14

CONSUMER RIGHTS WHEN YOU RENT AN APARTMENT

§ 14. 1. Introduction

This consumer rights chapter describes your rights and duties as a tenant. It contains the following sections:

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§ 14. 2. Your Tenant Rights

Our Maine statutes set forth many specific rights and obligations for persons who rent apartments or homes. You are protected from unfair evictions, unreasonable discrimination, unsafe housing, unreasonable refusals to return your security deposit, and other abuses during your time as a tenant. Of course, tenants must also act within the law and not abuse the legal rights of landlords. This chapter will attempt to briefly summarize the many rights of tenants. If you feel your landlord is treating you unfairly you should see an attorney about your complaint. Remember that serious violations of these laws might also constitute an unfair trade practice. Pursuant to 5 M.R.S.A. § 213 if the tenant successfully sues for damages or for back rent he might also be awarded his attorney fees. *See* Chapter 3 of this Guide, Unfair Trade Practice.

§ 14. 3. Abuse Of Your Security Deposit

Landlords are allowed to require their tenants to make an initial "security deposit" payment that will protect them against damage caused by their tenants to the apartment. This security deposit must be returned to the tenant unless the tenant has caused damage to the apartment beyond "normal wear and tear."[1]

Common sense is your best guide as to what is normal wear and tear. For example, the landlord generally cannot use your security deposit for routine cleaning or painting. The landlord may keep all or part of the deposit and use it to pay for damages caused by your carelessness, accidents or neglect. The landlord cannot unjustly refuse to return your deposit. You can sue the landlord in Small Claims Court for the return of a deposit not properly returned to you. Further, Maine has passed additional statutory protections for renters who live in *larger* apartment buildings (all apartment buildings except buildings with five units or less *and* a live-in landlord.)[2] These rights are as follows:

A. The landlord may not make you pay a security deposit greater than an amount equal to two months rent.[3] Recent legislation allows the landlord to accept a surety bond instead of a more expensive security deposit.[4]

B. The landlord must keep your security deposit in a bank account separate from his other funds and protected in case of bankruptcy, foreclosure or sale of the building. (He does *not*

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[1] 14 M.R.S.A. § 6031(1). The statutory definition of "normal wear and tear" is as follows:
"Normal wear and tear" means that deterioration that occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenant or members of the tenant's household or their invitees or guests. The term "normal wear and tear" does not include sums of labor expended by the landlord in removing from the rental unit articles abandoned by the tenant such as trash. If a rental unit was leased to the tenant in a habitable condition or if it was put in a habitable condition by the landlord during the term of the tenancy, normal wear and tear does not include sums required to be expended by the landlord to return the rental unit to a habitable condition, which may include costs for cleaning, unless expenditure of these sums was necessitated by actions of the landlord, events beyond the control of the tenant or actions of someone other than the tenant or members of the tenant's household or their invitees or guests.

[2] *See*, *e.g.*, 14 M.R.S.A. § 6026, 6037.

[3] 14 M.R.S.A. § 6032.

[4] 14 M.R.S.A. 776031, 6039.

have to pay you interest on it.) If the landlord sells the building then the landlord must either transfer the security deposit account to the new owner or return the deposits to the tenants.[5] The person in possession of the security funds must provide written proof at the closing that the funds have been transferred to the new owner.[6] Upon transfer, the new owner assumes responsibility for "maintaining and returning" to tenants all transferred security deposits.[7] A tenant can sue for damages, $500 or one month's rent, whichever is greater, if a landlord violates these obligations.[8]

C. The landlord is required to return your security deposit or provide a written statement of the reasons for keeping the deposit. If you are a tenant at will, this must be done within 21 days after you have turned the apartment over to the landlord. If you have a written lease, the landlord must return your deposit within the time stated in your lease; but, in no event, can this period exceed 30 days. Remember, a landlord may keep all or part of your security deposit for non-payment of rent or utility charges or the cost of disposing of unclaimed property.[9]

D. If the landlord fails to return your security deposit or refuses to supply you with a written statement as to why your money is being held, he or she gives up all legal rights to withhold any part of it.[10]

E. To get your money returned you should notify the landlord by *certified mail* that you intend to bring a legal action after seven days. The landlord must return the whole deposit within the seven days in order to avoid a lawsuit.[11]

F. If the landlord willfully refuses to return the deposit *and* fails to provide the required itemized explanation, then the landlord can be held liable for double damages, reasonable attorney fees and court costs.[12]

G. If you have to break your lease and move out early, then the landlord is required to make a reasonable effort to re-rent your apartment. Once a new tenant is in place your obligation to pay rent ceases.[13] In the 2008 Unfair Trade Practice action *Maine v. Port Property Management* (DV-08-138) the Defendant settled the State's allegations that it had improperly deducted rent from the tenants' security deposits, even though it had immediately re-rented the apartments. The Court enjoined Port Property Management from the following actions:

(1) Charging tenants who quit their apartment before their lease had expired an early termination fee even though the apartment was immediately re-rented and Port Property Management suffered little or no loss of rent; and

(2) Using a lease that is an adhesion contract in which an Early Termination Fee is automatically charged and is not a fair liquidated damages clause.

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[5] 14 M.R.S.A. § 6035.
[6] 14 M.R.S.A. §6035(1)(B).
[7] 14 M.R.S.A. §§ 6038.
[8] 14 M.R.S.A. § 6038 (2-3).
[9] 14 M.R.S.A. § 6033(2).
[10] 14 M.R.S.A. § 6033(3).
[11] 14 M.R.S.A. § 6034(1).
[12] 14 M.R.S.A. §§ 6034(2); *see Robbins v. Foley*, 469 A.2d 840 842 (Me.1983) (tenants entitled to damages equal to two times the security deposit and reasonable attorney fees).
[13] 14 M.R.S.A. §6010-A(2).

The Court also required Port Property Management to pay a $10,000 civil penalty and to return money to injured tenants.

H. Landlords may also accept a surety bond instead of a security deposit.[14]

I. If the landlord sells your building then the landlord is required to transfer all security deposits to the new owner. This transfer must occur no later than the real estate closing. The landlord must also provide written notice to its tenants that the transfer of the security deposits has taken place.[15]

§ 14. 4. Tenants Cannot Be Unfairly Discriminated Against

Federal and state laws prohibit unfair discrimination or harassment. In Maine, special court procedures are provided for enforcement of these laws. *See* 5 M.R.S.A. § 4613. For example, any discrimination against children is *generally* prohibited. It is unlawful to ask if someone has children or to have special rules, which apply only to children. There are four exceptions to this rule. Landlords can limit the number of occupants:

A. In a building of two units, one of which is occupied by the owner;

B. In retirement communities and senior citizen housing in which 80% of the units are occupied by people 55 and older;

C. In the rental of four or fewer rooms of a house occupied by the owner; and

D. In non-commercial rental of housing by religious groups.

Landlords may restrict the *number* of occupants based upon the *size* of the apartment, but Landlords may not refuse to show or rent a unit, or impose different terms of conditions on the basis of race, color, sex, sexual orientation, physical or mental handicap, religion, ancestry, national origin, familial status, or because of the receipt of any kind of public assistance. Landlords must accept general assistance vouchers for rent.[16]

Landlords may not refuse occupancy because the tenant requires the assistance of a seeing eye or a hearing ear dog unless the building consists of two units one of which is occupied by the owner.

For further information or to make a complaint of unfair discrimination, contact the Maine Human Rights Commission, 51 State House Station, Augusta, ME 04333-0051 (207-624-6050) or the Maine State Housing Authority (1-800-452-4668).

§ 14. 5. Tenants Have A Right To A

[14] 14 M.R.S.A. §§ 6031, 6039.
[15] 14 M.R.S.A. § 6035. *See also* §14.14 in this chapter.
[16] 5 M.R.S.A. § 4582.

