Tenant-Landlord Handbook

Chicago

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TENANT-LANDLORD HANDBOOK

Chapter 1
INTRODUCTION

The purpose of this manual is to inform you about landlord-tenant law in Illinois, and specifically in Chicago. It also is intended to improve the manner by which disputes are settled between landlords and tenants. By explaining the rights and duties of both landlord and tenant, we hope to encourage more negotiated settlements of disputes where a fair and equitable basis for negotiation exists. Our hope, too, is that this will help reduce the resolution of disputes by such illegal practices as lockouts and the destruction of property.

The Chicago Council of Lawyers, an association of lawyers, the Council's Fund For Justice, and the Legal Assistance Foundation of Chicago, a federally-funded law firm providing free legal services to low-income persons in Chicago, are pleased to sponsor publication of this fourth edition of the *Tenant-Landlord Handbook*. The *Handbook* was first published in 1979 and was revised in 1982 and 1989.

A majority of the sections are directed to tenants who, on the whole, have fewer sources of legal information available to them. This manual, however, provides information that should prove invaluable to both tenants and landlords.

This *Handbook* deals with landlord-tenant law in Illinois with a focus on the laws that are specific to the City of Chicago. This *Handbook* is designed to be used in conjunction with the Chicago Residential Landlord and Tenant Ordinance found in the Chicago Municipal Code, Chapter 5-12 *et seq.* [referred to as the "Ordinance" throughout this manual]. The Ordinance, which passed the Chicago City Council by a vote of 42-4 on September 8, 1986, recast the relative rights of most residential landlords and tenants in Chicago. Since its passage, the real estate industry has attempted to have the Ordinance declared unconstitutional or to preempt its provisions through state legislation. In May of 1987 the U.S. Court of Appeals for the Seventh Circuit declared the Ordinance constitutional in *Chicago Real Estate Board v. City of Chicago*, 819 F.2d 732 (7th Cir. 1987). And, in July 1987, a statewide landlord-tenant bill (H.B. 2698) that would have preempted the Ordinance and deprived the City of Chicago and other communities of home rule powers in the landlord-tenant area was rejected in the Illinois Senate Judiciary Committee and never came to a vote before the full Senate. However, in 1991 the Chicagoland Association of Real Estate Boards reopened negotiations with the Metropolitan Tenants Organization, and an agreement was reached regarding certain amendments to the Ordinance. These amendments were enacted by the Chicago City Council on November 6,

1991 and became effective January 1, 1992.

The Ordinance itself has been reprinted in the back of this book in Appendix F. Each alderman's office also may have a copy. Additional copies of the Ordinance and a summary of the Ordinance can be obtained from the City Clerk's Office, Room 107 of City Hall, 121 North LaSalle Street. A series of ten educational pamphlets explaining the Ordinance are available from the Metropolitan Tenants Organization and the Legal Assistance Foundation of Chicago. (See Appendix A for addresses and telephone numbers.)

Because this *Handbook* is based on the Ordinance, it is applicable only to those landlord-tenant areas that are covered by the Ordinance. (See Chapter 4, Section B for more information about the Ordinance.) In order to use this *Handbook*, read through the Ordinance, or turn to the chapter that deals with the specific questions you face. Each chapter is described below.

Be aware that the Ordinance applies to all residential rental units in the City of Chicago except:

- buildings of six or fewer units where the landlord lives in the building. The Ordinance does apply if the landlord does not live there;
- hotels, motels, and boarding houses. But the entire Ordinance applies if a tenant has lived in the facility 32 or more continuous days and pays monthly rent;
- housing accommodation in any hospital, monastery, convent, school dormitory, shelter, temporary or extended care facility;
- real estate occupied on a temporary basis by a purchaser or seller;
- cooperatives and condominiums, unless the tenant rents a unit from the owner, in which case the Ordinance applies;
- housing contingent upon employment.

This *Handbook* is designed to allow the user to find answers to common questions from both landlords and tenants.

Chapter 2, "Looking for an Apartment," gives some practical advice on apartment hunting, discusses apartment-finding agencies and provides questions every tenant should ask a potential landlord.

Chapter 3, "Oral and Written Leases," discusses the difference between these leases, suggests how to negotiate revisions in a form lease, discusses lease clauses that are prohibited under the Ordinance and other typical lease clauses found in form leases, and gives a brief explanation of a neutral, standard form

lease published by the Chicago Council of Lawyers and the Fund For Justice.

Chapter 4, "The Condition of the Apartment," deals with the landlord's and tenant's duties as to the condition of the apartment as regulated by the Chicago Building Code, the Ordinance and typical lease clauses. It explains what actions a tenant can take to try to get a landlord to make repairs and what a tenant can do if the landlord fails to make such repairs. It also explains the remedies available to a landlord against destructive tenants.

Chapter 5, "Other Rights and Obligations During Occupancy," discusses a tenant's duty to pay rent and a landlord's remedies when a tenant fails to pay rent. It also discusses rent raises and rules regarding the number of persons who can live in an apartment. Finally, it discusses tenants' rights if a building is converted to condominiums.

Chapter 6, "Discrimination in Housing," details the laws of discrimination in housing and the reasons for which a landlord can or cannot legally refuse to rent to a tenant and what the tenant should do if the landlord does discriminate.

Chapter 7, "Lease Renewals," discusses renewing an existing lease.

Chapter 8, "Terminating the Landlord-Tenant Relationship," explains a tenant's obligation if he or she moves out of the apartment in the middle of the lease term, grounds for and procedures by which a landlord can evict a tenant, the defenses a tenant can raise to such an eviction, and what follows a judgment. It also talks about the extent of the tenant's liability to pay rent after moving out of an apartment. Finally, it discusses a tenant's remedies if a landlord illegally locks out the tenant.

Chapter 9, "Subsidized Housing," deals with the rules applicable to federally subsidized and regulated housing.

Chapter 10, "Tenant Organizing," gives advice to tenants on organizing and forming tenant associations.

The **Appendix** includes selected forms, a list of organizations and governmental agencies that deal with rental housing, a chart on litigation fees, small claims procedures, sample demand letters and a copy of the Ordinance.

Please note that telephone numbers listed in this *Handbook* are area code 312 unless otherwise specified.

A FINAL NOTE

In addition to encouraging both landlords and tenants to become more familiar with their legal rights and obligations, the authors urge both landlords and tenants to put aside any notion that the other side is categorically bad. Both sides should approach problems in a courteous and businesslike manner. Whether you are a tenant or a landlord, requests should be put in writing and copies kept for your records. Written records, though inconvenient, are necessary if a lawsuit is filed.

Finally, one of the most serious landlord-tenant problems is the lack of decent rental units at an affordable price. While inflation has increased the costs of rental housing, the government has failed to adequately increase subsidies for housing. All of us must petition our government to develop programs to help both the private and public sectors respond to this problem. Housing subsidies should be expanded so as to increase the supply of housing for persons who could not otherwise afford decent housing.

This edition of the *Tenant-Landlord Handbook* was drafted and revised by a Committee of the Chicago Council of Lawyers, the Fund For Justice and the Legal Assistance Foundation of Chicago. Contributing members of the Joint Housing Committee are:

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We wish to thank Dina Capranica, Mi Young Pae and Katherine Schweit for their editorial assistance. We also offer these words of caution. This *Handbook* is intended to educate tenants and landlords in Chicago about their rights and obligations. It is not a substitute for a lawyer and we cannot be responsible for any results in individual disputes.

Joint Housing Committee of the
Chicago Council of Lawyers
The Fund For Justice
The Legal Assistance Foundation of Chicago
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Chapter 2
LOOKING FOR AN APARTMENT

A. FINDING AN APARTMENT

A tenant often looks for an apartment by contacting management companies or asking friends and neighbors if they know of an available apartment. If a tenant has time, he or she should personally contact resident agents or janitors of apartment buildings in which they are interested to find out more about individual rental units.

1. Apartment-Finding Agencies

A tenant can look for an apartment with the aid of an apartment-finding agency. Such agencies advertise that for a fee they will provide a list of available apartments. Occasionally, tenants have run into problems with these agencies because the list of apartments provided may include units already rented, those in poor condition, or units that do not even exist. A tenant who has had trouble with such an agency may be able to file a complaint with either the Illinois Department of Professional Regulation (100 West Randolph Street, Suite 9-300, Chicago 60601; 814-4500), the Consumer Fraud Division of the Attorney General's Office (100 West Randolph Street, 13th Floor, Chicago 60601; 814-3000), the Consumer Division of the State's Attorney's Office (303 Daley Center, Chicago 60602; 443-4600) or the City of Chicago's Department of Consumer Services (121 North LaSalle Street, Room 808, Chicago 60602; 744-9400). (See Chapter 6 for details on how to file a complaint with these agencies.)

2. False Promises or Misleading Advertisements

In Chicago it is illegal for a landlord to make false promises or distribute or display misleading advertisements regarding the rental of housing. Tenants who are the victims of this kind of practice can file a complaint with the City's Department of Consumer Services, Complaint Division (121 North LaSalle Street, Room 808, Chicago 60602; 744-9400). Under the law, a landlord who violates the Ordinance can be fined. A complaint is more likely to be acted on if the landlord's false promise was in writing and if others file similar complaints against the landlord.

Tenants also may be able to file a complaint with the Attorney General's Office or the Illinois Department of Professional Regulation as discussed in Chapter 6.

B. QUESTIONS TO ASK A PROSPECTIVE LANDLORD

A tenant's choice of an apartment will depend on a variety of personal factors including the amount of rent, preferences in location, size, and other features. As a general rule, do not be afraid to ask questions. Tenants should be sure to get the answers to their questions written into the lease, if there is a written lease, because the law provides that any prior oral promises that are not later put into the lease are unenforceable. (See Chapter 3 for a further discussion of this rule.) Here are some basic and important questions to ask.

1. Utilities

A tenant should ask who is responsible for paying heat, light and water bills, or whether these utilities are included in the rent. This question is especially important for heating bills, because if a tenant is responsible for paying heating costs, he or she should know that monthly costs increase dramatically during the winter. If a tenant is renting in a smaller building (6-8 units or less), it is important to ask whether electrical service for the halls and stairways are billed to the unit's meter. In most situations, the landlord is obligated to disclose utility cost information to the tenant. (See Chapter 4, section D.)

2. Services

If a landlord has advertised any special feature in the apartment, a tenant should ask specific questions about its operation. They should ask to see it in operation if it is a mechanical system, such as a washing machine or dishwasher.

A tenant should ask if there are any charges for use of other service in the building such as a laundry room, storage area, TV antennae hook-up or parking. He or she should also ask if the major kitchen appliances come with the apartment and who must pay to have them fixed.

3. Apartment Conditions

A tenant should ask whether the landlord will make any repairs before the tenant moves into the apartment. If a landlord promises to make repairs, those promises should be written into the lease.

4. Credit Check Fees

Some landlords charge a fee for checking a prospective tenant's credit history before agreeing to rent an apartment. This fee is usually not returned to tenants even if they do not rent the apartment. A tenant should ask for a receipt when the fee is paid.

Chapter 3
ORAL AND WRITTEN LEASES

A. INTRODUCTION

Once a tenant has decided to rent a particular apartment, he or she still must reach an agreement with the landlord about such things as rent and the length of the lease. Normally, agreements are made by signing a written lease, but landlords and tenants can make oral agreements without a written lease. This Chapter will discuss both oral and written leases.

B. ORAL VERSUS WRITTEN LEASES

The law requires that any lease for a term of more than one year must be in writing if it is to be binding and enforceable. This means that, if the landlord orally agrees to rent an apartment to the tenant for two years, this agreement is not enforceable by either party. If the landlord decides not to abide by the agreement, the tenant cannot do anything about it. Similarly, if the tenant does not move in or moves out prematurely, the landlord has no remedy against that tenant.

A rental agreement for periods such as week-to-week, month-to-month, or year-to-year can be entered into orally. For an oral agreement to be enforceable, it cannot be for a period longer than one year. The most common situation is when a tenant agrees to rent an apartment and pay a certain amount of rent per month. This is called a month-to-month tenancy. Either the tenant or the landlord can end or change a month-to-month rental with 30-days written notice.

C. ORAL AGREEMENTS PRIOR TO A WRITTEN LEASE

Another important rule of law to remember is that if an agreement is put into writing, none of the prior oral agreements are effective unless specifically put into the new written agreement. This rule is important because it also applies to leases. If, for example, a landlord promises to paint a tenant's apartment within two weeks after moving in, but that agreement is not put into the lease later signed, then the landlord is not bound by this promise. A tenant should make sure that the landlord writes into the lease, or into a rider that will be signed and attached to the lease, any promises previously made by the landlord. A tenant should write them in if the landlord has not done so, but the tenant should not sign the lease until the landlord signs or initials the new provisions.

A tenant should also be sure to sign or initial both the lease and the rider, or any other additions or deletions, and make sure the landlord does so, as well. Hand-written changes to printed leases are perfectly legal if both parties agree. A tenant should keep a copy of the lease that shows the landlord's and the tenant's original signatures or initials.

D. NEGOTIATING LEASE TERMS

Written leases offer protection by allowing a tenant to remain in possession of an apartment for a fixed term so long as there is compliance with the requirements of the lease, such as the payment of rent. On the other hand, most form leases have many clauses that try to limit or take away certain rights that a tenant would have if no lease were signed. The courts will enforce some of these clauses but will not enforce others. (We will discuss specific clauses in Sections G and H of this Chapter.)

A tenant has every right to try to negotiate the provisions of the lease. If a tenant believes that a landlord is asking for rent that is too high, the tenant can ask the landlord to accept a lesser amount. And, if the lease has a clause that a tenant does not like, the tenant may ask the landlord to delete it. One way for a tenant to negotiate is to make written revisions to the lease form, sign it and return it to the landlord. A tenant should contact the landlord if the revised lease is not returned in several days because, unless the landlord signs and returns the revised lease, there is no agreement.

Often it is difficult, if not impossible, for tenants to negotiate with the landlord about anything other than the rent and the length of the lease. One effective way for tenants to negotiate is for tenants in the building to combine their requests. A tenant committee can also bargain on behalf of all tenants. (See Chapter 10.)

Do not forget that a tenant can ask a landlord to sign an alternative lease form. Later in this Chapter we will discuss a form prepared by the Chicago Council of Lawyers, that a tenant can ask the landlord to use.

E. SECURITY DEPOSITS

The Ordinance (§5-12-080) spells out the requirements regarding security deposits. When a tenant gives a landlord a security deposit, the person who receives the money must give the tenant a receipt. This receipt must list the amount of the deposit, the name of the person receiving it, the name of the landlord (if different from the person receiving the money), the date and a

description of the apartment. Failure to comply with this requirement entitles a tenant to the immediate return of the security deposit.

After receiving the deposit, a landlord must keep the money in a federally insured, interest-bearing account in a bank, savings and loan association or other financial institution within the State of Illinois. The security deposit remains the property of the tenant at all times and cannot be combined with money belonging to the landlord.

A landlord must pay interest on the security deposit to a tenant at a rate of five percent a year. A landlord must pay a tenant the interest in cash or credit it towards the next month's rent within 30 days after the end of each 12-month rental period.

A landlord must return the security deposit within 45 days from the date a tenant moves out. The landlord may deduct from the deposit any rent still due (not being lawfully withheld under the Ordinance) and a reasonable amount necessary to repair any damage caused other than by normal wear and tear to the apartment. In the event that the apartment is severely damaged by fire or other casualty and is uninhabitable, a landlord must return the security deposit within seven days after receiving written notice from a tenant (provided that the landlord is notified within 14 days after the damage occurs).

If a landlord deducts part of the security deposit because of damage to the apartment, the landlord must deliver to the tenant (by mail or in person) a detailed list of the damage caused by the tenant and the cost or an estimate of the cost within 30 days from the date the tenant moved out. The landlord must also send the tenant copies of paid receipts for the repairs or replacements. If the landlord sends estimated costs of repairs with the list of damage, the landlord must send paid receipts or proof of the actual costs of repair within 30 days of the date the tenant was first told of the damage.

If ownership or control of the property is transferred, the new landlord must, within 10 days after the transfer, tell the tenant in writing and include the name, business address and telephone number of the new landlord. The new landlord must then take over the responsibilities of the old landlord and follow all regulations pertaining to security deposits. However, both the old landlord and the new landlord remain liable to the tenant for the security deposit unless the original owner transfers the security deposit to the new landlord, provides notice of the transfer to the tenant and specifies the name, business address and telephone number of the new landlord within 10 days of the transfer.

If the landlord or the landlord's agent fails to comply with any of the above provisions, the tenant may sue the landlord and could recover two times the security deposit plus five percent interest, court costs, and the tenant's attorney's fees. A tenant may want to consult a lawyer before initiating a lawsuit. Small claims cases may be filed in Room 602 of the Daley Center. (See Appendix D.)

F. CONSEQUENCES OF SIGNING A LEASE

As a general rule, once a tenant signs a lease he or she is bound by the terms of the lease. A few exceptions to this rule exist, however, and some lease clauses are legally unenforceable under the Ordinance. Even if a tenant signs a lease containing one of these illegal clauses, it cannot be enforced against the tenant. A tenant should always read the lease or try to have an attorney review the lease for the meaning of its terms before signing. If a tenant has signed a lease with illegal clauses, he or she should contact the landlord immediately. If the landlord attempts to enforce a lease with prohibited provisions, a tenant may bring suit against the landlord and may recover the amount of two months' rent and the tenant's attorney's fees. If a lease is found to contain a clause prohibited by the Ordinance, a tenant may recover any actual damages caused by the illegal provision.

G. PROHIBITED CLAUSES IN LEASES

Under the Ordinance, the following lease clauses are prohibited and are unenforceable:

1. Confession of Judgment Clause

Many leases may contain a clause that says the tenant "authorizes any attorney to appear in court and waive the tenant's right to notice and trial by jury and to confess judgment in favor of the landlord for any rent due." This is called a *confession of judgment* clause because it allows a landlord to get to court without first notifying the tenant. Once in court, the landlord can *confess* or admit on the tenant's behalf that a judgment for rent should be entered against the tenant. The Ordinance expressly prohibits the enforcement of any clause that attempts to authorize someone to admit judgment on the tenant's behalf.

2. Limitation of Liability Clause

An "exculpatory" clause or limiting clause is one that attempts to excuse the landlord from paying for any liabilities that may arise under the law. These

clauses attempt to relieve a landlord of the cost of damages a tenant may suffer because of his or her landlord's negligence. This type of clause is unenforceable, as is any clause that attempts to make a tenant reimburse the landlord for repairs that must be made because of the landlord's own negligence. No clause is legal if it makes a tenant pay for damages caused by a landlord.

3. Waiver of Notice Clause

A lease cannot contain a clause that attempts to take away a tenant's right to notice of the termination of a lease. A lease also cannot take away a tenant's right to any type of service of notice or right to the proper manner of service. Service is the legal process by which a tenant is notified by mail or in person of a legal action that has been filed naming the tenant as a party.

As explained in Chapter 8, if a landlord wants to evict a tenant in the middle of a lease, the Ordinance requires the landlord to serve the tenant either with a five-day notice for nonpayment of rent or a 10-day notice of violation of a lease provision. If the tenant fails to pay the delinquent rent within five days or fails to remedy the lease violation within 10 days, the lease terminates as provided in the notice. These notices cannot be waived, and any clause attempting to waive notice cannot be enforced.

4. Jury Trial Clause

A lease clause that takes away either a landlord's or a tenant's right to a jury trial in an eviction action is unenforceable under both state law and the Ordinance.

5. Attorney's Fees

In residential leases, it is illegal to include a lease clause that attempts to create a prior agreement between landlord and tenant that the tenant will pay the landlord's attorney's fees in the event of a lawsuit to enforce the lease. A court may allow a landlord or tenant to recover attorney's fees from the losing party but only as provided for by court rules, state statute or the Ordinance.

6. Cancellation Clause

No clause in a lease can permit a landlord or tenant to end the lease at a different time than the lease provides unless there is a separate written notice which includes such a provision.

7. Waiver Clause

Specific rights, remedies and obligations defined in the Ordinance cannot be excused by including a clause "waiving these rights, remedies or obligations." No lease can take away rights given to tenants by the Ordinance. For example, because the Ordinance allows subletting, withholding rent, and repair and deduct (explained later), no lease clause can take away those rights. Also, since the Ordinance strictly prohibits lockouts, no clause in the lease can allow a landlord to lock a tenant out of an apartment.

8. Fees for Late Payment of Rent

A lease cannot contain a clause permitting a landlord to charge any fee or penalty for the late payment of rent in excess of $10.00 per month for the first $500.00 in monthly rent plus five percent per month for any amount over $500.00. In addition, a lease cannot contain a clause that provides that *if a tenant pays rent before a specified date or within a specified time period in the month, then tenant shall receive a discount or reduction in rent in excess of $10.00 per month for the first $500.00 in monthly rent plus five percent per month for any amount over $500.00.*

9. Subletting

Many leases state that a tenant cannot sublet the apartment without the written consent of the landlord and that the landlord can reject the new subtenant for any reason. However, the Ordinance prohibits these type of clauses relating to the subletting of the apartment and provides rules for both landlords and tenants to follow. (See Chapter 8, Section B for information.)

10. Lockout Clause

Some leases provide that upon the termination of the tenancy the landlord: "shall have full and free license, with or without process of law, to take possession of the apartment and remove Tenant."

This clause is designed to permit a landlord to remove a tenant from an apartment without going to court, or "without due process of law," when a landlord believes the tenancy is terminated. This type of clause has been declared invalid by the Illinois courts and is specifically prohibited by the Ordinance. As a result, if a landlord wants to evict a tenant, the landlord must file a lawsuit and have that tenant served with a summons and complaint (the legal means by which a person is notified that a lawsuit is pending). A tenant

has the right to defend his or her case at a trial. (For more information on lock-outs, see Chapter 8, Section E.) All lockouts are illegal in Illinois. Even if a landlord wins an eviction lawsuit, the landlord still must have the sheriff remove the tenant and any personal property from the apartment if the tenant does not voluntarily leave.

H. OTHER COMMON PROVISIONS IN FORM LEASES

1. Condition of the Apartment

Some leases have a provision that says that the tenant has "examined the apartment," accepts its "present physical condition," and agrees that the landlord has made no "promises concerning the physical condition except those specifically set forth in the lease." This clause means that if a landlord has orally promised to make certain repairs but has not written it into the lease, a tenant cannot enforce the promise. Therefore, a tenant should make sure that any promise to repair is put in writing in the lease. Most leases have an "additional agreements and covenants" box near the top where promised repairs can be listed. Both landlord and tenant should initial any inserts placed in this part of the lease. A tenant should be sure the insert includes a date by which the repairs are to be completed.

Any clause dealing with the "conditions of the apartment" cannot relieve a landlord from the requirements of the Ordinance or the Housing Code. It also cannot limit any remedies by the tenant under the Ordinance. (For a further discussion of the Housing Code requirements see Chapter 4, Section B.)

2. Penalty for Not Moving Out

An Illinois statute (Chapter 735, §5/9-203 of the Illinois Compiled Statutes), provides that if a tenant deliberately remains in an apartment both after the end of the lease term and after the landlord serves the tenant with a written demand to move out, the landlord can sue the tenant for double the rent for the period the tenant continues to live in the apartment.

Most leases also provide for a more severe penalty for each day that a tenant remains in possession after the end of the lease. Whether such lease clauses are enforceable is open to question. A tenant sued under such a clause should consult with an attorney immediately.

3. Payment of Rent After Eviction

Most leases provide that even if a landlord evicts a tenant during the middle of a lease term, the tenant still must pay rent for the rest of the lease term. This only applies if the landlord tried but was unable to re-rent the apartment. So long as the eviction is legal, the courts will enforce such a provision. As a result, before moving out, the tenant should offer the landlord a suitable subtenant for the rest of the lease term. (See Chapter 8, Section B for more information about subletting.)

4. Fire and Casualty

Some leases have a fire and casualty provision, such as:

> If the apartment becomes untenantable by reason of fire, explosion or other casualty, owner may at his option terminate the lease or repair the apartment within 120 days.

However, under the Ordinance, a landlord no longer has the option of waiting 120 days to make repairs. A landlord must begin repairs within a *reasonable* time.

The tenant has three primary options in the event of a fire or other casualty.

(1) The tenant can immediately move out and terminate the lease. To do this the tenant must send the landlord written notice within 14 days of moving out stating the tenant's intention to end the lease. If the tenant sends proper notice, the lease is considered to have ended on the date of the fire or casualty.

(2) If the apartment can still be lived in, the tenant can stop using the part of the apartment that was damaged. In that case, the tenant can reduce the rent in proportion to the part of the apartment that can no longer be used.

(3) If the tenant wants to remain in the apartment and the landlord promises to make repairs but then fails to do so diligently or to start within a reasonable time after the damage occurred, the tenant can end the lease. The tenant must give the landlord written notice within 14 days after determining that the landlord has failed to make the repairs or to begin repairs in a timely manner. After this notice is given, the lease is ended and will be considered to

have ended on the date of the fire or casualty.

If the lease is ended as a result of a fire or other casualty, the landlord must return all prepaid rent and all of the security deposit within seven days. However, to use this remedy, the fire or casualty must not have been caused by the fault of the tenant, the tenant's family or a person on the premises with the tenant's permission.

5. Abandonment

Some leases provide that if the tenant has been absent from the apartment for 20 days without paying rent, and if the landlord has reason to believe that the tenant has "vacated the apartment with no intent to again reside therein," the tenant will be treated as having abandoned the apartment and the property in it. In this case, title to the tenant's property passes to the landlord and the landlord can enter the apartment "without process of law," that is, without going to court to evict the tenant.

The purpose of this law is to allow a landlord to evict a tenant and take the tenant's property without proving in court that the tenant has actually abandoned the apartment. However, the Ordinance has strict rules about handling abandonment that take precedence over any clause in the lease. Under the Ordinance, an apartment will be considered abandoned only if: (1) the tenant has given actual notice to the landlord that the tenant does not intend to return; or (2) all the tenants under the lease have been absent for 21 days or one rental period if the tenant is renting on less than a month-to-month basis, the tenants have removed most of their personal property and the rent is unpaid; or (3) all tenants under the lease have been absent for 32 consecutive days and the rent is unpaid.

If a tenant has paid the rent and provides the landlord with written notice of the tenant's intention to continue to occupy the apartment, the apartment is never deemed abandoned no matter how long the tenant is gone.

6. Rules and Regulations

Most leases include a set of rules and regulations such as "no signs in the window," "no nails in the wall," and "no pets." Many tenants ask if these provisions are enforceable. Most are enforceable as long as they are reasonable, such as the no-pet provision, and enforced equally against all tenants. On the other hand, a court would probably not evict a tenant for putting a tack in the wall. A tenant should try to negotiate the deletion of what he or she considers

to be a petty and pointless rule. If a landlord is willing to waive a particular rule, the tenant should get the landlord's written waiver. If this is not possible, the tenant should comply with the rules.

7. Use of the Apartment

Most leases provide that the apartment will be occupied solely as a residence for the tenant's family and that the tenant must do nothing to injure the property or to disturb neighbors. These clauses are enforceable, so the tenant must comply with them. Any language in a lease which is vague, such as a prohibition against the tenant's doing anything to "damage the reputation of the building," may be unenforceable because of vagueness.

8. Alterations

Lease clauses which prohibit the tenant from making alterations or installing major appliances without the landlord's permission are generally enforceable. So are clauses that provide that alterations and additions, including locks and bolts, shall remain as part of the apartment after the tenant leaves unless the landlord agrees otherwise. A tenant should obtain permission in writing before making any permanent alterations or additions.

9. Condominium Conversion

Under the Ordinance, a tenant must be given 120-days advance notice if a landlord intends to convert a building to a condominium. Any lease clause that violate a tenant's right to that 120-days' notice is unenforceable. (See Chapter 5, Section H.)

I. LANDLORD'S FAILURE TO ENFORCE A LEASE PROVISION

When a landlord accepts rent knowing that the rent was paid late, the landlord is prohibited by the Ordinance from terminating the tenant's lease or evicting the tenant for the failure to pay that prior rent on time.

If a landlord accepts rent with knowledge that the tenant has broken a lease provision, such as a ban on pets, a court is likely to conclude that the landlord waived the provision and would refuse to enforce the clause. This rule might not apply, however, if the lease has a clause that says that the landlord does not waive the right to enforce a lease provision by failing to enforce it in the past or by accepting rent with knowledge of the breach. And the rule may not apply if a landlord gives a tenant written notice that a lease provision will

be enforced in the future.

J. DISCRIMINATORY ENFORCEMENT OF RULES

It is illegal for a landlord to enforce a rule against one tenant but not against another because of race, sex, religion, national origin, marital status, or other factors. (See Chapter 6 for a further discussion of discrimination prohibited by law.)

K. ALTERNATIVE FORM LEASE

A standardized lease form has been prepared by the Chicago Council of Lawyers and the Fund For Justice. It is designed to be neutral and fair to both landlord and tenant and incorporates lease provisions that are in compliance with the Ordinance. A tenant can ask a prospective landlord to accept the lease as a whole or can ask that portions of the lease be used. Call the Council's office at 427-0710 to obtain a copy.

Chapter 4
APARTMENT CONDITIONS: LANDLORDS' AND TENANTS' RIGHTS AND OBLIGATIONS

A. INTRODUCTION

This Chapter explains the rights and obligations of landlords and tenants with regard to the condition of an apartment being rented. It will also explain what a tenant or landlord can do when the other party does not live up to his or her obligations.

The Ordinance requires that both landlord and tenant obey the requirements of the Municipal Code of Chicago with regard to the condition of the apartment and common areas. In §5-12-070, the Ordinance provides that "the landlord shall maintain the premises in compliance with all applicable provisions of the Municipal Code and shall promptly make any and all repairs necessary to fulfill this obligation." In §5-12-040, the Ordinance requires every tenant to "comply with all obligations imposed specifically upon tenants by provisions of the Municipal Code applicable to dwelling units." These provisions are binding on all dwelling units covered by the Ordinance (see Chapter 1 for further explanation of Ordinance coverage) and may not be reduced or modified by any provision in the lease. Thus, if the Municipal Code, including the Chicago Building Code found within it, requires the landlord to maintain the premises in a certain way or requires the tenant to care for the apartment in a particular manner, the parties are legally required to obey those provisions. In addition to the Ordinance and Building Code provisions in the Municipal Code, the landlord and tenant may agree to additional obligations in the lease - so long as these additional obligations are not contrary to any provisions in the Municipal Code, including both the Ordinance and the Building Code. If there is no written lease, the landlord and tenant must still comply with the Municipal Code.

B. ORDINANCE AND BUILDING CODE PROVISIONS ABOUT THE CONDITION OF THE APARTMENT

The Ordinance (Chapter 5-12 of the Municipal Code of Chicago) and the Building Code (Chapter 13-196 of the Municipal Code of Chicago) spell out the obligations of the landlord and tenant in regard to the condition of the dwelling. Some other sections of the Municipal Code also apply to housing conditions and will be noted below.

1. Tenant's Responsibilities

The Ordinance (§5-12-040) requires that a tenant comply with all obligations found in the Municipal Code in §13-196-620 of the Building Code. It requires the tenant to:

a. Keep the apartment in a clean, sanitary and safe condition.

b. Keep all plumbing fixtures in a clean and sanitary condition, and not abuse them.

c. Place no material in the building that might cause a fire.

d. Keep out of the apartment any furniture or materials that contain insects or rodents.

e. Dispose of garbage in proper containers, and never leave garbage open in hallways or back porches.

f. Leave intact screens that the owner supplied unless the owner has agreed that they be altered.

g. Provide heating facilities for the unit unless the owner provides them.

h. Stay within the housing code limits on the number of people living in the apartment.

In addition, the Ordinance (§5-12-040) requires the tenant to:

a. Keep the apartment as safe as possible.

b. Keep all plumbing fixtures in the apartment as clean as possible.

c. Not abuse any electrical, plumbing, sanitary, heating, ventilating, air conditioning or other facilities or appliances, including elevators.

d. Not purposely or negligently damage any part of the apartment or allow any other persons to do so.

e. Not act in a manner that disturbs neighbors.

