

Cincinnati Metropolitan Housing Authority Legal Responsibilities in Property Management

Instructor:

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DISCLAIMER

While Mr. Willis is very good looking and possesses a brilliant legal mind, this seminar is intended to provide general information and cannot substitute proper and specific legal advice.



In Ohio

88 different Counties

+12 different Appellate Districts

+1 Ohio Supreme Court

=Many different Local Rules, Policies, &
Quirks



Many Different Types of Housing



Public Housing

- Managed, owned, & facilitated by PHA
- Governed by 24 C.F.R. part 960-966 and a host of other federal statutes



Project Based Subsidized Housing

- Section 221(d)(3) and (d)(5)
- Section 236 and 202
- Project Based Subsidized Housing

****And others...receiving benefits of subsidy in the form of: below market interest rates, rent supplement payments, & Housing Assistance payments (Project Section 8) 24 C.F.R. Part 247**



Tenant-Based Rental Assistance

- Section 8 Housing Choice Voucher (HCV)
- Housing Assistance Payment (HAP)
Contract



LOW INCOME HOUSING TAX CREDIT



HAP Addendum

Termination of Tenancy by Owner

- A. *Requirements.* The owner may only terminate the tenancy in accordance with the lease and HUD requirements
- B. *Grounds.* During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:
 - 1. Serious or repeated violation of the lease;
 - 2. Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit & the premises
 - 3. Criminal activity or alcohol abuse (as provided in paragraph c); or
 - 4. Other good cause (as provided in paragraph d)



**All of the above types of housing
require “Good Cause Evictions”**



The Ohio Eviction Process

Self-Help Evictions are illegal

- Cannot shut off utilities
- Cannot change the locks
- Cannot hold tenant belongings for ransom



The Ohio eviction process allows landlords to legally evict a tenant for a number of reasons:

- Nonpayment of rent
- Tenant's failure to comply with health & safety codes
- Violation of material terms of lease
 - Rules and Regulations
- Criminal Activity
- Denying the landlord access upon reasonable notice (at least 24 hours)
- Others



Depending on the reason for the eviction,
and type of housing, the Ohio eviction
notice may be a 3-day, 10-day, or 30-day



Forcible Entry & Detainer

ORC Chapter 1923

Contains:

- Definitions of Landlord, Tenant, Residential Premises, Rental Agreement, etc.
- Ground for Eviction Action
 - Violation of lease (non-payment of rent)
 - Violation of Tenant's duties under the Ohio Landlord-Tenant Law
 - Drug Offenses
 - Holdover Tenancy



Landlords & Tenants

ORC Chapter 5321

Contains:

- Definitions – more extensive than 1923
- Obligations of Landlords (5321.04)
 - Keep common areas safe and sanitary
 - Comply with housing codes
 - Make repairs to keep fit and habitable
 - Supply hot and running water
 - Supply garbage cans & pick-up (4 or more units)
 - Maintain appliances provided by Landlord
 - Access (don't abuse)



Obligations of Tenant

- Keep unit safe & sanitary
- Comply with housing codes
- Operate electric & plumbing properly
- Don't destroy premises or appliances
- Don't disturb neighbors
- Don't sell drugs
- Access (must allow)
- “Guests, too!”



If you are a subsidized property, or using a
HUD Model Lease

10-day

(24 CFR 247)



Violation of R.C. 5321.05 obligation requires
a 30-day notice

R.C. 5321.11 and a 3-day or 10-day notice



R.C. 1923.04

- Mandatory & Jurisdictional
- Combination of 3-day into 10-day
- Check with your local Attorney



Counting 3-days

Method of Service of Notice

Subsidized Properties – higher obligation



Summons and Complaints

- Must be served 7-days to hearing
- Continuances



- Court Date
- Judgment / Writ of Restitution



Common Defenses to all Kinds of Properties

- Waiver Defenses
 - Waiver by acceptance of future rent
 - Accepting partial rent
 - Accepting rent after knowledge of breach of tenant
 - Cashing check or money order, even if Landlord tenders back



Holding of Rent May Equal Acceptance

- Evidentiary purpose of holding
- Notice to tenant that rent is being held, but not accepted



Other Waiver Defenses

Waiver of Breach by Landlord Action

- When a landlord has knowledge of the tenant's breach of the rental agreement, the landlord waives the breach if the landlord takes action that is inconsistent with a termination of the tenancy



- Tenant & Landlord make sweat equity agreement where tenant agrees to paint in lieu of paying rent, but landlord fails to buy paint supplies and then files eviction for failure to pay rent
- Landlord tells tenant not to pay rent because landlord intends to evict tenant for some other reason, but then files eviction for nonpayment



