



# Gearing Up For Your Transitions

## Frequently Asked Questions Housing & Legal Issues

The following information is from [Community Legal Aid Society Inc.](#) and Delaware State Agencies.

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### **Can My Landlord Evict Me From My Rental Unit Without a Valid Court Order?**

No. The law in Delaware requires a landlord to obtain an order from the Justices of the Peace Court (“JP Court”) before evicting a tenant from the rental unit. The landlord must go to JP Court and file a lawsuit for “summary possession”. It is only after a hearing and a judgment from the Court that a landlord can evict a tenant from the rental unit.

If your landlord tries to evict you without an order from the Court, you should call the police immediately. The police should advise the landlord that he or she is trespassing and that they must go have an order from the Court to make you move.

### **Does My Landlord Have to Send Me An Eviction Notice Before Filing an Action in Court?**

Before filing a complaint with the court to evict a tenant, the landlord must send the tenant a written notice terminating the landlord-tenant relationship. The notice must be sent in a certain way and the content of the notice depends upon the reason for the landlord’s action.

The landlord must send the termination notice in writing. The landlord cannot tell you on the telephone or when the landlord comes to collect the rent. Delaware Law requires that the notice must be in writing.

The landlord must send the notice in one of three different ways. The notice can be sent by certified or registered mail, by certificate of mailing or it can be hand-delivered. The notice cannot be slipped under your door or left under the windshield wiper of your car.

If you receive a notice of certified or registered mail from your landlord, you must pick it up! If you ignore the notice of certified or registered mail, and the letter is returned to the landlord, the landlord can still use that letter in Court to evict you. The Court deems that the notice is delivered effectively as long as the landlord uses the correct address. It does not matter that you did not pick up the letter.

If you receive a termination notice DO NOT THROW IT AWAY. You should keep it for your records and show it to an attorney if you have one. Quite often there are errors in the contents of the letter which can prevent the landlord from evicting you from your rental unit.

## **What is the Content of the Termination Notice?**

The content of the notice depends upon the reason for the landlord's action. The Delaware Residential Landlord-Tenant Code requires the landlord to use different types of notices for different reasons for eviction.

### **Non-Payment of Rent**

If the landlord is terminating the tenancy because the tenant did not pay rent, the landlord must send the tenant notice that the rent is due and that the tenant must pay the rent due within a specified time after the date on which the notice is sent. In most cases, the landlord must give the tenant at least 5 business days to pay the rent. The notice must also advise the tenant that if the rent is not paid within the time specified in the notice, the tenancy will be terminated.

If the tenant pays the rent within the period specified in the notice, the landlord cannot evict the tenant from the rental unit. If the rent is not paid by the date mentioned in the notice, the landlord can file an eviction complaint with the Justices of the Peace Court ("JP Court") and obtain an eviction order (a "writ of possession").

### **Lease Violation**

If the landlord wants to terminate the tenancy because the tenant violated the lease or a rule the landlord must send the tenant written notice describing the violation and giving the tenant seven calendar days to correct the problem. The notice must also state that failure to correct the violation may lead the landlord to terminate the tenancy and file a complaint for the tenant's eviction. Please be aware that if the violation is not corrected, or if the same violation is repeated within one year following the notice, the landlord may file a complaint for eviction with the JP Court.

To show you how this works suppose the landlord sends a seven day notice to the tenant to repair a hole in the wall made by one of the tenant's children. The tenant has seven days from the date the letter was sent to fix the hole in the wall. If the hole is fixed within seven days the tenant may stay. If not, the landlord can file an eviction action at the JP Court.

### **Termination Without Cause**

If the landlord is not terminating the tenancy because the tenant did something wrong, but is terminating the tenancy because the landlord simply no longer wants to rent the property to the tenant, the landlord must send a different written notice. The landlord must send the tenant the notice of termination at least 60 days before the end of the lease term. If the tenant does not move at the end of the sixty day period the landlord may file an eviction complaint with the JP Court.

The “term” is the length of time for which the landlord and tenant agreed for the rental of the property. If the landlord and tenant agreed to a one year tenancy, the term is one year.

The 60 day period for the notice does not begin to run until the first day of the month after the landlord sent the notice. It sounds confusing, doesn't it? Here is an example: *If the tenant receives a 60 day notice on the third day of September, the 60 day period does not begin to run until the first day of October (the “following month”). Consequently, the tenant would not have to move from the rental unit until December 1st. (60 days from October 1st).*

However, if the tenant receives the notice on the first day of the month, the 60 days begins immediately.

If the tenant does not have a written lease or the lease term is from month to month, the landlord must give the tenant 60 days notice. As above, the 60 days does not begin to run until the first day of the month after the landlord sent the notice.

