HOUSING ISSUES IN THE SMALL CLAIMS DIVISION OF THE SUPERIOR COURT

Fourth Edition

Citizens Advisory Council for Housing Matters
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HOUSING ISSUES IN THE SMALL CLAIMS DIVISION OF THE SUPERIOR COURT

Prepared by the Citizens Advisory Council for Housing Matters

INTRODUCTION

Most of the cases brought to the Small Claims Division of the Housing Session are of one of three types: (1) claims by the tenant for return of a security deposit, (2) claims by the landlord for back rent, and (3) claims by the landlord for property damage. This reference book attempts to summarize the major issues involved in each type of case and the present state of the law regarding each issue.[1]

The Citizens Advisory Council for Housing Matters is a state advisory board appointed by the Governor under the provisions of §47a-71a of the General Statutes. Its membership is a mix of lawyers and non-lawyers. The act requires that they be chosen so as to include representatives of tenants, landlords, and others involved in housing. The statements made in this booklet represent the work product of the Advisory Council, which includes both landlord and tenant members, but they have no official status. Finders of fact must ultimately draw on their own legal analysis in interpreting the applicable law.

I. SECURITY DEPOSITS

A. Security Deposit Act

Security deposits for all residential property are governed by the Security Deposit Act, C.G.S. §47a-21 and §47a-22a. The Security Deposit Act does not apply to security deposits for commercial property, Hoban v. Masters, 36 Conn. Sup. 611, 421 A.2d 1318 (App. Sess., 1980), Dell'Oro v. Kelly, SNBR-384, 1991 WL 135119 (1991); Lee v. Zampano, NH-144, 1983 WL 187790 (1983).[2] See also C.G.S. §47a-21(a)(6)

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[1]This book is an update of the 1997 edition of Housing Issues in the Small Claims Division of the Superior Court. The first edition of the book was prepared by the Advisory Council in 1993 under the title, Small Claims Issues for Magistrates Hearing Housing Cases.

[2]The Housing Division has developed its own numbering system for identifying decisions issued by housing court judges. Cases beginning with the letter "H" are from the Hartford-New Britain Housing Court; those beginning with "NH" are from the New Haven-Waterbury Housing Court; and those beginning with "SNBR" are from the Bridgeport-Norwalk Housing Court. Thus, "SNBR-384" refers to Case #384 from the Bridgeport-Norwalk Housing Court. Although these cases are not printed in the Connecticut Law Journal (unless they have a Connecticut Supplement citation), they are nevertheless "published" by the Commission on Official Legal Publications and may therefore be cited by code number. Copies of the decisions are available in state law libraries, in the housing court clerks' offices, and in such electronic data bases as WestLaw, Casemaker,

and §47a-21(a)(12).

B. Nature of a security deposit

A security deposit is defined as "any advance rental payment other than an advance payment for the first month's rent and a deposit for a key or any special equipment," C.G.S. §47a-21(a)(10). All other payments demanded by the landlord as a condition of occupancy are part of the security deposit and therefore subject to the law's requirements concerning escrow, payment of interest, accounting, and refund at the end of the tenancy. For example, the Banking Commissioner has ruled that a fee for "holding" an apartment is a security deposit which must be refunded unless the landlord suffers actual damage from a tenant's failure to take occupancy, In re Rowland, 8 CLT #44, p. 4 (1982). A "certificate of occupancy fee" must similarly be refundable, id.

The security deposit belongs to the tenant, not to the landlord, and the landlord has only a security interest in it, C.G.S. §47a-21(c). It must be held in an escrow account in a financial institution, C.G.S. §47a-21(h)(1). The failure to escrow a security deposit may be an unfair trade practice, Kline v. Walters, NH-666, 1995 WL 788954 (1995); Murphy v. Grigas, H-998, 1992 WL 436241 (1992). A landlord may consolidate security deposits in a single escrow account but may not combine security deposits with other funds or use the escrowed security deposits for operating expenses or any other purposes. A properly maintained escrow account is exempt from attachment or execution by the landlord's creditors, C.G.S. §47a-21(c), In re Stoney Ridge Ltd. Partnership, 27 Clearinghouse Review 52 (Bankr. Ct., D.Conn., 1992). It is not clear from the statute whether the tenant has the right to know the location of the escrow account. The landlord must, however, provide the name of the bank and the account number to the Banking Commissioner within seven days of the Commissioner's request for that information, C.G.S. §47a-21(h)(1).

C. Amount of the security deposit

Security deposits are generally limited to a maximum of two months' rent, C.G.S. §47a-21(b)(1). So-called "semester" payments, which are sometimes used in private apartments in college towns, do not appear to be legal, since they exceed the first month's rent and, even if treated as security deposits, exceed the two-month maximum.[3] If the tenant is age 62 or over, the maximum deposit is one month's rent. A tenant who turns 62 during occupancy has the right to an immediate refund of the portion of the security deposit that exceeds one month's rent, C.G.S. §47a-21(b)(2). Elderly and disabled tenants living in state-funded public housing for the elderly are entitled to a refund of their security deposit once they have occupied the housing for at least one year, C.G.S. §47a-22a.

CaseBase, and LOIS.

[3]Residence in university-owned dormitories is exempt from the Security Deposit Act under C.G.S. §47a-2(a)(1).

D. Rate of interest

The minimum rate of interest payable on security deposits is controlled by statute, C.G.S. §47a-21(i). Prior to 1993, the statute set a fixed minimum rate. Since July 1, 1993, the rate has been based on an index, which is adjusted by the Banking Commissioner effective January 1 of each year. The rates below apply to the following months:

Before October, 1973	No requirements
October, 1973, through September, 1982	4.0%
October, 1982, through September, 1992	5.25%
October, 1992, through June, 1993	4.0%
July, 1993, through December, 1993	2.9%
Calendar year 1994	2.5%
Calendar year 1995	2.8%
Calendar year 1996	3.1%
Calendar year 1997	2.8%
Calendar year 1998	2.6%
Calendar year 1999	2.3%
Calendar year 2000	2.2%
Calendar year 2001	2.4%
Calendar years 2002 through 2007	1.5%

Because the minimum rate is set by statute, it is independent of the rate which the landlord actually receives on the money. Thus, a landlord who earns more than the statutory minimum may keep the excess interest. If the landlord earns less than the minimum (or if the money is held in a non-interest-bearing account), the minimum must nevertheless be paid. If the lease provides for a rate higher than the minimum, the tenant will be entitled to application of the higher rate.[4]

The right to receive interest on the security deposit is not waivable, C.G.S. §47a-4(a)(1), and it appears that the courts will generally award statutory interest to the tenant even if it is not claimed in the small claims complaint. The tenant loses the right to interest, however, for any month in which the rent payment has been delinquent for more than ten days, as long as no late charge is imposed, C.G.S. §47a-21(i). The burden of proof is on the landlord to establish any months for which no interest is payable, Bauer v. Delvalle, H-1, 35 Conn. Sup. 126, 400 A.2d 285 (1979).

Interest on the security deposit is payable annually, on the anniversary date of the lease. If a tenant vacates before an annual date, any unpaid interest is due at that time. The landlord has the option on the annual date of either paying the interest to the tenant or crediting the year's interest to the next monthly rental payment. Contrary to

[4]This circumstance is most likely to arise when the language of the lease has explicitly incorporated the then-current statutory rate of interest (e.g., 5.25% interest) but the statutory rate thereafter has fallen.

this requirement, it is a common practice among landlords to pay no interest until the tenant vacates. In such a case, it appears that the interest should be compounded annually, since the act seems to anticipate the annual payment of simple interest. If an annual period overlaps a change in the statutory interest rate, it will be necessary to apply one interest rate to the months before the effective date of the statutory rate change and a different rate to the months after.

The tenant is entitled to interest on the security deposit from the date it is given until the deposit is returned. Some courts have applied the rate under the Security Deposit Act throughout this period, Whitfield v. Davia, NH-580, 1992 WL 209609 (1992). Others have applied that rate up to the date when the tenant vacates and thereafter the rate under C.G.S. §37-3a (which is higher). See Fitzpatrick v. Scalzi, 72 Conn. App. 779, 787-788, 806 A.2d 593, 600 (2002). The latter rate, which is "as damages for the detention of money after it becomes payable," is presently 10% per year.[5]

E. Return of the deposit upon vacating

1. Who must return the deposit? The person who is the landlord at the time that the tenant vacates is responsible for returning the deposit, C.G.S. §47a-21(e); Sutton v. Pinto, SNBR-342, 1990 WL 269416 (1990). In most cases, this will be the original landlord. If, however, the building has been transferred, the successor owner must return the deposit, regardless of whether the deposit was transferred to the new owner and regardless of how ownership was obtained, Opinion of the Banking Commissioner (Feb. 4, 1992). Thus, it makes no difference whether the new owner has purchased the property, inherited it, or obtained it by foreclosure. The failure, or even the refusal, of the original owner to transfer the deposit will not relieve the subsequent owner from this responsibility, Wall v. Brown, 2003 WL 1366110 (2003). The only exception to this rule is that a receiver's liability is limited to the revenues which it collects as a receiver, C.G.S. §47a-21(e).[6]

The Security Deposit Act applies to all residential landlords, C.G.S. §47a-21(a)(6) and §47a-1(d). This includes housing authorities, Housing Authority of Wethersfield v. Conway, H-301, 1982 WL 195300 (1982), Opinion of the Attorney General (April 11, 1988), owners of rooming houses, mobile home park owners, and anyone else who rents to persons covered by the landlord-tenant laws. The Security Deposit Act does not apply to commercial tenancies, Beal Bank v. Airport Industrial Limited Partnership, 74 Conn. App. 460, 812 A.2d 866 (2003).