Waiver of the Ohio R.C. 5321.11 or 5321.17 Notice of Termination

- If the landlord accepts future rent after the expiration of the thirty-day period of an R.C. 5321.11 or R.C. 5321.17(B) notice of termination, it may constitute waiver of the notice or create a new periodic tenancy



Waiver of timely tender of rent by Pattern & Practice

There is sufficient pattern and practice
between the parties of late rent payment
and acceptance that changes the due date
as a matter of law



OHIO

Fictitious/Trade Name Registration

If the landlord is doing business under a fictitious name that has not been properly registered, the landlord is barred from commencing or maintaining an eviction action



OHIO

Unauthorized Practice of Law



OHIO

Conditions Counterclaims: R.C.1923.061

- Must be a claim for nonpayment and tenant must file an answer & counterclaim on or before the day of trial
- Tenant defense premised on landlord's breach of duties under R.C.5321.04 or the lease
 - This breach is usually related to conditions and/or failure to repair that cause damages to tenant and/or tenant's possessions and/or reduces fair market value of rent
- Tenant not required to use escrow process under R.C.5321.07. R.C.1923.061 allows tenants another option to protect themselves if they fail to use R.C.5321.07
- Rent in escrow should be defense to eviction for nonpayment



OHIO Retaliation

- R.C.5321.02(A) prohibits a landlord from bringing an eviction action against a tenant (1) because the tenant complained to an appropriate governmental agency of a code violation at the premises that materially affects health & safety, (2) because the tenant complained to the landlord of an R.C.5321.04 violation, or (3) because the tenant joined a tenant organization
- Exceptions: R.C.5321.03(A)(1)-(4). (1) Tenant in default of payment of rent; (2) the condition about which the tenant complained was caused by the tenant or the tenant's guest; (3) the performance of the repairs necessary to achieve code compliance would effectively deprive the tenant of the use of the premises; (4) the tenant is a holdover for the tenant's term



Discrimination

When a tenant's race, color, religion, sex, handicap, familial status, or national origin is a significant factor in the landlord's decision to terminate the tenancy, a defense to the action may exist under one or more of the following statutes:

- a) The Federal Fair Housing Act, 42 U.S.C. § 3604
- b) Section 504 of the Rehabilitation Act of 1973 if handicap discrimination is alleged and the landlord receives federal financial assistance
- c) Title II of the Americans with Disabilities Act if handicap discrimination is alleged & the landlord receives state or local government financial assistance
- d) The Civil Rights Act of 1866, race discrimination
- e) The Ohio Civil Rights Act, R.C. 4112.02(H)



Lease, Procedures for Termination

A landlord must comply strictly with the termination procedure terms of the lease before instituting forfeiture proceedings



OHIO

Deficient Content/Service of Notice to Vacate or Notice of Termination

If a landlord fails to serve a notice to vacate, or serves a notice to vacate but its content or the service fails to comply with R.C. 1923.04, the trial court lacks subject-matter jurisdiction over the action



Allowable Circumstances for Terminating Tenancy

- **Material noncompliance**
 - Substantial lease violations
 - Fraud
 - Repeated minor violations
 - Nonpayment of rent
- **Drug abuse & other criminal activity**
- **Material failure to carry out obligations under a State Landlord and Tenant Act**
- **Other Good Cause**



A Landlord's termination of an assisted housing tenancy is subject to a good cause requirement

Good cause constitutes any material noncompliance with the rental agreement, material failure to carry out obligation under any state landlord and tenant act, certain criminal activity, certain alcohol abuse, or “other good cause”



Nonpayment of Rent

- Improperly Calculated Rent
 - Nonpayment of improperly calculated rent by the property owner is not good cause for termination of subsidized tenancy



Nonpayment of a Charge

- Nonpayment of a small charge may be a minor violation of the lease and, for that reason, might not be good cause to terminate an assisted housing tenancy
- Nonpayment of a disputed charge may be good cause to evict an assisted tenant, but certain procedural requirements should be satisfied



Unauthorized Occupant/Authorized Guest

- Regulatory definition of guest-
 - “Guest, only for purposes of 24 CFR, part 5, subparts A and I, and parts 882, 960, 966, & 982, means a person temporarily staying in the unit with the consent of a tenant or other members of the household who has expressed or implied authority to so consent on behalf of the tenant. The requirements of parts 966 & 982 apply to a guest as so defined.” 24 CFR § 5.100
- Factors to consider in distinguishing between an occupant and a guest include (1) number of days per week or length of stay, (2) any use of another residence, (3) where clothes & other personal belongings are maintained, (4) where meals are eaten, (5) where mail is received, (6) address used for driver's license & other documents, & (7) other indicia of residency



