

## Chapter 3



### WHEN THINGS GO WRONG BEFORE YOU MOVE IN

There are some things that can go wrong even before the tenant moves in. For example, the tenant may have lost his or her job and simply can't afford to rent the apartment or the house. Or, the tenant may have found a better apartment after agreeing to rent the apartment. If you have signed a written agreement to rent and you have paid a deposit, you may lose your deposit. Landlords have the right to retain deposits under certain situations, and the law usually protects the landlord who winds up in this situation. The landlord may also be entitled to some rent or other damages for having to re-advertise the apartment (NMSA § 47-8-35).

Sometimes, you will be ready to move in on the date you agreed with the landlord, but the apartment or the house is not ready. You have rights if you have signed a rental agreement or have paid deposits, if you were not able to move in on the date you and the landlord agreed to, and if the delay is not your fault. First, you are not required to pay any rent for the days that pass until you actually move in (NMSA § 47-8-26(B)). In addition, you may give a *written notice* to the landlord saying you want to terminate the rental agreement (NMSA § 47-8-26 (B)(1)). If you give the landlord that notice, you are entitled to the return of all prepaid rent and deposits (NMSA § 47-8-8 (B)(1)).

If you do not want to terminate the agreement, you may demand that the landlord make the rental unit available immediately (NMSA § 47-8-26(B)(2)). If the landlord fails, you may bring an action in court to get possession of the apartment or the house. You may also ask for damages as well as for possession in the lawsuit (NMSA § 47-8-26(B)(2)). Unless the landlord returns everything you have paid and makes a reasonable effort to get you possession within seven days of your written demand, you are entitled to damages (NMSA § 47-8-48) as well as possession.

Obviously, before filing a lawsuit, you should make every effort to seek legal advice. While you can do the lawsuit yourself, you will need more information than is contained in this guide to know all the issues that such a lawsuit will involve.

