

# LANDLORD'S GUIDELINES

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Following are various topics that landlords should familiarize themselves with: TENANT SCREENING; DISCRIMINATION; THE RENTAL AGREEMENT; THE SECURITY DEPOSIT; RENT; LANDLORD'S OBLIGATIONS; TENANT'S SAFETY; TENANT'S OBLIGATIONS; ENDING THE LEASE; EVICTION; DEFENSES TO EVICTION; AND OTHER PROBLEMS.

## **Item I: Tenant Screening**

Here are a few suggestions you may want to consider before renting to a tenant. (1) Establish a list of qualification standards you want in a tenant and apply these standards uniformly to applicants. (2) Obtain consumer credit and criminal background reports on all applicants. You may call the Clerk's Office in your County and inquire as to whether or not your applicant has ever been evicted. (3) Check and verify the applicant's employment, income and rental history. (4) Do not rent to applicants who don't meet your qualification standards.

## **Item II: Discrimination**

By having a list of qualification standards and applying them evenly, you may avoid discrimination charges.

Florida and federal law prohibits discrimination on the basis of race, color, national origin, sex, handicap, familial (family) status, and religion. DeSoto County follows the Federal laws regarding discrimination. However, various local laws in other counties add prohibitions against discrimination on the basis of age, pregnancy, marital status, sexual orientation and other factors.

## **Item III: The Rental Agreement**

A rental agreement spells out the specified place that you are going to rent, what specific amount of time the agreement covers, and the amount of rental to be paid. An agreement for a year or longer must be in writing. A shorter agreement can be either written or oral. If the agreement doesn't specify the rental period's length or how the lease will end, then the following schedule sets it:

### **Rent pay period**

Week to week  
Month to month  
Quarter to quarter  
Year to year

### **Necessary Notice**

Seven (7) days notice  
Fifteen (15) days notice  
Thirty (30) days notice  
Sixty (60) days notice

Either party must provide the other with notice at least this far in advance of the next rent payment date in order to terminate the rental agreement.

A written lease contains obligations for both the landlord and the tenant. Unless the lease says differently, the landlord cannot raise the rent during its term. But, unlike most oral leases, written leases usually commit a tenant to rent payments for a fixed amount of time, whether or not he lives in the apartment. In Florida, a landlord doesn't have to make any special efforts to re-rent your place if you move out early. This leaves you responsible for the rent due the remainder of the rental period. A written lease also minimizes disputes by recording both parties' responsibilities in writing.

#### **Item IV: The Security Deposit**

The security deposit consists of any money which you hold on behalf of the tenant to protect yourself from unpaid rent or damage to the apartment/home. The tenant may not defeat the purpose of the deposit by using it as the last month's rent.

All security deposits are refundable. Also, you must inform the tenant in advance about the conditions under which you will refund the deposit.

You cannot automatically take the deposit because the tenant breaches the lease. Please see the NOTICE OF INTENTION TO CLAIM SECURITY DEPOSIT at the Clerk's Office.

Florida law specifies how you may hold their deposit money. If you put it in an interest-bearing account, then you must pay them either 5% interest, or 75% of the account's interest rate, whichever you want.

You must return a tenant's security deposit to the tenant no more than 15 days after the tenant leaves the leased property. You may claim all or a portion of the security deposit.

If you intend to make a claim against the security deposit, you shall have 30 days to give the tenant written notice, by Certified Mail to the tenant's last known mailing address, of your intention to keep the deposit and the reason for keeping it. If you do not send the notice within the 30 day period, you cannot keep the security deposit.

If the tenant does not object to the notice within 15 days after receipt of such notice of intention to impose a claim, you may deduct the amount of his or her claim and must send the balance of the deposit to the tenant within 30 days after the date of the notice.

**If you fail to send a notice within the 30 days, then you forfeit your right to take any deductions at all.**

If the tenant does not object, then you have 30 more days following your first notice to return the balance of their deposit.

## **DOCUMENT ANY DAMAGES TO PROPERTY.**

If your tenant has objections to your calculation of damages, they must make them within 15 days of receiving this notice of deduction, or they forfeit their right to object.

If you neither return their deposit, nor send a notice of why you are keeping it, then they can take you to court. In court, the losing side will have to pay the winner's court costs.