Livable Apartment

A. Warranty Of Habitability

By law, all landlords in the State of Maine promise that all rented dwelling units are fit for human habitation—that is, they are reasonably safe and decent places to live. This is the Maine Warranty of Habitability.[17] If there is a condition in your rented apartment, trailer or house which makes it unfit or unsafe to live in, you can force your landlord to fix the problem by taking him or her to court. For you to win your case in court, each of the following requirements must be followed exactly:

(1) The condition complained of must be a serious one; it must be one that makes your house unsafe or unhealthy; *e.g.*, broken windows, long term lack of running water,[18] toilet malfunctions, rotting stairs, electrical hazards, oil burner problems, leaks in ceiling, hazardous lead based paint.[19]

(2) The condition must not be one which was caused by you or your family.[20]

(3) You must have given your landlord reasonably prompt *written* notice of the problem and also have allowed a reasonable time for the problem to be fixed. Keep a copy of the notice for yourself.[21]

(4) You must be fully up-to-date in your rent payments at the time you give the landlord written notice.

(5) If your landlord does not repair the unsafe or unhealthy condition within a reasonable time after the written notice, you should talk to an attorney about going to court. The judge may order that your rent be lowered, that you receive a partial rent rebate, or that your landlord fix the dwelling. *Warning*: the law states that you can sign away your right to complain about certain conditions. For example, if it is specifically stated in the written lease agreement, you can negotiate a lower rent in return for the landlord not supplying you with heat.[22]

(6) The landlord *cannot* increase your rent if your rental unit violates this implied warranty of habitability.[23]

This law does not apply to an apartment building with five or fewer apartments, one of which is occupied by the landlord.

If a landlord fails to maintain your rental unit in compliance with this warranty of habitability, and

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[17] 14 M.R.S.A. § 6021; *see Caporino v. Lacasse*, 511 A.2d 445 (Me. 1986).

[18] *See Leo Belanger et al. v. John Mulholland*, 2011 ME 107 (nine months lack of running water in a trailer was a breach of the warranty of habitability and tenant entitled to $4,500 in damages).

[19] For example, a strong argument can be made that if an apartment is in violation of the Lead Poisoning Control Act (22 M.R.S.A. § 1316) then the landlord has breached the warranty of habitability. This could also be an unfair trade practice. Currently, the Department of Human Services defines "lead health hazard" as the presence of a lead-based substance on exposed surfaces in a form "readily ingested by children six years of age or younger." *See Harris v. Soley*, 756 A.2d 499 (Me. 2000) (landlord responsible for emotional distress suffered by tenants exposed to rodents and snow).

[20] 14 M.R.S.A. § 6021(3)(B).

[21] 14 M.R.S.A. § 6021(3)(C) and 6021(3)(D). Pine Tree Legal Assistance has prepared a form notice that tenants can use to inform landlords of warranty of habitability defects. *See* § 14.17 for a copy of this form.

[22] 14 M.R.S.A. § 6021(5).

[23] 14 M.R.S.A. § 6016.

the reasonable cost of repairing the unit is less than $500 or an amount equal to one-half of your monthly rent, whichever is greater, you can notify the landlord in writing of your intention to correct the condition at the landlord's expense. If the landlord fails to comply within fourteen days after being notified, *or as promptly as conditions require in case of emergency*, the tenant may make the repair himself. After submitting to the landlord an itemized statement of your expenses in making the repair, you may deduct from your rent the reasonable cost of your repairs.[24] If you do deduct repair costs and then the landlord within the next six months tries to evict you for failure to pay rent or for causing damage to your unit, a legal presumption is created that the landlord is retailiating against you because you complained that the unit was not habitable.[25]

For example, you can hire a licensed oil burner repairperson to come in and fix the oil burner if your apartment is without heat. This statute can also be applied to the cost of buying oil if the landlord has allowed the oil to run out.[26] This right to repair and then deduct the cost from the rent you owe does not apply if your apartment is in a building of five or less dwelling units, one of which is occupied by the landlord. You should be sure to review the tenant requirements in 14 M.R.S.A. § 6026, Dangerous Conditions Requiring Minor Repairs before withholding rent and making your own repairs.

In January 1998, Maine suffered the effects of a massive ice storm. If under similar conditions your apartment loses electricity for several days, should you still pay a full month's rent? Depending on the facts, the answer could well be no. If after the first few days your electricity was not restored and the landlord had still not remedied the situation (e.g., purchased a generator or provided you with portable lights, a heater, a stove), the landlord could have violated your warranty of habitability. If so, you should consider negotiating a reasonable reduction in that month's rent. Since a portion of the rent usually goes to the cost of utilities, tenants should not be forced to pay for what they did not receive.

B. Apartment Temperature in the Winter

Maine's Warranty of Habitability law requires that the landlord maintain your apartment at a temperature that does not make a normally healthy person sick.[27] So, if you feel your apartment is so cold that it is making you ill you should contact your landlord and complain. If the landlord refuses to change the temperature then contact a medical professional and get a written note that your apartment needs to be warmer. For example, infants less than one year old and older people more than 60 years old are at risk for hypothermia, which means their body temperature can become too cold. An average of 20 Mainers die each year due to hypothermia, with three to four of them being found inside their home or apartment. Maine's Center for Disease Control and Prevention (Maine CDC) recommends that in the winter months infants and older people should be kept in rooms in which the temperature is from 61 to 68 degrees Fahrenheit. For more information on hypothermia go to the Maine CDC Stay Healthy This Winter Website at http://www.maine.gov/dhhs/boh/heat_2008.shtml.

C. Additional Rights

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[24] 14 M.R.S.A. § 6026.

[25] 14 M.R.S.A. § 6001(3).

[26] It can be argued that sub-section 9 could also authorize the purchase of another heater (e.g., a kerosene heater).

[27] 14 M.R.S.A. §6021(6)(A). State law also requires that a landlord's heating equipment must be "capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit." This does not necessarily require that your apartment always be at 68 degrees, although your municipality may have adopted an ordinance that requires certain temperatures during the winter months. *See* 14 M.R.S.A. §6021(6)(B).

While not stated in any statute, the tenant might have additional "common law" rights. For example, if the cost of repairing a health hazard is more than $500 or one half of one month's rent, you may be able to claim the remainder in Small Claims Court, after deducting from your rent the amount allowed by statute. Or a landlord may also be liable for injuries caused by defective or dangerous conditions.[28]

As of 2007, landlords are required to provide to potential tenants with an "energy efficiency disclosure statement," which tells tenants just how energy efficient the apartment will be.[29] This statement summarizes how the apartment is heated and what has been done to winterize the apartment.

You should report any defects in your dwelling which you think violate housing or building codes to your town or city clerk or code enforcement officer. If your housing problems are not being solved locally, contact your Local Health Officer. State law (22 M.R.S.A. § 451) requires all municipalities to appoint a Local Health Officer for a 3-year term. The Local Health Officer must assist in the reporting, prevention and suppression of diseases and conditions dangerous to health, and in addition, must receive and evaluate complaints made by any of the inhabitants concerning nuisances posing a potential public health threat within the limits of the Health Officer's jurisdiction.

Should you not achieve satisfactory results, you should contact your Selectman or Councilman to request assistance. Currently there are few specific laws dealing with remedying many landlord-tenant issues such as mold, indoor air complaints, poor water quality, and sewage disposal problems. Should your concern remain unresolved, you should contact the Division of Health Engineering located within the Bureau of Health in Augusta or call 207-287-5338. Serious health related problems in your apartment might constitute a breach of your Warranty of Habitability. *See* § 14.5.

