

## Chapter 7



### OBLIGATIONS OF LANDLORDS AND TENANTS FOR SAFETY, MAINTENANCE AND REPAIRS

Landlords and tenants both have duties in taking care of the rental unit and the areas around the rental unit (NMSA § 47-8-20 and NMSA § 47-8-22). The Uniform Owner-Resident Relations Act contains some of these duties, and other duties are imposed by local housing codes or by the lease agreement.

#### A. Tenant obligations and responsibilities

##### 1. A safe and clean place

The tenant's responsibilities to the landlord and to other tenants are based on the law, the rental agreement, and the rules the landlord makes for tenants. When the tenant fails to meet these responsibilities, the landlord may end the tenancy and evict the tenant. The tenant also has responsibilities to other tenants so that they may enjoy a decent and safe place to live, and in certain cases the landlord may take action to protect the rights of the other tenants.

Beyond paying rent, the tenant's most important obligation is to keep the rental unit clean, safe, and free from unnecessary damage (NMSA § 47-8-22). The tenant is not responsible to pay for normal wear and tear on the rental unit while living in it. The tenant will, however, have to pay for repairs for any damage caused by abuse or neglect of the unit by the tenant or the tenant's guests.

In addition, local housing codes make rules for the use of property (Albuquerque Code of Ordinances Chapter 14 Article 3) which add to the tenant's responsibilities. For example, the Albuquerque Housing Code prohibits: (1) unhealthy conditions

in the residence, particularly in the bathroom and kitchen, which might cause disease, attract rodents, or breed insects; (2) dangerous structures or objects, especially those that attract children; and (3) overcrowding the residence.

The tenant is responsible for disposing of ashes, rubbish, and garbage in a clean and safe way (NMSA § 47-8-22(C)). The landlord is responsible for providing the tenant with suitable containers and a means of disposal (NMSA § 47-8-20(A)(5)).

##### 2. Complying with the rental agreement and the landlord's rules

The agreement between the tenant and the landlord is a contract. Both the tenant and the landlord are normally required to live up to the responsibilities set out in their agreement. There are exceptions to this rule of law where the agreement contains illegal or inequitable (grossly unfair) terms (NMSA § 47-8-12).

Similarly, if the landlord makes rules about the use of rental facilities, the tenant must follow the rules if they are fair and reasonable, and if the tenant gets a copy of the rules at the time the tenant enters into the rental agreement (NMSA § 47-8-23). If the landlord makes a new rule or changes a current rule after the tenant begins renting, the landlord must give the tenant reasonable notice of the rule change. Rule changes should not be made on less notice than the rental term (for example, seven days' notice on a week-to-week, thirty days' notice on a month-to-month), and the rule change must be in a written

notice delivered to or mailed to the tenant. The rule change may also be posted, but if it is posted the landlord must also mail the notice to the tenant (NMSA § 47-8-23 and NMSA § 47-8-13(D)).

If the landlord makes a rule change that creates a major change in what the tenant agreed to initially—such as prohibiting pets or limiting access to certain facilities—the rule change cannot be enforced against the tenant for the period of the lease (NMSA § 47-8-23(F)).

There are other limits on the rules a landlord may make:

- The rules must be designed to improve the property's appearance; aid the tenants' safety, convenience, and welfare; or generally provide for equitable and efficient delivery of services to all tenants (NMSA § 47-8-23(A)).
- The rules must be required to fulfill a reasonable purpose (NMSA § 47-8-23(B)).
- The rules must apply to all tenants in a fair manner (NMSA § 47-8-23(C)).
- The rules must be clear and understandable (NMSA § 47-8-23(D)).
- The rules must not be made for the purpose of avoiding the landlord's legal obligations (NMSA § 47-8-23(E)).

### 3. Allowing access to the rental unit

A tenant must allow the landlord to have reasonable access to the rental unit in order to perform the landlord's duties. However, a landlord may not abuse this right of access, and the law has placed some restrictions on a landlord's right to enter the rental unit.

The law allows the landlord entry to inspect the unit, to make necessary and agreed-upon repairs, to decorate, to make alterations or improvements, and to supply necessary or agreed-upon services. The law also allows the landlord to enter the unit to show it to someone who plans to buy or rent the property. The landlord may also bring in contractors or workers when the landlord properly enters the rental unit (NMSA § 47-8-24(A)).

