

The Rental Agreement

Establishing a Rental Agreement

Statement of the Condition of the Premises (MCA 70-25-206)

At the beginning of the tenancy the landlord must provide the tenant with a written statement of the condition of the premises. The landlord is also required to provide a list of damage and cleaning charges assessed to the previous tenant upon the tenant's request. Many landlords choose to have their tenants fill out a "check-in" sheet or like the *condition of premises form* in our sample & model rental forms page (www.montpirg.com) in order to comply with this requirement. The condition of premises report is important because without it there is no evidence of the condition of the unit when the tenant moved in. The report protects the tenant from being charged for conditions that existed prior to the beginning of the tenancy and provides the landlord with the evidence necessary to withhold money from the security deposit for damages caused by the tenant.

If the landlord fails to provide a statement of the condition of the premises, s/he relinquishes his or her/his claim to withhold cleaning or damage charges from the security deposit when the tenancy ends. Without a written condition of premises the legal burden of proof is on the landlord to prove by "clear and convincing evidence" that the tenant is responsible for the damage in question. This evidence must be presented before any part of the deposit can be withheld.

The Rental Agreement

Montana law defines a **rental agreement** as any written or verbal agreement adopted in order to clarify the rights and responsibilities of both the tenant and the landlord (MCA 70-24-103). The landlord and the tenant must decide between a verbal or written agreement; and must choose a standard, term, or lease agreement. Finally, they should carefully outline any special provisions such as additional repairs to be performed or tenancy rules.

Verbal Versus Written Rental Agreements

Though they differ in significant respects, a few characteristics are common to both verbal and written rental agreements. Each is legally binding on both parties. No rental agreement may contain provisions which violate the law, or waive or forego the rights or remedies of any party under the law (MCA 70-24-202). The court also has some discretion in finding certain provisions of a rental agreement to be "unconscionable". These are provisions that, while not violating the letter of the law, are unfair or repressive to one of the parties. Neither party is required to abide by a rule in a rental agreement that is contrary to Montana law or has been found by a court to be unconscionable.

Aside from these shared qualities, verbal and written rental agreements differ significantly. **Verbal agreements** are those agreements in which there is no written documentation of the terms of your tenancy. You and your landlord simply decide upon the amount of rent, when it will be due, the security deposit amount, and perhaps a few simple rules. Issues not covered by the agreement are determined by state and federal law.

Verbal agreements are convenient to the extent that they are usually short and do not involve reading fine print. Technically, they are just as legally binding as written agreements. However, verbal agreements can be difficult to enforce. First, you must prove that some agreement exists; then you must prove what the terms of that agreement are. If a dispute arises later on, it is likely to deteriorate into an argument pitting the tenant's word against the landlord's. If witnesses are present, some of these difficulties may be avoided later.

If the person you are entering into a rental agreement with does not wish to sign a written agreement, make notes as to witnesses present and the substance of the agreement. Send a signed and dated letter identifying the key points of the agreement to the other party. Keep a copy of the letter for your records. By sending this letter, you not only document your understanding of the agreement, but you also create an opportunity for the other party to clear up disagreements.

A **written agreement** is a signed document listing the terms and provisions of your tenancy. The terms of written agreements are easier to enforce because: **1) they are clearly defined**, and **2) the signatures indicate that both parties understand and accept the terms of the agreement** .

Before signing an agreement, make sure that you read and understand all of its provisions. Under certain circumstances, a written agreement need not be signed by both parties to be binding. If either the landlord or the tenant does not sign and deliver a rental agreement which has been duly signed and delivered by the other party, but acts as though s/he did, then the agreement has the same effect as if it had been signed. If a landlord accepts rent money, or if a tenant takes possession of the dwelling unit, then s/he acts as though the rental agreement was signed (MCA 70-24-204).

Montana law requires that rental agreements be written in plain and understandable language, but if you are unsure of the implications of a certain term or provision, ask an attorney about it or call MontPIRG's Tenant/Landlord Hotline. If there is something you do not like in an agreement, cross it out and initial the modification with your landlord. After negotiating and signing a rental agreement, be sure to retain a copy of it for your records. Be aware that a tenant cannot be bound to provisions in a lease agreement which are prohibited by the Montana Residential Landlord Tenant Act (MCA 70-24-202). The law always takes precedent if there is any doubt.

Standard (Month-to-Month) and Lease Agreements

There are two kinds of rental agreements: the standard month-to-month agreement, and the lease. **Standard month-to-month** agreements can be terminated by either the landlord or the tenant on 30 days written notice **FOR ANY REASON**, unless the termination is discriminatory or retaliatory (see the sections on discrimination and retaliation). In addition, the landlord can change the terms of the rental agreement (including rent) on thirty (30) days written notice.

Leases are rental agreements which do not allow either the landlord or the tenant to vary the terms of the rental agreement for a term specified by the lease (for example, six months). Thus, neither party can terminate the rental agreement until the lease expires, or unless the terms of the lease are violated. If either the landlord or the tenant wish to terminate the lease at the end of the term, a thirty (30) day notice must be given to the other party. If a lease expires, but the tenant continues to pay rent and live at the rental unit and the landlord continues to accept rent, the rental agreement continues, but it then becomes a standard month-to-month agreement. Montana law does not allow for lease agreements of more than one year. If a lease is signed for a period longer than one year, the lease expires after one year and the rental agreement becomes month-to-month (MCA 70-24-204 (3)).

Sometimes a rental agreement will be referred to as a "term agreement." Provided neither the tenant nor the landlord can change the terms of the agreement for the term specified in the rental agreement, then the "term agreement" is for all purposes a lease. Occasionally, however, a "term agreement" will prohibit the tenant from terminating the rental agreement before the term specified, but will allow the landlord to terminate the rental agreement, raise rent, or otherwise change the terms of the agreement within the term specified. Clearly, such an agreement is in almost all circumstances not beneficial to the tenant and should be avoided.

Special Provisions

Many times the landlord and tenant will make special agreements regarding repairs, pets, subletting, etc. These provisions should be spelled out in a written agreement.

1. Repairs. If the landlord has agreed to perform repairs, the repairs and the dates by which they will be completed should be listed on the rental agreement. Each party should initial each repair that is added.

2. Pets (MCA 70-24-422, 1(b)). If a tenant plans to have a pet, they must get written permission from the landlord first. Sometimes the landlord will request an additional pet security deposit to cover cleaning or damage costs which may be associated with the pet. If so, tenants should make sure the terms of the deposit agreement are clear, and keep a copy for their records. Under Montana law, pet deposits are subject to all of the same rules and regulations as security deposits (70-25-101 (4)). Pet deposits cannot be "non-refundable" or have other terms associated with them that violate the Montana Residential Tenants' Security Deposits section of the Montana Code (MCA 70-25).

If a tenant has a pet which is not allowed by the rental agreement, the landlord may give the tenant a 3-day notice specifying that the tenant must either get rid of the pet or vacate the premises. For the tenant, temporarily removing or "hiding" the pet is not a good solution. If the landlord discovers any unauthorized pet in the rental within the next six months, s/he can give the tenant a five day notice to move out, with no opportunity to remedy the situation. If any unauthorized pet causes damage, the landlord may give the tenant a 3-day notice of termination for destruction of property, in which case removing the pet would do no good and the tenant should find another place to live.

3. Managing Premises For Landlord (MCA 70-24-303 (3) & (4)). Tenants may arrange (in writing and separate from the rental agreement) with the landlord to perform repair and maintenance tasks themselves, providing all of the following conditions are met: **a) the agreement is not made in order for the landlord to evade her/his responsibilities ; b) the work the tenant does is not necessary to bring the dwelling into compliance with the housing code ; c) the agreement does not diminish the landlord's responsibility to other tenants** . However, in buildings that contain more than three dwelling units, these kinds of arrangements are prohibited in order to protect the tenant from becoming a general maintenance person for the complex.

4. Subletting Agreements (MCA 70-24-305). Some landlords allow tenants to sublet, or rent, their rental unit to someone for a specified period of time. Tenants cannot sublet unless their landlord has given them written consent. Tenants normally sublet in order to hold a rental unit for a period in which they will be gone (as in the case of a tenant who leaves for the summer but wants to keep her/his apartment), or in order to complete the time remaining on a term agreement or lease.

If a tenant decides to sublet, they retain all their rights and responsibilities as a tenant, but you also take on all the rights and responsibilities of a landlord - **the tenant also becomes a landlord** . Thus, the tenant is still responsible for the timely payment of rent, and for any damages caused by the person subletting

from them, but as a landlord they also take on significant new obligations to, for example, keep the rental unit fit and habitable and to give adequate notice for terminating or changing the rental agreement.

A tenant may not sublet their rental property unless **1) they have written permission from their landlord** and **2) the subletting agreement is for no longer than the period of the rental contract (i.e. the sublet agreement cannot extend past the end of the lease or no more than one month's time for a month-to-month agreement.)**

If you sublet, use a written rental agreement and include in it all the terms of your rental agreement with the landlord. Draw up a separate, written agreement stating the amount and terms of a security deposit. Sublet only to people who recognize the unique nature and responsibilities of the situation and will conduct themselves accordingly.

