



Montana Tenant-Landlord Guide



2014



Montana Tenant-Landlord Guide

Revised Edition, 2014

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Special Thanks to:

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The Montana Public Interest Research Group (MontPIRG) is a student directed and funded non-partisan organization dedicated to affecting tangible, positive change through educating and empowering the next generation of civic leaders. Our goal is to help students become informed and equipped with the knowledge, skills, and confidence to advocate for the public interest. Get involved and make a difference!

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Introduction

Welcome to the 9th edition of the Montana Public Interest Research Group's (MontPIRG) Tenant/Landlord Guide. MontPIRG first published this guide in 1983 in response to a survey of University of Montana students that showed that students faced many problems as tenants, mostly do to their lack of understanding of Montana's tenant-landlord law. Though this guide was originally meant to be a source for students-tenants, it has become the standard source of information on tenant/landlord law for both landlords and tenants across the state.

Taking its expanding audience into account, the newest edition seeks to provide vital information for both landlords and tenants in language that makes it accessible to the general public. This edition has been updated to include changes to tenant-landlord law made by November 2013. This guide is designed to help tenants and landlords avoid problems, and if disputes arise, to solve them quickly and inexpensively. The information and suggestions contained in this guide are based on Montana law, consultations with attorneys, and extensive outreach to students to determine what issues were being faced in their lives today.

This guide is both a resource and a workbook. Use the table of contents and index to get quick answers to specific questions you may be facing and read it cover-to-cover in order to get an understanding of what your rights are as a renter or as a landlord. This guide will give you a fairly comprehensive understanding of the legal rights and responsibilities held by tenants and landlords, the remedies provided by law for resolving disputes should they arise, and practical tips on maintaining a good landlord-tenant relationship.

Finally, we would give one more piece of advice: **Put everything in writing.** Anytime you are going to communicate with your landlord or your tenant, do so in writing, and each should keep a copy for personal records.

The Renting

1. Know your legal rights and responsibilities.

Refer to the Montana Residential Landlord and Tenant Act (Montana Code Annotated 70-24) and the Residential Tenants' Security Deposit Act (MCA 70-25). For easier reading, explanations, and suggestions, use this guide. Additional copies are available at the MontPIRG office, in Corbin Hall 348 on the University of Montana campus, and online at the MontPIRG website (www.mtpirg.org).

2. Make all agreements and requests in writing, and save photocopies for your records.

Verbal agreements are legally binding, but they are harder to enforce than written agreements because it is more difficult to prove an agreement took place or what the nature of the agreement was when done verbally. Save copies of all written agreements in a single, safe place.

3. Read and understand agreements before signing them.

Read everything in any contract, and if there is something you do not understand, ask the landlord to explain it to you. If you are not comfortable with the explanation, do not sign it. Do not assume that a verbal explanation accurately paraphrases what you are about to sign, and never allow yourself to be rushed into a deal.

4. If you have a legitimate grievance, pursue it.

Montana tenant/landlord law includes many protections for both landlords and tenants but these protections are meaningless if they are not invoked to protect the rights of the respective parties. As a tenant, in keeping the landlord accountable to you, you not only help yourself but also future tenants. As a landlord, if a tenant is in default of the rental agreement, you have straightforward legal rights to pursue your grievances and resolve disputed with your tenant.

5. When you have a question or problem, call Montana Legal Services HelpLine at 1-800-666-6899.

Further Research on Renter Issues

Throughout this guide, you will see citations in parenthesis, which will look something similar to (MCA 70-24-101). MCA refers to the Montana Code Annotated, which is the collection of laws for the state of Montana. The sections of the MCA, which you will find in this guide and in the search for legal information on landlord/tenant issues, are the Montana Residential Landlord Tenant Act (MCA 70-24) and the Residential Tenants' Security Deposits Act (MCA 70-25).

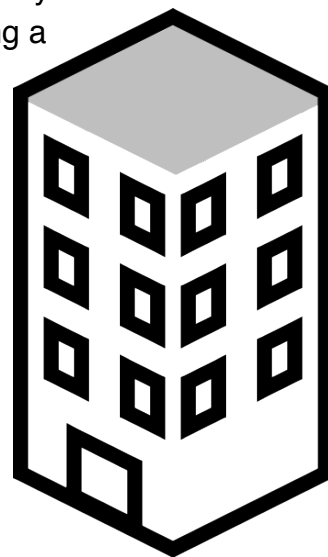
What do the numbers mean? The First number indicates the title the second the chapter and the third the section of the Montana Code Annotated. For example, in the reference (MCA 70-24-101) the information was taken from Title 70, Chapter 24, and Section 101 of the Montana Code Annotated.

Part I: Choosing a Rental Unit/ Choosing a Renter

Factors to Consider When Looking for a Rental

Before looking for a place to live, consider what you can afford and what you need. Decide how much you are willing to pay for rent and utilities. When considering a specific unit, find out how much the utilities will cost. Ask previous tenants and the landlord what the utilities have cost in the past. If necessary, ask the landlord to request the information for you from Northwest Energy or your local power company, which should have records of the previous year's gas and electric bills.

List those assets you want or need, for example laundry facilities, location in relation to work or school, safety, parking availability, access to public transportation, pet policy, etc. Then photocopy and use the "Checklist for Choosing a Rental Unit" (Appendix A, page 46) to assist you in choosing a rental unit which meets your needs.



Bargaining

As you find generally desirable rental units, remember that you can bargain with the landlord for acceptable terms. For example, a landlord might be willing to lower rent, spread the security deposit over several monthly payments, or alter pet policies. Too often tenants mistakenly assume that bargaining is unacceptable, however, many landlords are willing to bargain for a good renter. See what the landlord wants, vocalize what you want and negotiate for a rental agreement that works for both parties. If you do make special arrangements remember to put them in writing on the rental agreement. For more information see "Establishing a Rental Agreement," page 12.

Screening Prospective Tenants

Many landlords screen prospective tenants to ensure that they will maintain the unit and pay rent on time. To do this landlords may ask applicants for names, addresses, and phone numbers of previous landlords or rental agencies to find out about their rental history. A landlord may also run a credit check, request personal references, and information on employment and income to determine ability to pay. While screening tenants is important for landlords to ensure that their property will be cared for and that rent will be paid, landlords may not use the screening process to discriminate against

prospective tenants on the basis of race, color, national origin, marital status, familial status, age, religion, creed, gender or disability.

The Holding Deposit

A holding deposit is an amount of money paid by a prospective tenant to reserve a dwelling space for a certain amount of time until a rental agreement is formally initiated. In accepting such a deposit, the landlord is considered to have given consent for the person to take possession of the property. When the tenant has moved out the deposit is often returned or applied toward other rental charges as a credit. If a tenant pays a holding deposit and then backs out of the deal, the landlord often keeps the deposit as payment for having taken the unit off the market for the tenant.

The above definition of a holding deposit is drawn from the laws of states other than Montana. The Montana Residential Landlord Tenant Act does not define the term holding deposit. Lacking this state legal definition, a holding deposit falls into contract law making it is very important to negotiate a complete rental agreement as well as a written agreement with the landlord spelling out the terms of the holding deposit, including the last date that you can opt not to sign the rental agreement. Without a written agreement regarding the holding deposit, it would be the landlord's word against the

word of the prospective tenant as to what the holding deposit money was for. Without a written agreement, a landlord could keep all of the holding deposit after previously verbally agreeing to apply the money towards the security deposit when the tenant moves in.

Before you pay a holding deposit, make sure you have the conditions of the holding deposit spelled out on paper to your satisfaction. Get a receipt for the payment, and be sure to keep a copy of the holding agreement for yourself.

Impress Your Future Landlord

Courtesy of Get Rich Slowly

Create a Rental Résumé. Treat this like you would a job search. The majority of applications are going to ask for the same information. Put together a basic one- or two-page document containing this commonly requested information. Even if the landlord or property manager makes you fill out the application anyway, at least you'll already have everything on hand.

Be sure to include:

- Full names of everyone on application
- Dates of Birth
- Contact information (phone and e-mail)
- Current address (length, landlord information, reason for leaving.)
- Previous addresses (with additional information)
- Current employment information (salary, length, contact information)
- Past employment (with additional information)
- Personal references
- Vehicle information (make, model, plates, driver's license number)
- Pet(s) information (breed, size, age)



Discrimination

Unless a landlord is renting a room in her/his own house, the landlord is forbidden from discriminating against a potential tenant on the basis of the individual's race, color, creed, religion, sex, age, marital status, familial status, national origin, or mental or physical disability.

If you feel you are being discriminated against, or if you have questions about discrimination call the Montana Human Rights Bureau at 1-800-542-0807 or visit their website at <http://erd.dli.mt.gov/human-rights-bureau.html>. Montana Fair Housing can also assist you in filing a discrimination complaint. They can be reached at (406) 542-2611 in Missoula, (406) 245-6083 in Billings, or 1-800-929-2611 statewide.

The prohibitions against discrimination based on age or familial status mean that it is illegal to discriminate against tenants with children. The two exceptions to this law:

- 1) if the residence in question is owner-occupied provided the owner rents no more than 3 rooms within the residence, or
- 2) if the residence in question is part of an "all-adult" community that has adhered to the policies that demonstrate the housing is intended for a certain age, such as a nursing home.

Federal law also establishes rights to accessible housing for persons with disabilities. If a rental unit can be made accessible, a landlord must allow tenant to make reasonable changes and/or additions (at the tenant's cost). Additional information on the housing rights of people with disabilities can be obtained by calling agencies listed in the referrals section of this guide, most notably Montana Fair Housing.

A landlord might try to discourage prospective tenants she/he considers "undesirable" in a variety of ways. The landlord might sharply raise the rent or security deposit above the advertised cost. Upon seeing the tenant in person, the landlord might announce that the unit "was just rented."

If you feel that a landlord is discriminating against you, contact Montana Fair Housing at 1-800-929-2611.

Part II: Establishing a Rental Agreement

Statement of the Condition of the Premises (MCA 70-25-206)

At the beginning of the tenancy the landlord must provide the tenant with a written statement of the condition of the premises. The landlord is also required to provide a list of damage and cleaning charges assessed to the previous tenant upon the tenant's request. Many landlords choose to have their tenants fill out a "check-in" sheet or something similar to the *condition of premises form* in our sample & model rental forms page (www.mtpirg.org) in order to comply with this requirement. This option is the most beneficial to renters because they often will highlight defect in greater detail to preserve their deposit. The condition of premises report is important because without it there is no evidence of the condition of the unit when the tenant moved in. The report protects the tenant from being charged for conditions that existed prior to the beginning of the tenancy and provides the landlord with the evidence necessary to withhold money from the security deposit for damages caused by the tenant.

If the landlord fails to provide a statement of the condition of the premises, s/he relinquishes his or her claim to withhold cleaning or damage charges from the security deposit when the tenancy ends. Without a written condition of premises the legal burden of proof is on the landlord to prove by "clear and convincing evidence" that the tenant is responsible for the damage in question. This evidence must be presented before any part of the deposit can be withheld (MCA 70-25-206).

The Rental Agreement

Montana law defines a rental agreement as any written or verbal agreement adopted in order to clarify the rights and responsibilities of both the tenant and the landlord (MCA 70-24-103). The landlord and the tenant must decide between a verbal or written agreement; and must choose a standard, term, or lease agreement. Finally, they should carefully outline any special provisions such as additional repairs to be performed or tenancy rules.