2. Landlord's Responsibilities

Under the Ordinance, a landlord must maintain the premises in compliance with all applicable provisions of the Municipal Code and promptly make any and all repairs necessary. The following is a list of some of the landlord's obligations under the Municipal Code. We have listed the section number of the Code and/or Ordinance where applicable after each item. The landlord must comply with these provisions even if there is no written lease, or even if the lease contains provisions saying the landlord does not have to comply or that the apartment is already in compliance.

a. *Appliances.* All appliances and equipment supplied by the landlord must be maintained and repaired as necessary. (§13-196-590; §5-12-110)

b. *Basements and Cellars.* These shall be maintained in a safe and sanitary condition. Water should not be permitted to accumulate on the floor. Junk, rubbish and waste shall not be permitted to accumulate so as to create a fire hazard or endanger health or safety. They must be substantially water-tight and protected against rodents. (§13-196-580)

c. *Elevators.* Elevators in multiple-unit dwellings in buildings ten stories or higher must be maintained in a safe and operable condition. (§13-196-080)

d. *Exits.* Every apartment must have a safe, unobstructed means of exit leading to the ground level. (§13-196-080)

e. *Exterior and Foundation.* The foundation, exterior walls and exterior roof must be kept watertight, in sound condition and repair, and protected against rodents. (§13-196-530)

f. *Exterminating.* The landlord must exterminate any insects, rodents or other pests and maintain the building in rat-proof and reasonably insect-proof condition. (§13-196-630; §5-12-110)

g. *Fire Extinguisher.* A fire extinguisher must be provided on every floor of all multiple-unit buildings of more than three stories. (§15-16-640)

h. *Garbage and Trash Disposal.* The landlord must supply and

maintain refuse facilities such as refuse containers. (§7-28-220)

i. *Heat.* The landlord must provide the apartment with heat from September 15 to June 1. The following average temperatures must be maintained:

65 degrees from 7:30 a.m. to 8:30 a.m.

68 degrees from 8:30 a.m. to 10:30 p.m.

63 degrees from 10:30 p.m. to 7:30 a.m.

The landlord must maintain these temperatures as an average throughout the entire apartment. (§13-196-410)

j. *Hot Water.* Sinks, bathtubs and showers must be provided with hot water (at least 120 degrees) from 6:00 a.m. to 10:30 p.m. (§13-196-420; §13-196-430)

k. *Interior Floors, Walls, Ceilings.* Every floor, interior wall and ceiling must be kept in sound condition and good repair. In addition, "every floor shall be free of loose, warped, protruding or rotting floor boards;" and "all interior walls, ceilings, and interior woodwork shall be free of flaking, peeling, chipped or loose paint, plaster or structural material." Floors must meet safe load-bearing requirements. (§13-196-540; §13-196-040)

l. *Lighting of Halls or Stairways.* Halls and stairways must have adequate lighting at all times. (§13-196-450)

m. *Plumbing and Electrical Systems.* All plumbing and electrical systems must be maintained in good operating condition and repair. (§13-168-010; §14-12-010; §5-12-110)

n. *Poisonous Paint.* No lead-based paint is allowed anywhere in the building. (§7-4-020)

o. *Public Areas.* The landlord must maintain in a clean, sanitary and safe condition all shared or public areas of buildings and grounds. (§13-196-630)

p. *Roof.* No leaks are permitted in the roof. Adequate drainage

must be provided to prevent rain water from causing dampness in the walls. (§13-196-530)

q. *Screens.* The landlord must provide screens from April 15 to November 15 for all windows in apartments located on or below the fourth floor. (§13-196-560)

r. *Security Devices for the Apartment.* The landlord must supply and maintain a dead bolt lock on each door to the apartment. Each door also must have a viewing device such as a peep hole. Windows in an apartment located within 20 feet of ground level or within 10 feet of an adjacent roof or exterior stairway, fire escape, ramp or porch accessible from ground level are required to have ventilation locks. (§13-164-030; §13-164-050)

s. *Security for Building Entrance.* Every building entrance must be secured by a door with a dead bolt lock. In buildings where the entrance is composed of two doors divided by a vestibule or entry way, there need be only one dead bolt lock on either the exterior door or the interior door. (§13-164-040)

t. *Smoke Detectors.* Multiple dwellings shall have at least one smoke detector per unit and at least one smoke detector at the top of interior stairwells. (§13-196-100 through §13-196-160)

u. *Stagnant Water.* All yards, courts, passageways and other portions of a building's lot shall be graded and drained so as to prevent the accumulation of stagnant water on any surface. (§13-196-600)

v. *Stairways and Porches.* Stairways, inside and outside, and every porch shall be kept in safe condition and sound repair. "No flight of stairs shall have rotting, loose, or deteriorating supports." Every rail and balustrade must be firmly fastened and maintained in good condition. (§13-196-570)

w. *Toilet.* Each unit must have a toilet in good working order located in a separate room that affords privacy. (§13-196-350)

x. *Water.* Hot and cold running water must be provided to sinks, lavatories, baths and showers. (§13-196-420)

y. *Water Fixtures.* A landlord must provide and maintain in good working order in each apartment unit a flush toilet, lavatory basin, bathtub or shower, and kitchen sink. (§§13-196-350, 360, 370, 390)

z. *Windows and Window Sashes.* These must be in good condition, fit reasonably well, be easily opened and substantially tight. (§13-196-550)

3. City's Responsibilities

The City of Chicago must enforce the Chicago Building Code. Therefore, the City sends out inspectors either periodically or in response to a complaint. The Building Code requires that the Department of Buildings investigate a complaint of violation within 21 days of receiving the complaint. If the City finds a code violation, it sends a notice to the landlord. The landlord is invited to attend an informal hearing before the Compliance Board, where the landlord may either deny the existence of a code violation or discuss plans for repairing the violation. If repairs are not made, the case is referred to the City's attorney (known as the Corporation Counsel) for filing a code enforcement suit in Building Court against the landlord. To find out if there is a Building Court case pending against the owner of a particular building, call 744-3407 or 744-3408.

A judge in Building Court can fine a landlord up to $200 per day for violations of the Building Code. The court also can order the landlord to make repairs. If the landlord fails to make repairs, and the violations are serious enough to make the building uninhabitable, then the City can request and the court can order the building vacated and demolished.

C. WHAT DO LEASES SAY ABOUT BUILDING CONDITIONS?

Leases often have provisions about the condition of an apartment. Sections that list tenants' duties are frequently headed "Tenant's Use of Apartment," "Tenant's Upkeep" and/or "Rules and Regulations." Sections listing the landlord's duties are usually headed "Lessor to Maintain" or "Condition of Apartment." These provisions vary from lease to lease, but they are enforceable as long as they do not conflict with the Ordinance or the Building Code.

Most leases also have a box labeled "Additional Agreements." If a landlord has promised to make specific repairs to an apartment, these repairs,

as well as the date set for completion of such repairs, should be listed in this box and initialed by both the landlord and the tenant. This is important because the law provides that if a tenant has a written lease, a landlord's prior oral promise is unenforceable unless restated in the lease or in a rider that both parties sign and attach to the lease. (See Chapter 3, Section C.)

D. HOW TO GET INFORMATION ABOUT THE LANDLORD AND BUILDING

Problems with the conditions of a building must ultimately be remedied through the cooperation of the landlord. Several sources help a tenant locate those responsible for maintaining a building.

1. Landlord's Responsibility to Disclose Information to Tenants

a. Name, Address and Phone Number of Building Manager

■ Under State law (Chapter 735, §5/9-320 of the Illinois Compiled Statutes), the owner of any building with more than four living units, where neither the owner nor manager lives or has an office, must disclose the name, address and phone number of the person responsible for managing the building. This disclosure can be made by posting the information in the apartment building, mailing the information to a tenant, or including this information in the lease. If this law is not complied with, a tenant can file a complaint with the Office of the Cook County State's Attorney.

■ Under the Municipal Code (§13-12-030), an owner of a residential building with more than two units must post in a common area of the building the name, address and phone number of the owner and owner's agent. If a landlord has failed to do so, a tenant can call the Department of Buildings (744-5000) to file a complaint.

■ Under the Ordinance (§5-12-090), an owner of a residential building with more than six living units who enters into a rental agreement with a tenant must disclose to the tenant the name, address and phone number of the owner or person responsible for managing the building. This disclosure must be in writing, be made at or before the beginning of the rental period and must be kept current. If the owner does not comply with the law, the tenant may terminate the rental agreement after following the notice provisions of §5-12-110(a) of the Ordinance (See Section F(1) below.) If the landlord fails to comply after receipt of the notice, then the tenant also is entitled to recover one month's rent or actual damages (whichever is greater).

b. Notice of Code Violations

Under the Ordinance (§5-12-100), the owner of a residential building with more than six living units, who enters into or renews a rental agreement with a tenant, must inform each tenant of any citations received for building code violations during the previous year. The owner also must provide written notice of pending housing court litigation, if any, provided the case number of the lawsuit or the identification number of the compliance board proceeding, and a listing of code violations cited. Remedies for nondisclosure are the same as stated in Section D(1)(a) above.

c. Notice of Utility Shut-Offs

Under the Ordinance (§5-12-100), an owner must tell each tenant of any impending utility shut-off. The disclosure must state the type of service to be cut off such as water, gas or electric, the intended date of the shut-off and whether the shutoff will affect the tenant's own apartment, the common areas, or both. Remedies for nondisclosure are the same as stated above in §5-12-090.

d. Notice of Utility Costs

Under the Municipal Code (Chapter 5-16), a landlord must disclose to a tenant the projected average monthly cost of utility service for apartments heated primarily by natural gas or electricity. This applies where utility services for heat are metered individually to each dwelling unit and a tenant is directly responsible for paying the cost of the utility service. This information must be disclosed in writing at the time money is accepted in an application for an oral lease or prior to the signing of a written lease if no money is required with the application. The projected monthly cost must be included in a written lease if one is offered to the tenant. Disclosure need not be made when: (1) a lease is being renewed and (2) the tenant had the obligation to pay the utility company during the previous term for the utility service used for heating.

2. City's Responsibility to Provide Information

Under State law (Chapter 50, §810/2 of the Illinois Compiled Statutes), if the city's building department determines that a building code violation exists, then it shall post a notice of such violation conspicuously near the main entrance of the building. Under an Illinois court decision, this posting cannot occur, however, until after the landlord has had an opportunity to respond to the notice of violation. In Chicago, this means that no posting can occur until after the Compliance Board hearing. In fact, the building department in Chicago does not

ordinarily post the notice until several days before filing a building code prosecution lawsuit against the landlord.

3. Trustee's Responsibility to Provide Information

Under State law (Chapter 765, §425/1 of the Illinois Compiled Statutes), a trustee of property held in a land trust who receives notice of a building code violation from a city code enforcement agency, must, within 10 days, disclose to the City the names of every owner and beneficiary of the land trust. If violations in residential buildings are not corrected within 180 days of the notice to the trustee, then the City must publish the names of the beneficiaries of the land trust in a public register.

In Chicago, the Department of Buildings keeps a public information desk in Room 903 of City Hall. The public register of all land trust beneficiaries of buildings with outstanding code violations that have not been repaired within 180 days is available for copying. A $3.00 fee for copying is charged.

E. WHAT TENANTS CAN DO TO GET THE LANDLORD TO MAKE REPAIRS

1. Contact the Landlord

Under §5-12-070 of the Ordinance, a landlord is required to repair any item in the apartment that constitutes a code violation. A landlord is obligated to maintain the building according to the lease, or according to any oral promises that the landlord made if there is no written lease. In each instance, before seeking any other remedy, a tenant should first ask the landlord, in writing if possible, to make the repairs. This is important. The landlord may not know what in the apartment needs repair or which items are defective. The landlord should be asked to set dates as to when the repairs will be started and completed. (If the tenant wishes to utilize the self-help remedies in the Ordinance, see Section F of this Chapter.)

If repairs are needed, a landlord has a right to enter the premises or to allow a contractor to enter the premises to make such repairs. A landlord must give a tenant two-days' prior notice, and such notice can be either written or oral. Further, the right to enter, except in cases of emergency, is limited to reasonable times. An entry is considered reasonable if it falls between the hours of 8:00 a.m. and 8:00 p.m. or any other time that the tenant requests.

2. Keep Records

Every tenant should keep a record of the defects in his or her apartment and note what the landlord did in response to requests for repair. This is important for two reasons. First, it helps the tenant keep track of whether the landlord is promptly responding to requests. Second, if requests do not get results, the tenant might later need to take more formal action, such as going to court and testifying. If this occurs, the tenant will probably be asked: "What are the defects in the building? When did you first notice each? When did you contact your landlord? What did the landlord say and what did you do? When were repairs finally made?" A tenant will more easily be able to answer these questions if records are kept.

Here are some records that the tenant should keep.

Photographs. Take photographs of the defects in the apartment and the common areas of the building. On the back of each, write what the defect is, what room it is in, who took the picture and when. Keep the negatives.

Diary or Notebook. List each defect and when it was first noticed. List every conversation with the landlord, whether in person or by phone. BE SPECIFIC. List the date of the conversation and where it occurred and if there were any witnesses to it. Write down what was said and who said it. For instance, if a landlord said repairs would be made to the boiler "in about three weeks," write that down. Also, keep track of the times when a landlord, janitor or a repair person came to the apartment to inspect or work on a defect. List when work was started and when it was completed.

Temperature Records. If there is inadequate heat, buy a thermometer and keep track of the temperature in at least several rooms several times a day. Keep a record in a diary or notebook. Note that the Building Code requires different degrees of heat at different times of day. (See Section B(2)(i) of this Chapter).

Copies of Letters. If a tenant thinks there are going to be problems with a landlord, the tenant should communicate in writing in addition to making phone calls. Each letter should be dated and a tenant should keep a copy of each letter sent. If a tenant thinks a landlord might later deny receiving a letter, the letter should be sent by certified mail, return receipt requested.

3. Get Other Tenants Involved

A tenant might also want to get other tenants involved who face similar problems with their apartments. If they also call the landlord, all tenants may get faster action. In addition, if a matter must go to court, it is helpful to have witnesses. Explain to the other tenants the procedure for keeping records and making complaints. (See Chapter 10 for a discussion of tenant organizing.)

4. File a Complaint with the Department of Buildings

If phone calls and letters to the landlord fail to obtain results, a tenant can file a complaint with the Department of Buildings. Filing a complaint is a step a tenant should take before any further action, such as withholding rent. Complaints can be made by calling 744-5000, or by writing to Complaint Section, 9th Floor, City Hall, Chicago 60602. A copy of the complaint should be sent to the landlord by certified mail, return receipt requested, and the tenant should keep a copy. A tenant can ask the Department for the name of the inspector who will inspect the building. A tenant can call before 9:00 a.m. and let the inspector know when he or she will be home, or the tenant can arrange with a neighbor to let the inspector into the building.

5. Testify in Building Court

If the City files a lawsuit against the building owner, then a tenant may be able to testify in court against the building owner. A tenant should call the Corporation Counsel's Office, Building and Housing Division (744-8825), to find out if there is a pending case on the building. That office can provide the name and number of the case, what courtroom it is assigned to and when the case will be heard next. A tenant also may ask to speak to the Assistant Corporation Counsel assigned to the courtroom, who can arrange to have a tenant testify. The tenant should explain what evidence he or she can provide and ask to be called as a witness. On the court date, a tenant who is to testify should get to court 15 minutes early and introduce himself or herself to the Assistant Corporation Counsel. Any evidence, such as pictures of the premises, should be brought to court. Each tenant should encourage other tenants to attend because a large turnout helps to insure vigorous prosecution.

6. Intervene in Building Court

With the assistance of an attorney, a tenant can petition to "intervene" in the Building Court suit. This means that the tenant becomes a formal party to the lawsuit and, through the tenant's attorney, can introduce evidence,

cross-examine witnesses and ask the court to order the building repaired, or the landlord fined. A tenant also may file a separate complaint listing any building code violations the City has not listed. A tenant who wants to intervene should consider seeking an attorney's advice. The court will charge a filing fee unless the tenant qualifies to sue as a poor person. (See Appendix C.)

7. Filing a Lawsuit Without an Attorney

Under state law (Chapter 65, §5/11-13-15 of the Illinois Compiled Statutes), a tenant can sue a landlord to correct code violations. A tenant filing a lawsuit without an attorney is proceeding *pro se.* But a tenant should also consider that the court can order the owner of a building to pay the tenant's reasonable attorney's fees if defects are established. In some situations, a landlord may agree to enter into a contract with a tenants' association if a tenant agrees not to ask for attorney's fees. A tenant interested in filing this type of lawsuit should consider seeking an attorney's advice. The court will charge a filing fee, and the tenant will have to pay the Sheriff to serve a summons on the landlord unless the tenant qualifies to sue as a poor person. (See Appendix C.)

8. Ask the Court To Appoint a Receiver

If either the City or a tenant has filed a lawsuit against a landlord to compel Building Code compliance because the landlord has failed to make the necessary repairs, the court can appoint a receiver for the building. A receiver is a person the court appoints to temporarily take charge of the building. A receiver could either arrange to have specific repairs made, such as fixing the boiler in the winter, or manage the building and bring it up to Code. (See Chapter 10, Section 1.)

9. Sue the Landlord to Recover Excess Rent Paid

If an apartment has substantial building code violations or a landlord has failed to make the repairs that were agreed to, a tenant may file a lawsuit against the landlord to recover the difference between the rent paid and the market value of the apartment in its unrepaired condition. For instance, if an apartment usually rents for $350 per month, but the furnace breaks and the landlord fails to provide adequate heat promptly, a tenant might be able to persuade a judge or jury that the apartment was worth only $250 a month. Then the landlord would owe the tenant $100 for each month the furnace was broken.

The cost of filing this lawsuit depends on the amount for which a tenant is suing. If the claim is for $1500 or less, a tenant can file a lawsuit in *pro se*

court. (See Appendix D for these procedures.)

F. TENANT SELF-HELP REMEDIES FOR LANDLORD'S FAILURE TO MAINTAIN THE PREMISES

In addition to the remedies described above, the Ordinance provides four specific remedies that a tenant may use when the landlord has failed to maintain an apartment in substantial compliance with the Municipal Code. (The landlord's responsibilities under the code are set out in Section B of this Chapter.) These remedies are only available where there has been "material noncompliance" of the Code by the landlord. The Ordinance defines material noncompliance in §5-12-110. (See Appendix F.) Before pursuing one of these remedies, a tenant should first ask the landlord to make the repairs and ask the City to inspect the building. These remedies are more effective if a group of tenants join together. An attorney also should be consulted if there is doubt about whether the landlord's actions are inconsistent with the Ordinance.

1. Terminate the Lease

To terminate a lease (§5-12-110(a)), a tenant first should make a list of each defect in each room of the apartment and the common areas of the building. If a tenant finds defects that make his or her apartment not "reasonably fit and habitable" - that is, unsafe or unhealthy to live in - the tenant can present to the landlord a written notice that lists these defects. The notice should specify that the rental agreement will terminate on a certain date, which must be at least 14 days after the landlord has received the notice. Unless the defects are remedied by the landlord within the time period specified by the tenant in the notice, then the rental agreement shall terminate as provided for in the notice given to the landlord. The tenant must then vacate the apartment within 30 days after expiration of the time period in the notice. If the tenant fails to vacate within the 30 days, the notice is deemed withdrawn and the lease remains in full force and effect. After the rental agreement is terminated, the landlord must return all prepaid rent, security and interest recoverable by the tenant.

A tenant should keep a copy of the list of defects and of the notice. (A sample letter is provided in Appendix E.) To prove that a landlord received notice, the tenant should send it registered or certified mail, return receipt requested, or hand deliver it to the landlord - with a friend who can act as a witness.

2. Withhold Partial Rent

If a tenant chooses, he or she can withhold a portion of the monthly rent which reasonably reflects the reduced value of the premises. As with subsection (1) above, the tenant should make a list of the defects, though the list may include defects in addition to those that make the apartment unhealthy or unsafe. (§5-12-110(d)) Before withholding rent, however, a tenant must send this list to the landlord along with a letter that states that the tenant intends to withhold rent in accordance with §5-12-110(d) of the Chicago Landlord and Tenant Ordinance if the repairs are not made by the landlord within 14 days of being notified by the tenant. (A sample letter is provided in Appendix E.) To prove a landlord received a letter, the tenant should send it certified or registered mail, return receipt requested, or hand-deliver it to the landlord. If a landlord fails to make the repairs within the period stated, a tenant can deduct the amount stated in the letter from the rent. This amount can be no more than an amount that reasonably reflects the reduced value of the premises due to the faulty conditions.

Withholding partial rent could result in a landlord trying to evict a tenant for nonpayment of rent. To provide the best defense against this, however, a tenant should follow the procedures below. If successful, the tenant will have a defense to a landlord eviction suit and will likely be able to stay in the apartment.

To increase the chances of success, before withholding rent, a tenant should:

a. ask the City to inspect the building for code violations;

b. photograph and make a list of defective conditions, and show the defective conditions to another adult;

c. ask the landlord to make repairs within a specific reasonable time;

d. speak with a lawyer or a representative from a community organization who is knowledgeable about tenants' rights;

e. get other tenants to join with the tenant;

f. estimate conservatively the amount of the rent to withhold; and

g. put the withheld rent in a separate bank account.

The law says that a tenant cannot be evicted for withholding the difference between rent charged and the value of the apartment in an unrepaired condition. The problem for a tenant is that it is hard to estimate that amount. A landlord might choose to evict a tenant anyway, and eviction court judges are often not very sympathetic to tenants in this situation. As a result, if a landlord sues, the tenant should contact an attorney and consider asking for a jury trial. (See Chapter 8 on eviction procedures.)

3. Repair and Deduct

The "repair and deduct" remedy under the Ordinance allows the tenant to make repairs to the premises and deduct the cost from the rent. This can only be done where the cost of repairs does not exceed $500 per month or one-half of the monthly rent, provided that the reasonable cost does not exceed one month's rent. To utilize this remedy, a tenant should make a list of each item to be repaired. The tenant must send this list to the landlord along with a letter that states that according to §5-12-110(c) of the Ordinance, the tenant will make or have made the repairs to the items listed within 14 days (or longer) after the landlord receives the letter unless the repairs are made by the landlord within the period stated. Again, the tenant should send the letter registered or certified mail, return receipt requested, or hand deliver it to the landlord. (A sample letter is provided in Appendix E.)

If a landlord fails to make the repairs within the period stated in the letter, a tenant may have the work done in compliance with existing law and regulations. The tenant must then submit a paid bill to the landlord from an appropriate tradesman or supplier before deducting the amount from the rent. The amount deducted from the rent may not exceed the reasonable price usually charged for such work.

A tenant can also correct a condition that affects other tenants in the building, or common areas. However, before correcting such a defect, the tenant must notify all affected tenants, as well as the landlord, and complete the work in a way that creates the "least practical inconvenience" to other tenants.

4. Sue for Injunctive Relief and Damages

The Ordinance (§5-12-110(e)) also allows a tenant to sue for damages due to faulty conditions or to obtain injunctive relief, which is a court order requiring the landlord to make repairs and/or pay damages. A tenant who sues and is successful may recover court costs and attorney's fees under §5-12-180 of the Ordinance. A tenant should consult an attorney before using this remedy

and should consider that this relief does not prevent a tenant from using other remedies under the Ordinance.

G. TENANT SELF-HELP REMEDIES FOR LANDLORD'S FAILURE TO PROVIDE ESSENTIAL SERVICES

A tenant should notify the landlord immediately in writing if his or her dwelling unit is without the "essential services" of heat, running water, electricity, gas or plumbing. If the landlord does not fix the problem, a tenant may use one of the five remedies set forth below. The tenant should remember to keep a copy of any notice to the landlord and send the original by registered or certified mail, or hand delivery. If one of these remedies is used, the tenant may not use any of the remedies set forth in Section F above.

1. Pay the Utility Bill and Deduct the Cost from the Rent

If the water, gas or electricity is about to be shut off because a landlord has failed to pay a utility bill when it is the landlord's responsibility, the Ordinance (§5-12-110(f)(1)) permits a tenant to pay the bill in order to continue service and then deduct the cost from the rent. The Ordinance requires both that a landlord be notified in writing of which utility services are not being received, and then be given a copy of a paid receipt to prove that the tenant paid the bill. The tenant can then deduct that amount from the rent.

2. Sue To Recover Damages

The Ordinance (§5-12-110-(f)(2)) allows a tenant, after giving written notice to the landlord, to sue the landlord for failure to provide essential services. The amount of damages that can be recovered are equal to the reduction in the fair rental value of the premises. A tenant is entitled to recover reasonable attorney's fees and court costs under §5-12-180 of the Ordinance.

3. Obtain Substitute Housing

The Ordinance (§5-12-110(f)(3)) also allows a tenant, after giving written notice to the landlord, to find substitute housing and to move out of a landlord's dwelling unit that lacks essential services. After finding substitute housing, such as a hotel, motel, or a friend's or relative's home, a tenant is excused from paying rent during the period of the landlord's noncompliance. In

addition, a tenant is entitled to recover the reasonable cost of the substitute housing, up to the amount of the monthly rent for each month or prorated portion of each month of the landlord's noncompliance. The tenant is entitled to recover reasonable attorney's fees and court costs under §5-12-180 of the Ordinance.

4. Withhold Rent

The Ordinance (§5-12-110(f)(4)) also allows a tenant, after giving written notice to the landlord, to withhold rent in an amount that reasonably reflects the reduced value of the premises due to the failure of the landlord to correct a condition within 24 hours after receiving the notice. No rent may be withheld, however, if the failure is due, not to the landlord, but to a utility company's inability to provide service.

5. Terminate the Rental Agreement

The Ordinance (§5-12-110(f)(5)) also allows a tenant to terminate a rental agreement by written notice to the landlord if the failure persists for more than 72 hours after the landlord has received written notice concerning the failure. If a rental agreement is terminated, the tenant must move out of the apartment within 30 days after the end of the 72-hour time period specified in the termination notice the tenant gave to the landlord. If a tenant does not move out before 30 days, the notice is withdrawn and the rental agreement remains in full force. After the rental agreement is terminated, the landlord must return all prepaid rents, security deposit, and interest in compliance with §5-12-080 of the Ordinance.

H. TENANT SELF-HELP REMEDIES IN THE EVENT OF FIRE OR CASUALTY

If a tenant's apartment or common area is damaged or destroyed by fire or another casualty so that the dwelling unit is in "material noncompliance" with the Code (see Appendix F for definition of "material noncompliance"), a tenant has three options.

1. Move Out Immediately

After a fire or casualty that renders an apartment in material noncompliance with the Code, a tenant may immediately vacate the premises but must notify the landlord within 14 days of the move-out of the tenant's intention to terminate the rental agreement. The rental agreement is then terminated as of

the date of the fire or casualty. The tenant should move out immediately.

2. Withhold Partial Rent

If it is lawful to occupy a portion of the premises after a fire or casualty, a tenant may vacate the part of the dwelling unit that is rendered unusable by the fire or casualty. If this occurs, a tenant must pay rent in an amount that is reduced in proportion to the reduction in the fair rental value of the dwelling unit. This reduced amount can be paid until the apartment is repaired.

3. Move Out If the Landlord Fails To Make Repairs as Promised

If a tenant desires to remain in the premises after a fire or casualty because the landlord promises to make repairs, the tenant may still move out if the landlord fails to complete repairs within a reasonable time. The tenant must first notify the landlord in writing within 14 days after becoming aware that the repairs are not being carried out. The notice should inform the landlord that the tenant is terminating the rental agreement. The termination is effective as of the date of fire or casualty. The landlord must return all prepaid rent, security deposit and interest, subject to any deductions allowed under §5-12-080, within seven days after the tenant has provided notice of termination of the rental agreement pursuant to §5-12-110(g) of the Ordinance.

I. OTHER TENANT REMEDIES FOR DEFECTIVE CONDITIONS

In addition to the remedies set forth above, there are other remedies a tenant can use when a landlord fails to make repairs. Here is a list of these additional remedies.

1. Sue the Landlord for Personal Injuries or Property Damage

If a tenant believes injury to his or her property or self is a result of a landlord's negligence or carelessness, a tenant might be able to sue the landlord for damages. A tenant in this situation should seek advice from a lawyer.

2. Complaint about Lead Poisoning

It is illegal for an apartment building to be painted with paint containing lead or other poisonous materials. Such paint, or paint dust, when ingested by a child, can cause serious illness or brain damage. If an apartment has peeling or flaking paint, a tenant should call the Department of Inspectional Services at 744-5000 to have the apartment tested for lead. If lead is found, the tenant

should then call the Department of Health at 744-8500 and make an appointment to have blood tests for lead poisoning for all children living in the apartment. If the apartment has lead paint and any children have lead poisoning, the landlord will be ordered to cover or remove the lead paint. If the landlord does not do this in 14 days, the City can have the work done and bill the landlord.

A tenant can sue the landlord if a child living in the apartment becomes ill from eating lead paint. A tenant can obtain a referral to an attorney who handles lead poisoning cases from bar association referral services such as the Chicago Bar Association Lawyer Referral Service (554-2001) or the Cook County Bar Association Lawyer Referral Program (630-1157).

3. Complain to State's Attorney

It is illegal for a landlord to knowingly rent a deteriorated building that could endanger the health and safety of a tenant. If a building is in a dangerous condition and the owner has failed to repair it after being notified of the danger by a tenant, the tenant may file a complaint with the Cook County State's Attorney's Office in Room 500 of the Daley Center (443-6275). Tenants should encourage other tenants to join in the complaint and should keep track of the State's Attorney's action. The State's Attorney can ask the judge in Criminal Court to fine or jail a landlord. The judge cannot, however, order the landlord to make repairs or pay damages to the tenants.

4. Request that the Management Company's Real Estate License Be Revoked or Suspended

The State of Illinois licenses real estate brokers through the Department of Professional Regulation. The State regulations provide that a real estate broker's license can be suspended or revoked for "a failure to safeguard the interests of the public in the ... renting of real estate wherein the premises are known ... to be in violation of ordinances for the protection of the public in regard to fire, health, sanitation and other hazards."

If a building is in bad shape and a tenant has notified the landlord of the defects without results, the tenant should check with the Department of Professional Regulation (917-4527) to see if the landlord is a real estate broker. If so, the tenant can file a complaint to try to get the landlord's license revoked. (See Chapter 6, Section A.) If tenants in other buildings managed by the same company file similar complaints, the chances of success are better.

J. LANDLORD'S REMEDIES AGAINST DESTRUCTIVE TENANTS

A landlord has several remedies if a tenant damages an apartment, fails to comply with the requirements of the lease, or fails to maintain the premises as required by the building code. The best avenue for the landlord to take depends on the specific wording in the lease that the tenant signed. Therefore, a landlord should be sure to review the lease first.

1. Ask the Tenant To Make the Repairs

If a tenant damages an apartment, the landlord should first request that the tenant repair the damage. Similarly, if a tenant has violated a requirement of the lease or building code with regard to maintaining the apartment (see Section B(1) of this Chapter), the landlord should first ask the tenant to comply with the requirement. These requests should be in writing and the landlord should keep a copy in case a lawsuit is later filed.

2. Make the Repairs and Charge the Tenant

If a tenant damages an apartment and fails to make repairs, a landlord can make the repairs and charge the cost to the tenant. Most leases spell out this remedy; however, this right exists under §5-12-130(c) of the Ordinance even if there is no written lease. A landlord should keep in mind that this does not apply to ordinary wear and tear to the apartment.

To make the repairs and charge the tenant, a landlord must first give the tenant written notice. The notice should be dated and include a reference to §5-12-130(c) and what repairs need to be made.

If a tenant does not pay the cost of the repairs, the landlord can deduct the cost from the tenant's security deposit. If a building has more than six units, the landlord should make an itemized list of the damage caused by the tenant and keep copies of the receipts for work done. The Ordinance (§5-12-080(d)(2)) requires that the landlord give the tenant copies of the receipts within 30 days after the tenant moves out. This same procedure, pursuant to State statute (Chapter 765, §710/1 of the Illinois Compiled Statutes), applies to buildings outside Chicago having more than 10 units.

If a lease requires a tenant to pay for repairs and if, after the landlord's request, the tenant fails to do so, the landlord can file an eviction action for breach of the lease provision. (See Chapter 8, Section C, for a discussion of

eviction procedures.)

3. Sue the Tenant for Damages

If a tenant has damaged an apartment, the landlord can sue the tenant for the cost of repairs. The landlord should either hire a lawyer or, if the claim is $1,500 or less, file a *pro se* action. (See Appendix D for an explanation of the procedures.)

If other parts of a building have been damaged as a result of a tenant's negligence, such as damage to a downstairs apartment from a tenant's bathtub overflow, a landlord may be able to claim from the tenant the entire cost of making the necessary repairs. But a landlord should check the lease provisions and talk to a lawyer regarding his or her rights.

4. Sue To Evict the Tenant

If a tenant has damaged the apartment, fails to pay the cost for damages, improperly denies a landlord access to the premises or disturbs others, a landlord can sue to evict the tenant. Under §5-12-130(b) of the Ordinance, a landlord can also recover damages and obtain injunctive relief. If a tenant purposely fails to comply, a landlord also may recover attorney's fees.

