

# 5 Tips Landlords Must Know Before Wrapping-Up Seasonal Rentals

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## 1. Gaining Repossession

Just because the term of the lease is over does not mean that the landlord automatically gets their seasonal rental property back. In many States, such as New York, the tenant must surrender possession of the property prior to the landlord retaking possession regardless if the lease period has ended. In best practice, a written lease agreement will provide not only when the term is over, but also the mechanism of how, when and where the tenant is supposed to surrender possession (e.g., tenant shall surrender possession by way of turning over the keys to the subject premises to the landlord, in-person, at the subject premises at 12:00 p.m. on September 30, 2014 or at such other time, date and manner as is mutually agreed upon by and between the parties in a signed writing). Such a surrender clause is particularly important for landlords because a landlord who engages in a self-help eviction (i.e., going into the property without the tenant's permission and changing the locks) is exposed to a lawsuit by the tenant for treble damages for the tenant's lost use and occupancy of the property. Landlords should also motivate the tenant to leave on time by utilizing a holdover liquidated damages clause (i.e., predetermined monies due and owing in the case of a holdover tenant - staying after the expiration of the lease). Courts in many States, such as New York, will enforce this type of clause at a level of three times the previous rent due for the duration of the holdover period.

## 2. Damage Inspection

*There are 4 steps to a proper damages inspection:*

- *Establishing a baseline condition of the property when the tenant takes possession (i.e., countersigned and dated pictures should have been taken)*
- *Distinguishing between actual damage and ordinary wear and tear (i.e., definitions should be included in the lease for each category)*
- *Determining the condition of the property upon the tenant surrendering possession (i.e., tenant and landlord walk through the property while memorializing the condition in pictures that are countersigned and dated)*
- *Obtaining 2 estimates for repairs from licensed home improvement contractors to establish the cost of repairs*

## 3. Refunding the Security Deposit

A landlord is a trustee for the tenant's security deposit monies. Where a landlord wrongfully withholds the security deposit, the tenant may be able to sue for those monies on theories such as breach of contract, conversion and breach of fiduciary duty, among others. Additionally, many States, such as New York, provide a tenant with a reciprocal right to sue for attorneys' fees whenever a lease provides the landlord with such a right (i.e., landlord's right to attorneys' fees in the event of breach is standard practice in leases). Consequently, a tenant can frequently hire an attorney, who will be paid for by the landlord, to recover their security deposit.

#### 4. **Lease Renewal**

The best tenants continue to renew season after season. For the landlord, this not only makes the budget for operating the property predictable, but also avoids the landlord from having to continually make themselves an agent available to show the property to prospective replacement tenants. The protocol for the tenant exercising a lease renewal option should be set forth in the current lease agreement, including how notice to renew should be rendered (i.e., mailing a certified mail return receipt letter to the landlord indicating that the tenant shall exercise its renewal option). Additionally, the lease should provide how the rental fee will be adjusted for future seasons by what is typically referred to as a rent escalation clause, (i.e., either at a percentage increase such as 3% or tied to an index such as the Consumer Price Index). Oral renewals and text messages should be avoided as they often result in litigating.

#### 5. **Brokerage Agreement**

Many real estate brokerage agreements provide for additional monies being due to the broker in the event of a renewal of the lease by the current tenant or a member of the tenant's family. Additionally, smart brokers put a clause in their agreements that provides for a commission being due should the tenant purchase the rental property from the landlord. Reviewing the brokerage agreement that was applicable when the tenant first let the property is a great first step before lease renewal to know how a landlord's net profits will be effected in future years.

*Adapted from this [Lieb Blog's](#) post*

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