

# Landlord-Tenant Law



OhioMHAS Housing University

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# About The Presenter

## **Joe Maskovyak**

- Affordable and Fair Housing Coordinator

## **Coalition on Homelessness and Housing in Ohio**

- [www.cohhio.org](http://www.cohhio.org)
- Mission of ending homelessness and promoting affordable housing through public policy advocacy, training and technical assistance, research, hotline advice, and public education

# **Part 1:**

# **Introduction to Terms, Definitions, & Duties**

# Tenant

- A person entitled under a **rental agreement** to the use and occupancy of residential premises to the **exclusion of others, including landlords**
- Some circumstances can be tricky:
  - Guest, visitor (V. unauthorized tenant)
  - Living at premises, but not on the lease
  - Unclear rental agreement (ambiguity/conflicting terms)(problems for both landlord & tenant)

**A lease/rental agreement is a binding legal contract. Both landlords and tenants are bound by the terms of the agreement.**



# Landlord

- The owner, lessor, or sublessor of residential premises, OR
- The agent of the owner... or any person authorized by the owner... to manage the premises or to receive rent from a tenant under a rental agreement



# Residential Premises

- A dwelling unit for residential use and occupancy and the structure
  - Does **not** include: prisons, jails, hospitals, tourist homes, hotels, motels, boarding schools, most shelters, and many other structures/places
- Mobile Homes are covered by ORC 4781
- Land Installment Contracts are covered by ORC 5313

**Note that there is no specific exclusion for recovery housing**



# Occupancy Definitions:

## ORC 5321.01

**"Residential premises" does not include any of the following:**

- Occupancy in a facility licensed as an **SRO facility** that is either:
  1. Owned or operated by an organization that is exempt from taxation under **section 501(c)(3), OR**
  2. By an entity or group of entities, and if **either** of the following applies:
    - a) The occupancy is for a period of **less than 60 days, OR**
    - b) Program operated by the (SRO) facility to provide either of the following:
      - **Services licensed, certified, registered, or approved by a governmental agency or private accrediting organization** for the rehabilitation of . . . persons suffering from substance abuse;
      - Shelter for juvenile runaways, victims of domestic violence, or homeless persons.

# Occupancy Definitions: ORC 5321.01

**"Residential premises" does not include any of the following:**

Emergency shelters:

1. Operated by organizations under section 501(c)(3) for:
  - a) Persons whose circumstances indicate a transient occupancy, including:
    - I. homeless people,
    - II. victims of domestic violence,
    - III. and juvenile runaways.



# Occupancy Definitions: ORC 5321.01

- So... what services are **licensed, certified, registered, or approved by a governmental agency or private accrediting organization** for the rehabilitation of persons suffering from substance abuse?
    - OMHAS certification under OAC 5160?
    - CARF, COA, Joint Commission?
    - ORH certification of NARR?
- \*Remember this applies to SRO facilities**

# Rental Agreement

- “Rental Agreement” means any agreement or lease, **written or oral**, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties
- **Put agreement in writing to avoid disagreements over what was said/included in the rental agreement**



# Types of Rental Agreements

- **Month-to-Month**

- Benefits: flexibility
- Detriments: No guarantee beyond 30 days for either party
- May also be weekly, bi-weekly, etc.



- **Lease for a term**

- Guarantee of premises for specific term (1 yr. typically)
- Benefits: lock in rent amount & time: stability
- Detriment: no flexibility if either party wants to end agreement & the other side does not

# Prohibited in Rental Agreements

- **Prohibited Terms — ORC 5321.13**
  - Confess Judgment
    - Tenant gives up the right to a defense against a claim
  - Tenant required to pay landlord's attorney's fees no matter the outcome of a legal dispute
  - **Shifting landlord duties to the tenant**
  - Have tenant indemnify landlord from liability
- **Prohibited Actions — ORC 5321.15**
  - No self-help evictions (lockouts) or utility shut-offs

# Rental Agreement Term That is “Bad”



- **Unconscionable terms—ORC 5321.14**
  - Unconscionable = unfair/illegal
  - A court may rule to refuse to enforce a rental agreement
  - **OR (more likely)**
  - A court may elect to enforce the rental agreement without the unconscionable clause
  - There is no definition of “unconscionable”
  - Often used to attack unreasonable late fees (but reasonable late fees are OK)

