

1. The landlord and tenant relationship is based on a contract that must terminate or be rightfully terminated before the parties are relieved of their respective rights and duties and before a landlord can seek a judicial order of possession.

In Oklahoma, a “Rental Agreement” is a contract that includes “all agreements and valid rules . . . which establish, embody or modify the terms and conditions concerning the use and occupancy of a dwelling unit and premises.”¹ A rental agreement is a contract.² It is controlled by contract law.³ However, it is a special type of contract that is subject to certain statutory limitations that affect interpretation and enforcement of the contract: the Oklahoma Residential Landlord and Tenant Act (“ORLTA”).⁴ At its most basic, the rental agreement grants a possessory interest in real property for a period of time to another in exchange for money. In the language of the ORLTA, a “tenant”⁵ pays⁶ “rent”⁷ to a “landlord”⁸ for exclusive⁹ possession¹⁰ of a specified “premises”¹¹ for a period of time.¹² The rental agreement is enforceable by the landlord and the tenant until it expires¹³ or it is properly

¹ Okla. Stat. tit. 41 § 102(12).

² *Mercury Inv. CO. v. F.W. Woolworth Co.*, 1985 OK 38, ¶ 8, 706 P.2d 523, 528-529.

³ *Id.*

⁴ Okla. Stat. tit. 41 § 103; *Stone v. Linden Real Estate*, 2009 OK CIV APP 47, ¶ 9.

⁵ Okla. Stat. tit. 41 § 102(15).

⁶ Okla. Stat. tit. 41 § 109.

⁷ Okla. Stat. tit. 41 § 102(11).

⁸ Okla. Stat. tit. 41 § 102(5).

⁹ Okla. Stat. tit. 41 §§ 123, 124, 128.

¹⁰ Okla. Stat. tit. 41 § 117.

¹¹ Okla. Stat. tit. 41 § 102(10) & (3).

¹² Okla. Stat. tit. 41 § 110.

¹³ Okla. Stat. tit. 41 § 111(C).

terminated through the termination procedures outlined in the ORLTA.¹⁴ In all terminations, the parties are required to act in good faith.¹⁵

The ORLTA provides:

Except as otherwise provided in this act, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and be determined upon the effective date of said termination, and the parties shall thereupon discharge any remaining obligations under this act as soon as practicable.

Okla. Stat. tit. 41 § 112. That is: the duties of each party continue until the rightful termination of the agreement.

The ORLTA is designed to enforce rental agreements and preserve tenancies. The Act requires some reason for the relationship between landlord and tenant to end. In fact, even an agreement that would naturally terminate on its own terms will become a new month-to-month tenancy if the landlord consents to the tenant remaining in possession and the tenant continues to pay rent.¹⁶ Absent a naturally terminating agreement, termination of the rental agreement must occur through the termination processes outlined in the ORLTA. Each of those processes require a triggering event, including: non-payment of rent;¹⁷ non-renewal of the tenancy;¹⁸ landlord's breach of the agreement;¹⁹ destruction of the unit;²⁰ wrongful

¹⁴ Okla. Stat. tit. 41 § 112.

¹⁵ Okla. Stat. tit. 41 § 107.

¹⁶ Okla. Stat. tit. 41 § 111(D).

¹⁷ Okla. Stat. tit. 41 § 131(B).

¹⁸ Okla. Stat. tit. 41 § 111(A)-(B).

¹⁹ Okla. Stat. tit. 41 § 121.

²⁰ Okla. Stat. tit. 41 § 122.

exclusion from the unit;²¹ unlawful or unreasonable entry into the unit;²² tenant's breach of the agreement;²³ or criminal activity by a tenant or guest.²⁴

In most cases, triggering events do not themselves terminate the rental agreement. Instead, once a triggering event occurs the landlord or tenant *may choose* to terminate the rental agreement or may allow the agreement to continue.

2. In the event of non-payment of rent, the ORLTA requires the landlord to provide written notice of the amount due and a fair opportunity to pay before the rental agreement can be terminated.

Before a party can rightfully elect to terminate a rental agreement, there are specific steps that must be followed. In the context of this case, for non-payment of rent, Section 131(B) provides: “A landlord may terminate a rental agreement for failure to pay rent when due, if the tenant fails to pay the rent within five (5) days after written notice of landlord's demand for payment.”²⁵ Written notice must comply with Section 111(E). You can contest the service of the notice and the content of the notice.

