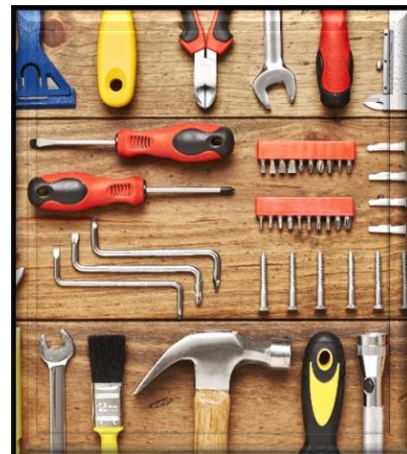


PONTIAC TENANT RIGHTS TOWNHALL
TENANT RIGHTS AND RESPONSIBILITIES TOOLKIT

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A. Ways to Prevent Fraud & Other Problems

Confirming Title and that a Tenant Is Working with the Legitimate Landlord/Owner/ Management Company or Agent. Tenants need to confirm that they are dealing with the actual landlord or authorized representative before making a deposit or signing a lease. Tenants should do so by examining the following 3 sources:

1. “BS&A” website for the municipality where the property is located. The BS&A site for Pontiac, for example, is found at <https://bsaonline.com/OnlinePayment/OnlinePaymentSearch/?PaymentApplicationType=7&uid=825>. Instructions for conducting a property search are found at <https://cms3.revize.com/revize/pontiacminew/Document%20Center/Departments/Building%20Safety/Online%20Payment%20Instruction.pdf>. The search can be conducted by using the name, address, and parcel number.

There is no charge to obtain the BS&A information. For a \$6.00 fee, however, more detailed information can be obtained. Information on the BS&A site includes permits, inspections, violations, certificates, and other information.
2. Oakland County Register of Deeds’ website is at <https://www.ocmideeds.com/> for property ownership information and any liens against the property; and
3. If any business entity is involved, a tenant applicant should search for the entity on the State of Michigan’s Department of Licensing and Regulatory Affairs’ (LARA) website at <https://cofs.lara.state.mi.us/SearchApi/Search/Search> and then reviewing the filings.

Verifying Rental Certification. Tenants also need to make sure that (i) all property repairs have been completed prior to paying a deposit and entering into a lease agreement; and (ii) that the owner has applied for and holds a current rental certificate.

In Pontiac, an owner or agent must obtain a “certificate of compliance”. Pontiac Municipal Code, Chapter 22, Building and Regulations, Article VI Housing Code, § 22-806. (Pontiac’s Municipal Code is located at <https://www.codepublishing.com/MI/Pontiac/>.)

Section 22-806(m) makes it unlawful for an owner to allow a “rental property to be occupied, or to collect rent from a tenant for occupancy of a rental property, during or for any time in which there is not a valid certificate of compliance for the rental property and/or the property is not registered as a rental property with the City of Pontiac.” This does not apply if the tenant has caused the conditions that constitute the hazard to health or safety.



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Tenants who occupy a rental property that lacks a certificate of compliance and/or have not registered with the City of Pontiac as a rental property, shall pay rent otherwise due into an escrow account with the City of Pontiac. Pontiac Municipal Code, Chapter 22, Building and Regulations, Article VI Housing Code, §§ 22-765 & 22-806(n). “At the end of every 30 days in which the owner fails to obtain a certificate of compliance and/or properly register the rental property, the rent in the escrow account shall be paid to the tenant, and the administrative fees shall be paid by the owner.” *Id.*

Tenants of non-registered properties who do not pay into a rent escrow, the following provision applies:

- (p) When the certificate of compliance and/or registration of rental property has been suspended, or has not been issued, and the rents thereafter withheld are not paid into the escrow account, actions for rent and for possession of the premises for nonpayment of rent may be maintained, subject to such defenses as the tenant or occupant may have upon the lease or contract.

Pontiac Municipal Code, Chapter 22, Building and Regulations, Article VI Housing Code, § 22-806(p).

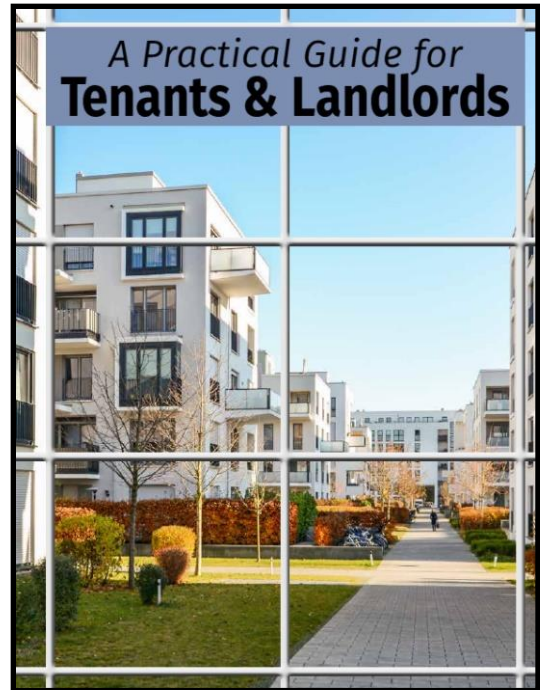
Alternatively, a tenant may choose to terminate the tenancy or occupancy prior to the owner undertaking to complete required repairs. In such situations, the tenant shall be entitled to the unexpired portion of the rent paid in escrow. *Id.* § 22-806(q). A tenant shall also be entitled to the unexpired portion of the rent paid in escrow if an order to vacate is entered. *Id.*

Defenses. Subsections § 22-806(m), (r) & (p) preserve the right of tenants to assert rights under the lease or contract. The ordinance also prohibits retaliation against a tenant for exercising rights under the ordinance. *Id.* § 22-806(r) & (t).

Importance of a Written Lease & What to Look For. Tenants should insist upon a written (not oral) lease and understand the important lease provisions. Every lease agreement for a period of more than one year must be in writing: “[i]f the lease agreement is for a period of more than one year, an oral lease is not an option—it must be put in writing to comply with the Statute of Frauds (MCL §§ 566.106, 566.108, 566.132).” [*A Practical Guide for Tenants & Landlords \(hereafter “Practical Guide”\)*](#), at 4.

