Town of Farmington

Tenant Information Packet

If you are experiencing problems with your landlord, you should refer to the following State law for guidance:

Title 14 M.R.S.A. §6021 et. seq. (copy attached)

"The Rights of Tenants in Maine" (copy attached) Pine Tree Legal

Paralegals will now be available to answer live phone calls at (207)784-1558 on:

- Monday 12:00 – 2:30 p.m.
- Tuesday 9:00 a.m. – 11:30 a.m.
- Thursday 9:00 a.m. – 11:30 a.m.

Walk-ins will be accepted at our Lewiston office located at 37 Park Street, 4th Floor:

- Tuesday 1:00 – 3:30 p.m.
- Friday 9:00 a.m. – 11:30 a.m.

The second phase of changes is scheduled to take place by the end of the summer. New clients will be able to complete the intake process through our website www.ptla.org

If clients have concerns about lead paint, they can meet with our lead paint attorneys during their walk-in office ours at the B Street Health Center on Wednesdays and Thursdays. Our lead paint attorneys can also be reached by calling (207)400-3227 and (207)400-3267.

"Consumer Rights When You Rent an Apartment" (copy attached) Maine Attorney General

Maine Revised Statutes

Title 14: COURT PROCEDURE -- CIVIL

Chapter 710: RENTAL PROPERTY

§6021. IMPLIED WARRANTY AND COVENANT OF HABITABILITY

1. **Definition.** As used in this section, the term "dwelling unit" shall include mobile homes, apartments, buildings or other structures, including the common areas thereof, which are rented for human habitation.

[1977, c. 401, §4 (NEW) .]

2. **Implied warranty of fitness for human habitation.** In any written or oral agreement for rental of a dwelling unit, the landlord shall be deemed to covenant and warrant that the dwelling unit is fit for human habitation.

[1977, c. 401, §4 (NEW) .]

3. **Complaints.** If a condition exists in a dwelling unit which renders the dwelling unit unfit for human habitation, then a tenant may file a complaint against the landlord in the District Court or Superior Court. The complaint shall state that:

A. A condition, which shall be described, endangers or materially impairs the health or safety of the tenants; [1977, c. 401, §4 (NEW).]

B. The condition was not caused by the tenant or another person acting under his control; [1977, c. 401, §4 (NEW).]

C. Written notice of the condition without unreasonable delay, was given to the landlord or to the person who customarily collects rent on behalf of the landlord; [1977, c. 401, §4 (NEW).]

D. The landlord unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and [1977, c. 401, §4 (NEW).]

E. The tenant was current in rental payments owing to the landlord at the time written notice was given. [1977, c. 401, §4 (NEW).]

The notice requirement of paragraph C may be satisfied by actual notice to the person who customarily collects rents on behalf of the landlord.

[1977, c. 401, §4 (NEW) .]

4. **Remedies.** If the court finds that the allegations in the complaint are true, the landlord shall be deemed to have breached the warranty of fitness for human habitation established by this section, as of the date when actual notice of the condition was given to the landlord. In addition to any other relief or remedies which may otherwise exist, the court may take one or more of the following actions.

A. The court may issue appropriate injunctions ordering the landlord to repair all conditions which endanger or materially impair the health or safety of the tenant; [1977, c. 401, §4 (NEW).]

B. The court may determine the fair value of the use and occupancy of the dwelling unit by the tenant from the date when the landlord received actual notice of the condition until such time as the condition is repaired, and further declare what, if any, moneys the tenant owes the landlord or what, if any, rebate the landlord owes the tenant for rent paid in excess of the value of use and occupancy. In making this determination, there shall be a rebuttable presumption that the rental amount equals the fair value of the dwelling unit free from any condition rendering it unfit for human habitation. A written agreement

whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord. [1977, c. 696, §164 (AMD).]

C. The court may authorize the tenant to temporarily vacate the dwelling unit if the unit must be vacant during necessary repairs. No use and occupation charge shall be incurred by a tenant until such time as the tenant resumes occupation of the dwelling unit. If the landlord offers reasonable, alternative housing accommodations, the court may not surcharge the landlord for alternate tenant housing during the period of necessary repairs. [1981, c. 428, §9 (AMD).]

D. The court may enter such other orders as the court may deem necessary to accomplish the purposes of this section. The court may not award consequential damages for breach of the warranty of fitness for human habitation.

Upon the filing of a complaint under this section, the court shall enter such temporary restraining orders as may be necessary to protect the health or well-being of tenants or of the public. [1977, c. 401, §4 (NEW).]

[1981, c. 428, §9 (AMD) .]

5. **Waiver.** A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.

Any agreement, other than as provided in this subsection, by a tenant to waive any of the rights or benefits provided by this section shall be void.

[1977, c. 401, §4 (NEW) .]

6. **Heating requirements.** It is a breach of the implied warranty of fitness for human habitation when the landlord is obligated by agreement or lease to provide heat for a dwelling unit and:

A. The landlord maintains an indoor temperature which is so low as to be injurious to the health of occupants not suffering from abnormal medical conditions; [1983, c. 764, §1 (NEW).]

B. The dwelling unit's heating facilities are not capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit; or [1983, c. 764, §1 (NEW).]

C. The heating facilities are not operated so as to protect the building equipment and systems from freezing. [1983, c. 764, §1 (NEW).]

Municipalities of this State are empowered to adopt or retain more stringent standards by ordinances, laws or regulations provided in this section. Any less restrictive municipal ordinance, law or regulation establishing standards are invalid and of no force and suspended by this section.

[1983, c. 764, §1 (NEW) .]

6-A. **Agreement regarding provision of heat.** A landlord and tenant under a lease or a tenancy at will may enter into an agreement for the landlord to provide heat at less than 68 degrees Fahrenheit. The agreement must:

A. Be in a separate written document, apart from the lease, be set forth in a clear and conspicuous format, readable in plain English and in at least 12-point type, and be signed by both parties to the agreement; [2009, c. 139, §1 (NEW).]

B. State that the agreement is revocable by either party upon reasonable notice under the circumstances; [2009, c. 139, §1 (NEW).]

C. Specifically set a minimum temperature for heat, which may not be less than 62 degrees Fahrenheit; and [2009, c. 139, §1 (NEW).]

D. Set forth a stated reduction in rent that must be fair and reasonable under the circumstances. [2009, c. 139, §1 (NEW).]

An agreement under this subsection may not be entered into or maintained if a person over 65 years of age or under 5 years of age resides on the premises. A landlord is not responsible if a tenant who controls the temperature on the premises reduces the heat to an amount less than 68 degrees Fahrenheit as long as the landlord complies with subsection 6, paragraph B or if the tenant fails to inform the landlord that a person over 65 years of age or under 5 years of age resides on the premises.

[2009, c. 139, §1 (NEW) .]

7. Rights are supplemental.

[T. 14, §6021, sub-§7 (RP) .]

SECTION HISTORY
1971, c. 270, (NEW). 1977, c. 401, §4 (RPR). 1977, c. 696, §164 (AMD). 1981, c. 428, §9 (AMD). 1983, c. 764, §1 (AMD). 1989, c. 484, §3 (AMD). 2009, c. 139, §1 (AMD).

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Maine Revised Statutes

Title 14: COURT PROCEDURE -- CIVIL

Chapter 710: RENTAL PROPERTY

§6021-A. TREATMENT OF BEDBUG INFESTATION

1. Definition. As used in this section, unless the context otherwise indicates, "pest control agent" means a commercial applicator of pesticides certified pursuant to Title 22, section 1471-D.

[2009, c. 566, §8 (NEW) .]

2. Landlord duties. A landlord has the following duties.

A. Upon written or oral notice from a tenant that a dwelling unit may have a bedbug infestation, the landlord shall within 5 days conduct an inspection of the unit for bedbugs. [2009, c. 566, §8 (NEW).]

B. Upon a determination that an infestation of bedbugs does exist in a dwelling unit, the landlord shall within 10 days contact a pest control agent pursuant to paragraph C. [2009, c. 566, §8 (NEW).]

C. A landlord shall take reasonable measures to effectively identify and treat the bedbug infestation as determined by a pest control agent. The landlord shall employ a pest control agent that carries current liability insurance to promptly treat the bedbug infestation. [2009, c. 566, §8 (NEW).]

D. Before renting a dwelling unit, a landlord shall disclose to a prospective tenant if an adjacent unit or units are currently infested with or are being treated for bedbugs. Upon request from a tenant or prospective tenant, a landlord shall disclose the last date that the dwelling unit the landlord seeks to rent or an adjacent unit or units were inspected for a bedbug infestation and found to be free of a bedbug infestation. [2009, c. 566, §8 (NEW).]

E. A landlord may not offer for rent a dwelling unit that the landlord knows or suspects is infested with bedbugs. [2009, c. 566, §8 (NEW).]

F. A landlord shall offer to make reasonable assistance available to a tenant who is not able to comply with requested bedbug inspection or control measures under subsection 3, paragraph C. The landlord shall disclose to the tenant what the cost may be for the tenant's compliance with the requested bedbug inspection or control measure. After making this disclosure, the landlord may provide financial assistance to the tenant to prepare the unit for bedbug treatment. A landlord may charge the tenant a reasonable amount for any such assistance, subject to a reasonable repayment schedule, not to exceed 6 months, unless an extension is otherwise agreed to by the landlord and the tenant. This paragraph may not be construed to require the landlord to provide the tenant with alternate lodging or to pay to replace the tenant's personal property. [2011, c. 405, §9 (AMD).]

[2011, c. 405, §9 (AMD) .]

3. Tenant duties. A tenant has the following duties.

A. A tenant shall promptly notify a landlord when the tenant knows of or suspects an infestation of bedbugs in the tenant's dwelling unit. [2009, c. 566, §8 (NEW).]

B. Upon receiving reasonable notice as set forth in section 6025, including reasons for and scope of the request for access to the premises, a tenant shall grant the landlord of the dwelling unit, the landlord's agent or the landlord's pest control agent and its employees access to the unit for purposes of an inspection for or control of the infestation of bedbugs. The initial inspection may include only a visual inspection and manual inspection of the tenant's bedding and upholstered furniture. Employees

of the pest control agent may inspect items other than bedding and upholstered furniture when such an inspection is considered reasonable by the pest control agent. If the pest control agent finds bedbugs in the dwelling unit or in an adjoining unit, the pest control agent may have additional access to the tenant's personal belongings as determined reasonable by the pest control agent. [2009, c. 566, §8 (NEW).]

C. Upon receiving reasonable notice as set forth in section 6025, a tenant shall comply with reasonable measures to eliminate and control a bedbug infestation as set forth by the landlord and the pest control agent. The tenant's unreasonable failure to completely comply with the pest control measures results in the tenant's being financially responsible for all pest control treatments of the dwelling unit arising from the tenant's failure to comply. [2009, c. 566, §8 (NEW).]

[2009, c. 566, §8 (NEW) .]

4. **Remedies.** The following remedies are available.

A. The failure of a landlord to comply with the provisions of this section constitutes a finding that the landlord has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy a condition that endangers or materially impairs the health or safety of a tenant pursuant to section 6021, subsection 3. [2009, c. 566, §8 (NEW).]

B. A landlord who fails to comply with the provisions of this section is liable for a penalty of $250 or actual damages, whichever is greater, plus reasonable attorney's fees. [2009, c. 566, §8 (NEW).]

C. A landlord may commence an action in accordance with section 6030-A and obtain relief against a tenant who fails to provide reasonable access or comply with reasonable requests for inspection or treatment or otherwise unreasonably fails to comply with reasonable bedbug control measures as set forth in this section. For the purposes of section 6030-A and this section, if a court finds that a tenant has unreasonably failed to comply with this section, the court may issue a temporary order or interim relief pursuant to Title 5, section 4654 to carry out the provisions of this section, including but not limited to:

(1) Granting the landlord access to the premises for the purposes set forth in this section;

(2) Granting the landlord the right to engage in bedbug control measures; and

(3) Requiring the tenant to comply with specified bedbug control measures or assessing the tenant with costs and damages related to the tenant's noncompliance.

Any order granting the landlord access to the premises must be served upon the tenant at least 24 hours before the landlord enters the premises. [2009, c. 566, §8 (NEW).]

D. In any action of forcible entry and detainer under section 6001, there is a rebuttable presumption that the action was commenced in retaliation against the tenant if, within 6 months before the commencement of the action, the tenant has asserted the tenant's rights pursuant to this section. The rebuttable presumption of retaliation does not apply unless the tenant asserted that tenant's rights pursuant to this section prior to being served with the eviction notice. There is no presumption of retaliation if the action for forcible entry and detainer is brought for failure to pay rent or for causing substantial damage to the premises. [2011, c. 405, §10 (AMD).]

[2011, c. 405, §10 (AMD) .]

SECTION HISTORY

2009, c. 566, §8 (NEW). 2011, c. 405, §§9, 10 (AMD).

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§6022. RECEIPTS FOR RENT PAYMENTS AND SECURITY DEPOSITS

1. **Rent receipts required.** A landlord or his agent shall provide a written receipt, as required in subsection 2, for each rental payment and each security deposit payment received partially or fully in cash from any tenant. This receipt shall be delivered to the tenant at the time the cash payment is accepted. If either the rent or security deposit is accepted in more than one installment instead of a single payment, a separate receipt shall be provided for each payment. If the payment for rent and security deposit is received at the same time, a separate receipt, properly identified in accordance with subsection 2, shall be issued each for the rental payment and for the security deposit.

[1979, c. 180, (NEW) .]

2. **Minimum information.** The information contained in each receipt shall include, but is not limited to, the following: The date of the payment; the amount paid; the name of the party for whom the payment is made; the period for which the payment is being made; a statement that the payment is either for rent or for security deposit; the signature of the person receiving the payment; and the name of that person printed in a legible manner. A rent card retained by the tenant and containing the aforementioned information shall satisfy the requirements of this section.

[1979, c. 180, (NEW) .]

3. **Exemption.** This section shall not apply to any tenancy for a dwelling unit which is part of a structure containing no more than 5 dwelling units, one of which is occupied by the landlord.

[1979, c. 180, (NEW) .]

SECTION HISTORY
1979, c. 180, (NEW).

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Maine Revised Statutes

Title 14: COURT PROCEDURE -- CIVIL

Chapter 710: RENTAL PROPERTY

§6023. AGENCY

Any person authorized to enter into a residential lease or tenancy at will agreement on behalf of the owner or owners of the premises is deemed to be the owner's agent for purposes of service of process and receiving and receipting for notices and demands. [2009, c. 566, §9 (AMD).]

SECTION HISTORY
1979, c. 180, (NEW). 2009, c. 566, §9 (AMD).

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§6024. HEAT AND UTILITIES IN COMMON AREAS

A landlord may not enter into a lease or tenancy at will agreement for a dwelling unit in a multi-unit residential building where the expense of furnishing heat or electricity or any other utility to the common areas or other area not within the unit is the sole responsibility of the tenant in that unit, unless both parties to the lease or tenancy at will agreement have agreed in writing that the tenant will pay for such costs in return for a stated reduction in rent or other specified fair consideration that approximates the actual cost of providing heat or utilities to the common areas. "Common areas" includes, but is not limited to, hallways, stairwells, basements, attics, storage areas, fuel furnaces or water heaters used in common with other tenants. Except as provided in this section, a written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section is liable to the tenant for actual damages or $250, whichever is greater, and reasonable attorneys' fees and costs. In any action brought pursuant to this section, there is a rebuttable presumption that the landlord is aware that the tenant has been furnishing heat or utility service to common areas or other units. If the landlord rebuts this presumption, the landlord is required to comply with this section but is only liable to the tenant for actual damages suffered by the tenant. [2009, c. 566, §10 (AMD).]

SECTION HISTORY
1981, c. 176, (NEW). 1981, c. 400, (NEW). 1983, c. 480, §A10 (RAL). 1985, c. 638, §5 (AMD). 2009, c. 566, §10 (AMD).

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Title 14: COURT PROCEDURE -- CIVIL

Chapter 710: RENTAL PROPERTY

§6024-A. LANDLORD FAILURE TO PAY FOR UTILITY SERVICE

1. **Deduct from rent.** If a landlord fails to pay for utility service in the name of the landlord, the tenant, in accordance with Title 35-A, section 706, may pay for the utility service and deduct the amount paid from the rent due to the landlord.

[2009, c. 566, §11 (NEW) .]

2. **Award damages.** In addition to the remedy set forth in subsection 1, upon a finding by a court that a landlord has failed to pay for utility service in the name of the landlord, the court shall award to the tenant actual damages in the amount actually paid for utilities by the tenant or $100, whichever is greater, together with the aggregate amount of costs and expenses reasonably incurred in connection with the action. The court may also award to the tenant reasonable attorney's fees.

[2009, c. 566, §11 (NEW) .]

3. **Presumption.** In any action brought pursuant to subsection 2, there is a rebuttable presumption that the landlord knowingly failed to pay for the utility service. If the landlord rebuts this presumption, the landlord is liable to the tenant only for actual damages suffered by the tenant.

[2009, c. 566, §11 (NEW) .]

SECTION HISTORY
1989, c. 87, §1 (NEW). 2009, c. 566, §11 (RPR).

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Title 14: COURT PROCEDURE -- CIVIL

Chapter 710: RENTAL PROPERTY

§6025. ACCESS TO PREMISES

1. **Tenant obligations.** A tenant may not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

A tenant may not change the lock to the dwelling unit without giving notice to the landlord and giving the landlord a duplicate key within 48 hours of the change.

[1999, c. 204, §1 (AMD) .]

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

[1981, c. 428, §10 (NEW) .]

3. **Remedy.** If a landlord makes an entry in violation of this section, makes a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages or $100, whichever is greater, and obtain injunctive relief to prevent recurrence of the conduct, and if the tenant obtains a judgment after a contested hearing, reasonable attorney's fees.

If a tenant changes the lock and does not provide the landlord with a duplicate key, in the case of emergency the landlord may gain admission through whatever reasonable means necessary and charge the tenant reasonable costs for any resulting damage. If a tenant changes the lock and refuses to provide the landlord with a duplicate key, the landlord may terminate the tenancy with a 7-day notice.

[1999, c. 204, §1 (AMD) .]

4. **Waiver.** Any agreement by a tenant to waive any of the rights or benefits provided by this section is against public policy and is void.

[1981, c. 428, §10 (NEW) .]

SECTION HISTORY
1981, c. 428, §10 (NEW). 1999, c. 204, §1 (AMD).

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Title 14: COURT PROCEDURE -- CIVIL

Chapter 710: RENTAL PROPERTY

§6026. DANGEROUS CONDITIONS REQUIRING MINOR REPAIRS

1. **Prohibition of dangerous conditions.** A landlord who enters into a lease or tenancy at will agreement renting premises for human habitation may not maintain or permit to exist on those premises any condition that endangers or materially impairs the health or safety of the tenants.

[2009, c. 566, §12 (AMD) .]

2. **Tenant action if landlord fails to act.** If a landlord fails to maintain a rental unit in compliance with the standards of subsection 1 and the reasonable cost of compliance is less than $500 or an amount equal to 1/2 the monthly rent, whichever is greater, the tenant shall notify the landlord in writing of the tenant's intention to correct the condition at the landlord's expense. If the landlord fails to comply within 14 days after being notified by the tenant in writing by certified mail, return receipt requested, or as promptly as conditions require in case of emergency, the tenant may cause the work to be done with due professional care with the same quality of materials as are being repaired. Installation and servicing of electrical, oil burner or plumbing equipment must be by a professional licensed pursuant to Title 32. After submitting to the landlord an itemized statement, the tenant may deduct from the tenant's rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection. This subsection does not apply to repairs of damage caused by the tenant or the tenant's invitee.

[2005, c. 78, §1 (AMD) .]

3. **Limitation on rights.** No tenant may exercise his rights pursuant to this section if the condition was caused by the tenant, his guest or an invitee of the tenant, nor where the landlord is unreasonably denied access, nor where extreme weather conditions prevent the landlord from making the repair.

[1981, c. 428, §10 (NEW) .]

4. **Limitation on reimbursement.** No tenant may seek or receive reimbursement for labor provided by the tenant or any member of his immediate family pursuant to this section. Parts and materials purchased by the tenant are reimbursable.

[1981, c. 428, §10 (NEW) .]

5. **Waiver.** A provision in a lease or tenancy at will agreement in which the tenant waives either the tenant's rights under this section or the duty of the landlord to maintain the premises in compliance with the standards of fitness specified in this section or any other duly promulgated ordinance or regulation is void, except that a written agreement whereby the tenant accepts specified conditions that may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration is binding on the tenant and the landlord.

[2009, c. 566, §13 (AMD) .]

6. **Rights are supplemental.** The rights created by this section are supplemental to and in no way limit the rights of a tenant under section 6021.

[1981, c. 428, §10 (NEW) .]