If a tenant moves out before their lease ends, or if you have an oral lease, then they have to give you a special notice in order to hold you to the 15 and 30 day time limits. If they don't give you this notice, then they free you from the 15 and 30 day requirements for returning their deposit balance. However, you will still owe it to them. Of course, if they do move out early, then you may deduct from the deposit the rent which they still owe.

### **Item V: Rent**

Late penalties may not be "unconscionable", which means shocking.

Sometimes a tenant who occupies an apartment/home, even without signing a lease, can also be held liable for rent.

With a written lease, you may not raise the rent unless the lease allows it. You may raise the rent under an oral lease, unless you both specifically agreed that you couldn't. You must give them the same notice for a rent increase that you would for a termination, in order to give them an opportunity to move out.

### **Item VI: Landlord's Obligations**

Florida law divides your obligations into two (2) categories. A tenant is allowed to withhold rent if you breach the obligations in category "A", but not if you breach the ones in category "B":

#### **A) Obligations which justify withholding rent for breach:**

You must keep the housing in conformity with all housing and health codes. If these don't exist, you must maintain the structural components and plumbing in good repair.

The above requirements don't apply to mobile homes owned by the tenant, and they may be modified in writing for duplexes and single family homes.

#### **B) Lesser obligations which don't justify withholding rent:**

The following duties do not apply to single family homes or duplexes or to mobile homes owned by the tenant, and the parties may modify them in writing for other types of rentals. You are is responsible for:

Exterminating insects and rodents: You have to give the tenant seven days notice that they will have to move out for a pest extermination, and you can't require them to leave for more than four days. You have to abate their rent for the days which they left your place, but you don't have to pay their costs for alternative housing.

Providing locks and keys.

Providing outside garbage receptacles, and arranging for them to be emptied.

Keeping common areas clean and safe.

Maintaining the heat, and hot and cold running water during winter.

Installing smoke detectors.

Although you must arrange these services, you can require the tenant to pay for them.

A tenant can enforce all of these obligations in court. However, they can use only those in category "A" as defenses to an eviction proceeding for non-payment of rent.

If your tenant sends a letter to you stating that repairs need to be done on the premises, you will need to act promptly.

Landlords are legally bound to follow codes. Housing inspectors pay particular attention to structural problems like leaking roofs, loose floorboards, and broken doors.

A tenant may withhold rent if you have failed to fulfill a requirement of category "A" described above, provided they have given written notice as described above.

A tenant may also withhold rent if you have retaliated against them for complaining or organizing tenants.

A tenant may withhold your rent if you have materially breached the rental contract. For example, if you didn't supply a washing machine which you promised.

The court will require a tenant to pay rent over to the court registry. If they can't pay the court your rent, then they will lose their case automatically.

After a court has determined that the tenant must pay withheld rent, the tenant has five days to pay it or else you can remove the tenant.

If the tenant wins, the court will decrease the rent according to the loss of value to the domicile caused by your noncompliance.

The winning side can collect court costs and attorney's fee from the loser.

If the tenant withholds rent for two months in a row, they must re-notify you before each rent is due.

Be aware that once they've given you a rent withholding letter, they may not terminate the lease. They have to do one or the other.

Florida law doesn't give tenants a right to make repairs and deduct the cost from the rent.

### **Item VII. Tenant's Safety**

You must make every reasonable effort to keep your rental property secure as is humanly possible. You must do this to not only provide your tenant with a safe and secure rental unit, but to also better protect yourself from unwarranted lawsuits filed against you. In order to keep property safe and secure, and to avoid needless lawsuits, you may wish to do the following:

1. Install solid-core doors on all entrances.
2. Install deadbolt locksets on all entrance doors.
3. Re-key all locksets after tenants move out.
4. Maintain strict control over all keys.
5. Repair all broken window frames that don't close properly.
6. Repair all cracked and broken window and door glass.
7. Install an adequate number of smoke detectors in all rental units.
8. Include a clause in all of your rental agreements that tenants are responsible for maintaining smoke detectors.
9. Provide all tenants with a listing of telephone numbers to call in case of emergency.
10. Install exterior lighting by all front entrance doors.
11. Install exterior lighting to illuminate common walkways.
12. Prune all plants and shrubbery near doors and windows.

13. Maintain your rental property in full compliance with all building and fire codes.
14. Maintain adequate liability insurance coverage.