Non-Criminal Conduct of a Tenant's Child

In determining good cause to evict, courts distinguish between children of tenants and children who are non-household members, non-guests



Non-Criminal Conduct of a Guest

- The conduct of a guest might not be good cause to terminate an assisted housing tenancy if (1) the tenant neither knows nor has reason to know that the guest is inclined to engage in improper conduct, (2) the tenant had no knowledge of the guest's improper conduct, and/or (3) the tenant could not reasonably have foreseen or prevented the guest's improper conduct
- R.C.5321.05(A)(6) does not impose a strict liability standard on a tenant for a guest's improper conduct



Criminal Conduct of Tenant, Household Member, or Guest

- In general, HUD regulations define the criminal activities that are grounds for terminating an assisted housing tenancy
- Discretion of Landlord
 - With one exception – the conviction of a tenant or household member of manufacture of methamphetamine on the premises of assisted housing – landlords have discretion in terminated assisted tenancies for criminal activities of tenant, household member, or guests



Criminal Conduct of Tenant, Household Member, or Guest

- To constitute good cause to evict, certain criminal activity must be engaged “on or near the premises”
 - Drug related criminal activity must occur on or near the premises for project-based subsidized housing or Section 8 voucher tenancy. See 24 CFR § 5.858, 247.3(a)(3), 880.607(b)(1)(iii)(project-based); 982.310(c)(1)(voucher)
 - Violent criminal activity must occur on or near premises to constitute good cause to terminate Section 8 voucher tenancy. 24 CFR § 982.31(c)(2)(i)(c)



Criminal Conduct of Tenant, Household Member, or Guest

- To constitute good cause to evict, certain criminal activity must be a “threat to health, safety, or peaceful enjoyment of the premises of other residents”



Menacing (R.C. § 2903.22)

1. Knowingly
2. Cause another to believe
3. That the offender will cause physical harm to the person or property of such other person or member of his immediate family
4. Venue



Criminal Mischief (RC § 2909.07)

- Without privilege knowingly move, deface, damage, destroy, or otherwise improperly tamper with property of another



Disorderly Conduct (RC § 2917.11)

Division (A):

1. Recklessly
2. Cause inconvenience, annoyance or alarm to another by means of
 - (a) Fighting/threatening harm to persons or property/violent or turbulent behavior (or)
 - (b) Making unreasonable noise/offensively coarse utterances/gestures, displays, or communicating unwarranted and grossly abusive language to others (or)
 - (c) Insulting/taunting/challenging another under circumstances in which such conduct is likely to provoke a violent response
 - (d) Hindering or preventing movement of persons upon a public street/road/highway/right of way, or to or from public/private property, so as to interfere with rights of others by acts which serve no lawful/reasonable purpose
 - (e) Creating a physically offensive condition or one which presents a risk of physical harm to persons/property by acts serving no lawful reasonable purpose

3. Venue

Disorderly Conduct (continued)

Division (B):

1. While voluntarily intoxicated
 2. (a) in a public place or in the presence of
2 or more persons
 1. Engage in conduct likely to be offensive (or)
 2. Cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if he were not intoxicated, should know is likely to have such effect on others (or)
 - (b) Engage in conduct or create a condition which presents a risk of physical harm to himself or another, or the property of another
-
3. Venue



Interference with Fair Housing Rights (RC 2927.03)

1. Whether or not acting under color of law
2. By force or by threat of force
3. Willfully
4. Injure, intimidate, or interfere with (or) attempt to injure, intimidate or interfere with
5. Any person
6. Because of race, color, religion, sex, familial status, national origin, handicap, or ancestry



Securing Writings by Deception

RC 2913.43

1. By deception
2. Cause another to execute a writing disposing of or encumbering property or creating pecuniary obligation
3. Venue



Criminal Trespass

RC 2911.21

1. Without privilege to do so
2. Knowingly enter or remain on land or premises of another



Drugs

Possessing Drug Abuse Instruments
RC 2925.12

Drug Paraphernalia
RC 2925.14

Permitting Drug Abuse
RC 2925.13



Innocent Tenant

- Equity Defense
- Conduct of an uninvited person



Minor Violations of the Lease

- One minor violation of the lease is not good cause to terminate an assisted housing tenancy. 24 CFR § 247.3(c)(2), 880.607(b)(3)(ii), 966.4(1)(2)(i), 982.310(a)(1)
- Although repeated minor violations of lease can be good cause to terminate an assisted housing tenancy, for project-based subsidized housing, repeated minor violations are only good cause to terminate if (1)



