

tenant rights

options available to resolve complaints



contact the landlord (legal owner) of the property,

—if the landlord refuses to correct the situation, file the matter in small claims court (if \$500 or under) or in municipal court (if over \$500).

Lancaster County Municipal Court has an instruction list on filing claims in small claims court. The list is available in the court clerk's office in the County-City Building, 555 South 10th St.

The small claims court operates informally. No attorneys are present as each side (the tenant and landlord in the example) presents his case to the judge. (If a jury or lawyers representation is desired, the claim should be filed in municipal court, which requires an \$8 filing fee.)

The judge asks most of the questions, although the plaintiff and defendant may cross examine the other's witnesses.

The procedure to bring a case to small claims court includes completing a one-page complaint form, charging that the defendant (the landlord, if a tenant, files the complaint) pay a specified amount for damages. A \$3 filing fee is required.

Both parties should arrange for witnesses, according to the clerk's office, although, if requested, the office will serve subpoenas requiring that they testify.

The clerk's office suggests that the plaintiff (party filing charges) bring receipts, cancelled checks, the lease, and other pertinent memoranda, such as repair bills to court. Witnesses may testify regarding conditions or damages, and photographs are also admissible as evidence.

The defendant may (but is not required to) make a counter claim at least two days before the court date. This means that the defendant is also bringing charges upon the plaintiff, asking for a specific amount of money or property.

Small claims court cases are appealed to Lancaster County Municipal Court.

by **brenda moskovits**

After living in an apartment for more than a year, you are moving to a bigger one. You gave the landlord thirty days notice, moved the furniture and scrubbed the place clean, but the landlord refuses to return your security deposit, claiming you and your roommate damaged the bathroom tile. The tile was damaged when you moved in. What do you do now?

You should have had the landlord sign a list of damages before moving in, says Marella Symovec, one of several authors of a soon to-be-published Nebraska University Public Interest Research Group (NUPIRG) landlord-tenant guide. Then, she said, there



could be no question as to what damages were new.

"The tenant should be aware of his legal responsibilities, she explained. The best protection is to get everything in writing. Oral agreements, although legal, are difficult to prove and defend, she said. When an oral agreement is unavoidable, Symovec suggested having a witness.

She said legitimate complaints include the following: failure of the landlord to do necessary maintenance, to make promised repairs, to comply with local safety codes or to give three

days warning before issuing an eviction notice.

Others include: refusal to return a security deposit once all conditions on the

lease are met, invasion of privacy, adding charges or raising the rent before the lease runs out, and "baiting and switching" (showing one apartment, but renting another).

In Nebraska, "breach of lease (by the landlord) is no reason for nonpayment of rent, she warned. In such cases, legal advice should be sought. Students may request help from ASUN Student Legal Services, 334 Nebraska Union, she said.

NUPIRG suggests the following steps to resolve landlord-tenant disputes:

- collect all facts, including dated receipts, leases and documents and addresses and phone numbers and organize them,
- determine who owns the property; the person who rented it may be a manager or realtor,
- attempt to reach a solution by speaking to the resident manager,
- if he/she cannot or will not help,

damage deposits source of disputes between land

by **kate gaul**

The last cardboard box had been dumped at the new apartment and now Jill paced anxiously across the bare wood floors. The landlord was scrutinizing her former home and Jill was delighting over the old memories.

She had lived in the apartment during her junior year, and here and there were the remains of a party. There was a small burn hole on the sofa where Roger had dropped his cigarette when Linda had poured a bottle of red wine over his head. Luckily the wine blended into the couch. Besides, it was an old, tattered couch her parents' dogs slept on better.

Elsewhere, there were holes in the walls, small but noticeable, where she had hung pictures. And there were a few scratches in the wood floor where her stereo had dug in its claws as she moved it.

But Jill was totally unprepared to hear that the landlord planned to withhold the entire \$100 damage deposit she had laid down in good faith of its return one year ago.

He claimed the place needed a good cleaning, new furniture and a few repairs.

Jill maintained that the place was a pit when she moved in. She had painted and been a tidy housekeeper. She said the place

was cleaner now than it ever had been.

He disagreed.

Jill said the furniture needed replacement when she moved in and she wasn't about to pay for someone else's comfort.

He demanded proof.

There was a \$100 stalemate and Jill and the landlord each claimed to be its rightful owner.

The damage deposit, as in the fictional story above, is the source of the frequent landlord-tenant disputes among students, according to Robert Lange, UNL Student Legal Services attorney.

Most students believe that too much money is withheld by their landlords. And while some students have grounds for their complaints, others don't, he said. The facts of the case are the only determinants.

But students should be aware that "some (landlords) keep it (the damage deposit) as a matter of course," Lange said.

Students should not be blackmailed into losing some or all of their damage deposits,



Lange said, and the best way to assure understanding of the terms of the damage deposit is to read the lease carefully.

According to the Landlord-Tenant Act, damage deposits cannot exceed the amount equal to one month's rent. However, if you have a pet, the damage deposit can be an additional one-fourth of the rent amount.

Lange said the damage deposit is applicable to damages the landlord receives when a tenant moves out, breaks a lease or fails adequate—one month's—

to provide notice.

In the latter case, Lange said, the landlord must use reasonable effort to find a new tenant. The landlord can keep the entire amount if the apartment goes empty. If he fills the apartment shortly, then some of the deposit should be refunded, Lange added.

Another way to clarify damage deposits is to complete a checklist, Lange said. The checklist should include the physical condi-