In order for the landlord to enter the rental unit to do any of the work listed above, the landlord must give the tenant notice. Unless the landlord and the

tenant agree to shorter notice, the landlord must give *twenty-four hours written notice* to the tenant before entering the rental unit. The notice must tell the tenant what time the landlord will be entering, how long the landlord will be inside, and why the landlord will be going in ((NMSA § 47-8-24(A)(1)).

The landlord does not need to give the twenty-four hour notice if the entry is to perform repairs or services that have been requested by the tenant within the past seven days, or when the landlord is with a public official conducting an inspection or a utility company representative or cable TV installer (NMSA § 47-8-24(A)(2)).

The rental agreement may provide for other specified conditions that require the landlord to enter the tenant's rental unit. The rental agreement may not, however, take away the notice rights of the tenant. The law does recognize that the landlord and the tenant may, from time to time, agree to other arrangements (NMSA § 47-8-24(A)). For example, a tenant may agree to let the landlord in on less than twenty-four hours notice, and the landlord may give the tenant options about the most convenient time to have the gas man look over the apartment (NMSA § 47-8-24(A)(3)).

While the law allows the landlord and the tenant to work out entry problems, there are sometimes when a landlord's right of entry is not open for negotiation. The landlord has the right of entry without any notice in case of an emergency (NMSA § 47-8-24(B)), or when the tenant has been gone from the rental unit for more than seven days without telling the landlord (NMSA § 47-8-24(D)).

If the tenant refuses to let the landlord in when the landlord is acting properly, the tenant's denial of access is a violation of the law. The landlord may terminate the tenancy, get a court order to enter the rental unit and sue for damages (NMSA § 47-8-24(E)).

If the tenant feels that the landlord is entering the apartment unreasonably, the tenant should seek legal advice. This is one area where a simple misunderstanding can lead to a serious dispute. If the landlord abuses the right of entry and is interfering with the tenant's right to peaceably

occupy the rental unit, the tenant can also terminate the tenancy and go to court. The tenant can get an order keeping the landlord out and sue for damages (NMSA § 47-8- 24(F)).

#### 4. Informing the landlord of the tenant’s absence for seven days or more

As stated above, if the tenant is gone for more than seven days without telling the landlord, the landlord has the right to enter the apartment (NMSA § 47-8-24(D)). There are good reasons to tell the landlord about an absence. Some of these reasons are practical and help the tenant. Other reasons include the tenant’s right to have a place to stay and what happens to the tenant’s property.

- First, the rental agreement may require the tenant to notify the landlord if the tenant is going to be gone for some period of time (NMSA § 47-8- 25). If the tenant doesn’t notify the landlord, the tenant will have broken the rental agreement and may be subject to having the tenancy terminated.
- Second, it is a good idea to let the landlord know the tenant will be gone, so the landlord can watch the rental unit for vandalism, fire, freezing pipes, and to be aware that the tenant’s property is more vulnerable to burglars. The tenant’s chances of having insurance cover any losses that occur to the tenant’s property may also be affected by whether the landlord was informed about the tenant’s absence.
- Third, the law states if the tenant is behind in the rent and is gone for more than seven days without telling the landlord, the tenant has *abandoned* the rental unit (NMSA § 47-8-3(A)). Once the tenant has legally abandoned the unit, the landlord can treat the tenancy as over and re-rent the apartment. The landlord can also store and sell any property the tenant leaves in the apartment, subject only to the tenant rights to claim the property from storage (NMSA § 47-8-34.1). (See Chapter 10, “The Tenant’s Property”).



#### 5. Using the rental unit as a residence

Unless the landlord agrees that the tenant may use the rental unit for other purposes, the tenant may use it only as a residence. For example, if the tenant plans to rent a place to use for a business, the tenant must discuss that with the landlord. If the tenant runs a business from the rental unit without the landlord’s permission, the tenant may be in violation of the rental agreement (NMSA § 47-8-25).