**Item VIII. Tenant’s Obligations**

Florida Statutes, Section 83.52, requires a tenant to comply with the following:

1. Keep the home or apartment in a clean and sanitary manner.
2. Remove all garbage from the home or apartment in a clean and sanitary manner (for example, use garbage cans).
3. Keep all plumbing fixtures in the home or apartment in a clean and sanitary manner.
4. Properly use and operate all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, which are in the home or apartment.
5. Not destroy, damage or in any way misuse the property itself. This includes not permitting any of their guests to do so either.
6. Not remove anything from the house or apartment which does not belong to them (for example, cannot remove light fixture which was in the property when they moved in).
7. Conduct themselves, and require other persons on the premises with their consent to conduct themselves, in a manner that does not unreasonably disturb their neighbors or constitute a breach of the peace.

**Item IX. Ending the Lease**

Either party must provide notice to the other this far **in advance of the next rent payment date** as follows:

|                        |                         |
|------------------------|-------------------------|
| <b>Rent pay period</b> | <b>Necessary notice</b> |
| Week to week           | seven days notice       |
| month to month         | fifteen days notice     |
| quarter to quarter     | thirty days notice      |
| year to year           | sixty days notice       |

in order to terminate the lease. This means that with a month to month lease, if either party wants to end the lease October 1<sup>st</sup>, they must notify the other party on or before September 15<sup>th</sup>. If one party gives notice on September 17<sup>th</sup>, that party cannot end the lease, without the other party’s agreement, before November 1<sup>st</sup>.

If a tenant gives this notice by personal delivery or certified mail, then it will also satisfy the notice requirement for getting their security deposit back.

If you provide housing as a benefit with a job, and so don't receive a money rent, then the rental period is the same as their pay period. However, if you fire them or they quit part way through the pay period, then they will owe you the pro-rated rent for the rest of the period.

An oral or written lease containing a specific duration may specify the terms for ending the lease. (Remember that any lease for more than one year must be in writing to be binding.) The lease could also end automatically at the end of the lease period and not require either party to notify the other.

If a tenant remains in your apartment after the lease ends, that makes them a holdover tenant. You may evict them and **collect double the usual amount of rent for the period during which they refused to surrender possession of the premises.**

### **Item X: Eviction**

The reasons for eviction are:

1. **Non-payment of Rent.** After a tenant misses a rent payment, you must give them notice and wait three days, not counting Saturday, Sunday or legal holidays, before you can evict them. You must mail or give this notice to them, or leave it at their residence, and it must specify the amount due and the deadline for payment.

If they pay rent within the three day limit, then you must drop the eviction proceedings. If you accept rent from them even after the three days, then you give up your right to evict or end the agreement during that rent period.

2. **Violating the Rules.** This means violating either your lease agreement or the Landlord-Tenant Act.

The Act divides tenant breaches into two categories, curable and noncurable. (Curable means that the tenant gets a chance to solve the problem. Noncurable, of course, means that the tenant does not get a chance to solve the problem.)

Curable noncompliances include: unauthorized pets, unauthorized guests, and not keeping the dwelling sanitary.

In the case of a curable condition, you must give them seven days in which to fix it. However, if they commit the same noncompliance again within twelve months, you may then evict them without another chance to cure.

In this situation, you must leave them a notice specifying the noncompliance and explaining that unless they take care of it within seven days the lease will end.

Noncurable noncompliances include: Destruction, damage, or intentional misuse of your or other tenants' property, or a subsequent or continued unreasonable disturbance. In these cases, you just has to leave you a note containing the seven day notice and specifying the problem.

3. Abandonment. A third legal justification for eviction occurs when the tenant leaves the dwelling for more than one-half of a rental period without paying rent or giving you written notice that he would be gone.

4. Other than non-payment of rent. If you want the tenant to move for any reason other than non-payment of rent you must proceed as described in Item IX. above.

**If you evict a husband and wife, you must name both parties as defendants, have summonses issued for each of them, and have the Sheriff's Office serve each of them.**

LANDLORDS CANNOT JUST THROW A TENANT OUT. Florida law prohibits landlords from evicting tenants without going through the court system (self-help evictions). You can't evict them without a judge's order. The only exception to this is if they have legally abandoned your place.

