

REPAIRS, RISKS, AND RESPONSIBILITIES OF LEASING IN TEXAS

Shanon Keith Stanfield

Stanfield Law Firm

512-457-1800

stanfieldlawfirm@gmail.com

stanfieldlawfirm.com

TOPICS

- Applications and Screening
- Move-in Condition Form
- Tell Them What You Want
- Inspections & Maintenance
- Walk-Throughs
- Closing the Lease
- Landlord's Duty to Repair
- Evictions
- *Questions*

THIS IS NOT EVERYTHING

DISCLAIMER:

The purpose of this presentation is to highlight only some of the many legal requirements and issues facing owners and management companies in Texas.

I have picked topics based on membership interest and my personal experience practicing landlord-tenant law for eight years.

Consult with an attorney for questions about a specific situation.

Applications and Screening

- Do Your Homework
 - Use a thorough application form
 - Verify rental references
 - Verify work and income
 - Get the PLATINUM background check
 - Credit
 - Criminal
 - Do your own research
 - Online records
 - Litigation history (evictions and other lawsuits)
 - County clerks (liens and foreclosures)

Applications and Screening

- Eligibility Requirements

- Full Disclosure: Must provide list of eligibility requirements along with application
- May not discriminate based on race, ethnicity, sex, etc.
- Field and process all applications consistently
- Nothing wrong with picking the highest rated applicant out of order but disclose the possibility

- Application Fees and Deposits

- Both must be returned if no stated eligibility criteria
- Application deposit must be returned if rejected
- Application considered rejected if no answer in 7 days
- **JUST CHARGE A FEE TO COVER SCREENING**

Applications and Screening

- Double-check before you offer
 - Make sure you like the tenants and the price
 - Make sure you are comfortable with the lease term
 - Shorten the term, go month-to-month, if the owner might sale within a year
 - Have a plan for management, rent, and repairs
 - Take advantage of technology
 - E-signing, auto-draft, email notices
 - Confirm major lease terms with the owner before approving tenant
 - Enter a management contract

Moving In Condition Form

- AS-IS
 - "Opportunity to thoroughly inspect" - TENANT SIGN
- Provide with lease, follow up
 - The move-in condition form can be a big part of a property damage/security deposit dispute
 - Do your own assessment
 - Make it a main part of the move-in checklist
 - Follow up if you do not receive the completed form
- Take pictures before
 - You might already have these from the listing
 - Take additional photos for accurate representation

Tell Them What You Want

- Be upfront about your expectations
 - Landlords have different priorities
 - Tenants will assume you are like their past landlords
 - Establish priorities and don't be shy
 - Create outline of important items
 - Paying rent on time, charging late fees
 - No "long-term guests"
 - Regular inspections/maintenance
 - Level of cleanliness
 - How to submit repair requests
 - Pet policy

Inspections & Maintenance

- Privacy versus diligence

- You have the right to access your property whenever but. . . .
- Give advanced, WRITTEN notice of non-emergency visits
- If possible coordinate with the tenants
- Short communications are better than no communication
- Texts and emails are acceptable written notice but be careful establishing a “texting relationship”

- Maintenance

- You can contract for the tenants to be responsible for all damage and conditions that (1) do not affect the material health or safety of an ordinary tenant, and (2) are caused by the tenant or guests

Inspections & Maintenance

- Appliances and amenities
 - Broken appliances may not “affect health or safety” but might be considered “part of the bargain”
 - Explain tenant may be responsible for new appliances
 - Use the “Special Provisions” section and Addendums to emphasize important items and concerns that might deviate from standard lease language
- Pest control
 - Tenant obligation under the TAR lease
 - Use the comprehensive TAR addenda and make sure tenants sign or initial those addenda and understand their responsibilities

Walk-throughs

- **Provide detailed move-out instructions**
 - Include with lease documents at signing - TENANT SIGN
 - Specify mowing grass, trees, plants, yard condition
 - You can contract for professional cleaning
- **Benefits**
 - Encourages tenants to clean up and fix up
 - Can point out problems for tenant to address before moving
 - Looks better in court
- **Problems**
 - Walkthrough comments not legally binding, but tell that to tenants
 - Agents may not be upfront about damage in front of tenants
 - Last opportunity for confrontation in person

