

**RESIDENTIAL LANDLORD AND TENANT ORDINANCE**

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5—3—1: **TITLE, Purpose and Scope:**

- (A) Short Title: This Chapter shall be known and may be cited as the "Residential Landlord and Tenant Ordinance."
- (B) Purpose and Declaration of Policy: It is the purpose of this Chapter and the policy of the City, in order to protect and promote the public health, safety and welfare of the citizens, to establish rights and obligations of the landlord and the tenant in the rental of dwelling units and to encourage the landlord and the tenant to maintain and improve the quality of housing.
- (C) Construction of Chapter: This Chapter shall be liberally construed and applied to promote its purposes and policies.
- (D) Scope:
1. Territorial Application: This Chapter applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within the City.
  2. Exclusions: Unless created to avoid the application of this Chapter, the following arrangements are not governed by this Chapter:
    - a. Residence at a public or private medical geriatric, educational or religious institution;
    - b. Occupancy under a contract of sale of a dwelling unit if the occupant is the purchaser ;
    - c. Occupancy in a structure operated for the benefit of a social or fraternal organization;
    - d. Transient occupancy in a hotel or motel; or
    - e. Occupancy in a co-operative apartment by a shareholder of the co-operative. (Ord. 114-0-89)

5—3—2: **GENERAL DEFINITIONS;  
PRINCIPLES OF INTERPRETATION:**

- (A) General Definitions: Subject to additional definitions contained in subsequent sections of this Chapter:

<b>ACTION:</b>	Includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.
<b>CODE:</b>	Includes any ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.
<b>COMMON AREA:</b>	Includes a part or area of the premises not within any dwelling unit.
<b>DWELLING UNIT:</b>	A structure or the part of a structure that is used as a home, residence or sleeping place by one or more persons who maintain a household.
<b>FAIR RENTAL VALUE:</b>	The prevailing value of comparable rental units in the City.
<b>LANDLORD:</b>	The owner, lessor or sublessor of the dwelling unit or the building of which it is a part. An owner is one or more persons jointly or severally, in whom is vested all or part of the legal title to property, or all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

**MATERIAL NON COMPLIANCE:**

A failure to comply with laws or regulations including the City of Evanston Residential Landlord-Tenant Ordinance, and the BOCA Property Maintenance Code adopted under Section 5—1—1 of this Title, or the requirements or determinations of a reviewing inspector from the Community Development Department and/or Health Department and/or Fire Department when that failure increases risk to landlord or tenant(s), or adversely affects the rights and welfare of the landlord or tenant(s). A failure to comply may result in termination of the lease. This may include only a single instance of non-compliance if it is substantial or repeated minor violations.

**PERSON:**

An individual or a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal or commercial entity.

**PREMISES:**

A dwelling unit and the structure of which it is a part, and facilities and appurtenances therein, and grounds, areas and facilities held out for the use of tenants.

**RENT:**

All payments to be made to the landlord under the rental agreement.

**RENTAL**

**AGREEMENT:**

A written agreement and valid rules and regulations adopted under Section 5—3—4-2 of this Chapter embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

**TENANT:**

A person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

- (B) Unconscionability: If the court finds the rental agreement, or a settlement in which a party waives or agrees to forego a claim or right under this Chapter or under a rental agreement, to have been unconscionable when made, the court may grant the following relief:

1. Nonenforcement: or
2. Nonenforcement of the unconscionable provision only; or
3. Limit the application of any provision to avoid an unconscionable result.

- (C) Notice: A person has notice of a fact if:

1. He has actual knowledge of it;
2. He has received notice of it; or
3. From all the facts and circumstances known to him at the time in question, he has reason to know that it exists. A person gives notice to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. (Ord. 19-0-75)

5—3—3: **RENTAL AGREEMENTS:**

**5—3-3-1: TERMS AND CONDITIONS  
OF RENTAL AGREEMENT:**

- (A) A rental agreement complying with the requirements of this Chapter shall be executed for the rental of all dwelling units within the jurisdiction regardless of the duration of the tenancy herein. The landlord and tenant may include in a rental agreement terms and conditions not prohibited by this Chapter and other rules of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties
- (B) All rental agreements for leases of dwelling units subject to this Chapter which are newly executed and/or renewed on or after August 1, 1994, shall contain the full names and birth dates of all occupants of the dwelling unit leased or to be leased under the rental agreement. The individual occupancy of the dwelling unit may not be changed without an amendment to the existing rental agreement reflecting the change in occupancy and shall in no case exceed the maximum occupancy permitted elsewhere in this Code for that size unit.
- (C) Rent is to be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent shall be uniformly apportionable from day to day.
- (D) Unless the rental agreement fixes a definite term, the tenancy shall be week-to-week in the case of a tenant who pays weekly rent, and in all other cases month-to month.

