

# Tenants' Rights & Responsibilities

## A Guide for Renters in Otsego County



3 West Broadway  
Oneonta NY 13820

[www.ofoinc.org/housing](http://www.ofoinc.org/housing)

This booklet provides information about tenants' rights in Otsego County, New York.

If you live outside of Otsego County, your rights may be different. Contact the legal aid or legal services office where you live for more information.

This booklet gives general information only. It does not give advice about your particular situation. If you need legal advice, contact the local legal services office.

If you have an impairment, disability, language barrier, or otherwise require an alternative means of reading this guide, please contact Opportunities for Otsego.



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## **What You Need To Know: Your Fair Housing Rights**

Federal and New York State fair housing laws protect everyone from illegal discrimination. Fair housing laws apply to all housing providers, including realtors, home sellers, lenders (banks and credit unions), home insurance agents, home appraisers, and landlords and apartment or property managers. Knowing your fair housing rights ensures your housing choice by helping you to identify discriminatory acts and to know where to get help in filing a formal fair housing complaint.

### **Fair Housing and Discrimination**

Under state and federal laws, it is illegal to refuse to rent or to renew a lease based on race, color, religion, national origin, age, sex, marital status, military status, family status (ex., a parent with children), disability, sexual orientation, lawful source of income (to include child support and/or Public Assistance), gender identity or expression. These categories are referred to as “protected classes” in federal and state fair housing laws.

### ***More information on Protections based on Family Status***

Landlords may not refuse to lease an apartment or discriminate against any person in the terms of the rental because a person has children living with him/her. The law also protects those who act as foster parents, legal guardians, or give birth to children during the term of the rental agreement. A clause in a lease that prohibits child-bearing, foster parenting, or legal guardianship is illegal and cannot be enforced.

Although overcrowding is a concern due to public health, a blanket policy limiting the number of occupants based on the number of bedrooms may be in violation of Fair Housing laws. Occupancy standards in New York State are determined by the square footage of the apartment and bedrooms, among other factors. In the City of Oneonta, maximum occupancy is defined in § 158-10 of Article II, Housing Code, Residential Premises.

### ***More Information on Protections based on Disability Status***

Disability is defined as having a physical or mental impairment to one’s life activities, as documented by a doctor. People who are in or have completed treatment for alcohol or drug addiction are considered by the Americans with Disabilities Act and the New York State Human Rights Law to be persons with a disability.

Landlords have an obligation under federal and state fair housing laws to make reasonable accommodations and to allow reasonable modifications to be made for people with disabilities. For example, if a current or prospective tenant with a disability needs to park closer to the building entrance and the landlord provides off-street parking, the landlord must designate a suitable parking space for the exclusive use of that tenant. Similarly, if a landlord maintains a “no pets” policy, an exception to the policy must be granted to a disabled person who requires a service animal.

Modifications to a dwelling, such as the installation of grab bars in a bathroom or a wheelchair ramp, must also be allowed. In privately-owned housing that does not receive any government subsidies, it is the tenant’s obligation to pay for such alterations. Tenants

of privately-owned housing must also return the apartment to its original state when they leave, if required by the landlord to do so.

### ***More information on Protections based on Marital Status and Age***

Marital status protection under the law covers all adults 18 years and older, whether they are single, married, divorced, separated, or widowed.

Age protection applies to everyone 18 years and over. A landlord may refuse to rent to someone who is under 18 years of age because leases and other agreements made with a person under the age of 18 are not enforceable.

### ***Illegal Activities Under Federal and State Fair Housing Laws***

Examples of illegal activities include, but are not limited to:

- Misrepresenting the availability of an apartment – for example, a landlord tells a single mother of 2 small children that his apartment is no longer available and then shows it to a single man the next day.
- Discriminatory advertising, such as an advertisement that lists an apartment for rent and states “this apartment is for young, married couples” or “no Public Assistance”.
- Using rental applications that discriminate with questions about race, marital status, and/or religion, as examples.
- Refusing to rent to tenants with children under the age of six who have known elevated blood lead levels.

Any tenant or potential tenant who feels that a landlord has violated his/her/their fair housing rights can refer to Opportunities for Otsego’s Fair Housing Guide, found at [https://ofoinc.org/files/3016/3346/0762/Fair\\_Housing\\_Guide\\_update\\_Oct\\_2021.pdf](https://ofoinc.org/files/3016/3346/0762/Fair_Housing_Guide_update_Oct_2021.pdf).

Please Note: Tenants have one year (12 months) from the date of an alleged Fair Housing violation to file a claim with HUD.

## RENTING AN APARTMENT

### ***The Rental Application***

Rental applications are important to a landlord when choosing new tenants. The landlord is looking for responsible tenants who will take care of the apartments, respect the rights of other tenants, and pay the rent on time. A landlord may reject an application for poor credit history, insufficient income, a negative reference from an employer, and/or a criminal conviction. As long as a landlord's decision isn't discriminatory, as discussed previously, he/she/they can choose whomever he/she/they wants to rent the apartment.

As of June 2019, landlords are prohibited from discriminating on the basis of a tenant's eviction history and cannot refuse to rent or offer a lease to a tenant on the basis that the tenant was involved in a past or pending eviction lawsuit.

The landlord may ask for a variety of information before agreeing to rent, including an applicant's Social Security number and driver's license number. Applicants should make sure to fill out rental applications completely. Tenants who do not feel comfortable giving their Social Security numbers can try asking the landlord to process the application with printed credit and background reports provided by the tenant. The landlord may not agree to this and has the right to simply deny the application. It is very important that all information on a rental application be accurate and true.

Under the Statewide Housing Stability and Tenant Protection Act of 2019, it is now illegal for landlords to charge an application fee. Background and credit check fees are limited to \$20.00 total.

### ***Leases and Rental Agreements***

The State of New York defines a lease as any agreement to rent between landlord and tenant. A lease can be either a written or an oral (verbal) agreement. Oral lease agreements may not last longer than 12 months and restrictions or agreements reached cannot be legally enforced unless they are part of the written lease. Verbal promises made by the landlord, such as "I'll fix those screens", or "I'll put in a new stove", are not valid unless they are written into the lease. Having a lease in place is important to protect the rights of both the tenant and the landlord. A lease spells out the specific terms of the rental agreement. Terms include:

- The amount of the rent and when it is due;
- The name and address of the landlord and where rents payments are to be sent;
- The responsibilities of both parties;
- The length of the agreement/lease;
- What each party (the landlord and the tenant) must do if either party wishes to terminate the lease prior to its expiration;
- The exact amount of the security deposit;
- Any conditions which must be met for the tenant to receive the full security deposit back when the lease expires or is otherwise terminated.

The landlord and tenant may make other promises to each other, such as who is responsible for the utility bills, parking, and/or if pets are allowed. It is best to have these agreements in writing as verbal agreements can be hard to prove in court if there are problems later.

