

## Landlord Liability Risks Increase with the Temperature by Aaron Tifft

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As the Oklahoma summer drags on, no one is surprised by high temperatures. But to avoid liability surprises, landlords and property managers should be aware of potential issues related to air conditioning maintenance. Failure to properly maintain a rental unit's air conditioning system can give tenants an opportunity to make repairs at the landlord's expense, secure replacement housing and stop paying rent until repairs are made, or obtain termination of the lease agreement altogether.

A landlord should understand that if she supplies an air-conditioning system Oklahoma law requires that she keep it "in good and safe working order." This means that it should be generally operational and effective at cooling the premises. However, some tenants have advocated a broader interpretation of "good working order." This broader argument advocates that air conditioning systems which require an abnormally high level of electricity are not "in good working order" because of their energy inefficiency. While no Oklahoma cases have categorically adopted this argument, it seems to be growing in prevalence. Accordingly, landlords should be alert to the discovery of any significant system inefficiencies.

If there is an HVAC failure, it is the responsibility of a tenant to notify their landlord in writing. To avoid liability risks, a landlord should repair it as soon as practicable and no longer than 14 days from notice of the issue. Failure to do so gives the tenant three independent remedies.

First, after 14 days without repair, the tenant can reasonably repair the system on their own, provide an itemized statement to the landlord, and deduct up to \$100 from the next month's rent.

Second, after 14 days without repair, the tenant can terminate the lease agreement—effective 30 days from the date of the notice.

Third, in the situation a tenant could prove special circumstances, he could immediately terminate the lease agreement, or vacate the premises until the air conditioning is fixed, with no rent obligation for that period. To obtain this more significant relief, the landlord must have "willfully or negligently" failed to repair the air conditioning system, or the lack of air conditioning would have posed an "imminent threat to the health and safety of any occupant."

To avoid these pitfalls and potential litigation costs, landlords should develop relationships with reliable HVAC repair services and budget for maintenance costs to enable timely repair of the inevitable air conditioning failures.

## Attorneys

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