

Landlord/Tenant Issues in Louisiana

DISCLAIMER: This is a guideline of general information and does not construe any type of legal advice. These are general answers and may not be applicable to your particular situation.

- **May I Terminate My Lease Because of the Disaster?**

· *What are my rights if I want to terminate my lease on my dwelling, following the disaster?*

If the dwelling is “totally destroyed” as a result of a disaster the lease terminates. La. Civ. Code art. 2714. If the dwelling is partially destroyed or damaged (or its use is otherwise substantially impaired) because of a disaster, the tenant may terminate the lease. La. Civ. Code art. 2715. Depending on the circumstances, remedy may be an abatement of the rent. Lease termination for a partial destruction, however, is not automatic, and the tenant must give written notice to the landlord. Upon termination, the tenant is entitled to a refund of any security deposit (less lawful deductions), plus a pro rata refund of any prepaid rent. The landlord must refund the security deposit and/or provide a statement of any lawful deductions from the deposit within one month after the tenant moves out. La. Rev. Stat. § 9:3251. The tenant shall furnish the landlord a forwarding address at the termination of the lease, to which such statements may be sent. *Id.* If the lease is lawfully terminated because it is totally or partially destroyed, the landlord cannot prevent the tenant from retrieving the tenant’s personal property in the dwelling.

NOTE: Most leases have specific provisions that apply if the dwelling is totally or partially destroyed, and these provisions dictate the rights of the tenant or landlord. *See Cerniglia v. Napoli*, 517 S.2d 1209 (La.App. 4 Cir. 1987). Additionally, whether the dwelling is totally or partially unusable is a fact question decided on a case-by-case basis. To be considered “totally destroyed,” the property must cease to be fit for use as a dwelling. Extreme flood or storm damage would likely be a “total destruction,” but minor flood or storm damage may only be a partial destruction. *See Chargeois v. Fiero*, 129 So. 229 (La.App. 1930). A temporary inconvenience from a flood (such as not being allowed to return to the dwelling for a time, but the dwelling did not suffer any damage) is not considered a total or partial destruction. *Dussnau v. Generis*, 6 La. Ann. 279 (1851) (The tenant, however, was only obligated to pay rent after the inconvenience ended).

GENERAL NOTE: Examine your lease carefully. Louisiana Civil Code Articles may be affected by the actual lease.

- **How Much Rent Do I Have To Pay?**

· If the premises are totally unusable because of the disaster, do I have to permanently move out even though I want to stay?

Again, if the dwelling is “totally destroyed” as a result of a disaster the lease terminates. La. Civ. Code art. 2714. However, the landlord could agree to keep the lease in force while the dwelling is repaired.

Most landlords should be willing to keep the lease in force and suspend all rent payments if the tenant does not stay in the dwelling while the landlord is trying to repair or restore the flood damage. In major repair situations, the landlord usually wants the premises empty for efficient repair and avoidance of personal injury liability. Depending on the circumstances, the landlord may be willing to allow the tenant to stay in the dwelling rent-free until the premises are restored or repaired—even if the premises normally would be considered totally unusable. If this is what you would like to do, you need to discuss it with your landlord as soon as possible.

· If the dwelling is partially unusable because of the disaster and if I don't want to permanently move out, can my rent be partially abated (temporarily reduced)?

If the premises are partially unusable for residential purposes after the disaster, the tenant may obtain a reduction or abatement of the rent during the length of the repairs. La. Civ. Code art. 2693. This rent reduction, however, is not automatic, and the amount of the reduction depends on the circumstances of each case. The landlord, however, can terminate the lease when: (1) the lease itself gives the landlord the right to terminate when a disaster renders the dwelling partially unusable, or (2) the landlord and tenant mutually agree to terminate the lease.

NOTE: Whether the dwelling is totally or partially unusable is a fact question decided on a case-by-case basis. The law does not give either the landlord or tenant the right to unilaterally decide how much the rent abatement should be. Obviously, before paying less than the full rent, the tenant should talk to the landlord and try to reach a mutual agreement on any rent abatement or reductions that are justified because a disaster has rendered the premises unusable. If the landlord and the tenant cannot agree on the appropriate amount of the reduction or if the unit is totally or partially unusable, the tenant must sue and have a court decide the amount. The tenant cannot unilaterally reduce the rent.

· May I withhold payment of rent because of the disaster or because the landlord has failed to timely repair the dwelling after the disaster?

No. Louisiana law prohibits a tenant from withholding rent on grounds of uninhabitability. If, after the disaster, neither the tenant nor the landlord has terminated the lease because the dwelling is totally unusable, the tenant has the right to repair with immediate reimbursement from the landlord or the right to deduct the amount from the payment of

rent if the landlord does not timely repair. La. Civ. Code art. 2694. Timeliness of repair by the landlord may depend on the availability of materials, labor and utilities and, in some cases, on when the landlord receives insurance proceeds from his or her insurance company. The tenant has other remedies, such as termination of the lease, if the landlord fails to timely repair. The tenant is not obligated to make the repairs. See La. Civ. Code art. 2715.

