

Eastern Michigan Real Estate Investment Association

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Your Rights and Responsibilities As A Residential Property Landlord By Lawyers.com

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Residential landlords are individual property owners or businesses that rent out apartments or houses for money. The renters who pay landlords to live in these properties are called residential tenants. Landlords and tenants each have legal rights and responsibilities.

To prevent misunderstandings between the parties, rental agreements and leases should clearly spell out these rights and obligations. Each state has its own laws on residential rentals. Landlords' rights and duties will differ depending on where the property is located.

Landlord's Rights and Responsibilities in Leases

A residential lease gives a landlord the right to collect rent from a tenant. The rental amount must be agreed upon by the landlord and tenant in advance. A lease may give the landlord the right to charge late fees for overdue rent.

Also, a landlord has the right to negotiate specific terms in a lease. For example, a landlord may require a tenant to pay utility bills, cut lawns, or shovel snow from the sidewalks and driveways.

Landlord's Right to Evict Tenants

Tenants who violate the terms of a lease can be evicted from residential rental property. Evictions commonly happen when tenants stop paying rent. In most states, a landlord must go to court to evict a tenant. Judges must give tenants a chance to fight eviction.

If the landlord wins in court, the judge can have the local sheriff remove the tenant's belongings and change the locks on the property. The landlord can also obtain a judgment against the tenant for back rent and court costs.

Landlord's Responsibility to Keep Property Safe

Landlords have a responsibility to keep rental properties in safe condition. For example, a landlord should not rent a house with serious electrical problems that may cause a fire. This does not mean that rental property must be in perfect condition. A tenant usually cannot demand that a landlord replace carpet merely because it is stained or starting to wear out.

Leases often require tenants to assume responsibility for minor maintenance such as changing light bulbs and cleaning carpets.

Landlord's Responsibility to Avoid Discrimination

Landlords cannot discriminate on factors like race, gender, family status, religion, disability, or national origin. Landlords cannot treat one class of tenants different than another, such as offering "white only" apartment buildings or charging more rent to a minority family. These laws are strict. Landlords who violate discrimination laws can be sued by the victims and may face government fines.

A Real Estate Lawyer Can Help

The law dealing with the rights and responsibilities of residential landlords can be complicated. Plus, the facts of each case are unique. This article provides a brief, general introduction to the topic. For more detailed, specific information, please contact a real estate lawyer. ■

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Claims against apartment complexes, management companies, extended-stay lodging facilities and condominiums make up a significant portion of personal injury claims and lawsuits. While providing residents and guests with safe and secure rental units is a top priority, maintaining common areas should be equally important. Maintenance efforts will not only add value and desirability to the property, but will reduce the likelihood for injury. From debris to broken handrails to poorly lit walkways, failing to reasonably maintain common areas may create potentially dangerous conditions, which may lead to injuries, resulting in claims or lawsuits. Defending against these liability claims can be costly and time consuming, not to mention disruptive.

It is implausible to assume that all accidents and injuries can be prevented. But understanding how to prevent and defend against claims is an invaluable resource for any property. Knowing that the occurrence of an incident does not typically equate to liability will also help to establish reasonable maintenance practices to reduce liability risks. When an injury claim is made, the burden rests with the claimant to establish negligence by proving that the unreasonable actions of the property's owner or management company were cause of injury. Establishing reasonable maintenance practices provides a key advantage, saving significant time and headaches when faced with a claim.

Keep written records

Most residential properties have procedures in place to respond to resident and guest complaints within rental units. This provides means to track both complaints and repairs within the units. Less common, however, are written logs or work orders for common areas. Often, maintenance staff will repair and maintain common areas on an "as needed" basis, without any reporting mechanism. Failing to maintain written records detailing significant maintenance efforts in common areas could hinder your defense to a liability claim.

While not every bulb changed or piece of debris needs to be documented, daily inspection logs or documents of significant improvement efforts, such as painting or fixing loose or broken handrails, should be completed. Otherwise, it may be difficult to prove that a condition had previously been repaired, or alternatively, that no such repairs were needed. Both the existence of written policies, as well as documentation showing compliance, are effective tools in establishing reasonable maintenance practices. Diligence with maintenance procedures will also strengthen the defenses to any claim as it will make the claimant's job much more difficult.