**5—3—3-2: EFFECT OF UNSIGNED OR  
UNDELIVERED RENTAL AGREEMENT:**

- (A) If the landlord does not sign and deliver a written rental agreement, signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord, for the term set forth in the rental agreement.
- (B) If the tenant does not sign and deliver a written rental agreement, signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.
- (C) If a rental agreement given effect by the operation of this Section provides for a term longer than one year, it is effective for only one year. (Ord. 19-0-75)

**5—3—3-3: PROHIBITED PROVISIONS  
IN RENTAL AGREEMENTS:**

- (A) Except as otherwise provided by this Chapter, no rental agreement may provide that the tenant or the landlord:
1. Agrees to waive or to forego rights or remedies under this Chapter;
  2. Authorizes any person to confess judgment on a claim arising out of the rental agreement;
  3. Agrees to the limitation of any liability of the landlord or tenant arising under law or to indemnify the landlord or tenant for that liability or the costs connected therewith.
- (B) A provision prohibited by subsection (A) included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing any provision known by him to be prohibited, the tenant may recover actual damages sustained by him and not more than two (2) months' rent and reasonable attorney's fees. (Ord. 19-0-75)

**5—3—4: TENANT OBLIGATIONS:**

**5—3—4-1 MAINTAIN DWELLING UNIT:**

The tenant shall:

- (A) Comply with all obligations imposed upon tenants by provisions of the codes applicable to the dwelling unit;
- (B) Keep that part of the premises that he occupies and uses as safe as the condition of the premises permits;
- (C) Dispose from his dwelling unit all ashes, rubbish, garbage and other waste in a clean and safe manner;
- (D) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (E) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators in the premises;
- (F) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so;
- (G) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbor's peaceful enjoyment of the premises; and
- (H) Not engage in or permit the unlawful selling, possession, serving, storage, deliverance, manufacture, cultivation, giving away or use of any controlled substance; prostitution; or gambling on the leased premises. (Ord. 20-0-99)

**5—3—4-2 RULES AND REGULATIONS:**

- (A) The landlord, from time to time, may adopt general rules or regulations concerning the tenant's use and occupancy of the premises. They are enforceable only if in writing and:
1. Their purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities among tenants;
  2. They are reasonably related to the purpose for which they are adopted;
  3. They apply to all tenants in the premises in a fair manner;
  4. They are sufficiently explicit to fairly inform the tenant of what he must or must not do to comply;
  5. They are not for the purpose of evading the obligations of the landlord; and
  6. The tenant has notice of them at the time he enters into the rental agreement.
- (B) A rule or regulation adopted after the tenant enters into the rental agreement that substantially modifies his bargain is not enforceable unless the tenant consents to it in writing.

**5—3—4-3: ACCESS:**

- (A) The tenant shall not reasonably withhold consent to the landlord to enter the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or show the dwelling unit to prospective or actual purchasers, mortgagees, tenants or workmen.
- (B) The landlord may enter the dwelling unit without consent of the tenant in case of emergency.
- (C) The landlord shall not abuse the right of access or use it to harass the tenant. Except in cases of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least two (2) days notice of his intent to enter and may enter only at reasonable times. (Ord. 19-0-75)

**5—3—4-4: Tenant's Use and  
OCCUPANCY of Dwelling Unit:**

Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a dwelling unit. (Ord. 19-0-75)

