



University of Illinois at Urbana-Champaign



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ARCHIVED DOCUMENT: Housing Guide, Part

2



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[Court](#)

[Legal/Court Forms](#)

[Attorney-Speaker Service](#)

[Student Legal Service Attorneys](#)

[History](#)

[Archives](#)

ARCHIVED DOCUMENT Housing Guide, Part 2: After You Move In

TABLE OF CONTENTS

- [Talking Is First Step for Noisy Neighbors](#)
- [Caught With Your Pants Down? Check the Lease!](#)
- [Early Precautions Can Help Prevent Housing Problem](#)
- [Suggestions for Subletting](#)

TALKING IS FIRST STEP FOR NOISY NEIGHBORS

It's 4:00 A.M. and they're still at it upstairs, bouncing springs, shrieking moans piercing the night like an orgasmic Banshee. Three times in two hours! Each extended foreplay more raucously raunchy, climaxing in rafter shaking spasms which reverberate through your ceiling and walls. My God, you think to yourself, what record are they trying to set, don't they know that some people have 8:00 A.M. classes! You are not just a jealous prude, you would simply like to occasionally enjoy a good night's sleep in your downstairs apartment which has the soundproofing of a box of Hydrox crackers. An occasional Friday night orgy or wild party is one thing but the nightly sexcapades accompanied by the voice of Whitney Houston warbling like an operatic diva with tuberculosis is more than anyone should have to tolerate. You resolve that you are going to call the police regardless of how foolish this makes you feel. Before you make the call consider some of the following approaches first.

This writer readily concedes that bad taste in music fully warrants criminal prosecution, the death penalty is insufficient sanction for such torture. Taste being subjective, the police cannot exercise their authority based upon aesthetic discretion but only based upon decibel levels. In the clear-eyed morning there are several practical steps you can take. Politely talk to your offending neighbor in a non-threatening manner about "late night noise". Yes, they will be embarrassed (all pleasures have penalties). It is likely in their passion they were unaware of the volume of their excitement. 90% of the time this will solve any noise problem in apartment living. Amazingly, most people fail to take this basic step and immediately get third parties involved; the landlord or the cops. Failing to contact the noisemaker before taking other actions serves to irritate the landlord and interrupts the cops in the middle of eating a chocolate donut but, most importantly, it may permanently alienate you from the neighbor. Civility becomes strained at best.

The court system is filled with petty disputes between neighbors and, for that matter, roommates who have not bothered to talk with one another about their grievances, leading to congested dockets and great taxpayer expense. While it is preferable to resolve things in court rather than by fist or lethal weapon, it remains true even in today's "my rights are all that count" world that discussing problems tends to resolve them. In twelve years of dealing with this issue, I continue to be flabbergasted by the excuses I've heard for not talking with neighbors. "Well, they'll think I'm racist because it's rap music," "Their friends all wear X caps." Unfortunately, the opposite side of this paranoid coin of false sensitivity also raises its transparent face. When there is a rational reason not to make contact, or where friendly discussion has failed, then and only then should you call in big brother, keeping in mind that sometime you too may want to have a party where Montovani elevator music is not the accompaniment.

In contacting the landlord, keep in mind that the landlord has a legal duty not to breach the covenant of quiet enjoyment of your unit; however, it is doubtful whether there is any legal duty for the landlord to control the behavior and noise of co-tenants in your building. Examine your lease carefully as some contracts do contain provisions which you can compel the landlord to enforce. In the absence of a legal duty, most landlords will nonetheless send around notices to tenants regarding noise levels and have been known to directly contact the offending tenant. Both measures are usually effective.

[Maps](#)[DMV/Driver Service Facility](#)[Mission Statement/Annual Reports](#)[Legal Links](#)[Contact Us](#)

As a last resort you should contact the police. Do not make a nuisance of yourself by calling every time you are irritated by some dissonant noise or loud conversation. Keep in mind that you are living in a loud, congested campus community and knew this when you signed your lease. I have had many very studious students confess to me that they cannot sleep in the silent burbs after a semester or two enjoying the campus cacophony of the night. Be tolerant before calling in the gendarmes; but also keep in mind that a noise ordinance exists and is readily enforced, you are not obligated to become a masochist.

Those of you who have just purchased the latest Metallica album do not really have to play it on high volume at 1:00 A.M. The cost of paying a noise ordinance fine of \$155 (Urbana) up to \$300 (Champaign) would allow you to buy at least nine CDs or better yet one nice set of headphones, perhaps even your share of the rent. No, I am not some stuffy gray haired parent giving you a lecture, although I am starting to go a bit bald. I love rock music and it is definitely at its best when played at window shattering levels, but rarely is the penalty worth the pleasure.