7. **Limitation on liability.** Whenever repairs are undertaken by or on behalf of the tenant, the landlord shall be held free from liability for injury to that tenant or other persons injured thereby.

[1981, c. 428, §10 (NEW) .]

8. **Application.** This section does not apply to any tenancy for a dwelling unit which is part of a structure containing no more than 5 dwelling units, one of which is occupied by the landlord.

[1981, c. 428, §10 (NEW) .]

9. **Lack of Heat.** If the landlord fails to comply with the provisions of Title 14, section 6021, subsection 6, then the purchase of heating fuel by the tenant shall be deemed to be a "cost of compliance" within the meaning of subsection 2. For tenants on general assistance, municipalities shall have the rights of tenants under this subsection.

[1983, c. 764, §2 (NEW) .]

10. **Foreclosure.** For tenancies in buildings in which a foreclosure action brought pursuant to section 6203-A or 6321 has been filed and is currently pending, or in which a foreclosure judgment has been entered, if the landlord fails to maintain the premises in compliance with the standards in subsection 1, a tenant may exercise the tenant's rights pursuant to this section without regard to the cost of compliance limitations set forth in subsection 2, except that the reasonable costs of compliance may not be more than the equivalent of 2 months' rent. A tenant who exercises the tenant's rights under this subsection and who thereafter seeks assistance pursuant to Title 22, chapter 1161 may not have any amounts expended under this subsection counted as income pursuant to Title 22, section 4301, subsection 7.

[2009, c. 566, §14 (NEW) .]

SECTION HISTORY
1981, c. 428, §10 (NEW). 1983, c. 764, §2 (AMD). 1993, c. 236, §1 (AMD). 2005, c. 78, §1 (AMD). 2009, c. 566, §§12 - 14 (AMD).

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Maine Revised Statutes

Title 14: COURT PROCEDURE -- CIVIL

Chapter 710: RENTAL PROPERTY

§6026-A. MUNICIPAL INTERVENTION TO PROVIDE FOR BASIC NECESSITIES

In accordance with the procedures provided in this section, the municipal officers of any town or city or their designee may provide for basic necessities and any repair activities to ensure the continued habitability of any premises leased for human habitation. For the purposes of this section, "basic necessities" means those services, including but not limited to maintenance, repairs and provision of heat or utilities, that a landlord is otherwise responsible to provide under the terms of a lease, a tenancy at will agreement or applicable law. [2009, c. 566, §15 (AMD).]

1. **Imminent threat to habitability of leased premises exists.** The leased premises must be in need of basic necessities such that the municipal officers or their designee can make a finding that an imminent threat to the continued habitability of the premises exists.

[2009, c. 566, §15 (AMD) .]

2. **Attempt to contact landlord.** The municipal officers or their designee must document a good faith attempt to contact the landlord of the premises under subsection 1 regarding:

A. The municipality's determination of the threat to habitability; [2009, c. 135, §1 (NEW).]

B. The municipality's intention to provide for basic necessities; [2009, c. 566, §15 (AMD).]

C. The municipality's intention to subsequently recover the municipality's direct and administrative costs from the landlord; and [2009, c. 135, §1 (NEW).]

D. The landlord's ability to avert the municipality's actions by causing the provision of basic necessities by a time certain. [2009, c. 566, §15 (AMD).]

This communication to the landlord must be either in person, by telephone or by certified mail as may be warranted considering the degree or imminence of the threat.

[2009, c. 566, §15 (AMD) .]

3. **Municipality may provide for basic necessities.** If the landlord cannot be contacted in a timely manner or if the landlord does not cause the provision of basic necessities by a deadline identified by the municipal officers or their designee, the municipality may provide for basic necessities and whatever attendant activities may be necessary to ensure the proper functioning of the leased premises.

[2009, c. 566, §15 (AMD) .]

4. **Lien.** The municipality has a lien against the landlord of the leased premises for the amount of money spent by the municipality to provide for basic necessities and attendant activities pursuant to this section, as well as all reasonably related administrative costs pursuant to subsection 5.

[2009, c. 566, §15 (AMD) .]

5. **Filing of notice of lien; interest; costs.** The municipal officers or their designee shall file a notice of the lien under subsection 4 with the register of deeds of the county in which the property is located within 30 days of providing for basic necessities. That filing secures the municipality's lien interest for an amount equal to the costs recoverable pursuant to this section. Not less than 10 days prior to the filing, the municipal officers or their designee shall send notification of the proposed action by certified mail, return

receipt requested, to the owner of the real estate and any record holder of the mortgage. The lien notification must contain the title, address and telephone number of the municipal officer or officers who authorized the provision of basic necessities, an itemized list of the costs to be recovered by lien and the provisions of this subsection regarding interest rates and costs. The lien is effective until enforced by an action for equitable relief or until discharged. Interest on the amount of money secured by the lien may be charged by the municipality at a rate determined by the municipal officers but in no event may the rate exceed the maximum rate of interest allowed by the Treasurer of State pursuant to Title 36, section 186. Interest accrues from and including the date the lien is filed. The costs of securing and enforcing the lien are recoverable upon enforcement.

[2009, c. 566, §15 (AMD) .]

SECTION HISTORY
2009, c. 135, §1 (NEW). 2009, c. 566, §15 (AMD).

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§6028. PENALTIES FOR LATE PAYMENT OF RENT

A landlord may assess a penalty against a residential tenant for late payment of rent for a residential dwelling unit according to this section. [1987, c. 605, (AMD).]

1. **Late payment.** A payment of rent is late if it is not made within 15 days from the time the payment is due.

[1987, c. 215, (NEW) .]

2. **Maximum penalty.** A landlord may not assess a penalty for the late payment of rent which exceeds 4% of the amount due for one month.

[1987, c. 215, (NEW) .]

3. **Notice in writing.** A landlord may not assess a penalty for the late payment of rent unless the landlord gave the tenant written notice at the time they entered into the rental agreement that a penalty, up to 4% of one month's rent, may be charged for the late payment of rent.

[1987, c. 215, (NEW) .]

SECTION HISTORY
1987, c. 215, (NEW). 1987, c. 605, (AMD).

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Maine Revised Statutes

Title 14: COURT PROCEDURE -- CIVIL

Chapter 710: RENTAL PROPERTY

§6030. UNFAIR AGREEMENTS

1. **Illegal waiver of rights.** It is an unfair and deceptive trade practice in violation of Title 5, section 207 for a landlord to require a tenant to enter into a lease or tenancy at will agreement for a dwelling unit, as defined in section 6021, in which the tenant agrees to a provision that has the effect of waiving a tenant right established in chapter 709, this chapter or chapter 710-A. This subsection does not apply when the law specifically allows the tenant to waive a statutory right during negotiations with the landlord.

[2009, c. 566, §16 (AMD) .]

2. **Unenforceable provisions.** The following lease or tenancy at will agreement or rule provisions for a dwelling unit, as defined in section 6021, are specifically declared to be unenforceable and in violation of Title 5, section 207:

A. Any provision that absolves the landlord from liability for the negligence of the landlord or the landlord's agent; [1991, c. 361, §2 (NEW); 1991, c. 361, §3 (AFF).]

B. Any provision that requires the tenant to pay the landlord's legal fees in enforcing the lease or tenancy at will agreement; [2009, c. 566, §16 (AMD).]

C. Any provision that requires the tenant to give a lien upon the tenant's property for the amount of any rent or other sums due the landlord; and [1991, c. 361, §2 (NEW); 1991, c. 361, §3 (AFF).]

D. Any provision that requires the tenant to acknowledge that the provisions of the lease or tenancy at will agreement, including tenant rules, are fair and reasonable. [2009, c. 566, §16 (AMD).]

[2009, c. 566, §16 (AMD) .]

3. **Exception.** Notwithstanding subsection 2, paragraph B, a lease or tenancy at will agreement or rule provision that provides for the award of attorney's fees to the prevailing party after a contested hearing to enforce the lease or tenancy at will agreement in cases of wanton disregard of the terms of the lease or tenancy at will agreement is not in violation of Title 5, section 207 and is enforceable.

[2009, c. 566, §16 (AMD) .]

SECTION HISTORY
1991, c. 361, §2 (NEW). 1991, c. 361, §3 (AFF). 1991, c. 704, (AMD). 2009, c. 566, §16 (AMD).

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Maine Revised Statutes

Title 14: COURT PROCEDURE -- CIVIL

Chapter 710: RENTAL PROPERTY

§6030-A. PROTECTION OF RENTAL PROPERTY OR TENANTS

1. Commencing action. A landlord may file a petition against a tenant, a guest or invitee of a tenant or the owner of a dangerous pet on the premises for the protection of rental property or tenants when the landlord, the landlord's employee or agent, the landlord's rental property or persons who are tenants of the landlord have experienced harm or have been threatened with harm by a tenant of the landlord, a guest or invitee of a tenant or a dangerous pet on the premises. The landlord may file the petition in the landlord's own name or, when the landlord has written authority from a tenant to do so, may file the action on behalf of the aggrieved tenant, or both.

[2003, c. 265, §1 (AMD) .]

2. Procedures and relief. Actions under this section are governed by the procedural provisions of Title 5, chapter 337-A. In addition, a temporary order may be sought if the landlord's rental property is in an immediate and present danger of suffering substantial damage as a result of the defendant's actions, and additional injunctive relief may be granted enjoining the defendant from damaging the landlord's or aggrieved tenant's property or from threatening, assaulting, molesting, confronting or otherwise disturbing the peace of the landlord, the landlord's employee or agent or of any aggrieved tenant.

[1995, c. 650, §8 (NEW) .]

SECTION HISTORY
1995, c. 650, §8 (NEW). 2003, c. 265, §1 (AMD).

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Title 14: COURT PROCEDURE -- CIVIL

Chapter 710: RENTAL PROPERTY

§6030-B. ENVIRONMENTAL LEAD HAZARDS

1. **Environmental lead hazard disclosure.**

[2011, c. 96, §1 (RP) .]

2. **Application.**

[2011, c. 96, §2 (RP) .]

3. **Notification of repairs.** A landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for residential property who undertakes, or who engages someone else to undertake, any repair, renovation or remodeling activity in a residential building built before 1978 that includes one or more units that are rented for human habitation shall give notice of the activity and the risk of an environmental lead hazard pursuant to this subsection.

A. Notice must be given at least 30 days before the activity is commenced by:

(1) Posting a sign on the building's exterior entry doors; and

(2) A notice sent by certified mail to every unit in the building. [2007, c. 238, §1 (NEW).]

B. Notwithstanding paragraph A, notice may be given less than 30 days before the activity is commenced by:

(1) Posting a sign on the building's exterior entry doors; and

(2) Obtaining from one adult tenant of each unit in the building a written waiver of the 30-day notice requirement and a written acknowledgment of receipt of notice for the particular activity. [2007, c. 238, §1 (NEW).]

C. The waiver of the 30-day notice requirement pursuant to paragraph B must be in plain language, immediately precede the signature of the adult tenant, be printed in no less than 12-point boldface type and be in the following form or in a substantially similar form:

NOTICE: YOU ARE WAIVING YOUR RIGHT UNDER STATE LAW TO RECEIVE 30 DAYS' NOTICE PRIOR TO ANY REPAIR, RENOVATION OR REMODELING ACTIVITY TO A RESIDENCE BUILT BEFORE 1978. RESIDENCES BUILT BEFORE 1978 MAY CONTAIN LEAD PAINT SUFFICIENT TO POISON CHILDREN AND SOMETIMES ADULTS. WORKERS PERFORMING RENOVATIONS OR REPAIRS IN HOUSING BUILT BEFORE 1978 SHOULD USE LEAD-SAFE WORK PRACTICES THAT MINIMIZE AND CONTAIN LEAD DUST AND SHOULD CLEAN THE WORK AREA THOROUGHLY TO PREVENT LEAD POISONING. [2007, c. 238, §1 (NEW).]

D. For purposes of this subsection, "repair, renovation or remodeling activity" means the repair, reconstruction, restoration, replacement, sanding or removal of any structural part of a residence that may disturb a surface coated with lead-based paint. [2007, c. 238, §1 (NEW).]

E. For purposes of this subsection, "environmental lead hazard" means any condition that may cause exposure to lead from lead-contaminated dust or lead-based paint. [2007, c. 238, §1 (NEW).]

F. Emergency repairs are exempt from the notification provisions of this subsection. For purposes of this paragraph, "emergency repairs" means repair, renovation or remodeling activities that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard or threatens equipment or property with significant damage. [2007, c. 238, §1 (NEW).]

G. A person who violates this subsection commits a civil violation for which a fine of up to $500 per violation may be assessed. This paragraph is enforceable in either District Court or Superior Court. [2007, c. 238, §1 (NEW).]

H. This subsection may not be construed to limit a tenant's rights, a landlord's duties or any other provisions under section 6026 or Title 22, chapter 252. [2007, c. 238, §1 (NEW).]

[2009, c. 566, §17 (AMD) .]

SECTION HISTORY
2005, c. 339, §1 (NEW). 2007, c. 238, §1 (AMD). 2009, c. 566, §17 (AMD). 2011, c. 96, §§1, 2 (AMD).

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Chapter 710: RENTAL PROPERTY

§6030-C. RESIDENTIAL ENERGY EFFICIENCY DISCLOSURE STATEMENT

1. Energy efficiency disclosure. A prospective tenant who will be paying utility costs has the right to obtain from an energy supplier for the unit offered for rental the amount of consumption and the cost of that consumption for the prior 12-month period. A landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for residential property that will be used by a tenant or lessee as a primary residence shall provide to potential tenants or lessees who pay for an energy supply for the unit or upon request by a tenant or lessee a residential energy efficiency disclosure statement in accordance with Title 35-A, section 10117, subsection 1 that includes, but is not limited to, information about the energy efficiency of the property. Alternatively, the landlord may include in the application for the residential property the name of each supplier of energy that previously supplied the unit, if known, and the following statement: "You have the right to obtain a 12-month history of energy consumption and the cost of that consumption from the energy supplier."

[2011, c. 1, §21 (COR) .]

2. Provision of statement. A landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement shall provide the residential energy efficiency disclosure statement required under subsection 1 in accordance with this subsection. The landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement shall provide the statement to any person who requests the statement in person. Before a tenant or lessee enters into a contract or pays a deposit to rent or lease a property, the landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement shall provide the statement to the tenant or lessee, obtain the tenant's or lessee's signature on the statement and sign the statement. The landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement shall retain the signed statement for a minimum of 3 years.

[2011, c. 405, §11 (AMD) .]

SECTION HISTORY
2005, c. 534, §1 (NEW). 2009, c. 566, §18 (AMD). 2009, c. 652, Pt. B, §2 (AMD). 2009, c. 652, Pt. B, §3 (AFF). RR 2011, c. 1, §21 (COR). 2011, c. 405, §11 (AMD).

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Chapter 710: RENTAL PROPERTY

§6030-D. RADON TESTING

1. **Testing.** By March 1, 2014, and, unless a mitigation system has been installed in that residential building, every 10 years thereafter when requested by a tenant, a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for a residential building shall have the air of the residential building tested for the presence of radon. For a residential building constructed or that begins operation after March 1, 2014, a landlord or other person acting on behalf of a landlord shall have the air of the residential building tested for the presence of radon within 12 months of the occupancy of the building by a tenant. Except as provided in subsection 5, a test required to be performed under this section must be conducted by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165.

[2013, c. 324, §2 (AMD) .]

1-A. **Short-term rentals.** As used in this section, "residential building" does not include a building used exclusively for rental under short-term leases of 100 days or less where no lease renewal or extension can occur.

[2011, c. 96, §3 (NEW) .]

2. **Notification.** Within 30 days of receiving results of a test with respect to existing tenants or before a tenant enters into a lease or tenancy at will agreement or pays a deposit to rent or lease a property, a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for a residential building shall provide written notice, as prescribed by the Department of Health and Human Services, to a tenant regarding the presence of radon in the building, including the date and results of the most recent test conducted under subsection 1, 5 or 6, whether mitigation has been performed to reduce the level of radon, notice that the tenant has the right to conduct a test and the risk associated with radon. Upon request by a prospective tenant, a landlord or other person acting on behalf of a landlord shall provide oral notice regarding the presence of radon in a residential building as required by this subsection. The Department of Health and Human Services shall prepare a standard disclosure statement form for a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for real property to use to disclose to a tenant information concerning radon. The form must include an acknowledgment that the tenant has received the disclosure statement required by this subsection. The department shall post and maintain the forms required by this subsection on its publicly accessible website in a format that is easily downloaded.

[2013, c. 324, §2 (AMD) .]

3. **Mitigation.**

[2013, c. 324, §2 (RP) .]

4. **Penalty; breach of implied warranty.** A person who violates this section commits a civil violation for which a fine of not more than $250 per violation may be assessed. The failure of a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for a residential building

to provide the notice required under subsection 2 or the falsification of a test or test results by the landlord or other person is a breach of the implied warranty of fitness for human habitation in accordance with section 6021.

[2013, c. 324, §2 (AMD) .]

5. **Testing by landlords.** A landlord or other person acting on behalf of a landlord may conduct a test required to be performed under this section on a residential building that, at a minimum, does not include an elevator shaft, an unsealed utility chase or open pathway, a forced hot air or central air system or private well water unless the water has been tested for radon by a person registered under Title 22, chapter 165 and the results show a radon level acceptable to the Department of Health and Human Services, or on a building otherwise defined in rules adopted by the Department of Health and Human Services. A test or testing equipment used as permitted under this subsection must conform to any protocols identified in rules adopted by the Department of Health and Human Services.

[2013, c. 324, §2 (NEW) .]

6. **Testing by tenants; disputed test results.** A tenant may conduct a test for the presence of radon in the tenant's dwelling unit in a residential building in conformity with rules adopted by the Department of Health and Human Services or have a test conducted by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165. After receiving notice of a radon test from a tenant indicating the presence of radon at or in excess of 4.0 picocuries per liter of air, either the landlord shall disclose those results as required by subsection 2 or the landlord or other person acting on behalf of the landlord shall have a test conducted by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165 and shall disclose the results of that test to the tenant as required by subsection 2.

[2013, c. 324, §2 (NEW) .]

7. **Reporting of test results.** A landlord or a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165 who has conducted a test of a residential building as required by this section or accepted the results of a tenant-initiated test as set forth in subsection 6 shall report the results of the test to the Department of Health and Human Services within 30 days of receipt of the results in a form and manner required by the department.

[2013, c. 324, §2 (NEW) .]

8. **Termination of lease or tenancy at will.** If a test of a residential building under this section reveals a level of radon of 4.0 picocuries per liter of air or above, then either the landlord or the tenant may terminate the lease or tenancy at will with a minimum of 30 days' notice. Except as provided in section 6033, a landlord may not retain a security deposit or a portion of a security deposit for a lease or tenancy at will terminated as a result of a radon test in accordance with this subsection.

[2013, c. 324, §2 (NEW) .]

SECTION HISTORY
2009, c. 278, §1 (NEW). 2009, c. 566, §19 (AMD). 2011, c. 96, §3 (AMD). 2011, c. 157, §1 (AMD). 2013, c. 324, §2 (AMD).

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The Rights of Tenants in Maine

Find more easy-to-read legal information at www.ptla.org

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How To Use This Guide

This guide gives you a quick look at Maine's landlord-tenant laws as of September 2011. The law is always changing. Also, you may need more information. If you have a problem with your landlord, ask for legal help. Call Pine Tree Legal or a lawyer you know.

If your rent is subsidized, read the "Subsidized Housing" section at page 23 first. **If you own your own mobile home and rent a lot**, go to "Mobile Home Parks" at page 23.

This handbook sometimes refers you to **Small Claims Court**. Call Pine Tree Legal or your local District Court for instructions.

Area Pine Tree Offices

Office	Telephone
Augusta	**622-4731**
Bangor	**942-8241**
Machias	**255-8656**
Lewiston	**784-1558**
Portland	**774-8211**
Presque Isle	**764-4349**

Multi-lingual language line: 774-8211
TTY: 711

Tips Before You Rent

- ✓ **Read the lease or rental agreement carefully before you sign or put money down.** Ask about anything you do not understand. Look for hidden charges or penalties. If you sign the lease, you may be stuck paying those charges.
- ✓ If something is important to you, get it in writing. Don't count on an oral promise.
- ✓ Make a list of major problems in the apartment. Include the condition of walls, floors, windows, and other areas. Try to get the landlord to sign your list. This will help protect you when it comes time to move out.
- ✓ If the building was built before 1978, beware of possible lead-based paint problems. Owners of these older buildings must tell you of any known lead-based hazards and show you any relevant records before you rent. Your landlord must give you a form notice explaining the dangers of lead-based paint. He must also give you a government pamphlet called "Protecting Your Family from Lead in Your Home." (See more at page 9.)
- ✓ Find out who pays for hot water, heat, electricity, parking, snow removal, and trash disposal.
- ✓ Find the utility controls. Ask questions. Where is the thermostat? Who controls it? Where is the electric box? Where is the hot water heater?
- ✓ You have the right to know the energy costs for the living unit before you rent. If you will be paying an energy bill (such as electric or heating oil), ask the energy supplier for billings on your unit for the past 12 months. The company must tell you. Or ask to see the landlord's "Energy Efficiency Disclosure Statement." (Contact the Maine Public Utilities Commission 1 (800) 452-4699 for more information about this law.)
- ✓ Be sure that all utilities and appliances are working right. Make sure the landlord agrees to fix appliances, furnace and all other building systems.