# Duties of Landlords & Tenants

## Landlord Duties (5321.04)

- Make all repairs to put and keep premises in a fit and habitable condition
- Keep all electrical, plumbing, heating, and ventilation systems in good working order
- Maintain all appliances and equipment supplied or required to be supplied by him/her (**no duty to supply appliances**)



## Tenant Duties (5321.05)

- Keep the premises safe & sanitary
- Use electrical and plumbing fixtures properly
- Keep the plumbing fixtures as clean as their condition permits
- Maintain the appliances supplied by the landlord in good working order

# Duties of Landlords & Tenants

## Landlord Duties (5321.04)

- Provide garbage cans and arrange for trash removal, if the landlord owns four or more residential units in the same building
- Comply with building, housing, health and safety codes
- Give at least 24 hours notice, unless it is an emergency, before entering a tenant's unit and enter only at reasonable times and in a reasonable manner



## Tenant Duties (5321.05)

- Dispose of rubbish properly
- Comply with housing, health, and safety codes that apply to tenants
- Refrain, and forbid household members or visitors, from damaging, or removing any fixture, appliance, or other part of the premises
- Permit landlord to enter the dwelling unit, if the request is reasonable and proper notice is given

# Duties of Landlords & Tenants

## Landlord Duties

- Evict the tenant when the landlord has “actual knowledge” of drug activity by the tenant, a member of the tenant’s household or a guest of the tenant occurring in or otherwise connected with the tenant’s premises

## Tenant Duties

- Comply with state or municipal drug Laws in connection with the premises and require household members and guests to do likewise





# Duties of Landlord

- Supply running water, reasonable amounts of hot water and heat, unless the hot water and heat are supplied by an installation that is under the exclusive control of the tenant and supplied by a direct public utility hook-up



# Duties of Tenant

- Refrain from damaging the premises and keep guests from damaging
- Refrain from disturbing any neighbors and require guests to do the same



# Retaliation vs. Discrimination

- These terms are often conflated, but have different legal meanings
- **Retaliation**: 3 ways in Ohio's statute for a landlord to commit retaliation:
  - Landlord increases rent, decreases services, or threatens to bring/actually brings eviction action for these specific reasons:
    1. Tenant complained to government agency about code violation
    2. Tenant complained to landlord that landlord violated their legal duties
    3. Tenant organized with other tenants to negotiate/deal with landlord about lease terms

# Retaliation vs. Discrimination

- **Discrimination**: Fair Housing Act (FHA) issue
  - FHA prohibits discrimination in the rental (including services), sale, advertising, design, insuring, and financing of dwellings, and in other housing-related transactions, based on membership in protected classes (race, skin color, familial status, religion, sex/gender, national origin, disability; Ohio state law adds ancestry & military status to list)
- **Some fair housing requirements will apply to all housing providers in one way or another – can't escape it**
  - Even if the Landlord-Tenant law doesn't apply to a housing provider, the **FHA** almost certainly will
  - Even if the FHA doesn't apply to a housing provider, the **Americans with Disabilities Act (ADA)** will

# Exceptions to FHA

- Any single family home sold or rented by an owner
- Rooms or units in dwellings with less than 4 units
- Religious organizations
- Private Clubs
- Emergency shelters?
  
- **Again, note that the FHA provides no specific exemption for recovery housing**

Having an exemption under the FHA does not prevent one from being sued pursuant to other non-discrimination statutes.  
(Section 504, ADA, ORC 4112)

# Americans with Disabilities Act (ADA)

- Covers places of public accommodation
- Those areas of a housing development which are open to the public:
  - Rental office
  - Pools
  - Club house/party room
  - Gym