5. Special Uses of the Premises. If a tenant wishes to use the premises in ways other than as a home to live in-e.g. as an office, day care center, wood-shop, etc. they must get special permission from the landlord. The tenant and landlord should put the terms of this permission in writing as part of the rental agreement. Residential rentals must be used primarily as residences. Small businesses may be run out of a residential unit only if this activity is secondary the use of the unit as a residence. The information in this guide only pertains to residential rental situations. If you rent space for a business, for storage, or for an art studio, etc., the information in this guide will not be valid for your rental agreement.

Bargaining

As you find generally desirable rental units, remember that you can bargain with the landlord for acceptable terms. For example, a landlord might be willing to lower rent, spread the security deposit over several monthly payments, or alter a "no-pets" policy with an additional "pet security deposit". Too often, tenants mistakenly assume bargaining is unacceptable. On the contrary, many landlords are willing to bargain for a good renter. See what the landlord offers, and if it doesn't match your needs, tell her/him what you want to negotiate for the rental agreement you want. If you do make any special agreements, remember to put them in writing on the rental agreement

Changing the Rental Agreement: Raising Rent or Altering the Terms of the Agreement (MCA 70-24-311)

If the landlord wants to substantially change the rental agreement, s/he must give the tenant 30 days written notice before the changes can take effect. In the case of a lease agreement, the landlord may not alter the terms of the rental agreement until the end of the term. If a landlord wishes to alter the terms of a lease agreement upon expiration of that agreement, s/he must provide the tenant notice of his/her intent to change the terms of the agreement 30 days before the lease expires.

Montana law does not place any restrictions or ceilings on how much a landlord can charge for rent or how much a landlord may raise rent. Generally, the landlord may charge whatever the rental market will bear. However, rent increases may not be allowed if they are determined to be retaliatory or intended to discriminate against the tenant (see sections on this site about discrimination and retaliatory conduct).

If a tenant with a lease receives a rule change letter from his/her landlord before the expiration of the agreement, the tenant should send a letter, refusing to recognize the change. Doing this will prevent the rule change from taking effect. This only pertains to those residential tenants with leases. If the tenant

wants to change the terms of the agreement or sublet s/he must negotiate a new agreement with the landlord.

Landlord and Tenant Rights and Responsibilities

General Provisions

Montana law recognises that both tenants and landlords have an interest in maintaining the rental unit and that the tenant/landlord relationship is by nature a symbiotic one. Tenants need landlords to provide a place for them to live and without tenants, landlords would be deprived of a source of income. Correspondingly, tenants and landlords have responsibilities to one another. Generally, tenants have a responsibility to pay the landlord rent in a timely manner and to maintain and care for the landlords property (MCA 70-24-201 , 70-24-321). Alternately, landlords have a responsibility to provide the tenant with a fit and habitable dwelling and to maintain the premises for which the tenant is paying (MCA 70-24-302 , 70-24-303).

Providing a fit and habitable dwelling means that the rental unit must comply with local building codes affecting health and safety and must have at least basic amenities such as heating, hot and cold running water, electricity, proper plumbing, a smoke detector and adequate ventilation. Landlords must also maintain any and all appliances supplied as part of the rental agreement (MCA 70-24-303). In addition, rules and regulations set forth by the landlord must be applied and enforced uniformly and fairly (MCA 70-24-311).

The tenant has a corresponding responsibility to maintain the dwelling, as far as it is in their control, and to keep the unit safe and reasonably clean. Tenants must dispose of all waste in accordance with health and safety codes. The tenant may not destroy, deface, damage or remove any part of the premises and must use the areas within the dwelling unit as they are designed to be used. For instance, a kitchen may not be turned into a ceramics studio. Also, the tenant may not unduly harass or disturb neighbours or use the rental in such a way so as to interfere with neighbour's peaceable enjoyment of their premises (MCA 70-24-321).

Maintenance of Premises and Property

Damages and Repairs

As stated above, the landlord must keep the premises in fit and habitable condition. The tenant has a corresponding obligation to treat the rental unit with care. If the tenant or a guest of the tenant accidentally or intentionally damages the rental property, the tenant is responsible for covering cost of repairs and/or replacement. Tenants must promptly notify the landlord of any damage to the unit.

Occasionally, repairs will be necessary through no fault of the tenant. Before asking the landlord to do repairs, tenants should make sure that: (1) the repairs are not for damages which are the tenants fault, and (2) the damages affect the fitness and habitability of the rental unit. If the tenant thinks the damages might pose a serious health or safety hazard, they should arrange for the county or city building inspector to examine the rental unit. The inspector will normally notify the owner, in writing, of any defects.

Tenants may never withhold rent to induce the landlord to perform repairs. Montana law recognizes that tenants need effective processes to ensure prompt repairs, but it draws a sharp distinction between these

processes and prompt rent payment. Withholding rent in order to force repairs is improper; in response, the landlord can terminate the rental agreement on three days notice and sue the tenant for up to three times the amount of rent (see Termination and Eviction in Ending the Rental Agreement).

If a repair needs to be made and it is the landlord's responsibility to make the repair (i.e. the tenant did not cause the damage and the repair is necessary to keep the premises in a habitable condition or to maintain appliances provided by the landlord) the tenant's first step is always to inform the landlord of the problem. None of the tenant's rights to have repairs made arise until the landlord has been notified of the problem. As a rule, the notification should be in writing and sent to the landlord via certified mail with a copy retained for the tenant's records. Some repairs, however, may necessitate notifying the landlord in a more prompt manner than that provided by the US Postal Service. In such cases, the tenant may choose to notify the landlord in person or by phone or e-mail. Like verbal rental agreements, verbal notification is recognized by Montana law. A landlord may not refuse to make necessary repairs because notice was not given in writing. However, a tenant who gives verbal notification would be well advised to send the landlord a certified letter documenting the prior notification so as to avoid the possibility of a landlord claiming that notification was, in fact, not given.

Montana law specifies a time period of 14 days for the repair of problems in the unit that materially affect health and safety of the premises. If the problem results in a case of emergency, the problem must be fixed in 3 days. In the initial notification letter, the tenant may specify that if the repair is not completed within 14 days the rental agreement will terminate in 30 days. In the case of an emergency, the tenant may specify that the rental agreement will terminate immediately if the repair is not completed in 3 days. If the landlord fails to have the necessary repairs made within the proper time period the tenant has a variety of options for having the repair made, if they do not wish to terminate the agreement.

Option 1: Repair & Deduct

If the cost of the repair is less than one month's rent, the tenant may have the repair made, pay for it, and deduct the cost from the next month's rent. The repair must be made by a professional and a copy of the receipt should be included with the next month's rent payment. This method, commonly known as "repair and deduct", may not be used to make repairs costing more than one month's rent. In addition, the tenant may file a Small Claims Court charge against the landlord to recover any damages s/he incurred due to the landlord's negligence.

Option 2: Injunctive Relief

If the cost of the repairs is more than one month's rent, the tenant may seek "injunctive relief" to force the landlord to comply with his/her responsibilities to maintain the premises. To do this, the tenant must file a complaint in the Justice Court specifying the repairs which are necessary and requesting a court order requiring that the landlord have the repairs made in a timely manner. As in option 1 above, the tenant may recover any damages incurred due to the landlord's negligence through the Small Claims Court .

Options 1 and 2 are generally employed by tenants to have minor repairs made that do not affect the delivery of essential services. If the failure of the landlord to make the required repairs results in the interruption or loss of essential services such as heating or running water, the tenant may either utilize option 1 or 2 or pursue one of the following options. It is important to note that in pursuing options 3,4 or 5, the tenant gives up his/her right to pursue options 1 or 2. In all cases, the landlord must first be notified of the problem and be given an adequate amount of time in which to fix it.

Option 3: Obtaining Service

The tenant may obtain reasonable amounts of the service from some other source and deduct the cost of the service from the next month's rent, and continue to do so until the landlord has made the necessary repairs, provided, of course, that the costs do not exceed the amount of rent. For example, if the landlord fails to repair the furnace, resulting in the loss of heat, the tenant, after notifying the landlord of the problem, may purchase a space heater and deduct its cost along with the increased amount of the electricity bill from the next month's rent. In this case, the space heater would belong to the landlord once its cost has been deducted from the rent.

Option 4: Substitute Housing

The tenant may procure substitute housing until such time as the landlord has made the necessary repairs. During this time the tenant is not required to pay rent to the landlord.

Option 5: Diminished Fair Rental Value

The tenant may recover damages from the landlord based on the diminished fair rental value of the unit. The idea here is that if the unit is worth \$300 per month when everything is in good working order, it is worth less when everything isn't working. If the running water has stopped working, the unit may only be worth \$150 per month. Montana law doesn't specify what diminished fair rental value is in monetary terms for specific situations, so it is up to the tenant and the landlord to work out exactly how diminished the rental value is. If they cannot come to an agreement, the Small Claims Court judge may ultimately decide.

Utilities

The rental agreement should specify which utilities the landlord provides and which the tenant is responsible for. The landlord must provide garbage cans, unless otherwise specified in the rental contract, but you may be required to pay for garbage pick-up.

If the landlord controls the heat, s/he must supply it between October 1 and May 1. If the tenant is responsible for the heating bills, Montana Power cannot shut it off from November 1 through April 1 unless it receives permission from the Public Service Commission.

If you need help paying for your utility bills, apply through the Human Resource Council (see Montana Resource Directory) for assistance from the "Low Income Energy Assistance Program (LIEAP)" or "Energy Share". LIEAP is designed to help low income individuals or families who cannot afford to pay their full heating bills during the winter, based on family and house size, annual income, and the type of heat you use (electric or gas). Energy Share is a state program, providing emergency assistance in paying power bills for those without the funds to pay their own bills. Assistance is available from October 1 through April 30.