The ORLTA prescribes two remedies for landlords when a tenant does not pay rent on time. One remedy, as stated above, is to terminate the tenancy if rent is not paid within 5 days of the written notice demanding payment under part B of Section 131.²⁶ Second, the

²¹ Okla. Stat. tit. 41 § 123.

²² Okla. Stat. tit. 41 § 124.

²³ Okla. Stat. tit. 41 § 132.

²⁴ *Id.*

²⁵ Okla. Stat. tit. 41 § 131(B).

²⁶ Okla. Stat. tit. 41 § 131(B).

landlord may also bring an action to collect the rent under part A of Section 131, without terminating the tenancy.

If rent is unpaid when due, the landlord may bring an action for recovery of the rent at any time thereafter or the landlord may wait until the expiration of the period allowed for curing a default by the tenant, as prescribed in subsection B of this Section, before bringing such action.

Okla. Stat. tit. 41 § 131(A). Part A does not terminate the tenancy unless the landlord also gives the notice as required by Part B. Part A, by incorporating Part B, recognizes that the right to possession requires proper termination through a written notice which specifically demands the proper amount due and gives the tenant an opportunity to cure the breach for unpaid rent.

Under Section 131(B), tenants are allowed a five-day grace period to pay rent that begins after written notice is served on the tenant. This is the tenant's opportunity to pay rent and cure the default. If the rent is not paid within the five-day period, the landlord can rightfully elect to terminate the rental agreement. Rent is defined by the ORLTA: "Rent" means all payments, except deposits and damages, to be made to the landlord under the rental agreement." Okla. Stat. tit. 41 § 102(11) (emphasis added).

Late fees are not rent and cannot be included in the Section 131(B) notice. Late fees are damages. The Oklahoma Supreme Court looked at rental agreement late fees in *Sun Ridge Investors v. Parker*, 1998 OK 22, 956 P.2d 876. In a rental agreement, as in all contracts, late fees are controlled by Okla. Stat. tit. 15 §§ 213 & 215. The statutes define this type of "fee" as either an unlawful "penalty" or "liquidated damages." The fees are not legally allowed to be a penalty, so they must be liquidated damages. This means the fees cannot be rent, because "rent," by definition, excludes damages. Alternatively, if the fees are

a penalty, they are not lawful and cannot be included in “all payments . . . to be made to the landlord under the rental agreement.”²⁷ Therefore, a penalty cannot be “rent.”

The right to cure a non-payment breach found in Section 131(B) is consistent with the Spirit of the ORLTA and the other termination procedures found throughout the Act. This right to cure is found for every triggering event that occurs during a tenancy for a definite term, except in the cases of criminal activity and destruction of the unit.²⁸ This right is available for tenant breaches and landlord breaches.

Failure to give the tenant proper notice deprives the Court of the power to enter an order for possession. This Court has long held that service of a pre-termination notice is jurisdictional. See, for example: *Sparks v. Calloway*, 1938 OK 395 ¶ 4, 82 P.2d 830 (“the giving of the notice must be proved as a jurisdictional fact where it is not waived”); *Bonewitz v. Home Owners Loan Corp.*, 1942 OK 431 ¶4, 132 P.2d 644 (“Service of the three-day notice . . . is jurisdictional, and must be proved at the trial unless proof is waived”); see also, *Moran v. Hooper*, 1958 OK 28 ¶¶ 3-4, 321 P.2d 963. Not only is proper service of the notice essential, but the Notice must properly inform the tenant of their default and option to cure. Due Process requires substantial compliance with a notice statute which means the notice cannot be misleading.²⁹ A notice that requires the tenant to perform more than the statutory requirement is misleading when the tenant is not given an opportunity to cure the default that triggers the termination. See also Section 132 which requires that Notices to terminate for

²⁷ Okla. Stat. tit. 41 § 102(11).

²⁸ Okla. Stat. tit. 41 §§ 122, 123, 124, 131, 132.

²⁹ *Seeley v. Adamson*, 1891 OK 4, ¶ 14.

cause specifically state the conduct that constitutes the Breach and which the tenant must cure in order to preserve the tenancy.

