

# DAYTON BUSINESS JOURNAL

## Guest Column: Residential leases for your college student — check the fine print

MIKE REED + ANA CRAWFORD  
Porter Wright Morris & Arthur LLP

For college students, this is a time of year for much anticipation. Spring break has just passed. Summer vacation is nearly within sight. And for a few, it's a flurry of resume sending and graduation prep. For many, this is also a time to begin shopping for a new place to live, and with apartment hunting, comes many obstacles, some of which seem designed specifically to trip them up and line the coffers of unscrupulous landlords.

As a real estate attorney and parent of children who have rented apartments, I have seen some of the pitfalls that can trap the unwary. Because these traps are generally not applicable to University landlords and other institutional landlords, they are not the subject of this article.

Leases tend to fall into one of three types; those that:

Are prepared by sophisticated landlords that are take-it-or-leave-it, one-sided agreements

Have been adopted by unsophisticated landlords, and contain provisions that do not apply to the property in question

Attempt to fairly balance the needs and concerns of both landlords and tenants (laudable, but perhaps the least frequently encountered)

My advice to my children always has been to read and understand the entire lease before they sign it. All too often, an attorney gets a telephone call after it has been signed asking if the lease is "ok." By that time, there is not much point in asking. If all the terms within the lease



Mike Reed is an attorney at Porter Wright Morris & Arthur LLP in Dayton.

are not easily understood, it might be wise to consult an attorney who can point out potential issues and allow you to decide whether you are willing to accept the potential risk or cost. Not everyone has "in-house" counsel to rely on, but local law schools and universities often run tenant information projects or may be able to provide a reference for free advice. Local bar associations also may be able to refer you to an attorney willing to do a short review for free.

Watch out for:

### **Clauses relating to appliances and maintenance**

Unfortunately, my children do not always follow my advice. One of my children signed a one-year lease for an attractive, restored apartment. The lease was not very tenant-friendly, and it required that the tenants maintain, repair



Ana Crawford is an attorney at Porter Wright Morris & Arthur LLP in Dayton.

and replace, if needed, almost everything, including appliances, heating, air conditioning and plumbing.

Under the terms of my child's lease and in the jurisdiction in which he lived, he was responsible for a plumbing problem that was supposedly fixed just days before the apartment was rented. He was charged \$500 for "emergency service" to fix the problem again. No one contended that he created the problem — only that it needed fixing and that it occurred while he was a tenant.

In addition, the lease contained a provision making the tenant responsible for payment of all attorneys' fees in case the tenant decided to take the landlord to court. In some jurisdictions, a residential tenant is not responsible for the landlord's attorneys' fees regardless of the lease terms, but with this provision,

the tenant would have to pay his own attorneys' fees, as well as those of the landlord.

### **Leases that require rent without granting occupancy rights**

Recently, I was asked to review two leases for the parents of college students. In both situations, the college-aged children had already signed them, and the parents were outraged by some of the provisions. The landlord had the students sign the leases, and then sent the parents a lease guaranty to sign and return. Both leases contained a clause that purported to bind the students to the lease, but also required them to find a guarantor satisfactory to the landlord. This provision even stated that unless the student found a guarantor satisfactory to the landlord, the student was still liable for all of the money under the lease but could not use or get access to the apartment.

In this instance, the parents were unwilling to guaranty the lease. In the end, the landlord relented and agreed to give the student the keys to the apartment and to rent it to him without obtaining a satisfactory guarantor.

If the landlord had refused to allow the student to occupy the apartment without first obtaining a satisfactory guaranty, the student and his family would have had to choose between two bad alternatives – either giving in to the landlord and guarantying a lease they did not want their child to enter into, or refusing, in which case the child would have had to sign and pay for another lease and risk that the landlord under the original lease would not sue him for the rent due under the lease for the property the landlord refused to allow him to occupy.

The far more logical (and ethical) way for the landlord to handle the situation is to not have the student sign the lease until one or more parents co-sign or guaranty the lease, if a landlord considers the guaranty a requisite for entering into the lease at all.

### **Changes in utility fees**

Another potential issue can sometimes be found with respect to utilities. One of my children signed a lease that allowed the landlord to later start charg-

ing separately for utilities that were currently included in the base rent, without reducing the base rent. Some landlords, given the opportunity, would certainly keep the base rent the same and pass through the cost of utilities to increase income from the current tenants of the apartment.

### **Clauses regarding roommates**

A renter with roommates should be particularly wary of clauses that require the tenant to pay for all of the rent if one of the roommates moves out. Depending on the terms of the lease, the remaining roommates, or their parent guarantor(s) could be responsible for a hefty rent payment. Check the lease, but usually multiple tenants will have "joint and several" responsibility. This means that each person signing is responsible for 100% of the rent. If one of the tenants moves out and does not pay the remainder of the rent due under the lease, the landlord can get a judgment against the remaining tenant for all of the rent due under the lease.

### **What about security deposits?**

In Ohio, if you are in possession of a leased property for at least six months, your security deposit will earn interest at the rate of 5 percent per annum, payable annually, to the extent your security deposit exceeds the greater of a.) \$50 or b.) one month's rent. When the lease ends, the tenant should provide, in writing, a forwarding address to the landlord. At the same time, the landlord may apply the security deposit to past due rent and any damages suffered by landlord as a result of the tenants' breach of the lease or violations of Section 5321.05.

All deductions from the security deposit shall be itemized in writing by the landlord and provided to the tenant within 30 days following termination of the lease and delivery of possession of the property to the landlord. If the landlord fails to provide the itemized list of deductions and any remaining security deposit to the tenant within that 30-day period, the landlord can be held responsible not only to return the security deposit but also for an additional amount equal to the security deposit and reasonable attorneys' fees. Therefore, the landlord has a pretty good incentive to

promptly return the security deposit balance, if any, along with the itemized list of deductions within the required period.

### **Ohio law provides requirements for landlords and tenants**

In Ohio, residential leases are generally governed by Chapter 5321 of the Ohio Revised Code: View Chapter 5321: Landlords and Tenants. (An important exception being university owned or operated housing, if housing is contingent on the tenant being a student.) For their protection, prospective tenants and their parents are advised to review the rules that govern residential leases, in particular those that address "unconscionable" lease terms. If a lease term is "unconscionable," it is, according to merriam-webster.com, "A provision that is extremely bad, unfair or wrong; going far beyond what is usual or proper." As Ohio Revised Code Section 5321 illustrates, there is a possible legal remedy for a lease that is deemed to be "unconscionable."

### **Renter beware**

Always ask questions. If you see a lease provision that bothers you, ask the landlord to change it. If you must agree to repair or replace something, ask about a dollar limit on your obligations, either per item or over the term of the lease. If your child is in school for nine months a year, can you get a nine-month lease or does everyone require 12-month leases? Is there a "warranty of habitability," which requires the landlord to maintain the property in habitable or livable condition?

Renting an apartment can be fraught with perils. Do your research on the front end, and ask questions if you don't understand. Once informed, it is up to you to decide whether the lease provisions are something you can live with.

*Mike Reed and Ana Crawford are attorneys at Porter Wright Morris & Arthur LLP in Dayton, Ohio.*

**porterwright**  
PORTER WRIGHT MORRIS & ARTHUR LLP