

# THE SELF-HELP GUIDE TO THE LAW

Property Law  
and Landlord-  
Tenant Relations  
for Non-Lawyers



J. D. Teller, Esq.



JuraLaw

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## ABBREVIATIONS

A	Grantee (for present estate/ future interest hypotheticals)
AGI	Adjusted gross income
AP	Adverse possession
B	Buyer
C	Constitution
CIF	Cause-in-fact
Cl.	Clause
CLEO	State Chief Law Enforcement Officer
Court (cap.)	United States Supreme Court
CP	Court of Pleas (UK)
CR	Contingent remainder
CSD	Common Scheme of Development
CSI	Compelling state interest
Ct.	Court
Ct. App.	Court of Appeals
Ct. Chan.	Court of Chancery (England)
ED	Emotional distress
EI	Executory interest
Eng.	England
ES	Equitable Servitude
FLSA	Fair Labor Standards Act
FMLA	Family and Medical Leave Act
FQJ	Federal question jurisdiction
FRAP	Federal Rules of Appellate Procedure
FRCP	Federal Rules of Civil Procedure
FRCrP	Federal Rules of Criminal Procedure
FRE	Federal Rules of Evidence
FS	Fee simple absolute (fee simple)
FSCS	Fee simple on condition subsequent
FSD	Fee simple determinable
FS EL	Fee simple on executory limitation
FT	Fee tail
H.L.	House of Lords (England)
JMOL	Judgment as a matter of law
JNOV	Judgment non obstante veredicto
JT	Joint tenant/tenancy
K	Knowledge (criminal law) or Contract (all other law)
K.B.	King's Bench (UK)
L	Loss in value
L1	First landlord
Lat.	Latin
LE	Life estate

LED	Life estate determinable
LLC	Limited liability company
LLP	Limited liability partnership
LRM	Least restrictive means
MPC	Model Penal Code
MSAJ	Motion to set aside the judgment
N.B.	Nota bene
O	Original owner, or grantor (in present estates and future interests)
P	Purpose or purchaser
PJ	Personal jurisdiction
PJI	Pattern Criminal Jury Instruction
Q.B.	Queen's Bench (UK)
R	Recklessness
RAP	Rule against perpetuities
RC	Real Covenant
Restatement	Restatement (of Contracts, Torts, Judgments, etc.)
RFRA	Religious Freedom Restoration Act of 1993
RLUIPA	Religious Land Use and Institutionalized Persons Act
RPP	Reasonable prudent person
Rule	Federal Rule of Evidence or Federal Rule of Civil Procedure
§	Section
S	Sublessee or seller
S.Ct.	Supreme Court or U.S. Supreme Court Reporter
SJ	Summary judgment
SMJ	Subject matter jurisdiction
SP	Specific performance
T1	First tenant
TE	Tenant/tenancy by the entireties
UCC	Uniform Commercial Code
US	United States of America or United States Reports (compilation of U.S. Supreme Court opinions)
USC	United States Code
VR	Vested remainder
VR SD	Vested remainder subject to divestment

# CHAPTER 1. LANDLORD / TENANT LAW

## I. INTRODUCTION

### A. Leasehold Estates

A leasehold estate is one where the possessor (tenant) has only possession, and full title (including possession) will spring back to the owner (landlord) at the conclusion of the leasehold estate.

In a freehold estate, in contrast, the possessor is the owner of the property (at least for a temporary period of time).

#### 1. Historical origins

In feudal times, the king owned all of the land. Nobles that were loyal to him were able to use parts of the land. They then were able to parcel land out to serfs and peasants.

Today, this many-layered system of tenancy continues to exist. For example, in commercial shopping centers, sections of a store may be parceled out to merchants many times over.

Later, leaseholds were established as collateral for loans. The tenant would “lend” the landlord the money in exchange for the use of the land. Rather than pay the loan back with interest, the landlord would simply grant the tenant use of the land. Eventually, the law began to recognize leaseholds as interests in land in and of themselves.

### B. Three Kinds of Leaseholds

#### 1. Tenancy for Years

##### a. *Characteristics*

A tenancy for years is a discreet lease with a determined beginning and end date. If there is a provision clause in the lease, then a second, separate one-time renewal lease may be established.

When there is a renewal clause in the lease, it is evidence of a tenancy for years, since periodic tenancies and at-will tenancies require no renewal to continue.