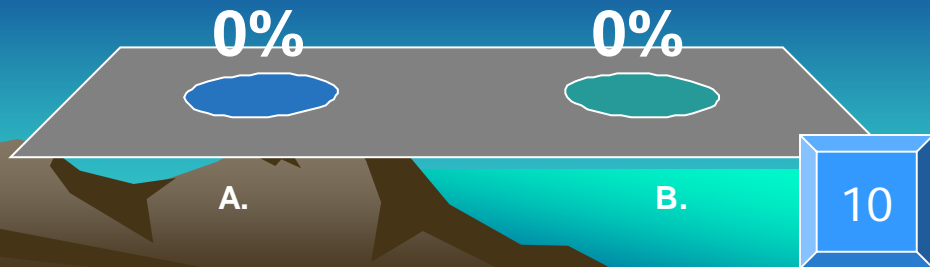
- Escrow procedures (deposit and release – 5321.07-5321.10)
- Security deposits (5321.16)
- Contents of Rental Agreements (what is not allowed – 5321.13-5321.14)
- Utility shut off, lock-outs, and other bad acts (5321.15)



Question:

On a conventional or market rate property, it is ok to give a three day notice to vacate for unauthorized occupant?

- ✓ A. True
- B. False



- Answer: A True
- Unauthorized occupant is a lease violation and not a R.C. 5321.05 obligation

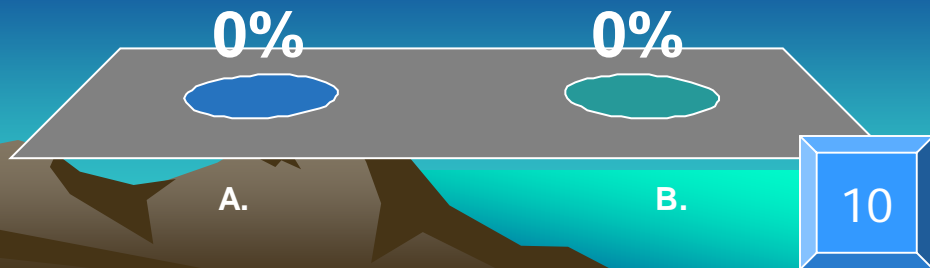


Question:

The easiest way to evict someone in a tax credit property is simply not renew his or her lease?

A. True

✓ B. False



- Answer B. False
- Although non-renewal would be the easiest method, IRS Rule 2004-82 and Revenue Procedure 2005-37 requires evictions for good cause in tax credit properties
- You may only terminate or refuse to renew only for material non-compliance with lease, or other good cause.



Question:

The most conservative way to calculate service on a 1923.04 3 day Notice is to...

- ✓ A. Don't count 1st day, Holidays, or weekends
- B. Don't count 1st day or last day
- C. Don't count 1st day, last day, or any day that ends in "y"

0%



A.

0%



B.

0%



C.

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- Answer: Civil Rule 6(A)
 - Follow A, don't count first day, weekends or holidays.



Question:

A three day notice is sufficiently delivered in Ohio if it has been taped to the resident's door?

- ✓ A. True
- B. False

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A.

B.

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- Answer: A. True

- Affix to door



- **** Housing Choice Voucher/Tenant Based Section 8 must also serve PHA with notice to vacate prior to filing eviction action**



Question:

A tenant must be convicted before a landlord can proceed against a tenant on drug related evictions?

A. True

✓ B. False

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0%

A.

B.

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- Answer: B. False
- Standard: Actual knowledge or has reasonable cause to believe



Question:

Drug related evictions are the easiest and quickest way to evict a problem tenant?

A. True

✓ B. False

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0%

A.

B.


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- Answer: False

- It may actually take longer to evict than other grounds for eviction.



5321.11 NOTICE OF TERMINATION

- Tenant breaches 5321.05 obligation
 - Keep premises safe and sanitary
 - Dispose of trash and garbage
 - Keep fixtures in good condition
 - Use plumbing and electric properly
 - Comply with housing, health & safety codes
 - Refrain from and forbid tenant and others from intentional or negligent damage
 - Maintain appliances in good working order
 - Tenant and others – peaceful enjoyment of the premises
 - Drugs
 - Withhold consent to enter
- 

- Termination date specified in 5321.11 notice may not be less than thirty days after the date on which the notice has been served.



