the attorney/client relationship; the experience, reputation, and ability of the attorney; and whether the fee is fixed or contingent. All factors may not be applicable in all cases and the trial court has the discretion to determine which factors to apply, and in what manner that application will affect the initial calculation.

Moreover, the trial court determination should not be reversed absent a showing that the court abused its discretion. “It is well settled that where a court is empowered to award attorney fees by statute, the amount of such fees is within the sound discretion of the trial court. Unless the amount of fees determined is so high or so low as to shock the conscience, an appellate court will not interfere. The trial judge which participated not only in the trial but also in many of the preliminary proceedings leading up to the trial has an infinitely better opportunity to determine the value of services rendered by lawyers who have tried a case before him than does an appellate court.”

Brooks v. Hurst Buick-Pontiac-Olds-GMC, Inc. (1985), 23 Ohio App. 3d 85, 91, 23 OBR 150, 155, 491 N.E. 2d 345, 351-352. Id. at 145-146

It is also important to note that even if your landlord has retained your money for unlawful reasons, if you owe him money overall, you will not get the double damages and attorneys fees. For instance, if the landlord keeps five hundred dollars of your deposit to replace carpet that the Court found needed to be replaced before you ever moved in, but also finds that you owe the landlord rent for the month of November which you never paid, then if the rent owed is more than the deposit, you will get no money back, no attorneys fees, and no double damages. This is the case even if the landlord gave you no itemization of the security deposit’s disposition.

In the case of Vardeman v. Llewellyn (1985), 17 Ohio St. 3d 24, the landlord had never sent out any itemization of the security deposit, completely ignoring his responsibility to do so pursuant to Ohio Revised Code Section 5321.16. The tenant’s attorney argued that this automatically entitled the tenant to double damages and attorneys fees. But the court found that since the tenant owed the landlord more than the security deposit, the fact that the landlord did not provide the itemization was of no consequence.

D. Reasonable Wear And Tear

What constitutes “reasonable wear and tear”? Surprisingly, this term is almost completely undefined in Ohio law. There are only about three or four cases that I have seen that deal with this definitionally, and they go in all different directions. The long and short of this question then is that reasonable wear and tear is what the Judge determines it to be in your case. To some extent, this is only fair. Reasonable wear and tear is going to be one thing at an apartment wherein an old lady lives alone with her TV and another thing for an apartment where you and your five college roommates and two dogs live.
I once did battle with a landlord who accused my client of not cleaning the dust out of the coils on the back of the refrigerator at the end of the rental term. She also alleged that my client did not remove the dirt from the inside of the pipes in the drain of the tub. After a long, hearty laugh, the Judge determined that these items amounted to “reasonable wear and tear.” I won the case hands down.

Other cases have defined reasonable wear and tear as any damages that were not caused by a tenant’s violation of Ohio Revised Code Section 5321.05 (the tenant’s duties to the landlord).

E. Why The Definition of Reasonable Wear and Tear Is Not All That Important

But the definition of reasonable wear and tear is all just so much pissing in the wind if you have the video tapes that you need to show the condition of the apartment. Read on for the section of how to best present these video tapes in the trial tactics section of this work. If you do it right, the Judge won’t care what the definition of reasonable wear and tear is. He’ll be looking to slam the landlord.

F. What Constitutes Wrongful Withholding?

The law says that if your landlord wrongfully withholds any portion of your security deposit after getting your forwarding address, then you are entitled to double damages and attorney fees. Some landlords will try to argue that since they didn’t actually mean to wrongfully withhold your security deposit, that it was an honest mistake, so they shouldn’t be hit with double damages and attorneys fees. This comes from the common law concept that double damages and attorneys fees are usually only awardable where there was evil intent by one of the parties.

The courts have long ago ruled against this argument in the case of Forquer v. Colony Club Apartments. In that case, quoted in the Ohio Supreme Court case of Smith v. Padgett, the Court held that the landlord’s intent had nothing to do with anything. If the landlord was wrong, then the tenant gets double damages and attorneys fees. Mandatory.

Some landlords or their attorneys will try to assert that so long as the landlord provided an itemized listing of deductions within 30 days, you might get your deposit back if those deductions turn out to be wrong, but you won’t get your double damages or attorney fees. Horse Hockey. The Ohio Supreme Court’s ruling in Smith v. Padgett put that tired old argument to rest.

Some landlords will try to tell you that normally, you could get your double damages and attorneys fees, but unfortunately, you sued in Small Claims Court which does not have the power to award such damages. Horse Hockey. The Ohio Supreme Court decided that issue in the case of Klemas v. Flynn (1993), 66 Ohio St.3d 249:
The double damages recoverable under R.C. 5321.16(C) are simply a measure of the damages allowable and are akin to liquidated damages rather than punitive damages. These additional damages serve to compensate injured tenants for the temporary loss of the use of that money given to the landlord as a security deposit and for the time and inconvenience of having to sue for the recovery of money wrongfully withheld. In addition, the possibility of double damages creates an incentive for landlords to comply with the law.

Even if the award of double damages has a somewhat punitive effect, double damages do not thereby become "punitive damages" as that term has been defined in the common law.

Further, there is no logical reason to exclude R.C. 5321.16(C) claims from the jurisdiction of small claims courts. Indeed, there are compelling policy reasons to include these claims. The small claims divisions of municipal and county courts are intended to provide a forum for persons with relatively small, uncomplicated claims to seek redress without the need for attorney representation. Security deposit claims are such claims.

G. The Burden Of Proof

Normally, the Plaintiff in any case has the burden of proving his case. The burden of proof is important because after all the evidence is in, there can be three possible outcomes in the Judge’s mind. Outcome number one, the Plaintiff has proved his case. Outcome number two, the Defendant has proved his case. Outcome number three, both sides proved their case so much so that the Judge does not know whom to believe (in this respect the evidence is said to be in equipoise, and it happens more than you might think). When the Judge doesn’t know whom to believe, the party with the burden of proof loses. In relation to outcomes then, the party with the burden of proof has only a one third chance of success.

In landlord tenant cases concerning the wrongful withholding of security deposits, there is authority in Ohio case law for the proposition that the landlord has the burden of proof to show that he rightfully withheld the deposit. This is true whether he is the Plaintiff or the Defendant. The reasoning is that since the landlord is the one asserting the right to keep the deposit, it should be his burden of proof to show that he has the right to keep it. Paxton v. McGranahan (1985), Cuyahoga App. No.49645, Eighth Appellate District of Ohio, (unreported) LEXIS 9094. This means that the tenant has a two out of three chance of winning the case from the outset, all other things being equal.

H. Sufficiency of Charges at the Time of Itemization

Another issue involving the return of security deposits is the sufficiency of the security deposit forfeiture notice. The notice that the landlord provides to you within the 30 day period must be sufficiently itemized so that you can get enough information out of it to call the landlord up and intelligently contest the damages. In the case of Nolan v. Sutton (1994),
97 Ohio App. 3d 616; 647 N.E.2d 218, the landlord sent the tenant out a notice of security deposit forfeiture which stated only “Cleaning, $40.00.” The First Appellate District Court in Hamilton County held that this was not sufficiently itemized as a matter of law when it stated as follows:

We hold that the itemization in this case, "$40-cleaning," is insufficient as a matter of law to meet the landlord's burden under R.C. 5321.16(B) and (C), and that, thus, the trial court properly granted summary judgment to Nolan, the tenant.

Your landlord, when confronted with this argument will then produce a raft of evidence, either at trial or in response to a discovery motion that will itemize the “damages” for failure to clean in a lot more detail. But this will be of no avail to him, as the Court in Nolan went on to state that:

We believe that under the statutory scheme established under the landlord/tenant law, the sufficiency of the itemization must be determined at the time it is sent to the tenant, not at the time it may later be clarified through discovery in a lawsuit.

The Court in Nolan provided insight into its reasoning for its holding in this matter as follows:

In the case at bar, there is simply no way to determine from the “Security Deposit Transmittal” form received by the tenant whether the $40 for cleaning was due to ordinary wear and tear or something above that. As stated by the supreme court in Smith v. Padgett (1987), 32 Ohio St.3d 344, 349, 513 N.E.2d 737, 742:

“A landlord should not be allowed to escape the intent underlying the R.C. 5321.16(C) penalties by making a list of deductions. A landlord will not be deterred from making unfounded deductions from a security deposit if the penalties provided by R.C. 5321.16(C) can be avoided by tendering a list of facially justifiable reasons for the deductions.” See, also, Albrect v. Chen (1983), 17 Ohio App.3d 79, 17 OBR 140, 477 N.E. 2d 1150 (“in the absence of an affirmative showing by way of itemization (see R.C. 5321.16[B]), that there was a specific need to clean the carpet, appellant’s unilateral deduction was improper”), and Swartz v. Luker (Dec. 30, 1991), Clermont App. No. CA91-07-051, unreported, 1991 WL 278243. Id. at 620-621

Remember that this case comes from the First Appellate District. While it is a reported case and controls the result of any matter before the First Appellate District’s trial courts, if you are not in the First Appellate District, then this case will not necessarily control the trial
court in which your case is heard. But it will stand tall as very persuasive authority of the kind that many judges would not want to rule against.

I. Written Notice of Intention to Vacate Clauses

For a more detailed analysis of penalty clauses, of which this is one type, take a look at the section of this work on the terms of a rental agreement. A lot of landlords will try to stick something like this one in on you: “The tenant agrees to give the landlord written notice of his intention to vacate the premises at least 30 days prior to the end of the lease term. Failure to do so will entitle the landlord to keep the security deposit of the tenant.” The lease might also say that the tenancy will automatically become month to month if 30 days written notice of intention to terminate is not received.

Before we get into a big discussion about whether this clause is enforceable or not, I ask you: Why not just send the written notice in using The Process? Don’t make it an issue. Don’t give the landlord any chance at all. Never cut the sucker an even break.

But now I’m going to assume that you purchased this work of legal artistry late in the game, and that you have already moved out, and you either forgot to give the landlord the notice, can’t prove that you gave him the written notice, or that you had told him on several occasions orally that you would be moving out at the end of the lease.

The Franklin County Court of Appeals examined whether these Intention to Vacate Clauses are enforceable in the case of McGowan v. D.M. Group IX (1982), 7 Ohio App.3d 349; 455 N.E.2d 1052. In McGowan:

The lease provided for an automatic month-to-month tenancy, unless thirty days’ written notice was given prior to the expiration of the original term. In addition, Paragraph 19 of the lease contains a provision that, in case of default by the tenant and a reletting of the premises “for the remainder of the term hereunder,” the tenant is required to pay “the sum of $150.00 as liquidated damages to cover the administrative, advertising and bookkeeping costs of reletting the premises.”

But the tenant in McGowan was renting the apartment for a three month term so that his mother could stay there. Unfortunately, Mom was only able to stay for the first ten days, and then had to move out for medical reasons. The tenant agreed to pay the rent as it came due until the end of the lease, which he did, and both he and the landlord searched together for a replacement tenant, but to no avail. When the tenant did not provide written notice of his intent to vacate, the landlord tried to keep his security deposit. But the trial court found that the landlord had actual notice of the intent to vacate at the end of the term. You may wonder why the landlord needs notice of your intent to vacate at the end of the rental term. One would think that the terms of the rental agreement delineating its starting and ending points would be sufficient. But the Tenth District Court of Appeals recognized that provisions
requiring the tenant to give written notice of an intention to vacate were not automatically unconscionable:

The trial court did err in finding unconscionable the provision of the rental agreement placing an affirmative duty upon the tenant to give thirty-days’ written notice prior to expiration of the term of his intent to vacate the premises. It is not unconscionable to require such notice or to provide that there shall be a month-to-month tenancy if such notice not be given. Id. at 351.

But the Court took a dim view of the landlord’s argument that he was entitled to keep One Hundred Fifty Dollars ($150.00) from the tenant’s security deposit because of the tenant’s failure to provide the written notice:

The purpose of requiring written notice is not to be hypertechnical but, instead, to create certainty. Here, defendants were aware for several months of plaintiff’s intent to terminate the tenancy as soon as possible. In fact, plaintiff testified that his payment of rent for the entire term was necessitated by defendants’ refusal to make any effort to re-rent the premises earlier. At no time is there any indication that defendants advised plaintiff that they were going to insist upon written notice or a new month-to-month tenancy. To require same under the circumstances of this case would be unconscionable, even though the provision of the lease itself is not unconscionable. Rather, it is the action of defendants under the peculiar circumstances of this case which is unconscionable. There was clearly knowledge on the part of defendants of plaintiff’s intent to vacate, and defendants were not prevented or delayed in finding a new tenant at the end of the term. In short, additional written notice would have served no purpose in this case. Defendants have attempted to take advantage of a hypertechnical construction and application of the lease agreement.

Thus the key argument is going to be whether or not the landlord had actual notice of the tenant’s intentions regarding what was going to happen at the end of the term of the rental agreement. If you convince the Court that you told the landlord orally on several different occasions that you were going to be leaving, or if the circumstances surrounding the rental agreement were such that the landlord had to know that you would be leaving at the end of the lease term, then the Court may see the requirement of written notice contained in your lease as hypertechnical as in McGowan. If that is the case, then the Court will not enforce the written notice requirement.

J. The Thirty Day Time Limit

The language of Ohio Revised Code Section 5321.16 says that if the landlord does not send a security deposit forfeiture notice to the landlord within 30 days of getting the tenant’s forwarding address, then he will be responsible for double damages and attorneys fees. But in
the case of Vardemen v. Llewellyn, the Ohio Supreme Court decided that the legislature didn’t actually mean to say what it said. According to the Ohio Supreme Court, so long as there actually were justifiable reasons to withhold the tenant’s security deposit, the fact that the landlord did not send the security deposit forfeiture notice or the refund to the tenant within 30 days didn’t mean anything.

What actually did not mean anything at that point was the thirty day rule. The following situation might be illustrative. You only pay one half of your last month’s rent. You send the landlord written notice of your security deposit forwarding address. The landlord keeps all of your deposit and never sends you a security deposit forfeiture notice. You sue your landlord for the whole deposit, double damages, and attorneys fees.

Under Vardeman, you will only get half of your deposit back, plus double damages on that half, plus attorneys fees. The fact that your landlord missed the thirty day deadline regarding the amount that he was entitled to keep (the unpaid half of the last month’s rent) was not important to the Ohio Supreme Court that decided Vardeman. They felt that it would be unfair to give such tenants the windfall of the entire deposit back when the landlord actually had justifiable reason for keeping part of it. I can see that part of the rationale, but this makes the thirty day rule meaningless for landlords so long as they can prove their damages later on. The whole idea was to get the landlord and the tenants on record early in the process regarding damages.

To be fair to the Ohio Supreme Court, they were consistent about the meaninglessness of the thirty day limit when they also decided the case of Smith v. Padgett. In this case, the landlord had wrongfully withheld a portion of the deposit, but had sent out a bogus notice within thirty days itemizing the charges. The landlord argued that he should not be subject to the double damages and attorneys fee penalties because he had complied with the thirty day deadline. The Ohio Supreme Court dismissed this argument saying that it was not the time limit of the notice that was important, but rather whether the items were or were not wrongfully withheld from the tenant.

Be careful to make sure that you give written notice of your forwarding address for the return of your security deposit to the landlord before you move out of the apartment. Some landlords have taken the position that if you give the notice after you move out, the thirty day provision does not apply. They argue this because the statute says that the landlord must upon receiving written notice of security deposit forwarding address give the deposit back within 30 days of the termination of the tenancy (rather than 30 days from the date they received notice) and that failure to provide the forwarding address before you leave makes it impossible for them to comply with the statute.

Ohio law has not presently ruled on this rather technical argument at the time of this writing, so it is best to avoid this issue if possible by getting the notice to the landlord before the move out date.

