

# Landlord & Tenant Issues

Southern Arizona Legal Aid, Inc.

Consumer Information

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# Landlord & Tenant Issues – Which Law Applies?

- » Arizona Residential Landlord Tenant Act
  - Applies to rental units
- » Arizona Mobile Home Parks Residential Landlord and Tenant Act
  - Applies when T owns mobile home, but rents lot space
- » Arizona Recreational Vehicle Long Term Rental Space Act
  - Applies when T rents RV park space for more than 180 consecutive days

# Rental Agreement

- » Defines LL/T relationship
  - » May include anything not prohibited by LL/T Act
  - » Rent payable without demand or notice at agreed time and place
  - » If rental agreement does not set term, tenancy is month-to-month
- Exception: Roomer who pays weekly rent, tenancy is week-to-week

# Rental Agreement –cont'd

## » Prohibited provisions in a rental agreement

- Can't waive or limit T's rights under Act
- Can't require T to pay LL's attorneys fees
  - + Can allow attorneys fees to "prevailing party"
- Can't limit LL's liability arising under law
- Can't waive or limit T's right to summon peace officer or emergency assistance, or penalize T for doing so
- If LL deliberately uses rental agreement that contains provisions the LL knows to be prohibited, T may recover damages [§33-1315 B]



# Rental Agreement With Children

- » LL cannot unlawfully discriminate against a person with children by knowingly refusing to rent to that person because of her/his children [¶33-1317]
- » Cannot advertise a rental restriction against children
- » Exceptions:
  - Senior living facilities
- » Occupancy standard: two people per bedroom considered reasonable

# Domestic Violence

- » T may terminate rental agreement [§33-1318]
  - Requires written notice
  - Must request mutually agreed upon release date within 30 days from actions that resulted in T being victim of DV, and either
    - 1) copy of protective order or
    - 2) copy of law enforcement agency report that states T notified agency that T was victim of DV

# Domestic Violence, cont'd.

- » If rental agreement terminated, T liable only for rent owed or paid through the date of the lease termination plus any previous obligations
- » Released from future rent liability [includes all other tenants in lease who were not the perpetrators]
- » T may require LL to install new lock to T's dwelling at T's expense.

# Bedbugs

- » LL's obligations [§33-1319 A]
  - Provide bedbug educational materials to all Ts
  - Shall not enter into lease agreement with T for unit that LL knows has current bedbug infection
- » T's obligations [§33-1319 B]
  - Shall not knowingly move materials into unit that are infested with bedbugs
  - If T is aware of presence of bedbugs, provide LL written or electronic notice of presence
- » Provision does not apply to LL and T of single family residence

# Landlord & Tenant Issues – Security Deposits

- Cannot exceed 1 ½ months rent
- Refundable unless otherwise noted
- Purpose of all nonrefundable deposits must be in writing by LL
- At move in, LL required to provide T w signed copy of lease, move-in form with existing damages, and written notice that T may be present at move-out inspection
- At request of T, LL must notify T of when move-out inspection will occur
  - Exception: if T being evicted for material and irreparable breach and LL has reasonable cause to fear violence or intimidation on part of T

## Landlord & Tenant Issues – Security Deposits

### » At Termination of Tenancy

- LL may apply security to payment of rent, charges in rental agreement, or damages suffered by LL because of T's noncompliance with rental agreement
- Within 14 business days after termination of tenancy (excludes weekends, holidays), LL must provide T with itemized list of deductions from deposit with remainder payable to T (mailed to T's last known residence)

## Landlord & Tenant Issues – LL Obligations §33-1322

- LL required to disclose in writing
  - Property manager
  - Property owner or person authorized to act for and on behalf of owner for purposes of service of process and to receive notices and demands.
  - Where copy of AZ LL/T Act is available
- LL required to provide copy of signed lease.
  - All blank spaces must be filled.

# Landlord & Tenant Issues – LL Obligations

- Maintain habitable premises. [§33-1324 & 9-1303]
- LL must
  - Comply with building codes that materially affect health and safety
  - Make all repairs and do whatever necessary to put and keep premises fit and habitable
  - Keep common areas clean
  - Maintain electrical, plumbing, sanitary, heating, ventilation, air-conditioning, facilities, and appliances supplied by LL or required to be supplied by LL
  - Provide for removal of garbage and other waste
  - Supply running water, reasonable amounts of hot water, reasonable heat, and reasonable cooling



## **Landlord & Tenant Issues – LL Obligations**

- » LL and T of single family residence may agree in writing that T will perform some of LL's duties to maintain premises
- » Limits to this agreement
  - “Adequate consideration”
  - Good faith
  - Not for the purpose of LL evading obligations



## **Landlord & Tenant Issues – T's Obligations [§33-1341]**

» Maintaining dwelling unit. T must

- Comply with obligations imposed on T by building codes that materially affect health and safety
- Keep part of premises that T occupies clean and safe
- Dispose of garbage and other waste in clean, safe manner
- Keep plumbing fixtures in unit clean
- Use electrical, plumbing, sanitary, heating, ventilating, air conditioning, other facilities and appliances in reasonable manner
- Not deliberately or negligently destroy or damage premises
- Not disturb neighbors' peaceful enjoyment
- Promptly notify LL in writing of needed repairs/action

