

## Recovery Housing and Landlord Tenant Laws: What You Need To Know

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# Recovery Housing and Landlord Tenant Laws: What You Need to Know

**Presenter: Joe Maskovyak** 

Wednesday, April 21<sup>st</sup>, 2021 12:00 p.m. to 1:30 p.m.

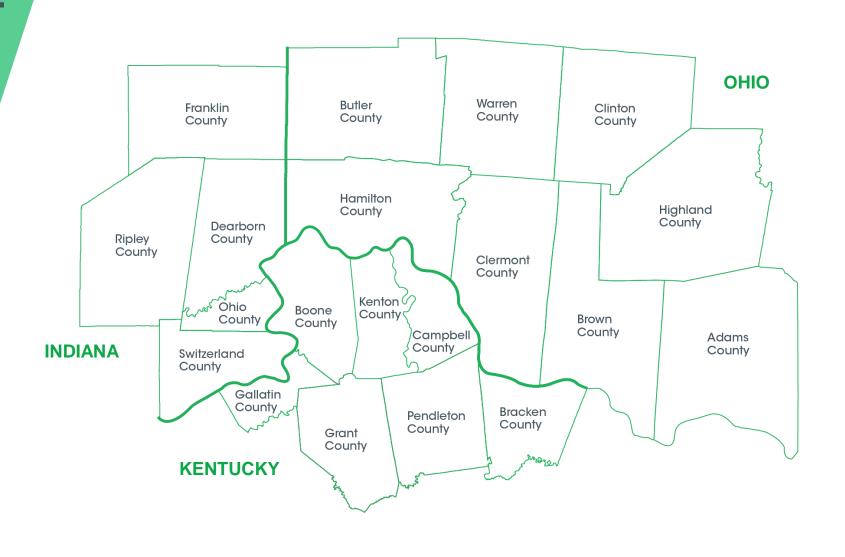
















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### Goal: Reverse the trend of overdoses and deaths from opioids





### Interact for Health



**Legal Compliance Training** 

Joe Maskovyak, Affordable and Fair Housing Coordinator Coalition on Homelessness and Housing in Ohio

### **About The Presenter**

#### Joe Maskovyak

Affordable and Fair Housing Coordinator

### Coalition on Homelessness and Housing in Ohio (COHHIO)

- www.cohhio.org
- Mission of ending homelessness and promoting affordable housing through public policy advocacy, training and technical assistance, research, hotline advice, and public education in Ohio

### **Overview**

#### Training will provide a general overview of:

Ohio's Landlord Tenant Law (Ohio Revised

Code or ORC 5321)

Review of ORC 1923 – Eviction Law

### **Agenda Details**

## Part 1: Introduction to Terms and Duties

- General Applicability of ORC 5321
- Basic Tenant, Landlord, Residential Premises definitions
- Rental Agreement definition and requirements
- Selected Duties and Rights of Landlords and Tenants
- Rooming Houses

### **Agenda Details**

## Part 2: Understanding Common Issues

- Entry and Right of Access
- Fees and Deposits
- Termination and Eviction
- COVID-19 & CDC Eviction Moratorium
- Repairs and Remedies



## Part 1: Introduction to Terms, Definitions, & Duties

### **Important Principles**

 Landlord-Tenant Relationship is a business relationship



#### **Tenant**

- A person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others, including landlords
- Some circumstances can be tricky:
  - Guest/visitor or unauthorized tenant?
  - Unclear rental agreement (ambiguity/conflicting terms create problems for both landlord & tenant)

 AMBIGUITY IS CONSTRUED AGAINST THE DRAFTER

A lease/rental agreement is a binding legal contract. Both landlords and tenants are bound by the terms of the agreement.

#### Landlord

- The owner, lessor, or sublessor of residential premises, OR
- The agent of the owner... or any person authorized by the owner... to manage the premises or to receive rent from a tenant under a rental agreement



### **Residential Premises**

- A dwelling unit for residential use and occupancy and the structure (RC 5321.01(C)
  - Does not include: prisons, jails, hospitals, tourist homes, hotels, motels, boarding schools, most shelters, and many other structures/places
  - RC 5321.01(C) Contains many other exclusions
  - There is no specific exemption for recovery housing



# Occupancy Definitions: ORC 5321.01

### "Residential premises" does not include any of the following:

- Occupancy in a facility licensed as an SRO facility that is either:
  - 1. Owned or operated by an organization that is exempt from taxation under **section 501(c)(3)**, **OR**
  - 2. By an entity or group of entities, and if **either** of the following applies:
    - a) The occupancy is for a period of less than 60 days, OR
    - b) Program operated by the (SRO) facility to provide either of the following:
      - Services licensed, certified, registered, or approved by a governmental agency or private accrediting organization for the rehabilitation of . . . persons suffering from substance abuse;
      - Shelter for juvenile runaways, victims of domestic violence, or homeless persons.

