

GETTING OUT OF YOUR LEASE IN GEORGIA

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CHAPTER 1 – Important Preliminary Issues

I. State v. National Issues

Most people think that the law is the same where ever they go in the United States. This is true if you are talking about federal law. But each state has its own laws when it comes to dealing with local issues. Landlord/Tenant law is nothing but a local issue. This means that each state's laws will be different when it comes to your rights as a tenant of residential rental property.

For instance, in Georgia, there is a law which says that if you go on active duty while you are a tenant at an apartment, and the military ships you somewhere, the landlord has to let you out of the lease agreement. But Alabama does not have that law. In fact, at the time of this writing, Alabama has no statute dealing with landlords and tenants on a state wide basis. So it is clear that the law differs greatly from state to state.

A. Example of the Difference

But there is a federal law, called the Soldiers and Sailors Relief Act which says that any suit against you while you are on active duty must be stayed until you either get off active duty or until you are stationed in a place which does not make it inconvenient for you to defend yourself. This does not get you out of the lawsuit, it merely delays the lawsuit until you are stationed in a place which does not make it inconvenient for you to defend yourself. As a practical matter, many landlords are going to throw up their hands at this defense, especially if you enlisted for several years.

Since the Soldiers and Sailors Relief Act is federal, it is the same for everyone. But the Georgia law applies only to leases in Georgia.

II. Statutory v. Common Law Issues

There are two sources of law in any state, common law and statutory law. We all know what statutory law is. That is when the legislature gets together and enacts a statute for all residents of the state to obey. But before there is a statute covering a certain area though, there is the common law. Common law refers to court decisions covering that situation. In the absence of statutory guidance, courts tend to follow what other courts have already decided. They do this for reasons of consistency.

Most landlord tenant laws in the various states around the U.S. were enacted in the early 1970s. Before there was any specific statute in your state covering the subject of landlord tenant law, there were cases which determined the rights of landlords and tenants. It should not be surprising that there were disputes between landlords and tenants before the 1970s, and it should also not be surprising that the state courts dealt with those disputes.

A. Leases as Conveyances Rather than Contracts

The earliest cases in landlord tenant law all indicated that a lease was a conveyance of a property right, not a contract guaranteeing anything to a tenant. Those holdings determined that the tenant had almost no rights, and the landlord called almost all of the shots. As long as the landlord delivered possession, that was all it took to give rise to a duty upon the part of the tenant to pay the rent through the end of the lease term. For instance, when you sell your house, you are finished with it, and you don't have to come back over and mow the lawn. Similarly, in the old days, once the lease was

signed and the keys handed over, there ended the duties on the part of the landlord until the end of the lease.

B. Leases as Contracts Rather than Conveyances

As time went on though, the courts started to see leases for residential property more in the nature of a contract rather than a conveyance of property. Courts started noticing that most leases had a lot of conditions in them, placing duties upon both the landlord and the tenant, and it was unfair not to enforce those written agreements. This was a significant step forward in the law of landlords and tenants. Now the tenants could point to a lease agreement clause and insist that it be enforced.

But the tenant's rights were still limited by landlords who refused to put certain things in their rental agreements. The tenants were further limited by some of the clauses that landlords did put in the agreements, no matter how unfair. The landlord could impose any conditions he wanted to upon the tenant by way of the lease agreement. If the tenant signed the lease agreement, then that was that and the tenant had to live with it.

For instance, if the lease contained no duty on the part of the landlord to repair the rented premises, and the furnace went out in January, then the tenant would be liable for repairing or replacing the furnace. There is an old case where the judge wrote that there "is nothing at common law to prevent a landlord from renting out a tumble-down house." The way the courts used to look at it, nobody was holding a gun to the tenant's head and forcing him to sign the lease agreement without that guarantee. If the parties intended that the landlord fix things, then they could have written that into the agreement.

Even if there was a clause in the rental agreement requiring the landlord to repair the place if something broke, under the common law, if your landlord was not fixing things around the apartment, you would have to sue for breach of contract. This would involve hiring a lawyer, going to court, winning, and then collecting upon the judgment you recovered. In those days, it was very possible for a tenant to spend more in attorney's fees and lost time than he was likely to recover. Landlords knew all about this, and they often took advantage of it, knowing that few people would sue out of principle.