The landlord cannot raise the rent or change the terms of the agreement during the lease term unless the tenant agrees to changes in writing. When a lease expires, it does not automatically renew itself. A tenant who stays in the rental unit with the landlord's consent becomes a month-to-month tenant, subject to the rental terms that were in the original lease.

A verbal agreement is often used for a month-to-month tenancy. Both written and verbal agreements are legally binding but there are some different requirements. A landlord can change the terms of a verbal agreement or terminate the tenancy with 30 days' notice to the tenant. More information on month-to-month tenancy can be found on page 9.

Even if the lease is not in writing, the tenant and the landlord have responsibilities to each other under New York State law.

The landlord must:

- Give the tenant receipts for rent payments;
- Keep the apartment safe and healthy for people to live in. This includes making sure the premises are free of garbage, vermin (pests, bugs, etc., and other offensive material);
- Give reasonable notice before coming into the apartment (except in emergencies).

The tenant must:

- Pay the rent on time;
- Not damage the apartment beyond "normal wear and tear";
- Let the landlord into the apartment, after receiving reasonable notice, to make repairs;
- Respect other tenants in the building.

Tenants should carefully read their leases before signing. Also, tenants should make sure that two copies are present and that they witness the signatures on both copies. The tenant is entitled to receive a copy of the lease and, once signed, the tenant's copy should be kept in a safe place. Opportunities for Otsego Housing Services staff can review leases for tenants. Tenants can call the Housing Services office at 607.433.8000 to schedule an appointment for a lease review.

### ***Plain Language Law***

New York State's Plain Language Law requires landlords to use wording that is clear, simple, and understandable and with common and everyday meanings. Sections of leases must be appropriately captioned and the print must be large enough to read easily (NYS General Obligations Law § 5-702; NY C.P.L.R. § 4544). Some clauses are illegal.

Following are examples:



- Exempting the landlord from liability for injuries to persons or property caused by the landlord's negligence, or that of the landlord's employees or agents;
- Waiver of the landlord's duty to make normal repairs;
- Waiver of the tenant's right to a jury trial in any lawsuit brought by either of the parties against the other for personal injury or property damage
- Waiver of the tenant's right to privacy or right to a court-ordered eviction;
- Waiver of the tenant's right to sublet in rentals with 6 or more units;
- Requirement that the tenant pledge his/her household furniture as security for rent;
- Restrictions on childbearing, foster parenting, or legal guardianship of children under the age of 18.

If a lease states that the landlord may recover attorney's fees and costs incurred if a lawsuit arises, a tenant automatically has a reciprocal right to recover those fees as well (Real Property Law § 234). A Court can nullify lease clauses that are illegal, although this would not necessarily nullify the entire lease. Any additions or deletions to an existing lease must be in writing, mutually agreed upon (both by the landlord and by the tenant), and signed by both parties.

### ***Upfront Rental Payments***

Under New York State law effective June 14, 2019, landlords cannot require first and last months' rent as a condition of occupancy. Landlord's may require a security deposit but it cannot be more than one month's rent (see page 9, Security Deposits).

### ***Month-to-Month Tenancy***

Tenants who do not have leases and pay rent on a monthly basis are called month-to-month tenants. Tenants who stay past the end of a lease become month-to-month tenants if the landlord continues to accept their rent payments after the lease expires.

Either party may terminate a month-to-month tenancy. The timeframe by when a landlord must give notice to a tenant can be 30, 60, or 90 days prior to the date the landlord wants the tenant to vacate (see page 20, Proper Notice).

### ***Landlord's Duty to Deliver Possession***

The landlord has a duty to deliver the apartment to the tenant on the date agreed. Failure to deliver give the tenant the right to declare the rental agreement or lease null and void with no obligation to move in at a later date. If the landlord refuses to return funds, the tenant can file a claim against the landlord in small claims court for first and/or last month's rent and security deposit amounts paid.

### ***Security Deposits***

Almost all leases and month-to-month rentals require tenants to give the landlord a security deposit. Under New York State law and effective with written leases or verbal agreements entered into on or after July 14, 2019, the security deposit may not be more than one month's rent. No later than one week prior to a tenant vacating the premises, the landlord must provide an itemized statement specifying repairs or cleaning that the landlord proposes are beyond "normal wear and tear" and that are the basis of any deductions from the security deposit. The tenant has the right to fix any damage prior to vacating. Within 14 days after the tenant has vacated the premises, the landlord must provide the itemized

statement of damages/cleaning with a reason for keeping any part of the security deposit and return the balance. If the landlord does not provide an itemized statement and the balance of the deposit within 14 days of the tenant vacating the apartment, then the landlord must return the entire deposit within 14 days.

The law requires all landlords, regardless of the number of units in the building, to treat the security deposit as trust funds belonging to their tenants. Landlords are prohibited from commingling the deposits with their own money. This means that security deposits must be kept in an account separate from the landlord's personal or business checking or savings account.

Landlords of buildings with six or more apartments must put all security deposits in New York bank accounts earning interest at the prevailing rate. Each tenant must be informed in writing of the bank's name and address and the amount of the deposit. Landlords are entitled to collect annual administrative expenses of one percent (1%) of the interest earned on the deposit. All other interest earned on the deposit belongs to the tenant. Tenants must be given the option of having this interest paid to them annually, applied to the rent, or paid at the end of the lease term. If the building has fewer than six apartments, a landlord who voluntarily place the security deposits in an interest-bearing account must also follow these rules. For example, a tenant pays a security deposit of \$1,000. The landlord places the deposit in an interest bearing account paying 1.5%. At the end of the year, the account will have earned interest of \$15.00. The tenant is entitled to \$5.00 and the landlord may retain \$10.00, 1% of the deposit, as an administrative fee.

A landlord may use the security deposit as a reimbursement for any unpaid rent, or the reasonable cost of repairs beyond normal wear and tear, if the tenant damages the apartment. As of June 2019, landlords must offer the tenant applicant the opportunity to inspect the premises with the landlord (or his agent/representative) to determine the condition of the property. The inspection can be after the lease is signed but before the tenant moves in. If the tenant agrees to an inspection, both the landlord and the tenant should develop a written agreement before the tenant moves in as to the condition of the property and specifically noting any defects or damages. Tenants choosing to rent within the city of Oneonta should complete and file the Tenant Inspection Checklist with the city's Code Enforcement Office. The form can be found on the city's website at [www.https://www.oneonta.ny.us/departments/code-enforcement/](https://www.oneonta.ny.us/departments/code-enforcement/) or requested by calling the Oneonta Code Enforcement office at 607-433-3435.

