

A GUIDE TO TENANT'S RIGHTS AND DUTIES

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Following are various topics that tenants should familiarize themselves with: FINDING A PLACE TO LIVE; DISCRIMINATION; THE RENTAL AGREEMENT; THE SECURITY DEPOSIT; MOVING IN AND PAYING RENT; LANDLORD'S OBLIGATIONS; TENANT'S OBLIGATIONS; ENDING THE LEASE; EVICTION; TENANT'S DEFENSES; AND OTHER PROBLEMS.

Item I: Finding a Place to Live

It is usually a good idea to look at a few places before you choose one...even if you really like the first place you see. That way, you'll get a feel for the market, so you can judge whether the place you like is reasonably priced or not.

At the time of pre-rental walk-through with the landlord, you should make note of damaged items or areas, worn rugs, broken fixtures, etc., and give a copy to the landlord. Keep a copy for your records. This may eliminate or minimize disputes later.

Item II: Discrimination

Florida and federal law prohibit 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.

If you believe you are being discriminated against, there are several ways to file a complaint: Write to: Fair Housing Hub, U.S. Dept. of Housing and Urban Development, Five Points Plaza, 40 Marietta St., 16th Floor, Atlanta, Ga. 30303-2806 or you may call them at 1-800-440-8091; or, you may call 1-800-669-9777. Have the following information available: your name and address, the name and address of the person your complaint is about, the address of the house or apartment you were trying to rent and the date when this incident happened.

Item III: The Rental Agreement

A rental agreement spells out the specified place that you are going to rent, what specific amount of time you will be residing there, 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

Necessary Notice
Seven (7) days notice

Month to month
Quarter to quarter
Year to year

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

This, of course, does not apply to nonpayment of rent. 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.

An oral agreement means that you don't write anything down. But, be careful. It might be hard to hold your landlord to any promises which you don't write down.

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.

Florida law requires both landlord and tenant to exercise "good faith" and honesty in their dealings. Naturally, the law prohibits unconscionable lease clauses, which means clauses which would "shock the conscience" of an ordinary person. For instance, a landlord may not prohibit water beds, unless the local building code bans them. However, Florida Statute 83.535 does require water bed users to carry a "reasonable amount" of liability insurance on the bed payable to the building owner.

Some lease provisions are legal and enforceable, but the tenant should look for and avoid them. If any of the following provisions appear in your lease: automatic renewal; tenant agreeing to obey all future rules of landlord; no one but tenant and immediate family may live in apartment; rent may increase; unannounced or unlimited entry by landlord; and landlord holds utilities in his name and bills you, you should negotiate with your landlord to delete them or make them reasonable.

Remember, if the landlord prepares his own lease or has a lease prepared by an attorney, it is for the landlord's benefit. Be sure that you understand everything in it. If you want something changed, you can do so right on the lease by crossing the part out in question and writing in the changes, and having both parties initial the new wording. Do this on both your copy of the lease and on your landlord's copy. If you and your landlord agree on a particular meaning for an ambiguous term, you can write it in and initial the agreed upon meaning. Be sure to get a copy of the lease for yourself before you pay the deposit.

If you want to make a change after signing the agreement, you can try to do so by sending your landlord a certified letter confirming any oral agreements, while keeping a copy of the letter for yourself. However, the prior written agreement may overrule the oral agreements if the matter goes to court.

Make sure that all blanks on the lease are either filled in or crossed out. Never let your landlord fill in details later.

Every roommate should sign the lease. This will ensure that one tenant doesn't move out and leave the other stuck owing his rent. If the lease is in your name only, then the landlord can hold you liable for the whole rent. So, if you are the lease holder, and the lease allows subleasing, you may want to have the other tenants sign subleases from you.

Item IV: The Security Deposit

The security deposit consists of any money which the landlord holds on behalf of the tenant to protect himself 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, your landlord must inform you in advance about the conditions under which he will refund the deposit.

The landlord cannot automatically take the deposit because you breach the lease. He can only take compensation for his damages.

Always get a receipt for the deposit, although you can simply write this into the lease.

Florida law specifies how your landlord may hold your deposit money. If he puts it in an interest-bearing account, then he must pay you either 5% interest, or 75% of the account's interest rate, whichever he wants.

Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit for back rent or damages, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. **If your landlord fails to send you this notice within the 30 days, then he forfeits his right to take any deductions at all.**

Unless you object, he then has 30 more days following his first notice to return the balance of your deposit.

If you have objections to your landlord's calculation of damages, you must make them within 15 days of receiving this notice of deduction, or you forfeit your right to object.

If your landlord neither returns your deposit, nor sends a notice of why he is keeping it, then you can take him to court. In court, the losing side will have to pay the winner's court costs.

If you move out before your lease ends, or if you have an oral lease, then you have to give your landlord a special notice in order to hold him to the 15 and 30 day time limits.