The issue of whether the tenant is maintaining a residence might be important when the tenant rents a room in a hotel or a motel. If a person pays on a weekly basis or less frequently (for example, biweekly or monthly) and has no other residence, that person is probably a tenant entitled to the protections of the Uniform Owner-Resident Relations Act. To be certain, the tenant should inform the hotel or motel management that the room is the tenant’s residence. There are many hotel and motel owners who do rent to people they know are residents, and they take rent for more than a week at a time. These owners, however, like to avoid the obligations the law places on landlords, and they may try to claim the tenant is not really a tenant. Be careful in such situations and take steps to make it clear to the owner the tenant intends to reside in the place.

#### 6. Obligations to neighbors— illegal conduct

The tenant has a duty not to disturb a neighbor’s peace and quiet (NMSA § 47-8-22(G)). This duty prohibits such disturbances as those caused by excessive noise, inconsiderate visitors, and uncontrolled pets. Also, while a landlord may not refuse to rent to the tenant because the tenant has children (42 USC § 3604), the tenant must still supervise the children so that they do not unreasonably bother other tenants. The tenant must

also conform to any rules of a joint housing unit or neighborhood association where the tenant lives (NMSA § 47-8-22(H)).

## 7. Substantial violations

The law states if a tenant knowingly does certain very serious acts (or allows others to do certain acts in the tenant's unit) that are against the law, the tenant may be evicted with only 3 days' written notice. A tenant may be quickly evicted for the following acts, if committed by the tenant or with the tenant's consent:

- Possession, use, sale, distribution or manufacture of a controlled substance (but not misdemeanor possession or use)
- Unlawful use of a deadly weapon (but not self-defense)
- Unlawful action causing serious physical harm to another person
- Sexual assault or sexual molestation of another person
- Entry into another's home or vehicle without their permission and with intent to commit theft or assault
- Theft or attempted theft of the property of another person by use or threatened use of force
- Intentional or reckless damage to property in excess of \$1,000

The act must take place within 300 feet of the premises (NMSA § 47-8-3 (T)).

A tenant does not have to be convicted of a crime to face eviction under this *substantial violation* provision of the law, but the landlord must still prove that the violation occurred.

The only general exceptions to the substantial violation prohibition are where the tenant is the victim of the illegal conduct or where the tenant does not know about the illegal conduct and has not done anything to allow it (NMSA § 47-8-33(K)). It is important to remember that this part of the law also applies to the tenant's guests and others living in the unit with the tenant. A tenant usually has a personal responsibility to control the conduct of people in his or her rental unit. Under the law, it is possible that the tenant and the tenant's family may be faced with eviction even if only one person is involved in the illegal conduct.



There is a special exception for victims of domestic violence. A victim of domestic violence cannot be evicted for the domestic violence (NMSA § 47-8-33(J)). The best way for a tenant to get protection under this part of the law is to

go to District Court to request a domestic violence order against the abuser. If the tenant is the victim of domestic abuse, the tenant should seek legal advice immediately, because of the abuse itself and also because it may have an effect on the landlord-tenant rights.

In addition, a tenant cannot be evicted for a substantial violation if he or she acted in self-defense (NMSA § 47-8-33(L)).

If the landlord tries to evict the tenant for conduct that was domestic violence or self-defense, it is very important the judge knows what happened.

Because the landlord has the right to terminate the tenancy on only 3 days' notice where such serious violations occur (NMSA § 47-8-33(I)), the law has several important tenant protections. If the landlord tries to use this part of the law to evict a tenant, the landlord must give a very specific notice of what the bad conduct was, explaining exactly when and where the bad conduct occurred (NMSA § 47-8-33(I)). If the landlord has no real basis for seeking an eviction for a substantial violation, the tenant may be awarded a civil penalty in a court action equal to two times the monthly rent (NMSA § 47-8-33(M)). For example, if the landlord simply claims someone was selling drugs in a tenant's apartment without any real evidence, the tenant might be entitled to stay in the apartment and receive an award of damages.

This section of the law is there to protect innocent people, so they can live in decent and safe places. If

the tenant suspects a neighbor is involved in illegal activity, the tenant should call the police and let the landlord know about the conduct at the same time.



## 8. What will happen if a tenant fails to live up to his or her obligations?

Depending on the type of violation, the tenant will get a written notice. The type of violation determines the number of days' notice the tenant is entitled to and what the tenant can do to cure (remedy or fix) the problem described in the notice.