K. Automatic Charges Pursuant to Lease
Another important thing to note is that the landlord cannot make automatic charges against your security deposit, even if the lease clearly purports to give him the right to do so. In the case of *Albreqt v. Chen* (1983), 17 Ohio App. 3d 79, the landlord pointed to a clause in the lease that required the tenant to pay for carpet cleaning after moving out whether the carpet was dirty or not. The Court of Appeals for the Sixth Appellate District in Lucas County compared this clause to other automatic charges involving the security deposit when it stated:

This court is satisfied that the rationale of *Riding Club Apts. v. Sargent* (1981), 2 Ohio App. 3d 146, is dispositive of the question presented in the second assignment of error. Factually, the cases are similar. In the *Riding Club Apartments* case, the appellant-tenant alleged that retention of his security deposit by the appellee-landlord, without any itemization of damages, as required by R.C. 5321.16(B), was unenforceable. The lease in that case provided, in part:

"* * * Furthermore, in the event tenant vacates the premises prior to the termination date, a charge of $150 will be deducted from said security deposit as an amount necessary or incidental to prepare said premises and secure a new tenant therefor. * * *"

Such a clause is not unlike paragraph 31 of the lease sub judice, which provides, in pertinent part:

"* * * Tenant assumes and agrees to pay a charge of $60.00 Dollars ( $60.00) for the cleaning of the carpeting in said apartment upon the vacation of said premises. * * * ‘Tenant’ agrees that said $60.00 Dollar charge will be deducted from said security deposit over and above any other charges to be deducted from said deposit as herein provided[.] * * *"

In the *Riding Club Apartments* case, the Court Tenth District Court of Appeals for Franklin County held:

A liquidated damages clause permitting the landlord to retain a security deposit without itemization of actual damages caused by reason of tenant’s noncompliance with R.C. 5321.05 or the rental agreement is inconsistent with R.C. 5321.16(B), may not be included in a rental agreement and is not enforceable (R.C. 5321.06)." (Emphasis added.)

The Court that decided *Albreqt* gave us an insight into its reasoning when it explained that:

As applied to the facts herein, we adopt and follow the rationale of the opinion of the Tenth District Court of Appeals in *Riding Club Apts. v. Sargent*, *supra*. 

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In this case, the trial court affirmatively found that when appellee vacated the apartment, the carpet was just as clean as or cleaner than when appellee initially moved into the apartment. Therefore, under the circumstances, appellee is not responsible for the cost of any carpet cleaning. In the absence of an affirmative showing, by way of itemization (see R.C. 5321.16[B]), that there was a specific need to clean the carpet, appellant’s unilateral deduction was improper. A lease provision regarding carpet cleaning that is inconsistent with R.C. 5321.16(B) is unenforceable. Cf. *Riding Club Apts. v. Sargent*, supra, at 147. Consequently, the second assignment of error is not well-taken. *Id.* at 81-82.

This case can be analogized to other automatic charges against a security deposit. It makes no sense to refuse to enforce automatic carpet cleaning clauses, but to allow the enforcement of clauses that automatically require the tenant to pay for painting. However, you must always beware when reasoning by analogy that some decision makers might fail to see the similarity of your examples.

Keep in mind as well that the landlord in *Albrect* was conceding that the carpet was clean when the tenant moves out, but that the lease allowed him to deduct money anyway. Once your landlord hears your *Albrect* argument, he is likely to argue both that the carpet was dirty and the lease agreement allows him to deduct money anyway. Unless you can prove with your video tape that the carpet was in the same condition as when you moved in, reasonable wear and tear excepted, this case gets you only half of the way there.

Some landlords will attempt to charge you for painting the place. They will have the right to do this if you wrote on the walls with magic markers or otherwise defaced or damaged the walls. But absent an affirmative showing that the painting was necessitated by damages beyond ordinary wear and tear (walls do get dingy after a few years), the Court will probably not allow such charges. In the case of *Swartz v. Luker* (Dec. 30, 1991), Clermont App. No. CA91-07-051, unreported, 1991 WL 278243, the District Court of Appeals in Clermont County noted that:

> Appellant applied appellee’s security deposit to the cleaning and painting of walls and baseboards. As the trial court observed, this did not constitute damage to the rental unit beyond normal wear and tear and did not constitute damages which appellant suffered pursuant to R.C. 5321.05 and 5321.16(B). *Id.* at 3-4.

`L. Transfer of Ownership During Rental Term`

Sometimes your apartment will be sold during the rental term, or a new management company will take over. If this happens, you will want to send your thirty day return of security deposit forwarding address letter to both the old owner and the new owner. The old and the new owners may very likely point fingers at each other regarding who has the deposit after the transfer. If you can’t get a straight answer on who has your security deposit, you
should probably sue them both, but Ohio law states that the person that received the security deposit has the burden of paying it back. In the case of Tutuer v. P. & F. Enterprises, Inc. (1970), 21 Ohio App.2d 122, the District Court of Appeals in Cuyahoga County stated as follows:

There is no Ohio law concerning the effect of this transfer of the rent security deposit. The United States courts appear to follow the stance taken by the New Jersey courts. Kaufman v. Williams (1919), 92 N. J. Law 182, 104 A. 202, held that the deposit was considered a pledge and that the liability to return the deposit does not run with the reversion but with the pledge. . .

Therefore, the landlord may be held liable to the lessee unless the lessee chooses to pursue the grantee and the grantee has personally assumed liability or has received a credit for the deposit against the sale price.

So under Ohio law, the renter may choose to go after the original owner, and that original owner will be held liable for the return of the deposit unless he can show that he received a credit for the security deposit paid to him in the sale price of the property. It is best to sue both the new and old owners just to be safe, though.

One thing that is good for the tenant about a transfer of ownership during the lease term is that the tenant need only return the apartment in the condition which she got it from the original landlord. The new landlord is going to be hard pressed to prove what the apartment looked like without help from the old landlord. Landlords are always forgetting this in Court and if you bring it up to the Judge that there was no evidence of what the place looked like at move in, you are very likely to win your case no matter what your apartment looked like when you moved out.

M. Whom To Sue

It is important to remember that even though your apartment complex may say “Willison Property Services”, this entity may not be your landlord. There are many real estate management outfits that manage rental property for the true owners who do not wish to have any involvement with their property holdings except to get a check every month. If the property manager wrongfully withholds your security deposit, the real owner may not even have known a thing about it. But this does not absolve the true owner of the property of responsibility in the matter.

So who is defined as a landlord? The answer comes to us from Ohio Revised Code Section 5321.01, the Definitional Section of the Act [many laws of Ohio have subsections, and it is very common for the first one to lay down definitions under which the rest of the act will be governed] which is reprinted immediately below:

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§ 5321.01 Definitions.

As used in this chapter:

(A) "Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.

(B) "Landlord" means the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, or any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement.

(C) "Residential premises" means a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant. "Residential premises" includes a dwelling unit that is owned or operated by a college or university. "Residential premises" does not include any of the following:

1. Prisons, jails, workhouses, and other places of incarceration or correction, including, but not limited to, halfway houses or residential arrangements which are used or occupied as a requirement of probation or parole;

2. Hospitals and similar institutions with the primary purpose of providing medical services, and homes licensed pursuant to Chapter 3721. of the Revised Code;

3. Tourist homes, hotels, motels, and other similar facilities where circumstances indicate a transient occupancy;
(4) Elementary and secondary boarding schools, where the cost of room and board is included as part of the cost of tuition;

(5) Orphanages and similar institutions;

(6) Farm residences furnished in connection with the rental of land of a minimum of two acres for production of agricultural products by one or more of the occupants;

(7) Dwelling units subject to sections 3733.41 to 3733.49 of the Revised Code;

(8) Occupancy by an owner of a condominium unit;

(9) Occupancy in a facility licensed as an SRO facility pursuant to Chapter 3731. of the Revised Code, if the facility is owned or operated by an organization that is exempt from taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, or by an entity or group of entities in which such an organization has a controlling interest, and if either of the following applies:

(a) The occupancy is for a period of less than sixty days;

(b) The occupancy is for participation in a program operated by the facility, or by a public entity or private charitable organization pursuant to a contract with the facility, to provide either of the following:

(I) Services licensed, certified, registered, or approved by a governmental agency or private accrediting organization for the rehabilitation of mentally ill persons, developmentally disabled persons, adults or juveniles convicted of criminal offenses, or persons suffering from substance abuse;

(ii) Shelter for juvenile runaways, victims of domestic violence, or homeless persons.

occupancy, including homeless people, victims of domestic violence, and juvenile runaways.

(D) "Rental agreement" means any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties.

(E) "Security deposit" means any deposit of money or property to secure performance by the tenant under a rental agreement.

(F) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(G) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(H) "Student tenant" means a person who occupies a dwelling unit owned or operated by the college or university at which the person is a student, and who has a rental agreement that is contingent upon the person's status as a student.

Thus Ohio Revised Code Section 5321.01(B) defines a “landlord” as “the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, or any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement.” This means that both the owner and the property manager are defined as landlords under the Act, and both can and should be sued if there is a wrongful withholding of the security deposit.

Remember that you can only collect money from someone against whom you have a judgment entry. If you do not sue both the owner and the property manager (assuming there is one), then one may escape liability if the other has no money to pay you. You can find out who owns a piece of property by going to the County Auditor’s Website or to the Courthouse itself and looking up your address in the County Recorder’s Office.

N. Built Up Late Charges

Often, a landlord will claim that you were late on the rent in one of the first few months of your lease, and that your failure to make a late payment made all of your other rental payments late. For example. Your rent is $500.00 per month, and the landlord claims that you were late in September. When the time came for you to pay October, you paid October on time, but only $500.00. So the landlord claims that the first $50.00 of the rental payment
went towards making up the previous late fee, and now you have only paid $450.00 on October’s rent, and the last $50.00 is late.

Sneaky. Very sneaky indeed, but it won’t work. It won’t work because you can make the same waiver arguments that are listed in Chapter 14. To summarize those, if you and your landlord enter into a course of conduct wherein late payments are commonly and regularly given and received without objection, the landlord’s conduct speaks for itself, and he will be estopped from asserting strict compliance with the timely payment terms of the rental agreement.

O. Abandoned Property

What happens to property which you leave behind at the rental premises after the term of the lease is up? Under Ohio law, the answer to this question depends upon the facts of the situation. In the case of Markovich v. Hunt 1995 Ohio App. LEXIS 282 (January 19, 1995) Lawrence App. No. 94CA16 (unreported), the Fourth Appellate District Court considered this issue. In Markovich, the tenant told the landlord that she would be out on April 1, but as of that date, still had items remaining in the house. The landlord disposed of these items and the tenant sued. The Court held that:

Generally, a landlord may remove chattels owned by a tenant that are left on the property after the tenant has vacated the premises. See Restatement of Property 2d, Landlord and Tenant (1977) 473, Section 12.3 Comment l. The landlord may then recover from the tenant the reasonable costs of storing and maintaining the property. Id. The tenant, however, does not lose ownership rights in the property unless the tenant abandons the property, in which case the landlord may dispose of the property in any manner. Id. Whether a tenant has abandoned the property is a question of fact. Id., at 482.

It is undisputed that appellant had moved into her new residence by April 1, but left some items of personal property behind in the rental property. The trial court specifically found that appellant had abandoned the property left behind. We must determine whether this factual determination by the trial court is supported by competent, credible evidence. See Seasons Coal Co. v. Cleveland (1984), 10 Ohio St.3d 77, 461 N.E.2d 1273.

In order to abandon property, the owner must unequivocally relinquish the rights to it so that the owner's conduct amounts to a virtual throwing away or total discarding of the property. See Hamilton v. Harville (1989), 63 Ohio App.3d 27, 577 N.E.2d 1125. Proof of intent to abandon along with acts or omissions implementing the intent must be shown. Id.

In examining the question of whether the tenant abandoned the property or not, the court reasoned that they came to their decision using the following factors:
We believe the trial court's finding of abandonment is supported by competent, credible evidence. Appellant never paid rent for the month of April and made no effort to contact appellee regarding the status of her property left on the premises. She admitted that she moved into her new residence on April 1, and that she had the electricity in the rental property turned off. The door to the residence was unlocked and the items were next to other bags of garbage. Id. at 4-6.

But that did not end the question. The tenant further argued that there was an implied bailment on the part of the landlord as regards the property. A bailment occurs when you give something to another for a short time. That person in receipt of the goods (the bailee) has a duty to the bailor (the giver of the goods) to make sure that nothing happens to the property. This only makes sense. If you take your car to the repair shop, and while they are repairing it, they leave the keys in the ignition and it gets stolen, then the repair shop will be responsible for your damages.

But the Court did not find the tenant’s argument regarding bailment to be well-taken either:

Generally, a bailment is a contractual agreement in which the parties agree to enter into a bailment relationship. See David v. Lose (1966), 7 Ohio St.2d 97, 218 N.E.2d 442; Wolf v. Lakewood Hosp. (1991), 73 Ohio App.3d 709, 598 N. E.2d 160. There is no evidence in the record to indicate that either party intended to enter into a bailment contract.

However, constructive bailments may also arise by operation of law when mislaid property is found by a person who then assumed control of the property. Johnson v. Akron Mgt. Corp. (May 30, 1990), Summit App. No. 14320, unreported. As stated above, the trial court found that the property had been abandoned, not mislaid. Thus, no constructive bailment could have arisen between the parties. Further, as we noted supra, a landlord may dispose of abandoned property left on the premises by a tenant who has vacated the rental property. Id. at 6-7.

N. Date of Move Out

Surprisingly, the date that you have “moved out” of the Apartment can be called into question by the landlord in certain situations. For instance, if three tenants are renting on a month to month tenancy, and two give their thirty day notice and move out, if the last one stays, is that sufficient to continue the tenancy so that the landlord need only return the deposit when the last one leaves? In the case of Zeallear v. F&W Properties, 2000 Ohio App. LEXIS 3321 (July 25, 2000), Franklin App. No. 99AP-1215 (unreported), the landlord claimed that he had no duty to return the security deposit to the tenants who had left until all of the original tenants had moved out. The departing tenants argued that the landlord had
already signed another rental agreement with two new tenants and the original tenant, and thus could not argue that their original tenancy continued.

The Tenth District Court of Appeals agreed with the departing tenants and ruled in their favor:

Clearly, after appellee and Gargett terminated their tenancy, duly giving thirty-day notice as required in the lease, and paying rent owed through the term of their tenancy, they were no longer "tenants" as defined in the lease or under Ohio law, and their security deposit was returnable at that time. The situation was rendered all the more clear by appellant's execution of a new lease with the sole holdover tenant and his two new co-tenants. The landlord's course of action at that time would have been to ascertain the state of the premises, make any lawful deductions from the security deposit based upon that inspection and other factors, such as past due rent, and return the proportionate balance of the security deposit to the departing tenants. Instead, appellant attempted to treat the new lease as a continuation of the old one, for which appellee and Gargett were responsible, and encouraged appellee to attempt to recoup his share of the security deposit from the new tenants. Even if we were to accept appellant's contention that the security deposit was not severable among the tenants by the terms of the lease, and was thus not refundable in increments as each co-tenant individually vacated the apartment, the execution of the new lease effectively ended the tenancy for all of the initial co-tenants, and renders this argument ineffective. Id. at 9-10.

Thus the Trial Court's ruling in favor of the departing tenants was upheld and they were awarded double damages and attorneys fees.
Chapter XIV: The Eviction Process

If your landlord is seeking to evict you, he must do so in accordance with Ohio law, specifically the Revised Code Section 1923. It is important to note that he cannot simply change the locks on your apartment door and throw all of your stuff out to the curb without any sort of warning or judicial process. That judicial process which the landlord must follow is described in Ohio Revised Code Section 1923. Your landlord may fail to observe the requirements of this section, but he does so at his own legal peril.

A. The Order of Battle

There must first exist a cause for the landlord to want to evict you. This right of eviction arises out of either a breach of a lease term, or (if the tenancy is month to month--also known as a “periodic tenancy”) no longer wishes to rent to you. Once the right to evict arises and the landlord decides to proceed with an eviction, the process goes something like this: The first thing that has to happen is that the landlord must put a three day notice to vacate upon your door. This three day notice to vacate is of vital importance to later proceedings, because it is what gives the Court the jurisdiction to hear a case of eviction. Without this three day notice, or if the three day notice is defective or was waived, then the Court is without jurisdiction to hear the matter and any decision that it comes to is null and void. This statute describing this Three Day Notice is reprinted in its entirety directly below.