5. Call the Police or File a Criminal Complaint

If a tenant is deliberately damaging an apartment with a rowdy party, a landlord should call the police. If the damage already has been done, a criminal complaint still can be filed against the tenant. To find out the procedure for filing such a complaint, a landlord should call the nearest police station.

Chapter 5
OTHER RIGHTS AND OBLIGATIONS DURING OCCUPANCY

In addition to the obligations imposed on both landlord and tenant with regard to the condition and maintenance of the apartment, there are other obligations that will be discussed in this Chapter.

A. PAYMENT OF RENT

Perhaps the most important obligation of a tenant is to pay the agreed amount of rent. A tenant must pay the rent when it is due or risk being evicted unless there is some legal justification for not paying the full rent. For example, if a tenant is properly following the procedures for withholding rent or repair and deduct, and such action is justified under the circumstances, then a tenant cannot be evicted for nonpayment.

Some landlords require that a tenant pay a late charge if the rent is late. However, a provision explaining this late charge must be contained in the lease and the penalty cannot be more than $10 per month if the rent is $500 or less. If the rent is more than $500, the maximum late penalty that can be charged is $10 plus five percent of any amount in excess of $500. Additionally, a landlord cannot circumvent this late fee cap by offering "discounts" if rent is paid before a specified date. If a tenant cannot pay the rent on time, the landlord should be contacted as soon as possible to see if arrangements can be made to make a late rent payment.

Note to tenants: The best way to pay your rent is by check. Write on each check the month for which the rent is paid, and keep each check when it is returned from the bank. If you pay by cash, ask the landlord for a receipt and keep it in a safe place. If you pay by money order, keep your copies, but remember that if the landlord sues you for rent, your copies are not proof that the landlord actually received the money order and cashed it. You will have to get the currency exchange to check its records. Always try to get a receipt for the payment of rent.

Note to landlords: Keep accurate records of rent due and rent paid. If you have no records or they are disorganized, you will have a hard time proving your case in court if you sue a tenant for failure to pay rent.

B. RENT LEVEL

Neither Chicago nor the State of Illinois has a "rent control" law that

controls how much a landlord can charge for rent. Unless a tenant lives in government owned or regulated housing, a landlord can charge whatever the market will allow, with one exception. A landlord cannot discriminate against a tenant by charging a higher rent because of race, religion, color, national origin, sex, marital status or certain other factors. (See Chapter 6 for a further discussion.)

C. RENT INCREASES

Both tenant and landlord should consider these rules with regard to rent increases:

1. If a tenant has a written lease for a certain time period that specifies the amount of rent, the landlord cannot raise the rent in the middle of the lease term. This applies even if the building is sold. The new owner is bound by the provisions of the lease.

2. If no written lease exists, but a tenant pays rent monthly according to an oral agreement with the landlord, then that landlord must give the tenant a 30-day written notice of a rent increase.

3. If a tenant pays rent weekly according to an oral agreement, the landlord must give the tenant a seven-day notice of a rent increase.

4. If a tenant lives in government-regulated or subsidized housing, specific rules about rent increases apply. (See Chapter 9.)

D. LANDLORD REMEDIES FOR NON-PAYMENT OF RENT

If a tenant does not pay rent when it is due, then a landlord has several remedies.

1. File Suit To Evict the Tenant

If a landlord wants to sue to evict a tenant for failure to pay rent, then he or she must first serve the tenant with written notice indicating that the tenant still has five days to pay the rent. (See Chapter 8, Section C for a discussion of eviction procedures.)

2. Sue the Tenant for the Rent

A landlord can sue a tenant to collect any unpaid rent. This claim can

be added to an eviction lawsuit if the landlord fills out a "Joint Action" complaint form. A landlord can file a separate lawsuit to recover rent due; however, the lawsuit will be a separate action and will be assigned to a different courtroom, not eviction court. (For a list of what must be specified in a rent claim lawsuit, see Appendix B(5).)

3. Distress for Rent

The Distress for Rent Act (Chapter 735, §§5/9-301 through 5/9-319 of the Illinois Compiled Statutes) authorizes a landlord or a landlord's agent to take as compensation for rent claimed to be due the tenant's personal property located in the county where the tenant resides. The Act has been interpreted to allow a landlord to enter a tenant's dwelling only in a peaceful manner. The Act *does not* authorize a landlord to lock a tenant out of an apartment. A landlord need not go to court before seizing a tenant's property. But a landlord must fill out a distress warrant and inventory of the property seized and file them with the clerk of the court "immediately" after seizing the property.

The warrant serves as a Complaint for rent due. The Sheriff is required to serve it, together with a summons, on the tenant. The tenant will then have the opportunity to defend the lawsuit.

A landlord may seize property only in the amount that reasonably approximates the amount of rent claimed to be due. Moreover, certain property is exempt from seizure, such as the tenant's clothing, Bible and schoolbooks, together with $2,000 worth of personal property and $750 worth of professional books or tools of the trade ("implements" to be selected by the tenant). To claim this exemption for "implements" of his or her trade, a tenant should file with the court within ten days of receipt of the distress warrant a list of the property selected to be exempt. If exempt property is seized, a landlord is liable to the tenant for double the value of the property seized (See Chapter 735, §§5/1001, 5/12-1002 and 5/12-1005 of the Illinois Compiled Statutes).

If a tenant wishes or needs to get the other property back, he or she must obtain a "release" of the property by filing a bond with the court for double the amount of rent claimed. If a tenant cannot obtain a bond, the landlord will be able to hold the property pending the outcome of the trial on the rent claim. If the tenant wins, the property is returned; if the landlord wins, the property can be sold by the landlord to help make up for the unpaid rent. A trial on a rent claim will normally take place about two to three weeks after the property is seized. If a tenant files a counterclaim or requests a jury trial, the trial may be later.

Some landlords think that the Distress for Rent Act authorizes them to lock out a tenant who is behind in rent. It does not. If a landlord illegally locks out a tenant, the tenant can sue for damages. (See Chapter 8, Section E.) Similarly, if a landlord seizes a tenant's property without following the steps required by the Distress Statute, then the tenant can sue for damages.

E. USE OF THE APARTMENT

Most leases provide that a tenant may use an apartment only for residential purposes and that a tenant must not disturb neighbors. If a tenant fails to follow these requirements, the tenant can be evicted. Before a landlord can evict a tenant for disturbing the neighbors, the landlord must notify the tenant, allowing the tenant ten days to remedy the problem. If a tenant takes care of the problem, a landlord cannot evict the tenant. However, if a tenant disturbs the neighbors again within 60 days after receiving a landlord's original ten-days' notice, the landlord can go to court to get an order telling the tenant to stop the bothersome conduct or the landlord can end the lease by serving another notice and ending the lease in ten days without the right to again take care of the problem. Note that having witnesses who are believable is very helpful to both landlord and tenant in these situations.

F. ACCESS TO THE APARTMENT

Under certain conditions a tenant must allow the landlord to enter the apartment. In most cases, a landlord must provide *prior written notice* of an intent to enter. A tenant cannot be unreasonable in denying a landlord permission to enter an apartment. A landlord must be allowed in:

- to make necessary or agreed repairs, decorations, changes or improvements;
- to supply necessary or agreed services;
- to make inspections that are allowed or required by law;
- to show the apartment or building to actual or prospective buyers, mortgagees, workers or contractors;
- to show the apartment to a prospective tenant if it is less than 60 days before the lease runs out;
- when it is necessary to enter in order to repair or maintain

other parts of the building that unexpectedly require that the landlord enter;

- to determine whether a tenant is obeying the terms of the lease;

- in case of emergency.

A landlord must not abuse the right to enter and cannot use it to harass a tenant. A landlord must give prior written notice except in those situations where a landlord needs to enter to make repairs in other parts of the building or in emergencies. In those situations the landlord can enter without warning but must tell a tenant that entry was made into the apartment within two days after entry. In all other cases, a landlord must give at least two days' notice before entering. A landlord's notice can be by mail, telephone, written letter or some other reasonable way that is a good faith attempt to inform the tenant. When a landlord needs to enter the apartment to make repairs on common areas shared with other tenants, such as in a hallways or stairways, the landlord can give general notice to all tenants whose apartments might be entered. The landlord can, for instance, post a sign near the mailboxes.

A landlord can enter only at reasonable times except in emergencies. Unless another time has been asked for by the tenant, a reasonable time is between 8:00 a.m. and 8:00 p.m.

If a tenant refuses to allow a landlord to enter under these conditions, the landlord can go to court and get an order telling the tenant to allow the landlord to enter. A landlord also can end a lease if a tenant refuses to allow the landlord to enter. To do so, the landlord must tell the tenant in writing why the landlord is canceling the lease and that the tenant has ten days to let the landlord enter. If a tenant refuses, the lease is canceled and the tenant can be evicted. The landlord then can sue the tenant and get payment for any costs that arise because the tenant would not let the landlord enter. The landlord also may be able to collect reasonable attorney's fees. (See Chapter 8, Section C.)

If a landlord enters without following these rules or makes unreasonable demands for entry simply to harass a tenant, the tenant may ask a judge to enter an order to make the landlord stop. A tenant also can cancel a lease by giving the landlord notice. The notice must be in writing and state that the tenant will cancel the lease in 14 days unless the landlord stops abusing the right to enter the apartment. If a landlord continues the behavior during the 14 days, the lease is canceled at the end of the 14 days. A tenant also can sue and may be able to receive reasonable attorney's fees and either one month's rent or twice the

amount of damages that arise from the landlord's actions, whichever is more. (§5-12-060; §5-12-180)

G. NUMBER OF OCCUPANTS

Most leases provide that an apartment can be occupied on a regular basis by only the persons listed on the lease or on the lease application. Courts will allow a landlord to evict a tenant who has violated such a provision. An occasional overnight guest is generally allowed.

In addition, the Chicago Municipal Code provides that it is illegal for a tenant to live in, or a landlord to allow or permit, an apartment that does not have the following square feet of floor space per occupant:

Floor area (Sq. Ft)	*Per Occupant*
125	for each of first two occupants
100	for each of next two occupants
75	for each additional occupant

H. CONDOMINIUM CONVERSION

A landlord cannot terminate a tenant's lease in the middle of the lease term because a landlord wants to convert the building to condominiums. Under §330 of the Illinois Condominium Property Act, a landlord must give a tenant at least 120-days written notice of the intention to convert a building from apartment units to condominiums. A tenant should receive a schedule of selling prices along with the notice. The notice also must give each tenant, except tenants in units to be vacated for rehabilitation, the opportunity to buy the unit within 30 days from receipt of notice. If a tenant's lease expires within this 120-day period, the tenant has the right to ask that the lease term be extended to the end of the 120-day period, at the same rent. To do this, the tenant must give the landlord notice of intent to stay within 30 days of receiving the landlord's notice of intent to convert. Should another person offer to buy the apartment during the period, the landlord must give the tenant an "option to buy," that gives the tenant a 30-day window in which to buy the condominium first under the same terms as the other person's offer. Apartment units may be shown to prospective purchasers only a reasonable number of times and at appropriate hours during the last 90 days of the tenancy. The statute also provides that any lease provision

contrary to the above requirements is unenforceable.

The Chicago Condominium Ordinance provides additional protection for tenants who fall into certain categories. If a tenant is over 65 years of age, deaf, blind, or unable to walk without assistance, the tenant shall have a right to continued occupancy for 180 days, not just 120 days as provided by state law. If another person offers to buy that person's apartment within the 180-day period, the tenant also must be given a 30-day option that permits the tenant to purchase the property under the same terms as the other person's offer.

Chapter 6
HOUSING DISCRIMINATION

A. INTRODUCTION

Housing discrimination can occur in a handful of different and potentially obvious ways. For example, what should a person do if a landlord refuses to show them an apartment, or refuses to rent the apartment? Or, what should a person do if a landlord offers an apartment for rent, but the offer is made based on different terms, conditions or privileges than it is offered to other tenants?

But a potential tenant should also consider that some differences in treatment are legal. For example, a family may have too many members to reside in the apartment, and a landlord would be violating a local building code by renting to the tenant. Or, a landlord may check a tenant's references and credit rating, and decide that the tenant may be unable to afford the rent on a particular apartment.

But everyone should know that it is illegal for a landlord to refuse to rent or show an apartment to a prospective tenant, or to offer an apartment based on different terms or conditions or privileges, primarily because of one or more of the following reasons: A landlord may not make the decision based on the prospective tenant's race, color, national origin or ancestry, sex, religion, physical or mental handicap, marital status, unfavorable military discharge, sexual orientation, source of income, because the family includes children under the age of 18, or because the tenant is 40 years or older.

A number of laws protect tenants from this form of discrimination. Some laws function to permit a tenant to move into an apartment he or she might otherwise have been prevented from moving into. Other laws allow a tenant to obtain money damages from the landlord. Still others punish the person who discriminates against a tenant. In some cases an individual can file a housing discrimination complaint on their own. In other situations, the person who is turned away by a landlord should consider hiring an attorney.

Sometimes the proof that a landlord is attempting to discriminate is found in the comments the landlord actually says to a prospective tenant. For example, he or she might admit: "I don't rent to single women," or "I don't rent to families."

Usually, however, a landlord does not make such an obvious statement

(the legal term is "admission"). Even if a landlord makes no verbal discriminatory statement, discrimination might be shown through the landlord's actions, such as if the landlord:

1. Advertises an apartment but then says the apartment has already been rented when a prospective tenant arrives and asks to look at the apartment or sign a lease;

2. Delays acting on an application or request to lease an apartment and then says someone else has asked to rent the apartment and the landlord agrees to rent to the second person; or

3. Imposes conditions on renting the apartment to one individual that are not conditions imposed on others.

These illustrate a few of the techniques used by landlords to illegally discriminate. But the difficulty for a potential tenants come when they realize that there also may be valid reasons for each of these actions, in any specific situation.

If any of these actions is taken against a prospective tenant, then that person might have been discriminated against. If an individual believes he or she has been discriminated against, many different laws exist to fit many different situations.

Anyone can file a civil complaint under as many of the laws as apply to his or her case. Federal, state and local laws protect against housing discrimination. A summary of each is provided below.

B. DISCRIMINATION BASED ON RACE, RELIGION, ETHNIC ORIGIN, ANCESTRY OR COLOR

If a person believes he or she has been discriminated against on any of these bases, these are the remedies available:

1. Suing the Landlord

Two federal laws protect individuals against discrimination based on race, ethnic origin or color in the rental of apartments. The Civil Rights Act of 1866 (Chapter 42 of the United States Code, §1982) applies to all landlords. In Illinois, a suit under this Act must be filed within two years of the alleged discriminatory act. If a tenant can prove discrimination occurred, a court could

order a landlord to pay money to the tenant (the legal term is "damages"). The court could also order the landlord not to rent the apartment to anyone except the person who was discriminated against or could order the landlord to take corrective action in the future. In most cases the landlord then rents to the tenant who brought the complaint.

The other federal law that prohibits discrimination because of race, religion, ethnic origin or color is the Fair Housing Act (Chapter 42 of the United States Code, beginning at §3601). Under this law, a tenant must file suit within two years of the refusal to rent. The court can order the landlord to pay the tenant damages, not to rent the apartment to anyone except the tenant, and to take corrective action in the future. The Act does not apply to owner-occupied buildings with four or fewer units, if discriminatory advertising is not used. In other words, if a landlord owns a two-flat and lives in one apartment, the prospective tenant could not sue the owner under the Fair Housing Act.

Although tenants can file a lawsuit without the assistance of a lawyer, a lawyer is recommended. The Leadership Council for Metropolitan Open Communities located at 401 S. State St., Suite 860, Chicago, Illinois 60605 (341-5678), provides legal services for these types of cases. If lawyers at the Leadership Council agree to represent a tenant, the tenant will not have to pay any fee. The landlord is liable for the cost of lawyer's fees if the case is won or settled against the landlord.

2. Complaining to the United States Department of Housing and Urban Development (HUD)

The Fair Housing Act also permits a tenant to file a complaint with HUD in addition to or instead of filing a lawsuit personally. Be sure to verify how many apartments are in the building involved, however, because HUD will not file an action if the landlord lives in the building and there are four or fewer units. A tenant can request a complaint form and file it with HUD by calling 886-7140 or visiting HUD's Regional Office of Fair Housing and Equal Opportunity at 77 West Jackson Boulevard, Suite 2101, Chicago 60604. The complaint must be filed within one year of the landlord's refusal to rent to a person or to show an apartment.

If necessary, HUD has the power to tell lawyers in the U.S. Justice Department to seek an immediate court order preventing the landlord from renting the apartment to another tenant, if the landlord has not already done so. HUD then may decide to try to get the tenant and landlord to resolve the complaint by asking the tenant to come to one or more conciliation conferences.

These are conferences where the parties talk together. Instead of trying to resolve the complaint, HUD may refer the tenant to the Illinois Department of Human Rights. If HUD tries but is not able to get the complaint resolved, and HUD determines that there is reasonable cause to believe that a violation of the law has occurred or is about to occur, a hearing will be scheduled at which the complainant may be awarded damages and the landlord may be required to pay a fine and to take corrective action in the future. However, if either party chooses, the hearing can be moved from HUD to federal court. A decision to move to federal court must be made within 20 days after HUD decides that there is reasonable cause for the complaint.

3. Complaining to the Illinois Department of Human Rights

The Illinois Human Rights Act also makes it illegal to refuse to show, rent, or offer different terms, conditions or privileges because of race, religion, national origin, ancestry or color. Under the Act, the Illinois Department of Human Rights is permitted to investigate and informally resolve complaints of discrimination. Complaints filed by the Department of Human Rights are heard and resolved by the Human Rights Commission. The Act has certain exclusions. For instance, it does not cover rental of an apartment in a building with five or fewer units where the landlord or the landlord's family lives in the building. Complaints must be filed within one year of the discriminatory act.

The Department has the power to go to court immediately after a complaint is filed to stop the landlord from renting the apartment to another tenant. This bar from rental can be maintained until the complaint has been decided. The Department, however, cannot seek such an order if the apartment has already been rented. The procedures are similar to that at HUD in that, if the parties cannot resolve the complaint, there will be a hearing. The remedies provided in the Act include requiring the landlord to rent the apartment to the complaining tenant, paying damages to the tenant, and compelling the landlord not to discriminate in the future.

A complaint may be filed at the Department office, 100 West Randolph Street, Suite 10-100, Chicago 60601, or by telephone, 814-6200, and must be filed within one year of the discriminatory conduct. A Department staff person will complete a written complaint and mail it to the tenant making the complaint. The tenant can file the complaint by signing and returning it to the Department.

4. Complaining to the Illinois Department of Professional Regulation

Illinois real estate brokers and salespeople are governed by the Real Estate License Act (Chapter 225, beginning at §455/1 of the Illinois Compiled Statutes), which is administered by the Illinois Department of Professional Regulation. Under the statute, the Department can take many different actions against the landlord. The Department may: refuse to issue or renew a license to a broker or salesperson; place this person on probation; suspend or revoke a license; or censure, reprimand or impose a monetary penalty on a broker or salesperson who has refused to show or rent an apartment or has offered the apartment to someone on different terms, conditions or privileges in violation of the Illinois Human Rights Act.

This process is not directed at requiring the landlord to rent to the prospective tenant, but only toward punishing the person for refusing to do so. Any fines imposed on the broker or salesperson are not paid to the person making the complaint but instead to the state. The statute does not require that anyone renting an apartment have a real estate license.

This type of complaint may be filed easily without an attorney. Complaints must be in writing and must include any documents the tenant has, such as an application or lease. People at the Department will help the tenant fill out the complaint and will provide information about whether the landlord has or should have a license. The Department is located at 100 West Randolph Street, Suite 9-300, Chicago 60601; the telephone number for complaints is 814-4500.

5. Complaining to the Fair Housing Section of the Chicago Commission on Human Relations

The City of Chicago has a Fair Housing Ordinance that prohibits discrimination based on race, religion, color, national origin or ancestry in the rental of housing and that allows the Chicago Commission on Human Relations to investigate and try to resolve complaints of discrimination. Complaints must be filed with the Commission within 180 days after the discriminatory conduct. The Commission will attempt to get the parties to reach a mutual resolution of the matter. If the parties are unable to do so, the Commission will investigate the complaint and, upon a determination that there is substantial evidence supporting the claims, it will set the matter for a hearing on the charges. The Commission can award full relief upon a determination in the complainant's favor and may also impose a fine upon the respondent of up to $500.00 for each

violation. Complaints may be filed by going to the Chicago Commission on Human Relations, 500 North Peshtigo Court, Suite 6-A, Chicago, Illinois 60611 or by calling 744-4111.

C. SEX DISCRIMINATION

A landlord may not refuse to show or rent an apartment or offer different terms, conditions or privileges, because of a person's sex. In the same way, a landlord cannot deny someone an apartment because the person refuses sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature. Individuals who believe they have been discriminated against in this way can:

1. Sue the landlord or rental agency for damages and to obtain the apartment under the Fair Housing Act.

2. Complain to HUD.

3. Complain to the Chicago Department of Housing.

4. Complain to the Illinois Department of Human Rights.

5. Complain to the Illinois Department of Professional Regulation.

(The details of each of these department and the purpose behind filing an action are discussed above in Section A.)

D. DISCRIMINATION AGAINST THE HANDICAPPED

Individuals who believe they have been discriminated against in the rental of housing because of a physical or mental handicap or because they have a guide, hearing or support dog, may be able to file a lawsuit in federal court or can file a complaint with the Illinois Department of Human Rights, the Illinois Department of Professional Regulation, the Chicago Commission on Human Relations or HUD. (For further details on these options see Section A above.)

E. DISCRIMINATION ON THE BASIS OF MARITAL STATUS

The City of Chicago Fair Housing Ordinance and the Illinois Human Rights Act prohibit discrimination in rentals on the basis of marital status. This can apply whether the discrimination is based on someone being married, single,

divorced or widowed. Individuals who believe they have been discriminated against based on marital status can file a complaint with the Chicago Commission on Human Relations or the Illinois Department of Human Rights. (See Section A above for more details.)

F. DISCRIMINATION AGAINST FAMILIES WITH CHILDREN

The Chicago Fair Housing Ordinance, the Illinois Human Rights Act and the Federal Fair Housing Act protect a potential tenant from being discriminated against because his or her family includes a child under the age of 18. Those who believe that the law has been violated may file a lawsuit in federal court or may file a complaint with the Chicago Commission on Human Relations, the Illinois Department of Human Rights, the Illinois Department of Professional Regulation or HUD. (See Section A above for more details.)

G. AGE DISCRIMINATION

If a person over the age of 40 believes he or she is discriminated against either because a landlord refuses to show an apartment, refuses to rent, or offers the apartment on different terms, conditions and privileges, then he or she can file a complaint under the Chicago Fair Housing Ordinance and the Human Rights Act. A person who believes discrimination occurred can file a complaint with the Chicago Commission on Human Relations, the Illinois Department of Human Rights or the Illinois Department of Professional Regulation. (See Section A above for more details.)

H. DISCRIMINATION BASED ON UNFAVORABLE DISCHARGE FROM THE MILITARY

Even if a person was unfavorably discharged from the military, a landlord cannot discriminate in the renting of an apartment. This is governed by the Illinois Human Rights Act and also covers discharges from the Reserves and the National Guard. It does <u>not</u> cover someone who was dishonorably discharged.

The Chicago Fair Housing Ordinance also prohibits discrimination in rental housing based on military discharge status. The law does not say whether it covers those who are dishonorably discharged.

(See Section A above for how to file a complaint under either the Act or Ordinance.)

I. DISCRIMINATION BASED ON SEXUAL ORIENTATION

The Chicago Fair Housing Ordinance prohibits discrimination in rental housing based on sexual orientation. This means that a person cannot be discriminated against because the person is gay or lesbian. Anyone who believes he or she has been discriminated against on this basis may file a complaint with the Chicago Commission on Human Relations. (See Section A above for procedures.)

J. DISCRIMINATION BASED ON SOURCE OF INCOME

Where a person gets his income, so long as it comes from lawful means, cannot be the basis for rejecting a potential tenant under the Chicago Fair Housing Ordinance. For example, a landlord cannot reject an apartment applicant because the person's income comes from Aid to Families with Dependent Children or from the Section 8 program, although the landlord can reject someone who does not make enough money to rent an apartment. Those who believe they have been discriminated against on this basis may file a complaint with the Chicago Commission on Human Relations. (See Section A above for procedures.)

K. DISCRIMINATORY HARASSMENT, INTIMIDATION, THREATS, INTERFERENCE AND EVICTION

What if a tenant moves into an apartment with little or no problem, but afterwards racist graffiti is written on the door and, as a consequence, the landlord attempts to evict the tenant? It is illegal under the federal Fair Housing Act to harass, intimidate, threaten, interfere with or evict a tenant because of race, color, religion, sex, national origin, physical or mental handicap or familial status. This applies to neighbors as well as to the landlord. Individuals who believe this has happened to them can file a federal lawsuit or a complaint with HUD. (See Section A above for procedures.)

It is also illegal to sexually harass a tenant. This means that the landlord cannot alter the conditions of tenancy if a tenant refuses sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature. For instance, a landlord cannot make a tenant pay increased rent or evict the tenant for refusing to have sex. A landlord also may not create a sexually harassing environment. This means that if a landlord's sexual harassment is pervasive and persistent, it is illegal even if the tenant is not threatened with losing his or her lease. Individuals who believe they have been sexually harassed can file a federal lawsuit or a complaint with HUD. (See Section A above for

procedures.)

L. DISCRIMINATORY RETALIATION

Can a landlord retaliate against a tenant by evicting the tenant because the tenant files a discrimination complaint or lawsuit? The answer is "no" under both the federal laws covering housing discrimination and under the Illinois Human Rights Act. Tenants who believe their landlord has retaliated against them in this way can file an additional complaint in federal court, with HUD, or with the Illinois Department of Human Rights. (See Section A above for procedures.)

Chapter 7
LEASE RENEWALS

A. INTRODUCTION

If a tenant has a written lease for a fixed term, it automatically expires at the end of the term. Under §5-12-130(i) of the Ordinance, no landlord may ask a tenant to renew a lease more than 90 days prior to the last date of the lease. A tenant can recover one month's rent or actual damages from a landlord if the landlord violates this section. Most landlords notify the tenant a month or two before the end of a lease to ask whether or not they plan to renew. If a landlord intends not to offer the apartment on a new lease, however, the tenant must be notified in writing at least 30 days prior to the stated termination date of the lease. If the landlord fails to provide such a notice, the tenant may remain in the dwelling unit for up to 60 days from the date the landlord provides the required notice at the same rent as in the previous lease.

Normally, a landlord sends each tenant a new lease form for a term immediately following the existing lease term. Some landlords may send the tenant a lease renewal form providing for renewal of the existing lease for a specified period of time, and often for a higher rent. These procedures are legal.

B. RENT RAISES

Often a landlord will ask for a higher rent for the new lease term. Unless a landlord is regulated by the government, such as discussed in Chapter 9, the landlord may charge any amount of rent. The landlord, however, cannot charge one tenant more rent than another tenant simply because of race, religion, color, national origin or ancestry, sex, marital status, unfavorable military discharge, age (if over 40), or because one tenant has children under the age of 18 in their family. (See Chapter 6 for a further discussion.)

If the rent increase is exorbitant, a tenant can try to negotiate with the landlord. Negotiations are likely, however, to be more successful if other tenants in the building make similar requests. (Also see Chapter 5, Section B and C and Chapter 10.)

C. REFUSALS TO RENEW

The basic rule is that when a written lease for a fixed term expires, it can be renewed or not renewed at the landlord's option. There are two exceptions to this rule.

1. A landlord cannot refuse to renew a lease simply because of the illegal discrimination factors listed in Section B above or because the tenant filed a complaint based on one of those factors. (See Chapter 6 for a further discussion.)

2. A landlord cannot refuse to renew a tenant's lease because a tenant engaged in activities protected by the Ordinance. These activities include complaining about city code violations, requesting that repairs be made, joining a tenants' organization, testifying in court about conditions in the apartment or exercising any right or remedy provided in the Ordinance or state law. (See Chapter 8, Section C(12), for a further discussion.)

D. SECURITY DEPOSITS

When renewing a lease at a higher rent, most landlords ask the tenant to pay an additional amount on the security deposit to bring it up to the level of one month's rent. This practice is legal.

But both landlord and tenant must remember that the Ordinance requires a landlord to pay to the tenant five percent (5%) interest on a security deposit within 30 days after the end of each 12-month rental period. This can be paid in cash or in a credit toward the next month's rent. If a landlord does not pay the interest within the 30-day period, a tenant may recover the interest plus twice the amount of the security deposit and attorney's fees. (See Chapter 3, Section E for more information on security deposits.)

Chapter 8
TERMINATING THE LANDLORD-TENANT RELATIONSHIP

A. INTRODUCTION

This chapter discusses the ways in which the landlord-tenant relationship can be terminated. The topics discussed include the legal requirements when a tenant wants to move out of an apartment either at the end or in the middle of the lease term; grounds, procedures and defenses for evictions; the circumstances under which a tenant can still be liable for payment of rent even after moving out, whether voluntarily or evicted in the middle of the lease term; and lockouts and tenants' remedies against illegal lockouts.

B. THE TENANT WANTS TO MOVE OUT

1. Moving Out at the End of the Lease

If a tenant has a written lease for a fixed term and wants to move out at the end of the lease, then the tenant does not have to give the landlord any advance warning of an impending move unless the lease specifically requires such notice. To avoid confusion and handle the move in a respectable manner, a tenant should give the landlord notice of the move and his or her new address, so the security deposit can be returned. A tenant must move out by the last day of the lease and return all door keys to the landlord. A tenant might want to take pictures of the apartment or have a friend look through it in case a landlord claims a tenant left the apartment in a damaged condition and attempts to retain a portion of the security deposit.

a. Notice to Landlord

If a tenant has an oral lease, a tenant must give the landlord at least seven-days' advance notice if the rent normally is paid weekly, or at least 30-days' notice if rent is paid by the month. The notice does not have to be in a particular form, but it is recommended that the tenant give the notice in writing and keep a copy for the tenant's files. If rent is due on the first of the month, a tenant must deliver notice of intent to move out at the end of the proceeding month. For instance, a tenant can deliver a notice dated October 31, saying that he or she will move out on November 30.

b. A Tenant Is Not Allowed To "Live Out" the Security Deposit

It is not an uncommon practice for a tenant to "live out" a security

deposit instead of paying the last month's rent. Unless a landlord has agreed to this, the practice is illegal. Because the purpose of the security deposit is to cover any damage (other than ordinary wear and tear) caused by a tenant while occupying the premises, a landlord has the right to require tenants to pay rent until they actually move out. Only after a tenant moves out is the tenant entitled to a refund of the security deposit. A tenant can ask a landlord for permission to "live out" the security deposit, and though the landlord is not required to agree to this, he or she may do so. This agreement should be in writing and both landlord and tenant should keep a copy.

c. Security Deposit Refund

If a tenant moves out and all rent is paid, the landlord must refund the security deposit after the tenant moves out unless there is damage to the apartment. A landlord is entitled to inspect an apartment before refunding the deposit. If all rent has not been paid or the apartment is damaged, a landlord can deduct those amounts from the security deposit. Specifically, the landlord can deduct the amount of the unpaid rent that has not been validly withheld or deducted according to the Ordinance and the cost of repairing any damage in the apartment. A landlord, however, cannot withhold the security deposit simply because there has been "ordinary wear and tear" to the apartment. Thus, if an apartment should be repainted because it has not been painted for ten years, if a faucet needs a worn-out washer replaced or if an old window cord has broken due to normal use, the landlord cannot charge the tenant for these expenses.

The Ordinance (§5-12-080(d)) provides that a landlord must send the tenant an itemized statement of any damage claimed and the estimated or actual cost of repair within 30 days after the tenant moves out. If a landlord provides a former tenant only with estimated costs for the repairs, then he or she must later provide copies of the paid receipts within 30 days after giving the estimate. If no itemized statement is provided, a landlord cannot withhold any part of the security deposit and must refund it in full within 45 days after the tenant moves out. If a landlord provides a statement of damage, the remaining portion of the deposit must be returned to the former tenant within 45 days.

A tenant who moves should notify the landlord in writing of his or her new address and request the security deposit plus interest. The tenant should keep a copy of the letter. (See Appendix E(5) and E(6). If a landlord does not provide the required list of damages and bills or does not return the deposit within the required time, a tenant should send another written request to the landlord, keeping a copy. If that does not work, a lawsuit can be filed against

the landlord to recover the deposit. The Ordinance provides that if the court finds that these requirements have been violated, the landlord must pay to the tenant damages equal to twice the amount of the deposit, plus court costs and reasonable attorney's fees.

d. Security Deposit Interest

The Ordinance (§5-12-080(c)) provides that a landlord who holds a security deposit must pay interest to the tenant at a rate of five percent per year. The law requires that a landlord shall, within 30 days after the end of each 12-month rental period, pay to the tenant any interest by cash or credit to be applied to the rent due.