### a. Failure to pay rent

If the notice is for a failure to pay rent, the tenant will have three days to pay the rent owed. If the tenant does not pay the rent within three days, the tenancy may end (NMSA § 47-8-33(D)). Then the landlord may go to court to evict the tenant. This type of notice may be hand delivered or mailed to the tenant or posted (NMSA § 47-8-13(D)).

### b. Seven-day notice of lease violation

If the notice is for a failure to live up to obligations under the rental agreement, failure to follow the landlord's rules and regulations, or for failure to perform duties the law requires of tenants, the landlord must give a seven-day notice of the problem (NMSA § 47-8-33(A)). The notice must clearly set out the problem (including dates and specific facts), so the tenant can have the chance to cure (fix) the problem. The seven-day notice of violation must be given within thirty days after the problem occurs or the landlord learns of it (NMSA § 47-8-33(C)).

If, for example, the landlord claims the tenant has a junk car on the property, and the rules prohibit inoperable vehicles, the tenant may get a notice of this violation. The tenant will have seven days from getting the notice to either repair the car or move it. If a tenant does not fix the problem within the seven days, the tenancy will end and the landlord can then go to court for an eviction. The landlord will have to prove that the tenant violated the lease and that the seven-day notice was properly given. The tenant would need to prove that he or she did not violate

the lease, or that the seven-day notice was inadequate, or that the problem was cured.

If the tenant does cure the problem, the tenancy will not end. But, if there are any other problems within six months after the first notice, the landlord can give a second seven-day notice. After the second notice, the tenant does not have the right to fix the problem, and after seven days the tenancy will end (NMSA § 47-8-33(B)). If there are no problems for six months after the first notice, then the next notice the landlord gives the tenant is treated as a new first notice. The tenant then has the right to fix the problem and stay in the rental unit (NMSA § 47-8-33(B)).

Remember, the seven-day notice is for *material* (important) failures to live up to the tenant obligations. If the tenant feels that the problems are minor and the landlord is simply sending the notices to harass the tenant, the tenant should seek legal advice.

A seven-day notice must be either delivered to the tenant in person or mailed to the tenant. If the notice is posted, it must also be mailed to the tenant in order to be effective. However, if the notice is posted, the seven days running will start on the date of posting, not the date the tenant receives the notice in the mail (NMSA § 47-8-13(D)).

### c. Three-day notice of substantial violation

If the landlord claims that the tenant, or someone living with or visiting the tenant, has done something that would be considered a serious crime (a substantial violation), the landlord can end the tenancy with a three-day notice of substantial violation (NMSA § 47-8-33(I)). With this kind of notice, the tenant has no right to cure the problem (for example, by telling the landlord that it will never happen again). If the tenant receives this type of notice, it is very important to get legal advice immediately.

A three-day notice of substantial violation must be hand delivered to the tenant or mailed to the tenant. As with a seven-day notice, if the notice is posted it

must also be mailed. The date of posting, not the date the mail is received, will be the date that the time in the notice starts running (NMSA § 47-8-13(D)). Once the three days are up, the landlord can file an eviction action in court to get possession of the rental unit.



There are similar issues presented by such violations in public housing. Ordinarily, a public housing tenant is entitled to a grievance hearing before the housing authority may seek to evict the public housing tenant. However, evictions for criminal activity that is drug-related or threatens the safety of other tenants or housing authority employees may be exempt from the grievance procedure (24 Code of Federal Regulations 966.51). In those cases, the housing authority may go directly to the local court process to evict. Check with HUD or an attorney to determine whether the tenant housing authority is exempt from the grievance procedure in those cases.

## 9. Notice of termination generally

In general, a landlord may terminate a tenancy without giving a reason using a thirty-day notice in a month-to-month tenancy (NMSA § 47-8-37(B)), or a seven-day notice in a week-to-week tenancy (NMSA § 47-8-37(A)). (Exceptions are made for rental agreements in mobile home parks, fixed-term leases, and some types of low-income housing.) If the tenant has a month-to-month tenancy, the landlord must give the tenant notice of termination at least thirty days before the beginning of the next full month (NMSA § 47-8-37(B)). In a fixed-term lease, the landlord does not have to give notice of termination, unless the lease provides that it will automatically renew unless terminated. Leases often will state that the landlord or the tenant must give a thirty-day notice if the lease will not be renewed.