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TITLE XIX [19] COURTS -- MUNICIPAL -- MAYOR'S -- COUNTY

CHAPTER 1923: FORCIBLE ENTRY AND DETAINER

ORC Ann. 1923.04 (Anderson 1999)

§ 1923.04 Notice; service.

(A) Except as provided in division (B) of this section, a party desiring to commence an action under this chapter shall notify the adverse party to leave the premises, for the possession of which the action is about to be brought, three or more days before beginning the action, by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in...
person, or by leaving it at his usual place of abode or at the premises from which the defendant is sought to be evicted.

Every notice given under this section by a landlord to recover residential premises shall contain the following language printed or written in a conspicuous manner: "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."

(B) The service of notice pursuant to section 5313.06 of the Revised Code constitutes compliance with the notice requirement of division (A) of this section. The service of the notice required by division (C) of section 5321.17 of the Revised Code constitutes compliance with the notice requirement of division (A) of this section.

Once the landlord has stuck this notice on your door, you will have three days to move out. Weekends, holidays, and the day the notice was posted don’t count, so if your landlord posts the notice on Friday, he must wait through Monday, Tuesday and Wednesday and come back Thursday morning to see if you are still at the Apartment before he can file his motion for forcible entry and detainer.

If the landlord comes back after the end of the third day and finds that you are still there, he can go down to the Court and file a Forcible Entry and Detainer Action against you. This is basically a lawsuit which may be heard before a Magistrate alleging that he has the right to have you removed from the premises. A hearing date will be set for you and the landlord to come in and argue it out in front of the Court.

You can present witnesses and other evidence in your favor, as can the landlord. If your landlord loses, then his Forcible Entry and Detainer Action will be dismissed, and he will have to wait until you breach the lease again before he can start the eviction process anew with another three day notice. If he tries to evict you again for the same thing, you can show the Court a copy of your previous decision and argue that it is Res Judicata. Res Judicata means that once an issue has been decided, that is the end of it, and the Court will not let the landlord have another chance at the same dispute.

But I am going to assume that your landlord won at Court (so that we can move on through the eviction process) and that the Judge issued a decision in his favor. Just getting a decision from the Judge is not sufficient. We are now at the point wherein the landlord will want to convert the Judgment Entry in his favor to that of a Writ of Restitution (also known as a red tag). What this looks like is determined by the statute reprinted directly below. I put this statutory section here not because it is important for you to read and memorize, but rather so if you ever get one and are unsure, you can compare the wording and know what it is.
§ 1923.13 Execution; form.

When a judgment of restitution is entered by a court in an action under this chapter, at the request of the plaintiff or his agent or attorney, that court shall issue a writ of execution on the judgment, in the following form, as near as practicable:

The state of Ohio,............... county: To any constable or police officer of........... township, city, or village; or to the sheriff of............... county; or to any authorized bailiff of the ...........: (Name of court)

Whereas, in a certain action for the forcible entry and detention (or the forcible detention, as the case may be), of the following described premises, to wit: , lately tried before this court, wherein............. was plaintiff, and........ was defendant,............ judgment was rendered on the . . . day of........... , .......... , that the plaintiff have restitution of those premises; and also that he recover costs in the sum of.......... You therefore are hereby commanded to cause the defendant to be forthwith removed from those premises, and the plaintiff to have restitution of them; also, that you levy of the goods and chattels of the defendant, and make the costs previously mentioned and all accruing costs, and of this writ make legal service and due return.

Witness my hand, this . . . day of . . . , A.D................................. Judge, . . . (Name of court).

Once this Writ of Restitution is placed upon your door, you will have about five days from the time it was filled out to get out. If you do not leave at that point, the landlord can schedule a time to meet with a Sheriff’s deputy or a Court Bailiff, travel to the Apartment, forcibly enter it, and remove you and your possessions to the curb.

B. Reasons Your Landlord Can Evict You
There are several reasons why your landlord might wish to evict you. I will divide them into categories because there are different legal considerations for different reasons.

1. Breach of Rental Agreement

If you have breached your rental agreement, your landlord can simply post the three day notice of eviction upon your door and follow the above process through from there. Examples of breaches of the rental agreement could include failure to pay rent, having a dog in violation of a no pets clause, subletting without the landlord’s permission, etc.

2. Breach of Tenant Duties

The Ohio Landlord Tenant Act of 1974 imposes certain duties upon tenants pursuant to Ohio Revised Code Section 5321.05. This statute is reprinted directly below.

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TITLE LIII [53] REAL PROPERTY

CHAPTER 5321: LANDLORDS AND TENANTS

ORC Ann. 5321.05 (1998)

§ 5321.05 Obligations of tenant.

(A) A tenant who is a party to a rental agreement shall do all of the following:

(1) Keep that part of the premises that he occupies and uses safe and sanitary;

(2) Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;

(3) Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits;

(4) Use and operate all electrical and plumbing fixtures properly;

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(5) Comply with the requirements imposed on tenants by all applicable state and local housing, health, and safety codes;

(6) Personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises;

(7) Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliances supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement;

(8) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors’ peaceful enjoyment of the premises;

(9) Conduct himself, and require persons in his household and persons on the premises with his consent to conduct themselves, in connection with the premises so as not to violate the prohibitions contained in Chapters 2925. and 3719. of the Revised Code, or in municipal ordinances that are substantially similar to any section in either of those chapters, which relate to controlled substances.

(B) The tenant shall not unreasonably withhold consent for the landlord to enter into the dwelling unit in order to inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations, or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(D) (1) If the tenant violates any provision of this section, other than division (A)(9) of this section, the landlord may recover any actual damages that result from the violation together with reasonable attorney's fees. This remedy is in addition to any right of the landlord to terminate the rental agreement, to maintain an action for
the possession of the premises, or to obtain injunctive relief to compel access under division (B) of this section.

(2) If the tenant violates division (A)(9) of this section and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(I) of section 1923.02 of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division, then the landlord promptly shall give the notice required by division (C) of section 5321.17 of the Revised Code. If the tenant fails to vacate the premises within three days after the giving of that notice, then the landlord promptly shall comply with division (A)(9) of section 5321.04 of the Revised Code. For purposes of this division, actual knowledge or reasonable cause to believe as described in this division shall be determined in accordance with division (A)(6)(a)(I) of section 1923.02 of the Revised Code.

If one of these duties are breached, then the landlord must give you a thirty day notice to cease and desist from the violations of Revised Code Section 5321.05. This works a lot like R.C. 5321.07 in reverse. If you do not cease your violations within 30 days, then the landlord can hang a three day notice to vacate the premises and proceed as above under the eviction statute.

For example, let’s say that your lease allows for pets, but that you don’t clean up after your pets, and they make the apartment unsanitary. Since the tenant has a duty to keep the apartment in a clean and sanitary manner, then the landlord must send the tenant a 30 day letter advising you to clean up the problem. If the problem persists after the 30 day period, then the landlord has the right to hang the three day notice on the door and go from there. It is important to note that there are some court decisions which allow the 30 day notice and the three day notice to be served together, even in the same document.

3. Violations of Both Lease and Tenant’s Duties

Landlords like speedy evictions. They don’t like to send out 30 day letters and wait for all that time before hanging the three day notice. Thus they like to evict for breaches of the lease, rather than breaches of the Ohio Revised Code Section 5321.05. Attorneys for landlords thought they could get around the 30 day letter requirement by making the tenant’s
duties to the landlord a part of the lease by copying Ohio Revised Code Section 5321.05 lock, stock, and barrel right into the body of the rental agreement. That way, a violation of Ohio Revised Code Section 5321.05 would also automatically be a violation of the rental agreement. Then they could argue that since it was also a violation of the lease, then they did not have to send out the 30 day letter.

The courts saw through this and decided that the landlord cannot circumvent the thirty-day notice requirement by placing the R.C. 5321.05 obligations in the written lease and then ignore the statutory notice requirement. Parker v. Fisher (1984), 17 Ohio App.3d 103, syllabus 1. Where an action of a tenant can be construed to violate both a term of the written lease and a provision of R.C. 5321.05 that materially affects health and safety, the thirty-day notice of termination of lease, as required by R.C. 532 1.11, must be given by the landlord. Sandefur Management Co. v. Wilson (1985), 21 Ohio App.3d 160, syllabus 2.

C. Illegal Activity

If you are engaging in certain legally prohibited activities, especially the manufacture, sale, or use of drugs at the apartment, your landlord will have cause to evict you. In fact, he would be a fool not to, because with the current state of civil forfeiture laws, if the landlord knew or should have known that the apartment is being used for the sale and distribution of drugs, the apartment building can be forfeited to the government and sold at auction. Nobody wants this. So the law provides that if you are caught in illegal activity at the apartment, especially the sale or manufacture of drugs, then the landlord has the right to evict you on that basis.

D. Ways To Beat An Eviction Action

There are two categories of ways to beat an eviction action. The first is on the merits, the second is on the procedure.

1. On The Merits

If your landlord is evicting you for failure to pay the rent, then you need to bring in proof that you have indeed paid the rent. If your landlord is evicting you because you have a dog in violation of the lease, you have to bring in evidence that you do not have a dog, or that the lease allows dogs. This is winning on the merits. There’s not much too it. You are either right or wrong, and the Judge will either see it or he or she won’t.

It helps to have trustworthy witnesses and lots of documentation to back up your claims. That’s why you should have all correspondence with the landlord in signed, dated, written form so that no one can come back later and say something did or did not happen. Why talk on the phone about stuff when you know you should be getting it in writing? Keep records, keep receipts of rental payments. Keep a diary or logbook of what is going on.

a. Equity Abhors a Forfeiture
Evictions are an example of the Court using its powers of Equity. The Court’s Equity powers allow it to order persons to do one thing or another, or perhaps refrain from doing one thing or another. This is different from the Court’s legal power, as its legal power is said to include only a determination of who owes what to whom. It used to be that Courts were split between Courts of Law and Courts of Equity. If you wanted money from someone, you had to go to a Court of Law. If you wanted the Court to force someone to do something, then you had to go to a Court of Equity (also known as a Court of the Chancery).

Equity courts were originally church based, and there is a surviving maxim of Equity which says that a party must come to a court of equity with “clean hands.” The proposition is also stated in the following terms: “to get equity, you must do equity.” This means that if you are a scoundrel and have treated the other side badly, even though you may be entitled to equitable relief, the Court of Equity has the discretion to leave you out in the cold if you are not an above board type person.

Today the legal and equitable courts have merged which simplifies matters a great deal. There is a very helpful case in Ohio law called Zanetos v. Sparks (1984), 13 Ohio App.3d 242. It stands for the proposition of law that Equity abhors a forfeiture and in fact the Tenth Appellate District Court in Franklin County stated in specifics as follows:

Clauses in written leases which give lessors [landlords] the right to declare forfeiture of a lease for nonpayment of rent are valid. However, unless a lessee’s [renter’s] conduct is willful or malicious, or if compensation for the breach cannot be made due to the lessor, a court exercising its equity powers will grant the lessee [renter] relief from forfeiture. The forfeiture clause for nonpayment of rent is not strictly construed, rather, it is viewed as merely security for the payment of rent. The courts will balance the equities of the case and relieve the forfeiture where the equities favor the lessee [renter]. See Peppe v. Knoepp (1956), 103 Ohio App. 223 [3 O.O.2d 281].

Numerous Ohio cases involving lease agreements stand for the proposition that equity abhors a forfeiture and that a forfeiture will not be declared where the equities of the parties can be adjusted. See Gould v. Hyatt (App. 1926), 4 Ohio Law Abs. 468; Prosser v. Kruger (App. 1923), 1 Ohio Law Abs. 348; Dietrich v. Ezra Smith Co. (1920), 12 Ohio App. 243.

In Zanetos, the tenant was unsure to whom he was supposed to pay rent because the property had been transferred. The tenant had always made payments timely in the past, and had made substantial improvements to the property. Further, the rent was only nine days overdue when the tenant learned the identity of the new landlord. This means that the judge might give the tenant some slack on minor breaches of the lease. If you were on your way to pay the rent at an apartment at which you had been living for several years and you had always previously paid your rent on time, and you were robbed at gun point and this caused a three or four day delay in getting the rent to your landlord, then a Judge might decide that even though you technically broke the rental agreement by not paying on time, Equity abhors
a forfeiture and the judge may not allow the eviction to proceed under such unjust circumstances.

More useful language is found in the case of Miraldi v. The Life Insurance Co. of Virginia (1971), 48 Ohio App. 2d 278. Evictions consist of the landlord declaring a forfeiture of the lease. The Ninth Appellate District Court said in Miraldi that:

No citation of authority is needed for the proposition that forfeiture is not favored in the law, and a waiver will be inferred whenever it can reasonably be inferred from the facts. Id. at 282.

While these cases establish a preference in the law for a declaration of waiver over a declaration of forfeiture, the trouble with these arguments is that it is the Judge’s call. There is no guarantee that the Judge will see you or your reason as blameless. In the above example of the robbery that prevents timely payment of the rent, the Judge might blast the victim for being so stupid to carry his rent around in cash in a dangerous neighborhood. The Judge might also take the simpler expedient of deciding that the robbery never happened and that you are making up some fish story to cover your tracks.

2. On The Procedure

Winning on the procedure involves pointing out to the Court some legal step that the landlord omitted in the eviction process. If the landlord never posted a three day notice of eviction, then the landlord’s eviction action will have to be dismissed. Even if the landlord did post a three day notice, its wording might not comply with that demanded by Ohio Revised Code Section 1923.04 reprinted above.

a. Waiver of Three Day Notice

Under R.C. 1923.04, a landlord is required to give his tenant at least three days notice before beginning an action in forcible entry and detainer. Because adequate notice under the statute is a necessity before a forcible entry and detainer action can be filed, it is reversible error for a trial court to evict a tenant if no three day notice has been given. See Shimko v. Marks (1993), 91 Ohio App. 3d 458, 463, 632 N.E.2d 990. Similarly, an action in forcible entry and detainer cannot be maintained if the landlord has waived his notice to the tenant. Id. A waiver of the three day notice is the same as if there had never been a three day notice.

How does a landlord waive his Three Day Notice? The generally accepted rule in Ohio is that, by accepting future rent payments after serving a notice to vacate, a landlord waives the notice as a matter of law, as such acceptance is inconsistent with the intent to evict. Authority for this proposition comes from the cases of Associated Estates Corp. v. Bartell (1985), 24 Ohio App. 3d 6, 9, 492 N.E.2d 841 and Presidential Park Apts. v. Colston (App. 1980), 17 Ohio Op. 3d 220, 221.
But a payment by a tenant is only a “future rent payment” when it is for a period of occupancy after the date of the landlord’s posting of the three day notice to vacate. Sheridan Manor Apartments v. Carter, 1992 Ohio App. LEXIS 6528, (Dec. 22, 1992), Lawrence App No. 92CA4, unreported. Rent paid for a period of occupancy before the landlord’s posting of the three day notice to vacate is for rent that is past due and already owed. The generally accepted rule is that a landlord’s acceptance of past due rent does not waive the statutory three-day notice to vacate the premises. Graham v. Pavarini (1983), 9 Ohio App. 3d 89, 92, 458 N. E.2d 421; Julian Invests., Inc. v. Dudley, 1999 Ohio App. LEXIS 429, (Feb. 12, 1999), Greene App. No. 98-CA-85, unreported.