B. Importance of a Written Lease Agreement

Advantages of Having a Written Lease. “Although it is common for tenants to sign some type of written agreement, a lease is not always put in writing. Sometimes it is nothing more than an oral agreement as to the move-in and move-out dates, the address of the rental property itself, and the amount of the rent and when it must be paid. . . Whether there is a fixed-term tenancy or a periodic tenancy, it is best to have a written record of the rental agreement. A written record is a permanent record that may be used for reference if misunderstandings arise—and they do. In the absence of a written lease, signed by both the landlord and the tenant, it’s advisable to keep a personal written record of the agreement.” [*Practical Guide*](#), at 4.



What to Look for Before Signing a Lease

- As discussed above, confirm you are dealing with the actual owner of the property or a reputable management company, and that the property has been inspected and has a current rental certificate.
- All repairs are fully completed. If repairs are not completed before you move in, do not expect them to be completed after you move in.
- The lease should state who is responsible for utilities (water, electricity, maintenance, etc.).
- The lease should specify what you are renting (*i.e.*, the entire home or unit or just a portion, the garage, basement, etc.)
- Late fees must be reasonable.
- Do not agree to pay the first \$100, \$200, or more for any repairs.
- Determine that you will have a record of all payments made.

C. Unlawful Lease Provisions

Unlawful Lease Provisions. Section 3 of the Michigan Truth in Renting Act (TRA), MCL § 554.633 lists numerous prohibited provisions or clauses in a rental agreement, including:



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- Provisions that waive or alter the owner or landlord's covenants of fitness and habitability under MCL § 554.139 (MCL § 554.633(1)(a));
- Provisions that waive any rights under the Landlord and Tenants Relationships Act, MCL §§ 554.601-554.616, regulating security deposits (MCL § 554.633(1)(b));
- Excludes or discriminates in violation of the Michigan Elliott-Larsen Civil Rights Act (ELCRA), MCL §§ 37.2101-37.2804, or the Michigan Persons with Disabilities Civil Rights Act (PWDCRA), MCL §§ 37.1101-37.1607 (MCL § 554.633(1)(c));
- Provides for confession of judgment (MCL § 554.633(1)(d));
- Seeks to charge costs or attorney fees in excess of the costs permitted by statute (MCL § 554.633(1)(g));
- Waives or alters a party's rights as to possession or under Section 600.2918 of the Revised Judicature Act (RJA), MCL § 600.2918, or as to summary proceedings under MCL §§ 600.5701-600.5759 (MCL § 554.633(1)(j));
- Exempts a landlord from liability for his or her negligent acts (MCL § 554.633(1)(e));
- Waives the right to demand a jury trial (MCL § 554.633(1)(f));
- Accelerates payment of rent (MCL § 554.633(1)(i));
- Releases a party from the duty to mitigate damages (MCL § 554.633(1)(g));
- Waives or alters rights under the Anti-Lockout Statute, MCL § 600.2918 (MCL § 554.633(1)(j));
- Violates the Michigan Consumer Protection Act (MCPA), MCL §§ 445.901-445.922 (MCL § 554.633(1)(m)); and/or
- Requires the tenant to give the lessor a power of attorney (MCL § 554.633(1)(n)).

Provisions in a rental agreement that violate this section of the TRA are void. MCL § 554.633(2).

A landlord has 20 days from time tenant provides written notice to fix prohibited language. Otherwise, the tenant may bring an action to void the lease, have the prohibited language removed or changed, and obtain monetary recovery. MCL § 554.636.

D. Move-In or Inventory Checklist

Requirement of an Inventory Checklist. The Michigan's Landlord-Tenant Relationships Act of 1973 (LTRA), MCL §§ 554.601-554.616, requires a landlord to make use of inventory

checklists at the beginning and termination of the tenant's occupancy, detailing the condition of the rental unit for which a security deposit is required. MCL § 554.608(1).

At the commencement of the lease, the landlord must provide the tenant with 2 blank copies of the commencement inventory checklist. The form must be "identical to the form used for the termination inventory checklist" and "shall include all items in the rental unit owned by the landlord including, but not limited to, carpeting, draperies, appliances, windows, furniture, walls, closets, shelves, paint, doors, plumbing fixtures and electrical fixtures." MCL § 554.608(2). Unless otherwise agreeing to a shorter time period, the tenant must review the checklist, note the condition of the property, and return to the landlord 1 copy of the checklist within 7 days after receiving possession. MCL § 554.608(3).

At the conclusion of the rental occupancy, the landlord must complete a termination inventory checklist, listing all the damages claimed to have been caused by the tenant. MCL § 554.608(5).

Importance of the Inventory Checklist. The [Practical Guide](#), at 8, emphasizes the importance of completing the inventory checklist:

Q7 What is the point of the inventory checklist?

The checklist preserves some proof of the condition of the property when the tenant moved in. The landlord must provide the tenant at move-in with 2 identical blank copies of an inventory checklist, referencing all items in the rental unit that belong to the landlord. The landlord must provide written notice on the first page of the checklist that the tenant must properly complete the checklist, noting the condition of the property, and return it to the landlord within 7 days after moving in, unless the landlord and tenant agree to a period of time shorter than 7 days (MCL 554.608). (See sample on page 41)

Note: The tenant may request a copy of the termination inventory checklist (generally referred to as the itemized list of damages) for the previous tenant. If requested, the landlord must provide a copy to the tenant.

Q8 Is it important to properly complete the inventory checklist?

Yes. The checklist preserves some proof of the condition of the property when the tenant moves in. If the tenant fails to note on the checklist existing damages, things that do not work, or things that are missing, or fails to return it at all, and a dispute over damages to the property occurs at the end of the lease, it may be very difficult for the tenant to convince a court that

the property was damaged, did not work, or was missing when the tenant moved in.

Note: Take photos or video recordings of the rental unit, regardless of being a landlord or tenant.

E. Security Deposits & Permissible Charges



Collecting Security Deposits. Security deposits are regulated under the LTRA. A landlord cannot collect a security deposit unless the landlord notifies the tenant in writing within 14 days after the tenant takes possession (i) the address in which the landlord will receive communications under the LTRA, the name and address of the “regulated financial institution” or surety required where the security deposit will be held (MCL § 554.604); and (ii) the tenant’s obligation to “notify [the] landlord in writing within 4 days after you move of a forwarding address where you can be reached and

where you will receive mail”. MCL § 554.603.