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[5]There is some disagreement as to whether interest under C.G.S. §37a-3a begins to accrue on the date the tenant vacates or the date the refund is due (which is 30 days after the tenant vacates). Cf. Abbot v. Lakewood Management Associates, NH-518, 1990 WL 271984 (1990), with Vekris v. Pass, H-964, 1991 WL 270278 (1991).

[6]The owner of the property at the time the tenant vacates would presumably be liable for any portion of the deposit in excess of the receiver's funds.

2. When is the deposit to be returned? The landlord must return the security deposit, plus interest, "within thirty days after termination of a tenancy," C.G.S. §47a-21(d)(2). In the context of the Security Deposit Act, this refers to the date upon which the tenant vacates, not the date upon which a termination notice, such as a notice to quit, is given. To trigger the time limits of the act, however, the tenant must give the landlord a written notice of a forwarding address, Kulenski v. Siclari, NH-539, 1990 WL 265323 (1990); Haines v. Brophy Ahern Development Co., NH-584, 1992 WL 389819 (1992). The forwarding address need not be the tenant's residence (e.g., it can be a post office box or the address of a place of employment, a lawyer, or a friend), Collazo v. Dias, NH-555, 1991 WL 120658 (1991). The notice may come from the tenant or from the tenant's agent (e.g., the tenant's attorney), Tankus v. Genta, NH-380, 1986 WL 296380 (1986). The small claims suit itself may also serve as the notice, Rebenoff v. Schlutow, SNBR-320, 1989 WL 516415 (1989). If the tenant does not give written notice of a forwarding address within the first 15 days after vacating, the landlord's time to refund the deposit is extended to 15 days after receipt of the written notice, C.G.S. §47a-21(d)(4), Wall v. Brown, 2003 WL 1366110 (2003). The right to return of the security deposit is not waivable, C.G.S. §47a-4(a)(1), and the landlord is thus responsible for refunding the deposit within 15 days of a delayed notice, whenever that may be.

The courts will ordinarily require that the security deposit be offset against a landlord's claim for damages, even if it has not been pleaded. See, for example, Bonito v. Lawrence, NH-576, 1992 WL 119205 (1992); Perrin v. DiLieto, NH-520, 1990 WL 271068 (1990); Espinoza v. Castillo, H-995, 1992 WL 389836 (1992). In an extraordinary case, the court may even award a net surplus to the tenant when the security deposit was not pleaded, Bauer v. Delvalle, H-1, 35 Conn. Sup. 126, 400 A.2d 285 (1979). In a suit brought by the landlord to recover for back rent or property damage, it is therefore appropriate for the finder of fact to inquire as to the existence of a security deposit and to require that it be offset against provable damages before entering a judgment.

3. What must the landlord do? The landlord's duty is (a) to return the security deposit, plus interest, or (b) to account in writing for any claims being made against the deposit and to return any portion of the deposit, plus interest, against which no claim is being made, C.G.S. §47a-21(d). If the landlord withholds any of the deposit, the act requires "a written statement itemizing the nature and amount" of the damages claimed as a result of the tenant's failure to comply with his or her obligations, C.G.S. §47a-21(d)(2). These damages may include unpaid rent and utility charges and losses arising from the tenant's breach of duties under C.G.S. §47a-11 (e.g., property damage), C.G.S. §47a-21(a)(12). The itemization must be specific, both as to the nature of the items of damage and as to their costs, Costales v. Gelinas, H-906, 1989 WL 516453 (1989). The refund or the accounting (which must be accompanied by any partial refund to which the tenant is entitled) must be delivered to the tenant within 30 days after the tenant vacates (or 15 days after receipt of the forwarding address, if that is later). The refund must include statutorily-mandated interest on the deposit, Murphy v. Grigas, H-998, 1992 WL 436241 (1992).

4. What claims may be made against the security deposit? The landlord may deduct for actual damages only, and the burden of proof is on the landlord to establish those damages. Property damage claims must be those beyond normal wear and tear. Claims for lost rent must be actual and not merely theoretical. Thus, if a tenant breaks a lease by vacating early, the landlord cannot automatically retain a one-month security deposit. It may be retained only to the extent that the landlord attempts to mitigate damages but still sustains a loss of rent. See Sections II and III below for a discussion of allowable claims.

F. Double damages

If the landlord "violates any provision of this subsection" (i.e., of C.G.S. §47a-21(d)), he or she is liable for "twice the amount or value of any security deposit" paid by the tenant, C.G.S. §47a-21(d)(2). This means that the entire deposit must be doubled, after which any damages which the landlord proves are to be deducted from the doubled amount, Opinion of the Banking Commissioner (April 28, 1992).[7] If, however, the landlord's only non-compliance is the failure to return accrued interest (i.e., if the deposit is properly returned but without statutory interest), it is only the interest that is doubled and not the entire security deposit. See C.G.S. §47a-21(d)(2).[8]

If the landlord violates C.G.S. §47a-21(d), the doubling of the security deposit is mandatory, Kufferman v. Fairfield University, 5 Conn. App. 118, 497 A.2d 77 (1985).[9] For the tenant to receive double damages, however, the tenant must have given written notice of a forwarding address, Broadnax v. Moore, NH-452 (1989); Brovold v. Faienza,

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[7]Before 1979, the amount doubled was only the amount owed to the tenant after the deposit was reduced by the landlord's provable claims. P.A. 79-559 changed the law to provide for the doubling of the entire deposit, Maskiell v. Lynch, H-221, 1980 WL 128080 (1980).

[8]Prior to 1996, the courts were divided as to whether or not a violation of the Security Deposit Act which entitled the tenant to a doubling of the security deposit also entitled the tenant to a doubling of any interest which the landlord improperly had failed to return. Although Cohen v. Meola, 37 Conn. Sup. 27, 429 A.2d 152 (1980), affirmed per curiam on other grounds, 184 Conn. 218, 439 A.2d 966 (1981), held that both the deposit and the interest must be doubled, both the Banking Commissioner, Opinion of the Banking Commissioner (April 28, 1992), and most trial courts, e.g., Ostrower v. Iaderosa, NH-288, 11 CLT #33, p. 20 (1985), and Rubenoff v. Schlutow, SNBR-320, 1989 WL 516415 (1989), have doubled only the deposit. The statute refers to doubling "the amount or value" of any security deposit paid by the tenant. While the amount of the deposit paid by the tenant does not include interest, it can be argued that the value of the deposit is enhanced by the interest which it has earned and therefore does include the interest. The 1996 amendment, §8 of P.A. 96-74, implicitly assumes that both the deposit and the interest are doubled and therefore indirectly appears to incorporate the rule of Cohen v. Meola into the statute.

[9]Before 1979, an award of double damages was discretionary with the court. P.A. 79-559 eliminated the court's discretion and required that the deposit be doubled, Maskiell v. Lynch, H-221, 1980 WL 128080 (1980).

H-318, 1982 WL 195261 (1982).[10] In a regular civil docket action, a double damage claim would have to be pleaded, under the general doctrine that a party cannot recover for claims beyond the scope of the pleadings, City of New Haven v. Mason, 17 Conn. App. 92, 550 A.2d 18 (1988); Chomko v. Patmon, 19 Conn. App. 483, 563 A.2d 311 (1989). This puts the landlord on notice that double damages will be an issue in the case. Although there are no reported cases, it is likely that this rule also applies to small claims court.

The most common violations of C.G.S. §47a-21(d) requiring the doubling of the deposit are (a) the landlord's failure to act within the 30-day response period and (b) the landlord's failure to provide a written itemization of the claims being made against the deposit. It should be noted that a written itemization which accounts for only part of the security deposit is not sufficient unless the uncontested portion of the deposit is also returned within 30 days of the tenant's vacating, C.G.S. §47a-21(d)(2)(B); Kufferman v. Fairfield University, 5 Conn. App. 118, 497 A.2d 77 (1985); Murphy v. Grigas, H-998, 1992 WL 436241 (1992). The itemization must also be specific, Costales v. Gelinas, H-906, 1989 WL 516453 (1989). Time is of the essence, and a late refund or itemization will not save the landlord from double damages, Whitfield v. Davia, NH-580, 1992 WL 209609 (1992). In general, if an itemized list of deductions is provided in a timely manner and any balance is refunded, there is no liability for double damages, even if the landlord ultimately fails to prove the damage claims at trial, Murphy v. Grigas, H-998, 1992 WL 436241 (1992). However, a notice letter that is "nothing more than a sham," "wholly spurious," admittedly false, or in bad faith may fail to satisfy the statutory requirement for giving notice, Vekris v. Pass, H-964, 1991 WL 270278 (1991).

The doubling of the deposit does not preclude the landlord from establishing offsets against the deposit for property damage or back rent, even though no itemization was ever given to the tenant, C.G.S. §47a-21(g). The offset, however, must be calculated against the doubled deposit, Nitch v. Lavoy-Alaimo, H-977, 1992 WL 259200 (1992).

G. Punitive damages and attorney's fees

The failure to comply with the time and itemization requirements of C.G.S. §47a-21(d) violates public policy and may therefore also be a violation of the Connecticut Unfair Trade Practices Act (CUTPA), C.G.S. §42-110a et seq. It may support an award of attorney's fees or punitive damages under CUTPA or an award of attorney's fees under the lease. See §IV(A)(2), p. 24, for a discussion of attorney's fee awards to tenants and §V(1), p. 26, for a summary of CUTPA.