### 5—3—5: LANDLORD OBLIGATIONS:

#### 5—3—5-1: SECURITY DEPOSITS AND PREPAID RENT:

- (A) A landlord may not demand or receive security or prepaid rent or any combination thereof in an amount in excess of one and one-half (1-1/2) months' rent; provided, however, that rent paid on the first day of the month or upon any other day mutually agreed upon by the parties, due and payable in advance for that month, shall not be construed herein as either security or prepaid rent and therefore shall not be included in the computation of the aforesaid one and one-half (1-1/2) months' rent. The tenant shall pay the landlord, at the time the tenant moves into the premises or at any other time mutually agreed upon by the parties, the amount of the security or prepaid rent required by the landlord. However, if the landlord requires a security deposit or prepaid rent in excess of one month's rent, but not exceeding one and one-half (1-1/2) months' rent, that portion in excess of one month's rent at the election of the tenant, shall be paid either at the time the tenant pays the initial security deposit, or shall be paid in no more than six equal installments no later than six months after the effective date of the lease. Interest on that portion of a security deposit or prepaid rent exceeding one month's rent, if paid in installments, shall not be computed until all installments are paid to the landlord.
- (B) Effective October 1, 2002, a landlord who receives security or prepaid rent from a tenant shall pay interest to the tenant at the rate equal to the interest rate paid on such security deposits in the City of Chicago. Interest on security deposits on leases commencing prior to October 1, 2002, shall be paid at a rate of four percent (4%) per year through December 31, 1975, and five percent (5%) per year from January 1, 1976 through September 30, 2002. A landlord shall pay to the tenant interest on all deposits within thirty (30) days after the end of each twelve (12) month rental period, by cash or credit to be applied to the rent due, except when tenant is in default under terms of the rental agreement. Interest on that portion of the security deposit or prepaid rent exceeding one month's rent, if paid in installments, shall not be computed until all installments are paid to the landlord. (Ord. 81-0-02)
- (C) Upon termination of the tenancy, property or money held by the landlord as security or prepaid rent may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with Section 5—3—4-1 of this chapter, all as itemized by the landlord in a written notice delivered to the tenant together with the amount due twenty one (21) days after tenant has vacated his unit. Any security or prepaid rent not so applied, and any interest on such security due to tenant shall be paid to the tenant within twenty-one (21) days after tenant has vacated his unit. In the event the rental agreement terminates pursuant to Section 5—3—7-4(A)-1 regarding landlord's wrongful failure to supply essential services, the obligations imposed on the landlord pursuant to this Section 5—3—5-1(C) shall be performed within forty-eight (48) hours after the expiration of the seven (7) -day written notice to the landlord to restore service.
- (D) A landlord shall hold all security deposits received by him or her in a federally insured interest-bearing account in a bank, savings and loan association or other financial institution located in the State of Illinois. A security deposit and interest due thereon shall continue to be the property of the tenant making such a deposit, shall not be subject to the claims of any creditor of the landlord or of the landlord's successors in interest, including a foreclosing mortgagee or trustee in bankruptcy.
- (E) The City shall cause the new rate of security deposit interest to be published once a week for two consecutive weeks or

more in newspapers of general circulation in the City. The City Manager shall direct the Human Relations Department to prepare and publish for free distribution at government offices and libraries, a pamphlet or brochure describing the respective rights, obligations and remedies of landlords and tenants with respect to security deposits, including the new interest rate as well as the interest rate for each of the prior two years. Said pamphlet shall also be available on the City's website.

(Ord. 81-0-22)

- (F) If the landlord fails to comply with subsection (C) hereof, the tenant may recover the property and money due him together with damages in an amount equal to twice the amount wrongfully withheld and reasonable attorney's fees.
- (G) This Section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this Chapter. (Ord. 19-0-75)

#### 5—3—5-2: DISCLOSURE:

- (A) The landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing, on or before the commencement of the tenancy:
1. The name, address and twenty four (24) hour telephone number of the person authorized to manage the premises; and
  2. The name and address of the owner of the premises or the person authorized to act on behalf of the owner for the purpose of service of process and for the purpose of receiving notices and demands.
- (B) A person who fails to comply with subsection (A) becomes an agent of each person who is a landlord for:
1. Service of process and receiving of notices and demands; and
  2. Performing the obligations of the landlord under this Chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.
- (C) The information required to be furnished by subsection (A) shall be kept current. Subsections (A) and (B) extend to and are enforceable against any successor landlord or manager.
- (D) Before a tenant initially enters into or renews a rental agreement for a dwelling unit, the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing any code violations which have been cited by the City for the dwelling unit and common area. If the landlord fails to comply with this subsection (D), the tenant may pursue the remedies provided in Sections 5—3—7-1 or 5—3—7-3 of this Chapter. (Ord. 19-0-75)