Maximum Amount of a Security Deposit. Assuming a landlord has given the required notice, the landlord may charge a security deposit of up to 1 ½ of the monthly rent. MCL § 554.602. Any prepayment of rent—other than for the first full rental payment period established in the lease—and any refundable fee or deposit are considered by law to be part of the security deposit. *Sobel v Trony Associates*, 91 Mich App 294, 297-298 (1979).

For example, often a lease will require that both the first and last months’ rent be paid before a tenant moves in. The last month’s rent would be considered a security deposit. Additional fees or deposits (for keys, mailboxes, storage, etc.), if otherwise refundable, are considered part of the security deposit. Nonrefundable fees are not considered part of the security deposit. Courts, however, may apply a standard of “reasonableness” to determine whether a particular fee amount may be charged (as courts may do as to late fees).

Permitted Charges. Permitted charges or uses of the security deposit includes unpaid rent (MCL § 554.602(b); unpaid utilities (electricity, water bill, etc.) (MCL § 554.602(b); and “actual damages to the rental unit or any ancillary facility that are the direct result of conduct not reasonably expected in the normal course of habitation of a dwelling.” (MCL § 554.602(a).

Charges Not Permitted. A landlord may charge and collect only for damages that are beyond reasonable wear & tear. Charges for general cleaning and carpet cleaning are not permitted. A landlord that charges for such items violates Section 3(1)(u) of the MCPA,

MCL § 445.903(1)(u)(defining “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce” to include “(u) [f]ailing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, . . . or to cancel within a specified time or an otherwise reasonable time an acquired security interest.”). The MCPA provides for actual damages or \$250 in statutory damages, whichever is greater. MCL § 445.911(2).

According to the Michigan Supreme Court in *Smolen v Dahlmann Apartments, Ltd*, 127 Mich App 108, 117-18 (1983), the MCPA is violated when a landlord retains part of the tenant’s security deposit for cleaning.

Fair Housing Violations that Arise in Connection with Security Deposits. It is also unlawful under the federal Fair Housing Act and the PWDCRA for a landlord or housing provider to charge deposits, fees, or surcharges for assistance animals or to charge a fee for processing a reasonable accommodation or reasonable modification request. It is also unlawful for a landlord to impose breed or weight restrictions as to an assistance animal. [FHEO-2020-1, Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act, at 14 \(Jan. 28, 2020\)](#). The landlord, however, can seek reimbursement or retain part of the security deposit due to damages resulting from an assistance animal.

It is also unlawful under the federal Fair Housing Act and the PWDCRA for a landlord or housing provider to require a tenant with a disability to obtain and maintain additional insurance coverage or to increase the security deposit as a condition to permitting the modification. [Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications Under the Fair Housing Act, at 12 \(Mar. 5, 2008\)](#). Further, a landlord or housing provider may not impose a requirement for the upkeep and maintenance of a modification that is not to be used exclusively by the tenant with a disability. *Id.* at 8-9 (“The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by her. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification. . . .”).



F. Security Deposit Timeline

Filing a Claim for Recovery of Security Deposit - Tenant's Action for Damages. A landlord's failure to comply with MCL § 554.613 entitles tenant to double the amount of the security deposit retained. MCL § 554.613(2). A claim will typically be filed in district court where the property is located or where the landlord resides. For amounts up to \$7,000, a tenant may prepare and file with the District Court Small Claims Division an [Affidavit and Claim – DC 84](#). Claims over \$7,000 should be filed in the General Civil Division of the District Court.

Unless removed to the general civil division of the District Court, parties in a small claims court action waive the following rights: right to an attorney; right to a jury trial; right to recover more than the jurisdictional limit; right to appeal to a higher court (if the action is first heard by a district court magistrate, the parties can appeal to a judge). The following actions are excluded from being litigated in a small claims court action: fraud; libel and slander (defamation); assault/battery; and intentional torts. Any party or their attorney may request removal of the small claims court action by filing a written demand or by appearing before the court and demanding removal.

Importance of Strict Compliance with Time Deadlines as to Security Deposits. Time deadlines are critically important as to disputes involving the security deposit. (A copy of the "Security Deposit Timeline" from the [Practical Guide](#) is shown below.) Failure to meet the these requirements may result in the loss of all or part of a security deposit.

The landlord's rights and obligations include the following:

- *Termination Inventory Checklist.* At the termination of occupancy complete an inventory checklist, listing all damages allegedly caused by the tenant. MCL § 554.608(4).
- *Itemized List of Damages.* If claiming damage(s) to the rental unit or other obligation (unpaid rent, utility bills, etc.) mail to the tenant within 30 days after the termination of occupancy an itemized list of damages. The list should include the estimated cost of repair of each property damaged item, along with the amounts and bases on which the landlord is assessing to the tenant. The list shall include a check or money order for the difference between the total claimed damages and the security deposit held by the landlord. The list shall not include any damages listed on inventory checklist completed prior to the tenant's occupancy of the unit. The notice of damages shall include the following statement in 12-point boldface type which shall be at least 4 points larger than the body of the notice: "You must respond to this notice by mail within 7 days after receipt of same, otherwise you will forfeit the amount claimed for damages." MCL § 554.609.

The landlord's failure to provide the notice of damages within 30 days after termination of the occupancy "constitutes agreement by the landlord that no damages are due and he shall remit to the tenant immediately the full security deposit." MCL § 554.610.

- *Landlord's Action for Damages.* The landlord within 45 days after occupancy is terminated "and not thereafter" may file an action in court against the tenant for a money judgment for claimed damages. Alternatively, the landlord may return the balance of the security deposit to the tenant or any amount mutually agreed upon in writing by the parties. A landlord, however, is not entitled to retain any portion of a security deposit for damages claimed unless the landlord first obtains a money judgment for the disputed amount (or files with the court satisfactory proof of an inability to obtain service on the tenant). MCL § 554.613(1).

There are several exceptions to this requirement: the tenant has failed to provide a forwarding address (MCL § 554.613(1)(a)); the tenant failed to respond to the notice of damages (MCL § 554.613(1)(b)); the parties agreed in writing to the disposition of the remaining security deposit amount (MCL § 554.613(1)(c)); and/or the amount claimed by the landlord is entirely based on accrued and unpaid rent (MCL § 554.613(1)(d)).