In the case of mobile home parks, if there is a written lease, a notice of termination must be *for cause* (NMSA § 47-10-5). This means a mobile home space rental agreement cannot be terminated just because the initial lease term has ended or because it is a month-to-month tenancy.

Subsidized housing tenants may have additional rights. For example, tenants of public housing, project-based Section 8 housing, and Low Income Housing Tax Credit housing are entitled to remain in their homes as long as the tenant remains eligible for the program and as long as the

landlord continues to receive the government subsidy, and sometimes longer. This rule does not apply to tenants with Section 8 housing choice vouchers. With some exceptions, private landlords who rent to tenants with Section 8 vouchers usually may terminate a tenancy at the end of the lease term and with proper written notice. See Chapter 14 of this guide for more information on the rights of tenants in subsidized housing.

Notices of termination must be hand delivered or mailed to the tenant. If the notice is posted, it must also be mailed. However, the time in the notice begins when the notice is posted, not when the mailed notice is received by the tenant (NMSA § 47-8-13(D)).

There are times when a landlord is upset with a tenant because the tenant has exercised certain rights, and the landlord will send the tenant a termination notice. This type of landlord action may be what the law calls *retaliation*. Such actions are illegal, and there are specific provisions of the law protecting tenants against retaliation (NMSA § 47-8-39). (See “Retaliatory Eviction” in Chapter 9 of this guide).

## 10. When the time on notices runs out

Because notices are important in creating a landlord’s right to terminate a rental agreement, it is crucial to know when the time in a notice starts and ends. As we have seen, the time required for a notice begins running when it is delivered or mailed to the tenant (NMSA § 47-8-13(C)(3)). Most landlords will post the notices, e.g., tape it to the tenant’s door. Remember, even when the posted notice is also mailed, it is the date when notice was posted that starts the time running (NMSA § 47-8-13(D)). If the last day of a notice falls on a weekend or a federal

holiday, its effective ending date will be the next day that is not a weekend or a holiday (NMSA § 47-8-33(H)).

For example, if a three-day notice for nonpayment of rent is posted on the tenant's door on a Thursday, the third day for paying the rent would be Sunday. Since Sunday is a weekend, the tenant has until Monday to pay the rent. The landlord could not file a lawsuit to evict the tenant until Tuesday.

## 11. Eviction

In any situation where the landlord has terminated the tenancy, the tenant can voluntarily move out, or stay in the rental unit and wait to see if the court will order him or her to move out. If the tenant does not move out voluntarily, the next step will be the court action for eviction. A landlord is not allowed to remove a tenant from a rental unit without getting an eviction order from a judge, unless the tenant has abandoned the unit (NMSA § 47-8-36(A)). Sometimes, landlords try to force a tenant to leave without going to court, but this type of self-enforcement is illegal. (See Chapter 9 of this guide on "Lock-outs").

Court actions for eviction are serious lawsuits, and a tenant who does not wish to move should seek legal advice if the landlord has terminated the tenancy. The tenant should also review the section in this guide about "Evictions" in Chapter 9.

### B. Landlord obligations and responsibilities

The responsibilities in a landlord-tenant relationship are not just the tenant's. Landlords have very real duties, which tenants have rights to enforce. The landlord's most important duty is to maintain the property as a safe, decent, and healthy place for the tenant and his or her family to live.

#### 1. Basic responsibilities

A landlord must do at least the following things:

- Make repairs and do whatever is required to put and keep the property in a safe condition (NMSA § 47-8-20(A)(2))
- Maintain in good working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other

facilities and appliances supplied, or required to be supplied, by the landlord (NMSA § 47-8-20(A)(4))

- Provide and maintain containers for ashes, garbage, rubbish or other waste, and to arrange for their removal (NMSA § 47-8-20(A)(5))
- Supply running water and a reasonable amount of hot water at all times (NMSA § 47-8-20(A)(6)), unless the tenant is responsible for the water bill
- Supply heat, unless this is under the tenant's exclusive control (for example, where the rental agreement states that the tenant is responsible to contract for and pay for gas and electrical utilities) (NMSA § 47-8-20(A)(6))

