

## Chapter 11



### TENANTS IN SPECIAL SITUATIONS

In any housing arrangement problems can occur, and it is well beyond the scope of this guide to anticipate every problem the tenant might have. This section will try to point out a number of areas that affect certain types of tenants and their landlords.

#### A. Sale of the rental property

Normally, when the landlord sells the rental property, the tenant's rental agreement continues, and the new owner has to abide by the terms of the agreement and the law (NMSA § 47-8-21(A)). Sometimes, however, the new owner will want to change how the property is used or to renovate the property. In such a situation, tenants with month-to-month tenancies may find themselves receiving thirty-day termination notices, notices of rent increases, or a whole new set of landlord rules and regulations. As long as the tenant receives the proper notices, these changes are legal. Tenants with fixed-term leases have more protection, because the new owner must abide by the terms at least until the lease expires.

If there is a change in ownership, the tenant is entitled to a notice in writing that the property has changed hands. The notice must tell the tenant about any changes in where rent is to be paid and it must include the name, address, and phone number of the new owner and of any new manager of the property (NMSA § 47-8-21(A)). The tenant should ask the new owner for proof of ownership of the property. After receiving the notice, the tenant should begin paying rent to the new owner. The new owner is responsible for any deposits that were made on the rental unit.

#### B. Utility problems

Where utilities are included in the rent, or where utility charges are billed to the tenant by the landlord, the tenant should deal with the landlord when utility problems occur. If the landlord cuts off or interrupts

utilities in a dispute with the tenant, this is an illegal *lock-out* (NMSA § 47-8-36(A)(4)) and the tenant should seek legal advice. (See the section in Chapter 9 of this guide on "Lock-outs").

Where the tenant is responsible for utilities, and the utilities are billed directly to the tenant, the tenant will need to deal directly with the utility company. Problems with utility companies are common enough to be discussed in this guide.

If the resident, or tenant, can prove medical necessity, utility companies will frequently leave the utilities on, despite an inability to pay. This can include the need for refrigeration for medication such as insulin, or special needs for heat or air conditioning. Generally, the resident will have to provide the utility company with a signed statement from his or her treating doctor verifying the medical condition and the need for utility service. If the tenant is having trouble paying their utilities, they should also consider applying for assistance from LIHEAP at their local HSD office or on the HSD website. Some local charities, such as churches, will also help with utility bills.

Utilities such as electricity and gas, including the Public Service Company of New Mexico (PNM), are regulated by a state agency called the Public Regulation Commission. The PRC has a Consumer Complaint Line for utility customers at 1-888-427-5772 (toll free) or 505-827-4592. The website explaining the complaint process is at <http://www.nmprc.state.nm.us/consumer-relations>

Control of water service in New Mexico varies with the locality. Usually, the landlord pays for water. Sometimes a tenant finds water shut off because the landlord hasn't paid the bill. In Albuquerque, the Water Utility Authority allows a tenant in such a predicament to open an account in his or her own

name in order to keep the water on. The tenant must pay a deposit, and then is liable for paying for future water service (but not for the landlord's back bill). Remember, the law and most rental agreements make the landlord responsible for providing water (NMSA § 47-8-20(A) (6)), so a tenant who has to pay for water service is in a position to abate rent and seek damages in court from the landlord.

### C. Making structural changes in a rental unit

Generally, tenants may not make structural changes to rental units (NMSA § 47-8-22(F)). For example, a tenant may not take down a wall to enlarge a room, widen a doorway, or add a porch. Similarly, a tenant should not make decorative changes (such as changing wallpaper, floor tile, or paint color) which the landlord may have to undo to re-rent the apartment. Also, improvements that attach to the structure and cannot be removed without damaging the structure (such as built-in bookcases) are considered fixtures, and they become the property of the landlord. If a tenant wants to make changes in the apartment or house, the tenant must get the landlord's consent. This consent should be in the form of a written agreement signed by the landlord. The agreement should clearly state whether the tenant may later remove the additions, and that the landlord will not charge the tenant to undo any changes.

Ordinarily, a tenant may not compel a landlord to consent to changes. However, there is an exception to this rule. If the tenant, or a member of the tenant's family, has a disability which requires a reasonable modification of the rental unit (such as a wheelchair ramp), the landlord must allow the tenant to make the modification (42 USC § 3604(F)(3)). The tenant may be required to pay for the modification, and the landlord may require the tenant to pay to remove the modification before moving out (but the landlord may not be unreasonable in insisting on the removal). If a landlord refuses to allow the tenant to make the necessary modifications, the landlord may have violated fair housing laws (see Chapter 13 of this guide).

