

# **A Guide to Tenant Rights & Responsibilities**



Renting an apartment or house is something almost everyone does sooner or later. Whether you already have a place to live or if you are currently searching, this brochure contains some advice that will hopefully make renting a little easier.

Please keep in mind that this brochure only has general information and may not fit your specific situation. Reach out to a lawyer if you have any questions.

## **Finding a Place to Rent**

Two of the most important considerations to every renter are price and condition. What you can afford will be up to you, but when you look at advertisements, remember that if the price seems too good to be true for the size and location of the rental unit - then it probably is! Most urban areas of Delaware have a shortage of good, affordable rental units, so if it sounds like a bargain, it will probably be

because the rental unit is in bad condition.

The condition and location of the rental unit can affect the health and safety of you and your family. Buildings that have not been properly maintained may have lead paint, poor heating or plumbing and other problems. Buildings in some areas will have illegal drug activity in the hallways. Before you consider renting something in bad condition or in a bad area because you think you can't afford anything better, ask yourself if it would be better to pay the same amount of money for a smaller, but safer, apartment elsewhere. After living in a bad location for a while, you'll decide that giving up size for more safety is a good trade.

Finding a safe place to rent or deciding if a specific rental unit is safe is easier than it sounds. One of the best ways to find a safe place to live is to ask around. Your friends and family may know of good landlords with good buildings available for rent. Such rental units may never be advertised in the newspaper. If you are interested in a specific apartment building, complex, or house, ask around to see if anyone knows about its reputation for safety or other problems.

Before agreeing to rent any rental unit, call the local building inspector to ask about the area and the building. If you are renting in the City of Wilmington, all rental units must pass a pre-rental inspection BEFORE the landlord can take any money from you or rent it out. Call the Department of Licenses and Inspections (576-3030) to find out if your rental unit passed inspection.

You can check the quality of the rental unit yourself. Walk around and look for problems. Run the water in the sinks and flush the toilets. Try the heater or air conditioner if possible. Open all the cabinets in the kitchen to check for insects. If possible walk around the hallways if you are looking at an apartment building. Also walk around the neighborhood. If you don't feel safe - don't rent there.

## **Conditions in the Rental Unit**

Under the Delaware Landlord-Tenant Code, landlords have a legal duty to keep a rental unit in a safe and clean condition. That includes making any necessary repairs while you live there. Local laws, such as county and city codes also have specific requirements. All rental units must have heat and hot water. If you think your rental

unit has a problem the landlord should fix, [send the landlord a letter](#) explaining what repairs are necessary (keep a copy, you might need it later). If the repairs are not made, call the local building inspector and talk with them about it. Remember that you cannot be evicted or punished by the landlord for calling an inspector. If your landlord tries to do something to you because you called an inspector, or if the repairs are not made, call Legal Services or the Attorney General's office.

Withholding rent from a landlord is risky business. In the City of Wilmington, the inspectors can help you set up a rent withholding account IF the conditions are bad enough. Withholding rent on your own is almost guaranteed to get you sued by your landlord for non-payment of rent. If the judge disagrees with the amount you withheld, and you can't pay the amount you owe right away, you could get evicted.

Remember that you can take your landlord to court in order to get problems fixed or if the landlord has done something else to violate the lease. You do not need a lawyer to take your landlord to court.

Beware of landlords that promise to fix things after you move in. Once you give them your money and move in, they have less incentive to keep their promise. Tell them you will only rent the unit if the problems are fixed before you give him any money.

Tenants have responsibilities for the condition of the rental unit too. If you, a family member, or a guest damage anything, you will be responsible for fixing it. If it is not fixed by the time you move out, the landlord is allowed to keep part of your security deposit to pay for repairs. If there is repeated damage, or if the damage is serious enough, you could even be taken to court and evicted. So take good care of your rental unit. Even if you don't own it, you are responsible for it.

