

# Chapter 1

## Statutory Construction in Landlord Tenant Law

### 1-1 “LANDLORD” AND “TENANT” DEFINED

Under Connecticut law, a “landlord” is defined as “the owner,<sup>1</sup> lessor, or sublessor of the dwelling unit,<sup>2</sup> the building of which it is a part or the premises.”<sup>3</sup>

The statutory definition of a “tenant” is one who is “the lessee, sublessee or person entitled under a rental agreement<sup>4</sup> to occupy

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<sup>1</sup> Conn. Gen. Stat. § 47a-1(e). *Dang v. Dang*, No. HDSP147757, 2009 Conn. Super. LEXIS 786 (Conn. Super. Ct. Apr. 8, 2009) (statute requires that legal title be vested in the owner and, therefore, plaintiff in a summary process action must prove by a preponderance of the evidence, ownership of the premises); *St. Germain v. Labrie*, No. 2114820, 2006 Conn. Super. LEXIS 989 (Conn. Super. Ct. Apr. 3, 2006), *remanded on other grounds*, 108 Conn. App. 587 (Conn. App. Ct. 2008) (a former owner cannot be considered a “landlord” under this statute and therefore lacks standing to commence a summary process action); *Western Boot & Clothing Co. Inc. v. L’Enfrance Magique, Inc.*, 81 Conn. App. 486 (Conn. App. Ct.), *appeal denied*, 269 Conn. 903 (Conn. 2004) (a sublessor by virtue of a master lease with the owner of the premises has a beneficial interest in the premises and therefore has standing to bring a summary process action); *Pitcher v. Hamrick*, No. CV030566770, 2005 Conn. Super. LEXIS 931 (Conn. Super. Ct. Apr. 12, 2005) (a beneficiary owner of a revocable trust did not have vested property interest and therefore not an owner under Connecticut General Statute § 47a-1(e)); *Scott v. Heinonen*, 118 Conn. App. 577 (Conn. App. Ct. 2009) (an executor of an estate who is authorized to market real property of decedent has power to evict an occupant to whom the property has specifically been devised by the will of the decedent).

<sup>2</sup> Conn. Gen. Stat. § 47a-1(c).

<sup>3</sup> Conn. Gen. Stat. § 47a-1(g); Conn. Gen. Stat. § 47a-1(d).

<sup>4</sup> Conn. Gen. Stat. § 47a-1(i).

a dwelling unit<sup>5</sup> or premises<sup>6</sup> to the exclusion of others or as is otherwise defined by law.”<sup>7</sup>

A landlord-tenant relationship arises when there is a written or oral rental agreement between the parties, which contains the terms and conditions for the use of such premises.<sup>8</sup>

## 1-2 OTHER STATUTORY DEFINITIONS

In the context of landlord tenant law, Connecticut statutes also provide specific definitions for terms such as “action,”<sup>9</sup> “building and housing codes,”<sup>10</sup> “person,”<sup>11</sup> “rent,”<sup>12</sup> “roomer,”<sup>13</sup> “single-family residence,”<sup>14</sup> and “tenement house.”<sup>15</sup>

## 1-3 RESIDENTIAL RENTAL AGREEMENTS/LEASES

A residential rental agreement is generally for a fixed and definite term. Absent such fixed designated term, the tenancy will be construed as a month to month,<sup>16</sup> except where a tenant pays weekly rent, in which case such tenancy will be construed as a week-to-week tenancy.<sup>17</sup>

The renewal of such implied monthly tenancy requires the manifestation of one or more of these three elements: (1) payment of rent by the tenant; (2) acceptance of such payment by the

<sup>5</sup>. Conn. Gen. Stat. § 47a-1(c).

<sup>6</sup>. Conn. Gen. Stat. § 47a-1(g).

<sup>7</sup>. Conn. Gen. Stat. § 47a-1(l).

<sup>8</sup>. *Rivera v. Santiago*, 4 Conn. App. 608 (Conn. App. Ct. 1995); *but see Allstate Ins. Co. v. Palumbo*, 296 Conn. 253, 265 (Conn. 2009) (although a live-in boyfriend fiancé did have an oral agreement with his fiancée to make monthly payments, he “is neither a social houseguest nor a tenant in the strict legal sense” for equitable subrogation purposes).

<sup>9</sup>. Conn. Gen. Stat. § 47a-1(a).

<sup>10</sup>. Conn. Gen. Stat. § 47a-1(b).

<sup>11</sup>. Conn. Gen. Stat. § 47a-1(f).

<sup>12</sup>. Conn. Gen. Stat. § 47a-1(h).