H. Enforcement by the Banking Commissioner

The regulation of security deposit practices is under the jurisdiction of the Commissioner of Banking. The Commissioner may receive and investigate complaints

[10]See §I(E)(2), p. 5, on what constitutes written notice of a forwarding address.

dealing with the payment of interest, the demand for a deposit in excess of the statutory maximum, the maintenance of escrow accounts, and the failure to properly return or account for deposits, C.G.S. §47a-21(j). The Commissioner has no jurisdiction over good faith disputes about whether a landlord's claimed setoff against a deposit is legitimate; but the Commissioner can sue to compel the return of a deposit (including double damages) by a landlord who has failed to make a timely refund and/or accounting of a deposit under C.G.S. §47a-21(d), Brown v. Barclay, H-768 (1986). The only issue in such an action is whether or not the landlord has complied with the law. Thus, in an enforcement action by the Banking Commissioner, the landlord cannot offset damage or back rent claims against the tenant, as could be done in a suit by the tenant, Woolf v. Patel, H-664, 1985 WL 263956 (1985); Brown v. Barclay, H-768, (1986).[11] In addition, if the landlord fails to appeal the Banking Commissioner's enforcement order, it will be precluded from challenging its validity in an enforcement action, Commissioner of Banking v. Haynes, 76 Conn. App. 824, 821 A.2d 843 (2003).

II. PROPERTY DAMAGE

Landlord claims for property damage, like back rent claims, usually arise either as part of a suit for damages or as a setoff or counterclaim to a tenant's action for return of a security deposit. In either case, the burden of proof is on the landlord to establish all elements of the claim, Expressway Associates II v. Friendly Ice Cream Corp. of Connecticut, 218 Conn. 474, 590 A.2d 431 (1991); Morris v. Kookoolis, NH-582, 1992 WL 257747 (1992).

A. Basis of liability

A tenant's liability for property damage may be based on statute, the lease, or some common law theory (such as negligence). C.G.S. §47a-11 sets out the tenant's statutory duties, of which the most general is the duty to "not wilfully or negligently destroy, deface, damage, impair or remove any part of the premises or permit any other person to do so," C.G.S. §47a-11(f). The tenant is thus liable for wilful or negligent property damage. The lease may also assign responsibility to the tenant, and the tenant is liable for damage resulting from breach of the lease. A lease, however, cannot supersede the landlord's duties under C.G.S. §47a-7, which permits only narrow exceptions to the landlord's maintenance responsibilities. See C.G.S. §47a-7(c) and (d).

Since tenant liability must be based on wilful or negligent conduct, the mere fact of damage does not necessarily make the tenant liable. Proof of property damage requires evidence, which must be provided even in a case in which the tenant defaults. A mere statement of account is insufficient, since a property damage claim is not liquidated damages within the meaning of Practice Book §17-24 and §24-24. The

[11]The landlord can, of course, bring a separate action against the tenant based on such claims.

landlord bears the burden of proof on all elements of a damage claim. This means that the landlord must prove that (a) the damage occurred, (b) it exceeded normal wear and tear, and (c) it was caused by the tenant, Kulenski v. Siclari, NH-539, 1990 WL 265323 (1990); Stutz v. Andren, SNBR-381, 1992 WL 171164 (1992); Lurie v. Baker, NH-499, 1990 WL 614598 (1990); Pilagin v. Michalski, H-603, 1985 WL 263875 (1985). Damage may be shown either by direct evidence or circumstantially. However, a tenant is not liable for damage that already existed when he or she moved into the apartment or for damage which occurred after vacating, Wareck v. Connecticut Chair Car Co., NH-557, 1991 WL 135116 (1991); Slaughter v. McFarlane, NH-583, 1992 WL 316453 (1992). Similarly, a tenant is not liable for damage caused by persons for whom he or she is not responsible (e.g., for broken windows caused by neighborhood children throwing rocks through them or for damage caused by burglars, Fish v. Dudzikowski, H-166, 1980 WL 128048 (1980)).

The tenant is also not liable for what is usually described as "normal" or "reasonable" wear and tear, Dell'Oro v. Kelly, SNBR-384, 1991 WL 135119 (1992); Grzewinski v. George, H-930, 1990 WL 265293 (1990); Opinion of the Attorney General, 6 CLT #38, p. 19 (1980). The determination of what is wear and tear, as distinct from what is property damage, is heavily dependent on the facts of the particular case; but in general it refers to deterioration of or damage to the property which can be expected to occur from normal usage. For example, the tenant is not liable for wear to a landlord-provided carpet which reflects normal usage of a rug. On the other hand, the tenant may be liable for the cost of cleaning a rug which has become urine-stained because of the tenant's dog, Toczydlowski v. Nicolaedis, NH-223, 1984 WL 255905 (1984).

Wear and tear also includes normal repainting and cleaning which occur at the end of a tenancy. Thus, a tenant is not liable for the cost of cleaning a landlord-provided oven which is left in a moderately, but not perfectly, clean condition; but the tenant may be liable for the cost of cleaning a heavily encrusted oven. The tenant is not liable for nail or pin holes in a plaster wall which would ordinarily be spackled as part of a routine repainting, Bronzi v. Barone, H-533 (1984); Pilagin v. Michalski, H-603, 1985 WL 263875 (1985). The tenant may, on the other hand, be liable for damage to wallpaper which requires the rewallpapering of the room. Each claim must be evaluated on its own merits, in light of the general principle that some wear and tear is inevitable in rental property.

B. Proof of amount of damages

The landlord must also establish sufficient evidence of the amount of the damage to remove a judgment from the area of speculation. This will not ordinarily require expert testimony or appraisals, but it does require the presentation of some evidence from which a court can make a reasonable estimate of the amount to be awarded, Clarke v. Mele, SNBR-372, 1992 WL 65432 (1992); Collazo v. Dias, NH-555, 1991 WL 120658 (1991). Mathematical exactitude in setting damages is, however, not required, Hassane v. Lawrence, 31 Conn. App. 723, 626 A.2d 1336 (1993); Chaspek Manufacturing Corp. v. Tandet, SNBR-429A, 1995 WL 447948 (1995); and an owner is

allowed to testify as to the value of his property, Moore v. Sergi, 38 Conn. App. 829, 664 A.2d 795 (1995).

Property damage may be measured by repair cost or by value, as appropriate. Replacement cost is not usually allowed, Lenares v. Mensah, H-1040 (1995). Thus, if a tenant has destroyed or removed a landlord-provided carpet, the tenant's liability must be adjusted for the age and condition of the carpet, since the tenant is liable only for lost value, Nitch v. Lavoy-Alaimo, H-977, 1992 WL 259200 (1992); Bonito v. Lawrence, NH-576, 1992 WL 119205 (1992).

The dollar value of damage may be shown by paid bills or estimates, DiNapoli v. Doudera, 28 Conn. App. 108, 609 A.2d 1061 (1992), Wyatt v. Ghosh, SNBR-366, 1992 WL 24719 (1992), but the courts have held that paid bills are more credible. Evidence that the apartment was subsequently rented to another tenant without repairs being made may reduce the credibility of a claim that damage occurred or that it was of substantial impact, Milano v. Myers, H-7, 1979 WL 48994 (1979); Dell'Oro v. Kelly, SNBR-384, 1991 WL 135119 (1992). If damage is repaired as part of a larger repair or improvement job, the tenant is liable only for the portion of the repair caused by negligent or wilful conduct, and the landlord's evidence must provide a method by which it can be determined how much to allocate against the tenant, Sippin v. Ellam, SNBR-338 (1989); Strofolino v. Bordeau, NH-531, 1990 WL 279603 (1990). While care has been taken not to impose an unreasonable burden of proof, judges handling property damage claims in landlord-tenant cases have traditionally sought to make sure that such claims are legitimate and that the amount claimed as damages is not inflated, Bonito v. Lawrence, NH-576, 1992 WL 119205 (1992); Buccino v. Cable Technology, Inc., 1990 WL 279539 (1990), affirmed, 25 Conn. App. 676, 595 A.2d 376 (1991).[12]

III. UNPAID RENT

Claims for unpaid rent[13] cover two distinct time periods: (a) the period of time during which the tenant occupied the premises and (b) the period of time after the tenant vacated. In both cases, the tenant's liability depends upon whether or not occupancy was under a lease:

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[12]The text of this section (Part II of this booklet) was substantially adopted by the court in DiBiaso v. Gargiulo, NH-593, 1993 WL 307678 (1993), and Birney v. Barretta, NH-595, 1993 WL 307695 (1993), affirmed, 36 Conn. App. 928, 650 A.2d 179 (1994). See also Denino v. Valenti, NH-604 (1993).

[13]Technically, the unpaid amount claimed may be for rent, use and occupancy, or damages for breach of a lease. In a regular civil docket action, the failure to characterize the claim correctly can be fatal. For example, a court need not consider a use and occupancy claim if the action was for unpaid rent, Bushnell Plaza Development Corp. v. Fazzano, 38 Conn. Sup. 683, 460 A.2d 1311 (1983); City of New Haven v. Mason, 17 Conn. App. 92, 550 A.2d 18 (1988). In the small claims division, however, the courts will ordinarily treat a claim for use and occupancy as being encompassed by a claim for rent.

(a) For the period during which the tenant occupied the premises, the tenant is liable for rent (if a lease was in effect) or for use and occupancy (if no lease was in effect).

(b) For the period after the tenant vacates, the tenant may or may not have any liability at all. A tenant who has vacated is never liable for a time period beyond the end of the lease term. If the tenant abandons voluntarily before the end of the lease and the landlord does not accept the tenant's surrender of the premises, the tenant may be liable for rent for the unexpired portion of the lease. In a residential case, the landlord must first attempt to mitigate damages; in a commercial case, mitigation is not required. If, in contrast, the tenant vacates after the landlord terminates the lease (e.g., by serving the tenant with a notice to quit), or if the landlord accepts a voluntary surrender by the tenant, then the lease is no longer in existence and the tenant has no liability for rent accruing after vacating. In such cases, without regard to whether residential or commercial, the landlord must attempt to mitigate damages by trying to rerent the premises. The landlord can recover an amount equivalent to the rent lost as a result of the tenant's breach by suing for "damages for breach of contract" instead of for "rent." See §47a-11c and the discussion in §III(C)(2), p. 20.