Provide staff training

While having maintenance policies and procedures in place is crucial, ensuring that employees are educated, trained and following them is critical. It is up to management to routinely train and remind staff of policies. Holding safety meetings monthly, quarterly or even semi-annually, provides a reasonable means to ensuring safety procedures are not only in place, but actually in practice.

In addition to written records, employees familiar with the

property are often a valuable resource when defending against claims. Because maintenance staff and leasing agents routinely walk the property, they could easily be the best source of information when establishing defenses. Maintenance employees routinely walk sidewalks, stairwells and breezeways checking for trash, replacing bulbs and responding to residents' requests, while leasing agents visit common areas such as the pool, laundry facilities and other "clubhouse" amenities while showing the property. Familiarity with these areas will not only serve as a constant reminder to keep them visually appealing for residents and guests, but will result in familiarity with the condition of the common areas as well. These employees are often in the best position to discuss the state of the property around the time of an incident.

Incident reports are crucial

Because many claims are made months, or even years, after an incident, employees with valuable information may no longer be employed at the property, or may be unavailable. In that instance, written records will again become crucial in defending against claims. Therefore, beyond maintenance records, the single most important document to maintain is an incident report, together with the records of any post-incident investigations.

Creating an incident report immediately after an incident is reported is crucial to ensure no details are omitted. If no formal incident report form is available, a hand-or type-written account of the incident should be created as soon as possible, with specific details about what happened and from whom the information was obtained. If possible, have the claimant write a separate statement about the incident to help keep details clear should litigation ensue. Photographs of the area should also be taken and attached to the report to depict any property condition, or lack thereof. If employees are sent to investigate an incident after a fall is reported, each should also prepare a written statement as to their findings.

It's possible to foresee and prevent all incidents. However, heeding these risk management practices can help to reduce the number of incidents and assist property owners, claims personnel and lawyers in evaluating and resolving injury claims and, when necessary, help reduce the resources spent defending them. ■



What is Your Case Worth? By Lawyers.com

In order to recover damages, a party must establish the existence and extent of damages, and the amount of recoverable damages varies widely depending on the parties, jurisdiction, and claims involved.

Factors in Determining What a Case Is Worth

Determining how much a case is worth is a very complicated question because there are many factors that influence the end result. Things that can influence the amount of an award include:

- Your age
- Good faith efforts to mitigate damages
- Your Education
- Your work experience
- Medical expenses
- Lost income, both past and future
- Jurisdictional limitations on damages
- Location where cause of action arose
- Strength of case
- Amount of fault
- Severity of injuries
- Future consequences of the injury
- How reprehensible the conduct was giving rise to suit
- Wealth of the parties
- Emotional distress
- Witness testimony
- The presence or absence of insurance
- Subjective items such as the jury's sympathy, the appearance of the injured, the likeability of the injured, juror perceptions, and the makeup of the jury

The only way to evaluate a case to determine what it may be worth is to fully investigate the cause, develop the damages, research the law, and evaluate all applicable factors. While there are broad ranges of values depending upon the clarity of liability and the nature and extent of the damages, there are no books, databases, or other tools that place a specific value on each case.

Types of Damages

General damages are the actual damages that are the natural consequence of the wrongful act. For example, damages for personal injury may be sought as general damages in an au-

tomobile accident case, while lost profits may be sought as general damages in a breach of contract case.

Nominal damages are not compensatory in nature, but rather serve as a token recognition of the "technical" violation of rights. In tort cases in general, if only the fact of damages but not their extent is proven, nominal damages may be awarded. For example, in an Ohio case, a patient sought damages from the state's department of mental health on the grounds that the department had provided improper psychiatric care and had used unsuitable restraints. The court in that case found that the care provided was appropriate, but found that the restraints used on the patient had been improper.

The court found that the patient had not shown any damage resulting from the use of the restraints, and stated that where an invasion of a right occurred, but there was no evidence of a particular loss, only a small sum was recoverable by the person whose right had been invaded. The court noted that where only nominal damages were awarded, it was usual to fix the award at one dollar.

Punitive damages, also known as "exemplary" damages, are those damages generally designed to punish and to deter. In order to receive punitive damages, the plaintiff must usually prove that the defendant's conduct was malicious or outrageous. Most punitive damage awards are discretionary. Under the traditional common-law approach, the amount awarded is determined by a jury instructed to consider both the gravity of the act and the need to deter similar conduct. For example, in a civil action for damages filed by a prison inmate who was injured by another inmate who escaped from his cell, the trial court awarded nominal damages to the injured inmate, but awarded exemplary damages against the state's corrections department because the injured inmate showed that prison officials knew that cell doors installed at the facility could be closed in a way that made the doors look secured when actually they could be opened from inside.