<sup>13</sup>. Conn. Gen. Stat. § 47a-1(j).

<sup>14</sup>. Conn. Gen. Stat. § 47a-1(k).

<sup>15</sup>. Conn. Gen. Stat. § 47a-1(m).

<sup>16</sup>. Conn. Gen. Stat. § 47a-3d; *Welk v. Bidwell*, 136 Conn. 603, 607 (Conn. 1950) (“In the case of a rental on a month-to-month basis the tenancy is not regarded as a continuous one. The tenancy for each month is one separate from that of every other month.”); *Corrigan v. Autopit*, 131 Conn. 71 (Conn. 1944) (an oral month-to-month tenancy commences on the first day of the month and expires on the last day of the month).

<sup>17</sup>. Conn. Gen. Stat. § 47a-3b; *FJK Assocs. v. Karkoski*, 52 Conn. App. 66 (Conn. App. Ct. 1999).

landlord; or, in the alternative, (3) “other circumstances showing agreement to continue the lease.”<sup>18</sup> Such periodic tenancy may be terminated unilaterally by either the landlord or the tenant,<sup>19</sup> and in the case of the landlord, through the service of a valid notice to quit.<sup>20</sup>

### 1-3:1 The Plain Language Act

The Plain Language Act stands for the proposition that a consumer contract must be written in plain language. Thus, a contract complies with the statute if it incorporates short sentences and paragraphs, everyday words, the actual names of the parties, simple and active verb forms, readable fonts, and it is coherent and organized.<sup>21</sup> This act applies to residential leases and rental agreements in that a residential tenant could be defined as a “consumer . . . who . . . leases . . . property . . . under a written agreement.”<sup>22</sup> A lessor who fails to comply with the Plain Language Act is liable “for statutory damages of one hundred dollars plus, at the discretion of the court, all attorney’s fees not to exceed one hundred dollars.”<sup>23</sup> A court may award statutory damages, but yet refrain from awarding attorney’s fees.<sup>24</sup>

### 1-3:2 Prohibited Terms in Rental Agreements/Residential Leases

Any terms or conditions may be included in a residential rental agreement so long as they are not prohibited by law.<sup>25</sup> A sampling

<sup>18</sup> *Webb v. Ambler*, 125 Conn. 543, 551 (Conn. 1939).

<sup>19</sup> *Hour Publ’g Co. v. Gorez*, 5 Conn. Cir. Ct. 419 (Conn. Cir. Ct. 1968); *FJK Assocs. v. Karkoski*, 52 Conn. App. 66 (Conn. App. Ct. 1999).

<sup>20</sup> *City of Bridgeport v. Barbour-Daniel Elecs., Inc.*, 16 Conn. App. 574 (Conn. App. Ct. 1988).

<sup>21</sup> Conn. Gen. Stat. § 42-152.

<sup>22</sup> Conn. Gen. Stat. § 42-151(a); *Marinuzzi v. Bankowski*, No. CVNH 8205-112-HA, NH 256, 1984 Conn. Super. LEXIS 349 (Conn. Super. Ct. July 9, 1984).

<sup>23</sup> Conn. Gen. Stat. § 42-154.

<sup>24</sup> *Keill v. Howland*, No. CV NH 6172, 1995 Conn. Super. LEXIS 2779 (Conn. Super. Ct. Sept. 1, 1995).

<sup>25</sup> Conn. Gen. Stat. § 47a-3; *Olin v. Traylor*, Nos. CVN 8308322AV & HA523, 1984 Conn. Super. LEXIS 360 (Conn. Super. Ct. Mar. 9, 1984) (Under Connecticut General Statute § 47a-4(a)(1), a lease agreement cannot contain a provision in which the tenant agrees to “waive or forfeit” certain remedies under the landlord tenant statute. For example, pursuant to a previous stipulated judgment agreement, a tenant cannot be required to agree to give the landlord the right to an execution under a subsequently signed lease agreement.).

of the specific terms prohibited by law with respect to residential rental agreements include the following: authorizing landlord to confess judgment on claim arising out of the rental agreement,<sup>26</sup> agreement by tenant to the exculpation or limitation of liability of the landlord arising out of law or the indemnification of the landlord for such liability or related costs,<sup>27</sup> agreement by tenant to waive the demand for security deposit interest,<sup>28</sup> agreement allowing landlord to evict tenant without court order,<sup>29</sup> consent by tenant to “distrain” his or her property in lieu of rent,<sup>30</sup> agreement by tenant to pay landlord’s attorney’s fees in excess of 15 percent of judgment entered against tenant in damages actions,<sup>31</sup> agreement by tenant to pay late fees/charges prior to the statutory grace period set forth in Connecticut General Statute § 47a-15,<sup>32</sup> or agreement to pay heat or utility surcharge if heat or utilities are already included in the rental agreement.<sup>33</sup> In short, any prohibited

<sup>26</sup> Conn. Gen. Stat. § 47a-4(a)(2).