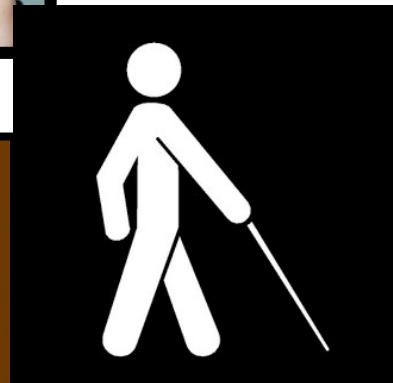
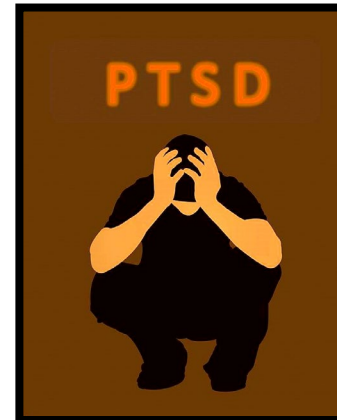
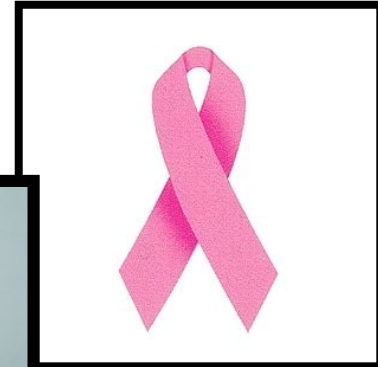


# Disability Definition

- A individual with a disability is any person who has a **physical or mental impairment** that **substantially limits** one or more **major life activities**
- Person who has a record of such impairment
- Person regarded as having such an impairment

# Physical or Mental Impairment

- Visual or Hearing Impairment
- Mobility Impairment
- Mental Illness
- Emotional Illness
- Intellectual Disability
- **Alcoholism & Past Substance Abuse**
- Chronic Disease: muscular dystrophy, multiple sclerosis, HIV, Cancer, Autism, ADHD, asthma, etc.
- **Can be temporary**





# Major Life Activities

Including, but not limited to:

Seeing

Hearing

Walking

Breathing

Performing Manual Tasks

Caring for One's Self

Speaking

Thinking

# Reasonable Accommodations

- Remember that **substance abuse is a disability** under the FHA
  - Disabled = **current** alcohol users and former users of illegal controlled substances
  - This means tenants can ask for reasonable accommodations (RAs)
  - RA to get a 2<sup>nd</sup> chance (or more)
- Under FHA or ADA, **cannot have a blanket ban on pets without allowing reasonable accommodations**



# Accommodation Example

## ADA

- Trained
- Performs a specific task to assist
- Dogs or miniature horses



## FHA

- No training
- No certification
- Not limited to dogs & horses
- No # limit



# Animal Accommodations

- Under the FHA
  - The housing provider can ask for documents that show that the individual has a disability, there is a problem stemming from that disability, and the animal is necessary to help with that problem
- Under the ADA
  - The housing provider **cannot** require documentation, but may ask 2 questions:
    - 1. Is this a service animal that is required because of a disability?
    - 2. What work or tasks has the animal been trained to perform?

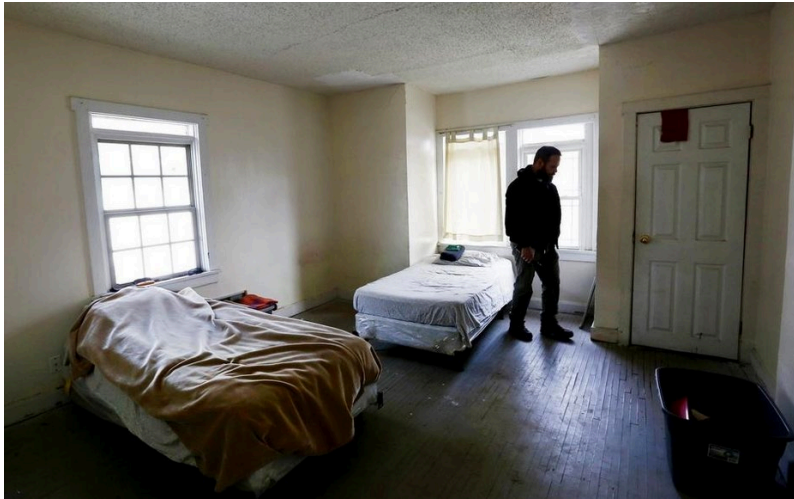
# Reasonable Accommodations

- Other types of RA requests:
  - Referral to a treatment provider to get help
  - Referral to a crisis center
  - Referral to another recovery provider
- An **administrative due process system**, laid out in writing, that includes a meeting is an ideal way to facilitate such requests/actions