#### 5—3—5-3: MAINTAIN FIT PREMISES:

- (A) The landlord shall maintain the premises in substantial compliance with the applicable codes of the City and shall promptly make any and all repairs necessary to fulfill this obligation.
- (B) The landlord and tenant of any dwelling unit may agree that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling only if:
1. The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration; and
  2. The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

#### 5—3—5-4: LIMITATION OF LIABILITY:

- (A) Unless otherwise agreed a landlord who sells the premises

is relieved of liability under the rental agreement and this Chapter for events occurring subsequent to written notice to the tenant of the sale. However, he remains liable to the tenant for any property and money to which the tenant is entitled under Section 5—3—5-1 of this Chapter and all prepaid rent, unless the tenant receives written notice that such property, money and prepaid rent have been transferred to the buyer, and that the buyer has accepted liability for such property, money and prepaid rent.

- (B) Unless otherwise agreed the manager of the premises is relieved of liability under the rental agreement and this Chapter for events occurring after written notice to the tenant of the termination of his management.

**5—3—5-5: LEAD DISCLOSURE REQUIREMENTS:**

Landlords subject to this Ordinance must follow all applicable state and federal regulations regarding lead poisoning and must specifically:

- (A) Provide all prospective and current lessees with a copy of the current, approved U.S. Environmental Protection Agency federal pamphlet on lead-based paint disclosure.  
(B) Disclose any known lead hazards. (Ord. 8-0-97)

**5—3—6 : LANDLORD REMEDIES:**

**5—3—6-1 : NONCOMPLIANCE WITH RENTAL**

**AGREEMENT; FAILURE TO PAY RENT:**

- (A) (1) If there is a material noncompliance by the tenant with the rental agreement or with Subsection 5—3—4-1 (A)-(G) of this Chapter, the landlord may deliver a written notice to the tenant specifying the acts and omissions, constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice, unless the breach is remedied by the tenant prior to the expiration of the notice. If the breach is not remedied prior to the expiration of the notice, the rental agreement shall terminate as provided in the notice.  
(2) If there is material noncompliance by the tenant with any of the provisions of Section 5—3—4-1 (A)-(G), after expiration of the landlord's written notice to the tenant to remedy the acts and omissions specified in the notice delivered pursuant to Section 5—3—6-1 (A)(1), throughout the remainder of the term of the rental agreement, the landlord may delivery written notice to the tenant that the rental agreement shall terminate not less than (30) days after delivery of the written notice to terminate.  
(3) If there is noncompliance by the tenant with subsection 5—3—4-1 (G) or 5—3—4-1 (H) of this Chapter, the landlord may deliver written notice to the tenant specifying the acts constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice, or, in the case of owner-occupied dwelling units containing two (2) or fewer rooming units, upon a date not less than forty-eight (48) hours after receipt of the notice.  
(B) If rent is unpaid when due, and the tenant fails to pay the unpaid rent within ten (10) days, or, in the case of owner-occupied dwelling units containing two (2) or fewer rooming units, within forty-eight (48) hours after receipt of written notice by the landlord of his/her intention to terminate the rental agreement if the rent is not so paid, the landlord may terminate the rental agreement.  
(C) Except as provided herein, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or with Section 5—3—4-1 of this Chapter. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

**5—3—6-2: FAILURE TO MAINTAIN:**

If there is material noncompliance by the tenant with Section 5—3—4-1 hereof, and the tenant fails to comply as promptly as conditions permit in case of emergency or within fourteen (14) days of receipt of written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and have the work done in a workmanlike manner and submit a receipted bill from an appropriate tradesman for the cost thereof as rent on the next day when rent is due, or if the rental agreement has terminated, for immediate payment, provided that the landlord has fulfilled his affirmative obligations under Section 5—3—5-2 (D) and 5—3—5-3 (A).