When the tenant vacates the property (after the lease expires or any other legal and agreed-upon reason), the landlord cannot retain any amount of the security deposit due to any condition, damage, or defect noted in the agreement. Tenants are also entitled to inspect the apartment with the landlord upon moving out. Landlords are required to notify the tenant of his/her right to an inspection within a reasonable amount of time following the tenant's or landlord's notice to terminate the tenancy. If requested by the tenant, the landlord must schedule the inspection no earlier than two weeks and no later than one week before the end of the tenancy. If the landlord informs the tenant that he is keeping all or part of the security deposit, he must give the tenant a written list of what it is being used for within 14 days of the tenant moving out (NY Statewide Housing Stability and Tenant Protection Act of 2019). The tenant will then have two weeks to fix and/or clean anything/everything on the list in order to receive the full security deposit back.

If the building is sold, the landlord must transfer all security deposits to the new owner or return the security deposit to the tenants within five (5) days. Landlords must give tenants the name and address of the new owner in writing and delivered by registered or certified mail.

If a lease is renewed after it expires and the rent is increased, the landlord is allowed to collect additional money from the tenant in order to bring the security deposit up to the new monthly rent.

The Office of New York State Attorney General offers, as an alternative to filing a lawsuit, a mediation service to assist tenants in recovering rent security deposits and interest. To access the Office's mediation service, simply file a rent security complaint form (found on the Office of New York State Attorney General website at <https://ag.ny.gov/forms>) and either submit online or mail to:

Office of the New York State Attorney General  
Bureau of Consumer Frauds and Protection  
28 Liberty Street, 15th Floor  
New York, NY 10005.

Consumer Hotline Number: 800.771.7755; TDD: 800.788.9898.

### ***The Difference Between Tenants and Occupants***

New York State law defines a *tenant* as one who has the landlord's permission to stay on the property with a written or verbal lease agreement. The tenant is required to make rent payments as long as he/she/they remains in the unit.

An *occupant* is a person who stays in the apartment with the tenant's permission but has no financial or legal responsibility to the landlord. The tenant remains entirely responsible for paying rent and maintaining the condition of the apartment. The tenant must inform the landlord of the name(s) of any occupant(s) within 30 days of occupancy, or within 30 days after the landlord specifically requests the name of the occupant(s).

There is no law that limits occupancy of an apartment to a tenant named on a written lease or to that tenant and his/her immediate family. When one person is named on a written lease, that tenant may share the apartment with immediate family, one additional occupant, and that occupant's children, provided that the tenant or the tenant's spouse occupies the premises as his/her primary residence and provided that the total number of occupants does not create a situation of overcrowding as defined by state law (Real Property Law § 235-f) or local code (§ 158-10 of Article II, Housing Code, Residential Premises).

If there is more than one tenant named on the lease and one of the named tenants moves out during the lease term, the tenant may be replaced with another occupant and the occupant's children without the landlord's consent, provided that the landlord is given the name of the new occupant within 30 days of his/her move-in date. At least one of the original tenants named on the lease must continue to occupy the apartment during the lease term. The new occupant is not a tenant and the original tenant named on the lease remains responsible for the full amount of the rent and the condition of the apartment.

## PAYING THE RENT

### ***Rent Receipts***

Landlords must provide tenants with a written receipt when rent is paid in cash, with a money order, a cashier's check, or personal check. If the payment is handed directly to the landlord, the landlord must give the tenant a receipt immediately. If the rent payment is made indirectly (mailed, transmitted via Venmo or other electronic means), the landlord must provide the tenant with a receipt within fifteen (15) days of payment.

The receipt must state the payment date, the amount, the period for which rent was paid, and the apartment number. The receipt must be signed by the person receiving the payment and state his/her title. Tenants paying rent by personal check may request, in writing, a rent receipt from the landlord.

### ***Rent Withholding or Reduction***

With the advice of an attorney, a tenant may withhold rent when severe code violations exist in the apartment. Generally, proof of the violations can be used as a defense in a non-payment of rent eviction proceeding. A judge will then decide whether to uphold rent withholding. A landlord could be ordered by the court to make repairs as a condition for getting the rent. A judge may also require that the tenant deposit the rent with the court until the repairs have been completed. A judge may release these funds to pay for necessary repairs. The burden of proof is on the landlord to show that the repairs have been made.

New York Social Services Law § 143-b allows the Otsego County Department of Social Services (DSS) to withhold rent for recipients of public welfare assistance when severe code violations exist that are determined to be dangerous, hazardous, and/or detrimental to life or health. Generally, these tenants are protected from eviction for non-payment of rent. The landlord must correct the code violations before DSS will release the rental payments.

*Special Note: For all tenants who are not receiving public assistance, rent withholding should only be done at the advice of an attorney.*

### ***Rent Abatement***

Tenants can seek a reduced rent when portions of their dwelling are unusable due to lack of basic services or when serious life, health, and/or safety hazards exist. When full rent has already been paid, a tenant can take a landlord to small claims court or arbitration to seek a lowering of the rent. Tenants must supply documented proof of the problems. A judge can also order a reduced rent for the period of time that severe code violations exist.

There is no set formula for reducing the rent. Only the court has the right to determine the amount. Factors a judge may use in determining the reduced rent are:

- The severity of the repair problems and conditions;
- The length of time the conditions have existed;
- The amount of effort the landlord made to correct the defects.

### ***Late Fees on Rent***

Landlords can charge tenants late fees that are reasonable. Under the New York Statewide Housing Stability and Tenant Protection Act of 2019, late fees are limited to \$50 or 5% of the monthly rent, whichever is lower for all written lease or verbal agreements made after June 14, 2019. A late fee cannot be charged if payment is made within five (5) days of the rent due date. Also under New York State law, a tenant may not legally liable for late fees unless the original lease contains a late fee clause. The amount of the late fee and when it can be assessed must be included as part of the lease in order for it to be lawfully collected. Landlords must send tenants a written notice within 5 days of the rent being late. If the landlord does not do this, it may be a defense in the tenant's eviction case.

### ***Rent Increases***

Effective October 12, 2019, landlords must give the following written notice before increasing the rent by 5% or more:

- 30 days' notice to a tenant who has occupied the apartment for less than 1 year and has a lease for less than 1 year;
- 60 days' notice to a tenant who has either occupied the apartment for more than 1 year but less than 2 years OR has a lease term for at least 1 year but less than 2 years;
- 90 days' notice to a tenant who has either occupied the apartment for more than 2 years OR has a lease term of at least 2 years.

## TENANTS' PERSONAL PROTECTIONS

### ***Right to Privacy***

Tenants have the right to privacy within a rented apartment. This is called *Covenant of Quiet Enjoyment* (or peaceful possession) and is implied in every lease. A landlord may enter a tenant's apartment with reasonable prior notice with the consent of the tenant and to either provide routine or agreed upon repairs and/or services or in accordance with the lease. Courts generally define reasonable prior notice as 24 hours before entering. The landlord must choose a reasonable time to enter. Examples of unreasonable times are in the middle of the night or at 5:00am. The Covenant of Quiet Enjoyment also applies to real estate agents, repairmen, building managers, and anyone representing or working for or on behalf of a landlord who may have reason to enter an apartment. A tenant cannot unreasonably withhold the landlord's limited right of entry. The law implies compromise by both the landlord and the tenant.

