DELAWARE DEPARTMENT OF JUSTICE

A Summary of the Delaware Residential Landlord-Tenant Code

THIS SUMMARY *MUST* BE PROVIDED TO ALL *NEW* TENANTS UPON THE SIGNING OF A RESIDENTIAL LEASE.

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Introduction and Disclaimer

The information in this publication covers most people in the State of Delaware who rent the place where they live. Many laws apply to the relationship between renters (tenants) and landlords. **This summary will tell you about the most common laws concerning your rights and responsibilities as a tenant.** The most important law to know about is the Residential Landlord-Tenant Code, Chapters 51 through 59 of Title 25 of the Delaware Code (collectively referred to as "the Code"), which can be found in its entirety online.[1] **This summary is general information only and is not legal advice. All tenants should read the Landlord-Tenant Code in full before taking any action**.

This document is a summary of the Code. It does not address any of the numerous additional federal, state, and local laws and regulations that may affect the rights and responsibilities of landlords and tenants under various circumstances. This document should not be used as a complete or definitive listing of the rights and responsibilities of landlords and tenants.

You will *see* citations in this packet, for example, 25 *Del. C.* § 5101. "Del. C." stands for the Delaware Code, the laws of the State of Delaware These citations tell you the specific law that supports the statement before the citation. The citations can help you to look up the law, at your local law library or online. Where only a § number appears, it can be found in Title 25 of the Delaware Code, the title that deals with laws governing real property (for example, "§5101").

Enforcement of the Code

Private cause of action in court. Both landlords and tenants have a right to maintain a cause of action in court upon the other's breach of the lease or upon violation of the Code.[2] The Consumer Protection Unit cannot serve as private counsel for any party and cannot give legal advice to tenants or landlords. If you have any questions about the Code, or any of its provisions, you should consult with an attorney. You may be eligible to receive free legal assistance from one of the following:

- Community Legal Aid Society Inc. 302.575.0660
- Delaware Volunteer Legal Services, Inc. 302.478.8680
- Legal Services Corporation of Delaware 302.575.0408

For additional information, please contact:
Consumer Protection Unit[3]
Delaware Department of Justice
1000 N. West St., 10th Floor
Wilmington, DE 19801
New Castle County: (302) 577-8600
Kent & Sussex Counties: (800) 220-5424
Email: **consumer.protection@delaware.gov**

THIS SUMMARY *MUST* BE PROVIDED TO ALL *NEW* TENANTS UPON THE SIGNING OF A RESIDENTIAL LEASE.

General

Who is covered[4]

- The Code does not cover tenants residing in a medical, educational, fraternal, religious, recreational, or correctional institution, tenants residing in a hotel or motel, tenants subject to nonrenewable leases of 120 days or less in certain locales (for example, seasonal beach house rentals or tenant migrant workers where the employer provides the housing), or certain tenants subject to land leases where the tenant retains title to the improvements.
- Any rental agreement for a commercial rental unit is excluded from the provisions of the Code governing residential tenancies.
- There are also special laws for people who live in manufactured home communities where the tenants own their homes and lease the land on which the home sits.[5]

No discrimination[6]

- Fair Housing requirements provide that no landlord or its agent may discriminate against a tenant or prospective tenant, by refusing to rent, sublease, assign or by canceling any existing rental agreement by reason of the tenant's race, creed, religion, marital status, color, sex, sexual orientation, gender identity, national origin, disability, age, source of income, or occupation or because the tenant or prospective tenant has a child or children in the family; however, a landlord may reserve rental units exclusively for rental by senior citizens.
- No landlord may charge a greater amount for rent for the reasons set forth above.
- Landlords may consider the sufficiency or sustainability of income of, and may consider credit rating of, prospective tenants as long as any such considerations are applied in a commercially reasonable manner and without regard to source of income.
- Landlords may make rental units available exclusively to senior citizens and may reserve rental units for tenants eligible for government sponsored assistance programs in which the landlord chooses to participate.
- In the event of discrimination under this section, the tenant may recover damages sustained as a result of the landlord's action.

