



Landlord Tenant

Prepared by Chris Jorgenson

Wyoming Residential Rental Property Act (W.S. §§ 1-21-1201, et seq.)

Abrogates common law landlord immunity in tort. Governs many rights, duties and remedies for landlords and tenants. *See, infra.*

Leases

Leases are rental agreements entered into between a property owner (landlord) and a renter (tenant) creating a **leasehold interest** for the tenant in certain rented property. A leasehold interest is a time-limited claim or right to occupy and use the real property owned by the landlord. Lease agreements are usually written agreements that lay out the duration of the lease and the various rights and obligations of the parties. Any agreement to lease property for **more than one (1) year** must be in writing in order to be valid (W.S. § 1-23-105 – **Statute of Frauds**). Generally, when no length of term is agreed upon, the term of the lease is determined by the interval for payment of rent. *Day v. Smith*, 30 P.2d 786 (Wyo. 1934). That is to say, that if the tenant is paying rent on a month-to-month basis, the lease term is a month-to-month lease, basically being renewed upon every payment of rent.

Leases often address the following issues:

- The length of time the lease agreement will exist
- The amount of rent the tenant is to pay for possession/use of the rental property, and the frequency by which the tenant is to pay rent
- What actions constitute default under the lease (i.e. termination of the lease)
- What actions are/are not permitted on the rental property
- Whether the tenant is allowed to have pets on the rental property
- The number of tenants allowed on the rental property
- Who will pay the utilities, and any combination thereof
- Whether the tenant is required to provide a security deposit, and whether that security deposit is refundable or nonrefundable
- Whether default of the lease by the tenant will accelerate all outstanding rents (make all rents immediately due to the landlord)
- Lead paint disclosures for homes built before 1978

When a **tenant remains** in the rental property after the **expiration of the lease term**, the tenant becomes a hold over tenant. A hold over tenant is a **tenant at sufferance**. W.S. § 34-2-

128. A tenant at sufferance is in **naked possession** of the property, and does not have an estate in the property giving them rights in the property. *McNamara v. O'Brien*, 2 Wyo. 447 (1881). A tenant at sufferance is in possession of the property merely by the owner's permission or indulgence, and is liable to be **evicted at any time**. *Id.*

Acceptance of rent by the owner from a hold over tenant will only create a tenancy at sufferance, and does not renew the original lease term (W.S. §§ 34-2-128 and 34-2-129).

An owner **must disclose** to a tenant at the beginning of the lease term, in writing, if a security **deposit is nonrefundable** (W.S. § 1-21-1207).

A lease protects both the landlord and the tenant.

Rental Property owners' duties (W.S. §§ 1-21-1202 and 1-21-1203)

Rental property owners must maintain their rental properties in a **safe** and **sanitary** condition (**fit for human habitation**). That includes functioning electrical, heating and plumbing with hot and cold running water (season rentals excepted, if appropriate for the season). The renter has a duty to maintain the rental property in accordance with these conditions, ordinary wear and tear excepted.

Renter's duties (W.S. § 1-21-1204)

A renter is required to do the following:

- Maintain the residential unit in a clean and safe condition, and keep the common areas the same;
- Safely and cleanly dispose of all garbage and waste;
- Keep the plumbing fixtures in as clean a condition as possible;
- Use electrical, plumbing, sanitary, heating and other facilities and appliances in a reasonable manner;
- Not add unauthorized tenants, and inhabit the rental in the manner for which it was designed;
- Be current on all payments required by the lease;
- Comply with all lawful lease terms;
- Remove all property and waste at the end of the lease term, and clean the rental to the condition it was in at the beginning.

A renter **may not** do the following (W.S. § 1-21-1205):

- Intentionally or negligently destroy, deface, damage impair or remove any part of the rental, or let anyone else do it;
- Interfere with another’s peaceful enjoyment of the rental property;
- Unreasonably deny access to, refuse entry to or withhold consent to enter the rental by the owner or agent in order to repair or inspect the unit, or showing the unit for rent or sale.

Remedies available to tenants

A tenant must be **current on rent** and any other payments **before seeking repairs** or alterations to the rental property by the landlord to bring the property up to habitable conditions (W.S. § 1-21-1203). There must also be a **reasonable cause** supported by evidence that the premises do not meet habitable conditions. The tenant must provide **written notice** to the landlord, detailing the problems and the remedial action sought, **served** by certified mail or by a neutral process server in person or with someone over fourteen (14) years of age or older at the landlord’s residence or place of work – should in person service not be available. Within a **reasonable time after receipt of the notice**, the landlord will either commence **repair or notify** the tenant that repair will **not be performed**. The owner may refuse to repair and terminate the lease if the cost of repairs is greater than reasonable in light of rent charged. The owner must provide the tenant reasonable written notice of the lease termination. In that case, the tenant has between ten (10) and twenty (20) days to find a new place to live.

If the tenant has served notice of the needed repairs on the owner and the owner has failed to respond or correct the condition, the tenant must serve a **Notice to Repair or Correct Condition** on the owner in order to move forward with remedying the situation (W.S. § 1-21-1206). The Notice to Repair or Correct Condition must be **served** by registered mail, leaving a copy with the owner, or leaving a copy at the owner’s usual place of abode or business if the owner cannot be found. The Notice to Repair or Correct Condition **must include**:

- Reference and recite the previous notice of needed repair served on the owner
- State the number of days that have passed since the last notice was served and that under the circumstances such amount of time constitutes ‘reasonable time.’
- State the conditions included in the previous notice which have not been corrected
- Demand that the uncorrected conditions be corrected
- State that unless reasonable corrective action is started within three (3) days, the tenant will seek court intervention

Absent efforts to correct the condition after notice is received, the tenant may commence an **action in circuit court**. The court shall endorse on the summons the number of days which the

owner is required to appear, which shall **not be less than three (3) nor more than (20) days** from the date of service. As such, the tenant will need to obtain a trial setting before drafting the summons, and include that date in the summons (much like in a forcible entry and detainer action, *see infra*). At trial, the tenant must show an **unreasonable refusal to correct** or a **failure to use due diligence** to correct the described condition. Monetary damages and affirmative relief are available to the tenant.