Special damages are defined as those damages that do not necessarily or invariably flow from the particular wrong. Special damages must be reasonably foreseeable at the time of the injury in order to be recoverable. For example, if a party's conduct results in the flooding of another's land, the landowner could seek general damages for the harm done to the land, and could seek special damages for such things as lost crops, expenses of transporting himself and his family out of the flooded homestead, and the expenses of suitable lodging. The loss of crops, moving expenses, and lodging costs do not invariably flow from the flooding of someone's land, but such costs are reasonably foreseeable at the time of the injury.

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People have minor disputes every day. They range from a landlord who refuses to return a tenant's security deposit, to a customer who won't pay for car repairs made by a mechanic. Many times, these kinds of disputes don't involve enough money to justify hiring an attorney. The fees you may have to pay an attorney may be close to the amount you're owed. And what if you can't afford an attorney in the first place?

This is where small claims court can help. In Michigan, the small claims court settles legal disputes that involve small amounts of money. The courts are designed to be easy to use, inexpensive, fast, and a lot less formal than the state's other courts.

The person or business that files a small claims lawsuit is called the **plaintiff**. The person or business that's sued is called the **defendant**. Any individual defendant must be at least 18 years old and mentally competent. If a defendant is in active military service, your case can't proceed until the court arranges to have him represented by an attorney.

You file a small claims case with the clerk of the appropriate district court. In Michigan, there are nearly 100 districts, with each covering at least one township, city or county.

Individuals or Businesses May Sue

Individuals, businesses and corporations can file suits and be sued in the small claims court in Michigan. You need to know the names and address of each defendant and whether the defendant is an individual, partnership, corporation or sole proprietorship. The Michigan Secretary of State can help you figure out if a defendant is a business.

Claims

In Michigan, the most you can recover in small claims court is \$3,000. If your claim is a little over \$3,000, you may want to consider filing in small claims anyway and forget about recovering the full amount. It will be faster, easier, and less expensive than filing suit in another court. If your claim is not a lot more than \$3,000, you may want to talk to an attorney to see what your chances are of recovering the full amount in another court.

Cases Suitable for Small Claims Court

Many different kinds of cases go to small claims court. Some of the most common cases involve:

- Goods or services sold
- Money loans
- Auto negligence

- Security deposit refunds
- Unpaid rent
- Minor accidents
- Landlord/tenant disputes (but landlords can't file eviction actions in small claims court)
- Car repair disputes
- Property damage
- Breach of contract

There are several things you can't sue for in small claims court, including fraud, libel, slander, assault, battery, and other intentional torts, like trespassing and invasion of privacy. You also can't use the court for things like changing your name or contesting someone's last will and testament.

Statute of Limitations

The statute of limitations is how long you have to file a lawsuit after something happens. The time period is based upon the type of claim you have. For example, if you were injured in a car accident, you generally have three years from the date of the accident, or from the date you discovered your injury, to file a "personal injury" lawsuit in Michigan. These time periods can be shorter or longer, depending on your claim. So, to be safe, you should file your lawsuit as soon as possible.

Court Forms

You file a small claims case by completing a form called an "Affidavit and Claim." This form tells the person you're suing why you're filing suit and what your damages are. The district court clerk can give you this form, or you can get it online, along with instructions on how to complete it.

Attorney

In Michigan, you can't have an attorney represent you in small claims court. However, you are free to hire an attorney to help you figure out how much you should sue for, how long you have to file a claim (the statute of limitations), and other matters related to your suit. If you want to have an attorney represent you in court, you need to file your lawsuit in the regular district court.

Clerk's Duties

The district court clerk may help you complete the Affidavit and Claim, like telling you whose name goes where and where you should sign. She can't, however, give you legal advice about your claim. When you file the Affidavit and Claim, the clerk will ask how you want to have the defendant notified or the suit (called "service of process"), and she will

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arrange for the defendant to get a copy of your Affidavit and Claim.

Trial

Sometimes a case is settled before the trial, such as when the defendant pays what it owes you, for example. Other times your case may be heard by a mediator. He listens to you and the defendant, asks questions, and tries to get you both to reach an agreement. If there's no resolution in your case, a trial will be held before an attorney-magistrate (or "magistrate") or by a judge. At trial, both you and the defendant, and your witnesses, will be sworn in. You'll tell your side of the story first, and the defendant will get a turn. You'll each have a chance to ask each other questions, as well as question any witnesses.