<sup>27</sup> Conn. Gen. Stat. § 47a-4(a)(3); *Church v. Capodiferro*, No. 094723, 1991 Conn. Super. LEXIS 2284 (Conn. Super. Ct. Oct. 4, 1991); *Phoenix Ins. Co. v. Town of Vernon*, No. HHD07CV044025148, 2007 Conn. Super. LEXIS 113 (Conn. Super. Ct. Jan. 5, 2007) (citing *Johnson v. Fuller*, 190 Conn. 552 (Conn. 1983)) (this is in contrast to the commercial lease context where no such statutory prohibition applies); *Vincent DelMedico PPA v. Panda Properties, LLC*, No. KNL-CV-166027376S, 2017 WL 4106088 (Conn. Super. Ct. Aug. 7, 2017) (save harmless provision in lease synonymous with indemnification and therefore prohibited by § 47a-4).

<sup>28</sup> Conn. Gen. Stat. § 47a-4(a)(4).

<sup>29</sup> Conn. Gen. Stat. § 47a-4(a)(5); *M&M Wall St. Assocs. v. Maffucci*, No. CV980167029, 1998 Conn. Super. LEXIS 3738 (Conn. Super. Ct. Dec. 30, 1988) (citing *Berlingo v. Sterling Ocean House Inc.*, 5 Conn. App. 302, 306 (Conn. App. Ct. 1986), *rev’d on other grounds*, 203 Conn. 103 (Conn. 1987)) (any provision in a residential or commercial lease in which the tenant agrees that the landlord “may re-enter the demised premises without process of law” is not only unenforceable but more importantly unlawful, as it is in direct contravention of Connecticut General Statutes § 47a-4 and § 47a-43).

<sup>30</sup> Conn. Gen. Stat. § 47a-4(a)(6).

<sup>31</sup> Conn. Gen. Stat. § 47a-4(a)(7); *Bushnell Plaza Apartments v. McGadney*, Nos. CVH 8204811 & HA505, 1983 Conn. Super. LEXIS 554 (Conn. Super. Ct. Dec. 31, 1983) (attorney’s fees in damages action against residential tenant is limited to 15 percent if judgment against tenant); *Cobin West Apartments v. Garcia*, Nos. SCN 1679NB & HA428, 1983 Conn. Super. LEXIS 597 (Conn. Super. Ct. July 26, 1983) (in order for the residential tenant to be liable for the 15 percent of judgment imposed by the statute, the lease must have contained an attorney’s fees provision); *Watkins v. Dino Arno Enters. LLC*, No. CVN08112158, 2009 Conn. Super. LEXIS 2869 (Conn. Super. Ct. June 12, 2009) (An attorney’s fee provision in a residential lease that is ambiguous will not be enforced by the court).

<sup>32</sup> Conn. Gen. Stat. § 47a-4(a)(8).

<sup>33</sup> Conn. Gen. Stat. § 47a-4(a)(9).

provision under Connecticut General Statute § 47a-4 that appears in a lease is unenforceable.<sup>34</sup>

## 1-4 COMMERCIAL LEASES

Unlike in the residential context, the provisions contained in commercial leases are not generally governed by statutory mandates. However, there are a few instances in which certain provisions in a commercial lease must comply with statutory guidelines. For example, any provision in a commercial lease that requires a lessee to be “open for business seven days a week or any specified day of the week”<sup>35</sup> shall be void, as is any provision authorizing the waiver of a notice to quit except within the exception set forth under statute (i.e., waiver of notice to quit when a lease terminates by lapse of time).<sup>36</sup>

Other than three exceptions under Chapter 830 of the Connecticut General Statutes titled “Rights and Responsibilities of Landlord and Tenant,” Connecticut General Statutes §§ 47a-1 through 47a-22 specifically govern residential tenancies and thus are not applicable to commercial leases.<sup>37</sup> To that end, parties to a commercial lease have more latitude with respect to the provisions contained in commercial leases. Consequently, the obligations of the parties are more governed by the terms of the negotiations between them as opposed to the adherence to a particular statute. Notwithstanding the specific terms agreed upon by the parties, a commercial lease nonetheless imposes an implied covenant of good faith and fair dealing on both the landlord and tenant.<sup>38</sup>

<sup>34</sup> Conn. Gen. Stat. § 47a-4(b); *Church v. Capodiferro*, No. 094723, 1991 Conn. Super. LEXIS 2284 (Conn. Super. Ct. Oct. 4, 1991). See Sample Residential Lease, Appendix Form 2-015.