- ✓ Bedbugs are becoming a major issue in some parts of Maine. It is against the law for a landlord to rent a living unit with bedbugs. If you ask about when the building was last treated and declared free of bedbugs, the landlord must tell you. (Read more about bed bugs)

- ✓ Your landlord must show you a written "smoking policy." This tells you where smoking is prohibited and identifies any smoker-friendly areas. Your landlord can include this in the lease or give you a separate notice to read and sign. You have the right to know this information before you pay a deposit or commit to a rental contract.

- ✓ If you share rent, remember that the landlord can charge you for all of the rent if your roommates don't pay their share.

- ✓ Try to talk with another tenant about the building and the landlord.

- ✓ Check about off-street parking, public transportation, and stores. Try to check the neighborhood at night.

- ✓ Check to see that all the windows and doors can be locked and are not broken. Are there window screens?

- ✓ Your landlord's insurance probably does not protect you from damage or loss of your furniture or other property. Consider buying tenant's insurance if you want this protection.

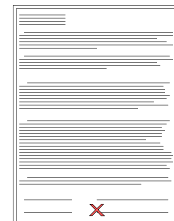
- ✓ Be careful about putting money down to “hold an apartment.” If you decide later not to rent it, the landlord may refuse to return your money. You can sue him in Small Claims Court, but this will take time. Also, depending on how the judge interprets your agreement, you may not get all of your money back. For example, the court may decide that you put the money down as a security deposit. (See section on security deposits at page 4.)

- ✓ If a landlord suggests that you buy a surety bond, instead of paying a security deposit, be careful. A few basic rules about surety bonds:
  1. You cannot be forced to buy one. It is your choice.
  2. You will not get back the money you pay for the bond, even if you owe the landlord nothing when you move out.
  3. Although a surety bond can save you money in the short-run, it may cost you more in the long-run if you leave owing rent or damages. The surety company can choose to sue you for the money it pays to the landlord under the bond.
  4. Buying a bond will not save you from getting a bad mark on your credit report, if you leave owing the landlord money. Contact Pine Tree Legal for more information.

- ✓ **Get something to keep your records in. Keep in your file:**
  - ❑ your lease or rental agreement
  - ❑ security deposit receipt
  - ❑ ~~dated~~ list of things wrong with the apartment
  - ❑ rent receipts (or cancelled checks)
  - ❑ landlord's address and phone number
  - ❑ all other papers about your tenancy

Types of Rental Agreements

Leases



The agreement you make with your landlord affects what rights you will have. You may sign a

written agreement called a lease. A lease lists the names of the landlord and tenant, the address of the apartment, the length of the lease, and the day the rent is due. Most leases contain much more than this. Read these "extra conditions" carefully and understand them before you sign. This handbook will give an idea of what to look for in a lease.

If you sign a lease, be aware that it sets out the rules you and your landlord agree to follow. For example, it will probably say whether the landlord can evict you before the lease ends, what reasons he must have, and what kind of notice he must give you. If the landlord is trying to evict you, a judge will look at what your lease says to decide the case. If something in a lease is grossly unfair to you, a judge **may** say that it can't be used against you. But **usually** your rights depend on what the lease says.

Note: If you have a written agreement that does not have a "lease term" (a specific amount of time you will be renting), then you have a "rental agreement," not a lease. Our advice to you is the same. **Read the agreement and understand it before you sign!**

A new statute, effective September 2011, clarifies that either the landlord or the tenant can choose to end the lease if the other party has "materially breached" the lease. This requires a written 7-day notice, served in-hand, or, after 3 good faith efforts, mailed by first class mail, with a copy left at the other party's home. Read more about landlord's duty to seek a court order before evicting a tenant at page 14 “Evictions.”

The Maine Attorney General's office posts a "model lease" form that landlords and tenants can use for reference: *maine.gov/ag/dynld/documents/clg16.pdf*

Tenancies at Will

When you rent without a lease, you become a "tenant at will." Maine law gives you certain rights we will tell you about here. For example, to evict you, your landlord must give you time after a written notice and must get a court order if you are still not out. Read more about this under "Evictions" at page 14.

Hotels, Motels, Inns, and Rooming Houses

Generally, if you are staying in a hotel or motel, you are not a tenant and do not have the rights of a tenant. A motel owner can evict you on short notice and without going to court.

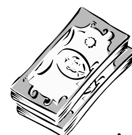
If you live in a rooming house, are you a tenant? This is a gray area of the law. The owner may say that you are not a tenant because she has an “innkeeper's license” or runs a “lodging house.” But there is more to it. If the owner acts like a motel owner by:

- providing clean sheets and towels
- cleaning your room
- signing guests in and out in a registry
- renting rooms by the day, rather than by the month

then you are probably not a tenant. But if the owner does **not** do these things, then he is probably a landlord, and you **do** have the rights of a tenant.

If you live in an inn or rooming house and you are not sure about your rights, call Pine Tree Legal (page 2).

Security Deposits



What is a security deposit?

A security deposit is money you give to your landlord when you move in. Your landlord can use it to cover any

unpaid rent or damages. You may not use your security deposit to cover your last month's rent unless your landlord agrees.

NOTE: A **surety bond** is very different from a security deposit. If your landlord suggests that you buy a surety bond, read our tips at page 3.

How much can my landlord charge for a security deposit?

Your landlord cannot charge more than two times your monthly rent. If you live in subsidized housing, your security deposit should be much less. Check with your housing authority.

Does my landlord have to return my security deposit to me?

If you owe back rent or you have damaged your apartment, your landlord may deduct those costs from your security deposit. If you owe your landlord more than the amount of your security deposit, he may sue you in court.

Does my landlord have to pay me interest when returning my security deposit?

No, not unless you both agreed to this. If you live in subsidized housing, check your lease or ask the housing authority. Your landlord **may** have to pay interest on your deposit. (See page 24 for mobile home park rules.)

Can my landlord keep my security deposit to pay for routine upkeep?

No, your landlord **cannot** keep your security deposit for "normal wear and tear." Examples of "normal wear and tear" could be:

- a worn carpet
- chipped paint
- worn finish on wood floor
- faded or dingy paint

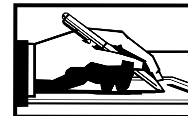
This means that your landlord cannot charge you for routine upkeep, such as periodic cleaning and painting.

The landlord can deduct the cost of fixing damages which are beyond "normal wear and tear." Examples of these damages could be:

- broken windows
- holes in the wall
- leaving trash or other items that have to be thrown away
- leaving your apartment so dirty that it's unhealthy or unsafe

If your apartment is damaged by a storm, a fire, or a vandal, tell your landlord right away. He cannot charge you for the repairs if you or your guests did not cause the damage. It is also a good idea to make a police report.

What kind of notice do I have to give if I am moving?



If you are a tenant at will (no written lease), you must give your landlord a 30 day written notice. The notice period should end on a rent day. You and your landlord can agree to a shorter notice period, if you agree in writing.

If you have a lease, read it to see what kind of notice you must give.

If you do not give the right notice, your landlord may try to charge you for time after you move. If you have a lease, she may try to charge you rent for the rest of the lease term. Again, this will depend on what the lease says.

Your landlord must try to re-rent your apartment as soon as she knows you have moved out. If she re-rents your apartment

right away, she can only charge you for the time you were there and the time it took her to find a new tenant. For example, your rent is $500 a month and you moved out on the 10th day of the month without notice. Your landlord re-rents the apartment on the 15th of the month. You owe $250, or half a month's rent. Your landlord may also charge you reasonable expenses for re-renting the apartment if you did not give the right notice.

Note: If you are moving out because your landlord has "substantially breached" the lease, the rules are different. You must give the landlord a written 7-day notice, served in-hand, or, after 3 good faith efforts, mailed by first class mail, with a copy left at the landlord's home. The notice should explain your intention to leave based on the landlord's failure to uphold his duties under the lease. If you follow these rules, then the lease ends, and you have no more responsibilities under the lease.

When does my landlord have to return my security deposit?

Your landlord must either return all of your security deposit or send you a letter telling you why he is not giving some or all of it back. He must send this letter to your "last known address." Give your landlord your new address, or make sure your mail is being forwarded so that you will get the letter.

If you are a tenant at will (no written lease), your landlord must give back the deposit or send you the letter within **21 days** after you move out and return the key. **If you have a lease**, check to see what it says. If there is nothing in the lease about this, or if the lease gives more than 30 days, then your landlord has **30 days** to return the deposit. This is the legal limit.

What can I do if my landlord does not return my security deposit?

⇒**Step One**

Contact your landlord and ask her to give back your deposit.

⇒**Step Two**

If the 21 or 30 days has gone by and you still don't have the deposit, send your landlord a letter asking for return of your deposit within 7 days. Write that if your deposit is not returned, you will bring legal action. Your landlord should return your full deposit. (We have a form letter you can use. Call Pine Tree Legal.)

⇒**Step Three**

Sue your landlord in Small Claims Court. Ask your District Court clerk for a pamphlet explaining the steps. In your written complaint, ask the Court to order your landlord to pay you **two times** the deposit amount plus your court costs. The judge will order this unless the landlord can show at the court hearing that she had good reason not to return the deposit to you.

> **Note**: If your landlord lives in your building and there are 5 living units or fewer, then you can still sue to get your deposit back but you cannot get twice that amount.

If I take my landlord to court, can he/she sue me?

Keep in mind before you sue that if you owe your landlord money, he will probably bring these claims against you to counter your claim for return of the deposit. So, if you owe him more money than he owes you, suing in court is probably not a good idea. On the other hand, if he sues you, you can

"counterclaim" for return of your deposit and for any other money he owes you.

Does my landlord have to keep my security deposit in any special account?

Yes. He has to keep security deposits in an account that is separate from his other accounts and safe from his creditors. This includes protecting your money from a lender who forecloses on the building and from a trustee in bankruptcy. If you ask, the landlord must tell you the name of the bank where the money is deposited and the account number.

What if my landlord doesn't follow these "separate account" rules for protecting my deposit?

You can take your landlord to court. If you win you can get:

- "actual damages" (your losses)
- $500, or
- one month's rent,

whichever is greatest, plus your court costs. Also, the court can order the landlord to pay your lawyer's fees.

This right to sue starts on June 1, 2010 for all deposits paid after that date. For security deposits paid before that date, you can sue your landlord if he violates the rules after October 1, 2010. (This new law gives landlords an extra four months to bring pre-existing accounts into compliance.)

What if my landlord sells my building?

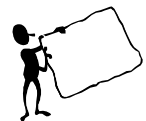
If your building is sold (or passes to a new owner for any reason), your landlord must give your security deposit to the new owner or give it back to you. If he gives it to the new owner, he must mail you a notice with that person's name and address and how much money was passed on to him. He can deduct charges for back rent or damages.

Remember, if you follow these tips you will have a better chance of getting your security deposit back.

- ❑ Get a payment receipt and keep it.
- ❑ When you move in, make a list of the defects. Keep the list and give a copy to your landlord.
- ❑ Clean your apartment and take away all of your things, including trash.
- ❑ Take pictures or write down what is right and what is wrong with the apartment when you leave. Have a witness look over the apartment just before you move out. (He can testify in case you have to go to court).
- ❑ If you don't get the deposit back right away, leave your new address with the landlord (so he can send you your deposit).
- ❑ Try not to owe any rent when you leave.

Rent

Should my landlord give me a receipt when I pay my rent?



If you pay any of your rent in cash, the landlord must give you a receipt at the same time. The receipt must include:

- the date
- the amount paid
- your name
- what the payment was for
- the landlord's signature

If you live in a building with 5 apartments or fewer and your landlord lives there, he does not have to give rent receipts. If your landlord won't give a receipt, try to pay with a check or money order and keep your own records.

Can my landlord charge interest on a late payment of rent?

Yes. If you do not pay your rent within 15 days after it is due, your landlord can charge a late fee. The fee cannot be more than 4% of one month's rent. For example, if your rent is $800 per month, the late charge cannot be more than $32. **To charge a late fee, your landlord must tell you about it in writing when you agree to rent from him.**

General Assistance

Does my landlord have to accept general assistance (GA) rent vouchers?

Yes. Your landlord cannot refuse your rent just because the town is paying some or all of it. (read more about General Assistance in Maine)

What if the landlord refuses to take GA vouchers?

First, find out why your landlord will not take GA vouchers. Maybe the problem is that the town only pays by the week but your landlord charges by the month. Ask the town to pay by the month or to agree with your landlord on a payment schedule. If the town will not help, call the General Assistance Unit at the Department of Health and Human Services in Augusta. Their toll free number is **1-800-442-6003**. If that does not help, call your local Pine Tree Legal office (listed on page 2).

Your landlord cannot refuse to take GA simply because he doesn't like city vouchers. You can file a discrimination complaint with the Maine Human Rights Commission in Augusta: **624-6050**. Pine Tree Legal can help you to file a complaint.

Rent Increases

Can my landlord increase my rent?

Yes, if you are a tenant at will (without a lease). Your landlord must give you a **45 day written notice** of any rent increase. If your landlord does not do this, you have two choices.

1. You can refuse to pay the increase, **or**
2. You can pay under protest and later sue your landlord for the amount you were overcharged. You can ask the court to order the landlord to pay for your court costs and lawyer's fees. Or you can sue in Small Claims Court without a lawyer.

If you choose not to pay the increase, your landlord may try to evict you. See "Evictions" at page 14.

If you have a lease, the landlord probably cannot increase the rent during the lease term. Read your lease to find out if it says something different.

If you live in subsidized housing, your rent is based on your income. So, your rent can be raised or lowered if your income changes. Also, there are special “earnings disregard” rules if you start working. Read your lease. Then contact Pine Tree Legal if you think you are paying too much.

Can my landlord increase my rent if there are serious problems with my apartment?

No. If there are serious problems, which are unsafe or could make you sick, the landlord must fix the problems before she can charge more rent. For example, your landlord cannot increase your rent if there is no heat in the winter. If you or your guests have caused the problems, then your landlord can still raise your rent. For more information about heating your apartment, see “How

Much Head and Other Utilities Does my Landlord Have to Provide?"

Unsafe or Unfit Housing

Does my landlord have to keep my home safe and in decent condition?

Yes. Maine law gives tenants an "implied warranty of habitability." This means that your landlord must promise that your home is safe and fit to live in.

Examples of landlord violations:

- undrinkable water
- no heat or too little heat in the winter
- a combination of problems, such as leaking ceilings, unsafe heating system, broken windows, and roaches

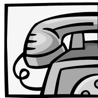
The heating system should be able to heat your living space to at least 68°. (For more details, ask for our pamphlet "How Much Heat?")

What can I do if my home is not safe?

⇒**Step One**

Ask your landlord to fix the problem. If he does nothing, you may want to follow up with a **written** demand. Keep a copy of your letter.

⇒**Step Two**



Call your city hall or town office and ask about any housing codes that may apply to your building. If your town has a building code enforcement officer, you can ask him to look at your home and send the landlord a letter demanding that he fix any code violations. State law also requires each town to have a health officer, who can inspect and require that unhealthy conditions be remedied (or the building vacated). Also, each town must have a local plumbing inspector to enforce state and local plumbing-related rules.

⇒**Step Three**

If you cannot get local help, you may be able to get some help, or other referrals, from these state agencies:

- Fire hazards:
  State Fire Marshall's Office
  Inspections Unit
  626-3880 TTY: 287-3659
- Electrical wiring problems:
  Senior Electrical Inspector
  624-8519 (leave a voicemail for inspector); for general inquiries, call
  624-8603 TTY: 1-888-557-6690
- Plumbing problems:
  Plumbing Inspector
  624-8639 TTY: 1-888-557-6690
- Wastewater, drinking water, and radon:
  DHHS Division of Environmental Health
  TTY: 1-800-606-0215
  Wastewater program: **287-5689**
  Drinking water: **287-2070**
  Mold, radon, indoor air quality: **287-5676**
- Mold:
  Office of Local Public Health: **287-6227**
  Health Inspection Program: **287-5671**

Also, the non-profit agency Maine Indoor Air Quality Council (**626-8115**) is a reliable resource and posts useful information here: www.maineindoorair.org

What if I think there is lead paint in my apartment?

You can be tested or have your children tested for lead. Ask your family doctor or clinic about lead tests. If your child's test shows a very high level of lead, the lab will tell the Childhood Lead Poisoning Prevention Program in Augusta (see below). They can inspect your home for free and order your landlord to remove the lead. This program gives other help and information as well.

If you want to check the paint or water in your home for lead, ask your landlord for help or call one of these state agencies:

- The Health and Environmental Testing Laboratory at **287-2727** (Water testing)
- Maine State Housing Authority **1-800-452-4668** (Paint testing; they can also test for lead in soil where your child plays.)

Some Community Action Programs (CAPs) can also help you with dust testing.

For more information contact:

- Childhood Lead Poisoning Prevention Program, DHHS: **1-866-292-3474**
- Lead Hazard Control Program, MSHA: **1-800-452-4668**
- **Lead Hazard Prevention Program, DEP: 1-800-452-1942**

If you have a young child who has been harmed by a landlord's failure to tell you about known lead hazards, or failure to give you other required warnings (see page 2), he may be fined or ordered to pay you damages. Get legal advice.

For all places built before 1978, a landlord must give you 30 days advance notice before doing any repairs or renovations that disturb lead-based paint. This notice includes postings on all exterior entry doors and a certified mail letter to all residential units in the building. Or the landlord can post the notices and get a signed written waiver from an adult in each unit. The waiver must contain specific warnings. Your landlord can be fined up to $500 for each violation of these notice rules. If you believe that you or your children have suffered harm because your landlord failed to notify you, you can report the violation to your local District Attorney or the Maine Attorney General's Consumer Protection Division: **1-800-436-2131**.

The purpose of this law is to make sure that you have the chance to protect yourself and your children from lead dust while the work is being done. Also, your landlord must use lead-safe practices so as to minimize the danger. Read more in our pamphlet: "What You and Your Family Should Know about Lead."

Bedbugs: What can I do to avoid them and get rid of them?

Bed bugs have become much more common in Maine. They are difficult to get rid of. As with other health and safety issues, the first step is to contact your landlord and ask him to have the building professionally treated. You and others in the building will also have to take steps to help combat the problem

Before you rent:

It is illegal for a landlord to rent an apartment that he knows (or suspects) to have bedbugs. He must also tell you whether other nearby apartments in the building have bedbug problems.

Before you rent ask when the apartment and nearby units:

- were last inspected for bedbugs, and
- found to be free of bedbugs.

The landlord must give you an honest answer.

What happens if my apartment is infected with bedbugs after I move in?

First, you must tell your landlord right away. To create a record, it is probably a good idea to do this in writing. (Get a sample letter here.)After that, both you and your landlord must make efforts to fix the problem. Here is how it works:

- After you notify your landlord, he must inspect your apartment within 5 days.
- Next, your landlord must contact a state certified pest control expert

within 10 days of inspecting and finding bedbugs.

- Then your landlord must take all reasonable steps to treat the problem, based on the expert's advice.
- Your landlord and the pest control expert will probably need access to your bed, furniture and other belongings. They must be respectful of your privacy but at the same time do whatever inspections are needed to take care of the problem. You need to cooperate to get rid of the bedbugs. Your landlord must tell you the costs of your participation in the process.

NOTE: Your landlord should always give you 24-hour advance notice before entering your apartment or sending pest control experts, unless it's an emergency. See "Landlord Entering Your Home" at page 22.

What if I can't afford to "cooperate?"

To help get rid of the bedbugs, you may be asked to move furniture, launder clothing and linens, or take other steps to assist in the process. If you cannot afford to do these things or are not able to do them, your landlord can go ahead with the necessary steps and charge you for any costs specific to you (such as moving your furniture or laundering your linens). If your landlord fronts these costs for you, after first telling you how much they will be, he can ask that you repay those costs over a 6-month period (or longer, by agreement).

What should I do if my landlord doesn't do anything to get rid of the bedbugs?

You can take your landlord to court. You can get at least $250 or your "actual damages" (whatever you lost). You must show that:

- you did not cause the problem;
- you gave your landlord oral or written notice of the problem when you learned about it;
- the landlord didn't take prompt steps to get rid of the bedbugs; and
- you did not owe the landlord any back rent when you gave the notice.

