

## Apartment Leases

# Tenants warned to beware of oral contracts with owner

Editor's note: The following article was prepared by the University legal advisor's office. It appeared in the Battalion some months ago and is reprinted here to aid students living off campus.

For many students the new academic year marks the beginning or continuation of off-campus living. Present campus housing facilities accommodate approximately one-third of the Texas A&M University students. Thus, a large percentage of the student body resides in off-campus facilities and is confronted by a maze of legal perplexities. Although the student who is a tenant enjoys no exceptional consideration in the eyes of the law, the student-tenant does encounter unique problems.

The owners (lessors) of virtually every type of student housing in the Bryan-College Station area require some type of written document evidencing their agreement with the student-tenant. This written document is variously described as a lease, contract, rental contract or lease agreement.

### Toothful image

United Press International

Farrah Fawcett-Majors, in commissioning a personal portrait from jetset artist Richard Bernstein, who has painted the likes of Rudolf Valentino, Margo Hemmingway, Mick Jagger, Liza Minnelli and Grace Jones in his day: "I want something completely different from my public image — no teeth."

In addition, many owners require the student-tenant to sign a separate security deposit agreement. While the nomenclature of the documents is relatively unimportant, the contents are not.

"Rental contract-lease" describes that written instrument that specifies the length of occupancy, amount of monthly rent, owner obligations and tenant responsibilities.

"Security deposit agreement" will denote the written document which details the amount of security deposit, conditions for refund and procedures for refund.

It is important for the student-tenant to read and understand the contents of any document before signing it. Once a signature is affixed to the rental contract-lease the student-tenant is legally bound and obligated to the terms and conditions of the document. Full understanding of legal rights, duties and obligations can avoid future problems.

It is imperative that the student-tenant read the rental contract-lease and security deposit agreement and then ask questions about or change any clause not desired. The student-tenant should be wary of any verbal promises or commitments. Most rental contract-leases, including the Texas Apartment Association standard lease, contain a clause which recites that the writing constitutes the entire agreement between the parties, no oral agreements have been entered into, and the written agreement cannot be

modified unless the modification is in writing.

For example, an oral promise by the owner to repaint the premises, provide vacuum cleaners, build tennis courts, etc., cannot be enforced. The breach of such a promise is not adequate cause for vacating the premises in violation of the rental contract-lease, without considerable legal hassle.

The chain of managerial responsibility for rental property is confusing. Buck-passing of this responsibility is done at all levels of management. Furthermore, in the Bryan-College Station area a large percentage of the rental property is owned by out-of-town corporations.

Managers are responsible to the owners of rental property although a manager can be owner and vice versa. The term "landlord" frequently is used to describe both the manager and owner, although the Texas legislature uses "landlord" to describe only an owner. The owner is ultimately responsible to the student-tenant, with the manager acting as an agent.

Non-resident ownership aggravates the problem when a student-tenant disagrees with a policy decision made by the owner, and detailed in the rental contract-lease, or its application by the resident manager.

The law surrounding the landlord-tenant relationship is complex. Much of it is in favor of the owners of rental property.

In the tight housing market prevalent today, the student-tenant must be aware of his rights as well as his responsibilities.

# Sign leases, check rental policies to avoid owner-tenant disputes

By FLAVIA KRONE  
Battalion Campus Editor

Weeks of combing the "For Rent" ads have finally landed you the perfect apartment, duplex, house or mobile home.

So sign the lease and move on in, right? Wrong.

Signing a lease without fully understanding all of its clauses and conditions can saddle you with a set of legally binding obligations that you may not want to or cannot fulfill.

Although many area leases are similar, since many Bryan-College Station landlords use the standard Texas Apartment Association lease, no two rental agreements are exactly alike, former student attorney Eugene Lyles said.

In general, a lease is a legal contract between landlord and tenant that specifies the rent and length of time a tenant may occupy the premises to be rented. But leases also specify many other regulations and mutual agreements between landlord and tenant.

Leases can be oral or written. An oral lease is legally binding, but it may be difficult to prove any contract provisions should a landlord-tenant dispute arise, Lyles said.

Oral leases run from month to month provided the rent is paid monthly, Lyles said. However, an oral lease means the rent can be raised or the tenant evicted after 30-days notice.

To avoid the hazards inherent in an oral agreement, many students sign long-term leases. Brenda Rees, assistant student de-

velopment coordinator, warns students against signing a 12-month lease.

"Don't sign a 12-month lease if you or any roommates will not be around next summer," Rees said. "The enrollment during the summer drops way down and the chances of finding someone to sublease an apartment are slim."

The "Off-Campus Survival Manual," published by the Department of Student Affairs, contains several tips on signing leases. Before signing a lease make sure that all of the following clauses are included:

- The name and address of the manager.
- A description or address of the place rented including the equipment and furnishings of the building that you can use.
- The term of agreement with precise beginning and ending dates.
- The amount of rent, how it is to be paid, and the date it is due.
- The amount of security deposit and conditions for refund.
- Requirements for terminating the contract. (Must the entire term be fulfilled and 30-days notice given?)
- Alterations. (Can you hang pictures, build shelves, or have plants?)
- Who is responsible for maintenance and repairs? Some landlords require the tenant to pay for minor repairs.
- What kind of parking facilities are available?
- Who pays the utilities?
- What are the provisions for sub-letting?