Notice[7]

- Any notice required by the Code must be in writing and may be served upon the landlord or upon the tenant in any of the following ways:
- Personal service by leaving a copy with an adult or an agent at the dwelling or place of business
- By Registered or Certified mail with a return receipt
- By First Class Mail, with a certificate of mailing
- Posting of the unit, when combined with a return receipt or certificate of mailing
- Personal service by a special process server appointed by the Court
- In the case of mailed notice, the return receipt signed or unsigned, or the certificate of mailing, is considered evidence of service of the notice
- Email and texts are <u>not</u> valid methods of providing notice

Calculation of applicable time periods[8]

- In computing any period of time required or allowed by Court order or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included unless specifically included by statute, order or rule
- The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday
- When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation

THIS SUMMARY *MUST* BE PROVIDED TO ALL *NEW* TENANTS UPON THE SIGNING OF A RESIDENTIAL LEASE.

Certain conduct by tenant, or tenant's guests, preclude remedies under the Code[9]

- No remedies under the Code are available where the complained about condition was caused by the tenant, a member of tenant's family or any other person on the property with the consent of the tenant
- Some remedies under the Code are unavailable if the tenant is delinquent in the payment of rent
- The tenant may not terminate the lease for a condition caused by the want of due care by the tenant, a member of tenant's family or any other person on the premises with the tenant's consent; if a tenant terminates wrongfully, the tenant shall remain obligated under the lease

THIS SUMMARY *MUST* BE PROVIDED TO ALL *NEW* TENANTS UPON THE SIGNING OF A RESIDENTIAL LEASE.

Becoming a Tenant

Application fee[10]

- A landlord may require a prospective tenant to pay an application fee to determine credit worthiness so long as a receipt is provided and records related to such fees retained for two years
- The application fee may not exceed the greater of 10% of the monthly lot rent or $50
- If the fee exceeds that amount, the tenant is entitled to damages equal to double the amount demanded

Rental agreement or lease terms; when written lease required[11]

- Leases for period longer than one year must be in writing
- For verbal leases for less than a year, the tenant may request that the lease be put into writing
- Leases that have no stated term will be presumed to be a month-to-month lease
- Tendered leases signed by only one party that take effect because the other party either accepts rent (if tenant is the party who signed) or accepts possession of the rental unit (if the landlord is the party who signed) shall be valid for no longer than one year once rent or occupancy commences even if the lease purports to have a longer term.
- The landlord must provide to the tenant a copy of any written lease and this summary, free of charge, prior to occupancy

Required lease disclosures[12]

- The names and addresses of the owners or their resident agents
- Names/addresses of anyone who would be deemed a landlord under the lease

Optional lease provisions

Extended absence[13]

- The landlord may require in the lease that the tenant notify the landlord in writing of any anticipated extended absence from the premises no later than the 1st day of such absence
- If the tenant fails to comply with such notice requirement, the tenant shall indemnify the landlord for any harm resulting from such absence
- The landlord may, during any extended absence, enter the rental unit as is reasonably necessary for inspection, maintenance and safekeeping

Subleasing and assignment[14]

- Unless otherwise agreed in writing, the tenant may sublet the premises or assign the rental agreement to another
- The lease may restrict or prohibit the tenant's right to assign the lease or may condition such right on the landlord's consent. If the tenant can assign the lease with landlord consent, the landlord shall not unreasonably withhold such consent.

Optional service fee for amenities[15]

- The tenant can agree to the payment of an optional service fee for actual services rendered to the tenant, such as a pool fee or tennis court fee, but any other non-refundable fee as a condition for the tenant living in the rented unit is prohibited

Tenant's payment of taxes[16]

- Absent an express provision in the lease stating that the tenant is responsible for paying property taxes on the rental unit, the tenant can set-off the payment of property taxes against the rent
- If the rent insufficient to set-off amounts paid, the tenant may bring an action in court to demand and recover the same from the landlord or owner with costs

Prohibited lease provisions; effect of inclusion or enforcement[17]

- Provisions providing for the recovery of attorney's fees by either party
- Provisions providing for the confession of judgment (where one party agrees to let the other party enter a judgment against him or her)
- Provisions providing for any waiver or limitation on the landlord's liability or indemnification for such liability
- Provisions providing for the waiver of any right or remedy the tenant is entitled to under the Code
- Provisions requiring a tenant to declaw a cat
- Any prohibited provision contained in a lease is void and unenforceable
- If a landlord attempts to enforce a prohibited provision, tenant may bring an action to recover an amount equal to three months' rent. This does not apply to an attorneys' fee provision, but such a provision is still unenforceable.