The weight of recent authority in Ohio supports the landlord’s right to collect rent after the notice to vacate, as long as it is taken as payment for obligations which arose before he posted the notice. Graham, 9 Ohio App. 3d at 92; Mecca Management, Inc. v. Gouse, 1997 Ohio App. LEXIS 5270, (Nov. 21, 1997), Lucas App. No. L-97-1185, unreported; see also Bristol Court v. Jones, 1994 Ohio App. LEXIS 4479, (Sept. 29, 1994), Pike App. No. 93-CA520, unreported (“Nothing * * * prevents a landlord from accepting payments for rent past due.”). A tenant will continue to incur obligations for rent when he occupies a premises after the notice to vacate is given. Julian Invests., 1999 Ohio App. LEXIS 429 at 8-9. Thus, it is not considered inconsistent for a landlord to collect upon such obligations after they become past due and still insist on his right to present possession.

If all that makes your head swim, then perhaps two examples will help. In example A, the rent is Five Hundred Dollars ($500.00) per month. The tenant owes the landlord for the months of January, February and March. The landlord decides that he will no longer wait and hangs a three day notice to vacate on the door of the apartment on April 3. The tenant brings in $1,500.00 after the Notice to Vacate is posted and promises another $500.00 in a week’s time. The landlord accepts the $1,500.00, and also accepts the $500.00 one week later. The eviction hearing is set for April 20. But instead of dismissing the forcible entry and detainer action, the landlord goes ahead with the eviction anyway.

The landlord wins the eviction because he has only accepted money for rent that is past due. On April 1, the rent became due and owing, and became past due rent, even though part of it was for a period in the future, the remainder of April.

But example B gives us a different result. Let’s assume the same facts wherein the tenant makes good on the rent for January, February and March, only the tenant promises the landlord a payment of another One Thousand Dollars ($1,000.00) during the first week in April, which will pay for both April and May’s rent. If the landlord accepts this amount as well before the eviction hearing on April 20, then the landlord has accepted future rent (the extra Five Hundred Dollars for the month of May), and this is inconsistent with his three day notice, and constitutes a waiver of it.

b. Helping Your Landlord To Waive His Three Day Notice to Vacate
If the owner of the apartment is different than the rental manager who is trying to throw you out, and you know where the owner lives, you may wish to try sending the rent check directly to the owner and payable to him. If the owner cashes the check for future rent, not caring that the rental manager is trying to evict you, then this may well constitute a waiver of the notice to vacate that the rental manager put on your door. Just bring the canceled check into court with you.

Another way of doing it that works with large rental management companies is to bring in your future rent for the next month in the form of cash. Give it to the receptionist and get a receipt from her. Once you have the signed, dated receipt for cash in hand, showing it to the Judge at the eviction hearing may be all that you have to do to prove that the three day notice to vacate has been waived.

Some landlords simply don’t understand the law, and may accept your rental payment for future rent themselves. Their own greed works against them when you come in with a number of crisp one hundred dollar bills. They will give you a signed, dated receipt, not knowing that they are waiving their three day notice to evict and that the court date that they have set up for next week is not going to go well for them.

If you pay your future rent by check, the landlord may simply return your check to you uncashed and still maintain her eviction action against you. But this is not necessarily true if the landlord waits until the Court date to do this. In the case of *Pace v. Buck*, (1949), 86 Ohio App. 25, 85 N.E.2d 401, we find the following wording:

Where the landlord retains a money order received from the tenant in payment of rent and the landlord fails to notify the tenant that the money order was not accepted in payment of rent, or that it was retained for evidentiary purposes, and fails to tender the money order to the tenant on or before the day of trial, the retention of money order constitutes an acceptance in payment of the rent. It follows that the defendant could not be legally evicted during the term for which the rent was paid. Id. at 28.

In so holding, the court observed that due to the landlord's retention of the money order, and despite its subsequent tender of the money order to the trial court, “the [tenant] did not get possession or control of the money order and was not permitted to cash it, which she would have been privileged to do had a sufficient tender been made to her.” Id. at 27.

Another procedural way to defeat an eviction action is problems with service. The notice to vacate can be tacked to the Apartment door, but if the landlord simply tacked a copy of the forcible entry and detainer action to your door and left, then this will not be sufficient to have served you. This is a different stage of the proceedings than the three day notice. The forcible entry and detainer action must be put in your hands, or into the hands of some person at your place of residence of suitable age and discretion.
There is a commonly used type of service called certified mail service. The Clerk of Courts will send out a copy of the lawsuit by certified mail. If you get it and sign for it, then you are served. But a lot of people like to play games and duck the certified mail, thinking that if they don’t sign for it, then they can claim later that they never got notice of the lawsuit. But the courts are wise to this and a new rule has been promulgated. If the landlord waives notice by certified mail service, the Clerk still sends out the Complaint by certified mail. This time if it comes back unclaimed or refused, then the Clerk of Courts will re-send the Complaint by regular mail service and you will be deemed served at that point.

Yet another procedural way to defeat an eviction is if the forcible entry and detainer action does not list all of the residents of the apartment. If only one of the five roommates is listed, then the writ of restitution issued by the Court will be effective against the listed person, but not against those who were not party to the lawsuit, and were not served with the forcible entry and detainer action. The landlord may try to get around this by listing you and “all other occupants.” But if you can show that the landlord knew the names of the other occupants (let’s say such persons were on the lease) and the other persons at the apartment had no notice of these proceedings, then the eviction may not be effective against them.

Procedural errors are rare, but they happen, and when they do, you would be wise to take advantage of them to complicate your landlord’s unjustified lawsuit against you. But remember that procedural errors will not solve your problems in the long run. They are a temporary substitute at best for a decision upon the merits. Also, be advised that if there is any way that a Judge can bend or interpret the facts so as to decide a case on its merits, he will do so. This means that even if you think that you have a procedural solution to your problems, you should still stand ready to defend yourself on the merits in case your procedural argument fails. Procedural solutions are at best good bargaining chips to leave the apartment on terms that are better than what you would have received had you been staring down the barrel of a red tag.
Chapter XV: Month to Month Tenancies

Some oral rental agreements do not run for a year, but rather go from month to month. This type of contract is a month to month tenancy. In the absence of any other evidence, a court will presume that a rental agreement is a month to month tenancy. Month to month tenancies can be terminated at the will of either the landlord or the tenant, for any reason (that isn’t discriminatory or retaliatory) or no reason at all, so long as the proper notice is given.

In the case of a month to month tenancy, Ohio Revised Code Section 5321.17 has spoken on the amount of notice that must be given to the other side, and it is reprinted directly below:

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TITLE LIII [53] REAL PROPERTY

CHAPTER 5321: LANDLORDS AND TENANTS

ORC Ann. 5321.17 (1998)

§ 5321.17 Termination of periodic tenancies.

(A) Except as provided in division (C) of this section, the landlord or the tenant may terminate or fail to renew a week-to-week tenancy by notice given the other at least seven days prior to the termination date specified in the notice.

(B) Except as provided in division (C) of this section, the landlord or the tenant may terminate or fail to renew a month-to-month tenancy by notice given the other at least thirty days prior to the periodic rental date.

(C) If a tenant violates division (A)(9) of section 5321.05 of the Revised Code and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the residential premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(I) of section 1923.02 of the Revised Code, the landlord shall terminate the week-to-week tenancy, month-to-month tenancy, or other rental agreement with the tenant by giving a notice of
termination to the tenant in accordance with this division. The notice shall specify that the tenancy or other rental agreement is terminated three days after the giving of the notice, and the landlord may give the notice whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in division (A)(6)(a)(I) of section 1923.02 of the Revised Code. If the tenant fails to vacate the premises within three days after the giving of that notice, then the landlord promptly shall comply with division (A)(9) of section 5321.04 of the Revised Code. For purposes of this division, actual knowledge or reasonable cause to believe as described in this division shall be determined in accordance with division (A)(6)(a)(I) of section 1923.02 of the Revised Code.

(D) This section does not apply to a termination based on the breach of a condition of a rental agreement or the breach of a duty and obligation imposed by law, except that it does apply to a breach of the obligation imposed upon a tenant by division (A)(9) of section 5321.05 of the Revised Code.

The notice requirement is thirty days. But the thirty days does not start to run except from the beginning of a rental term. Let’s say that you moved into your apartment on a month to month tenancy on May 1, and that your rent is due by the first of each month. A Court is then very likely to find that the rental term starts at the beginning of each month. On July 15, the landlord decides that he wants you out of the apartment and he gives you notice of this on that same day. His thirty days of notice will not start to run until August 1. This means that you will have until August 30 to leave the apartment (of course, you will have to pay rent for the month of August).

The same is true for a tenant wanting to vacate. Let’s say that you moved into the apartment on May 15, and that your rent is due on the Fifteenth day of each month. A Court will probably find that the rental period goes from the middle of each month to the middle of the next. This means that if the tenant gives notice that he wants to terminate the month to month tenancy on July 18, then the thirty days notice does not start to run until August 15, and the tenant will be responsible for paying rent at the apartment until September 15.

If your landlord wishes to raise the rent on your apartment for a month to month tenancy, what he is in effect doing is seeking to destroy your previous tenancy, and begin an entirely new one with you at the higher rental rate. To destroy a month to month tenancy, the landlord must give thirty days notice, from the beginning of the rental term before he can start to demand the higher rental price. This means that if your rent is One Thousand per month and your landlord wants to increase it to One Thousand Five Hundred per month, then he must give you thirty days notice. If he tells you about the rental increase on August 4, and your rental term starts at the beginning of each month, then you will pay your regular rent for September and you will then pay the higher rent starting in October.
A. Rent Control Statutes

At the time of the writing of this work, there are no rent control statutes in Ohio that I know of on a state wide basis. This means the landlord is free to triple the rent if he wishes. Nothing prevents him from gouging you for whatever you or the market is willing to pay. Your only protection is if you can prove that the rental increase is actually a retaliation against you in violation of 5321.02, which I get into in another part of this work. If your landlord jacks up the rent on a month to month tenancy to a foolish level that no one in his right mind would pay, your only remedy is to move out and let the landlord learn that he is an idiot the hard way as he stares at vacant property for month after month. The law will not protect him (or you) from his own idiocy.

It is important to note though that the landlord cannot jack up your rent in retaliation for you complaining about conditions at the apartment (although rental increases have been allowed by courts to mitigate the reasonable expenses of complying with the repairs). There are decisions going both ways on the issue of whether the rental increase is retaliatory or simply to defray legitimate expenses. This is because it is a factual determination and each case will be treated on its own facts.

B. Out of State Employment Termination Laws

Some states say that if you get a letter from your employer stating that you have been hired at or transferred to a place of employment beyond a certain mile radius of your present apartment, you can get out of your rental agreement. This is not the case in Ohio. The only way that you can get the protection of such a rule is by asking the landlord to include a provision to that effect in your rental agreement. If your landlord refuses to include such a provision, your only remedy is to find some other landlord who will.
Chapter XVI: The Rules of Court

A. The Rules of Civil Procedure

1. The Pleading Stage

This is going to be a crash course on what we who went to law school call Civil Procedure. Civil Procedure is basically the rules of the game. In fact, my Civ Pro teacher from law school, Professor Bradley Smith, reveled in bringing in the children’s board game “Chutes and Ladders” on the first day of class. With great fanfare he would open the game up and show how the game’s instructions were printed on the inside of the box top. He was showing us by analogy that The Rules of Civil Procedure were just like the rules to the game in the box top. The man went on to head the Federal Elections Commission, an even greater honor than being my favorite law school professor.

There are two systems of justice, one is the criminal system, which does not concern us (even though you doubtless feel that what your landlord is doing to people is a crime) and there is the civil system which is the system in which we will be playing our game. There are different types of civil courts, and the main important difference for our purposes is the amount in controversy limit.

All landlord tenant law suits are started by the filing of a Complaint by the Plaintiff(s) against the Defendant(s). The Complaint is a short plain statement of the facts that gives the other side enough information to know that they are being sued and why. If the Complaint does not have enough specificity in it for the Defendant to formulate an answer, the Defendant should file a Motion for a More Definite Statement. If the Court grants this Motion, it will instruct the Plaintiff to redraft its Complaint to be more specific as to the facts and the claim(s) for relief of the Plaintiff. The failure of the Plaintiff to so amend his Complaint may lead to its eventual dismissal.

If the Complaint has enough facts, but the Defendant feels that even if all of those facts were true, the Complaint does not state a cause of action, the Defendant can make a Motion to Dismiss Pursuant to Civil Rule 12(B)(6). An example might be that your landlord sues you for $2,000.00 because you had guests at your apartment on several occasions. Your rental agreement says nothing about limitations on guests. In this situation, you would probably move for the Court to dismiss the case against you pursuant to Civil Rule 12(B)(6) for the landlord’s failure to state an actionable claim for relief against you. In other words, even if everything in the Plaintiff’s Complaint is true, the Plaintiff still loses because the actions or inactions described in the Complaint don’t amount to a hill of beans.

If the Judge overrules your 12(B)(6) Motion, then you will have to file an Answer to the Complaint. The answer is simply a matter of going through the Complaint, line by line, and denying or admitting the accusations. Defendants often wish to simply enter a general denial stating that they deny all of the allegations in the Complaint of the Plaintiff. But this is improper. There are almost always some things in every Complaint that both the Plaintiff...
the Defendant agree on. In the landlord tenant context, they would probably both agree about
the address of the apartment, and how much the rent was, and how much the security deposit
was for.

There are three answers to any allegation in a Complaint when you are drafting your
Answer. You can admit the allegation, deny the allegation, or deny the allegation for lack of
knowledge. If a single sentence contains several allegations, some of which are true, some of
which are false, then your answer can be in the same form, just inform the other side what you
deny, what you admit, and what you deny for lack of knowledge.

If the Defendant fails to file an Answer within 28 days of getting served, then the Plaintiff
can move for a default judgment against the Defendant for failure to answer. The Court will
hold a hearing on whether or not to grant the default judgment. If the Defendant still does not
show up, then a default judgment will be granted and the Plaintiff wins. But such wins are
usually a very hollow victory. In my experience, Judges are way too willing to overturn a
default judgment if the Defendant makes a Motion Pursuant to Civil Rule 60(B) wherein he
argues some sob story of justification for his failure to respond. So don’t think that having a
default judgment ends your case. Your landlord still has a fighting chance at getting it
overturned and getting his case heard and decided on the merits. On the other hand, do not
count on such special treatment yourself. If all you have is a 60(B) motion and a sob story,
you are in the hurt locker.

2. The Discovery Period

Once the Complaints and Answers have been filed, you will start into what is called the
Discovery Period. A long time ago, the Court system decided that it did not like to have its
cases decided upon surprises and ambushes. For example, after a car accident, the Plaintiff
was complaining that he could not walk. But the Defendant hired a private investigator to tail
him around and the investigator took videos of the Plaintiff water skiing and carrying pianos
without assistance. Defendants used to keep these videos a secret from the Plaintiff and
ambush the Plaintiff with them at trial in front of the jury.

But long experience has informed the Courts that if each of the parties knew what the other
party had on each other (evidence wise), a lot of cases would get resolved earlier in the process
through settlement. Courts always favor settlement over trial. Nine out of ten cases are
settled, and if they weren’t, if you think that wait for trial is long right now, try it when no one
is settling cases. Thus the Discovery Rules were adopted.

You can send your opponent Requests for Production of Documents, asking for copies of
everything that they have in their possession that may be useful to your side at trial. You must
ask for these documents in a fairly specific way however. For instance, if you don’t have a
legible copy of the rental agreement, you can request that the other side provide it to you. If
you don’t have a copy of the letter that the landlord sent to you informing you that it was okay
to have pets even though your rental agreement has a not pets clause, then you can request it.
You can ask for documents like repair records and bills for material and labor if
the landlord is alleging that you caused damages to his apartment. You can ask the landlord for pictures or videos taken of the apartment that depict the damages he is claiming that you did.

If the landlord answers your request for production of documents by saying that he does not have any of these things, then he may have a hard time proving his case without them. If he tells you that he doesn’t have them and then tries to introduce them at trial, the Judge may not allow the landlord to use them, and if he does exclude them, he will ignore them when it comes to making his decision.