Verbal Versus Written Rental Agreements

Though they differ in significant respects, a few characteristics are common to both verbal and written rental agreements. Each is legally binding on both parties. No rental agreement may contain provisions that violate the law, or waive or forego the rights or remedies of any party under the law (MCA 70- 24-202). Courts in Montana have consideration discretion in finding certain provisions of a rental agreement to be "unconscionable", with the Montana Supreme Court being the ultimate authority. These are provisions that, while not violating the letter of the law, are unfair or repressive to one of the parties. Neither party is required to abide by a rule in a rental agreement that is contrary to Montana law or has

been found by a court to be unconscionable.

Aside from these shared qualities, verbal and written rental agreements differ significantly. Verbal agreements are those agreements in which there is no written documentation of the terms of your tenancy. You and your landlord simply decide upon the amount of rent, when it will be due, the security deposit amount, and perhaps a few simple rules. Issues not covered by the agreement are determined by state and federal law.

Verbal agreements are convenient to the extent that they are usually short and do not involve reading fine print. Technically, they are just as legally binding as written agreements. However, verbal agreements can be difficult to enforce. First, you must prove that some agreement exists; then you must prove what the terms of that agreement are. If a dispute arises later on, it is likely to deteriorate into an argument pitting the tenant's word against the landlord's. If witnesses are present, some of these difficulties may be avoided later.

If the person you are entering into a rental agreement with does not wish to sign a written agreement, make notes as to witnesses present and the substance of the agreement. Send a signed and dated letter identifying the key points of the agreement to the other party. Keep a copy of the letter for your records. By sending this letter, you not only document your understanding of the agreement, but you also create an opportunity for the other party to clear up disagreements.

A **written agreement** is a signed document listing the terms and provisions of your tenancy. The terms of written agreements are easier to enforce because:

- 1) *They are clearly defined*
- 2) *The signatures indicate that both parties understand and accept the terms of the agreement*



Before signing an agreement, make sure that you read and understand all of its provisions. Under certain circumstances, a written agreement need not be signed by both parties to be binding. If either the landlord or the tenant does not sign and deliver a rental agreement which has been duly signed and delivered by the other party, but acts as though she/he did, then the agreement has the same effect as if it had been signed. If a landlord accepts rent money, or if a tenant takes possession of the dwelling unit, then she/he acts as though the rental agreement was signed (MCA 70-24-204).

Montana law requires that rental agreements be written in plain and understandable language, but if you are unsure of the implications of a certain term or provision, ask an attorney about it or contact another form of legal help. If there is something you do not like

in an agreement, cross it out and initial the modification with your landlord. After negotiating and signing a rental agreement, be sure to retain a copy of it for your records. Be aware that a tenant cannot be bound to provisions in a lease agreement that are prohibited by the Montana Residential Landlord Tenant Act (MCA 70-24-202). The law always takes precedent if there is any doubt.

Standard (Month-to-Month) and Lease Agreements

There are two kinds of rental agreements: the standard month-to-month agreement, and the lease. **Standard month-to-month** agreements can be terminated by either the landlord or the tenant on 30 days written notice **FOR ANY REASON or FOR NO REASON**, unless the termination is discriminatory or retaliatory (see the sections on discrimination and retaliation). In addition, the landlord can change the terms of the rental agreement (including rent) on thirty (30) days written notice.

Leases are rental agreements that do not allow either the landlord or the tenant to vary the terms of the rental agreement for a term specified by the lease (for example, six months). Thus, neither party can terminate the rental agreement until the lease expires, or unless the terms of the lease are violated. If either the landlord or the tenant wish to terminate the lease at the end of the term, a thirty (30) day notice must be given to the other party. If a lease expires, but the tenant continues to pay rent and live at the rental unit and the landlord continues to accept rent, unless otherwise detailed in the lease, the rental agreement continues, but it then becomes a standard month-to-month agreement. (MCA 70-24-205) Montana law does not allow for lease agreements of more than one year. (MCA 70-24-204 (3)).

Sometimes a rental agreement will be referred to as a "term agreement." Provided neither the tenant nor the landlord can change the terms of the agreement for the term specified in the rental agreement, then the "term agreement" is for all purposes a lease. Occasionally, however, a "term agreement" will prohibit the tenant from terminating the rental agreement before the term specified, but will allow the landlord to terminate the rental agreement, raise rent, or otherwise change the terms of the agreement within the term specified. Clearly, such an agreement is in almost all circumstances not beneficial to the tenant and should be avoided.

Special Provisions

Many times the landlord and tenant will make special agreements regarding repairs, pets, subletting, etc. These provisions should be spelled out in a written agreement.

1. Repairs. If the landlord has agreed to perform repairs, the repairs and the dates by which they will be completed should be listed on the rental agreement. Each party should

initial each repair that is added.

2. Pets. If a tenant plans to have a pet, it is recommended to get detailed written permission from the landlord. Sometimes the landlord will request an additional pet security deposit to cover cleaning or damage costs, which may be associated with the pet. If so, tenants should make sure the terms of the deposit agreement are clear, and keep a copy for their records. Under Montana law, pet deposits are subject to all of the same rules and regulations as security deposits (70-25-101 (4)). Pet deposits cannot be "non-refundable" or have other terms associated with them that violate the Montana Residential Tenants' Security Deposits section of the Montana Code (MCA 70-25). However, landlords are allowed to charge higher rents to tenants with pets.

If a tenant has a pet which is not allowed by the rental agreement, the landlord may give the tenant a 3- day notice specifying that the tenant must either get rid of the pet or vacate the premises. For the tenant, temporarily removing or "hiding" the pet is not a good solution. Following the initial notice, if the landlord discovers any unauthorized pet in the rental within the next six months, s/he can give the tenant a five-day notice to move out, with no opportunity to remedy the situation. If any unauthorized pet causes damage, the landlord may give the tenant a 3- day notice of termination for destruction of property, in which case removing the pet would do no good and the tenant should find another place to live.



3. Managing Premises For Landlord (MCA 70-24-303 (3) & (4)). Tenants may arrange (in writing) with the landlord to perform repair and maintenance tasks themselves, providing all of the following conditions are met: **a)** *the agreement is not made in order for the landlord to evade her/his responsibilities;* **b)** *the work the tenant does is not necessary to bring the dwelling into compliance with the housing code;* **c)** *the agreement does not diminish the landlord's responsibility to other tenants.* However, in buildings that contain more than three dwelling units, these kinds of arrangements are prohibited in order to protect the tenant from becoming a general maintenance person for the complex.

Sharing Responsibilities with the Landlord

Courtesy of New Mexico Legal Aid

There are three kinds of repairs that may be needed at a rental unit:

1. Those required by something the tenant caused to happen (like accidentally breaking a lamp or a window);
2. Those by normal wear and tear (like a leaky faucet or a stopped up drain);
3. Those involving the landlord's obligation to adequately maintain the property (like faulty plumbing or electrical wiring problems).

The rights and obligations of the tenant and of the landlord are different for each type of repair.

4. Subletting Agreements (MCA 70-24-305). Some landlords allow tenants to sublet, or rent, their rental unit to someone for a specified period of time. Tenants cannot sublet unless their landlord has given them written consent. Tenants normally sublet in order to hold a rental unit for a period in which they will be gone (as in the case of a tenant who leaves for the summer but wants to keep her/his apartment), or in order to complete the time remaining on a term agreement or lease.

If a tenant decides to sublet, they retain all their rights and responsibilities as a tenant, but you also take on all the rights and responsibilities of a landlord - ***the tenant also becomes a landlord***. Thus, the tenant is still responsible for the timely payment of rent, and for any damages caused by the person subletting from them, but as a landlord they also take on significant new obligations to, for example, keep the rental unit fit and habitable and to give adequate notice for terminating or changing the rental agreement.

A tenant may not sublet their rental property unless

1) *they have written permission from their landlord and;*

2) *the subletting agreement is for no longer than the period of the rental contract (i.e. the sublet agreement cannot extend past the end of the lease or no more than one month's time for a month-to-month agreement.)*

If you sublet, use a written rental agreement and include in it all the terms of your rental agreement with the landlord. Draw up a separate, written agreement stating the amount and terms of a security deposit. Sublet only to people who recognize the unique nature and responsibilities of the situation and will conduct themselves accordingly.

5. Special Uses of the Premises. If a tenant wishes to use the premises in ways other than as a home to live in-e.g. as an office, day care center, wood-shop, etc. they must get special permission from the landlord. The tenant and landlord should put the terms of this permission in writing as part of the rental agreement. Residential rentals must be used primarily as residences. Small businesses may be run out of a residential unit only if this activity is secondary the use of the unit as a residence. The information in this guide only pertains to residential rental situations. If you rent space for a business, for storage, or for an art studio, etc., the information in this guide will not be valid for your rental agreement.

The Security Deposit Agreement (MCA 70-25)

Most landlords require the tenant to put down an amount of money, separate from rent, to protect the landlord from losses due to tenant-caused damages, appropriate cleaning not performed by the tenant, and unpaid rent and utilities owed by the tenant after the rental agreement is terminated. This is usually called the “cleaning” or “security” deposit. It should be noted, however, that any money (or its equivalent) collected by the landlord to

ensure the premises are left clean, no damages have occurred, and that all rent and utilities are paid is considered to be a security deposit, no matter what is called (MCA 70-25-101 (4)). This means that landlords cannot evade security deposit regulations simply by calling the security deposit, or a portion thereof, by a different name (i.e. pet deposit, cleaning fee, etc.).

It should also be noted that Montana law defines security deposits as “value given in money or its equivalent” (MCA 70-25-101). This means that if tenants are required to perform cleaning on the residence when they move in, an appropriate charge for their labor is part of the security deposit and must be refunded to them upon termination of tenancy.

The security deposit is the tenant’s money throughout the tenancy and is eventually refunded to them provided they do not owe any rent and leave the rental unit in as good condition as when they moved in. Non-refundable cleaning and security deposits are not allowed under Montana law (MCA 70-25-201).

“Non-refundable deposits are not allowed under Montana law.”

The security deposit agreement should be set down in writing. Refer to Appendix F (page 61) for a model agreement. If the landlord does not want to sign an agreement, the tenant should make sure to get a receipt for the deposit and save it for future reference.

Part III: Landlord and Tenant Rights and Responsibilities

General Provisions

Montana law recognizes that both tenants and landlords have an interest in maintaining the rental unit, and that the tenant/landlord relationship is by nature a symbiotic one. Tenants need landlords to provide a place for them to live, and without tenants landlords would be deprived of a source of income. Correspondingly, tenants and landlords have responsibilities to one another. Tenants have a responsibility to pay the landlord rent in a timely manner and to maintain and care for the landlord's property (MCA 70-24-201, 70-24-321). Landlords have a responsibility to provide the tenant with a fit and habitable dwelling, and to maintain the premises for which the tenant is paying (MCA 70-24-302 , 70-24-303).

Providing a fit and habitable dwelling means that the rental unit must comply with local building codes affecting health and safety, and must have at least basic amenities such as heating, hot and cold running water, electricity, proper plumbing, a smoke detector and adequate ventilation. Landlords must also maintain any and all appliances supplied as part of the rental agreement (MCA 70-24-303). In addition, rules and regulations set forth by the landlord must be applied and enforced uniformly and fairly (MCA 70-24-311).

