



The Landlord has Keys to my Home – When Can he Enter?

The most fundamental tenet of the relationship between a landlord and a tenant is that the tenant has the exclusive right to occupy and possess the premises that he has rented from his landlord. The tenant has the legal right to exclude all persons, including the landlord, from the premises. However, it is quite common place for a landlord to retain a copy of the keys to the premises that he has rented. You probably know someone whose landlord has entered his/her premises while the person was at work or away on vacation. The landlord probably indicated that he went in to investigate an unusual sound or scent appearing to come from the apartment; or he may have entered the apartment to

make a repair that he has been promising to do for an extended period of time; or he may have indicated that he was doing routine inspection. While a landlord is entitled to retain keys to the premises that he has rented, when can he lawfully use those keys?

A landlord and tenant may address this issue in the lease agreement, preferably in written format. However, even where the lease agreement does not specify, the common law implies into the relationship certain rights of re-entry for the benefit of the landlord. These include:

TERMINATION

When the lease agreement has been terminated, whether by expiration of time, notice to quit, court order, surrender of the lease by the tenant, or forfeiture for non-payment of rent or breach of other important covenants. In other words, the landlord may re-enter and use his keys for access when the tenant is no longer entitled to be on the premises.

REPAIRS & MAINTENANCE

To effect repairs or maintenance works. In some instances, the landlord may have an obligation to make repairs or maintain the premises when the need arises. Once the landlord has an obligation to repair or maintain, it is implied that the landlord has the right to enter upon the premises and he may use his keys for access. The agreement should usually indicate that the landlord is to give the tenant notice of his intention and the date on which he wishes to carry out the repairs or maintenance work. The landlord is not free to enter the premises as he wishes and without notice under the guise of carrying out repairs. Where the agreement does not make any specifications regarding notice, the landlord is required to give the tenant reasonable notice. Of course, reasonable notice period will vary depending on the circumstances. For example, reasonable notice to effect repairs to a roof following a hurricane will be judged differently from reasonable notice to effect merely cosmetic repairs.

INSPECTION

To carry out periodic inspection of the state of repair of the premises. Where a lease agreement reserves this right for a landlord, it is implied that the landlord may enter upon the premises. In this circumstance, he is also required to give the tenant reasonable notice.

OTHERS

To perform other specific obligations stated in the lease agreement, where to perform such obligations reasonably requires that the landlord enter the premises. In one case, the tenant was a formerly homeless person who needed assistance, which the landlord was required by the lease agreement to provide.

While the landlord may retain keys to premises that he has rented, it does not mean that he has the same level of rights as the tenant in respect of the premises. The landlord's right to access

the premises is limited to the specific circumstances in which that right has been expressly reserved in a written lease, or implied into the relationship as being a usual and necessary incidence of the leasehold relationship. The landlord is not entitled to reserve extensive or general rights to use his keys to access the premises. Extensive reservations will destroy the landlord and tenant relationship and make it into a different legal creature, called a licence. During the lease the landlord must always obtain permission from the tenant to enter for a specific purpose. The landlord's right to use his keys must be very limited (and not general in nature) and must be in submission to the tenant's exclusive right to possess the premises and exclude all others, including the landlord, as the tenant wishes.

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