If the landlord has the documents you want, but ignores your requests, you can file a Motion to Compel Production of Documents. You must first have made several informal attempts to convince the landlord to turn over the documents without involving the Court. I usually send out letters (retaining copies) and make phone calls (logging each). If the Court finds your motion well taken and grants it, the Judge will issue an entry of decision commanding the landlord to produce the documents by a certain date. The landlord’s failure to so produce them at that point will land him in deep kimchee with the Judge. The Judge may sanction him by finding him in contempt of court (with the possibility of jail time), exclude the documents at trial, and/or may even dismiss the landlord’s case and grant you a victory right there and then.

After you have seen all the documents that you want to see, you may wish to send Interrogatories to the other side. You can send each Defendant up to 40 Interrogatories. Interrogatories are questions that the other side must answer, and must swear to the answer’s truth via an attached affidavit (a statement signed in front of a notary that all of the responses are true). You can ask when the carpet was last replaced at the apartment before you moved in. You can ask when the landlord purchased the building. You can ask if the landlord is incorporated or operating as a sole proprietor. You can ask if there are any other owners of the building besides the landlord. You can ask who the landlord intends to call at trial and what they are likely to say. You can ask just about anything that you are curious about that is either relevant to your case or reasonably calculated to lead you to information that is relevant to your case. If your landlord ignores your interrogatories, you can file a motion to compel here too.

You can also file a Request for Admissions. In this, you will ask that your landlord admit or deny certain things. You may want the landlord to admit that the document attached to the Requests for Admissions as Exhibit A is a true and accurate copy of the rental agreement. You may want him to admit that you paid a security deposit to him in the amount of $1000.00. You may want him to admit that he received written notice of your forwarding address. If the landlord ignores the requests for admissions, any request for admission that is not denied in writing within 28 days of receipt will be deemed admitted. Some requests can blow huge holes in a landlord’s case like: “Admit that you wrongfully withheld all of Tom Tenant’s security deposit.” If that one gets deemed admitted because the landlord failed to answer it, then the landlord is sunk, and will not be able to bring on evidence at trial the contradicts that admission. Of course this can work in reverse too, and if you miss a Request for Admissions Deadline, you will be sorry you did.
You can also ask for an inspection of the premises so that you can observe the quality of the repairs that were done. You might want to bring a video camera along with you to this inspection. If your landlord is claiming that he had to put a new floor in the kitchen, and your inspection reveals that the floor is still 30 years old, then a video tape of that is just the tonic for your ailing case.

You can also take the deposition of your landlord or any witness that he wishes to call. At the deposition, your landlord or his witness will be sworn in by a court reporter and you can ask questions directly to the landlord and/or witness. The deponent must answer the questions under oath. He may lie, but now is not the time for brilliant cross-examination which makes the landlord cry out in shame his apologies for attempting to cheat you. The good thing about getting the landlord to tell his story however he wants to is that you have now pinned him down to one version of the story. If he tries to change his story at trial when the previous lies are no longer convenient, that is when you spring the trap upon him and read back parts of his own deposition answers which he swore to under oath.

3. Dispositive Motions Stage

Eventually, you will get all of the information that you need in discovery. If this information reveals that you should win your case on the law, then you might want to move on to the next stage of your case, the Dispositive Motions Stage. In this stage, you will file a Motion for Summary Judgment.

A motion for summary judgment is a time saving device for the Court. What happens is that one side alleges a set of facts, usually supporting those facts by evidence gleaned from the discovery process. If the landlord has admitted that you were on a month to month tenancy, provided you with a letter which you sent to him that informed him you were terminating the month to month tenancy with 30 days notice, and has also admitted that you paid your last month’s rent, then the issue of whether you have to pay rent at the apartment until the landlord finds a new tenant is ripe for being decided upon summary judgment. You are basically saying that given these facts your honor, the law says I win.

To defeat a motion for summary judgment, your opponent must argue and present some evidence that there is a material question of fact concerning the things that you alleged in your motion for summary judgment. The court will not get into weighing the credibility of your landlord’s evidence. It can be the hokiest, flimsiest, non-believable crap, but if it raises a genuine question of material fact, then your motion for summary judgment will be overruled.

At this point, the judge will set a trial date, and you will present your case at that time.

If you lose your case at the trial court level, you can always appeal, but be warned. An appeal is not what most people think it is. Most people think that the appeals court tries the case again just like the lower court did. This is incorrect. The appeals court will not be interested in hearing any evidence. It will not decide the case upon the merits. It will rather
examine the lower court’s proceedings and make sure that the trial court did not make any errors of law. If the trial court ruled that the landlord had 40 days to fix the plumbing at the apartment, and that the landlord did in fact get it fixed in 33 days, then the Appeals Court would rule that the trial court erred in its 40 days to repair ruling. The Appeals Court would then reverse the lower court, send the case back down to the lower court, with instructions to the lower court to reconsider the issue in accordance with the correct rule of law, that the landlord has only 30 days to repair the plumbing.

But the Appeals Court will not overturn the trial court’s ruling that the landlord got the plumbing fixed in 33 days. This is because this is a finding of fact. Findings of fact will not be overturned by the Court of Appeals unless they are against “the manifest weight of the evidence.” This is a very high standard to meet, and is almost never met by any case. The reason for this of course is that the trial court was in the position to actually see the demeanor of the witnesses as they testified. All the appeals court can do is read the cold transcript of what was said. The Appeals Court cannot hear sarcasm through a transcript, nor can it hear the wavering voice of a liar, or see his giveaway gestures. So once the trial court makes certain findings of fact, they are pretty much set in stone.

If the Appeals Court gets the law wrong as well, then you have a right to petition the Ohio Supreme Court for relief. You will need to write a brief to the High Court, and the Justices of the Ohio Supreme Court will read this to see if it raises an important enough issue to warrant their time. If they decide that it does, then they will grant certiorari, meaning that they will hear arguments upon the case.

If all of this sounds like a rather complex web to be spinning, that’s because it is. To complicate matters further (or in some ways to simplify them) the Rules of Civil Procedure do not apply in Small Claims Court, nor do the apply to Eviction Hearings. I didn’t really provide you with this information to enable you to side step attorney participation in the legal process. I gave you this information so that when your attorney tells you where you are in the court process, you will understand it a little better.

I also gave you this information so that you will see the necessity of hiring competent counsel. You are best off getting competent legal counsel if at all possible. Lawyers have spent three years in law school learning about all of this stuff and much much more, and many lawyers still aren’t really up to speed on Civil Procedure even now, especially if they are not trial lawyers. It isn’t that difficult to find a lawyer who will work on your case if you throw some money at him up front. There are lots of attorneys out there who are one or two years out of law school and are looking for a way to make the rent on their office this month. So take my advice and hire one. This book will tell you almost everything you need to know about your rights, but if you want to win in Court, it is really helpful to have a lawyer.

There is an old saying in Court that a man who represents himself has a fool for a client. This is true for several reasons, but one of the most important is detached objectivity. When you are the person who was wronged, you carry with you the emotional scars of the wrong to Court. You may get emotional in front of the Judge (usually via anger) and this will not serve your case. An attorney is valuable as a dispassionate observer of what happened to you and
can advocate with an objective distance that Courts usually find helpful. For this same reasons, many attorneys refuse to represent close friends or family members because they find themselves getting too subjectively involved and thereby lose their effectiveness.
Chapter XVII: The Administrative Structure of The Court

I. The Trial Court Level

A. Small Claims Division

At the bottom, the lowest level is Small Claims Court. Small Claims Courts are a division of the Municipal Court. At the time of this writing, Small Claims Courts in Ohio can hear cases where the amount in controversy does not exceed Three Thousand Dollars. There is no Judge in Small Claims Court. There is someone who looks, acts, talks and walks like a Judge. This person is called the Magistrate. This person is also sometimes called the Referee (not because he officiates at football games, but because the matter has been referred to him by the Judge). For the purposes of this section, I will refer to Referees as Magistrates.

The Magistrate is someone who works for the Judge, and whom the Judge has vested with certain judicial powers to hear the facts of a case and write up a report for the Judge. The Magistrates will often conduct their proceedings in a very loose way, and there is usually no real need for attorneys. The Magistrate is usually a lawyer, and will sometimes protect one side from the other if one side has a lawyer and the other does not.

You have no right to a jury in Small Claims Court. The rules of Civil Procedure and Evidence are as relaxed as the Magistrate wants to let them be. You cannot recover punitive damages or attorneys fees in Small Claims Court unless you are suing for return of your security deposit.

B. Regular Division of Municipal Court

The regular division of the Municipal Court has a jurisdictional limit of up to Fifteen Thousand Dollars. This means that it can hear cases and controversies wherein Fifteen Thousand Dollars or less is at stake. These cases are presided over by Judges and there is the option of a jury. Be warned that if you want a jury, you will have to ask for one up front, and there may be a requirement that you put down a jury deposit. The formal rules of Evidence and Civil Procedure will be in force, and you will be at a profound disadvantage without an attorney who is well versed in those rules. The Municipal Court is a division of the Court of Common Pleas.

C. The Court of Common Pleas

Don’t let the name fool you. There is nothing common about the Court of Common Pleas. On the contrary, this is the grand daddy of all Ohio Trial Courts. There is no jurisdictional limit in this Court. When you read about a jury awarding someone Five Gazillion Dollars, that judgment was rendered in the Court of Common Pleas. The rules of Evidence and Civil Procedure are always in effect here, and you are a fool to come to this Court without a lawyer.
II. Appellate Level Courts

If you lose your case at the Trial Court Level, and you think that you lost it because the Judge made an error in one of his legal rulings, then you can appeal the case to the Court of Appeals for your District. There are Twelve Appellate Districts in Ohio, and your county falls under one of them. Understand up front that the Court of Appeals does not conduct a new trial. There will be no evidence presented to the Court of Appeals. Rather, you will be arguing that the Judge in your trial court made an error of law that affected the outcome and that he should be reversed. The Court of Appeals may order that you get a new trial in accordance with their instructions on the law (hopefully not in front of the same Judge, although that happens), but there will be no new trial during the appeal.

In fact, the Supreme Court of Ohio has held that "judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." C.E. Morris Co. v. Foley Construction Co. (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus. When conducting this review, an appellate court must not re-weigh the evidence or "substitute its judgment for that of the trial court when there exists * * * competent and credible evidence supporting the findings of fact and conclusions of law rendered by the trial judge." Seasons Coal Co. v. Cleveland (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273. "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." Id.

It has been said that the Trial Court judges the evidence, and the Appeals Court judges the Judge. The Appeals Court will not hear your appeal, or will be extremely unlikely to decide your appeal if your appeal is based upon the fact that the Trial Court judge or the jury believed the wrong person or believed the wrong facts. Appeals Courts are more likely to reverse a lower court’s decision if you can show them that the Trial Judge violated a rule of Evidence or Civil Procedure in coming to his decision.

But even if the Judge did violate said rule, you will have to then contend with the Doctrine of Harmless Error. This Doctrine states that even if the Trial Judge messed up, if the case would have been decided against you anyway, then the lower result will be allowed to stand. There is also what is called the Abuse of Discretion Standard. Just because the Trial Court messed up, this is not enough. The mess up should be serious enough that it actually amounts to an abuse of the Trial Court’s discretion. On appeal, you must show that the Trial Court was making its rulings in an arbitrary and capricious manner. This is all really good news if you won at the Trial Court level and your landlord is appealing the case. But is sucks to be you if you are the appellant.

Further, if you did not object at the Trial Court level to the Judge’s ruling that you felt to be mistaken, then you will be found to have waived the right to appeal on that issue. Someone who wishes to appeal an issue must first bring it to the trial court’s attention to give it a chance to do the right thing. If you do not, then you have waived. An example might be
helpful. You are in a traffic case where you claim that the light was green, and your opponent claims that the light was red. Your opponent asks the police officer who responded to the accident what a witness at the accident said to him later on about what color the light was. If you fail to object to this testimony (it is likely hearsay), then you will not be able to later bring up the argument on appeal that the Judge should not have allowed the police officer to testify as to what the witness said. You have waived the objection by not objecting at the time.

But the opposite is true if you are the appellee (you won at trial level). If the Appeals Court finds that the Trial Court erred as a matter of law, you can argue that there are other reasons why you should have won, and the Appeals Court will uphold the Trial Court if there is any other argument (made or not at the trial court level) that supports your case and has been proved. To take the above example, the Appeals Court might find some evidence in the record that the witness to the traffic accident was very excited when he spoke to the police officer. In that case, the Appeals Court may rule that the Trial Court could have found that the statement of the witness was an excited utterance, which is an exception to the hearsay rule.

III. Citation to Legal Authority

There are three types of legal authority. The first is the Ohio Constitution. The Ohio Constitution is the legal authority that sets up the state government. It allows the Legislature to pass certain laws. All laws must comply with the Ohio Constitution. Any laws that violate it are ruled unconstitutional by the Ohio Supreme Court.

The second type of legal authority are statutes as enacted by the Ohio Legislature. The Ohio Legislature is empowered to pass laws for our health, safety, morals and welfare, and so it does. It is up to the Courts to determine both the meaning of these laws, and if they are constitutional.

The third type of legal authority is the judicial system and its case law decisions. There is no way for a statute to be perfectly specific enough to cover every possible situation that might arise. Such statutes would be too long to read or find the law. Even if you could make a statute that specific, times would change and require change in the law. For instance, if there were a law that prohibited the carrying of a firearm unless the carrier were transporting large amounts of cash, how do we define the term “large”? In 1850, Twenty Five Dollars was a huge amount of cash, and certainly would have qualified. Nowadays, junior high schoolers carry that much home from mowing the neighbor’s yard.

As stated above, there are three levels of Courts. At the highest level is the Ohio Supreme Court. All Courts below it are bound to follow its decisions. If a Trial Court ignores a case that has been decided by the Ohio Supreme Court, the Court of Appeals will almost certainly reverse them.
Below the Ohio Supreme Court are the Appellate Courts. There are Twelve Appellate Districts in Ohio. Some Appellate Districts cover only one very populous county (such as the Tenth Appellate District in Franklin County). But some appellate districts, such as the Fourth Appellate District, cover several counties, including Athens, Jackson, and Gallia Counties.

When these Appellate District Courts issue decisions, two things can happen to the decisions. If the powers that be think that the case is important enough, then it gets reported in the Ohio Appellate Reporter. As such, you will see a citation to such a case that looks like this: Smith v. Jones (1988), 41 Ohio App.3d 35. This is telling you that the case is in the 41st volume of the Ohio Appellate Reporter, Third Edition, on page 35. Don’t bother looking that one up, because I made it up. If a case gets reported, then it is binding authority within that Appellate District and all of the Trial Courts therein must follow it or be reversed.

Even though a case is reported, other appellate districts are not bound to follow it. For example, there is a case called Cubbon v. Locker (1982), 5 Ohio App.3d 200, which says that if the landlord evicts the tenants during the rental term, then the tenants do not have to pay rent for the remainder of the rental term. This is a reported case and is binding authority upon all trial courts in the Sixth Appellate District (including Lucas County).

But the case of Briggs v. McSwain (1986), 31 Ohio App.3d 85, is also a reported case and has ruled in the exact opposite fashion, saying that just because a landlord evicts someone for a breach of the lease, the tenant is still responsible for the rent until the end of the original lease term or until the apartment is re-rented, which ever is sooner. So don’t go quoting Cubbon to Franklin County Judges because Briggs is binding authority in the Tenth Appellate District and all of the Trial Courts in Franklin County must follow it. Usually when there is a conflict between Appellate Districts, the Ohio Supreme Court will eventually step in and decide the issue for everyone because it doesn’t seem fair to have the law treat the same factual situations differently in different counties.

In fact, this is what the Ohio Supreme Court did in the case of Dennis v. Morgan (2000), 89 Ohio St.3d 417 wherein the Court stated as follows:

We thus find that R.C. Chapter 1923, in its allowance of separate actions under the lease by both parties does contemplate that lessees are liable to lessors for post-termination rent. We find that Cubbon is therefore flawed.