**5—3—6-3: ABANDONMENT; SUBLEASES:**

If the tenant abandons the dwelling unit, the landlord shall make good faith effort to rent it at a fair rental. This shall include the acceptance of reasonable subleases. If the landlord succeeds in renting the dwelling unit at a fair rental, the tenant shall be liable for the amount by which the rent due from the date of abandonment to the termination of the initial rental agreement exceeds the fair rental subsequently received by the landlord from the date of abandonment to the termination of the initial rental agreement. If the landlord makes a good faith effort to rent the dwelling unit at a fair rental and is unsuccessful, the tenant shall be liable for the rent due for the period of the rental agreement. In either event, the tenant shall be liable for the advertising expenses and reasonable redecoration costs incurred by the landlord in rerenting the dwelling unit. (Ord. 19-0-75)

**5—3—6-4: WAIVER OF LANDLORD'S RIGHT TO TERMINATE:**

Acceptance of rent with knowledge of a default by the tenant, or acceptance of performance by him that varies from the terms of the rental agreement or rules or regulations subsequently adopted by the landlord, constitutes a waiver of his right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

**5—3—6-5: REMEDY AFTER TERMINATION:**

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for damages for breach of the rental agreement and reasonable attorney's fees, as provided in Section 5—3—5-1 (C) hereof.

**5—3—6-6: DISPOSITION OF ABANDONED PROPERTY:**

- (A) Except as otherwise agreed, if, upon termination of a tenancy (other than by an order of a court of competent jurisdiction) including, but not limited to, a termination after expiration of a lease or by surrender or abandonment of the premises, a tenant has left personal property on the premises, and the landlord reasonably believes that the tenant has abandoned such personal property, the landlord may:
1. Notify the tenant in writing of his demand that such property be removed within the dates set forth in such notice (but not less than 15 days after delivery or mailing of such notice); and that if such property is not removed within the time specified, the property may be sold. If the property is not removed within the time specified in such notice, the landlord may sell the property at a public sale or at a commercially reasonable private sale. The proceeds, less reasonable costs incurred by such sale or storage of property, shall be held by the landlord for the tenant for one year. If the tenant does not claim the proceeds within one year, the proceeds

shall be the property of the landlord.

2. If the tenant has left personal property which is reasonably determined by the landlord to be valueless or of such little value that the cost of storing and conducting a sale would probably exceed the amount that would be realized from such sale, the landlord may notify the tenant in writing that such property be removed by the date specified in such notice (but not less than 15 days after delivery or mailing of such notice), and that if such property is not removed within the time specified, the landlord intends to destroy or otherwise dispose of the property. If the property is not removed within the time specified in the notice, the landlord may destroy or otherwise dispose of the property.

3. The notice shall indicate his election to sell specific items of the tenant's personal property and to destroy or otherwise dispose of the remainder of said property.

- (B) For purposes of this Section, "abandonment" shall mean that the tenant has vacated the premises, and that his rent is in default and that notice by the landlord to terminate the rental agreement as provided in Section 5—3—6-1 (B) has expired.
- (C) After sending written notice, as provided in subsection (A), the landlord shall store all personal property of the tenant in a place of safe keeping and shall exercise reasonable care of the property, but shall not be responsible to the tenant for any loss not caused by the landlord's deliberate or negligent act or omission. The landlord may elect to store the property in or about the previously vacated premises. In such case, the storage shall not exceed commercially reasonable storage rates. If the tenant's property is removed to a commercial storage company, the storage cost shall include the actual charge for such storage and removal from the premises to the place of storage.
- (D) After landlord's notice under subsection (A), if the tenant makes timely response in writing of his intention to remove the personal property from the premises and does not do so within the time specified in the landlord's notice or within thirty (30) days of the delivery or mailing of the tenant's written response or a mutually agreeable date (whichever is later), it shall be conclusively presumed that he has abandoned such property. In the event the tenant removes the property after notice, the landlord shall be entitled to the cost of storage for the period the property has remained in his safe keeping.
- (E) Any public sale, authorized under the provisions of this Section, shall be conducted pursuant to law in such instances made and provided. (Ord. 19-0-75)

**5—3—7: TENANT REMEDIES:**

**5—3—7-1: NONCOMPLIANCE BY LANDLORD:**

- (A) If there is a material noncompliance by the landlord with the rental agreement or with Section 5—3—5-2 (D) or Section 5—3—5-3, the tenant may deliver a written notice to the landlord specifying the breach and that the rental agreement will terminate on a date not less than thirty (30) days after receipt of the notice, or, in the case of owner-occupied dwelling units containing two or fewer rooming units, upon a date not less than forty-eight (48) hours after receipt of the notice, unless the breach is remedied by the landlord prior to the expiration of the notice. If the breach is not remedied prior to the expiration of the notice, the rental agreement

shall terminate as provided in the notice. The tenant may not terminate for a condition caused by the the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

(Ord. 33-0-83)

- (B) Except as provided in this Chapter, the tenant may recover damages and obtain injunctive relief for any material noncompliance by the landlord with the rental agreement or with Section 5—3—5-3. If the landlord's noncompliance is willful, the tenant may recover reasonable attorney's fees.
- (C) If the rental agreement is terminated, the landlord shall return all security and interest recoverable by the tenant under Section 5—3—5-1 and all prepaid rent.