If a landlord does not pay interest when it is due, the tenant should write a letter to the landlord requesting that it be paid. See Appendix E(6). If that does not work, the tenant may file a lawsuit. Under the Ordinance, a landlord found in violation of the interest provisions may be awarded damages in an amount equal to two times the security deposit plus five percent interest, court costs and reasonable attorney's fees.

e. Landlord Remedies Against Tenants Who Do Not Move Out at the End of the Lease Term

A tenant who cannot move out at the end of a lease term should contact the landlord and the incoming new tenant to see if temporary arrangements can be made to permit the tenant to remain in the building. If no agreement can be worked out, the tenant may be subject to one of the following claims or lawsuits:

i. The landlord (or the new tenant) can file an eviction action against the tenant.

ii. The landlord can treat the tenant as a "holdover tenant," in effect renewing the lease.

iii. The landlord can claim double rent if the tenant has willfully stayed in the apartment after expiration of the lease and after the landlord has demanded possession of the apartment in writing.

iv. If the lease has what is known as a "liquidated damages" provision, the landlord might be able to claim a set amount of money from the tenant according to the terms of that provision.

2. Moving Out Before the End of the Lease

Many leases require a tenant who moves out before the end of a lease to be responsible to pay the rent for the remainder of the lease term. However, there are several ways a tenant can attempt to end the lease obligation with no further responsibility to the landlord. Most importantly, a tenant can find a suitable subtenant or negotiate with the landlord to cancel the lease agreement.

If a landlord deliberately interferes with a tenant's right to occupy an apartment or fails to maintain the apartment in material compliance with the Chicago Building Code, the tenant may terminate the lease and will not be liable for rent thereafter. (See Chapter 4.)

a. Subletting

A tenant who wishes to terminate the rent agreement without legal cause has the primary obligation to find a reasonable subtenant. However, the Ordinance states that the landlord also has the responsibility to make a good faith effort to re-rent the tenant's apartment at a fair rent (rent charged for comparable apartments on the premises or in the neighborhood).

Additionally, a landlord must accept a reasonable sublessee proposed by the tenant without assessing any additional fees or charges against the tenant. If the landlord does not accept the reasonable substitute renter for the apartment, the tenant is no longer liable for the additional rent. A tenant is responsible for the reasonable advertising costs incurred by the landlord in trying to re-rent the apartment.

A tenant remains responsible for the rent until the apartment is re-rented. If a landlord accepts the subtenant and the subtenant pays the rent and otherwise complies with the lease, the tenant should have no further problems. If, however, a subtenant does not pay the rent, a landlord can claim it from the tenant. If the landlord accepts the subtenant, the landlord can hold the tenant's security deposit until the end of the lease. The tenant should ask the landlord to take a new security deposit from the subtenant and refund the tenant's money. If a landlord does not agree to this, the tenant may ask the subtenant for a security deposit.

b. Lease Cancellation

If a landlord cancels the lease, the tenant is not liable for future rent. Therefore, it is in a tenant's interest to ask a landlord to cancel a lease. It also

might be in the landlord's interest to cancel a lease because then an apartment can be re-rented for a new lease term possibly at a higher rent, not just for the remainder of the tenant's lease term. On the other hand, if a landlord accepts a subtenant for the remainder of the lease, the tenant still is responsible for paying rent if the subtenant fails to do so. A tenant who pays the rent has the right to collect it from a subtenant.

Although a tenant does not have the right to compel a landlord to cancel a lease in the middle of the lease term, it may be possible to negotiate a cancellation. If a landlord does agree to cancel a lease, the agreement should be in writing and signed by both landlord and tenant. It should state that the lease will be canceled on a certain date and that the tenant will not be liable on any terms of the lease, including payment of rent, in the future. Both parties should keep a copy of the agreement.

C. THE LANDLORD WANTS THE TENANT TO MOVE OUT

This section deals primarily with grounds, procedures and defenses for evictions. As a general rule, even if grounds for eviction exist, a landlord must file an eviction lawsuit and comply with the required procedures before a tenant can be forcibly evicted. For tenants in public or subsidized housing, the procedures are more complicated and will be discussed in detail in Chapter 9.

1. Grounds for Eviction

A landlord can seek a tenant's eviction either because the term of the lease has ended or because a tenant has failed to comply with a provision in the lease, such as paying rent.

If a lease is for a fixed term, whether a year or a week, a tenant is required to move out at the end of the lease unless the landlord has agreed to renew the lease. A landlord is obligated to inform a tenant in writing at least 30 days prior to the termination date in the lease if the landlord does not want to renew the lease. (See Chapter 7.)

2. Termination of Tenancy Notices

In all situations where a landlord seeks to end a lease in midterm, the landlord must first give the tenant a "termination notice" advising the tenant of the landlord's demand that the tenant move out. There are several different types of termination notices, the most common of which are the following:

a. Five-Day Notice. If a landlord claims a tenant owes rent, the landlord must give the tenant a five-day notice, specifying the amount of the rent claimed and giving the tenant five days to pay. If, in that five-day period, the tenant offers all the rent due, the landlord must accept it and cannot initiate an eviction lawsuit.

b. Ten-Day Notice. If a landlord claims a tenant violated a condi tion of the lease, the landlord can give a ten-day notice. That notice must specify the violation, and demand that the tenant move at the end of ten days if the problem is not corrected. If the landlord does not inform the tenant of the ten-day right to cure (to resolve the problem) or if the tenant corrects the problem within ten days, the landlord cannot initiate an eviction lawsuit.

c. Seven-Day or 30-Day Notice. If there is no written lease, the landlord can ask the tenant to move without giving a reason. If rent is paid monthly, the landlord must give a 30-day notice. If rent is paid by the week, the landlord must give a seven-day notice.

Tenants in public housing or other government-subsidized housing cannot be evicted except for good cause, which must be specified in the notices. (See Chapter 9 for further discussion.)

3. Filling Out the Notice

Appendix B contains an example of the front and back of a five-day notice. A landlord or landlord's agent is required to fill out the front of a notice form and give a tenant notice on the date indicated on the bottom. After giving (the legal term is "serving") a tenant notice, the landlord must fill out the front and back of a notice form. The back of the form lists the date and method used to give the notice to the tenant. A landlord or agent should sign the back and have it notarized. A tenant's copy does not have to be notarized. If a landlord later files a lawsuit against a tenant, the landlord or the landlord's lawyer can present the notarized copy of the notice form to the judge as evidence of service.

4. Service of Notice

A statute provides that a landlord or the landlord's agent can serve (or give) a termination notice to a tenant in one of four ways:

a. delivering a copy to the tenant personally;

b. leaving a copy with a person 13 years of age or older who. lives in the apartment;

c. mailing a copy of the notice to the tenant by certified or registered mail, return receipt requested; or

d. if the premises appears abandoned, the landlord can post the notice on the premises.

A landlord is not supposed to slip the notice under the door. But if a landlord does slip the notice under the door, a tenant should either pay the rent due or seek legal assistance.

5. What Should a Tenant Do Upon Receiving a Termination Notice?

A tenant who receives a termination notice and believes he or she should not have to move should call the landlord immediately. The tenant may believe that the rent due has already been paid or that the landlord has made a mistake in serving notice on the tenant. To be safe, a tenant should offer to pay any unpaid rent.

A tenant who receives a termination notice and wants to move should tell the landlord when the move will be complete and when the keys will be returned. Rent must be paid through the day the tenant remains in the apartment and holds the keys, and sometimes later, depending upon the provisions of the lease.

6. When Can an Eviction Suit Be Filed?

A landlord can file an eviction suit in any of the following circumstances:

a. when a tenant has not moved out on the date the lease term expires (assuming the landlord has provided proper notice of nonrenewal as discussed in Chapter 7);

b. when a tenant has not moved out after receipt of a proper 30-day or seven-day notice in a month-to-month or week-to-week tenancy;

c. when a tenant has failed to correct a problem cited in the ten-day termination notice within the ten days provided; or

d. when a tenant has failed to pay the rent within five days after receipt of a five-day termination notice.

7. How to File and Prosecute an Eviction Lawsuit

A landlord must file an eviction lawsuit to get a tenant to move. This section is written for landlords, but tenants should read it too. If a case is complicated, the landlord should hire an attorney. The following seven steps explain how to file an eviction suit in Chicago.

a. Fill out an original plus three copies of the Complaint and Summons. (A copy of each is found in Appendix B.) There are two forms of Complaint: one for possession only and one for possession and rent. The first should be used if you want the court to order a tenant evicted. The second should be used if you also want the court to order a tenant to pay any rent due.

b. File these papers (your complaint) with one of the cashiers in Room 602 of the Daley Center at Randolph and Clark streets. The cashier will charge you a filing fee and return some of the papers to you.

c. To have the complaint served on your tenant, take the papers to the Sheriff's Office in Room 701. File them with one of the clerks at the counter. You will be charged a fee for the service of summons. Keep at least one copy of the Complaint and Summons.

d. Go to the courtroom specified on the date and time set for the trial. When you hear your case called, step up to the front and tell the judge that you are the landlord and show the judge the notarized termination notice served on the tenant. If the ground for eviction is nonpayment of rent, bring your records of the tenant's nonpayment. If the judge finds in favor of the tenant and dismisses your lawsuit, you will have to continue renting to the tenant until the tenancy is properly terminated.

e. If the judge orders the tenant evicted, the judge will give the tenant some time (usually 15 days) to move. If the tenant is not

in court, you should later tell the tenant of the eviction order. The judge will sign an "order for possession," which is found on the back of the complaint form.

f. If the tenant does not move out within the time the judge ordered, go to Room 601 of the Daley Center and ask the clerk to give you the court file. Take it to the clerk in Room 602 who deals with eviction orders. The clerk will have you take some forms, including the "order for possession," to the Sheriff's Office in Room 702. There, you will be asked to pay a filing fee, a deposit, and agree to pay any additional costs incurred by the Sheriff in evicting the tenant. You also must give the Sheriff's clerk a self-addressed stamped postcard, which will be returned to you stating whether the Sheriff had to evict the tenant or the tenant moved out voluntarily. Depending on how much work the Sheriff had to do to evict the tenant, you may receive back a portion of your deposit fee.

8. How Must the Sheriff Serve the Complaint and Summons?

Only the Sheriff or another person designated by the Court is allowed to serve (give) a Complaint and Summons on a tenant. A Sheriff must either deliver the papers to the tenant personally or leave them at the apartment with a member of the tenant's family who is 13 years or older. The landlord also should mail a copy to the tenant. If a Sheriff has not been able to serve a tenant or appropriate family member after diligent attempts, the law allows the Sheriff to mail the tenant a copy of the summons and either publish a notice of the notice in the newspaper or post a notice in a public place. To do this, the landlord must first file an appropriate affidavit with the court that the tenant cannot be found or has left the state. The posted notice is usually in the court building.

If a tenant is actually notified of the action as a result of this public posting or newspaper publication, the tenant should contact a lawyer immediately. If a tenant believes he or she has not been served by the Sheriff's office but then learns that the Sheriff's Office is claiming to have served the court papers on the tenant, the tenant should contact a lawyer immediately.

9. What Should a Tenant Do Upon Receiving a Summons?

In Cook County, a summons tells a tenant to come to court on the date

set for trial, called a "return date." A tenant must file an "appearance," which is a legal acknowledgement to the court that you have been served and intend to participate in the court action on the complaint. A tenant who receives a summons should decide whether to go to court alone or to have an attorney represent him or her. If in doubt, the tenant should see a lawyer as soon as possible. Getting a lawyer several days before the return date means that the lawyer can file an appearance for the tenant.

When an appearance is filed, a tenant will be required to pay a fee in order to defend the case. (See Appendix C1.) A tenant who does not have the money with them at court, but can obtain it, can ask the clerk to postpone the payment of the fee. In Cook County, this is done by filling out a form for a temporary "waiver" of fee. A tenant who cannot afford to pay the fee at all can ask the clerk for an *Application To Sue or Defend as a Poor Person.* (See Appendix C2.) The application will need to be completed and given to the judge. In Cook County this can be done when the case is called. If the judge approves the petition the tenant will not have to pay the appearance fee.

A tenant who believes he or she has not been properly served with the summons can ask the clerk for a "special appearance" form. This allows a tenant to ask the court to dismiss the case simply because the summons was served improperly. A tenant should see a lawyer in such a situation because simply appearing in court, without filing a special appearance, could give the court permission to hear the case and waive your right to be properly served.

If a tenant wants a jury to hear his or her case, a "jury demand" also must be filed on the return date. A tenant who wants a jury trial (see Section 17 below) must make sure the appearance form says "jury demand" and must pay an additional fee. If an *Application to Sue or Defend as a Poor Person* has been approved, the tenant will not have to pay a fee for a jury trial. (See Appendix C.)

The tenant should make sure to ask for the jury trial at the time the appearance is filed, otherwise the court might rule that the tenant has "waived" the right to a jury trial. A tenant who plans to present any of the complicated defenses listed in Section 11 below should consider asking for a jury trial because in Chicago, the non-jury trials are very rushed and in some cases they may not have a full opportunity to present their cases. A tenant requesting a jury trial should consider contacting an attorney immediately.

10. Should a Tenant Go to Court Without an Attorney?

Although a tenant has a legal right to defend himself or herself without being represented by a lawyer, it is recommended that a tenant go it alone only where routine defenses will be argued. (See Section 11 on eviction defenses.) A tenant also might avoid finding and hiring an attorney if the tenant does not plan to fight the eviction and plans to move anyway within 14 days of trial. Even if a tenant loses, a judge will likely give a tenant 14 days to move out of the apartment. If the landlord is suing for rent as well as possession of the apartment, even a tenant who plans on moving out should seek the advice of a lawyer or try to speak to someone from a community organization that assists tenants. (See Appendix A.)

11. Eviction Defenses

The following is a list of routine eviction defenses which a tenant may be able to present to the court without finding or hiring a lawyer:

a. Paid or Offered Rent

A landlord claims the tenant has not paid rent but the tenant has either paid or offered to pay all rent due within the period of a five-day notice. The tenant should have records or witnesses to help present this defense.

b. Premature Filing

A tenant received a termination notice and the landlord filed the eviction lawsuit before the period ran out. For example, if a tenant received a five-day notice dated November 2 that asked for the rent to be paid by November 8, it would be premature for the landlord to file a lawsuit on or before November 8. A tenant who wants to rely on this defense should be sure to bring the termination letter and date-stamped copy of the complaint to court.

c. Improper Notice

The tenant received too short a termination notice. For instance, if a tenant has a month-to-month lease and should therefore be given a 30-day termination notice, the tenant has a defense to the landlord's action if the landlord gave a tenant only a 25-day notice.

d. Correcting the Breach of Lease Terms

A tenant can avoid eviction by correcting his or her improper action (called "curing a breach," in legal terms). For instance, if a tenant received a ten-day termination notice and fixed the problem before the ten days was over, the tenant has cured the problem and should bring evidence of the "cure" to court to be presented in defense.

The following are more complicated defenses, and a tenant should consider finding or hiring an attorney for help:

e. Repair and Deduct

A tenant exercised the right to repair and deduct under the Ordinance, and the landlord filed an eviction action for nonpayment of rent. The tenant's defense is (1) proof that a proper 14-day notice was served on the landlord; and (2) copies or originals of the receipts for the work done in the apartment.

f. Rent Withholding

A tenant exercised the right to withhold rent under the Ordinance and the landlord filed an eviction action for nonpayment of rent. The tenant's defense is (1) proof that a proper 14-day notice was served on the landlord; and (2) reasonable grounds for withholding a sum of money from the rent which reflects the diminished value of the apartment due to the landlord's failure to maintain. The tenant may want to obtain relevant building code inspection reports to use as evidence.

g. Landlord Fails To Provide Essential Services

A tenant exercised the right to withhold rent under the Ordinance according to "Tenant Remedy for Landlord's Failure To Provide Essential Services," and the landlord sued for eviction for failure to pay rent. The tenant's defense is (1) proof of proper notice was served on the landlord; and (2) proper compliance with the procedure for using the remedy.

12. Retaliatory Eviction

The Ordinance makes it unlawful for a landlord to take retaliatory action against a tenant. A landlord may not knowingly terminate a tenancy, increase rent, decrease services, bring or threaten to bring a lawsuit against a tenant for possession or refuse to renew a lease or tenancy because the tenant has in good

faith done any of the following:

a. Complained to a governmental agency, elected representative or public official about building code violations in or about the tenant's apartment.

b. Complained to a community organization or the news media about a building, housing or health code violation or an illegal practice by the landlord.

c. Sought the assistance of a community organization or the news media to remedy a code violation or illegal practice by a landlord.

d. Requested that a landlord repair the premises as required by a building code, health ordinance, or rental agreement.

e. Became a member of a tenants' union or similar organization.

f. Testified in any court or administrative proceeding concerning the condition of the premises.

g. Exercised any right or remedy provided by law.

A tenant whose landlord retaliates against him or her in any of the ways mentioned has a defense in any retaliatory action brought. A tenant in this situation could be awarded: (1) recovery of possession of the apartment or termination of the rental agreement; (2) reasonable attorney's fees; (3) an amount equal to, but not more than, two months' rent or twice the damages sustained by them, whichever is greater.

If a tenant chooses to terminate the rental agreement, the landlord must return the tenant's security deposit, interest and all prepaid rent.

A tenant who exercises a right in any of the ways previously stated is protected for one year against any alleged act of retaliation by the landlord. A court will presume a landlord's acts were retaliatory unless the landlord states a good faith reason for the eviction. If a landlord states a good faith reason for the eviction, a tenant will have to prove that the landlord's acts were retaliatory. To do this, a tenant must present enough evidence so that the court believes that it is more likely than not that the eviction was in retaliation for something done

by the tenant.

13. Discrimination

The law prohibits a landlord from discriminating against a tenant because of the factors discussed in Chapter 6. A tenant has a defense if the landlord attempts an eviction for any one of these reasons. Furthermore, a landlord cannot evict a tenant just because he or she has children under age 18. However, a landlord can limit the number of persons living in an apartment based on space requirements provided in the Chicago Municipal Code. (See Chapter 5, Section G.)

14. Breach of Lease Provisions Other than Nonpayment of Rent

A landlord can sue a tenant for possession of an apartment, if the tenant has violated a condition of the lease. However, the landlord must serve the tenant a ten-day notice and allow the tenant to fix the violation within the ten day period of time. If the tenant does not cure the violation, the lease agreement will end as provided in the notice, and the landlord can sue the tenant for possession of the apartment. At the trial, the landlord has to prove that the tenant violated the lease, and the tenant has the right to prove that the lease was not violated, or that the violation was corrected within ten days of receipt of the ten-day notice.

15. What Happens at an Eviction Trial

The following is an explanation of an eviction trial, from beginning to end, from a tenant's perspective.

a. Court Procedure

If you are the tenant, you should go to court 15 minutes before the trial time. If you are late, a judge may already have heard the case and found in favor of the landlord. Check in with the clerk to make sure you are in the right place. Ask the clerk what number your case is on the list. When your case is called, step up to the judge and be prepared to present your case. Continuances are rarely given.

You should have all your papers with you, including: the termination notice, summons and rent receipts. If you are prepared to pay additional rent, have the cash or a check with you. If you have any witnesses, have them join you when your case is called. Eviction courts are crowded and busy courtrooms.

On the average, the judge hears about one case every two minutes.

The usual procedure is for a landlord's attorney to show the judge the termination notice. A landlord must first present evidence in support of the landlord's case. This is called presenting a "prima facie" case. If a landlord claims that you have not paid rent, proof will have to be presented to show that: (a) you have not paid the full rent due; and (b) the landlord served you with a proper five-day notice.

When presenting a case, a landlord or attorney can ask you if you received the notice and paid the rent. If a judge asks you if you received the notice or paid the rent before the landlord presents any evidence, you can tell the judge that the landlord has not proved his or her case and ask that the case be dismissed.

If the landlord presents sufficient evidence in support of the case, you will have to present evidence to support your defense. The judge will ask you if there is a defense. You should be assertive.

Here are some suggestions on how to present your defense to the judge:

(1) Payment of Rent Defense

If your defense is that you have paid all rent due, you must prove that your landlord accepted the rent or that you offered the full amount of rent within the five-day notice period. If you offered it after that, it is too late unless the landlord accepted the payment. Show the judge your canceled checks or receipts. If you paid by money order or certified check, the landlord might say that it was never received. If this is so, ask the judge for at least a one-week continuance to give you time to contact the bank or currency exchange to prove that the landlord received the payment. If the landlord is not in court but the landlord's attorney testifies that you have not paid rent or that the landlord never received it, you should object to this testimony. If the judge allows the attorney to testify anyway, you can ask that the attorney first swear to tell the truth.

(2) Defective Notice Defense

If your defense is that the "termination of tenancy" notice was defective - for instance, it only gave you three days instead of five days to pay your rent - then show the defect to the judge by presenting the notice the landlord gave you. Similarly, if the landlord filed the suit before the end of the period specified in the notice, show the judge your copy of the notice and of the

summons, which lists the date the case was filed. If you never received the termination notice, you and/or the member of your family who was supposedly given the notice will have to testify that it was never received. If the judge suggests that you should move out anyway because the landlord could serve another notice or file another lawsuit, do not agree to move unless you are already planning to and can do so in 14 days. Tell the judge that you have the right to have the case dismissed, and ask that it be dismissed. You may also request an order requesting the landlord to reimburse you for your court costs.

(3) Defects in Premises Defense

If your defense is that you have not paid all the rent due because the building is in bad shape and you have either used the "repair and deduct" provision or "rent withholding" provision of the Ordinance, you should present to the judge the proper 14-day written notice you served on the landlord plus any receipts for work that was done. If you withheld a certain portion of your rent because of bad building conditions you should be prepared to present some evidence of the problem, that is, Department of Buildings inspection reports, pictures showing the problem, testimony of witnesses who saw the problem, your own oral testimony as to how long the landlord has failed to make repairs and any injury or damage you have suffered as a result.

b. Court Orders

If a judge allows you 15 days to pay the rent, ask the judge if this means an eviction order will be entered against you anyway. If such an order is entered, the landlord can still evict you even if you pay the rent. If the judge orders this and you are willing to pay the rent, ask the judge to order the landlord to accept the rent and dismiss the case if you pay the rent in 15 days.

If you win the lawsuit, the judge should "dismiss" it, in which case you will not have to move. If you lose the lawsuit, the judge will order you to move. The judge will almost always give you at least five days to move and will normally give you 14 days. If you want more than 14 days, tell the judge how much more time you need and why. If you do not understand what the judge said or has ordered, make sure you ask right away in court that it be explained to you.

16. How Long Does the Process Take?

Here is an example of the amount of time it takes to evict a tenant. If a landlord or the Sheriff delays, it can take longer. And, if a tenant asks for jury

trial, it also may take longer. Here is a sample time line:

August 1	Rent is due but not paid.
August 2	Landlord serves five-day notice.
August 7	Last day on which landlord must accept rent.
August 8	Landlord files suit. Summons issued to tenant.
August 9	Sheriff serves summons.
August 22	Trial Date (at least 14 days after summons issued).
September 5	Eviction Date (usually 15 days after trial date).
September 10	The Sheriff, if behind in evictions, might not actually evict the tenant until several days after the eviction date.

17. How Does a Jury Trial Work?

Because jury trials are more complicated than non-jury trials, both tenant and landlord should be represented by attorneys. The attorneys should explain to their clients the details of how the trial will proceed. Here is a brief overview of a jury trial:

In Cook County, if a tenant has asked for a jury trial, the case will be assigned to another courtroom. It is possible that the case will go to trial the same day, but it is also possible that it will be continued, either because the landlord is not ready or because there is not a jury available to hear the case. Continuances can last several months.

In a jury trial, witnesses testify before the judge and jury. Attorneys for both the landlord and tenant are allowed to ask questions of the witnesses. At the end of the trial, the judge tells the jury the relevant rules of law, and the jury must decide the case in light of those rules. Jury trials are not as rushed as non-jury trials. Tenants with a complicated defense should consider asking for a jury trial.

18. What Happens If the Judge Orders the Tenant To Move?

A judge might order a tenant to move out of the building, saying in open court: "Order of Possession entered and stayed for 15 days." The "Order of Possession" is the name of the court order instructing the Sheriff to evict the tenant. When the judge says "Stay 15 days," the judge means that the Sheriff cannot evict the tenant until 15 days later. Only the Sheriff can evict a tenant; a landlord cannot. A landlord must first pay the Sheriff a fee for the eviction. The Sheriff will not evict the tenant, even though the court authorized it, unless the landlord pays this fee. A tenant in this situation should call the Sheriff's

Office each day to find out whether or not the landlord has paid for the eviction. In Chicago, the number is 443-3356. The Sheriff will often send a letter telling the tenant that he or she has 24 hours to move out before the actual eviction occurs.

19. Settling the Case

If both the landlord and tenant wish to try settling the case prior to trial or at any time prior to the actual eviction by the Sheriff, they may do so. Neither side is required to discuss settlement because both are entitled to a trial. However, it may be in the tenant's and landlord's interests to discuss settlement depending on the particular circumstances of each case.

A landlord's lawyer may ask a tenant to move in 15 days, saying, "The judge will just order you to move out." The tenant does not have to agree to this. A court will only order a tenant to move if the tenant loses the case. If a tenant wins, that tenant can stay in the apartment. Therefore, a tenant who wants to present a defense should not enter into such an agreement with the landlord or the landlord's attorney.

If both sides want to discuss settlement, it is best to put the agreement in writing and present it to the judge for approval. Each side should understand all provisions and the settlement should state as many specifics as possible. For example:

- If a settlement is reached in which a tenant agrees to move in a certain number of days, the number of days should be specified in the agreement.

- If a settlement requires a tenant to pay a certain amount of rent in a certain period of time, the settlement should say whether the tenant will be allowed to stay if the amount is paid.

- If the settlement provides for a judgment for the landlord, but also allows the tenant to stay if the rent is paid for a certain period of time, the settlement should provide that the landlord will not enforce or will vacate the judgment if the rent is paid in time.

- If the settlement requires either side to pay court costs or attorney's fees, the dollar amount should be specified. When a case is tried, the court will normally award court costs to the winning side (the cost of filing the lawsuit and issuing summons, or the cost of appearing).

If a landlord or the landlord's lawyer drafts a settlement agreement to sign and the tenant has questions about the meaning, the agreement should not be signed. Instead, the tenant should wait for the case to be called and ask the judge for help in understanding the agreement. Then, if the tenant agrees, the settlement agreement can be signed, or if the tenant does not, the case can go to trial. If a tenant agrees to the settlement, both the landlord and tenant should keep a copy of the settlement agreement.

A tenant who has agreed to an order requiring the tenant to move out of the building within a certain amount of time should know that the landlord has no obligation to extend the time that the tenant can stay in the apartment. Moreover, a judge probably will not give a tenant more time. A tenant who wants more time will have to negotiate with the landlord. Most landlords will not allow this unless the tenant agrees to pay additional rent. If such an agreement is reached, it should be put in writing and both parties should keep a copy of the agreement.

20. What Should the Tenant Do If the Judge Enters an Eviction Order?

If a judge has given a tenant a certain time to move, the tenant should take the order seriously and find a place to move within that time period. A tenant should keep all rent receipts and a copy of the lease in case the landlord later decides to sue for any remaining rent for the period that they occupied the apartment. In the case of a tenant with an unexpired written lease, the landlord might sue for rent for the period after the eviction and before the end of the lease term.

21. Can a Tenant Get More Time To Move?

A tenant who cannot move in the time allowed should call the landlord or the landlord's attorney to try to get more time. The landlord will probably demand that all rent that is due be paid plus rent for the extra period of time. As a result, the tenant will have to negotiate with the landlord.

If a landlord refuses to negotiate, a tenant can go back to the judge to ask for more time to move, but the chances of getting more time are slim. The judge may be persuaded to allow additional time if: (1) the tenant has a place to which to move but cannot move for a week or so after the time already allowed, and/or (2) the tenant is willing to pay the landlord rent for the extra period of time. A tenant might also get more time in the event of illness. But simply not being able to find an apartment will not necessarily persuade the judge to allow a tenant more time. If a tenant originally settled the case by agreeing to move

in a certain period of time, most judges will not allow additional time to move.

To ask for more time a tenant has to present a "Motion To Extend the Stay of the Order of Possession." A "Motion" is a request to the court to take some action. The "Order of Possession" is the court's order to the Sheriff to evict the tenant. To present such a motion in Chicago, a tenant should follow these steps:

a. Get your court file by going to Room 601 of the Daley Center. Write the case number on a small slip of paper and give it to one of the clerks at the long counter. The clerk will bring the file to you.

b. Take the file to the short counter in front of the window next to the door you came in. On this counter you will find a white motion slip. Fill it out. The heading (*John Doe v. Jane Doe*) should be the same as on your court papers. The courtroom number is the same as the one you were in originally. Ask the clerk behind the counter what time you should schedule for the motion. The date should be at least five days after you mail your notice of motion to the landlord. On the blank lines write "Motion To Extend Stay of the Order of Possession." Near the bottom, fill in the address where you plan to mail the notice, or if you plan to personally deliver the notice, fill in the middle section. You must sign the bottom of the original and have your signature notarized.

c. Mail or deliver the unsigned copy to your landlord or a lawyer representing your landlord. Remember, the copy must be mailed at least five days before the court date. Keep the original to give to the judge on your court date.

d. When your case is called on your court date, hand the judge the original notarized copy of your notice of motion. You may now tell the judge your story.

e. If the judge gives you more time, you must notify the Sheriff. If the Sheriff has not been notified of the new court order, you may be evicted anyway. As a result, you should ask the judge to let you take a written order to the Sheriff's office. In Chicago, the Sheriff's Office is in Room 702 of the Daley Center.

22. Appeal

If a landlord wins an eviction case and the tenant wants to appeal the decision, the tenant should consider seeking the help of an attorney. The following is a brief explanation of how an appeal works.

The tenant or the tenant's attorney must file a notice of appeal within 30 days of the adverse ruling against the tenant. To stay in the apartment during the course of the appeal, the tenant also must post a bond. Normally, the bond is the full amount of the rent for the next 12 months or so, but if the tenant cannot afford to pay that amount, the tenant's lawyer or the tenant can ask the judge to allow payment of the rent into court each month. This is called a "use and occupancy" bond. A tenant in this situation is required to disclose his or her income.

When an appeal is filed, the Illinois Appellate Court reviews the transcript or other records of the trial to decide if the trial judge made an error which would require a reversal of the judgment. The Appellate Court cannot hear additional testimony or examine more evidence. It usually takes at least a year for the appellate court to reach a decision after the appeal has been filed.

23. Suppose the Tenant Misses the Trial?

If a tenant misses the trial and a judgment is entered against him or her, the tenant should see a lawyer. To open the judgment, the tenant will have to show that the Sheriff did not properly serve the summons, or if the summons was received, that the tenant had a good excuse for missing the trial. Hospitalization is a good excuse; missing a bus is not. A tenant should approach the trial judge within 30 days of the judge's order, and the tenant should be prepared to present a defense. A tenant without a defense should either move in the time specified or try to negotiate a settlement with the landlord. If a landlord is willing to settle, the tenant will probably be asked to pay all the rent due plus court costs as a condition of allowing the tenant to stay in the apartment.

D. TENANT'S LIABILITY FOR RENT AFTER MOVING OUT

1. Lease Provision

Most leases require a tenant to pay rent for the full length of the lease term even if the landlord evicts the tenant in the middle of the lease. Courts enforce these provisions. If no such lease clause exists, a tenant is not obligated to pay rent for the period of the lease after an eviction. If a tenant moves out

voluntarily, not because there has been an eviction, then the tenant must continue to pay rent for the remainder of the lease term.

2. Landlord Suit for Rent

If a tenant has moved out or been evicted from an apartment and fails to pay rent for the remainder of the lease term, the landlord can sue for the rent due. The procedure is basically the same as any other rent claim lawsuit. Most landlords wait until the end of the lease before filing the lawsuit because courts will not require a tenant to pay rent before it is due.

