

Newsletter

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Watch out for illegal lease clauses

I have seen many illegal clauses inserted into residential lease agreements. Just because a landlord and tenant agree on the clause, it does not make it legal. Understand what you can and cannot do before you sign any lease to make sure that no problems arise later. My easy to use Landlord Guide answers most questions about residential leases and includes an up to date lease for you to use.

Some clauses in apartment leases aren't legal



Landlords can insert a no-smoking clause in a lease, but can't evict a tenant for smoking unless they can prove it's bothering other tenants or damaging the property. Shutterstock image

By Mark Weisleder | Fri Sep 14 2012 as seen in *Moneyville*: (<http://www.moneyville.ca/article/1254727--some-clauses-in-apartment-leases-aren-t-legal>)

As the new school year begins, students and landlords are signing leases. There are lots of clauses put into them, but just because something is written into a lease, doesn't make it legal.

Here are some examples:

First and last month's rent: The most a landlord can ask from a tenant is the first and last month's rent. I know of cases where tenants have been asked to pay as much as one year's rent in advance. Anything more than two months is not legal, so if the landlord asks for that, move in and then go directly to the [Landlord and Tenant Board](#) and ask for the return of anything paid extra. The landlord has no right to evict you for doing so.

Security or damage deposits: Many landlords ask for an extra month's rent to be applied as a deposit against any damages, or for the rental of any furniture that is in the unit. This is also illegal. Last month's rent can only be applied to the last month's rent. It cannot be used to correct any damages done by the tenant or their invited guests. Further, you can't ask a tenant to pay the first \$100 of any repair bill.

Rent discounts: You can give tenants a discount for paying the rent on time. This is a good incentive for tenants and assures a landlord that the rent will always be received in a timely manner. You cannot force tenants to give you postdated cheques. You can ask them and if they agree that's fine.

No pets: Unless you are in a condominium where the declaration says no pets, any tenant is permitted to bring a pet into the unit. It doesn't matter if the lease says that they can't. The only way to evict a tenant for having a pet is if the landlord can prove that the pet is bothering other tenants or damaging the unit. Other reasons include the pet is dangerous or if the landlord who lives in the property is allergic to the pet. A tenant was evicted for having a pet snake. A tenant was not evicted with a pit bull terrier, even though other tenants came to the hearing saying they were afraid of it.

No smoking: You can include a no smoking clause in a lease; however, you cannot evict a tenant for smoking, unless you can prove that the smoke is either bothering other tenants or damaging the unit. In one case, a tenant was evicted for smoking because the building had a forced air system and the other tenants complained about the second-hand smoke entering their unit. In another case, the tenant rented a furnished suite with a no smoking clause and the landlord was able to prove that the smoke in fact damaged the furniture and the unit, and was able to evict the tenant on that basis. Smoking pot, on the other hand, is an illegal act which can get you evicted for that reason.

Shovelling snow, cutting the grass: The law says that this is the landlord's responsibility, so you can't make this an obligation of the tenant under the lease. However, you can agree in a separate agreement to pay the tenant, for example, \$50 a month to do this. So if you do want this to happen, charge the tenant \$50 more for rent in the lease and have them sign a separate agreement to shovel and/or cut the grass for the same amount.

No loud music, parties after 9 p.m.: This is a good idea to include in any lease. You will still need to prove that the tenant's partying is bothering other tenants or other property owners in order to evict for this reason.

Condo rentals: Make sure you attach all of the condominium rules to the lease to make sure that the tenant follows them. In some cases, the tenant's guests have caused damage to the condo building facilities and the landlord/owner was charged by the condominium corporation for all of the repairs.

Follow the rules when you sign leases in the first place and you will have less aggravation later.