Another important clause to look for is the "joint-and-several" clause, said Lyles. This clause makes each roommate liable for his share of the rent plus a roommate's portion if the roommate does not pay his share of the rent before the lease expires.

Lyles said that many students do not realize that they can try to change a lease before signing it. There are several common lease clauses which students may consider unacceptable, including:

- Manager or representative may enter premises at any time without notice.
  - Manager may re-let the apartment without notice.
  - Tenant is liable for attorney's fees in litigations arising from the lease contract, including defense of the landlord.
  - Tenant agrees to abide by all rules and regulations made after the lease is signed.
  - Landlord is not liable for any injury to tenant, family or guest as a result of any repairs.
  - Tenant waives any defects in the building.
  - Tenant is liable for all repairs to the premises.
- To change the lease, scratch out the unacceptable clause, making sure that both the landlord agree, and be sure that both the landlord and the tenant initial the change.
- "Any change or addition that the tenant agrees to should be placed in writing, signed, and signed," Rees said. "Even a simple change should be accompanied by a carbon-copy of work order."

### Who makes the repairs?

## Lease classifies responsibilities

Editor's note: The following article was prepared by the University student legal advisor's office and has previously appeared in the Battalion.

The air conditioner is out. The dishwasher gushes like Ol' Faithful. And the light fixture just descended upon the dining table.

Who is responsible for making these very necessary repairs? As with most problems encountered by the student-tenant the rental contract-lease holds the answer.

Many rental contract-leases utilized in the Bryan-College Station area, including the standard Texas Apartment Association (TAA) rental contract-lease, contain a clause which states that the owner will: (1) keep all common areas in a clean condition; (2) provide appropriate receptacles for garbage; (3) properly maintain hot water, heating and/or air conditioning equipment; (4) comply with all state and local laws (NOTE: this provision would include city building codes), and (5) make all reasonable repairs.

If the rental contract-lease signed by the student-tenant contains such a clause, the owner is obligated to

repair the air conditioner and light fixture. Frequently, the same clause of the rental contract-lease provides that the student-tenant may terminate the rental contract-lease under the following conditions: (a) if the owner has not attempted to make the repairs within a reasonable period of time after being requested to do so, and, (b) if the owner has not attempted to do so within one week after receiving written notice of the student-tenant's intention to terminate unless the repairs are made.

Thus, the owner has a reasonable period of time, plus one week, to make the repairs. The length of time constituting a "reasonable period of time" within which to make repairs depends on the nature of the repair, availability of necessary parts and repair personnel and the cost of the repair.

In the absence of an "owner will repair" clause the owner is not obligated to repair that portion of the premises over which he has no control, i.e. the leased premises. That is, the owner would be obligated to repair only the common areas (laundry rooms, sidewalks, parking lot, etc.).

The landlord-tenant relationship does not obligate the landlord to repair the premises leased by the student-tenant. In fact, if the rental contract-lease does not contain an "owner will repair" clause, the owner is not obligated to reimburse the student-tenant for repair expen-

ditures. Furthermore, in Texas a tenant may not withhold or decrease the amount of the rental payments while repairs are being made unless the lease so provides.

In some rental contract-leases which do not contain an express "owner will repair" clause, such a clause can be implied. This will be implied from the clause which states that the student-tenant will notify the manager of any plumbing, electrical or mechanical difficulty and the clause which provides that the owner or his agents shall have access to the leased premises to make necessary repairs. An implied "owner will repair" clause has the same legal effect as an express clause, i.e., the owner must make all reasonable repairs.

Rental contract-leases generally provide that the student-tenant will return the leased premises in good order and condition and prohibits the student-tenant from being charged for reasonable wear and tear. This provision is important with regard to liability for repair expenditures.

If a piece of furniture or equipment, device or fixture ceases to function properly under only normal use, then the owner bears the burden of repair notwithstanding the absence of an "owner will repair" clause. For instance, if the refrigerator ceases to function during the sixth month of a 12-month lease, assuming normal and reasonable use of the appliance, the owner may not

charge the student-tenant with the cost of repair or replacement.

A comment on improvements to the leased premises appears appropriate.

Suppose a student-tenant paints a room or installs bookshelves. To whom do the improvements belong?

Most rental contract-leases in general use in the Bryan-College Station area require the consent of the owner or his representative before any improvements, alterations or modifications to the leased premises can be made. The same clause further states that improvements, alterations or modifications become a part of the leased premises and will remain thereon at the termination of the student-tenant's occupancy.

Thus, in most situations the student-tenant is not entitled to move any improvements.

In summary, check the lease to determine whether the owner has the duty to repair. If an "owner will repair" clause is present, the responsibility is clear. If no such clause is not present on the lease, the responsibility is not present on the rental contract-lease. Improvements to the leased premises made by the student-tenant will become the property of the owner unless the owner consented to the improvements and agreed that the student-tenant would have the right of removal.

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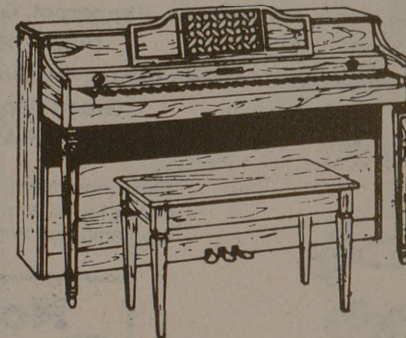
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