Cubbon also conflicts with the public policy reasoning of the court in Briggs v. MacSwain (1986), 31 Ohio App. 3d 85, 31 Ohio B. Rep. 126, 508 N.E.2d 1028. That court plainly held that a three-day notice to vacate does not terminate the obligations of the tenant to pay rent for the remainder of the term. The Briggs court considered which party should bear the burden caused by a lessee's breach of the lease:

"A tenant may not avoid her obligations under the lease agreement for payment of the rent during the term of the lease, or until a new tenant is
secured, by failing to pay her rent and then vacating after she receives the required three-day notice for non-payment of rent." 31 Ohio App. 3d at 86, 31 Ohio B. Rep. at 127, 508 N.E.2d at 1029.

The breach of the lease in Briggs was failure to pay rent, whereas the breach here was for violating the agreement's "nondisturbance" clause, but the reasoning is the same. Should a person be able to escape her obligations under a lease by purposefully violating that lease and waiting for the lessor to present her with a three-day notice to vacate? We agree with the Briggs court that the answer to that question is "no." Otherwise, whenever a lease became unpalatable, a lessee could commit some bad act and thereupon be relieved of the burden of her bargain.

In the present case, the statutory law and public policy are on the side of the landlords, insofar as the recoverability of some rent after termination is concerned. However, the law may not be with them upon remand if they cannot show that they reasonably attempted to relet the property for seven months. A seven-month vacancy strains the limits of reasonableness.

Accordingly, we reverse the judgment of the court of appeals and remand the cause to the trial court. Id. at 419-20.

Keep in mind that while a reported Appellate District Court decision is binding upon the Trial Courts in that Appellate District, it is not binding upon the Appellate Court that issued it. The Court that issues a decision can change its mind at anytime, though this is very rare. When an Appeals Court reverses itself, it is admitting that it got things wrong, and no one likes to do that. Also, the Courts like for their decisions to stand for a while so that the law seems predictable rather than haphazard. For example, even though the Justices of the United States Supreme Court of today might not have decided the case of Roe v. Wade (which legalized abortion) the way that the previous Justices decided it long ago, they would be loathe to overturn it because of the principle of stare decisis (meaning that decisions once decided should be allowed to stand so that the law has predictability).

If there is a reported case in your favor that is not from your Appellate District, you can still use it to buttress your arguments. It is called persuasive authority. When you use persuasive authority, you are telling the judge, "Your Honor, there aren’t any controlling cases in this Appellate District which decide this issue, but you may want to see how Appellate District Courts in other areas have come down on the topic. This way, you won’t be going out on a limb."

Judges don’t like to go out on a limb and make precedent setting decisions. That is how a Judge gets reversed, and getting reversed looks bad. It’s like you boss calling you forward at the company meeting and explaining before everyone how you screwed up your job. A Judge is far less likely to be reversed if he follows another Appellate District’s decision on the
matter, and even if he does get reversed, at least he can point to the other decision to show
that he wasn’t totally out in left field.

Some cases (referred to as “unreported decisions” or “slip opinions”) are not deemed
important enough to make the Ohio Appellate Reporter. These cases though still get picked up
by computer legal research companies and they are searchable if you have access to the right
database. For every one reported case, there are nine unreported cases. Why don’t these
cases get reported? Because the issue may have been decided a long time ago, but the Trial
Court just messed up and didn’t rule the correct way. If that is the case, what is the point to
telling the world again what the law is? All that is needed is a reiteration of the law to the
particular Trial Court that got it wrong so that the case can be re-decided in accord with the
law. Unreported cases are binding upon no one, not even other trial courts in the appellate
district that issued it. But they are darned persuasive sometimes.

So why are unreported cases of interest? Because lawyers often have to reason by analogy
since every factual situation is different. For instance, if there is a case that says that insurance
companies cannot enforce clauses in their policies that prevent waiver of the terms of the
agreement, then by analogy, landlords seeking to prevent waiver of terms of their rental
agreements can’t either. Of course you take the chance when making this argument that the
Judge will look over the top of his glasses at you and say, “Sir, insurance policies and rental
agreements are apples and oranges.” You may argue back that they are both contracts, but
then you are violating the first rule of effective legal representation, never argue with the
Judge.

So attorneys would rather have a case that is right on point that says that clauses in leases
that seek to prevent waiver of the terms of the lease are unenforceable. There is a lot greater
chance of matching your particular factual situation if you have a much larger pool of cases
from which to draw. The ocean of unreported cases is a lot bigger than the pool of reported
ones.

An unreported case citation will look like this: Mecca Management, Inc. v. Gouse, 1997
decisions are persuasive authority only, but once again, they give the Court a peg to hang its
robe on if the issue is new to Ohio law.

Ohio Courts will also listen to what Courts from other states have to say on an issue,
especially if the law in that state is fairly similar to our own. Ohio has based its Landlord
Tenant Act on the model landlord tenant act that has been adopted by several states around
the nation. Some states may have slight variations in the law, such as triple damages instead
of double damages when it comes to the return of a security deposit, but a Court may be
willing to listen to a decision from another state if there are no Ohio decisions on point.

Every now and then, you will get a Trial Court decision that gets reported. This is
usually because no previous Court has addressed this particular but important issue. This type
of decision is the very definition of persuasive authority, because no Court must follow it.

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Even the Court that issued it can change its mind months or years down the road.
Chapter XVIII: Court Tactics

I. Introduction

I know that all of you have watched movies about the law. You’ve seen how attorneys get up in front of juries and thunder away at injustice and evil. They use procedural technicalities to win cases like magicians. You think attorneys score points by getting in those needling little jibes at the other attorney, the quick witted wise cracks with the perfect timing. This has nothing to do with the law. This has everything to do with pissing off Judges so that they will not find in your favor. Judges place great stock in organized presentation of evidence. They place very little stock in courtroom antics.

Once again, I present you with the following information, not so that you can read it and be instantly qualified to bring your case to Court, but rather to give you a better understanding of what happens in a trial, how to act, and how much you need an attorney to act as an objective, knowledgeable, dispassionate observer and advisor.

II. Organization

Organization and preparation are key, but difficult for a lot of people. If you are a disorganized person, you are at an almost insurmountable disadvantage. Your landlord is either organized, or has hired someone who is. Organization and preparation usually win when it comes to a court battle with your landlord.

While your landlord has organization as his strongest weapon, you have energy on your side. If you are a student tenant (the ones most at risk in landlord tenant law), you should have boundless energy and creativity. If you can couple this with organization and a good set of facts, you will be a formidable opponent for your landlord.

You must tell your story to the Court in an organized manner. Courts are places of organization. They are their own bureaucracy, and they think along those same lines. Your landlord is something of a bureaucracy too, especially if you live in a multi-unit building. Your landlord understands the bureaucratic process from having done it so long.

Whenever you make a presentation, you want to have your ducks in a row. Nothing sucks confidence and credibility from your arguments more than an advocate who is fumbling around for things in messy pile of documents. When you want to show your lease to the Court, you should be able to find it immediately and hand it to the Judge. The video tape of your apartment should be rewound to the starting point. The Judge will not be filled with confidence as you fast forward through the end of a taped football game to get to what you need to show him.

A. Trial Note Book
How do you organize your documents? For those of you in school the answer is easy. The invention of the three ring note book with dividers is the answer to your problem. Below are the sections and how you want them organized.

1. The Opening Argument

Judges hear too many cases every day to be able to remember what yours is about as they walk into the Court. Your opening argument is your chance to remind and reorient the Court as to what is going on. So long as your opening argument is short and to the point, the Judge will greatly appreciate it because after hearing a good opening argument, he will not be quite as embarrassed about walking into the Court a few minutes earlier not having the slightest idea of what is going on. He will be able to categorize the case in his mind as follows: “Aha. Landlord tenant case, tenant wants deposit back.”

Don’t read your opening argument to the Court. Have an outline of it and tell it to the Court in your own words. What follows is an excellent introduction:

Your honor, my name is Adam Smith, and this case is about a wrongfully withheld security deposit. I entered into a one year written lease with my landlord on May 3, 1999. The lease was for the apartment at 123 Main Street, Columbus, Ohio, Apartment One. I paid a security deposit of $500.00, and the rent was $500.00 per month. I moved in on the first day of the lease, September 1, 1999. The apartment was in poor condition, the following things being wrong with it. [list examples]

I paid the rent every month, and then I moved out at the end of the lease on August 31, 2000. I sent the landlord my forwarding address and he got that letter on August 20, 2000. He sent me a list of deductions from my deposit, none of which are proper. I am asking you to award me my security deposit back in the amount of $500.00. I am also asking for another $500.00 in double damages under Ohio Revised Code Section 5321.16(C). Thank you.

The above was short, too the point. Now the Judge knows what went on and why you are taking up his time. Don’t try to sound like a lawyer. Judges get enough of that. Be different. Sound like yourself. Don’t go in for all this “May it please the Court” and “Consequently, per se, your honor” jazz. Nothing sounds dumber to a Judge than someone trying to sound like an attorney.

The Opening Argument section of your trial notebook should have the above argument outlined on it. Even though you know the facts by heart, it’s easy to freeze up. When you do freeze up, it helps to have an outline of all of the important dates, times, and amounts sitting right there at your finger tips.

2. Your Evidence Section
You should have four copies of every document that you want to show the Court. There will very likely be evidence stickers at the Bench that say “Plaintiff’s Exhibit ___” or “Defendant’s Exhibit ___. “ Ask the Court Reporter or Bailiff if you can have some of these on an earlier trip to the Courthouse to scout out the territory.

Let’s say that you have five exhibits. The first is a copy of your rental agreement. Many rental agreements are printed on 14 inch paper. It’s okay to have your lease shrunk down to 11 inch paper so long as you can still read all of the terms (note, if your Judge is elderly, you may want to keep things at their original size to make it easy on his eyes). You should have four copies of the rental agreement, and there should be a sticker on each one marking it as “Plaintiff’s Exhibit #1” (if you are the Plaintiff).

Your second exhibit might be a check in the amount of $500.00 with “security deposit” written in the memo section. Your third exhibit might be a video tape of what the place looked like on move in. You don’t need four copies of this tape, but two might be handy so that you will still have one after leaving the original with the Court. Your fourth exhibit might be the tape of your apartment at move out. It is difficult to store video tapes in a trial notebook since they are loose. So you should get one of those plastic pouches with a zipper on them that are three hole punched on the left side. Put the stickers directly on the tapes. Make sure they are rewound to their starting points. Your fifth exhibit might be a copy of the letter that you sent to the landlord giving him notice of your forwarding address for the return of your security deposit. Your last exhibit might be the security deposit forfeiture notice that the landlord sent out to you.

The reason that you have four copies of each document is because you will need one to hand the other attorney, one to hand the witness, one to hand the judge, and one to refer to as you ask questions about it. It is imperative to have them all ready, pre-marked, and paper clipped together in your three ring trial notebook.

Each group of four copies should have a one page list of questions that stays with you in your trial notebook. On this paper will be the authentication questions and then the testimonial questions you will want to ask. Every piece of evidence needs to be authenticated before it is formally introduced. Authentication questions introduce the piece of evidence to the Court. They show the Court that there is some relationship between the evidence and the issues to be decided such that it warrants the Court’s time to look at it. An example:

You: I am handing you what has been marked for identification purposes as Plaintiff’s Exhibit Number One. Could you tell the Court what that is?

Landlord: That is the lease that we signed for the apartment.

You: When was that signed?

You have now provided the Court with sufficient information so that it can see that the evidence is related to the proceedings. The Court can now give it whatever weight the Court deems it deserves.

The questions you ask your witnesses should move through your story. Don’t start out asking what the apartment looked like when the landlord got it back. Take the Judge through the rental agreement signing, then onto the day you picked up your keys and moved in. Take him through your history of rental payments if those are at issue. Then take him through your leaving the apartment, and turning in your keys. Ask him what it looked like when he got it back. Ask him if he got your forwarding address for the return of your deposit, then ask him if he sent you an itemized listing of the damages.

Along the way, have him identify pieces of evidence. When you are asking about the rental agreement, ask him if Plaintiff’s exhibit one is a copy of it. When asking about whether he got your forwarding address, ask him if Plaintiff’s Exhibit ___ is a copy of it. Some Courts prefer that you move to introduce each piece of evidence as you show it to the witness after it has been authenticated. But other Courts (and this is the more common practice, especially if you are trying the case to a Judge) want you to move to admit all of your evidence at the end of your presentation of evidence. At that point, objections to admission of the evidence are typically heard and ruled upon and exhibits are either admitted or excluded.

3. Closing Argument Section

You will want an outline of your closing argument. You do not want this to be a word for word script that you read to the Court. Things will get said during testimony that you will want to re-emphasize to the Court. If you have a well spaced out outline, you can pencil stuff in between the lines where it fits in best. You want to restate the facts, show how they relate to the law, and then inform the Judge one last time what you are asking for.

4. Case Law and Statute Section

If your argument depends upon a certain statute or the ruling of a case that is on point, then you want to have a copy of such statute or case at your fingertips with the important provisions highlighted and tabbed so that you can turn right to them. This is especially the case if you are relying upon unreported opinions. If you are using such opinions, you must produce a copy of them to the Court and the opposition.

III. Being Nervous

It’s okay to be nervous. No matter how much you prepare, you will be a little scared when you get up in front of the Judge. Being a little scared can work in your favor. It shows the Judge that being here is important to you. It reminds the Judge that you are the little guy that he is supposed to protect. It will make the Judge forgive a few of your mistakes. It is
hard for the Judge to think of you as a smart ass punk kid if your voice is shaking a little bit at first.

A. Limiting Nervousness

Too much nervousness is not good. There are ways to take the edge off. Go to your Court on days when you are not scheduled. Sit in the back row and watch the proceedings. Watch how the attorneys conduct themselves. Watch how the Judge runs the Court, especially your Judge if possible. Watch how the Bailiffs and secretaries do things. Take notes. Feel free to ask them questions during the breaks if they have a spare moment (but don’t ask them for legal advice). A good question might be, “Excuse me, but I have a case in front of this Court in a few weeks time, and I was wondering if there is any rule about which of the two counsel tables I sit at.”

You might find that the Court will be deserted in the late afternoon. Ask around, but there probably won’t be anyone that has a problem with you rehearsing your opening and closing arguments in the empty court room. Try to do this in your courtroom. Be friendly with the Court staff. If they like you, things will go very easily for you. If you piss them off, they will probably speak to the Judge about you in less than glowing terms.

IV. Three Stages of a Trial

The three stages of a trial can be broken down as follows. In the first stage, your opening presentation, you tell ‘em what you are going to tell ‘em. In the second stage, the presentation of evidence, you tell ‘em, and in the third stage, the closing argument, you tell ‘em what you told ‘em. Pretty simple? You bet. Keep it that way.

A. Opening Argument

Keep this section simple. Illustrate where your arguments are going to go, and how the evidence will link up with your arguments. But don’t allow yourself to try to testify during this period. This is a movie preview, like you see before the main event. It should be the roadmap, not the trip. You are using this opening argument to remind the Court of who you are and why you are here, because the Court has hundreds of other cases on its mind that are just as important as yours. Don’t try to introduce your evidence. Keep it short. Don’t repeat yourself. Don’t try to score points.

B. Presentation of Evidence

You need to have the confidence in your evidence, preparation, and yourself to let your evidence speak for itself. This is very difficult, even for attorneys. People always want to put a spin on the evidence. The Judge does not want to see spin, he wants to hear the evidence speak for itself. The art of winning is letting your evidence do the talking. Let’s look at an analogy from another context.
A cop is walking along on his patrol and he gets a radio call informing him that the local convenience store has just been robbed. The suspect is said to be wearing a red shirt and dark blue jeans and was last seen in a foot chase with other officers. James Innocent gets out of his car after the long drive home from work and is walking up the sidewalk to his house. James is wearing a red shirt and dark blue jeans by chance.