##### b. *How It Is Created*

A tenancy for years is created formally; it requires a clear end date. The end date need not be explicitly expressed, if the expiration of the lease could be determined. The following clause, for example, would be sufficient: “the lease will begin on Jan 1, 2000 and will expire three years later.”

According to some authorities, there must also be a set start date. Under the majority view, however, it does not need to be fixed. The clause “the lease begins when the construction has ended” would be sufficient.

Under the modern law Statute of Frauds, any lease for more than one year must be in writing to be enforced.

### *c. How It Is Terminated*

A tenancy for years ends automatically at the end of the term. The lease may provide the possibility of renewal. In such a case, a court would allow the new lease. Except for when a provision of the original contract (lease) is illegal, unclear or for some other reason against public policy, the original contract controls all matters in the new lease.

## 2. Periodic Tenancy

### *a. Characteristics*

A periodic tenancy is an indefinite lease. There is no need for renewal.

### *b. How It Is Created*

A periodic tenancy may be created by the parties in an express agreement (*e.g.*, “This lease is from month-to-month.”). In addition, it may be created by law.

If the parties attempt to create a tenancy for years, but a period is mentioned (*e.g.*, “rent will be paid each month”) and no end date is determined, then a periodic tenancy is presumed.

### *c. How It Is Terminated*

Either party may end a periodic tenancy with *proper notice* (unlike tenancies at will, which do not require proper notice). For periods of one or more years, six months of notice is usually required. For

periods of less than one year, notice equal to one full period (generally measured by payment periods) is required.

Generally, notice of termination must be in writing and delivered.

Example: the tenant rents from a landlord in a monthly periodic tenancy. The tenant gives notice to the landlord on July 15 that he wishes to leave. Until when must the tenant pay rent?

Since the tenant must have one full month of rent paid before vacating, all of August must be paid before leaving. Thus, the tenant is responsible for rent up until August 31.

### 3. Tenancy at Will

#### a. *Characteristics*

A tenancy at will may be terminated at any time.

#### b. *How It Is Created*

It is usually created by operation of law; if a tenancy for years is attempted, but there is no clear end date and no basis for ascertaining a period, then a tenancy at will is presumed.

Examples of tenancies where there is no basis for ascertaining a period:

- The landlord agrees to allow his tenant to live on the property on the condition that the tenant keeps up the property and pays the taxes and insurance.
- The tenant is an employee-at-will of a landlord who furnishes a home as part of the compensation.

#### c. *How It Is Terminated*

Under the common law, a tenancy at will can be ended at any time. In the modern era, many state statutes protect tenants, by requiring, for example, at least ten days of notice prior to the landlord's termination of the tenancy.

## II. DISCRIMINATORY PREFERENCES AND RELIGIOUS LIBERTY ISSUES

### A. The Evolution of Regulations on Landlords

Under the common law, a landlord could select whichever tenants or purchasers he wanted for his housing or land. Later, statutes prohibited landlords or sellers from discriminating on the basis of race, color, religion, sex, familial status, age, handicap or national origin. One example of such a statute is the federal Fair Housing Act.

The Fair Housing Act prohibits:

- Discrimination on the basis of race, color, religion, sex, familial status, age, handicap or national origin for the basis of choosing a tenant or buyer; and
- The *publication* or *indication* of a preference as to any of the above categories in choosing a buyer or tenant.

The subjective intent of the owner or landlord is irrelevant; what is controlling is whether a reasonable person from one of the protected groups would interpret an indication as expressing a preference.

*See Jancik v. Department of Housing and Urban Development* (7th Cir. 1995), where the Seventh Circuit held that the landlord violated the Fair Housing Act by indicating his preference for a “mature person,” which a reasonable person would take to mean a middle-aged tenant without small children, thus violating the statute on familial status. He also violated the statute by saying that he did not want any teenagers and by inquiring as to race with a discriminatory purpose. Damages and an injunction were affirmed.

Many states have adopted stricter versions of this federal act. Massachusetts, for example, has adopted statutes that also prohibit discrimination on the basis of sexual orientation.

Regulations are usually more lax for the rental of rooms attached to the owner’s abode (*e.g.*, a landlord may chose a tenant based on gender).

## **B. Modern Statutes and Religious Liberty**

Many state and federal statutes prohibit familial status discrimination. Such statutes do not necessarily prohibit landlords from discriminating against unmarried cohabitants. *See State v. French* (Minn. 1990).

Since there is no federal law protecting against marital status discrimination, claims for marital status discrimination fall to the states, whose regulations vary widely.