Closing the Lease

- **Security Deposit**

- Tenant entitled to accounting and refund of security deposit minus lawful deductions within 30 days after surrender:
 - Any amount owed under the lease (rent, fees, utilities)
 - Amounts needed to cover the cost of repairs and cleanings to cover damage beyond normal wear and tear
 - Must be ITEMIZED, the more specific the better
- “Normal wear and tear” is deterioration that results from the intended use of a dwelling, including breakage or malfunction due to age or deteriorated condition

Closing the Lease

- Does not include damage caused by tenant's negligence, carelessness, accident, or abuse
- Forwarding address required but good practice to email regardless
- Landlord who in "bad faith" fails to account for deductions, charges for normal wear and tear, or makes unreasonably high charges may be liable:
 - Three times the amount wrongfully withheld plus \$100
 - Attorney's fees and costs
- PICTURES, FORMS, AND INVOICES
 - All good evidence to establish reasonableness of charges
 - You can do the work yourself and charge fair market

Closing the Lease

- **Recovering unpaid balance**
 - Send follow up demand letter after move-out statement
 - State possibility of negative rental reference and affect on credit
 - Find reputable third-party debt collector that collects unpaid accounts AND reports debts to consumer agencies
 - Report tenant to national database
 - Can attempt to collect yourself but will not qualify to submit account to credit agencies
- **Filing suit**
 - Make sure it's worth the time, money, and hassle
 - Application may give you idea of assets and accounts
 - Consider tenant personality and resources

Landlord's Duty to Repair

- **Landlord must repair when all of the following met:**
 - The tenant gives the landlord written notice of the condition
 - **The tenant is not delinquent in paying rent at the time of notice;** and
 - The condition “materially affects the physical health or safety of an ordinary tenant” OR arises from landlord’s failure to maintain a hot water heater
 - Liability does not kick in until after the second written notice OR only one notice is required if sent certified mail, return receipt
 - Seven days is presumed to be a reasonable time, but might be longer depending on the nature of the condition and availability of materials and labor

Landlord's Duty to Repair

- “Materially affects the physical health or safety . . .”
 - No heater or air conditioner in particularly cold or hot weather
 - Water leaks that seep into walls, floor, cabinetry and could lead to mold growth
 - Mold complaints are usually overblown, but if you can see sprawling mold patterns and smell a musty odor it is advisable to pay for a mold assessment, even though it may not always be legally required
 - Uncommon physical hazards
 - Local ordinances good place to check for general health and safety requirements

Landlord's Duty to Repair

- Most likely does not “materially affect the physical health or safety”
 - Mildew and non-toxic mold that is naturally present in the environment and generally does not materially affect the physical health of an ordinary person
 - Broken appliances: dish washer, microwave, refrigerator
 - Non-essential lights
 - Cosmetic issues: unsightly marks and stains on the walls and floors, general damage to cabinetry and shelving

Landlord's Duty to Repair

- Landlord fails to make required repairs tenant can:
 - Terminate the lease at will
 - Pro rata rent refund from date of move out
 - Deduct security deposit from rent or get refund
 - Tenants not usually entitled to repair and deduct
- Judicial relief
 - One month's rent plus \$500
 - Actual damages such as moving costs
 - Attorney's fees and court costs
 - Repair and remedy lawsuit (fast tracked like evictions)

Landlord's Duty to Repair

- Casualty Loss Exception:

- LL can wait until the insurance money comes in if condition results from an insured loss, such as fire, smoke, hail, or explosion.
- If place is uninhabitable because of the condition, LL or T can terminate by written notice before repairs are completed.
- If place is partially unusable but otherwise inhabitable and safe, LL and T can agree on reduced rent amount

Evictions

- LL must give T a three-day notice to vacate or one-day notice to vacate if allowed under lease
- Be as specific as possible in notice to vacate
- Notice to vacate must be hand delivered, sent by mail, or affixed to the inside of the door
- Can affix to outside of door if notice in sealed envelope with IMPORTANT DOCUMENT printed on outside AND also served by mail same day
- **Notice to Vacate MUST be given to T before eviction suit is filed; LL can easily lose case on NTV defect**
- “Notice of Termination” ends lease but serve additional “Notice to Vacate” for holding over

Evictions

- **Going to Court**

- Documentation is key
- Signed copy of lease
- Signed copy of termination and vacate notices
- Easy to read ledger/spreadsheet for charges and payments
- For non-rent violations, written communications, photos, recordings, witnesses
 - Not as cut and dry as rent so have good evidence ready for judge to review