Conflicts between the lease and State and federal law[18]

- Any provision in a lease (written or oral) that conflicts with the Code is void and unenforceable
- Where provisions of the Code conflict with applicable federal housing regulations, the federal regulations shall be applicable

Security Deposits[19]

Purpose[20]

- To reimburse the landlord for damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning
- To reimburse the landlord for reasonable expenses incurred in renovating and re-renting the premises caused by the early termination of the lease
- To pay the landlord for unpaid rent due under the lease, including late charges and rent due for early termination or abandonment of the lease

Amount[21]

- A landlord may require a security deposit not to exceed one month's rent if the lease is for one year or more. There is no security deposit limit on a furnished rental unit
- Where the lease is not for a defined term, or is month to month, the landlord may charge more than one month's rent; however, the excess deposit must be returned to the tenant after one year
- If tenant houses a pet in the unit, the landlord may require the payment of a pet deposit not to exceed one month's rent, regardless of the length of the lease; a pet deposit shall not be charged for a certified trained service animal[1]
- If the lease specifies, the landlord may increase the security deposit to an amount commensurate with the rent; if the increase will exceed 10% of the monthly rent, payment shall be prorated over the term of the lease

How Held[22]

- Security/pet deposits must be held in a "security deposit account" at a federally insured bank in Delaware and cannot be used in the operation of the business of the landlord
- The landlord must disclose the location of the security deposit account within 20 days of the receipt of a written request or forfeit the security deposit to the tenant
- Failure to forfeit in this time period shall entitle tenant to double the amount of the security/pet deposit

Procedure for return of security/pet deposits[23]

[1] The rights of persons with disabilities regarding housing are governed by additional federal and state laws not covered by this Summary. Those laws should be consulted by anyone seeking a complete picture of the rights and responsibilities of landlords and tenants when the tenants are persons with disabilities.

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- Within 20 days of the termination/expiration of the lease, the landlord must either remit the full security/pet deposit or provide the tenant with an itemized listing of damages with the cost of repair and remit any money remaining from the security/pet deposit to the tenant. If the landlord fails to provide the itemized listing, the security/pet deposit must be returned to the tenant in full
- To the extent the damages are caused by pets and there is a pet deposit, the damages must be deducted from the pet deposit first, prior to deducting from the non-pet security deposit. However, a landlord may deduct non-pet related damages from the pet deposit even if the damages are not related to damages caused by a pet if the non-pet security deposit is insufficient to cover those damages
- If the tenant does not agree with the list of damages or the amount being withheld, then the tenant must object in writing within 10 days of receiving the portion of the deposit not withhold by the landlord
- Failure to return any security/pet deposit due to the tenant shall entitle the tenant to recover double the amount wrongfully withheld by the landlord
- Prior to vacating the property the tenant must provide, in writing, a forwarding address. Failure to do so relieves the landlord of responsibility to provide notice of damages and relieves the landlord of liability to pay double the amount of the security deposit for failing to give notice. If the tenant does not provide a forwarding address, the landlord must hold the unused portion of the security/pet deposit in the account for the period of one year, and the tenant may make a claim for the security deposit in that time.

Notice of amendment or modification to lease upon renewal[24]

- The landlord must provide 60 days' notice prior to expiration if the lease is being renewed subject to amended or modified terms.
- Tenant shall object to the amended or modified terms within 45 days prior to expiration of the lease and such rejection will be treated as an effective termination notice. Failure to object presumes the acceptance of the amended or modified terms

Moving Into the Rented Unit

Failure to make unit available at beginning of term[25]

- If the rented unit is not ready or if the landlord fails to put the new tenant into full possession at the beginning of the term, then the tenant will not have to pay rent and may give landlord written notice of termination of the lease and request the return of all pre-paid rent, security/pet deposit money
- The tenant may bring an action in a court to recover reasonable expenses to obtain substitute housing for one month if the inability to enter is caused by the landlord's failure to conform to building and housing codes
- Where the inability to commence occupancy is due to a holdover tenant, the new tenant may bring an action to evict the former tenant and then recover the costs of the action and the costs of substitute housing from the landlord

Installation of new locks[26]

- A tenant has the right to install a new lock on the door to the rental unit at the tenant's expense so long as the landlord is notified in writing and given a key, the new lock fits into the system already in place and the installation does not cause damage to the door