- *Landlord's Liability for Twice the Security Deposit.* If the landlord fails to comply fully with the provisions of MCL § 554.613, the landlord's failure results in (i) the waiver of all claimed damages; and (ii) makes the landlord liable to the tenant for double the amount of the security deposit retained. MCL § 554.613(2).

The tenant's rights and obligations include the following:

- *Written Forwarding Address.* Within 4 days after termination of occupancy, the tenant shall provide the landlord in writing an address at which communications may be received. If the tenant fails to provide the landlord in writing an address to which communications may be received, the landlord is relieved of the of providing the tenant the notice of damages. This had no effect, however, on the right of a tenant to bring a claim for the security deposit. MCL § 554.611.
- *Agreement/Disagreement with the Landlord's List of Damages.* The tenant, after receiving the landlord's list of damages, has 7 days to respond by ordinary mail to the landlord's list of damages, indicating in detail the agreement or disagreement to each of the damage charges listed. MCL § 554.612. The tenant should obtain a proof of mailing receipt and keep it with the list of damages and the tenant's response to the list of damages.



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- *Filing an Action for Damages, Potentially Including a Demand for Twice the Security Deposit.* The tenant should carefully review the landlord's compliance with MCL § 554.613 (reviewed above). The landlord's failure to comply with MCL § 554.613, typically by not filing an action for money damages within 45 days after termination of the occupancy, waives the landlord's right to seek claimed damages and makes the landlord liable to the tenant for double the amount of the security deposit retained. MCL § 554.613(2).

Attorney General Complaint. A tenant also has the option of filing a complaint with the Michigan Department of Attorney General. The Attorney General has authority to enforce the LRA. MCL § 554.615.

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Security Deposit	Landlord's Duties	Tenant's Duties
<p>Beginning of Lease (generally move-in) MCL 554.602, 554.604, 554.605, 554.608(2)</p>	<p>A security deposit, if required, shall not exceed 1.5 times the monthly rent. Deposit tenant's security deposit in a regulated financial institution OR file a surety bond with the state. Provide tenant: 1. A copy of the lease, and 2. Two blank copies of the inventory checklist.</p>	<p>The security deposit is the lawful property of the tenant. <i>Recommendation:</i> Read the lease (preferably before signing it) and all other information provided to you by the landlord. Request from the landlord the inventory checklist and/or itemized list of damage report from previous tenancy.</p>
<p>Within 7 days from move-in (landlord and tenant may agree to a shorter period, but not a longer period) MCL 554.608(3)</p>	<p><i>Recommendation:</i> Keep tenant's completed checklist.</p>	<p>Return to landlord the completed inventory checklist, noting condition of rental unit (add pages if necessary); be sure to keep a copy yourself.</p>
<p>Within 14 days from move-in MCL 554.603</p>	<p>Provide tenant in writing: 1. Landlord's name and address for receipt of rent and communications; and 2. Where tenant's security deposit will be held (name and address of the financial institution or surety bond company). 3. Include specific statutory notice of tenant's duty to provide forwarding address within 4 days of move-out.</p>	<p><i>Recommendation:</i> Read the information provided to you by the landlord.</p>
<p>Move-out (not necessarily the end of the lease) MCL 554.608(5)</p>	<p>Complete a termination inventory checklist, noting condition of rental unit.</p>	<p><i>Recommendation:</i> Remove all personal property, clean the rental unit, and turn in keys.</p>
<p>Within 4 days after move-out MCL 554.611</p>	<p><i>Recommendation:</i> Keep a copy of tenant's forwarding address.</p>	<p>Provide landlord in writing (not orally) your forwarding address.</p>
<p>Within 30 days after move-out MCL 554.609</p>	<p>Mail to tenant an itemized list of damages, with proper statutory notice provision claimed against tenant's security deposit accompanied by a check or money order for the difference. Only unpaid rent, unpaid utility bills, and damages to the rental unit beyond reasonable wear and tear caused by tenant may be claimed against the deposit (not cleaning fees).</p>	<p><i>Recommendation:</i> Watch for the itemized list of damages in the mail.</p>
<p>Within 7 days of tenant's receipt of landlord's itemized list of damages MCL 554.612</p>	<p>Watch for tenant's response to the itemized list of damages by mail.</p>	<p>Respond in detail, by ordinary mail, indicating agreement or disagreement with the damages charged. Be sure to count the days; the date of mailing is considered the date of response.</p>
<p>Within 45 days—not thereafter—of move-out MCL 554.613</p>	<p>To be entitled to keep the disputed amount of security deposit, file suit against tenant for damages—unless an exception applies.</p>	<p>If suit is filed, appear in court and defend. <i>Note:</i> If suit is not filed, you may file suit for recovery of your security deposit.</p>

G. Habitability & Repairs

As noted above, a tenant should insist on all repairs being completed prior to signing a lease, paying a security deposit, or moving into a rental unit.

Landlord's Requirements to Keep Unit and Common Areas in Reasonable Repair. The landlord has a statutory duty to keep the rental unit and all common areas habitable:

- (1) In every lease or license of residential premises, the lessor or licensor covenants:
 - (a) That the premises and all common areas are fit for the use intended by the parties.
 - (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants willful or irresponsible conduct or lack of conduct.
 - ...
- (3) The provisions of this section shall be liberally construed, and the privilege of a prospective lessee or licensee to inspect the premises before concluding a lease or license shall not defeat his right to have the benefit of the covenants established herein.

MCL § 554.139.

Additionally, MCL § 554.139(2) permits the landlord and tenant to modify the above habitability obligations or requirements where the lease term is for 1 year or more. For example, many landlords include in lease agreements the requirement that tenants to pay the first \$100 or \$200 toward any repair. Tenants should exercise great caution, however, in agreeing to such lease provisions as it is the landlord's responsibility to keep the unit and common areas habitable, fit for intended use, and in compliance with all health and safety laws.

Rent Abatement Due to a Landlord's Failure to Keep the Rental Unit and Common Areas in Reasonable Repair. In an action filed by the landlord against the tenant for possession due to nonpayment of rent, if the judge or jury finds that the landlord is entitled to possession of the unit the judge or jury in determining the amount due shall deduct any portion of the rent which the jury or judge finds to be excused by the landlord's breach of 1 or more of the statutory covenants imposed by MCL § 554.139.