3. Defenses to a Suit for Rent

There are several possible defenses or setoffs to a suit for rent.

a. Rent Has Been Paid

Sometimes a landlord makes a mistake because of a lack of good records. If a landlord claims rent for which a tenant has receipts, then the tenant has a good defense.

b. Defects in the Apartment

If there are substantial building code violations in the apartment and the landlord has failed to make the repairs after being given a 14-day written notice requesting such repairs, the tenant may terminate the lease if the repairs are not done within the 14 days. The tenant is not liable for any remaining rent under the lease.

c. Landlord Agreed that the Tenant Could Move Out

If the landlord agreed that the tenant would not have to pay rent after moving out in the middle of the lease term, there is no obligation for that tenant to pay future rent. Sometimes, however, there is confusion between the landlord and the tenant about the future obligation to pay rent. The tenant should have the landlord sign a written statement that the lease will be canceled as of the date the tenant moves out and that the tenant will not be liable for future rent. Landlords usually will not sign such a statement unless the tenant agrees to forfeit all or part of the security deposit. This is a matter for negotiation.

d. Tenant Was Justified in Moving Out

If the landlord deliberately interferes with the tenant's use of the apartment or negligently fails to repair dangerous defects, the tenant can notify the landlord that the tenant is terminating the lease. (See Chapter 4, Section F.) Also, if the apartment is destroyed or damaged by fire or other casualty, the tenant may move out after giving proper notice. (See Chapter 4, Section H.)

e. Landlord Refused To Accept a Reasonable Subtenant

If a tenant wants to move out in the middle of a lease, the landlord must accept a reasonable subtenant proposed by the original tenant. If the landlord rejects such a subtenant, the tenant is not liable for the rent the subtenant would have paid for the remaining period of the lease. (See Chapter 8, Section B2.)

f. The Lease Does Not Require the Tenant To Pay Rent after an Eviction

If the landlord sues for rent for the period remaining on the lease after the tenant has been evicted and the lease does not specifically obligate the tenant to pay for this period, the landlord cannot collect rent.

g. Security Deposit Setoff

If the landlord sues for rent and the tenant has not damaged the apartment, the landlord must credit towards the rent any security deposit that tenant has paid.

E. LOCKOUTS

1. Introduction

It is not legal for a landlord to evict a tenant by locking out the tenant. Even hotels and motels are covered by the law that prevents lockouts of tenants. A lockout is any act by the landlord that interferes with the use of the apartment. This includes plugging, changing or removing locks, interfering with utility service, removing personal property, or any act that makes the apartment inaccessible or uninhabitable. Instead, the landlord must file a lawsuit to evict the tenant, and, if the landlord wins the lawsuit, only the Sheriff can physically evict the tenant.

2. Remedies for Illegal Lockout

A tenant's immediate response when faced with a lockout situation should be to call the police. It is a crime for a landlord to lock a tenant out of the apartment by any means including changing locks or cutting off utility service. The Chicago Police Department has issued a special order to all officers setting forth the procedures they must follow in case of an unlawful lockout (Special Order 93-12 issued June 15, 1993) A copy of the order can be found in Appendix F. When the police arrive at the apartment, the tenant should tell the police officer about this police order. In case the officer is not familiar with what to do in case of a lockout, the order explains the proper procedure. If the landlord is anywhere nearby, the police should see that the landlord cures the lockout. If the landlord refuses, the police can arrest the landlord.

The landlord also can be fined between $200 and $500 for each day of the violation. If the landlord or the landlord's agent is reachable by telephone, the tenant can ask the police to tell the landlord or the agent that lockouts violate the law. The police also should assist the tenant in filing a complaint against the landlord if the landlord does not cure the lockout. If the police officers who respond to the tenant's call are not helpful, that tenant should ask for a supervisor to come out. Sometimes a patrol car officer is not familiar enough with lockout situations to respond correctly. A police supervisor is usually more aware of the proper procedures to follow.

If neither the police officers nor the police supervisor are responsive, the tenant should call the Metropolitan Tenants Organization at 292-4980 or the Legal Assistance Foundation of Chicago at 341-1070. Also, the Chicago Department of Human Services (744-9400) and any local community organizations should be contacted if the tenant is in need of emergency housing or relocation assistance.

Chapter 9
SUBSIDIZED HOUSING

A. INTRODUCTION

This chapter discusses subsidized rental housing programs and is divided into five sections.

The first section briefly discusses the relationship between federal rules and regulations that govern subsidized housing and local ordinances, such as Chicago's Landlord-Tenant Ordinance, and state laws that also may apply to subsidized housing.

The second section discusses subsidies relating to buildings with federally insured mortgages such as the §221(d)(3), §236, and rent supplement programs. These are referred to as the FHA programs because the Federal Housing Authority (a division of the United States Department of Housing and Urban Development (HUD)) insures the mortgages on these buildings.

The third section discusses Public Housing, which, in Chicago, is administered by the Chicago Housing Authority (CHA). The fourth section deals with the Section 8 Rental Assistance Program, which is also administered by the CHA.

The fifth section briefly discusses the Illinois Housing Development Authority (IHDA).

B. LAWS GOVERNING SUBSIDIZED HOUSING

Most laws governing federally subsidized housing are found in federal housing statutes, regulations, or government-issued handbooks and circulars. Copies of HUD circulars and handbooks may be obtained from the HUD Office at 77 West Jackson Boulevard in Chicago. Generally, these laws take precedence over state or local laws that conflict with them. Where there is no conflict between federal and state or local laws, the state and local laws also will apply to federally subsidized housing. For example, both private and public or government-regulated landlords must file a lawsuit in order to evict a tenant. Chicago's Landlord-Tenant Ordinance specifically applies to the FHA programs, CHA, Section 8 and IHDA housing to the extent that it "is not in direct conflict with statutory or regulatory provisions governing such programs." Thus, the rights set forth in the other sections of this Handbook also may apply to federally subsidized housing. A tenant in public or government-regulated housing

with questions as to whether the Ordinance applies to federally subsidized housing in a particular situation should seek advice from a lawyer. Finally, a tenant in public or government-regulated housing frequently has rights in addition to those of a tenant renting from a private landlord. We will discuss these rights below.

C. FHA RENTAL HOUSING: §221(d)(3), §236 AND RENT SUPPLEMENT

FHA rental housing is privately owned housing that is regulated by the Federal Housing Administration (FHA). The FHA insures the mortgage on these buildings. In the case of §221(d)(3), §236 and Rent Supplement housing, the FHA provides a subsidy to the landlord which must be passed on to eligible tenants in the form of lower rents.

Under the §221(d)(3) and §236 programs, HUD pays the landlord a subsidy that reduces the mortgage interest from the market rate to three percent in §221(d)(3) projects, and one percent in §236 projects. Some §221(d)(3) projects do not involve such a subsidy, but we will not deal with them. We will discuss only the §221(d)(3) "Below Market Interest Rate" (BMIR) program. In return for the subsidy, the landlord is regulated by the FHA as to the amount of rent that can be charged, tenant eligibility requirements, rent increases and evictions. These programs are supposed to have rents at levels affordable by moderate income tenants, but increased operating expenses and, on some occasions, mismanagement by private landlords have caused rents to increase above this level.

Some of these buildings have additional subsidies available for some of the units in the building, provided the tenant is low income and meets certain other requirements. This is called the "Rent Supplement Program."

1. Admission Requirements

Each FHA-subsidized program has specific admission eligibility requirements based on income, family composition and other criteria. The income limits are usually increased each year and are published annually in the Federal Register. Call HUD at 353-1629 to find out if the listings below, effective May 1993, have been changed.

a. §221(d)(3)

In 1993, for Cook County, a tenant's adjusted family income cannot

exceed the following limits:

No. of Persons	Limits	No. of Persons	Limits
1	$32,100	5	$49,500
2	36,650	6	53,150
3	41,250	7	56,850
4	45,850	8 or more	60,500

b. §236 and Rent Supplement

In 1993, for §236 and rent supplement projects in the Chicago-area counties, the following adjusted income limits apply:

No. of Persons	Limits	No. of Persons	Limits
1	$26,650	5	$41,150
2	30,450	6	44,150
3	34,250	7	47,200
4	38,100	8 or more	50,250

2. Amount of Rent Due

a. §221(d)(3)

A tenant who is within the income limits for initial occupancy in §221(d)(3) buildings is charged a rent which is based on the cost of operating the building with a three percent mortgage. This BMIR rent varies with each building and the size of the apartment. The rent level must be approved by HUD.

Every year a tenant must recertify his or her current income by filling out a Certification of Tenant Eligibility form. A tenant may stay in possession of the rental unit if the tenant's income exceeds the initial occupancy income limits if the tenant agrees to pay the "adjusted market rent," which is 120% of the BMIR rent.

b. §236

A tenant living in a §236 project must pay a "basic rental" charge, or such amount that represents 30% of the tenant's adjusted income, whichever is greater. The basic rent, which must be approved by HUD, is based on the cost of operating a building with a one percent mortgage. The market rent, which

also must be approved by HUD, is based on the cost of operating the building with the actual, higher interest on the mortgage. The basic and market rents vary from building to building and also depend on the size of the apartment. In most cases, the basic rent is higher than 30% of the tenant's adjusted income.

Each tenant must fill out the "Certification of Tenant Eligibility" form to calculate the amount of rent to be paid. A tenant should ask the landlord what the basic and market rent levels are for the apartment. This can be verified by calling the multifamily occupancy specialist at HUD. In Chicago, the number is 353-1454.

A tenant can calculate the "annual family income" and then determine the tenant's "adjusted annual income," which is total income less certain deductions listed on the form. Once the tenant has figured out the adjusted annual income, a few calculations will permit the tenant to determine whether the tenant must pay the "basic rent" approved by HUD or must pay 30% of the tenant's income.

First, the tenant must divide his "adjusted annual income" figure by 12 to give the tenant the adjusted monthly income. If the tenant then multiplies this adjusted monthly income by .3 [which is 30%], the tenant will have determined whether he or she is to pay 30% of his income for the rent owed or simply the basic rent. If the basic rent is higher, the tenant will have to pay the basic rent. But a tenant never has to pay more than the market rent.

In some §236 buildings, a tenant must pay the utilities. Some tenants are allowed to subtract a utility allowance (sometimes called a Personal Benefit Expense) from the rent payment. This allowance is supposed to be based on the normal level of utility consumption for the type of apartment in the building. A tenant whose average utility bill over a 12-month period is higher than the allowance amount should check with other tenants in similar units in the building to see if their bills also exceed the allowance. If so, they might be able to get HUD to increase the allowance for the building.

Each tenant is required to recertify his or her income each year. Rent is recalculated using the same formula described above. So, if a tenant's income goes up, the rent will go up unless the tenant is already paying the market rent. And, if a tenant's income goes down, the rent might go down, but it cannot go below the basic rent unless the tenant receives a rent supplement.

c. Rent Supplement

A tenant receiving a rent supplement pays only 30% of his or her adjusted income for rent. To calculate what the rent should be, the tenant should follow the instructions on the "Certificate of Tenant Eligibility" form.

Each tenant must fill out an income recertification form annually unless the tenant is elderly or handicapped. A tenant also is required to report to the building owner if the tenant's adjusted monthly income increases to four times the HUD-approved rent for the tenant's unit, in which case the supplement ceases. Finally, a tenant whose income substantially decreases can ask the landlord to recertify the income before the annual recertification.

3. Rent Increases

Under all of the above programs, rent can go up if the tenant's adjusted income goes up. But the more common reason for the rent to go up is if HUD approves an increase in the basic and market rents for the building as a whole. HUD is supposed to do this only when owners demonstrate that operating expenses over which they have "no effective control" have increased.

HUD regulations allow tenants to file written comments with HUD when a landlord asks HUD to approve an across-the-board rent increase. These regulations are found in the 24th volume of the *Code of Federal Regulations*, Part 245. The regulations require that at least 30 days before asking HUD for an increase in rents, the landlord must notify the tenants of the proposed increase. Copies of the notice must be either delivered directly to the tenant or be posted in at least three conspicuous places in the building and in the management office. The notice must inform the tenants of the reasons for the request and tell them that they may examine and copy all documents submitted in support of the request. Any tenant can submit to HUD comments on the appropriateness of the increase.

In submitting comments to HUD, tenants typically cover the following points:

a. Is the landlord's arithmetic correct?

b. Are the expenses listed accurate? For instance, has the landlord claimed to have paid utilities that the tenants have actually paid?

c. Could the landlord have avoided or controlled an increase in any particular expense? Did the landlord pay an excessive amount for any particular item or service? For instance, did the landlord fail to appeal an exorbitant real estate tax bill, or has there been a purchase of supplies or services from a company in which the landlord has a financial interest at a higher price than other companies charge?

d. What is the physical condition of the building and the quality of the maintenance? List any problems in the building. Ask HUD to inspect the building if there are defects. If the landlord has failed to keep the building in good condition and repair, HUD can deny the rent raise request.

e. Is the requested increase so large that it will be a significant hardship on most tenants? If that is the case, HUD can require that it be implemented in stages.

When asking HUD for permission to increase rents, the landlord is required to submit a "Statement of Profit and Loss" (FHA Form 2410) covering the most recent accounting year. The form requires the landlord to list, among other things, operating expenses for that period. Because a landlord must show that operating expenses have increased since the last rent raise, the operating expenses for the prior year are normally listed. If the total operating expenses have not increased, the landlord is not entitled to raise rents.

After HUD has considered the owner's application for a rent increase and comments from tenants, HUD sends the owner a written statement of the reasons for approval or disapproval. The owner must deliver or post that statement in the same manner as the original notification to tenants. In making its determination, HUD calculates the total rent the building would have to charge to cover mortgage payments, reasonable operating expenses, a management fee and vacancies and collection losses (unpaid rents). If that total is higher than the total allowed when rents were last set, HUD will send a letter advising the landlord that the total rental amount for the building may be increased and asking the landlord to submit a revised "Rental Schedule," which breaks down the total rent into rent levels for each apartment type. After putting the rent raise into effect, the landlord must give the tenant at least a 30-day written notice of the rent raise before it becomes effective.

One word of caution: Operating expenses are in fact increasing. If the landlord has followed the proper procedures and actual expenses have in fact

increased, HUD will approve the rent raise.

4. Form Leases

In March 1985, HUD issued a Handbook, #4350.3 CHG-1, which explained the requirements that must be met for landlords of FHA rental housing to include particular provisions in the leases they use and to exclude certain other provisions, which are the same as the excluded provisions listed at Section E4 below. A copy of this Handbook can be obtained from the HUD office at 77 West Jackson Boulevard, Chicago 60604.

5. Evictions

Before a tenant of HUD-subsidized housing can be evicted, a landlord must comply not only with the requirements of Illinois law applying to evictions, but also with the regulations issued by HUD (found in Volume 24 of the *Code of Federal Regulations* at Part 247). These regulations provide that a tenant in a subsidized project or in a project that has been acquired by HUD can only be evicted if a landlord can prove: (a) material noncompliance with the rental agreement, such as nonpayment of rent; (b) material failure to carry out obligations under the state landlord-tenant act; or (c) other good cause.

Within a specific time prior to instituting a court action to evict a tenant, a landlord must provide the tenant with a notice stating: (a) when the tenancy is to be terminated; (b) the reasons for the termination with enough specificity to enable the tenant to prepare a defense; and (c) that the tenant may present this defense in court. It is advisable that any tenant faced with eviction seek legal advice. (For further discussion of evictions, see Chapter 7.)

D. PUBLIC HOUSING

1. Introduction

This section of the Chapter will deal with low income public housing. Such housing is built and operated by local housing authorities and is subsidized and regulated by the federal government through HUD. This section will focus on public housing in the City of Chicago administered by the CHA. Because federal regulations apply to all public housing throughout the country, the discussion will generally apply to all such housing. The only exception is that the income limits for occupancy in such housing vary from city to city.

The CHA is the largest landlord in the City of Chicago. Most tenants

live in buildings that are either family housing or elderly housing. The CHA also administers one of the Section 8 rent subsidy programs through which a tenant can live in privately owned housing scattered throughout the city at rent levels subsidized by the CHA. (This program will be discussed in the next section of this Chapter.)

The purpose of public housing is to provide "decent, safe and sanitary" housing for low income persons and families. Many believe the CHA, like other public housing authorities, has not met this goal. Complaints about CHA buildings include charges that they are poorly maintained and staffed by personnel who are often insensitive to tenants. As a result, many CHA tenants feel helpless and intimidated when dealing with CHA. It is not uncommon for CHA tenants to believe that they have fewer political and legal rights because they live in public housing. But in fact, CHA tenants have the same rights as other tenants, as well as additional rights and obligations because they live in public housing. We will now discuss these rights and obligations.

2. Eligibility for a CHA Apartment

Eligibility for CHA housing is based upon income and family size. The following are CHA's income limits effective May, 1993 for admission and continued occupancy:

No. of Persons	Limits	No. of Persons	Limits
1	$16,650	5	$25,700
2	19,050	6	27,600
3	21,400	7	29,500
4	23,800	8 or more	31,400

Although prospective CHA tenants may fall within these income limits, federal regulations allow CHA to reject applicants whose backgrounds indicate that the applicants are likely to injure the welfare or physical environment of other CHA tenants. Likewise, applicants who have a history of long-term rent delinquency may be rejected.

a. Informal Hearing To Contest Application Denial

If a person's application is denied, the applicant can ask for an "informal hearing" on the denial. The request should be made in writing immediately upon receiving the rejection notice. Prior to the hearing the applicant is entitled to be

advised of the basis for rejection. At the hearing, the applicant can present evidence to refute the adverse information. An applicant has the right to be represented by a lawyer or any other person chosen by the applicant. It is important to bring to the hearing any documentary evidence that may refute the information upon which CHA relied. If that information is correct but there has been a change in circumstances (for instance, a disruptive child leaving the home, change in marital status or improved financial situation), it should be explained. In addition, oral or written statements or letters from people familiar with the applicant's situation or character, such as members of the clergy, social workers or employers, can be helpful.

b. Application for Public Housing

In Chicago, applications for public housing are available at any CHA project office or at CHA's Main Office at 500 East 37th Street, Chicago 60653. Applications should be processed within six weeks, but this time may vary greatly from case to case. A tenant can find out about the status of his or her application by calling the Central Rental Office at 791-8528. Applications for emergency housing for people who have been evicted, burned out, or relocated due to government action are processed more quickly. If a person has been displaced by fire, a letter from the Red Cross stating the person's housing need will help speed processing. The applicant should, of course, tell CHA of the emergency when applying.

3. Rent Calculation

Rent for public housing tenants is 10% of monthly income or 30% of monthly adjusted income, whichever is higher. Monthly adjusted income is defined as total monthly income less various deductions for each dependent, certain medical expenses and certain child care expenses. These expenses should be specified on the income certification form. In addition, there are certain other deductions for the elderly and for the handicapped.

4. Reporting of Income

Because the amount of rent to be paid is based on a tenant's income, the tenant must make an annual income report to CHA. CHA will adjust the rent accordingly. A tenant whose income decreases between reporting periods has the right to have the rent lowered. A tenant whose income increases between reporting periods must report this increase which will raise the rent. If a tenant fails to report an income increase, the CHA can charge the increased rent retroactively or evict the tenant.

5. Evictions

Although the procedures for evicting a CHA tenant are similar to those used by private landlords, CHA must give its tenants certain procedural safeguards not available to tenants living in private housing.

a. Evictions for Nonpayment of Rent

CHA may evict a tenant for failing to pay rent. It is CHA's general practice to bill a tenant in the second month for rent not paid in the first month. If a tenant is not current by the third month, CHA will normally serve the tenant with a 14-day notice entitled "Landlord's Notice and Demand for Rent."

If the tenant offers to pay all back rent within the 14-day period, the CHA must accept the payment. A tenant may request a grievance hearing to question whether the rent claimed is really owed; however, all rent in dispute must first be deposited with the CHA. If the tenant does not offer to pay, the CHA will file a lawsuit to evict the tenant. Under no circumstances may a tenant be evicted before the lawsuit is filed and a judge has ruled in favor of the CHA. (Eviction procedures and the requirements of service of summons are described in Chapter 8.)

b. Evictions for Cause (Breach of Lease)

The CHA also may evict a tenant for a serious or repeated lease violations. For example, a tenant may be evicted if the tenant's actions endanger other tenants. Common problems include burglary, assault and drug dealing. A tenant also may be evicted if a person who is not listed on the lease is living permanently in the apartment.

c. Eviction Procedure

When the CHA decides to evict a tenant, the CHA will send the tenant a notice of lease termination. The tenant will be advised in the notice of his or her right to file a grievance. If the tenant files a grievance, an informal hearing will be held at the project office. The tenant may bring a representative to this informal conference. If the matter is not resolved, the CHA will then serve the tenant a notice stating that it still intends to terminate the tenancy and a postcard that must be filled out and returned in order to request a formal grievance hearing to contest the CHA's decision to evict. The tenant should comply with all time requirements on the postcard. The tenant will then receive a notice setting the time and place for the hearing. A tenant has a right to examine his

or her file before the hearing and should do so well in advance. If the local project office will not allow this, the tenant should make a written request to the Central CHA Office. At all stages in the proceeding a tenant is entitled to be represented by a lawyer or other representative.

The evidence is heard at a hearing, that is recorded on audio tape, and listened to by a panel composed of CHA tenants and employees, with tenants in the majority. The CHA must prove that a tenant has breached the lease. The tenant has the right to confront and cross-examine persons who have adverse information. It is important that tenants and their representatives be prepared to demand these rights. A tenant who is denied these procedural rights should contact a lawyer immediately.

Federal regulations allow the CHA to skip the grievance procedure if an eviction is prompted by either of two types of criminal activity. This is true whether the criminal activity is committed by the tenant, any member of the household, a guest, or another person under the tenant's control. These two criminal activities are: (1) criminal activity threatening the health, safety or right to peaceful enjoyment of CHA premises by other residents; and (2) any drug-related criminal activity on or near the premises. If the CHA decides to base an eviction on one of these two categories of criminal conduct and, thereby, to skip the grievance procedure, it must so notify the tenant in its notice of termination of tenancy. Sometimes the CHA fails to advise a tenant of the grievance procedure even when no criminal activity is involved. If this occurs, a tenant should ask the CHA about the grievance procedure and may contact an attorney for more advice on how best to proceed.

After the grievance hearing, a tenant or the tenant's representative may obtain a tape recording of the hearing by sending a written request plus a $10 check or money order to the CHA's Legal Department at 17 E. Monroe Street, Suite 201, Chicago, Illinois 60603.

The grievance panel's decision will be reported to the tenant within five working days after the hearing. In the event of an adverse decision, the CHA need not serve the tenant with another notice of lease termination, and can immediately file a lawsuit to evict.

The tenant who loses a grievance hearing can usually expect the eviction process to begin within 45 days of the hearing decision. At the eviction trial the tenant is entitled to contest the basis for the eviction. At this stage, legal help is advisable.

6. The CHA Standard Form Lease

The following is a brief summary of the important paragraphs of the CHA lease.

a. *Paragraph 1.* This paragraph obligates a tenant to pay rent, excess utilities, certain maintenance charges and fines for violation of the lease. A list of these charges can be obtained from the project office. A tenant who believes that the maintenance and utility charges are unjustified has the right to file a grievance to contest these charges. (The grievance procedures are described in Subsection 7 below.)

b. *Paragraph 3.* This paragraph obligates a tenant to pay a security deposit. Contrary to popular belief, a tenant cannot legally use the security deposit in place of any one month's rent.

c. *Paragraph 6.* A tenant may have guests or visitors on a temporary basis. The tenant must give CHA written notice of any guest who stays more than 14 days in the unit. Only those persons listed in the lease may live in the apartment permanently.

d. *Paragraph 8.* The CHA must provide proper maintenance services to its tenants. If a tenant feels that the CHA is not doing its job, the tenant should consider filing a grievance (See Subsection 7 below.)

e. *Paragraph 9.* A tenant cannot use the apartment for any money-making purposes; sublet the apartment; remove or damage any of the fixtures; disturb the "peace or quiet" of the project; or engage in illegal activities. Should the tenant violate any of these provisions, the CHA can seek to evict the tenant.

f. *Paragraph 10.* This is the "rent withholding" provision of the lease. The procedures necessary to initiate rent withholding are discussed in subsection 8 below.

g. *Paragraph 11.* CHA may enter the apartment at any time so long as it is "reasonable," and so long as the CHA gives the tenant 48 hours written notice. The CHA may enter the apartment without notice in an emergency situation.

h. *Paragraph 12.* This paragraph tells a tenant that all communi cations may be sent to the CHA at the local project office or at the Central Office. The CHA is obligated to send all notices to the tenant's address. This provision should not be confused with the Sheriffs obligation to hand deliver to the tenant or member of the household all court papers.

i. *Paragraph 14.* A tenant must give the CHA 15 days' written notice of intent to move out. If this is not done, the tenant can be charged an additional month of rent. The CHA will provide the tenant with its "Notice of Intent To Vacate" form upon request. This paragraph also allows the CHA to evict for nonpayment of rent or for other good cause.

j. *Paragraph 18.* A tenant may be liable for certain court costs incurred in eviction proceedings. Should a charge seem unreasonable the tenant can seek legal advice.

k. *Paragraph 20.* A tenant has the right to inspect any rules and regulations referred to but not set out in the lease.

l. *Paragraph 21.* This paragraph deals with the grievance proce dure. (See Subsection 7 below.)

7. Grievances

The CHA must follow the procedures described below to deal with tenant grievances. Federal regulations require the CHA to use the grievance procedure whenever a tenant has a grievance concerning CHA's action or whenever a tenant believes the CHA has failed to act with regard to any provision in the lease. This might apply if the tenant has suffered a property loss or the tenant believes the CHA is poorly maintaining its property. The grievance procedure also must be followed if the CHA seeks to take any adverse action against a tenant, such as billing the tenant for an additional charge in a damage claim or evicting the tenant for failure to pay rent or to otherwise comply with the lease.

To begin the grievance procedure, a tenant should send a letter to the local project manager setting out the tenant's complaint, the relief sought and stating that the tenant believes the problem to be the result of the CHA's failure to fulfill its obligations under the lease. The letter should conclude with a request for an informal conference. The tenant should keep a copy of the letter.

After the informal conference, the tenant should receive a written summary of the conference containing the proposed decision. If the tenant is not satisfied with the results of the informal conference or, if the CHA has ignored the tenant's first letter, a second letter should be sent. This letter should duplicate the first letter but should conclude with a request for a formal hearing. A copy of this letter should also be kept. The tenant should be informed as to the time and place of the hearing. The actual hearing procedure is the same as that described in Subsection 5 above.

8. Rent Withholding

Federal regulations provide that a tenant may withhold rent when the CHA fails to correct problems in a building if the problems create a serious hazard to the tenant's life, health or safety. As a result of a lawsuit (*Jones v. CHA*, 84 L 50630, Circuit Court of Cook County) alleging that the CHA was not following the rent abatement procedures, the CHA has revised its procedures for processing rent abatement claims. Now, all rent abatement claims must be submitted to the CHA on specific forms and other procedures must be followed. In addition, CHA residents also may be able to assert rent withholding or repair and deduct measures under the Ordinance. Because rent withholding is a serious matter that could lead to the tenant's eviction if proper procedures are not followed, it is advisable that a tenant not initiate rent withholding processes without first seeking legal advice. (See Chapter 8 for further discussion of rent withholding.)

E. SECTION 8 RENTAL ASSISTANCE PROGRAM

1. Introduction

The Section 8 Rental Assistance Program, sometimes referred to as the Section 8 Housing Assistance Payments Program, is a federally-funded program providing rent subsidies to low and moderate income tenants who live in privately owned housing. The program is funded by HUD and in some cases administered by either the CHA or IHDA.

2. Income Limits

In order to be eligible for a Section 8 subsidy, the qualifying family's or person's income must not exceed 50% of the median family income for the metropolitan area. In the Chicago metropolitan area those income limits are as follows, effective May 1993.

No. of Persons	Limits	No. of Persons	Limits
1	$16,650	5	$25,700
2	19,050	6	27,600
3	21,400	7	29,500
4	23,800	8 or more	31,400

3. Rent Calculation

Rent for Section 8 tenants is 10% of monthly income or 30% of monthly adjusted income, whichever is higher. Monthly adjusted income is currently defined as total monthly income less various deductions for each dependent, certain medical expenses and certain child care expenses. These expenses should be specified on the income certification form. In addition, there are certain other deductions for elderly families and for the handicapped.

4. Lease Provisions

The form lease used by a landlord of Section 8 housing specifies the part of the rent paid by the tenant and the part that is subsidized. In addition, federal regulations prohibit the use of the following lease clauses:

a. *Confession of Judgment*. Prior consent to any lawsuit which the landlord may bring against the tenant, and for a judgment in favor of the landlord.

b. *Distress for Rent*. Authorization to the landlord to seize the tenant's property when the landlord claims the tenant has failed to pay rent.

c. *Exculpatory Clause*. Agreement by tenant not to sue the landlord for negligent acts.

d. *Waiver of Legal Notice by Tenant*. Agreement by tenant that the landlord may file suit without any notice to the tenant.

e. *Waiver of Legal Proceedings*. Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions without notice to the tenant or any court proceedings.

f. *Waiver of Jury Trial*. Tenant's agreement not to ask for a jury trial.

g. *Waiver of Right to Appeal*. Tenant's agreement not to appeal a court decision.

h. *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome*. Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even if the court finds in favor of the tenant.

Other program requirements depend on whether the housing is existing housing, or new or substantially rehabilitated housing. We will discuss these in turn.

5. Existing Housing

The Section 8 program for already existing rental housing allows an eligible person or family to live in privately owned housing, while receiving a federally funded rent subsidy administered through the local housing authority. In Chicago, the housing authority is the CHA.

To be eligible for Section 8 assistance, a person must be within the income limits mentioned above and must apply for a Section 8 Certificate or Voucher from the CHA, 500 East 37th Street, Chicago 60653; 791-8500. Upon approval, a Certificate or Voucher is issued. A tenant must then find an apartment with a landlord who is willing to rent under the program. The housing authority may provide help in finding an apartment if, because of age, handicap or other reason, a person cannot find an apartment on his or her own. The apartment must be decent, safe and sanitary and must have at least one bedroom for every two occupants.

After finding an apartment and a landlord willing to rent under the program, the tenant must submit a "Request for Lease Approval," an "Owners' Inspection Report," a "Family's Inspection Report" and a copy of the lease to the CHA. The CHA must then inspect the apartment and approve it before the lease can be signed.

Under the Section 8 Certificate program the apartment rent cannot exceed certain limits, which vary from area to area and which depend upon whether the building has an elevator. These rent limits can be obtained by calling the Chicago Area Office of HUD at 353-1629. The tenant only pays the

amount of rent specified in Section E3 above. Under the Section 8 Voucher program if the apartment rent does exceed the HUD rent limits, the tenant must pay the amount of rent specified in Section E3 above plus the difference between the HUD rent limit for that size apartment and the apartment rent.

Federal law provides that if a landlord of Section 8 existing housing wants to evict a tenant who entered into a lease on or after October 1, 1981, the landlord must prove that there has been a serious or repeated violation of the lease, that the tenant has broken the law or that other good cause exists to evict the tenant. For tenants with leases entered into before October 1, 1981, the landlord has to first obtain CHA approval of the grounds for the eviction and allow the tenant to present to CHA, in person or in writing, any objections the tenant has to the eviction.

Note that if the tenant has used the Section 8 certification to rent an apartment in FHA-subsidized housing, the eviction is also governed by the regulations discussed above at Section C5.

6. Newly Constructed or Substantially Rehabilitated Housing

Newly constructed or substantially rehabilitated Section 8 housing differs from existing housing. The landlord has more control over the selection and eviction of tenants, and the program is administered by HUD or the IHDA instead of the local housing authority. The applicant applies for Section 8 housing in a newly constructed or substantially rehabilitated building by filling out an application with the management of the building in which the tenant wants to live. The landlord is responsible for determining the eligibility of the applicant, selecting families from among those determined to be eligible and computing the subsidy on behalf of each family in accordance with the rules established by HUD.

The apartment rent cannot exceed certain limits which vary from area to area and which depend on apartment size and housing type, such as whether the housing is detached, semi-detached, walk-up or has an elevator. These rent limits can be obtained by calling the Chicago Area Office of HUD at (312) 886-9811. The tenant pays the amount of rent specified in Section E3 above. Each year the landlord must recertify the family income to determine whether the tenant still qualifies for Section 8 assistance. Such recertification can be done every two years for the elderly.

It is the landlord's duty to keep the building in a decent, safe and sanitary condition, and HUD or IHDA should inspect the building at least every

year to see that the landlord is maintaining it. The landlord is also responsible for evictions and does not need HUD's or IHDA's authorization before evicting a tenant.

7. Section 8 Subsidies in FHA Housing

Some of the funds for Section 8 rent subsidies are set aside for buildings with FHA-insured mortgages or those that have been acquired by the FHA after foreclosure of the mortgage. The rules about income limits, the subsidy amount and lease provisions are the same as discussed above, but the rules are somewhat different with regard to application and eviction procedures. Persons with questions about this program should consider seeing a lawyer.