Note: If your landlord tries to evict you within six months of your complaint, the law may protect you. See "Retaliation Defenses" at page 17.

TIPS

- ✓ Make sure you have correctly identified the bug. You can send samples to the University of Maine Cooperative Extension's Insect Lab.
- ✓ Avoid picking up beds, mattresses and other old furniture off the street or from the dump.
- ✓ When moving to a new place from one with bed bugs, make sure that you are not bringing the bugs, or their eggs, with you in your belongings. (See article links below)

Here is a helpful resource on bed bugs, how to identify them, and how to get rid of them:

"Bed Bugs: University of Kentucky Entomology"

See also, July 29, 2012 Lewiston Sun Journal article about high-heat treatment as an effective remedy. (Landlords and homeowners should consult with a qualified, experienced expert.)

What can I do about mold?

If you think you have mold, ask your landlord to find and fix the water problem

that is allowing mold to grow, then to fix any water damage. If this doesn't work, follow the steps at page 8. Approach your landlord again with findings from your local health officer and your doctor, if you can get them.

The state's Health and Environmental Testing Laboratory is no longer doing mold testing. Some private labs will do testing, but it is expensive.

For More Information Contact:

- Office of Local Public Health **287-6227**
- The non-profit agency Maine Indoor Air Quality Council (**626-8115**) is a reliable resource and posts useful information here: www.maineindoorair.org
- The federal EPA posts "A Brief Guide to Mold, Moisture and Your Home" here: www.epa.gov/iaq/molds/moldguide.html

Does my landlord have to provide smoke and carbon monoxide alarms?

Yes. All apartments must have working smoke and carbon monoxide alarms in or near bedrooms. Single-family homes built or renovated after 1981 must also have smoke alarms. Any renovation that adds a bedroom must include a carbon monoxide alarm. In apartment buildings with more than three stories, all hallways must have smoke alarms. All new alarms put in after October 2009 must plug into the wall and have a battery backup.

If you are deaf or hard-of-hearing, you may request a non-audible alarm. If your landlord refuses, you may put one in yourself and deduct the actual cost from your rent. (See "Can I fix the problem myself?" at page 12.)

Any smoke detectors located within 20 feet of kitchen or a bathroom containing a tub or shower must be photoelectric-type smoke detector.

Landlords may be fined up to $500 for each violation of these rules.

Tenants should:

- Test alarms periodically
- Make sure the batteries are working
- Not disable alarms, and
- Notify the landlord in writing when an alarm is not functioning properly.

How do I know if my building has dangerous radon levels?

Radon is a gas you can't see or smell that can be harmful to your health. According to Maine DHHS radon is the second leading cause of lung cancer. By March 1, 2014, your landlord must test for radon in your building.. He must do this every 10 years at the request of a tenant, unless there is a working radon mitigation system Whoever tests your building must be registered with the state's Division of Environmental Health at DHHS. (There are some exceptions for landlord-or tenant-conducted testing.) Your landlord must notify you in writing about the results of the most recent radon test when you enter into a rental agreement. If asked, the landlord must tell a prospective tenant about the radon levels in the building. To help landlords comply, DHHS has issued a standard disclosure form: www.ptla.org/sites/default/files/Maine-radon-disclosure-info-renters.pdf

The landlord is not required to fix radon problems. A landlord who chooses to fix the problem must use a licensed radon mitigation person. If radon levels are over 4.0 picocuries per liter of air, a tenant may vacate the premises by giving a 30-day notice to the landlord.

Violation of these requirements can result in a $250 fine per violation. Failure to supply the required notice also means that the landlord has violated Maine's "implied warranty of fitness for human habitation." Landlords must also report results to Maine DHHS.

For more information contact:

DHHS Division of Environmental Health
287-5676 TTY: 1-800-606-0215

Can I fix the problem myself?

Sometimes if a repair is not too major, you can "repair and deduct." You can fix the problem and deduct the cost of the repair from your next month's rent. Here are the rules:

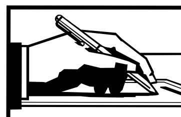
1. Your problem must be one that makes your home unhealthy or unsafe. Examples:

- no heat or not enough heat in the winter
- unsafe drinking water
- falling ceiling
- unsafe wiring

2. You must be able to fix the problem for less than $500, or half of your monthly rent, whichever is greater. For example:

- If your rent is $800 per month, you can spend up to $500 to do the repair.
- If your rent is $1200, you can spend up to $600.
- This amount is increased to two times your monthly rent if your building is in foreclosure.

3. You, your family, or your guests did not cause the problem.



4. Before you fix the problem, you must write a letter to your landlord. Send the letter by certified mail, return receipt requested. In the letter, ask your landlord to fix the dangerous condition within 14 days, **or sooner if it is an emergency**. Tell him that if he does not do the repair, you will have it fixed and deduct the cost from your rent. (We have a form letter you can use. Call Pine Tree Legal if you want a copy.) If your landlord offers to fix the problem, then you must let him into your home to do the repair. See "Landlord Entering Your Home" at page 22.

5. If you have the work done, both the work and the materials must be of good quality. If your problem is with the heating, plumbing, or electricity, you must get a licensed worker to do the repairs.

6. After the work is done, send the landlord a copy of the bill. Keep the original bill. Then you can deduct the cost from your rent payment.

Here are a few more "repair and deduct" limitations:

- You cannot use "repair and deduct" if your landlord lives in your building **and** there are fewer than 5 apartments.
- If you do the repairs yourself, you can deduct for parts and materials but not for your labor.

- Members of your immediate family cannot charge for labor either.
- You cannot hold your landlord responsible if anyone gets hurt doing the repairs.

What if the repairs cost more than $500.00 or half my monthly rent (or 2x monthly rent if building is in foreclosure)?

You and your neighbors may be able to use "repair and deduct" together to fix a bigger problem. For example, your building might have a bad roof or furnace that costs a lot to fix. If you had 8 tenants who each pay $800 per month, you could pay for a repair costing as much as $4000 (8 x $500).

Caution: We do not know of anyone who has tried this before in

Maine. If you want to try a group "repair and deduct," try to talk with a lawyer first.

My landlord just stopped paying his utility bills. What can I do?

Your agreement was that the landlord would pay for utilities- such as lights, electric heat, fuel or water. Then he stopped paying. You can legally put the account in your name, pay the bill, and then deduct the cost from your rent.

If this doesn't work to make you even, you can sue the landlord for "actual damages" (your losses). The court can also order the landlord to pay the court costs and lawyer's fees.

Can I just refuse to pay my rent if my landlord won't fix things?

No. You will risk eviction and can still be charged for the rent while you are living there. Talk to a lawyer before you decide to stop paying rent.

Exception to the rule: If your apartment burns down or is so damaged that you can no longer live there (and it's not your fault), you do not have to pay rent from the day you are forced out.

I have tried all of the things you have suggested but my home still is not safe. What about suing my landlord in court?

Warning your landlord of court action may be enough to get him to fix the problem. If not, you may either want to move or to sue.

To win a lawsuit, you must meet these tests:

- ❑ Your problem must be serious--something that makes your home unsafe or unhealthy.
- ❑ You, your family or guests did not cause the problem.
- ❑ You must tell your landlord about the problem **in writing** within a reasonable time, and give her a reasonable time to get it fixed. (Telling the building manager or someone else who collects rent for the landlord may be good enough. But the best way to prove that your landlord knew about the problem is by giving her written notice and keeping a copy.) Get a sample form here.
- ❑ You should be fully up-to-date in your rent payments at the time you give the landlord written notice.

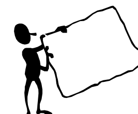
If your landlord does not fix the problem within a reasonable time after you give the written notice, talk to a lawyer about going to court or file a complaint in Small Claims Court yourself. (If you need quick action, going to Small Claims Court may take too long.)

At a court hearing the judge will decide whether your landlord has given you a safe and healthy place to live. The judge may order any of these remedies:

- that your landlord fix the apartment
- that your rent be less until the landlord does the repairs
- that your landlord pay you back some of the rent you have paid

Can my landlord make me agree to live in a home that is unsafe or unfit?

No. A landlord cannot force you to accept unsafe or unfit housing. You can agree **voluntarily** to live with certain unsafe or unfit conditions. The agreement does not stand unless:



- ☐ it is in writing

- ☐ it says exactly what unsafe conditions you have agreed to live with
- ☐ it says exactly how much the rent was lowered because of the unsafe conditions

Learn more from our pamphlet: "How Much Heat and Other Basic Utilities Does My Landlord Have to Provide?"

Evictions

Can my landlord turn off my utilities or change the locks on my door or otherwise kick me out without first going to court?

No. It is illegal for your landlord to throw you out by force. Your landlord must get a court order before he evicts you. If your landlord tries get around this by changing the locks, taking your property, or shutting off any of your utilities, he has broken the law. If you take him to court and ask for immediate help, the court may stop the landlord and order him to pay you for your losses or $250.00, whichever is greater, plus your court costs. If you have a lawyer and you win the case, the court can also order your landlord to pay your attorney fees.

NOTE: The electric company must determine if tenants are living in a place before cutting off service at the owner's request. If you agree to put the service in your name, the electric company cannot cut you off.

Does my landlord have to have a reason to evict me?

This depends on whether you are a tenant at will or have a written lease.

If you have a written lease, your landlord probably has to have a reason to evict you. This is also the rule if you live in **subsidized housing** or own your own home in a **mobile home park.**

If you are a tenant at will (no lease), your landlord can evict you without giving a reason. However, he must give you 7 or 30 days notice in writing. There are some exceptions to this, explained below.

Does my landlord have to warn me before I can be evicted?

Yes. The type of notice he must give depends on what type of tenancy you have.

➢ If you have a written lease:

- Your landlord can evict you for a "material breach" of the lease. This means that you have violated one of your major duties under the lease, such as payment of rent, not disturbing other tenants in the building, not causing major damage, or some other "material" lease clause. **Know what your lease says so that you will know exactly what you have agreed to.** (Note: You have a similar right if your landlord "materially breaches" the lease. (Read more at page 3-4 under "Leases.")
- If you have "materially breached" the lease, your landlord can serve you with a 7-day notice to quit. The notice must advise you of your right to contest the eviction in court. Read more about 7-day notice rules at page 16.
- **End of lease term.** If your lease does not say that it automatically renews when the lease term ends, your landlord can go to court without giving you any notice. But he can do this only during the seven days following the end of your lease term. For example, you have a one year lease that ends on February 28. Your landlord may file a court complaint between March 1 and March 7, asking for an eviction order without giving you

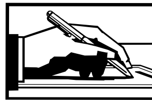
a notice first. (**If your rent is subsidized**, your lease probably renews automatically, so this paragraph does **not** apply to you.)

- **If you are a tenant at will (no lease):**

Your landlord must give you either a 30-day or 7-day written notice to leave, or he can combine both of these into one notice. Any notice must advise you of your right to contest the eviction in court. This is called a "Notice to Quit."

30-day written notice

Your landlord can evict you with 30 days notice for almost any reason or no reason.

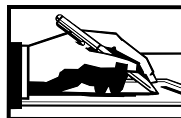


Exceptions: You may be able to stop the eviction if your landlord is evicting you because of "retaliation" or "illegal discrimination." Read "Retaliation defense" and "Discrimination defense" at page 18.

The notice must not terminate the tenancy until the last date for which rent has been paid, or later. For example, if your rent is paid through the end of June, your notice period cannot end before June 30th. Also, the notice must give you a full 30 days. (Example: A notice ending the tenancy on June 30 must be given to you no later than May 31.) If the notice does not follow these rules, you may be able to stop or delay the eviction. Get legal advice.

7-day written notice

To evict you with a 7-day notice, your landlord must have a reason and state that reason in writing. The reason must be one of these:



- ✓ You have **seriously** damaged the apartment and have not repaired the damage.
- ✓ You have been a "nuisance" to other tenants or neighbors. (Examples: You pick fights with your neighbors, don't let them sleep, or destroy their property.)
- ✓ You have made the apartment unlivable or unfit to live in.
- ✓ You have changed your door locks and have refused to give your landlord a duplicate key (see page 23).
- ✓ You are 7 days or more behind in rent.

If the reason is that you have not paid your rent, the notice **must include** these two sentences:

> **"If you pay the amount of rent due as of the date of this notice before this notice expires, then this notice as it applies to rent arrearage is void."**
>
> **"After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated."**

This means that you can stop the eviction by paying the rent you owe. After 7 days, if you do not pay up what you owe before your next rent date, you have to pay both months' rent to stop the eviction. You can still stop the eviction by paying all rent owed even after the landlord takes you to court to get an eviction order. But to stop the eviction then, you have to pay all of the rent due **and** the landlord's court costs. These costs are:

- cost of serving the court papers
- court filing fee

Your last chance to stop the eviction is just before the court issues the "writ of

possession." Your landlord can get this "writ" **7 days** after he gets the Court order.

Does the landlord, or his agent, have to give me the "Notice to Quit" in person?

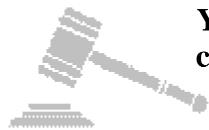
Yes. In a tenancy at will, the landlord, or his agent, must deliver the 7-day or 30-day notice to the tenant in person. The notice does not have to be served by a sheriff.

> **Exception:** The landlord, or his agent, must make 3 good faith efforts to hand deliver you the notice. If he still cannot find you after 3 tries, he can mail you the notice and leave a copy at your home.

What if I rent my home from my employer?

If your landlord is also your employer, he may be able to go to court to evict you without first giving you a written notice to quit. Get legal advice. Your landlord must still go to court to evict you.

What if I do not move out after I get an eviction notice?



Your landlord must go to court to evict you! If you do not move out by the end of the notice period, then your landlord can have you served with court papers. The court case is called a "Forcible Entry and Detainer." (This does **not** mean that the landlord can enter your home by force or detain you.) The papers say that he is trying to evict you. They ask the court to hold a hearing, to decide if you can be evicted. If you want to fight the eviction, you have a right to be heard in court. A landlord **cannot** legally evict you without a court order.

Here is what will happen:

⇒ A deputy sheriff will give you court papers: a summons and a complaint. The landlord can have these papers served on you anytime after the end of the notice period. The summons will tell you the date, time and place of the court hearing. You must get the papers at least 7 days before the court hearing. Between October 6, 2013 and September 1, 2016, a new "alternative service" rule will be in effect. The officer must make a good faith effort to deliver the papers in hand at least 3 times on 3 different days. If that doesn't work, then the landlord may mail you the notice and leave a copy at your residence where you are likely to find it (such as posting on your door). Then the landlord must file an affidavit with the court swearing to the steps he has taken to notify you.

⇒ **Seek legal advice immediately.**

⇒ If you end up going to the hearing without a lawyer, ask for a **recorded hearing**. Send a letter to the court ahead of time. Your request should be at least 24 hours in advance. Then ask for a recording again when you get to court.

⇒ **Be on time for your hearing.**

⇒ The judge may tell you that you must go to "mediation" before having a court hearing. (Read more about this and other court procedures in our pamphlet on Evictions.) If you do not come to an agreement during mediation, then you will go on to a formal court hearing.

⇒ At the court hearing the landlord will tell the judge what notice he gave you and why he wants to evict you. Then you have a chance to explain why you should not be evicted. Here are some common defenses:

- **Improper notice defense**

Your landlord must follow all of the notice rules. (Most of the notice rules are

explained above.) If you think that your notice to quit did not meet all of the rules, explain that to the judge. If the judge finds that your landlord did not follow all of the notice rules, then the landlord loses and he will have to start the eviction process all over again.

- **Unsafe or unfit housing defense**

If your landlord is trying to evict you because you are behind in paying rent, you may be able to stop the eviction if you didn't pay because of serious problems with your home that your landlord refused to fix. This is called a "warranty of habitability defense" because the landlord has broken his promise to rent you a safe home. (See "Unsafe or Unfit Housing" section at page 9.)

If the judge finds that the landlord has not fixed serious problems that you told him about, then you can ask the court:

- ✓ To let you out of your lease, **OR**
- ✓ To let you stay and to pay a lower rent until the landlord makes your home safe. If you stay, the judge will also decide how much back rent you must pay, at the lower rate.

- **Retaliation defense**

There are laws to protect you if your landlord tries to evict you because you asserted your rights. For example, if you can show that the landlord is trying to evict you because you:

- Complained to the city of code violations
- Asked your landlord in writing to do necessary repairs
- Filed a fair housing (discrimination) complaint with the government, or
- Started or joined a tenants' union

The judge should not let the landlord evict you.

Warning: If the landlord convinces the judge that he is trying to evict you for some other good reason (like causing a "nuisance"), then you may still be evicted. Also, a new law (eff. 9/2011) does not allow this defense where the eviction is based on failure to pay rent or causing substantial damage to the premises unless you had tried to use "repair and deduct" because of bad living conditions. (See “Can I fix the problem myself?” at page 12.)

You also have the right **not** to pay an unlawful rent increase and **not** to pay for common utilities. (See sections on "Rent" at page 7 and "Heat and Utility Charges for Common Areas" at page 21.) If your landlord is trying to evict you for one of these reasons, explain that to the judge. These defenses **might** stop the eviction.

- **Discrimination defense**

You should not be evicted because of your:

- race
- color
- sex
- sexual orientation
- physical or mental impairment
- religion
- ancestry or national origin
- getting welfare, or
- being a single parent, being pregnant or having children

Read more about “Discrimination” at page 21.

Note: If you or someone in your family has a physical or mental impairment, most landlords must allow for “reasonable accommodations” to help you stay in your home. You can ask for this help even after you get an eviction notice. A court should not allow your landlord to evict you if your landlord has

> not tried a “reasonable accommodation.” Try to get a lawyer to help you with this defense.

Caution: Your landlord may have more than one reason for trying to evict you. Even if you have a good defense to one of his complaints, the judge may still allow the eviction if the landlord has another good reason why he wants you to move out.

Will the court give me extra time to move?

Most judges do not believe that the law gives them the power to grant extra time where you have no legal defense. You may try to negotiate with the landlord or his lawyer for some extra time. Or, if you have the option to talk to a court mediator, you can try to get an agreement for extra time through mediation. But, unless you have an agreement, the court will probably not delay the eviction.

Can I be evicted during the winter or if I have children?

Yes. Maine law allows your landlord to evict you at any time during the year and even if you have children. However, you cannot be evicted **because** you have children. See “Discrimination” section at page 21.

NOTE: If you are evicted, your children still have the right to be in school. For more information, ask for our pamphlet: “Rights of Homeless Students to Attend School.”

What happens if I do not go to the eviction hearing in court?

If you do not go to the court hearing and your landlord does, you will lose. The judge will most likely enter a "default judgment" against you. Then the landlord can go back to court 7 days later and get a "writ of possession."

If you owe the landlord money for rent or damages, he cannot get a court order for this at the eviction hearing. He can only ask for an eviction order. He can sue you later, if he wants to, for any money you owe him.

What happens if I go to court and lose?

If the court rules against you and you do not appeal, then your landlord can get a "writ of possession" from the court 7 days later.

What is a "writ of possession?"

This paper comes from the Court and gives the landlord the right to get his property back from you. Your landlord can ask a law enforcement officer to give you a copy of the "writ." You must move out of your apartment within 48 hours after getting the "writ." If you do not move out, you will become a trespasser. The landlord then, and only then, has the right to have the police remove you by force (and to put your things in storage at your expense).

> **Note**: We have another pamphlet about going to eviction court. If you cannot find a lawyer, call Pine Tree Legal (page 2) and ask for help.

Can I appeal my case?

Yes. You can appeal your case if you believe that the court's decision was wrong.

There is an appeal deadline. Any appeal must be filed before the “writ” issues (see above). To be safe, file the appeal with the District Court within **6 days** of the day the judge signed the order against you. (The absolute deadline is 30 days from judgment, if a “writ” was not issued earlier.)

On appeal you can have a new trial with a jury. To get a jury trial, you must prove to the Court that you and your landlord disagree about the **facts** of the case. If you only disagree about what the **law** means, the appeals court will only review the record of your first hearing to see if the judge made any legal mistakes in deciding the case.

Be prepared to pay rent to the landlord or into a court escrow account while your appeal is pending.

If you want to appeal, especially if you are going to ask for a jury trial, try to get a lawyer. This would be hard to do on your own. The court provides an appeal form, but completing and filing the form is only the first step of pursuing an appeal. The appeal form, CV-206, is posted here: www.courts.maine.gov/fees_forms/forms/index.shtml#cv

Abandoned Property

What happens if I move and do not take all my property with me?

If you move out without taking your property with you, you could lose it. So take all your things with you when you leave if you can. Don't leave things behind to pick up later. If this is not possible, Maine law does offer some protections.