It is usually not difficult to determine what payments were made to the landlord. The most common contested issues which arise in small claims cases are (a) is the tenant excused from making full payment for periods of time when the tenant was in occupancy and (b) is the tenant liable for a time period after the tenant vacated?

A. Determining whether a rental agreement exists

The presence or absence of a lease will affect the tenant's liability. It is therefore important to determine whether and for what time period a lease existed.

1. Creation of a lease

A lease[14] is a contract and does not exist until there is a meeting of the minds of the parties, DiCostanzo v. Tripodi, 137 Conn. 513, 78 A.2d 890 (1951); Welk v. Bidwell, 136 Conn. 603, 73 A.2d 295 (1950). Such a contract may be written or oral, although an oral lease for more than one year is subject to the statute of frauds, C.G.S. §47-19 and §52-550. Leases with no definite ending date are deemed to be one-month leases, unless the rent is paid weekly, in which case they are one-week leases, C.G.S. §47a-3b and §47a-3d. A separate lease exists for each month or week, Welk v. Bidwell, id.

The fact that the tenant holds over after a lease expires is not alone sufficient to

[14]"Lease" is a common law term. "Rental agreement" is the phrase which the General Statutes use to refer to residential leases, C.G.S. §47a-1(i). In this booklet, the two terms are used interchangeably.

create a new lease, DiCostanzo v. Tripodi, 137 Conn. 513, 78 A.2d 890 (1951); Shulman v. Hartford Public Library, 119 Conn. 428, 177 A. 269 (1935); C.G.S. §47a-3d. A new lease is created only if the tenant holds over with the landlord's acquiescence, Welk v. Bidwell, 136 Conn. 603, 73 A.2d 295 (1950); Berlingo v. Sterling Ocean House, Inc., 5 Conn. App. 302, 504 A.2d 516 (1985), reversed on other grounds, 203 Conn. 103, 523 A.2d 888 (1987); Byxbee v. Blake, 74 Conn. 607, 51 A. 535 (1902). For example, if the landlord accepts a rent payment from a month-to-month tenant, the combination of holding over, payment, and acceptance creates a new lease, even if the amount was less than the landlord requested, Baier v. Smith, 120 Conn. 568, 181 A. 618 (1935).

A new lease may also be created by "implication." Although courts are cautious about implying such leases, Chomko v. Patmon, 19 Conn. App. 483, 563 A.2d 311 (1989), they will ordinarily find a lease by implication if the tenant holds over and the circumstances reasonably suggest an intention to renew the lease, Freshwater Pond Apartments v. Olivera, H-730, 1986 WL 296315 (1986). The failure to pay the rent, standing alone, does not prevent a lease arising by implication, Green Realty Corp. v. Ortiz, H-12 (1979); Zareck v. Salsbury, H-196 (1980). Thus, if a month-to-month tenant continues occupancy into the next month and there has been no communication whatsoever between the landlord and the tenant, a court will ordinarily find that a new lease by implication arose on the first day of the month, and, as a result, the tenant will be liable for the entire month's rent, Webb v. Johnson, H-861, 1988 WL 492438 (1988). On the other hand, if the landlord has informed the tenant either orally or in writing that the tenant should move out, or if the tenant has indicated an intention to vacate, or if the landlord has sought a rent increase which the tenant has neither accepted nor rejected, then a new lease by implication does not arise and the tenant will not be liable for "rent" for the subsequent month, DiTomasso v. Godin, H-349, 1982 WL 195319 (1982); Longobardi v. Longobardi, NH-474, 1989 WL 516478 (1989); Birney v. Barretta, NH-595, 1993 WL 307695 (1993); affirmed, 36 Conn. App. 928, 650 A.2d 179 (1994). The key date for making this analysis is the first day of the new leasing period, i.e., on that date, did a new lease arise?

2. Termination of a lease

Leases can terminate by lapse of time or for breach. A lease ends by "lapse of time" when it expires by its own terms. An oral month-to-month lease, for example, ends at the end of the month, and a new lease does not arise unless the landlord acquiesces in the tenant's holding over. Written leases may contain specific provisions for how to renew the lease, how to prevent the lease from renewing, and what the consequences of holding over are. For example, the lease may make any holdover wrongful (which makes the tenant a common law tenant at sufferance occupying without a lease) or it may convert the tenancy into a month-to-month leasing.

The landlord can also terminate the lease for the tenant's breach of the lease. A tenant's breach, however, does not automatically terminate the lease but rather gives the landlord the option to terminate, Sandrew v. Pequot Drug, Inc., 7 Conn. App. 627,

495 A.2d 1127 (1985). The landlord must do something unequivocal (usually the issuance of a notice to quit) to effectuate a termination. Service of a notice to quit (or termination by some other means) will convert the tenancy to one at sufferance and change the tenant's liability from rent to use and occupancy.

A tenant may also terminate a lease for breach by the landlord. Although several statutory mechanisms for termination exist,[15] those mechanisms are not exclusive[16] and courts have permitted terminations, particularly in residential leasings, by less formal means. If the tenant's termination is justified, he or she will be relieved from liability for rent for the balance of the lease term, Thorne v. Broccoli, 39 Conn. Sup. 289, 478 A.2d 271 (1984); Reick v. Taub, H-978, 1992 W: 257730 (1992); Dornfield v. Hom, H-949, 1991 WL 86256 (1991); Grand Avenue Associates v. Gallant & Gallant, NH-607, 1993 WL 479829 (1993). A lease may also be terminated under the doctrine of constructive eviction, which applies when the landlord permits the premises to become uninhabitable, forcing the tenant to vacate, Thomas v. Roper, 162 Conn. 343, 294 A.2d 321 (1972). Constructive evictions are not limited to failures of maintenance but can occur from any condition which reasonably justifies the tenant's vacating. See, for example, Tang v. Balkun, H-1022, 1994 WL 271766 (1994). Constructive eviction is not necessary, however, for a termination to be justified.

B. Liability for the time during which the tenant is in occupancy of the premises

1. In general

In general, occupants of rental premises are liable to the landlord for the period of time in which they are in occupancy. Depending on the circumstances, their liability may be for "rent" or for "use and occupancy." Although in many cases rent and use and occupancy will be equal to each other in amount, there will be times when their values will be different.

"Rent" is the money that is paid for occupancy under a lease or rental agreement, C.G.S. §47a-1(h). The amount of the rent is the amount stated in the lease, i.e., the amount established by contract. "Use and occupancy" is what is paid for occupancy by persons not occupying under a lease. Consequently, unless a rental agreement exists during the period of occupancy, "rent" is not due for that time, O'Brien Properties, Inc. v. Rodriguez, 215 Conn. 367, 576 A.2d 469 (1990); Bridgeport v. Barbour-Daniel Electronics, Inc., 16 Conn. App. 574, 548 A.2d 744 (1988). A tenant who holds over without a lease after the end of a tenancy is a "tenant at sufferance" and is liable only for the fair rental value for the use and occupancy of the premises, not

[15]See, for example, C.G.S. §47a-18a (unauthorized entry by landlord), C.G.S. §47a-13 (landlord's failure to provide essential services), C.G.S. §47a-12 (landlord's violation of statutory responsibilities), and C.G.S. §47a-14 (destruction of or extensive damage to the premises).

[16]For example, C.G.S. §47a-12(d) states explicitly that it does not restrict other tenant remedies.

for contract rent, C.G.S. §47a-3c; Lonergan v. Connecticut Food Store, Inc., 168 Conn. 122, 357 A.2d 910 (1975). Liability for use and occupancy is imposed only for the days the premises are actually occupied, Altieri v. Layton, H-36, 35 Conn. Sup. 258, 408 A.2d 17 (1979); Rich v. Lesnow, NH-389, 1986 WL 296355 (1986). For example, when a rental agreement is terminated by the delivery of a notice to quit based on the tenant's breach of the agreement, "rent" is not due for days beyond the date of delivery, Feneck v. Nowakowski, 146 Conn. 434, 151 A.2d 891 (1959); O'Brien Properties, Inc. v. Rodriguez, 215 Conn. 367, 576 A.2d 469 (1990); Bushnell Plaza Development Corp. v. Fazzano, 38 Conn. Sup. 683, 460 A.2d 1311 (App. Sess., 1983). "Use and occupancy" is due, but the obligation to pay use and occupancy ends when the tenant vacates the premises.

2. Circumstances in which liability is for use and occupancy rather than for rent

The tenant's liability for periods of occupancy will usually be for rent. There are, however, four principal circumstances in which no lease will be in effect and therefore a tenant will be liable for use and occupancy rather than rent.

(a) No lease, i.e., when a tenant's occupancy was never under a rental agreement. For example, a homeowner who sells a home but, without the consent of the new owner, fails to vacate by the closing date may be liable for use and occupancy for the number of days of continued occupancy. Compare Griffin v. Deboer, SNBR-350, 1991 WL 135126 (1991).

(b) Failure to agree to a lease, i.e., when the landlord and tenant fail to agree on the renewal or extension of a lease, most often because of disagreement about a proposed rent increase or because the landlord wants the tenant to move out. The existence of a disagreement is a question of fact and does not require any specific action by either the landlord or the tenant. If there is no lease, either by express agreement or by implication, and the tenant holds over, the tenant becomes a tenant at sufferance and is liable for use and occupancy, not for rent.

(c) Termination of the lease, i.e., when the landlord terminates the lease because of the tenant's breach. This is usually, although not always, accomplished by service of a notice to quit. Upon service, the tenant's liability for rent ends and, for the remainder of the tenant's occupancy, liability is for use and occupancy only.

(d) Legally prohibited rent collection, i.e., when statute or common law prohibits the landlord from collecting rent. For example, a landlord cannot collect rent for time periods during which the premises do not comply with C.G.S. §47a-7(a). See C.G.S. §47a-4a.