Complaints to Local Building Departments. A tenant's complaint to a local building or health department can aid in determining or documenting a landlord's failure to keep the unit in reasonable repair or otherwise violated applicable health and safety laws. Local building or health department reports provide compelling evidence that may warrant rent abatement or a separate action by the tenant against the landlord for monetary damages cause by the disrepair.

H. Navigating the "Repair and Deduct" Process

Statutory Right to Repair & Deduct. Under the Housing Law of Michigan, MCL § 125.534, a tenant has a statutory right to make repairs and then deduct the cost of repairs from the rent. However, the tenant cannot be the cause of the condition.

Common Law Right to Repair & Deduct. Michigan common law (also referred to as case law or legal standards based on court decisions) also grants tenants the right to a repair and deduct process. The leading decision and conditions for exercising the repair and deduct remedy is set forth in *Anchor Inn of Mich, Inc v Knopman*, 71 Mich App 64 (1976):

Where the landlord has covenanted to make repairs and fails to do so, the tenant, after giving reasonable notice to the landlord, may make the repairs and recover the cost of such repairs from the landlord or he [or she] may deduct the cost from the rent. Unless the landlord's duty to repair is expressly made conditional upon receipt of notice from the tenant, such duty may arise from the landlord's actual knowledge of the need for repair. The landlord's duty to maintain in good repair an air conditioning unit on the leased premises extends to reimbursing the tenant for [moneys] expended in replacing defective air conditioning apparatus.

Id. at 67 (internal citations omitted.)

Navigating the Repair & Deduct Process. The repair & deduct process is high risk for any tenant. Often, placing the rent into escrow to cover needed repairs will result in landlord filing a complaint to evict the tenant for nonpayment of rent. Tenants seeking to use the repair & deduct process should follow the Repair & Deduct process in the [Practical Guide](#), pp. 26-28.

The Fair Housing Center of Metropolitan Detroit has a "[Step-by-Step Guide for Tenants When Landlords Fail to Make Repairs](#)":

Step-by-Step Guide for Tenants When Landlords Fail to Make Repairs

Here are some practical steps to address needed repairs that are not being made by your landlord.

First: Take photographs of all items needing to be repaired. For major repairs or safety items, contact your city's building and safety department. Obtain a copy of the inspection report, if any.

Second: Send the landlord a letter or email with copies of the photographs showing the problem(s) along with a request to repair. If you obtained an inspection report, please include a copy of the inspection report in your letter or email to the landlord. It is critical that you keep unmarked copies of the repair request(s), photographs, and inspection report.

Your request should give the landlord a reasonable amount of time to fix the problems. The amount of time that is reasonable will depend on the kind of repairs that need to be made.

Third: Make sure you get proof that you sent the notice to repair and photographs (if not sent by email, then send by certified mail return receipt requested. If you walk the notice into the management office, have their representative sign, print, and date their signature on the actual letter and your copy.

Fourth: If the landlord fails to make the necessary repairs a reasonable time, you should obtain two or three cost estimates to make the repairs. The estimates should be made by licensed contractors, not friends, family members, or acquaintances. Send copies of the estimates to the landlord in a letter which states that the problem will be fixed unless the landlord agrees to do it by a certain date, and the cost of repair will be paid from the rent withheld.

Send this letter either by certified mail return receipt, email or walk the letter into the management office. If you walk the letter into the management office, be sure to have their representative sign, print, and date their signature on the actual letter and your copy.

Keep all receipts, notes, and dates of repair. Send copies to the landlord along with the remaining portion of the rent if the cost is less than the monthly rent amount.

Fifth: Send the landlord a second letter or email with copies of the estimates. Inform the landlord that, if the repairs are not completed immediately, you will withhold the next rent payment (or next two or three rent payments depending on the cost listed in the lowest repair estimate). Deposit the rent payments into an escrow account. Alternatively, if the cost of repairs is less than the monthly rent amount, you should inform your landlord that you will pay for the repairs and deduct the cost from the rent.

If you are withholding all or a portion of the rent do the following:

State why the rent will be withheld and where it will be deposited (name of the bank). Also, state that the payment will be released when the maintenance or repair problem has been corrected.

Send a letter certified mail return and request a return receipt. If you walk the letter into the management office, have their representative sign, print, and date their signature on the actual letter and your copy.

If public housing and rent being paid by agency, then withholding rent is not an option and contact the agency that is paying the rent.

If the landlord brings eviction proceedings, your defenses may be:

- A claim of retaliatory eviction.
- The landlord's breach of warranty of habitability and duty to repair.
- Rent was property withheld and escrowed.
- Violation of ordinance.

Retaliatory Evictions. As noted above, the landlord is required to keep the rental unit and common areas in reasonable repair and comply with health and safety laws. MCL § 554.139. Landlord's failure to make repairs and keep unit and common areas habitable provides a defense or offset to Landlord's claim for rent. MCL § 600.5741. It is unlawful for the landlord to seek to evict you because you made a complaint to a governmental authority about the violation of a health or safety code or ordinance. MCL § 600.5720. Retaliatory evictions are discussed in more detail below.



I. Rent Increases

Permitted Increases. Generally, there is no limitation upon the amount of rent that a landlord may charge. There are a couple of exceptions, however. A landlord is bound by the terms of any outstanding lease. For example, if a tenant has a lease for one year, rents may not be increased during the term of the lease. Also, a landlord may not charge a rent “which is grossly in excess of” rents for similar houses or apartments. MCL § 445.903(1)(z)(Consumer Protection Act). See also MCL § 554.633(1)(m); MCL § 554.633(3) (Truth in Renting Act’s prohibition against violating the Consumer Protection Act).

Local Rent Control Ordinances. All local governments are prohibited from adopting local rent control ordinances regarding private residential property unless the local government has an interest in the property. MCL § 123.411(2)-(3).

J. Recreational and Medical Marijuana

The Michigan Regulation and Taxation of Marijuana Act’s (MRTMA) purpose “is to make marijuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marijuana under a system that licenses, regulates, and taxes the businesses involved.” MCL § 333.27952.

The MRTMA “allows a person to prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marijuana accessories on property the person owns, occupies, or manages, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marijuana by means other than smoking.” MCL § 333.27954(4).

The Michigan Medical Marijuana Act states that it cannot be construed to require “[a] private property owner to lease residential property to any person who smokes or cultivates marijuana on the premises, if the prohibition against smoking or cultivating marijuana is in the written lease.” MCL § 333.26427(c)(3).

