

## Chapter 6



### PAYING RENT

#### A. The tenant's duty to pay rent

In a landlord-tenant relationship, the tenant's main responsibility is to pay rent. The tenant must pay the landlord the amount of rent agreed upon, and the rent must be paid at the time and place stated in the lease (NMSA § 47-8-15(B)). If the tenant and the landlord have not agreed on a time and place, the law says that the rent is due on the first day of the rental period (a week or a month), and it is payable at the rental residence. If the rental period is longer than one month (for example, a one-year lease), and the rent is paid monthly, rent is due on the first day of the month unless the tenant and the landlord have agreed on a different day (NMSA § 47-8-15(B)).

The lease may require that the rent be paid by cash, check or money order. The best way to pay rent is payment in person to the landlord in return for a receipt. Whether you pay with a check, money order, or cash, *always get a receipt*. A canceled check is proof that you paid, but it does not prove *when* you handed the rent to the landlord. A money order stub does not prove *who* you gave the money order to or *when* you gave it. Money orders can be traced, but that is expensive and can take many months. And cash paid without a receipt is as good as cash never paid. A landlord who does not give receipts, or who says he will give you one later, is not an honest landlord and might cheat you later.

*Never pay rent through a rent drop box.* A drop box does not give you a receipt, so you cannot prove that you paid the rent or when you paid it. Drop box

thefts are common, and if your rent payment is stolen from the drop box, the landlord might charge you late fees and make you pay the rent a second time (though this is often illegal).

If the tenant is having trouble paying rent, but the tenant wants to stay in the rental unit, the tenant *must* talk to the landlord. It is possible to modify a rental agreement, but the tenant can't expect the landlord to agree to a change if he or she doesn't understand the tenant's problem.

It may also be possible to make agreements with the landlord about how to pay rent. For example, if the tenant gets a government check on the third day of every month, the tenant will probably not want the rent to be due on the first of the month; if the check is a disability check, the landlord may be required under the law to accept rent after receipt of the check as a reasonable accommodation for the tenant's disability. If the tenant is having financial problems, it may be possible to arrange to pay part of the rent on the first of the month and the rest on the fifteenth. If a landlord believes that the tenant is trying to pay the rent, it is less likely the landlord will immediately move to evict the tenant when the rent is a little behind.

#### B. Rent vs. deposits or damages

Rent may not be used by the landlord for deposits or to pay for damages, unless the tenant agrees to this kind of use in a written rental agreement (NMSA § 47-8-15(G)). The tenant should check the

lease or rental agreement to see whether it contains such a provision.

If the tenant has caused some damage to the property, the landlord may allocate a portion of the rent to cover the damages only if the lease specifically allows such an allocation (NMSA § 47-8-15(G)). If the landlord then sues the tenant for eviction, and if the landlord wins, the tenant can still stay in the rental unit. The court will issue a *conditional writ* which gives the tenant three days to pay the amount of unpaid rent. If the tenant pays within the three days, then the tenant can stay in possession of the rental unit (NMSA § 47-8-33(E)(2)).

### **C. Agreements where the tenant's right to a dwelling is tied to a job**

Sometimes, a landlord will rent to a tenant in exchange for the tenant agreeing to manage the property or make repairs around the property. In other situations, an employer may give an employee a place to live as part of working for the employer. If the agreement is that the housing is directly tied to the job and the tenant gets fired or laid off, the housing can be lost at the same time. If the agreement connecting the job to the housing is in writing, the tenant will not have the rights provided by the Uniform Owner-Resident Relations Act (NMSA § 47-8-9(E)). The landlord can use a quicker legal action, called Forcible Entry and Detainer, to evict the employee (NMSA § 35-10-1). If the job-housing connection is not spelled out in writing, the employer/landlord must give the tenant the notices, and recognize the rights required by the Uniform Owner-Resident Relations Act (NMSA § 47-8-9(E)).

