

**ATTORNEY GENERAL'S OFFICE  
STATE OF DELAWARE**



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



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

**Revised August 30, 2004**

## **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.**

INDEX TO SUMMARY

I.	<u>BECOMING A TENANT</u> .....	1
1.	Rental agreement defined .....	1
2.	Landlord required to provide a copy of agreement .....	1
3.	Rental agreements for period longer than one (1) year must be in writing .....	1
4.	A landlord may require an application fee .....	1
5.	A landlord may require a security deposit .....	1,2
6.	Other fees .....	2
7.	A landlord may not discriminate - Fair Housing requirements.....	2
8.	Disclosure of ownership of the rented unit .....	2
9.	Summary of the code .....	2
10.	Conflicts with the code .....	2
11.	Service of notices.....	2
II.	<u>MOVING INTO THE RENTED UNIT</u> .....	2
1.	Rented unit .....	2
2.	Tenant remedies if the rented unit is not available .....	2
3.	Installation of new locks .....	3
III.	<u>CONDITION OF THE RENTED UNIT</u> .....	3
1.	Landlord's duties .....	3
2.	Termination by tenant at the beginning of the term.....	3
3.	Termination, by tenant, after the first month .....	3
4.	Repair and deduction from rent.....	3,4
5.	Failure to provide essential services .....	4
6.	Receivership .....	4
7.	Fire or other catastrophe .....	4
8.	Consumer Protection Unit .....	4
IV.	<u>TENANT'S DUTIES AND LANDLORD'S REMEDIES</u> .....	4
1.	Payment of rent.....	4
2.	Tenant's failure to pay the rent .....	5
3.	Increases in the amount of the tenant's rent.....	5
4.	Tenant obligations relating to rental unit. 5	
5.	Tenant breach of rules or neglect of unit.....	5
6.	Access to the rental unit .....	5,6
V.	<u>TERMINATING A RENTAL AGREEMENT</u> .....	6
1.	Term .....	6
2.	Notice of termination.....	6
3.	What if termination notice is not given .....	6
4.	Tenant's ability to terminate early .....	6
5.	Abandonment or breaking a rental agreement .....	6
6.	Restrictions on sublease or assignment of the rental agreement .....	6
7.	Retaliatory acts prohibited .....	7
8.	Single room rentals in the landlord's residence .....	7
9.	Unlawful ouster or exclusion of tenant .....	7
VI.	<u>ACTIONS FOR SUMMARY POSSESSION OF THE RENTED UNIT</u> .....	7
1.	Grounds for summary proceeding .....	7,8
2.	Who may maintain a summary possession proceeding .....	8
3.	How to begin an action for summary possession.....	8
4.	What the complaint must state .....	8
5.	Trial .....	8
6.	Execution on the judgment and writ of possession .....	9
7.	Stay of proceeding after judgment is entered.....	9

## **I. BECOMING A TENANT.**

### **1. Rental agreement defined. (§5141(u))**

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, 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.

**3. Installation of new locks. (§5509)**

- A tenant has the right to install a new lock on the door to the rental unit at the tenant's expense but only if:
- a. The tenant notifies the landlord in writing and supplies the landlord with a key to the new lock;
  - b. The new lock fits into the system already in place; and
  - c. The lock installation does not cause damage to the door.

### **III. CONDITION OF THE RENTAL UNIT.**

1. **The landlord must: (§5305)**
  - a. Comply with laws regarding the maintenance, construction, use or appearance of the unit and the property of which it is a part.
  - b. Provide a unit that shall not endanger the health or safety of the tenant and is fit for the purpose for which it is expressly rented.
  - c. Keep clean and sanitary all areas maintained by the landlord.
  - d. Make repairs necessary to keep the unit in as good a condition as it was or should have been at the start of the rental.
  - e. Maintain the facilities provided in good working order.
  - f. If the agreement specifies that the landlord is responsible for it, provide garbage receptacles and for the removal of garbage.
  - g. If the agreement specifies that the landlord is responsible for it, supply water, hot water, heat and electricity.

2. **Termination by tenant at the beginning of the term. (§5302)**

If the landlord fails to comply with the rental agreement or if there is substantial noncompliance with other legal requirements, then the tenant may, during the first month, on written notice to the landlord, terminate the rental agreement.