K. Late Fees

Reasonable Late Fees. Late fees must bear direct relationship to actual costs to the landlord caused by the late rent. *Noble v Strum*, 210 Mich 462 (1920); *Roland v Kenzie*, 11 Mich App 604 (1968). The burden of proof rests with the landlord to establish the reasonableness of the claimed damages. *Curtis v Hartford Accident & Indemnity Co*, 335 Mich 416, 418-19 (1953).

Penalty or Liquidated Damages Clause. According to the [Michigan Judicial Institute's Residential Landlord-Tenant Benchbook](#), at p. 1-9 (2022), "Whether such fees will be added to the rent due depends on whether the late fee provision is viewed as a penalty clause imposed by the landlord or as a liquidated damage clause. Whether a provision is a penalty or liquidated damages is a question for the court and not the jury. However, the amount of damages must be determined by the trier of fact." (citations and quotations omitted).

Important to Challenge Late Fees. The City of Detroit, for example, [states on its website that "Excessive Late fees can be rejected by the court. Typically amounts over \\$35.00 dollars are worth raising."](#)

L. Early Lease Termination: Domestic Violence and Stalking

Domestic Abuse, Sexual Assault, or Stalking Victims. MCL § 554.601b provides for early termination for tenants or their children who have reasonable apprehension of danger of domestic violence, sexual assault, or stalking. The requirements of MCL § 554.601b are detailed and require strict adherence, including the providing of a notarized statement verified by a qualified third party. A tenant will be released from an obligation to pay rent no later than the first day of the second month that rent is due after notice is given.

Violence Against Women's Act (VAWA). Applicants and tenants of HUD housing programs who are victims of domestic violence, dating violence, sexual assault, or stalking. The protections are not limited to women; VAWA protections are available to all, without regard to sex, gender identity, or sexual orientation.

The landlord may not consider incidents of domestic violence, dating violence or stalking as serious or repeated violations of the lease or other "good cause" for termination of the occupancy rights of the victim of abuse. The landlord may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that abuse.

- The landlord may request in writing that the victim, or a family member on the victim's behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066, or other documentation as noted on the certification form, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under the VAWA. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction.

VAWA also grants protections to the abused spouse or child of a U.S. citizen or lawful permanent resident (including the right to self-petition for a green card).

M. “Self-Help” vs. Legal Eviction Process

No right to “self-help” in Michigan. Eviction statutes and court rules intended to prevent landlords from “self-help” in executing evictions, thus reducing the number of violent confrontations between landlords and tenants. *Grant v Detroit Ass’n of Womens Clubs*, 443 Mich 596, 607-08 (1993).

Subsection (2) of Michigan Anti-Lockout Statute, MCL § 600.2918(2), prohibits a landlord from resorting to self-help even where the landlord is entitled to possession. Instead, on refusal of the tenant to surrender the leased premises the landlord must resort to judicial process. To discourage self-help, the Legislature has provided that the tenant may recover treble damages for forcible ejection under [MCL § 600.2918(1)], and actual damages for other unlawful interference under [MCL § 600.2918(2)].” *Deroshia v Union Terminal Piers*, 151 Mich App 715, 720 (1986). A landlord’s resort to “self-help” also precludes entry of a judgment of possession. MCL § 600.5720(1).



N. Retaliatory Evictions

Michigan, by statute, lists several retaliatory actions by landlords that preclude entry of a judgment of possession:

- (1) A judgment for possession of the premises for an alleged termination of tenancy shall not be entered against a defendant if 1 or more of the following is established:
 - (a) That the alleged termination was intended primarily as a penalty for the defendant's attempt to secure or enforce rights under the lease or agreement or under the laws of the state, of a governmental subdivision of this state, or of the United States.
 - (b) That the alleged termination was intended primarily as a penalty for the defendant's complaint to a governmental authority with a report of plaintiff's violation of a health or safety code or ordinance.
 - (c) That the alleged termination was intended primarily as retribution for a lawful act arising out of the tenancy, including



membership in a tenant organization and a lawful activity of a tenant organization arising out of the tenancy. . . .

(e) That the plaintiff attempted to increase the defendant's obligations under the lease or contract as a penalty for the lawful acts as are described in subdivisions (a) to (c) and that the defendant's failure to perform the additional obligations was the primary reason for the alleged termination of tenancy.

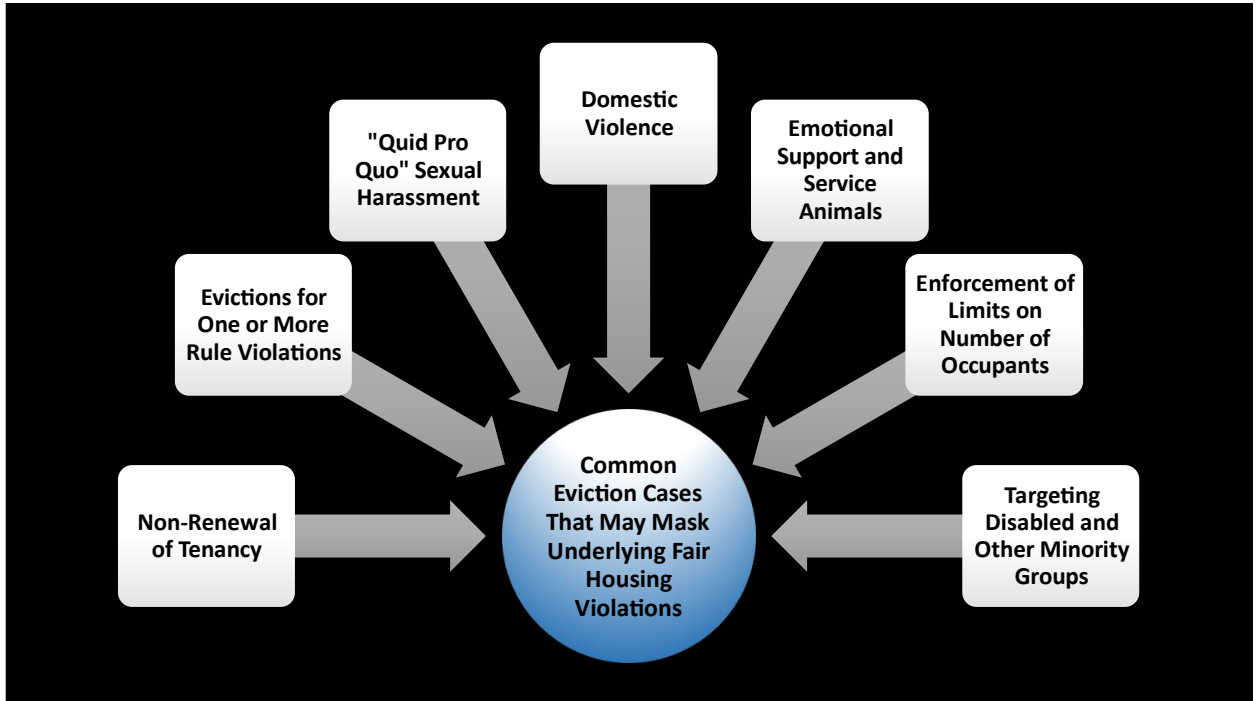
(f) That the plaintiff committed a breach of the lease which excuses the payment of rent if possession is claimed for nonpayment of rent.