The tenant has a responsibility to maintain the dwelling, as far as it is in their control, and to keep the unit safe and reasonably clean. Tenants must dispose of all waste in accordance with health and safety codes. The tenant must not destroy, deface, damage or remove any part of the premises and must use the areas within the dwelling unit as they are designed to be used. For instance, a kitchen may not be turned into a ceramics studio. Also, the tenant may not disturb neighbors or use the rental in such a way so as to interfere with neighbor's peaceable enjoyment of their premises (MCA 70-24-321).

Maintenance of Premises and Property

Damages and Repairs

As stated above, the landlord must keep the premises in fit and habitable condition. The tenant has an obligation to treat the rental unit with care. If the tenant or a guest of the tenant accidentally or intentionally damages the rental property, the tenant is responsible for covering cost of repairs and/or replacement. Tenants must promptly notify the landlord of any damage to the unit.

Occasionally, repairs will be necessary through no fault of the tenant. Before asking the

landlord to do repairs, tenants should make sure that:

- (1) The repairs are not for damages that are the tenant's fault
- (2) The damages affect the fitness and habitability of the rental unit. If the tenant thinks the damages might pose a serious health or safety hazard, they should arrange for the county or city building inspector to examine the rental unit. The inspector will normally notify the owner, in writing, of any defects. Ask you your local county or city offices about how to arrange a visit from a building inspector.

Tenants may never withhold rent to induce the landlord to perform repairs. Montana law recognizes that tenants need effective processes to ensure prompt repairs, but it draws a sharp distinction between these processes and prompt rent payment. Withholding rent in order to force repairs is improper; in response, the landlord can terminate the rental agreement on three days notice and sue the tenant for up to three times the amount of rent (see Termination and Eviction in Ending the Rental Agreement).



If a repair needs to be made and it is the landlord's responsibility to make the repair (i.e. the tenant did not cause the damage and the repair is necessary to keep the premises in a habitable condition or to maintain appliances provided by the landlord) the tenant's first step is always to inform the landlord of the problem. Though landlords are obligated to maintain the conditions of a rental property as per the lease, none of the tenant's rights to have repairs made arise until the landlord has been notified of the problem. As a rule, the notification should be in writing and sent to the landlord via a letter with proof of mailing with a copy retained for the tenant's records. Some repairs may necessitate notifying the landlord in a more prompt manner than that provided by the US Postal Service. In such cases, the tenant may choose to notify the landlord in person or by phone or e-mail. Like verbal rental agreements, Montana law recognizes verbal notification. A landlord may not refuse to make necessary repairs because notice was not given in writing. However, a tenant who gives verbal notification would be well advised to send the landlord a certified letter documenting the prior notification so as to avoid the possibility of a landlord claiming that notification was not given.

Montana law specifies a time period of fourteen days for the repair of problems in the unit that materially affect health and safety of the premises. If the problem results in a case of emergency, the problem must be fixed in three days. In the initial notification letter, the tenant may specify that if the repair is not completed within 14 days the rental agreement will terminate in thirty days. In the case of an emergency, the tenant may specify that the rental agreement will terminate immediately if the repair is not completed in

three days. Terminating a rental agreement in this way presumes that the tenant will move immediately. If the landlord fails to have the necessary repairs made within the proper time period the tenant has a variety of options for having the repair made, if they do not wish to terminate the agreement.

Option 1: Repair & Deduct

If the cost of the repair is less than one month's rent, the tenant may have the repair made, pay for it, and deduct the cost from the next month's rent. A professional must make the repair and a copy of the receipt should be included with the next month's rent payment. This method, commonly known as "repair and deduct", may not be used to make repairs costing more than one month's rent (MCA 70.24.406). In addition, the tenant may file a lawsuit against the landlord to recover any damages s/he incurred due to the landlord's negligence.

Option 2: Injunctive Relief

If the cost of the repairs is more than one month's rent, the tenant may seek "injunctive relief" to force the landlord to comply with his/her responsibilities to maintain the premises. To do this, the tenant must file a complaint in the Justice Court specifying the repairs that are necessary and requesting a court order requiring that the landlord have the repairs made in a timely manner. As in option 1 above, the tenant may recover any damages incurred due to the landlord's negligence through the court.

Options 1 and 2 are generally employed by tenants to have minor repairs made that do not affect the delivery of essential services. If the failure of the landlord to make the required repairs results in the interruption or loss of essential services such as heating or running water, the tenant may either utilize option 1 or 2 or pursue one of the following options. It is important to note that in pursuing options 3,4 or 5, the tenant gives up his/her right to pursue options 1 or 2. In all cases, the landlord must first be notified of the problem and be given an adequate amount of time in which to fix it.

Option 3: Obtaining Service

The tenant may obtain reasonable amounts of the service from some other source and deduct the cost of the service from the next month's rent, and continue to do so until the landlord has made the necessary repairs, provided, of course, that the costs do not exceed the amount of rent. For example, if the landlord fails to repair the furnace, resulting in the loss of heat, the tenant, after notifying the landlord of the problem, may purchase a space heater as replacement for the heat and, after notifying the landlord, withhold it's cost from the next month's rent.

Option 4: Substitute Housing

The tenant may procure substitute housing until such time as the landlord has made the necessary repairs. During this time the tenant is not required to pay rent to the landlord (MCA 70.24.408). As an example, the water heater doesn't work: the tenant gives the landlord proper notice and provides that, unless the furnace is fixed in 5 days (reasonable time), the tenant may then obtain substitute housing.

Option 5: Diminished Fair Rental Value

The tenant may recover damages from the landlord based on the diminished fair rental value of the unit. The idea here is that if the unit is worth \$300 per month when everything is in good working order, it is worth less when everything isn't working. If the running water has stopped working, the unit may only be worth \$150 per month. Montana law doesn't specify what diminished fair rental value is in monetary terms for specific situations, so it is up to the tenant and the landlord to work out exactly how diminished the rental value is. If they cannot come to an agreement, the court judge may ultimately decide.

Collecting Both

If a tenant's heat went out and it was not repaired in a reasonable amount of time they could buy a heater and deduct that cost from their rent. At the same time they could also claim an additional deduction of rent for the diminished value of an apartment without heat.

Utilities

The rental agreement should specify which utilities the landlord provides and which the tenant is responsible for. The landlord must provide garbage cans, unless otherwise specified in the rental contract, but you may be required to pay for garbage pick-up.

If the landlord controls the heat, s/he must supply it between October 1 and May 1. If the tenant is responsible for the heating bills, the utility companies regulated by the Montana Public Service Commission (such as NorthWestern Energy) cannot shut it off from November 1 through April 1 unless it receives permission from the Public Service Commission.

The Montana Public Service Commission will not approve a request to disconnect under the following circumstances:

1. The account holder is at or below the federal poverty guideline.
2. The account holder is a recipient of a public assistance program, such as food stamps.
3. A member of the customer's household is 62 years old or older.

4. A member of the household is person with a disability.

Even if a renter meets those criteria, it is best to continue paying for utilities if possible. If you have questions, contact the Montana Public Service Commission.

If you need help paying for your utility bills, apply through the Human Resource Council (see Montana Resource Directory) for assistance from the "Low Income Energy Assistance Program (LIEAP)" or "Energy Share." LIEAP is designed to help low income individuals or families who cannot afford to pay their full heating bills during the winter, based on family and house size, annual income, and the type of heat you use (electric or gas). Energy Share is a state program, providing emergency assistance in paying power bills for those without the funds to pay their own bills. Assistance is available from October 1 through April 30.

Fire Safety

Be sure your dwelling conforms to fire safety codes. If you are not familiar with general fire prevention practices, consult your local fire department.

Use stoves and fireplaces properly and carefully. Plug electric ranges into an outlet, do not wire them directly into the wall. Make sure fireplaces and wood stoves have safe, clean chimneys or other outside ventilation sources. Keep combustible materials, such as wood and paper, at least four feet from wood stoves.

All landlords are required to install a certified smoke detector, at their expense, in each dwelling unit under their control. It is the Tenant's responsibility to properly maintain these detectors

Follow the guidelines below to ensure that your smoke detector is properly placed:

1. A smoke detector's primary function is to awaken sleeping persons and warn them of a dangerous fire. As such, the most important rule for locating a smoke detector is that the detector be between the bedrooms and the rest of the house, but closer to the bedrooms.
2. Place smoke detectors on the ceiling or on a wall six to twelve inches from the ceiling. Never install within six inches of where the wall and the ceiling meet. This is usually dead air space and smoke tends to miss it.
3. Do not place smoke detectors near vents, heating ducts, and other sources of air current, which may keep smoke from reaching the detector.
4. Do not place smoke detectors in or adjacent to the kitchen or bathrooms where cooking, steam, etc. might unnecessarily set off the alarm.
5. Avoid placing detectors on a ceiling that is significantly warmer or colder than the rest of the room because a thermal barrier might exist which prevents smoke from entering the smoke detector. This is of primary concern with mobile homes, poorly insulated houses, outside ceilings, and outside walls. If you live in a mobile home, never install the detector on the ceiling or any outside walls, use an interior wall.
6. For multistory homes, place a detector on each level of the house, preferably at the top of stairwells. Don't forget to put one in the basement.

(MCA 70-24-303). Use and maintain smoke detectors. (i.e. replacing batteries when necessary and reporting to the Landlord if the detector seems to be malfunctioning). There should be at least one smoke detector per dwelling unit. The tenant should check to make sure smoke detectors are properly installed, and s/he also might want to install additional smoke detectors as needed. However, if the tenant installs smoke detectors on the wall they become fixtures and may become the property of the landlord.

Smoke detectors are effective life saving alarms, but they save lives and property only if maintained properly. Follow these rules to keep your alarm working.

1. Test your alarm once a month. Some smoke alarms have a "test button," however, this is not always reliable. It may test the electrical circuit only and not the alarm's ability to detect smoke adequately. To test properly, hold a candle six inches under the detector. To test ionization alarms, let the candle burn. To test photoelectric alarms, extinguish the candle and let the smoke drift into the detector. The alarm should sound within twenty seconds. If it does, fan the smoke away to stop the alarm, and leave as is: the alarm is ready.



2. Replace batteries as needed but at least once a year. Keep spares handy.

3. Replace light bulbs in photoelectric detectors as needed. Keep spares handy.

Renter's Insurance

Renters may have property of considerable value in the apartment or house. The landlord's insurance probably will not cover damage, which occurs to tenant's property due to fire, theft, broken water pipes, or natural disaster. Thus, tenants should consider purchasing renter's insurance. Renter's insurance is designed to cover only losses of the tenant's property, not the landlord's. Tenant's seeking insurance should call a variety of insurance agents to get the policy that meets their needs for the best price. Yearly premiums are based on the value of the property the tenant is insuring and generally range from \$50 on up. If the tenant is a student under age twenty-one, their property may be covered by their family's homeowner policy. Check with your auto insurance provider: sometimes a discount is available for getting renter's insurance through the same agent or company. Renters insurance is a good value, considering the potential loss if something bad happens.

Landlords Right to Access; Tenant's Right to Privacy

(MCA 70-24-312 , 70-24-410 , 70-24-424)

Both tenant privacy and landlord access are protected under Montana law. Landlords cannot abuse their right of access, nor can tenants unreasonably withhold consent from the landlord or the landlord's agent to lawfully enter the unit. In particular:

1. The tenant cannot unreasonably deny access to the landlord in order to inspect the premises, make repairs or improvements, supply services, or show the dwelling to prospective tenants, purchasers, workers, contractors, etc.

