



# Tenants' Rights & Responsibilities

As a tenant in Delaware you have rights under the Delaware Landlord-Tenant Code. This factsheet briefly outlines the most common laws concerning your rights and responsibilities. The full Landlord-Tenant Code can be found online here: [Delaware Landlord-Tenant Code](#). As a tenant, you have the right to organize in your community to improve and strengthen your rights. If there are rules on this list you disagree with, you can work to change them. This document is organized into 3 main sections: Pre-tenancy (seeking housing); During tenancy (renting); Termination of lease/eviction (ending your rental agreement by choice or force).

## Section 1: Pre-Tenancy

### Are you covered?

- The Code doesn't cover you if you're living in medical, educational, fraternal, religious, recreational, or correctional institutions.
- The Code does not cover you if you're living in a hotel or motel.
- The Code does not cover you if you have a nonrenewable lease of 120 days or less in certain locations (i.e. seasonal beach house rentals or tenant migrant workers where the employer provides housing).
- The Code does not cover certain tenants subject to land leases where the tenant retains title to the improvements.
- There are special laws for people who live in mobile/manufactured home communities where the landlord does not own the mobile/manufactured home.

### Discrimination

- No landlord can discriminate against a tenant or prospective tenant based on race, creed, religion, marital status, color, sex, sexual orientation, gender identity, national origin, disability, age, source of income, or occupation or having a child or children in the family.
- No landlord can refuse to rent/sublease, cancel an existing rental agreement or charge a greater amount for rent for the reasons written above.
- If you believe you were discriminated against under these conditions you should contact Community Legal Aid Society, Inc. (See Important Contact numbers).

### Application Fees

- The landlord can make a prospective tenant pay an application fee to determine someone's credit. The landlord must give you a receipt of this fee.
- Application fees do apply to residential leases.
- The fee can't be more than 10% of the monthly lot rent or \$50 (whichever is greater). This applies to mobile/manufactured home leases.

## Rental Agreement/Lease

- Leases for longer than 1 year must be in writing.
- You can and should ask for a written lease if you have a verbal lease/agreement with your landlord.
- Leases that have no specific length will be considered as a month-to-month lease.
- The landlord must provide a free copy of the written lease to the tenant before they move in.

## Things required to be in the lease

- The name and address of the landlord.
- The names and addresses of the owner(s) of the rental unit and the real property (the land and anything growing on it or attached to it like a building or fence).
- Any agreement between you and the landlord (written or verbal) which makes/changes the terms of the use of the rental unit.

## Things that can't be in the lease

- Either the tenant or landlord having to pay each other's attorney fees.
- Something eliminating your right to a trial for any disputes.
- Something that eliminates or limits the landlord's legal responsibilities.
- Something eliminating the rights you have as a tenant.

## Conflicts between the lease and the law

- Anything in the lease (written or verbal) that conflicts with the Code is invalid and unenforceable.
- If anything in the Code conflicts with federal housing regulations, the federal housing regulation will apply.
- For more info on federal regulations and updates on HUD in Delaware: [Department of Housing and Urban Development](#).

*This document does not provide any type of legal advice. H.O.M.E.S. is not a legal organization. Our goal is to provide you with general information and opportunities to advocate for yourself and others. Contact us at [dehomescampaign@gmail.com](mailto:dehomescampaign@gmail.com).*

## Security Deposit

- If your lease is 1 year or more (unfurnished apartment): security deposit = 1 month's rent or less.
- If your rental unit is furnished: there is no limit for the security deposit.
- A lease with no specific length/a month-to-month lease: security deposit can be more than 1 month's rent (after 1 year in the rental unit you can get back any extra amount paid if the deposit was more than 1 month's rent).
- Pet deposit: 1 month's rent or less regardless of lease term (certified service animals don't require a pet deposit).

## Getting your security deposit back

- Before leaving the rental unit, you have to give the landlord a forwarding address (in writing by sending a letter and get a certificate of mailing from the post office) to receive your deposit.
- Within 20 days of the termination of your lease, the landlord has to return the full security deposit OR give you a list with any deductions from the deposit for damages to the rental unit. If the landlord does not give you this list, they must return the full security deposit to you.
- If you disagree with any of the deductions, tell your landlord within 10 days of receiving the list (in writing by sending a letter and get a certificate of mailing from the post office).
- If you don't give a forwarding address prior to terminating your lease you can still request (in writing) the unused portion of their security deposit for up to one year after tenancy termination.

## Section 2: During Tenancy

### Moving in

- If the rental unit is not ready for you to move in at the beginning of your lease, you don't have to pay rent. You are allowed to give written notice to terminate your lease if this happens. You can also request a full refund of any prepaid rent or security/pet deposit.
- You can go to court to recover reasonable expenses used for substitute housing for up to a month if you could not enter the rental unit because the landlord failed to adhere to housing codes. The expenses cannot exceed the agreed upon rent for one month.
- The rental unit cannot endanger your health or safety. Any areas, facilities, and utilities maintained by the landlord must be kept clean and in good working order.
- You can put in a new lock if you pay for it, your landlord is notified in writing (by sending a letter and get a certificate of mailing from the post office, and the new lock doesn't cause damage to the door.

### Repairs

- When you notify the landlord (in writing by sending a letter and get a certificate of mailing from the post office) of a potential issue, they must start repairs within 10 days and must complete repairs within 30 days.

- If the landlord doesn't start the repairs within 10 days you must send a second letter informing them that you will make the repairs yourself.
- If you make the repairs yourself you can subtract the cost from your rent (total subtracted must be either less than 1/2 month's rent or \$200).

