

## EXPLANATION OF LEASE PARTICULARS

The attachment is the standard lease drafted by the D17 legal assistance office. It complies with all provisions of the law and removes those items landlords include that do not comply with the law. Of course you'll need to change dates and locations where appropriate. If you have any other changes, though, we ask that you contact the legal assistance office to discuss them so we can ensure the requested provision complies with the law. There are many provisions floating around in Alaska leases that simply do not comply with the law, so if you pick and choose from other leases, you risk running afoul of the law. For example, non-refundable deposits are never allowed in any lease for any reason.

This lease accounts for several landlord-friendly changes effective in September 2014 and establishes the rights and obligations of each party. It describes the rental premises; establishes the term of the rental period and the amount of the rental payments; provides for a security deposit and, if pets are to be permitted, a pet deposit; provides for a late fees; and addresses prohibitions on smoking. A major update to this lease is the tenant's obligation to professionally clean the carpets upon termination of the tenancy, which previously had been the landlord's responsibility as normal wear and tear.

The information to be placed in most of the blanks should be self-explanatory. However, I do want to address late fees. Alaska law allows the parties to a rental agreement to contract for a reasonable late charge, provided it "reasonably approximates the landlord's actual costs caused by the tenant's failure to pay rent on time." That is accounted for in the final sentence of that section: "The purpose of this late fee is to compensate Landlord for the expense of processing a delinquent account."

Since that is based on the landlord's inconvenience, and not a percentage of the amount overdue, the amount of the rent doesn't matter. It's also probably not appropriate to approximate it to your mortgage late fee, since that late fee is based on a substantially higher balance than the one month's rent that is overdue. Even though you may apply the rental payments to your mortgage, they are in fact two separate matters and are not legally connected.

The key is that the fee must reasonably approximate your actual cost of dealing with the delinquent account. However, there is no actual law defining a reasonable late fee. Alaska courts tend to disfavor provisions that appear to be punitive to the tenant, rather than compensatory to the landlord. I have heard judges interpret "reasonably approximates the landlord's costs caused by the tenant's failure to pay rent on time" to mean that \$50.00 after five days probably is not excessive, because it compensates the landlord for the convenience of having to monitor a late account. The implication--and sometimes overt statement--was that anything over the amount likely would be questioned for reasonableness. Therefore, that generally is the amount I recommend, and I don't think most judges would question a late fee of \$50 or below.

With that in mind, since there is no legal definition of a reasonable late fee, I have left that to your discretion, subject to my opinion that \$50.00 certainly seems reasonable. If I were addressing it to a landlord on behalf of a tenant, I would object to anything over that amount.

In addition, please keep in mind that while you may charge a late fee and potentially could sue the tenant to collect it, you may not assess it against the tenant's security deposit. The law allows a landlord to withhold from the security deposit for accrued rent and damages, only.

This lease also provides for a pet deposit in addition to the security deposit. That language is almost precisely from the statute. However, non-refundable deposits are never allowed in any lease for any reason, and the pet deposit is no exception. Both the security deposit and the pet deposit must be fully refundable, subject to an itemized statement of damages assessable to the tenant beyond normal wear and tear, now broadly defined to more particularly favor the landlord. The law limits the pet deposit to a maximum amount equivalent to one month's rent, in addition to the normal security deposit. But if you intend to allow pets, keep in mind that providing an additional \$2,000 (or whatever rent you intend to charge) for that privilege may be cost-prohibitive for most renters, and having that amount of damages in excess of the security deposit is extremely rare. You still have the right to withhold both from the pet deposit and the security deposit for damages directly attributable to the pet, but what does it benefit you to require a deposit far beyond the amount of damages you reasonably could expect.

In any event, of course it is your option whether to permit pets (modify that provision on page four if you do) and how much of a deposit to collect. The only legal requirement is that the additional deposit may not exceed one month's rent.

The other significant update to this lease is to add the tenant's obligation to professionally clean the carpets. Until September 2014, Alaska law was fairly definitive that the landlord could not require the tenant to have the carpets professionally cleaned. Now, the landlord may require the tenant to professionally clean the carpets, if the landlord had the carpets professionally cleaned immediately before the tenancy. Therefore, this lease includes your statement that you have professionally cleaned the carpets within \_\_\_\_\_ days before the tenancy began, and the tenant will professionally clean the carpets within \_\_\_\_\_ before the end of the tenancy.

The lease also reflects modern society's communications methods. I'm often asked whether a text message constitutes notice in writing, because it is the means used by a lot of tenants and landlords to communicate with each other. Unfortunately, there is no definitive statement of the law on that issue, although the Department of Justice just entered a settlement agreement with a landlord requiring it to accept notice by email and text message. I resolved that by providing that notice could be by whatever course of conduct you have demonstrated between the two parties. That proves particularly advantageous when the landlord and tenant are several thousand miles apart and actual written mailed notice would cause unnecessary delay. There still are certain notices that require proof of delivery, such as a notice to quit before eviction and the notice of eviction itself, but if you prefer the simplified options, this lease now provides them. Of course if you want to ensure that all communication will be in writing, you should simply strike those provisions, but then you'll have to accept the tenant's assertion that he or she did not receive a notice you had sent by text.

Finally, given the changes to Alaska's enforcement of the federal marijuana laws, the lease includes cannabis in the prohibition against smoking, to ensure proper protection for the military landlord. Of course if you want to permit smoking, you may strike that provision.

If you have any questions and would like to schedule an appointment with Mr. Harris, contact the D17 legal assistance office at (907) 487-5474.