After termination of the lease agreement

As noted above, upon termination of the lease term, the tenant has the duty to remove any personal property and waste, and to clean the property to the state it was in at the beginning of the lease term.

The landlord must **return the security deposit** to the tenant within **thirty (30) days** of the termination of the lease or within fifteen (15) days from receipt of the tenant's new mailing address, whichever is later. The owner may apply any security deposit to the payment of accrued rent, damages to the property beyond reasonable wear and tear, the cost to clean the property to the condition at the beginning of the lease term, or other costs agreed to in the lease (W.S. § 1-21-1208). If the owner intends to **withhold** all or a portion of the **security deposit**, the owner must submit a **written itemization of any deductions** from the deposit, together with the reasons for the deductions, within **thirty (30) days** of the termination of the lease or within fifteen (15) days from receipt of the tenant's new mailing address, whichever is later. Any remaining balance of the security deposit must accompany the itemization. The tenant has the obligation of notifying the owner of the address to mail the security deposit within thirty (30) days following the termination of the lease.

Any monies held for and specifically identified as **utility deposits** must be refunded within ten (10) days of proof that all utilities on the property have been paid. Absent such a showing within forty-five (45) days of lease termination, the owner must apply the utility deposit to the outstanding utilities within fifteen (15) days. Any remaining amount must be returned to the tenant.

FORCIBLE ENTRY AND DETAINER

What is forcible entry and detainer?

Forcible entry and detainer is the process in Wyoming by which a tenant is **evicted** from a rental property. Forcible entry and detainer actions are brought by property owners, landlords, and/or management companies against tenants who have failed to pay rent or violated lawful lease terms; or against defendants who occupy real property without a legal right to do so. Eviction in Wyoming is a statutorily driven process, and the procedures laid out in Wyoming statute must be substantially complied with in order for an eviction to occur. **Without substantial statutory compliance, courts lack jurisdiction to hear eviction proceedings.** *White v. Veitch*, 401 P. 983 (Wyo. 1921).

When eviction is allowed? (W.S. § 1-21-1002)

A forcible entry and detainer action is permitted in the following statutorily prescribed situations:

- Against a hold-over tenant after their lease term has expired;
- Against a tenant who has failed to pay rent for three (3) days after it is due;
- Against a judgment debtor in possession of real property at the time of a foreclosure sale, or other legal sale, of said property;
- Against a settler or occupier of lands, without color of title, brought by someone with a right of possession;
- Against residential renters in violation of statutorily prescribed renter's duties (*see* W.S. §§ 1-21-1204 and 1-21-1205).

Procedural steps for forcible entry and detainer (W.S. § 1-21-1003, et seq)

The party bringing a forcible entry and detainer action must substantially comply with the statutory procedure.

- The action is commenced by notifying the adverse party to leave the premises at issue: Notice to Quit. The notice must be provided at least three (3) days before filing the complaint for forcible entry and detainer. (W.S. § 1-21-1003). The Notice to Quit must be in writing and given to the defendant, or left at his usual place of abode or business if he cannot be found. Best practice is to have a neutral process server serve the Notice to Quit, and to have an affidavit of service prepared to help establish jurisdiction.
- Once the complaint is filed, a copy of the complaint must be served upon the defendant in accordance with the Wyoming Rules of Civil Procedure. (W.S. § 1-21-1004). A summons must accompany the complaint. A summons in a forcible entry and detainer action is different than the normally issued summons in a civil action. This type of summons must list the time and place of trial (you must get a trial setting before you

prepare and serve the summons). The trial must occur not less than three (3) and not more than twelve (12) days after service of the summons and complaint.

Whether or not the defendant appears, the **plaintiff must still prove its case to the court.** (W.S. § 1-21-1005).

Continuances of more than two (2) days require the posting of a bond with the court. (W.S. § 1-21-1007).

The parties to the action have a **right to a jury trial.** (W.S. § 1-21-1008).

The **available judgment** in a forcible entry and detainer case is **restitution of the property** (vacating the property) and **costs**. If rent is due, judgment may include **past due rental amounts** (calculated at the time of the hearing) and any other late fees contained in the lease agreement which clearly are considered as additional rental monies in the lease agreement. (W.S. § 1-21-1008).

Upon a judgment in favor of the plaintiff, a **Writ of Restitution** is issued and executed on the defendant by the sheriff within two (2) days of the trial, thereby restoring the plaintiff to the premises. (W.S. §§ 1-21-1012 and 1-21-1013).

The plaintiff should **notify the defendant** of any **personal property remaining** in the **premises** after removal of the tenant. Such written notice should describe the property that is going to be deemed abandoned and notify the prior tenant that the property will be **disposed of after seven (7) days** from the date of the notice, unless the plaintiff hears from the ex-tenant within that time. The notice must be served in accordance with statute (*see* W.S. § 1-21-1210). If the **ex-tenant provides written response** of their intent to reclaim the property within those seven (7) days, the ex-tenant has an **additional fifteen (15) days** to remove the property, after which the property is conclusively deemed abandoned.