D. Implied Warranties

As time went on, courts began to imply certain contractual guarantees into leases when they were not written into the lease agreement. Most courts have held that a landlord is under a duty to put and keep the premises in a fit and habitable condition. This is called the "Implied Warranty of Habitability." Further, most courts have implied a "Covenant of Quiet Enjoyment" into leases, meaning that the landlord must not do anything or fail to do anything which would result in either the displacement of the tenant from the property, or disturb his enjoyment of it.

When I say "imply" I mean that the court will pretend that such clauses are in the contracts even if they are not. The reasoning behind these implications is that many tenants are not sophisticated people, and don't understand how to read contracts limiting their rights in important ways. Thus, the courts take care of these people by saying that the landlord must still fix the furnace in the winter even if there is no duty upon the landlord to do so specifically written into the lease agreement.

Thus if your landlord is not fixing things around the premises, then this may give you the right to move out, since it will have been the landlord, not the tenant, who breached the lease agreement.

But be warned, courts generally want to see some pretty dangerous conditions before they will rule that you have the right to terminate the lease. A loud bathroom exhaust fan won't do it, but sparking outlets might.

III. Residential v. Commercial Leases

One of the things you need to take into account is that there is a difference between the way that the law treats tenants who live at a rented premises and the way that the law treats tenants who use the rented premises only has a business. Residential tenants tend to have more statutory rights than commercial tenants since residential tenants often have families full of minor children to be concerned about. It is important to keep this distinction in mind when reading statutes and case law cited in this work.

IV. Non Performance by Landlord

In reading through this work, you should always keep in mind that if ever you can show that your landlord has materially failed to comply with the lease agreement the two of you have, then you can use this as an excuse to terminate the lease agreement and move out. If the nonperformance of a party to a contract is caused by the conduct of the opposite party, such conduct shall excuse the other party from performance. Allen v. Harkness Stone Co., Inc. (2004), 271 Ga.App. 397, 609 S.E.2d 647.

Chapter 2: Writing Requirements for Georgia Leases

I. Express v. Implied Contracts

A contract can be either express or implied. An express contract is a contract in which the parties have agreed to certain definite terms and conditions. This agreement can be oral or written. An implied contract arises out of the actions of the parties. An example of this might be if you sat down without saying anything in a barber's chair under a sign that said "Haircuts, \$10.00" and then the barber cut your hair. If you got up after the haircut and attempted to walk out without paying, you would be subject to a lawsuit for breach of an implied contract.

There is a natural advantage to having a contract in writing rather than merely expressed in oral terms. The primary benefit is that once the agreement is reduced to a writing, if any conflict ever arises surrounding the terms and/or nature of the agreement, all the parties have to do is read the contract. While there may still be ambiguities in the wording (not every contract is appropriately worded), at least the parties no longer have to engage in a battle of "he said/she said." It's all right there in the document.

II. Contracts in Writing Required in Certain Situations

Many states have requirements that certain types of contracts must be in writing to be enforceable. Legislatures enact these laws because certain types of agreements are very important, and the courts have found that a lower percentage of disputes arise over written contracts than over oral contracts. Most legislatures, and Georgia is no exception, refer to the laws requiring such writings as the Statute of Frauds. It doesn't really have much to do with what you and I think of as "fraud" except so far as having a writing tends to keep you from being defrauded.

A. Georgia Section 44-7-2

Georgia law requires that contracts for the rental of apartments must be in writing if they are for more than one year. As you are reading below, be advised that the word "parol" means an oral agreement.

§ 44-7-2. Parol contract creating landlord and tenant relationship; certain provisions prohibited; effect of provision for attorney's fees

(a) Contracts creating the relationship of landlord and tenant for any time not exceeding one year may be by parol [Author's note: This is a fancy way of saying that the agreement between you and your landlord has to be in writing if it is for more than one year].

Thus the Georgia Supreme Court has held that A lease for a period longer than one year *must be in writing* and signed by the parties thereto; otherwise, a tenancy at will results. Lewis v. Floyd, 126 Ga. App. 520 (191 S.E.2d 291) (1972). Where a two-year lease is not signed by the lessor, even though signed by the lessee in possession, it is inoperative as such. Lewis v. Floyd, 126 Ga. App. 520 (191 S.E.2d 291) (1972).

B. What Happens if your Lease is Not in Writing and More than One Year?