

Watch Out!

Some landlords set traps for unwary tenants. Be prepared! Read this flyer before it's too late!

Before you pick your new home, Watch Out! for:

Trap: Bait and switch - different rental unit.

Remedy: Inspect the actual rental unit before signing a lease.

Many large apartment complexes have a "model" unit. Always demand to see the actual unit you may decide to rent before signing a lease. Make sure the lease has "your" unit number - the one you actually inspected - on the first page. If you're told that "your unit" is being repaired and can't be shown, either make a future appointment to see the actual unit or find another place to rent. Don't rent based only on a newspaper or internet advertisement. Once you sign a rental agreement, "bait and switch" is very hard to prove. And many written agreements contain "as is" clauses whereby the tenant accepts the rental unit in its present condition. Do a "walk through" with the landlord either before you sign an agreement or shortly after you move in. If the landlord won't join you, write down all the problems with the rental unit within a few days after you move in. You can use the list on our website when moving in and moving out:

<http://www.utahlegalservices.org/public/self-help-uploads/AptChecklist.pdf> Give a copy to the landlord and keep a copy for yourself. Taking pictures can also help. You'll be glad you did.

Trap: unacceptable terms buried in the fine print.

Remedy: ask for a blank lease when you fill out an application to rent or the very first time you contact the owner/manager. Then read it all before you sign it.

Please keep reading. What's below details many of the traps found in written leases. If you don't read the lease before you sign it, you will almost certainly be stuck with the terms. Long leases often contain traps!

Watch Out! for possible problems in the rental agreement before you sign it:

● **Huge late fee(s):**

Landlords can only charge late fees if such charges are stated in a rental agreement signed by the tenant. Watch Out! for exorbitant fees. Some landlords claim \$50 per day! Others charge one up-front late fee such as \$150 on the first day that the tenant is late. Such massive late fees can be challenged in court but by the time such a challenge gets before a judge, the tenant may already have been evicted. If you negotiate a reduced late fee, the new fee must appear on the written lease or it will not be enforceable. If the late fee is large and you cannot negotiate a reduced late fee, look for another landlord. If you're late paying the rent, you will likely incur a late fee even if you pay before the notice comes. Read more below and see our flyer:

<http://www.utahlegalservices.org/public/self-help-uploads/Nonpayment%20eviction%20flyer.pdf>

● **Uncertain monthly rental amount:**

Some rental agreements state a monthly rent and then various fees such as for utilities, parking, taxes, service of notice but in text buried pages later allow these amounts to be changed during the lease term.

● **"Concession" recovery:**

Landlords often advertise a "move-in special" like "first month free" or "\$99 moves you in". This "free rent" is often apportioned over 12 months. But Watch Out! for fine print that says you must pay the rent on the first

day of every month - even if no late fee is charged until the third or fifth of a month - or lose the concession. You may have 3 extra days each month to pay before a late fee is imposed (a “grace period”) but this is not the same as what the tenant must do in order to keep the concession. If you lose the concession this way, the notice you get may come after you pay the rent: you now owe additional rent and a late fee and a service of notice fee because you didn’t factor in the lost concession as part of the rent payment that you paid “on time”.

- **Don’t be hurried; read the entire lease:**

Leases are often 10+ pages long with a lot of fine print. Don’t be rushed into signing any lease, especially long leases containing many thousands of words. Ask for a blank lease when you fill out an application form or first contact the owner/manager. Once you sign, you will be bound by the contract. “I didn’t see that in the lease” is no defense. The longer the lease the more likely it is to contain a trap!

- **Demand a copy with all blanks filled in at the same time as you sign:**

Many tenants make the mistake of accepting a landlord’s promise to give them a copy of the lease at some later date. Don’t be fooled! Landlords always have multiple copies of their leases. Two copies can be simultaneously executed, one for you and one for the landlord. In a pinch, use your cellphone or camera to take a picture of each individual page. Some landlords only preserve the signature page of a lease; the other pages can then be recreated - with different numbers. Don’t let this happen to you!

- **Landlord’s lien on your personal property:**

Some leases have language that claims a “landlord’s lien” on all personal property brought into the rental unit by the tenant. The language says that the landlord can enforce that lien whenever the rent is past due. State law seems clear: a landlord cannot seize exempt personal property. That is, a landlord cannot take your clothing, most furniture, rugs, bedding, washer, dryer, dishes and the like - unless you leave such property in the rental unit more than 30 days after being evicted. But if your property is seized, it may take a very long time to get it back. If the lease offered to you claims an unrestricted lien on your personal property, consider finding another landlord.

- **60 day notice required of tenant but no reciprocal provision for landlord:**

Lease terms always end with the passage of time after which the tenancy usually becomes month-to-month. Watch Out! for one or more provisions in the lease saying that the tenant must give 60 days written notice before terminating a month-to-month tenancy but there’s nothing saying how much advance notice the landlord must give. The landlord may only give a 15 day notice (the minimum required under Utah law for a “no cause” eviction). Some leases require 60 day notice from a tenant but say the landlord need only give 30 days. In either of these cases, try to negotiate “equal treatment”. Or find another landlord.

- **Oral representations:**

Most written contracts have an “integration” clause: the entire agreement is in the written lease. Landlords sometimes give oral assurances that rent can be paid late without penalty or that the tenant can fix things up in exchange for rent or deposit. Such agreements must be in writing or they will probably not be enforceable. Read our flyer <http://www.utahlegalservices.org/public/self-help-uploads/workinlieuofrent> about working on your rental unit instead of paying rent.

