

TED HESS-HOMEIER

Attorney At Law
445 South 5th West
Missoula, MT 59801
(406) 549-9611 phone
(406) 728-7390 fax
thesshomeier@msn.com

CLAUSES THAT YOU SHOULD INCLUDE IN YOUR LEASE

A while back I wrote an article about landlords using illegal clauses in leases. We litigate hundreds of leases every year. Because we litigate so many leases, we also see a lot of leases which lack clauses which would be helpful. Here are some lease clauses that we would like to see more often:

Restricting Occupancy To The People Named In The Lease:

Everyone who is allowed to live in a rental unit should be listed on the lease. They don't all need to sign the lease. Just make sure that all the people who will live there are listed in the lease. And make sure the lease says that only the listed people may live there. Your property is exceedingly valuable. You should maintain control over who lives in your property. Please also note that this suggestion doesn't apply to landlords who rent trailer spaces. Trailer park rules must be "reasonable." It may not be reasonable to try to control everyone who lives inside a trailer if you don't own the trailer. Note however, that it is okay to restrict trailer occupancy to trailer owners as opposed to renters. Often trailer parks don't want other landlords renting trailers out on their spaces.

Forbid Non-Working Vehicles:

Prohibit tenants from keeping non-working vehicles on or near the property. Debris lowers your property values and in the long haul will lower your rents. Debris attracts crime and will eventually lower the quality of your tenants. Enforce rules against debris including non-working vehicles promptly and consistently. One of the most important things you can do as a landlord is to preserve the value of your property by keeping it clean and prosperous looking. This in turn protects your better tenants by assuring them an attractive neighborhood.

Establish Rules About Pets And Consistently Enforce Them:

Either forbid pets or specifically restrict their numbers and types and charge more. In our experience Landlords significantly underestimate the cost of allowing pets. Charge more rent and a higher deposit from tenants with pets. Provide for exceptions to these rules if the pet is a legitimate assistant to a disabled person.

Mandate That Late Fees Are Part Of Rent:

Our most common eviction is the nonpayment of rent eviction. In those cases we begin the case with a three day notice to pay or vacate. The three day notice states the rent and late fees owing and demands that the tenant vacate the premises or pay rent within the three days. Sometimes the tenant responds by paying the rent but not the late fees. This raises a potential legal issue. The issue is; "Can you still evict for nonpayment of rent when they have paid the rent but not the late fees?" We've argued this issue many times and always won. However, we try to avoid even frivolous claims in order to save our clients attorney's fees. Because of this we like our clients to include a clause in their lease that looks something like this:

"Rent includes all late fees, notice fees, costs and attorney's fees incurred to enforce this lease. Rent is not paid in full until all late fees, notice fees, costs and attorney's fees incurred to enforce this lease are paid in full."

State The Place For Any Litigation:

This subject is called the law of venue. "Venue" basically means place. Lots of people confuse the word "venue" with the word "jurisdiction." "Jurisdiction" means power. Here is the difference. The Justice Courts (and the District Courts) have power to decide eviction cases. However, if you file in a Missoula Court to evict somebody in Havre then you have filed in the wrong venue. The Missoula Court has jurisdiction over your eviction. However, the venue is improper.

This actually still gets a little more complicated. Venues is sort of a procedural issue. The venue rule is that the Plaintiff can sue in any venue assuming it isn't beyond the Court's jurisdiction. In other words, you could sue in Missoula Court to evict your tenant in Havre. (I don't recommend it.) Then, after you file suit, the Defendant has the option of challenging venue if you have filed in an improper venue. Proper venue is either: 1. Where most of the contract took place or 2. The county where the Defendant lives. Note that the Defendant can opt to just leave venue where the Plaintiff filed originally. In other words, improper venue becomes proper venue if Defendant doesn't object to Plaintiff's original choice of venue.

Here is some language to use to establish venue: "Venue shall be in Missoula County, Montana."

Time Is Of The Essence:

In law school we read a case about a notorious jerk who had an entire mansion built and then refused to pay the builder because the builder had used the wrong kind of nails. The notorious jerk accused the builder of breaching the contract. Technically the builder had breached the contract. The contract had specified the kind of nails and he used a different kind. The Court rules (as one would expect) that the jerk had to pay **because the breach was minimal**.

There is a whole area of law devoted to the issue of which breaches are minimal and

which are substantive. Some of the cases in this area of law deal with breaches of deadlines. The general rule in this area is that a deadline is a deadline **unless the other guy meets the deadline within a reasonable time after the actual deadline**. Nobody seems to know what a reasonable time is. However, all of this can usually be avoided by including in your contracts the following language: "Time is of the essence for all deadlines in this lease."

If all this time is of the essence stuff seems ridiculous, it's because it is ridiculous.