There are **no jury trials** in Michigan's small claims court.

Judgment

The **judgment** is the decision given by the magistrate or judge. After hearing the arguments of both parties, the magistrate makes a decision, and the clerk will enter it into the court record. If the magistrate doesn't make a decision immediately after trial (called "taking it under advisement"), you and the defendant will be notified by mail about the decision.

If the judgment is in favor of the defendant, the case is over and you can't recover any money or damages. If the judgment is in your favor, the magistrate's judgment will state how much the defendant owes you, and when it must be paid, and what happens if it's not paid. The district court clerk can get you the judgment form, or it's available online

Either party can appeal (have a higher court look at the case) a decision made by a magistrate. You have seven days from the date of judgment to appeal. However, if a judge makes a decision in your case, neither party can appeal.

Small Claims Court Procedural Rules

The Michigan Small Claims Rules of Court can tell you more about how the small claims process works. ■

What is Your Case Worth?

Conclusion

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Liquidated damages are damages specified in a contract as a remedy in the event of a breach. Liquidated damages must be reasonable in light of the anticipated or actual loss caused by the breach and the difficulties of proof of loss and must not impose a penalty on the breaching party. A lease or rental agreement is one common type of contract likely to contain a liquidated damages clause that would permit the landlord/lessor to recover liquidated damages in the event that the tenant/lessee breaches the contract by failing to comply with any terms therein.

Statutory damages are damages that are specifically provided for by statute. In American jurisprudence, each party traditionally bears his own attorney's fees. However, some statutes authorize the recovery of attorney's fees and/or other costs by the prevailing party.

Appealing a Damage Award

A damage award is a judgment of the court that renders it, and a damages award can be appealed to the same extent and in the same manner and timetable as any other judgment of that court. Parties to litigation can agree to accept an award of damages and to forego appeals. The agreement to abide by an award would be in the nature of a contract, and filing an appeal of the award would be a breach of the agreement.

Small Claims Cases

The jurisdiction of small claims courts varies from state to state. In general, such courts have jurisdiction limits on both the amount at issue and the nature of the case. Whether a small claims court can award damages for such things as travel, lost wages, or anything other than actual damages depends on the authority conferred on that court. Whether a small claims court can issue an injunction or mandamus to compel a specific action will likewise depend on the jurisdiction conferred. Damage awards, like other judgments of a small claims court can be appealed. However, in some instances, an appeal of a judgment from a small claims court is heard by a superior court in a trial de novo. ■



Must I Rent to a Sex Offender? By LAWYERS.COM

Our society is terrified of sex offenders, and has enacted many laws including requiring registration and restricting where they can be and live. In fact, there are many more laws restricting sex offenders than any other type of criminal—even murders.

Currently, there are about 747,000 registered sex offenders in the United States. In order to comply with the terms of registration and avoid re-arrest, they must have a permanent address.

Government Restrictions on Housing

Many state and local governments have imposed restrictions on where registered sex offenders can live after their release from direct supervision (jail, halfway house or probation). Generally, they are not allowed to live within a designated distance of schools, daycare centers, parks and other places where children congregate.

Some cities have created tiny “pocket parks” throughout their areas in order to effectively ban registered sex offenders from living anywhere within their boundaries. Once sex offenders lose stable housing, many become homeless and in violation of registration. They become not only more difficult to track, but also more likely to re-offend.

Such restrictions are being challenged. In August 2013, a federal judge in Colorado struck down a city ordinance that tightly restricted where registered sex offenders can reside, ruling that it conflicts with a state law requiring the reintegration of parolees into society. Under the ordinance, 99 percent of the city was essentially off-limits.

Must a Landlord Rent to a Sex Offender?

In most states, a landlord can rent to a registered sex offender as long as the offender does not pose a recognizable risk to other tenants. A recognizable risk might be renting to a known pedophile in a building with many children. It would not be a risk to rent to a pedophile in a building with all adults. A landlord is under no duty to check the registry prior to renting. Being a registered sex offender is not covered by anti-discrimination laws. It is not a protected characteristic. In most states, a landlord can refuse to rent to an offender who reveals his or her status in an application or if the offender’s status is uncovered in a criminal background check.