**5—3—7-2: FAILURE TO DELIVER POSSESSION:**

- (A) If the landlord fails to deliver possession of the dwelling unit to the tenant in compliance with the rental agreement and Section 5—3—5-3, rent abates until possession is delivered and the tenant may:
1. Upon at least five (5) days' written notice to the landlord, terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security; or
  2. Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him.
- and the tenant may:
- (B) If a person's failure to deliver possession is willful, an aggrieved person may recover from that person wrongfully in possession, an amount not more than two (2) months' rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees.

**5—3—7-3: SELF HELP FOR MINOR DEFECTS AND RENT WITHHOLDINGS:**

- (A) With respect to any single violation, the tenant may choose either the remedy in subsection 1 below or the remedy in subsection 2 below, but not both.
1. If the landlord fails to comply with the rental agreement or with Section 5—3—5-3 (A) and the reasonable cost of compliance is less than two hundred dollars (\$200.00) or an amount equal to one-half (1/2) of the monthly rent, whichever amount is greater, the tenant may recover damages for the breach under Section 5—3—7-1 (B) or may notify the landlord in writing of his intention to correct the condition at the landlord's expense. If the landlord fails to comply within fourteen (14) days after being notified by the tenant in writing or as promptly as conditions require in case of emergency, the tenant may have the work done in a workmanlike manner and, after submitting to the landlord a receipted bill from an appropriate tradesman, deduct from his rent the amount thereof, not exceeding the limits specified in this subsection; provided, that the tenant has fulfilled his affirmative obligations under Section 5—3—4-1.
  2. If the landlord fails to comply with the rental agreement or with Section 5—3—5-3 (A), the tenant may, where the condition has been cited as a code violation by the City, notify the landlord in writing of the tenant's

intention to withhold from the monthly rent an amount which reasonably reflects the reduced value of the premises. If the landlord fails to correct the condition within fourteen (14) days after being notified by the tenant in writing, the tenant may, during the time such failure continues, deduct from the rent the stated amount.

- (B) A tenant may not repair at the landlord's expense or withhold rent under this Section if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent.
- (C) Before correcting a condition affecting facilities shared by more than one dwelling unit, the tenant shall notify all other tenants sharing such facilities of his plans, and shall so arrange the work as to create the least practicable inconvenience to the other tenants.

**5—3—7-4: WRONGFUL FAILURE TO SUPPLY ESSENTIAL SERVICES:**

- (A) If, contrary to the rental agreement, the landlord fails to supply heat, running water, hot water, electricity, gas or plumbing, the tenant may:
1. Deliver written notice to the landlord specifying the service to be restored, that the service must be restored within seven (7) days of the delivery of the notice, and that the rental agreement will be terminated automatically at the expiration of the seven (7) days if the specified service is not restored.
  2. Pay for the provision of these services and deduct the cost from their next rental payment, or payments in the event the cost of services procured exceed the amount of the next rental payment.
  3. Recover damages based upon the diminution in fair rental value of the dwelling unit and reasonable attorney fees; or
  4. Procure substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance. The tenant may recover the cost reasonable value of the substitute housing up to an amount equal to the monthly rent and reasonable attorney's fees.
- (B) If the tenant proceeds under this Section, he may not proceed under Sections 5—3—7-1 or 5—3—7-3 for that breach.
- (C) The tenant may not exercise his rights under this Section if the condition was caused by the inability of a utility supplier to provide service or by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

**5—3—7-5: LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION FOR POSSESSION OR RENT:**

- (A) In an action for possession based upon nonpayment of rent or in an action for rent where the tenant is in possession, the tenant may counterclaim for any amount which he may recover under the rental agreement or this Chapter. In that event, the court may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If no rent remains due after application of this Section, judgment shall be entered for the tenant in the action for possession. If the

be entered for the tenant in the action for possession. If the defense or counterclaim by the tenant is without merit, the landlord may recover reasonable attorney's fees.