### **D. When the tenant doesn't pay the rent**

If the tenant does not pay the full rent on time, the landlord may evict the tenant (NMSA § 47-8-33(D)). Eviction must be done through a court action. The landlord does not have the right to simply throw a tenant out of the apartment without going to court first (NMSA § 47-8-36(A)). Until a judge orders the tenant to move out, the tenant may stay in the rental dwelling and the landlord cannot cut off necessary utilities or force the tenant to leave

(see Chapter 9 of this guide on "Lock-outs") (NMSA § 47-8-36(A)).

Before a landlord can go to court to evict a tenant for non-payment of rent, the landlord must give the tenant a *written three-day notice of non-payment*. If the tenant does not pay the rent (including late charges if the rental agreement provides for late charges) within three days of receiving the notice, the tenant loses the right to stay and may be evicted. If the tenant pays the rent within the three-day period, the tenancy is reinstated and the landlord may not try to evict the tenant for non-payment of rent (NMSA § 47-8-33(D)).

The law also requires that the landlord deliver the notice to the tenant, mail it to the tenant, or *post* it (NMSA § 47-8-13(D)). Unfortunately, even with these requirements, a tenant may sometimes not find out about the notice during the three-day period. For example, the notice may be given to someone who is living with the tenant. Mail may arrive late. And *posting* only requires that the notice be taped to the tenant's door or placed in a fixture or receptacle designed for notices or mail, such as a tenant's box at the apartment entrance, or on a covered bulletin board (NMSA § 47-8-13). After the three days pass, there is not much the tenant can do to avoid going to court to defend him or herself in an eviction action. If the tenant did not properly receive the notice, that can be used as a defense in the eviction action.

Sometimes, a tenant will try to pay the rent during this three-day period, but the landlord won't accept it. If this happens, the tenant should make a second offer of the rent in the presence of witnesses; the tenant can then ask the witnesses to testify in court. If the tenant can show the judge that he or she tried to pay but the landlord refused the payment, the tenant may be able to win the eviction case.

If the tenant faces an eviction action for non-payment of rent, the tenant will owe the rent for each day the tenant stays in the rental unit (NMSA § 47-8-30(A)). The court will enter a judgment for the amount of rent due through the move-out day. This court order is called a *writ of restitution*. The day set by the court for moving out will be *three to seven days* from the court hearing. If the tenant does not

move out by that day, the landlord can take the order to the sheriff, who can force the tenant to move out, and then change the locks (NMSA § 47-8-46(A)).

### E. Keeping records

*It is very important for the tenant to receive and keep all rent receipts.* If the tenant pays by check, write on the check the month for which the rent is being paid, before giving the check to the landlord. Keep the canceled check when it comes back with the bank statement. The tenant should get a receipt from the landlord when paying by check or money order just as when paying cash, but at least the canceled check will be evidence of payment if the tenant doesn't get a receipt. Money order receipt forms are not as good evidence of payment as are canceled checks. In order to prove a landlord received and cashed a money order, the tenant will have to order the records from the money-order company, pay a fee (about \$15-35) and wait for weeks or even months.

Both the tenant and the landlord should keep complete records of rent payments. These may be needed at some point as proof of what rent was paid or not paid.

### F. Rent increases

If the tenant has a written lease covering a specified period of time (for example, a six-month or one-year lease), the landlord is not allowed to raise the rent during that period. If a fixed-term lease is for more than a month, and the lease automatically renews itself, the landlord must give the tenant notice of a rent increase at least thirty days before the current lease expires (NMSA § 47-8-15(F)).

If the lease allows the tenant to renew by giving notice, the landlord must also give the tenant thirty days' notice of a rent increase on the new lease. If the lease runs out, the landlord cannot raise the rent without giving the tenant thirty days' notice, unless a new lease is signed (NMSA § 47-8-15(F)).

Under a month-to-month rental agreement, a landlord must give thirty days' written notice before the increase in rent can become effective. If a rental agreement is week-to-week, the landlord must give seven days' notice before the beginning of the week the rental increase is to become effective (NMSA § 47-8-15(F)).

All written notices of a rent increase must be either hand delivered to the tenant or mailed to the tenant (NMSA § 47-8-13(C)(3)). Posting the rental increase at the rental unit is not enough.