In an emergency, such as a fire or water leak, the landlord (or his/her/their employee) may enter the apartment without the tenant's consent and without giving prior notice.

Tenants should discuss the issue of entry with the landlord to let him know that entry to the apartment will be allowed at reasonable times and according to the law. The tenant should inform the landlord if he/she/they prefers to be present when the landlord enters the apartment. In this case, the tenant and landlord will have to schedule times appropriately.

A lease clause that waives the tenant's right to privacy is not enforceable. If the landlord or anyone representing the landlord violates a tenant's right to privacy, the tenant can file a trespass complaint with the local police department.

### ***Tenant Organizations***

Tenants have a legal right to organize. They may form, join, and participate in tenant organizations for the purpose of protecting their rights. Landlords must permit tenant organizations to meet, at no cost, in any community or social room in the apartment building, even if the use of the room is normally subject to a fee. Tenant organization meetings are required to be held at reasonable times and in a peaceful manner which does not obstruct access to the premises (NYS Real Property Law § 230).

### ***Retaliation***

Landlords are prohibited from harassing or retaliating against tenants who exercise their rights. Retaliation includes refusing to renew a lease that has expired or offering a new lease with an unreasonable rent increase. For example, landlords may not seek to evict tenants only because they:

- Make good faith complaints to a government agency (such as the city's Code Enforcement Office) regarding violations of any health or safety laws;
- Take good faith actions to protect their rights under the lease; OR
- Participate in tenant organizations.

Tenants may collect damages from landlords who violate this law, which applies to all rentals except buildings with fewer than four units in which the landlord/owner also resides (NYS Real Property Law § 223-b).

### **Harassment**

A landlord is prohibited from any action intended to force a tenant out of an apartment or to make a tenant give up any rights granted the tenant by law. No landlord, or any person acting on the landlord's behalf, may interfere with the tenant's privacy, comfort, or quiet enjoyment of the apartment. Harassment may take the form of physical or verbal abuse, willful denial of services, or multiple instances of insignificant or frivolous legal action. If a landlord lies or deliberately misrepresents the law to a tenant, this may also constitute harassment.

### **Guests**

Tenants have the right to have guests in their apartments without the landlord's consent as long as the guest(s) behave properly and lawfully\*. This includes overnight guests. Note that after 30 days, a guest is considered an occupant, and the landlord has the right to know the name of that person. (see *The Difference Between Tenants and Occupants*, page 11).

### **Pets**

Tenants may keep pets in their apartment unless their lease specifically prohibits it. Landlords may be able to evict tenants who violate a lease provision that prohibits pets. Tenants should get the landlord's permission to have a pet in writing. If a tenant acquires a pet without the landlord's permission, it may be grounds for the landlord to terminate the lease for objectionable tenancy.

Landlords can allow certain kinds of pets and not others. Under New York State law, landlords cannot charge an additional fee, known as a "pet deposit" that is above or in addition to the security deposit amount (see page 10, *Security Deposits*). Tenants can be held liable for damage a pet causes both inside the apartment and on the property and payment for damages may be deducted from the Security Deposit.

Federal and state fair housing laws protect persons with a disability. A landlord cannot deny a tenant with a documented disability the right to have a service animal, even if the landlord has a "no pets" policy. Tenants who are blind or deaf are permitted to have guide dogs or service dogs regardless of a no-pet clause in the lease. The landlord may not collect an extra security deposit for a service animal. Also, tenants with chronic mental illness are permitted to have emotional assistance animals (NY Civil Rights Law § 47-b).

A tenant with a service animal must keep the animal under control at all times and must clean up after the animal both inside the apartment and on the grounds.

### ***Use of Common Areas of the Dwelling and Property:***

A landlord has no legal obligation to supply a tenant with off-street parking, storage space, use of a garage, use of yard and common areas, snow removal, garbage cans or garbage pickup. However, because the rental market is competitive a landlord will usually supply tenants with certain services to attract tenants to rent. Tenants should try to get it in writing if a landlord is willing to supply certain amenities. For instance, if a landlord says he will provide off-street parking and free garbage pickup, the tenant should ask for a written, signed statement to that effect and/or have this included in a written lease agreement.

\*Reference: *McKenna v. Peekskill Housing Authority*, information provided by The West Side SRO Law Project

## **HABITABILITY, REPAIRS, and SAFETY**

### ***Warranty of Habitability***

Under the warranty of habitability, tenants have the right to a livable, safe, and sanitary apartment. This right is implied in every written or verbal residential lease agreement. Any lease provision that waives this right goes against public policy and is therefore not enforceable. Examples of a violations of this warranty include the landlord's failure to provide heat or hot water on a regular basis, or the failure to rid an apartment of an insect infestation.

Public areas of the building are also covered by the warranty of habitability.

Any uninhabitable condition caused by the tenant or person's under the tenant's direction or control does not constitute a landlord's violation of the warranty of habitability. In these cases, it is the tenant's responsibility to make the necessary repairs or remedies.

### ***Appliances***

In Otsego County (not to include the City of Oneonta), landlords can rent an apartment without a stove or refrigerator as long as they make it clear to individuals applying for the apartment that they will have to furnish their own appliances. However, if landlords do supply appliances, they have a duty to keep them in good working order. It is not a code requirement that appliances be supplied in a rental agreement and if they are in disrepair, they cannot be cited as a code violation by a code enforcement officer or building inspector.

Tenants should:

- Check the appliances carefully when first looking at an apartment to make sure they are in good working order;
- Ask the landlord to provide a written statement that the appliances will be supplied and maintained. This should be done whether the lease is verbal or in writing;
- Submit requests for repairs in writing. The tenant should take common sense steps to make sure food does not spoil if the refrigerator is not working;
- Try negotiating with the landlord, for example, offering to make the necessary repairs to appliances for a reduction in rent. If tenants choose to take the "repair and deduct" option, they should get all agreements in writing.

In the City of Oneonta, landlords are required to supply and maintain cooking and refrigeration equipment in each apartment. These appliances must be stationed in a kitchen or kitchenette and properly connected to the electrical and/or gas system. (Oneonta Housing Code § 158-38).

### ***Utilities***

The warranty of habitability requires landlords to maintain all utility systems up to code and in safe working order. It is a criminal offense for a landlord to shut off a tenant's utility service. If the landlord shuts off utility service, call the Oneonta Police Department in the City of Oneonta or the Otsego County Sheriff's Department outside of the city. Landlord's refusal of a police order to turn the utilities back on can result in the arrest of the landlord. Tenants should make sure to document calls to the authorities in case they need to follow through with constructive eviction (see page 23).