The law says your landlord must store your property in a safe, dry, secured place. Then she must mail a notice to your "last known address," saying she plans to get rid of your things and listing the items. (Leave a forwarding address if you want to get the notice.) You must claim your property within **7 days** after the notice was sent. If you do this, your landlord must store the property for at least **14 days from the date notice was sent**, giving you time to get your things. Pick up your things within the 14 days. If you do this, **your landlord cannot make you pay any rent owed, damages, or costs of storage as a condition for giving back your property.**

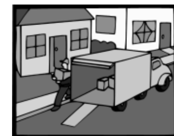
If you don't claim the property within 7 days, or don't pick it up within 14 days, your landlord may:

- sell the property for fair market value,
- get rid of anything he thinks has no fair market value, or
- return your property to you only if you pay for rent owed, damages, and costs of storage

If he sells your property, he must send any money left over to the State Treasurer in Augusta, after deducting what you owe him for rent, damages, and storage costs.

NOTE: Effective September 2011, there are new rules for mobile home park owners who claim that a tenant has abandoned a mobile home. Go to Mobile Home section to read more (page 23).

What if I can't get my things because I am hospitalized due to my disability?



Write to your landlord and ask him to make a "reasonable accommodation" for you, giving you more time or a chance to get someone to help you move your things.

Note: If you're not moving out voluntarily, your landlord must follow eviction rules to get you out.

Remember: The best way to protect your property is to take it with you when you leave. Even though the law says that your landlord must protect your property, things can go wrong.

- Sometimes it is hard to get back what you have lost or to prove what it is worth.
- If your landlord does not have your current mailing address, you won't get his notice. Then you could easily miss the 7 day deadline for claiming your things.
- If you fail to act within the deadline, your landlord can deduct for money you owe, which will be more as time goes on if there are storage fees.
- If your landlord damages your property, it will be difficult to recover that loss.
- Your landlord might ignore the law and get rid of your things illegally.

Sale of Your Building

What happens if my landlord sells my building?

The sale of your building may affect your rights.

If you do not have a written lease, your old tenancy will end. The new owner must let you stay for at least as long as you have paid for. You and your new landlord can make a new agreement. If your new landlord accepts rent from you, then you have a new tenancy.

If you have a lease, you probably have the right to stay until the end of your lease term. Read your lease to see if it says anything different. If your lease term is for more than 2 years, you should record your lease in your county Registry of Deeds **before** the sale, to help protect your lease rights. This rule also applies if you have a long-term lease with no specific ending date.

Does the new landlord have to give me a notice to quit before evicting me?

Yes. Even if you are a tenant at will (no lease), your new landlord must give you a 30-day or a 7-day written notice, unless your old landlord already gave you the notice. (See "Eviction" section at page 14.)

What if my building is in foreclosure?

A federal law signed in May 2009 may give you more protections. This law states that, in a foreclosure situation, you must be given at least 90 days notice to move. Or, if you have a lease, you must be allowed to stay until the end of your lease term. For more details ask for our handout "Federal Law Helps Renters in Foreclosure."

Discrimination

Landlords may not discriminate against you because of your:

- race
- color
- sex
- sexual orientation
- physical or mental impairment
- religion
- ancestry or national origin
- getting welfare
- being a single parent, being pregnant or having children

This means that a landlord cannot refuse to rent to you, charge you extra, or evict you for any of these reasons.

Note: The state law barring discrimination based on sexual orientation went into effect on December 28, 2005. This law also protects trans-gendered people. And it prohibits discrimination based on another person's belief that you are gay or trans-gendered, even if you are not.

If you think your landlord has illegally discriminated against you, contact Pine Tree Legal or one of these offices:

Maine Human Rights Commission
51 State House Station
Augusta, Maine 04333-0051
phone: **624-6290** TTY: **1-888-577-6690**

U.S. Fair Housing Office (HUD)
10 Causeway Street, Room 321
Boston, MA 02222-1092
phone: **1-617-994-8300**
toll-free: **1-800-827-5005**
TTY: **1-617-565-5453**

Pine Tree Legal has more information about how a landlord must treat you fairly if you have a mental or physical impairment. You can get that information from our offices, or visit our "Fair Housing for People with Disabilities" page: www.ptla.org/fair-housing-faq-housing-protection-people-disabilities

Heat and Utility Charges for Common Areas

Can the landlord make me pay for heat and utilities outside of my apartment?

If you live in an apartment building, you may find out that you are paying for heat, lights, or other utilities for "common areas," This includes, for example, hallways, basements, or a common hot water heater or furnace. It is illegal for your landlord to make you pay those costs alone. For example, the hall lights should not be hooked up to your meter.

If you find out that you are paying for heat or utilities going to "common areas" or to someone else's apartment, take these steps.

⇒ First talk to your landlord. Ask her to put in a separate meter or to lower your rent to make up for the extra money you are paying.

⇒ If you agree to lower your rent, do it in writing. Write down exactly how much less rent you will pay in exchange for paying for the extra heat or utility costs.

⇒ If you have been paying these extra charges for some time, ask your landlord to pay you back. If you cannot figure out how much you should be paid, check with your heating or utility company or city electrician to find out if they will help you.

⇒ If your landlord refuses to pay what is fair, you can sue. If you win, you can get $250.00 or your "actual damages" (how much you lost), whichever is more. The landlord will have to pay your court costs and lawyer's fees. Or you can file your claim in Small Claims Court on your own.

Caution: If you are not ready to move, think about whether you want to sue now or later. Read the section on "Evictions" at page 14. If you are not protected by a lease, then you may want to wait and sue after you have moved or are ready to move, in case the landlord retaliates with an eviction.

Cable TV, Dishes, Antennas

If I live in an apartment building, can my landlord stop me from getting cable TV, a satellite dish or an antenna?

Generally, no. Your landlord can refuse to allow these installations **only if** he has "good cause" to deny that company. "Good cause" could be:

- if that company has broken agreements with the landlord before
- if that company has damaged the building before and has not fixed it

- some similar valid complaint against that company

Maine has detailed laws about how cable TV companies and landlords must deal with each other. Call Pine Tree Legal if you want a copy of that law.

The Federal Communications Commission also has rules allowing tenants to have small dishes (one meter or less in diameter) and certain types of “customer-end” antennas. But you must have “exclusive use” of the area where you install the dish or antenna, such as a balcony (not common areas, such as the roof of an apartment building, unless your landlord allows it).

More information from the FCC (website link). If you still have questions, contact Pine Tree Legal for more information.

Landlord Entering Your Home

Can my landlord come into my apartment or house at any time?

No. If your landlord wants to come into your home to make non-emergency repairs, or to show or inspect the apartment, she must give you "reasonable notice." Normally, this means at least 24 hours notice.

Your landlord can come in only at "reasonable times." Generally, this means during the daytime or evening, not in the middle of the night. There may be other factors that make certain times "unreasonable" for you.

Exception: If there is an emergency, your landlord can enter after a shorter notice or without notice. For example, the pipes burst or there is a fire in your apartment.

What can I do if my landlord comes in without giving me reasonable notice?

If your landlord does not follow these rules, or if your landlord tries to come in without good reason to the point you feel harassed, you can sue your landlord. The judge can order your landlord to pay you for your "actual damages," or $100.00, whichever is more. She can also order the landlord to stop coming into your apartment without good reason and without fair notice. If you have a lawyer and you win at hearing, the court can also order your landlord to pay your lawyer fees.

If you cannot get a lawyer and if you need fast protection from serious, repeated harassment, you can file a Protection from Harassment complaint in District Court. Call Pine Tree Legal if you want more information about how to do this.

Is it legal to change the locks to keep my landlord out?

No. If you need to change your locks for any reason, you must notify your landlord. Also, you must give him a key within 48 hours of the change. Your landlord may give you a 7-day eviction notice (see page 16) if you change the locks without following these rules. He can also charge you for any damage caused, if he needs to enter in an emergency and is locked out.

Subsidized Housing

If a housing authority or similar agency pays all of part of your rent, your housing is "subsidized." Your rent may be subsidized even if your house or apartment is owned by a private landlord. "Public housing" is also subsidized.

If you need to find out where to apply for subsidized housing in your area, contact:

Maine State Housing Authority
89 State House Station
353 Water Street
Augusta, Maine 04330
Toll-free phone: **1-800-452-4668**
TTY: **1-800-452-4603**

If you live in "subsidized housing," you should have a standard lease. This lease gives you more protections than most non-subsidized tenants have. For example, your lease may have a "grievance procedure" which gives you the right to an informal out-of-court hearing on a complaint you have against your landlord. **Your lease probably gives you more protections against eviction than the ones described in this "Rights of Tenants" Guide.** . It may say that your landlord cannot evict you unless he has "good cause" or unless he can prove you broke the lease.

If you are in one of the 3 major HUD subsidy programs (public housing, Section 8, or voucher choice), you cannot be evicted because you were the victim of domestic violence, dating violence, sexual assault or stalking. You may have other rights under federal law that are not explained in your lease.

Different subsidized housing programs have different rules and different form leases. **Read your lease!** If you are not sure of your rights under your lease or if you are being evicted from subsidized housing, **contact your local Pine Tree Legal office** (page 2).

Mobile Home Parks

Who is protected by the mobile home park laws?

This section applies to you if you **own your mobile home and rent a lot in a mobile home park.** Also, these "Rights of Tenants" Guidebook sections above apply to you:

Tips Before You Rent	page 2
Types of Rental Agreements	page 3
Fee for Late Payment of Rent	page 8
General Assistance	page 8
Discrimination	page 21

If you **rent a mobile home,** you have the same rights as a tenant in an apartment building or house. Read the earlier sections of this handbook, which apply to you. To read about your security deposit, see below.

If you **own your mobile home and rent the land it sits on but not in a mobile home park**, you should talk to a lawyer if you have a problem. (Only some parts of this handbook apply to you.)

What is a mobile home park?

A mobile home park is a piece of land that has, or is laid out to have, two or more mobile homes on it.

How much can I be charged for a security deposit and how do I get it back?

The "Security Deposit" section at page 4 applies to you, with these exceptions:

- The park owner may charge up to 3 times the monthly rent for a security deposit.

- For the period before September 12, 2009, the landlord must pay 4% interest on your deposit. For later periods, the park owner must pay you a market-based

rate of interest. Your landlord must put your money in a separate, protected bank account (which can be pooled with other deposits). You should get all of the interest earned on your deposit. In the alternative, your post 9/12/09 interest will be based on the Federal Reserve's secondary market 6-month CD rate for each year the landlord has been holding your deposit.

Read the "Security Deposit" section at page 4 to find out how to get your deposit back if the park owner refuses.

What kind of fees can I be charged?

The park owner may charge fees. Fees may include rent, utilities, incidental service charges, security deposit and an entrance fee. Before you move into the park, the park owner must explain all fees to you in writing. Before increasing any fees, he must give **all tenants** at least 30 days written notice.

If you are moving into a mobile home that is already in the park, the park owner cannot charge you more than 2 times the monthly rent for an entrance fee. He cannot call this fee something else, in order to get around this limit.

The park owner cannot require you to buy your oil or bottled gas from him. He cannot choose your dealer; that is **your** choice.

The park owner cannot require you to buy from him any under skirting, equipment for tying down mobile homes or any other equipment.

Park Rules

What kind of rules can the park owner have?

The rules must be reasonably related to keeping order and peace in the mobile home park. All park rules must be fair and reasonable. A rule is presumed to be unfair if it does not apply to all park tenants. (However, the park owner may be able to prove that a non-uniform rule is fair, if he has a compelling reason for the rule.) The park owner must give **all tenants** at least 30 days notice of any rule change before it takes effect.

These rules are **not** legal and a park owner **cannot** enforce them:

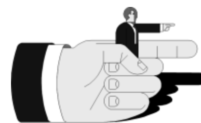
- A rule that says the park owner is not responsible for his own negligence
- A rule that says you have to pay the park owner's legal fees (in an eviction, for example)
- A rule that says you must give the park owner a lien on your property if you owe him money
- A rule that gives up your right to challenge the fairness of any park rule or any part of your lease or rental agreement

How do I find out what the park rules are?

Before you sign an agreement to rent, the park owner must give you:

- ☐ a copy of the mobile home park rules **and**
- ☐ a copy of the Maine mobile home park laws

Eviction



Does the park owner have to have a reason to evict me?

Yes. He must have a reason and he must be able to prove it in court. His reason must be on this list. (These rules apply to you, all household members, and your guests.)

1) You did not pay rent, utility charges or **reasonable** service charges. You will not be evicted if you pay the amount you owe **plus a fee** before the end of the notice period. The notice must give you at least 30 days. The fee is 5% of what you owe, up to a maximum of $5.00. (A 2005 law allows park owners to charge interest on late payments. See page 7. It is unclear how this new rule on interest charges intersects with this older $5 fee rule. Call Pine Tree Legal (see page 2) if you need advice on this issue.)

2) You broke a mobile home park law. Before giving you an eviction notice, the park owner must tell you in writing what law you have broken and give you a reasonable chance to comply.

3) You broke a **reasonable** park rule. (See section on "Park Rules.") Before giving you an eviction notice, the park owner must tell you in writing what rule you have broken and give you a reasonable chance to comply.

4) You violated Paragraph 1, 2 or 3 above three times within 12 months. After 3 chances within a one-year period, you can be evicted even if you corrected all three violations.

5) You damaged the property in some way. "Damage" does not include "normal wear and tear." Normal wear and tear is what happens to property over time from normal use.

6) You **repeatedly** disturbed the peace and quiet or safety of other tenants.

7) You violated a term of your written lease that the lease says you can be evicted for. **Read your lease before you sign!**

8) The park is condemned or changed to some other use. Before evicting you for "change of use," the park owner must have told you about this when you moved in or must give you a **one-year** written notice.

9) If the park owner wants to evict you because he plans to renovate the park, he must give you between 6 months to 12 months notice. He may also have to pay for your moving costs.

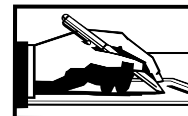
Exceptions:

- If there is a serious problem that is dangerous for tenants, the park owner can evict you "temporarily" with a shorter notice, if he pays your costs.
- If it is **not** an emergency, he can give a 30-day written notice to "temporarily" evict, if he pays your costs.
- If the government orders the park owner to do a major renovation that requires evictions, the park owner can give a shorter notice.

> **Note:** If you are being evicted for reason #9 above, talk to a lawyer or Pine Tree Legal.

What kind of notice do I get?

Before taking you to court to get an eviction order, the park owner must give you a written notice to quit. The notice must:



- be in writing
- state the reasons for the eviction
- give you **45 days** before your tenancy ends

Note: The notice period is different in some cases, like for nonpayment of rent (30 days). To find out these exceptions, read the list 1-9 above.

The park owner, or his agent, must give this notice to you in person.

Exception: He can send the notice by mail and leave a copy at your home if he has tried for 3 days to serve you in person and has not been able to find you. He must have a witness.

If someone has a lien on your mobile home (such as a seller to whom you are still making payments), the park owner may also notify the lien-holder of the eviction. If your contract with the lien-holder allows it, she may try to repossess your home to protect her interest in the property. Get legal advice.

What happens at the end of the notice period?

If you have not moved and the park owner still wants to evict you, she must file a complaint in District Court asking the court to allow the eviction. This is called a "Forcible Entry and Detainer" action. A deputy sheriff will serve you with a copy of the complaint and a court summons. The summons will tell you the date and time of the court hearing.

At the hearing, the judge will listen to both sides. If the judge finds that the park owner did not follow all of the notice rules or did not prove one of the reasons for eviction listed above, the judge will dismiss the case and you will not be evicted. But if the park owner gets the eviction order from the court, she can then ask the Sheriff's Department to evict you and your family **and to remove your mobile home from the lot**.

Talk to a lawyer right away if you get a notice to quit or a court complaint and summons.

What if the park owner is trying to evict me because I complained, because I am in a tenant group, or for some other unfair reason?

The Court should not evict you if you prove that the park owner's main reason for trying to evict you is that:

- You helped to start a tenant's organization or you belong to a tenant's organization; or
- You have complained about the park owner's violations of mobile home park laws.

If you think that the park owner is trying to evict you because you complained about unsafe conditions in the park, read the section above on "Retaliation Defense" at page 17. This defense to eviction **may** apply to you. If you believe that the park owner is illegally discriminating against you because of your:

- race
- color
- sex
- sexual orientation
- physical or mental impairment
- religion
- ancestry or national origin
- getting welfare
- being a single parent, being pregnant or having children

See “Discrimination” section at page 21.

What if I refused to pay rent because of bad living conditions in the park?

If the park owner is trying to evict you because you owe rent and there are unsafe living conditions in the park, you may have a good defense to the eviction. Read the section "Unsafe or unfit housing defense" under "Evictions" at page 17. These rules

also apply to mobile home park tenants. In your case, the problem might be dangerous outside wiring or unsanitary septic system, instead of lack of heat.

Additional rule for mobile home parks: You must have given the park owner or his agent notice of the problem when your rent was paid up.

What if the court orders an eviction and I can't move my mobile home right away?

The park owner must mail you a "14-day notice" - sent first class mail, with proof of mailing. The notice tells you that the park owner plans to get rid of your mobile home. You have 14 days to claim the mobile home before this happens. The landlord must send this notice to your "last known address." In order to get the notice, you must let your landlord know where you are getting mail. Otherwise, the 14 days could lapse without your knowing about it.

If you claim the mobile home within 14 days, then the park owner must give you another 21 days to move it. If the weather or roads prevent you from moving the mobile home, then the park owner must give you more time to move it. But he can charge you for any actual costs he incurs as a result of the delay.

If you do not claim your mobile home within 14 days - or move it within the 21 days (or other agreed-upon time period) - then the park owner may treat the mobile home as "abandoned property."

The park owner can:

- Hold your mobile home until you pay all back rent, damages, legal fees, and storage costs; OR
- Sell the mobile home for a "reasonable fair market price." He can then deduct from the sale money his costs: back rent, damages, legal fees, storage costs, marketing expenses, and taxes. (He may also dispose of any property that has "no reasonable fair market value.")

If there is money left over after the sale and deduction of expenses, the park owner must send it to your last known address. If the mailing is returned by the post office, then the park owner must forward the money to the Treasurer of State. The park owner cannot keep any money that is left over.

Unsafe or Unfit Conditions

What areas must the park owner take care of?

A park owner must promise that the space he rents and its facilities are "fit for habitation." This means that they are safe and healthy. For example, if your septic system backs up or your park road becomes impassable, the park owner must fix the problems. On the other hand, you must fix problems inside your home, unless they were caused by the park owner.

What if the park facilities are unsafe or unhealthy?
You can file a court action against the park owner. Before going to court you should take these steps:

- ☐ Talk with the park owner or manager about the problem.
- ☐ Talk with other tenants about the problem and meet as a group with the owner or manager.
- ☐ Contact the local code enforcement officer, plumbing inspector or fire chief and ask for an inspection.
- ☐ Contact the Maine Manufactured Housing Board:
  35 State House Station
  Augusta, ME 04333
  Phone: **624-8612**
  TTY: **1-888-577-6690**

If you still cannot resolve the problem, talk to a lawyer or Pine Tree Legal before going to court. Also, read the section about suing your landlord in court at page 14. The procedures and remedies are very similar.

What happens if I am forced to leave my mobile home during repairs?

If you must leave for a short time so things can be fixed, the park owner cannot charge you any rent until you move back in. If the owner offers you a reasonable place to stay, then the court will not order the park owner to pay for your costs of staying somewhere else.

Sale of Your Mobile Home

Can the park owner interfere if I want to sell my mobile home?

No.

- The park owner **cannot** charge you a fee for selling, unless you asked him to sell it for you and signed a contract agreeing to pay him.
- The park owner **cannot** force you to hire him as your sales agent.
- The park owner **cannot** restrict any advertising you do, as long as it is reasonable.

You must tell the park owner before you put up any "For Sale" signs in the park.

If your mobile home was built before June 15, 1976, the park owner can require you to show that it meets the state standards.
If the buyer plans to stay in the park, he should make sure that the park owner will accept him as a tenant. He can back out of a sale agreement within the first 30 days if the park owner does not agree to rent the lot to him.
He can also back out of the deal if the park owner wants the home removed because it does not meet state or park standards. The park owner cannot require removal because of **park** standards unless these standards are clearly stated in the park rules **and** are reasonable.

Sale of Mobile Home Park

Does the park owner have to let me know if he is selling the park?

Yes, in most cases.

General rule: The park owner must give you and all other tenants 45 days written notice of his intent to sell. During the 45 days, he cannot contract to sell the park.

Exception: The park owner does not have to give the 45-day notice if the buyer's deed says that he cannot change the use of the park for two years after he buys it. This deed restriction must also say that tenants have the right to enforce it.

What if the new owner tries to close the park anyway?
You can sue the new owner in Superior Court and ask the judge to order the buyer to keep renting the lots for at least two years. You can also make a money claim for any damages you have suffered. You can sue alone or as a group of tenants or as a tenant association. If you have a lawyer, the judge can order the park owner to pay your lawyer fees if you win.