Condition of rental unit[27]

- The rental unit shall comply with laws governing the maintenance, construction, use or appearance of the unit and shall not endanger the health or safety of the tenant
- All areas, facilities and utilities maintained by the landlord shall be kept clean and in good working order
- If the lease provides, the landlord shall provide garbage receptacles

Responsibility for repairs[28]

- During the tenancy, the landlord shall maintain the rental unit and fixtures in as good a condition as they were, or ought by law or agreement to have been, at the commencement of the tenancy
- Upon notice of a defective condition, the landlord must commence repairs within ten days and complete repairs in 30 days. Upon failure to remedy the defective condition in such time period, the tenant may do the necessary work in a professional manner and deduct the lesser of one half month's rent or a sum not exceeding Four Hundred Dollars ($400.00), whichever is less, for the expenditures by submitting to the landlord copies of those receipts covering at least the sum deducted
- Unless agreed otherwise by the parties, if the tenant performs repairs after notice was given and no action was taken by the landlord to cure the defective condition, the tenant may raise as a defense in any subsequent proceeding brought by the landlord for damages due to the repair (i.e. an action in waste) if the repairs were those a prudent owner would take and that such repairs did not reduce the market value of the unit or other interest of the landlord
- The parties may agree in writing, separate from the lease, that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling for adequate consideration so long as the work is for the primary benefit of the rental unit and not for the purpose of bringing the rental unit into code compliance

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Tenants' Obligations and Landlords' Remedies

Payment of rent[29]

- Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for one month or less, while one month's rent shall be payable at the beginning of each month of a longer term
- Rent shall be payable at the time and place agreed to by the parties
- The landlord shall maintain an office or other permanent place for receipt of payments in the County where the unit is located; failure to maintain such an office or other permanent place of payment shall extend the agreed on time for payment of rent by three days beyond the due date
- The landlord shall within 15 days give to the tenant a receipt for rent paid for in cash a cash payment for rent and maintain a record of all cash receipts for three years
- Where the agreement provides for a late charge, the late charge may not exceed 5% of the monthly rent and may not be imposed until five days after the due date. A late charge is considered as additional rent.
- Upon failure to pay rent, the landlord may send the tenant a notice that rent must be paid within five days from the date the notice was given or sent, or the lease will be terminated; the landlord must secure a court order of possession prior to removing tenant

Landlord remedies upon non-payment of rent[30]

- If the tenant fails to pay rent as required in the lease, the landlord may send the tenant a notice stating that their lease will be terminated if they do not pay by the date specified in the notice. The notice must provide the tenant with at least 7 days to pay from the date the notice was given or sent.
- If the tenant remains in default after the notice period, the landlord may bring an action for summary possession or for recovery of the rent and any applicable late charges
- If the tenant pays all rent due, and landlord accepts the same without giving tenant a written reservation of rights that landlord intends to pursue remedies due to the default, the landlord must not initiate a summary possession action and must dismiss any pending actions

Tenant obligations relating to rental unit[31]

- Keeping the premises and all plumbing fixtures clean and safe
- Disposing of ashes, rubbish, garbage and other organic or flammable waste, in a clean and safe manner
- Using all electrical, plumbing, sanitary, heating, ventilation and other facilities in a reasonable manner
- Not damaging, or allow others to damage, the unit, the facilities, equipment or appurtenances thereto
- Not tampering with any smoke detector or carbon monoxide detector
- Informing the landlord promptly in writing of any necessary repairs
- Informing the landlord promptly action brought by a third party that may affect the occupancy or interest in the rental unit
- Where the lease provides, informing the landlord in advance of any extended absence
- Unless the lease provides otherwise, using the rental unit only as the tenant's abode

Tenant obligations to obey rules and regulations promulgated by the landlord[32]

- Rules and regulations may be promulgated by the landlord to promote the health, safety, quiet, private enjoyment or welfare, peace and order of the tenants and to preserve the landlord's property from abuse
- Such rules and regulations must be reasonable, sufficiently clear and enforced in a fair manner
- The tenant shall be informed of such rules and regulations at time of occupancy. If promulgated subsequent to occupancy or otherwise not provided at the beginning which constitute a substantial modification of the lease, agreed to in writing
- All tenants and other guests of the premises with the consent of tenant shall conduct themselves in a manner that does not unreasonably interfere with the peaceful enjoyment of the other tenants