- (B) In an action for rent where the tenant is not in possession, the tenant may counterclaim as provided in subsection (A), but the tenant is not required to pay any rent into court.

**5—3—7-6: FIRE OR CASUALTY DAMAGE:**

- (A) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:
1. Immediately vacate the premises and notify the landlord in writing within fourteen (14) days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or
  2. If continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.
- (B) If the rental agreement is terminated, the landlord shall return all security recoverable under Section 5—3—5-1 and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.
- (C) A tenant may not exercise remedies in this Section if the fire or casualty damage was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or a person on the premises with his consent. (Ord. 19-0-75)

**5—3—8: HOLDOVER; ABUSE OF ACCESS:**

**5—3—8-1: HOLDOVER REMEDIES:**

If the tenant remains in possession without the landlord's consent, after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful, the landlord in addition may recover an amount not more than two (2) months' periodic rent or twice the damages sustained by him, whichever is greater, and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, Section 5—3—3-1 (D) applies.

**5—3—8-2: LANDLORD AND TENANT REMEDIES FOR ABUSE OF ACCESS:**

- (A) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the landlord may recover damages and reasonable attorney's fees.
- (B) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful, but which have the effect of harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In each case, the tenant may recover an amount equal to not more than two (2) months' rent or twice the damages sustained by him, whichever is greater, and reasonable attorney's fees.

**5—3—8-3: NOTICE OF REFUSAL TO RENEW  
RENTAL AGREEMENT:**

- (A) If the rental agreement will not be renewed or if a month-to-month tenancy will be terminated, the landlord shall notify the tenant in writing thirty (30) days prior to the termination date.
- (B) If the landlord fails to give the required written notice, the tenant may remain in his dwelling for two (2) months, commencing on the date that the written notice is received by the tenant. During such period, the terms and conditions of the tenancy shall be the same as the terms and conditions during the month of tenancy immediately preceding the notice.

**5—3—9: RETALIATORY CONDUCT;  
CIVIL ACTIONS BY CITY:**

**5—3—9-1: RETALIATORY CONDUCT:**

- (A) Except as provided in this Section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring action for possession or by refusing to renew a rental agreement because the tenant has:
1. Complained in good faith of a code violation to a government agency charged with the responsibility for the enforcement of such code;
  2. Complained to the landlord of a violation under Sections 5—3—5-2 (D) or 5—3—5-3;
  3. Organized or become a member of a tenant union or similar organization; or
  4. Exercised or attempted to exercise any right or enforce any remedy granted to him under this Chapter.
- (B) If the landlord acts in violation of subsection (A), the tenant has a defense in any retaliatory action against him for possession and is entitled to the following remedies: he shall recover possession or terminate the rental agreement and, in either case, recover an amount equal to and not more than two (2) months' rent or twice the damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated, the landlord shall return all security and interest recoverable under Section 5—3—5-1 and all prepaid rent. In an action by or against the tenant, if there is evidence of a complaint within one year prior to the alleged act of retaliation, it may be presumed that the landlord's conduct was retaliatory. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase. (Ord. 126-0-82)
- (C) Notwithstanding subsection (A) and (B), a landlord may bring an action for possession if:
1. The violation of a code was caused primarily by lack of care by the tenant, a member of his family or other person on the premises with his consent; or
  2. The tenant is in default in rent, other than a purported default under Section 5—3—7-3.
- 5—3—9-2: CIVIL ACTIONS BY CITY:**
- Whenever the City Manager or his designee has reasonable cause to believe that any landlord or tenant is engaged in a pattern of practice of violating the provisions of this Chapter, the City may bring a civil action by filing a complaint signed by the City Manager, setting forth the facts pertaining to such pattern of practice and requesting such relief, including an application for a permanent or temporary injunction, restraining order and damages as hereinbefore provided

against the landlord or tenant responsible for such pattern of practice, as may be necessary to insure compliance with the provisions of this Chapter and the full enjoyment of the rights herein established. The foregoing does not limit the City of Evanston's authority to institute actions pursuant to Section 5—3—12-3 to enforce Section 5—3—12 of this Chapter.  
(Ord. 8-0-81)