# Landlord-Tenant Law & Rooming Houses

- Columbus and Cincinnati define “rooming house” in their municipal codes and provide regulatory schemes for their licensing
  - Specific about regulatory schemes
- **Cleveland has no specific regulatory schemes that govern rooming/boarding housing**
  - But there still needs to be a standard landlords and tenants of rooming houses are held to
  - **Landlord-tenant law is needed to fill in the gaps**

# Real Life Example: William Brady Organization



- Columbus code inspectors visited 9 houses run by the William Brady Organization and continued to find problems that the operator was previously told to fix, including broken drywall, missing kitchen tiles, peeling paint, broken windows, dead roaches and rodent droppings.
- “The Brady group has 30 days to take care of the problems before another re-inspection,” said Dana Rose, the city’s code-enforcement administrator. “The city won’t issue the 7 remaining licenses until the houses pass code.”
- The founders of the Brady group have been in the housing business since 2009, serving more than 3,000 people. **But the group had never checked state and city codes setting minimum requirements and safety standards.**

# Part 1 Summary

- Definitions: rental agreement, landlord, tenant, residential premises
- Types of rental agreements and requirements
- Identify and distinguish duties of landlord and tenant
- Retaliation vs. Discrimination
- Reasonable Accommodations
- Rooming houses



# Part 2: Understanding Common Issues

# Entry & Access

## Landlord

### 5321.04

Give at least 24 hours notice, unless it is an emergency, before entering a tenant's unit and enter only at reasonable times and in a reasonable manner

**Entry permitted for: repairs, inspections, show the unit, etc.**

## Tenant

### 5321.05

Permit landlord to enter the dwelling unit, if the request is reasonable and proper notice is given



# What is "reasonable" entry?



- **Reasonable not defined in ORC 5321**
- **General Principles:**
  - 24 hours notice is presumed reasonable by statute
  - NOT in statutory language, but likely reasonable:
    - Knock before entering
    - Announce presence before opening door/crossing the threshold
    - Timing can be negotiated
    - Purpose and time of day must also be reasonable

# Repairs & Remedies: 5321.07

If a tenant reasonably believes that a landlord has failed to fulfill an obligation under the law or lease:

1. Give **written notice** (emails & texts count) to the landlord (person or place where rent is normally paid). **Advice we give tenants: date, sign, & keep a copy for their own records.**
2. After LL receives notice, wait reasonable time, considering the severity of the condition and time necessary to remedy it, not more than 30 days.

# Repairs & Remedies: 5321.07

## 3. Tenant may take legal action

- Escrow with local Clerk of Courts (pay rent to court at time rent is due)
  - Apply to the court for an order to compel the repairs (find an attorney)
  - Terminate the rental agreement
- 
- **Exceptions:** If landlord gives written notices that s/he owns 3 or fewer units, a tenant may not take legal action; also N/A to student housing

# General Escrow Requirements

- **Have to be current in rent**
- Have to deposit your **full amount of rent** with local Clerk of Courts **at time rent is due**
  - Court may have specific procedures or requirements
- Can't deposit in "bad faith"
- If LL (Owner AND Agent) doesn't disclose his/her name and address to the tenant, then they give up the right to a notice before the tenant takes legal action

# Tenant Failure to Maintain Property: ORC 5312.11

- Notice to cure from Landlord to Tenant to cure problem because Tenant not fulfilling duties
- Tenant's breach is "materially affecting health and safety"
- Must give 30 days to cure
- If Tenant cures, then no grounds to pursue in court
- Anomaly in the law

# Rent Amount, Fees & Deposits

- **ORC 5321 does not cover:**
  - Rent Increases (amount or frequency)
  - Late fees specifically (no defined limit)
  - Application Fees
  - Deposit to “hold” the unit (NOT a security deposit)
- **ORC 5321 only covers:**
  - Security Deposits (no limit on amount)
  - Late fees cannot be “unconscionable”



