



Mesmer & Deleault, PLLC
41 Brook Street, Manchester, NH 03104
Seacoast Office: One New Hampshire Ave., Suite 125
Portsmouth, NH 03801



“Tip of the Month”

Landlord-Tenant Law and Evictions

At one time or another most of us have been either tenants or landlords. This month we examine some of the important features of New Hampshire residential landlord-tenant law and the eviction process.

In feudal times and early America, leasing real property was considered a conveyance of a real estate interest known as a “leasehold.” Today, leasing real property is more a matter of contract than real estate conveyance. As the NH Supreme Court noted in the landmark Landlord and Tenant case of Kline v. Burns, 111 NH 87 (1971), “the legal rules for leases should not be tied strictly to common law principles that were remnants of an ancient feudal system and anachronisms in our present society.”

Based on the perceived abuses and imbalance of power between landlords and tenants, legislatures in New Hampshire and elsewhere began to pass laws in the 1970’s and 80’s which were more favorable to residential tenants. These laws, enforced by the courts, created due process procedures and placed limits on landlord evictions and provided tenants with new tools to require Landlords to improve housing quality. The days when a landlord could change the locks on a cold January night because a tenant did not pay the rent are long gone. Some landlords argue that the pendulum has now swung too far in favor of the tenant.

Regardless of whether the laws favor landlords or tenants, the law must be obeyed or dire consequences could follow. For example, the landlord cannot even shut off the cable TV, which is now considered a utility, without due process, or the landlord may face a big civil penalty. In New Hampshire, landlords can terminate a residential tenancy for many reasons, the most common of which are non-payment of rent, breach of lease, damage to the premises, bad behavior, or “business reasons.” To evict the tenant, the landlord must follow NH RSA 540. If the tenant has not paid the rent, the landlord must serve a Demand for Rent together with the Eviction Notice (formerly known as a Notice to Quit). The tenant can escape eviction up to three times in a year by paying the rent within the demand period.

After the Eviction Notice period expires, the Landlord can file a Landlord-Tenant Writ with the Court and a trial will be scheduled. If the tenant defaults (by not showing up) or the landlord prevails at trial, the Court will then issue a Writ of Possession, which will entitle the landlord to regain possession of the premises. If necessary, the Sheriff is authorized to physically remove the tenant and possessions. The landlord in a residential or commercial eviction can recover only up to \$1,500 under the Landlord-Tenant Writ. To recover more than that in back rent or damage, the landlord must file a separate lawsuit in court.

Landlord-tenant law and evictions can involve risk. For instance, there are significant penalties if a landlord does not return the security deposit or explain keeping it (in writing) within the statutory time frames.

If you have questions about landlord-tenant law, leases or eviction process, please call us at 668-1971 or contact us by sending an email to mailbox @ biz-patlaw.com.

Frank B. Mesmer, Jr., Esq.
Robert R. Deleault, Esq.
Charles M. Vivian, Esq.
Steven H. Slovenski, Esq.
0911

(603) 668-1971
Fax (603) 622-1445
E-mail: mailbox@biz-patlaw.com
Website: www.biz-patlaw.com