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Landlord access to the rental unit[33]

- The tenant is required to provide reasonable access during business hours for the landlord to enter the unit in order to inspect the unit, read utility meters, make repairs, decorations, alterations or improvements or to show the unit to prospective tenants, purchasers or mortgagees
- The landlord is required to give the tenant 48 hours' notice of intent to enter for any purpose other than those repairs requested by the tenant or for emergencies; however, the tenant may waive such advance notice in writing as it pertains to prospective tenants or purchasers.
- Where permission is unreasonably withheld, the landlord may *see*k an injunction in court and the tenant shall be liable to the landlord for any harm proximately caused by the tenant's unreasonable refusal to allow access

Landlord ability to terminate the lease and commence a court action[34]

- The landlord may terminate the lease and commence a summary possession action:
- Upon tenant's failure to cure the breach of any rule or covenant which is material to the rental unit or remedy neglect of the unit within seven days after written notice. If a substantially similar breach occurs within one year, no notice need be given by the landlord before seeking remedies. This section does not apply to late payment of rent.[35]
- In lieu of a court action, the landlord can remedy the tenant's breach and bill the tenant for the actual and reasonable costs of such remedy; such billing shall be due and payable as additional rent, immediately upon receipt
- If the rental unit is a single room in the landlord's primary residence in a residence with no more than three rooms rented to tenants in the building and no more than three tenants in the building: Upon tenant's material violation of a rule or regulation provided to tenant at the time of lease.
- Upon failing to use the rental unit only as the tenant's abode (unless the lease provides otherwise)
- Upon wrongful termination of the lease coupled with an indication that the tenant does not intent to resume the tenancy; the abandoning tenant shall be liable for damages caused by the abandonment and costs incurred to prepare and re-rent the unit
- Where a breach causes or threatens to cause irreparable harm, or the tenant is convicted of a class A misdemeanor or felony that caused or threatened to cause irreparable harm during the term of the tenancy, the landlord may without further notice either remedy the breach or immediately terminate the lease and bring an action for summary possession
- If there is no appeal from a judgment granting summary possession, the landlord may immediately remove and store, at the tenant's expense, any and all items left on the premises by the tenant; seven days after the appeal period has expired, the property shall be deemed abandoned and may be disposed of by the landlord without further notice or liability

Landlord remedies upon tenant's wrongful deduction or withholding from rent[36]

- If the tenant withholds rent or deducts from the rent and the Court finds that the withholding or deduction was wrongful, then the Court can grant the landlord either possession of the rented unit or a judgment for the amount withheld
- If the Court finds that the withholding was done in bad faith then the Court can grant the landlord damages of double the amount withheld by the tenant; if those damages are not paid then the Court can enter a judgment for possession without any further notice to the tenant

Landlord remedies relating to holdover tenant.[37]

- If the tenant continues in possession of the premises after the date of expiration or termination without the landlord's consent, such tenant shall be liable for a sum not to exceed double the monthly rental under the previous agreement, computed and pro-rated on a daily basis, for each day the tenant remains in possession for any period
- Upon a court's finding that the tenant's holdover was wrongful, the tenant may also be responsible for any additionally losses incurred by the landlord

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Landlords' Obligations and Tenants' Remedies

Retaliatory acts by landlord prohibited[38]

- A landlord acts in a retaliatory manner if the landlord pursues an action for summary possession, otherwise attempts to force the tenant to leave the premises, demands an increase in rent, or decreases services to which the tenant is entitled in response to a tenant's complaint concerning the condition of the rental unit or property, the institution of an enforcement action based tenant's allegation of non-compliance, organization or participation in a tenant association, or pursuit of any legal right or remedy arising from the tenancy
- A rebuttable presumption of retaliation arises if an adverse action is taken within ninety (90) days after such conduct, but this presumption can be overcome by the landlord's showing of a legitimate reason for taking such action
- Upon a court finding that the landlord has engaged in retaliatory actions, the tenant shall be entitled to recover three months' rent or treble the damages sustained by tenant, whichever is greater, together with the cost of the suit (excluding attorney fees)

Landlord's unlawful ouster or exclusion of tenant[39]

- If the tenant has been unlawfully ousted or excluded from the unit, then the tenant can recover either three times the damages incurred or three times the per diem rent for the period of exclusion. In addition, the tenant has the choice to either or recover possession of the unit or terminate the lease.