Fire Safety

Be sure your dwelling conforms to fire safety codes. If you are not familiar with general fire prevention practices, consult your local fire department.

Use stoves and fireplaces properly and carefully. Plug electric ranges into an outlet. Do not wire them directly into the wall. Make sure fireplaces and wood stoves have safe, clean chimneys or other outside ventilation sources. Keep combustible materials, such as wood and paper, at least four feet from wood

stoves.

Use and maintain smoke detectors. All landlords are required to install a certified smoke detector, at their expense, in each dwelling unit under their control. It is the Tenant's responsibility to properly maintain these detectors (i.e. replacing batteries when necessary and reporting to the Landlord if the detector seems to be malfunctioning). Use ionization or photoelectric smoke detectors, not heat detectors. There should be at least one smoke detector per dwelling unit. The tenant should check to make sure smoke detectors are properly installed, and s/he also might want to install additional smoke detectors as needed. However, if the tenant installs a smoke detectors on the wall, it may become the property of the landlord.

Follow the guidelines below to ensure that your smoke detector is properly placed:

1. A smoke detector's primary function is to awaken sleeping persons and warn them of a dangerous fire. As such, the most important rule for locating a smoke detector is that the detector be between the bedrooms and the rest of the house, but closer to the bedrooms.
2. Place smoke detectors on the ceiling or on a wall six to 12 inches from the ceiling. Never install within six inches of where the wall and the ceiling meet. This is usually dead air space and smoke tends to miss it.
3. Do not place smoke detectors near vents, heating ducts, and other sources of air current which may keep smoke from reaching the detector.
4. Do not place smoke detectors in or adjacent to the kitchen or bathrooms where cooking, steam, etc. might unnecessarily set off the alarm.
5. Avoid placing detectors on a ceiling which is significantly warmer or colder than the rest of the room because a thermal barrier might exist which prevents smoke from entering the smoke detector. This is of primary concern with mobile homes, poorly insulated houses, outside ceilings, and outside walls. If you live in a mobile home, never install the detector on the ceiling or any outside wall use an interior wall.
6. For multistory homes, place a detector on each level of the house, preferably at the top of stairwells. Don't forget to put one in the basement.
7. Follow the manufacturer's installment directions carefully.

Smoke detectors are effective life saving alarms, but they save lives and property only if maintained properly. Follow these rules to keep your alarm working.

1. Test your alarm once a month. Some smoke alarms have a "test button." However, this is not always reliable. It may test the electrical circuit only and not the alarm's ability to detect smoke adequately. To test properly, hold a candle six inches under the detector. To test ionization alarms, let the candle burn. To test photoelectric alarms, extinguish the candle and let the smoke drift into the detector. The alarm should sound within 20 seconds. If it does, fan the smoke away to stop the alarm, and leave as is: the alarm is ready.
2. Replace batteries as needed but at least once a year. Keep spares handy.
3. Replace light bulbs in photoelectric detectors as needed. Keep spares handy.

Renter's Insurance

Renters may have property of considerable value in the apartment or house. The landlord's insurance probably will not cover damage which occurs to tenant's property due to fire, theft, broken water pipes, or natural disaster. Thus, tenants should consider purchasing renter's insurance. Renter's insurance is designed to cover only losses of the tenant's property, not the landlord's. Tenant's seeking insurance should call a variety of insurance agents to get the policy that meets their needs for the best price. Yearly premiums are based on the value of the property the tenant is insuring and generally range from \$50 on up. If the tenant is a student under age 21, their property may be covered by their family's homeowner policy.

Landlord's Right to Access; Tenant's Right to Privacy

(MCA 70-24-312 , 70-24-410 , 70-24-424)

Both tenant privacy and landlord access are protected under Montana law. Landlords cannot abuse their right of access, nor can tenants unreasonably withhold consent from the landlord or the landlord's agent to lawfully enter the unit. In particular:

1. The tenant cannot unreasonably deny access to the landlord in order to inspect the premises, make repairs or improvements, supply services, or show the dwelling to prospective tenants, purchasers, workers, contractors, etc.
2. The landlord cannot abuse the right of access to harass the tenant. Except in emergencies or unless it is impracticable to do so, the landlord must give the tenant 24 hours notice (verbal or written) of her/his intent to enter the premises. The landlord can enter only at reasonable times. Notice may be considered impracticable if the tenant is absent from the dwelling for an extended period.
3. The landlord can enter the premises without 24 hour notice only: a) in an emergency; b) if s/he has a court order or; c) if the rental agreement contains a provision allowing the landlord access when reasonably necessary in cases where the tenant is absent more than seven days.
4. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner (such as an entry at an unreasonable time), or makes repeated demands for access which harasses the tenant (for example, giving the tenant a 24 hour notice every day for a week), the tenant may obtain injunctive (court ordered) relief from the Justice Court or terminate the rental agreement (MCA 70-24-410). On the other hand, if a tenant refuses access to the landlord, the landlord may obtain injunctive relief from the Justice Court to force the tenant to allow access or terminate the rental agreement (MCA 70-24-424). In cases of abuse by the landlord or refusal by the tenant of access, the law allows for recovery of actual damages through the Small Claims Court .
5. The tenant may not remove, replace or add a lock to the premises without the written permission of the landlord. If the tenant adds or replaces a lock not supplied by the landlord, then the tenant must provide a key to ensure that the landlord will continue to have the right of access. If the tenant fails to supply a key, then the landlord may either obtain an order from the court or terminate the rental agreement.

Road Maintenance Obligations (Mobile Homes)

The mobile home park landlord must keep common roads within the park in safe condition, including arranging for snow plowing when needed to make the roads passable.

Section 8 (Subsidized) Housing

Landlord Responsibilities (Section 8)

Section 8 landlords are required to maintain their units in accordance with MCA 70-24-303 (see Subsidized Housing) and with federal Housing Quality Standards. MDOC local agents may perform inspections of Section 8 housing once a year, or in response to a tenant complaint, to insure that all units are meeting the standards. If a deficiency is found the landlord will receive a deficiency letter stating what the landlord needs to do to bring the unit into compliance and specifying a period of time in which the repairs must be made. If the defect is life threatening, the landlord must correct the problem in 24 hours. After the deficiency has been fixed, the tenant must call the local Section 8 agency to schedule another inspection to verify that the problem has been fixed. The landlord should verify with the local agency that a reinspection has been scheduled. MDOC will not issue a rent check to the landlord until a reinspection has been completed.

In Moderate Rehabilitation units, landlords are responsible for repairing all damages to the unit, even those caused by the tenants. The landlord may, however, seek compensation for damages to the unit caused by the tenant in Civil Court and/or terminate the rental agreement.

Landlords are also responsible for enforcing all tenant obligations under the lease. It is not the responsibility of MDOC or their local field agents to ensure tenant compliance with the lease. If the unit is to be occupied by a disabled person, it is also the landlord's responsibility to make any necessary modifications to the unit though these modifications may be at the tenant's expense.

Tenant Responsibilities (Section 8)

All Section 8 tenants are required to abide by Montana tenant/landlord law in regards to the care

and maintenance of the unit they are renting. Tenants are responsible for correcting any breach of the Housing Quality Standards that were caused by the tenant, within the amount of time specified by MDOC. If the breach is life threatening, the tenant must correct the situation in 24 hours.

In addition to these responsibilities, tenants must supply all information that MDOC, its local agents or HUD determines is necessary for the administration of the program. The family must also provide local Section 8 agents with at least a 30 day written notice if they intend to terminate their rental agreement or a copy of any eviction notice from the owner of the unit. Families are also required to notify their local agents of any change in the composition of the household. No family members may be added to the household without prior consent from MDOC.

Ending the Rental Agreement

Termination

Either the landlord or the tenant can terminate (end) a rental agreement. The party who wishes to terminate the agreement must, under normal circumstances, give the other party **thirty days written notice** (MCA 70-24-441 (2)). The party initiating the termination should sign and date the notice and

keep a photocopy for their records. In order to prove the notice was received, or at least sent to the appropriate address, it should be sent by certified mail. A notice sent by certified mail is presumed to be delivered three days after the date of mailing, regardless of whether or not the other party has actually received the notice (MCA 70-24-108). If the notice is delivered in person, the initiating party should obtain a signed receipt indicating the date the notice was received. Additionally, a neutral third party could witness the delivery of the notice and then sign a written statement of what they witnessed.

In the case of a month-to-month agreement, the notice can be given any time during a tenancy, i.e. it need not be given at the beginning of the month or with payment of rent (MCA 70-24-441 (3)). In the case of a lease agreement, the 30 day written notice cannot terminate the rental agreement prior to the date specified in the lease unless either the landlord or the tenant has violated the conditions of the lease or state law. Landlords may terminate a lease agreement with a **five day notice** if the tenant has violated the same lease provision twice within a six month period and was informed in writing of the noncompliance and given adequate time to remedy the situation (70-24-422 (1)(d)). If the landlord has breached the same provision twice and a six month period and has been notified in writing of the breach, the tenant may terminate the agreement with **fourteen days notice** (MCA 70-24-406 (1)(a)(ii)).