2. The landlord cannot abuse the right of access to harass the tenant. Except in emergencies or unless it is impracticable to do so, the landlord must give the tenant twenty-four hours notice (verbal or written) of her/his intent to enter the premises. The landlord can enter only at reasonable times. Notice may be considered impractical if the tenant is absent from the dwelling for an extended period.

3. The landlord can enter the premises without twenty-four hour notice only:

- a) in an emergency;
- b) if s/he has a court order or;
- c) if the rental agreement contains a provision allowing the landlord access when reasonably necessary in cases where the tenant is absent more than seven days.

4. If the landlord makes an unlawful entry or a lawful entry in an unreasonable

Let the Landlord In

Courtesy of NOLO Law for All

If your landlord does not have a history of invading your privacy, you're better off accommodating requests for entry, especially if the purpose is to make repairs that will benefit you. Objecting to legal entries without solid reasons may result in:

- An eviction. As long as your landlord complies with your state law as to reasons for entry and notice periods, your refusal to allow access can result in an eviction lawsuit.
- A termination at the end of the month or a non-renewal at the end of the lease. If your landlord concludes you are too difficult to deal with, he may simply give you a 30-day notice or not renew the lease rather than put up with you.
- A difficult working relationship. Don't expect much help or understanding when you make repair requests or float an occasional plea to pay the rent late. Landlords have long memories.

If you have nothing to hide, do not hide from your landlord.

manner (such as an entry at an unreasonable time), or makes repeated demands for access which harasses the tenant (for example, giving the tenant a twenty four hour notice every day for a week), the tenant may obtain injunctive (court ordered) relief from the court or terminate the rental agreement (MCA 70-24-410). On the other hand, if a tenant refuses access to the landlord, the landlord may obtain injunctive relief from the court to force the tenant to allow access or terminate the rental agreement (MCA 70-24-424). In cases of abuse by the landlord or refusal by the tenant of access, the law allows for recovery of actual damages through court.

5. The tenant may not remove, replace or add a lock to the premises without the written permission of the landlord (MCA 70-33-312). If the tenant adds or replaces a lock not supplied by the landlord, then the tenant must provide a key to ensure that the landlord will continue to have the right of access. If the tenant fails to supply a key, then the landlord may either obtain an order from the court or terminate the rental agreement.

Changing the Rental Agreement: Raising Rent or Altering the Terms of the Agreement

(MCA 70-24-311)

If a rule is adopted after a tenant enters into a rental agreement that creates a substantial modification of the tenant's bargain, it is not valid until seven days after written notice to the tenant in the case of a week to week tenancy, or thirty days' written notice in the case of tenancies from month to month. In the case of a lease agreement, the landlord may not alter the terms of the rental agreement until the end of the term. If a landlord wishes to alter the terms of a lease agreement upon expiration of that agreement, s/he must provide the tenant notice of his/her intent to change the terms of the agreement thirty days before the lease expires.

Montana law does not place any restrictions or ceilings on how much a landlord can charge for rent or how much a landlord may raise rent. Generally, the landlord may charge whatever the rental market will bear. However, rent increases may not be allowed if they are determined to be retaliatory or intended to discriminate against the tenant (see sections about discrimination and retaliatory conduct).

If a tenant with a lease receives a rule change letter (for example, new requirements to maintain the lawn or not play music after a certain time) from his/her landlord before the expiration of the agreement, the tenant should send a letter, refusing to recognize the change. Doing this will prevent the rule change from taking effect. This only pertains to those residential tenants with leases. If the tenant wants to change the terms of the agreement or sublet s/he must negotiate a new agreement with the landlord.

Part IV: Ending the Rental Agreement

Termination

Either the landlord or the tenant can terminate (end) a rental agreement. The party who wishes to terminate the agreement must, under normal circumstances, give the other party **seven days** notice for a week-to-week tenancy, or **thirty days written notice** for a month-to-month tenancy. (MCA 70-24-441 (2)). The party initiating the termination should sign and date the notice and keep a copy for their records. In order to prove the notice was received, or at least sent to the appropriate address, it should be sent with a proof of mailing. A notice sent by certified mail is presumed to be delivered three days after the date of mailing, regardless of whether or not the other party has actually received the notice (MCA 70-24-108). If the notice is delivered in person, the initiating party should obtain a signed receipt indicating the date the notice was received. Additionally, a neutral third party could witness the delivery of the notice and then sign a written statement of what they witnessed.

In the case of a month-to-month agreement, the notice can be given any time during a tenancy, i.e. it need not be given at the beginning of the month or with payment of rent (MCA 70-24-441 (3)). In the case of a lease agreement, the thirty day written notice cannot terminate the rental agreement prior to the date specified in the lease unless either the landlord or the tenant has violated the conditions of the lease or state law. Landlords may terminate a lease agreement with a **five-day notice** if the tenant has violated the same lease provision twice within a six-month period and was informed in writing of the noncompliance and given adequate time to remedy the situation (70-24-422 (1)(d)). If the landlord has breached the same provision twice and a six month period and has been notified in writing of the breach, the tenant may terminate the agreement with **fourteen days notice** (MCA 70-24-406 (1)(a)(ii)).

Security Deposit Refund

After proper notice has been given by either the tenant or the landlord that the rental agreement is to be terminated, there are a series of steps that need to be taken to ensure that the tenant receives all the security deposit due to her/him and that the landlord is able to withhold any necessary amount from the deposit.

- 1) Within 7 days of the final termination of the agreement, preferably after all or most of the tenant's belongings have been removed and cleaning has been performed, a final inspection of the premises must be performed (MCA 70-25-201 (2)). Ideally, both the tenant and landlord will be present for this inspection, but if

this is not possible then the landlord may perform the inspection without the tenant being present.

2) After the inspection has been completed, the landlord must deliver a written list of additional cleaning to be completed by the tenant to bring the unit into the same condition as when it was rented. The landlord must give the tenant at least twenty-four hours to complete the required cleaning (MCA 70-25-201 (3)). If, after the final inspection, there is no further cleaning to be completed, no damages to the property for which the tenant is liable, no unpaid rent and the tenant can prove to the landlord that there are no outstanding utility bills for which the tenant is responsible, the landlord must return the full amount of the security deposit to the tenant **within 10 days** (MCA 70-25-202 (2)).

3) After the tenant has had the opportunity to complete any required cleaning and has returned the keys to the landlord, the landlord must deliver to the tenant, **within 30 days**, an itemized list of deductions from the security deposit along with any portion of the security deposit remaining (MCA 70-25-202(1)). If the tenant fails to deliver their forwarding address to the landlord, this does not forfeit the tenant's claim to the security deposit. If the landlord does not comply with this requirement, s/he forfeits their right to withhold anything from the security deposit for cleaning or damages (MCA 70-25-204).

How to Get Your Security Deposit Back From the Landlord

Courtesy of realestate.aol.com

1. **Read the fine print:** Read your lease or rental agreement carefully, the best way to follow the rules is to know exactly what they are.
2. **Learn the law:** Know what your state's laws are in regards to the security deposit and what it deems are suitable reasons to withhold money from the return.
3. **Photograph the evidence:** Take pictures, with dates, to ensure that you have proof of what things were there when you moved in and when you moved out to ensure that you are not charged for things that you did not do.
4. **Leave the place in good condition:** Security deposits are generally only used for repairs that go above and beyond general wear and tear, do everything you can to ensure there is nothing above and beyond. If you do something that will cost you extra try to fix it yourself, for instance a drill hole can be spackled and re-painted.
5. **Clean, clean, clean:** If you choose not to hire a cleaning service to scrub down your rental before you turn in the keys then give yourself a few days to roll up your sleeves and do some scrubbing. The better you clean the happier the landlord will be.
6. **Give your landlord a forwarding address:** Though this sounds obvious giving your landlord a way to return the deposit will be a big help in actually getting the deposit back. As soon as you are aware of the new place you can be reached give it to your landlord in writing.

Occasionally a situation will arise where the landlord and the tenant disagree as to a reasonable amount to be withheld from the security deposit. To avoid as many of these conflicts as possible, landlords should be sure to present every tenant with an initial condition of premises report at the beginning of tenancy. Without the initial condition of premises report, the landlord must be able to show by "clear and convincing evidence" that

the damage caused, or cleaning required is the tenant's fault. Additionally, landlords are not permitted to deduct money from the tenant's security deposit for "normal wear" (MCA 70-25-101 (1)) or for cleaning that is performed on a cyclical basis (MCA 70-25-201(3)). For instance, if a landlord paints the walls after every tenancy, s/he may not charge the tenant for the painting.

If a tenant disagrees with the landlord's itemized list of security deposit deductions, they should send the landlord a letter detailing why they dispute the deduction (e.g. the damage was preexisting) and requesting the landlord send them an additional refund. Alternatively, cases may occur where the security deposit is insufficient to cover damages caused by the tenant and unpaid rent and/or utilities. In this case, landlords must still send the departing tenant an itemized list of deductions, but in place of a check for the remainder of the security deposit, a bill for the additional charges. If the landlord and the tenant cannot come to an agreement on the amount of the deduction from the security deposit, a lawsuit may be necessary to decide (see Solving Problems).

Eviction Procedures

If a landlord wishes to remove a tenant from a rental unit, the steps s/he can take are limited to terminating the rental agreement, asking the tenant to leave, and finally, taking the tenant to court to get an eviction order. In no instance can the landlord physically remove either the tenant or her/his possessions from the dwelling, nor may s/he change the locks or turn off the tenant's power or other services in order to force the tenant out. Doing so entitles the tenant, whether in the rental unit wrongfully or not, to collect three month's rent from the landlord.

Before the landlord can bring an "**action for possession**" (a legal claim for the tenant's removal from the rental unit), s/he must first terminate the rental agreement (70-24-429).

The landlord can terminate the rental agreement in the following ways (MCA 70-24-422):

1. **On Three (3) days**, after notifying the tenant in writing if:

- Rent is unpaid when due. If the rent is paid within the three days then the notice is void. (MCA 70-24-422).
- The tenant has physically destroyed, defaced, damaged, impaired or removed any part of the premises. The landlord does not have to give the tenant the opportunity to remedy the situation in cases of property damage (MCA 70-24-422 (3)).
- The tenant is keeping an "unauthorized pet", (one not allowed by the rental agreement) on the premises. The rental agreement terminates if the pet is not removed from the premises within those three days. If the pet is removed then the notice is void (MCA 70-24-422, 1 (b)). If this breach of the rental agreement occurs

again within six months, the landlord may terminate on **five days written notice**, with no opportunity for the tenant to correct the situation (MCA 70-24-422, 1(e))*.

- There are unauthorized people (people other than are on the contract, or that the landlord has not authorized) residing in the rental. The rental agreement terminates if the unauthorized person is not removed within those three days. If the unauthorized person does leave within three days, the notice is void (MCA 70-24-422, 1 (c)). If this breach of the rental agreement occurs again within six months, the landlord may terminate on **five days written** notice with no opportunity for the tenant to remedy the situation (MCA 70-24-422, 1(d))*.

** These conditions do not apply to rental agreements where a tenant rents space in a mobile home park but owns the mobile home.*

2. **On Fourteen (14)** days after notifying the tenant in writing if there has been a non-compliance with the terms of the rental agreement. If the tenant does whatever is necessary to remedy the non-compliance within the fourteen-day period, the notice is void (MCA 70-24-422, 1 (a)). This can happen in just five days if the same act of non-compliance occurred within the previous six months (MCA 70-24-422, 1(d)). Non-compliance involving unauthorized pets or persons in the rental, as mentioned in section 1, only requires a three (3) day notice.