In some states, such as California, this information cannot come from the sex offender registry database. It must come from some other source. Be sure to check the law in your state.

If a landlord discovers that he or she already has a sex offender for a tenant, eviction can be difficult. A month-to-month tenant can be let go with due notice. A tenant with a lease can be evicted if he or she lied about sex offender status on an application, especially if the residence falls within an area restricted to sex offenders. Otherwise, absent an issue, the offender must be treated like any other tenant until the lease renews.

Must a Landlord Notify Other Tenants?

Usually, a landlord is under no obligation to notify other tenants

of the presence of a sex offender. In most states, a lease agreement must include information about the state’s sex offender registry, which allows a potential tenant to do a search on his or her own prior to signing the lease and moving into the building or area. In all states, law enforcement is required to notify residents of sex offenders.

Notification is the responsibility of the tenant and law enforcement, not the landlord.

Call a Landlord/Tenant Lawyer

The issues surrounding renting to a registered sex offender can be complicated. Plus, the facts in each case and the law in each state are unique. This article provides a brief, general introduction to the topic. It is not legal advice. For more detailed information about your specific situation, please contact a landlord/tenant lawyer.

Rent and Rent Control

By Lawyers.com

In just about any lease, some of the most important parts are the rent provisions. The payment of rent is critical to both the landlord and tenant: it's what the tenant has to pay for the right and privilege to use the property, and it's what the landlord charges to cover things like the costs of maintaining the property, paying taxes and hopefully make a profit.

In almost every lease, the parties agree on the amount of rent, and it's not uncommon for leases to set out if and when rent will increase (or decrease) and by how much. But, even when the parties agree on such things, some states and cities have "rent control" or "rent stabilization" laws that limit how often a landlord can raise rent and by how much.

It's important for every landlord and tenant to know some things about the rent provisions of a lease, and if you're in an area with rent control laws, it's even more critical. So, before you sign a lease, be certain to check the landlord-tenant laws in your area, or get some assistance from a real estate lawyer.

General Rent Provisions

In most states, the landlord-tenant laws control what has to be included in the rent provisions of a lease. The requirements vary from state to state, but generally the rent provisions need to include things such as:

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- The monthly amount of rent
- The date on which rent is due
- The manner or method of payment, such as by check (personal or business account?), cash, or money order
- When a payment will be considered late, such as if there was a mail delay, including any "grace" periods and late fees

Also, many state laws provide that rent is due and payable without demand or notice at the time and place agreed upon by the parties. In other words, there's no need for the landlord to notify the tenant each month that rent is due.

Rent Control and Stabilization

Rent control began in certain states and cities after World Wars I and II as a result of increased rents in major U.S. cities, which was caused by the lack of housing. Many modern statutes are called "rent stabilization" laws, which are similar to but a little different from rent control laws.

Nonetheless, the both rent control and rent stabilization laws generally:

- Limit how often a landlord can **increase** rent and by how much
- Allow the government (usually a city) to force a landlord to **decrease** rent
- Limit a landlord's ability to evict a tenant

Rent control and stabilization laws are not very common. In some states, there are laws that bar a city from enacting such laws. In some states, rent control laws can only be enacted by the state and not the cities. But, rent control is still in place in states with large concentrations of population, such as California, the District of Columbia and New York.

Also, not all rental properties are subject to rent control or stabilization even in areas where such laws exist. Usually, only buildings that were built before or after a specific date and/or house multiple tenants fall within the laws. So, for example, single family homes and condominiums are often not covered by rent control laws. And, under many of the laws, landlords have to register rent controlled housing with the appropriate government agency.

Rent increases are typically determined by some administrative body, such as a rent control board, as a percentage based upon the prior year's rent or based upon average

housing costs in the area. Increases typically range from 4 to 8% per year. These are "automatic" increases that a landlord can make without permission from the government.

In addition, most laws allow a landlord to increase rent **with government permission** when, for example:

- The landlord requests the increase because of a major repair or improvement to the premises
- There are increased operating or maintenance costs

Rent decreases typically occur when: :

- There's a decrease in demand for rental housing in the area or a decrease in maintenance costs, as determined by the government agency
- If the landlord refuses or neglects to provide services and the tenant applies for rent reduction. "Services" include things like inadequate heat and/or hot water, unsanitary common areas like hallways and lobbies and insufficient security, such as broken or inoperable door and window locks

Evictions are impacted by rent control and stabilization laws in that they usually limit the reasons that justify an eviction by specifically listing appropriate reasons. In other landlord-tenant relations, evictions can occur for any reason listed in the lease or landlord-tenant laws. Rent control and stabilization laws typically allow evictions only when, for example, a tenant:

- Fails to pay rent
- Using the property for an illegal purpose
- The premises will no longer be used for rental property
- The building is condemned

The main **difference** between rent *control* and rent *stabilization* is that in rent stabilized property, the tenants have the right to have their leases renewed, often for a term of one or two years, at the tenant's option. The landlord is required to offer a renewal, and a tenant's failure to renew is a ground for eviction.