### **Heating Code**

New York State Building and Standards Code, section 602.3 states, “[e]very owner and operator of any building who rents, leases, or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from September 15 to May 31 to maintain a temperature of not less than 68 degrees in all habitable rooms, bathrooms, and toilet rooms.”

The city of Oneonta Housing Code states that “one- and two-family dwellings, not wholly owner-occupied and in all multiple dwellings, heat shall be provided whenever occupied during the period from September 15 to May 31. Temperatures shall be maintained in habitable spaces, kitchenettes, toilet rooms, and bathrooms, as follows:

- a) From 6:00am to 11:00pm, not less than 70 degrees when outside temperature falls below 55 degrees;
- b) From 11:00pm to 6:00am, not less than 55 degrees when the outside temperature falls below 40 degrees.”

A multiple dwelling is a dwelling that is either rented, leased, let, or hired out to be occupied or is occupied as the residence or home of three (3) or more families living independently of each other.

Violations of this code in the city of Oneonta can be reported to the Code Enforcement Office at 607.433.3435. Outside of the city of Oneonta and within the county of Otsego, contact the county Code Enforcement Office at 607.547.4214. Visit the county’s Code Enforcement webpage at [https://www.otsegocounty.com/departments/code\\_enforcement/](https://www.otsegocounty.com/departments/code_enforcement/) for a listing of code enforcement officers and contact information specifically for the towns of Milford, Oneonta (town), Otego (town), Otego (village), Roseboom, and Worcester.

For heat stoppages during the evening hours after 5:00pm or on the weekends, tenants should call the Oneonta Police Department (if living in the city) or the county Sheriff’s Department if living outside of the city.

### **Truth in Heating**

Before signing a lease requiring payment of individual heating and cooling bills, prospective tenants are entitled to receive from the landlord a complete set or summary of the past two (2) years’ bills. These copies must be provided to applying tenants free upon written request (NY Energy Law § 17-103).

### **Hot Water**

Landlords must provide all tenants of multiple dwellings with both hot and cold water. Hot water must register at or above a constant temperature of 120 degrees at the tap. If a tub or shower is equipped with an anti-scald valve that prevents the hot water temperature from exceeding 120 degrees, the minimum hot water temperature for that tub or shower is 110 degrees (NY Multiple Residence Law § 170).

### ***Continuation of Utility Service***

For rental or lease properties in which the utilities are included as part of the rent, if the landlord is delinquent in paying utility bills, the utility company must give advance written notice to tenants and to certain government agencies of its intent to discontinue service. Service must not be discontinued if tenants pay the landlord's current bill directly to the utility company. Tenants can deduct these charges from future rent payments.

The New York State Department of Public Service can assist tenants with related problems. The department's helpline is 1.800.342.3377. If a landlord of a multiple dwelling fails to pay a utility bill and service is discontinued, landlords may be liable for compensatory and punitive damages (NY Real Property Law § 235-a; Public Service Law § 33).

### ***Repairs and Maintenance***

Under New York State Real Property Law, section 235-b, landlords have a duty to make all repairs necessary to keep rental units free of health and safety hazards (warranty of habitability). Landlords are required to keep the apartments and the building's public areas in "good repair" and clean and free of vermin, garbage, or other offensive material. Landlords are required to maintain electrical, plumbing, sanitary, heating and ventilating systems, and appliances landlords install (such as refrigerators and stoves), in good and safe working order. This law is enforced through state and local property codes. Tenants living in rented or leased dwellings who have repair needs should take the following steps:

- Always put repair requests in writing to the landlord or property manager. Tenants should sign and date the requests and make photocopies for their records;
- If the landlord does not make the requested repairs in what in a reasonable amount of time, the tenant should contact the appropriate Code Enforcement office.

For property located in the city of Oneonta, tenants should call the city's Code Enforcement office at 607.433.3435. For properties outside of the city, tenants should call the Otsego County Code Enforcement office at 607.547.4214.

In the city of Oneonta, the City Engineer (or his/her/their representative) will look at the problems identified by the tenant and note any/all code violations. The landlord will be sent a violation order that will list the code violations and a timeframe for when the repairs need to be made.

Tenants should be sure to inform the City Engineer or Code Inspector (for properties outside of the city of Oneonta) if they receive full or partial public assistance. The Otsego County Department of Social Services (DSS) will be notified of the repair problems. In cases where the code violations are serious (life, health, or safety hazards), DSS may withhold the rent from the landlord until the repairs are made.

Tenants who do not receive public assistance should never withhold rents unless advised to do so by an attorney.

Landlords are prohibited from harassment or retaliation against tenants who exercise their housing rights. For example, landlords may not seek to evict tenants, unreasonably raise

the rent, or cut back or stop services specified in the lease agreement solely because tenants:

- Make good faith complaints to a government agency about violations of any health or safety issues;
- Take good faith actions to protect their rights under the lease;
- Participate in tenant organizations.

In all cases mentioned above, the tenant must continue to pay rent unless legally advised to withhold it. The tenant must abide by the terms of the rental agreement.

### ***Repair and Deduct***

There is no “repair and deduct” law in New York State. The right to deduct the cost of repairs from the rent is not guaranteed by law. The tenant will need to show that he/she/they made repeated written requests to the landlord for the repairs, along with a notice of the tenant’s intention to make repairs and deduct the cost from the rent. Tenants should be sure to keep receipts of all costs.

### ***Smoke Detectors***

Landlords in the city of Oneonta must install approved smoke detectors in each apartment. The number of smoke detectors required is as follows:

1. At least one smoke detector shall be installed in each dwelling unit and in each cellar/basement, the alarm of which shall be clearly audible throughout the structure.
2. In each structure containing two or more dwelling units, at least one detector shall be installed in each common passageway on each floor, the alarms of which shall be clearly audible throughout the structure.
3. In each multiple dwelling, interconnected detectors shall be installed in each common passageway on each floor and in the cellar or basement, the signal or alarm of which shall be clearly audible throughout the structure, with the single exception, however, that in any structure containing three or more dwelling units in which all doors in the structure meet the requirements of the New York State Uniform Fire Prevention and Building Code as to doors required and door rating, then , in that event, interconnected detectors shall not be required, but at least one detector shall be installed in each common passageway on each floor.
4. At least one detector shall be installed in each sleeping room of every dwelling unit, rooming house, fraternity house or sorority house wherein three or more unrelated individuals reside.

Each smoke detector shall include a test device to allow a tenant to ensure that the device is functioning properly. Tenants should test their detectors frequently to make sure they work properly.