3. **On Thirty (30) days** (in the case of a month-to-month agreement) after notifying the tenant in writing that s/he wishes to terminate the agreement (MCA 70-24-441). The landlord is not required to provide the tenant with a reason for the termination if they give the tenant thirty days notice of the termination. There is no law in Montana barring eviction during the winter. However, termination of the rental agreement is not allowed, regardless of the amount of notice given, if the termination is retaliatory or discriminatory (see sections on Retaliatory Conduct by Landlord and Discrimination).

Termination on notice of less than thirty days, as mentioned above, is allowed only for some non-compliance on the part of the tenant. Landlords may recover actual damages for any non-compliance by the tenant. (MCA 70-24-422, 5). This means that if a landlord was forced to terminate the rental agreement because of noncompliance by the tenant, the landlord could recover, in court, actual losses which the landlord incurred. For example, the landlord could charge the tenant for rent until the unit was re-rented, assuming the landlord made a reasonable effort to re-rent the property. Situations involving destruction of property, wastage, and second offenses within six months do not require that the tenant be given any "second chances" to remedy the situation.

If the tenant remains on the premises following termination of the agreement, the landlord can take them to court to get an order of possession. If the tenant doesn't move out upon legal termination of the rental agreement, the landlord can sue the tenant for her/his court costs, attorney's fees, and three times the amount of rent due during the time

the tenant occupied the rental unit after the rental agreement was terminated.

If a tenant feels they're being unlawfully evicted (see Retaliatory Conduct by Landlord and Discrimination), they may dispute the eviction by filing an Answer to the Landlord's Claim to Evict you within ten days of being served with the action for possession.

As a tenant, if your landlord is preparing to file an action for possession (eviction) against you, consider your circumstances carefully before proceeding. If you are considering contesting the eviction, you might want to consult with an attorney before taking any action. If the conditions under which the landlord terminated the rental agreement are legal and proper, move out. If not, try to pursue your concern with the landlord. Document your attempts to resolve the issue. If no agreement is possible and further negotiations are useless, and if you feel the landlord is trying to evict you wrongfully, pursue the problem in court.

It is important to note that Montana law states that **acceptance of rent by the landlord is a waiver of a claimed breach only when the claimed breach is the nonpayment of rent**. In the past, the acceptance of rent by a landlord invalidated any pending action for possession, but now, it only invalidates the eviction procedure if the complaint against the tenant is for non-payment of rent. The acceptance of partial payment of rent due does not constitute a waiver of any right (MCA 70-24-423).

The Eviction Process (MCA 70-24-427)

Under no circumstances can the landlord personally remove the tenant. Additionally, the landlord cannot change the locks on the rental or cause the interruption of essential services in an attempt to oust the tenant.

The typical eviction process is as follows:

1. The landlord delivers a written termination notice to the tenant.
2. The tenant refuses to obey the notice and remains in the rental unit after the termination date.
3. The landlord files an action for possession with the county justice court.
4. The sheriff's department delivers a summons and a copy of the complaint to the tenant.
5. The tenant has ten days to respond to the complaint. The tenant files her/his response with the court.

If the tenant fails to file an answer to the action for possession within ten days, the

landlord can obtain a default judgment in his/her favor and obtain a writ of assistance from the justice court to have the tenant removed. The landlord takes the writ of assistance to the sheriff's department to have the tenant physically removed. The landlord can store any of the tenant's property and charge for reasonable moving and storage costs.

6. If the tenant responds to the complaint, the judge sets a trial date within 20 days.

7. After hearing testimony and arguments, the judge, within five days, makes a decision.

If the judge decides in favor of the tenant, the tenant can continue to stay at the rental unit and may collect damages, if any are awarded by the court.

If the judge decides in favor of the landlord, the tenant must move out, and pay the landlord any damages awarded by the court.

Retaliatory Conduct By Landlord (MCA 70-24-431)

A landlord may not terminate the rental agreement, bring or threaten to bring an action for possession, raise the rent, or decrease services because the tenant:

1. Submitted a written complaint to the landlord about damages affecting the habitability, health, or safety of the rental unit, or
2. Submitted a written complaint to federal or state authorities about damages affecting the habitability, health, or safety of the rental unit, or
3. Joined a tenants' union or similar organization.

If the tenant provides evidence of having complained or joined a tenants union within six months of the alleged retaliatory conduct (eviction, raising the rent), then it creates a "rebuttable presumption" that the landlord's conduct was in retaliation. This means that unless the landlord can prove otherwise with clear and convincing evidence, the court will assume that the action is in retaliation and therefore illegal. This is why it is so important for tenants to communicate with their landlord in writing. Oral requests for repairs are not enough to prove retaliatory conduct.

The rebuttable presumption will not hold, however, in the following cases:

1. The action requested by the tenant involves remodeling or alterations required to bring the unit into compliance with appropriate building or housing codes that would require the tenant to move out of the unit.

2. The damages complained about by the tenant were caused by the tenant.

3. The tenant is in default on the rent.

If the landlord takes retaliatory action against the tenant, the tenant is entitled to sue for triple damages or three months rent, whichever is greater, (also see page 36 on Civil Court).

Part V: Solving Problems

Landlords and tenants should be able to resolve problems quickly, amicably, and at relatively little cost. Disputes will rarely arise if both parties understand their rights and fulfill their obligations.

If a problem does arise, both parties should proceed carefully, calmly and deliberately. This way, the chances are increased that the problem will be resolved properly.

It is always better to make requests for repairs or complaints in writing, rather than orally, whether face- to-face or over the telephone. Written documents are more likely to get an appropriate response, and if the case goes to court, they provide evidence and show that the parties have tried normal avenues of redress before bringing the dispute to court.

If negotiations are failing, one or both of the parties may want to consult with someone who can provide assistance. This might be a consumer advocate or an attorney (see Montana Resource Directory). A consumer advocate may be a law student; paralegal, or trained lay person. While not able to represent you in court or give legal advice, s/he may be experienced in tenant-landlord conflicts and can give helpful information to you. In contrast, an attorney can provide legal advice, and if necessary, represent you in court.

Ultimately, if you cannot resolve a dispute, you will be forced or take the issue to court where a judge will make a decision in the case. In court, written records of events are preferable, in order to avoid having the dispute turn into one party's word against the other.

Standard Complaint Letter

Many times, the most appropriate first step towards resolving a problem is to write a request/complaint letter. In general, it should include the following.

1. A concise statement of the problem(s).

Develop a Relationship with Your Landlord

Courtesy of Home.com

- **Ask but do not nag.** Landlords do give perks but remember that perks are extra, not to be expected. Be sure to
- **Watch what you sign.** Reading the fine print will help you avoid disagreements in the future, it is best to discuss things prior to signing and events rather than after
- **Complete a walk-through.** Keeping good records of any damages, no matter how minor, will help to avoid disagreements when it comes time to move out. Though you will be leaving the property when this disagreement is likely to occur you may need them for a reference in the future.
- **Pay your rent.** Make a budget, to ensure that you pay your rent on time and have the funds. The simplest way to keep the landlord happy is pay them what you owe.
- **Do it yourself.** Take control of small maintenance issues on your own be sure to inform your landlord about larger maintenance problems.

2. A chronology of previous attempts to resolve the problem(s) and responses to those attempts.
3. A clear and well-defined statement requesting that the problem is resolved. This should explain the specific course of action requested and a specific time period within which the request must be met.
4. A clear indication as to what will be done if the request is not met within the time specified.

Letters should also include a full name, address, phone number, signature, and date. Always keep a photocopy for your records. When sending out the letter, go to the post office, request a certificate of mailing, and then staple the certificate to your copy of the letter. This certificate proves that the letter was mailed.

In Montana, if the notice is made with a certificate of mailing or by certified mail, service is considered to have been made three days after the date of mailing (MCA 70-24-108, 1c).

In previous editions of our Tenant/Landlord Guide, we recommended sending notices by certified mail, which requires a signature for delivery. If the recipient refuses to sign for the letter, then there would be an official record (on file with the post office) that s/he did not receive the letter. Therefore, a certificate of mailing, which requires no signature, is the better of the two choices.

Sample complaint letters can be viewed in our Sample and Model Forms page.

Consulting an Attorney

Attorneys can give expert advice, negotiate, and represent their client in court. To find an attorney, check to see if your university, employer, union, or other community group provides legal assistance. You can also check the yellow pages or the Bar Association (call the Lawyer Referral Service at (406) 449-6577).

1. **Consultations and Advice.** An attorney can provide an assessment of the legal options for action in a particular case. Consultation involves an office visit. Some lawyers do not charge for the first visit, but ask before setting up an appointment.
2. **Negotiation.** A lawyer can help you negotiate via a letter, phone call, or meeting.
3. **Litigation.** If you go to court, an attorney can advise or represent you.

Civil Court

Occasionally after the termination of the rental agreement, or during the term of the rental agreement, either the tenant or landlord may decide that the other party owes them money. Usually, in the case of the tenant, this money is for a wrongfully withheld security deposit, meaning the tenant feels that the landlord has withheld money from the security deposit for pre-existing problems or that the landlord has



withheld an unreasonable amount for deductions that would otherwise be acceptable. On the landlord's side, they may feel that the former tenant's security deposit was not enough to cover the costs of cleaning the unit and making repairs after the tenant vacated, or that the former tenant owes them for unpaid rent or utilities beyond the amount of the security deposit. Claims may also be filed for personal property that is being wrongfully withheld by another party. Claims may also be filed in court for diminished fair rental value or actual damages incurred due to the other party's noncompliance with the rental agreement or Montana law.

If the renter feels that their current or former landlord or tenant owes them money or property a written complaint must be prepared and filed with the Court. A complaint is a brief, concise statement of the facts making up your complaint. The renter must include the dollar amount requested, and/or the return of specific property. The date of the transaction must also be stated. The renter will need to prepare a summons to be served on the opposing party, and a praecipe or directive for the Sheriff's office, Constable, or other person, or an acknowledgment of service if served by 1st class mail. For each person the renter is suing, they will need 2 copies of the complaint, 2 copies of the summons, and 1 praecipe. The forms are self explanatory and easy to fill out. All papers necessary are available at Justice or City Court.

Where to File

Landlord-Tenant disputes of any kind should be will filed in Civil Court. The Civil Court is a division of the county Justice Court and a case may be filed at Justice or City Court. A person may file a claim in Civil Court if they feel that the other party owes them money or property up to an amount of \$12,000. Tenants seeking wrongfully withheld security deposits, and landlords seeking unpaid rent, utilities, or cleaning fees should also file in Civil Court. Also, landlords or tenants who feel that the other party is in possession of property belonging to them worth less than \$7,000 should file in Civil Court.

Claims for monetary reimbursement for damaged personal property must be filed in Civil Court, regardless of the amount of compensation owed. A person should also file in Civil Court if their claim arose due to negligence on the part of the other party.

Another thing to keep in mind when filing a claim in Civil Court is in which county the claim will be filed. Claims must be filed in the county where the defendant lives or where he/she has a place of business or in the county where the events in the dispute occurred. In any case, the defendant must be able to be served in the county where you file your claim.