- Notice and cure period are applicable to the termination of written lease when termination is based on conduct of the tenant that violates both the lease and R. C. 5321.05.



Question:

Finish this sentence. . . You must give a tenant a notice to cure if. . .

- ✓ A. The tenant has exhibited continually loud behavior late into the night.
- B. The tenant has committed robbery on the premises.
- C. The Tenant has an illegal pet that he or she refuses to remove.

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A.

B.

C.

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- Answer:

Violation of peaceful enjoyment is a
5321.05 violation

B and C are not

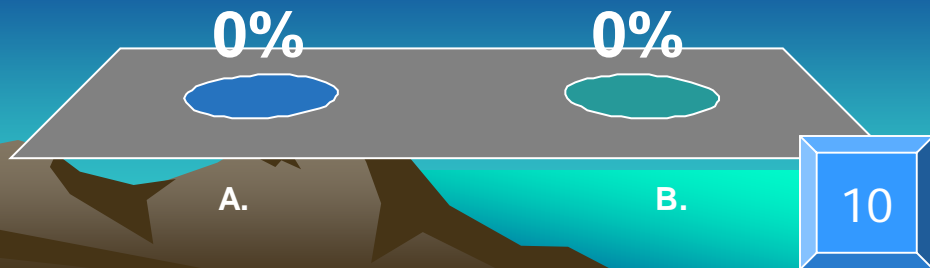


Question:

A periodic tenancy in a market rate property can be month to month, week to week, or even day to day, and you must have a reason to terminate such a tenancy. . .

A. True

✓ B. False



- Answer: B False
- R.C. 5321.17- As long as it is not discriminatory



- Note that evictions for
 - Unauthorized Occupants
 - Pets
 - Criminal Activityonly require a three day notice. However, more often than not, it will become a factual dispute to be determined on a case-by-case basis with the Court.
- A good paper trail should always be established.



COMPLAINT - TRIAL

- Most landlords file a two-count eviction.
 - The first count is normally for restitution of the property.
 - The second count is for money damages.
 - Normally, in Franklin County, the restitution hearing is scheduled fourteen (14) to twenty-one (21) days from the date of filing the complaint.



- At least seven (7) days prior to the restitution hearing, the landlord must perfect service on his/her complaint on the tenant by certified mail, bailiff service, or bailiff/ordinary mail service (S.B. 83). If service on the complaint is not perfected before the original restitution hearing date, the case will be continued.



Showe Management Corporation v. Virgil
Cunningham February 1, 2011 (10th District)

- Bailiff posted service
- Mail service of complaint returned to Court “Return to Sender-Attempted- Not Known-Unable to Forward”
- Eviction hearing found no service



Tenth Appellate District: Found that

- Landlord complied with R.C. 1923.06(G)
- Jurisdiction to proceed with FE&D portion of action, but not with respect to monetary damages.



Question:

Is a controller or president of a corporation permitted to file an eviction for the corporation or limited liability company?

A. Yes

✓ B. No

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A.

B.

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- Answer: B No
- Corporations must be represented by an attorney – yes! We wrote the rules.
- * Small claims



- The unauthorized practice of law is prohibited in Ohio. A non-attorney is prohibited from filing an eviction complaint for a corporation. A non-attorney cannot file an eviction on behalf of another party.



- At the hearing, the court will first determine:
 - Whether the statutory three-day notice has been served upon the tenant;
 - Whether three or more days have lapsed from the service of three-day notice to the filing of the action, and
 - Whether there is proper service of the summons and complaint.
- All three procedural requirements must be met before the matter may proceed to a hearing.



- Once the court has determined that the action has been properly served and the three procedural requirements have been met, the court may proceed with or without the tenant.
- The landlord has the burden of proof to establish its case by a preponderance of the evidence.
- If the tenant is present, a full hearing may be heard by the referee or a judge. If a referee is the trier of fact, his/her finding of fact must be submitted to the judge in such a fashion that the judge is able to determine whether the landlord established his/her right to possession.