F. Prohibition of Federal Housing Rent Subsidies to Illegal Aliens

In 1981, Congress passed a law limiting participation in federally assisted housing to citizens and "eligible aliens," defined by nine different categories. Applicants for such housing must provide documents showing that they are citizens or eligible aliens. Existing tenants must provide such information at their annual income recertification if they wish to continue receiving a housing subsidy. Persons with questions about their status as a citizen or eligible alien should consider contacting an attorney or other specialist in immigration law.

G. Illinois Housing Development Authority (IHDA)

The Illinois Housing Development Authority (IHDA) is another source of subsidized rental housing. IHDA loans funds to private developers and not-for-profit groups for the construction or rehabilitation of rental housing. This privately owned housing is regulated by IHDA and must be made available to low and moderate income persons. Some IHDA projects also are subsidized under the FHA §236 program, and most have at least 20% of their units reserved for lower-income tenants eligible for the Section 8 subsidy. (These programs are discussed above.)

The remaining units in an IHDA development are made available to persons with moderate incomes who pay the full market rent. The annual income of such moderate income persons cannot, at the time of initial occupancy, be more than seven times the annual apartment rent. If the tenant's income later increases above this level, the tenant will be allowed to continue to rent the apartment, but must pay a higher rent.

A person who wants to live in IHDA housing must apply for an apartment at the rental office of the development in which the applicant wants to live. Persons interested in obtaining a list of IHDA projects can call IHDA at 836-5200. The building management will take the application and determine if an individual is eligible for IHDA housing, and if so, how much rent must be paid.

IHDA requires that each landlord use a form lease approved by IHDA. This lease contains none of the clauses prohibited by HUD under the Section 8 program listed in Section E4 above, such as the "confession of judgment" clause. The IHDA lease also has provisions that are more favorable to tenants than those in the typical form lease used by private landlords. For example, the lease provisions cover the security deposit and the owner's responsibilities for building upkeep.

In order to increase rents, the manager of an IHDA building must give a 30-day notice at the end of the lease term. For those tenants receiving Section 8 assistance, the Section 8 program will pay the increase in rent. If the IHDA building is subsidized under the FHA §236 program, the management also must follow the notice and comment procedures discussed in Section C above. These steps must be taken before implementing an across the board rent raise due to an increase in operating expenses. The only difference is that IHDA, not HUD, must approve the rent raise.

In IHDA housing, evictions are left up to the management. Management does not need to get IHDA authorization before filing an eviction, but must, as must all other landlords, comply with Illinois law when evicting a tenant. (See Chapter 8.) If, however, the building is an FHA §236 project, the landlord must comply with the eviction regulations discussed in Section C5 above.

H. Elderly or Handicapped Tenant's Right To Have a Pet

A 1987 change in the law allows a tenant to have a pet as long as the tenant lives in federally subsidized housing for elderly or handicapped tenants. The law applies to public housing and Section 8 buildings but does not apply to those who have a Section 8 Certificate or Voucher. A tenant in another subsidized building may not keep a pet unless there is a medical need for the pet, such as a seeing-eye dog.

A tenant must inform management of the pet to be kept in the apartment and must ensure that the pet does not disturb neighbors or damage the building. The management may establish reasonable rules concerning pets but cannot

exclude pets. The tenant must be informed of the rules. The management may require an additional security deposit for potential damage by the pet. The deposit must be reasonably related to potential damage and cannot be more than $300.

Chapter 10
TENANT ORGANIZING

A. WHY SHOULD TENANTS ORGANIZE?

Tenants acting together are better able to assert their rights than can a tenant who acts alone. For instance, the actions listed in Chapter 4, Section E that tenants can take to improve the conditions of their building are more effective if several tenants join together. The landlord, the City of Chicago Department of Buildings, or a court is more likely to respond to demands from several tenants or a tenant association than from one tenant.

Tenant unions have been successful in expanding the legal rights of tenants. Consider this in light of the Illinois Supreme Court decision holding that landlords make an implied warranty of habitability obligating them to maintain their buildings in substantial compliance with the Chicago Building Code. That case grew out of a case involving a tenant union. The Ordinance protects the right of tenants to organize and gives legal protection for many of the activities in which a tenant union would engage. Tenant unions can also help to protect individual tenants against illegal retaliatory action by the landlord by providing assistance and moral support to the tenant.

In addition to being able to assert rights against the landlord more effectively, a group of tenants also can organize to do things for themselves. Buying and sharing a communal washing machine, sharing babysitting, obtaining legal assistance or other services, being alert to criminal activity around the building, encouraging each tenant not to disturb other tenants and sponsoring recreational activities are all examples of tenant cooperation.

B. WHAT FORM SHOULD A TENANT'S ORGANIZATION TAKE?

A tenant's organization can be either formal or informal. Some groups simply get together regularly to talk about common problems. Others form a not for-profit corporation and adopt written bylaws. In the beginning of such an organization, informality is appropriate. If any major group activity is later undertaken, the organization may adopt bylaws and consider incorporation.

Do not be overly concerned with formality. It is more important for the group to focus its energies on its ultimate goals and to develop an effective means of communication among tenants.

C. DO TENANTS HAVE A RIGHT TO ORGANIZE?

Yes! Retaliatory conduct by landlords against tenants who organize, join, or attend a meeting of a tenant union or organization is illegal under the Ordinance. Retaliatory action also is forbidden against tenants who: complain about bad conditions or illegal landlord behavior to government agencies, elected representatives, public officials, community groups, newspapers, radio stations, or television stations; ask their landlord to make repairs required by the lease or city laws; or testify in court or at a hearing about the conditions of the apartment building.

Retaliatory conduct is any action a landlord takes to punish a tenant or tenant group for exercising rights under the law. For example, a landlord cannot end a lease, raise rent, stop any utility service, sue or threaten to sue for eviction, refuse to renew a lease or take any other action against a tenant or tenant group because they exercised rights granted under the law.

Tenants have a legal defense against an eviction suit brought against them because they complained or organized. Tenants also may sue for money if their landlord seeks to evict them for complaining or joining a tenant group. If a tenant wins a suit, he or she may get from the landlord two months' rent or twice the cost caused by the landlord's action, whichever is more, and lawyer's fees.

D. HOW DOES A TENANT'S ASSOCIATION DEAL WITH BAD BUILDING CONDITIONS?

Many tenant associations get their start because tenants are tired of living with roaches, rats, inadequate heat or poor service. Tenants with these concerns should have the tenants in the building make a list of defects in their apartments and make a joint list about the common areas, like halls, stairways and porches. A building code violation checklist can be obtained from a community group, or one can be created. Each tenant should fill it out and bring it to a meeting, or several tenants can inspect each apartment and fill out the forms. It may be useful in the future to have several members familiar with the defects in each apartment so that there will be several capable spokespersons.

Tenants will then need to compile a list of defects for the entire building. Once that list is compiled, tenants in the building should individually draft 14-day written notices detailing problems in their own apartments and stating their intentions to either repair and deduct or withhold rent. It is VERY important for tenants considering such actions to read Chapter 4 and consult with

a local community group or an attorney before doing this.

The 14-day written notices should be sent together to the landlord, preferably by certified mail. This package also should include a list of defects in the common areas of the building. As with any written correspondence with a landlord, each tenant should keep a copy of what was sent in case there is any dispute.

Once these notices have been sent, the landlord knows that if action is not taken within 14 days, many of the tenants in the building will not be paying their full rent next month. At this point, tenants may want to organize a negotiating committee, and set up a negotiating session with the landlord. If the landlord agrees to meet, the tenants' negotiating committee should agree ahead of time which complaints deal with the most important problems and should be handled immediately. The tenant association may want to tell the landlord that no rent will be withheld or repair and deduct undertaken if the landlord will provide the tenants with a written, binding commitment to make repairs in a specified, reasonable amount of time. It is important during the negotiating session that more than one person talk to the landlord so that the complaints come from the group, not just from one individual. If negotiating with the landlord does not solve the problems, see Chapter 4 for the other ways in which tenants can get building code violations corrected.

E. HOW TO BUILD AND MAINTAIN A TENANT'S ASSOCIATION

Participation and communication are the keys to building and maintaining a successful tenants' association. The strength of any organization increases with the number of people who are involved in doing the vital tasks of the organization (such as chairing meetings, doorknocking, presenting demands, doing research, testifying in court, writing flyers and letters, and so forth). Tenant associations thrive on a good two-way flow of information between leaders and other tenants. Leaders must keep themselves informed about the problems and concerns of all tenants, and all tenants must be kept aware of the activities of the leaders and other important occurrences.

In large buildings, planning and organization are necessary for good communication to occur. Floor captains, for example, may be designated to doorknock or pass out leaflets to specific tenants. Written communication is especially useful when complex or detailed information must be given out or when tenants are being asked to do something such as attend a meeting or go to court.

Meetings, which should be held only when really needed, provide a good forum for exchange of information as well as being occasions when tenants can become aware of their shared problems and get a sense of the power of their numbers. To have well-attended, well-planned meetings, leadership should go door-to-door beforehand to make sure tenants know why the meeting is necessary and so the leaders are prepared to address the kinds of issues that will arise.

F. OTHER BARGAINING ISSUES

Tenant groups can try to get the landlord to do other things besides repairing and maintaining the building. For instance, they can ask the landlord:

1. To delete or not enforce certain lease clauses. (Many lease clauses may already be illegal; see Chapter 3 for a list of those.)

2. To do regular decorating even though the building code does not require it.

3. Not to increase rents more than a certain amount or percentage each year, and to charge comparable rents for comparable apartments.

4. To give each tenant or tenant union representative a key to the basement.

5. To sign a collective bargaining contract.

G. WHAT IS A COLLECTIVE BARGAINING AGREEMENT?

In collective bargaining between a landlord and a tenant union, the landlord agrees to bargain with the tenant union instead of dealing with each individual tenant. Collective bargaining agreements typically have the following provisions:

1. The landlord recognizes the union as the sole bargaining agent on behalf of the tenants on matters relating to the condition of the building and provisions of the agreement.

2. The landlord agrees not to discriminate against the union or its members.

3. The landlord agrees to renew members' leases unless there is good cause to not agree.

4. The landlord agrees to make specific repairs by a certain date and to maintain the building thereafter, according to specified standards.

5. Any provisions in the leases between the landlord and individual tenants are void if they contradict the collective bargaining agreement.

6. Rents will not be increased for a specified time period.

7. The union has the right to inspect each apartment before occupancy by a new tenant.

8. A grievance procedure is established to handle tenant complaints.

9. The tenant union agrees to instruct tenants in their obligations under the building code, lease and collective bargaining agreement and to encourage them to comply with these obligations.

H. RECEIVERSHIP

If the City or the tenants have filed a lawsuit to compel the landlord to make repairs in the building and the landlord has failed to do so after a reasonable time, the court can appoint a person or group known as a receiver to temporarily take control of the building and make the necessary repairs. The court may sometimes appoint a receiver when the heat has been shut off in a building. Building court judges usually appoint as receivers persons with experience in managing or repairing apartment buildings. Many neighborhood organizations and the Chicago Department of Law are familiar with receivers who have good track records and who work well with tenant organizations. (See Appendix A for a list of these organizations.)

If a tenant group is interested in having a receiver appointed, it should first discuss the matter with other groups that have had a similar experience and should contact a lawyer. The receiver, once appointed by the court, has an obligation to manage the building. The receiver must collect rent, evict tenants who do not pay rent, keep detailed financial records, hire contractors and pay all bills. The receiver may have to pay prior unpaid bills to keep the building open. The receiver must also file written reports with the court showing what work has been done and disclosing the financial records.

Receivership is only temporary. At some point the court will discharge the receiver, either because of incompetence, because the receiver has completed the repairs on the building or because the building is sold or foreclosed upon.

Full control of the building will then be returned to the owner.

I. WORKING WITH LAWYERS

Every prospective and existing tenant organization should at least be in contact with a lawyer to whom they can go for advice and representation. A lawyer can advise the group as to its rights and the consequences of its actions. A landlord may attempt to evict members of a tenant group or its leaders, and a lawyer will be needed to prepare the legal defense.

The benefits of working with a lawyer are accompanied by certain problems. A tenant group must be steered by the needs of its members. Actual needs are not always the same as those perceived by the lawyer. The lawyer must represent the group, rather than direct it. A tenant organization must be careful not to fall into the easy trap of handing its entire fight over to a lawyer or letting the delay of legal proceedings and resulting tenant apathy destroy the organization.

J. SUPPOSE A TENANT GROUP WANTS TO ORGANIZE FORMALLY?

Tenants who want to organize formally will find it helpful to draw up some kind of agreement or bylaws concerning how the group should operate. There is no hard and fast rule about bylaws, but they should at least include the following:

1. *Members*. Who can be a member of the organization (for example, every adult tenant). It is strongly suggested that at least some minimal dues be charged to provide revenue for certain activities and cement tenants' commitment to the group.

2. *Meetings and Quorums*. Either schedule regular meetings or set up a system for calling special meetings. Decide how many members must be present before important issues can be decided. This is called a "quorum."

3. *Officers*. Usually there is a President, Vice President, Secretary and Treasurer. Define the procedure for electing, removing or replacing officers and the duties of each. Care must be taken not to give all of the work to the officers. In order to achieve maximum strength, all members should take an active role.

4. *Committees*. Some bylaws specify various committees, but with the exception of an executive committee, it is probably advisable to let committees be formed as problems arise.

5. *Amendments*. There should be some provision for amending the bylaws.

6. *Incorporation*. Some tenant groups incorporate as not-for-profit corporations. To do so is a fairly simple task which involves filing articles of incorporation with the Illinois Secretary of State and paying a $50 fee. The law regulates how corporations should operate. For instance, there must be a Board of Directors that is responsible for the management of the corporation. It will also have to file annual reports with the State. Groups should consult a lawyer before deciding to incorporate.

APPENDICES

APPENDICES

A. RESOURCES & REFERRALS

1. Community and Civic Organizations
2. Legal Assistance
3. Government Offices

B. SAMPLE FORMS

1. Five-day Notice
2. Ten-day Notice
3. 30-day Notice
4. Summons
5. Complaint-Nonpayment of Rent
6. Complaint-Possession Only
7. Order of Possession

C. LITIGATION FEES AND WAIVER OF FEES

1. Fee Schedule
2. Application To Sue or Defend As A Poor Person

D. PRO SE COURT AND SMALL CLAIMS COURT

E. SAMPLE LETTERS

1. Rent Withholding
2. Repair & Deduct
3. Terminating Tenancy
4. Lack of Sufficient Heat
5. Return of Security Deposit
6. Security Deposit Interest

F. CHICAGO POLICE DEPARTMENT SPECIAL ORDER 93-12: LOCKOUTS

G. CHICAGO RESIDENTIAL & TENANT ORDINANCE

APPENDIX A. - RESOURCES & REFERRALS

APPENDIX A. - RESOURCES & REFERRALS

1. Community and Civic Organizations in Chicago

a. City-Wide Organizations

ACORN
601 South LaSalle Street,Suite 200
Chicago, Illinois 60605
939-7488

Center for Neighborhood Technology
2125 West North Avenue
Chicago, Illinois 60647
278-4800

Chicago Rehab Network
53 West Jackson Boulevard
Suite 742
Chicago, Illinois 60604
663-3936

Lawyers' Committee For Better Housing
1263 West Loyola Avenue
Chicago, Illinois 60626
274-1111

Metropolitan Tenants Organization
2125 West North Avenue
Chicago, Illinois 60647
292-4980

b. Northside Organizations

Bickerdike Redevelopment Corp.
2550 West North Avenue
Chicago, Illinois 60647
278-5669

Edgewater Community Council
1112 West Bryn Mawr Avenue
Chicago, Illinois 60660
334-5609

Lakeview Action Coalition
3212 North Broadway Street
Chicago, Illinois 60657
549-1631

Latin United Community Housing Association
2750 West North Avenue
Chicago, Illinois 60647
276-5338

Logan Square Neighborhood Association
3321 West Wrightwood Avenue
Chicago, Illinois 60647
384-4370

North River Commission
4745 North Kedzie Avenue
Chicago, Illinois 60625
478-0202

Northwest Community Organization
1109 North Ashland Avenue
Chicago, Illinois 60622
276-0211

Organization of the North East
5121 North Clark Street
Chicago, Illinois 60640
769-3232

(continued)

b. Northside Organizations (continued)

People's Housing
1607 West Howard Street #207
Chicago, Illinois 60626
262-5900

Rogers Park Community Council
1772 West Lunt Avenue
Chicago, Illinois 60626
764-4326

Rogers Park Community Action Network
1545 West Morse Avenue
Chicago, Illinois 60626
973-7888

United Neighbors In Action
1620 North Pulaski Road
Chicago, Illinois 60639
227-8550

Uptown Peoples Community Service Center and
Heart of Uptown Coalition
4409 North Broadway Street
Chicago, Illinois 60640
769-2085

Voice of the People
4753 North Broadway Street
Suite 1010
Chicago, Illinois 60640
769-2442

Westtown Concerned Citizens Coalition
3524 West Armitage Avenue
Chicago, Illinois 60647
235-2144

c. Southside Organizations

Action Coalition of Englewood
6001 South Justine Street
Chicago, Illinois 60636
471-0080

Covenant Development Corporation
1312 East 62nd Street
Chicago, Illinois 60637
752-8682

Chicago Urban League
4510 South Michigan Avenue
Chicago, Illinois 60653
285-5800

Greater Grand Crossing Organizing Committee
213 East 79th Street
Chicago, Illinois 60619
846-5552

Hyde Park-Kenwood Community Conference
1513 East 53rd Street
Chicago, Illinois 60615
288-8343

Interfaith Community Organization
1641 South Allport Street
Chicago, Illinois 60608
226-7887

Kenwood-Oakland Community Organization
1238 East 46th Street
Chicago, Illinois 60653
548-7500

(continued)

c. Southside Organizations (continued)

The Neighborhood Institute
1750 East 71st Street
Chicago, Illinois 60649
684-4610

Pilsen Neighbors Community Council
2026 South Blue Island Avenue
Chicago, Illinois 60608
666-2663

South East Chicago Commission
1511 East 53rd Street, 2nd floor
Chicago, Illinois 60615
324-6926

South Shore Tenants Organization
2555 East 73rd Street
Chicago, Illinois 60649
734-7507

Southwest Community Congress
2832 West 63rd Street
Chicago, Illinois 60629
436-6150

United Neighborhood Organization of Southeast Chicago
2938 E. 91st Street
Chicago, Illinois 60617
731-1742

Woodlawn East Community & Neighbors
1541 East 65th Street
Chicago, Illinois 60637
288-3000

The Woodlawn Organization
6040 South Harper Avenue
Chicago, Illinois 60637
288-5840

d. Westside Organizations

Austin People's Action Center
5931 West Corcoran Place
Chicago, Illinois 60644
921-2121

Bethel New Life
367 North Karlov Avenue
Chicago, Illinois 60624
826-5540

Interfaith Organizing Project
1617 West Washington Boulevard
Chicago, Illinois 60612
243-3328

Midwest Community Council
301 North Kedzie Avenue
Chicago, Illinois 60612
826-2244

Northeast Austin Organization
5057 West North Avenue
Chicago, Illinois 60639
745-8222

Northwest Austin Council
5758 West Potomac Avenue
Chicago, Illinois 60651
379-7822

PRIDE
4 North Cicero Avenue, Room 41
Chicago, Illinois 60644
379-4412

(continued)

d. Westside Organizations (continued)

South Austin Coalition Community Council
5112 West Washington Street
Chicago, Illinois 60644
287-4570

United Neighborhood Organization of Little Village
125 North Halsted Street,Suite 203
Chicago, Illinois 60606
441-1300

e. Statewide Organizations

Statewide Housing Action Coalition
202 South State Street, Suite 1414
Chicago, Illinois 60604
939-6074

2. Legal Assistance

Legal Assistance Foundation of Chicago

General Office

343 South Dearborn Street
Suite 700
Chicago, Illinois 60604
341-1070

Neighborhood Offices:

Englewood Office
853 West 63rd Street
Chicago, Illinois 60621
651-3100

Westside Office
911 South Kedzie Avenue
Chicago, Illinois 60612
638-2343

Mid-South Office
4655 South Michigan Avenue
Chicago, Illinois 60653
538-0733

Northwest Office
1212 North Ashland Avenue
Chicago, Illinois 60622
489-6800

Legal Aid Bureau of Chicago

General Office
14 East Jackson Boulevard
Chicago, Illinois 60604
922-5625

Mandel Legal Aid Clinic
6020 South University Avenue
Chicago, Illinois 60637
702-9611

Chicago Volunteer Legal Services
205 West Randolph Street
Suite 510
Chicago, Illinois 60606
332-1624

a. Other Legal Assistance

32nd Ward Community Service Network
1909 West Belmont Avenue
Chicago, Illinois 60657
265-5631

(continued)

a. Other Legal Assistance (continued)

Bridgeport Volunteer Law Center
3240 South Morgan Street
Chicago, Illinois 60608
254-3718

Chicago Bar Association Lawyer Referral Service
321 South Plymouth Court
Chicago, Illinois 60604
554-2001

Legal Services Center
Chicago-Kent College of Law
565 West Adams Street
Chicago, Illinois 60661
906-5050

Cook County Bar Association Community Law Project, Inc.
188 West Randolph Street, Suite 720
Chicago, Illinois 60601
630-9363

Cook County Bar Association Lawyer Referral Program
188 West Randolph Street, Suite 720
Chicago, Illinois 60601
630-1157

DePaul Legal Clinic
25 East Jackson Boulevard
Suite 950
Chicago, Illinois 60604
341-8294

Leadership Council for Metropolitan Open Communities
401 South State Street, Suite 860
Chicago, Illinois 60605
341-5678

Lawyers Committee for Better Housing
1263 West Loyola Avenue
Chicago, Illinois 60626
274-1111

Community Law Center
Loyola University Law School
721 North LaSalle, 5th Floor
Chicago, Illinois 60610
655-7770

Northwestern University Legal Clinic
357 East Chicago Avenue
Chicago, Illinois 60611
503-8576

South Chicago Legal Clinic
2938 East 91st Street
Chicago, Illinois 60617
731-1762

Uptown People's Law Center
4409 North Broadway Street
Chicago, Illinois 60640
769-1411

(continued)

3. Government Offices Dealing with Tenant-Landlord Relations

a. City of Chicago Agencies

Chicago Department of Buildings
121 North LaSalle Street
Room 800
Chicago, Illinois 60602
(complaints taken at 744-5000)

Corporation Counsel (Building Violations Division)
180 North LaSalle Street
Room 501
Chicago, Illinois 60602
(Pending cases: 744-5000)

Mayor's Office of Inquiry and Information
121 North LaSalle Street
Room 100
Chicago, Illinois 60602
744-5000

Chicago Department of Health
3026 South California
1st Floor South
Chicago, Illinois 60608
744-7744 (can determine whether a child has lead poisoning)

Chicago Housing Authority
500 East 37th Street
Chicago, Illinois 60653
791-8500

Chicago Commission on Human Relations, Fair Housing Division
318 South Michigan Avenue
Chicago, Illinois 60604
744-4100 (investigates complaints of discrimination)

Chicago Department of Consumer Services
121 North LaSalle Street
Room 808
Chicago, Illinois 60602
744-9400 (investigates complaints concerning security deposits and apartment-finding agencies)

b. Cook County Agencies

Cook County Sheriff
Richard J. Daley Center
Room 704
Chicago, Illinois 60602
(Evictions: 443-3356; Information about summons fees: 443-3990)

Cook County State's Attorney
(criminal housing management prosecutions)
Richard J. Daley Center
Room 500
Chicago, Illinois 60602
443-6275

(continued)

b. Cook County Agencies (continued)

Cook County State's Attorney
(Consumer Division)
Richard J. Daley Center
Room 303
Chicago, Illinois 60602
443-4600

c. State of Illinois Agencies

Department of Professional Regulation
100 West Randolph Street
9th Floor
Chicago, Illinois 60601 (licenses real estate brokers and apartment-finding agencies)
814-4500

Illinois Attorney General
100 West Randolph Street
13th Floor
Chicago, Illinois 60601 (Consumer Fraud Division)
814-3000

Illinois Housing Development Authority
401 North Michigan Avenue
Suite 900
Chicago, Illinois 60611
836-5200

Illinois Department of Human Rights
100 West Randolph Street
10th Floor
Chicago, Illinois 60601
814-6245 (investigates complaints of discrimination)

d. Federal Offices

Federal Housing Administration, Department of Housing and Urban Development 77 West Jackson Boulevard
Suite 2101
Chicago, Illinois 60605
Switchboard: 353-5682;
Fair Housing Division: 353-7776.

Federal Housing Administration, Department of Housing and Urban Development: Public Housing Division
77 West Jackson Boulevard
Suite 2200
Chicago, Illinois 60605
353-6236.

APPENDIX B. - SAMPLE FORMS

FIVE-DAY NOTICE

Landlord's Five Days' Notice
(Illinois)

NO. 30
FEBRUARY, 1966

GEORGE E. COLE®
LEGAL FORMS

CAUTION: Consult a lawyer before using or acting under this form. *Neither the publisher nor the seller of this form makes any warranty with respect thereto, including any warranty of merchantability or fitness for a particular purpose.*

LANDLORD'S FIVE DAYS' NOTICE

To (Tenant)

You are hereby notified that there is now due the undersigned landlord the sum of

(Amount of Rent) Dollars and Cents,

being rent for the premises situated in the City of Chicago, County of Cook

and State of Illinois, described as follows, to wit: (Address)

together with all buildings, sheds, closets, out-buildings, garages and barns used in connection with said premises.

And you are further notified that payment of said sum so due has been and is hereby demanded of you, and that unless payment thereof is made on or before the expiration of five days after service of this notice your lease of said premises will be terminated November 8, 19

(Name) is hereby authorized to receive said rent so due, for the undersigned.

Only FULL PAYMENT of the rent demanded in this notice will waive the landlord's right to terminate the lease under this notice, unless the landlord agrees in writing to continue the lease in exchange for receiving partial payment.

Dated this 2d day of November, 19 ___

(Name)
Landlord

By (Signature)
Agent or Attorney

No._____

FIVE DAYS' NOTICE

_____

_____

vs.

_____

_____

Served the within notice by delivering a copy thereof to the within named:

_____

_____

_____

this _____ day of

_____ A. D. 19____

Fees - - - $_____

Mileage - - - $_____

Service - - - $_____

GEORGE E. COLE®
LEGAL FORMS

STATE OF ILLINOIS } SS.
COUNTY OF_____ }

AFFIDAVIT OF SERVICE—When served by a person not an officer.

(Name) _____, being duly sworn, on oath deposes and says that on the 2d day of November, 19____ he served the within notice on the tenant named therein, as follows:*

(1) by delivering a copy thereof to the within named tenant (Name) _____

(2) by delivering a copy thereof to _____ a person above the age of thirteen years, residing on or in charge of the within described premises.

(3) by sending a copy thereof to said tenant by ** {certified / registered} mail, with request for return of receipt from the addressee.

(4) by posting a copy thereof on the main door of the within described premises, no one being in actual possession thereof.

Subscribed and sworn to before me this

2d day of November, 19____ } (Signature) _____

(Signature) _____
Notary Public

*Strike out all paragraphs not applicable.
**Strike out word not applicable.

TEN-DAY NOTICE
(Chicago, Illinois)

LANDLORD'S TEN DAYS' NOTICE

CAUTION: Consult a lawyer before using or acting under this form. Neither the publisher nor the seller of this form makes any warranty with respect thereto, including any warranty of merchantability or fitness for a particular purpose.

(Chicago, Illinois)

To (Tenant)

You are hereby notified that your tenancy of the following described premises, to wit:

(Address)

situated in the City of Chicago, in the County of Cook and the State of Illinois, will terminate on the 11th day of November 19 ___ due to the following material noncompliance with the Chicago Residential Landlord and Tenant Act or with the rental agreement (lease):

Keeping a dog on the premises in violation of ¶8 of the lease.

unless the aforesaid noncompliance is remedied within 10 days after receipt of this Notice. If the noncompliance is not remedied within the 10-day period, the tenancy will terminate as stated above, and you will be required to surrender possession of the premises to the undersigned on that day.

Dated this 1st day of November, 19 ___

(Landlord)

(Signature)

STATE OF ILLINOIS, County of Cook } ss.

AFFIDAVIT OF SERVICE—When served by a person not an officer.

(Landlord), being duly sworn, on oath deposes and says that on the 1st day of November 19___ he served the within notice

(1) by delivering a copy thereof to the within named tenant, (Name)

(2) on said tenant by delivering a copy of the same to _____, a member of the family of tenant, above the age of thirteen years, residing on or in possession of the within described premises.

(3) on said tenant by posting a copy of the same on the main door of the within described premises, no one being in actual possession thereof.

Subscribed and sworn to before me this 1st day of November, 19__

(Signature)
Notary Public.

(Signature)

Note: Strike out all except 1, 2, or 3, according to the facts of service.

30-DAY NOTICE

NOTICE OF TERMINATION OF TENANCY (CHICAGO) (Illinois) No. 27P FEBRUARY, 1986

GEORGE E. COLE® LEGAL FORMS

CAUTION: Consult a lawyer before using or acting under this form. *Neither the publisher nor the seller of this form makes any warranty with respect thereto, including any warranty of merchantability or fitness for a particular purpose.*

To (Tenant)_____

_____

You are Hereby Notified that your tenancy of the following premises, to-wit:

(Address)

situate in the City of Chicago, in the County of Cook, and State of Illinois, will terminate on the 30th day of November, 19____, and you are now hereby required to surrender possession of said premises to the undersigned on that day.

Dated at Chicago, Illinois, this 31st day of October, 19____.

(Landlord)

(Signature)

STATE OF ILLINOIS } SS.
COUNTY OF COOK }

AFFIDAVIT OF SERVICE—When served by a person not an officer.

(Landlord), being duly sworn, on oath deposes and says that on the 31st day of October, 19____, he served the within notice on the named tenant, (Tenant),

(1) by delivering a copy thereof to the tenant

(2) by leaving a copy thereof with _____, a person above the age of thirteen years, residing on or in possession of the premises

(3) by sending a copy thereof by {certified / registered} mail, with return receipt requested

(4) by posting a copy thereof on the premises, there being no one in the actual possession of the premises.*

Subscribed and sworn to before me this 31st day of October, 19____

(Signature)
Notary Public

(Signature)

*Note: Strike out all except one of (1), (2), (3) and (4), according to the facts of service.

14

SUMMONS

2120 - Served 2220 - Not Served 2620 - Sec. of State
2121 - Alias Served 2221 - Alias Not Served 2621 - Alias Sec. of State (Rev. 3/92) CCM1-81 A

IN THE CIRCUIT COURT OF COOK, COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

COPY

Plaintiff...

v.

Defendant...

No. 88 M1-123456

Rent Amount Claimed $ 500.00

Trial Date November 6, 19__

Trial Time 9:30 A.M.

SUMMONS FOR TRIAL

The plaintiff, named above, has filed a complaint in this Court to have you evicted. A true and correct copy of that complaint is attached.

THEREFORE, you, the defendant(s), are hereby summoned to appear in person before this Court on* _____

November 6 19____ at 9:30 (a.m.)(p.m.) in Courtroom 1402 of the Richard J. Daley Center, Randolph and Clark Streets, Chicago, Illinois at which time and place a TRIAL will be held on the complaint. (See top of this form if blanks not filled in).

If you wish to contest the claim of the plaintiff, YOU MUST APPEAR in court at the time specified above. IF YOU DO NOT APPEAR and contest the claim, a JUDGMENT BY DEFAULT may be entered for the relief requested in the complaint, ordering that you be evicted. If judgment is entered against you, the SHERIFF may evict you. A money judgment may also be entered against you if requested in the complaint.

*Not less than 14 days nor more than 40 days after issuance of summons.

INSTRUCTIONS TO SHERIFF

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees if any, immediately after service and not less than seven(7) days before the day for appearance. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than seven (7) days before the trial date.

SEAL

WITNESS October 20, 19__

AURELIA PUCINSKI

AURELIA PUCINSKI, Clerk of Court

Name Landlord's Attorney
Attorney For Landlord
Address etc.
City
Telephone
Atty No.

DATE OF SERVICE ....., 19__
(To be inserted by officer on copy left with defendant or other person)

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

(OVER)

IMPORTANT INFORMATION FOR DEFENDANTS

THIS IS AN EVICTION SUMMONS

On the date and at the time shown on the other side, the court will decide whether you will have to move or whether you can continue to stay. YOU MUST BE ON TIME FOR COURT. HAVING TO GO TO WORK, BEING ILL, OR DOING SOMETHING ELSE DOES NOT MEAN YOU CAN MISS COURT.