Filing in Civil Court

The filing fee is \$40 for each complaint. There are additional costs for service of the papers by the Sheriff's office or process server. The costs may vary from area to area and will include mileage costs. A deposit is generally required before service is done. If there are additional mileage costs, the plaintiff will be billed for the excess. Any deposit money not spent will be refunded to you. If you obtain a judgment in court, the plaintiff may be entitled to a full reimbursement of the fees they paid to pursue this case in court. (Husband and wife cannot represent each other and each need to sign the complaint, if jointly filed).

The defendant or opposing party will be notified of the lawsuit by service of the papers by the Sheriff's office, Constable, or another person. After the papers are served, the plaintiff will receive the summons back with a certificate of service or acknowledgment of receipt of service with an accounting of the fees spent, when applicable. **THE PLAINTIFF MUST RETURN THIS SUMMONS** to the Court to continue with the lawsuit and to have their costs included in the judgment amount.

Counterclaim and Removal

Once the defendant has been served with the order to appear, the defendant may decide that the plaintiff actually owes them money or property. In this case, the defendant may file a counter-claim against the plaintiff at the small claims court (SCC). Counter-claims must arise from the same transaction as the original claim. For example: a tenant files a claim against her ex-landlord for wrongfully withholding her security deposit. The landlord, however, feels that the former tenant's security deposit was not enough to cover reasonable costs for the amount of time he spent cleaning the apartment and so decides to file a counter-claim for cleaning charges above the amount of the security deposit.

Counter-claims must be filed and served on the plaintiff at least 72 hours prior to the date of the trial. There is a \$10 fee for filing a counter-claim but a defendant who files a counter-claim will not be required to pay the \$10 appearance fee.

The defendant may also choose to have the case removed from the SCC to the Justice Court. In Justice Court both parties may choose to be represented by attorneys and the defendant may request a jury trial. If the defendant chooses to have the case removed to Justice Court, they must first pay the SCC a \$10 removal fee and then pay the Justice Court a \$30 filing fee. The prevailing party, as well as attorney's fees may recover these costs. If the defendant does not have the case removed to the Justice Court they give up their right to be represented by an attorney and their right to a jury trial.

At the Trial

If a case continues to trial, the parties may be given a handout outlining the procedure that will be expected to be followed at the trial. Each party is responsible for proving to the Court the facts of their side of the case. At the trial, each party will be expected to bring all of their witnesses, written documents (i.e., lease, contract, bills of sale, receipts, etc.), or other evidence needed for judgment. Generally, deadlines to comply with discovery or exchange of information are set by the Court.

After the trial is held, the Court will issue a judgment based on the facts presented in the case. Each party will receive a copy of the judgment. Either party will have 30 days to file a written notice of appeal with the District Court and complete the procedures necessary. An appeal will be heard in the District Court as a brand new trial. You will be required to pay a filing fee to the Clerk of the District Court and post an appeal bond, if set by the Judge.

Your evidence is held for thirty (30) days after the judgment is issued. After that time, you may pick up your evidence from the Court file. The Court will not mail the evidence back to you. If an appeal is filed, the evidence is transferred to the District Court with all other payers.

If you obtain a judgment, either by default or after a pre-trial hearing or a trial is held, you may proceed to the actual collection of the judgment.

If the parties wish to negotiate a payment plan for the payment of the judgment, you may do so. The Court would encourage any payments to be handled directly between the parties involved.

Payment of judgment is due immediately, however, it may be best to wait ten (10) days after judgment before you begin the collection process.

Judgment

Within five days of the conclusion of your case, the judge will issue a written decision or judgment. The prevailing party is entitled to collect the amount of money or specific items

of personal property set forth in the judgment plus all court costs. However, it is the responsibility of the prevailing party to collect the payment from the other party. If the losing party refuses to pay, the prevailing party may go back to the SCC and request a writ of execution. This is an order to the Sheriff, directing him/her to take money or specific personal property from the losing party to pay the judgment. If you have difficulty collecting a judgment see an attorney.

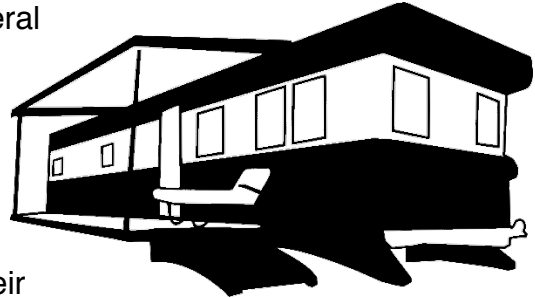
Appeal

If either party is not satisfied with the judgment in the case they may appeal the case to the District Court. Appeals must be filed at the SCC within 10 days of the judgment. Within 30 days of the filing of the appeal, the record of the trial and any evidence presented will be sent from the SCC to the District Court. The party appealing will be notified when this happens but it is their responsibility to make sure that the records are transmitted.

Appeals may only be filed in matters of law, meaning you can only file an appeal if you believe the judge applied the law in your case incorrectly. The case will not be retried at the District Court, the judge at the District Court will only review the case and rule as to whether or not the law was correctly applied in the original ruling. Fees for filing an appeal are the same as for removing a case to Justice Court (see above).

Part VI: Mobile Home Owners Renting Space in Mobile Home Parks & Their Landlords

During the 1993 and 1995 legislative sessions, several laws were passed concerning the rights of mobile home owners who rent a space in a mobile home park and their landlords (a mobile home park consists of two or more mobile homes). This section covers only the laws concerning tenants who rent a space in a mobile home park but own their mobile home. Unless specified otherwise, all rights applying to tenants and landlords of non-mobile homes apply to tenants and landlords of mobile homes.



Rules

Mobile home park landlords may adopt written rules governing the tenant's use and occupancy of the premises as long as these guidelines are followed:

1. A rule may not be unreasonable. Additionally, a rule that does not apply uniformly to all mobile home residents is unfair and therefore unenforceable.
2. All rules must be written and given to each existing and new resident of the mobile home park.
3. Each common area facility must be open or available to residents at all reasonable hours, and the hours of a common recreational facility must be posted at the facility.

Resident Associations

The mobile home park landlord may not prohibit meetings by a tenant association or a group of tenants relating to mobile home living.

All residents may attend meetings, but the mobile home park landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by tenant association.

A landlord may not retaliate by increasing rent, decreasing services or by bringing or threatening to bring an action for possession due to a tenant's involvement in a tenant union, a mobile home park tenant association or similar organization.

Road Maintenance Obligations

The mobile home park landlord must keep common roads within the park in safe condition, including arranging for snow plowing when needed to make the roads passable.

Reasons for Eviction (MCA 70-24-436)

Unlike rentals involving a landlord-owned dwelling, rental agreements for spaces in mobile home parks may only be terminated for good cause. Below is a list of reasons for which mobile home space rental agreements may be terminated. The type of termination notice required for each reason appears in parentheses().

1. Nonpayment of rent, late charges or common area maintenance fees as established in the rental agreement (**15 day notice**, pay or quit).
2. Late payment of rent, late charges or common area maintenance fees three or more times in a 12- month period if the landlord gave written notice after each non-payment incident (**30 day notice**)
3. Violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the park if the violation has not been remedied 24 hours after the violator is given written notice of the violation (**30 day notice**).
4. Two or more violations within a 12-month period of any combination of one or more mobile home park rules, the violation of which would have a significant adverse impact on the mobile home park or its residents and which are so designated (**30 day notice**).
5. Two or more violations within a 12-month period of the same rule (**30 day notice**).
6. Two or more violations within a 12-month period of MCA 70-24-321 (1) or any violation of MCA 70-24-321 (**30 days**).
7. Disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises (**30 day notice**).
8. Endangering other residents or park personnel, causes substantial damage to the park premises.
9. Conviction of the mobile home owner or tenant of the mobile home owner of violation of a federal, state, or local ordinance when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park or the landlord's documentation of a drug violation.

10. Changes in the use of the mobile home parkland (**6 month notice**).

11. A legitimate business reason (**90 day notice**).

Part VII: Section 8 Housing

Section 8 housing is a program designed to assist very low-income families in paying for housing. To be eligible for the Section 8 housing program, an individual must have an income that is below 50% of the median income for the county. Section 8 is a federal program administered through state and local agencies, known as Housing Authorities. In Montana, the Montana Department of Commerce administers Section 8 through a number of local agencies. This section covers a few of the rules and regulations for Section 8 housing, but should not be considered complete. You should contact your local Section 8 agent or the Montana Department of Commerce (see reference section in the back of this book) if you want to inquire about getting on the Section 8 wait list or if you have any further questions regarding Section 8 housing. Average time on the Section 8 wait list is 3 to 7 years.

All Section 8 tenants and landlords are required to abide by Montana tenant/landlord laws. Section 8 regulations are supplements to Montana law, not replacements for it.

Screening of Tenants

If you are a landlord and are considering acceptance of a Section 8 housing voucher, it is your responsibility to check the prospective tenant's rental history, credit report, etc. Participation in the Section 8 program or being on the Montana Department of Commerce (MDOC) wait list is not a representation of the tenants suitability of tenancy or expected behavior. MDOC will provide prospective landlords with the family's current and prior addresses and the names and addresses, if known, of current and prior landlords, as they appear in MDOC records. However, it is the responsibility of the prospective landlord to seek appropriate references.

Landlords: Find the Best Tenant

Courtesy of Find Law

1. **Check them out.** Go beyond the standard credit check and conduct a thorough background check including criminal record, employment and rental history.
2. **Make phone calls.** You can get valuable insight by calling the references and previous landlords provided.
3. **Keep an open mind.** Do not simply disregard a possible tenant for a mark on their record, ask question and get information to the situation. We all make mistakes.

Security Deposits

Section 8 landlords are allowed to collect security deposits from their tenants. However, MDOC local field agents may prohibit security deposits above private market practice or above the amount required of non-Section 8 tenants. For Moderate Rehabilitation Housing, the landlord may collect a security deposit in the amount of one month's tenant payment, or \$50, whichever is greater. The Montana Residential Security Deposit Act (MCA 70-25)

applies in full to all Section 8 security deposits (see Security Deposits).

Landlord Responsibilities

Section 8 landlords are required to maintain their units in accordance with MCA 70-24-303 (see Landlord & Tenant Responsibilities) and with federal Housing Quality Standards. MDOC local agents may perform inspections of Section 8 housing once a year, or in response to a tenant complaint, to insure that all units are meeting the standards. If a deficiency is found the landlord will receive a deficiency letter stating what the landlord needs to do to bring the unit into compliance and specifying a period of time in which the repairs must be made. If the defect is life threatening, the landlord must correct the problem in 24 hours. After the deficiency has been fixed, the tenant must call the local Section 8 agency to schedule another inspection to verify that the problem has been fixed. The landlord should verify with the local agency that a re-inspection has been scheduled. MDOC will not issue a rent check to the landlord until a re-inspection has been completed.

In Moderate Rehabilitation units, landlords are responsible for repairing all damages to the unit, even those caused by the tenants. The landlord may, however, seek compensation for damages to the unit caused by the tenant in Civil Court and/or terminate the rental agreement.

Landlords are also responsible for enforcing all tenant obligations under the lease. It is not the responsibility of MDOC or their local field agents to ensure tenant compliance with the lease. If the unit is to be occupied by a disabled person, it is also the landlord's responsibility to make any necessary modifications to the unit though these modifications may be at the tenant's expense.