# Occupancy Definitions: ORC 5321.01

- So... what services are licensed, certified, registered, or approved by a governmental agency or private accrediting organization for the rehabilitation of persons suffering from substance abuse?
- OMHAS certifies inpatient and outpatient clinical treatment services and recovery supports such as peer support services and supported employment. They also certify/license residential treatment facilities for addiction and mental illness. For addiction, the residential services are consistent with ASAM Level 3 and have clinical treatment components. OAC 5160 defines this in detail.
- OMHAS accepts national accreditation for clinical services (CARF, COA, Joint Commission). Organizations with national Accreditation have what's known as "deemed status."
- They also recognize ORH as certifying recovery residences in meeting the NARR national quality standards.

# Occupancy Definitions: ORC 5321.01

### "Residential premises" does not include any of the following:

#### Emergency shelters:

- 1. Operated by organizations under section 501(c)(3) for:
  - a) Persons whose circumstances indicate a transient occupancy, including:
    - I. homeless people,
    - II. victims of domestic violence,
    - III. and juvenile runaways.

### Rental Agreement

- "Rental Agreement" means any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties
- Put agreement in writing to avoid disagreements over what was said/included in the rental agreement



### **Types of Rental Agreements**

#### Month-to-Month

- Benefits: flexibility
- Detriments: No guarantee beyond 30 days for either party
- · May also be weekly, bi-weekly, etc.



- Guarantee of premises for specific term (1 yr., typically)
- Benefits: lock in rent amount & time: stability
- Detriment: no flexibility if either party wants to end agreement & the other side does not



# Prohibited in Rental Agreements

- Prohibited Terms ORC 5321.13
  - Confess Judgment
    - Tenant gives up the right to a defense against a claim
  - Tenant required to pay landlord's attorney's fees no matter the outcome of a legal dispute
  - Shifting landlord duties to the tenant
  - Have tenant indemnify landlord from liability
- Prohibited Actions ORC 5321.15
  - No self-help evictions (lockouts) or utility shutoffs

# Rental Agreement Term That is "Bad"

- Unconscionable terms—ORC 5321.14
  - Unconscionable = unfair/illegal
  - A court may rule to refuse to enforce a rental agreement

#### **OR** (more likely)

- A court may elect to enforce the rental agreement without the unconscionable clause
- There is no definition of "unconscionable"
- Often used to attack unreasonable late fees (but reasonable late fees are OK)

### **Duties of Landlords &**

### Landlord Duties (5321.04)

- Make all repairs to put and keep premises in a fit and habitable condition
- Keep all electrical, plumbing, heating, and ventilation systems in good working order
- Maintain all appliances and equipment supplied or required to be supplied by him/her (no duty to supply appliances)





#### <u>Tenant Duties</u> (5321.05)

- Keep the premises safe & sanitary
- Use electrical and plumbing fixtures properly
- Keep the plumbing fixtures as clean as their condition permits
- Maintain the appliances supplied by the landlord in good working order

### **Duties of Landlords &**

**Tenants** 

Landlord Duties (5321.04)

<u>Tenant Duties</u> (5321.05)

 Provide garbage cans and arrange for trash removal, if the landlord owns four or more residential units in the same building



- Comply with building, housing, health and safety codes
- Give at least 24 hours notice, unless it is an emergency, before entering a tenant's unit and enter only at reasonable times and in a reasonable manner



- Dispose of rubbish properly
- Comply with housing, health, and safety codes that apply to tenants
- Refrain, and forbid household members or visitors, from damaging, or removing any fixture, appliance, or other part of the premises
- Permit landlord to enter the dwelling unit, if the request is reasonable and proper notice is given

#### COVID-19

- Many landlords
  - have suspended all repairs, OR
  - are only providing emergency repairs
- Code Enforcement has been less active
  - only responding to emergencies



But...

No definition of "emergency" in state law

# Duties of Landlords & Tenants

#### **Landlord Duties**

 Evict the tenant when the landlord has "actual knowledge" of drug activity by the tenant, a member of the tenant's household or a guest of the tenant occurring in or otherwise connected with the tenant's premises

#### **Tenant Duties**

 Comply with state or municipal drug Laws in connection with the premises and require household members and guests to do likewise



### **Duties of Landlord**

 Supply running water, reasonable amounts of hot water and heat, unless the hot water and heat are supplied by an installation that is under the exclusive control of the tenant and supplied by a direct public utility hook-up



### COVID 19

Are water, hot water, heat, and a/c emergency



### **Duties of Tenant**

- Refrain from damaging the premises and keep guests from damaging
- Refrain from disturbing any neighbors and require guests to do the same