## MOVING OUT

### ***Proper Notice***

Proper notice is written notice that a landlord is requiring a tenant to vacate the apartment at the end of a lease term or to terminate a month-to-month tenancy. Proper notice requires that written notice be given *within a specific time period*. The exact timeframe depends on how long the tenant has rented the apartment:

- 30 days' notice if the tenant has occupied the apartment for less than 1 year and/or has a lease for less than 1 year;
- 60 days' notice if the tenant has occupied the apartment for more than 1 year but less than 2 years OR has a lease term for at least 1 year but less than 2 years;
- 90 days' notice if the tenant has occupied the apartment for more than 2 years OR has a lease term of at least 2 years.

EXAMPLE: If the rent is due on the first of each month, the landlord must inform a tenant who has lived in the apartment for 1 ½ years by the last day of the month. 60 days *before* the landlord wants the tenant to vacate the apartment. For example, if the landlord wants the tenant to leave by September 30, he must inform the tenant on or before July 31. Informing the tenant on August 1 that he/she/they must move out by September 30 is too late. In that case, the tenant would not be required to move until October 31.

*The same rules do not apply if a tenant decides not to renew his/her/their lease, rental agreement, or month-to-month tenancy. A tenant must only give one month's notice to the landlord that he/she/they is not renewing.*

Other important information:

- The termination notice does not need to specify why the landlord is terminating the rental agreement;
- A landlord may raise the rent of a month-to-month tenant only with the consent of the tenant. If the tenant does not consent, the landlord can terminate the tenancy by giving the tenant one full calendar months' notice;
- A month-to-month tenancy can be in writing. Landlords can have a list of provisions that both parties sign;
- Federal, state, and local codes apply to all rental agreements, whether written or verbal;
- All rental agreements are binding once entered into by a tenant and landlord. There is no grace period to withdraw from the agreement. If the tenant agrees to rent an apartment and then changes his/her mind, the landlord can hold the tenant liable for his losses, which can include keeping the tenant's security deposit.

### **Moving Before Your Lease or Rental Agreement Expires:**

#### ***Subletting***

Tenants who need to move out of an apartment before the lease expires may choose to sublet the apartment. Subletting means that the tenant finds someone to take his/her place living in the apartment and paying the rent for the duration of the lease. Tenants have a

right under New York law to sublet if the unit is in a building with four (4) or more rental units. Any lease provision that restricts a tenant's right to sublease is illegal.

A landlord of a building with less than four (4) units does not have to let a tenant sublet. Landlords have the right to screen any individual the tenant proposes to sublet, just as they would any other applicant for a vacant apartment. Once the landlord accepts the new tenant, the sublet is completed. NOTE: the original tenant and the sub-tenant are liable under the terms of the lease.

Subletting an apartment is prohibited in government subsidized housing.

### ***Assigning a Lease***

A lease assignment transfers all of the rights and obligations that a tenant has under a lease to another tenant for the remainder of the lease term. Under a lease assignment, the original tenant permanently vacates the apartment. In order to assign a lease to a new tenant, the original tenant must get the landlord's written approval. In lease assignment situations, the landlord is not legally required to agree and may withhold consent without cause.

### ***Breaking the Lease***

Tenants who need to get out of their leases early should consider talking with their landlords about early termination. Some options to present to a landlord are:

- A lease buyout: the tenant offers to forfeit or give up the security deposit. A landlord may ask for a larger buyout than just the security deposit. Courts sometimes limit the amount a tenant must pay due to early termination. Tenants should check with an attorney before agreeing to a large buyout amount.
- Tenants should re-read their leases to see if there is a clause that sets conditions for ending a lease early. Tenants should get a written statement from the landlord that they are released from the contract. The written statement should include any/all conditions for the release. If there are no conditions for early termination, then the issue to terminate is strictly negotiable.

A tenant who break a lease without the landlord's consent could find themselves in small claims court for lost rent during the time between when the tenant moved out and a new tenant moved in. The landlord could also sue for the cost of advertising the apartment.

### **Lease Terminations:**

#### ***Senior Citizen Lease Termination***

Tenants or their spouses living with them who are 62 years of age or older, or who will turn 62 during the term of their leases, are entitled to terminate their leases if they:

- Are certified by a physician as being no longer able, for medical reasons, to live independently and who will move to a residence of a family member, OR
- Relocate to an adult care facility, a residential health care facility, subsidized low-income housing, or other senior citizen housing.

When given notice of the tenant's intention to move into one of the facilities mentioned above, the landlord must agree to the termination of the lease and agree that the tenant no longer has to pay rent for the remainder of the lease term. If the tenant paid for rent in advance of the notice of intent to move into one of the facilities mentioned above, the landlord must make the appropriate adjustments and/or refunds.

A tenant's written notice to move out of the apartment for the above-mentioned reasons must include:

- Termination date: The law says "the termination date must be effective no earlier than thirty days after the date on which the next rental payment (after the notice is delivered) is due." The notice is considered to be delivered five (5) days after mailing. An example of this is: if the notice to the landlord is mailed on April 5, the notice is deemed received on April 10. Since the next rental payment (after April 10) is due May 1, the earliest lease termination date will be effective June 1.
- A physician's certification that the person is no longer able to live independently for medical reasons.
- A notarized statement from a family member stating both that the senior is related and will be moving into his/her residence for at least six months, OR documentation of admission or pending admission to one of the above-mentioned facilities. (NY Real Property Law § 227-a(2)).

Anyone who interferes with the tenant's or the tenant's spouse's removal of personal items, clothing, furniture or other personal property from the premises to be vacated will be guilty of a misdemeanor (NY Real Property Law § 227-a(3)).

### ***Military Personnel Lease Terminations***

Individuals entering active duty in the military may terminate a residential lease if:

- The lease was agreed to and signed by the service member before entering active duty; AND
- The service member or his/her dependents occupied the leased apartment.

Any such lease may be terminated by written notice delivered to the landlord at any time following the beginning of military service. Termination of a lease requiring monthly rent payments is not effective until 30 days after the first date on which the next rent payment is due (NY Military Law § 310).

### ***Victims of Domestic Violence Lease Terminations***

A tenant with a court order of protection is permitted, on ten (10) days' notice to the landlord, to seek a court order terminating the lease, and will be released from any further obligation to pay the rent after the lease is terminated. The tenant must demonstrate that there continues to be substantial risk of physical and/or emotional harm to the tenant or the tenant's child from the person covered by the order of protection if that person remains in the apartment building and that relocation would substantially reduce that risk. The tenant must first attempt to secure the voluntary consent of the landlord to terminate the lease, and if the request is denied, a court may order termination as long as all payments due under

the lease through the termination date of the lease have been paid (NY Real Property Law § 227-c).

### ***Persons with Disabilities Lease Terminations***

The Fair Housing Act allows for early termination of a lease as a reasonable accommodation for a tenant with a disability under specific circumstances. There must be a connection between the request for reasonable accommodation and the person's disability. For example, if a tenant is no longer able to navigate steps and the landlord is not able to find a more suitable apartment to accommodate the tenant's disability, the tenant may terminate his/her lease early in order to move into an apartment that doesn't have steps.