Directly in front of him is a young man, about the same age and height, wearing the same clothing, walking nonchalantly along the sidewalk. The Police Officer rounds the corner, sees them both, and orders the two of them to stop. He knows that one of them is the crook.

The Police Officer tells them both that he is looking for suspect that just eluded other officers in a foot chase after robbing the convenience store. The crook immediately starts protesting his innocence upon questions by the Police Officer. He is extremely convincing, having lived the life of a con-man. James Innocent is a little befuddled as he is just home from work, tired, and has no idea what is going on. The Police Officer has to choose one. James touches the left side of his chest and says to the Officer: “Feel my heart, then feel his. That will tell you who was in a foot chase with the police.” The Police Officer feels James’ heart, then puts his hand on the crook’s chest. The cop realizes that the crook’s heart is beating a mile a minute, while James’ heart rate is normal. James wins the argument by letting the evidence speak for itself.

The above example contains all the elements of a trial proceeding. You have two advocates, James and the Crook. You have a Judge (in this case the Police Officer). You have evidence, the heartbeats. Why would James want to get into a long diatribe about how the human heart increases its rate of operation during a foot chase? Why would James want to tell the cop what he was feeling as the cop felt his chest? Those statements detract from the power of the evidence. The evidence spoke so eloquently that the best lawyer in the world could not hope to match it.

The best reason to let the evidence speak for itself is that people tend to value their own conclusions and realizations more than the ones which others point out to them. That’s because their conclusions are their own. They take pride in them. When you let the evidence speak for itself and the Judge comes to a realization that favors you, the other side’s attack this realization, is an attack on the Judge’s own mental process.

Let’s take a courtroom example. Your landlord claims under oath that he never got your forwarding address for the return of your security deposit. Here’s what not to do.

You: Are you aware that you are under oath?

Landlord: Yes.

You: And are you aware of the penalties for perjury?

Landlord: Yes.
You: I’m going to show you Plaintiff’s Exhibit Three, which is a post office return receipt that shows that you are lying because it proves that you got my forwarding address letter on September 4, 1999.

Landlord: I may have been mistaken earlier. I have so many tenants.

You: No, you were lying weren’t you? Weren’t you?

Rather, the questioning should go something like this.

You: You never got my forwarding address?

Landlord: No. I never got your forwarding address. You just left.

You: I’m going to show you what has been marked for identification as Plaintiff’s Exhibit Number Three [Hand out copies to Judge and other counsel]. Can you identify that for the Court?

Landlord: It’s a letter with a return receipt.

You: Is that your signature?

Landlord: It appears to be.

You: [Hand Plaintiff’s Three to the Judge] My next question concerns....

Now you may read the two accounts and think that the first one has a lot more spark and excitement, and it does if your landlord breaks down and starts weeping and admits to the Court between sobs that he is sorry for swindling your money and that he should be led off in chains and beaten about the head and neck. You see this kind of drama all the time on TV and in the movies.

But the second line of questions speaks louder to a Judge. The Judge can look at your letter and see that the date was August 20, 2000. He can look at the return receipt and see that the landlord signed it on August 24, 2000. He can draw from his own experiences that the mail usually takes about three days. Now it dawns upon the Judge that the landlord is lying.

Sometimes, you don’t even want to catch the landlord in his lie until a bit later on. The following passage is an example of how to do this.

You: What did the Apartment look like when you got it back on September 1, 2000?
Landlord: You guys had lived like pigs the entire time you were there and it showed. The apartment was waist high in garbage, the refrigerator was tipped over in the kitchen, and there was a dead cat in the sink.

You: How long did it take you to clean it up?

Landlord: It took my work crew four days working eight hour shifts to get it ready.

You: Who was on your work crew?

Landlord: Mr. Wayne, Mr. Rogers, Mr. Sullivan, and Mrs. Miller.

You: Are they all here today?

Landlord: Yes, and they will all testify.

Once you have the landlord on the record committing to his version of what the apartment looked like, and you are done asking questions to the landlord, then you call all of the landlord’s witnesses up to testify to the same thing. The Judge is going to wonder what in the world you are doing, and why you are calling witnesses who are backfiring on you. Then you call your witness that made the video tape of the apartment on the last day of the lease term.

You: What did the Apartment look like on the last day of the lease?

Witness: You guys had done a really good job of cleaning it up. It even smelled clean.

You: Did you do anything to document the condition of the Apartment on that last day?

Witness: Yes.

You: What did you do?

Witness: I made a video tape of the Apartment that showed its condition.

You: I’m going to hand you what has been marked for identification purposes as Plaintiff’s Exhibit Three. Can you identify that for the Court?

Witness: That is the video tape I made of the Apartment.

You: Your honor, with your permission, I would like to play this tape for the Court.
At that point, you sit down and shut up. Let the tape speak for itself. The only questions you might want to ask while the tape is playing concern which rooms are which, because sometimes it is difficult for the viewer of a tape to orient himself with the layout of a residence as the video tape runs. Don’t detract from the power of your video tape with stupid questions like “You don’t see any garbage in the place do you?” or “Is there a dead cat in the sink?” At the end of the tape, just rewind it and put it in with a group of your exhibits for formal introduction into evidence.

I once took a creative writing class in college, and the professor was very fond of saying “Show, don’t tell.” In other words, don’t tell the reader that your character was nervous. Write that his hand was shaking and he dropped his glass on the floor. The idea then is the same for presentation of evidence in court to a Judge. Let him figure a few things out for himself. That way your arguments will become his conclusions, and he will defend those conclusions against attack from your opponent because he took pride in thinking them up. Remember though that with juries you cannot always afford to be so subtle. George Carlin once said that if you are tried by a jury, you are tried by 12 people that were not smart enough to get out of jury duty.

C. Closing Argument

Now it is the time to tell ‘em what you told ‘em. Briefly go through your story again. Point out how your version and the landlord’s version differ, and how the evidence shows that each time, your side of the story is what really happened. Point out how the law and the facts come together in a way that judgment in your favor is appropriate.

A trial is all about telling your story to the decision maker and getting him to agree with you. Note that I did not say, forcing him to agree with you. Because you are trying to convince the Judge, you need to direct all of your evidence, testimony, and theories to him. I see a lot of lawyers who try to argue with me in front of the Judge. They direct their comments and questions directly to me. I never even so much as look in their direction. My entire focus is on the Judge, the center of my particular universe. Why would I even want to speak with the other attorney while Court is in session? I don’t have to convince the other attorney to win.

Bad lawyers argue. Good lawyers persuade. Good lawyers keep it short and simple.

V. General Courtroom Tips

A. Know When To Sit Down and Shut Up

The first legal argument that I ever got to make in a Court to a Judge was in a divorce case. The issue was very easy (there was an Ohio Supreme Court decision in my favor). I went through my argument in about 45 seconds, and found that I was starting to repeat myself. At that point, I sat down and said nothing further. The other lawyer got up and
spouted the biggest raft of legal nonsense and obfuscation that I had ever heard. I wanted to get up and refute him point by point, but it was not my turn to talk.

I was busy writing down all of the stupid things that the other attorney said and how I would counter them one by one when I noticed something. All the time that I was talking, the Judge didn’t seem to be listening to me. He was writing something on his legal pad. When my opponent was talking, the Judge wasn’t writing anything. He was just looking intently at my opponent while this guy was rambling on and on. I thought I was done for.

But I was making a rookie mistake. What I thought was a lack of attention on the part of the Judge during my argument was actually very focused attention. When I cited to my Supreme Court case, he wrote down the cite and a short synopsis of what I said it stood for. But by looking at my opponent and not writing anything down, he was completely ignoring my opponent because his arguments were legally untenable. They were not worthy of his notation. I learned that when you score a point in Court, you’ll know it because the Judge makes a note on his legal pad. He will not smile, or nod, or jump to his feet and yell “Give ’em hell, counselor!” My client at the time didn’t think that I did a very good job because the other guy got to do all the talking and I only spoke for less than a minute. But the client’s mood and opinion of my legal skill improved when he got the ruling in his favor.

B. Never Be Anything But Polite and Respectful To The Other Side (Especially If They Are Being Rude To You)

On another instance, early in my legal career, the other attorney was going on and on trying to obfuscate some rather clear law, and he let this gem drop on me: “Your Honor, I don’t know what they are teaching these kids in law school today about civil procedure, but . . .” I thought about getting up and letting him have a full scale barrage, reiterating all of my arguments and challenging him to answer them, but then the Judge, who had been peacefully dozing, was awakened by the comment of my opponent.

“Well, how do you address Mr. Willison’s argument on the first issue he raised? “

Well your Honor, I think that . . .”

“I don’t care much about what you think. What does the law say?”

“The law is unclear on that point, you see...”

“It doesn’t seem unclear to me. It seems like a rather simple issue.”

“It’s not a simple issue . . .”

“Maybe you just don’t understand it, counselor.”
“Well, your Honor...

“Let’s move on to some other more reasonable argument, counselor.

During this back and forth between the Judge and the other side, which was getting nastier and nastier, I just sat quietly. My client leaned over and passed me a note asking: “Aren’t you going to get into this?” I passed a note back. “No! ” I didn’t have dog in that fight. What could I have added other than something like “Yeah, your Honor, good point. Kick his butt.” The Judge was making all of my arguments, the other attorney was arguing with the Judge (the decision maker) and all was right with the world as far as I was concerned. When the Judge had finally had enough of the other side’s folderol, he ended the proceedings. I got up to shake the other attorney’s hand, but the guy was already out the door and heading home. The decision was in my favor.

C. Watch For Body Language

Watch the Judge’s body language when he listens to arguments. If you get the sense that the Judge has already made up his mind in your favor, quit trying to convince him. Move on to your next strong point. Crossed arms often mean that the Judge is in disagreement (or the air conditioning might be on a bit too high). Move on to your next point. If the Judge uncrosses his arms and leans forward, then he might be more likely to accept an argument if you show how the evidence nicely dovetails with what you are arguing.

D. Don’t Be Put Off By Questions From The Bench

Many lawyers hate it when the Judge interrupts them or the proceedings and starts asking questions. In reality, this is a golden opportunity. The Judge is showing you his inner thought process. If he starts asking about when the keys were returned to the landlord, then you know that this is important to him for some reason. If you can apply the law and figure out what he is getting at, then you can be well ahead of the landlord, and maybe even the landlord’s attorney. Note the answer to the Judge’s question in your closing argument in support of your points.

Here’s an example. Let’s say your case rises and falls upon when the Court determines that you gave possession of your apartment back to the landlord. If you gave it back by the end of August, you win. If you gave it back in September, the landlord wins.

You: When did your lease end?

Jim [your roommate and witness]: On August 31, 1999.

You: When did you send the landlord your forwarding address in writing?

Jim: In July of 1999.
You: When did you vacate the Apartment?


You: No further questions, your Honor

Court: I have a question, when did you return the keys to the landlord?


Court: Thank you.

The Court has just told you that one of the important factors it will consider regarding possession of the Apartment is when the keys went back to the landlord. Stress the fact that the keys were returned on August 31, 1999 in your closing argument.

E. Don’t Get Sidetracked

At all times during your case, remember what you are there to establish. Remember the old saying that when you are up to your ass in alligators, it is easy to forget that you are there to drain the swamp. If you are trying to get your security deposit back, and you have a video tape of the apartment’s condition at move out and your landlord has been lying to the Court and you caught him with the tape, the case is over. All you need to do is stay on message and go home when Court adjourns.

But your rental agreement had a no pets clause and you had a dog the whole damn time. The other attorney is asking you question after question about the dog, and you are arguing that the landlord knew about your dog, but took no action, or that you paid an extra pet deposit, or that your landlord said don’t worry about the dog clause, have a pet anyway, or that the dog was only there a few times. Stop. What are you doing?

Is the landlord claiming that the dog damaged the premises? No. Your video tape proves that the dog did no such thing. Then whether or not you had a dog has no relevance to your case. Why argue it? You should sit tall in the witness box and say: “Your Honor, I had a dog, and the lease said I wasn’t supposed to. As the tape shows, it did no damage.” What is there more to say? If the other side’s attorney keeps hounding you on it, keep politely answering the questions, but eventually the Judge is going to get tired of it and instruct the other attorney to move on. But quit arguing about it. It merely clouds the focus of your case. The other attorney is trying to get you off message. He is trying to make a simple case into a complex one, and by arguing every time the dog came over for a weekend rather than a week, you are going off message and the other side is taking the initiative. Stay on target. Stay on message. Keep coming back to your strong points.

You should never argue with opposing counsel or the other side while you are testifying. This is because the Judge does not want to hear argument during testimony. He wants to see
and hear testimony and evidence. If you feel like you want to argue, then address all of your answers to the Judge. That will make you less likely to argue during testimony.

When you are asked a simple question, give a simple answer if at all possible. There is a tendency is all of us to want to explain an answer that seems to hurt us first before giving it. Do not do this. Give your answer first and then explain your answer after it has been given. The appropriate phraseology is not “Blah, blah, blah, so the answer is yes.” The appropriate answer is “Yes, but to explain that, blah, blah, blah.”

You should never get angry with opposing counsel. That is because angry people react without thinking. You need to take time to think about your answers before you make them. There is no rule that says that you have to answer at once. You can sit there for a few seconds and think about things. But when you are angry, it will be difficult to think clearly. That is why the other attorney is being such a jerk to you, because he does not want you to think, he wants you to react. So always sit there and act like you are an unflappable Ghandi on the top of a mountain with a rose in one hand and some book of important sayings in the other. Nothing angers a person more than a person that refuses to get mad, and your opponent will go to greater and greater lengths to get your goat and take it out for a walk. Eventually, the Court will lose its patience with the other side and issue stern warnings.
NOTICE TO VACATE THE PREMISES

Address:


In re: Notice to Vacate Premises

Dear __________________________:

I wish you and any guests or fellow occupants to leave the above referenced premises now in your possession.

***************************************************************************

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.

***************************************************************************

Very truly yours,

______________________________

Landlord
Rental Agreement

This lease, has been entered into this day of 20__, between , (hereinafter referred to as Landlord and/or Lessor), and

, (hereinafter referred to jointly and severally as Lessee or Lessees). Lessor, in consideration of the rent to be paid, and the covenants and conditions to be performed by the Lessee(s) does hereby lease the following described Premises, a four bedroom furnished apartment located at , City of , Ohio, County of hereinafter referred to as the Premises).

The term of the lease shall be for one year from noon of to noon of . Lessee agrees to pay as rent for Premises the total sum of . This sum will be paid without demand in twelve (12) equal monthly installments of after any applicable prorated rent. The monthly rent is due in advance on or before the fifth day of each month during the lease term. All rent received after the due date shall be subject to a $30.00 late charge plus one dollar per day after the fifth day of the month until paid in full. All rent is to be paid by check or money order and made payable to [Landlord].

If there are more than two Lessees, the monthly rental payment must be by one check or money order. Payments must show Lessee’s name, address, apartment number, and remitter’s phone number. Any payment that is returned from the bank is subject to a Thirty Dollar ($30.00) bounced check charge, and if applicable, the late charge noted above.

THE LESSOR AND LESSEE(S) ALSO AGREE TO THE FOLLOWING COVENANTS AND CONDITIONS

1. COMPLIANCE: Lessor agrees to reasonably maintain the Premises to conform with all codified housing rules and regulations as they apply to the leased premises.
2. OCCUPANCY/SUBLETTING/USE: Lessee agrees that only those persons listed above shall occupy the Premises. No person shall be released from or added to this lease without first obtaining the written agreement of the other Lessees set forth herein and written approval of changes from Lessor (such approval may not be unreasonably withheld). Lessee agrees that the Premises, or any part thereof, will not be assigned or sublet without written consent of Lessor (such approval may not be unreasonably withheld). If such changes are agreed upon, all parties herein agree to pay any reasonable and normal application fee and to make the necessary changes to the lease before the changes are valid. Lessee agrees that the Premises are to be occupied for residential purposes only. The Premises shall not be used or allowed to be used for any unlawful purpose, or for any purpose reasonably deemed hazardous by Lessor because of fire or any other risk or in any other manner which would disturb the peaceful, quiet enjoyment of any other occupant of the apartment community of which the Premises are a part.