### Paying rent

- You and your landlord agree to when and where/how you pay your rent.
- Cash payment: the landlord must give you a receipt within 15 days of payment and must keep a record of all payments for at least 3 years.
- Late charge (if included in lease): can't be more than 5% of 1 month's rent and can't be enforced until 5 days after due date.
- Failure to pay rent: the landlord can send a notice which requires rent to be paid within 5 days (from the date the notice was sent) or the lease will be terminated. The landlord must receive a court order before they can try to remove you from the property.

### Your obligations to the unit

- Keep the rental unit and plumbing fixtures clean and safe.
- Dispose of waste in a clean and safe way.
- Use facilities (electricity, plumbing, heating, etc.) in a reasonable way.
- Don't damage or allow guests to damage the rental unit or facilities.
- Don't interfere with the smoke detector or carbon monoxide detector.
- Tell the landlord (in writing by sending a letter and get a certificate of mailing from the post office) of any needed repairs.
- Using the rental unit only as your home (unless otherwise stated in the lease).

### Rules from landlord

- Any rules and regulations must be reasonable, clear, and enforced in a fair way.
- The landlord must tell you these rules at the beginning of your tenancy. If new rules are created by the landlord after you've moved in, the landlord must tell you and you both agree to it in writing.

### Landlord's access to the unit

- The landlord has to give you at least 48 hours' notice to enter the rental unit (unless for repairs requested by you or for emergencies).
  - You have to give access during business hours for the landlord to inspect the unit, read utility meters, make repairs, decorations, alterations, or improvements or to show the unit to prospective tenants.
  - You can be held legally responsible for any harm caused by not giving the landlord access to the unit (considering they gave 48 hours' notice).
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## The landlord can't...

- Retaliate against you (i.e. trying to force you to leave the rental unit or threatening to increase the rent because you made a complaint or joined a tenants' union).
- Illegally exclude/evict you from the rental unit.
- Discriminate against you if you have received assistance for domestic violence, sexual violence, or stalking.

## Section 3: Termination of Lease/Eviction

- If the lease is for a specific lease term both the landlord and the tenant have to honor the lease until it expires.
- If either party wants to terminate an existing lease at the end of the lease term they must give 60 days' written notice prior to the expiration of the lease.
- If either party would like to terminate at a time prior to the lease expiration they would have to follow whatever provisions were agreed to in the lease agreement regarding early terminations.
- If neither party provides 60 days notice to terminate prior to the expiration of the lease term, the lease will convert to a month to month agreement.
- Month to month leases can be terminated by either party by providing 60 days written notice at any time. The 60 day time period starts from the first day of the month following the day the notice was sent.
- In certain situations, you can end the lease with less than 60 days' notice.

### Notice by tenant: 30 days

- You have to move more than 30 miles away because of work (required by your current employer, not a new job).
- You or your immediate family member (who lives with you) has a serious illness which requires you to move.
- You are accepted into a senior citizens facility, group facility, or retirement home.
- You are accepted into subsidized private/public housing.
- You enter military service on active duty.
- You are a victim of domestic violence, sexual violence, or stalking or are seeking relief for domestic violence from any court, police agency, or domestic violence program/service.

### Notice by tenant: 15 days

- The landlord repeatedly violates the Code or breaks the contract within the first 6 months of tenancy.
- If after 15 days' notice, the landlord doesn't fix any condition which is depriving you from living safely in the rental unit.

### Notice by tenant: 7 days

- After a fire or other destruction to the rental unit.
- The landlord must return any security/pet deposit or prepaid rent (unless the landlord is entitled to keep all or part of it).

### Notice by tenant: 2 days

- If the landlord fails to provide essential services for more than 48 hours after being notified by you in writing (by sending a letter and get a certificate of mailing).

### Eviction

- There are three reasons a landlord can evict a tenant:
  1. The rental term is over.
  2. The tenant is behind on rent.
  3. The tenant has breached some clause of the lease.
- The eviction process starts by your landlord sending you a written notice of the reason for the eviction and the date the landlord wants you to leave.
- If the reason is failure to pay rent, you will have 5 days to pay before the lease is terminated. If the reason is violation of an important part of the lease, you will have 7 days to correct the violation before the lease is terminated.
- The landlord can immediately terminate the tenancy if you cause or threaten to cause irreparable harm to another person at the rental unit, the rental unit, or the surrounding property. The landlord does not have to give any notice before filing an eviction lawsuit in this situation.
- If rent is not paid or the lease violation is not corrected within the time frame your landlord must then go to Justice of the Peace Court and file a complaint against you.
- After a complaint is filed a hearing will be scheduled. You will be provided notice of the date and time of your hearing. At the hearing you and your landlord can explain to the Judge with evidence and witnesses why you should or should not be evicted.
- If the Judge finds in favor of your landlord, after the hearing is completed your landlord will be able to take back the property. This will not happen on the day of your hearing. If you attended your hearing, your landlord will have to wait 5 business days before they can request a Writ of Possession.
- After your landlord requests the Writ of Possession from the court, a Constable will come to your property and provide you with a 24 hour eviction order. A 24 hour eviction order is a notice telling you that unless you move out of the property within 24 hours the Constable will remove you and change the locks.
- If you leave any personal belongings in your rental unit you will have 7 days to remove them before your landlord can discard anything you left behind.
- **If you receive an eviction notice from your landlord you should contact one of the legal aid agencies listed below as soon as possible.**

### Important Contact Numbers

2-1-1

Centralized Intake: 1-833-346-3233

Community Legal Aid Society, Inc.: (302) 575-0660

Delaware Volunteer Legal Services, Inc.: (302)-478-8680

Delmarva Power: 1-800-375-7117

Legal Help Link: <https://delegalhelpink.org/>

Legal Services Corporation of Delaware, Inc.: (302)-575-0408

New Castle County Code Enforcement: (302) 395-5555

Wilmington Dept. of Licenses and Inspections: (302) 576-3030