Other jurisdictions have found that a defective notice - one that does not put the tenant properly on notice of their right to cure a default - does not operate to terminate the lease and deprives the trial court of jurisdiction to hear the matter. The Kansas Supreme Court, in *Fenn v. Windsor at Kingsborough, Inc.*, 226 Kan. 653, 603 P.2d 188 (Kan. 1979), determined that a notice which did not apprise the tenant of their right to cure a breach changed the relief available to the landlord. And in Iowa, the Supreme Court, in *Liberty Manor v. Rinnels*, 487 N.W.2d 324, 326 (Iowa 1992), determined that a termination notice that does not adequately inform the tenant of their right to cure a default deprives the trial court of jurisdiction to hear a demand for possession. Neither case involved the non-payment of rent. However, the concept of inadequate notice is the same: where the statute requires that the tenant have an opportunity to cure their default before the termination is effective, the notice must fairly give that opportunity. Without that opportunity, there is no termination of the lease. If there is no termination of the lease, the trial court cannot decide the issue of possession.

Additional Reading

Marjorie Downing, The Oklahoma Residential Landlord and Tenant Act--The Continuing Experience, 17 Tulsa L. J. 97 (2013).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol17/iss1/5>

Matthew Despond, Evicted: Poverty and Profit in the American City, (Penguin Random House LLC 2016).

Landlord Duty to Maintain Premises:

Miller v. David Grace Inc., 2009 OK 49.

Cordes v. Wood, 1996 OK 68.

Stone v. Linden Real Estate, 2009 OK CIV APP 47.

Small Claims Procedure and Consumer Protection:

Patterson v. Beall, 2000 OK 92.

Due Process for Termination of Public Benefits:

Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011 (1970).

The Importance of Legal Aid:

ANTINI v. ANTINI, 2019 OK 20, ¶¶ 25-29.

Defending Evictions

2019 Solo and Small Firm Conference

Eric D. Hallett

- ▶ Statewide Coordinator of Housing Advocacy for Legal Aid Services of Oklahoma
- ▶ Civil litigation
 - ▶ Housing conditions
 - ▶ Discrimination
 - ▶ Consumer protection
 - ▶ Subsidized housing rights
- ▶ Eviction and small claims

Legal Aid Services of Oklahoma

- ▶ Serve all 77 counties through 19 local offices and online resources
- ▶ Civil legal matters only
- ▶ 200% of the federal poverty guidelines (\$51,500 for a family of 4); citizenship requirements
- ▶ 1:10,000
- ▶ Getting people out of bad homes and keeping them in good homes

Does eviction matter?

- ▶ Negative court record and credit report entry
- ▶ Property loss
- ▶ Disrupts social networks, employment, education, health
- ▶ Disproportionate impact on low-income women, women of color, families with children, and domestic violence victims
- ▶ Can occur with “no fault”

Why eviction happens

- ▶ Non-payment of rent
 - ▶ Lack of affordable housing
 - ▶ One-time financial setback
- ▶ Holdover at the end of the lease
- ▶ Personality conflict with owner/manager
- ▶ Breaking rules/law
- ▶ Discrimination
- ▶ No reason

Limits

- ▶ No opportunity for discovery in small claims court
- ▶ Short window for evidence gathering
- ▶ Many courts will not grant continuances
- ▶ Tenant cannot always make it to court - work, school, transportation
- ▶ Attorney fees and costs to prevailing party

What is eviction?

Foundations of the law and process

Statutes

- ▶ Small Claims Procedure Act - Okla. Stat. tit. 12 §§ 1751 - 1773
- ▶ Forcible Entry and Detainer - Okla. Stat. tit. 12 §§ 1148.1 - 1148.16
- ▶ Oklahoma Residential Landlord Tenant Act (ORLTA) - Okla. Stat. tit. 41 §§ 101 - 201

The landlord/tenant relationship

- ▶ Contractual relationship
 - ▶ Landlord has the right to receive rent
 - ▶ Tenant has the right to exclusive possession of the unit
- ▶ Written or oral
- ▶ Rental Agreements define the rental term, rent, and rules
- ▶ ORLTA provides parameters of agreement, termination procedures, and remedies

Basic Eviction Process

- ▶ Event triggers the right to terminate the agreement
- ▶ Written notice is required
 - ▶ Cure period
- ▶ Rightful termination of the rental agreement and Holdover
- ▶ File/serve forcible entry & detainer action - affidavit and summons
- ▶ Limited answers allowed but not required
- ▶ Hearing within 10 days

Jurisdiction and Procedure Defenses

Because you cannot waive Jurisdiction

Jurisdiction

12 O.S. § 1148.1 - FED Court Jurisdiction:

- ▶ All actions for forcible entry and detention of real property (right to possession of property)
- ▶ claims for the collection of rent or damages to the premises
- ▶ claims arising under the ORLTA
- ▶ other claims may not be included

Small Claims Procedure Act:

- ▶ Claim must be less than \$10,000 or for possession only

Answer or Affidavit by Defendant

- ▶ Defendant may file a verified answer or affidavit up to the date of trial - before the hearing - Okla. Stat. Tit. 12 § 1148.6
 - ▶ Boundary disputes or ownership claims are transferred to district court for ejectment action
 - ▶ *Rogers v. Bailey*, 2011 OK 69
 - ▶ Defenses raised under ORLTA continue to be heard in small claims
 - ▶ Contract for deed - file the contract with land records

Counterclaims

- ▶ Counterclaims and setoffs not allowed? *Schuminsky v. Field*, 1980 OK 22
 - ▶ *Schuminsky* involved commercial property and OK S. Ct. interpreted the FED jurisdiction statute without reference to the language allowing claims brought under the ORLTA
 - ▶ Counterclaims arising outside ORLTA are beyond Jurisdiction statute for FED action
- ▶ See also Okla. Stat. Tit. 41 § 105 - any right or remedy under ORLTA may be prosecuted as part of an action for forcible entry or detainer

Service of Summons Defenses

- ▶ Service of process, 12 O.S. §§ 1148.4 - 1148.5:
 - ▶ Summons must be served at least 3 days before trial, on tenant or someone over age 15 residing in unit.
 - ▶ May be served by certified mail if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises. Must be postmarked at least 3 days before trial.
- ▶ Constructive service, 12 O.S. § 1148.5A: If unable to serve, Summons may be posted but no money judgment can be granted (possession only). Reasonable diligence required. What if tenant appears in Court?

Service of Notice Defenses

- ▶ The pre-termination notice must be served according to tit. 41 O.S. § 111(E)
 - ▶ Notice must be in writing
 - ▶ Must be served on the tenant (or landlord) personally
 - ▶ If tenant not available, on any family member over age 12 residing in unit
 - ▶ If tenant nor family member available, notice may be posted. If posted, it must also be sent by certified mail
 - ▶ Landlord may be served by certified mail

Notice Content Defenses

- ▶ Notice required to terminate tenancy
- ▶ Improper notice should not terminate tenancy
- ▶ Issues beyond the scope of the notice should not be raised

Party Based Defenses

Standing and Other Rights

Real Party in Interest

- ▶ Check: County Assessor, Land Records, Secretary of State
- ▶ Review: Lease and other documents
- ▶ Okla. Stat. tit. 12 § 2017
- ▶ Okla. Stat. tit. 12 § 1760: No new parties shall be brought into the action, and no party shall be allowed to intervene in the action
- ▶ Okla. Stat. tit. 18 § 2055.2: LLC not in good standing cannot maintain suit

Subsidized Housing

- ▶ Tenants in subsidized housing have additional rights and protections
 - ▶ Additional notice requirements
 - ▶ *OKC Housing Authority v. Jeffers*, 1993 OK 73
 - ▶ Limited or specific bases for lease termination
 - ▶ Right to file Grievance
 - ▶ Good Cause to Evict standard may apply
- ▶ Type of subsidy is important
- ▶ For Section 8 tenants: insist on seeing HAP contract, part C

RENT and Rent Defenses



Rent - Okla. Stat. Tit. 41 § 102

“Rent” means all payments, except deposits and damages, to be made to the landlord under the rental agreement.

“Deposit” means any money or other property required by a landlord from a tenant as a security and which is to be returned to the tenant upon termination of the rental agreement, less any deductions properly made and allowed by this act.

What about late fees?

Sun Ridge Investors v. Parker

1998 OK 22

- ▶ Late fees are liquidated damages
 - ▶ 15 O.S. §§ 213, 215
- ▶ Late fees cannot be a penalty. Liquidated damages allowed if:
 - ▶ the injury caused by the breach must be difficult or impossible to estimate accurately
 - ▶ the parties must intend to provide for damages rather than for a penalty
 - ▶ the sum stipulated must be a reasonable pre-breach estimate of the probable loss

Sun Ridge Investors, continued

- ▶ \$20 late fee + \$5/day
- ▶ No one contested the \$20 fee. Only \$5 fee challenged.
- ▶ Characterizing late fee as "additional rent" did not convert the fee into "rent"
- ▶ Landlord only made general assertions about damages but did not provide evidence showing the actual cost of collecting late rent
- ▶ See also *North American Invest. V. Lawson*, 1993 OK CIV APP 73
 - ▶ OK Civ App applied all late fees paid to the alleged owed rent - late fees were considered penalty

Does the Court have Jurisdiction to hear late fees?

