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Ohio law offers protections for landlords, tenants

Dear Dale: When my daughter went to college, she responded to a blind e-mail to sublet an apartment with four women she didn't know. It turned out to be a nightmare. The first two nights, her roommates and their friends partied until 6 a.m. The third night, her roommates hosted a pot party. My daughter left to stay with a girlfriend on campus. When she told me about the situation, I told her to move out immediately. My daughter never signed a lease. Is she — or are we, as her parents — on the hook for the rest of the sublease?

ANSWER: Lease agreements are contracts. Ohio law requires that leases for properties be made in writing and that legal actions based on the lease shall not be brought unless the lease is signed by the party charged with breaching the terms.

If it were that simple, I could end the column here. Oral agreements to rent an apartment can be enforceable, but only to the extent that they form a tenancy for a certain period based on the frequency of the rental payments. Some courts have described these oral arrangements as defective leases.

For example, let's say your daughter agreed to rent the apartment for a year with rental payments of \$400 to be paid monthly. Her oral lease agreement becomes a month-to-month tenancy because that's how often she was to pay the rent. Absent a written lease agreement, she is only obligated to pay monthly rather than being on the hook for the entire year.

Under Ohio's Landlord-Tenant Law, a landlord or a tenant can terminate a month-to-month tenancy by giving 30 days notice to the other party. The same concept applies to a week-to-week tenancy.

In this case, the women who sublet the apartment to her are landlords for purposes of the law. She could terminate the agreement by giving her roommates 30 days notice. If she failed to do that, she technically could be on the hook for the rent for that period. I think moving out and giving the key back provides constructive notice that she has terminated the agreement.

Even if her former roommates bring a legal action against your daughter, they would have to show that they acted in such a way to limit their damages. If a tenant breaks the lease agreement, a landlord must take action to try to rent the unit.

The landlord can't try to collect for the entirety of the lease agreement without making an effort to rent the apartment to another tenant.

In addition to her defenses under the law, your daughter probably could raise the issues of the all-night parties and the illegal drug use at the apartment. Under this type of equitable defense, she might argue that her roommates did not live up to their end of the bargain.

She could even consider a counterclaim to put them on the defensive.

From a practical point of view, it's probably unlikely that your daughter is going to face any legal action from her roommates. If she does, I think any exposure she may have is fairly limited because of the absence of a written lease agreement and the conduct of her roommates.

You also asked whether you, as a parent, would be liable for any unpaid rent. The quick answer is no. You weren't a party to the agreement, and your daughter wasn't acting on your behalf, so I don't think you have any obligation.

Dale Emch practices law at the Charles E. Boyk Law Offices, LLC, in Toledo. In his column, he will discuss general legal principles and answer readers' questions. Neither Mr. Emch nor The Blade present or intend his column to be taken as legal advice. Readers seeking legal advice should consult with an attorney. Readers should send their questions to Mr. Emch at demch@charlesboyk-law.com or Dale Emch, 405 Madison Ave., Suite 1200, Toledo, OH 43604. His blog is at www.toledocaraccidentlawyerblog.com
