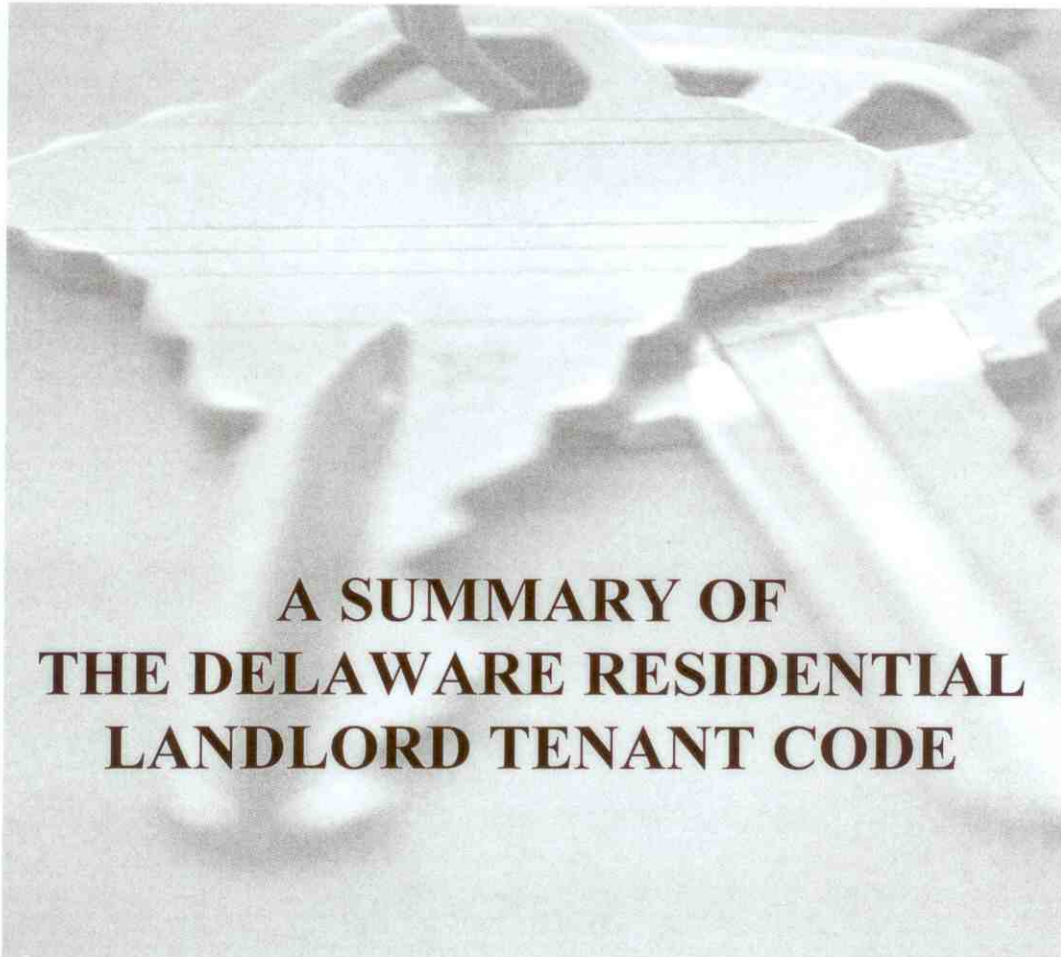


DELAWARE DEPARTMENT OF JUSTICE



**A SUMMARY OF
THE DELAWARE RESIDENTIAL
LANDLORD TENANT CODE**

**Fraud and Consumer Protection Division
Consumer Protection Unit**

Revised October 20, 2009

SUMMARY OF THE DELAWARE RESIDENTIAL LANDLORD TENANT CODE

This is a summary of the Delaware Residential Landlord Tenant Code that took effect on July 22, 2004. The purpose of this summary is to familiarize tenants and landlords with the provisions of this Code and with their rights and obligations under the Code. The Residential Landlord Tenant Code applies to all leases signed after July 17, 1996. The Code may also apply to a renewal or extension of any pre-July 1996 rental agreement if both the landlord and the tenant agree that it shall apply to the lease. Otherwise, the prior Landlord Tenant Code shall apply to renewals and extensions of pre-July 1996 leases.

This is only a general summary. It does not cover all aspects of the Residential Landlord Tenant Code. For specific legal questions, please refer to the statute itself (25 Del.C. §5101 to §5718) or consult an attorney. You can obtain a complete copy of the Landlord Tenant Code by calling Legislative Council at 1-800-282-8545. The first copy is free.

The section numbers listed in this summary refer to specific sections of the Residential Landlord Tenant Code. General questions concerning the Landlord Tenant Code may be referred to the:

**CONSUMER PROTECTION UNIT
ATTORNEY GENERAL'S OFFICE
Carvel State Office Building
820 North French Street
Wilmington, Delaware 19801
(New Castle County) 302-577-8600
(Kent and Sussex Counties) 1-800-220-5424**

When you call, please specify whether the pre-July 1996 or post-July 1996 Landlord Tenant Code applies to the lease. That question is answered by whether the lease was entered *before or after July 17, 1996*, and if before July 17, 1996, whether the tenant and landlord, at the time of lease renewal or extension, agreed that the post-July 1996 law would apply.

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I. BECOMING A TENANT.

1. Rental agreement defined. (§5141(21))

A rental agreement is an agreement, written or oral, which establishes or modifies the terms, conditions, rules, regulations or any other provision concerning the use and occupancy of a residential rental unit. (A lease is another name for a "rental agreement").