Florida law does not allow you to force a tenant out by:

1. Shutting off the utilities or interrupting service, even if the service is in your name.
2. Changing the locks or using a device that denies them access.
3. Removing the outside doors, locks, roof, walls or windows (except for the purposes of maintenance, repair or replacement).
4. Removing their personal property from the home or apartment unless action is taken after surrender, abandonment or a lawful eviction.

If any of these occur, the tenant may sue for actual and consequential damages or three month's rent, whichever is greater, plus court costs and attorney's fees.

This is what happens during a nonpayment of rent or breach of lease eviction:

1. Tenant's notice of problem: In order to be able to defend themselves, they must already have given you a notice saying they intended to withhold rent unless you fixed a specific problem.



2. Landlord's notice of non-payment or breach: You must give them notice specifying the complaint, such as non-payment of rent or breach of the lease, and telling them that you will evict them if they didn't take care of it.
3. Landlord files complaint: After you have waited the required number of days and they haven't left, you may then file a complaint with the county court and serve a copy of the complaint and a summons to appear in court on them.
4. Tenant's answer: To contest the eviction they must file an answer with the court within five business days. Listed below are some reasons they may use and they will also need to deposit any outstanding rent with the Clerk of the Court.
5. Notice of hearing: If they don't answer, the court will issue you a final judgment allowing you to have the sheriff evict them. If they do answer, and it is a legally sufficient reason and/or they have paid rent into the court registry, you will receive a "Notice of Hearing" from the court setting a hearing date.
6. The hearing: If you win at the hearing they may owe double the rent for the time which they stayed over, your legal expenses, and possibly court costs. If you don't appear at the hearing, then you lose automatically.

#### **Item X. Tenant's Defenses**

1. Improper notice: If you didn't give three days notice before evicting them for not paying rent.
2. Acceptance of rent payment: If you accept rent from them knowing that they were in noncompliance with the lease agreement, you give up your right to evict them during that rent period.
3. Breach by landlord: If they can show the court that you breached and that they gave you seven days notice about it, then they will not owe the rent. However, they will still have to pay that rent to the court registry during any legal proceedings.
4. Retaliation: You may not evict a tenant as a retaliation for organizing tenants or filing legitimate complaints.
5. No noncompliance: If they go to court and prove that they did not commit the alleged noncompliance, then you cannot evict.

#### **Item XII. Other problems**

**Landlord's right of entry.** You may enter at any time to take care of emergencies. An **emergency** should be something serious and requiring immediate attention, like leaking gas, or a broken water pipe.

After giving reasonable notice, you can enter to make repairs, decorate, or show the place. The statutes define reasonable notice as being 12 hours in advance, and reasonable time of inspection as between 7:30 A.M. and 8:00 P.M.

You may also enter if they leave your place for more than one-half of a rent payment period without giving you notice or keeping the rent current.

You may not abuse the right to enter the premises to harass a tenant.

**Major changes to rental unit.** Tenant's shouldn't make any major structural changes which you will have to undo, unless they get your permission first. You can charge them for any work required to return the unit to its condition at the time when they moved into it.

**Landlord's liability:** You have a duty to exercise reasonable care to inform your tenants of any hidden dangers and to repair dangerous defective conditions when they give you notice of their existence.

In common areas of the property, such as hallways shared by several tenants, you must inspect the areas and make necessary repairs. However, you are only liable for injuries which occurred while the property was being used in the manner for which it was intended.

You are also liable for any negligence you commit while doing repair work in their apartment.

Finally, you may even be liable for crimes committed against tenants by strangers, when they were reasonably foreseeable, and your negligence allowed the crime to happen.

**Tenant's liability:** The tenant generally has responsibility for the areas under his own control, except for hazards caused by structural defects, dangers which you knew about but did not reveal when you rented out the apartment, violations of the law, and dangers caused by your negligence.

However, the tenant is responsible for the safety of visitors to his apartment.

**Fire, flooding and other unavoidable disasters:** If damage occurs (not due to your fault) which "substantially impairs" their use of your place, then they may end the lease agreement and move out. They also have the option of using only the undamaged portion of their unit, and having the rent reduced proportionately.

THE INFORMATION CONTAINED HEREIN IS DERIVED PRIMARILY FROM THE FLORIDA PUBLIC INTEREST RESEARCH GROUP ([www.pirg.org](http://www.pirg.org)) AND FROM [www.floridalandlord.com](http://www.floridalandlord.com) .