D. Electrical Bills

What if you cannot keep up with your electrical bills and the electric company says it is going to disconnect your service? This problem often occurs during the winter months. Contact your electric company. They should work with you to set up a special payment plan to spread out high winter bills (covering mid-November to mid-April) over a longer period of time. If you are low-income, you cannot be disconnected in the winter if you agree to a "special payment arrangement." Also, if you or a member of your family is seriously ill, the company won't disconnect your power for at least 30 days.

If you are a tenant, and the electric bill is in your landlord's name, your power cannot be disconnected without your being offered the chance to put the service in your name. Let the electric company know you are the tenant. You must also get at least 10 days notice before any disconnection.

If you cannot work things out with your electric company, contact the Consumer Assistance Division of the Public Utilities Commission (1-800-452-4699 or 287-3831).

E. Landlord-Tenant Agreement for Reduced Heat

[28] *Saunders v. Picard*, 683 A.2d 501 (Me. 1996) (landlord is not liable to tenant for personal injuries caused by defective condition in premises under tenant's exclusive control, except when landlord agrees to maintain premises in good repair).
[29] *See* 14 M.R.S.A. §6030-C, 35-A M.R.S.A. §10006.

A landlord who provides heat as part of the rent must keep the apartment at a healthful level for residents.[30] However, in return for a specific reduction in an apartment's current rent, a landlord and a tenant can enter into a specific written agreement, which must be separate from their lease agreement, to maintain an indoor temperature between 62 and 68 degrees. Such reduced heat agreements cannot be entered into if anyone under the age of 5 or over the age of 65 resides in the rental unit. The law authorizing such agreements, 14 MRSA sec. 6021 (6-A) became effective in September, 2009 and reads as follows:

> **6-A. Agreement regarding provision of heat.** A landlord and tenant under a lease or a tenancy at will may enter into an agreement for the landlord to provide heat at less than 68 degrees Fahrenheit. The agreement must:
>
> A. Be in a separate written document, apart from the lease, be set forth in a clear and conspicuous format, readable in plain English and in at least 12-point type, and be signed by both parties to the agreement;
>
> B. State that the agreement is revocable by either party upon reasonable notice under the circumstances;
>
> C. Specifically set a minimum temperature for heat, which may not be less than 62 degrees Fahrenheit; and
>
> D. Set forth a stated reduction in rent that must be fair and reasonable under the circumstances.
>
> An agreement under this subsection may not be entered into or maintained if a person over 65 years of age or under 5 years of age resides on the premises. A landlord is not responsible if a tenant who controls the temperature on the premises reduces the heat to an amount less than 68 degrees Fahrenheit as long as the landlord complies with subsection 6, paragraph B or if the tenant fails to inform the landlord that a person over 65 years of age or under 5 years of age resides on the premises.

F. Lead And Other Hidden Defects

In addition to the statutory warrant of habitability, Maine common law requires landlords to disclose to tenants any serious, hidden defects. Landlords also cannot negligently repair defects or so poorly perform promised maintenance that the premises are dangerous.[31]

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[30] 14 M.R.S.A. §6021(6) reads as follows:

> **6. Heating requirements.** It is a breach of the implied warranty of fitness for human habitation when the landlord is obligated by agreement or lease to provide heat for a dwelling unit and :
>
> A. The landlord maintains an indoor temperature which is so low as to be injurious to the health of occupants not suffering from abnormal medical conditions;
>
> B. The dwelling unit's heating facilities are not capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit;
>
> C. The heating facilities are not operated so as to protect the building equipment and systems from freezing.
>
> Municipalities of this State are empowered to adopt or retain more stringent standards by ordinances, laws or regulations provided in this section. Any less restrictive municipal ordinance, law or regulation establishing standards are invalid and of no force and suspended by this section.

[31] *See Nichols v. Marsden*, 483 A.2d 341, 343 (Me. 1984) (a landlord can be liable when it fails to disclose the existence of a latent defect which it knows or should have known existed but which is not known to the tenant nor discoverable by the tenant in the exercise of reasonable care).

For example, a violation of the Maine Lead Poisoning Control Act[32] could also be a breach of the warranty of habitability. Maine landlords must provide a completed lead paint disclosure form to each tenant in a residence built before 1978.[33]An article in the July 16, 2001 *Portland Press Herald* details how serious this problem is:

> A report by the state Department of Human Services says that all 1-and 2-year-old Maine children should be tested because so many of Maine's houses were built before 1960, when lead paint was widely used. But, the report says, doctors rarely screen more than 30 percent of even those children defined as being at high risk of lead poisoning, and that follow-up practices are lax.
>
> The national Centers for Disease Control and Prevention has determined that a blood lead level of 10 percent or more per deciliter requires monitoring and action. The state offers financial incentives to doctors who test children for lead. The report on Maine blood lead level screenings shows that 23 percent of children who had BLLs of more than 70, which can cause seizures, coma or death, did not receive follow-up exams without intervention by the state Bureau of Health. Another 41 percent of children who tested between 10 and 14 BLLs did not get follow-up care without state prodding, while 26 percent of youngsters with BLLs ranging from 15 to 19 also did not get automatic follow-up care and monitoring.

In July 1991, *Newsweek* magazine reported that lead poisoning is the number one environmental threat to children in the United States. As of September 6, 1996, the federal government requires all owners and managers of most pre-1978 housing to make specific disclosures to tenants concerning the dangers of lead-based paint. For further information on this notice requirement *see* Chapter 16 of this Guide, Model Landlord Tenant Lease, §§16.2-16.3.

In 2007 the Maine Legislature required landlords to give tenants 30 days notice before undertaking renovations in a pre-1978 building.[34] Renovations in older buildings can produce lead laced dust and debris that are very dangerous.

Beginning April 22, 2010 all contractors who disturb lead paint will be subject to new federal Environmental Protection Agency (EPA) rules. Here is the Maine Apartment Owners & Managers Association's description of this new law from its 2010 Newsletter:

> It is estimated that nearly 16,000 people, including contractors and landlords, may be affected by the new rule in Maine. The rule addresses hazards created by renovation, repair, painting activities and is referred to as the Renovation, Repair and Painting Rule (RRP Rule).

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[32] 22 M.R.S.A. §§ 1314-1329, *See Richwind v. Brunson*, 625 A.2d 326, 340 (Md. App. 1993) (renting an apartment containing loose lead-based paint was unfair and deceptive trade practice); *see also State v. A. Newton Culver*, No. CV-96-301 (Me.Sup.Ct., And.Cty., Feb.14,1997) (apartment owner entered into Unfair Trade Practice Consent Decree which required him to pay to correct lead hazards), *State v. Robert Smith and Theresa Smith, d/b/a B & T Property Management*, No.CV-96-301 (Me. Sup. Ct., And.Cty., Nov.26, 1996) (Consent Decree in which defendants were permanently enjoined from renting an apartment to be occupied by children when that apartment had been posted and ordered cleared of harmful lead-based substances); *Young v. Libby*, 737 A. 2d 1071, 1075 (landlord can be liable for lead paint poisoning if it negligently failed to disclose a hidden lead paint defect and such negligence was the proximate cause of plaintiff's injuries).

[33] 22 M.R.S.A.§1328. *See also* Chapter 16, pp16-11 to 16-12, Maine Attorney General's Model Landlord-Tenant Lease.

[34] 14 M.R.S.A. § 6030-B.

Renovations, remodeling, painting, plumbing, electrical work, heating and air-conditioning, demolition and related jobs performed for compensation in 'target housing' and 'child occupied facilities' built before January 1, 1978 will be impacted when they exceed 6 square feet of paint per room or 20 square feet outside. All work, including work on rental property, schools and child care facilities, will be subject to the rule. Landlords are subject to the new rule because 'rent' is considered compensation. Thus, landlords must either get certified themselves, or hire a certified contractor to do the work. The rule requires contractors to have at least one Renovation, Repair, and Painting (RRP) Certified Contractor at each job site.