IF YOU DON'T COME TO COURT

The court may order you to move within a short period of time. IF YOU DON'T MOVE, your landlord can have the SHERIFF move you and all your belongings out. The sheriff will put your property outside and you will have to make arrangements to move it some where else.

YOUR HAVE RIGHTS

1. You have the right to come to court and tell your side of the case.

2. You may come to court and speak for yourself, or may have a lawyer represent you. If you want a lawyer, you must get one right away. If you are unable to come to court for any reason, you should talk to a lawyer.

3. If you do not have a lawyer, and are able to afford one, you may call one of the following Lawyer Referral Service and ask them to recommend a lawyer for you:

   - Chicago Bar Association Lawyer Referral Service, 321 S. Plymouth Ct., Chicago, Illinois 60604. Phone (312) 554-2001
   - Cook County Bar Association, Lawyer Referral Service, 188 W. Randolph St., Suite 720 Chicago, Illinois 60601.
   - Other Lawyer Referral Services are listed in your telephone directory.

4. If you cannot afford a lawyer, you may call one of the following agencies that may be able to provide you with free legal help:

   - Legal Assistance Foundation of Chicago 343, S. Dearborn, Chicago, IL 60604, phone (312)341-1070
   - Legal Aid Bureau of United Charities, 14 E. Jackson Blvd., Chicago, IL. phone (312)986-4200
   - Chicago Volunteer Legal Services, phone(312)332-1624

THERE WILL BE A FEE TO FILE YOUR APPEARANCE. IF CLAIM IS $1,500.00 OR LESS, THE FEE WILL BE $64.00. IF OVER $1,500.00. THE FEE WILL BE $84.00, IF OVER $15,000 THE FEE WILL BE $99.00. THIS FEE CAN BE WAIVED BY COURT ORDER IF YOU ARE UNABLE TO PAY.

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY , ILLINOIS

COMPLAINT - NONPAYMENT OF RENT

0005
0006
COMPLAINT IN FORCIBLE DETAINER AND RENT OR DAMAGE CLAIMS (Rev. 8-88) CCMD-20A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, ... DISTRICT

Landlord,

Plaintiff..

v.

Tenant,

Defendant...

No. 88-M1-123456

Rent or Damage Claimed $ 500

Return date November 6, 19__

COMPLAINT

The plaintiff... claim.s . as follows:

1. The plaintiff....is.... entitled to the possession of the following described premises in the City or Village of: Chicago, Illinois

(Address)

2. The defendant ..... unlawfully withhold .s ..... possession thereof from the plaintiff .....

3. There is due to plaintiff .... from the defendant .... for rent of or for damages for withholding possession of said premises from ..October .1....., 19...., to ..October .31....., 19...., after allowing the defendant ... all just credits, deductions and set-offs, the sum of $..500.....

The plaintiff .... claim.s... possession of the property and $..500..... as rent or damages.

(Signature)
Attorney... for plaintiff...

Name Landlord's Attorney
Attorney for Landlord
Address etc.
City
Telephone
Atty No.

I, ...(Landlord)....., on oath state that I am the plaintiff in the above entitled action. The allegations in this complaint are true.

(Signature)

[ ] Under penalties as provided by law pursuant to ILL REV. STAT. CHAP 110-SEC 1 - 109 the abovesigned certifies that the statements set forth herein are true and correct.

COMPLAINT - POSSESSION ONLY

Forcible Detainer - Complaint For Possession Only (Rev. 5-91) CCMD-21A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS ..... DISTRICT

Landlord,

Plaintiff ___

v.

Tenant,

Defendant ___

No. ...88-M1-654321.....

Return Date ...November 6, 19__.....

COMPLAINT

The Plaintiff___ claim _s_ as follows.

1. The plaintiff_____is / are entiled to possession of the following described premises:

.....(Address).....

.....

.....

2. Defendant ___unlawfully withhold _s_ possession of the premises from the plaintiff for the following reason ___,

   a. The defendant____ failed to pay rent.

   b. The defendant ___ held over after the tenancy ended.

   c. The defendant breached the terms of the lease by .....

   .....

   d. .....
   (insert specific facts showing how

   defendant___ unlawfully withhold___ possession)

   (Strike "2a", "2b", "2c" or "2d", as appropriate.)

3. The Plaintiff___ claim _s_ possession of the property.

.....(Signature).....
Attorney ___ for plaintiff___ / Plaintiff Pro-Se

I .....(Landlord)....., on oath state that I am the plaintiff in the above entitled action. The allegations in this complaint are true.

.....(Signature).....

Name (Landlord's Attorney)
Attorney for (Landlord)
Address
City etc.
Telephone
Atty No.

[ ] Under penalties as provided by law pursuant to ILL REV. STAT. CHAP 110 - SEC 1 - 109 the abovesigned certifies that the statements set forth herein are true and correct.

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY , ILLINOIS

ORDER FOR POSSESSION

9420

(Rev. 5-91) CCM1-114

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

TYPE OR PRINT

Landlord,

Plaintiff–

v.

NO. .... 88 M1-123456 .....

Tenant,

Defendant–

Amount Claimed $. 500 .....

ORDER FOR POSSESSION

This cause coming on to be heard upon the complaint of the plaintiff, .(Landlord) .... and the issues thereof having been heard and determined by . the Court ..... (the Court) (a jury) and said ..... Court ..... (Court) (jury) having found that the plaintiff .....(Landlord)..... is entitled to the possession of the premises described herein.

It is therefore ordered and adjudged:

1. That the plaintiff have and recover of and from the defendant ...(Tenant)..... ..... the possession of the following described premises:

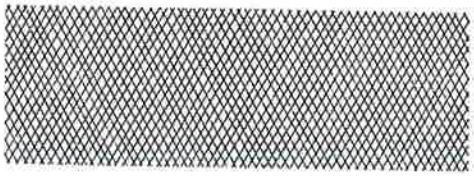
Name: ...(Tenant).....

Address. .(Street .Address).....

City - Zip:(City, .Zip .Code).....

Floor - Apt. No. ..(Apt. No.).....

.....



2. That the plaintiff have and recover of and from the defendant, (Tenant) .... , damages in the sum of ....$500..... Dollars and his costs and charges in his behalf expended.

3. Enforcement of this judgment is stayed until . November 21, 19__ ..... (date).

I hereby certify the above to be correct.

Dated ....(Date).....

(Seal of Clerk of Circuit Court)

..(Signature of the Clerk of Circuit Court)

Clerk of the Circuit Court of Cook County, Illinois.

This order is the command of the Circuit Court and violation thereof is subject to the penalty of the law. IRS, Ch.110 Sec. 6-101 Et. Seq. & Sec. 110-9 Et. Seq.

DATE ENTERED ....(Date).....

ENTER: .....(Judge's Signature)..... (Judge's No.)

Judge Judge's No.

NAME: (Landlord's Attorney)

ATTORNEY FOR PLAINTIFF

ADDRESS

CITY etc.

TELEPHONE

Atty No.

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX C. - LITIGATION FEES AND WAIVER OF FEES

19 w/o #

APPENDIX C. - LITIGATION FEES AND WAIVER OF FEES

1. Litigation Fees

When a lawsuit is filed, the party filing the lawsuit (plaintiff) must pay a filing fee to the Clerk of the Court and a service of summons fee to the Sheriff. The person sued (defendant) must pay the Clerk of the Court an "Appearance" fee in order to defend the case. The amount of the filing and appearance fee depends on the nature of the case. Either party may ask for a jury, except in cases seeking an injunction only.

a. Eviction Filing Fees

Filing fee for eviction: $100.00 (if landlord claims rent or damages in excess of $15,000.00, the fee is $250.00).

Fee Sheriff charges landlord to carry out eviction order:

Filing Fee	$15.00
Deposit	210.00
Hourly Rate	95.00

b. Service of Summons

In Chicago, the fee is $23.00 plus $0.40 per mile of travel required.

c. Injunction Lawsuit

Filing Fee	$215.00

(continued)

d. Appearance Fees

Eviction where only possession is sought	$64.00
Claims up to $1,500.00	64.00
Claims over $1,500.00 but up to $15,000.00	84.00
Claims over $15,000.00	99.00

e. Jury Fees

Claims up to $2,500.00	
Six-Person Jury	$12.50
Twelve-Person Jury	$25.00
Claims up to $15,000.00	
Six-Person Jury	$100.00
Twelve-Person Jury	$200.00
Claims over $15,000.00	
Six-Person Jury Not Permitted	
Twelve-Person Jury	$200.00

NOTE: These fees are in effect as of June, 1993. They may be changed at a future time.

APPLICATION TO SUE OR DEFEND AS A POOR PERSON

3387 (4-81) CCG-19

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Landlord, Plaintiff
v.
Tenant, Defendant

NO. 88 M1-123456
ORDER
☐ Application granted
☐ Application denied
....., 19....
.....Judge

APPLICATION TO SUE OR DEFEND AS A POOR PERSON

I, ...(Tenant).....,

(check applicable statement) ☒ on my own behalf.
☐ as ..... (parent) (guardian) (other) on behalf of

..... (name), a ..... (minor) (incompetent)

called "applicant," on oath state:

1. Applicant's occupation or means of subsistence.

a. Applicant is employed as .....Unemployed..... (job)

by ..... (employers)

b. Applicant's other sources of income or support are: AFDC - $341 per month

2. Applicant's income for the preceding year was $. .4,092.....

3. The sources and amount of income expected by applicant hereafter are:

Same as above.

The persons dependent on applicant for support are:

Maurice (son) - Age 13
Marrell (son) - Age 10

4. Applicant owns (a) no real estate except: (State address or location, nature of improvements and value.)

and (b) personal property which in the aggregate does not exceed $ . . 1,000 . . . . . .in value and consists of:

including a none (make) motor vehicle, 19...., (year) valued at $. .....

5. No applications were filed by or on behalf of applicant for leave to sue or defend as a poor person during the preceding year except:

6. Applicant is unable to pay the costs of this case.

7. Applicant has a meritorious . defense and counterclaim (claim) (defense)

.....(Signature)..... (Signature)

Signed and sworn to before me .....(Date)....., 19....

Name (Tenant or Tenant's Attorney)
Attorney for applicant (Tenant)
Address etc.
City
Telephone
Atty No.

(Signature of Notary) ..... Notary public

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX D. -
PRO SE COURT AND SMALL CLAIMS COURT OF THE CIRCUIT COURT OF COOK COUNTY

93 404

APPENDIX D. - PRO SE COURT AND SMALL CLAIMS COURT OF THE CIRCUIT COURT OF COOK COUNTY

CIRCUIT COURT OF COOK COUNTY
Pro Se Court

Clerk's Office:
602 Daley Center (60602)
443-5626 or 443-5627
Monday - Friday, 9:30 a.m. to 4:30 p.m.

Court:
1308 Daley Center (60602)
Trial Call: Monday - Friday, 9:30 a.m.
Motion Call: Monday - Friday, 2:00 p.m.

Clientele: Individual plaintiffs who have claims up to $1,500.00.
Type of service: The pro se court is a court of law that hears any kind of claim up to $1,500.00, including auto damage, consumer complaints, debt collection, tenant-landlord claims, etc. Plaintiffs may not have an attorney but defendants may. There is no jury. Court procedures are greatly simplified, and a case may be disposed of in a few weeks.

CIRCUIT COURT OF COOK COUNTY
Small Claims Court

Clerk's Office:
602 Daley Center (60602)
443-5145

Court: Usually 11th Floor; check with Clerk's office

Clientele: Individual plaintiffs with claims up to $2,500.00.
Type of Service: The small claims court is a court of law that hears any kind of claim up to $2,500.00. Both parties may be represented by an attorney. Court procedures are simplified and expedited.

APPENDIX E. - SAMPLE LETTERS OF NOTIFICATION

25 w/o #

APPENDIX E. - SAMPLE LETTERS OF NOTIFICATION

NOTE: These sample letters are not to be duplicated or used as actual letters of notification. They should not be used as a legal guide or an official form for notification of a landlord. When writing a letter of notification, always consult with an attorney or a tenants' organization for guidance.

1. **SAMPLE LETTER FOR USING RENT WITHHOLDING**
(Can only be used by residents of buildings covered by the Chicago Residential Landlord-Tenant Ordinance)

(Landlord's name and address) (Date)

Dear Landlord or Manager:

There is a serious problem in my apartment that needs to be taken care of. (HERE, STATE THE EXACT NATURE OF THE PROBLEM.)

This problem is a violation of the Chicago Residential Landlord-Tenant Ordinance (OR my lease agreement). Therefore, I am requesting that you remedy this problem within 14 days. Otherwise, under the law, I will deduct a portion of my rent for each day after 14 days, which reflects the reduced value of my apartment. I will continue to make this deduction until the problem is remedied.

Thank you.

Sincerely,
(Your name and address)

cc: (a community organization)

REMEMBER TO KEEP A COPY OF THE LETTER FOR YOURSELF and to send the letter by certified or registered mail, return receipt requested.

2. SAMPLE LETTER FOR USING REPAIR AND DEDUCT

(Can only be used by residents of buildings covered by the Chicago Residential Landlord-Tenant Ordinance)

(Landlord's name and address) (Date)

Dear Landlord or Manager:

There is a problem in my apartment that I would like you to take care of. (HERE, STATE THE EXACT NATURE OF THE PROBLEM.)

This problem constitutes a violation of the Chicago Residential Landlord-Tenant Ordinance (or my lease agreement). Therefore, I am requesting that you remedy this problem within 14 days. Otherwise, under the law, I will get the repair done on my own, and deduct the cost from my rent. I will provide paid receipts to you along with my reduced rent, and the deduction will not exceed the legal maximum of $500 (or one-half of the monthly rent, whichever is greater), but not to exceed one month's rent.

Thank you.

Sincerely,
(Your name and address)

cc: (a community organization)

REMEMBER TO KEEP A COPY OF THE LETTER FOR YOURSELF and to send the letter by certified or registered mail, return receipt requested.

3. **SAMPLE LETTER FOR TERMINATING TENANCY** (Can only be used by residents of buildings covered by the Chicago Residential Landlord-Tenant Ordinance and only under circumstances where the premises is "not reasonably fit and habitable." See Chapter 4, Section F(1).)

(Landlord's name and address) (Date)

Dear Landlord or Manager:

There is a problem in my apartment that I would like you to take care of. (HERE, STATE THE EXACT NATURE OF THE PROBLEMS).

These problems make my apartment not reasonably fit and habitable and are violations of the Chicago Residential Landlord-Tenant Ordinance (or my lease agreement). Therefore, I am requesting that you remedy this problem within 14 days. Otherwise, under the law, my lease will terminate at the end of that 14 day period. I will then vacate the premises within 30 days thereafter.

Thank you.

Sincerely,
(Your name and address)

cc: (a community organization)

REMEMBER TO KEEP A COPY OF THE LETTER FOR YOURSELF and to send the letter by certified or registered mail, return receipt requested.

4. **SAMPLE LETTER WHEN THERE IS A LACK OF SUFFICIENT HEAT** (Can only be used by residents of buildings covered by the Chicago Residential Landlord-Tenant Ordinance)

(Landlord's name and address) (Date)

Dear Landlord or Manager:

This notice is to inform you of the lack of sufficient heat in my apartment. Since (GIVE DATE AND TIME OF INITIAL FAILURE TO PROVIDE HEAT), I have been without heat (OR SUFFICIENT HEAT) throughout the entire apartment (OR SPECIFY WHICH PART OF THE PREMISES LACKS HEAT), and I would like you to correct this problem immediately so that I might enjoy the full use of my apartment.

I have notified you (OR THE MANAGER, OR JANITOR, ETC.) about the heat problem by telephone, but I am presenting this notice in writing in order to exercise my rights under the Chicago Residential Landlord-Tenant Ordinance, specifically Section 5-12-110(f). Under the Ordinance, I have the right, among others, to procure reasonable amounts of heat and deduct this cost from my rent and, also, to withhold from the monthly rent an amount that reasonably reflects the reduced value of my apartment if the heat is not restored within 24 hours of receipt of this notice. I regard the lack of heat as a serious health and safety problem that cannot go unremedied; if you do not remedy this problem immediately, I will take appropriate action.

Please inform me as to how you intend to correct this problem. I can be contacted at (GIVE TELEPHONE NUMBER, TIME, AND PLACE WHERE YOU CAN BE REACHED).

Sincerely,
(Your Name and Address)

cc: (a community organization)

REMEMBER TO KEEP A COPY OF THE LETTER FOR YOURSELF and to send the letter by certified or registered mail, return receipt requested.

5. SAMPLE LETTER FOR RETURN OF SECURITY DEPOSIT

(Can only be used by residents of buildings covered by the Chicago Residential Landlord-Tenant Ordinance)

(Landlord's name and address) (Date)

Dear Landlord or Manager:

I am writing to request that you send my security deposit of $ (amount) to me at my new address: (current mailing address)

.

As you know, I vacated my apartment at (previous address) on (date). The apartment was left clean, and I have documented the condition of the apartment and left it as it was when it was first rented to me, except for normal wear and tear.

The Chicago Residential Landlord-Tenant Ordinance states that you owe me the entire amount of the security deposit, since I did not hear from you within 30 days of vacating the apartment. If I do not receive my deposit, I can sue you for the deposit, plus a penalty equal to the amount of the deposit and any court costs or attorney's fees.

I will expect a refund by (date). (A date at least 45 days after the move-out date.) Thank you in advance for your cooperation.

Sincerely,
(Your name and address)

cc: (a community organization)

REMEMBER TO KEEP A COPY OF THE LETTER FOR YOURSELF and to send the letter by certified or registered mail, return receipt requested.

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6. SAMPLE LETTER FOR SECURITY DEPOSIT INTEREST

(Can only be used by residents of buildings covered by the Chicago Residential Landlord-Tenant Ordinance)

(Landlord's name and address) (Date)

Dear Landlord or Manager:

I am writing to you concerning the payment of interest on my security deposit. As you are probably aware, the law requires that landlord's pay 5% interest each year on the deposit. (Excluding only owner-occupied six-flats or less.) The interest must be paid each year within 30 days of the anniversary of the lease.

The law says that if the landlord fails to pay this interest, the court can order the landlord to pay this interest plus twice the amount of the security deposit, plus court costs and lawyer's fees.

I have calculated that you owe me a total of $ (amount) in interest on my deposit of $ (amount) for the year 1987. I will expect to receive a check for this amount by (date). (A date at least 30 days after the anniversary of the lease.) Thank you for your cooperation.

Sincerely,
(Your name and address)

cc: (a community organization)

REMEMBER TO KEEP A COPY OF THE LETTER FOR YOURSELF and to send the letter by certified or registered mail, return receipt requested.

APPENDIX F. - CHICAGO POLICE DEPARTMENT SPECIAL ORDER 93-12: LOCKOUTS

SPECIAL ORDER 93-12: LOCKOUTS

DEPARTMENT SPECIAL ORDER	DATE OF ISSUE	EFFECTIVE DATE	NO.
	14 June 1993	15 June 1993	93-12

SUBJECT	DISTRIBUTION	RESCINDS
LANDLORD-TENANT(LOCKOUTS)/INNKEEPER-GUEST DISPUTES	B	Department Special Order 88-13

RELATED DIRECTIVES

General Orders: City Licensed Premises and Licensees: Processing Persons Under Department Control: Ordinance Complaint Form: Non-Traffic Arrest Warrant Procedures: Miscellaneous Incident Reporting Procedure: **Department Special Order:** Handling Mayor's Office of Inquiry and Information Complaints. **Department Notice:** Time Scheduled Court Call System.

I. PURPOSE

This directive:

A. informs Department members of legal requirements under the Chicago Residential Landlord and Tenant Ordinance and sets forth the procedures for investigating and handling lockouts of tenants by landlords or their agents.

B. cites applicable statutes relative to innkeeper-guest disputes and sets forth the procedures for handling such disputes.

II. POLICY

Under the November 1991 amendments to the Chicago Residential Landlord and Tenant Ordinance, whenever a complaint of a lockout is received by the Chicago Police Department, the Department will investigate and determine whether a violation has occurred.

III. LANDLORD-TENANT DISPUTES (LOCKOUTS)

A. Law

1. "Exclusions" (Municipal Code of Chicago, Section 5-12-20) "

The provisions of Section 5-12-160 (Item III-A-2 of this directive) will apply to all residential rental dwelling units in Chicago except:

a. housing accommodations in a hospital, convent, monastery, extended care facility, asylum, not-for-profit home for the aged, temporary overnight shelter, transitional shelter or a dormitory owned and operated by an elementary school, high school, or an institution of higher learning.

b. a dwelling unit occupied by a purchaser or seller in a real estate contract prior to the transfer of title to the property.

c. a dwelling unit occupied by an employee of a landlord whose right to occupancy is conditional upon employment in or about the premises.

d. a dwelling unit in a cooperative occupied by a holder of a proprietary lease.

2. "Prohibition on Interruption of Tenant Occupancy by Landlord" (Municipal Code of Chicago, Section 5-12-160) (LOCKOUTS)

It is unlawful for any landlord or any person acting at his direction knowingly to oust or dispossess or threaten or attempt to oust or dispossess any tenant from a dwelling unit without authority of law, by plugging, changing, adding or removing any lock or latching device; or by blocking any entrance into said unit; or by removing any door or window from said unit; or by interfering with the services to said unit; including but not limited to, electricity, gas, hot or cold water, plumbing, heat or telephone service, or by removing a tenant's personal property from said unit, or by the removal or

incapacitating of appliances or fixtures, except for the purpose of making necessary repairs; or by the use or threat of force, violence or injury to a tenant's person or property, or by any act rendering a dwelling unit or any part thereof or any personal property located therein inaccessible or uninhabitable. The foregoing shall not apply where:

(a) a landlord acts in compliance with the laws of Illinois pertaining to forcible entry and detainer and engages the Sheriff of Cook County to forcibly evict a tenant or his personal property; or

(b) a landlord acts in compliance with the laws of Illinois pertaining to distress for rent; or

(c) a landlord interferes temporarily with possession only as necessary to make needed repairs or inspection and only as provided by law; or

(d) the tenant has abandoned the dwelling unit, as defined in Section 5-12-130(e).

Note: "Landlord Remedies", as stated in the Municipal Code of Chicago, Section 5-12-130(e)" provides:

(e) Abandonment of the dwelling unit shall be deemed to have occurred when:

(1) actual notice has been provided to the landlord by the tenant indicating the tenant's intention not to return to the dwelling unit; or

(2) all persons entitled under a rental agreement to occupy the dwelling unit have been absent from the unit for a period of 21 days or for one rental period when the rental agreement is for less than a month, and such persons have removed their personal property from the premises, and rent for that period is unpaid; or

(3) all persons entitled under a rental agreement to occupy the dwelling unit have been absent for a period of 32 days, and rent for that period is unpaid.

Notwithstanding the above, abandonment of the dwelling unit shall not be deemed to have occurred if any person entitled to occupancy has provided the landlord a written notice indicating that he still intends to occupy the unit and makes full payment of all amounts due to the landlord.

Whenever a complaint of violation of this provision is received by the Chicago Police Department, the Department shall investigate and determine whether a violation has occurred. Any person found guilty of violating this section shall be fined not less than $200 nor more than $500, and each day that such violation shall occur or continue shall constitute a separate and distinct offense for which a fine as herein provided shall be imposed. If a tenant in a civil legal proceeding against his landlord establishes that a violation of this section has occurred he shall be entitled to recover possession of his dwelling unit or personal property and shall recover an amount equal to not more than two months rent or twice the actual damages sustained by him, whichever is greater. A tenant may pursue any civil remedy for violation of this section regardless of whether a fine has been entered against the landlord pursuant to this section.

B. Procedures

1. A police officer assigned to a landlord-tenant dispute (lockout) will:

a. determine from the facts available whether the conduct complained of constitutes a "lockout" as specified in the ordinance (Item III-A-2).

b. in situations wherein a threatened, attempted or actual lockout has occurred:

1) determine from the facts available that the premises involved is a "dwelling unit" as defined by the ordinance:

a) "Premises" means the dwelling unit and the structure of which it is a part, and facilities and appurtenances therein, and grounds, areas and facilities held out for the use of tenants.

b) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one or more persons who maintain a household, together with the common areas, land and appurtenant buildings thereto, and all housing services, privileges, furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities.

2) determine from the facts available that the alleged offender is a "landlord" and that the person residing at the location is a "tenant" as defined by the ordinance.

a) "Landlord" shall mean the owner, agent, lessor or sublessor, or the successor in interest of any of them, of a dwelling unit or the building of which it is part.

b) "Tenant" shall mean a person entitled by written or oral agreement, sub-tenancy approved by the landlord, or by sufferance, to occupy a dwelling unit to the exclusion of others.

In determining whether a person who resides in a single room occupancy (SRO) building, hotel, motel, apartment hotel or YMCA/YWCA is a "tenant," the officer must determine whether the occupant pays rent/room charges on a periodic basis (e.g., by the week or by the month) and that he has no other permanent address. If both conditions are met, he is considered a tenant. If these conditions are not present, refer to Innkeeper-Guest Disputes, Item IV, of this directive.

3) determine from the facts available that the conduct is not exempted from the ordinance as stated in Item III-A-2-a,b,c,d. Examples of exempt conduct include instances wherein:

a) a landlord has a court order for possession of the dwelling unit and engages the Sheriff of Cook County to forcibly evict the tenant and his personal property; or,

b) the landlord acting alone or through an agent or attorney, complies with the law pertaining to distress for rent by:

(1) filing nothing in court prior to seizing the tenant's property;
(2) filling out a distress warrant stating that rent is overdue;
(3) serving the warrant on the tenant;
(4) seizing the tenant's property;
(5) filing a copy of the distress warrant and an inventory of the property seized with the Clerk of the Circuit Court immediately after the seizure.

Note: In accordance with the provisions of the Illinois Compiled Statutes, Chapter 735, Sections 5/9-301 through 5/9-303, and Illinois Revised Statutes Chapter 110 Sections 9-301 through 303, the landlord, his agent or attorney is required to fill out a distress warrant but is not required to file the warrant in court prior to seizure of the tenant's property.

4) request that the offender end threats of or an actual "lockout," restore the tenant(s) to the dwelling unit, return the tenant's property or take any other action necessary to end the lockout including, but not limited to:

a) effecting the arrest if the offender refuses to comply with the officer's request; or

b) issuing an Ordinance Complaint form; or

c) instructing the complaining party to obtain an arrest warrant when the offender is no longer at or in the vicinity of the scene.

c. The officer will advise the complaining party that he may file a civil action at the Daley Center in Room 602 to seek additional relief.

d. When responding to a "lockout" complaint against a landlord or his agent, the officer will complete a Miscellaneous Incident Exception Report (CPD-11.419) unless a case report is applicable.

Note: In those instances when the responding officers require additional legal information or advice to resolve the "lockout," they will contact the City of Chicago Corporation Counsel's Office during normal business hours at 744-6945

C. Department of Human Services

1. The Department of Human Services has a City-wide Emergency Services Program in operation 24 hours a day, 7 days a week. The purpose of this program is to provide immediate services, such as food, temporary shelter, and counseling to the parties. An officer responding to a verified "lockout" will contact his supervisor, apprise him of the facts and obtain his approval to notify the Emergency Services Program at 744-5829.

2. Upon receiving notification of a landlord-tenant dispute (LOCKOUT) from the assigned officer, Communication Operations Section personnel will contact personnel of the Emergency Services Program and inform them of the location and the police district in which the "lockout" is taking place.

IV. INNKEEPER-GUEST DISPUTES

A. Law (Illinois Innkeepers Act)

1. "Obtaining lodging, etc., without paying - Punishment" (Illinois Compiled Statutes, Chapter 740, Section 90/5, and Illinois Revised Statutes, Chapter 71, paragraph 4a)

Any person who, with intent to defraud, shall obtain lodging, food, money, property or other accommodation at a hotel, inn, boarding house or lodging house without paying therefor shall be guilty of a Class A misdemeanor. In case of a second conviction of the offense described, the punishment shall be that provided for a Class 4 felony.

2. "Hotel within meaning of act - Copy of law to be posted" (Illinois Compiled Statutes, Chapter 740, Section 90/7, and Illinois Revised Statutes, Chapter 71, paragraph 4c)

The word "hotel" as defined under the Innkeepers Act includes every building or structure kept, used, maintained, advertised, and held out to the public to be a place where lodging, or lodging and food, or apartments, or suites, or other accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which 25 or more rooms are used for the lodging, or lodging and food, or apartments, or suites, or other accommodations of such guests. The owner or keeper of such hotel, apartment hotel, residential hotel, motel, motor court, inn, boarding or lodging house shall post a copy of this law in conspicuous places upon the premises.

B. Procedures

1. A police officer responding to an innkeeper-guest dispute will determine, from the facts available, whether:

   a. the establishment is a "hotel" within the meaning of the Act when:

      1) the premises is licensed or should be licensed pursuant to Chapter 4-144 of the Municipal Code of Chicago; and

      2) 25 or more rooms are used for purposes as stated in the statute (Item IV-A-2).

   b. the occupant is a guest or tenant. If the occupant both pays rent/room charges on a periodic basis (by the week or month) and resides in the premises on a permanent basis (has no other permanent residence), he is a tenant, not a guest. The following situations will result in a determination that the occupant is a guest:

      1) occupant pays rent/room charge daily; has another permanent residence and has resided at the premises less than 32 continuous days; or,

      2) occupant pays rent/room charge weekly or monthly, but does not reside at the hotel permanently, and has been there less than 32 continuous days.

   c. the guest has received food and/or lodging for which payment has not been made. For purposes of the Innkeepers Act, the officer must establish not only that payment was not made for the services, but also that the guest procured such services with an intent to defraud. The following are examples of acts considered prima facie proof of fraudulent intent:

      1) paying for lodging, food or other accommodations by check or other instrument on which payment has been stopped or refused;

      2) obtaining lodging, food or accommodations by false pretenses;

      3) leaving or attempting to leave the premises without paying.

      Note: Under existing law, the refusal or neglect to pay, standing alone, is not sufficient to show intent to defraud.

2. In situations where the conditions in Item IV-B-1 are present, the responding officer will:

   a. effect the arrest of the offender when he is present at or in the immediate vicinity of the incident and the innkeeper or his agent agrees to sign a complaint;

   b. direct the complaining party to obtain an arrest warrant when the offender is no longer at or in the vicinity of the incident.

Note: An asterisk (*) following a paragraph indicates that particular section is not fully cited in this directive as it does not normally pertain to Department operations. If necessary, please refer to the full text as contained in the Municipal Code of Chicago.

Authenticated by: RJMcD

Matt L. Rodriguez
Superintendent of Police

Indicates new or revised item
92-022 MAA

38 Blank

APPENDIX G. - RESIDENTIAL LANDLORD AND TENANT ORDINANCE,

PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO, NOVEMBER 6, 1991

39 w/o #

PAMPHLET COPY

COPY

MUNICIPAL CODE TITLE 5, CHAPTER 12 ENTITLED "RESIDENTIAL LANDLORD AND TENANT ORDINANCE"

Passed by the City Council of the City of Chicago November 6, 1991.

OFFICIAL RECORD.

Chapter 5-12

Residential Landlords And Tenants.

Sections:

5-12-010. Title, Purpose And Scope.

This chapter shall be known and may be cited as the "Residential Landlord and Tenant Ordinance", and shall be liberally construed and applied to promote its purposes and policies.

It is the purpose of this chapter and the policy of the city, in order to protect and promote the public health, safety and welfare of its citizens, to establish the rights and obligations of the landlord and the tenant in the rental of dwelling units, and to encourage the landlord and the tenant to maintain and improve the quality of housing.

This chapter applies to, regulates and determines rights, obligations and remedies under every rental agreement entered into or to be performed after the effective date of this chapter, for a dwelling unit located within the City of Chicago, regardless of where the agreement is made, subject only to the limitations contained in Section 5-12-020. This chapter applies specifically to rental agreements for dwelling units operated under subsidy programs of agencies of the United States and/or the State of Illinois, including specifically, programs operated or subsidized by the Chicago Housing Authority and/or the Illinois Housing Development Authority to the extent that this chapter is not in direct conflict with statutory or regulatory provisions governing such programs. (Prior code § 193.1-1; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-020. Exclusions.

Rental of the following dwelling units shall not be governed by this chapter, unless the rental agreement thereof is created to avoid the application of this chapter:

(a) Dwelling units in owner-occupied buildings containing six units or less; provided, however, that the provisions of Section 5-12-160 shall apply to every rented dwelling unit in such buildings within the City of Chicago.