Once you’re a tenant, **Watch Out! for:**

- **Paying the rent on time:**

No law requires a landlord to give a “late rent” notice (3-day pay or vacate) on the first day the rent is late. You may pay your rent some days after it is due but that does not prevent the landlord from giving you a notice to pay late fees just after you pay only the monthly rent amount.

- **Last month's unpaid late fees = insufficient payment for current month:**

Many landlords use "last in, first out" accounting. So when the last charge on the ledger is a late fee, the next month's rent check first goes to paying off the late fee and the rest to pay the rent for the new month. But that means: more late fees! Unless the rental agreement states otherwise (and they never do), the tenant cannot designate a payment for a specific purpose. Tenants often believe they've "worked it out" with the landlord because the landlord didn't give another nonpayment notice right away. But that's usually wrong. Tenants often believe that if the landlord accepts rent for the next month, everything is now okay. But that's also usually wrong. Some landlords wait many months before issuing another notice to pay or vacate. That notice will often claim many hundreds of dollars in cumulative late fees accrued over several months. It is usually not a defense to eviction that the landlord waited too long to give a notice to pay late fees.

- **Paying cash and not getting a receipt:**

Always get a receipt when you pay cash! If necessary, carry your own receipt book or notebook when paying rent in cash so that the landlord can date and sign a short statement of how much you paid and for what reason. If a dispute arises later, some landlords deny ever having received payment or claim it was less than what was paid. Tenants almost always lose these arguments. If your landlord won't give you a receipt, pay by money order or cashier's check. Once you tender (actually give) the rent payment, you will have a defense to nonpayment even when the landlord demands "cash only" payment.

- **Additional "month-to-month" fee when the lease expires:**

Both landlords and tenants often want predictable length-of-tenancy agreements: one year, six months, etc. Some landlords include in the original rental agreement an increase in the rent if the lease term expires and no new lease has been signed. Unless the agreement says otherwise (and they never do), the landlord need not give any additional notice at the end of the lease term about the increased rent the following month. The contract is the notice. Many tenants have been surprised by a 3 day notice to pay or vacate - with late fees and a service of notice charge - because the tenant did not pay the additional month-to-month fee for the month following the end of the lease term.

- **Refusing to pay rent because the landlord won't repair – don't do it!**

The landlord's duty to maintain the rental unit is separate from the tenant's duty to pay rent. Two wrongs don't make a right! The landlord has breached the lease but the tenant cannot choose the remedy. See our flyer http://www.utahlegalservices.org/public/self-help/uploads/Bad_Housing.pdf. Except in the very narrow circumstances described in our "Bad Housing" flyer, a tenant will almost certainly be evicted for failing to pay rent.

Watch Out! for these termination/eviction problems:

- **"Voluntary" termination:**

The landlord asks the tenant to sign a "voluntary" termination agreement by threatening to evict the tenant for some reason if the tenant doesn't sign. You do not have to sign it! Get a copy of what you're asked to sign and call ULS. But if you do sign it, it will most likely be enforceable. That the landlord threatened to evict you is not sufficient to void such an agreement even if you now think the landlord had no basis to threaten you.

- **"No cause" notice in subsidized property:**

Certain rental properties are subsidized. The landlord gets tax credits or direct payments from HUD or the US Dept. of Agriculture. Some rental properties are owned by public housing authorities. In exchange for these subsidies, tenants pay reduced rent or a specific percentage of their household income as rent. Tenants living in subsidized properties cannot be evicted without good reason. This is even true at the end of a lease term. The landlord must continue the tenancy unless there is good cause for eviction. **Note:** If you have a "section

8” voucher or the subsidy for your rental unit can readily be converted to a section 8 voucher then your subsidy is portable: you can rent from any private landlord. In that case, you can be evicted without cause after the end of the lease term.

- **Bad/no delivery of documents:**

The first notice required to start the eviction process in Utah is not a “court paper”. The landlord can deliver the notice himself or post it to your door. But a few landlords will say a notice was given when it wasn’t. More serious is the case of “bad service” of the summons and complaint for eviction. Sometimes a process server will sign an affidavit saying the tenant was personally served but in reality the papers were left on the porch or the process server used a pass key to lay the papers on the kitchen table. Or didn’t actually leave any papers at all. In such cases the first notice the tenant gets about the eviction lawsuit is an Order of Restitution telling the tenant to leave the rental unit - or be locked out - usually within 3 days. (The Order of Restitution can be posted to the door.) If you never received the initial notice or the summons and complaint or the Order of Restitution, call ULS as soon as possible.

- **A money judgment against you long after eviction**

Please read our flyer <http://www.utahlegalservices.org/public/self-help-uploads/eviction-whats-the-worst-that-can-happen-to-me> This flyer explains the methods used by some landlords to get and collect monetary judgments against evicted tenants many months after the tenant has left the rental unit. Many eviction lawsuits end when the tenant leaves. But many landlords go after a money judgment too.

- **Damage claim after you move out**

Some landlords sue tenants for damage to the rental unit after the tenant has moved. The best way to prevent such claims is to schedule a walk-through with the landlord on the day you leave the premises. If that’s not possible, take pictures or write a description of any conditions you think might give rise to the landlord’s damage claim. But pictures and descriptions at the end of your tenancy won’t be much help if you can’t prove the condition of the premises when you first moved in.

If you receive an eviction notice or court papers, call us right away.

Utah Legal Services, Inc.

We help low-income Utahns with many types of civil (not criminal) legal problems

New clients please call Monday – Friday from 9:00 a.m. to 2:00 p.m.

801-328-8891 in the Salt Lake valley; 800-662-4245 from elsewhere in Utah

Offices in Ogden, Salt Lake, Provo and St. George

www.utahlegalservices.org