MCL § 600.5720(1).

If a tenant who alleges a retaliatory eviction shows that within 90 days before the commencement of summary proceedings (filing of the eviction complaint) the tenant attempted to secure or enforce rights against the landlord or complained against the landlord (as provided in subsection (1)(a), (b), (c), or (e) above, by means of official action to or through a court or other governmental agency and the official action has not resulted in dismissal or denial of the attempt or complaint), "a presumption in favor of the defense of retaliatory termination arises, unless the [landlord] establishes by a preponderance of the evidence that the termination of tenancy was not in retaliation for the acts." MCL § 600.5720(2).

O. Common Eviction Cases That May Mask Underlying Fair Housing Violations

The following graphic illustrates the common eviction cases that may involve underlying fair housing violations. Due to the complexity of the procedural rules for preserving and raising the fair housing claims in eviction cases, tenants should contact the Fair Housing Center of Metropolitan Detroit at 313-579-FAIR or submit a complaint at FairHousingDetroit.org.



P. Eviction Timeline

A helpful eviction timeline is set forth in the [Practical Guide](#), pp. 18-19:

Eviction Timeline	<p>Some incident gives rise for eviction. MCL 600.5714</p> <p>24-HOUR NOTICE is required for the following reason: Illegal drug activity and formal police report filed (a lease provision must allow for termination).</p> <p>7-DAY NOTICE is required for the following reasons:</p> <ol style="list-style-type: none"> 1) Nonpayment of rent; 2) Extensive and continuing physical injury to property; 3) Serious and continuing health hazard; 4) Injury or threatened injury to another person. <p>30-DAY NOTICE is required for the following reasons:</p> <ol style="list-style-type: none"> 1) Violation of a lease provision and the lease allows for termination; 2) Forceful entry OR peaceful entry, but forceful stay OR trespass; 3) Holding over after natural expiration of lease term; 4) Just cause for terminating tenant of mobile home park; 5) Just cause for terminating tenant of government-subsidized housing. 	<p>BEGIN THE LAWSUIT: After the time period in the notice has expired—either 7 days or 30 days—if things cannot be worked out: File with the district court and serve on the tenant a Summons and Complaint. MCL 600.5735</p>
Landlord's Duties	<p>Provide proper notice of intent to evict. MCL 600.5716, 600.5718 Forms DC 100a, DC 100c (from the court)</p> <p>The notice MUST:</p> <ol style="list-style-type: none"> 1) Be in writing; 2) Be addressed to the tenant; 3) Describe the rental property (address is sufficient); 4) Give reason for eviction; 5) State the time for tenant to take remedial action; 6) Include landlord's signature; and 7) Include date. <p>The notice MUST be delivered:</p> <ol style="list-style-type: none"> 1) In person to the tenant, OR 2) At the rental property, to a member of the tenant's household—of suitable age—requesting that it be delivered to the tenant, OR 3) By sending it through first-class mail addressed to the tenant. 	<p>The Summons. The Summons commands the tenant to appear at the court for trial. Michigan Court Rule 4.201(C) Form DC 104 (from the court)</p> <p>The Complaint. The Complaint gives further notice of the cause of action, or grounds, for the eviction. Landlord MUST attach the following:</p> <ol style="list-style-type: none"> 1) A copy of the Lease; AND 2) A copy of the notice to quit or demand for possession—stating when and how it was delivered. <p>Michigan Court Rule 4.201(B) Forms DC 102a, DC 102c (from the court)</p> <p>The Summons and Complaint MUST be delivered (and proof of how and when they were delivered must be filed with the court) to the tenant BY MAIL AND ONE OTHER WAY:</p> <ol style="list-style-type: none"> 1) Personally, OR 2) Sent by mail—certified, return-receipt, restricted delivery, OR 3) At the rental property, to a member of the tenant's household—of suitable age—requesting that it be delivered to the tenant, OR 4) After diligent attempts at personal service, by securely attaching the papers to the main entrance of the rental property unit. <p>Michigan Court Rule 4.201(D)</p>
Tenant's Duties	<p>Read the notice. Certain reasons for eviction CAN be cured (e.g., nonpayment of rent can be cured by paying the rent). Certain reasons CANNOT be cured and tenant must move out (e.g., breach of lease, illegal drug activity), otherwise, you may be sued.</p> <p><i>Recommendation:</i> Contact the landlord to peacefully discuss his or her reasons for eviction. Try to reach an agreement to remain in the rental property.</p>	<p>The Summons will have a date and time ordering the tenant to appear in court. As the Summons commands, you MUST APPEAR at the court for this hearing.</p> <p>You MUST APPEAR and ANSWER the Complaint by the date on the Summons. You can do this either in writing OR orally at the hearing.</p> <p><i>NOTE:</i> If you are unfamiliar with this process and need assistance, please seek competent legal advice and/or attorney services.</p>