Landlord attention to this new rule is essential because records compiled over several years by the Maine Department of Human Services substantiates that over ½ of child lead poisonings occur in rental units. Indeed, nearly 80% of these occur within 5 'high density areas' urban areas. Increased levels of scrutiny and resources are now directed at landlords by State and Federal regulators and health professionals because this is seen to be the most cost effective way to reduce poisonings.

Landlord Liability and Resources to Adapt
All landlords should be familiar with the Maine Lead Disclosure Form which requires landlords to notify tenants of any lead tests and provide the booklet, 'Protect Your Family From Lead in Your Home' to your tenants. If a child is found poisoned in your rental, Maine law requires testing of the unit and expensive abatement if your unit is determined to have lead hazards (regardless of any direct proof that the child was poisoned in your unit).

The new EPA rule changes the thrust of lead law to date, from disclosure and response after poisoning has occurred, *to prevention*. According to Rick Reibstein, a former EPA lawyer, 'anyone hiring or participating in the management of someone who does such work (disturbs lead) should also understand that the new rule affects potential liabilities for lead poisoning or contamination, as it articulates an expectation that *it is necessary to prevent the dispersal of lead dust*.'

If you have questions about lead contact the Maine Bureau of Health, Maine Lead Poisoning Program (207-287-4311), Environmental Protection Agency (lead in water) (1-800-452-4668) National Lead Information Clearinghouse (1-800-424-LEAD), or the Maine State Housing Authority (1-800-452-4668). To have your apartment tested for lead-based paint you should call a licensed lead inspector who will charge you for the test. A landlord's failure to make federal lead-based paint disclosures may also be a violation of the Maine Unfair Trade Practices Act. *See* § 3.2 of this Guide, Consumer Rights and the Maine Unfair Trade Practices Act, and §16.3 (EE), The Attorney General's Model Landlord Tenant Lease. For lead paint forms and more information visit:

http://www.maine.gov/dep/rwm/lead/
http://www.epa.gov/lead
http://www.maine.gov/dhhs/ehu
http://www.maine.gov/healthyhomes

G. Mold

Maine recently published its Report of the Mold in Maine Buildings Task Force (20008). Among its findings were:

1. For the majority of persons, undisturbed mold is not a substantial health hazard.

2. Mold is a greater hazard for persons with underlying conditions: mold allergies, asthma, and immune-suppressed conditions.

H. Radon Testing

By 2012 and every ten years thereafter, a landlord must test the air of a residential building for the presence of radon and provide written notice to tenants of the results and the risks associated with radon. If the test results reveal a level of radon of 4.0 picocuries per litre of air or above, the landlord must take measures to reduce the radon level below the 4.0 level.[35]

§ 14. 6. Landlord and Tenant Responsibilities for Bedbugs

Bedbugs are becoming an increasing problem in public accommodations. A bedbug infestation can be so serious as to constitute a breach of the warranty of habitability (*see* §14.5). As of July 12, 2010[36], Maine law provides both landlords and tenants with specific rights and duties as to the threat of bedbugs.

A. Tenant Responsibilities

(1) A tenant must promptly notify a landlord when the tenant knows of or suspects an infestation of bedbugs in the tenant's apartment.
(2) Upon receiving reasonable notice from the landlord[37], the tenant must grant the landlord reasonable access in order to inspect for bedbugs.
(3) The tenant must comply with the landlord's reasonable measures to eliminate and control a bedbug infestation. If the tenant unreasonably fails to do so, the landlord may commence a court action to require the tenant pay for all the pest control treatments of the unit arising from the tenant's failure to comply.

B. Landlord Responsibilities

[35] 14 M.R.S.A. §6030-D.
[36] 14 M.R.S.A. §6021-A.
[37] See 14 M.R.S.A. §205 as to the requirements of reasonable notice when the landlord needs access to your apartment.

(1) Before renting an apartment or other dwelling unit, the landlord shall disclose to a perspective tenant if an adjacent unit or units are currently infested with or being treated for bedbugs.
(2) Upon request from a tenant or prospective tenant, the landlord must disclose the last date that the dwelling unit the landlord seeks to rent or an adjacent unit or units were inspected for a bedbug infestation and found to be free of a bedbug infestation.
(3) A landlord may not offer for rent a dwelling unit that the landlord knows or suspects is infested with bedbugs.
(4) Once the tenant informs the landlord that the dwelling unit may have a bedbug infestation, the landlord must within 5 days conduct an inspection of the unit for bedbugs.
(5) Upon determination that the unit has bedbugs, the landlord shall within 10 days contact a pest control agent to effectively identify and treat any suspected bedbug infestation.
(6) The landlord must employ a pest control agent that carries current insurance to promptly treat the bedbug infestation. The pest control agent will determine what the tenant must do to prepare the unit for the bedbug treatment.
(7) If a tenant is unable to comply with a requested bedbug inspection or the measures necessary to treat the bedbugs, as outlined by the pest control agent (e.g., moving furniture, washing and drying clothes, providing mattress covers, etc.), then the landlord must offer reasonable assistance including financial assistance. The landlord must describe to the tenant what the cost may be for the tenant's compliance with the requested bedbug inspection or control measures. After making this disclosure the landlord can offer financial assistance to the tenant to help the tenants prepare the unit for bedbug treatment. If the tenant accepts the landlord's offer of financial help, the landlord may charge the tenant a reasonable amount for the assistance, subject to a reasonable repayment schedule, not to exceed six months.[38]

C. Tenant Remedies

(1) The landlord's failure to comply with this new bedbug law is a violation of the tenant's warranty of habitability.[39] This means the landlord has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy a condition that endangers or materially impairs the health or safety of the tenant. *See* §14.5 in this chapter for a description of the tenant's remedies for a violation of the warranty of habitability.

(2) A landlord who fails to comply with these bedbug provisions is liable to the tenant for a penalty of $250 or actual damages, whichever is greater, plus reasonable attorney's fees.

(3) If a landlord goes to court and seeks to evict a tenant, there is a rebuttable presumption that the landlord's eviction action was commenced in illegal retaliation against a tenant if, within the six months before the landlord's eviction action, the tenant had asserted the tenant's statutory bedbug rights.

[38] 14 M.R.S.A. § 6021-A(2)(F).
[39] 14 M.R.S.A. § 6021(3).

D. Landlord Remedies

(1) However, if the tenant fails to provide reasonable access to the unit or fails to comply with reasonable requests for treatment of bedbugs, the landlord can seek an expedited court order against the tenant:

(a) Granting the landlord access to the premises for the purposes set forth in the bedbug law;
(b) Granting the landlord the right to engage in bedbug control measures; and
(c) Requiring the tenant to comply with specified bedbug control measures or assessing the tenant with costs and damages related to the tenant's noncompliance.

(2) When seeking access to the unit the landlord must give the tenant at least 24 hours notice.

§ 14. 7. Right To Hearing Before Eviction

Generally speaking, there is little a tenant can do to stop the landlord from eventually forcing the tenant to leave the apartment or house. If a tenant refuses to leave after receiving from the landlord a notice to quit, then the landlord's only remedy is to file a forcible entry and detainer action (FED) in District Court and give the tenant an opportunity for a court hearing. Only the court can order that a tenant be forcibly evicted and only a law enforcement officer can enforce the court's eviction order.