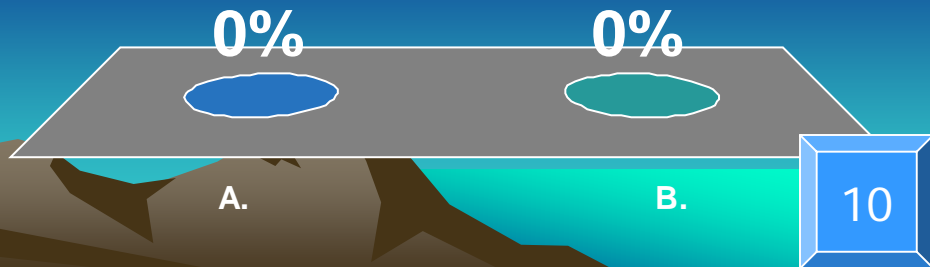
- Once the judgment in a forcible entry and detainer action has been granted to the landlord for restitution, it is a final appealable order.



Question:

Does A or B provide the best possible defense to an eviction action?

- A. the tenant can prove that the landlord has failed to maintain the heating and plumbing in the unit
- ✓ B. the tenant can prove that the landlord always allowed the tenant to pay late on various dates



- At the time of the hearing, the tenant may bring any defense in an action for forcible entry and detainer. However, the court may exclude evidence concerning the condition of the premises if offered by the tenant as a defense to the landlord's actions for restitution where the tenant admits not being current in rental payments and had not put the rent in escrow with the court.



- Once judgment has been granted for restitution, a landlord must file a writ of restitution with the court to restore the premises to the landlord.



New Franklin County Local Rule 6.08

- “...some set outs present circumstances such as an infestation or the existence of illegal or harmful substances that make it hazardous to conduct the set out. In those cases in which the set-out presents hazardous circumstances, the chief service bailiff, or his/her designee, shall have authority to determine the most appropriate means of conducting the set out and restoring possession of the premises to the plaintiff...”
- May include disposal



- The procedures and rules concerning execution on judgment for restitution vary from county to county. You should familiarize yourself with your local rules and procedures.



*RC 1923.14- Writ of Execution

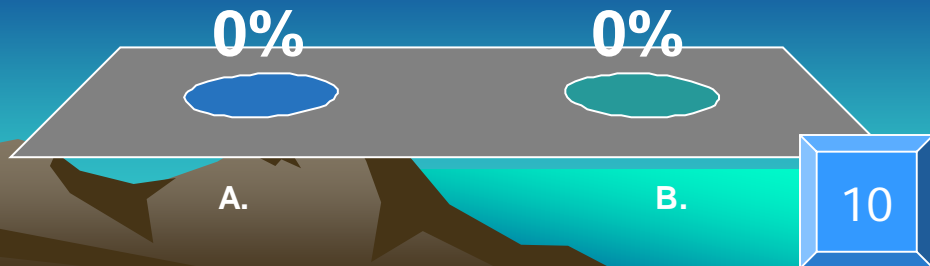


Question

In most counties outside of Franklin County, the Bailiffs will help landlords with the set out if the landlord does not have enough people on hand.

A. True

✓ B. False



- Answer: False

– YEAH RIGHT !!



- Given a landlord's duty to mitigate, it is prudent to periodically check the property after the door has been tagged. A 24-hour notice should be placed on the door before you enter the property.
- It is also prudent to contact utility companies to see if service has been turned over to the management company.



Question:

It would be prudent for a landlord to contact a bailiff prior to set out if:

- A. tenant voluntarily vacates
- B. tenant leaves small children left alone in their apartment
- C. tenant has made physical threats to management
- D. All of the above

25% 25% 25% 25%

A.

B.

C.

D.

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- Answer : D

- That's right, all of the above



- A landlord should provide sufficient manpower to accomplish the set-out within one and one-half hours.
- In the event of inclement weather or other circumstances, special provisions for protecting the defendant's property shall be made in cooperation with the service bailiff's office.
- It is very helpful to inform the bailiff how long you think a particular set-out is going to take.
- Also inform the service bailiff if the tenant has children and/or pets.



- Although defendant's property has been removed from the apartment unit, he/she still possesses legal interest in the personal property.
- Never authorize or condone taking of this property by management company personnel.



- Many local ordinances and codes permit the discarding of personal property as refuse if it is not claimed within a certain amount of time. You should familiarize yourself with these ordinances and codes.

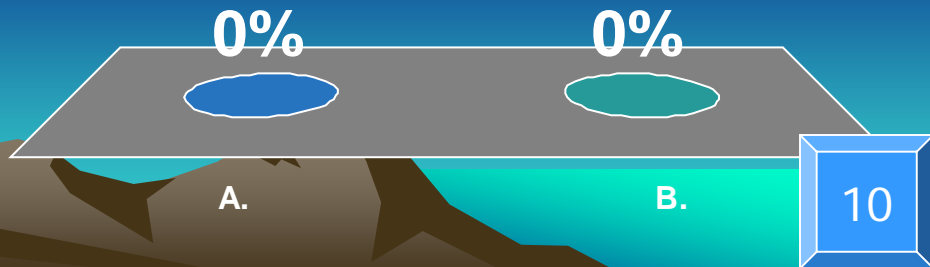


Question:

You are a property manager with a tenant delinquent for August and September's rent. You 3-day on September 5 and the tenant comes in on September 7 and offers you August's rent. Can you accept and still evict?