The most common question the office is asked is "Where do I get a permit/license to have a party so the cops won't bust me for noise?" Neither Urbana nor Champaign issue party permits for noise, although a license is required if you plan on having more than one keg. Failure to obtain a keg license will result in a \$300 fine for EACH keg on the premises; empties count. The twin cities do not write noise ordinance variances for personal parties. You are wasting your time calling the city for permission to violate this law, although you may be helping the police by letting them know where to go to write their tickets. The best advice I can give you is to maintain sound at humane levels before 10:00 P.M. and after 10:00 P.M. make sure that noise cannot be heard outside of your unit. If you cannot live with this restriction, then please be prepared to make a non-tax deductible contribution to the city treasury.

By: Thomas E. Betz, Staff Attorney

[Top](#)

CAUGHT WITH YOUR PANTS DOWN? CHECK THE LEASE!

It's Tuesday at 10 a.m. Your three roommates are in class, luckily you don't have class until 1 p.m. Finally, you have two uninterrupted hours that belong to you and your girlfriend. No snoopers, banging doors, or other interruptions. Together you head for the bedroom and the throes of passion. As your romance enters its final phase you suddenly have a sense of foreboding. No, you haven't forgotten your condom. Your girlfriend whispers, "I don't think we're alone." You quickly grab the blankets in a limp gesture of modesty just as you see the landlord swinging the pass key around his index finger. The landlord proceeds down the hall with prospective tenants for the next school year. Your girlfriend is in shock, you are in a state of impotent rage. All you can scream is, "Whatever happened to privacy? Ever heard of a goddam phone call before you show the place? A loud knock at least would have been appreciated!"

If this scenario even seems remotely familiar you are not alone. While most invasions of tenant privacy are not so graphically extreme as in the above incident, any invasion of your home by uninvited third parties is an interference with your personal solitude and the quiet enjoyment of your tenancy.

Perhaps no single issue produces more emotion and outrage by tenants than the seemingly pervasive abuse of access to apartments exercised by local landlords and their agents. The practice is blithely tolerated by state and local law. Unfortunately, most leases virtually guarantee free access for the landlord, usually without any notice requirement. While many landlords seem to intellectually recognize that a person's home is their castle their hearts still dictate that they own the property and will do as they please, after all tenants are "just kids" and should be good anyway and shouldn't be doing anything that might be embarrassing in the first place. The notion that the landlord might be committing the felony of breaking and entering does not seem to register. What is even more peculiar is that some landlords who enter without notice or even a knock seem to lack the basic animal instinct of self preservation. Could there be a petrified tenant holding a gun, crouched next to the door, who has been awakened by the sound of the door creaking open? I lived as a tenant for many years in Detroit where landlords necessarily developed a keen sense of self-preservation. While Champaign-Urbana is not Detroit, a human instinct of such a profound nature logically should be universal in all landlords.

The privacy protection issue remains bleak in this community, however, Urbana has now legislated a very modest notice requirements as well as setting broad time parameters of when a unit can be shown to prospective tenants. As of April 1, 1994, Privacy is Protected in Urbana. Champaign and Illinois do not provide any statutory protection of tenant privacy, but Illinois continues to recognize the common law Covenant for Quiet Enjoyment.

The Covenant of Quiet Enjoyment minimally protects the tenant's right to possession of the premises in peace without hostile disturbance by landlord. The covenant does not require notice before entry. It protects landlords when they are engaged in non-hostile entries for repairs, maintenance, rent-collection and showings. An excessive number of showings at unreasonable hours could rise to the level of a breach of quiet enjoyment necessitating the tenant to take time consuming legal action in court. The covenant does not establish clear standards of conduct for

landlords and therefore is at best an aspiration for privacy and a mild general deterrent against the most egregious landlord conduct.

Tenants and prospective tenants have several strategies they can take to protect their privacy despite the lack of strong legal protection.