· Do I have to keep paying rent to my landlord while I am not living at my house/apartment?

The Louisiana Civil Code provides that the total destruction of leased property results in termination of the lease, with no further liability on the part of landlord or lessee. (Civil Code Art. 2714) Partial destruction of the leased premises gives rise to a right on the part of the lessee to seek dissolution of the lease or an abatement of the rent. (Civil Code Art. 2715)

So, the practical advice is that the client should hold payments until the condition of the leased property is verified.

· What can happen and what should I do if I cannot pay the rent on my dwelling because of job or salary interruptions following the disaster?

Temporary government rent assistance may be available from the Federal Emergency Management Agency (FEMA) or other governmental agencies. NOTE: the application for or the receipt of entitlements or funds, under any federal or state program or rent subsidy assistance, shall not be considered payment of rent and shall not be a defense to an action to evict the lessee. La. Rev. Stat. § 9:3259.2. Therefore, the landlord can file eviction proceedings even though you may be entitled to government assistance.

If your lease is terminated because the dwelling is totally unusable, you must move out, regardless of whether you can or cannot pay rent.

If you live in public or federally subsidized housing or receive Section 8 assistance, you are entitled, in most circumstances, to have your rent reduced when you suffer a loss in income. You must notify your landlord or the housing authority.

If the landlord is entitled to evict you and you do not move after the landlord has given you notice to vacate, you can be evicted only through lawsuit. NOTE: although the law requires a five-day notice to vacate, this notice period can be waived in the lease.

· How could I pay rent if I wanted to?

For residential leases, the landlord probably is local and probably had to evacuate just like the lessee. Clients should be advised not to mail payments until the USPS procedures for forwarding mail to evacuees are clarified, or until client can verify the landlord is receiving mail at the old address.

· ***Can my landlord rent my home/apartment to someone else while I am gone?***

Short answer is that the landlord is required to surrender peaceable possession of the leased premises to the lessee for the term of the lease. (Civil Code Art. 2700) Landlord can not impair peaceful possession unless there has been a default by lessee and the lease has been terminated.

The unfortunate practical advice here is not to worry about it until it can be verified that the leased premises still exist in habitable form.

· ***How do I Contact my landlord?***

One hopes that phone service will be restored in the near future, and that 504 area code calls can be completed. We understand the USPS is attempting to coordinate mail delivery by establishing central repositories for mail directed to evacuated zip codes. There is no easy answer to this question.

• **Must I Move Out?**

· ***My landlord told me to move out because the dwelling is totally unusable after the disaster. Do I have to move out?***

You must move out if the dwelling is totally destroyed and the landlord has terminated your lease on that ground. La. Civ. Code art. 2714. Unless your lease says otherwise, the landlord has the right to terminate the lease if the dwelling is totally destroyed as a result of a disaster such as flood. *Id.* However, if you do not move after the landlord has demanded that you move, the landlord may evict you only by filing a lawsuit.

· ***My landlord told me to move out the next day because he wants the dwelling for his daughter who lost her house in the flood. He told me if I didn't move out, he'd change the locks. Do I have to move out?***

No. The landlord must honor the lease unless the dwelling is totally destroyed or the lease contains an express provision allowing the landlord to terminate in event of fire, flood, or similar casualty. If the landlord wants you out in order to move someone else in, then the premises are obviously not "totally destroyed" and the landlord cannot terminate the lease.

If the landlord unlawfully locks you out, you should contact a legal services program for information or possible representation.

· ***What should I do if I am served with an eviction lawsuit?***

If an eviction lawsuit is served on you, you should carefully read the papers and find your deadline for filing an answer or appearing in court. You can defend yourself in court or you can call a legal services program for information or possible representation.

· How can I recover my personal property from the leased premises?

FEMA and federal security official are going to be in control of when and how evacuees are allowed to return to their homes.

Between now and when the agencies permit a return, the best advice we can give an evacuee is to try to contact the landlord and determine whether the landlord (i) knows anything about the condition of the property, and (ii) has been able to do anything to secure the property.

• **Can I Hold the Landlord or Previous Homeowner Responsible for Fraud or Negligence?**

· May I recover damages against my landlord for injuries or property damage I suffered as a result of the disaster?

When the injury or property damage results from a natural disaster and not from the landlord's negligence, the landlord is not liable for such injuries or property damage.

However, the law does not prevent suits against the landlord for injuries or property damage resulting from the landlord's negligence. The landlord can therefore be sued if the landlord's negligence caused or contributed to the tenant's injuries or damage from the disaster.