✓ A. Yes

B. No



- Answer: Yes
- Can't accept future payments-
- However, use a forbearance agreement



Caution: Holding rent might equal acceptance. Landlord may have to show:

- Held for evidentiary purpose
- Tenant was given notice that rent was being held but not accepted

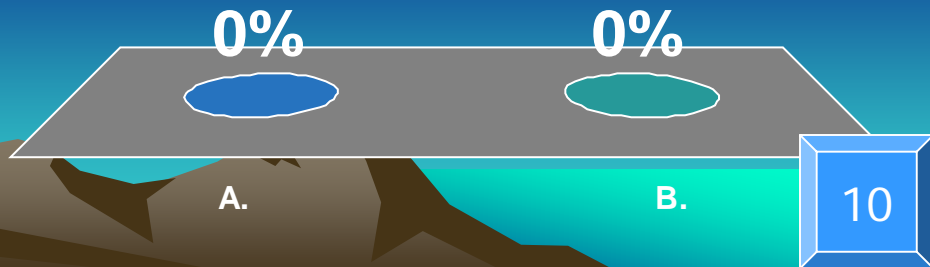


Question:

If a tenant is behind in their rent and files a city code violation, it may be viewed as an act of retaliation if you file an eviction

A. True

✓ B. False



- Answer B. False



Question:

The Fair Housing Amendments Act could be a defense even if you can prove reason to evict?

- ✓ A. True
- B. False

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0%

A.

B.

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- Answer: True

- When the threat or violation could be removed by applying a reasonable accommodation, the landlord must base their decision on current objective data, not on supposition that the tenant may or could pose a harm or threat to other persons or property.



Question:

If you file evictions under the name of the apartment community, are you 100% certain that name is registered with the Ohio Secretary of State?

- ✓ A. Yes
- B. No
- C. I have no idea what you are talking about

0%



A.

0%



B.

0%



C.

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- Answer: Should be Yes!!

– However, you had better check!!



Question

You are in a dispute with a tenant regarding money owed. The tenant sends you a check for $\frac{3}{4}$ of the amount owed marked “payment in full”. Under Ohio law you can cash the check and pursue the balance.

True or False?



What is your opinion?

A. True

✓ B. False

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A.

B.

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Answer

- False!

Ohio Revised Code 1303.40 (UCC) states:

There is a landlord/creditor safeguard that says you can re-tender repayment within ninety days of receiving payment.



- Ohio law recognizes that a landlord is entitled to damages until the exemption of the tenants lease or until the premises are re-rented...which ever comes first. A landlord is also under a duty to mitigate damages and re-rent the premises using reasonable efforts.



- Until the Supreme Court decided *Dennis v. Morgan* in 2000, Ohio Appellate districts were split on whether a three day notice to vacate pursuant to R.C. 1923.04 terminated a tenant's obligation to pay rent for the remainder of the lease term or until a new tenant is secured.



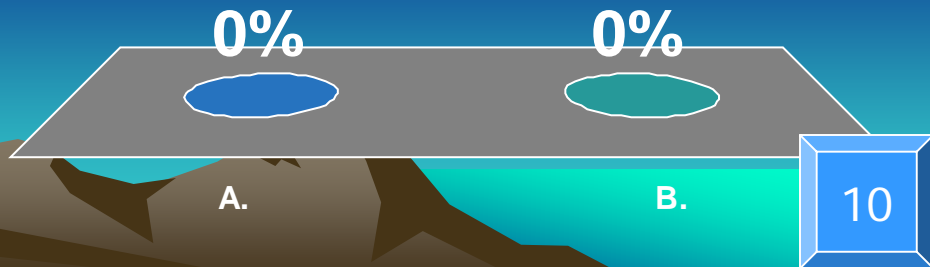
Question

- Are oral contracts valid in Ohio?



Do you Agree?

- ✓ A. Yes
- B. No



Answer

- The answer is Yes.

Oral contracts/leases can be valid.
Written leases are important because
people lie!



Question:

The Ohio Landlord-Tenant Act prohibits either a landlord or tenant from making a lease agreement requiring the other to pay attorney's fees?