1. As a prospective tenant looking at a unit, carefully observe whether the landlord is knocking before entry. Do the current tenants appear surprised that you are in their unit? If the landlord doesn't respect the current tenants' privacy he won't ensure yours! When the landlord leaves ask the current tenants if their privacy has been respected.
2. Many landlords have drafted leases that contractually provide tenants with notice before entry. This is a positive sign that the landlord recognizes the paramount importance of this issue. Read the provision carefully as often the language is very deceptive, e.g. "Whenever practicable the landlord will provide notice before entry except in cases of emergency, etc." The determination of the meaning of the term "practicable" is at the sole subjective discretion of the landlord. This is not a privacy clause at all. Look for leases that state, "The landlord shall provide 24 hours notice before entry except in cases of ..." This type of provision has a greater likelihood of being enforced in the Courts, but more importantly it is an excellent indicator of the landlord's sensitivity to tenant privacy. Carefully examine the entire lease because even strong privacy clauses are often severely diluted by other clauses of the agreement.
3. Before you sign the lease have it examined at the Tenant Union. That office maintains extensive records of complaints about landlords on all sorts of issues including privacy. Regardless of price and location, it is never necessary to rent from a notoriously poor landlord or even one with a mediocre record when the vast majority of landlords have either a good or excellent history.
4. Many landlords are willing to negotiate a privacy clause into their lease. Those who are totally unwilling to even put a "knock before entry" clause into your lease tend to be landlords who will orally tell you that, "it goes without saying that we respect your privacy." If the landlord won't put it in writing all of the verbal representations become little more than hot air forgotten in the winter breeze. Student Legal Service recommends that all tenants make an effort to secure in writing some form of notice before entry clause in the lease if privacy is of concern. Privacy cannot be negotiated after the lease is signed!
5. If your privacy is invaded, by all means file a complaint with the Tenant Union. At the very least this can protect future tenants but more importantly will often change the landlord's behavior. If the invasion is particularly egregious, i.e. repeated late night entry without any apparent emergency, tenants should not hesitate to contact the police. Unfortunately, it is unlikely that the police will arrest the landlord for what would otherwise be a felony, nonetheless, the landlord probably will not repeat the behavior once your resolve is made apparent and he has to embarrassingly explain the circumstances to the police officer.

It is important that tenants protect their privacy. It is also on balance important that tenants not unreasonably deny landlords access to the unit to make needed repairs and inspections, after all, tenants are the primary beneficiaries of properly maintained property. Mutual respect and courtesy can resolve most privacy conflicts if both landlords and tenants adopt such an outlook. I urge all parties to give this approach a try. It works more often than not.

By: Thomas E. Betz, Staff Attorney

[Top](#)

EARLY PRECAUTIONS CAN HELP PREVENT HOUSING PROBLEMS

There is a long and sordid history of campus landlords ripping off tenants' security deposits. Students frequently ask staff attorneys in hindsight what they could have done to avoid the situation. In rare instances, some housing problems are unavoidable, but in most cases even if you have already signed a lease with a landlord of ill repute, you can ameliorate some of the worst consequences by taking some basic steps now.

Many landlords provide check-in sheets. If your landlord does not or will not, then you should visit the Tenant Union to obtain a form. Using the check-in sheet, carefully examine your apartment with a fine toothed comb. If the windows, stove, refrigerator, carpets and walls are not clean, mark this on the sheet even if you are personally willing to tolerate the condition. You will be billed at the end of the lease for everything the market will allow even if you did not cause the condition. Never mark something on the sheet as "OK" unless it really is in good condition. Use a white-glove approach to your check-in sheet inspection; there is no scratch too small or dent too shallow for you not to note specifically on the sheet. If items such as vacuum cleaners, microwaves, etc. are listed on the sheet but are not in the unit, make absolutely sure that you note this on the form.

Once you have completed the form, you should make a dated copy for your permanent records and send a copy to the landlord. Fortunately, most landlords will respond to your check-in sheet and make needed repairs in a reasonable time. Please be aware that during move-in season, landlords' resources are stretched to capacity, and thus, some degree of patience is in order. When you move out at the end of your lease term, your check-in sheet is the best evidence

available to you against the unscrupulous landlord who deducts from your damage deposit for pre-existing conditions.

When faced with the landlord who takes geological time as opposed to human time to make repairs, you are not without legal weapons. Initially, you should politely request the repair; if this does not produce results in a reasonable time, then you should follow up by sending a written request (saving a dated copy for your files). If the problem is of a serious nature that is potentially hazardous and your repair requests are being received by deaf ears, you should contact the building inspectors of Urbana or Champaign, depending upon where you live. Inspectors usually act in a prompt fashion and have the power to cite the property owner for deficiencies. Most landlords will then cure the condition promptly.

In the City of Urbana, an elaborate legal mechanism for repairing and then deducting from your rent exists. Do not try to repair/deduct unless you obtain legal advice from Student Legal Service or counseling from the Tenant Union. There are many pitfalls to the concept and procedures that must be followed to the letter in order to be successful.

Some housing is essentially uninhabitable. In this situation, do not simply move out and expect your lease to be canceled. You should seek an inspection from building-code enforcement and consult with Student Legal Service regarding whether conditions are sufficient for "constructive eviction" that will allow you to leave the unit.