If you are a tenant at will, that is someone who does not have a written lease, the landlord can evict you with thirty days written notice.[40] If you do have a lease, he cannot evict you until the lease expires, unless you have broken a significant lease term and the lease itself states that violation of that term is a breach of the lease.[41]

In most situations, if you do not have a *written lease* (*e.g.*, you pay week to week or month to month), the landlord must give you a full thirty-day written notice before requiring you to leave the apartment. A seven-day written notice[42] may be used only for one of the following reasons:

A. You have caused substantial damage to the apartment;

B. You have committed a "nuisance" or crime on the premises; or

C. You are seven days or more behind in rent.

The landlords must give you specific written notice, listing the reasons why he is evicting you without a full thirty-day notice. If you are up-to-date on your rent payments, the thirty-day notice "must expire on or after the date through which the rent has been paid." If the reason for the eviction is that you are seven days or more behind in rent, then the notice must state the amount of rent owed and that if the tenant pays the rent owed within seven days after he has received the notice, he will not have to leave. Remember that if *you* have to leave the apartment and you do not have a written lease, you in

[40] 14 M.R.S.A. § 6002. *See Homestead Enterprises v. Johnson Products, Inc.*, 540 A.2d 471 (Me. 1988) (upon expiration of written lease the tenant becomes a tenant at will and subject to a 30-day eviction notice).
[41] *MacKerron v. MacKerron*, 571 A.2d 810 (Me.1990); *see also Rubin v. Josephson*, 478 A.2d 665, 669-70 (Me. 1984) (Provision in lease that upon expiration or termination of lease tenant would deliver premises and be responsible for damage caused by animals did not terminate lease upon nonpayment of rent).
[42] 14 M.R.S.A. § 6002(1).

turn must give the landlord a full thirty-day written notice, from the day your rent is due, of your intention to leave. If you do not, then the landlord may keep your security deposit for unpaid rent (*e.g*., if you only gave him fourteen days notice, then he may take from your security deposit an amount equal to two weeks worth of rent).

In general, if there is no written lease, a landlord can decide to evict you for no reason at all as long as he gives you at least thirty days notice.[43] This notice must expire on or after the date through which the rent has been paid. However, if you are living in federally subsidized housing (*e.g.*, Section 8 Housing), you must be given a written lease and it is likely you cannot be evicted unless the landlord has "good cause" or unless the landlord can prove that you broke the lease. Call the Maine State Housing Authority (1-800-452-4668) to learn more about subsidized housing rights.

Still, Maine law does provide tenants limited protection against unfair and unreasonable evictions. Whether the tenant has a written lease or a verbal agreement (month to month tenancy), the tenant cannot be forcibly thrown out of a rental unit without first receiving a written "Notice To Quit" and a court order. No landlord has the right to break into the tenant's home, move the tenant's belongings, lock the tenant out of the home or turn off the heat or utilities. Law enforcement officers (*i.e*., the local police or the county sheriff) are the only persons who can legally remove the tenant and the tenant's property and then only after (A) a District Court hearing has been held and the tenant has had a chance to be heard in that court hearing; and (B) a court judgment, specifying an eviction date, has been awarded to the landlord.[44]

Once the tenant receives the eviction notice, the tenant has the right to a court hearing. Sometime after the expiration of the written "Notice To Quit" and at least seven days before the eviction hearing, the tenant will receive a *summons* from a deputy sheriff to appear in District Court for the hearing.[45] At this hearing the tenant can raise the affirmative defense that the landlord failed to provide a "reasonable accommodation" and that this led to the tenant conduct that resulted in eviction (e.g., tenant's failure to pay rent).[46]

Once the tenant receives this summons, the tenant should seek legal advice immediately. The eviction hearing is generally referred to as a "forcible entry and detainer action" (FED). The hearing is scheduled one or two weeks after the tenant was served with the summons and the landlord files the FED complaint. It is at this hearing that the tenant will receive the only chance to disprove the landlord's claim of breach of lease (*e.g.*, unpaid rent, damage to the apartment, etc.) as stated in the seven-day notice. If the landlord is successful, the court can enter a Writ of Possession seven days after judgment.[47]

When a landlord evicts a tenant, the Court's eviction order will include any guests of the tenant (e.g., a couch surfer). Only residents who pay rent to the landlord are considered tenants.[48] Guests lose the right to stay in the apartment when the landlord lawfully evicts the tenant.

The court may, at any time, require the landlord and tenant to mediate their dispute. The court can refer the eviction to the Court Alternative Dispute Resolution Service and if the court finds the

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[43] A 30 day termination notice can be combined with a 7 day termination notice. 14 M.R.S.A. § 6002.

[44] 14 M.R.S.A.§§ 6003-6005; M.R. Civ. P. 80 D (b); *see Hailu v. Simonds*, 784 A. 2d 1, 4 (Me. 2001) (landlord who padlocked door committed illegal eviction and was responsible for damages due to pain, suffering and emotional distress suffered by tenant).

[45] 14 M.R.S.A. §§ 6001-6016.

[46] 14 M.R.S.A. § 6001(5).

[47] 14 M.R.S.A. §6005.

[48] 14 M.R.S.A. § 1601(1). In such cases the landlord's court action should specifically include "all other occupants."

landlord did not make a good faith effort to mediate then the court can dismiss the landlord's eviction action and impose other penalties.[49]

If the reason you are being evicted is failure to pay your rent you can stop the eviction process by paying all back rent and the landlord's court filing fees and service of process fees.[50] If the tenant files bankruptcy, then the eviction, no matter what stage it is at—notice to quit or writ of possession or any point in between—is immediately "stayed" and the eviction is ceased. The matter is now in the Bankruptcy Court.

If it can be shown that a thirty-day notice was not issued at least thirty days before the rent was due, the Notice To Quit will be found improper and the landlord will have to start the eviction process all over. Another tenant defense is that the apartment was uninhabitable and that the landlord breached the warranty of habitability.[51]

The court's decision can be appealed to Superior Court on a question of law. The tenant may also have the right to a new trial (trial de novo) with a jury.[52]

Once the court has reached a decision, either side has ten working days to appeal the decision. After the time for the appeal ends, if the decision favors the landlord, the court will issue a "Writ of Possession" giving the local police or the sheriff the power to remove the tenant from the property. This generally means that the tenant will not be evicted for at least a week after the hearing. However, if the court is convinced that a severe hardship will arise from the immediate issuance of the "Writ of Possession," the court might decide the Writ should not issue for a somewhat longer period of time. If a tenant fails to leave the residence within 48 hours after being served with the Writ of Possession then the tenant becomes a trespasser and the tenant's goods are considered abandoned property.[53]

§ 14. 8. Forcible Or Retaliatory Evictions Are Illegal

Maine law specifically prohibits illegal evictions.[54] Illegal evictions include, but are not limited to, the following:

A. The landlord interrupts your vital utilities (heat, lights, etc.);

B. The landlord does not allow you access to your apartment;[55]

C. The landlord seizes your property.

D. The landlord is discriminating because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status.[56]

"Retaliatory evictions" are also illegal. If your landlord tries to evict you from your home within six months after you have filed a complaint with a housing official about an unsafe or unfit condition, the law presumes that the landlord is evicting you because you complained to the housing official. This

[49] 14 M.R.S.A. §6004-A.
[50] 14 M.R.S.A. § 6002(1-2).
[51] 14 M.R.S.A. § 6002(3).
[52] 14 M.R.S.A. § 6008.
[53] 14 M.R.S.A. § 6005.
[54] 14 M.R.S.A. § 6014.
[55] *See Hailu v. Simonds*, 784 A. 2d 1 (Me. 2001) (illegal eviction to padlock door).
[56] *See* 5 M.R.S.A. §4581. Such discrimination can be an affirmative defense to a landlord's eviction action. *See* 14 M.R.S.A. §6001, Subsection 5 (effective 7/12/2010).

is called a "retaliatory eviction."[57] The same holds true if you have filed a complaint in court asserting that the landlord has breached the implied warranty of habitability within 6 months of the time the landlord tries to evict you. The presumption of retaliatory eviction may also apply if you are a member of a tenant's organization.