3. Defenses to claims for rent or use and occupancy

a. Liability for rent

Under some circumstances, the landlord's violation of statutory duties or requirements will relieve the tenant of liability for the rent. These include:

(i) Warranty of habitability: At common law, the covenants of a lease were independent and the tenant was liable for payment of the rent, even if the landlord failed to meet his or her obligations under the lease.[17] To a large extent, the common law doctrine still governs landlord-tenant rent obligations in commercial leases, Thomas v. Roper, 162 Conn. 343, 294 A.2d 321 (1972); Johnson v. Fuller, 190 Conn. 552, 461 A.2d 988 (1983). As to residential leases, however, that doctrine has been rejected, C.G.S. §47a-4a; C.G.S. §47a-7; LeClair v. Woodward, 6 Conn. Cir. 727, 316 A.2d 791 (1970); Todd v. May, 6 Conn. Cir. 731 (1973), 316 A.2d 793; Steinegger v. Rosario, 35 Conn. Sup. 151, 402 A.2d 1 (1979); and all residential leases now contain an implied warranty of habitability.[18]

In particular, C.G.S. §47a-4a prohibits the collection of rent for any time period in which the landlord is in violation of statutory duties prescribed by C.G.S. §47a-7(a), including the duty to "make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition" and the duty to comply with applicable housing codes "materially affecting health and safety," Eamiello v. Liberty Mobile Home Sales, Inc., 208 Conn. 620, 546 A.2d 805 (1988). Violation of these duties is a question of fact; but the courts have held that certain violations, including the lack of a smoke detector required by the Fire Safety Code, Chauncey Harris Associates v. Brathwaite, H-951, 1991 WL 120654 (1991), are sufficiently severe that they per se relieve the tenant of the duty to pay rent.

(ii) Certificate of occupancy: Prior to October 1, 1997, C.G.S. §47a-5 and §47a-57 prohibited the recovery of rent for any period during which the premises were not covered by a certificate of occupancy required by local ordinance, Conaway v. Prestia, 191 Conn. 484, 464 A.2d 847 (1983); Pediment Homes, Inc. v. Russell, 6 CLT #8, p. 10 (App. Sess., 1980). About 15 or 20 towns, including many of the larger towns, require that a certificate of apartment occupancy be obtained before renting to a new tenant after an apartment becomes vacant.

P.A. 97-231 and P.A. 98-107, however, deleted this language from §47a-5 and

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[17]Even at common law, however, there is an implied warranty against defects which existed in the premises when the tenant moved in, which were actually or constructively known to the landlord, and which were not discoverable by the tenant upon reasonable inspection, Johnson v. Fuller, 190 Conn. 552, 461 A.2d 988 (1983).

[18]The rental of a lot in a mobile home park is a form of residential leasing, and mobile home park residents are protected in the same manner as are other residential tenants. See, for example, Eamiello v. Liberty Mobile Home Sales, Inc., 208 Conn. 620, 546 A.2d 805 (1988). In 1991, the General Assembly recodified some mobile home protections in the Mobile Manufactured Home Park Act, C.G.S. §21-64 et seq. For example, the statutory doctrine of dependent covenants for mobile home parks (the equivalent of §47a-4a) is now contained in §21-83c, and the statutory warranty of habitability (the equivalent of §47a-7) is in §21-82(a).

§47a-57, substituting instead a provision that an owner or lessor who collects rent in violation of a certificate of occupancy requirement "shall be liable for a civil penalty of not more than twenty dollars per day, per apartment or dwelling unit, for not more than two hundred days for such period of unlawful occupation." Much about this provision, and its impact on existing law, remains unclear. First, even absent specific statutory language, the rental of premises contrary to an ordinance which prohibits such rental without a pre-occupancy inspection may give rise to an illegal leasing defense under Sippin v. Ellam (see below) or to an equitable defense of unclean hands, at least in regard to the recovery of rents not yet paid. Second, it is not clear from the statutes to whom the landlord is liable for the civil penalty. May it be claimed by the tenant, at least as a set-off, or is it recoverable only by the town?[19]

(iii) Other illegal leasing: A landlord may not collect rent under a lease that violates zoning laws or a restrictive covenant in the deed, Sippin v. Ellam, 24 Conn. App. 385, 588 A.2d 660 (1991). Compare LeClair v. Woodward, 6 Conn. Cir. 727, 316 A.2d 791 (1970). By analogy, a lease drawn in violation of any other law or superior contractual provision which goes to the right to enter into the lease would similarly fail to support a claim for rent.[20] But see 12 Havemeyer Place, LLC v. Gordon, 76 Conn. App. 377, 820 A.2d 299 (2003) and 12 Havemeyer Place, LLC v. Gordon, 93 Conn. App. 140, 888 A.2d 141 (2006).

The tenant may, of course, also defend a claim for back rent by showing that the rent was paid. If the landlord has overcharged for rent in prior months -- something which can happen where rent is set by the complex formulas of government rent-subsidy programs -- rent may in effect have been pre-paid.

b. Liability for use and occupancy

The fact that the landlord is precluded from recovering "rent" does not necessarily preclude the recovery of "use and occupancy," i.e., the fair value of the premises. Premises, even the most deteriorated, usually have some rental value. However, in some cases the landlord can recover neither rent nor use and occupancy. In particular, no use and occupancy is recoverable if the leasing was void ab initio. In Sippin v. Ellam, 24 Conn. App. 385, 588 A.2d 660 (1991), as construed in 12 Havemeyer Place, LLC v. Gordon, 76 Conn. App. 377, 820 A.2d 299 (2003) and 12 Havemeyer Place, LLC v. Gordon, 93 Conn. App. 140, 888 A.2d 141 (2006), the Appellate Court held that the leasing of premises for a use prohibited by a restrictive

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[19]In addition, since the failure to obtain a required certificate of occupancy is an unfair trade practice, Conaway v. Prestia, 191 Conn. 484, 464 A.2d 847 (1983), it is possible that the civil penalty under §47a-5 and §47a-57 may become a measure of damages on a set-off or counterclaim under the Connecticut Unfair Trade Practices Act (CUTPA). Conaway, in contrast, measured damages by the diminution of the value of the lease.

[20]However, a lease clause which violates C.G.S. §47a-4(a) does not invalidate the entire lease but merely makes the improper clause unenforceable, C.G.S. §47a-4(b).

covenant in a deed falls into this category. Prior to the adoption of P.A. 97-231, courts had held that use and occupancy cannot be recovered if the landlord rents out the premises without a required certificate of occupancy, Groton Townhouse Apartments v. Marder, 37 Conn. Sup. 688, 435 A.2d 47 (App. Sess., 1981); Chauncey Harris Associates v. Brathwaite, H-951, 1991 WL 120654 (1991); Tucker v. Cotton, H-424 (1983); contra., Burris Associates Limited Partnership v. Ellison, H-1018, 1994 WL 133084 (1994); but the continuing viability of these cases is placed in doubt by P.A. 97-231.[21] Those cases were applications of the more general principle that the duty to pay use and occupancy does not arise unless the occupant originally had a right to occupy the premises, Welk v. Bidwell, 136 Conn. 603, 73 A.2d 295 (1950). Thus, if the original occupancy was wrongful (e.g., in a condemned unit), the occupant could not become a tenant at sufferance and the statutory duty to pay use and occupancy would not arise. Compare Chapel-High Corp. v. Cavallaro, 141 Conn. 407, 106 A.2d 720 (1954).

c. Other grounds for the full or partial abatement of rent or use and occupancy

In suits for unpaid rent or use and occupancy, the courts have frequently reduced the tenant's liability based on breaches of the landlord's duties under C.G.S. §47a-7(a), usually for housing code violations or for failure to provide heat or other essential services. These reductions are usually calculated as a reduction from the agreed-upon rent, Farmington Ave. Associates v. Oleson, H-164 (1980); Chalmers v. Popillo, H-199 (1980); Fulghum v. Apanovitch, H-334, 1982 WL 195273 (1982); Jack A. Halprin, Inc. v. Pedersen, NH-437, 1988 WL 492482 (1988); Lurie v. Baker, NH-499, 1990 WL 614598 (1990). A partial reduction in liability may be awardable, even though the violations would not support a habitability defense in an eviction action, Blazuk v. Standard, H-70, 1979 WL 49029 (1979); Fournier v. Girardin, H-1190, 2000 WL 288348 (2000).[22]

Where code violations have an exceptionally serious impact on health and safety, the courts have sometimes held that the landlord can collect neither rent nor use and occupancy. Thus, in one case, the absence of a smoke detector was held to abate all use and occupancy and not just rent, Chauncey Harris Associates v. Brathwaite,

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[21]The tenant cannot, in any event, use C.G.S. §47a-5 or §47a-57 alone as the basis for the recovery of rent previously paid voluntarily to the landlord, Smith v. Dreamy Hollow Apartments Corp., 150 Conn. 702, 192 A.2d 648 (1963); Conaway v. Prestia, 191 Conn. 484, 464 A.2d 847 (1983), although such recovery is possible on other legal theories, Conaway v. Prestia, id.

[22]It should be noted that these cases all involve claims reducing liability for unpaid rent or use and occupancy, not claims for refund to the tenant of rent previously paid. When use and occupancy is at issue, the deteriorated conditions reduce the fair rental value of the premises. See §III(B)(4), p. 18. When rent is at issue, the tenant's setoff may be based either upon a direct violation of C.G.S. §47a-7 or as damages for breach of the warranties of habitability, which are implied in every lease by §47a-7 and by local ordinances mandating property maintenance by landlords, Todd v. May, 6 Conn. Cir. 731, 316 A.2d 793 (1970).