After you fill out your check-in sheet, it is wise to re-examine your entire lease. If specific promises can be found within the four corners of the lease, those promises are enforceable in court if the landlord does not uphold his end of the contract. Be aware that although most landlords provide maintenance and repair for their units to protect their investment interest, in the absence of an express covenant of repair in the lease, Illinois law does not impose a general legal duty of maintenance and repair unless or until the necessary repairs give rise to uninhabitable conditions. Most cases will involve a failure to paint the unit, etc. A lawsuit is rarely going to be necessary once you point the promise out to the landlord.

Most tenants will not lose their damage deposits if they fill out a check-in sheet and a check-out sheet when leaving; insist on repairs and do not diminish the value for the property. Your renting experience can be pleasant and uneventful if these basic guidelines are followed.

By: Thomas E. Betz, Staff Attorney

[Top](#)

SUGGESTIONS FOR SUBLETTING

Summer in Champaign not your idea of a good time? Most students agree and flee to more attractive locations. However, those apartment leases go on, and your landlord will expect the rent to be paid even though you are not living in the place.

The solution? Sublet, of course. But before undertaking this project, there are a few things you must be aware of:

CONTINUING LIABILITY

When you sublet your apartment, you become the sublessor; in other words, you are a kind of landlord. However, you also remain the tenant that you started out to be. Therefore, if your subtenant causes damage, fails to pay rent, or otherwise breaches the lease and can't or won't pay the damages, your landlord can and will hold you responsible. You must be aware of this risk when you sublet and decide if the amount of rent your subtenant is willing to pay will outweigh the financial risk you might be taking in allowing the subtenant to live in your apartment all summer.

SECURITY DEPOSIT

In most instances, your landlord will not return your security deposit to you until your lease expires and damages can be assessed. When you turn the apartment over to a subtenant, you can not predict what will or won't happen over the course of the summer. Unfortunately, the phenomenon of trashing one's sublet seems to be on the increase locally. Summer sublets are frequently looked upon as sites for a three month orgy of parties, and the results can be disastrous. Even the kindest landlord will take a dim view of an apartment turned back in August that contains none of the right things--intact furniture, curtains, major appliances--and lots of the wrong things such as beer-soaked carpets, infestations of fleas, cigarette (and other) ashes, furry items in the refrigerator and enough garbage to form an independent landfill. It is very wise to obtain a security deposit from your subtenant (remember, you're a landlord now) to guard against any damage that a person might cause.

WALK THROUGH

Prior to turning over your apartment to your subtenants, you should conduct a walkthrough of the unit with them and note the condition of the unit as specifically as you can. This way, everyone

will be clear on what damage, if any, was caused by whom. This will be of great help in sorting out security deposits at the end of the lease.

UTILITIES

Never leave utilities in your name once you sublet. Your subtenant might complain about the cost of transferring the accounts, but do it anyway. Your subtenant might well have friends and relatives all over the world with whom he or she likes to maintain frequent phone contact. Even with "Friends and Family," this can cost a lot. One instance in recent memory involved a student who took pity on his subtenant and kept the phone bill in his name. For this kindness, he was stuck with a \$7,000 phone bill. Air conditioning is very popular here during the summer as well, and your subtenant might prefer the atmosphere of a meat locker to more ecologically sound room temperatures. If these bills remain in your name, you might well wind up being held responsible for them.

IMPEDIMENTS TO SUBLEASING

Check your lease; it might well contain language attempting to regulate your right to sublet. Your landlord might insist on a right to approve your subtenant, charge you a "sublet fee," or even try to require you to prepay all your summer rent prior to subletting. This last tactic, also known as rent acceleration, is especially obnoxious. Sure, it would be great to have everything in life prepaid--what a wonderful sense of security that would offer! However, your landlord has no right to expect you to prepay summer rent just because you're subletting the place. Insist on your right to sublet if your landlord tries to impose such conditions on you. The only legitimate reason to reject a subtenant is if that person appears to be a financial risk. In that case, you are also better off since you remain responsible as well. Student Legal Service will be happy to assist you if you need help in overcoming such obstacles to a sublet.

With a summer sublet, you are likely to receive only nominal rent. In exchange, you are permitting someone else to live in your apartment and are putting yourself at risk for damage that a person might cause. Be very careful in weighing the risks and benefits in subletting. If you feel that it's worthwhile, go ahead, remember: GET IT IN WRITING. Both the Tenant Union and Student Legal Service are here to help.

By: Susan Y. Hesse, Staff Attorney

[Top](#)

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