Notice

Pine Tree Legal Assistance
September 2011; partially revised June 2014

We have tried to make this accurate as of the date above. Sometimes the laws change. We cannot promise that this information will always be up to date and correct. If the date above is not this year, call us to find out if there is an update.

This information is not legal advice. By sending you this, we are not acting as your lawyer.

14

CONSUMER RIGHTS WHEN YOU RENT AN APARTMENT

§ 14. 1. Introduction

This consumer rights chapter describes your rights and duties as a tenant. It contains the following sections:

§ 14. 2. Your Tenant Rights

§ 14. 3. Abuse Of Your Security Deposit

§ 14. 4. Tenants Cannot Be Unfairly Discriminated Against

§ 14. 5. Tenants Are Protected By A Warranty Of Habitability

§ 14. 6. Landlord and Tenant Responsibilities for Bedbugs

§ 14. 7. Right To Hearing Before Eviction

§ 14. 8. Forcible Or Retaliatory Evictions Are Illegal

§ 14. 9. Notice Of Rent Increase Must Be Given

§ 14. 10. Rent Increase Limits

§ 14. 11. Abandoned Property

§ 14. 12. Landlord’s Access To Your Dwelling

§ 14. 13. Landlord’s Refusal To Pay For Utilities

§ 14. 14. Leaving Early: When A Tenant Breaks The Lease

§ 14. 15. When The Landlord Sells A Building Or It’s Foreclosed

§ 14. 16. Unfair Rental Contracts

§ 14. 17. Hotels, Motels, Boarding Houses

§ 14. 18 Landlord Smoking Policies

§ 14. 19. Selected Statutes

§ 14. 20. Seeking Help

§ 14. 21. Notice Of Violation Of The Warranty Of Habitability Act

§ 14. 2. Your Tenant Rights

Our Maine statutes set forth many specific rights and obligations for persons who rent apartments or homes. You are protected from unfair evictions, unreasonable discrimination, unsafe housing, unreasonable refusals to return your security deposit, and other abuses during your time as a tenant. Of course, tenants must also act within the law and not abuse the legal rights of landlords. This chapter will attempt to briefly summarize the many rights of tenants. If you feel your landlord is treating you unfairly you should see an attorney about your complaint. Remember that serious violations of these laws might also constitute an unfair trade practice. Pursuant to 5 M.R.S.A. § 213 if the tenant successfully sues for damages or for back rent he might also be awarded his attorney fees. *See* Chapter 3 of this Guide, Unfair Trade Practice.

§ 14. 3. Abuse Of Your Security Deposit

Landlords are allowed to require their tenants to make an initial "security deposit" payment that will protect them against damage caused by their tenants to the apartment. This security deposit must be returned to the tenant unless the tenant has caused damage to the apartment beyond "normal wear and tear."[1]

Common sense is your best guide as to what is normal wear and tear. For example, the landlord generally cannot use your security deposit for routine cleaning or painting. The landlord may keep all or part of the deposit and use it to pay for damages caused by your carelessness, accidents or neglect. The landlord cannot unjustly refuse to return your deposit. You can sue the landlord in Small Claims Court for the return of a deposit not properly returned to you. Further, Maine has passed additional statutory protections for renters who live in *larger* apartment buildings (all apartment buildings except buildings with five units or less *and* a live-in landlord.)[2] These rights are as follows:

A. The landlord may not make you pay a security deposit greater than an amount equal to two months rent.[3] Recent legislation allows the landlord to accept a surety bond instead of a more expensive security deposit.[4]

B. The landlord must keep your security deposit in a bank account separate from his other funds and protected in case of bankruptcy, foreclosure or sale of the building. (He does *not*

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[1] 14 M.R.S.A. § 6031(1). The statutory definition of "normal wear and tear" is as follows:

"Normal wear and tear" means that deterioration that occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenant or members of the tenant's household or their invitees or guests. The term "normal wear and tear" does not include sums of labor expended by the landlord in removing from the rental unit articles abandoned by the tenant such as trash. If a rental unit was leased to the tenant in a habitable condition or if it was put in a habitable condition by the landlord during the term of the tenancy, normal wear and tear does not include sums required to be expended by the landlord to return the rental unit to a habitable condition, which may include costs for cleaning, unless expenditure of these sums was necessitated by actions of the landlord, events beyond the control of the tenant or actions of someone other than the tenant or members of the tenant's household or their invitees or guests.

[2] *See*, *e.g.*, 14 M.R.S.A. § 6026, 6037.

[3] 14 M.R.S.A. § 6032.

[4] 14 M.R.S.A. 776031, 6039.

have to pay you interest on it.) If the landlord sells the building then the landlord must either transfer the security deposit account to the new owner or return the deposits to the tenants.[5] The person in possession of the security funds must provide written proof at the closing that the funds have been transferred to the new owner.[6] Upon transfer, the new owner assumes responsibility for "maintaining and returning" to tenants all transferred security deposits.[7] A tenant can sue for damages, $500 or one month's rent, whichever is greater, if a landlord violates these obligations.[8]

C. The landlord is required to return your security deposit or provide a written statement of the reasons for keeping the deposit. If you are a tenant at will, this must be done within 21 days after you have turned the apartment over to the landlord. If you have a written lease, the landlord must return your deposit within the time stated in your lease; but, in no event, can this period exceed 30 days. Remember, a landlord may keep all or part of your security deposit for non-payment of rent or utility charges or the cost of disposing of unclaimed property.[9]

D. If the landlord fails to return your security deposit or refuses to supply you with a written statement as to why your money is being held, he or she gives up all legal rights to withhold any part of it.[10]

E. To get your money returned you should notify the landlord by *certified mail* that you intend to bring a legal action after seven days. The landlord must return the whole deposit within the seven days in order to avoid a lawsuit.[11]

F. If the landlord willfully refuses to return the deposit *and* fails to provide the required itemized explanation, then the landlord can be held liable for double damages, reasonable attorney fees and court costs.[12]

G. If you have to break your lease and move out early, then the landlord is required to make a reasonable effort to re-rent your apartment. Once a new tenant is in place your obligation to pay rent ceases.[13] In the 2008 Unfair Trade Practice action *Maine v. Port Property Management* (DV-08-138) the Defendant settled the State's allegations that it had improperly deducted rent from the tenants' security deposits, even though it had immediately re-rented the apartments. The Court enjoined Port Property Management from the following actions:

(1) Charging tenants who quit their apartment before their lease had expired an early termination fee even though the apartment was immediately re-rented and Port Property Management suffered little or no loss of rent; and

(2) Using a lease that is an adhesion contract in which an Early Termination Fee is automatically charged and is not a fair liquidated damages clause.

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[5] 14 M.R.S.A. § 6035.
[6] 14 M.R.S.A. §6035(1)(B).
[7] 14 M.R.S.A. §§ 6038.
[8] 14 M.R.S.A. § 6038 (2-3).
[9] 14 M.R.S.A. § 6033(2).
[10] 14 M.R.S.A. § 6033(3).
[11] 14 M.R.S.A. § 6034(1).
[12] 14 M.R.S.A. §§ 6034(2); *see Robbins v. Foley*, 469 A.2d 840 842 (Me.1983) (tenants entitled to damages equal to two times the security deposit and reasonable attorney fees).
[13] 14 M.R.S.A. §6010-A(2).

The Court also required Port Property Management to pay a $10,000 civil penalty and to return money to injured tenants.

H. Landlords may also accept a surety bond instead of a security deposit.[14]

I. If the landlord sells your building then the landlord is required to transfer all security deposits to the new owner. This transfer must occur no later than the real estate closing. The landlord must also provide written notice to its tenants that the transfer of the security deposits has taken place.[15]

§ 14. 4. Tenants Cannot Be Unfairly Discriminated Against

Federal and state laws prohibit unfair discrimination or harassment. In Maine, special court procedures are provided for enforcement of these laws. *See* 5 M.R.S.A. § 4613. For example, any discrimination against children is *generally* prohibited. It is unlawful to ask if someone has children or to have special rules, which apply only to children. There are four exceptions to this rule. Landlords can limit the number of occupants:

A. In a building of two units, one of which is occupied by the owner;

B. In retirement communities and senior citizen housing in which 80% of the units are occupied by people 55 and older;

C. In the rental of four or fewer rooms of a house occupied by the owner; and

D. In non-commercial rental of housing by religious groups.

Landlords may restrict the *number* of occupants based upon the *size* of the apartment, but

Landlords may not refuse to show or rent a unit, or impose different terms of conditions on the basis of race, color, sex, sexual orientation, physical or mental handicap, religion, ancestry, national origin, familial status, or because of the receipt of any kind of public assistance. Landlords must accept general assistance vouchers for rent.[16]

Landlords may not refuse occupancy because the tenant requires the assistance of a seeing eye or a hearing ear dog unless the building consists of two units one of which is occupied by the owner.

For further information or to make a complaint of unfair discrimination, contact the Maine Human Rights Commission, 51 State House Station, Augusta, ME 04333-0051 (207-624-6050) or the Maine State Housing Authority (1-800-452-4668).

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[14] 14 M.R.S.A. §§ 6031, 6039.

[15] 14 M.R.S.A. § 6035. *See also* §14.14 in this chapter.

[16] 5 M.R.S.A. § 4582.

§ 14. 5. Tenants Have A Right To A Livable Apartment

A. Warranty Of Habitability

By law, all landlords in the State of Maine promise that all rented dwelling units are fit for human habitation—that is, they are reasonably safe and decent places to live. This is the Maine Warranty of Habitability.[17] If there is a condition in your rented apartment, trailer or house which makes it unfit or unsafe to live in, you can force your landlord to fix the problem by taking him or her to court. For you to win your case in court, each of the following requirements must be followed exactly:

(1) The condition complained of must be a serious one; it must be one that makes your house unsafe or unhealthy; *e.g.*, broken windows, long term lack of running water,[18] toilet malfunctions, rotting stairs, electrical hazards, oil burner problems, leaks in ceiling, hazardous lead based paint.[19]

(2) The condition must not be one which was caused by you or your family.[20]

(3) You must have given your landlord reasonably prompt *written* notice of the problem and also have allowed a reasonable time for the problem to be fixed. Keep a copy of the notice for yourself.[21]

(4) You must be fully up-to-date in your rent payments at the time you give the landlord written notice.

(5) If your landlord does not repair the unsafe or unhealthy condition within a reasonable time after the written notice, you should talk to an attorney about going to court. The judge may order that your rent be lowered, that you receive a partial rent rebate, or that your landlord fix the dwelling. *Warning*: the law states that you can sign away your right to complain about certain conditions. For example, if it is specifically stated in the written lease agreement, you can negotiate a lower rent in return for the landlord not supplying you with heat.[22]

(6) The landlord *cannot* increase your rent if your rental unit violates this implied warranty of habitability.[23]

This law does not apply to an apartment building with five or fewer apartments, one of which is occupied by the landlord.

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[17] 14 M.R.S.A. § 6021; *see Caporino v. Lacasse,* 511 A.2d 445 (Me. 1986).

[18] *See Leo Belanger et al. v. John Mulholland*, 2011 ME 107 (nine months lack of running water in a trailer was a breach of the warranty of habitability and tenant entitled to $4,500 in damages).

[19] For example, a strong argument can be made that if an apartment is in violation of the Lead Poisoning Control Act (22 M.R.S.A. § 1316) then the landlord has breached the warranty of habitability. This could also be an unfair trade practice. Currently, the Department of Human Services defines “lead health hazard” as the presence of a lead-based substance on exposed surfaces in a form “readily ingested by children six years of age or younger.” *See Harris v. Soley,* 756 A.2d 499 (Me. 2000) (landlord responsible for emotional distress suffered by tenants exposed to rodents and snow).

[20] 14 M.R.S.A. § 6021(3)(B).

[21] 14 M.R.S.A. § 6021(3)(C) and 6021(3)(D). Pine Tree Legal Assistance has prepared a form notice that tenants can use to inform landlords of warranty of habitability defects. *See* § 14.17 for a copy of this form.

[22] 14 M.R.S.A. § 6021(5).

[23] 14 M.R.S.A. § 6016.

If a landlord fails to maintain your rental unit in compliance with this warranty of habitability, and the reasonable cost of repairing the unit is less than $500 or an amount equal to one-half of your monthly rent, whichever is greater, you can notify the landlord in writing of your intention to correct the condition at the landlord's expense. If the landlord fails to comply within fourteen days after being notified, *or as promptly as conditions require in case of emergency*, the tenant may make the repair himself. After submitting to the landlord an itemized statement of your expenses in making the repair, you may deduct from your rent the reasonable cost of your repairs.[24] If you do deduct repair costs and then the landlord within the next six months tries to evict you for failure to pay rent or for causing damage to your unit, a legal presumption is created that the landlord is retailiating against you because you complained that the unit was not habitable.[25]

For example, you can hire a licensed oil burner repairperson to come in and fix the oil burner if your apartment is without heat. This statute can also be applied to the cost of buying oil if the landlord has allowed the oil to run out.[26] This right to repair and then deduct the cost from the rent you owe does not apply if your apartment is in a building of five or less dwelling units, one of which is occupied by the landlord. You should be sure to review the tenant requirements in 14 M.R.S.A. § 6026, Dangerous Conditions Requiring Minor Repairs before withholding rent and making your own repairs.

In January 1998, Maine suffered the effects of a massive ice storm. If under similar conditions your apartment loses electricity for several days, should you still pay a full month's rent? Depending on the facts, the answer could well be no. If after the first few days your electricity was not restored and the landlord had still not remedied the situation (e.g., purchased a generator or provided you with portable lights, a heater, a stove), the landlord could have violated your warranty of habitability. If so, you should consider negotiating a reasonable reduction in that month's rent. Since a portion of the rent usually goes to the cost of utilities, tenants should not be forced to pay for what they did not receive.

B. Apartment Temperature in the Winter

Maine's Warranty of Habitability law requires that the landlord maintain your apartment at a temperature that does not make a normally healthy person sick.[27] So, if you feel your apartment is so cold that it is making you ill you should contact your landlord and complain. If the landlord refuses to change the temperature then contact a medical professional and get a written note that your apartment needs to be warmer. For example, infants less than one year old and older people more than 60 years old are at risk for hypothermia, which means their body temperature can become too cold. An average of 20 Mainers die each year due to hypothermia, with three to four of them being found inside their home or apartment. Maine's Center for Disease Control and Prevention (Maine CDC) recommends that in the winter months infants and older people should be kept in rooms in which the temperature is from 61 to 68 degrees Fahrenheit. For more information on hypothermia go to the Maine CDC Stay Healthy This Winter Website at http://www.maine.gov/dhhs/boh/heat_2008.shtml.

[24] 14 M.R.S.A. § 6026.
[25] 14 M.R.S.A. § 6001(3).
[26] It can be argued that sub-section 9 could also authorize the purchase of another heater (e.g., a kerosene heater).
[27] 14 M.R.S.A. §6021(6)(A). State law also requires that a landlord's heating equipment must be "capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit." This does not necessarily require that your apartment always be at 68 degrees, although your municipality may have adopted an ordinance that requires certain temperatures during the winter months. *See* 14 M.R.S.A. §6021(6)(B).

C. Additional Rights

While not stated in any statute, the tenant might have additional "common law" rights. For example, if the cost of repairing a health hazard is more than $500 or one half of one month's rent, you may be able to claim the remainder in Small Claims Court, after deducting from your rent the amount allowed by statute. Or a landlord may also be liable for injuries caused by defective or dangerous conditions.[28]

As of 2007, landlords are required to provide to potential tenants with an "energy efficiency disclosure statement," which tells tenants just how energy efficient the apartment will be.[29] This statement summarizes how the apartment is heated and what has been done to winterize the apartment.

You should report any defects in your dwelling which you think violate housing or building codes to your town or city clerk or code enforcement officer. If your housing problems are not being solved locally, contact your Local Health Officer. State law (22 M.R.S.A. § 451) requires all municipalities to appoint a Local Health Officer for a 3-year term. The Local Health Officer must assist in the reporting, prevention and suppression of diseases and conditions dangerous to health, and in addition, must receive and evaluate complaints made by any of the inhabitants concerning nuisances posing a potential public health threat within the limits of the Health Officer's jurisdiction.

Should you not achieve satisfactory results, you should contact your Selectman or Councilman to request assistance. Currently there are few specific laws dealing with remedying many landlord-tenant issues such as mold, indoor air complaints, poor water quality, and sewage disposal problems. Should your concern remain unresolved, you should contact the Division of Health Engineering located within the Bureau of Health in Augusta or call 207-287-5338. Serious health related problems in your apartment might constitute a breach of your Warranty of Habitability. *See* § 14.5.

D. Electrical Bills

What if you cannot keep up with your electrical bills and the electric company says it is going to disconnect your service? This problem often occurs during the winter months. Contact your electric company. They should work with you to set up a special payment plan to spread out high winter bills (covering mid-November to mid-April) over a longer period of time. If you are low-income, you cannot be disconnected in the winter if you agree to a "special payment arrangement." Also, if you or a member of your family is seriously ill, the company won't disconnect your power for at least 30 days.

If you are a tenant, and the electric bill is in your landlord's name, your power cannot be disconnected without your being offered the chance to put the service in your name. Let the electric company know you are the tenant. You must also get at least 10 days notice before any disconnection.

If you cannot work things out with your electric company, contact the Consumer Assistance Division of the Public Utilities Commission (1-800-452-4699 or 287-3831).

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[28] *Saunders v. Picard*, 683 A.2d 501 (Me. 1996) (landlord is not liable to tenant for personal injuries caused by defective condition in premises under tenant's exclusive control, except when landlord agrees to maintain premises in good repair).

[29] *See* 14 M.R.S.A. §6030-C, 35-A M.R.S.A. §10006.

E. Landlord-Tenant Agreement for Reduced Heat

A landlord who provides heat as part of the rent must keep the apartment at a healthful level for residents.[30] However, in return for a specific reduction in an apartment's current rent, a landlord and a tenant can enter into a specific written agreement, which must be separate from their lease agreement, to maintain an indoor temperature between 62 and 68 degrees. Such reduced heat agreements cannot be entered into if anyone under the age of 5 or over the age of 65 resides in the rental unit. The law authorizing such agreements, 14 MRSA sec. 6021 (6-A) became effective in September, 2009 and reads as follows:

> **6-A. Agreement regarding provision of heat.** A landlord and tenant under a lease or a tenancy at will may enter into an agreement for the landlord to provide heat at less than 68 degrees Fahrenheit. The agreement must:
>
> A. Be in a separate written document, apart from the lease, be set forth in a clear and conspicuous format, readable in plain English and in at least 12-point type, and be signed by both parties to the agreement;
>
> B. State that the agreement is revocable by either party upon reasonable notice under the circumstances;
>
> C. Specifically set a minimum temperature for heat, which may not be less than 62 degrees Fahrenheit; and
>
> D. Set forth a stated reduction in rent that must be fair and reasonable under the circumstances.
>
> An agreement under this subsection may not be entered into or maintained if a person over 65 years of age or under 5 years of age resides on the premises. A landlord is not responsible if a tenant who controls the temperature on the premises reduces the heat to an amount less than 68 degrees Fahrenheit as long as the landlord complies with subsection 6, paragraph B or if the tenant fails to inform the landlord that a person over 65 years of age or under 5 years of age resides on the premises.

F. Lead And Other Hidden Defects

In addition to the statutory warrant of habitability, Maine common law requires landlords to disclose to tenants any serious, hidden defects. Landlords also cannot negligently repair defects or so

[30] 14 M.R.S.A. §6021(6) reads as follows:

> **6. Heating requirements.** It is a breach of the implied warranty of fitness for human habitation when the landlord is obligated by agreement or lease to provide heat for a dwelling unit and :
>
> A. The landlord maintains an indoor temperature which is so low as to be injurious to the health of occupants not suffering from abnormal medical conditions;
>
> B. The dwelling unit's heating facilities are not capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit;
>
> C. The heating facilities are not operated so as to protect the building equipment and systems from freezing.
>
> Municipalities of this State are empowered to adopt or retain more stringent standards by ordinances, laws or regulations provided in this section. Any less restrictive municipal ordinance, law or regulation establishing standards are invalid and of no force and suspended by this section.

poorly perform promised maintenance that the premises are dangerous.[31]

For example, a violation of the Maine Lead Poisoning Control Act[32] could also be a breach of the warranty of habitability. Maine landlords must provide a completed lead paint disclosure form to each tenant in a residence built before 1978.[33]An article in the July 16, 2001 *Portland Press Herald* details how serious this problem is:

> A report by the state Department of Human Services says that all 1-and 2-year-old Maine children should be tested because so many of Maine's houses were built before 1960, when lead paint was widely used. But, the report says, doctors rarely screen more than 30 percent of even those children defined as being at high risk of lead poisoning, and that follow-up practices are lax.
>
> The national Centers for Disease Control and Prevention has determined that a blood lead level of 10 percent or more per deciliter requires monitoring and action. The state offers financial incentives to doctors who test children for lead. The report on Maine blood lead level screenings shows that 23 percent of children who had BLLs of more than 70, which can cause seizures, coma or death, did not receive follow-up exams without intervention by the state Bureau of Health. Another 41 percent of children who tested between 10 and 14 BLLs did not get follow-up care without state prodding, while 26 percent of youngsters with BLLs ranging from 15 to 19 also did not get automatic follow-up care and monitoring.