- Most states have either: (i) not passed statutes prohibiting discrimination based on marital status; or (ii) passed legislation prohibiting discrimination based on marital status, but explicitly exclude unmarried couples from protection.
- Other states have passed legislation protecting against marital status discrimination, but not specifically protecting unmarried cohabitants.

### III. TENANT'S RIGHTS AND REMEDIES

#### A. Introduction

A tenant has four basic rights:

- Legal possession;
- Actual possession;
- The covenant of quiet enjoyment / constructive eviction; and
- The implied warranty of habitability.

Furthermore, he has certain remedies if the lease violates housing regulations.

#### B. Legal Possession

All states recognize tenants' right to legal possession. The landlord must have title in order to enter into a lease.

#### C. Actual Possession

The landlord has a duty to deliver the actual possession of the premises to the tenant. This duty prevents *third parties*, such as holdover tenants, from preventing new tenants from taking actual possession of the rented property.

**English (majority) rule:** the landlord has the duty of delivering the actual possession of the property and of preventing third parties from interfering with it.

- Some states that have adopted the English rule apply it only to *residential*, not *commercial*, leases).
- In states that have adopted the English rule, the tenant's remedy for the landlord's failure to deliver actual possession is *expectation damages*. See *Adrian v. Rabinowitz* (N.J. 1936).

**American (minority) rule:** the new tenant is responsible for obtaining possession of the property and for evicting holdover tenants; the landlord is merely a title holder.

In states that have adopted the American rule, the tenant has no remedy for the landlord's failure to deliver actual possession.

#### **D. The Covenant of Quiet Enjoyment and Constructive Eviction**

The covenant of quiet enjoyment and constructive eviction deals with the tenant's *actual and constructive continued possession* of the property after delivery. It is implied in all states except NJ.

There are two kinds of violations:

##### 1. Actual (Full or Partial) Eviction

###### a. Overview

There are two kinds of actual eviction:

- *Eviction for lack of title:* a third party with superior title evicts the tenant from the property.
- *Wrongful eviction:* the landlord evicts the tenant without cause.

The promises in a landlord-tenant relationship are independent from one another. Thus, even if a lease is violated by a landlord, the tenant is generally not relieved of the duty to pay rent. However, a violation of the covenant of quiet enjoyment is the exception. Thus, if a tenant is evicted from the property, he is excused of the duty to pay rent.

###### b. Full and Partial eviction

Full eviction applies when a tenant is evicted from *all* of the property. An eviction is partial when the tenant is evicted from only *part* of the property. In either case, the covenant of quiet enjoyment protects the tenant.

Since the lease is seen at common law as a transfer of *all* the property, *exclusion from any of the property* is seen to be an eviction. Thus, the *remedy for partial eviction is similar to that for full eviction:* the obligation to pay rent is entirely excused until the tenant's full possession is restored. *See Smith v. McEnany* (Mass. 1897).

However, the restatement and many states take a different approach: partial eviction proportionally reduces the rent that the

tenant must pay, but he is still obligated to pay rent for the *portion of the land from which he has not been evicted*.

## 2. Constructive Eviction

Some violations of the lease may be so material that the tenant can be considered to have been *constructively evicted*, even if he continues to hold actual possession of the land.

The elements of constructive eviction are as follow:

- A material breach of the lease;
- That is chargeable to the landlord;
- Of which the landlord is given notice;
- With the opportunity to cure; and
- The tenant vacates the premises after a reasonable time.

Violations of peace and quiet can constitute violations of the covenant of quiet enjoyment.

Example: the landlord leases a store to one tenant who opens a bookstore. The landlord then leases adjacent space to a second tenant, who opens up a gym that is always playing loud music. If the music is so loud that it alienates all of the first tenant's clients, the first tenant may have a claim for constructive eviction.

Constructive eviction places a burden on the tenant to vacate the premises and then bring an action to *terminate the lease and the duty to pay*. The problem with this is that it is possible that the tenant vacate the premises, sue, and lose. He will then be required to pay the rent, even though he has vacated the premises.

## 3. Remedies for Violations of the Covenant of Quiet Enjoyment

At common law, the tenant is *excused of the duty to pay rent* (in some states, if it is a partial eviction, he may do so while remaining in possession of the property). In other states, the tenant is entitled to money damages.

### **E. The Implied Warranty of Habitability**

Because of the problems involving constructive eviction, some states have recognized the *implied warranty of habitability*. This warranty makes it easier for the tenant to recover damages when the condition of the premises is so poor that the tenant is *virtually*