# Retaliation vs. Discrimination

- These terms are often commanded, but have different legal meanings
- <u>Retaliation</u>: 3 ways in Ohio's statute for a landlord to commit retaliation:
  - Landlord increases rent, decreases services, or threatens to bring/actually brings eviction action for these specific reasons:
    - 1. Tenant complained to government agency about code violation
    - Tenant complained to landlord that landlord violated their legal duties
    - 3. Tenant organized with other tenants to negotiate/deal with landlord about lease terms

### Retaliation vs.

- Discriminat Dr. S& Hansing at (FOA) issue
  - FHA prohibits discrimination in the rental (including services), sale, advertising, design, insuring, and financing of dwellings, and in other housing-related transactions, based on membership in protected classes (race, skin color, familial status, religion, sex/gender, national origin, disability; Ohio state law adds ancestry & military status to list)
- Some fair housing requirements will apply to all housing providers in one way or another – can't escape it
  - Even if the Landlord-Tenant law doesn't apply to a housing provider, the FHA almost certainly will
  - Even if the FHA doesn't apply to a housing provider, the Americans with Disabilities Act (ADA) will

### Reasonable

- Remember that substantial a disability under the FHA
  - Disabled = current alcohol users and former users of illegal controlled substances
  - This means tenants can ask for reasonable accommodations (RAs)
  - RA to get a 2<sup>nd</sup> chance (or more)
- Under FHA or ADA, cannot have a blanket ban on pets without allowing reasonable accommodations
  - Assistance animals ≠ pets

### Reasonable

- Other types of Range dations
  - Referral to a treatment provider to get help
  - Referral to a crisis center
  - Referral to another recovery provider
- An administrative due process system, laid out in writing, that includes a meeting is an ideal way to facilitate such requests/actions
- Ohio law does <u>not</u> require that a landlord have administrative due process before going to court to evict

# Landlord-Tenant Law & Rooming Houses

"Rooming House" is not defined by state law. Local housing codes may provide a definition, for instance:

Columbus, Cincinnati, and Toledo define "rooming house" in their municipal codes and provide regulatory schemes for their licensing

Specific about regulatory schemes

Cleveland has no specific regulatory schemes that govern rooming/boarding housing

# Landlord-Tenant Law & Rooming Houses in Toledo

- Toledo: Rooming House. A dwelling containing three or more rooming units, in which space is let by the owner or operator for living or sleeping, but not open to the public or overnight guests. Meals may or may not be provided. Typical uses include rooming and boarding houses. Ord. 353-18. Passed 8-28-18. Chapter 1116.0250(C). See also Chapter 1761 of the Health Code.
- Chapter **1761.01. General requirements.** No person shall operate a **rooming house**, or shall occupy or let to another for occupancy any dormitory room and/or rooming unit in any **rooming house**, which is not in compliance with the provisions of every section of this Housing Code...
- Chapter 1761.02. Permits. (a) No person shall operate a rooming house unless he holds a valid rooming house permit issued by the City Department of Health and Environment in the name of the operator and for the specific dwelling or dwelling unit. The operator shall apply to the City Department of Health and Environment upon compliance by the operator with the applicable provisions of this Housing Code and of any rules and regulations adopted pursuant thereto. This permit shall be displayed in a conspicuous place within the rooming house at all times. No such permit shall be transferable. Every person holding such permit shall give notice in writing to the Toledo Department of Health and Environment within twenty-four hours after having sold, transferred, given away or otherwise disposed of ownership of, interest in or control of any rooming house. Such notice shall include the name and address of the person succeeding to the ownership or control of such rooming house. Every rooming house permit shall expire on March 31 of each year following its date of issuance, unless sooner suspended or revoked as hereinafter provided.
- Rooming Houses are subject to Code Enforcement in Toledo. 1743.06. Ord. 134-15. Passed 3-31-15.

# Rooming Houses, Toledo (Cont.)

- Toledo adopts IPMC-308.4 Multiple occupancy (Amended): The owner of a structure containing four or more dwelling units, a multiple occupancy, a rooming house or a nonresidential structure shall be responsible for extermination in the public or shared areas of the structure and exterior property. If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupants shall be responsible for extermination. Ord. 131-15. Passed 3-31-15. Chapter 1367.03.
- Required to exterminate rodents, insects, and other pests and keep the building in a ratproof and rat-free condition under Regulation No. 2-57
- Lead paint is prohibited in rooming houses. Regulation No. 2-72, Appendix I, Section III.
- Title Three, Appendix B: 40-3-1(A)(1) PREPARATION OR EATING OF MEALS IN ROOMING UNITS PROHIBITED: No occupant of a rooming house shall prepare or eat meals in a rooming house unless such meals are prepared or eaten in a dwelling unit contained therein; however, roomers may prepare and eat meals in a communal kitchen and may eat meals in a communal dining room in accordance with the provisions of subsections 40-3-1(A)(2), and 40-3-1(A)(3).
  - 40-3-1(A)(1)(i) as used herein the term "meals" shall mean foods that are prepared for consumption within the rooming unit by any form of heating and/or cooking.
  - 40-3-1(A)(1)(ii) Only those dishes, food containers and utensils, that are readily disposable are permitted to be used in rooming units.