Upon finding that an illegal eviction has occurred, the court can order the landlord to pay the tenant his damages, expenses, and reasonable attorneys' fees.[58]

Can a landlord ask the police to issue a criminal trespass against someone in an apartment? Not if that person is a tenant or a guest of the tenant. But if the tenant is lawfully evicted, then the guest must leave also. If a tenant sub-leases the apartment but then decides that the sub-leasee should leave, the tenant must go to court and obtain an FED court order.

Remember, if a landlord treats you so unfairly as to violate the Maine Unfair Trade Practices Act, you may very well be able to seek an injunction against his practices and also have him pay your attorney fees.[59]

§ 14. 9. Notice Of Rent Increase Must Be Given

When the lease is unwritten (a tenancy at will), the landlord can increase the rent only after providing the tenant at least a full forty-five days written notice. A written or oral waiver of this requirement is against public policy and is void. A tenant can sue in court and win back money incorrectly collected by the landlord, with interest, and his reasonable attorney's fees.[60] If the lease is in writing, then any rent increase can only begin after the lease term expires.

§ 14. 10. Rent Increase Limits

Normally, a landlord can charge whatever he wishes for rent. While it is possible that a rent increase may be so extreme as to violate the "profiteering in rents" law,[61] the new rent being charged would have to be completely out of line with comparable rentals. Landlords cannot increase rents for apartments that are in violation of the warranty of habitability. Again, tenants can sue for the return of their money and their attorneys' fees.[62] A landlord is prohibited from charging more than a 4% penalty for a late rental payment.[63] By statute, rent is not "late" until 15 days after its due date.

§ 14. 11. Abandoned Property

Property is considered abandoned if it is left on the premises after the tenant has vacated or

[57] 14 M.R.S.A. § 6001(3); *see Perrault V. Parker*, 490 A.2d203(1985) (eviction not illegal because the landlord rebutted presumption of retaliation by establishing a non-retaliatory motive for eviction).
[58] 10 M.R.S.A. § 6014(2); *see Dennis v. Bickford,* AP-98-17 (Me. Super. Ct. Kenn. Cty., March 19, 1999) (breach by landlord of implied warranty of habitability resulted in an illegal constructive eviction and plaintiff entitled to reimbursement of rent in excess of fair market value and attorney fees).
[59] 5 M.R.S.A. §§ 207,213; *see e.g.,Moore V. Porter*, 569 A.2d 603 (Me. 1990) (tenant who had been illegally evicted waived her right to attorney fees when she did not present evidence of her legal expenses at trial); *Leardi v. Brown,* 474 N.E.2d 1094 (Mass.1985).
[60] 14 M.R.S.A. § 6015.
[61] 10 M.R.S.A. § 1106.
[62] 14 M.R.S.A. § 6016.
[63] 14 M.R.S.A. § 6028.

terminated and has not been claimed within fourteen days after written notice (first class mail with proof of mailing) has been sent to the tenant's last known address.[64] Here are the specific steps a landlord must take:

A. Place the property in a safe, dry, secure location;

B. Send an itemized listing of the property to the tenant and say it will be disposed after 14 days if the tenant does not respond.

C. If the tenant claims the property within 7 days after the date of the notice was sent, the landlord must release the property and cannot require the tenant to first pay any money the tenant still owes to the landlord.

D. The tenant must retrieve the property by 14 days after the notice was sent. If not, the landlord can:

    1. before releasing the property require the tenant to pay any money still owed (e.g., unpaid rent);

    2. Sell the property for a fair price and use the proceeds to pay any money still owed and send the remaining balance to the Secretary of State as abandoned property.

§ 14. 12. Landlord's Access To Your Dwelling

Except in the case of emergency or if it is impractical to do so, the landlord should give the tenant reasonable notice of an intent to enter and shall enter only at reasonable times. Twenty-four (24) hours is presumed to be reasonable notice. The landlord is allowed to enter the rental unit in order to make necessary repairs, alterations or improvements. If the landlord makes an illegal or unauthorized entry which has the effect of harassing the tenant, the tenant can recover actual damages or $100 whichever is greater, obtain an injunction, and his reasonable attorneys' fees.[65]

§ 14. 13. Landlord's Refusal To Pay For Utilities

If a landlord fails to pay for a utility service which is in the name of the landlord, then the tenant, in accordance with 35-A M.R.S.A. §706, can pay for the utility service and deduct the amount paid from the rent due the landlord.[66]

In general, landlords cannot unfairly charge tenants for the use of utilities. A single tenant in a multi-unit apartment building cannot be required to pay for electricity to the common areas of the building (*e.g.*, hallways, stairwells, attics, basements, etc.). This right can be waived if the tenant agrees *in writing* to pay for this electricity in return for a specific reduction in rent. Penalties include

[64] 14 M.R.S.A. § 6013,
[65] 14 M.R.S.A. § 6025.
[66] 14 M.R.S.A. § 6024-A (effective 7/12/2010).

damages or $100, whichever is greater, and attorney fees.[67]

If the lease requires the tenant to pay utility costs, the tenant has the right to obtain from the energy supplier the amount of energy consumption and the cost of that consumption for the prior 12 month period.[68]

§ 14. 14. Leaving Early: When A Tenant Breaks The Lease

If a tenant unjustifiably moves from the premises prior to the end of the written lease or, if the lease is verbal, without giving a full 30 days notice, and defaults in payment of rent, or if the tenant is removed pursuant to a forcible entry and detainer action for failure to pay rent or any other breach of a lease, the landlord may recover back rent and damages except amounts which he could reasonably have avoided[69] (*e.g.*, by renting out the apartment to a new tenant). Back rent and damages are not available if the landlord expressly agreed to accept a surrender of the apartment and end the tenant's liability.[70] Remember, if you have a *verbal* lease you must give the landlord a full 30 days' notice in writing from the day the rent is due before leaving the apartment.[71] If you have a *written* lease you have agreed to pay for the apartment until the end of the lease, unless you and the landlord jointly agree to modify the lease. . Also, you may not be responsible for future unpaid rent if the landlord immediately re-rents your apartment. *See* section 14(G) in this chapter.

§ 14. 15. When The Landlord Sells A Building Or It's Foreclosed

If you are a tenant at will and do not have a written lease, then the sale of the building can terminate your tenancy. However, the new landlord must let you live there the period for which you have paid rent and must still give you the proper "notice to quit."[72] Like any tenant, you have the right to a court hearing before you can be evicted. *See* §14.6 in this chapter, "Right to a Hearing Before Eviction." If you have a written lease, then normally you can stay until your lease expires.[73]

But what happens if the landlord fails to pay the mortgage and the building is foreclosed by the mortgagee? This question is answered by a new federal law, effective May 20, 2009:[74]

A. If you are a tenant-at-will (no lease) or if you are a month-to-month renter then the new owner must give you at least a 90 day notice to quit, or notice to vacate. If you do not leave after that 90 days then the new owner can file an eviction action in Maine District Court (*see* §14.6 in

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[67] *See* 14 M.R.S.A. §§6024, 6024-A and 35-A M.R.S.A. §§704-706.
[68] 14 M.R.S.A. §6030-C.
[69] See 14 M.R.S.A. § 6010-A, Landlord's duty to mitigate.
[70] 14 M.R.S.A. § 6010-A.
[71] 14 M.R.S.A. § 6002. However, you and the landlord can waive in writing this 30 day notice requirement.
[72] If you do not have a lease you become a "tenant at sufferance" when the title passes to the new landlord. This means the landlord can serve you with a "notice to quit" within 7 days after the title passes. If the new landlord waits longer than 7 days, then you are a "tenant at will" and are entitled to a 30-day notice to quit.
[73] *See State v. Fin and Feather Club*, 316 A.2d 351, 354 (Me. 1986) (a purchaser of property takes subject to any lease of which he has knowledge).
[74] See 14 M.R.S.A. §6001(1-A); Title VII of the Helping Families Save their Home Act of 2009, Public Law 111-22 (Sections 701-704). This discussion is based on Pine Tree Legal Assistance's brochure "New Federal Law Helps Renters in Foreclosure."

this chapter).