TENANT RIGHTS AND RESPONSIBILITIES TOOLKIT

Eviction Timeline	<p>TRIAL: Within 10 days there will be a trial/hearing. Michigan Court Rule 4.201(F)</p> <p>If either party appears without an attorney, but requests to retain one, the judge will generally adjourn the trial/hearing for 7 days.</p>	<p>JUDGMENT: After trial, the judge will render a decision either in favor of the:</p> <ol style="list-style-type: none"> 1) Landlord (evicting the tenant), OR 2) Tenant (allowing him or her to remain in possession). <p>A money award may also be entered for damages incurred by either party. Michigan Court Rule 4.201(K)</p>	<p>APPEAL: Within 10 days after judgment, either party may appeal the judge's decision. The party appealing the judge's decision must pay an appeal bond, filing fees, and transcript fees to preserve the appeal and stop the Writ of Eviction from being issued. Michigan Court Rule 4.201(N)</p>	<p>EVICTION: After 10 days—a Writ of Eviction may be requested, issued, and executed. MCL 600.5744(5); Michigan Court Rule 4.201(L)</p> <p>Issuance: Issuance must occur within 56 days after judgment is entered and must be executed no later than 56 days after the writ is issued.</p> <p>Important: Certain situations may allow issuance of a Writ of Eviction immediately. MCL 600.5744(3)</p>
Landlord's Duties	<p>You have a right to an attorney; you may ask for time to retain one. Generally, the judge will adjourn for 7 days. You have a right to a jury trial; however, you must demand it in the Complaint and pay the jury fee. (The fee starts at \$40 and goes up depending on the amount in controversy.)</p> <p>Provide testimony, documents, and other evidence to show that you are lawfully entitled to recover possession of your rental property.</p>	<p>If judgment is for you, the landlord, it may include an award for any money due and for costs. You may begin collections on the money judgment if the tenant does not otherwise pay or appeal. You will have to wait to regain possession by requesting a Writ of Eviction. MCL 600.5741</p> <p>If judgment is for the tenant, he or she may remain in possession of your rental property.</p>	<p>Decide whether to appeal in the allotted time frame.</p>	<p>Once the Sheriff executes the Writ, you regain possession of your rental property.</p>
Tenant's Duties	<p>You must appear and answer the Complaint. You have a right to an attorney; you may ask for time to retain one. Generally, the judge will adjourn for 7 days. You have a right to a jury trial; however, you must demand it in your first response—written or oral—and pay the jury fee. (The fee starts at \$40 and goes up depending on the amount in controversy.)</p> <p>Defending landlord's claim may require you to testify and provide documents and other evidence of why you should be entitled to remain in possession of the rental property.</p>	<p>If judgment is for you, the tenant, you may remain in possession of the rental property. MCL 600.5747</p> <p>If judgment is for the landlord, you must either:</p> <ol style="list-style-type: none"> 1) Make full payment (if the eviction can be cured by payment), OR 2) Settle the dispute, OR 3) Move out, OR 4) Appeal the judge's decision. 	<p>Decide whether to appeal in the allotted time frame.</p>	<p>If the reason for the eviction was nonpayment of rent, full payment of the rent, plus fees and costs awarded, may stop the issuance of the Writ of Eviction. Partial payment will not stop the issuance of the Writ.</p> <p>WARNING: Other reasons for eviction may NOT be cured by payment and you must move out before the Sheriff executes the Writ and moves your items out.</p>
<p>FROM START TO FINISH— IT CAN TAKE AS FEW AS 21 DAYS OR AS MANY AS 57 DAYS TO EVICT A TENANT</p>				

Q. Michigan’s Anti-Lockout Statute (MCL § 600.2918)

MCL § 600.2918, commonly referred as the “Anti-Lockout Statute”, prohibits unlawful interference with a tenant’s possessory interests. The types of violations include

- (i) use of force or threat of force;
- (ii) removing or destroying tenant’s property;
- (iii) changing locks;
- (iv) boarding of premises that prevents or deters entry;
- (v) removal of doors, windows, or locks; and/or
- (vi) interrupting or terminating utility service that landlord is under a duty to furnish, involving an essential service such that failure to provide constitutes a constructive eviction (such as heat, running water, hot water, electric, or gas service); and vii. Introduction of noise, odor, or other nuisance.

Actual & Statutory Damages. The Anti-Lockout Statute provides for treble (three times) damages for forcible ejectment (MCL § 600.2918(1) and for actual damages for other unlawful interference. MCL § 600.2918(2). “Actual damages in Michigan, particularly when an intentional wrong is involved, as is the case here, include damages for emotional stress, embarrassment and humiliation. Accordingly, [individuals who are successful in an action filed under MCL § 600.2918] are entitled to damages for the emotional stress, embarrassment and humiliation they suffered as a result of the lock[]out.” *Shaw v Cassar*, 558 F Supp 303, 316 (ED Mich, 1983) (internal citations omitted).

Unless the lease specifies otherwise, a tenant is not required to pay further rent if he or she is evicted by the landlord. *Central Trust Co v Wolf*, 255 Mich 8, 12-13 (1931); *Longcor v Homeopathic College*, 210 Mich 575, 579-580 (1920).

Deadline for Filing a Claim Under the “Anti-Lockout Statute”. An action to regain possession must be filed within 90 days after the time the cause of action arises or becomes known to the plaintiff. MCL § 600.2918(8). An action for monetary damages must be filed within 1 year after the time the cause of action arises. MCL § 600.2918(8).

Circuit Court Jurisdiction. “A person who has lost possession or whose possessory interest has been unlawfully interfered with may, if that person does not peacefully regain possession, bring an action for possession under section 5714(1)(f) or bring a claim for injunctive relief in the appropriate circuit court.” MCL § 600.2918(6).

Circuit or District Court Jurisdiction. A claim for damages may be included with the claims for possession and for injunctive relief in the circuit court or may be brought in a separate action in circuit or district court depending upon the amount sought. MCL § 600.2918(6).



R. When May a Landlord Enter the Rental Property

Landlord's Right to Enter Rental Property. A landlord or owner may enter property in the following situations:

- “only as necessary to make needed repairs or inspection and only as provided by law.” MCL § 600.2918(3)(b);
- pursuant to a court order. MCL § 600.2918(3)(a);
- landlord believes in good faith that the tenant has abandoned the premises and, after diligent inquiry, has grounds to believe the tenant does not intend to return and current rent is unpaid. MCL § 600.2918(3)(c); or
- occupant entered or took possession by trespass without color or title or other possessory interest. MCL § 600.2918(6).

The best practice is to make sure that the lease agreement specifies the times that a landlord may enter the property and the type of advance notice (2 days, 1 week, etc.) should be given prior to entry.

Governmental inspections are set forth in the Housing Law of Michigan, MCL § 125.526.

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