These are the most common reasons that a landlord terminates a tenancy but there are other reasons and corresponding notice requirements as well. In addition, the requirements mentioned above vary if a tenant lives in a mobile home park or in subsidized housing. You should contact CLASI or a private attorney as soon as possible for assistance if you receive a termination notice.

## **What Happens When the Landlord Files an Action for Possession (Eviction) with the Court?**

In order to remove a tenant from rented property, a landlord must file a written “complaint” with the Justices of the Peace Court (JP Court). A “complaint” tells the Court why the landlord wants a tenant to move. The complaint can ask for return of the rental unit, damages and for unpaid rent. The complaint can also ask that the tenant be assessed court costs.

After the landlord files a complaint, the Court schedules a trial to determine whether the statements in the complaint are true. The Court also will decide whether, if the statements are true, the landlord is entitled to recover possession of the rental unit. A trial concerning a landlord's complaint for eviction (court forms use the term “possession” rather than “eviction”) usually occurs fifteen days after the complaint is filed. This time period may be longer if the Court is very busy.

A Court constable will deliver a copy of the complaint to the tenant, along with written notice of the date and time of trial. The constable will deliver the notice by hand to an adult at the rented property, by attaching the documents to the rented property and/or by sending it by certified mail.

At the trial the landlord will tell the Court why an eviction is required. The tenant can tell the Court why the tenant believes that the tenant is entitled to stay in the rental unit. Witnesses also

may testify on behalf of the landlord or the tenant. After the testimony, the Court makes a decision. Usually, the Court will make a decision right away, but sometimes, if there is a lot of testimony, the Court will send out a decision in the mail.

If the Court denies, or rules against, the landlord's claim for possession the tenant is entitled to remain in the rented property. If, on the other hand, the Court awards possession to the landlord, the landlord may, after waiting five business days, request a "writ of possession".

A "writ of possession" is an order directing the Court constable to evict the tenant from the rental unit. The constable will deliver a written notice to the rental property to warn the tenant that the landlord has obtained a writ of possession and the tenant has 24 hours to move. The tenant must move within 24 hours after receiving the writ from the constable.

If the landlord or tenant is unhappy with the Court's decision, an appeal may be filed by either party. The appeal must be filed within five business days after the date of the decision. Ordinarily, the Court charges a fee for the appeal and requires a "bond". If a party is low-income and cannot afford to pay a filing fee or a bond, the party can fill out a form with the Court which asks the Court to waive the fee and bond.

An appeal is heard by a panel of three Justices of the Peace. An appeal of an eviction case is conducted as if the original trial never occurred. In other words, it is a completely new trial. You may testify and call all of your witnesses again. Do not assume that the judges know any of the testimony from the first trial. The decision of the three judges after the hearing is final and cannot be appealed by either party.

If you feel you need legal assistance from CLASI please call us as soon as you receive notice of the court date. CLASI will need as much time as possible to investigate your case prior to trial. In addition, CLASI attorneys are quite busy and may not be available for trial upon short notice.

## **How Do I Terminate My Lease When I Want to Move?**

Tenants often have problems when they try to terminate their leases. You should be aware that you cannot normally terminate your lease unless you give the landlord 60 days written notice prior to the end of the lease term. For example, if you have a lease for one year beginning on October 1st, you generally cannot terminate the tenancy until September 30th. In order to terminate your tenancy by September 30th, you must give the landlord notice before August 1st (60 days in advance) that you are terminating your tenancy on September 30th.

In a tenancy for a specific term, you generally cannot terminate the lease prior to the end of the term. If you terminate the lease early or abandon the rental unit before the end of the term, your landlord can recover damages for the early termination.

The procedure for terminating your lease is slightly different if you have a month to month tenancy. A month to month tenancy can occur in several ways. Normally, the parties agree to the term of the tenancy being month to month. However, if no term is specified in your lease, you have a month to month tenancy.

Your tenancy also may change to a month to month tenancy from a term tenancy. If you have a lease for a term, such as one year, and the lease does not provide that it is renewed for an additional year after the initial year has passed, the lease does not automatically renew for the

same term. Instead your tenancy converts to a month to month tenancy once the first lease term expires.

A month to month term technically ends each month on the day before your next rent payment is due. However, in order to terminate your lease you still must give your landlord 60 days' notice before you intend to leave. For example, if your rent is due on the first of each month and you want to move out before June 1st, you must give your landlord written notice before April 1st that you are terminating the tenancy on June 1st.

There are some exceptions to the 60 day requirement. Among other exceptions, a tenant may be required to give a lesser notice of termination when the landlord fails to correct certain serious conditions, or when the tenant has been accepted to senior citizen or subsidized housing, or when a tenant needs to move because of domestic violence.