H-951, 1991 WL 120654 (1991). The courts have been divided as to whether premises can be so deteriorated in general that their fair rental value is zero, even though they are occupied. Compare Fulghum v. Apanovitch, H-334, 1982 WL 195273 (1982), and Marin v. Gray, H-304, 1982 WL 195289 (1982), with McFarlane v. Hutchings, NH-127, 1982 WL 195362 (1982), and Ridgeway Gardens Co. v. Liebowitz, SNBR-39, 1983 WL 187580 (1983).

At least two statutes permit the tenant to make deductions from the rent. One is C.G.S. §47a-13, which allows a tenant under certain conditions to withhold rent or purchase essential services that the landlord fails to provide or to pay for substitute housing, Birney v. Barretta, NH-595, 1993 WL 307695 (1993), affirmed, 36 Conn. App. 928, 650 A.2d 179 (1994). The other is C.G.S. §16-262e(c), which permits the tenant to reduce the rent payment in at least two types of disputes over heat or utility bills. First, if a utility account is in the landlord's name but the tenant has to assume the account because of the landlord's failure to pay the bill, the tenant can deduct the utility payments from the rent, C.G.S. §16-262e(d) and (e).[23] Second, if the tenant's heat or utility bill includes portions of the premises that are not exclusively within the tenant's control (e.g., the common hallways, the basement, or another tenant's apartment), the tenant may deduct from the rent a reasonable estimate of the portion of the heat or utility bill that covers areas outside his or her apartment, C.G.S. §16-262e(c).

4. Measure of fair rental value

A landlord who claims payment for use and occupancy value (e.g., for a period during which no rental agreement was in effect or when the collection of rent was barred by statute) must prove the fair rental value of the property. This is the amount for which it would rent on the open market, The Collinsville Co. v. Cecere, H-498, 1983 WL 208447 (1983). Expert testimony may be offered but is not conclusive, Slavitt v. Ives, 163 Conn. 198, 303 A.2d 13 (1972), McClendon v. Foran, H-758 (1986). A party may also testify to the value of his or her own property, Lovejoy v. Darien, 131 Conn. 533, 41 A.2d 98 (1945); Connecticut Evidence, Tait & LaPlante, p. 171. This allows both landlord and tenant to give their opinions as to reasonable value. In addition, a finder of fact may rely on his or her own knowledge of the elements of rental value, Slavitt v. Ives, 163 Conn. 198, 303 A.2d 13 (1972), McClendon v. Foran, H-758 (1986).

There is also a rebuttable presumption that fair rental value equals the last agreed-upon rent between the parties, Kemsco v. Engineering Services and Products

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[23]Under Connecticut law, a heat or utility account cannot be billed to the tenant unless the service goes exclusively to the tenant. In buildings without individual meters or furnaces, or in which one meter or furnace serves common areas or a second apartment, the bill is supposed to be in the landlord's name. In the case of master-metered water, electric, or gas service which is in the landlord's name, if the landlord defaults, the utility company can require the account to be transferred to the tenant only if there is a meter which serves solely the tenant's unit. It must otherwise seek appointment of a receiver to collect the rents for the entire building, C.G.S. §16-262e(a), §16-262f.

Co., Inc., H-900, 1989 WL 516448 (1989); McClendon v. Foran, H-758 (1986). This is the same method used for determining fair rental value when rent or use and occupancy is paid into court during an eviction action, C.G.S. §47a-26b. The last agreed-upon rent, or any other evidence of rental value, may be rebutted with any relevant evidence, Milano v. Chernick, NH-385, 1986 WL 296351 (1986); Heyman v. Chen, SNBR-394, 1993 WL 525054 (1993). The most common rebuttal evidence is proof of deteriorated housing conditions or other failures to comply with landlord duties and is usually treated as a deduction from the last agreed-upon rent, McClendon v. Foran, H-758 (1986); Milano v. Chernick, NH-385, 1986 WL 296351 (1986); The Collinsville Co. v. Cecere, H-498, 1983 WL 208447 (1983).

C. Liability for the time period after the tenant vacates

A tenant who vacates is no longer liable for use and occupancy charges, since he or she is no longer in occupancy. If, however, the tenant has vacated before the end of the lease, there may be liability for the rent that would have been due for the remaining term of the lease. Depending on the circumstances, the landlord's suit may be for the rent itself or for damages resulting from the tenant's breach of the lease.

1. Situations in which no liability exists

a. Absence of a lease

A tenant has no obligation to pay the landlord for any time period after vacating unless the tenant is (or, but for the breach, would have been) subject to a lease covering that time period. For example, if the tenant occupies under an oral month-to-month lease and vacates by the end of the month, there is no liability to the landlord for the next month's rent, even if the landlord was given no advance notice that the tenant was vacating. Similarly, if the tenancy is week-to-week, the tenant's liability for rent expires at the end of the week. That is because, both by statute and at common law, an oral lease for an indefinite period of time is construed to be a lease for one month only, unless the rent is paid on a weekly basis. C.G.S. §47a-3b and §47a-3d; Welk v. Bidwell, 136 Conn. 603, 73 A.2d 295 (1950). There is no obligation to give advance notice of vacating on an oral month-to-month or week-to-week lease.

Similarly, if a tenant holds over beyond the end of a lease without the consent of the landlord, no new lease is created, so the tenant will be liable only for the number of days of actual occupancy, even if the tenant vacates mid-month, Bushnell Plaza Development Corp. v. Fazzano, 38 Conn. Sup. 683, 460 A.2d 1311 (1983). Thus, if the tenant has an oral month-to-month lease and, before the end of the month, the landlord states an intention no longer to rent to the tenant, the tenant's liability is only for the number of days in the next month that a holding over occurs. The same will be true if the landlord proposes a rent increase which the tenant does not accept. McCormack v. Tarpey, SNBR-299, 1987 WL 349021 (1987); Fischel v. Word Processing Associates of Fairfield Co., SNBR-317, 1988 WL 492432 (1988). In contrast, if an oral month-to-month lease renews by implication, the tenant will be occupying under a lease, rather

than as a holdover tenant. See §III(A)(1), p. 11, for a discussion of when a lease arises.

Thus, if the time period in question is beyond the end of the old lease and no new or renewed lease has arisen by implication or otherwise been entered into, a tenant who is no longer in occupancy has no further liability for occupancy charges.

b. Breach of the lease by the landlord

A tenant is not liable for the unexpired term of a lease after vacating if it is the landlord, rather than the tenant, who has breached the lease. In other words, the landlord's breach may justify the tenant in terminating the lease and vacating early. See §III(A)(2), p. 12, for a discussion of termination by the tenant.

2. Situations in which liability may exist

a. Liability for the unexpired term of the lease

If the tenant vacates before the end of the lease and stops paying rent, the landlord has the choice of enforcing the lease or terminating it. The legal consequences of these two options are different.

When the tenant vacates voluntarily before the end of the lease term, without the landlord's having terminated the lease, the landlord may be able to sue for the rent for the remaining period of the lease. In a commercial tenancy, the landlord can refuse to accept the tenant's surrender of the property, treat the tenant as still in occupancy, not attempt to mitigate damages, and hold the tenant liable for the rent for the rest of the lease. In such a case, the suit is for the rent itself, not for damages for breach of contract, White v. Miller, 111 Conn. 53, 180 A. 464 (1930); Sagamore Corp. v. Willicutt, 120 Conn. 315, 149 A. 237 (1935); Nemeth v. Gun Rack, Ltd, SNBR-383A, 1992 WL 315995 (1992), affirmed, 33 Conn. App. 909, 633 A.2d 743 (1993). In regard to residential leases, however, the common law doctrine that the landlord can refuse to accept the tenant's abandonment of the lease and therefore not mitigate damages has been overruled by C.G.S. §47a-11a, Ross v. Cully, H-251, 1980 WL 128103 (1980); Riedel v. Brown, NH-371, 1986 WL 296372 (1986); it still survives only as to commercial leases. In a residential case in which the tenant has voluntarily abandoned the apartment, the landlord thus cannot recover the rent for the remaining lease term without attempting to mitigate damages.[24]

If the landlord instead terminates the lease because of the tenant's breach (or accepts the tenant's surrender and retakes the premises, which has the same effect), the lease is ended and the tenant is completely freed of direct liability for rent for the remaining term of the lease, Feneck v. Nowakowski, 146 Conn. 434, 151 A.2d 891

[24]In effect, §47a-11a eliminates the option of refusing to mitigate damages in residential cases.

(1959). The tenant is, however, liable for lost rent in the form of damages for breach of contract if the landlord's efforts to mitigate damages are not fully successful, C.G.S. §47a-11c; Rokalor, Inc. v. Connecticut Eating Enterprises, Inc., 18 Conn. App. 384, 558 A.2d 265 (1989); Danpar Associates v. Somerville Mills Sales Rooms, Inc., 182 Conn. 444, 438 A.2d 708 (1980).[25] In general, damages for breach of a lease are measured in the same way as damages for breach of any other contract, i.e., the amount which would put the landlord in the same position as if the contract had not been broken. Thus, the tenant whose lease has been terminated may be liable for the cost of reletting the unit, Barraco v. Ethel Allan, Inc., SNBR-344, 1991 WL 57084 (1991), the cost of securing and maintaining the premises while they are vacant, Friedler v. Colclough, NH-173, 1983 WL 187808 (1983), and other similar transitional costs.[26] Section 47a-11c is explicit, however, that it does not affect the tenant's right "to assert other legal or equitable claims, counterclaims, defenses or setoffs." The tenant is therefore not precluded in a collection action from denying having breached the lease, asserting that any non-performance was in response to the landlord's breach, claiming a setoff, or asserting a counterclaim.

b. Mitigation of damages

If the tenant would be liable for a time period after vacating, the landlord must make reasonable efforts to rerent the premises in order to mitigate damages.[27] If a landlord who must mitigate damages fails to do so, the tenant is relieved from liability for rent for the unexpired portion of the lease. If a landlord initially attempts to mitigate (e.g., by advertising) but then stops, the tenant is liable only during the period of time when the landlord was attempting to mitigate, Barone v. O'Connell, SNBR-450, 1995 WL 788961 (1995), affirmed, 43 Conn. App. 913, 684 A.2d 280 (1996). Mitigation of damages, in other words, is a precondition for recovery of rent or damages related to the unexpired term of the lease. At common law, however, which applies to commercial leases, the burden of proof is nevertheless on the tenant to show that the landlord failed to mitigate, Lynch v. Granby Holdings, Inc., 37 Conn. App. 846, 658 A.2d 592 (1995); Krevit v. A La Carte Foods, NH-509, 1990 WL 614608 (1990). In contrast,

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[25]If the suit is for damages, the landlord must always attempt to mitigate damages. To the extent that Feneck v. Nowakowski, 146 Conn. 434, 151 A.2d 891 (1959), says that there is no liability for unpaid rent as damages for breach of the lease, it appears to have been overridden by the adoption of C.G.S. §47a-11c in 1997.