Tenant Responsibilities

All Section 8 tenants are required to abide by Montana tenant/landlord law in regards to the care and maintenance of the unit they are renting. Tenants are responsible for correcting any breach of the Housing Quality Standards that were caused by the tenant, within the amount of time specified by MDOC. If the breach is life threatening, the tenant must correct the situation in 24 hours.

In addition to these responsibilities, tenants must supply all information that MDOC, its local agents or HUD determines is necessary for the administration of the program. The family must also provide local Section 8 agents with at least a 30 day written notice if they intend to terminate their rental agreement or a copy of any eviction notice from the owner of the unit. Families are also required to notify their local agents of any change in the composition of the household. No family members may be added to the household without prior consent from MDOC.

Payments to Landlords

The portion of rent paid by the Section 8 program is mailed directly from MDOC in Helena to the landlord on or before the 10th of each month. Local offices have no control over rent checks. If you are a Section 8 landlord and have not received your check by the middle of the month, call your local office (see Montana Resource Directory) and the staff will investigate the delay. If you owe the state money for taxes, student loans, child support, etc. your check may be withheld. If the check was sent, MDOC will verify whether the check was cashed or not. If the check was issued and not cashed, MDOC will require the landlord to sign a bond to re-issue the check.

Landlords may never ask the tenant for more money than is stipulated in the rental contract. If a landlord asks for more than the amount stipulated by the rental contract, the contract may be canceled and the tenant may sue the landlord for damages.

For tenants on the voucher program, landlords must seek reimbursement through the Civil or Small Claims Court from the tenant for damages to the unit caused by the tenant or for cleaning costs, unpaid rent or un-paid utilities owed to the landlord. No claims for damages or cleaning may be filed with MDOC for tenants on the voucher program. For Moderate Rehabilitation housing, if the security deposit is insufficient to cover the amount owed to the landlord, or if the landlord did not collect a security deposit, the owner may claim reimbursement from MDOC. The reimbursement will be for the lesser of a) the amount owed to the owner, or b) two month's contract rent minus the amount of the security deposit collected, or the amount that the landlord could have collected from the tenant.

Rent Adjustments

Rent adjustments for moderate rehabilitation housing programs may only occur once a year, on the anniversary date of the contract. For voucher programs, rent may be adjusted at any time after the expiration of the original six-month contract with at least a 60 day written notice to the tenants and MDOC. For moderate rehabilitation housing, all rent adjustments must be approved by MDOC and such approval is contingent on inspection of the unit, compliance with the contract and evaluation that the adjustment is reasonable.

Landlords may apply to MDOC for special rent adjustments other than at the times specified above by submitting to MDOC with the request for rent adjustment all tax records and utility bills for the current and prior year. Special increases will only be approved if the landlord can show that his/her costs have increased due to increased property taxes, utility rates or assessments.

Terminations and Evictions

All Housing Assistance Payments contracts are for one year. During this time, both the landlord and the tenant are barred from terminating the rental contract unless the other party has repeatedly and severely violated the terms of the lease or Montana law.

Landlords may also terminate the rental agreement during the initial one year period for other good cause, as long as that cause is something the tenant did or failed to do.

Landlords may not terminate the agreement during the first year because they want to use the unit for some other purpose or because the tenant won't agree to a revision of the lease. The landlord may not terminate the rental agreement for non-payment of MDOC's share of the rent.

After the first six months, a tenant or landlord may terminate the rental agreement for any reason by delivering to the landlord or tenant and MDOC a written notice of termination. The notice must be delivered at least 30 days prior to the termination but not more than 60 days. If a tenant moves out of the rental unit before the end of the month, the landlord is entitled to keep the entire month's rent portion from MDOC but must return a prorated amount of rent to the tenant if the unit is re-rented before the end of the month.

If at any time the landlord sells the property to a new owner, they must immediately notify MDOC of the sale. MDOC cannot issue rent checks to the new owner until they have filled out the required paperwork for the Section 8 program.

PART VIII: APPENDICES

Appendix A

Checklist for Choosing a Rental Unit

Landlord:	
Address:	
Phone: (H) (C) (W)	

Management Company:	
Address:	
Phone:	
Month-to-Month, Term, or Lease Agreement:	
Date Available:	
Subletting Provisions:	
Pet Provisions:	
Special Provisions:	

Costs	Desired	Actual
Rent		
Security Deposit		
Gas/Oil Bill (Normal)		
Gas/Oil Bill (Winter)		
Electric Bill (Normal)		
Electric Bill (Winter)		
Water Bill		
Garbage Pick-up Bill		
Other		
Total		

Housing Features	
Heat Source	
Number Bedrooms	
Number Bathrooms	

Housing Features Cont.

Shower

Storage Space

Yard

Pets Allowed

Washer/Dryer

Furnished

Other

Location/Transportation

Parking Access

Nearest Bus Line

Nearest School

Nearest Shopping Center

Nearest Laundromat

Safe Neighborhood

Parks

Other

Appendix B

Model Rental Agreement

Parties and Premises: This rental agreement is made and entered into on _____ by and between _____, hereinafter referred to as "Landlord," and _____, hereinafter referred to as "Tenant," for the premises located at: _____ with the following furniture and appliances: _____. The parties have agreed:

1. Term of Period

This agreement is to begin on _____ and is:

_____ Month-to-Month

_____ an agreement for the specific term of _____ months, ending _____.

2. Deposit

(a) If, at the time of termination of this agreement and upon final inspection of the premises,

(i) there is no unpaid rent owed to the landlord

(ii) no damages or additional cleaning for which the tenant is responsible

(iii) the tenant can prove that there are no unpaid utilities for which the tenant is responsible; the landlord may deduct these expenses for the security deposit, within ten days of the termination, the full amount of the security deposit.

(b) If, at the termination of this agreement there remains money owed to the landlord for cleaning or damages for which the tenant is responsible, the landlord may deduct these expenses from the security deposit. Within thirty days after termination of this agreement the landlord shall deliver to the tenant:

(i) a written statement itemizing all deductions from this deposit and the specific reasons for the deductions

(ii) any balance of the deposit owed the tenant

The landlord may deduct for unpaid rent and the actual and reasonable cost of repairing damage caused by tenant, except damage caused by normal wear and tear, as per Montana law (MCA 70-25-201).

3. Rent

Rent is payable in advance on the _____ day of each month, and will be delivered to _____ . Initial rent: \$ _____. This amount covers the period of _____, to _____.

Optional Provision: The landlord also accepts \$ _____ as payment for last month's rent.

4. Disclosure

The name and address of the owner of the rental unit is: _____.

The name and address of the manager of the rental unit is _____.

5. The Tenant Shall:

A. Pay all rents promptly when due.

B. Pay for any damages to the rental unit, including appliances and property within the rental unit that belong to the landlord, caused by any act of negligence of the tenant(s) or

any guest. Damage due to ordinary and reasonable wear and tear, or loss or damage by fire not caused by the tenant or guest excepted.

C. Place garbage and refuse inside the containers provided.

D. Refrain from acts or practices which disturb the neighbors' peaceful enjoyment of the premises.

E. Keep the rental unit clean and sanitary condition.

F. Surrender possession of the premises to the landlord upon the lawful and proper termination of the rental agreement.

G. Fulfill other duties and responsibilities as set down in Montana law (MCA 70-24-312, 70-24-321 and 70-24-322).

6. The Landlord Shall be Responsible For:

A. Repairs to the exterior of the premises.

B. Repairs to sewers, heating, all landlord-owned appliances and wiring and plumbing fixtures.

C. Repairs to all common area doors, windows and stairs.

D. Providing for necessary extermination service for the premises, ensure for the elimination of all vermin and rodents.

E. Installing and maintaining locks on all doors leading from the entranceways into hallways and on the doors to all common areas.

F. Maintaining the premises and common areas in accordance with city or county housing, building, and zoning codes.

G. Other duties and responsibilities as set down in Montana law (MCA 70-24-301, 70-24-302, and 70-24-303).

Tenants shall be responsible for all of the above repairs if they are made necessary by the negligence of the tenant(s) or her/his guests.

7. Landlord's Rights of Entry

Except in case of emergency or pursuant to court order, the landlord must give at least 24 hours notice before entering the rental unit, and then may enter only with the tenant's consent (MCA 70-24-312). The landlord may enter only at reasonable times and in a reasonable manner. The landlord shall not abuse the right of access, nor use it to harass the tenant. The tenant shall not unreasonably withhold consent for access to the premises by the landlord.

8. Alterations

Tenant(s) shall not materially alter the premises without permission of the landlord.

9. Termination

Either party may terminate or change the terms of a month-to-month agreement by giving the other party at least 30 (thirty) days written notice. If the duration of this agreement is to be more than thirty days (month-to-month), then the terms of the agreement may only be changed at the termination date listed above, except as provided for by the law.

10. Utilities.

Landlord agrees to pay all utilities except _____, which shall be paid by the tenant.

11. Subletting

Tenant shall not sublet all or any part of the premises, nor assign this agreement or any interest in it without the Landlord's prior written consent, which will not be unreasonably withheld.

12. Pets

The following pets will be allowed in the rental unit: _____
_____.

13. The landlord will make the following repairs or alterations to the rental unit by the dates noted:

_____	_____	_____
Repair	Date	Landlord's Initial
_____	_____	_____
Repair	Date	Landlord's Initial
_____	_____	_____
Repair	Date	Landlord's Initial

14. Additional Terms

Further, both parties agree to the following additional terms:

_____	_____
Landlord (Signature)	Date
_____	_____
Tenant 1 (Signature)	Date
_____	_____
Tenant 2 (Signature)	Date
_____	_____
Tenant 3 (Signature)	Date
_____	_____
Tenant 4 (Signature)	Date

Appendix C

Model Statement of the Condition of the Premises

Use this report to record the condition of your unit and its contents when you move in. If you mark anything as either dirty or damaged, describe it fully on an additional sheet. Also be sure to indicate the quantity of each piece to avoid miscommunication. Both you and your landlord should have signed and dated copies of this form after you have filled it out.