## **Your Lease**

Whenever you rent a house or apartment, you make a lease. Even if you never sign anything and just give the landlord some money in exchange for the key - you still have a lease. Oral and written leases are both legal and can be enforced in court. A lease is a promise by you to pay the rent every month on the day it is due. It is also a promise by the landlord to give you a rental unit that is clean and safe. If your

landlord can't keep his promise by letting you into your apartment, or by keeping it in safe condition, you can take him to court and he will get in trouble. BUT if you don't keep your promise by paying the rent, the landlord can take you to court and evict you. Just like you don't need to tolerate the landlord's excuses (I'll fix it next week, etc.), the law says your landlord does not need to tolerate your excuses for not paying the rent ("I lost my job, I'll have the money in a couple weeks"). Renting is a two-way street, so make sure you can pay your rent on time, or start looking for a more affordable place to live.

If your landlord offers you a written lease, READ IT from one end to the other BEFORE you sign it. Leases can include rules such as "no pets." If you break these rules, you can be evicted, so its very important to know about them. Also, sometimes a landlord will ask you to sign a lease that says he has given you a copy of the Landlord-Tenant Code. Your landlord is required to give you a copy of the [summary of the Landlord Tenant Code](#). If he doesn't, don't sign! You may be giving up some of your legal protections if you say you got a copy when you really didn't. Beware of any landlord or rental agent that says "we'll work it out" or "don't worry about that" when you see something you don't like in the lease. If it's written in the lease, the landlord's words don't matter. All that matters is what's in writing. If your landlord offers to work something out, get it in writing or it won't happen.

If your lease doesn't have a starting and ending date, then the law says your lease runs from month to month. The only way to end a month to month lease is by giving your landlord a letter (telling her isn't good enough) saying you want to end your lease. By law, you must give your landlord 2 months notice (start counting from the 1st day of the upcoming month). If you give less, you will be responsible for the rent anyway. This is also the only way your landlord can end a month to month lease with you. Thirty days notice isn't enough.

**BUT** remember that if you break a rule, or don't pay rent, the 60 day rule doesn't apply and you can be evicted with much less notice. You are still entitled to written notice, but you will only get 5-7 day's notice and the landlord may take you to court to evict you.

If you have a lease with an ending date, and the ending date goes by, and you keep living there **with** your landlord's permission, your lease changes to a month to month lease. If you want another lease with a specific ending date (such as another 1 year lease), you must sign a new lease with the landlord. If you keep living there

**without** your landlord's permission, that makes you a "holdover tenant." If you are a holdover tenant, your landlord can go to court and get you evicted. You will also be ordered to pay rent for the time you stayed, and you could even be ordered to pay DOUBLE the rent as a penalty. If you are worried about this happening, be sure to call Legal Services or the Attorney General for free advice.

## Rent Money

A big part of your lease is the date the rent is due and what happens if it's late. If rent is due the 1st of the month and you pay on the 2nd of the month, your rent is late. Even though the law says the landlord can't charge a late fee until you are at least 5 days late, the rent is still late. If your rent is late a lot, you could be evicted or your landlord might refuse to renew your lease.

If your pay or benefit check comes later in the month, such as on the 15th, and you think you won't have the money to pay the rent on the 1st of every month, ask the landlord to change the due date for the rent. The best time to ask is BEFORE you sign the lease. Despite what some landlords might tell you, the rent due date can be any date that you and the landlord agree on. Just make sure it's written in the lease. Many people have leases that say their rent is due on the 15th of the month instead of the 1st. If you get paid on the 15th each month, changing your due date will be better than being late every month.

When your rent is late enough that the landlord can charge you with a late fee, you must pay the rent + the late fee, or the landlord can go to court and say you didn't pay the rent. If the next month comes, any money you pay goes to back-rent and late fees 1st. For example, if you don't pay January's rent and then February comes and you pay rent on the 1st of February, your landlord will use the money to pay January's rent and you will still owe a late fee for January + a late fee for February + February's rent. If you pay late, the late fee becomes part of your rent bill. If you don't pay the late fee, you can be evicted.

For this reason, it is very important to keep track of how much money you pay and when. Keep your [receipts](#) and [keep a list of payments](#). That way, if your landlord claims you didn't pay, you can prove you did. Don't trust your landlord to keep track for you.

