

# Helping Older Tenants Remain at Home

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## National Consumer Law Center

The National Consumer Law Center uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

## Introduction

As the Baby Boomer generation ages into retirement, more older adults are choosing to rent rather than purchase homes. Researchers expect that nearly 6.8 million renters will be over the age of 65 in 2020.<sup>1</sup> Older tenants are more likely to live on a fixed income than their younger counterparts, putting them at greater risk of losing their homes if rents increase. Moreover, older tenants may be reluctant to complain about housing code violations, as they have limited resources to finance a move if their landlord pursues eviction in retaliation for the complaint.<sup>2</sup> Landlords may also be reluctant to make reasonable modifications to the property for older tenants with disabilities, including the installation of appropriate medical assistive devices.

Landlord-tenant laws vary widely. A tenant's legal rights typically depend on the law in the state they live in and can differ between municipalities as well. In this publication, we address general tenants' rights that are shared among most states. **Advocates should consult their state's landlord/tenant law, as not every state will have the rights outlined below.** We also highlight federal statutes that may be particularly relevant to older adult tenants, such as the Fair Housing Act and the Americans with Disabilities Act.

## Key Lessons

1. Older adult tenants are more likely to have fixed incomes and may face greater challenges when rents increase.
2. Regardless of jurisdiction, tenants are entitled to certain standards of living within their rental property.
3. Landlords must follow the legal processes for eviction, during which tenants must be given an opportunity to cure any violations and to raise defenses.
4. Older tenants are entitled to accessible apartments if they are disabled and may be entitled to protections based on their age.

<sup>1</sup> Talia Schmidt, *More Older Americans Renting*, AARP, [aarp.org/home-garden/housing/info-05-2011/more-older-americans-becoming-renters.html](http://aarp.org/home-garden/housing/info-05-2011/more-older-americans-becoming-renters.html) (last visited Jul. 12, 2018).

<sup>2</sup> Shannon Rieger, *As Baby Boomers Age, Older Single Women Will Face the Greatest Housing Challenges*, Joint Center for Housing Studies of Harvard University, [jchs.harvard.edu/blog/as-baby-boomers-age-older-single-women-will-face-the-greatest-housing-challenges](http://jchs.harvard.edu/blog/as-baby-boomers-age-older-single-women-will-face-the-greatest-housing-challenges) (last visited Jul. 12, 2018).

## Common Tenants' Rights & Protections

### The right to use and control the rented premises

Beginning on the first day of the lease, tenants have a general right to access their residencies. With this right of access comes the right to sue for property violations such as trespass, nuisance, and damage to the property. The tenant retains this right even if the landlord causes or knowingly permits the violation. In many jurisdictions, tenants can also restrict their landlord's entry onto the rented premises in non-emergency situations. Finally, tenants have a right to host guests unless their guests pose a nuisance or danger to the property or other tenants.

### The right to habitable premises

Most jurisdictions recognize the implied warranty of habitability, which holds that tenants are entitled to a residency fit for human occupancy throughout the duration of the lease. The warranty is breached if there is a condition that impairs the tenant's health or safety, such as carbon monoxide or a lack of potable water. In most jurisdictions, the tenant must give the landlord notice of the breach and an opportunity to correct the condition. If the landlord fails to act, in many but not all jurisdictions, the tenant can withhold rent or receive damages.

### The right to quiet enjoyment of the premises

If a landlord interferes with the tenancy in a way that severely impairs the character and value of the leased premises, he or she has violated the tenant's right to quiet enjoyment. Only a landlord can violate the tenant's right to quiet enjoyment, but a third person's actions can violate the right if the landlord knowingly permits that person's behavior. A violation of the right of quiet enjoyment must be severe enough to amount to an actual or constructive eviction, such as preventing the tenant from accessing the premises or allowing ongoing defective conditions to impair the use of the leased property. In most jurisdictions, the landlord must have notice of the interfering condition and have had an attempt to cure prior to the tenant seeking damages or an injunction.

### The right to be free from discrimination

The federal Fair Housing Act (FHA),<sup>3</sup> section 3604, prohibits landlords from discriminating against tenants based on their race, color, national origin, religion, sex, familial status or disability. The FHA applies both to practices that purposely discriminate against tenants of a protected class, and to practices that have a disparate impact on tenants of a protected class. However, it may not apply to certain single-family homes or smaller rental buildings where the landlord is also an occupant.