Security Deposit Refund

After proper notice has been given by either the tenant or the landlord that the rental agreement is to be terminated, there are a series of steps that need to be taken to ensure that the tenant receives all the security deposit due to her/him and that the landlord is able to withhold any necessary amount from the deposit.

1) Within 7 days of the final termination of the agreement, preferably after all or most of the tenant's belongings have been removed and cleaning has been performed, a final inspection of the premises must be performed (MCA 70-25-201 (2)). Ideally, both the tenant and landlord will be present for this inspection, but if this is not possible then the landlord may perform the inspection without the tenant being present.

2) After the inspection has been completed, the landlord must deliver a written list of additional cleaning to be completed by the tenant to bring the unit into the same condition as when it was rented. The landlord must give the tenant at least 24 hours to complete the required cleaning (MCA 70-25-201 (3)). If, after the final inspection, there is no further cleaning to be completed, no damages to the property for which the tenant is liable, no unpaid rent and the tenant can prove to the landlord that there are no outstanding utility bills for which the tenant is responsible, the landlord must return the full amount of the security deposit to the tenant **within 10 days** (MCA 70-25-202 (2)).

3) After the tenant has had the opportunity to complete any required cleaning and has returned the keys to the landlord, the landlord must deliver to the tenant, **within 30 days**, an itemized list of deductions from the security deposit along with any portion of the security deposit remaining (MCA 70-25-202 (1)). If the tenant fails to deliver their forwarding address to the landlord, this does not forfeit the tenant's claim to the security deposit. If the landlord does not comply with this requirement, s/he forfeits their right to withhold anything from the security deposit for cleaning or damages (MCA 70-25-204).

Occasionally a situation will arise where the landlord and the tenant disagree as to a reasonable amount to be withheld from the security deposit. To avoid as many of these conflicts as possible, landlords should be sure to present every tenant with an initial condition of premises report at the beginning of tenancy. Without the initial condition of premises report, the landlord must be able to show by "clear and convincing evidence" that the damage caused, or cleaning required is the tenant's fault.

Additionally, landlords are not permitted to deduct money from the tenant's security deposit for "normal wear" (MCA 70-25-101 (1)) or for cleaning that is performed on a cyclical basis (MCA 70-25-201 (3)). For instance, if a landlord paints the walls after every tenancy, s/he may not charge the tenant for the painting.

If a tenant disagrees with the landlord's itemized list of security deposit deductions, they should send the landlord a letter detailing why they dispute the deduction (e.g. the damage was preexisting) and requesting the landlord send them an additional refund. Alternatively, cases may occur where the security deposit is insufficient to cover damages caused by the tenant and unpaid rent and/or utilities. In this case, landlords must still send the departing tenant an itemised list of deductions, but in place of a check for the remainder of the security deposit, a bill for the additional charges. If the landlord and the tenant cannot come to an agreement on the amount of the deduction from the security deposit, a Small Claims Court judge may ultimately have to decide (see Solving Problems).

Eviction Procedures

If a landlord wishes to remove a tenant from a rental unit, the steps s/he can take are limited to terminating the rental agreement, asking the tenant to leave, and finally, taking the tenant to court to get an eviction order. In no instance can the landlord physically remove either the tenant or her/his possessions from the dwelling, nor may s/he change the locks or turn off the tenant's power or other services in order to force the tenant out. Doing so entitles the tenant, whether in the rental unit wrongfully or not, to collect three month's rent from the landlord.

Before the landlord can bring an "**action for possession**" (a legal claim for the tenant's removal from the rental unit), s/he must first terminate the rental agreement. The landlord can terminate the rental agreement in the following ways (MCA 70-24-422):

1. **On Three (3) days**, after notifying the tenant in writing if:

- rent is unpaid when due. If the rent is paid within the three days then the notice is void. The three day time is increased to fifteen days for situations requiring the tenant to move a mobile home from rented space (MCA 70-24-422, 2 (a) and (b)).
- the tenant has physically destroyed, defaced, damaged, impaired or removed any part of the premises. The landlord does not have to give the tenant the opportunity to remedy the situation in cases of property damage (MCA 70-24-422 (3)).
- the tenant is keeping an "unauthorized pet", (one not allowed by the rental agreement) on the premises. The rental agreement terminates if the pet is not removed from the premises within those three days. If the pet is removed then the notice is void (MCA 70-24-422, 1 (b)). If this breach of the rental agreement occurs again within six months, the landlord may terminate on **five (5) days written notice**, with no opportunity for the tenant to correct the situation (MCA 70-24-422, 1(d))*).
- there are unauthorized people (people other than are on the contract, or that the landlord has not authorized) residing in the rental. The rental agreement terminates if the unauthorized person is not removed within those three days. If the unauthorized person does leave within three days, the notice is void (MCA 70-24-422, 1 (c)). If this breach of the rental agreement occurs again within six months, the landlord may terminate on **five (5) days written notice** with no opportunity for the tenant to remedy the situation (MCA 70-24-422, 1(d))*.

** These conditions do not apply to rental agreements where a tenant rents space in a mobile home park but owns the mobile home.*

2. **On Fourteen (14) days** after notifying the tenant in writing if:

· there has been a non-compliance with the terms of the rental agreement. If the tenant does whatever is necessary to remedy the non-compliance within the 14 day period, the notice is void (MCA 70-24-422, 1 (a)). This can happen in just five days if the same act of non-compliance occurred within the previous six months (MCA 70-24-422, 1(d)). Non-compliance involving unauthorized pets or persons in the rental, as mentioned in section 1, only require a three (3) day notice.

3. **On Thirty (30) days** (in the case of a month-to-month agreement) after notifying the tenant in writing that s/he wishes to terminate the agreement. The landlord is not required to provide the tenant with a reason for the termination if they give the tenant 30 days notice of the termination. There is no law in Montana barring eviction during the winter. However, termination of the rental agreement is not allowed, regardless of the amount of notice given, if the termination is retaliatory or discriminatory (see sections on Retaliatory Conduct by Landlord and Discrimination).

Termination on notice of less than thirty days, as mentioned above, is allowed only for some non-compliance on the part of the tenant. Landlords may recover actual damages for any non-compliance by the tenant. (MCA 70-24-422, 4) This means that if a landlord was forced to terminate the rental agreement because of noncompliance by the tenant, the landlord could recover, in court, actual losses which the landlord incurred. For example, the landlord could charge the tenant for rent until the unit was re-rented, assuming the landlord made a reasonable effort to re-rent the property. Situations involving destruction of property, wastage, and second offenses within six months do not require that the tenant be given any "second chances" to remedy the situation.

If the tenant remains on the premises following termination of the agreement, the landlord can take them to court to get an eviction order. If the tenant doesn't move out upon legal termination of the rental agreement, the landlord can sue the tenant for her/his court costs, attorney's fees, and three times the amount of rent due during the time the tenant occupied the rental unit after the rental agreement was terminated.

If a tenant feels they're being unlawfully evicted (see Retaliatory Conduct by Landlord and Discrimination), they may dispute the eviction by filing a counterclaim against the landlord within 10 days of being served with the action for possession. In the counter suit, the tenant is entitled to sue to retain possession of the premises and for up to three month's rent or treble damages, whichever is greater.

As a tenant, if your landlord is preparing to file an action for possession (eviction) against you, consider your circumstances carefully before proceeding. If you are considering contesting the eviction, you might want to consult with an attorney before taking any action. If the conditions under which the landlord terminated the rental agreement are legal and proper, move out. If not, try to pursue your concern with the landlord. Document your attempts to resolve the issue. If no agreement is possible and further negotiations are useless, and if you feel the landlord is trying to evict you wrongfully, pursue the problem in court.

It is important to note that Montana law states that **acceptance of rent by the landlord is a waiver of a**

claimed breach only when the claimed breach is the nonpayment of rent. In the past, the acceptance of rent by a landlord invalidated any pending action for possession, but now, it only invalidates the eviction procedure if the complaint against the tenant is for non-payment of rent. The acceptance of partial payment of rent due does not constitute a waiver of any right (MCA 70-24-423).

Reasons for Eviction (MCA 70-24-436)

Unlike rentals involving a landlord-owned dwelling, rental agreements for spaces in mobile home parks may only be terminated for good cause. Below is a list of reasons for which a mobile home space rental agreements may be terminated. The type of termination notice required for each reason appears in parentheses().

1. Nonpayment of rent, late charges or common area maintenance fees as established in the rental agreement (**15 day notice** , pay or quit).
2. Late payment of rent, late charges or common area maintenance fees three or more times in a 12-month period if the landlord gave written notice after each non-payment incident (**30 day notice**)
3. Violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the park if the violation has not been remedied 24 hours after the violator is given written notice of the violation (**30 day notice**).
4. Two or more violations within a 12-month period of any combination of one or more mobile home park rules, the violation of which would have a significant adverse impact on the mobile home park or its residents and which are so designated (**30 day notice**).
5. Two or more violations within a 12-month period of the same rule (**30 day notice**).
6. Two or more violations within a 12-month period of MCA 70-24-321 (1) or any violation of MCA 70-24-321 (**30 days**).
7. Disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises (**30 day notice**).
8. Endangering other residents or park personnel, causes substantial damage to the park premises.
9. Conviction of the mobile home owner or tenant of the mobile home owner of violation of a federal, state, or local ordinance when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park or the landlord's documentation of a drug violation.
10. Changes in the use of the mobile home park land (**6 month notice**).
11. A legitimate business reason (**90 day notice**).

