

# LEGAL INFORMATION FOR OFF-BASE HOUSING

## Before You Move-In

Q: Is there anything I should do before signing a rental agreement?

A: You should talk with the landlord about any required maintenance or cleaning during or at the end of the rental agreement. Under Montana law you are also entitled to know how much the landlord deducted from the prior tenant's security deposit and what for. Look to see whether these repairs were actually made. Finally, always read the entire rental agreement and ask questions if you do not understand a term. Legal assistance attorneys can help you understand the rental agreement.

Q: What should be included in my rental agreement?

A: You should always add a military clause to your contract to expand on the rights you have under the Servicemembers Civil Relief Act (SCRA). Do not assume a military clause exists in the contract until you see or add it! The JAG handouts on military clauses and SCRA can provide more information.

In addition, before you sign a rental agreement think through all the possibilities. Do you intend to stay for the entirety of the rental agreement or are you hoping to move on base? Can you add a roommate to the contract later on? Who is responsible for the maintenance and upkeep? The rental agreement should address these and other concerns you may have. If the landlord is unwilling to make changes to fit your needs, consider renting somewhere else.

Q: I just signed a rental agreement for a new apartment or home. What should I do first?

A: Record the condition of any parts you are responsible for under the rental agreement before you move any furniture into the apartment. Take pictures and/or video of anything that is broken or in need of repair. You should also take pictures and/or video of any appliances the landlord supplied, such as refrigerators, air conditioners, stoves, microwaves, and heaters. Record the condition of countertops, carpeting, drapes, and anything else subject to increased wear and tear. This can be used as proof at a later date to show how much damage - if any - that you did.

## When You Move-in and Take Possession

Q: What can I do if the landlord or prior tenant won't let me move in?

A: Under Montana law you have the right to possess the rental as soon as your rental agreement starts, and do not have to pay rent until you occupy the rental. It is the landlord's responsibility to make the rental available. The landlord must make prior occupants move out, and deliver keys to you. Legal assistance attorneys can help ensure your rights are protected.

Q: Can I make the landlord make repairs?

This handout is meant for informational purposes only and does not substitute for the advice of a competent attorney. The discussion of divorce in Montana is only a brief overview. Laws can and do change. If you would like to speak to an attorney, please call the Malmstrom Legal Office at 731-2878.

Q: Can I be evicted?

A: If you are facing an eviction, see a legal assistance attorney immediately. You may be evicted if you fail to follow your rental agreement or applicable state law. However, you are usually entitled to 14 days' written notice. If you are intentionally destroying the property or committing certain crimes you will be entitled to less notice.

The SCRA provides some protection to Airmen and their families facing eviction. A court may on its own, or at the motion of the servicemember, stay an eviction or adjust an obligation if the servicemember's ability to pay has been materially affected by military service. However, in order to fulfill the rent payment the court may also order an allotment from the servicemember's pay be directed to the landlord.

Q: Can I leave my rental before the rental agreement ends?

A: Under certain circumstances you may terminate your rental agreement early without penalty. For example, if you are exercising your rights above you will not be penalized. In addition, if you are terminating the rental agreement pursuant to a PCS, then you have rights under SCRA that will allow you to avoid penalties. However, in most other circumstances you will continue to be responsible under the rental agreement until the landlord has re-rented the property or the rental agreement has terminated. The landlord must take reasonable efforts to re-rent the property.

Q: What happens to my security deposit when I terminate a rental agreement?

A: Landlords may deduct any damages caused by a tenant, co-tenant, or guest; unpaid rent; late charges; utilities due; penalties provided for in the rental agreement; cleaning costs; and any other money owed to the landlord from your security deposit. The landlord must provide the departing tenant with a written list of deductions within 30-days. If the landlord fails to do so, the landlord forfeits the right to keep any of the security deposit. However, the landlord could still try to recover damages through a lawsuit.

## Resources

Montana State Law Library, Landlord Tenant Law:

<http://www.courts.mt.gov/library/topic/landlord.mcp>

MontanaLawHelp.org: Housing, <http://www.montanalawhelp.org/issues/housing>

State Bar Lawyer Referral and Information Service,

<http://www.montanabar.org/displaycommon.cfm?an=1&subarticlenbr=19>: 1-406-449-6577.

*Please also see the JAG handout on hiring a civilian attorney*

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