[26]There is some question as to how to calculate claims for advertising or real estate broker's fees, since these are costs which the landlord would eventually have to pay anyway even if the tenant remained in possession until the end of the lease term. The landlord should not be able to claim as damages items which were not caused by the tenant's breach of the lease. It appears that most courts, when allowing such fees, have allowed them to be recovered in full, e.g., K & R Realty Associates v. Gagnon, 1992 WL 394623 (1992), reversed on other grounds, 33 Conn. App. 815, 639 A.2d 524 (1994), although an alternate approach would be to prorate these costs, based on the percentage of the leasing period not completed by the tenant.

[27]Except where the landlord refuses to accept surrender under a commercial lease.

residential cases are governed by C.G.S. §47a-11a, which imposes a statutory duty on the landlord to "make reasonable efforts to rent [the dwelling unit] at a fair rental in mitigation of damages"; and the courts have held that this not only places the burden of proof on the landlord, Flebeau v. Volak, H-101, 1979 WL 49095 (1979); Gleit v. Insalaco, H-192, 1980 WL 128116 (1980); Rosenberg v. Pollard, NH-140 (1983), but that the failure to plead mitigation in a case governed by §47a-11a is ground for granting a motion to strike the complaint, Ross v. Cully, H-251, 1980 WL 128103 (1980). But, contra., see DeMatteo v. Villano, NH-740, 1997 WL 428595 (1997).

Mitigation requires a reasonable effort to relet the premises, which may depend on the unique circumstances of the case, Krevit v. A La Carte Foods, NH-509, 1990 WL 614608 (1990). A landlord who fails to advertise the unit adequately, Thorne v. Broccoli, 39 Conn. Sup. 289, 478 A.2d 271 (1984); demands a rent that is above a fair market rate, Friedler v. Colclough, NH-173, 1983 WL 187808 (1983); Kral v. McCoy, SNBR-204, 1985 WL 263972 (1985); accepts rent that is unreasonably low, Rokalor, Inc. v. Connecticut Eating Enterprises, Inc., 18 Conn. App. 384, 558 A.2d 265 (1989); or unreasonably refuses to accept a prospective replacement tenant, Vespoli v. Pagliarulo, 212 Conn. 1, 560 A.2d 980 (1989) may be held not to have satisfied this requirement.[28]

Any rent received from a replacement tenant for months during the period of the lease term, including increased rent resulting from charging the new tenant a higher rent, must be applied to reduce the tenant's indebtedness, Dalamagas v. Fazzina, 36 Conn. Sup. 523, 414 A.2d 494 (App. Sess., 1979), though the tenant is not entitled to receive a surplus if the credit is greater than the tenant's liability, Pratt Trumbull Associates v. Keen, H-341, 1981 WL 164248 (1981).[29]

IV. Attorney's fees and late charges

A. Attorney's fees

1. For the landlord

Under Connecticut law, each party to litigation must bear his or her own litigation costs, including attorney's fees, unless an attorney's fee award is authorized by lease or statute, Gino's Pizza of East Hartford, Inc. v. Kaplan, 193 Conn. 135, 475 A.2d 305

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[28]In light of the mandatory wording of C.G.S. §47a-11a, a landlord who has other vacant apartments cannot avoid the duty to mitigate damages by renting them before offering the apartment which was vacated by the tenant. See Stony Ridge Apartments Limited Partnership v. Kott, NH-497, 1989 WL 516473 (1989).

[29]If the landlord rents to a new tenant under a lease which continues beyond the lease period of the original tenant, the original tenant is entitled to credit only for the rent received for the months of overlap.

(1984); Petti v. Balance Rock Associates, 12 Conn. App. 353, 530 A.2d 1083 (1987); Papa Gino's of America, Inc. v. Broadmanor Associates, Ltd., 5 Conn. App. 532, 500 A.2d 1341 (1985). Attorney's fee awards for the benefit of the landlord are almost always based on the lease, since there are no statutes which would ordinarily authorize such awards. An award therefore requires proof of a lease containing the tenant's agreement to pay the landlord's attorney's fees. Because oral month-to-month leases do not contain attorney's fee clauses, no attorney's fees are ordinarily awardable under an oral lease.

The leasing situation must be examined carefully if the tenant once occupied under a lease which has expired. For example, if the tenant holds over beyond a one-year lease which contains an attorney's fee clause, the clause may well not survive the holdover and there will be no liability for attorney's fees in an action against the tenant. Similarly, if a tenant is sued based upon conduct which occurred after a lease has been terminated by a notice to quit, the landlord's damage claim will be based on post-lease conduct, which is not subject to an attorney's fee clause, Buccino v. Cable Technology, Inc., 25 Conn. App. 646, 595 A.2d 376 (1991); Clarke v. Mele, SNBR-372, 1992 WL 65432 (1992).[30] By the same token, neither attorney's fees nor late charges can be awarded under a lease which is illegal, Hartford Investment Group v. Vaughan, H-899 (1989).

Since leases are construed against the drafter, who is ordinarily the landlord, ambiguous attorney's fee clauses will be construed narrowly. For example, a clause providing attorney's fees in an action for possession will not support an award of attorney's fees in a collection action, Schiavone Realty and Development Corp. v. Bradley, NH-561, 1991 WL 204886 (1991). Compare Pacelli v. Karington, SNBR-427, 1995 WL 348338 (1995).

Attorney's fees may not be in excess of "fair compensation," C.G.S. §49-7. In actions for money damages based upon residential leases, the attorney's fee cannot exceed 15% of the amount of the judgment, C.G.S. §47a-4(a)(7) and §42-150aa. Attorney's fees cannot be awarded in a summary process action, which is an action for possession only, but attorney's fees for such an action can be recovered in a collection action if authorized by lease. The 15% limit does not apply to such cases, since there are no monetary damages in a summary process action; but the amount must be reasonable. The courts usually do not award attorney's fees on attorney's fees (i.e., attorney's fees for a summary process action are usually not included in the base on which the 15% attorney's fee maximum in a collection action is calculated), although the law may not be entirely clear on this point, Kalita v. D'Averso, NH-510, 1990 WL 274526 (1990); Abraham v. Boyette, NH-511, 1990 WL 274524 (1990).

Attorney's fee awards usually require proof of the reasonableness of the fee in light of what the attorney has done, Buccino v. Cable Technology, Inc., 25 Conn. App.

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[30]The same analysis applies to late charges and similar provisions which depend upon the existence of a lease.

646, 595 A.2d 376 (1991); Todd Associates v. Arden, H-785, 1986 WL 296422 (1986); but the courts have sometimes been willing to rely on their own general knowledge of attorney's practices, without other evidence, to determine whether a fee is reasonable, Vespoli v. Pagliarulo, 212 Conn. 1, 560 A.2d 980 (1989); Post Road Properties v. Etc., Etc., Inc., SNBR-373, 1992 WL 120288 (1992). At least where the 15% maximum produces a small fee, the courts have generally not required proof of actual attorney labor. An attorney's fee award cannot, however, exceed the actual attorney's fee for which the party is liable.[31] Similarly, a party that is not represented by an attorney cannot obtain an attorney's fee award. A pro se party (including a lawyer appearing pro se as landlord or tenant) can therefore not obtain attorney's fees, Mininberg v. Alston, SNBR-156, 1985 WL 264016 (1985).

2. For the tenant

As with landlord claims for attorney's fees, a tenant can obtain attorney's fees only if authorized by lease or statute. Oral leases do not ordinarily have attorney's fee clauses. Attorney's fee clauses in written leases sometimes are reciprocal (i.e., fees may be awarded to a prevailing landlord or tenant) and sometimes provide attorney's fees for the landlord only. In the latter case, C.G.S. §42-150bb requires the court to award attorney's fees to a prevailing residential tenant "as a matter of law," even if the lease clause provides only for attorney's fees for the landlord, Newbold v. Aboudi, NH-352, 1986 WL 296395 (1986); Toczydlowski v. Nicolaedis, NH-223, 1984 WL 255905 (1984); Pilagin v. Michalski, H-603, 1985 WL 263875 (1985).[32] This includes a tenant who successfully defends an action by the landlord and not merely one who prevails in affirmative litigation, Cioffoletti Construction v. Nering, 14 Conn. App. 161, 540 A.2d 91 (1988). The amount of the award to the tenant should be "based as far as practicable upon the terms governing the size of the fee" for a prevailing landlord which are contained in the lease, C.G.S. §42-150bb; Cioffoletti Construction v. Nering, 14 Conn. App. 161, 540 A.2d 91 (1988); Pilagin v. Michaelski, H-603, 1985 WL 263875 (1985); Toczydlowski v. Nicolaedis, NH-223, 1984 WL 255905 (1984).