In some areas, like New York City, there are both rent control **and** rent stabilization laws. Which laws apply to which properties primarily depends upon when the building was built. So, be sure to check the laws in your area to make certain that your lease complies with all rent regulations.

Multifamily benchmarking has come a long way, but there's still room for improvement

Most operational tasks at multifamily communities strive to maximize efficiency in order to increase the bottom line. The web-based revolution in the past 10 to 15 years has helped these businesses to streamline their operations and as that technology evolves, companies are taking a closer look at, and improving, the ways they are spending money on property utilities through benchmarking.

So what is benchmarking? Putting it simply, benchmarking is the process of taking an entity's specific set of metrics and measuring or comparing those metrics to the metrics of another entity or the average of metrics of other similar entities. In multifamily - and commercial and industrial buildings as well - an example would be taking the total use of electricity at one building and comparing that usage against other similar buildings, or the average usage of multiple buildings that are similar in stature.

While this might sound relatively simple, there are several factors that make utility benchmarking at multifamily communities and buildings more difficult than their commercial and industrial counterparts, including sub-metering, resident privacy and the willingness of utility companies to cooperate with requests for accurate data. Having the right tools, finding the right benchmarking vendor and being aware of local, state and federal benchmarking efforts can all help companies to build a benchmarking strategy that will help reduce utility costs and increase NOI. (Net Operating Income)

A few vendors and tools

In order to effectively benchmark utilities, a company needs nothing more than a method of collecting, analyzing and storing the data, as well as a way to determine how other similar multifamily properties are consuming in order to track results. An initial gut response might include opening up Microsoft Excel or signing into Google Drive, but, unfortunately, the labor costs for tedious manual data entry for benchmarking would likely outweigh any savings that could be had, and there would be no guarantee that the data could be appropriately analyzed.

"This can be done in spreadsheets, but it is time consuming and tedious, and the analysis required to do it accurately is not as simple as adding up utility bills," says benchmarking guru Jonathan Braman, vice-president of the New York-based benchmarking company BrightPower. "For example, in climates with a lot of heating or cooling needs, building energy consumption varies a lot based on how hot the summer [is] or cold the winter is. If I installed a new efficient boiler before last winter's polar vortex, I still probably used more gas than the previous winter. I may have used less than I would have with the boiler - but utility bills alone won't show that."

BrightPower is just one of many benchmarking companies that have emerged in the multifamily industry. One tool that the company offers its clients is its EnergyScoreCards platform, which auto-

matically fetches data from most large utilities, and then "provides weather-normalized benchmarks at the building, property and portfolio levels," he notes.

Braman says that the use of EnergyScoreCards has helped long-term clients decrease utility spending since they started using the project, but he also notes that the benchmarking alone isn't necessarily a cause for energy saving.

That combined with working with BrightPower analysts can help companies sort through the data. If consumption problems are evident, BrightPower engineers and procurement experts help clients work through the problem.

"Benchmarking only helps owners make better decisions and take action to save energy," he says. "We think of benchmarking as a critical component of energy management, but it must be combined with smart operations and maintenance, behavioral changes, and in some cases, capital improvements, to save energy."

Another major player in the benchmarking industry is American Utility Management (AUM) Inc., which has been providing energy management solutions to the multifamily industry since 1994.

AUM Chief Energy Officer Dimitris Kapsis says that the most important tool for benchmarking is good data.

"The most essential tools for benchmarking is the availability of the actual comparative data, its integrity and overall size of the comparative group," he says.

AUM's primary benchmarking tool, SCORE, utilizes data captured from a state-of-the-art data capture process that checks the data's integrity, and then provides benchmarking that takes into account geographic region, property type and other property characteristics and their overall utility usage to rate a property's energy efficiency against similar peer groups.

Kapsis stresses the importance of the data integrity checks, since manual data entry can be flawed, as can data that comes directly from the utility companies.