· I have suffered personal injuries or loss or damage to my personal belongings from the disaster. May I recover damages against my landlord or the previous homeowner if they knew about the possibility of flooding and failed to inform me?

If the landlord or seller made an affirmative misrepresentation concerning the possibility of flooding, the tenant or buyer may be able to sue the landlord or seller for fraud to recover for property damages or personal injuries. If you knew, however, that the property could flood or did not rely on the affirmative misrepresentation, then you will not be able to recover damages.

If the landlord or seller said nothing about the possibility of flooding, then you will probably not be able to recover any damages. Generally, the mere failure to disclose a fact known by the seller or landlord is not fraud. However, failure to disclose the possibility of flooding may, under certain circumstances, support a lawsuit against a landlord or seller who knew of past flooding or knew of the possibility of flooding. Active concealment of known past flooding (for example, painting over flood water marks on walls) may also be the basis for tenant recovery. *See 37 Am. Jur. 2d, Fraud and Deceit, 144-146.*

· Can I recover damages against my landlord or the previous homeowner if they didn't know about the possibility of flooding?

No. As a general rule, the tenant or buyer cannot recover from the landlord or previous owner a loss or damage from flooding if the landlord or previous owner knew nothing about past flooding or the possibility of flooding, and did not tell the tenant or buyer that the property was not subject to flooding.

• **Am I Covered by Insurance?**

· All my personal belongings were destroyed when the roof fell in on the place I rent. What help can I get from my insurance company?

If you had renter's insurance or homeowner's contents insurance at the time of the flood, contact your insurance company. If your situation is desperate, make sure you describe your situation to the insurance company. If the insurance company agrees that there is coverage, you can ask for advance payment to cover a part of your loss.

· What should I do if I do not have insurance on my personal belongings?

If your losses are not covered by insurance, you may be able to get an Individual and Family Grant (IFG) from FEMA to replace necessary items of personal property. You may apply for these benefits at the FEMA DAC sites. You may also wish to contact the Red Cross, which may be able to help you.

· If my personal belongings are lost or damaged as a result of the flood or other disaster, may I recover from my landlord under the landlord's hazard insurance policy?

No. The landlord has no "insurable interest" in the tenant's property, and therefore, the landlord's hazard insurance cannot (and does not) insure the tenant's personal property.

However, if the damage or loss of the tenant's property is due in whole or in part to the landlord's negligence, the tenant may be able to sue the landlord and the loss may be covered by the landlord's liability insurance carrier.

· Is flood damage to my home covered under my insurance policy?

Your homeowner's insurance policy (sometimes called a "casualty insurance policy," "hazard insurance policy," or "fire and extended coverage policy") normally does not cover flood damage. The policy may cover water damage inside the home from direct or blowing rainfall, but it normally does not cover damage from surface water or rising water. Windstorm insurance normally will be limited to greater-than-normal wind conditions, such as from a hurricane. You should read your policy, talk to your insurance agent, and consult an attorney if you have questions.

· Does my automobile insurance cover the damage to my car resulting from the disaster?

Normally, disaster damage to an owner's vehicle will be covered under the owner's comprehensive auto coverage, although specific language in the policy and any express policy exclusions will control.

- **Can I Recover Against Neighbors or Others?**

· May I recover damages against my neighbor whose property damaged my property during the disaster?

The general rule is that a person is not liable for injuries or damages caused by a disaster or "Act of God" where there is no fault of negligence on the part of the owner whose property caused damage to others during the disaster. Therefore, your neighbor is liable only when he or she was negligent and such negligence was a cause of the damage. *See* 1 Am. Jur. 2d, Act of God, 11, 15; and 57 Am. Jur. 2d, Negligence, 181.

· What can I do with someone else's property, which the disaster carried onto my land?

When personal property is carried away by flood, wind or explosion onto the land of another, such personal property still belongs to the original owner and the original owner may enter and retrieve it. If the landowner refuses to let the owner of the personal property enter, or if the landowner appropriates the property for the landowner's own use, the owner of the personal property can sue the landowner for the value of the property.

- **What About My Commercial Lease?**

· Must I continue paying rent for my commercial lease space (office, retail, mini-storage, etc.) even though it has been rendered totally or partially unusable by the disaster?

In Louisiana, the same law that applies to residential leases also applies to commercial leases. Most commercial leases have specific provisions that address situations when the property is totally or partially destroyed, and these provisions dictate the rights of the tenant or landlord. *See Cerniglia v. Napoli*, 517 S.2d 1209 (La.App. 4 Cir. 1987). Refer to your lease.

**Excerpt taken from "Resource Materials For Responding To Legal Questions From Those Displaced By Hurricane Katrina". Materials prepared by the State Bar of Texas and the Louisiana Sate Bar Association.

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