Living Room		Dirty	Not Dirty	Damaged	Not Damaged
1	Couch				
2	Chair				
3	End Table				
4	Easy Chair				
5	Floor Lamp				
6	Table Lamp				
7	Coffee Table				
8	Light Fixtures				
9	Rug or Carpet				
10	Floor				
11	Walls				
12	Ceiling				

Bedroom 1		Dirty	Not Dirty	Damaged	Not Damaged
13	Bed Frame				
14	Headboard				
15	Mattress				
16	Mattress Cover				
17	Box Spring				
18	Dresser				
19	Night Stand				
20	Drapes/ Curtains				
21	Mirror				
22	Light Fixtures				
23	Rug or Carpet				
24	Door				
25	Floor				
26	Walls				
27	Ceiling				

Bedroom 2		Dirty	Not Dirty	Damaged	Not Damaged
28	Bed Frame				
29	Headboard				
30	Mattress				
31	Mattress Cover				

32	Box Spring				
33	Dresser				
34	Night Stand				
35	Drapes/ Curtains				
36	Mirror				
37	Light Fixtures				
38	Rug or Carpet				
39	Door				
40	Floor				
41	Walls				
42	Ceiling				

Bathroom		Dirty	Not Dirty	Damaged	Not Damaged
43	Towel Racks				
44	Tissue Holder				
45	Mirror				
46	Medicine Cabinet				
47	Counter Top				
48	Working Sink				
49	Working Tub				
50	Working Shower				

51	Toilet Seat				
52	Shower Curtain				
53	Cabinet				
54	Light Fixture				
55	Hot and Cold Water				
56	Door				
57	Floor				
58	Walls				
59	Ceiling				

Kitchen		Dirty	Not Dirty	Damaged	Not Damaged
60	Working Stove				
61	Working Oven				
62	Oven Racks				
63	Boiler Pan				
64	Refrigerator				
65	Ice Cube Trays				
66	Working Sink				
67	Garbage Disposal				
68	Counter Tops				
69	Dishwasher				

70	Range and Hood				
71	Hot and Cold Water				
72	Drawers				
73	Cabinets				
74	Table				
75	Chairs				
76	Light Fixtures				
77	Floor				
78	Walls				
79	Ceiling				

Miscellaneous		Dirty	Not Dirty	Damaged	Not Damaged
80	Door Keys				
81	Windows				
82	Door Screens				
83	Doors				
84	Mailbox				
85	Mailbox Key				
86	Thermostat				
87	Smoke Detector				
88	Other				
89	_____				

90	_____				
91	_____				
92	_____				

Do all windows work? _____

Is the furnace clean and working properly? _____

Landlord (Signature)

Date

Tenant 1 (Signature)

Date

Tenant 2 (Signature)

Date

Tenant 3 (Signature)

Date

Tenant 4 (Signature)

Date

Appendix D

Model Roommate Rental Agreement

Upon signing below, the tenants living in the rental unit located at _____ agree to the following:

1. All Roommates shall abide by the terms of the rental agreement with the landlord as well as with those laws governing tenants and their rights and responsibilities.
2. Rent will be paid as follows:

_____	\$_____
Roommate 1	
_____	\$_____
Roommate 2	
_____	\$_____
Roommate 3	
_____	\$_____
Roommate 4	

3. All rental and security deposits shall be divided, paid and refunded equally, except that each roommate will be individually responsible for financial costs associated with any of her/his actions or negligence resulting in unpaid rent or costs for cleaning or damages.
4. Utility costs shall be divided and paid equally, except for long distance phone calls, which shall be divided and paid according to each roommate's use.
5. Each roommate shall pay rent, utilities, and other housing costs promptly and in full.
6. If any roommate does not fulfill the terms of the rental agreement with the landlord, pay housing costs promptly, or if she/he otherwise violates the terms of this roommate agreement, any of the other roommates shall have the right to: (1) require her/him to vacate the premises 30 days from receipt of a written notice, and (2) collect any money due through legal means.
7. Any roommate may terminate their obligation to the rental agreement only as allowed by the rental agreement with the landlord, and in case of a month-to-month rental agreement, upon 30 days written notice to all the other roommates.
8. If a roommate terminates her/his obligation to the rental agreement, the remaining roommates shall refund her/his security deposit-minus appropriate deductions for unpaid rent, damages, or cleaning-within 30 days of terminating the agreement. Deductions must be in accordance with Montana law. Before costs for cleaning can be deducted, the remaining roommates must give notice of cleaning needing to be done, anticipated costs, and 48 hours to the departing roommate to do the cleaning her/himself. The remaining roommates must also provide, within 30

Appendix F

Model Security Deposit Agreement

Upon entering into a rental agreement on the rental unit located at _____ and upon payment by the tenant, _____, and the landlord, _____, a security of \$_____, the parties signing below agree to the following:

1. Said deposit may be applied by the landlord toward reimbursement for any cost incurred because of tenant's violation of the rental agreement, including nonpayment of rent and /or any utilities for which the tenant is responsible. Said deposit is to be returned within thirty (30) days of termination accompanied by a written statement itemizing deductions. If, after the completion of the final inspection of the premises, there is no further cleaning required no unpaid rent, no damages to the unit and the tenant can prove to the landlord that all units are paid, the landlord will return the entire amount of the security deposit to the tenant within ten (10) days.
2. Landlord shall inspect the premises within one week prior to termination of the said rental agreement and before tenant vacates, shall give tenant a written statement of needed repairs and the estimated cost thereof. Tenant shall be responsible only for damage beyond normal wear and tear and for returning the rental unit to a condition of cleanliness similar to its condition when tenant moved in.
3. A written statement as to the condition of the premises upon occupation by the tenant, as prescribed by section 70-25-206 of the Montana Code Annotated, is attached.
4. The landlord shall place the tenant's security deposit in an interest bearing bank account. Earned interest shall be treated as part of the security deposit.

Landlord (Signature)

Date

Tenant 1 (Signature)

Date

Tenant 2 (Signature)

Date

Tenant 3 (Signature)

Date

Appendix G

Sample Repairs Letters

First Request Letter (See Page 19)

Jane Doe Tenant
100 A Street
Missoula, MT, 59801

Today's Date

Dear Ms. Smith (Landlord),

The right rear burner on the stove stopped working last night. I would appreciate it if you could have it repaired soon. Thanks, and please call me at (Phone Number) if you have any questions.

Sincerely,

Jane Doe Renter

Second Request Letter (See Option 1, Page 19)

Jane Doe Tenant
1000 A Street
Missoula, MT, 59801

Today's Date

Dear Ms. Smith,

The right rear burner on the stove stopped working last night. I would appreciate it if you could have it repaired soon. If you can not get it fixed by (Reasonable Date), I will have it repaired and deduct the cost from next month's rent. Thanks, and please call me at (Phone Number) if you have any questions.

Sincerely,

Jane Doe Renter

Glossary

Abatement: To reduce or lower rent. If the lease says there will be a rental abatement if XYZ happens, it means the tenant will pay a lower rent if XYZ happens.

Action: Legal proceeding in which rights of parties are determined. Most commonly an “Action for Possession,” to determine who has the right to occupy a rental unit.

Casualty Destruction: Accidental damages caused by fire, flood, etc.

Certified Mail: Mail service providing the sender with proof of mailing.

Counterclaim: A claim by a defendant opposing the claim of a plaintiff and seeking some relief from the plaintiff for the defendant, consisting of assertions that the defendant could have made by starting a lawsuit, if the plaintiff had not already begun the action.

Detainer: To keep another’s property against her/his will.

Distress and/or Distrain: A landlord’s acts of securing the tenant’s property and the tenant’s belongings to keep or sell in place of rent the landlord claims the tenant owes.

Dwelling: A structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park and rents the mobile home, means the mobile home itself.

Dispossess: To remove a person from land or property.

Landlord: The owner, lessor, or sublessor of the dwelling unit or the building of which it is a part.

Lessee: The tenant.

Lessor: The landlord.

Liable: Legally responsible; legally required to pay.

The Party of the First Part: The first person’s name to appear on the rental agreement (usually the landlord’s) is the party of the first part.

The Party of the Second Part: The second person's name to appear (usually the tenant's) is the party of the second part.

Premises: Means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

Prorate: To divide or distribute rent proportionately, usually according to rent owed per day.

Rental Agreement: Means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

Security Deposit: Money a landlord takes from a tenant other than the advance payment of rent, serving to protect the landlord if the tenant breaks or violates the terms of the lease or rental agreement.

Subletting: A tenant sublets when she/he rents the dwelling to someone else.

Tenant: means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Terminate: To bring to an end.

Waiver: An act or instance of giving up a right or a claim. For example, a rental agreement might state that if the tenant does XYZ, she/he waives her/his right to ABC.

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Referrals

For More Information and Advice on Tenant-Landlord Issues:

For Information/Complaints About Housing Discrimination

Montana Human Rights Bureau

PO Box 1728
Helena MT 59624-1728

1-800-542-0807
(406) 444-2884

For Information and Advice on Discrimination and Disabled Persons' Housing Rights:

Montana Fair Housing

519 East Front Street
Butte MT 59701

(406) 782-2573
1-800-929-2611

inquiry@montanafairhousing.org

To Find an Attorney:

Lawyer Referral Service (406) 449-6577

Financial Assistance for Housing or Utilities (Local Section 8 Agencies)

Billings

Human Resource Development Council (Bighorn, Carbon, Sweetgrass, Stillwater and rural Yellowstone Counties)

7 N 31st St
Billings MT, 59101

info@hrdc7.org

(406) 247-4732
800-433-1411
Fax 406-248-2943

Billings Housing Authority (Billings Area)

2415 First Ave North
Billings, MT 59101

(406) 245-6391
(406) 245-0387 FAX

Bozeman

Human Resource Development Council (Gallatin, Park and Meagher Co.)

Suite 300, Bozeman Hotel
321 East Main Street
Bozeman MT 59715

1-800-332-2796
(406) 587-4486
Fax-(406) 585-3538

Butte

Human Resources Council

700 Casey St
Butte, MT 59701

(406) 496-4917

Glendive

Action For Eastern Montana (Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, Wibaux counties)

P.O. Box 1309
2030 N. Merrill Ave
Glendive, MT 59330-1309

(406) 377-3564
(406) 377-3570 (Fax)
(800) 227-0703 (Toll Free)

Great Falls

Opportunities Inc. (Cascade, Chouteau, Glacier, Pondera, Teton, and Toole Counties)

P.O. Box 2289
905 1st Ave N
Great Falls, MT 59403-2289

Phone: 406-761-0310
Fax: 406-761-0363

Great Falls Housing Authority

1500 Chowen Springs Loop
Great Falls, MT 59405
EMAIL: gpha@gfhousing.org

Voice: 406.453.4311
TDD: 406.453.6327; Montana Relay: 711
FAX: 406.727.5566

Havre

Human Resource Development Council

2229 - 5th Avenue

Havre, MT 59501

Phone - (406) 265-6743

Toll Free - 1-(800) 640-6743

FAX - (406) 265-1312

Helena

Helena Housing Authority

812 Abbey Street

Helena, Montana 59601

Phone (406) 442-7970

Fax (406) 442-0574

Kalispell

Northwest Montana Human Resources

214 Main Street

P.O. BOX 8300

Kalispell, Montana 59904-1300

406-752-6565

1-800-344-5979

capnm@capnm.net

Lewistown

Human Resource Development Council

300 1st Avenue North, Suite 203

Lewistown, MT 59457

Phone: 406-535-7488

Fax: 406-535-2843

Toll Free: 1-800-766-3018

Missoula

Human Resource Council

1801 S. Higgins

Missoula MT 59801

(406) 728-3710

Montana Housing Authority

1235 34th Street

Missoula, MT 59801

Phone: (406) 549-4113

Fax: (406) 549-6406

Email: info@missoulahousing.org

For Legal Assistance

Billings

Montana Legal Services

211 North Higgins Avenue, Suite 401 (406) 543-8343

Missoula, MT 59802

Bozeman

ASMSU Legal Services

221 Strand Union

Tel: (406) 994-2933

Bozeman MT

E-mail: asmsu@montana.edu

Helena

Montana Legal Services

616 Helena Avenue, Suite 100 (406) 442-9830

Helena, MT 59601

Missoula

Montana Legal Services

211 North Higgins Avenue, Suite 401 (406) 543-8343

Missoula, MT 59802

ASUM Legal Services (University of Montana Students Only)

University Center RM 112 University of Montana (406) 243-6213

Missoula, MT 59812 (406) 243-2566 Fax

NOTES



Montana Public Interest Research Group

The Montana Public Interest Research Group (MontPIRG) is a student directed and funded non-partisan organization dedicated to affecting tangible, positive change through educating and empowering the next generation of civic leaders.

348 Corbin Hall – Missoula, MT 59812 – 406-243-2908

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