The Eviction Process. (MCA 70-24-427)

Under no circumstances can the landlord personally remove the tenant. Additionally, the landlord cannot change the locks on the rental or cause the interruption of essential services in an attempt to oust the tenant.

The eviction process is as follows:

1. The landlord delivers a written termination notice to the tenant.
2. The tenant refuses to obey the notice and remains in the rental unit after the termination date.
3. The landlord files an action for possession with the county justice court.
4. The sheriff's department delivers a summons and a copy of the complaint to the tenant.
5. The tenant has ten days to respond to the complaint. The tenant files her/his response with the court.

If the tenant fails to file a counter-claim within 10 days, the landlord can obtain a default judgment in his/her favor and obtain a writ of assistance from the justice court to have the tenant removed. The landlord takes the writ of assistance to the sheriff's department to have the tenant physically removed. The landlord can store any of the tenant's property and charge for reasonable moving and storage costs.

6. If the tenant responds to the complaint, the judge sets a trial date within twenty days.
7. After hearing testimony and arguments, the judge, within five days, decides whether or not the eviction notice is legal.

If the judge decides in favor of the tenant, the tenant can of course continue to stay at the rental unit and may collect any damages awarded by the court.

If the judge decides in favor of the landlord, the tenant must move out and pay the landlord any damages awarded by the court.

Retaliatory Conduct By Landlord (MCA 70-24-431)

A landlord may not terminate the rental agreement, bring or threaten to bring an action for possession, raise the rent, or decrease services because the tenant:

1. Submitted a written complaint to the landlord about damages affecting the habitability, health, or safety of the rental unit, or
2. Submitted a written complaint to federal or state authorities about damages affecting the habitability, health, or safety of the rental unit, or
3. Joined a tenants' union or similar organization.

If the tenant provides evidence of having complained or joined a tenants union within six months of the alleged retaliatory conduct (eviction, raising the rent), then it creates a "rebuttable presumption" that the landlord's conduct was in retaliation. This means that unless the landlord can prove otherwise with clear and convincing evidence, the court will assume that the action is in retaliation and therefore illegal. This is why it is so important for tenants to communicate with their landlord in writing. Oral requests for repairs are not enough to prove retaliatory conduct.

The rebuttable presumption will not hold, however, in the following cases:

1. The action requested by the tenant involves remodeling or alterations required to bring the unit into compliance with appropriate building or housing codes that would require the tenant to move out of the unit.
2. The damages complained about by the tenant were caused by the tenant.
3. The tenant is in default on the rent.

If the landlord takes retaliatory action against the tenant, the tenant is entitled to sue for triple damages or three months rent, whichever is greater, (also see the section on suing in small claims court).

Abandonment (MCA 70-24-426 and 70-24-430)

Occasionally a tenant will abandon a rental property, leaving some of their personal possessions in the unit. If a landlord has reason to believe that the property has been abandoned they must follow the steps listed below. Failure to follow the letter of the law when dealing with abandoned property may result in a charge of illegal property seizure or theft by the tenant.

1. The landlord must reasonably believe the tenant's property has been abandoned. Before taking action, the landlord must wait at least five days from the time of the occurrences which led her/him to believe the property had been abandoned.
3. The landlord must create an itemized list of the property that has been abandoned.
4. The landlord may move and store the property in a place of safekeeping. S/he must treat the property with reasonable care.
5. Upon moving and/or storing the property, the landlord must make a reasonable attempt to notify the tenant in writing that the landlord is now in possession of the property and that it must be removed. The landlord should send a notice by certified mail to the tenant's last-known address and must state that at a specified time, not less than fifteen days after mailing the notice, the property will be disposed of if not removed.
6. The landlord must deliver a list of items the s/he is holding to the local law enforcement office .
7. The landlord must make a reasonable effort to determine if the property is secured or otherwise encumbered.
8. If the tenant retrieves the property, the landlord is entitled to reasonable storage and labor charges if the property is stored by the landlord, plus the cost of removal of the property to the place of storage (MCA 70-24-430). If the tenant contacts the landlord within the fifteen days specified in #5 above, and declares their intention to remove the property but fails to do so after seven days, the property is considered abandoned and the landlord may proceed with the sale/disposal of the property. The landlord is not responsible for loss or damage unless it occurred as a result of her/his intentional or negligent actions. If this is the case, the landlord is liable for actual damages. The landlord does not have to release the property until any storage costs owed to the landlord have been paid by the tenant.
9. If the tenant does not retrieve the property, the landlord can either sell the property, or if the cost of storage or sale exceeds the value of the property, destroy it. If the landlord sells the property, s/he can

deduct reasonable costs for moving, storing, labor, and selling the property (as well as for rent owed or damages), but must give any remaining proceeds to the tenant. If the tenant cannot be found, the remaining money should be given to the county treasurer. If the landlord chooses to attempt to sell the property, they need follow specific guidelines for the sale. (MCA 30-9-503, 3)

Once a landlord has removed and stored abandoned property, this creates two separate debts that the tenant owes to the landlord: 1)Any back rent, damages, or cleaning costs unpaid and 2) the cost of removing and storing the tenant's property. If the tenant pays the removal and storage costs to the landlord, the landlord must return the tenant's property from storage. Under no circumstances can the landlord withhold the return of the stored property in order to force the tenant to pay any additional debts.

Abandoned Mobile Homes (MCA 70-24-432)

The 2001 Legislature added this section to cover mobile homes that have been abandoned on a rented lot. For the most part, the procedure is the same as that for abandoned property in a rental units, with the excption of a longer waiting period in which the owner may claim the mobile home. In step #8 above, if the owner notifies the landlord of their intent to remove the mobile home and fails to do so after 20 days, the mobile home is considered to be abandoned and the landlord may procede with the sale/disposal of the mobile home. All other procedures are the same as specified above.

Section 8 Terminations and Evictions

All Housing Assistance Payments contracts are for an initial period of six months. During this time, both the landlord and the tenant are barred from terminating the rental contract unless the other party has repeatedly and severely violated the terms of the lease or Montana law. Landlords may also terminate the rental agreement during the initial six month period for other good cause, as long as that cause is something the tenant did or failed to do. Landlords may not terminate the agreement during the first year because they want to use the unit for some other purpose or becuase the tenant won't agree to a revision of the lease. The landlord may not terminate the rental agreement for non-payment of MDOC's share of the rent.

After the first six months, a tenant or landlord may terminate the rental agreement for any reason by delivering to the landlord or tenant and MDOC a written notice of termination. The notice must be delivered at least 30 days prior to the termination but not more than 60 days. If a tenant moves out of the rental unit before the end of the month, the landlord is entitled to keep the entire month's rent portion from MDOC but must return a prorated amount of rent to the tenant if the unit is re-rented before the end of the month.

If at any time the landlord sells the property to a new owner, they must immediately notify MDOC of the sale. MDOC cannot issue rent checks to the new owner until they have filled out the required paperwork for the Section 8 program.

The Security Deposit

The Security Deposit Agreement (MCA 70-25)

Most landlords require the tenant to put down an amount of money, separate from rent, to protect the landlord from losses due to tenant-caused damages, appropriate cleaning not performed by the tenant,

and unpaid rent and utilities owed by the tenant after the rental agreement is terminated. This is usually called the "**cleaning** " or "**security**" **deposit**. It should be noted, however, that any money (or its equivalent) collected by the landlord to ensure the premises are left clean, no damages have occurred, and that all rent and utilities are paid is considered to be a security deposit, no matter what it is called (MCA 70-25-101 (4)). This means that landlords cannot evade security deposit regulations simply by calling the security deposit, or a portion thereof, by a different name (i.e. pet deposit, cleaning fee, etc.)

It should also be noted that Montana law defines security deposits as "value given in money or its equivalent " (MCA 70-25-101). This means that if tenants are required to perform cleaning on the apartment when they move in, an appropriate charge for their labor is part of the security deposit and must be refunded to them upon termination of the tenancy.

The security deposit is the tenant's money throughout the tenancy and is eventually refunded to them provided they don't owe any rent and leave the rental unit in as good condition as when they moved in. Non-refundable cleaning and security deposits are not allowed under Montana law.

The security deposit agreement should be set down in writing. Refer to our sample & model rental forms page for a model agreement. If the landlord does not want to sign an agreement, the tenant should make sure to get a receipt for the deposit and save it for future reference.

Statement of the Condition of the Premises (MCA 70-25-206)

At the beginning of the tenancy the landlord must provide the tenant with a written statement of the condition of the premises. The landlord is also required to provide a list of damage and cleaning charges assessed to the previous tenant upon the tenant's request. Many landlords choose to have their tenants fill out a "check-in" sheet or like the *condition of premises form* in our sample & model rental forms page in order to comply with this requirement. The condition of premises report is important because without it there is no evidence of the condition of the unit when the tenant moved in. The report protects the tenant from being charged for conditions that existed prior to the beginning of the tenancy and provides the landlord with the evidence necessary to withhold money from the security deposit for damages caused by the tenant.

If the landlord fails to provide a statement of the condition of the premises, s/he relinquishes his or her/his claim to withhold cleaning or damage charges from the security deposit when the tenancy ends. Without a written condition of premises the legal burden of proof is on the landlord to prove by "clear and convincing evidence" that the tenant is responsible for the damage in question. This evidence must be presented before any part of the deposit can be withheld.