<sup>35</sup> Conn. Gen. Stat. § 47a-4b; *Phoenix Ins. Co. v. Town of Vernon*, No. HHD07CV044025148, 2007 Conn. Super. LEXIS 113 (Conn. Super. Ct. Jan. 5, 2007) (The statutory prohibitions in residential leases do not apply to the commercial lease context. One of the “only stated prohibition in the statute applies to a requirement that a business be open on a specified day or open several days a week.”).

<sup>36</sup> Conn. Gen. Stat. § 47a-25.

<sup>37</sup> *A&M Towing & Recovery, Inc. v. Guay*, 282 Conn. 434 (Conn. 2007); *669 Atl. St. Assocs. v. Atl.-Rockland Stamford Assocs.*, 43 Conn. App. 113 (Conn. App. Ct. 1996) (Connecticut General Statutes § 47a-4b and § 47a-11c expressly refer to “commercial tenancies,” and Connecticut General Statute § 47a-3d has been construed to apply to commercial premises).

<sup>38</sup> *Warner v. Konover*, 210 Conn. 150 (Conn. 1989); 2 Restatement (Second) Contracts § 205 (1981).

In order to meet the requirements of Connecticut's Statute of Frauds,<sup>39</sup> a commercial lease for more than one year must, at the minimum, contain the following rudimentary components: the names of the parties, a description of the property to be leased, the terms of the lease, the amount of rent, and the terms of payment of rent.<sup>40</sup>

### 1-5 DUE DATE FOR PAYMENT OF RENT/USE AND OCCUPANCY

In instances where the lease does not state the date when rent should be due and payable, the statute will impose such a due date into the rental agreement. Unless otherwise agreed, "periodic rent is payable on the beginning of any term of more than one month or less, and for terms of more than one month in equal monthly installment *at the beginning of each month.*"<sup>41</sup> For either written or oral leases where the time for the payment of rent is not agreed upon, the tenant will be required to pay rent "on the first day of the month."<sup>42</sup>

In situations where the landlord and tenant failed to enter into a specific rental agreement, "the tenant shall pay the fair rental value for the use and occupancy of the dwelling unit."<sup>43</sup> Although the statute refers to "dwelling unit," the obligation to pay use and occupancy in the absence of a lease has been enforced by courts in the commercial lease context as well.<sup>44</sup> However, where the tenant occupied the premises under an illegal lease, the landlord would be precluded from recovering any fair rental value of the premises under Connecticut General Statute § 47a-3c, or from any other recovery, even under the theory of quantum meruit.<sup>45</sup> A summary

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<sup>39</sup> Conn. Gen. Stat. § 52-550.

<sup>40</sup> *KMart Corp. v. First Hartford Realty Corp.*, 810 F. Supp. 1316 (D. Conn. 1993).

<sup>41</sup> Conn. Gen. Stat. § 47a-3a(b) (emphasis added).

<sup>42</sup> *Daniels v. John Doe I*, No. HDSP129424, 2004 Conn. Super. LEXIS 3886 (Conn. Super. Ct. Dec. 30, 2004).

<sup>43</sup> Conn. Gen. Stat. § 47a-3c.

<sup>44</sup> *RLO Props., Inc. v. Chapman*, No. CV065001650, 2008 Conn. Super. LEXIS 2542 (Conn. Super. Ct. Oct. 7, 2008).

<sup>45</sup> *Sippin v. Ellam*, 24 Conn. App. 385 (Conn. App. Ct. 1991).

**DUE DATE FOR PAYMENT OF RENT/USE  
AND OCCUPANCY**

**1-5**

process action cannot be based upon “nonpayment of use and occupancy.”<sup>46</sup> In calculating the fair rental value under § 47a-3c, the court may make a determination as to that amount and its determination of fair rental value will be upheld unless it is clearly erroneous.<sup>47</sup>

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<sup>46.</sup> *Duprey v. Bourque*, Nos. SPH 831020852MR & HA522, 1984 Conn. Super. LEXIS 416 (Conn. Super. Ct. Mar. 9, 1984).

<sup>47.</sup> *LeBlanc v. Tri-Town Shelter Servs.*, 110 Conn. App. 118 (Conn. App. Ct. 2008).