Lessor reserves the right of eviction for all the illegal manufacture, distribution, or use or other illegal activities in connection with controlled substance(s). A criminal conviction shall not be necessary before Lessor can institute an eviction action based thereupon.

3. LOCKS/KEYS: All issued keys must be surrendered to Lessor at Lessor’s place of business upon termination of the lease, or a charge of Forty Dollars ($40.00) per lock will be assessed to Lessee. Keys may not be duplicated by Lessee. Lost keys will be replaced at a cost of Four Dollars ($4.00) per key during regular business hours. Lockouts during non business hours will be at the rate of Twenty Dollars ($20.00) plus One Dollar ($1.00) per hour after Eight P.M. payable in cash at time of entry.

4. PETS: Pets are allowed under this rental agreement.

5. INSURANCE: Lessor is not responsible for any personal property on the Premises unless loss is due to Lessor’s negligence. Lessee will be responsible for and is required to insure all the Lessee’s personal property on the Premises and hereby relieves the Lessor of all risk that can be insured thereunder.

6. PARKING: Off street Parking may be on a regulated permit basis at Lessor’s discretion, but Lessor may not withhold parking permits for any reason except unavailability of space. Vehicles improperly
parked, blocking aisles, cars, or dumpsters will be towed. All motorized vehicles are restricted to designated areas only and must use ordinary traffic lanes of ingress and egress.

7. FORBIDDEN APPLIANCES, OBJECTS, AND USE: Large appliances are not permitted in or on the Premises, except those supplied by Landlord, whether in use or not in use, these include but are not limited to freezers, kilns, ovens, etc. This paragraph is not intended to deny the use of smaller portable cooking grills, microwave ovens, toasters, and appliances where the lessee is responsible for the payment of the utility required to run such appliance.

8. COMMON AREAS/AMENITIES-RIGHTS AND RESPONSIBILITIES: Landlord agrees to be responsible for maintenance of any common areas of the Apartment or Apartment Complex. Common areas are defined as any area that is not under the direct control of the tenant by key access (including but not limited to yards, hallways or stairs used by tenants from different apartments, basements or lobbies used by different apartments, etc.).

9. EXTERIOR APPEARANCE AND USE: This lease is specifically for the living area of the Premises, and not for the porch area, stairwell, stairway, hallway, step landings, elevators, lobbies or outside areas of the building. Lessee’s personal property may not be left in these areas and may be discarded by Lessor if left unattended by Lessee, and Lessee denies recourse on Lessor. Chains, locks, and cable will be removed and discarded. Lessee, permittees, and/or guests are prohibited from entering upon or being on any roofs, overhangs, deck coverings, or elevated structures not specifically intended for such use.

10. UTILITIES AND SERVICES: The Lessee shall pay (if checked): ___ Electricity, ___ Gas, ___ Water, sewage, and storm water, ___________ Cable TV. The Lessee agrees to pay for any and all other utilities, related deposits and charges on the Lessee(s) utility bills. The Lessee shall not allow utilities, other than cable, to be disconnected by any means (including non payment of bill) until the end of the Lease term or renewal period. If sub-metering or bill-back percentages are necessary for a utility, the Lessee will be responsible for said utility as if it was a direct billing and late fees will be assessed if not paid and could result in the termination of said utilities. Any premises that has utilities included is only for reasonable use and any utility usage that is excessive or misused will be the responsibility of the Lessee.
11. QUITE ENJOYMENT AND RULES: Lessee shall have peaceful and quiet enjoyment of Premises, provided all lease terms, rules and regulations are met. This does not cover disturbances and noise by others which are a civil or criminal matter, not the responsibility of the Lessor. Lessor may institute legal action against anyone denying Lessee peaceful and quiet enjoyment of Premises.

12. CONDITION OF PREMISES AND REPAIRS: Lessor shall provide a move in inspection form to Lessee on or before move-in. Within seven (7) days after move-in, Lessee shall note all defects or damages on the form and return it to Lessor for a receipted copy. All glass/screens, doors, locks, mailbox doors, mailbox locks, and their parts, and all window glass and window parts are the responsibility of the Lessee for repair and replacement if damage is caused by Lessee. They are to be repaired by Lessee within three (3) days of any malfunction or breakage. Lessor is to be promptly notified that the damage has occurred and when the repairs are finished so that Lessor may inspect and approve the work. All such breakage, repairs, and inspections shall be recorded and kept in the lease file. If not repaired promptly, Lessor may make necessary repairs for safety, security and well being of the Premises and the cost of said repairs, will be billed to Lessee.

No holes or stickers are allowed inside or outside the unit, however, a reasonable number of small nail holes for picture hanging are permitted, but Lessee(s) must repair them at the end of the tenancy. Lessee shall not disable, disconnect, or remove any property, including security devices, alarm systems, smoke detectors, appliances, furniture or screens. Nothing can be stored in furnace areas or furnace rooms. Smoke detectors are provided, as required by law and/or as a courtesy to Lessee. Smoke detectors are not infallible and it is the Lessee’s responsibility to check any smoke detectors on a daily or frequent basis and report any malfunctions to Lessor. Replacement of batteries in the smoke detectors is the sole responsibility of the Lessee. Light bulbs are to be replaced by Lessee and at Lessee’s expense. When moving out, Lessee shall surrender the Premises in good condition, reasonable wear and tear excepted.

13. ENTRY AND WAIVER: After 24 hours notice, Lessor or Lessor’s representatives may enter the Premises to inspect, show,
maintain, repair or for other valid business purposes. A request for repairs shall not be deemed a waiver of notice to enter.

14. SECURITY DEPOSIT: The Lessee agrees to deposit a security deposit with Lessor as security for Lessee’s faithful performance under the Lease and by law. By this rental agreement, Lessor and Lessee(s) acknowledge the payment to Lessor of the amount of - - - - - - to act as such security deposit. Lessee acknowledges that the security deposit may or may not be maintained by the Lessor and may be used to pay expenses of the property owner or may be paid to the property owner. The Lessee agrees the deposit is not an advance payment of rent and does not relieve the obligation to pay rent including rent for the last month of occupancy. At the expiration of the lease term Lessor may apply the security deposit for the past due rent, fees, utilities, and/or the cost of repairing damage beyond reasonable wear and tear to the Premises. Also, abandonment or vacating of the Premises by Lessee before the end of the term of the lease shall result in Lessor deducting damages he/she has incurred from the security deposit. Each Lessee will by jointly and severally responsible for all losses incurred by Lessor occasioned by the tenancy. Lessee agrees to provide Lessor, in writing, a forwarding address upon vacating the Premises.

Lessor agrees to return to the Lessee the security deposit, or whatever part has not been applied in payment of Lessee's obligation under the lease, within thirty (30) days after expiration of the lease or delivery of possession of the premises to Lessor, whichever is last to occur. All deductions will be itemized in writing by Lessor. Lessor may seek damages in excess of the security deposit and lessee agrees to reimburse Lessor for any rent, fees, utilities due and/or damages exceeding the security deposit. One check will be issued for the return of security deposit funds and the check will be issued to all Lessees unless there are more than three (3) lessees, in which case the Lessees will designate one Lessee to whom the check will be issued. The Security Deposit Forwarding Address is given herein as:

__________________________________________

__________________________________________

__________________________________________

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15. CO-SIGNER: If guarantee or co-signing of the lease is required, it is agreed that such document is as much a part of the agreement as if executed at the same time and done as a continued part of this lease. All clauses, monies to be paid or due to be paid are the obligation of the co-signer and the Lessee. Each Lessee and each co-signer shall be jointly and severally liable for the entire amount of this lease, individually and/or collectively. It is agreed that any co-signed copy of the lease is incorporated and becomes a part of said lease. Co-signer consents, if agreed to by Lessee and Lessor, to a change in the name or number of Lessee(s) during the lease term.

16. DEFAULT/ HOLDOVER: In the event Lessee is in default of any of the terms or obligations of the lease, violates and/or fails to comply with any of the covenants, terms, or conditions of the lease, or any community policies herein or hereafter adopted by lessor, said default shall constitute grounds for termination of the lease and/or eviction by Lessor. It is expressly understood and agreed that Lessee shall be and remain liable for any deficiency in rent and damages to the end of the lease term. No tenancy of any duration shall be created by the holding over of this lease. The lease termination date shall end all rights to the Premises that Lessee may enjoy. If Lessee holds over, Lessee is responsible for all costs/damages created by the holdover, including but not limited to expenses incurred in providing alternative/interim housing for subsequent Lessee(s). In the event the Premises become unfit for occupancy for a period of 20 days, the lease shall terminate and be void unless situation causing it is created by Lessee and/or if it is caused by the property and/or the materials of Lessee, Lessee’s guests or permittees on the property of Lessor.

17. NON-LIABILITY: Lessee acknowledges that any security measures provided by Lessor shall not be treated by Lessee as a guarantee against crime or a reduction in the risk of crime. Lessor shall not be liable to Lessee, guests, or occupants for injury, damage, or loss to person or property caused by criminal conduct of other persons including theft, burglary, assault, vandalism, or other crimes. Lessor shall not be liable to Lessee, guest or occupant for personal injury or damage or loss of personal property from fire, flood, water leaks, rain, hail, ice, snow, smoke, lightning, wind, explosions, and interruption of utilities unless caused by Lessor’s negligence. Lessor has a duty to remove ice, sleet, or snow, and Lessor may do so in whole or in part, with or without notice.
18. DELAY IN POSSESSION: Delay by Lessor in delivering possession of the Premises shall make this rental agreement voidable at the discretion of Lessee.

19. RENTAL ACCELERATION: Time is of the essence of this agreement. If there is a default upon any part of this lease by the Lessee, the entire amount due and owing and to become due and owing hereunder shall come due immediately. All Lessees and co-signers agree to be jointly and severally liable for the defaults of Lessee(s) and co-signers under this rental agreement.

20. WAIVER AND SEVERABILITY: Waiver by the Lessor of any portion of this rental agreement shall not constitute a waiver of any other portion of it. If any portion of this rental agreement is deemed to be unenforceable, Lessor and Lessee(s) agree that the remaining enforceable terms shall still be binding upon the Lessor, Lessee(s) and co-signers.

21. ENTIRE AGREEMENT: The lease and attached Addenda listed in paragraph 21 of this lease are the entire agreement between Lessor and Lessee(s). No representations, oral or written, not contained herein or attached hereto, shall bind either party, except any attached Addendum.

22. BINDING EFFECT: The Lease is binding upon Lessor, Lessee, and co-signers, on their respective heirs, assigns, successors, executors, and administrators.

23. JOINT AND SEVERAL LIABILITY: Lessees and co-signers agree to be jointly and severally liable for all their actions and breaches of this rental agreement and/or defaults under this rental agreement.

24. EMPLOYER VERIFICATION: Lessee(s) agree by their signature below that Lessor may contact their employer(s) from time to time and verify that Lessees are employed at the business at which Lessees have told the Lessor they work.

25. LESSOR’S ADDRESS: Lessor’s address for the purposes of payments of rent or notification is:

________________________________________
________________________________________
26. OPTION TO TERMINATE: Lessee(s) may terminate this agreement at any time by giving 60 days notice for any reason. If one Lessee terminates this agreement, the remaining Lessees may continue to pay rent at the Apartment so long as the full rental amount listed above is paid in a timely fashion.

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<th>Lessor or Agent of Lessor:</th>
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Dear Sirs:

I am a resident of one of your rental properties located at:

Please be advised that I have experienced the following problems with the apartment listed directly above:
I believe that these problems violate Ohio Revised Code Section 5321.04 or other applicable housing regulations. Please remedy these problems as soon as possible or I will exercise my rights under Ohio Revised Code Section 5321.07.

Very truly yours,
Notification of Forwarding Address For Return of Security Deposit

Date:

To:

________________________
________________________
________________________

In re: Forwarding Address For Return of Security Deposit:

Dear Sir:

I am presently a tenant of your property located at:

________________________
________________________
________________________

Pursuant to our previous agreement, the amount of______________________ was paid to you as a security deposit. Upon our vacating of the premises at the end of the rental term, please forward this security deposit to the following address:

________________________
________________________
________________________

Very truly yours,
Notice of Termination of Month to Month Tenancy

Date:

To: ___________________________

________________________________

In re: Termination of Month to Month Tenancy

Dear Sir:

I am presently a month to month tenant of your property located at:

________________________________

Ohio Revised Code Section 5321.17 states that either the landlord or the tenant may terminate a month to month tenancy by giving 30 days notice to the other party. Please consider this to be my thirty day notice. R.C. 5321.17 specifies that the 30 days will not begin to be counted until the beginning of a rental term. Therefore, I will pay the rent for the month(s) of ________________, 20___, and will be vacating the Apartment on____________________, 20___.

Very truly yours,
## Move In/Move Out Checklist

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<th>Kitchen</th>
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Q: The landlord believes that he can come into my apartment without giving any written notice and has done this several times in the past. What can I do to prevent this? In addition, my relationship with my landlord has deteriorated over time because of various conflicts that we have had in the past. He has threatened to tell concerned parties that I do not live there to prevent me from taking advantage of opportunities within my residential area. How can I counter this?

A: Ohio Revised Code Section 5321.04(A)(8) requires that a landlord must give a tenant reasonable notice before entering the tenant's apartment unless there is an emergency. Twenty four hours is presumed to be reasonable notice (meaning that the Court will use this as a starting point for reasonableness unless some facts are introduced to show that more or less than 24 hours notice is reasonable). Keep in mind that the Court will require you to be reasonable in accommodating the landlord's needs to make repairs and show or inspect the apartment. This question often comes up in the context of the tenant making a request for repairs, and the landlord treating that request as a carte blanche invitation to stop by without warning. Accordingly, you should specify in any letter requesting repairs that the request is not an invitation to enter and that you expect to be consulted with a mutually convenient time for the repairs to be done.

There are several problems with enforcing your rights in this situation. The first is that it is very difficult to prove to a court months after the fact that someone came into your apartment without your permission. Even if you could prove this, a court will only award you money for your actual damages. That's fine if you have a video tape of your landlord sneaking in and throwing a brick through your television screen, but just walking around in your apartment is hard for a judge to quantify as to damages. This is so even if you are stepping out of the shower as your landlord opens your bathroom door.

Ohio Revised Code Section 5321.04(B) does allow the tenant to terminate his lease upon the landlord's unlawful entry into the premises. In the case of Limage v. Citiscene Apartments 1992 Franklin County Ohio App. No. 92AP190 (June 9, 1992 unreported), the Tenth District Court of Appeals allowed three tenants to terminate their lease for the landlord's merely walking through the apartment without notice while they out. But you should be warned that if you are in Ohio's Fourth Appellate District, the Courts there go by the rule laid down in TKD Enterprises v. Zimmerman 1998 Athens County Ohio App. (July 11, 1998, Athens App. No. 97CA44 unreported), that there has to be more than one unauthorized entry. It is unfortunate that many judges don't take this complaint from tenants very seriously.

Read your lease carefully. If you don't see a clause that requires the landlord's permission for altering the premises, then install an additional lock on the door and don't give the landlord the key. This is permitted under the case of Spencer v. Blackmon (1985), 22 OMisc.2d 52, so long as there is not a contrary lease term.
Most leases however, require the tenant to get the landlord's permission before doing any alteration. If that is the case with you, then go to a local department store and get a portable motion detector (these are pretty cheap and require only a nine volt battery). Set it about ten feet back from the door and turn it on when you leave. Your landlord will not want to spend too much time in your apartment while that thing is going off at 120 decibels. Otherwise, keep the chain on the door while you are there (or if you don't have chain get one of those door stops that you can wedge between the door knob and the floor) and tell the landlord to come back later if he doesn't have an appointment.

If your landlord refuses to acknowledge that you live at the rented address, a reference to the lease and/or your utility bills should clear up any confusion.