Security Deposit Refund

After proper notice has been given by either the tenant or the landlord that the rental agreement is to be terminated, there are a series of steps that need to be taken to ensure that the tenant receives all the security deposit due to her/him and that the landlord is able to withhold any necessary amount from the deposit.

1) Within 7 days of the final termination of the agreement, preferably after all or most of the tenant's belongings have been removed and cleaning has been performed, a final inspection of the premises must

be performed (MCA 70-25-201 (2)). Ideally, both the tenant and landlord will be present for this inspection, but if this is not possible then the landlord may perform the inspection without the tenant being present.

2) After the inspection has been completed, the landlord must deliver a written list of additional cleaning to be completed by the tenant to bring the unit into the same condition as when it was rented. The landlord must give the tenant at least 24 hours to complete the required cleaning (MCA 70-25-201 (3)). If, after the final inspection, there is no further cleaning to be completed, no damages to the property for which the tenant is liable, no unpaid rent and the tenant can prove to the landlord that there are no outstanding utility bills for which the tenant is responsible, the landlord must return the full amount of the security deposit to the tenant **within 10 days** (MCA 70-25-202 (2)).

3) After the tenant has had the opportunity to complete any required cleaning and has returned the keys to the landlord, the landlord must deliver to the tenant, **within 30 days**, an itemized list of deductions from the security deposit along with any portion of the security deposit remaining (MCA 70-25-202 (1)). If the tenant fails to deliver their forwarding address to the landlord, this does not forfeit the tenant's claim to the security deposit. If the landlord does not comply with this requirement, s/he forfeits their right to withhold anything from the security deposit for cleaning or damages (MCA 70-25-204).

Ocasionally a situation will arise where the landlord and the tenant disagree as to a reasonable amount to be withheld from the security deposit. To avoid as many of these conflicts as possible, landlords should be sure to present every tenant with an initial condition of premises report at the beginning of tenancy. Without the initial condition of premises report, the landlord must be able to show by "clear and convincing evidence" that the damage caused, or cleaning required is the tenant's fault. Additionally, landlords are not permitted to deduct money from the tenant's security deposit for "normal wear" (MCA 70-25-101 (1)) or for cleaning that is performed on a cyclical basis (MCA 70-25-201 (3)). For instance, if a landlord paints the walls after every tenancy, s/he may not charge the tenant for the painting.

If a tenant disagrees with the landlord's itemized list of security deposit deductions, they should send the landlord a letter detailing why they dispute the deduction (e.g. the damage was preexisting) and requesting the landlord send them an additional refund. Alternatively, cases may occur where the security deposit is insufficient to cover damages caused by the tenant and unpaid rent and/or utilities. In this case, landlords must still send the departing tenant an itemised list of deductions, but in place of a check for the remainder of the security deposit, a bill for the additional charges. If the landlord and the tenant cannot come to an agreement on the amount of the deduction from the security deposit, a Small Claims Court judge may ultimately have to decide (see Solving Problems).

Section 8 Security Deposits

Section 8 landlords are allowed to collect security deposits from their tenants. However, MDOC local field agents may prohibit security deposits above private market practice or above the amount

required of non-Section 8 tenants. For Moderate Rehabilitation Housing, the landlord may collect a security deposit in the amount of one month's tenant payment, or \$50, whichever is greater. The Montana Residential Security Deposit Act (MCA 70-25) applies in full to all Section 8 security deposits.

For more information on this issue, visit our section on Subsidized Housing/Section 8 .

The Holding Deposit

A holding deposit is often paid by a prospective tenant to reserve a dwelling space for a certain amount of time until a rental agreement is formally initiated. In accepting such a deposit, the landlord is considered to have given consent for the person to take possession of the property. When you do move in, the deposit is normally returned or applied to the rent or security deposit. If you pay a holding deposit and then back out of the deal, the landlord usually keeps the deposit as payment for having taken the unit off the market while you made up your mind.

The above definition of a holding deposit is drawn from the laws of other states, not from Montana. The Montana Residential Landlord Tenant Act does not define the term holding deposit. Lacking this state legal definition, it is very important to negotiate a complete rental agreement as well as a written agreement with the landlord spelling out the terms of the holding deposit, including the last date that you can opt not to sign the rental agreement. Without a written agreement regarding the holding deposit, it would be the landlord's word against the word of the prospective tenant as to what the holding deposit money was for. Without a written agreement, a landlord could keep all of the holding deposit after previously verbally agreeing to apply the money towards the security deposit when the tenant moves in. Download a model holding deposit agreement in our sample & model rental forms page .

Before you pay a holding deposit, make sure you have the conditions of the holding deposit spelled out on paper to your satisfaction. Get a receipt for the payment, and be sure to keep a copy of the holding deposit agreement for yourself.

Solving Problems

Landlords and tenants should be able to resolve problems quickly, amicably, and at relatively little cost. Obviously, disputes will rarely arise if both parties understand their rights and fulfill their obligations. If a problem does arise, both parties should proceed carefully, calmly and deliberately. This way, the chances are increased that the problem will be resolved properly.

It is always better to make requests for repairs or complaints in writing, rather than orally, whether face-to-face or over the telephone. Written documents are more likely to get an appropriate response, and if the case goes to court, they provide evidence and show that the parties have tried normal avenues of redress before bringing the dispute to court.

If negotiations are failing, one or both of the parties may want to consult with someone who can provide assistance. This might be a consumer advocate or an attorney (see Montana Resource Directory). A consumer advocate may be a law student, paralegal, or trained lay person. While not able to represent you in court or give legal advice, s/he may be experienced in tenant-landlord conflicts and can give helpful information to you. In contrast, an attorney can provide legal advice, and if necessary, represent you in court. Remember, there are no attorneys allowed in Small Claims Court unless both parties are represented .

Ultimately, if you cannot resolve a dispute, you will be forced or take the issue to court where a judge will make a decision in the case. In court, written records of events are preferable, in order to avoid having the dispute turn into one party's word against the other.

Standard Complaint Letter

Many times, the most appropriate first step towards resolving a problem is to write a request/complaint letter. In general, it should include the following.

1. A concise statement of the problem(s).
2. A chronology of previous attempts to resolve the problem(s) and responses to those attempts.
3. A clear and well-defined statement requesting that the problem be resolved. This should explain the specific course of action requested and a specific time period within which the request must be met.
4. A clear indication as to what will be done if the request is not met within the time specified.

Letters should also include a full name, address, phone number, signature, and date. Always keep a photocopy for your records. When sending out the letter, go to the post office, request a certificate of mailing, and then staple the certificate to your copy of the letter. This certificate proves that the letter was mailed.

In Montana, if the notice is made with a certificate of mailing or by certified mail, service is considered to have been made three days after the date of mailing. (MCA 70-24-108, 1c)

In previous editions of our Tenant/Landlord Guide , it has recommended sending notices by certified mail, which requires a signature for delivery. If the recipient refuses to sign for the letter, then there would be an official record (on file with the post office) that s/he did not receive the letter. Therefore, a certificate of mailing, which requires no signature, is the better of the two choices.

Sample complaint letters can be viewed in our Sample and Model Forms page .

Consulting an Attorney

Attorneys can give expert advice, negotiate, and represent their client in court. To find an attorney, check to see if your university, employer, union, or other community group provides legal assistance. You can also check the yellow pages or the Bar Association (call the Lawyer Referral Service at (406) 449-6577).

1. **Consultation and Advice.** An attorney can provide an assessment of the legal options for action in a particular case. Consultation involves an office visit. Some lawyers do not charge for the first visit, but ask before setting up an appointment.
2. **Negotiation.** A lawyer can help you negotiate via a letter, phone call, or meeting.
3. **Litigation.** If you go to court, an attorney can advise or represent you.

Small Claims Court

Occasionally after the termination of the rental agreement , or during the term of the rental agreement, either the tenant or landlord may decide that the other party owes them money. Usually, in the case of the tenant, this money is for a wrongfully withheld security deposit , meaning the tenant feels that the

landlord has withheld money from the security deposit for pre-existing problems or that the landlord has withheld an unreasonable amount for deductions that would otherwise be acceptable. On the landlord's side, they may feel that the former tenant's security deposit was not enough to cover the costs of cleaning the unit and making repairs after the tenant vacated, or that the former tenant owes them for unpaid rent or utilities beyond the amount of the security deposit. Claims may also be filed for personal property that is being wrongfully withheld by another party. Claims may also be filed in Small Claims Court for diminished fair rental value or actual damages incurred due to the other parties noncompliance with the rental agreement or Montana law.

If you feel that your current or former landlord or tenant owes you money or property **the first step is** always to contact the other party via a certified letter and request that they pay you the amount you feel is owed. Standard procedure is to give the other party 10 days to respond to the request, after which period a claim may be filed in either Civil or Small Claims Court, depending on the nature of the claim (see below). If the other party refuses to pay before the 10 day period has expired, a claim may be filed immediately.

Where to File

Depending on what the damages you are seeking are for (i.e. unpaid rent, wrongfully withheld security deposit, property damage) you will file your claim in either the Small Claims Court (SCC) or in Civil Court. The SCC is a division of the county Justice Court and the two will usually be located in the same office. You may file a claim in SCC if you feel that the other party owes you money or property belonging to you up to an amount of \$3000. Tenants seeking wrongfully withheld security deposits, and landlords seeking unpaid rent, utilities, or cleaning fees should file in SCC. Also, landlords or tenants who feel that the other party is in possession of property belonging to them worth less than \$3000 should file in SCC.