If you do not properly terminate your tenancy, the landlord can recover damages from you. These damages are called "reasonable re-letting expenses". The Court can award damages to the landlord for lost rents for the time that you left early and/or lost rents for the time that it takes to get the rental unit repaired and re-let.

However, the Courts normally limit "reasonable re-letting expenses" to two or three months rent. The landlord must make efforts to find another tenant to live in the unit. The Court will not permit a landlord to leave the rental unit vacant until the end of the lease term. The Court usually assumes that it would take the average landlord two to three months to find another tenant. Consequently, if you terminate your lease 10 months early, the Court will not award the landlord a judgment for 10 months rent but you will be responsible for two to three months rent.

The landlord cannot charge rent to two different tenants at the same time for the same rental unit. Regardless of whether you moved improperly, if your landlord re-rents the dwelling, your liability for rent ends. Accordingly, if you have to terminate your lease early, it is in your best interests to find another qualified tenant to take your place.

## **How Much Can My Landlord Legally Collect as a Security Deposit?**

Your landlord cannot automatically collect any amount for security deposit. There must be a written or oral agreement between you and your landlord establishing the amount of any security deposit.

If the lease term is for one year, your landlord cannot legally collect a deposit in excess of one month's rent.

For example, You move into an apartment and sign a lease for one year. The monthly rent is \$500. Your landlord cannot charge you any more than \$500 for your security deposit.

If you have a lease for less than one year, there is no limit on the amount of security deposit your landlord can collect. (Of course, you don't have to rent from the landlord if you object to the amount the landlord demands). If you agree to a deposit in excess of one month's rent, and you stay in the rental unit for more than one year, your landlord only may keep one month's rent for your security deposit. He must, at the end of one year, give you credit for that part of the security deposit that exceeds one month's rent.

For example, you rent an apartment from month to month. Your monthly rent for the apartment is \$400 but the landlord charged you \$600 for a security deposit. After you have stayed in the apartment for one year the landlord must give you credit for \$200 (\$600 minus \$400). When you move into the rental unit (and you don't have a pet), the landlord can only charge you for first month's rent and the security deposit. The Delaware Residential Landlord-Tenant Code does not permit the landlord to pay a deposit for the last month's rent. An application fee is not a security deposit. A landlord may charge an application fee to determine the creditworthiness of a prospective tenant. That fee cannot exceed the greater of 10% of the monthly rent or \$50.00. If the landlord charges more than the law allows, you can sue the landlord for double the application fee.

### **Can My Landlord Charge a Pet Deposit?**

If you and your landlord agree, your landlord can charge a pet deposit. The deposit cannot exceed one month's rent regardless of the term of your tenancy. A landlord cannot charge a pet deposit and then charge a pet fee. The landlord must elect to charge one or the other, but not both. If you or a member of your family is disabled and the pet is used as a support animal, the landlord may not charge a pet deposit.

### **What Happens to My Security and/or Pet Deposit?**

Your landlord must place your deposit(s) in a special bank account called an "escrow account". The account must be in a federally insured bank and the bank must have an office in Delaware that accepts deposits. Your landlord is required to tell you the location of the security deposit account. If your landlord does not disclose the location of the account, you may write to the landlord at any time to request the location. (Always remember to send your letter by certified mail). Your landlord has 20 days from the date on which the landlord receives the letter to disclose the location of the account.

If your landlord does not disclose the location of the account – or if your landlord has not placed the deposit in a federally insured bank with an office that accepts deposits in Delaware – your landlord immediately forfeits the right to hold your deposit. The landlord must then return your deposit to you within 20 days.

If your landlord does not return the deposit within 20 days, your landlord must pay you double the amount of the deposit. You can immediately file a complaint with the Justices of the Peace Court to collect double the deposit.

### **What Can My Landlord Use My Deposit For?**

After the tenancy is over, your landlord can use the deposit:

- To pay for any damage to the rented dwelling which was not caused by "normal wear and tear" or which cannot be corrected by painting and ordinary cleaning;
- As payment for all rent you owe, including late charges;

- As payment for all rent and expenses which you may owe if you terminated the lease early or if you abandoned the property.

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As mentioned above, a landlord cannot deduct damages from your deposit for “normal wear and tear” to the rental unit. “Normal wear and tear” means “the deterioration in the condition of a property or premises by the ordinary and reasonable use of such property or premises.” In other words, as you live in a house or an apartment things begin to wear out with normal use. For example, the carpet on the floor becomes worn from people walking on it. Eventually, the carpet will need to be replaced. That is normal wear and tear.

“Normal wear and tear” is an expense that must be born by the landlord. It is a cost of doing business. A wise landlord will figure out the upkeep costs of a rental unit and pass the costs along to the tenant in the rent. But the landlord cannot pass along the costs to the tenant by deducting the costs from the security deposit.

