

CAN MY LANDLORD EVICT ME FOR SMOKING?

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By dan the roommate man

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QUESTION:

I'm subletting an apartment. My landlord wants to evict me for smoking -- and for allowing my guests to smoke, too. The tenant whom I rent from didn't mention any rules about smoking, nor were there any in the tenant's lease nor in my month-to-month sublease. I pay rent on time. What are my rights?

ANSWER:

Given the news reports over the harmful effects of tobacco smoke, some landlords are writing lease and rental agreement clauses that prohibit smoking, either in the tenant's unit or even the entire building. There has not yet been a successful legal challenge to a clearly written clause.

But it is quite a different animal to rewrite the rules or make them up smack dab in the middle of the lease. If the original tenant has a fixed-term lease, the landlord cannot change its terms until the lease expires. If that tenant rents month-to-month, the landlord can make a change after giving the tenant proper notice -- that is 30 days in most states.

Now, since you are a subtenant of a tenant with a lease, you must abide by the terms and conditions of the tenant's lease. For example, a no-pets clause in the lease would apply to you. But you also get to enjoy the rule about no changes mid-lease -- which means that the landlord cannot insist that you stop smoking. But watch out -- if the tenant from whom you rent were to decide that he didn't want you to smoke in the apartment, he could give you proper notice (again, usually 30 days) and you'd have to comply.

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CAN MY CURRENT ROOMMATE JUST THROW ME OUT?

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QUESTION:

I feel that I am being wrongly evicted from our apartment by another roommate who claims to be the only one on the lease. I'm pretty sure I signed it, too, but I can't remember.

ANSWER:

The first thing to do is to get a copy of that lease. Start with the landlord, who probably has a copy (and state law may require him to give you a copy if you request it). If you're on the lease, your roommate cannot get you out — only landlords can evict tenants.

Now, suppose you're not on the lease. All is not lost. If the landlord has treated you as a tenant — by accepting rent directly, for example, or putting your name on the mailbox or doorbell — you may have attained the status of a tenant. Surely, if you and the roommate rented the place together and it was clear that you were on equal footing, you should be given the status of a tenant.

Once you are a tenant, a co-tenant such as your roommate cannot evict you. Only the landlord can do that.

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