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Know Legal Ramifications of Recording Tenant-Landlord Disputes

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Wear and tear is bound to happen. Whether it's the tenant's fault, the landlord's fault or the calendar dates changing, there will come a time when tenants will have to contact property owners to make repairs or upgrade rental amenities. But what happens when a landlord refuses to do so and the tenant needs a record of their discussions?

In Texas, **landlords can charge for repairs** that are the tenant's fault. Tenants must also be up to date on rental payments before a landlord must get involved. While both Florida and Texas give landlords seven days to resolve the issue, Florida tenants have a little more leverage: the option to withhold rent until repairs are made.

But let's say the tenant and the landlord simply cannot agree on who is at fault for the repair, and the disagreement has blown up into a war of words. Does the tenant have the right to record those in-person or phone conversations to use as defense in court? While federal law has a one-party consent policy (**18 U.S.C. § 2511**), meaning a tenant (or any other person) can record a phone call or conversation so long as that same person is a participant in the conversation, **state laws may vary**. Floridian and Texan tenants may want to hold off on recording rental disputes before knowing what they can and cannot record.



Recording Policies In Texas

Under Texas law (**Penal Code § 16.02**), it is a felony to record oral or electronic communication without the consent of at least one party, or with the intent to commit a crime or a tort. This means as long as the tenant is one of the parties in the conversation, and not eavesdropping and recording private conversations that the tenant is not directly participating in, recording the conversation is generally OK. (Asking for permission beforehand will always eliminate any room for miscommunication though.)

Recording Policies In Florida

Florida is less forgiving of recorded calls or in-person communication, even if it's just to prove that the conversation about a repair actually happened. In this all-party consent state, Sunshine State laws dictate that it is illegal to record an in-person or telephone conversation without all parties knowing. If done anyway, tenants can be charged with a misdemeanor or a third-degree felony. The judgment largely depends on how this recording was intended to be used. The risks are much higher, depending on the tenant's initial intent plus any prior conviction history. Tenants may also be at risk of civil damages.



Photo credit: Tim Sullivan/StockSnap

Recording Out-Of-State Landlords

The recording laws get trickier for tenants having discussions with **out-of-state landlords**. For example, a Texan (one-party consent state) may be in a bind if recording a landlord in Illinois (two-party consent state like Florida). However, even two-party states have relaxed some of their laws. In December of 2014, the Illinois Supreme Court reportedly struck down the statute, allowing recordings in places that have "**no reasonable expectation of privacy.**"

To illustrate this point, a Texan tenant denying the recording of a virtual call with an Illinois landlord may not be treated the same as that same tenant and landlord arguing in a condominium hallway. In the latter case, any other tenant or guest walking by can easily hear their conversation. There is no expectation of privacy. A one-on-one Zoom call, on the other hand, is understood to be a private conversation.

If Felonies Are the Risk, Moving May Be the Best Answer

Moving can be expensive. While movers may charge up to \$50 per person and have multi-

hours long minimums—resulting in a move rate of approximately \$400 for two movers in a four-hour labor job—that also doesn't include gas, the truck and moving supplies. This could easily make moving expenses anywhere from \$600 to \$800, or higher.

But the average cost of an attorney, should a tenant want to take repair disputes and recorded conversations to court, is far more expensive. Texas attorneys range from **\$175 to \$495** per hour and Florida attorneys charge \$195 to \$400 per hour. The entire moving process can end up being the equivalent of a two-hour task for an attorney.

Does that mean tenants shouldn't fight for what's right? This decision is completely dependent upon the tenant. This is also where tenants have more leverage than some owners, specifically condo association members. While the latter group's bylaws usually dictate that the condo unit owner has to pay legal fees for both parties, unless the rental lease says so, the tenant is usually only responsible for their own legal fees.

If the attorney wins the case in court, even those legal fees may be reimbursed. However, tenants also run the risk of losing the case and having to pay the landlord's legal fees regardless of whether the lease required this or not.

Before a **tenant takes a rental dispute to court**, it may be worth paying for a legal consultation (some attorneys offer them for free) to see if the potential lawsuit is financially feasible and has a high likelihood of a win. If not, tenants may want to close the smartphone recording app and pick up the cardboard boxes instead.