# Landlord-Tenant Law & Rooming Houses in Cincinnati

**Definition**: "Rooming house" shall mean a dwelling occupied by three or more roomers or in which three or more rooms are kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered for pay; provided that "hotels" as herein defined, "dwelling units" as defined in Title XI of this code and any dwelling in which one or two rooms within individual dwelling-units are let out by the occupants of the units shall not be construed to be rooming houses for purposes of this chapter. Sec. 855-1-R1

**Licensing**: Cincinnati requires rooming houses to have a license or temporary certificate posted in a conspicuous place in the rooming house. The license can be revoked or denied for failure to comply with the city's laws, rules, and regulations, insanitation, violations regarding kitchen use, or the conviction of the operator for illegal use of the building.

**General Requirements**: The operator must maintain a guest register that is open for inspection by city officers, including police. Premises cannot be used for illegal solicitation. 855-19 & 21.

# Landlord-Tenant Law & Rooming Houses in Columbus Definition: Rooming house means and includes every dwelling, other than hotels and

**Definition**: Rooming house means and includes every dwelling, other than hotels and motels, kept, used or held out to be a place where sleeping or lodging rooms are offered for pay to three (3) or more persons and shall include but not be limited to uses defined in the Zoning Code at Chapter C.C. 3303 as "apartment hotel," "boarding home," "residential care facility," "rooming house" and "shared living facility." 4501.32

**Licensing**: In order to operate a rooming house, you must have a license and display it conspicuously within the rooming houses. <u>4561.02-03</u>

**General Requirements**: Columbus imposes various requirements on rooming houses such as regulations of bathroom facilities, bedding and towels, floor space, stairways, egress, sanitary maintenance, fire extinguishers, exit signs, bedfast/feeble persons, and locks. 4561.09-17.

**Compliance Requirement**: No person shall operate a rooming house, or shall occupy or let to another for occupancy any rooming unit in any rooming house, except in compliance with the provisions of every section of this Housing Code except the provisions of Sections 4521.02, 4521.03; 4521.06; 4521.07; 4551.01(b), (g) and (1); and 4551.02(b) and (g).

# Real Life Example: William Brady Organization



- Columbus code inspectors visited 9
  houses run by the William Brady
  Organization and continued to find
  problems that the operator was
  previously told to fix, including
  broken drywall, missing kitchen
  tiles, peeling paint, broken windows,
  dead roaches and rodent droppings.
- "The Brady group has 30 days to take care of the problems before another reinspection," said Dana Rose, the city's code-enforcement administrator. "The city won't issue the 7 remaining licenses until the houses pass code."
- The founders of the Brady group have been in the housing business since 2009, serving more than 3,000 people. But the group had never checked state and city codes setting minimum requirements and safety standards.

# Real Life Example: Summer Rays in Reynoldsburg

- The Ohio attorney general's office obtained a restraining order in July, 2018 against the operators of a local sober-housing charity, saying the founder exploited residents financially, abused them emotionally and verbally and engaged in activity "wildly inappropriate" for a recovery program.
- Franklin County Common Pleas Judge David
  C. Young also granted the attorney general's
  request for a court-appointed receiver to
  take control of Summer Rays' assets and
  properties, including 25 houses where 100 or
  more people live as they try to maintain
  sobriety from drugs and alcohol.
- The state conducted a multiyear investigation of Summer Rays, headed for the past 10 years by Reynoldsburg resident Chuck Kirk, 46, his wife and other family members. Kirk also controls Reynoldsburg Revolve Church, the Rev Cafe and a handful of other businesses that, investigators say, depended on Summer Rays residents for labor or as customers. Some residents joked that Summer Rays had "a cultlike environment," with Kirk wielding absolute authority.



- Court documents describe multiple instances of intimidation, including sexual harassment. They say Kirk loudly called one resident a "hillbilly whore" in a public restaurant and threw chairs, cans, water bottles and even hurled "a plastic cup filled with urine, from a drug test, at a Summer Rays resident."
- Court documents say houses were often overcrowded, with some people living in partly renovated garages. At one point, Kirk had residents in a duplex that lacked heat, air conditioning, running water and, at times, electricity.

### How to Stay in Touch

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Thank you!