### ***Constructive Eviction***

Constructive eviction occurs when residential rental property is not in habitable condition, forcing the tenant to leave the property. Examples of a situation that creates an apartment that is not habitable is when a landlord refuses to provide heat or water or a severe storm knocked a tree onto the roof of the building, causing significant damage to an upstairs apartment. The inhabitable condition must be caused by no fault of the tenant.

To claim constructive eviction, the tenant must serve the landlord with written notice of the constructive eviction and provide the landlord with a reasonable amount of time to clear up the problem. It is wise to take photographs and have a code inspector view the property. A court will decide what is reasonable on a case-by-case basis.

If the landlord does not remedy the conditions within a reasonable amount of time, the tenant may be able to vacate the property and not be responsible for the remaining balance of the lease. The tenant must physically move out of the property and then sue for damages in civil court. The court will determine the tenant's liability, if any. Tenants who believe their situation constitutes constructive eviction should discuss the situation with an attorney before proceeding. Legal Services of Central NY (LSCNY) HelpLine is available Monday – Friday, 9:00am – 5:00pm by calling 1-877-777-6152. More information about LSCNY can be found at [www.lscny.org](http://www.lscny.org).

## EVICTION

An eviction is an action by a city or town court. Landlords must petition a tenant to appear in court and ask the court to evict the tenant. Following is the timeframe that landlords are legally required to give, depending on how long the tenant has lived in the property:

- 30 days' notice for a tenant who has occupied the apartment for less than 1 year and/or has a lease for less than 1 year;
- 60 days' notice for a tenant who has either occupied the apartment for more than 1 year but less than 2 years OR has a lease term for at least 1 year but less than 2 years;
- 90 days' notice to a tenant who has either occupied the apartment for more than 2 years OR has a lease term of at least 2 years.

A landlord does not have the legal power to forcefully evict a tenant. Only a judge in a court of law can issue a ruling that will evict the tenant and only a police officer, sheriff, or constable can carry out a court ordered warrant to evict a tenant. Landlords may not take the law into their own hands and evict a tenant by use of force or unlawful means. For example, a landlord cannot use threats of violence, remove a tenant's possessions, lock the tenant out of the apartment, or willfully discontinue essential services such as heat or water. A tenant who is illegally evicted should call the local police or sheriff's department immediately. Law enforcement can get the landlord to stop the illegal action and get the tenant back in the apartment. If a landlord refuses a police order they can be arrested.

**It is wise for tenants to consult an attorney to protect their legal rights if the landlord seeks possession of the apartment.**

There are multiple grounds upon which a landlord may attempt to get an eviction order. Three examples are nonpayment of rent, holdover tenancy, and objectionable tenancy:

### ***Nonpayment of Rent***

Prior to starting a nonpayment eviction proceeding, a landlord must first make a demand for rent. The demand must be in writing and give the tenant 14 days to pay the back rent. This written demand is called a "Notice to Pay or Quit". If the tenant pays, he/she/they can stay. Late fees indicated in written agreements, such as the lease agreement, may be included in the demand notice (see page 14 for more information on Late Fees). If the tenant leaves, he/she/they must take all of his/her belongings and leave behind a completely vacant apartment. If the tenant either pays all arrears and late fees (if applicable) in full or vacates the apartment and takes all belongings, it is not necessary for the landlord to start a nonpayment eviction proceeding. If the tenant remains in the property without paying the past due rent, the landlord can file a petition and a notice of petition and have the tenant served with these papers to appear in court.

### ***Holdover Tenancy***

A holdover tenant is a tenant who has been given proper notice to vacate the rental property but continues to occupy the rental unit past the end date of the lease or rental agreement.



A landlord cannot physically remove a tenant but he can have papers served on the tenant to appear in court as a holdover tenant. The court would then decide when the tenant has to move out and how much rent is to be paid.

NOTE: Tenant Liability in Holdover – If a tenant gives proper notice of his/her intent to move out and does not leave at the time and date specified in the notice, the landlord may ask for double rent that the tenant must pay in the same manner as when paying a single month's rent. Landlords may sue in court for this amount (NY Real Property Law, § 229).

***Objectionable Tenancy:***

An objectionable tenancy eviction involves a tenant whose behavior is undesirable. Some examples would include violation of terms of a lease or rental agreement, damage to the property, disruption of the lives of other tenants or neighbors, and/or violation of the law on the property. For this type of eviction there must be a written lease. The lease also must have a termination clause giving the landlord the right to send a notice to a tenant, which terminates the tenancy, based on objectionable conduct. Such conduct must be frequent and continuous. If the tenant does not move by the date specified in the notice, the landlord can take the tenant to court for Holdover Tenancy, as described previously.

***Eviction Caused by Foreclosure***

Tenants have special protections in the event the landlord is faced with foreclosure of the rental property in which the tenants reside.

In 2018, the *Protecting Tenants at Foreclosure Act* (PFTA) was reinstated. This legislation requires that leases remain in place in the event of a foreclosure. The tenant can remain in the rental unit until the end of the lease. Month-to-month tenants are entitled to a 90-day notice before having to move out.

PFTA provides an exception for a buyer who purchases the rental property in a foreclosure sale and intends to live in the property. A buyer who intends to occupy the property may terminate any existing lease with a 90-day notice. A tenant who has a written lease and who has to move out so that new owners can move in may decide to sue his/her/their former landlord. A landlord is legally bound to deliver the rental unit for the entire terms of the lease. This duty is known as the "covenant of quiet enjoyment". A landlord who defaults on his/her/their mortgage of the rental property which results in foreclosure and the tenant's loss of the lease violates this covenant. The tenant can sue for the damages this causes. Tenants who find themselves in this situation should consult an attorney before proceeding with a lawsuit.

Importantly, the PFTA cannot block any state law that is more generous to tenants. These protections apply to private market rentals, including rental units occupied by tenants who receive Housing Choice Voucher Program (Section 8) benefits.

The State of New York requires the foreclosing party to notify tenants of an impending foreclosure through a notice delivered by both certified and first-class mail. New York State law grants tenants' protections in addition to those provided by the federal PFTA. Specifically, the law protects tenants in properties that were financially disposed of through other means, such as a short sale or deed in lieu of foreclosure if the property is transferred during the process of a foreclosure proceeding.

## **GOING TO COURT (for eviction proceedings)**

Tenants must be served with a petition and a Notice of Petition before they can be required to go to court. These papers must be served on the tenant at least ten (10) but no more than seventeen (17) days before the court hearing. The petition gives the reason for the eviction and must be signed by the landlord and notarized. The Notice of Petition gives the date, time, and location of the court appearance and is signed by the court clerk. A third party, not the landlord, must serve the tenant with these papers. Tenants can be served directly (papers handed directly to the tenant) or indirectly if the tenant was not at home when the server came. Papers can be attached to the entrance door of the apartment, put under the door, or given to a family member or someone else of age and discretion in the tenant's household.

