



TOP 10 SILENT LEASE RIGHTS FOR TENANTS

Just because it's silent doesn't mean it isn't there. Did you know that the state of New York provides residential tenants with many rights that supersede even the most grueling landlord-favorable lease terms? Below is a list of the top 10 tenants' rights that should be fully understood by landlords, tenants and real estate brokers who engage in the rental market.

IMPLIED WARRANTY OF HABITABILITY

Every residential premises must be "fit for human habitation and for the uses reasonably intended by the parties" pursuant to Real Property Law §235-b. The key to this rule is that tenants have a right to a premises that is not dangerous to their life, health and safety. Violations of this warranty include contaminated water, mouse infestations, water leaks, second hand smoke, bedbugs, broken steam pipes, defective plumbing, offensive odors, and mold.

COMPLAINT TO CODE ENFORCEMENT

Tenants have the benefit of local government enforcing minimal housing standards.

In fact, if a tenant files a good faith complaint about the property with their municipality's code enforcement, Real Property Law §223-b prevents the landlord from retaliating by bringing an eviction proceeding.

DOMESTIC VIOLENCE VICTIM

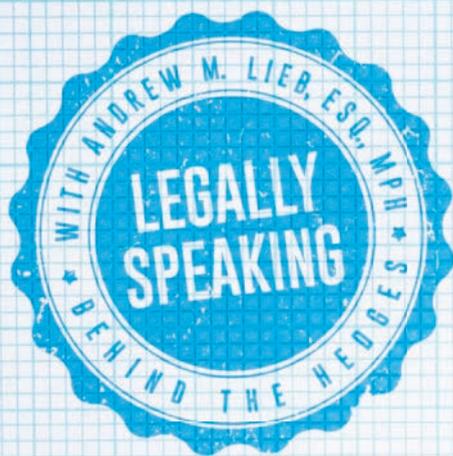
If a tenant receives an order of protection for their benefit, Real Property Law §227-c permits such victims of domestic violence to apply to the court that issued such order to also terminate the tenant's lease.

ESTATE OF DECEASED TENANT

If the tenant meets his demise during the term of the lease, Real Property Law §236 permits the deceased tenant's estate to request an assignment or sublet of the lease where the landlord can either grant the request or elect to terminate the leasehold. To clarify, an assignment is defined as a transfer of the tenant's entire interest in the property to a third-party whereas a sublet is defined as a transfer of part of the tenant's interest in the property to a third-party where the tenant retakes possession prior to the termination of the lease.

SENIOR CITIZEN NEEDING CARE

Where a tenant is 62 years of age or older and their physician certifies that they can no longer live independently for medical reasons, Real Property Law §227-a permits such senior citizen tenants to terminate their lease.



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RIGHT TO ASSIGN OR BE RELEASED

Landlords must accept a reasonable assignment request by their tenants or release such tenants from their lease pursuant to Real Property Law §226-b. However, landlords can always reasonably withhold their consent. When evaluating whether to provide their consent, landlords should look to the reasonable factors of financial responsibility, identity or suitability of the particular apartment, legality of the proposed use or other business rationales. Non-business factors are generally unreasonable bases for denial.

UNLIMITED RIGHTS TO OCCUPY PRIMARY RESIDENCE

Where a rental is the primary residence for the tenant, Real Property Law §235-f prohibits a landlord from restricting occupancy to the tenant or such tenant's immediate family. However, a landlord may restrict occupancy to comply with maximum occupancy laws, such as codes focused on fire safety.

RECIPROCAL RIGHT FOR ATTORNEYS' FEES

Many leases provide for a landlord to recover attorneys' fees incident to enforcing such landlord's rights where a tenant breaches their lease. Real Property Law §234 provides an automatic reciprocal right for the tenant to recover attorneys' fees is an action to enforce the tenant's right under the lease, including an action based upon the landlord's violation of many of the above silent lease rights for tenants.

RIGHT TO A WRITTEN RECEIPT

Landlords must always issue receipts for rent received where rent is paid by other than personal check. If rent is paid by personal check and the tenant requests a receipt in writing, the landlord must provide a receipt for such personal check as well. In fact, Real Property Law §235-e provides that the receipt must include the date, amount paid, identity of the rental, the period to which payment corresponds, and the signature / title of the recipient of rent.

RIGHT TO RECEIVE / MAKE NON-ELECTRONIC BILLING

Technophobes are protected by Real Property Law §235-g, which requires landlords to offer non-electronic billing and payment systems for the payment of rent.