



C R E S C E N T T I T L E

presents:

Landlord – Tenant Law

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Art. 2668. Contract of Lease Defined

- Lease is a synallagmatic contract by which one party, the lessor, binds himself to give to the other party, the lessee, the use and enjoyment of a thing for a term in exchange for a rent that the lessee binds himself to pay.
- The consent of the parties as to the thing and the rent is essential but not necessarily sufficient for a contract of lease.



Art. 2671. Types of Leases

- Depending on the agreed use of the leased thing, a lease is characterized as: residential, when the thing is to be occupied as a dwelling; agricultural, when the thing is a predial estate that is to be used for agricultural purposes; mineral, when the thing is to be used for the production of minerals; commercial, when the thing is to be used for business or commercial purposes; or consumer, when the thing is a movable intended for the lessee's personal or familial use outside his trade or profession. This enumeration is not exclusive.
- When the thing is leased for more than one of the above or for other purposes, the dominant or more substantial purpose determines the type of lease for purposes of regulation.



Art. 2673. The Thing

- All things, corporeal or incorporeal, that are susceptible of ownership may be the object of a lease, except those that cannot be used without being destroyed by that very use, or those the lease of which is prohibited by law.

Art. 2674. Ownership of the Thing

- A lease of a thing that does not belong to the lessor may nevertheless be binding on the parties



Art. 2675. The Rent

- The rent may consist of money, commodities, fruits, services, or other performances sufficient to support an onerous contract.

Art. 2678. Term

- The lease shall be for a term. Its duration may be agreed to by the parties or supplied by law.
- The term may be fixed or indeterminate. It is fixed when the parties agree that the lease will terminate at a designated date or upon the occurrence of a designated event.



Art. 2681. Form

- A lease may be made orally or in writing. A lease of an immovable is not effective against third persons until filed for recordation in the manner prescribed by legislation.

Art. 2676. Agreement as to the Rent

- The rent shall be fixed by the parties in a sum either certain or determinable through a method agreed by them. It may also be fixed by a third person designated by them.
- If the agreed method proves unworkable or the designated third person is unwilling or unable to fix the rent, then there is no lease.



Art. 2682. The Lessor's Principal Obligations

- The lessor is bound:
 - (1) To deliver the thing to the lessee.
 - (2) To maintain the thing in a condition suitable for the purpose of which it was leased.
 - (3) To protect the lessee's peaceful possession for the duration of the lease



Art. 2683. The Lessee's Principal Obligations

- The lessee is bound:
 - (1) To pay the rent in accordance with the agreed terms.
 - (2) To use the thing as a prudent administrator and in accordance with the purpose for which it was leased.
 - (3) To return the thing at the end of the lease in a condition that is the same as it was when the thing was delivered to him, except for normal wear and tear or as otherwise provided hereafter.



Art. 2691. Lessor's Obligation for Repairs

- During the lease, the lessor is bound to make all repairs that become necessary to maintain the thing in a condition suitable for the purpose for which it was leased, except those for which the lessee is responsible.

Art. 2692. Lessee's Obligation to make Repairs

- The lessee is bound to repair damage to the thing caused by his fault or that of persons who, with his consent, are on the premises or use the thing, and to repair any deterioration resulting from his or their use to the extent it exceeds the normal or agreed use of the thing.



Art. 2693. Lessor's Right to Make Repairs

- If during the lease the thing requires a repair that cannot be postponed until the end of the lease, the lessor has the right to make that repair even if this causes the lessee to suffer inconvenience or loss of use of the thing.
- In such a case, the lessee may obtain a reduction or abatement of the rent, or a dissolution of the lease, depending on all of the circumstances, including each party's fault or responsibility for the repair, the length of the repair period, and the extent of the loss of use.



Landlord Repairs



Art. 2694. Lessee's Right to Make Repairs

- If the lessor fails to perform his obligation to make necessary repairs within a reasonable time after demand by the lessee, the lessee may cause them to be made. The lessee may demand immediate reimbursement of the amount expended for the repair or apply that amount to the payment of rent, but only to the extent that the repair was necessary and the expended amount was reasonable.



Art. 2707. Lessor's Privilege

- To secure the payment of rent and other obligations arising from the lease of an immovable, the lessor has a privilege on the lessee's movables that are found in or upon the leased property.
- In an agricultural lease, the lessor's privilege also encompasses the fruits produced by the land.



Art. 2709. Lessor's Right to Seize Movables of Third Persons

- The lessor may lawfully seize a movable that belongs to a third person if it is located in or upon the leased property, unless the lessor knows that the movable is not the property of the lessee.
- The third person may recover the movable by establishing his ownership prior to the judicial sale in the manner provided Article 1092 of the Code of Civil Procedure, If he fails to do so, the movable may be sold as though it belonged to the lessee.



Art. 2713. Lessee's Right to Sublease, Assign, or Encumber

- The lessee has the right to sublease the leased thing or to assign or encumber his rights in the lease, unless expressly prohibited by the contract of lease. A provision that prohibits one of these rights is deemed to prohibit the others, unless a contrary intent is expressed. In all other respects, a provision that prohibits subleasing, assigning, or encumbering is to be strictly construed against the lessor.