Because litigation initiated by tenants performs the broad function of enforcing the consumer protection laws in the area of rental housing, there are many statutes which provide attorney's fees to prevailing tenants, depending upon the type of action. The broadest is the Connecticut Unfair Trade Practices Act (CUTPA), C.G.S. §42-110g, a general consumer protection statute which authorizes attorney's fees to a prevailing consumer in any case involving an unfair trade practice. CUTPA applies to the rental of residential property and other landlord-tenant matters, C.G.S. §42-110a(4), Conaway v.

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[31]This rule does not preclude the award of attorney's fees to a public interest law firm which does not charge attorney's fees, Hernandez v. Monterey Village Associates Limited Partnership, 17 Conn. App. 421, 553 A.2d 617 (1989); Hernandez v. Monterey Village Associates Limited Partnership, 24 Conn. App. 514, 589 A.2d 888 (1991).

[32]C.G.S. §42-150bb does not apply to commercial tenancies, Baskin v. Welson, H-590, 1985 WL 263882 (1985).

Prestia, 191 Conn. 484, 464 A.2d 847 (1983); Daddona v. Liberty Mobile Home Sales, Inc., 209 Conn. 243, 550 A.2d 1061 (1988), including many violations of the Security Deposit Act, Collazo v. Dias, NH-555, 1991 WL 120658 (1991); Costales v. Gelinas, H-906, 1989 WL 516453 (1989). Attorney's fees, if pleaded, are also available for housing discrimination (C.G.S. §46a-86), unlawful entry (C.G.S. §47a-18a), and failure to provide essential services (C.G.S. §47a-13).

The 15%-of-judgment limit on attorney's fees contained in C.G.S. §47a-4(a)(7) and C.G.S. §42-150aa does not apply to awards in favor of the consumer, i.e., the tenant. CUTPA provides explicitly that the amount of the fee is to be based on work reasonably done by the attorney, not on the amount of the judgment, C.G.S. §42-110g. This reflects the fact that consumer judgments are often small, while the amount of attorney work involved may be large. The CUTPA rule appears to be applicable to most other cases involving statutorily-authorized attorney's fees, Rodriguez v. Ancona, 88 Conn. App. 193, 201-203, 868 A.2d 807, 813-815 (2005) (attorney's fees under C.G.S. §47a-18); Vekris v. Pass, H-964, 1991 WL 270278 (1991) (attorney's fees under C.G.S. §52-251a).

3. Counterclaims and setoffs

While there is some inconsistency in the court decisions, if one party prevails on a counterclaim or setoff which reduces the other party's net judgment, the weight of decisions seems to be to apply the attorney's fee award to the net judgment, Pratt Trumbull Associates v. Keen, H-341, 1981 WL 164248 (1981); R.P.J. Associates v. Weglinski, NH-494, 1989 WL 516470 (1989). If both parties have an attorney, there is no practical difference between awarding attorney's fees on the net judgment and awarding them separately to each party on the claim and counterclaim or setoff, as long as the basis for the attorney's fee awards is the contract or the reciprocity statute.[33] If one party is pro se, however, the approach taken can produce a substantially different result. Since the prevailing party's true victory is reflected in the amount of the net judgment, it would seem fairer to base any attorney's fee award on the net amount which the prevailing party wins.

B. Late charges

Late charges, like attorney's fees, can be awarded only if agreed to by the tenant, which in practice requires the existence of a written lease containing a late charge clause, Cramer v. Avery, NH-463, 1989 WL 516517 (1989); Clarke v. Mele, SNBR-372, 1992 WL 65432 (1992); Milano v. Paladino, NH-552, 1991 WL 86272 (1991); Begin v. Reissman, SNBR-426, 1995 WL 348043 (1995). Late charges are not owed for any month following the landlord's termination of the lease, Barraco v. Ethel Allan, Inc., SNBR-344, 1991 WL 57084 (1991); Milano v. Paladino, NH-552, 1991 WL

[33]A different rule must be applied if the tenant's claim or counterclaim is based on a statute, such as CUTPA, which requires that attorney's fees be based on actual work performed, rather than on a percentage of the judgment.

86272 (1991). A lease may not impose a late charge for rent paid during the grace period established by C.G.S. §47a-15a.[34] Nor may a landlord evade this rule by giving a rent "discount," C.G.S. §47a-4(a)(8).[35] Clauses which permit imposition of a late fee on rent payments made within the grace period violate the Landlord-Tenant Act and are unenforceable on their face, Blake v. Romaniello, H-746 (1986); C.G.S. §47a-4(b). The fact that a late fee under such a clause is in practice imposed only on rent payments received after the grace period would not appear to save the clause, since no late charges can be awarded in the absence of a valid late fee agreement in the lease.

Late charges must also be reasonable in amount, and excessive fees will be denied, Beir v. Gliniak, H-176, 1980 WL 128067 (1980). In addition, the general common law doctrine against penalty clauses applies to leases, and late fees must therefore not be a penalty but rather a fair effort to estimate damages. For example, a "constantly accruing" late charge ($5 per day for every day after the tenth of the month that the rent remains unpaid) is unconscionable and unenforceable as a penalty, Begin v. Reissman, SNBR-426, 1995 WL 348043 (1995).

V. Other Types of Tenant-Initiated Small Claims Actions

The actions described above account for the overwhelming majority of actions brought in small claims court by either landlords or tenants. There are, however, many parts of the statutes authorizing particular actions by tenants which may, on rare occasions, be brought in small claims court. These include:

1. Connecticut Unfair Trade Practices Act, C.G.S. §42-110a et seq.: Claims of unfair and deceptive practices by the landlord. Most violations of the landlord-tenant laws are also unfair trade practices. The tenant may recover actual damages, including rent previously paid, and attorney's fees, Conaway v. Prestia, 191 Conn. 484, 464 A.2d 847 (1983). Punitive damages are also awardable if the landlord's conduct reveals a reckless indifference to the tenant's rights or an intentional and wanton violation of those rights, Gargano v. Heyman, 203 Conn. 616, 525 A.2d 1343 (1987); Nielson v. Wisniewski, 32 Conn. App. 133, 628 A.2d 25 (1993); Murphy v. Grigas, H-998, 1992 WL 436241 (1992).

2. Entry and Detainer Act, C.G.S. §47a-43 et seq.: Claims of self-help lockouts or

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[34]If the landlord permits payment of the rent by mail, a payment is timely if deposited in a mailbox by the due date, and the landlord bears the risk of loss of the payment in the mail, C.R. Parkside Limited Partnership v. Lorenzana, 10 Conn. App. 517, 523 A.2d 1363 (1987); Gallas v. Sloan, H-833, 1987 WL 348959 (1987); Keller v. Delvalle, NH-446, 1989 WL 516496 (1989). This suggests that a late charge cannot be imposed on a rent check mailed within the grace period. Due dates in written leases may also be extended or waived by a pattern of accepting late payments, Tinty v. Profita, H-970, 1992 WL 119199 (1992).

[35]There is no functional difference between a rent of $500, subject to a $25 late fee, and a rent of $525, subject to a $25 "discount" for early payment.

seizures of the tenant's belongings. "Force" is no longer required for an illegal entry and detainer, C.G.S. §47a-43(a)(3) and (4), Bourque v. Morris, 190 Conn. 364, 460 A.2d 1251 (1983); Robotham v. O'Loughlin, H-915, 1990 WL 614595 (1990). The tenant may recover double damages. The tenant may testify to the value of goods lost, and damages may be awarded for the loss of items of sentimental value, such as photograph albums, Ford v. Mewborn, 1991 WL 224030 (1991). The prohibition against self-help eviction applies not only to conventional apartments but to rooming and boarding houses as well. The principal exception, which is a narrow one, is for transient occupancy in a hotel, motel, or similar place of lodging, C.G.S. §47a-2(5).

3. Unlawful Entry Act, C.G.S. §47a-16 et seq.: Claims of entry by the landlord into the unit without the tenant's consent. The tenant is entitled to minimum damages of at least one month's rent and may recover attorney's fees, C.G.S. §47a-18a, Denino v. Valenti, NH-604, 1993 WL 426040 (1993). For a tenant with a Section 8 voucher, this amount is calculated as one month's full contract rent, not the lesser amount paid by the tenant as his or her share of the rent, Rodriguez v. Ancona, 88 Conn. App. 193, 200, 868 A.2d 807, 813 (2005). A landlord may enter a unit without consent only if there is an emergency, if the unit has been abandoned, or with a court order. The landlord must give reasonable notice of entry, enter only at reasonable times, and not use entry to harass the tenant. The landlord may enter only for a limited number of statutorily-identified purposes (e.g., to make repairs); and the tenant may not unreasonably withhold consent for the landlord to enter for those purposes. The landlord's remedy, however, is a court action under C.G.S. §47a-18, not unilateral entry.

4. Fair Housing Act, C.G.S. §46a-64c: Claims of housing discrimination. The plaintiff may recover actual damages, punitive damages, and attorney's fees, C.G.S. §46a-84.

5. Essential Services Act, C.G.S. §47a-13: Claims of failure to provide essential services, such as heat or running water. Under some circumstances, the tenant may recover double damages (equal to at least two months' rent) and attorney's fees, Gerhard v. Veres, 30 Conn. App. 199, 619 A.2d 890 (1993).

6. Plain Language Act, C.G.S. §42-151 et seq.: Claims of leases not written in plain language. Residential leases are subject to the Plain Language Act, which sets out standards for what constitutes plain language, Marinuzzi v. Bankowski, NH-256, 1984 WL 255721 (1984); Keill v. Howland, NH-655, 1995 WL 591467 (1995). The tenant can be awarded statutory damages of $100 plus attorney's fees of up to $100 for violations, C.G.S. §42-154.