"It could be a situation where we have some data entry issues such as fat fingering, or we even have data issues coming from the utility, because unlike the popular consensus, utilities make mistakes and sometimes [they] make big mistakes," he says.

Once the data is validated and entered into the system, AUM's system monitors the data for anything that is out of trend, including utility usage.

It's pretty straight forward. We put some variances in place up or down, and if they break through those barriers that we manually set into the system then the system notifies us," he says. "We look into it as to if it's a legit variance. If it is, we let it go through the system and the client receives a notification. From there, either themselves or with our help, we can work on fixing the issue."

Kapsis referenced an AUM Energy Management client with a portfolio of more than 100 properties that was able to identify con-

servation opportunities through benchmarking efforts that led to \$400,000 in annual savings with a ROI in just 13 months.

NWP, which offers benchmarking through its analytics portfolio, offers a product called ScoreCard, which allows clients to rank a property within a portfolio to see how it is doing against its peers.

ScoreCard also takes into account factors such as weather normalization, and benchmarks several utilities both individually and combined.

“You can look at gas, electric and then a combined gas and electric,” says Chris Dorando, product manager for NWP’s Utility Smart product line. “So for instance, if you’re a property that has electric heating and you want to know how that property is performing against other properties in the area that have gas heating, we normalize that so that you can actually make a comparison.”

NWP also works with clients that use the EPA Energy Star Portfolio Manager, which anonymously tracks whole-building energy and water consumption data that can be used for benchmarking.

All three energy management and consulting companies, BrightPower, AUM and NWP, are service and product provider (SSP) partners through the Energy Star Portfolio Manager Program. According to Energy Star, SSP partners “have demonstrated their expertise and achievements by meeting strict Energy Star program requirements for benchmarking customer buildings using Portfolio Manager and gaining Energy Star certification for buildings.”

Challenges and the future

Utility benchmarking has been around since the 1990’s but was primarily restricted to more commercial buildings, where whole-building consumption data is easier to acquire and track.

Even though an assortment of industry suppliers have assisted EPA in creating and improving the Portfolio Manager, whole-building data remains one of the biggest challenges for multifamily due to property complexity and the various types of metering structures set up at those properties.

“The main difference between the rest of the industry and multifamily, especially when we’re talking about commercial or retail, is that each individual unit—an individual unit could be a retail shop or an entire office building—tends to have central metering for electric, gas and water. So, when we capture the data, we know what the entire unit is using on a per-month, quarterly and annual basis.”

This type of cumulative data makes a platform like Portfolio Manager easy to use and compare to other similar properties by type and region.

With multifamily, however, properties can range from garden-style, to high-rise buildings and beyond, with each of those

different types of buildings. Utilities across the spectrum can be measured across the entire property, such as water, which tends to be measured by whole-building, combined with utilities such as gas and electric, that are measured in either entire building or individual apartments or somewhere in between.

“To be able to compare apples to apples for a particular property, it’s not just location and type of property, it’s also what type of metering they have in place. And, not just for one type of utility, it could have a diversity of metering types depending on what utility you’re looking at...that was the difficulty that the EPA had up until recently and they still do.”

Currently, whole building data can only be acquired from utilities that have willingly agreed to provide the information in good faith or that have been mandated by cities to provide the information, with the first option being subject to a variety of data discrepancies.

“Benchmarking laws in several cities have also helped owners and vendors to improve the process and greatly expand the number of properties benchmarking.” BrightPower’s Braman says.

Kapsis, who notes that owners are gravitating toward individual metering for gas and electric as residents demand more control over factors like individual unit climate settings and knowing their own utility usage, is in agreement that the availability of whole-building data will help with benchmarking.

“As a result of those mandates, we will be able to capture whole-building data.” he says.

Dorando believes that the mandate trend is not going to fade away anytime soon.

“As those urban areas like Seattle and New York and Washington D.C. [and] Chicago start to roll out, I think you’ll start to see a lot more of that happen across the country,” he says. “Other communities will start to follow that. It’s something that’s going to be happening, and it’s something that we help our clients with. It’s pretty cutting edge at this time. I think it’s going to be a valuable tool for the property owners because they’ll be able to really improve their properties.”

As this whole-building data becomes more accessible to vendors and their clients, more research and evidence on the effectiveness of benchmarking will become available to owners and operators.