## Evictions & Lockouts

Your landlord can NEVER, NEVER lock you out or evict you, or make the rental unit unlivable (ex. by turning off the heat or water) without going to court and getting permission. If the landlord does otherwise, call Legal Services immediately for help or go to the Justice of the Peace Court and file a case to get back in. For temporary food and shelter, [Online Guide to Human Services | Delaware 2-1-1](#) or call 1-800-560-3372 or dial 2-1-1.

The court always sends you notice when the landlord requests to have you evicted and if the landlord wins permission to have you evicted. If you get a letter from a court or your landlord that talks about going to court, don't ignore it! That notice could mean that you will get locked out legally if you don't do something. Legal Services can talk to you about such letters if you need help - but you must call as soon as you get the notice. If you delay, you could give up your rights. Certified mail is especially important because the court sends papers that way - pick it up! [Read the Legal Services Evictions guide to learn more.](#)

## Moving Out

To end a lease, make sure you tell the landlord in advance and return your key. You can never go wrong by giving your landlord a [letter](#) 60 days in advance saying when you will move out. Telling your landlord that you will be moving "soon" without a date is not good enough. Your landlord is entitled to know **exactly** when you are moving or she has the right to assume you will stay indefinitely. (Imagine if your landlord said "you can move into your new apartment soon" but never told you exactly when!) Just remember that when you tell the landlord you are moving out, the landlord will probably start looking for a new tenant to replace you, so it may be impossible to take back your move-out notice. If you move out before the lease ends, or before you said you were going to leave, you could owe rent from the day you actually left to the day originally said you were going to move.

# Security Deposit

If you have a [security deposit](#), when you move out you should also give the landlord a forwarding address **in writing** so you can [get your deposit back](#). Make sure the apartment is clean and fix anything you broke. You must remove everything you own. Take pictures and have a friend look at the empty apartment before you give the key back so you have proof of how it looked. Give the key to the landlord by hand. Never slide it under the door. If the landlord thinks you haven't returned the key, you will be charged for rent as if you still lived there. If necessary, send it by "certified mail, return receipt requested." Your landlord is allowed to keep part or all of your deposit to change the locks because you didn't return the key, for back rent, damages, dirt, or for removing anything you left behind.

After you move out, you should get a letter within 20 days that either includes a check for your deposit or a letter from your landlord saying she is keeping part of your deposit and giving you a check for the rest. If the landlord keeps some or all of your deposit, **STOP!** If you want the rest of the deposit back, you must send a letter complaining about the deduction to the landlord. You have 10 days to do this. If you wait, you are stuck. Also don't cash that check!! If you do, you won't get the rest of your money back. If you don't get a letter or your deposit, you can go to court to get it. Ask Legal Services for details.

# Utilities

Utilities are a big deal when you move in and when you move out. If the utilities are in your name, they stay that way until they are shut-off, or someone else (like a roommate or the landlord) agrees to let the bill get put into their name. If you have trouble paying the utility bill, call the Delaware Help Line 1-800-464-4357 for a referral to an energy assistance program (these are usually only available in the winter). You can also ask the power company to set up an averaging bill payment plan. That way your bill will be the same almost every month and it will be easier to make a budget.

When you move out, [call the power company](#) in advance to make sure the bill is either switched into someone else's name, or that the power is shut off. If the

utilities are to be shut off, make sure you personally let them in to shut-off the power. Your electricity can usually not be turned off without access to your apartment or house. Don't trust anyone else to do it. If you move out and the power is still on, the landlord can rent the apartment or house to someone else and the new tenant (or the landlord) will get free electricity and gas that you will get billed for. If you want to get utilities at your new home, you will have a lot of trouble because of the old apartment. Once this happens, it is very hard to ever get the utilities at the old house or apartment taken out of your name. You will end up with a huge bill on your credit report.

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## [Housing](#)

### Links

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[Summary of Landlord Tenant Code](#)

[RESUMEN DEL CÓDIGO DE PROPIETARIO-ARRENDATARIO RESIDENCIAL](#)

[Rent Receipt](#)

[Rent Payment Record](#)

[Lease Termination Letter](#)

[Security Deposit Return](#)

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