### D. Foreclosure of the Rental Property

Sometimes the landlord does not pay the mortgage on his property and the property gets foreclosed on. Under the Protecting Tenants at Foreclosure Act (PTFA), most tenants will have at least ninety (90)

days to move out after a home is foreclosed on. The law covers all types of residential foreclosures as long as the tenant is a "bona fide" tenant. This means the tenant must be paying market rent for the rental. Most importantly under this law, if the tenant has a lease for a set term, he or she will be allowed to stay in the property until the lease ends. However, if the new owner intends to move into the property and live there himself, the lease can be terminated early with ninety days' notice. If the tenant has a month-to-month lease, the landlord must provide the tenant with ninety days' notice before the tenant is forced to move out. Tenants are still subject to the regular eviction process if they fail to pay their rent.

Tenants are often, but not always, named in the complaint as defendants. Tenants might not be listed by name, but instead as "Unknown Tenants," "Unknown Occupants" or "All Other Occupants." If you receive a foreclosure complaint saying your rental home is being foreclosed, you should file a written notice—called an *answer*—with the court, saying you are a tenant and attaching a copy of any written lease. Even if you are not named as a defendant, you should still notify the court in writing that you are a tenant. Attend any hearings scheduled by the court and ask the judge to make the bank honor your lease and the PTFA.

Your original landlord, however, is still your landlord until the District Court judge signs an order of foreclosure on the property. Until that order is signed, you are obligated by your lease. You must still pay rent to the landlord, and a court can evict you for nonpayment or for any other lease violation. Likewise, until the foreclosure order is signed, your original landlord must still make repairs, pay for any utilities the lease obligates him to pay, and perform any other lease obligations.

Unfortunately, landlords in foreclosure often stop making repairs or paying utilities. If you have any questions about whether to pay rent and whom to pay, hold the rent in a bank account, notify your landlord that you are doing so, and contact an attorney for legal advice.

Some banks foreclosing on properties will offer to pay tenants to move out of foreclosed properties. If you receive such an offer, get it in writing and contact an attorney if you need legal advice.

## Chapter 12



### MOBILE HOME PARKS

Some mobile home park residents are covered by just the Uniform Owner-Resident Relations Act and some are covered by the Mobile Home Park Act also. Anyone who is *renting* a mobile home is governed by the landlord-tenant laws set out in the rest of this guide.

However, if the tenant owns or is buying a mobile home and is renting a space in a mobile home park, the Mobile Home Park Act may apply to the rental agreement. The Mobile Home Park Act provides certain protections for mobile home owners whose agreements are covered under that Act. If the Mobile Home Act does not have a provision for a particular situation, the UORRA (landlord-tenant law) still applies.

#### A. What is a mobile home park?

The law defines a mobile home park as a parcel of land accommodating *twelve or more* occupied mobile homes, where a landlord rents spaces (NMSA § 47-10-2(C)). If the park has fewer than twelve spaces, it is not considered a mobile home park, and regular landlord-tenant law applies to the tenants.

Where the Mobile Home Park Act does apply, it requires that all rental agreements be in writing (NMSA § 47-10-3(A)) and states that the landlord may only terminate the agreement for cause (NMSA § 47-10-5) after giving the tenant thirty days' notice (NMSA § 47-10-3(C), except for non-payment of rent (NMSA § 47-10-6). The tenant served with such a notice has thirty days after the end of the rental period in which the notice was served to move the mobile home (NMSA § 47-10-

3(C)). If the tenant has a multi-section or doublewide mobile home, he or she will have sixty days to move the home (NMSA § 47-10-3(C)).

Rental agreements must contain the following information:

- The term of the tenancy
- The amount of the rent and the amount of any rent increases for the last two years
- The day rent is due
- The day when unpaid rent will be considered in default
- The rules and regulations of the park
- The zoning of the park
- The name and mailing address where the owner/ manager's decision can be appealed
- The name and mailing address of the owner
- All charges other than rent
- A statement of the right to request alternative dispute resolution of any disputes except rent, utility charges or public safety emergencies (NMSA § 47-10-14(A))

In a mobile home park, the landlord may not raise rent except after giving sixty days' written notice of a rental increase (NMSA § 47-10-19(A)). If a court finds that a landlord has violated this rule, the court can assess a penalty of up to \$500 on the landlord.

The Mobile Home Park Act prohibits *closed parks*. This means that the owner cannot require tenants to purchase their mobile home from a particular seller and shall not require the tenant to sell their home