Notify him by certified mail at least 7 days before you move out. If you don't give him this notice, then you free him from the 15 and 30 day requirements for returning your deposit balance. However, he will still owe it to you. Of course, if you do move out early, then your landlord may deduct from the deposit the rent which you still owe.

To help make sure you get back all you can, ask your landlord if you can accompany him when he inspects your apartment's condition upon your moving in and when you move out.

When you move out, clean the whole apartment/home thoroughly, including bathroom and kitchen walls, appliances, floors, furniture and mini blinds.

The most common problem in recovering a security deposit is proving the condition upon moving out in comparison with moving in. Therefore, take photos and have witnesses who are not tenants examine the apartment and sign statements about its condition.

Item V: Moving in and Paying Rent

If the place is unlivable or occupied when you attempt to move in, then your landlord has breached the contract and you are freed from obligations.

If you still want to move in, then notify your landlord of the place's condition by **certified mail**. You can then hold him liable for your alternative housing costs, although you have an obligation to minimize these costs.

Rent is the main thing your landlord wants from you. If you know that you won't be able to make a rent payment, let your landlord know as soon as possible. The two of you may be able to work something out to avoid late penalties or eviction proceedings.

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

Those who signed the lease are primarily liable for any unpaid rent. However, sometimes a tenant who occupies an apartment/home, even without signing a lease, can also be held liable for rent.

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

Item VI: Landlord's Obligations

Florida law divides your landlord's obligations into two (2) categories. You are allowed to withhold rent if he breaches the obligations in category "A", but not if he breaches the ones in category "B":

A) Obligations which justify withholding rent for breach:

The landlord must keep your housing in conformity with all housing and health codes. If these don't exist, he 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. Your landlord is responsible for:

Exterminating insects and rodents: Your landlord has to give you seven days notice that you will have to move out for a pest extermination, and he can't require you to leave for more than four days. He has to abate your rent for the days which you left your place, but he doesn't have to pay your 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.

However, although the landlord must arrange these services, he can require you to pay for them.

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

If you can still live in your place despite the problem, then you should first write your landlord and explain the situation, advising him of any housing codes being violated. Sending a letter like this is the best way to get repairs done. You should keep a copy of this letter for your records.

Following is a sample letter you may write to the landlord:

Date

Dear (name of landlord):

Pursuant with Florida Statutes, Section 83.60, I am notifying you of your material noncompliance with Florida Statutes, Section 83.51(1).

Attached to this letter is a list of needed repairs. Unless these repairs are made within seven (7) days of delivery of this notice, I will not pay rent, because of your failure to maintain the premises.

Sign your name

Print your name and address

Mail or deliver this letter to your landlord at least seven days before the next rent is due. It is recommended that this letter be sent certified mail, return receipt requested.

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

Here are some hints for making the inspector's visit as productive as possible:

Clean your apartment/home before the inspector arrives.

Try to arrange for the inspector to look at as many apartments/homes owned by the landlord as possible during the same trip. This will show that your landlord has been negligent and that you are not just a griping tenant.

Collect as much evidence as you can beforehand. (If, for example, the roaches only come out a night, have some dead roaches on display for the inspector.)

Have a list of all of your landlord's violations.

Get the inspector's name, and accompany him around. This may make him more careful, and will help guarantee he doesn't overlook anything.

Withholding rent is the most extreme step and we strongly recommend getting an attorney's advice before acting. Before you withhold rent, be sure of two things:

1. Your landlord has satisfied one of the legal justifications for rent withholding.

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

You may also withhold rent if your landlord has retaliated against you for complaining or organizing tenants.

You may withhold your rent if your landlord has materially breached the rental contract. For example, if he didn't supply a washing machine which he promised.

2. You should have the rent available because the court will require you to pay it over to the court registry. If you can't pay the court your rent, then you will lose your case automatically.

Be ready to pay withheld and accrued rent to the court registry. After a court has determined that you must pay withheld rent, you have five days to pay it or else the landlord can remove you.

If you win, the court will decrease your rent according to the loss of value to the domicile caused by the landlord's noncompliance.

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

If you withhold rent for two months in a row, you must re-notify your landlord before each rent is due.

Be aware that once you've given your landlord a rent withholding letter, then you may not terminate the lease. You 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. If you do make such an arrangement with your landlord, get it in writing before you spend your own money.

If the problem is serious, you have the right to leave if you have given your landlord a seven-day notice. But if you move out and your landlord then sues you for unpaid rent, you will have to pay the rent to the court registry until the court decides your case. (In fact, it is critical not to pay rent to your landlord while you sue him in court, because payment constitutes legal acknowledgment that you accept the apartment's/home's condition.)