Claims for monetary reimbursement for damaged personal property must be filed in Civil Court, regardless of the amount of compensation owed. You should also file in Civil Court if your claim arose due to negligence on the part of the other party.

Another thing to keep in mind when filing a claim in either SCC or Civil Court is in which county you will be filing. Claims must be filed in the county where the defendant lives or where he/she has a place of business or in the county where the events in the dispute occurred . In any case, the defendant must be able to be served in the county where you file your claim.

Filing in Small Claims Court

After you have sent a certified demand letter to the other party and they have either refused to pay verbally or in writing, or have not responded to the letter after 10 days, you may file a claim in SCC. Be sure to bring a copy of the letter and the mailing receipt with you when you go to the courthouse to file your claim and also to your court date, as these are your evidence of having attempted to get the other party to pay you voluntarily.

To file a claim in SCC you must pay a filing fee of \$15. This fee may be added to the amount of your claim if the court finds in your favor. After paying the fee you will be asked to fill out a few forms to initiate the SCC process.

First you must fill out the Complaint form. You will need to know the correct and complete name and

street address of the person you are filing against, a post office box is not sufficient. You must have this information so that the other party can be served with an order to appear in court. Also on the Complaint form you will need to state the reasons for filing your claim and the amount of money or the property you want to recover. The clerk at the SCC should be able to help you in filling out the Complaint form but they cannot give you legal advice.

After you have filled out the Complaint form , you must have the other party (the defendant) served with an order to appear in SCC for the trial. The clerk or judge will set a time and date for the trial when you file your claim. The trial date will be set for sometime from 10 to 40 days after you file. As the Plaintiff, you are responsible for making sure the defendant is served with the order, however, you may not serve the defendant yourself. Most people opt to have the county Sheriff serve the defendant, but you may decide to have a process server or some other disinterested third party perform the service. You should be able to find local process servers in the Yellow Pages. A disinterested third party may serve the defendant if they are at least 18 years of age. If you have the Sheriff serve the defendant, they will require a \$30 dollar deposit plus an additional \$20 for each additional defendant. The charge for service will vary depending on how many trips the Sheriff must make to serve the defendant and how far away the defendant lives. After the defendant has been served you may get some of your money back or be asked to pay more. Fees for process servers will vary with location. However you decide to have the defendant served, they must receive the summons at least five days prior to the court date.

Counter-Claim and Removal

Once the defendant has been served with the order to appear, they may decide that the plaintiff actually owes them money or property. In this case, the defendant may file a counter-claim against the plaintiff at the SCC. Counter-claims must arise from the same transaction as the original claim. For example: a tenant files a claim against her ex-landlord for wrongfully withholding her security deposit. The landlord, however, feels that the former tenant's security deposit was not enough to cover reasonable costs for the amount of time he spent cleaning the apartment and so decides to file a counter-claim for cleaning charges above the amount of the security deposit.

Counter-claims must be filed and served on the plaintiff at least 72 hours prior to the date of the trial. Counter-claims may not exceed \$2500. There is a \$10 fee for filing a counter-claim but a defendant who files a counter claim will not be required to pay the \$10 appearance fee.

The defendant may also choose to have the case removed from the SCC to the Justice Court. In Justice Court both parties may choose to be represented by attorneys and the defendant may request a jury trial. If the defendant chooses to have the case removed to Justice Court, they must first pay the SCC a \$10 removal fee and then pay the Justice Court a \$30 filing fee. These costs may be recovered by the prevailing party, as well as attorney's fees. If the defendant does not have the case removed to the Justice Court they give up their right to be represented by an attorney and their right to a jury trial.

At the Trial

Before you go to your own trial at the SCC, you may want to sit in on another trial so that you can get a feeling for the procedure and know what to expect at your own trial. All SCC proceedings are open to the public unless one of the parties has requested otherwise.

It is important to show up to your SCC trial whether you are the plaintiff or the defendant. Failure to appear by either party could result in a default ruling for the other party. If you will not be able to make

it on the time and date of your trial, you may notify the SCC clerk and request that the date be moved.

Before the trial, the defendant, if they have not filed a counter-claim, must pay the SCC a \$10 appearance fee. At the trial, the Judge will first swear in the plaintiff and ask him/her to give the facts of their case. Facts should be presented in the order in which they occurred. The plaintiff may give testimony, provide any relevant material evidence and call witnesses to make her/his case. Then the defendant is sworn in and gives his/her testimony, provides evidence and calls all of her/his witnesses. Both parties have the opportunity to cross-examine the other party and his/her witnesses and ask questions about any evidence presented. The burden of evidence is on the plaintiff to prove that the defendant owes him/her the money or property claimed. However, the defendant should be prepared to show that they do not owe the plaintiff the money or property. If the defendant has filed a counter-claim against the plaintiff, they should be prepared to show that the plaintiff owes them that amount of money or property. Attorneys are not allowed in SCC unless both sides are being represented by attorneys . You may wish to seek legal counsel before the trial but as a rule, no lawyer may represent you during the trial itself (see the Montana Resource Directory for information on finding a lawyer). If there is a witness whose testimony is essential to your case but who you do not think will come to the trial, you may have the Judge subpoena them. To have a witness subpoenaed you must pay witness and subpoena fees.

Judgement

Within five days of the conclusion of your case, the judge will issue a written decision or judgement. The prevailing party is entitled to collect the amount of money or specific items of personal property set forth in the judgement plus all court costs. However, it is the responsibility of the prevailing party to collect the payment from the other party. If the losing party refuses to pay, the prevailing party may go back to the SCC and request a writ of execution. This is an order to the Sheriff, directing him/her to take money or specific personal property from the losing party to pay the judgement.

Appeal

If either party is not satisfied with the judgement in the case they may appeal the case to the District Court. Appeals must be filed at the SCC within 10 days of the judgement. Within 30 days of the filing of the appeal, the record of the trial and any evidence presented will be sent from the SCC to the District Court. The party appealing will be notified when this happens but it is their responsibility to make sure that the records are transmitted.

Appeals may only be filed in matters of law, meaning you can only file an appeal if you believe the judge applied the law in your case incorrectly. The case will not be retried at the District Court, the judge at the District Court will only review the case and rule as to whether or not the law was correctly applied in the original ruling. Fees for filing an appeal are the same as for removing a case to Justice Court (see above).

Fees for Small Claims Court

Filing Fee: \$15

Service Fee: \$30+\$20 for ea. Additional Defendant

Counter-Claim/Appearance Fee: \$10

Appeal/Removal Fee: \$10 + \$30 filing fee in Dist. Court

Civil Court

If your claim is for damage to personal property or has arisen due to negligence on the part of the other party or your claim is for more than \$3000 but less than \$7000, you must file your claim in Civil Court. Procedures for filing a claim in Civil Court are similar to filing in SCC with a few exceptions.

The filing fee for Civil Court is \$30 and you may file a claim without first having sent a certified demand letter, although this is still suggested. There is no charge for a counter-claim in Civil Court but there is a \$15 answer fee which you must pay regardless of whether or not you have a counter-claim. There is also a \$10 judgement fee levied on the prevailing party. However, both the answer fee and judgement fee may be recovered from the losing party. As stated above, the money value limit for Civil Court is \$7000. Any claim for more than \$7000 must be filed in District Court.

Discrimination

Unless a landlord is renting a room in her/his own house, the landlord is forbidden from discriminating against a potential tenant on the basis of the individual's race, color, creed, religion, sex, age, marital status, familial status, national origin, or mental or physical handicap.

If you feel you are being discriminated against, or if you have questions about discrimination, call the Montana Human Rights Commission at 1-800-542-0807. Montana Fair Housing can also assist you in filing a discrimination complaint. Montana Fair Housing can be reached at (406)542-2611 in Missoula, (406)245-6083 in Billings, or 1-800-929-2611 statewide.

The prohibitions against discrimination based on age or familial status mean that it is illegal to discriminate against tenants with children. Thus, a landlord cannot refuse to rent to you because you have children. **There are two exceptions** to this law: 1) if the apartment in question is a room in the landlord's own house of residence, or 2) if the rental unit in question is part of a truly "all-adult" community, such as a nursing home.

Federal law also establishes rights to accessible housing for disabled persons. If a rental unit can be made accessible, a landlord must allow the tenant to make reasonable changes and/or additions (at the tenant's cost). Additional information on disabled persons' housing rights can be obtained by calling agencies listed in the referrals section of this guide, most notably Montana Fair Housing .

A landlord might try to discourage prospective tenants s/he considers "undesirable" in a variety of ways. The landlord might sharply raise the rent or security deposit above the advertised cost. Upon seeing the tenant in person, the landlord might announce that the unit "was just rented."

If you feel that a landlord is discriminating against you, there are several actions you can take:

1. Report your case to the Montana Human Rights Commission or contact Montana Fair Housing (see above). MHRC can conduct an investigation into the matter, and may order the landlord to correct the situation. They can award money damages, and can also refer you to other agencies who may be able to give assistance or advice.

2. Persuade or pressure the landlord to refrain from discrimination. You may want to confront the landlord with evidence of her/his discriminatory actions, and inform her/him that such actions are illegal. If you are willing to take additional steps to protect your rights, tell the landlord. You may also want the help of an attorney to pursue the issue further.
3. Take legal action. If your attempts to persuade or pressure the landlord fail, you can take the landlord to court. This will involve more time, energy, and money, but you may be able to collect damages.