“People used to say, rightly at the time, that there were no good databases of multifamily energy and water use data, so no one knew what was good or bad.” Braman says. “Now we know.”

Your Rent: Due Dates, Grace Periods and Late Fees by Landlord.com

Landlord-tenant laws differ a great deal from state to state, but most leases cover common points: Your lease should state that rent is due by a certain date, late fees become payable a few days after the due date, and if you don't pay your rent, your landlord can evict you. Your lease is a contract with your landlord, and when each of you sign it, you're bound by its terms.

Your Rent Is Due on the Due Date

The due date in your lease is the date on which you're contractually obligated to pay your rent each month. But sometimes things happen, and your landlord - and most state laws - agree that there shouldn't be any dire penalties if you're a little bit late. This is where your grace period comes in; it's a small window of time after your due date during which you can pay your landlord without incurring a late fee.

How Long Is the Grace Period

Some states have laws that determine how long a grace period your landlord must give you. For example, in New Jersey, it's five days, but in Texas, you only have one day. Other states, such as Ohio, have no statutory grace periods at all. If you're concerned about when yours is, check your lease. The late fee usually applies the day after your grace period expires. If you have a five-day grace period, the late fee becomes payable on the sixth day.

Late Fees Should Be Reasonable

Unfortunately, even among states that provide for statutory grace periods, there's not always an exact formula for calculating how much the late fee should be. Sometimes your lease will spell it out. It might be a one-time charge of \$50, or \$5 per day after your grace period expires. If your lease doesn't mention an exact fee, some state laws simply say that it must be "reasonable," which typically means that it's enough to cover any costs your landlord incurs because you were late.

You May Risk Eviction

If you incur a late fee, it means that you didn't pay your rent before your grace period expired, so you're technically in default of your lease contract. Depending on the goodwill of your landlord, he might simply accept the rent and the late fee, or he may move to evict you. Some states will not allow your landlord to evict you for late fees alone-that is, if you're not also behind with your rent - if such a provision isn't written in your lease.

Can I fix Up My Rental? By Lawyers.com

Tenants often think about making improvements to the property they are renting, especially if they like the location and the landlord, and plan to stay for a long time. This article deals with tenant improvements above and beyond the landlord's requirement to keep a unit safely habitable.

Don't do anything to improve your rental property until you've read your lease or rental contract and have discussed the improvements with your landlord.

Your lease or rental agreement probably contains a detailed repair/modification/alteration clause prohibiting alterations or improvements. Some of these clauses are so strict that they forbid the tenant from painting the walls or even using nails to hang pictures or shelves.

Get Permission

Even minor work can result in major consequences if you don't get permission first. Landlords are ultimately responsible for making sure any work done on their property adheres to real estate regulations, building codes, zoning ordinances or other rules governing construction and habitability.

They don't take kindly to "random acts of improvement."

Without landlord permission, you probably won't be reimbursed. You could be forced to restore the property to its "pre-improvement" condition, at your expense. You could lose the rights to property you buy that becomes part of the improvement. You could lose some or all of your security deposit to correct or remove the work. You could be evicted.

Removable Improvements Are Safer than Fixtures

These improvements could include major appliances like refrigerators, ranges, washers and dryers that plug in, screw in or otherwise require simple wiring or attachments to connect to an electrical or water source.

A tenant can often change simple fixtures in the home. Updating cabinet hardware, light fixtures and switch plates, electrical outlet plates and bathroom fixtures is a simple way to update the home. Be sure to keep the original items, however, and replace them with no damage before you move out.

Permanent Fixtures

A fixture is personal property owned by the tenant, but made a permanent part of the rental property so that removal would be impossible or impractical upon termination of the lease or rental agreement. It increases the value of the property. Adding a new shower stall, track lighting, built-in bookcases or new windows, remodeling a kitchen or refinishing or carpeting floors are examples of installing permanent fixtures.

Once you permanently nail, screw, cement or otherwise attach something to the property, the item legally becomes a "fixture" that belongs to the property owner.

Negotiate for Improvements

You can try to negotiate with the property owner for permanent home improvements that will remain after your lease expires. The landlord may even agree to pay for some or all of the work, or reduce the rent to cover your cost. Never rely on an oral agreement. Always get it in writing.

A detailed contract itemizing the work to be performed and signed by the tenant and the landlord helps prevent misunderstandings. Without an agreement, a landlord is not automatically responsible for reimbursing a tenant for tenant-initiated improvements.

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