In July 1991, *Newsweek* magazine reported that lead poisoning is the number one environmental threat to children in the United States. As of September 6, 1996, the federal government requires all owners and managers of most pre-1978 housing to make specific disclosures to tenants concerning the dangers of lead-based paint. For further information on this notice requirement *see* Chapter 16 of this Guide, Model Landlord Tenant Lease, §§16.2-16.3.

In 2007 the Maine Legislature required landlords to give tenants 30 days notice before undertaking renovations in a pre-1978 building.[34] Renovations in older buildings can produce lead laced dust and debris that are very dangerous.

Beginning April 22, 2010 all contractors who disturb lead paint will be subject to new federal Environmental Protection Agency (EPA) rules. Here is the Maine Apartment Owners & Managers Association's description of this new law from its 2010 Newsletter:

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[31] *See Nichols v. Marsden*, 483 A.2d 341, 343 (Me. 1984) (a landlord can be liable when it fails to disclose the existence of a latent defect which it knows or should have known existed but which is not known to the tenant nor discoverable by the tenant in the exercise of reasonable care).

[32] 22 M.R.S.A. §§ 1314-1329, *See Richwind v. Brunson*, 625 A.2d 326, 340 (Md. App. 1993) (renting an apartment containing loose lead-based paint was unfair and deceptive trade practice); *see also State v. A. Newton Culver*, No. CV-96-301 (Me.Sup.Ct., And.Cty., Feb.14,1997) (apartment owner entered into Unfair Trade Practice Consent Decree which required him to pay to correct lead hazards), *State v. Robert Smith and Theresa Smith, d/b/a B & T Property Management,* No.CV-96-301 (Me. Sup. Ct., And.Cty., Nov.26, 1996) (Consent Decree in which defendants were permanently enjoined from renting an apartment to be occupied by children when that apartment had been posted and ordered cleared of harmful lead-based substances); *Young v. Libby,* 737 A. 2d 1071, 1075 (landlord can be liable for lead paint poisoning if it negligently failed to disclose a hidden lead paint defect and such negligence was the proximate cause of plaintiff's injuries).

[33] 22 M.R.S.A.§1328. *See also* Chapter 16, pp16-11 to 16-12, Maine Attorney General's Model Landlord-Tenant Lease.

[34] 14 M.R.S.A. § 6030-B.

It is estimated that nearly 16,000 people, including contractors and landlords, may be affected by the new rule in Maine. The rule addresses hazards created by renovation, repair, painting activities and is referred to as the Renovation, Repair and Painting Rule (RRP Rule).

Renovations, remodeling, painting, plumbing, electrical work, heating and air-conditioning, demolition and related jobs performed for compensation in ‘target housing’ and ‘child occupied facilities’ built before January 1, 1978 will be impacted when they exceed 6 square feet of paint per room or 20 square feet outside. All work, including work on rental property, schools and child care facilities, will be subject to the rule. Landlords are subject to the new rule because ‘rent’ is considered compensation. Thus, landlords must either get certified themselves, or hire a certified contractor to do the work. The rule requires contractors to have at least one Renovation, Repair, and Painting (RRP) Certified Contractor at each job site.

Landlord attention to this new rule is essential because records compiled over several years by the Maine Department of Human Services substantiates that over ½ of child lead poisonings occur in rental units. Indeed, nearly 80% of these occur within 5 ‘high density areas’ urban areas. Increased levels of scrutiny and resources are now directed at landlords by State and Federal regulators and health professionals because this is seen to be the most cost effective way to reduce poisonings.

Landlord Liability and Resources to Adapt
All landlords should be familiar with the Maine Lead Disclosure Form which requires landlords to notify tenants of any lead tests and provide the booklet, ‘Protect Your Family From Lead in Your Home’ to your tenants. If a child is found poisoned in your rental, Maine law requires testing of the unit and expensive abatement if your unit is determined to have lead hazards (regardless of any direct proof that the child was poisoned in your unit).

The new EPA rule changes the thrust of lead law to date, from disclosure and response after poisoning has occurred, *to prevention*. According to Rick Reibstein, a former EPA lawyer, ‘anyone hiring or participating in the management of someone who does such work (disturbs lead) should also understand that the new rule affects potential liabilities for lead poisoning or contamination, as it articulates an expectation that *it is necessary to prevent the dispersal of lead dust*.’

If you have questions about lead contact the Maine Bureau of Health, Maine Lead Poisoning Program (207-287-4311), Environmental Protection Agency (lead in water) (1-800-452-4668) National Lead Information Clearinghouse (1-800-424-LEAD), or the Maine State Housing Authority (1-800-452-4668). To have your apartment tested for lead-based paint you should call a licensed lead inspector who will charge you for the test. A landlord’s failure to make federal lead-based paint disclosures may also be a violation of the Maine Unfair Trade Practices Act. *See* § 3.2 of this Guide, Consumer Rights and the Maine Unfair Trade Practices Act, and §16.3 (EE), The Attorney General’s Model Landlord Tenant Lease. For lead paint forms and more information visit:

http://www.maine.gov/dep/rwm/lead/
http://www.epa.gov/lead

http://www.maine.gov/dhhs/ehu
http://www.maine.gov/healthyhomes

G. Mold

Maine recently published its Report of the Mold in Maine Buildings Task Force (20008). Among its findings were:

1. For the majority of persons, undisturbed mold is not a substantial health hazard.

2. Mold is a greater hazard for persons with underlying conditions: mold allergies, asthma, and immune-suppressed conditions.

H. Radon Testing

By 2012 and every ten years thereafter, a landlord must test the air of a residential building for the presence of radon and provide written notice to tenants of the results and the risks associated with radon. If the test results reveal a level of radon of 4.0 picocuries per litre of air or above, the landlord must take measures to reduce the radon level below the 4.0 level.[35]

§ 14. 6. Landlord and Tenant Responsibilities for Bedbugs

Bedbugs are becoming an increasing problem in public accommodations. A bedbug infestation can be so serious as to constitute a breach of the warranty of habitability (*see* §14.5). As of July 12, 2010[36], Maine law provides both landlords and tenants with specific rights and duties as to the threat of bedbugs.

A. Tenant Responsibilities

(1) A tenant must promptly notify a landlord when the tenant knows of or suspects an infestation of bedbugs in the tenant's apartment.
(2) Upon receiving reasonable notice from the landlord[37], the tenant must grant the landlord reasonable access in order to inspect for bedbugs.
(3) The tenant must comply with the landlord's reasonable measures to eliminate and control a bedbug infestation. If the tenant unreasonably fails to do so, the landlord may commence a court action to require the tenant pay for all the pest control treatments of the unit arising from the tenant's failure to comply.

[35] 14 M.R.S.A. §6030-D.
[36] 14 M.R.S.A. §6021-A.
[37] See 14 M.R.S.A. §205 as to the requirements of reasonable notice when the landlord needs access to your apartment.

B. Landlord Responsibilities

(1) Before renting an apartment or other dwelling unit, the landlord shall disclose to a perspective tenant if an adjacent unit or units are currently infested with or being treated for bedbugs.
(2) Upon request from a tenant or prospective tenant, the landlord must disclose the last date that the dwelling unit the landlord seeks to rent or an adjacent unit or units were inspected for a bedbug infestation and found to be free of a bedbug infestation.
(3) A landlord may not offer for rent a dwelling unit that the landlord knows or suspects is infested with bedbugs.
(4) Once the tenant informs the landlord that the dwelling unit may have a bedbug infestation, the landlord must within 5 days conduct an inspection of the unit for bedbugs.
(5) Upon determination that the unit has bedbugs, the landlord shall within 10 days contact a pest control agent to effectively identify and treat any suspected bedbug infestation.
(6) The landlord must employ a pest control agent that carries current insurance to promptly treat the bedbug infestation. The pest control agent will determine what the tenant must do to prepare the unit for the bedbug treatment.
(7) If a tenant is unable to comply with a requested bedbug inspection or the measures necessary to treat the bedbugs, as outlined by the pest control agent (e.g., moving furniture, washing and drying clothes, providing mattress covers, etc.), then the landlord must offer reasonable assistance including financial assistance. The landlord must describe to the tenant what the cost may be for the tenant's compliance with the requested bedbug inspection or control measures. After making this disclosure the landlord can offer financial assistance to the tenant to help the tenants prepare the unit for bedbug treatment. If the tenant accepts the landlord's offer of financial help, the landlord may charge the tenant a reasonable amount for the assistance, subject to a reasonable repayment schedule, not to exceed six months.[38]

C. Tenant Remedies

(1) The landlord's failure to comply with this new bedbug law is a violation of the tenant's warranty of habitability.[39] This means the landlord has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy a condition that endangers or materially impairs the health or safety of the tenant. *See* §14.5 in this chapter for a description of the tenant's remedies for a violation of the warranty of habitability.

(2) A landlord who fails to comply with these bedbug provisions is liable to the tenant for a penalty of $250 or actual damages, whichever is greater, plus reasonable attorney's fees.

(3) If a landlord goes to court and seeks to evict a tenant, there is a rebuttable presumption that the landlord's eviction action was commenced in illegal retaliation against a tenant

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[38] 14 M.R.S.A. § 6021-A(2)(F).
[39] 14 M.R.S.A. § 6021(3).

if, within the six months before the landlord's eviction action, the tenant had asserted the tenant's statutory bedbug rights.

D. Landlord Remedies

(1) However, if the tenant fails to provide reasonable access to the unit or fails to comply with reasonable requests for treatment of bedbugs, the landlord can seek an expedited court order against the tenant:

(a) Granting the landlord access to the premises for the purposes set forth in the bedbug law;
(b) Granting the landlord the right to engage in bedbug control measures; and
(c) Requiring the tenant to comply with specified bedbug control measures or assessing the tenant with costs and damages related to the tenant's noncompliance.

(2) When seeking access to the unit the landlord must give the tenant at least 24 hours notice.

§ 14. 7. Right To Hearing Before Eviction

Generally speaking, there is little a tenant can do to stop the landlord from eventually forcing the tenant to leave the apartment or house. If a tenant refuses to leave after receiving from the landlord a notice to quit, then the landlord's only remedy is to file a forcible entry and detainer action (FED) in District Court and give the tenant an opportunity for a court hearing. Only the court can order that a tenant be forcibly evicted and only a law enforcement officer can enforce the court's eviction order.

If you are a tenant at will, that is someone who does not have a written lease, the landlord can evict you with thirty days written notice.[40] If you do have a lease, he cannot evict you until the lease expires, unless you have broken a significant lease term and the lease itself states that violation of that term is a breach of the lease.[41]

In most situations, if you do not have a *written lease* (*e.g.*, you pay week to week or month to month), the landlord must give you a full thirty-day written notice before requiring you to leave the apartment. A seven-day written notice[42] may be used only for one of the following reasons:

A. You have caused substantial damage to the apartment;

B. You have committed a "nuisance" or crime on the premises; or

C. You are seven days or more behind in rent.

The landlords must give you specific written notice, listing the reasons why he is evicting you without a full thirty-day notice. If you are up-to-date on your rent payments, the thirty-day notice "must expire on or after the date through which the rent has been paid." If the reason for the eviction is

[40] 14 M.R.S.A. § 6002. *See Homestead Enterprises v. Johnson Products, Inc.*, 540 A.2d 471 (Me. 1988) (upon expiration of written lease the tenant becomes a tenant at will and subject to a 30-day eviction notice).

[41] *MacKerron v. MacKerron*, 571 A.2d 810 (Me.1990); *see also Rubin v. Josephson*, 478 A.2d 665, 669-70 (Me. 1984) (Provision in lease that upon expiration or termination of lease tenant would deliver premises and be responsible for damage caused by animals did not terminate lease upon nonpayment of rent).

[42] 14 M.R.S.A. § 6002(1).

that you are seven days or more behind in rent, then the notice must state the amount of rent owed and that if the tenant pays the rent owed within seven days after he has received the notice, he will not have to leave. Remember that if *you* have to leave the apartment and you do not have a written lease, you in turn must give the landlord a full thirty-day written notice, from the day your rent is due, of your intention to leave. If you do not, then the landlord may keep your security deposit for unpaid rent (*e.g.*, if you only gave him fourteen days notice, then he may take from your security deposit an amount equal to two weeks worth of rent).

In general, if there is no written lease, a landlord can decide to evict you for no reason at all as long as he gives you at least thirty days notice.[43] This notice must expire on or after the date through which the rent has been paid. However, if you are living in federally subsidized housing (*e.g.,* Section 8 Housing), you must be given a written lease and it is likely you cannot be evicted unless the landlord has "good cause" or unless the landlord can prove that you broke the lease. Call the Maine State Housing Authority (1-800-452-4668) to learn more about subsidized housing rights.

Still, Maine law does provide tenants limited protection against unfair and unreasonable evictions. Whether the tenant has a written lease or a verbal agreement (month to month tenancy), the tenant cannot be forcibly thrown out of a rental unit without first receiving a written "Notice To Quit" and a court order. No landlord has the right to break into the tenant's home, move the tenant's belongings, lock the tenant out of the home or turn off the heat or utilities. Law enforcement officers (*i.e*., the local police or the county sheriff) are the only persons who can legally remove the tenant and the tenant's property and then only after (A) a District Court hearing has been held and the tenant has had a chance to be heard in that court hearing; and (B) a court judgment, specifying an eviction date, has been awarded to the landlord.[44]

Once the tenant receives the eviction notice, the tenant has the right to a court hearing. Sometime after the expiration of the written "Notice To Quit" and at least seven days before the eviction hearing, the tenant will receive a *summons* from a deputy sheriff to appear in District Court for the hearing.[45] At this hearing the tenant can raise the affirmative defense that the landlord failed to provide a "reasonable accommodation" and that this led to the tenant conduct that resulted in eviction (e.g., tenant's failure to pay rent).[46]

Once the tenant receives this summons, the tenant should seek legal advice immediately. The eviction hearing is generally referred to as a "forcible entry and detainer action" (FED). The hearing is scheduled one or two weeks after the tenant was served with the summons and the landlord files the FED complaint. It is at this hearing that the tenant will receive the only chance to disprove the landlord's claim of breach of lease (*e.g*., unpaid rent, damage to the apartment, etc.) as stated in the seven-day notice. If the landlord is successful, the court can enter a Writ of Possession seven days after judgment.[47]

When a landlord evicts a tenant, the Court's eviction order will include any guests of the tenant (e.g., a couch surfer). Only residents who pay rent to the landlord are considered tenants.[48] Guests lose the right to stay in the apartment when the landlord lawfully evicts the tenant.

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[43] A 30 day termination notice can be combined with a 7 day termination notice. 14 M.R.S.A. § 6002.

[44] 14 M.R.S.A.§§ 6003-6005; M.R. Civ. P. 80 D (b); *see Hailu v. Simonds,* 784 A. 2d 1, 4 (Me. 2001) (landlord who padlocked door committed illegal eviction and was responsible for damages due to pain, suffering and emotional distress suffered by tenant).

[45] 14 M.R.S.A. §§ 6001-6016.

[46] 14 M.R.S.A. § 6001(5).

[47] 14 M.R.S.A. §6005.

[48] 14 M.R.S.A. § 1601(1). In such cases the landlord's court action should specifically include "all other occupants."

The court may, at any time, require the landlord and tenant to mediate their dispute. The court can refer the eviction to the Court Alternative Dispute Resolution Service and if the court finds the landlord did not make a good faith effort to mediate then the court can dismiss the landlord's eviction action and impose other penalties.[49]

If the reason you are being evicted is failure to pay your rent you can stop the eviction process by paying all back rent and the landlord's court filing fees and service of process fees.[50] If the tenant files bankruptcy, then the eviction, no matter what stage it is at—notice to quit or writ of possession or any point in between—is immediately "stayed" and the eviction is ceased. The matter is now in the Bankruptcy Court.

If it can be shown that a thirty-day notice was not issued at least thirty days before the rent was due, the Notice To Quit will be found improper and the landlord will have to start the eviction process all over. Another tenant defense is that the apartment was uninhabitable and that the landlord breached the warranty of habitability.[51]

The court's decision can be appealed to Superior Court on a question of law. The tenant may also have the right to a new trial (trial de novo) with a jury.[52]

Once the court has reached a decision, either side has ten working days to appeal the decision. After the time for the appeal ends, if the decision favors the landlord, the court will issue a "Writ of Possession" giving the local police or the sheriff the power to remove the tenant from the property. This generally means that the tenant will not be evicted for at least a week after the hearing. However, if the court is convinced that a severe hardship will arise from the immediate issuance of the "Writ of Possession," the court might decide the Writ should not issue for a somewhat longer period of time. If a tenant fails to leave the residence within 48 hours after being served with the Writ of Possession then the tenant becomes a trespasser and the tenant's goods are considered abandoned property.[53]

§ 14. 8. Forcible Or Retaliatory Evictions Are Illegal

Maine law specifically prohibits illegal evictions.[54] Illegal evictions include, but are not limited to, the following:

A. The landlord interrupts your vital utilities (heat, lights, etc.);

B. The landlord does not allow you access to your apartment;[55]

C. The landlord seizes your property.

D. The landlord is discriminating because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status.[56]

"Retaliatory evictions" are also illegal. If your landlord tries to evict you from your home within

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[49] 14 M.R.S.A. §6004-A.
[50] 14 M.R.S.A. § 6002(1-2).
[51] 14 M.R.S.A. § 6002(3).
[52] 14 M.R.S.A. § 6008.
[53] 14 M.R.S.A. § 6005.
[54] 14 M.R.S.A. § 6014.
[55] *See Hailu v. Simonds,* 784 A. 2d 1 (Me. 2001) (illegal eviction to padlock door).
[56] *See* 5 M.R.S.A. §4581. Such discrimination can be an affirmative defense to a landlord's eviction action. *See* 14 M.R.S.A. §6001, Subsection 5 (effective 7/12/2010).

six months after you have filed a complaint with a housing official about an unsafe or unfit condition, the law presumes that the landlord is evicting you because you complained to the housing official. This is called a "retaliatory eviction."[57] The same holds true if you have filed a complaint in court asserting that the landlord has breached the implied warranty of habitability within 6 months of the time the landlord tries to evict you. The presumption of retaliatory eviction may also apply if you are a member of a tenant's organization.

Upon finding that an illegal eviction has occurred, the court can order the landlord to pay the tenant his damages, expenses, and reasonable attorneys' fees.[58]

Can a landlord ask the police to issue a criminal trespass against someone in an apartment? Not if that person is a tenant or a guest of the tenant. But if the tenant is lawfully evicted, then the guest must leave also. If a tenant sub-leases the apartment but then decides that the sub-leasee should leave, the tenant must go to court and obtain an FED court order.

Remember, if a landlord treats you so unfairly as to violate the Maine Unfair Trade Practices Act, you may very well be able to seek an injunction against his practices and also have him pay your attorney fees.[59]

§ 14. 9. Notice Of Rent Increase Must Be Given

When the lease is unwritten (a tenancy at will), the landlord can increase the rent only after providing the tenant at least a full forty-five days written notice. A written or oral waiver of this requirement is against public policy and is void. A tenant can sue in court and win back money incorrectly collected by the landlord, with interest, and his reasonable attorney's fees.[60] If the lease is in writing, then any rent increase can only begin after the lease term expires.

§ 14. 10. Rent Increase Limits

Normally, a landlord can charge whatever he wishes for rent. While it is possible that a rent increase may be so extreme as to violate the "profiteering in rents" law,[61] the new rent being charged would have to be completely out of line with comparable rentals. Landlords cannot increase rents for apartments that are in violation of the warranty of habitability. Again, tenants can sue for the return of their money and their attorneys' fees.[62] A landlord is prohibited from charging more than a 4% penalty for a late rental payment.[63] By statute, rent is not "late" until 15 days after its due date.

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[57] 14 M.R.S.A. § 6001(3); *see Perrault V. Parker*, 490 A.2d203(1985) (eviction not illegal because the landlord rebutted presumption of retaliation by establishing a non-retaliatory motive for eviction).