However, the advantage for you in moving out is that this will make the court more likely to abate the rent completely for the time during which you vacated. Also, if you have a strong case because the problem is serious, then the landlord might not sue you for the rent at all.

If your landlord does repair the problem, then you will have to move back in for the rest of your lease. However, the court will probably require him to abate your rent and pay your moving expenses.

You should get legal advice before you move out.

Item VII. Tenant's Obligations

Florida Statutes, Section 83.52, requires you as 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 used by you in a clean and sanitary manner and in good repair.
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 your guests to do so either.
6. Not remove anything from the house or apartment which does not belong to you (for example, cannot remove light fixture which was in the property when you moved in).
7. Conduct yourself, and require other persons on the premises with your consent to conduct themselves, in a manner that does not unreasonably disturb your neighbors or constitute a breach of the peace.

Item VIII. Ending the Lease

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

Rent pay period	Necessary notice
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 1st, they must notify the other party on or before September 15th. If one party gives notice on September 17th, that party cannot end the lease, without the other party's agreement, before November 1st.

If you give this notice by personal delivery or certified mail, then it will also satisfy the notice requirement for getting your security deposit back. Be certain to include your forwarding address.

If you receive your housing as a benefit with your job, and so don't pay a money rent, then the rental period is the same as your pay period. However, if you get fired or quit part way through the pay period, then you will owe your landlord 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 you remain in your apartment after your lease ends, that makes you a holdover tenant. Your landlord may evict you and **collect double the usual amount of rent for the period during which you refused to surrender possession of the premises.**

Item IX: Eviction

The reasons for eviction are:

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

If you pay rent within the three day limit, then your landlord must drop the eviction proceedings. If your landlord accepts rent from you even after the three days, then he gives up his 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, your landlord must give you seven days in which to fix it. However, if you commit the same noncompliance again within twelve months, your landlord may then evict you without another chance to cure.

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

Noncurable noncompliances include: Destruction, damage, or intentional misuse of the landlord's or other tenants' property, or a subsequent or continued unreasonable disturbance. In these cases, your landlord 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 his landlord written notice that he would be gone.

4. Other than non-payment of rent. If your landlord wants you to move for any reason other than non-payment of rent or breach of lease, he must proceed as described in Item VIII. above.

LANDLORDS CANNOT JUST THROW YOU OUT. Florida law prohibits landlords from evicting tenants without going through the court system (self-help evictions). Your landlord can't evict you without a judge's order. And if the sheriff shows up to evict you, he also must have a court order. The only exception to this is if you have legally abandoned your place.

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

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

If any of these occur, you 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 an eviction:

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

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

Item X. Tenant's Defenses

If these apply, you can use them to defend yourself against an eviction:

1. Improper notice: If your landlord didn't give you three days notice before evicting you for not paying rent.
2. Acceptance of rent payment: If your landlord accepts rent from you while knowing that you were in noncompliance with the lease agreement he gives up his right to evict you during that rent period. The same is true if a tenant pays rent with actual knowledge of a landlord's noncompliance.
3. Breach by landlord: If you can show the court that your landlord breached and that you gave him seven days notice about it, then you may not owe the rent. In your answer to the court, you must ask the court to determine what amount of rent is due, if any. However, you will still have to pay the rent into the court registry during any legal proceedings.
4. Retaliation: Your landlord may not evict you as a retaliation for organizing tenants or filing legitimate complaints. However, just because you filed complaints doesn't mean that he can't evict you. You have to prove that he evicted you for complaining. (Your landlord also can't penalize you in other ways for being a squeaky wheel. He can't raise

your rent, make unreasonable requests to inspect your place, or in any other way treat you differently from other tenants.)

5. No noncompliance: If you go to court and prove that you did not commit the alleged noncompliance, then your landlord cannot evict.

Item XI. Other problems

Landlord's right of entry. Your landlord 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 you reasonable notice, he can enter to make repairs, decorate, or show your 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.

It would also be reasonable for you to require your landlord to enter only in your presence, or, if, because of any emergency, he entered with you absent, to leave a written explanation.

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

The landlord may not abuse the right to enter the premises to harass the tenant.

Major changes to rental unit. Don't make any major structural changes which your landlord will have to undo, unless you get his permission first. He can charge you for any work required to return the unit to its condition at the time when you moved into it.

Landlord's liability: The landlord has a duty to exercise reasonable care to inform his tenants of any hidden dangers and to repair dangerous defective conditions when the tenant gives him notice of their existence.

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

Your landlord is also liable for any negligence he commits while doing repair work in your apartment.

Finally, your landlord may even be liable for crimes committed against tenants by strangers, when they were reasonably foreseeable, and the landlord's 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 the landlord knew about but did not reveal when he rented the apartment, violations of the law, and dangers caused by the landlord's negligence.

However, you, the tenant, are responsible for the safety of visitors to your apartment.

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

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