## 2. Local housing codes

In addition to the basic landlord responsibilities set out above, local housing codes also impose duties on landlords that tenants may enforce. For example, in Albuquerque the city housing code requires landlords to ensure that:

- Public or shared areas are in a clean, sanitary and safe condition (Albuquerque Code of Ordinances § 14-3-5-11(B))
- Insect and rodent infestations are prevented (where such infestations occur, the landlord is responsible for extermination, unless the tenant is the cause of the infestation); the landlord is always responsible for extermination when an infestation is caused by the landlord's poor maintenance, or is in the common areas of an apartment building (ACO § 14-3-4-2(N))
- General dilapidation is prevented by regular maintenance (ACO § 14-3-4-2(L))
- The foundation, floors, walls, ceilings and roof are reasonably weather tight, in good repair (ACO §14-3-4-8(A)) and capable of affording privacy to the tenants (ACO § 14-3-2-3(G))
- The windows and doors are reasonably weather tight and are kept in sound working condition (ACO § 14-3-4-8(A))
- Stairs and porches are safe to use and capable of supporting the load that normal use requires (ACO § 14-3-4-3(J))

- Bathroom and toilet compartment floor surfaces are reasonably resistant to water absorption and capable of being kept clean (ACO § 14-3-2-3(D))
- Any appliances or fixtures supplied by the landlord (such as a stove, refrigerator, or hot water heater) are in safe working condition (ACO § 14-3-3-2)



Under the Albuquerque Municipal Code, the landlord must also provide the tenant with:

- A properly vented heater (capable of keeping the dwelling heated to 70 degrees) (ACO § 14-3-3-2)
- An adequate toilet, sink and bathtub (or shower) (ACO § 14-3-2-3(B))
- An adequate (non-absorbent) kitchen sink (ACO § 14-3-2-3(C)(2))
- Hot (110 degrees) and cold running water to appropriate plumbing fixtures (ACO § 14-3-2-3(C)(1))
- Working windows or other ventilating equipment (ACO § 14-3-3-2(A)(3))
- Electrical outlets and lighting fixtures (ACO § 14-3-3-2(A)(2)(B))
- Adequate sewage disposal connections (ACO § 14-3-4-2(M))

Most cities and towns have laws setting housing standards. The tenant should check to see what the local code requires, because the landlord will be required to maintain the property up to that standard.

### 3. Repairs

When there is a problem with any of the things a landlord is required to maintain, the tenant has the right to request that necessary repairs be made. Sometimes, a simple request will do the trick. However, it occasionally happens that the landlord will ignore the tenant requests, and the tenant will

need to do more. *Requests for repairs should be made in writing and a copy kept.* If the landlord refuses to make necessary repairs, the tenant will have to think very seriously about enforcing the tenant rights to have repairs done. (See Chapter 8 of this guide on “What to do when repairs are needed.”)

### 4. Written rental agreement

The law requires landlords to give the tenant a written contract containing the rental agreement (NMSA § 47-8-20(G)). Unfortunately, some landlords do not live up to this requirement.

As we have stated earlier in this guide, the tenant should insist on a written agreement when moving in. If the landlord won’t give the tenant a written agreement, the tenant should think seriously about looking for another place. If the tenant does not have a written agreement with the landlord and there is a dispute with the landlord, the tenant should seek legal advice immediately.

### 5. Quiet enjoyment

*Quiet enjoyment* means a lot more than limited noise. It means that when a tenant rents property, the tenant has a right to reasonably use the property. While the tenant must give the landlord access to the rental unit for certain purposes, the landlord has no right to interfere with the tenant’s privacy by entering the rental unit at will (see Chapter 7 of this guide on “Allowing access to the rental unit”) (NMSA § 47-8-24(F)). The landlord may not lock the tenant out of the rental unit (NMSA § 47-8-36(A)) (see Chapter 9 on “Lock-outs”).

The landlord may also not make rules and regulations that are unreasonable and that unreasonably limit the tenant’s use of the rental property (see Chapter 7 of this guide on “Complying with the rental agreement and the landlord’s rules”) (NMSA § 47-8-23).