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Ten Landlord Legal Mistakes to Avoid

Being a landlord is a complicated endeavor. Not only do you have to worry about the usual headaches like leaky pipes and broken dishwashers, but there are extensive legal requirements that are waiting to trip you up. Here is a list of the ten most common legal mistakes that landlords make, and tips on how to avoid falling into these traps yourself.

Asking Discriminating Questions

A landlord should refrain from asking certain questions to a prospective tenant. This is one of the more serious legal mistakes that landlords make. Because the federal Fair Housing Act prohibits a landlord from refusing to rent property to a tenant for discriminatory reasons like race, color, religion, national origin, sex or gender, disability, and familial status, a landlord should avoid questions that may appear discriminatory or suggest a discriminatory intent. For instance, questions about the severity of a disability or marital status can result in a lawsuit or in an investigation by the U.S. Department of Housing and Urban Development (HUD). A landlord does, however, have the right to use standard tenant screening methods like credit and reference checks, but weeding out tenants based on the use of discriminatory information is illegal.

Failure to Make Disclosures to Prospective Tenants

One of the less obvious legal mistakes is the failure to disclose important information about the rental property. Every state has different requirements, but common disclosures include the following: notice of mold when the landlord knows or has a reason to believe that it exists, information about a state's sexual offender registry, notice of sex offenders that live in the area if the landlord has actual knowledge, and disclosure of recent deaths that occurred in the rental unit. Federal law requires that a landlord disclose whether the rental unit contains lead-based paint if the property was built before 1978.

Using Illegal Provisions in a Rental Agreement

A residential lease agreement should not contain provisions that violate state and/or federal laws. A landlord should avoid the legal mistake of placing conditions in a rental agreement that require the tenant to waive the right to a refund of a security deposit or the right to sue the landlord. Other conditions to avoid include terms that bar tenants based on race, color, national origin, sex or gender, familial status, disability, and religion. An illegal provision may result in landlord liability for monetary damages.

Failure to Provide a Safe Environment

In many states, landlords are legally responsible for the failure to keep tenants safe from dangerous conditions on a property or safe from criminal activity. A landlord has a duty to make inspections and inform tenants and others that legally enter the property of hazards that exist on the premises. A landlord must take reasonable measures to ensure the safety of tenants from other tenants and from criminals that enter the property. Basic safety measures a landlord should provide include locks and adequate lighting. If a tenant sustains physical or property damage after a landlord becomes aware that the property is unsafe, an injured tenant may be able to sue and recover compensation from the landlord.

Refusal to Make Repairs

A rental agreement should specify who has the duty to make repairs. A landlord must make some repairs even if a rental agreement does not specify these duties. More specifically, a landlord has the duty to provide a rental unit that is fit to live in. Every state imposes an "implied warranty of habitability" on all rental premises. A habitable rental unit will provide heating, plumbing, gas, clean water, a structurally safe roof and flooring, and electricity. If a property remains in disrepair, a tenant may choose to fix the problem and deduct the cost from the rent, move out, or report the violation to a state building inspector. The failure to make these major repairs when requested can result in a lawsuit against the landlord.

Disregard of a Tenant's Right to Privacy

A tenant has a right to privacy. A landlord should not enter a tenant's rental unit without first giving a 24-hour written or verbal notice. A landlord can enter after giving notice when showing the unit to a prospective tenant, making a repair, or inspecting the property. It is unnecessary to provide notice when an emergency occurs.

Ignoring Eviction Rules

Eviction is a legal action by a landlord to remove a tenant from a rental property. Every state has laws that regulate the eviction process. A landlord can evict a tenant for the nonpayment of rent, for the failure to vacate the premises after a lease agreement has expired, for a violation of a provision in the rental contract, or if the tenant causes damage to the property and it results in a substantial decrease in the value of the property. Before throwing out a tenant, a landlord must use the eviction process. Every state has different guidelines, but most require giving the tenant a termination notice before filing an eviction lawsuit. If the landlord attempts to remove the tenant without a court order, the tenant may recover damages for the landlord's actions.

Keeping Security Deposits

Most lease agreements require a tenant to pay a security deposit to cover damage caused by the tenant or for a tenant's default. After a tenant moves out, a landlord can use the security deposit to fix damage caused by the tenant. A landlord, however, must provide the tenant with an itemized list of deductions and must pay the balance of the deposit to the tenant. The failure of a landlord to provide an itemized statement or the failure to return the unused portion of the security deposit can result in the landlord owing the tenant for monetary damages.

Getting Rid of Abandoned Property Inappropriately

When a tenant leaves items behind after vacating the property, the landlord must treat it as abandoned property. The landlord must notify the tenant of how to claim the property, the cost for storage, where to claim the property, and how long the tenant has to claim the items. If the property remains unclaimed and it is worth more than a certain amount, the landlord may sell the property at a public sale after publishing a notice of sale in a local newspaper. If the property is worth less than the state-specified amount, the landlord can either keep the property or throw it away.

Inadequate Insurance on a Rental Property

Besides insuring a property for destruction caused by natural disasters, a landlord should insure a property against lawsuits brought by a tenant. If a landlord illegally evicts a tenant, makes an illegal entry, or if a tenant or a person legally on the premises is injured because of a dangerous condition, insurance will cover the cost of litigation and will pay the damage award.

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