B. If you are a tenant with a longer lease then you should be able to stay in your residence until the lease expires. But if the new owner wants to live in your apartment then you only have a right to a 90 day notice to quit, followed by an eviction action if you have not left by that date.

C. What happens if you commit an act that Maine law makes a reason for eviction (e.g., you fail to pay your rent; you damage the property; you violate the provisions of your lease)? Then the landlord may be able to evict you without waiting 90 days or the end of your lease.

In March 2010 the New England Consumer Advisory Group published the following good advice for tenants whose building has been foreclosed on:

A. Under Maine law, tenants must be notified of pending foreclosures of their rental buildings.

B. Be sure that you are paying rent to the right party. Before the foreclosure process is completed, pay rent to the current landlord, unless ordered otherwise by a court. Once the building is foreclosed upon, pay the new landlord (which could be a bank, a private company or an individual). If you don't know who the new landlord is, contact the registry of deeds or the tax assessor's office.

C. If the new landlord does not accept your payment, keep written record of his refusal (and any other correspondence), and put the money in a separate account for proof of your attempt to pay.

D. Remember! You must continue to pay your rent. Otherwise, you may not be covered by the legal protections mentioned above, and your new landlord could legally evict you for your failure to pay rent.

E. If your new landlord offers you cash to get you to move out early, you should consider the following:

(1) You are not obligated to accept what is known as a "cash for keys" offer.

(2) Before you accept such an offer, determine whether you have an affordable place to live, enough time to move, and whether the money offered will cover incidentals such as basic moving expenses, security deposits, 2 months of rent at the new place, and wages lost for moving time.

§ 14. 16. Unfair Rental Contracts

No matter what lease a tenant signs there are certain tenant rights that cannot be waived,[75] no matter what the lease says:

A. The landlord cannot charge a tenant for the months remaining on the lease after the tenant is evicted or leaves unless the landlord makes a good faith effort to re-rent the residence. *See* 14 M.R.S.A. § 6010-A.

B. Late fees may not exceed 4% of one month's rent. *See* 14 M.R.S.A. § 6028 and discussion above in § 14.9.

C. Security deposit rights are the same for all tenants, whether there is a written lease or not. *See* 14 M.R.S.A. §§ 6031-6038 and the discussion above in § 14.3. Please note: This law

[75] 14 M.R.S.A. § 6030.

does *not* apply to a residence which is part of a building of no more than 5 dwellings, one of which is occupied by the owner.

D. Landlords cannot unfairly charge tenants for utilities. *See* 14 M.R.S.A. §§ 6024, 6024-A and 35-A M.R.S.A. §§ 704-706 and the discussion above in § 14.13.

E. Landlords cannot disclaim the Maine Warranty of Habitability unless the lease specifically charges a lower rent in return for unsafe conditions. *See* 14 M.R.S.A. § 6021 and the discussion above in § 14.5.

F. Tenants have the right to repair serious problems and deduct the cost (up to $250 or one half of the monthly rent) from the rent. This law does not apply to owner-occupied buildings with 5 or fewer units. *See* 14 M.R.S.A. § 6026(2) and the discussion above in § 14.5.

G. Landlords cannot unreasonably enter the tenant's residence. *See* 14 M.R.S.A. § 6025 and the discussion above in § 14.11.

H. Landlords can terminate the lease and evict a tenant for a substantial breach of the lease, but they cannot forcibly eject the tenant (*e.g.*, by changing the locks or removing furniture). Only a law enforcement officer can force the tenant to leave and only after a court hearing in which the court orders eviction. *See* 14 M.R.S.A. §§ 6001-6016 and the discussion above in § 14.6.

I. Landlords must handle tenant-abandoned property in accordance with Maine laws. *See* 14 M.R.S.A. § 6013 and the discussion above in § 14.10.

J. The landlord cannot evict a tenant in retaliation for complaining about living conditions or joining a tenant's organization. *See* 14 M.R.S.A. § 6001 and discussion above in § 14.7.

K. Landlords cannot unfairly discriminate against tenants. *See* discussion above in § 14.4.

L. Landlords violate the Maine Unfair Trade Practices Act (5 M.R.S.A. § 207) if they use lease provisions that have the effect of waiving a tenant's statutory rights. *See* 14 M.R.S.A. § 6030(1). Further, the Maine Legislature has specifically declared (14 M.R.S.A. § 6030(2)) that the following lease provisions are unenforceable and violations of the Maine Unfair Trade Practices Act:

(1) Any provision that absolves the landlord from liability for the negligence of the landlord or the landlord's agent;

(2) Any provision that requires the tenant to pay the landlord's legal fees in enforcing the rental agreement;

(3) Any provision that requires the tenant to give a lien upon the tenant's property for the amount of any rent or other sums due the landlord; and

(4) Any provision that requires the tenant to acknowledge that the provisions of the rental agreement, including tenant rules, are fair and reasonable.

M. Landlords must make certain disclosures concerning lead paint. See Chapter 16, Attorney General's Model Landlord-Tenant Lease, §§16.2 and 16.3.

N. Landlords must disclose in writing the landlord's policy as to smoking on the premises.[76]

The Attorney General, at the direction of the Maine Legislature, has published a Model Lease for Maine landlords and tenants. *See* Chapter 16 of this Guide for a copy of this model lease.

§ 14. 17. Hotels, Motels, Boarding Houses

Persons staying at hotels or motels or boarding houses or other short-term residencies (e.g., a campground), have significantly fewer rights than tenants. The owner can refuse accommodations or eject the lodger for failure to pay, dangerous firearms, disturbing other guests, possessing illegal drugs or violating any rules that have been posted in a prominent place and each guest room.[77]

The statute defining hotels, boarding houses and inns describes their attributes. For example, they must post in every bedroom the maximum daily rates for that room.[78] However, a recent court decision concluded that even if the rental has some of these attributes it may on balance be an apartment and subject to the landlord-tenant laws.[79]

Nor do people renting summer cottages have the same rights as tenants. Such short rents usually create a "license" instead of a lease. However, the rentor could have a higher "duty of care" toward any guests.[80]

§ 14. 18. Landlord Smoking Policies

Landlords can certainly ban smoking on the premises. Further, there is an argument that a building's common areas must be smoke free, due to Maine's Public Place Smoking Law.[81]

Landlords must provide tenants with a written smoking policy concerning smoking on the premises. This notice must identify the areas on the premises where smoking is allowed, if any.[82]

§ 14. 19. Selected Statutes

A. 14 M.R.S.A. § 6002, Eviction of Tenants With Verbal Leases (Tenancies at Will); Breach of Warranty of Habitability

Tenancies at will must be terminated by either party by a minimum of 30 days' notice, except as provided in subsection 1, in writing for that purpose given to the other party, but if the landlord or the landlord's agent has made at least 3 good faith efforts to serve the tenant, that service may be accomplished by both mailing the notice by first class mail to the tenants last known address and by leaving the notice at the tenant's last and usual place of abode. In cases when the tenant has