Some common examples of “normal wear and tear” are:

- replacing worn out carpets;
- repainting the rental unit every few years;
- replacing old, worn appliances;
- replacing worn floor tile.

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You will be responsible for any damages that are not “normal wear and tear”. For example, if you accidentally knock a hole in the wall when you are moving a piece of furniture, you will have to pay to repair the wall. If you wear out a carpet by constantly walking upon it with football cleats, you will have to pay to replace the carpet.

“Normal wear and tear” really just comes down to common sense. If you act reasonably in your rental unit and remain current with your rent payments, you should be able to recover your security deposit when you move.

## **What Do I Need to Do to Get My Deposit Back At the End of the Tenancy?**

You should take the following steps to get back your security and pet deposits from your landlord:

1. Give your landlord written notice of an address you can be contacted by mail before you move. You should either send the notice by certified mail or hand-deliver it to the landlord and ask for a signed receipt for the notice. The address you give the landlord may be the address where you are moving, but that is not required. You only need to give the landlord an address where you can receive mail. For example, you can use the address of a friend or a family member.
2. After you move, wait 20 days. Within 20 days your landlord must send you an itemized list of damages and the estimated cost of repair for each item of damage. Any balance left after the deduction of damages must be returned to you with the itemized list. If the landlord does not give you this list of damages within 20 days, the landlord waives any claim that he is entitled to damages.
3. If you disagree with the items of damage, or dispute the cost of repair **DO NOT CASH THE CHECK**. Within 10 days after you receive the itemized list, send the landlord a letter objecting to the proposed use of the deposit. With the letter you should also return



the check you received (if any) from the landlord. If you cash the check sent by the landlord you indicate that you agree with the damages alleged by the landlord and you will not be able to recover any more of your security deposit.

4. If within 20 days after you move out your landlord fails to return the security deposit – or the difference between the deposit and the cost of repairing the items on the list of damages – you are entitled to double the amount of the deposit wrongfully withheld. You should file a complaint with the Justices of the Peace Court asking for these money damages.
5. If your landlord returned an itemized list with a portion of the deposit and you dispute the damage claim on the itemized list, you also should file a complaint with the Justices of the Peace Court to recover the full deposit.
6. You have one year from when you moved out of the rental unit to file an action for the return your deposit with the Justices of the Peace Court.

### **What if I Didn't Give the Landlord a Forwarding Address?**

If you did not give the landlord a forwarding address in writing before you moved, you have one year to write to the landlord to request that the security deposit be returned. Your landlord, however, does not have to send an itemized list of damages, and your landlord is no longer liable for double any amount wrongfully withheld.

You can still file a complaint with the Justices of the Peace Court to recover the security deposit. A judgment will be entered in your favor for any amount wrongfully withheld.

The following questions came from Delaware State Agencies

### **What housing supports are available for individuals with disabilities?**

The DDDS or [Division of Developmental Disabilities Services](#) provides a number of community based residential service options, based on personal preferences and the amount of support the individual needs to live in the community. These options include neighborhood or group homes, staffed apartments, supervised apartments, supported living arrangements or shared living, also known as adult foster care living arrangements. Individuals in need of financial assistance in order to live independently may contact DSHA or the [Delaware State Housing Authority](#) for information on the affordable housing options available in Delaware. These options include: Public Housing; Housing Choice Vouchers (formerly known as Section 8 Vouchers); Site-Based Subsidized Housing; and Tax Credit sites.

### **Who do I contact to apply for assistance with housing?**

Contact the [Division of Developmental Disabilities Services](#) or the [Delaware State Housing Authority](#) for assistance with housing.

### **What is a group home or neighborhood home?**

A group home is housing for up to five individuals in a single-family home setting. 24 hour care and supervision is provided, along with case management and some nursing services.

### **What is supported living?**

Supported living is housing for individuals living in the community who request or require less than 12 hours of support per day. These may be considered drop-in services.

### **What is the difference between a staffed apartment and a supervised apartment?**

Staffed apartments are for individuals who require 24-hour support in an apartment setting. Supervised apartments are for individuals who need more than 12 hours, but less than 24 hours of support per day in an apartment setting.

### **What is shared living?**

Shared living or adult foster care is for individuals who want to live in a family setting.

### **Is there assistance with rental fees if I live on my own?**

[Affordable housing options provided through the Delaware State Housing Authority](#) may be available to assist with rental fees if you are eligible. These options include Public Housing; Housing Choice Voucher (Section 8 Voucher); Site-Based Subsidized Housing; and Tax Credit sites.

### **Is there any assistance with keeping track of my rental payments or if I have problems?**

DDDS residential services include case management services although there should not be rental payments. Other problems could be addressed with the assistance of the case manager. Landlord/tenant issues may be addressed by contacting the Attorney General's Consumer Protection Unit at (800) 220-5424.