[58] 10 M.R.S.A. § 6014(2); *see Dennis v. Bickford,* AP-98-17 (Me. Super. Ct. Kenn. Cty., March 19, 1999) (breach by landlord of implied warranty of habitability resulted in an illegal constructive eviction and plaintiff entitled to reimbursement of rent in excess of fair market value and attorney fees).

[59] 5 M.R.S.A. §§ 207,213; *see e.g.,Moore V. Porter*, 569 A.2d 603 (Me. 1990) (tenant who had been illegally evicted waived her right to attorney fees when she did not present evidence of her legal expenses at trial); *Leardi v. Brown,* 474 N.E.2d 1094 (Mass.1985).

[60] 14 M.R.S.A. § 6015.

[61] 10 M.R.S.A. § 1106.

[62] 14 M.R.S.A. § 6016.

[63] 14 M.R.S.A. § 6028.

§ 14. 11. Abandoned Property

Property is considered abandoned if it is left on the premises after the tenant has vacated or terminated and has not been claimed within fourteen days after written notice (first class mail with proof of mailing) has been sent to the tenant's last known address.[64] Here are the specific steps a landlord must take:

A. Place the property in a safe, dry, secure location;

B. Send an itemized listing of the property to the tenant and say it will be disposed after 14 days if the tenant does not respond.

C. If the tenant claims the property within 7 days after the date of the notice was sent, the landlord must release the property and cannot require the tenant to first pay any money the tenant still owes to the landlord.

D. The tenant must retrieve the property by 14 days after the notice was sent. If not, the landlord can:

1. before releasing the property require the tenant to pay any money still owed (e.g., unpaid rent);
2. Sell the property for a fair price and use the proceeds to pay any money still owed and send the remaining balance to the Secretary of State as abandoned property.

§ 14. 12. Landlord's Access To Your Dwelling

Except in the case of emergency or if it is impractical to do so, the landlord should give the tenant reasonable notice of an intent to enter and shall enter only at reasonable times. Twenty-four (24) hours is presumed to be reasonable notice. The landlord is allowed to enter the rental unit in order to make necessary repairs, alterations or improvements. If the landlord makes an illegal or unauthorized entry which has the effect of harassing the tenant, the tenant can recover actual damages or $100 whichever is greater, obtain an injunction, and his reasonable attorneys' fees.[65]

§ 14. 13. Landlord's Refusal To Pay For Utilities

If a landlord fails to pay for a utility service which is in the name of the landlord, then the tenant, in accordance with 35-A M.R.S.A. §706, can pay for the utility service and deduct the amount paid from the rent due the landlord.[66]

In general, landlords cannot unfairly charge tenants for the use of utilities. A single tenant in a multi-unit apartment building cannot be required to pay for electricity to the common areas of the building (*e.g.*, hallways, stairwells, attics, basements, etc.). This right can be waived if the tenant

[64] 14 M.R.S.A. § 6013,
[65] 14 M.R.S.A. § 6025.
[66] 14 M.R.S.A. § 6024-A (effective 7/12/2010).

agrees *in writing* to pay for this electricity in return for a specific reduction in rent. Penalties include damages or $100, whichever is greater, and attorney fees.[67]

If the lease requires the tenant to pay utility costs, the tenant has the right to obtain from the energy supplier the amount of energy consumption and the cost of that consumption for the prior 12 month period.[68]

§ 14. 14. Leaving Early: When A Tenant Breaks The Lease

If a tenant unjustifiably moves from the premises prior to the end of the written lease or, if the lease is verbal, without giving a full 30 days notice, and defaults in payment of rent, or if the tenant is removed pursuant to a forcible entry and detainer action for failure to pay rent or any other breach of a lease, the landlord may recover back rent and damages except amounts which he could reasonably have avoided[69] (*e.g.*, by renting out the apartment to a new tenant). Back rent and damages are not available if the landlord expressly agreed to accept a surrender of the apartment and end the tenant's liability.[70] Remember, if you have a *verbal* lease you must give the landlord a full 30 days' notice in writing from the day the rent is due before leaving the apartment.[71] If you have a *written* lease you have agreed to pay for the apartment until the end of the lease, unless you and the landlord jointly agree to modify the lease. . Also, you may not be responsible for future unpaid rent if the landlord immediately re-rents your apartment. *See* §14.3 in this chapter.

§ 14. 15. When The Landlord Sells A Building Or It's Foreclosed

If you are a tenant at will and do not have a written lease, then the sale of the building can terminate your tenancy. However, the new landlord must let you live there the period for which you have paid rent and must still give you the proper "notice to quit."[72] Like any tenant, you have the right to a court hearing before you can be evicted. *See* §14.6 in this chapter, "Right to a Hearing Before Eviction." If you have a written lease, then normally you can stay until your lease expires.[73]

But what happens if the landlord fails to pay the mortgage and the building is foreclosed by the mortgagee? This question is answered by a new federal law, effective May 20, 2009:[74]

A. If you are a tenant-at-will (no lease) or if you are a month-to-month renter then the new owner must give you at least a 90 day notice to quit, or notice to vacate. If you do not leave after that

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[67] *See* 14 M.R.S.A. §§6024, 6024-A and 35-A M.R.S.A. §§704-706.
[68] 14 M.R.S.A. §6030-C.
[69] See 14 M.R.S.A. § 6010-A, Landlord's duty to mitigate.
[70] 14 M.R.S.A. § 6010-A.
[71] 14 M.R.S.A. § 6002. However, you and the landlord can waive in writing this 30 day notice requirement.
[72] If you do not have a lease you become a "tenant at sufferance" when the title passes to the new landlord. This means the landlord can serve you with a "notice to quit" within 7 days after the title passes. If the new landlord waits longer than 7 days, then you are a "tenant at will" and are entitled to a 30-day notice to quit.
[73] *See State v. Fin and Feather Club*, 316 A.2d 351, 354 (Me. 1986) (a purchaser of property takes subject to any lease of which he has knowledge).
[74] See 14 M.R.S.A. §6001(1-A); Title VII of the Helping Families Save their Home Act of 2009, Public Law 111-22 (Sections 701-704). This discussion is based on Pine Tree Legal Assistance's brochure "New Federal Law Helps Renters in Foreclosure."

90 days then the new owner can file an eviction action in Maine District Court (*see* §14.6 in this chapter).

B. If you are a tenant with a longer lease then you should be able to stay in your residence until the lease expires. But if the new owner wants to live in your apartment then you only have a right to a 90 day notice to quit, followed by an eviction action if you have not left by that date.

C. What happens if you commit an act that Maine law makes a reason for eviction (e.g., you fail to pay your rent; you damage the property; you violate the provisions of your lease)? Then the landlord may be able to evict you without waiting 90 days or the end of your lease.

In March 2010 the New England Consumer Advisory Group published the following good advice for tenants whose building has been foreclosed on:

A. Under Maine law, tenants must be notified of pending foreclosures of their rental buildings.

B. Be sure that you are paying rent to the right party. Before the foreclosure process is completed, pay rent to the current landlord, unless ordered otherwise by a court. Once the building is foreclosed upon, pay the new landlord (which could be a bank, a private company or an individual). If you don't know who the new landlord is, contact the registry of deeds or the tax assessor's office.

C. If the new landlord does not accept your payment, keep written record of his refusal (and any other correspondence), and put the money in a separate account for proof of your attempt to pay.

D. Remember! You must continue to pay your rent. Otherwise, you may not be covered by the legal protections mentioned above, and your new landlord could legally evict you for your failure to pay rent.

E. If your new landlord offers you cash to get you to move out early, you should consider the following:

(1) You are not obligated to accept what is known as a "cash for keys" offer.

(2) Before you accept such an offer, determine whether you have an affordable place to live, enough time to move, and whether the money offered will cover incidentals such as basic moving expenses, security deposits, 2 months of rent at the new place, and wages lost for moving time.

§ 14. 16. Unfair Rental Contracts

No matter what lease a tenant signs there are certain tenant rights that cannot be waived,[75] no matter what the lease says:

A. The landlord cannot charge a tenant for the months remaining on the lease after the tenant is evicted or leaves unless the landlord makes a good faith effort to re-rent the residence. *See* 14 M.R.S.A. § 6010-A.

B. Late fees may not exceed 4% of one month's rent. *See* 14 M.R.S.A. § 6028 and discussion above in § 14.9.

C. Security deposit rights are the same for all tenants, whether there is a written lease or not.

[75] 14 M.R.S.A. § 6030.

See 14 M.R.S.A. §§ 6031-6038 and the discussion above in § 14.3. Please note: This law does *not* apply to a residence which is part of a building of no more than 5 dwellings, one of which is occupied by the owner.

D. Landlords cannot unfairly charge tenants for utilities. *See* 14 M.R.S.A. §§ 6024, 6024-A and 35-A M.R.S.A. §§ 704-706 and the discussion above in § 14.13.

E. Landlords cannot disclaim the Maine Warranty of Habitability unless the lease specifically charges a lower rent in return for unsafe conditions. *See* 14 M.R.S.A. § 6021 and the discussion above in § 14.5.

F. Tenants have the right to repair serious problems and deduct the cost (up to $250 or one half of the monthly rent) from the rent. This law does not apply to owner-occupied buildings with 5 or fewer units. *See* 14 M.R.S.A. § 6026(2) and the discussion above in § 14.5.

G. Landlords cannot unreasonably enter the tenant's residence. *See* 14 M.R.S.A. § 6025 and the discussion above in § 14.11.

H. Landlords can terminate the lease and evict a tenant for a substantial breach of the lease, but they cannot forcibly eject the tenant (*e.g.*, by changing the locks or removing furniture). Only a law enforcement officer can force the tenant to leave and only after a court hearing in which the court orders eviction. *See* 14 M.R.S.A. §§ 6001-6016 and the discussion above in § 14.6.

I. Landlords must handle tenant-abandoned property in accordance with Maine laws. *See* 14 M.R.S.A. § 6013 and the discussion above in § 14.10.

J. The landlord cannot evict a tenant in retaliation for complaining about living conditions or joining a tenant's organization. *See* 14 M.R.S.A. § 6001 and discussion above in § 14.7.

K. Landlords cannot unfairly discriminate against tenants. *See* discussion above in § 14.4.

L. Landlords violate the Maine Unfair Trade Practices Act (5 M.R.S.A. § 207) if they use lease provisions that have the effect of waiving a tenant's statutory rights. *See* 14 M.R.S.A. § 6030(1). Further, the Maine Legislature has specifically declared (14 M.R.S.A. § 6030(2)) that the following lease provisions are unenforceable and violations of the Maine Unfair Trade Practices Act:

    (1) Any provision that absolves the landlord from liability for the negligence of the landlord or the landlord's agent;

    (2) Any provision that requires the tenant to pay the landlord's legal fees in enforcing the rental agreement;

    (3) Any provision that requires the tenant to give a lien upon the tenant's property for the amount of any rent or other sums due the landlord; and

    (4) Any provision that requires the tenant to acknowledge that the provisions of the rental agreement, including tenant rules, are fair and reasonable.

M. Landlords must make certain disclosures concerning lead paint. See Chapter 16, Attorney General's Model Landlord-Tenant Lease, §§16.2 and 16.3.

N. Landlords must disclose in writing the landlord's policy as to smoking on the premises.[76]

The Attorney General, at the direction of the Maine Legislature, has published a Model Lease for Maine landlords and tenants. *See* Chapter 16 of this Guide for a copy of this model lease.

§ 14. 17. Hotels, Motels, Boarding Houses

Persons staying at hotels or motels or boarding houses or other short-term residencies (e.g., a campground), have significantly fewer rights than tenants. The owner can refuse accommodations or eject the lodger for failure to pay, dangerous firearms, disturbing other guests, possessing illegal drugs or violating any rules that have been posted in a prominent place and each guest room.[77]

The statute defining hotels, boarding houses and inns describes their attributes. For example, they must post in every bedroom the maximum daily rates for that room.[78] However, a recent court decision concluded that even if the rental has some of these attributes it may on balance be an apartment and subject to the landlord-tenant laws.[79]

Nor do people renting summer cottages have the same rights as tenants. Such short rents usually create a "license" instead of a lease. However, the rentor could have a higher "duty of care" toward any guests.[80]

§ 14. 18. Landlord Smoking Policies

Landlords can certainly ban smoking on the premises. Further, there is an argument that a building's common areas must be smoke free, due to Maine's Public Place Smoking Law.[81]

Landlords must provide tenants with a written smoking policy concerning smoking on the premises. This notice must identify the areas on the premises where smoking is allowed, if any.[82]

§ 14. 19. Selected Statutes

A. 14 M.R.S.A. § 6002, Eviction of Tenants With Verbal Leases (Tenancies at Will); Breach of Warranty of Habitability

Tenancies at will must be terminated by either party by a minimum of 30 days' notice, except as provided in subsection 1, in writing for that purpose given to the other party, but if the landlord or the landlord's agent has made at least 3 good faith efforts to serve the tenant, that service may be accomplished by both mailing the notice by first class mail to the tenants last known address and by leaving the notice at the tenant's last and usual place of abode. In cases when the tenant has

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[76] 14 M.R.S.A. §6030-E(2); 33 M.R.S.A. §§ 1604-119.
[77] 30-A M.R.S.A. §3838. *See Dorothy Hailu, et al. v. Gordon D. Simonds, Trustee,* 784 A.2d 1 (Me. 2001).
[78] 30-A M.R.S.A. §3802.
[79] *See Dagenhardt v. EWE Limited Partnership*, 211 ME 23 (arrangement with resident more clearly resembled a lease for an apartment than a room in a boarding house and landlord was required to evict by a forcible entry and detainer action).
[80] *Morton & Furbush Agency*, 929 A.2d 471, 474 (Me. 2007).
[81] 22 M.R.S.A. § 1542.
[82] *See* 14 M.R.S.A. § 6030-E.

paid rent through the date when a 30-day notice would expire, the notice must expire on or after the date through which the rent has been paid. Either party may waive in writing the 30 days' notice at the time the notice is given, and at no other time prior to the giving of the notice. A termination based on a 30-day notice is not affected by the receipt of money, whether previously owed or for current use and occupation, until the date a writ of possession is issued against the tenant, during the period of actual occupancy after receipt of the notice. When the tenancy is terminated, the tenant is liable to the process of forcible entry and detainer without further notice and without proof of any relation of landlord and tenant unless the tenant has paid, after service of the notice, rent that accrued after the termination of the tenancy. These provisions apply to tenancies of buildings erected on land of another party. Termination of the tenancy is deemed to occur at the expiration of the time fixed in the notice. A 30-day notice under this paragraph and a 7-day notice under subsection 2 may be combined in one notice to the tenant.

1. *Causes for 7-day notice of termination of tenancy*. Notwithstanding any other provisions of this chapter, the tenancy may be terminated upon 7 days' written notice in the event that the landlord can show, by affirmative proof, that:

   A. The tenant, the tenant's family or an invitee of the tenant has caused substantial damage to the demised premises that the tenant has not repaired or caused to be repaired before giving of the notice provided in this subsection; [2009, c. 171, §2]

   B. The tenant, the tenant's family or an invitee of the tenant caused or permitted a nuisance within the premises, has caused or permitted an invitee to cause the dwelling unit to become unfit for human habitation or has violated or permitted a violation of the law regarding the tenancy; or

   C. The tenant is 7days or more in arrears in the payment of rent. [2009, c. 171, §2]

   If a tenant who is 7 days or more in arrears in the payment of rent pays the full amount of rent due before the expiration of the 7-day notice in writing, that notice is void. Thereafter, in all residential tenancies at will, if the tenant pays all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually expended by the landlord before the issuance of the write of possession as provided by section 6005, then the tenancy must be reinstated and no writ of possession may issue.

   In the event that the landlord or the landlord's agent has made at least 3 good faith efforts to personally serve the tenant in-hand, that service may be accomplished by both mailing the notice by first class mail to the tenant's last known address and by leaving the notice at the tenant's last known address and by leaving the notice at the tenant's last and usual place of abode.

   Payment or written assurance of payment through the general assistance program, as authorized by the State or a municipality pursuant to Title 22, chapter 1161, has the same effect as payment in cash.

2. *Ground for termination of notice.* A notice of termination issued pursuant to subsection 1 must indicate the specific ground claimed for issuing the notice.

   A. If a ground claimed is rent arrearage of 7 days or more, the notice must also

include a statement:

(1) Indicating the amount of rent that is 7 days or more in arrears as of the date of the notice; and

(2) Setting forth the following notice; "If you pay the amount of rent due as of the date of this notice before this notice expires, then the notice as it applies to rent arrearage is void. After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated." [2009, C. 171, §3 (NEW) .]

B. If the notice states an incorrect rent arrearage or contains any other clerical errors that do not significantly or materially alter the purpose or understanding of the notice, the notice cannot be held invalid if the landlord can show the error was unintentional.

3. *Breach of warranty of habitability as an affirmative defense.* In an action brought by a landlord to terminate a rental agreement on the ground that the tenant is in arrears in the payment of rent, the tenant may raise as a defense any alleged violation of the implied warranty and covenant of habitability, provided that the landlord or the landlord's agent has received actual or constructive notice of the alleged violation, and has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition and the condition was not caused by the tenant or another person acting under the tenant's control. Upon finding that the dwelling unit is not fit for human habitation, the court shall permit the tenant either to terminate the rental agreement, without prejudice or to reaffirm the rental agreement, with the court assessing against the tenant an amount equal to the reduced fair rental value of the property for the period during which rent is owed. The reduced amount of rent thus owed must be paid on a pro rata basis, unless the parties agree otherwise, and payments become due at the same intervals as rent for the current rental period. The landlord may not charge the tenant for the full rental value of the property until such time as it is fit for human habitation.

B. 14 M.R.S.A. § 6014, Tenant Remedies For Illegal Evictions

1. *Illegal evictions.* Evictions which are effected without resort to the provisions of this chapter are illegal and against public policy. Illegal evictions include, but are not limited to, the following:

A. No landlord may willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant including, but not limited to, water, heat, light, electricity, gas, telephone, sewerage, elevator or refrigeration, whether or not the utility service is under control of the landlord, except for such temporary interruption as may be necessary while actual repairs are in process or during temporary emergencies.

B. No landlord may willfully seize, hold or otherwise directly or indirectly deny a tenant access to and possession of the tenant's rented or leased premises, other than through proper judicial process

C. No landlord may willfully seize, hold or otherwise directly or indirectly deny a

tenant access to and possession of the tenant's property, other than by proper judicial process.

2. *Remedies*. Upon a finding that an illegal eviction has occurred, the court shall take one or both of the following actions:
   A. The tenant shall recover actual damages or $100, whichever is greater.
   B. The tenant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorneys' fees.
3. *Good faith*. A court may award attorneys' fees to the defendant if, upon motion and hearing, it is determined that an action filed pursuant to this section was not brought in good faith and was frivolous or intended for harassment only.
4. *Nonexclusively*. The remedies provided in this section are in addition to any other rights and remedies conferred by law.

§ 14. 20. Seeking Help

People who are in need of emergency or subsidized housing should call the social service emergency line of 211, contact their municipality for General Assistance, their local Community Action Program or the Maine State Housing Authority at 1-800-452-4668 or 207-626-4600 or 1-800-452-4603 (TTY).

Acknowledgement. The Consumer Protection Division of the Attorney General's Office is thankful for the assistance it received in the preparation of this chapter from Pine Tree Legal Assistance and its pamphlet, *The Rights of Tenants in Maine* (January 2002).

§ 14. 21. Notice Of Violation Of The Warranty Of Habitability Act

This Notice* should be delivered in hand to your landlord, or sent through the U.S. Mail, Return Receipt Requested. Please keep a copy for your records.

To: ____

The unit which I rent from you and which is located at:

____

is subject to the provisions of the Maine Warranty of Habitability Act, 14 M.R.S.A. § 6021. According to the provisions of this law, all landlords must maintain their rental unit free from any condition which endangers or impairs the health or safety of any tenant. If you are found to have violated this law, a judge can order you to:

CORRECT THE DEFECT, AND REDUCE MY FUTURE RENTAL PAYMENTS,

AND RETURN TO ME RENT WHICH I HAVE ALREADY PAID TO YOU.

The unit which I rent from you is in violation of the Maine Warranty of Habitability Act for the following reason(s):

___ Faulty Heating System ___ Insect Infestation

___ Inadequate Heat ___ Leaking Ceiling

___ Faulty Sewage System ___ Unfit Drinking Water

___ Insufficient Hot Water or Water Pressure ___ Faulty Electrical Wiring

___ Unsafe Chimney

___ Other: ____

Comments: (Please describe the particular details of your situation; use other side if necessary.)

I hereby request that you correct the above defect(s) immediately. Please be advised that if you fail to do so, I will take appropriate legal action. Thank you.

Signed:_________________________________ Date:___________________

copy forwarded to:

Municipal Code Enforcement Officer ____ Fire Marshal ____ Other ________________

* This form was originally published by Pine Tree Legal Assistance, Inc.