[76] 14 M.R.S.A. §6030-E(2); 33 M.R.S.A. §§ 1604-119.
[77] 30-A M.R.S.A. §3838. *See Dorothy Hailu, et al. v. Gordon D. Simonds, Trustee,* 784 A.2d 1 (Me. 2001).
[78] 30-A M.R.S.A. §3802.
[79] *See Dagenhardt v. EWE Limited Partnership*, 211 ME 23 (arrangement with resident more clearly resembled a lease for an apartment than a room in a boarding house and landlord was required to evict by a forcible entry and detainer action).
[80] *Morton & Furbush Agency*, 929 A.2d 471, 474 (Me. 2007).
[81] 22 M.R.S.A. § 1542.
[82] *See* 14 M.R.S.A. § 6030-E.

paid rent through the date when a 30-day notice would expire, the notice must expire on or after the date through which the rent has been paid. Either party may waive in writing the 30 days' notice at the time the notice is given, and at no other time prior to the giving of the notice. A termination based on a 30-day notice is not affected by the receipt of money, whether previously owed or for current use and occupation, until the date a writ of possession is issued against the tenant, during the period of actual occupancy after receipt of the notice. When the tenancy is terminated, the tenant is liable to the process of forcible entry and detainer without further notice and without proof of any relation of landlord and tenant unless the tenant has paid, after service of the notice, rent that accrued after the termination of the tenancy. These provisions apply to tenancies of buildings erected on land of another party. Termination of the tenancy is deemed to occur at the expiration of the time fixed in the notice. A 30-day notice under this paragraph and a 7-day notice under subsection 2 may be combined in one notice to the tenant.

1. *Causes for 7-day notice of termination of tenancy*. Notwithstanding any other provisions of this chapter, the tenancy may be terminated upon 7 days' written notice in the event that the landlord can show, by affirmative proof, that:

   A. The tenant, the tenant's family or an invitee of the tenant has caused substantial damage to the demised premises that the tenant has not repaired or caused to be repaired before giving of the notice provided in this subsection; [2009, c. 171, §2]

   B. The tenant, the tenant's family or an invitee of the tenant caused or permitted a nuisance within the premises, has caused or permitted an invitee to cause the dwelling unit to become unfit for human habitation or has violated or permitted a violation of the law regarding the tenancy; or

   C. The tenant is 7days or more in arrears in the payment of rent. [2009, c. 171, §2]

   If a tenant who is 7 days or more in arrears in the payment of rent pays the full amount of rent due before the expiration of the 7-day notice in writing, that notice is void. Thereafter, in all residential tenancies at will, if the tenant pays all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually expended by the landlord before the issuance of the write of possession as provided by section 6005, then the tenancy must be reinstated and no writ of possession may issue.

   In the event that the landlord or the landlord's agent has made at least 3 good faith efforts to personally serve the tenant in-hand, that service may be accomplished by both mailing the notice by first class mail to the tenant's last known address and by leaving the notice at the tenant's last known address and by leaving the notice at the tenant's last and usual place of abode.

   Payment or written assurance of payment through the general assistance program, as authorized by the State or a municipality pursuant to Title 22, chapter 1161, has the same effect as payment in cash.

2. *Ground for termination of notice.* A notice of termination issued pursuant to subsection 1 must indicate the specific ground claimed for issuing the notice.

   A. If a ground claimed is rent arrearage of 7 days or more, the notice must also

include a statement:

(1) Indicating the amount of rent that is 7 days or more in arrears as of the date of the notice; and

(2) Setting forth the following notice; "If you pay the amount of rent due as of the date of this notice before this notice expires, then the notice as it applies to rent arrearage is void. After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated." [2009, C. 171, §3 (NEW) .]

B. If the notice states an incorrect rent arrearage or contains any other clerical errors that do not significantly or materially alter the purpose or understanding of the notice, the notice cannot be held invalid if the landlord can show the error was unintentional.

3. *Breach of warranty of habitability as an affirmative defense.* In an action brought by a landlord to terminate a rental agreement on the ground that the tenant is in arrears in the payment of rent, the tenant may raise as a defense any alleged violation of the implied warranty and covenant of habitability, provided that the landlord or the landlord's agent has received actual or constructive notice of the alleged violation, and has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition and the condition was not caused by the tenant or another person acting under the tenant's control. Upon finding that the dwelling unit is not fit for human habitation, the court shall permit the tenant either to terminate the rental agreement, without prejudice or to reaffirm the rental agreement, with the court assessing against the tenant an amount equal to the reduced fair rental value of the property for the period during which rent is owed. The reduced amount of rent thus owed must be paid on a pro rata basis, unless the parties agree otherwise, and payments become due at the same intervals as rent for the current rental period. The landlord may not charge the tenant for the full rental value of the property until such time as it is fit for human habitation.

B. 14 M.R.S.A. § 6014, Tenant Remedies For Illegal Evictions

1. *Illegal evictions.* Evictions which are effected without resort to the provisions of this chapter are illegal and against public policy. Illegal evictions include, but are not limited to, the following:

A. No landlord may willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant including, but not limited to, water, heat, light, electricity, gas, telephone, sewerage, elevator or refrigeration, whether or not the utility service is under control of the landlord, except for such temporary interruption as may be necessary while actual repairs are in process or during temporary emergencies.

B. No landlord may willfully seize, hold or otherwise directly or indirectly deny a tenant access to and possession of the tenant's rented or leased premises, other than through proper judicial process

C. No landlord may willfully seize, hold or otherwise directly or indirectly deny a

tenant access to and possession of the tenant's property, other than by proper judicial process.

2. *Remedies*. Upon a finding that an illegal eviction has occurred, the court shall take one or both of the following actions:

   A. The tenant shall recover actual damages or $100, whichever is greater.

   B. The tenant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorneys' fees.

3. *Good faith*. A court may award attorneys' fees to the defendant if, upon motion and hearing, it is determined that an action filed pursuant to this section was not brought in good faith and was frivolous or intended for harassment only.

4. *Nonexclusively*. The remedies provided in this section are in addition to any other rights and remedies conferred by law.

§ 14. 20. Seeking Help

People who are in need of emergency or subsidized housing should call the social service emergency line of 211, contact their municipality for General Assistance, their local Community Action Program or the Maine State Housing Authority at 1-800-452-4668 or 207-626-4600 or 1-800-452-4603 (TTY).

Acknowledgement. The Consumer Protection Division of the Attorney General's Office is thankful for the assistance it received in the preparation of this chapter from Pine Tree Legal Assistance and its pamphlet, *The Rights of Tenants in Maine* (January 2002).

§ 14. 21. Notice Of Violation Of The Warranty Of Habitability Act

This Notice* should be delivered in hand to your landlord, or sent through the U.S. Mail, Return Receipt Requested. Please keep a copy for your records.

To: _____

The unit which I rent from you and which is located at:

_____

is subject to the provisions of the Maine Warranty of Habitability Act, 14 M.R.S.A. § 6021. According to the provisions of this law, all landlords must maintain their rental unit free from any condition which endangers or impairs the health or safety of any tenant. If you are found to have violated this law, a judge can order you to:

CORRECT THE DEFECT, AND REDUCE MY FUTURE RENTAL PAYMENTS,

AND RETURN TO ME RENT WHICH I HAVE ALREADY PAID TO YOU.

The unit which I rent from you is in violation of the Maine Warranty of Habitability Act for the following reason(s):

___ Faulty Heating System ___ Insect Infestation

___ Inadequate Heat ___ Leaking Ceiling

___ Faulty Sewage System ___ Unfit Drinking Water

___ Insufficient Hot Water or Water Pressure ___ Faulty Electrical Wiring

___ Unsafe Chimney

___ Other: _____

Comments: (Please describe the particular details of your situation; use other side if necessary.)

I hereby request that you correct the above defect(s) immediately. Please be advised that if you fail to do so, I will take appropriate legal action. Thank you.

Signed:_____ Date:_____

copy forwarded to:

Municipal Code Enforcement Officer ____ Fire Marshal ____ Other _____

* This form was originally published by Pine Tree Legal Assistance, Inc.