Tenants should always appear in court on the date and time given. The only exception would be in cases of emergency. A tenant who has an emergency should call the court at least one business day before the court date. If the tenant does not appear in court and the court date has not been cancelled due to an emergency, the judge will grant an immediate Warrant of Eviction. In other words, a court enforcer will serve the Warrant on the tenant which will require the tenant to vacate the rental property in fourteen (14) days from the date the Warrant was issued.

Personally appearing in court gives the tenant a chance to tell his/her side of the story. If the tenant is present, it is very likely that a judge will consider the tenant's ability to find another place to live before giving a date to be out of the apartment.

If the tenant pays the full amount of rent due to the landlord at any time before or during the scheduled court date, the landlord must accept it and the eviction proceedings will cease. Tenants should make sure to get a written receipt from the landlord to prove that the full amount of rent due was paid (see Rent Receipts, page 12).

Tenants who think they might be facing eviction are encouraged to contact the Legal Services of Central NY Helpline at 1-877-777-6152 and ask to speak with an attorney about eviction.

### ***Suggested Defenses in Eviction Proceedings:***

#### **Non-payment of Rent Defenses**

- Appearing in court with the full rent payment will likely result in the case being dismissed. If the tenant pays the full amount of rent due to the landlord at any time before the scheduled court date, the landlord must accept it and the court proceeding will be unnecessary;
- If there are severe code violations in the apartment and the tenant offers proof that the landlord has been notified, it may be possible to get a ruling that rent can be withheld;
- If the tenant was advised by an attorney to withhold rent, the tenant should bring proof of the severe code violations and proof that full rent amount owed is being held in an account or other form of savings;

- If the tenant is receiving public assistance and Otsego County DSS is withholding the rent money due to severe code violations, the tenant should bring a copy of the letter from DSS stating that the agency is withholding the rent from the landlord until repairs are made.

### **Holdover Tenant Defense**

The tenant should provide proof in court if:

- the tenant can show that the landlord did not give him/her proper notice to move in a month-to-month tenancy, or
- did not give the tenant the notice to move, as required in a written lease agreement.

A tenant who is given a notice to move by the landlord or notice that the lease will not be renewed within six (6) months of when a “Notice and Order” was received from a code inspector listing code violations may be able to claim that the landlord is retaliating against the tenant as a defense for remaining in the apartment.

### **Court Decisions**

When the tenant and the landlord appear in court, the judge will listen to both the tenant and the landlord briefly and then make a decision. The three (3) basic decisions, eviction, no eviction, and stay of eviction are described below:

#### **Eviction**

Eviction occurs when the judge rules in favor of the landlord. A Warrant of Eviction is issued, signed by the judge, and enables the local law enforcement agency (sheriff, police, town constable) to remove the tenant from the property. As of June 2019, there is a mandatory 14-day waiting period between the time the tenant is served with the Warrant and when the tenant may be removed from the premises by the local law enforcement agency.

The law enforcement agency is required to give a written 14-day notice to the tenant prior to any physical removal. The sheriff/police/town constable will serve a copy of the warrant along with the notice. The 14-day period, once the warrant and notice have been served, runs uninterrupted: weekends & holidays are counted. The warrant and notice must be served between sunrise & sunset (daylight hours). Evictions warrants cannot be served on a Saturday or Sunday or other Sabbath.

In cases where tenants leave possessions behind when they vacate an apartment following an eviction, the law enforcement agency and the landlord will discuss storage options. Tenants are strongly encouraged to set up a date to retrieve possessions with the landlord. It is illegal for a landlord to throw a tenant’s possessions out or to refuse to give them to the tenant until all rent due is paid. Generally, a judge will not require a landlord to hold a tenant’s possessions for more than 30 days from the date of eviction.

**NOTE:** Effective June 2019, in cases of eviction for Objectionable Tenancy in which the landlord states the tenant has broken the rules of the lease, the court must delay eviction for 30 days to allow the tenant to fix the problem.

Tenants who are evicted and need emergency housing should contact Opportunities for Otsego's Emergency Housing office at 607-433-8335 for information about accessing available housing options.

### **No Eviction**

No eviction occurs when a judge rules in favor of the tenant. The matter is then dismissed and the tenant remains in possession of the apartment/rental unit.

### **Stay of Eviction**

A judge may grant a "stay" of eviction by delaying the issuing of a warrant if a tenant meets certain conditions within a period of time set by the court. For example, if the tenant appeared in court on September 10 for nonpayment of rent, a judge could give the tenant until September 20 to pay the rent. If the rent is not paid by that date, then a warrant of eviction will likely be issued. Additionally, under Real Property And Proceedings Law (RPAPL), section 753, the court, on application of the tenant, may stay the issuance of a warrant and also stay any execution to collect the costs of the proceeding for a period of not more than one year if:

- it appears that the premises are used for dwelling purposes;
- the tenant's application was made in good faith;
- the applicant cannot find and secure suitable premises within the neighborhood similar to those occupied by the applicant; and
- the applicant made reasonable efforts to secure such other premises; or
- that by reason of other facts it would cause hardship to the applicant or the applicant's family if the stay were not granted.

## IMPORTANT AGENCIES AND PHONE NUMBERS

Opportunities for Otsego Housing Services (Information for tenants and landlords) .....	433-8000
Opportunities for Otsego Emergency Housing Hotline .....	433-8335
City of Oneonta Civil Court (Eviction Proceedings) .....	376-5380
City of Oneonta Code Enforcement .....	433-3435
Otsego County Code Enforcement .....	547-4320
City of Oneonta Small Claims Court .....	376-5380
(Security deposit and other financial disputes)	
Otsego County Department of Health .....	547-4230
<b>HEAP</b>	
Individuals age 60 or older .....	547-4232
Individuals under age 60 .....	547-1700
Legal Services of Central NY (free legal help to low-income tenants in Otsego County) .....	1/877-777-6152
Catholic Charities Dispute Resolution Center .....	432-0061
(Landlord/tenant mediation services as an alternative to court)	
Catskill Center for Independence .....	1/866-724-8666
(Housing assistance for people with disabilities)	
NYS Division of Human Rights, Binghamton Satellite Office .....	721-8467
(To seek investigation of discrimination in rental housing)	
NYSEG Customer Advocate – Oneonta Division .....	1/585-484-4908
Public Service Commission .....	1/800-342-3377
(For information on utility problems and tenants' rights)	
NYS Attorney General Consumer Helpline .....	1/800-771-7755
(For rental security deposit complaints and other consumer complaints)	TDD: 800-788-9898
Division of Housing and Community Renewal (DHCR) .....	1/866-275-3427
(Oversite and regulation of the State's public and publicly-assisted rental housing)	
Housing and Urban Development (HUD), Albany NY .....	1/518-862-2801