Landlord's liability for abuse of access to the rental unit[40]

- The landlord shall be liable to the tenant for any theft, casualty or other harm proximately resulting from an entry into the rental unit by landlord, its employees or agents or with landlord's permission or license where the tenant is absent and has not specifically consented to the entry, for failing to obtain the tenant's actual consent when tenant is present and able to consent; or in any other case, where the harm suffered by the tenant is due to the landlord's negligence
- Where the landlord makes repeated demands for unreasonable entry or where any actual entry which is unreasonable and not consented to by the tenant, the tenant may *see*k an injunction in court or terminate the lease

Special protections for tenant's that are victims of domestic abuse, sexual offenses and/or stalking[41]

- A landlord may not take any adverse action against a tenant who has obtained or has sought assistance for domestic abuse, sexual offenses, or stalking from any court, police, medical emergency, domestic violence, or sexual offenses program or service
- A rebuttable presumption arises if an adverse action is taken within 90 days of any incident in which the tenant was a victim

Provisions relating to the death of a sole tenant[42]

- Deceased sole tenant means the sole leaseholder under a residential rental agreement entitled to occupy a residential rental unit to the exclusion of all others who have died; the right of any nonleaseholder residing in the unit shall immediately terminate upon the death of the sole tenant
- Upon death of sole tenant, possession shall be returned to landlord without court action after landlord provides the decedent's personal representative 30 days access to remove decedent's belongings if the personal representative has not provided the landlord written notice that access to the deceased sole tenant's residential rental unit is still needed
- During this access period, landlord still retains the right to initiate at any time an action for summary possession and/or monies due, in which case the landlord shall bring the action against the estate of the deceased sole tenant
- If at the time landlord gains possession there is still property inside the deceased sole tenant's residential rental unit, landlord shall have the right to immediately remove and store such property for a period of 7 days, at the expense of the estate of the deceased sole tenant

- If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit all or a portion of the security deposit within 20 days of receiving possession of the residential rental unit to the personal representative with the required documents evidencing costs of repair

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Termination of the Lease

Whenever either party to a lease rightfully elects to terminate, the duties of each party under the lease shall cease[43]; the following notice provisions shall apply:

Sixty day advance notice by either party of termination prior to expiration[44]

- If either party intends to terminate an existing lease, they must give 60 days' written notice prior to the lease's expiration
- For month-to-month leases, the 60 day time period starts from the first day of the month following the day of actual notice
- If either party fails to give the 60 day notice, then the lease will continue as a month to month lease and all other terms of the agreement will remain in effect

Thirty day advance notice by tenant under certain conditions[45]

- The tenant may give 30 days' advance notice, which commences on the 1st day of the month following actual notice, under the following circumstances:
  - The tenant is required by his current employer to move the tenant's residence in excess of 30 miles
  - The serious illness of the tenant or a member of the tenant's immediate family member who lives with the tenant requires the tenant to move on a permanent basis
  - The tenant is accepted for admission into a senior citizens facility or a group facility or retirement home
  - The tenant is accepted for admission into subsidized private or public housing
  - The tenant enters the military service of the United States on active duty
  - The tenant who is the victim of domestic abuse, sexual offenses, stalking or who is *see*king relief from domestic violence or abuse from any court, police agency, or domestic violence program or service
  - Where a sole the tenant dies, the personal representative of the estate may terminate with 30 days advance notice

Shorter notice by tenant after failure to cure violation of Code or material breach of lease[46]

- The tenant may terminate the lease with 15 days' notice if, within the first six months of occupancy, the landlord repeats a violation of the Code or material breach of the lease shall that it has already committed and promised to correct.
- If the landlord fails to cure any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain after 15 days of written notice, the tenant may terminate the lease and bring an action for damages in court

Written notice by tenant if within first month of occupancy[47]

- If a violation of the Code or a material breach of the lease occurs within the first month of occupancy, or thereafter if tenant remains based upon landlord's representations that the condition will be corrected, termination can occur immediately after written notice
- Failure to make unit available at beginning of term constitutes a material breach

Seven days notice by tenant after fire or other destruction of the rental unit[48]