Time for a challenge

Rent Defenses

Section 120

- ▶ Failure to deliver possession: rent abates

Section 121

- ▶ Landlord failed to maintain unit and tenant moved: agreement terminated
- ▶ Landlord failed to make repairs and tenant made repairs up to \$100: deducted from rent
- ▶ Landlord failed to provide essential service: abate, reduce, or terminate

Rent Defenses

Section 122

- ▶ Destruction of unit: terminate or reduce rent

Section 123

- ▶ Illegal Lockout: may terminate and demand return of prepaid rent and deposits (may also sue for damages)

Section 124

- ▶ Landlord's unlawful or unreasonable entry: tenant may terminate (and may sue for damages)

The Best Rent Defense

The best rent defense is showing that rent was paid or not owed.

The most important thing your client can do is to bring his/her evidence to court, including:

- ▶ Receipts
- ▶ Leases
- ▶ Notices
- ▶ Pictures
- ▶ Written communications

Good Faith Withholding of Rent

Title 12 O.S. § 1148.10B: Applicable if the tenant withholds rent because the landlord failed to provide essential services

- ▶ Tenant must have given landlord actual notice within 10 days of the rent due date
- ▶ The order of the court must recite that the tenant by paying the judgment including court costs and attorney fees, by cash or cashier's check, within seventy-two (72) hours can avoid a writ of execution, cure the breach and remain in the premises
- ▶ Does not require the landlord to provide the essential services

For Cause Evictions

Rules and Property Damage

Section 132 – Tenant's failure to comply with rental agreement or perform duties

10 day notice to cure violation or lease termination in 15 days

- ▶ Material terms of the lease
- ▶ Section 127 – which includes tenancy "rules"

Defenses

- ▶ Is damage Normal Wear and Tear?
- ▶ Is notice sufficiently clear to allow tenant to cure?
- ▶ Is the "rule" proper under section 126?
- ▶ Tenant cannot/should not comply because of disability and needs an accommodation

Section 126 Rules

Rules are only enforceable if:

1. For a proper purpose: promote safety/peace/welfare of tenants; protect property from abuse; or equitably divide services
2. Reasonably related to the purpose
3. Applies to all fairly
4. Is sufficiently explicit
5. It is not for the purpose of evading the obligations of the landlord; and
6. Tenant has notice of it.
7. Cannot be a new rule unless tenant consents.

Section 132 – Criminal Activity or bad behavior

Can the landlord prove the criminal activity?

- ▶ Hearsay

Does noncompliance cause or threaten to cause imminent and irreparable harm to the premises or to any person? Was tenant given notice to remedy bad behavior?

- ▶ Is the evidence Hearsay?
- ▶ Does the tenant need an accommodation of a disability - hoarding, mental health problem, etc.

No Fault Eviction

But you still need to move

30 Day Notice or Non-renewal

Notice cannot be issued in bad faith (section 107)

- ▶ Discrimination
- ▶ Retaliation

Negotiate an agreed move

- ▶ Length of time in unit
- ▶ Age, disability, kids, employment, education
- ▶ Cost of moving/deposits/utilities

Post-Eviction

The background features a series of overlapping, semi-transparent green triangles and polygons of various shades, ranging from light lime green to dark forest green. These shapes are primarily located on the right side of the page, creating a modern, abstract geometric pattern.

Time to Move

- ▶ If possession granted to the Plaintiff, Defendant has 48 hours to move before a Writ can issue that will restore possession to the Plaintiff. 12 O.S. §§ 1148.10, 1148.10A
- ▶ Counsel your client:
 - ▶ Gather most important items and have them ready to go
 - ▶ Try to move before the 48 hours expires
- ▶ Landlord has lien on items left in unit - except exempt property
- ▶ Tenant will have 30 days to retrieve left-behind property but will need to pay judgment, costs, and storage fees to landlord

Discrimination

Federal Fair Housing Act: 42 U.S.C. § 3601

State Fair Housing Act: 25 O.S. § 1451

Unlawful to discriminate in housing transactions because of:

- ▶ Race
- ▶ Color
- ▶ National Origin
- ▶ Gender
- ▶ Religion
- ▶ Familial Status
- ▶ Disability - Failure to make a reasonable accommodation

The background features abstract, overlapping green geometric shapes in various shades, primarily on the right side of the page. The shapes include triangles and polygons, creating a modern, layered effect. The colors range from light lime green to dark forest green.

Thank You!

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