**5—3—10: ATTACHMENT OF CHAPTER  
TO RENTAL AGREEMENT:**

- (A) A current copy of this ordinance shall be attached to each written rental agreement whether it be a City of Evanston Model Apartment Lease or a landlord drafted written lease agreement, when any such agreement is initially offered to any tenant or prospective tenant by or on behalf of a landlord and whether such agreement is for new rental or a renewal thereof.
- (B) If a tenant in a civil legal proceeding against his landlord establishes that a violation of 5—3—10(A) has occurred, he shall be entitled to recover two hundred dollars (\$200.00) in damages and reasonable attorney's fees.
- (C) The Model Apartment Lease Agreement ("Agreement"), as amended from time to time, shall be on file with the City Clerk. Each amended Agreement form shall be effective for a minimum of one (1) year. Leases entered into during the effective period of a particular Agreement form shall remain valid notwithstanding amendments made in the Agreement form during the lease term.

**5—3—11 : CONDOMINIUM CONVERSIONS:**

Provisions of this Chapter that contradict, modify, expand or limit rights of landlords or tenants established under this Chapter shall prevail over the provisions of this Chapter for leases entered into or renewed subsequent to the effective date of the Residential Condominium Ordinance. (Ord. 12-0-79)

**5—3—12: INTERRUPTION OF  
TENANT OCCUPANCY:**

**5—3—12-1: UNLAWFUL INTERRUPTION:**

It is unlawful for any landlord or any person acting at his direction to knowingly oust or dispossess or attempt to oust or dispossess any tenant from a dwelling unit without authority of law, by plugging, changing, adding or removing any lock or latching device; or by blocking any entrance into said unit; or by removing any door or window from said unit; or by interfering with the services to said unit, including, but not limited to, electricity, gas, hot or cold water, plumbing, heat or telephone service; or by removing a tenant's personal property from said unit; or by the use of force or threat of violence, injury or force to a tenant's person or property; or by any other act rendering a dwelling unit or any part thereof or any personal property located therein inaccessible or uninhabitable.

**5—3—12-2: EXCLUSIONS:**

- The provisions of Section 5—3—12-1 shall not apply where:
- (A) A landlord acts in compliance with the laws of Illinois pertaining to forcible entry and detainer and engages the Sheriff of Cook County to forcibly evict a tenant or his personal property; or
- (B) A landlord acts in compliance with the laws of Illinois pertaining to distress for rent; or
- (C) A landlord acts pursuant to court order; or

- (D) A landlord interferes temporarily with possession only as necessary to make needed repairs or inspection and only as provided by law; or
- (E) The tenants with a right to possession of the dwelling unit have been absent therefrom for thirty (30) consecutive days without advising the landlord of such absence or their intent to return, current rent is thirty (30) or more days overdue, and after diligent inquiry the landlord has reason to believe that tenants have abandoned the premises and do not intend to return.

**5—3—12-3: FINES:**

- (A) Each member of the Police Department, while on duty, is hereby authorized to arrest any person who is found to have violated any of the provisions of Section 5—3—12-1.
- (B) Any person found guilty of violating Section 5—3—12-1 shall be fined not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00), and each day that such violation shall occur or continue shall constitute a separate and distinct offense for which a fine as herein provided shall be imposed.

**5—3—12-4: CIVIL REMEDY:**

If a tenant in a civil legal proceeding against his landlord establishes that a violation of Section 5—3—12-1 has occurred he shall be entitled to recover possession of his dwelling unit or personal property and shall recover an amount equal to not more than two (2) months' rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. A tenant may pursue any civil remedy for violation of this article regardless of whether a fine has been entered against the landlord pursuant to Section 5—3—12-3.

**5—3—12-5: TENANT'S RIGHT TO TERMINATE:**

If a landlord or any person acting at his direction violates Section 5—3—12-1, the tenant shall have the right to terminate the rental agreement by sending the landlord written notice of his intention to terminate within three (3) days of the violation. If the rental agreement is terminated, the landlord shall return all security deposits, prepaid rent and interest to the tenant in accord with section 5—3—5-1. (Ord. 8-0-81)

Effective date June 1, 1975 unless otherwise stated.

**For additional information or assistance,  
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**Most of the required forms, including those  
needed for court action are available in our  
office at no cost.**