- The tenant shall be liable for rent only until vacating a unit damaged by fire or casualty so long as written notice of termination is given to the landlord within seven days of vacating
- The landlord shall timely return any security/pet deposit and pre-paid rent, except that to which the landlord is entitled to retain
- Failure to provide notice shall result in the tenant's liability for rent until the landlord has actual knowledge of the tenant's vacating the rental unit or until further occupancy is unlawful

- If continued occupancy in the rental unit is lawful, the tenant may remain, and the tenant's liability for rent shall be reduced in proportion to the diminution of the fair rental value of the rental unit

Two days notice by tenant after failure to provide essential services[49]

- If the landlord fails to provide essential services, provided for in the lease or by law, for a period in excess of 48 hours after being notified by the tenant in writing, then the tenant may:
  - terminate the lease
  - accept equivalent substitute housing, or
  - keep 2/3 per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied; landlord can avoid this liability upon a showing of show impossibility of performance
- Rent withholding does not act as a bar to the later recovery of damages by a tenant if those damages exceed the amount withheld

THIS SUMMARY *MUST* BE PROVIDED TO ALL *NEW* TENANTS UPON THE SIGNING OF A RESIDENTIAL LEASE.

Right of Redemption (i.e., Pay to Stay)

A landlord may not evict a tenant for failing to pay rent under the following circumstances:

- Prior to the landlord filing an eviction case in court: if the tenant, or someone on the tenant's behalf pays all rent owed, including late fees. The landlord may restrict the method of payment to methods permitted in the lease but cannot refuse payment.[50]
- After the landlord files an eviction case in court but before the tenant is removed by the execution of a writ of possession: if the tenant, or someone on their behalf, pays all rent owed, including late fees, plus any costs and fees awarded by the court.[51]
    - Prior to judgment being entered against the tenant, the landlord may restrict the method of payment to methods permitted in the lease but cannot refuse payment.
    - After judgment has been entered against the tenant, the landlord may require payment by certified check or money order but cannot refuse payment.
- A tenant who has had two judgments of possession entered against them for failure to pay rent in the prior 18 months is not eligible for the right of redemption.[52]

Citations

[1] Full URL: https://delcode.delaware.gov/title25/index.html
[2] *See* § 5117
[3] Full URL: http://www.attorneygeneral.delaware.gov/fraud/index.shtml
[4] *See* §§ 5101, 5102
[5] *See* Chapter 70 of Title 25.
[6] *See* §5116. *See* also the Delaware Fair Housing Act at 6 *Del C.* § 4600)
[7] *See* §5113
[8] *See* §5112
[9] *See* §§ 5302, 5307, 5302(e)
[10] *See* §5514(d))
[11] *See* §§5105(b), 5106(a)&(b), 5110, 5118. Although the Code uses the term 'rental agreement' it is the same as 'lease', the more common term which is used herein.
[12] *See* §§ 5105(a)(1), 5105(a)(2)
[13] *See* §§5506, 5507(a)&(b))
[14] *See* §5508
[15] *See* §5311
[16] *See* §5315
[17] *See* §§ 5111, 5121, 5301(a)&(b)
[18] *See* §§ 5101, 5106(e), 5107(d)
[19] If the parties agree to the posting of a surety bond in lieu of security deposit, *see* §5514A.
[20] *See* §5514(c)
[21] *See* §§ 5514(a),(i)&(j)
[22] *See* §5514 (b)&(g)
[23] *See* §5514 (f), (g) & (h)
[24] *See* §5107
[25] *See* §§5303, 5304
[26] *See* §5509
[27] *See* §5305
[28] *See* §§5305(a)&(c), 5307, 5504
[29] *See* §§5501, 5502(a)
[30] *See* §5502
[31] *See* §§ 5503, 5505, 5506, 5507
[32] *See* §5511
[33] *See* §§5509, 5510
[34] *See* §§ 5512, 5513(a)&(b), 5507(c)&(d)
[35] *See* § 5502
[36] *See* §5308
[37] *See* § 5515
[38] *See* §5516
[39] *See* §5313
[40] *See* §5510)(b) & (c)
[41] *See* §5316
[42] *See* § 5141, 5719
[43] *See* §5515
[44] *See* §§5106, 5108
[45] *See* §5314
[46] *See* § 5302(b)&(c)
[47] *See* § 5304
[48] *See* §5309
[49] *See* §5308

[50] *See* §5502(c)
[51] *See* §5716A(b)
[52] *See* §5716A(b)(7)