

[Legal Services Corporation of Delaware, Inc.](#)

A non-profit law firm and community education organization assisting low-income families in Delaware
www.lscd.com

[Evictions - What You Should Know \[1\]](#)

If you rent a house or apartment, there are some important facts you should know about being evicted. The Delaware Landlord-Tenant Code lists all of the laws and rules describing when and how a landlord can evict a tenant.

If you do not already have a copy of the Delaware Landlord-Tenant Code, you can call one of the telephone numbers listed at the end.

A landlord can legally evict a tenant for several reasons:

- [Failure to pay rent](#)
- [Violating an important part of the lease](#) or the Delaware Landlord-Tenant Code
- [Holding-over](#) (staying after the lease ends without permission)
- [Conviction of a Class A misdemeanor or felony](#) that threatens person or property

There are some reasons for which a landlord can *never* evict a tenant:

- The tenant complained about problems in the apartment or house
- Race, religion, sex, marital status, national origin, disability, age, or occupation
- The tenant has children.

Get a summary of the [Delaware Landlord-Tenant Code](#) [2] and read it from front to back!

[Failure To Pay Rent](#)

If you do not pay the amount of rent that is due every month, the landlord can go to court to evict you. To do so, the landlord must first send you a letter stating that unless all of the rent due is paid, the landlord will terminate the lease

and take you to court. The letter must set a deadline giving you at least 5 days to pay. This letter is often called a "Five Day Letter."

Then, if you do not pay in full or move out by the deadline, the landlord can go to Justice of the Peace Court and file a case asking for the rent money and to have you evicted. Remember that the amount of money you owe could include late fees and back rent from previous months. The law allows the landlord to ask you to pay all of it or be taken to court.

Violating An Important Part Of The Lease Or Landlord-Tenant Code

Most leases include rules and promises by the tenant. Some examples are: a promise to not make noise that disturbs the neighbors, or a promise not to run a business out of the house without the landlord's permission. The Landlord-Tenant Code also includes rules that are made a part of all leases automatically, even if the lease is not written down. Some of these are: a promise to keep the property clean and safe, and a promise not to damage or destroy any part of the property.

If you break one of these rules or promises, the landlord can go to court to have you evicted. To do so, the landlord must first give you a letter that does the following:

1. explain what rule you have broken and what you are doing wrong,
2. give you at least 7 days to correct the problem (not 5 days as when rent is late),
3. tell you that if the problem is not corrected by the deadline, the landlord may terminate the lease and go to court to have you evicted,
4. warn you that if the same rule is broken again within 1 year, the landlord can go directly to court without giving a new notice.

If you do not fix the problem, or if you fix it and break the same rule again within 1 year, your landlord can take you to court to have you evicted.

Conviction Of A Class "A" Misdemeanor Or Felony

If you (or a family member living on the premises) is convicted of a class A misdemeanor or a felony while living in the house or apartment and the conduct that led to the conviction caused or threatened to cause irreparable (unfixable) harm to any person or property, the landlord can immediately terminate the lease and go to court for an eviction. In this situation, the landlord does not need to warn you with a letter.

Holding-Over

For people that rent month to month, with no set ending date for when you must leave, the landlord can end the lease by giving you, at least, 60 days written notice. If you have a lease with an ending date, the landlord must tell you 60 days before the lease ends, in writing, that he will not be renewing the lease. Otherwise, after the ending date, it

continues month to month.

If the landlord has notified you that the lease will not be renewed, then you must move out by the last day of the lease.

If you do not move out, then you are "holding-over" and the landlord can go to court and seek to have you evicted. The landlord does not need to give any additional warning or notices. The notice that the lease would not be renewed is enough.

If you lose in court, the law says that you can be ordered to pay double your daily rent as a penalty until you move out.

When Your Landlord Takes You To Court

If your landlord has gone to court to evict you, the court will notify you and tell you when and where to go to court. You will be notified in one of two ways:

1.
By certified mail, return receipt requested:
 1.
If you get a card from the Post Office telling you to pick up some certified mail, GET IT! If you do not, the court will evict you anyway and you will not get a chance to defend yourself.
2.
By Constable:
 1.
A Constable will try to deliver the notice to you in person. If you are not home, he will tape it to your door.

Normally, the court date will be 2 to 4 weeks after the date your landlord files his case.(It can be more or less.) The date depends on how busy the court is.

If you get a notice telling you to go to court, don't ignore it.

If you want help, call one of the numbers at the end of this brochure.

On the court date, be sure to go to court early. There will be a trial in front of a judge. Both you and the landlord will have a chance to tell their side of the story. If you do not go to court, your landlord will win. If you are late, the court will go ahead without you, so get there early.

If You Lose In Court

If you lose in court and your landlord has asked for "possession" of your apartment or house, the court will order you to move out. If there was a complete trial on the summary possession and you lose, you will only have 5 days to appeal. On the other hand, if a "default judgment" is entered (most likely if you did not appear for court), you will only have 10 days to file a "motion to vacate".

If you do not appeal *and* ask for a "stay of proceedings," the court will issue a 24 hour eviction notice to the Constable who will most likely post it on your door within a week after the time to appeal is up. Also, to prevent execution on the judgment during the time of the appeal, you must provide a bond or otherwise demonstrate your ability to pay all court costs, money damages and rent, if you lose the appeal.

When you get an eviction notice, act fast!

The 24 hour eviction notice means that the Constable will be back in a minimum of 24 hours. If you are still there, he will make you leave. The constables only work during daylight hours, Monday through Friday. So, if the 24 hour notice is posted on Friday, you will have at least until Monday morning.

If you do not have all of your belongings out of the house by the time the Constable comes back, you will have to leave them behind.

The landlord can remove your belongings and store them or leave them where they are for 7 days. If the landlord wants to, he can charge you for storing your property.

If, at the end of 7 days, you have not claimed your property, the landlord can do whatever he wants with your property including keep it, sell it, or leave it on the street. He cannot hold your property hostage until you pay the rent but he can ask for his storage costs.

[Making A Deal](#)

If you want make a deal or payment arrangement with your landlord, try to get it in writing and be sure you understand exactly how much you must pay and when. A court judgment for back rent will usually include interest and court costs, so you may owe more money than you expect.

Unfortunately, your landlord is not required to make a deal with you or accept a payment plan. He might want all his money immediately.

So, if you think you might lose in court, or if you don't have enough money to pay your landlord, start looking for a new place to stay immediately. Do not let yourself and your family be left without a home.

There are some things a landlord can **never** do to evict you. They are:

- Change the locks without getting a court judgment against you first.
- Turn off the electricity, gas, or water.
- Take any of your property.
- Threaten to hurt you or anyone else if you dont pay.

[Where To Call For Help](#)

New Castle County and Sussex County

Legal Services Corporation of Delaware, Inc.
100 West 10th Street, Suite 203, Wilmington
New Clients Call: (302) 478-8850

Kent County

Legal Services Corporation of Delaware, Inc.
208 S. Governors Ave., Dover (302) 734-8820
New Clients Call: (800) 773-0606

Anywhere in Delaware

Consumer Protection Unit, Delaware Attorney General's Office
(302) 577-8600 or 1-(800)-220-5424

Legal Help Link

(800) 773-0606

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