2. Landlord required to provide a copy of agreement. (§5105)

Where there is a written rental agreement, the landlord is required to provide the tenant with a copy of the agreement, free of charge.

3. Rental agreements for period longer than one (1) year must be in writing. (§5106)

Unless a rental agreement is in writing, it will not be effective for any longer than one (1) year. An agreement that has no term will be for a term of month to month.

4. A landlord may require the payment of an application fee. (§5514(d))

If the tenant is required to pay a fee to determine the tenant's credit worthiness such a fee is called an application fee. A landlord may charge an application fee not to exceed the greater of 10% of the monthly rent, or fifty dollars (\$50.00). The landlord is required to provide the tenant with a receipt for the payment of the application fee.

5. Security deposit. (§5514)

(a) Amount of deposit.

i. A landlord may require the payment of a security deposit. The security deposit may not be more than one (1) month's rent if the rental agreement is for one (1) year or more.

If the rental agreement is not for a defined term, or if it is on a month to month basis, the landlord may charge more than one (1) month's rent as a security deposit; however, once the tenant has lived in the unit for one year or more, the excess deposit must be returned to the tenant. There is no limit on the amount that can be charged for a security deposit on a furnished rental unit. If the rental agreement so specifies, a landlord may increase the security deposit to the same amount as the rent.

ii. Pet deposit.

A landlord may require the payment of a pet deposit for the rental of the unit if the tenant will have a pet in the unit. A landlord may not require a pet deposit in excess of one (1) month's rent, regardless of how long the rental agreement will last.

(b) How the security deposit must be treated.

i. Where located.

A security deposit must be held in a federally insured bank with an office within the State of Delaware. The account must be called a security deposit account and cannot be used in the operation of the business of the landlord.

The landlord must disclose to the tenant the location of the security deposit account. If the landlord fails to disclose the location of the security deposit account within twenty (20) days of the receipt of a written request, the landlord must return the security deposit to the tenant. If the landlord fails to return the security deposit to the tenant within an additional twenty (20) days, the tenant is entitled to receive double the amount of the security deposit from the landlord.

ii. Procedure for return of security or pet deposit.

Prior to vacating the property, the tenant must provide a forwarding address to the landlord, in writing. Within twenty (20) days of the termination or expiration of the rental agreement, the landlord must provide the tenant with an itemized listing of any damages to the premises and the cost of repair, and must return any money remaining from the security deposit to the tenant.

If the landlord fails to provide the list of damages, the landlord is not entitled to keep any of the security deposit that must be returned to the tenant. If the tenant does not agree with the list of damages or the amount being withheld, then the tenant must object to the listing and the amount of money being withheld within ten (10) days of receipt of the list or the tenant will be considered to have agreed to the list and the amount being withheld.

If the tenant has provided the landlord with a forwarding address and the landlord does not return any security deposit due to the tenant, then the tenant is entitled to recover double the amount wrongfully withheld by the landlord. If the landlord refuses to pay the amount wrongfully withheld, the tenant can bring an action for debt in the Justice of the Peace Court.

6. Other fees. (§5311)

A landlord may not charge any non-refundable fee as a condition for the tenant living in the rental unit unless that fee is an optional service fee for actual services rendered to the tenant.

7. A landlord may not discriminate - Fair Housing requirements. (§5116)

No landlord or rental agent may discriminate against a tenant or prospective tenant by refusing to rent, subrent, sublease or assign, or by canceling any existing rental agreement by reason of the tenant's or prospective tenant's race, creed, religion, marital status, color, sex, sexual orientation, national origin, disability, age or occupation or because the tenant or prospective tenant has a child or children in his/her family. A landlord may not charge a greater amount for rent for the reasons set forth above. A landlord may reserve rental units exclusively for rental by senior citizens.

8. Disclosure of ownership of the rental unit. (§5105)

On each written rental agreement, the landlord must clearly disclose the usual business address of all persons who are owners or agents of the owners. In the case of an oral agreement, this information must be provided to the tenant upon demand.

9. Summary of the Code. (§5118)

The landlord must provide every tenant with a copy of this summary, free of charge, at the beginning of the rental term.

10. Conflicts with the Code. (§5101)

Any provision of a residential rental agreement, oral or written, which conflicts with the Residential Landlord Tenant Code is unenforceable.

11. Service of notices. (§5113)

Any notice required by the Residential Landlord Tenant Code must be in writing and may be served upon the landlord or upon the tenant in any of the following ways:

- a. Personal service by leaving a copy with an adult or an agent at the dwelling or place of business;
- b. By Registered or Certified Mail;
- c. By First Class Mail, with a certificate of mailing; (This is a new form of notice)
- d. Posting at the unit, combined with b or c;
- e. 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.

II. MOVING INTO THE RENTAL UNIT

1. Rental unit. (§5303)

The landlord must supply the rental unit that the tenant bargained for at the beginning of the term, and put the tenant into full possession of the unit.

2. Tenant's remedies if the rental unit is not available. (§5304)

If the rental unit is not ready or if the landlord fails to put the new tenant into full possession, then the tenant will not have to pay rent during the time that the tenant is unable to enter the rental unit. In addition, the tenant may:

- a. Give notice to the landlord terminating the rental agreement and requesting the return of all pre-paid rent, pet deposit or security deposit money;
- b. Recover reasonable expenses to obtain substitute housing if the inability to enter is caused by the landlord or by the landlord's failure to conform to building and housing codes;
- c. Bring an action in the Justice of the Peace Court to evict a holdover tenant, and recover the costs of the action and the costs of substitute housing from the landlord.