(b) Dwelling units in hotels, motels, inns, tourist houses, roominghouses and boardinghouses, but only until such time as the dwelling unit has been occupied by a tenant for 32 or more continuous days and tenant pays a monthly rent, exclusive of any period of wrongful occupancy contrary to agreement with an owner. Notwithstanding the above, the prohibition against interruption of tenant occupancy set forth in Section 5-12-160 shall apply to every

rented dwelling unit in such buildings within the City of Chicago. No landlord shall bring an action to recover possession of such unit, or avoid renting monthly in order to avoid the application of this chapter. Any willful attempt to avoid application of this chapter by an owner may be punishable by criminal or civil action.

(c) Housing accommodations in any hospital, convent, monastery, extended care facility, asylum or not-for-profit home for the aged, temporary overnight shelter, transitional shelter, or in a dormitory owned and operated by an elementary school, high school or institution of higher learning.

(d) A dwelling unit that is occupied by a purchaser pursuant to a real estate purchase contract prior to the transfer of title to such property to such purchaser, or by a seller of property pursuant to a real estate purchase contract subsequent to the transfer of title from such seller.

(e) A dwelling unit occupied by an employee of a landlord whose right to occupancy is conditional upon employment in or about the premises; and

(f) A dwelling unit in a cooperative occupied by a holder of a proprietary lease. (Prior code § 193.1-2; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-030. Definitions.

Whenever used in this chapter, the following words and phrases shall have the following meanings:

(a) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one or more persons who maintain a household, together with the common areas, land and appurtenant buildings thereto, and all housing services, privileges, furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities.

(b) "Landlord" means the owner, agent, lessor or sublessor, or the successor in interest of any of them, of a dwelling unit or the building of which it is part.

(c) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property, or all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

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(d) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal or commercial entity.

(e) "Premises" means the dwelling unit and the structure of which it is a part, and facilities and appurtenances therein, and grounds, areas and facilities held out for the use of tenants.

(f) "Rent" means any consideration, including any payment, bonus, benefits or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a dwelling unit.

(g) "Rental agreement" means all written or oral agreements embodying the terms and conditions concerning the use and occupancy of a dwelling unit.

(h) "Tenant" means a person entitled by written or oral agreement, subtenancy approved by the landlord or by sufferance, to occupy a dwelling unit to the exclusion of others. (Prior code § 193.1-3; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-040. Tenant Responsibilities.

Every tenant must:

(a) Comply with all obligations imposed specifically upon tenants by provisions of the municipal code applicable to dwelling units;

(b) Keep that part of the premises that he occupies and uses as safe as the condition of the premises permits;

(c) Dispose of all ashes, rubbish, garbage and other waste from his dwelling unit in a clean and safe manner;

(d) Keep all plumbing fixtures in the dwelling unit or used by the tenants as clean as their condition permits;

(e) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in the premises;

(f) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person on the premises with his consent to do so; and

(g) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises. (Prior code § 193.1-4; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-050. Landlord's Right Of Access.

A tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit:

(a) To make necessary or agreed repairs, decorations, alterations or improvements;

(b) To supply necessary or agreed services;

(c) To conduct inspections authorized or required by any government agency;

(d) To exhibit the dwelling unit to prospective or actual purchasers, mortgagees, workmen or contractors;

(e) To exhibit the dwelling unit to prospective tenants 60 days or less prior to the expiration of the existing rental agreement;

(f) For practical necessity where repairs or maintenance elsewhere in the building unexpectedly require such access;

(g) To determine a tenant's compliance with provisions in the rental agreement; and

(h) In case of emergency.

The landlord shall not abuse the right of access or use it to harass the tenant. Except in cases where access is authorized by subsection (f) or (h) of this section, the landlord shall give the tenant notice of the landlord's intent to enter of no less than two days. Such notice shall be provided directly to each dwelling unit by mail, telephone, written notice to the dwelling unit, or by other reasonable means designed in good faith to provide notice to the tenant. If access is required because of repair work for common facilities or other apartments, a general notice may be given by the landlord to all potentially affected tenants that entry may be required. In cases where access is authorized by subsection (f) or (h) of this section, the landlord may enter the dwelling unit without notice or consent of the tenant. The landlord shall give the tenant notice of such entry within two days after such entry.

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The landlord may enter only at reasonable times except in case of an emergency. An entry between 8:00 A.M. and 8:00 P.M. or at any other time expressly requested by the tenant shall be presumed reasonable. (Prior code §193.1-5; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-060. Remedies For Improper Denial Of Access.

If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or terminate the rental agreement pursuant to Section 5-12-130(b) of this chapter. In either case, the landlord may recover damages.

If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated unreasonable demands for entry otherwise lawful, but which have the effect of harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement pursuant to the notice provisions of Section 5-12-110(a). In each case, the tenant may recover an amount equal to not more than one month's rent or twice the damage sustained by him, whichever is greater. (Prior code §193.1-6; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-070. Landlord's Responsibility To Maintain.

The landlord shall maintain the premises in compliance with all applicable provisions of the municipal code and shall promptly make any and all repairs necessary to fulfill this obligation. (Prior code §193.1-7; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-080. Security Deposits.

(a) A landlord shall hold all security deposits received by him in a federally insured interest-bearing account in a bank, savings and loan association or other financial institution located in the State of Illinois. A security deposit and interest due thereon shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the landlord, and shall not be subject to the claims of any creditor of the landlord or of the landlord's successors in interest, including a foreclosing mortgagee or trustee in bankruptcy.

(b) Any landlord or landlord's agent who receives a security deposit from a tenant or prospective tenant shall give said tenant or prospective tenant at the time of receiving such security deposit a receipt indicating the amount of such security deposit, the name of the person receiving it

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and, in the case of the agent, the name of the landlord for whom such security deposit is received, the date on which it is received, and a description of the dwelling unit. The receipt shall be signed by the person receiving the security deposit. Failure to comply with this subsection shall entitle the tenant to immediate return of security deposit.

(c) A landlord who holds a security deposit or prepaid rent pursuant to this section for more than six months, after the effective date of this chapter shall pay interest to the tenant accruing from the beginning date of the rental term specified in the rental agreement at the rate of five percent per year. The landlord shall, within 30 days after the end of each 12-month rental period, pay to the tenant any interest, by cash or credit to be applied to the rent due.

(d) The landlord shall, within 45 days after the date that the tenant vacates the dwelling unit or within 7 days after the date that the tenant provides notice of termination of the rental agreement pursuant to Section 5-12-110(g), return to the tenant the security deposit or any balance thereof and the required interest thereon; provided, however, that the landlord may deduct from such security deposit or interest due thereon for the following:

(1) Any unpaid rent which has not been validly withheld or deducted pursuant to state or federal law or local ordinance; and

(2) A reasonable amount necessary to repair any damage caused to the premises by the tenant or any person under the tenant's control or on the premises with the tenant's consent, reasonable wear and tear excluded. In case of such damage, the landlord shall deliver or mail to the last known address of the tenant within 30 days an itemized statement of the damages allegedly caused to the premises and the estimated or actual cost for repairing or replacing each item on that statement, attaching copies of the paid receipts for the repair or replacement. If estimated cost is given, the landlord shall furnish the tenant with copies of paid receipts or a certification of actual costs of repairs of damage if the work was performed by the landlord's employees within 30 days from the date the statement showing estimated cost was furnished to the tenant.

(e) In the event of a sale, lease, transfer or other direct or indirect disposition of residential real property, other than to the holder of a lien interest in such property, by a landlord who has received a security deposit or prepaid rent from a tenant, the successor landlord of such property shall be liable to that tenant for any security deposit, including statutory interest, or prepaid rent which the tenant has paid to the transferor.

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The successor landlord shall, within 10 days from the date of such transfer, notify the tenant who made such security deposit by delivering or mailing to the tenant's last known address that such security deposit was transferred to the successor landlord and that the successor landlord is holding said security deposit. Such notice shall also contain the successor landlord's name, business address, and business telephone number of the successor landlord's agent, if any. The notice shall be in writing.

The transferor shall remain jointly and severally liable with the successor landlord to the tenant for such security deposit or prepaid rent, unless and until such transferor transfers said security deposit or prepaid rent to the successor landlord and provides notice, in writing, to the tenant of such transfer of said security deposit or prepaid rent, specifying the name, business address and business telephone number of the successor landlord or his agent within 10 days of said transfer.

(f) If the landlord or landlord's agent fails to comply with any provision of Section 5-12-080 (a) -- (e), the tenant shall be awarded damages in an amount equal to two times the security deposit plus interest at five percent. This subsection does not preclude the tenant from recovering other damages to which he may be entitled under this chapter. (Prior code §193.1-8; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-090. Identification Of Owner And Agents.

A landlord or any person authorized to enter into an oral or written rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name, address, and telephone number of:

(a) The owner or person authorized to manage the premises; and

(b) A person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

A person who enters into a rental agreement and fails to comply with the requirements of this section becomes an agent of the landlord for the purpose of (i) service of process and receiving and receipting for notices and demands and (ii) performing the obligations of the landlord under this chapter under the rental agreement.

The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

If the landlord fails to comply with this section, the tenant may terminate the rental agreement pursuant to the notice provisions of Section 5-12-110(a). If the landlord fails to comply with the requirements of this section after receipt of written notice pursuant to Section 5-12-110(a), the tenant shall recover one month's rent or actual damages, whichever is greater. (Prior code §193.1-9; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-100. Notice Of Conditions Affecting Habitability.

Before a tenant initially enters into or renews a rental agreement for a dwelling unit, the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing:

(a) Any code violations which have been cited by the City of Chicago during the previous 12 months for the dwelling unit and common areas and provide notice of the pendency of any code enforcement litigation or compliance board proceeding pursuant to Chapter 13-8-070 of the municipal code affecting the dwelling unit or common area. The notice shall provide the case number of the litigation and/or the identification number of the compliance board proceeding and a listing of any code violations cited.

(b) Any notice of intent by the City of Chicago or any utility provider to terminate water, gas, electrical or other utility service to the dwelling unit or common areas. The disclosure shall state the type of service to be terminated, the intended date of termination, and whether the termination will affect the dwelling unit, the common areas or both. A landlord shall be under a continuing obligation to provide disclosure of the information described in this subsection (b) throughout a tenancy. If a landlord violates this section, the tenant or prospective tenant shall be entitled to remedies described in Section 5-12-090. (Prior code §193.1-10; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-110. Tenant Remedies.

In addition to any remedies provided under federal law, a tenant shall have the remedies specified in this section under the circumstances herein set forth.

For purposes of this section, material noncompliance with Section 5-12-070 shall include, but is not limited to, any of the following circumstances:

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Failure to maintain the structural integrity of the building or structure or parts thereof;

Failure to maintain floors in compliance with the safe load-bearing requirements of the municipal code;

Failure to comply with applicable requirements of the municipal code for the number, width, construction, location or accessibility of exits;

Failure to maintain exit, stairway, fire escape or directional signs where required by the municipal code;

Failure to provide smoke detectors, sprinkler systems, standpipe systems, fire alarm systems, automatic fire detectors or fire extinguishers where required by the municipal code;

Failure to maintain elevators in compliance with applicable provisions of the municipal code;

Failure to provide and maintain in good working order a flush water closet, lavatory basin, bathtub or shower, or kitchen sink;

Failure to maintain heating facilities or gas-fired appliances in compliance with the requirements of the municipal code;

Failure to provide heat or hot water in such amounts and at such levels and times as required by the municipal code;

Failure to provide hot and cold running water as required by the municipal code;

Failure to provide adequate hall or stairway lighting as required by the municipal code;

Failure to maintain the foundation, exterior walls or exterior roof in sound condition and repair, substantially watertight and protected against rodents;

Failure to maintain floors, interior walls or ceilings in sound condition and good repair;

Failure to maintain windows, exterior doors or basement hatchways in sound condition and repair and substantially tight and to provide locks or security devices as required by the municipal code, including deadlatch locks, deadbolt locks, sash or ventilation locks, and front door windows or peep holes;

Failure to supply screens where required by the municipal code;

Failure to maintain stairways or porches in safe condition and sound repair;

Failure to maintain the basement or cellar in a safe and sanitary condition;

Failure to maintain facilities, equipment or chimneys in safe and sound working conditions;

Failure to prevent the accumulation of stagnant water;

Failure to exterminate insects, rodents or other pests;

Failure to supply or maintain facilities for refuse disposal;

Failure to prevent the accumulation of garbage, trash, refuse or debris as required by the municipal code;

Failure to provide adequate light or ventilation as required by the municipal code;

Failure to maintain plumbing facilities, piping, fixtures, appurtenances and appliances in good operating condition and repair;

Failure to provide or maintain electrical systems, circuits, receptacles and devices as required by the municipal code;

Failure to maintain and repair any equipment which the landlord supplies or is required to supply; or

Failure to maintain the dwelling unit and common areas in a fit and habitable condition.

(a) Noncompliance by Landlord. If there is material noncompliance by the landlord with a rental agreement or with Section 5-12-070 either of which renders the premises not reasonably fit and habitable, the tenant under the rental agreement may deliver a written notice to the landlord specifying the acts and/or omissions constituting the material noncompliance and specifying that the rental agreement will terminate on a date not less than 14 days after receipt of the notice by the landlord, unless the material noncompliance is remedied by the landlord within the time period specified in the notice. If the material noncompliance is not remedied within the time period so specified in the notice, the rental agreement shall terminate, and the

tenant shall deliver possession of the dwelling unit to the landlord within 30 days after the expiration of the time period specified in the notice. If possession shall not be so delivered, then the tenant's notice shall be deemed withdrawn and the lease shall remain in full force and effect. If the rental agreement is terminated, the landlord shall return all prepaid rent, security and interest recoverable by the tenant under Section 5-12-080.

(b) Failure to Deliver Possession. If the landlord fails to deliver possession of the dwelling unit to the tenant in compliance with the residential rental agreement or Section 5-12-070, rent for the dwelling unit shall abate until possession is delivered, and the tenant may;

(1) Upon written notice to the landlord, terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security; or

(2) Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him.

If a person's failure to deliver possession is wilful, an aggrieved person may recover from the person withholding possession an amount not more than two months' rent or twice the actual damages sustained by him, whichever is greater.

(c) Minor Defects. If there is material noncompliance by the landlord with the rental agreement or with Section 5-12-070, and the reasonable cost of compliance does not exceed the greater of $500.00 or one-half of the monthly rent, the tenant may recover damages for the material noncompliance or may notify the landlord in writing of his intention to correct the condition at the landlord's expense; provided, however, that this subsection shall not be applicable if the reasonable cost of compliance exceeds one month's rent. If the landlord fails to correct the defect within 14 days after being notified by the tenant in writing or as promptly as conditions require in case of emergency, the tenant may have the work done in a workmanlike manner and in compliance with existing law and building regulations and, after submitting to the landlord a paid bill from an appropriate tradesman or supplier, deduct from his or her rent the amount thereof, not to exceed the limits specified by this subsection and not to exceed the reasonable price then customarily charged for such work. A tenant shall not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a

member of the tenant's family, or other person on the premises with the tenant's consent.

Before correcting a condition affecting facilities shared by more than one dwelling unit, the tenant shall notify all other affected tenants and shall cause the work to be done so as to create the least practical inconvenience to the other tenants. Nothing herein shall be deemed to grant any tenant any right to repair any common element or dwelling unit in a building subject to a condominium regime other than in accordance with the declaration and bylaws of such condominium building; provided, that the declaration and bylaws have not been created to avoid the application of this chapter.

For purposes of mechanics' lien laws, repairs performed or materials furnished pursuant to this subsection shall not be construed as having been performed or furnished pursuant to authority of or with permission of the landlord.

(d) Failure to Maintain. If there is material noncompliance by the landlord with the rental agreement or with Section 5-12-070, the tenant may notify the landlord in writing of the tenant's intention to withhold from the monthly rent an amount which reasonably reflects the reduced value of the premises due to the material noncompliance. If the landlord fails to correct the condition within 14 days after being notified by the tenant in writing, the tenant may, during the time such failure continues, deduct from the rent the stated amount. A tenant shall not withhold rent under this subsection if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

(e) Damages and Injunctive Relief. If there is material noncompliance by the landlord with the rental agreement or with Section 5-12-070, the tenant may obtain injunctive relief, and/or recover damages by claim or defense. This subsection does not preclude the tenant from obtaining other relief to which he may be entitled under this chapter.

(f) Failure to Provide Essential Services. If there is material noncompliance by the landlord with the rental agreement or with Section 5-12-070, either of which constitutes an immediate danger to the health and safety of the tenant or if, contrary to the rental agreement or Section 5-12-070, the landlord fails to supply heat, running water, hot water, electricity, gas or plumbing, the tenant may give written notice to the landlord specifying the material noncompliance or failure. If the landlord has, pursuant to this ordinance or in the rental agreement, informed the tenant of an address at which notices to the landlord are to be received, the tenant shall mail or deliver the written notice required in this section to such

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address. If the landlord has not informed the tenant of an address at which notices to the landlord are to be received, the written notice required in this section shall be delivered by mail to the last known address of the landlord or by other reasonable means designed in good faith to provide written notice to the landlord. After such notice, the tenant may during the period of the landlord's noncompliance or failure:

(1) Procure reasonable amounts of heat, running water, hot water, electricity, gas or plumbing service, as the case may be and upon presentation to the landlord of paid receipts deduct their cost from the rent; or

(2) Recover damages based on the reduction in the fair rental value of the dwelling unit; or

(3) Procure substitute housing, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance. The tenant may recover the cost of the reasonable value of the substitute housing up to an amount equal to the monthly rent for each month or portion thereof of noncompliance as prorated.

In addition to the remedies set forth in Section 5-12-110 (f) (1) -- (3), the tenant may:

(4) Withhold from the monthly rent an amount that reasonably reflects the reduced value of the premises due to the material noncompliance or failure if the landlord fails to correct the condition within 24 hours after being notified by the tenant; provided, however, that no rent shall be withheld if the failure is due to the inability of the utility provider to provide service; or

(5) Terminate the rental agreement by written notice to the landlord if the material noncompliance or failure persists for more than 72 hours after the tenant has notified the landlord of the material noncompliance or failure; provided, however, that no termination shall be allowed if the failure is due to the inability of the utility provider to provide service. If the rental agreement is terminated, the landlord shall return all prepaid rent, security deposits and interest thereon in accordance with Section 5-12-080 and tenant shall deliver possession of the dwelling unit to the landlord within 30 days after the expiration of the 72 hour time period specified in the notice. If possession shall not be so delivered, then the tenant's notice shall be deemed withdrawn and the lease shall remain in full force and effect.

If the tenant proceeds under this subsection (f), he may not proceed under subsection (c) or (d). The tenant may not exercise his rights under this subsection if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent. Before correcting a condition, the repair of which will affect more than his own dwelling unit, the tenant shall notify all other tenants affected and shall cause the work to be done so as to result in the least practical inconvenience to other tenants.

(g) Fire or Casualty Damage. If the dwelling unit or common area are damaged or destroyed by fire or casualty to an extent that the dwelling unit is in material noncompliance with the rental agreement or with Section 5-12-070, the tenant may:

(1) Immediately vacate the premises and notify the landlord in writing within 14 days thereafter of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of the fire or casualty; or

(2) If continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the reduction in the fair rental value of the dwelling unit; or

(3) If the tenant desires to continue the tenancy, and if the landlord has promised or begun work to repair the damage or destruction but fails to carry out the work to restore the dwelling unit or common area diligently and within a reasonable time, notify the landlord in writing within 14 days after the tenant becomes aware that the work is not being carried out diligently or within a reasonable time of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of the fire or casualty.

If the rental agreement is terminated under this subsection (g) the landlord shall return all security and all prepaid rent in accordance with Section 5-12-080(d). Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty. A tenant may not exercise remedies in this subsection if the fire or casualty damage was caused by the deliberate or negligent act or omission ofthe tenant, a member of his family or a person on the premises with his consent. (Prior code § 193.1-11; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

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5-12-120. Subleases.

If the tenant terminates the rental agreement prior to its expiration date, except for cause authorized by this chapter, the landlord shall make a good faith effort to re-rent the tenant's dwelling unit at a fair rental, which shall be the rent charged for comparable dwelling units in the premises or in the same neighborhood. The landlord shall accept a reasonable sublease proposed by the tenant without an assessment of additional fees or charges.

If the landlord succeeds in re-renting the dwelling unit at a fair rental, the tenant shall be liable for the amount by which the rent due from the date of premature termination to the termination of the initial rental agreement exceeds the fair rental subsequently received by the landlord from the date of premature termination to the termination of the initial rental agreement.

If the landlord makes a good faith effort to re-rent the dwelling unit at a fair rental and is unsuccessful, the tenant shall be liable for the rent due for the period of the rental agreement. The tenant shall also be liable for the reasonable advertising costs incurred by the landlord in seeking to re-rent the dwelling unit. (Prior code § 193.1-12; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-130. Landlord Remedies.

Every landlord shall have the remedies specified in this section for the following circumstances:

(a) Failure to Pay Rent. If all or any portion of rent is unpaid when due and the tenant fails to pay the unpaid rent within five days after written notice by the landlord of his intention to terminate the rental agreement if rent is not so paid, the landlord may terminate the rental agreement. Nothing in this subsection shall affect a landlord's obligation to provide notice of termination of tenancy in subsidized housing as required under federal law or regulations. A landlord may also maintain an action for rent and/or damages without terminating the rental agreement.

(b) Noncompliance by Tenant. If there is material noncompliance by a tenant with a rental agreement or with Section 5-12-040, the landlord of such tenant's dwelling unit may deliver written notice to the tenant specifying the acts and/or omissions constituting the breach and that the rental agreement will terminate upon a date not less than 10 days

after receipt of the notice, unless the breach is remedied by the tenant within that period of time. If the breach is not remedied within the 10-day period, the residential rental agreement shall terminate as provided in the notice. The landlord may recover damages and obtain injunctive relief for any material noncompliance by the tenant with the rental agreement or with Section 5-12-040. If the tenant's noncompliance is wilful, the landlord may also recover reasonable attorney's fees.

(c) Failure to Maintain. If there is material noncompliance by the tenant with Section 5-12-040 (other than subsection (g) thereof), and the tenant fails to comply as promptly as conditions permit in case of emergency or in cases other than emergencies within 14 days of receipt of written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and have the necessary work done in the manner required by law. The landlord shall be entitled to reimbursement from the tenant of the costs of repairs under this section.

(d) Disturbance of Others. If the tenant violates Section 5-12-040(g) within 60 days after receipt of a written notice as provided in subsection (b), the landlord may obtain injunctive relief against the conduct constituting the violation, or may terminate the rental agreement on 10 days' written notice to the tenant.

(e) Abandonment. Abandonment of the dwelling unit shall be deemed to have occurred when:

(1) Actual notice has been provided to the landlord by the tenant indicating the tenant's intention not to return to the dwelling unit; or

(2) All persons entitled under a rental agreement to occupy the dwelling unit have been absent from the unit for a period of 21 days or for one rental period when the rental agreement is for less than a month, and such persons have removed their personal property from the premises, and rent for that period is unpaid; or

(3) All persons entitled under a rental agreement to occupy the dwelling unit have been absent from the unit for a period of 32 days, and rent for that period is unpaid.

Notwithstanding the above, abandonment of the dwelling unit shall not be deemed to have occurred if any person entitled to occupancy has provided the landlord a written notice indicating that he still intends to occupy the unit and makes full payment of all amounts due to the landlord.

If the tenant abandons the dwelling unit, the landlord shall make a good faith effort to re-rent it at a fair rental, which shall be the rent charged for comparable dwelling units in the premises or in the same neighborhood. If the landlord succeeds in re-renting the dwelling unit at a fair rental, the tenant shall be liable for the amount by which the rent due from the date of abandonment to the termination of the initial rental agreement exceeds the fair rental subsequently received by the landlord from the date of abandonment to the termination of the initial rental agreement. If the landlord makes a good faith effort to re-rent the dwelling unit at a fair rental and is unsuccessful, the tenant shall be liable for the rent due for the period of the rental agreement. The tenant shall also be liable for the reasonable advertising expenses and reasonable redecoration costs incurred by the landlord pursuant to this subsection.

(f) Disposition of Abandoned Property. If the tenant abandons the dwelling unit as described in subsection (e) hereof, or fails to remove his personal property from the premises after termination of a rental agreement, the landlord shall leave the property in the dwelling unit or remove and store all abandoned property from the dwelling unit and may dispose of the property after seven days. Notwithstanding the foregoing, if the landlord reasonably believes such abandoned property to be valueless or of such little value that the cost of storage would exceed the amount that would be realized from sale, or if such property is subject to spoilage, the landlord may immediately dispose of such property.

(g) Waiver of Landlord's Right to Terminate. If the landlord accepts the rent due knowing that there is a default in payment of rent by the tenant he thereby waives his right to terminate the rental agreement for that breach.

(h) Remedy After Termination. If the rental agreement is terminated, the landlord shall have a claim for possession and/or for rent. (Prior code § 193.1-13; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

(i) Notice of Renewal of Rental Agreement. No tenant shall be required to renew a rental agreement more than ninety (90) days prior to the termination date of the rental agreement. If the landlord violates this subsection, the tenant shall recover one month's rent or actual damages, whichever is greater.

(j) Notice of Refusal to Renew Rental Agreement. Provided that the landlord has not exercised, or is not in the process of exercising, any of its rights under Section 5-12-130 (a) -- (h) hereof, the landlord shall notify the tenant in writing at least thirty (30) days prior to the stated termination date of the rental agreement of the landlord's intent either

to terminate a month to month tenancy or not to renew an existing rental agreement. If the landlord fails to give the required written notice, the tenant may remain in the dwelling unit for up to sixty (60) days after the date on which such required written notice is given to the tenant, regardless of the termination date specified in the existing rental agreement. During such occupancy, the terms and conditions of the tenancy (including, without limitation, the rental rate) shall be the same as the terms and conditions during the month of tenancy immediately preceding the notice; provided, however, that if rent was waived or abated in the preceding month or months as part of the original rental agreement, the rental amount during such sixty (60) day period shall be at the rate established on the last date that a full rent payment was made.

5-12-140. Rental Agreement.

Except as otherwise specifically provided by this chapter, no rental agreement may provide that the landlord or tenant:

(a) Agrees to waive or forego rights, remedies or obligations provided under this chapter;

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(c) Agrees to the limitation of any liability of the landlord or tenant arising under law;

(d) Agrees to waive any written termination of tenancy notice or manner of service thereof provided under state law or this chapter;

(e) Agrees to waive the right of any party to a trial by jury;

(f) Agrees that in the event of a lawsuit arising out of the tenancy the tenant will pay the landlord's attorney's fees except as provided for by court rules, statute, or ordinance;

(g) Agrees that either party may cancel or terminate a rental agreement at a different time or within a shorter time period than the other party, unless such provision is disclosed in a separate written notice;

(h) Agrees that a tenant shall pay a charge, fee or penalty in excess of $10.00 per month for the first $500.00 in monthly rent plus 5% per month for any amount in excess of $500.00 in monthly rent for the late payment of rent;

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(i) Agrees that, if a tenant pays rent before a specified date or within a specified time period in the month, the tenant shall receive a discount or reduction in the rental amount in excess of $10.00 per month for the first $500.00 in monthly rent plus 5% per month for any amount in excess of $500.00 in monthly rent.

A provision prohibited by this section included in a rental agreement is unenforceable.

The tenant may recover actual damages sustained by the tenant because of the enforcement of a prohibited provision. If the landlord attempts to enforce a provision in a rental agreement prohibited by this section the tenant may recover two months' rent. Prior code § 193.1-14; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-150. Prohibition On Retaliatory Conduct By Landlord.

It is declared to be against public policy of the City of Chicago for a landlord to take retaliatory action against a tenant, except for violation of a rental agreement or violation of a law or ordinance. A landlord may not knowingly terminate a tenancy, increase rent, decrease services, bring or threaten to bring a lawsuit against a tenant for possession or refuse to renew a lease or tenancy because the tenant has in good faith:

(a) Complained of code violations applicable to the premises to a competent governmental agency, elected representative or public official charged with responsibility for enforcement of a building, housing, health or similar code; or

(b) Complained of a building, housing, health or similar code violation or an illegal landlord practice to a community organization or the news media; or

(c) Sought the assistance of a community organization or the news media to remedy a code violation or illegal landlord practice; or

(d) Requested the landlord to make repairs to the premises as required by a building code, health ordinance, other regulation, or the residential rental agreement; or

(e) Becomes a member of a tenant's union or similar organization; or

(f) Testified in any court or administrative proceeding concerning the condition of the premises; or

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(g) Exercised any right or remedy provided by law.

If the landlord acts in violation of this section, the tenant has a defense in any retaliatory action against him for possession and is entitled to the following remedies: he shall recover possession or terminate the rental agreement and, in either case, recover an amount equal to and not more than two months' rent or twice the damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated, the landlord shall return all security and interest recoverable under Section 5-12-080 and all prepaid rent. In an action by or against the tenant, if there is evidence of tenant conduct protected herein within one year prior to the alleged act of retaliation, that evidence shall create a rebuttable presumption that the landlord's conduct was retaliatory. The presumption shall not arise if the protected tenant activity was initiated after the alleged act of retaliation. (Prior code § 193.1-15; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-160. Prohibition On Interruption Of Tenant Occupancy By Landlord.

It is unlawful for any landlord or any person acting at his direction knowingly to oust or dispossess or threaten or attempt to oust or dispossess any tenant from a dwelling unit without authority of law, by plugging, changing, adding or removing any lock or latching device; or by blocking any entrance into said unit; or by removing any door or window from said unit; or by interfering with the services to said unit; including but not limited to electricity, gas, hot or cold water, plumbing, heat or telephone service; or by removing a tenant's personal property from said unit; or by the removal or incapacitating of appliances or fixtures, except for the purpose of making necessary repairs; or by the use or threat of force, violence or injury to a tenant's person or property; or by any act rendering a dwelling unit or any part thereof or any personal property located therein inaccessible or uninhabitable. The foregoing shall not apply where:

(a) A landlord acts in compliance with the laws of Illinois pertaining to forcible entry and detainer and engages the sheriff of Cook County to forcibly evict a tenant or his personal property; or

(b) A landlord acts in compliance with the laws of Illinois pertaining to distress for rent; or

(c) A landlord interferes temporarily with possession only as necessary to make needed repairs or inspection and only as provided by law; or

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(d) The tenant has abandoned the dwelling unit, as defined in Section 5-12-130(e).

Whenever a complaint of violation of this provision is received by the Chicago Police Department, the department shall investigate and determine whether a violation has occurred. Any person found guilty of violating this section shall be fined not less than $200.00 nor more than $500.00, and each day that such violation shall occur or continue shall constitute a separate and distinct offense for which a fine as herein provided shall be imposed. If a tenant in a civil legal proceeding against his landlord establishes that a violation of this section has occurred he shall be entitled to recover possession of his dwelling unit or personal property and shall recover an amount equal to not more than two months' rent or twice the actual damages sustained by him, whichever is greater. A tenant may pursue any civil remedy for violation of this section regardless of whether a fine has been entered against the landlord pursuant to this section. (Prior code § 193.1-16; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-170. Summary Of Ordinance Attached To Rental Agreement.

The commissioner of the department of housing shall prepare a summary of this chapter, describing the respective rights, obligations and remedies of landlords and tenants hereunder, and shall make such summary available for public inspection and copying. A copy of such summary shall be attached to each written rental agreement when any such agreement is initially offered to any tenant or prospective tenant by or on behalf of a landlord and whether such agreement is for a new rental or a renewal thereof. Where there is an oral agreement, the landlord shall give to the tenant a copy of the summary.

If the landlord acts in violation of this section, the tenant may terminate the rental agreement by written notice. The written notice shall specify the date of termination no later than 30 days from the date of the written notice. If a tenant in a civil legal proceeding against his landlord establishes that a violation of this section has occurred, he shall be entitled to recover $100.00 in damages. (Prior code § 193.1-17; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-180. Attorney's Fees.

Except in cases of forcible entry and detainer actions, the prevailing plaintiff in any action arising out of a landlord's or tenant's application of the rights or remedies made available in this ordinance shall be entitled to all court costs and reasonable attorney's fees; provided, however, that nothing herein shall be deemed or interpreted as precluding the awarding

of attorney's fees in forcible entry and detainer actions in accordance with applicable law or as expressly provided in this ordinance.

5-12-190. Rights And Remedies Under Other Laws.

To the extent that this chapter provides no right or remedy in a circumstance, the rights and remedies available to landlords and tenants under the laws of the State of Illinois or other local ordinances shall remain applicable. (Prior code § 193.1-18; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

5-12-200. Severability.

If any provision, clause, sentence, paragraph, section, or part of this chapter or application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person and circumstances affected thereby. (Prior code § 193.1-19; Added. Council Journal of Proceedings, September 8, 1986, page 33771)

SECTION 2. This ordinance shall take effect on January 1, 1992.