### The right to be free from retaliation

A landlord cannot retaliate against a tenant for complaining about violations of any of the above rights. If a landlord evicts a tenant in retaliation, the tenant can use retaliatory eviction protections as a defense at the eviction hearing. If a landlord raises the rent, decreases services, or threatens an eviction action in response to the tenant's exercising of legal rights, the tenant may seek damages or an injunction depending on the circumstances. Retaliatory eviction protections may not apply to fixed-term tenants holding over at the end of the lease period or to tenants residing in mobile home parks in some states.

### The right to a fair eviction process

An eviction without legal process constitutes a breach of the implied covenant of quiet enjoyment. In most jurisdictions, only a court can have a tenant removed from their residency. Some jurisdictions have "good cause" eviction statutes, which limit the grounds on which tenants may be evicted. A landlord cannot change a tenant's

<sup>3</sup> 42 U.S.C. §§ 3601-3619.

locks, turn off a tenant's utilities, or take other similar actions without first going to court. The next section will provide a brief overview of the eviction process.

## The Eviction Process

Eviction procedures vary significantly depending on the jurisdiction, but most jurisdictions require the landlord to warn the tenant that he or she is at risk of being evicted and to allow a grace period during which the tenant can cure any violations. The length of the grace period will depend on the jurisdiction, but in general the periods range from a few days to two weeks. Notice requirements may be waived in the lease agreement.

If a tenant cannot cure the violation, then a landlord can commence with summary proceedings. The landlord must serve the tenant with a summons to the eviction proceeding. Tenants should attend these proceedings so that they can explain their situation and raise defenses such as retaliatory eviction or breach of the implied warranty of habitability. In many jurisdictions, tenants can also appeal an adverse judgment.

If a tenant is in public housing, their experience with the eviction process may be slightly different. They may be entitled to a longer notice period, and a landlord may have to show good cause for the eviction.

## Special Legal Protections for Older Adults

### The Fair Housing Act

The federal Fair Housing Act (FHA) does not prohibit discrimination on the basis of age. The act prohibits discrimination in the sale or rental of a residency on the basis of a person's disability. Under the FHA, a landlord cannot refuse to rent a residency to an individual with a disability, nor can a landlord require different terms in a lease agreement because of a potential tenant's disability.<sup>4</sup> Discrimination also includes a refusal to allow an individual with a disability to make reasonable modifications to existing premises, such as adding a ramp or grab bar.

### The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) does not apply to most private residences, including private apartment complexes where landlords accept housing vouchers.<sup>5</sup> However, the ADA does apply to programs, services, and activities provided by public entities, including housing provided by housing authorities or state or local government.

### The Age Discrimination Act of 1975

The Age Discrimination Act of 1975 prohibits age discrimination in programs that receive federal funding, such as HUD low-income housing and voucher programs.<sup>6</sup> However, programs and activities that reasonably consider age as a necessary factor, including subsidized housing for older adults, are still permitted under this act.

### State and local protections

Though older adults are not a protected class under the federal FHA, several states and the District of Columbia have prohibited discrimination based on age in residential sales and rentals. In states without protections for older adults, municipalities often provide additional protections. Furthermore, in many jurisdictions, tenants over the age of sixty-two can receive assistance if their rental housing is converted into a condominium.

<sup>4</sup> 42 U.S.C. § 3604.

<sup>5</sup> 42 U.S.C. §§ 12101 et seq.

<sup>6</sup> 42 U.S.C. §§ 6101 et seq.

## Conclusion

Tenants' rights will vary depending on their jurisdiction, and older adults are at particular risk for having these rights violated. Knowing about which local and federal protections are available can help lower the risk that an older tenant will lose their home.

## Additional Resources

- U.S. Department of Housing and Urban Development (HUD)
  - » [HUD-approved housing counseling agency](#)
  - » [Rental Assistance](#)
  - » [Fair Housing](#)
  - » [State Information](#)
  - » [Resource Locator](#)
- Legal Assistance
  - » [Legal services/legal aid](#)
  - » [Volunteer lawyers](#)
- Advocacy Organizations
  - » [National Housing Law Project](#)
  - » [National Fair Housing Alliance](#)
- Publications & Reports
  - » National Consumer Law Center, *Guide to Surviving Debt* (10th ed. 2016)
  - » National Consumer Law Center, *Credit Discrimination* (6<sup>th</sup> ed.)
  - » Joint Center for Housing Studies of Harvard University, *Housing America's Older Adults* (2014)

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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