# Landlord & Tenant Issues – Rules and Regulations [§33-1342]

- » LL may adopt new rules and regulations about T's use and occupancy of premises
- » 30 day notice
- » Cannot substantially modify rental agreement
- » Must apply to all tenants

- T not allowed to unreasonably withhold consent for LL to enter unit to inspect, make repairs
- Written request for repairs = permission to enter for purpose of maintenance
- LL may enter unit without T's consent in emergency
- Non-emergency: LL must give T two days notice
  - LL may only enter at reasonable times
- LL has no other right of access except by court order, or if T has abandoned or surrendered the premises



**Landlord & Tenant Issues**  
– Access [33-1341]

- LL's material noncompliance with rental agreement
  - May give LL written notice, with specifics, that rental agreement will terminate on specific date, no sooner than 10 days
  - LL has 10 days to fix
- LL does not maintain fit premises, materially affecting health and safety
  - May give LL written notice, with specifics, that rental agreement will terminate on date no sooner than five days after receipt of notice if problem is not fixed
  - Does not apply to conditions T caused deliberately or negligently
- If rental agreement terminated, LL must return applicable security deposit



**Landlord & Tenant Issues  
– T's Remedies §33-1361**

- Self-help for minor defects
  - If LL does not maintain fit premises
  - T must notify LL in writing that T intends to correct condition at LL's expense
  - LL has 10 days to comply
  - If not, T may have condition fixed
    - **Must use licensed contractor**
    - Must submit itemized statement to LL afterwards
  - Deduct from rent actual, reasonable cost of work
    - No more than \$300 or  $\frac{1}{2}$  of one month's rent (whichever is greater)
    - No limit on how many times this may be done

T's remedies

- Self help exceptions

## Self help for minor defects

T may not repair at LL's expense if:

Condition was caused by deliberate or negligent act or omission of T, member of T's family, or other person on premises with T's consent, or

If condition does not constitute breach of fit and habitable condition of premises



# Landlord & Tenant Issues – Habitability Remedies [§33-1364]

- » If the landlord wrongfully fails to supply an essential service, T may
  - Procure reasonable amounts of essential service and deduct actual, reasonable cost from rent
  - Recover damages
  - Get reasonable substitute housing during noncompliance, and be excused from paying rent for period of noncompliance
  - If LL provides utilities as part of rental agreement, LL shall not terminate them except to provide repairs or until the tenancy ends. LL also cannot transfer utility responsibility to T without T's written consent
  - If this happens, T may also recover damages



## Landlord & Tenant Issues – T's Remedies §33-1367

- » If LL engages in unlawful “ouster,” exclusion, or diminution of essential services
  - T may be entitled to recover possession or terminate rental agreement
  - T may recover damages of two months rent or actual damages, whichever is greater
  - LL must return applicable security deposit

# Landlord & Tenant Issues – §33-1368

## LL's Remedies Non-rent issues

- If T does not comply with rental agreement [non-rent violations]
  - May give T written notice, with specifics, that rental agreement will terminate on specific date, no sooner than 10 days
  - T has 10 days to fix
  - Material noncompliance includes material falsification on rental application
- If T does not maintain unit, which materially affects health & safety
  - May give T written notice, with specifics, stating that rental agreement will terminate on date no sooner than **five** days after receipt of notice if problem is not fixed
  - Second, similar noncompliance, LL may institute special detainer action **ten** days after delivery of written notice that noncompliance of same or similar nature has occurred
- Material and irreparable breach of lease
  - LL may give T written notice for immediate termination of rental agreement



# **Landlord & Tenant Issues – §33-1368**

## **LL's Remedies Non-rent issues**

- Second Cure notices-
- If there is an additional act of non-compliance of a “similar” or same nature within one year
- 10 day notice of termination available.  
NO CURE



## Landlord & Tenant Non Rent Issues – LL's Remedies

- » If T fails to maintain the unit [§33-1369]
  - If T fails to maintain the unit, and this materially affects health and safety, (but can be fixed by repair, replacement, or cleaning), AND
  - T fails to comply promptly in emergency, or within **14 days** after LL's written notice, THEN
  - LL may enter unit and cause work to be done and give T itemized bill for actual and reasonable cost or fair and reasonable value. This can be due as rent on next date when rent is due, or immediately if rental agreement has terminated

# Landlord & Tenant Issues – §33-1368

## LL's Remedies - Rent issues

### » If T fails to pay rent

- T must pay rent. Can't withhold rent unless allowed by Act
- T has 5 days from receipt of LL's written notice to pay late rent
  - + If not paid within 5 days, LL may terminate rental agreement by filing special detainer action
  - + Before filing action: Rental agreement reinstated if T pays all past due rent and reasonable late fees stated in agreement
    - Late fees must be “reasonable”
  - + After filing action, but before judgment entered: Rental agreement reinstated if T pays all past due rent, reasonable late fees stated in agreement, attorneys fees, court costs
  - + After judgment entered in favor of LL: reinstatement within sole discretion of LL
- LL may recover reasonable damages, court costs, and reasonable attorneys fees [so can T if he/she prevails]

# Landlord Remedies – FED Issues

» If Judgment for LL – i.e. Writ of Execution. What can LL do?