# Security Deposits: 5321.16

- **NO LIMIT on amount**

- If amount is more than one month's rent, 5% annual interest on surplus



- **LL's have 30 days to return it after tenant leaves**

- Tenant must give written notice of forwarding address
- LL must itemize deductions and charges
- Tenant can sue for double amount believed to be **wrongfully withheld** if not returned
- **No penalty for landlord's failure to comply with notice requirement**

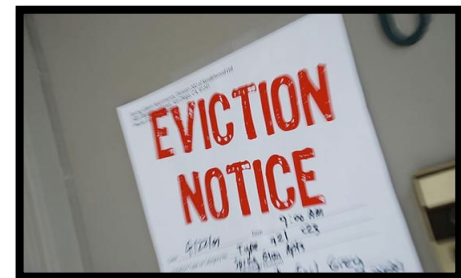
# Termination vs. Eviction

## Termination ORC 5321.17

- 30 day notice for month-to-month
  - Runs with rent cycle
  - No reason required

## Eviction ORC Chapter 1923

- A landlord can bring an eviction action:
  - Tenant failed to pay rent on time
  - Stayed in the unit after the termination or expiration of rental agreement (holdover)
  - Tenant breaches lease or law



# Termination vs. Eviction

- Regardless of Landlord-Tenant law application, consider having an **administrative due process** component to termination
- Similar to HUD programs:
  - State grounds clearly
  - Right to a meeting
  - Right to a representative
  - Right to a written decision by someone not the original decision maker and not subordinate

# Eviction Process

- 1. Termination event**
- 2. Notice to leave premises**
- 3. Complaint**
- 4. Hearing**

# Eviction Notice 1923.04

- **Serve Notice to Vacate (3 Day Notice)**
- Magic language: "You are being asked to leave the premises. If you do not leave an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."
- Must wait 3 days to file
- Magic language must be "conspicuous"
- Counting: Include Saturdays, Sundays, Holidays???

# Eviction Procedure Quirks

- Summary proceeding
  - Special service
    - “Nail & mail”
  - Hearing scheduled 16-21 days after filing in Hamilton Cty.; 14 days in Franklin Cty.
- Split claims
  - Money & Possession



# General Eviction Procedures

- Landlord or attorney files an eviction action at the local court where property is located
- The local Court will schedule a hearing and send a summons to the tenant
  - **First Cause** – Right to the Possession of the Property
  - **Second Cause** – Recovery of Damages
  - Often NOT done at same time
  - First Cause is an “expedited proceeding”
- If landlord gets favorable decision, tenant has to move
  - Landlord can arrange to have tenant’s belongings removed by executing (set out) on the writ of restitution



# Local Practice (Franklin County)

- Evictions heard each day at 9:00 AM
- Heard by Magistrates
- If tenant loses, a 5-Day Writ issues, unless evidence of criminal activity or destruction of property, in which case even less time is given to vacate
- Around 40-100 cases per morning, usually done in one hour or so





# Self-Help Eviction: ORC 5312.15

- Any action of landlord outside of court approval to remove tenant, or:
  - Shut off utilities
  - Change the locks
  - Seize the tenant's possessions

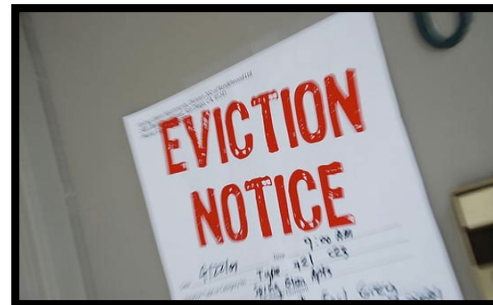


**Consequences:** Landlords who violate the prohibition on self help evictions and utility shut-offs are liable for damages and attorney fees and may be subject to injunctive relief

# Part 2 Summary

- **Common Issues:**

- Entry and Access
- Repairs and Remedy
- Security Deposits and Fees
- Termination and Eviction
- Eviction procedure and rights



# How to Stay in Touch

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Toll Free: 888-485-7999 (Housing Information Line)

or Email: [rentinfo@cohhio.org](mailto:rentinfo@cohhio.org)

*Thank you!*