Eviction

- The Constable's Office is the enforcement arm for the First City Court of New Orleans. Our role is to execute the decisions of the court, act as a process server and peace-keeper, and to ensure that the eviction process flows as smoothly as possible. We are aware that the eviction process may seem complicated to the parties involved, so we have produced this web site to help you better understand the process. Created with the attorney, landlord, property manager and tenet in mind, this web site can effectively guide you through the eviction process.



Five-Day Notice to Vacate Premises

- The eviction process is initiated in the Constable's Office with the Five-Day Notice to Vacate Premises. This notice is filed by the landlord between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, and applicable fees will apply. The reason for the eviction must be clearly stated on the notice before it will be served. The Constable's Office will then serve the notice to the tenant in person or by attaching it to the tenant's door. The tenant will receive the notice on the next business day.



Rule for Possession of Premises

- If the tenant fails to pay rent or to vacate the premises by the fifth (5th) business day once the Five-Day Notice to Vacate Premises has been served, the landlord must return to the Constable's Office to file the Rule for Possession of Premises. On the sixth (6th) business day, or shortly thereafter, the Clerk of First City Court will serve notice of the assigned court date to the tenant either in person or by attaching it to the tenant's door.
- On the date given by the Clerk's Office, both landlord and tenant will appear in court. If the landlord fails to appear or accepts full or partial payment of rent from the tenant at any time after the eviction process has begun, the court will dismiss the Rule for Possession of Premises.
- If the landlord still wishes to evict, the landlord must begin a new eviction process and file another Five-Day Notice to Vacate Premises.



Cases

Reed v. Ramsay

- Tenant installed a window air-conditioning unit that was above the front door and hung over the street.
- Water dripped from the air-conditioning unit onto the street causing an algae-like substance, which a pedestrian slipped in and hurt his back.
- Court held the landlord was not responsible because the tenant installed the air-conditioner without the landlord's knowledge.



Cases

Potter v. First Federal Savings and Loan

- Woman had oral lease with landlord and complained to landlord's management company about poor lighting.
- She was assured the lighting problem would be fixed.
- One month after complaining, the management company failed to fix the lighting, and the woman was raped in the parking lot.
- Court ruled that the landlord owed the tenant a duty to fix the lights because of statements made to the tenant about repairing the lights.
- When the property manager assured the tenant that the lighting would be fixed, the oral lease was modified and created an obligation by the landlord.





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Cases

Harris v. Pizza Hut

- Two men armed with sawed-off shotguns entered Pizza Hut at the corner of Port Street and Claiborne to rob the store.
- A Police Officer was on-duty as a security guard but was sitting at a table eating a salad.
- Neither the officer nor the gunmen saw each other at first. The officer was told what was happening and reached for his gun when one of the gunmen beat him to the draw and told him not to move.
- The officer moved to his right, and the gunman fired injuring the officer and a patron and killing another patron.
- Court ruled that once Pizza Hut hired the police officer, it assumed the duty to take care of third persons on that property.



Cases

Davis v. Riverside Court Condominium Ass. Phase II, Inc.

- Lessee of condominium unit brought suit against lessor after lessee sustained scald burns from condo's bath water.
- Lessee was burned on 40% of her body and hospitalized for 2 – 3 months.
- Lessor owned only one unit of the 198 units on site, and the units were managed by Riverside Court Condo Association.
- Lessor not strictly liable for the injuries to lessee because it did not have custody of the hot water system.
- Hot water system was controlled by two boilers in the boiler room that only condo association employees had keys to and the rooms remained locked.



Cases

Roshto v. Bajon

- Landlord told tenant that “if she were a man, I would beat the hell out of you”.
- Curse words without taking it further such as physical conduct are not actionable.
- The Court would not condemn the language as so extreme and outrageous to cause conduct to be actionable.
- In landlord-tenant relationship, tolerance of harsh conduct or language is warranted.



Cases

George v. Paffen

- A child was playing next door to the Defendant/Lessee's house when the lessee's dog broke free and attacked the child causing severe injuries to the child's leg.
- The child's parents sued the lessee and the landlord arguing the landlord was liable because she knew the lessee kept pit bulls on the property.
- The court found that the landlord was not liable because the landlord did not have actual knowledge of the dog's vicious propensities.



Cases

Mazzini v. Strathman

- Lessor wanted to evict lessee for having a dog on the premises, which violated the lease agreement.
- The lessee argued she had a prescription that allowed her to have the dog as an “Emotional Support Animal” under the Fair Housing Amendments of 1988.
 - The lessee claims she had severe anxiety and severe allergies.
- Court ruled that the lessee failed to establish that she had a disability and that nothing indicated the lessor knew or reasonably expected to know of the disability.



Cases

Steier v. Heller

- Landlord served notice to vacate on tenant and his wife that was pregnant with twins.
- Lessees argued that lessor's termination of lease was against morals, good faith, and fairness.
- Court ruled the Lessor has right to terminate lease according to the agreement between the parties.
- The terms of the lease clearly granted the lessor the right to terminate the lease with 60 days notice.
- Court reasoned that the Lessor's primary motive was economic, which is a serious and legitimate motive.





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