If you plan to take action against a discriminatory landlord, proceed carefully and deliberately. Call the Montana Human Rights Commission or Montana Fair Housing or an attorney for advice on how to pursue your problem. They may advise you to test your suspicions of discrimination. You can do this in a couple of ways. Have a friend call to see if the rental unit is still available. Check to see if other tenants pay rent comparable to what you have been offered. Arrange for a friend who would not normally be discriminated against to apply for the same place, using personal background information similar to your own, and see how the landlord responds. Montana Fair Housing can also assist you in testing a landlord for discrimination.

If you are convinced the landlord is discriminating, consider what actions you are willing to take. Again, consult with the Human Rights Commission or an attorney in order to develop the most effective plan to deal with the discriminatory landlord. You will need evidence of discrimination in order to succeed in your complaint. Collect necessary written documents, write down a history of events, and keep a written record of relevant events. Finally, contact witnesses for supporting evidence.

Mobile Home Owners Renting Space in Mobile Home Parks & Their Landlords

During the 1993 and 1995 legislative sessions, several laws were passed concerning the rights of mobile home owners who rent a space in a mobile home park and their landlords. (A mobile home park consists of two or more mobile homes.) Mobile home renters and their landlords may refer to other information on this site for further guidance. This section covers only the laws concerning tenants who rent a space in a mobile home park but own their mobile home. Unless specified otherwise, all rights applying to tenants and landlords of non-mobile homes apply to tenants and landlords of mobile homes.

Rules

Mobile home park landlords may adopt written rules governing the tenant's use and occupancy of the premises as long as these guidelines are followed:

1. A rule may not be unreasonable. Additionally, a rule that does not apply uniformly to all mobile home residents is unfair and therefore unenforceable.
2. All rules must be written and given to each existing and new resident of the mobile home park.

Resident Associations

The mobile home park landlord may not prohibit meetings by a tenant association or a group of tenants relating to mobile home living.

All residents may attend meetings, but the mobile home park landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by tenant association.

A landlord may not retaliate by increasing rent, decreasing services or by bringing or threatening to bring an action for possession due to a tenant's involvement in a tenant union, a mobile home park tenant association or similar organization.

Road Maintenance Obligations

The mobile home park landlord must keep common roads within the park in safe condition, including arranging for snow plowing when needed to make the roads passable.

Section 8 Housing

Section 8 housing is a program designed to assist very low-income families in paying for housing. To be eligible for the Section 8 housing program, an individual must have an income that is below 50% of the median income for the county. Section 8 is a federal program administered through state and local agencies, known as Housing Authorities. In Montana, the Montana Department of Commerce administers Section 8 through a number of local agencies. This section covers a few of the rules and regulations for Section 8 housing, but should not be considered complete. You should contact your local Section 8 agent or the Montana Department of Commerce (see reference section in the back of this book) if you want to inquire about getting on the Section 8 wait list or if you have any further questions regarding Section 8 housing. Average time on the Section 8 wait list is 3 to 7 years.

All Section 8 tenants and landlords are required to abide by Montana tenant/landlord laws.

Section 8 regulations are supplements to Montana law, not replacements for it.

Screening of Tenants

If you are a landlord and are considering acceptance of a Section 8 housing voucher, it is your responsibility to check the prospective tenant's rental history, credit report, etc. Participation in the Section 8 program or being on the Montana Department of Commerce (MDOC) wait list is not a representation of the tenants suitability of tenancy or expected behavior. MDOC will provide prospective landlords with the family's current and prior addresses and the names and addresses, if known, of current and prior landlords, as they appear in MDOC records. However, it is the responsibility of the prospective landlord to seek appropriate references.

Security Deposits

Section 8 landlords are allowed to collect security deposits from their tenants. However, MDOC local field agents may prohibit security deposits above private market practice or above the amount required of non-Section 8 tenants. For Moderate Rehabilitation Housing, the landlord may collect a security deposit in the amount of one month's tenant payment, or \$50, whichever is greater. The Montana Residential Security Deposit Act (MCA 70-25) applies in full to all Section 8 security deposits (see Security Deposits).

Landlord Responsibilities

Section 8 landlords are required to maintain their units in accordance with MCA 70-24-303 (see

Landlord & Tenant Responsibilities) and with federal Housing Quality Standards. MDOC local agents may perform inspections of Section 8 housing once a year, or in response to a tenant complaint, to insure that all units are meeting the standards. If a deficiency is found the landlord will receive a deficiency letter stating what the landlord needs to do to bring the unit into compliance and specifying a period of time in which the repairs must be made. If the defect is life threatening, the landlord must correct the problem in 24 hours. After the deficiency has been fixed, the tenant must call the local Section 8 agency to schedule another inspection to verify that the problem has been fixed. The landlord should verify with the local agency that a reinspection has been scheduled. MDOC will not issue a rent check to the landlord until a reinspection has been completed.

In Moderate Rehabilitation units, landlords are responsible for repairing all damages to the unit, even those caused by the tenants. The landlord may, however, seek compensation for damages to the unit caused by the tenant in Civil Court and/or terminate the rental agreement.

Landlords are also responsible for enforcing all tenant obligations under the lease. It is not the responsibility of MDOC or their local field agents to ensure tenant compliance with the lease. If the unit is to be occupied by a disabled person, it is also the landlord's responsibility to make any necessary modifications to the unit though these modifications may be at the tenant's expense.

Tenant Responsibilities

All Section 8 tenants are required to abide by Montana tenant/landlord law in regards to the care and maintenance of the unit they are renting. Tenants are responsible for correcting any breach of the Housing Quality Standards that were caused by the tenant, within the amount of time specified by MDOC. If the breach is life threatening, the tenant must correct the situation in 24 hours.

In addition to these responsibilities, tenants must supply all information that MDOC, its local agents or HUD determines is necessary for the administration of the program. The family must also provide local Section 8 agents with at least a 30 day written notice if they intend to terminate their rental agreement or a copy of any eviction notice from the owner of the unit. Families are also required to notify their local agents of any change in the composition of the household. No family members may be added to the household without prior consent from MDOC.

Payments to Landlords

The portion of rent paid by the Section 8 program is mailed directly from MDOC in Helena to the landlord on or before the 10th of each month. Local offices have no control over rent checks. If you are a Section 8 landlord and have not received your check by the middle of the month, call your local office (see Montana Resource Directory) and the staff will investigate the delay. If you owe the state money for taxes, student loans, child support, etc. your check may be withheld. If the check was sent, MDOC will verify whether the check was cashed or not. If the check was issued and not cashed, MDOC will require the landlord to sign a bond to re-issue the check.

Landlords may never ask the tenant for more money than is stipulated in the rental contract. If a landlord asks for more than the amount stipulated by the rental contract, the contract may be canceled and the tenant may sue the landlord for damages.

For tenants on the voucher program, landlords must seek reimbursement through the Civil or Small Claims Court from the tenant for damages to the unit caused by the tenant or for cleaning costs, un-paid

rent or un-paid utilities owed to the landlord, . No claims for damages or cleaning may be filed with MDOC for tenants on the voucher program. For Moderate Rehabilitation housing, if the security deposit is insufficient to cover the amount owed to the landlord, or if the landlord did not collect a security deposit, the owner may claim reimbursement from MDOC. The reimbursement will be for the lesser of a) the amount owed to the owner, or b) two month's contract rent minus the amount of the security deposit collected, or the amount that the landlord could have collected from the tenant.

Rent Adjustments

Rent adjustments for moderate rehabilitation housing programs may only occur once a year, on the anniversary date of the contract. For voucher programs, rent may be adjusted at any time after the expiration of the original six month contract with at least a 60 day written notice to the tenants and MDOC. For moderate rehabilitation housing, all rent adjustments must be approved by MDOC and such approval is contingent on inspection of the unit, compliance with the contract and evaluation that the adjustment is reasonable.

Landlords may apply to MDOC for special rent adjustments other than at the times specified above by submitting to MDOC with the request for rent adjustment all tax records and utility bills for the current and prior year. Special increases will only be approved if the landlord can show that his/her costs have increased due to increased property taxes, utility rates or assessments.

Terminations and Evictions

All Housing Assistance Payments contracts are for an initial period of six months. During this time, both the landlord and the tenant are barred from terminating the rental contract unless the other party has repeatedly and severely violated the terms of the lease or Montana law. Landlords may also terminate the rental agreement during the initial six month period for other good cause, as long as that cause is something the tenant did or failed to do. Landlords may not terminate the agreement during the first year because they want to use the unit for some other purpose or because the tenant won't agree to a revision of the lease. The landlord may not terminate the rental agreement for non-payment of MDOC's share of the rent.

After the first six months, a tenant or landlord may terminate the rental agreement for any reason by delivering to the landlord or tenant and MDOC a written notice of termination. The notice must be delivered at least 30 days prior to the termination but not more than 60 days. If a tenant moves out of the rental unit before the end of the month, the landlord is entitled to keep the entire month's rent portion from MDOC but must return a prorated amount of rent to the tenant if the unit is re-rented before the end of the month.

If at any time the landlord sells the property to a new owner, they must immediately notify MDOC of the sale. MDOC cannot issue rent checks to the new owner until they have filled out the required paperwork for the Section 8 program.