- LL may discontinue utilities provided by LL on day following execution of writ of restitution
- LL must hold T's personal property for 21 days from execution
  - + To reclaim, T shall pay LL only for cost of removal and storage for time the property was held by LL
  - + T does not have right to access property until all payments are made except T may obtain clothing, tools, apparatus of the trade, books of a trade, and certain ID and financial documents

# Defenses to Nonpayment of Rent Issues

## » Partial payments [§33-1371]

- LL not required to accept partial payment
- LL waives right to terminate rental agreement for T's nonpayment of rent **or on any other basis** if LL accepts partial payment
- LL does not waive right if
  - + LL accepts partial payment AND
  - + T agrees in a contemporaneous writing to terms and conditions of partial payment (agreement must include date by which balance is due)
- If LL already gave T written notice of failure to pay rent, no additional notice is required if T breaches partial payment agreement



## Other Issues: Termination of Term Tenancies §33-341

### » Periodic tenancy and hold over tenancy

- LL and T may terminate week-to-week tenancy by providing 10 day notice
- LL and T may terminate month-to-month tenancy by providing 30 day notice [beginning with the
- If T remains in possession without LL's consent after expiration of rental agreement or its termination, LL may bring action for possession
  - + If T's holdover is willful and not in good faith, LL may recover two months periodic rent, or twice the actual damages, whichever is greater. [never seen]

# Other Issues: Abuse of Access §33-1376

## » Abuse of access

- If T refuses LL's lawful access, LL can:
  - + Get court order to compel access
  - + Terminate rental agreement
  - + Recover actual damages
- If LL makes unlawful or lawful but unreasonable entry, T can:
  - + Get court order to stop unlawful or unreasonable entry
  - + Terminate rental agreement
  - + Recover actual damages not less than one month's rent

# Court Proceedings – §33-1377

- » Special detainer actions = eviction action
  - Summons issued same day as complaint filed
  - Hearing scheduled 3-6 days after summons issued
  - If complaint filed for alleged material and irreparable breach
    - + Summons issued same day as complaint filed
    - + Trial set no later than 3 days after summons issued
    - + If court finds material and irreparable breach, writ of restitution issued between 12-24 hours later

## Other Issues – Retaliation Prohibited

- » LL not allowed to retaliate by increasing rent, decreasing services, bringing, or threatening to bring, eviction action against T if T
  - Complains to authorities about building or housing code violation that materially affects health and safety
  - Complains to LL for violation of maintaining fit and habitable premises
  - If T organizes or is member of tenants' union
- » Presumption of retaliation if T's complaint is within 6 months of LL's adverse conduct
- » If retaliation, T may be entitled to terminate rental agreement and recover damages greater of two months rent or actual damages

## Retaliation Prohibited, cont'd

- » LL can still bring action for possession if either
  - Violation of applicable building or housing code caused primarily by lack of reasonable care by T or other person in household or upon premises with T's consent
  - T is in default of rent.



## Crime Free Lease Addenda vs. §33-1368(A) crimes issues

- » 33-1368 only references serious crimes, e.g. prostitution; drug dealing; homicide, etc.
- » Other “crimes” raised in Crime free addenda signed as part of rental agreement
- » May make T responsible for
  - T’s illegal (or suspected illegal) activity at or near the premises AND
  - Illegal (or suspected illegal) activity of household member, guest, or other affiliated person
  - Depending on what addendum says, T may be subject to material and irreparable breach of lease if these things occur (without arrest or criminal conviction)

## Other issues– Foreclosure

### » AZ Residential Landlord Tenant Act

- If rental agreement entered into after foreclosure action initiated, owner shall include written notice of possible foreclosure with rental agreement to T. 33-1331
- If owner fails to provide notice, T may deliver notice of noncompliance to owner, recover damages, and obtain injunctive relief [question reality of remedy]
- Section does not apply to multifamily residential rental units consisting of four or more connected units

## Other issues– Foreclosure

### » Protecting Tenants at Foreclosure Act of 2009 (Federal)

- If property foreclosed on, “immediate successor in interest” assumes its interest subject to the rights of a “bona fide T”
- Must provide T with 90 day notice to vacate, OR
- Must permit T to stay until end of lease (whichever is longer)
  - + Exceptions
    - Property sold to someone who will occupy property as primary residence or
    - No lease or lease is terminable at will
  - + If exception applies, must give T 90 days

# Other Resources

- » Pima County Health Department - Consumer Health and Food Safety
  - Investigate bedbug complaints
  - For homes outside city limits, investigate building code violations as well
  - (520)243-7908
- » City of Tucson Housing and Community Development, Code Compliance Center
  - Investigate building code violations within city limits
  - (520)791-5843



# THANK YOU!

## Q & A