- ✓ A. True
- B. False

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0%

A.

B.

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- Everyone does it --

5321.13 terms are barred

(A) Cannot modify, or waive 5321

(B) No Cognovits Agreement

(C) No Agreement to pay landlord's or
tenant's attorney fees

(D) No agreement by a tenant to the
exculpation or limitation of any
liability



- R.C. 5321.14 unconscionable agreement

(A) Can strike unconscionable clause or entire agreement.



NEW TRICKS

- Joint and several liability
- Contract and negligence



- Delinquent date vs. late fee date.
- Distinction between termination of tenancy vs. termination of the lease.
- Equity Issues
- Form of Payment
- Application of Monies
- Utilities-Material-Non-Compliance
- Prohibited conduct- “on or near language”



- Abandonment
- Notices
- Move-out notice and renewals
- Oral representation clause



Question:

If a tenant turns in keys but leaves personal belongings in the apartment, that means that they have vacated and it is ok to retake and trash the unit?

A. True

B. False

✓ C. Maybe

0%



A.

0%



B.

0%



C.

10

- ANSWER:
- C. Since there is no statutory definition of abandonment, this is one indication that the tenant has vacated.



RESIDENTIAL ABANDONMENT

- “No statutory definition”
- Reasonable man standard; must be judged case by case.
 1. Forwarding Address
 2. Return of keys
 3. Utility shutoff
 4. Lack of food, bedding and/or clothing
 5. Written notice of intent to vacate.



Question:

Theft is defined by Ohio Revised Code Section 2913.02 as:

Knowingly obtain or exert control
over property or services with purpose
to deprive the owner thereof without consent
of the owner or person authorized to consent.

- ✓ A. True
- B. False

0%

0%

A.

B.

10

- Answer: A True

- Someone gets to go to jail!!!



- Length of time the premises appears to have been abandoned.
- Rental Application
 - Employment
 - Next of kin/Emergency Contact #
- Tape on the door trick
- Duty to mitigate
- Document, document, document



- Pictures
- Itemized list of belongings
- What do I do with the belongings?
 - discard
 - donate
- Material belongings
- Keep-sake belongings



- Lease language helpful
- Use of Abandonment Worksheet
- Attorney as sounding board
- 5321.15 – Holding belongings as ransom
- Conversion



Question:

When a resident dies, Ohio law allows a Landlord to provide keys and/or access to a family member?

A. True

✓ B. False

0%

0%

A.

B.

10

- Answer: B False
- Only the administrator or executor appointed by the probate court has authority to act on behalf of the Tenant's Estate



DEATH OF A RESIDENT

- First contact
- Don't enter the apartment alone
- Clean up
- Application-locate Emergency #
- Security-changing the locks
- Giving out keys
- Burial clothing
- Liability for rent
- Evictions
- Removal of resident's property
- Indemnity Agreement



Question

- A resident's ex-boyfriend damaged the apartment front door and broke a front window. The resident did not invite the ex-boyfriend to the apartment or participate in the damage, in fact, she is the one who called the police. The landlord seeks to hold the resident responsible for the damages.



What will the result be?

1. The landlord will win, tenant cannot cause damage to the apartment
2. Tenant will win since she did not actually cause the damage.
3. It depends on how the lease was drafted.



Please make your selection...

A. Landlord will win

✓ B. Tenant will win

C. Depends on the lease

0%

0%

0%

A.

B.

C.

10

Answer

The correct answer is 2 based on these facts *DAK, PLL v. Borgerding* Franklin Cty. 2003



5321.05(A)(6)

“...personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance or other part of the premises.”
The Court found that the resident did not invite or encourage/condone the violence



The Court noted R.C. 5321.05(A)(6) which does not require the tenant to prevent damage to the leased premises, but rather personally to refrain from such activity and to forbid others from engaging in it.



No lease language could get around 5321 mandates.



Dayton Metropolitan Housing Authority

Rhonda Kilgore 2011-Ohio-3283

- **Public Housing**
- **Drugs found on premises**
- **Kilgore testified unaware of drugs**
- **Kilgore allowed people into her apartment while she was away**
- **Kilgore cooperated with police and was not charged**



- At Magistrate level-Court found tenant did not breach the lease
- Court overruled objections of DMHA



- On appeal
- Tenant argued Cuyahoga Metropolitan Housing v. Harris and Equity
- Court found although Kilgore might have been “innocent” of criminal activity, by making her apartment open and available she furthered her guests criminal purposes