3. **Termination by tenant after the first month. (§5302)**

- a. **First six (6) months.** If the tenant remains in the rental unit, based upon a promise of the landlord to correct a problem that occurred during the first month and the same problem arises again during the first six (6) months of the lease, the tenant may terminate the agreement after giving fifteen (15) days written notice to the landlord.
- b. **At any time.** The tenant may terminate the agreement at any time if a condition exists that deprives the tenant of a substantial portion of the benefit and enjoyment of the bargain the tenant made at the beginning of the rental period. To terminate, the tenant must notify the landlord in writing and give the landlord fifteen (15) days to remedy the condition complained of before terminating. The tenant must then file an action in the Justice of the Peace Court to have the agreement terminated. The tenant may seek damages in the action filed in the Justice of the Peace Court.
- c. **May not terminate if tenant caused condition.** The tenant may not terminate if the tenant, a member of tenant's family or any other person on the property with the consent of the tenant, caused the condition being complained of.
- d. **Penalty if caused willfully or negligently by landlord.** If the condition complained of was caused by the willful conduct or the negligence of the landlord, the tenant can recover damages including the greater of the cost of substitute housing or one month's rent plus the security deposit.

4. **Minor repair and deduction from rent. (§5307)**

- a. **A landlord must start efforts to correct defective conditions within ten (10) days of being notified by the tenant of the defect and must remedy the condition completely within thirty (30) days.** If the landlord fails to repair, maintain, or keep the rental unit in sanitary condition, or fails to perform any duty required by Code or ordinance after being notified in writing by the tenant to do so, the tenant may complete the repair and deduct the lesser of one half of one month's rent or Two Hundred Dollars (\$200.00).

The tenant may not deduct any amount if the tenant, his or her family or anyone on the premises with permission of the tenant caused the condition. The tenant may not deduct any amount if he or she owes rent.

- b. **Wrongful deduction or withholding from rent. (§5308)**

Withholding rent or deducting from the rent has some risk for a tenant. If the tenant withholds rent or deducts from the rent and the Court finds that the withholding or deduction was wrongful, the Court can either grant the landlord possession of the rental unit or enter a judgment against the tenant for the amount wrongfully withheld or deducted. If the Court finds that the withholding was done in bad faith, the Court can grant the landlord damages of double the amount withheld by the tenant. If those damages are not paid, the Court can then enter a judgment for possession by the landlord without any further notice to the tenant.

**5. Failure to provide essential services. (§5308)**

The landlord must supply essential services to the tenant if required to do so by the rental agreement, this Code or a housing code. If the landlord fails to provide such services for a period of more than forty eight (48) hours after being notified by the tenant of the problem, the tenant may, upon *written* notice to the landlord:

- a. Terminate the agreement; or
- b. Deduct 2/3rds of the daily rent which would have been due during the period the essential service is not provided.

A landlord can avoid this deduction by showing impossibility of performance. If the tenant has given this notice and remains in the unit, and the landlord still does not correct the problem, the tenant may, upon *written* notice, to the landlord:

- a. Terminate the agreement; or
- b. Deduct 2/3rds of the daily rent which would have been due during the period the essential service is not provided; or
- c. Obtain equivalent substitute housing as long as the essential service is not provided, with a rent reduction for that period. The tenant may also recover up to ½ of the reduced rent amount for any additional expense incurred as a result of the landlord's failure to provide the essential service.

**6. Receivership. (§§5901, 5905, 5906)**

In addition to the rights set forth above, if the landlord does not provide heat, water, electricity or sewage facilities, or, if the rental unit is dangerous to the safety or health of the tenant, the tenant should give the landlord written notice. If there is no improvement within five (5) days, the tenant can ask the Justice of the Peace Court to establish a receivership. If the Court orders the receivership, the receiver will be the Consumer Protection Unit of the Attorney General's Office.

**7. Fire or other catastrophe. (§5309)**

If, without the fault of the tenant, the premises are rendered unusable by fire or other extreme damage, the tenant may:

- a. Immediately leave the unit and notify the landlord in writing that the tenant has left. This notice will terminate the rental agreement as of the date the tenant leaves the unit; or
- b. If the tenant can still use part of the property, then the rent must be reduced in proportion to the reduction of the fair market rent for the unit.

If the tenant terminates, the landlord must return any security deposit or pet deposit and any prepaid rent that the landlord is not entitled to keep.

**8. Consumer Protection Unit of the Attorney General's Office.**

The Consumer Protection Unit of the Attorney General's Office has the power to enforce the provisions of the Residential Landlord Tenant Code. Suspected violations of the Code should be reported to the Unit by calling 577-3250 or 1-800-220-5424.

**IV. TENANT'S OBLIGATIONS AND LANDLORD'S REMEDIES**

**1. Payment of rent. (§5501)**

The tenant must pay rent at the time and place agreed upon by both parties. If the agreement provides for a late charge, the late charge may not exceed 5% of the monthly rent. A late charge is considered as additional rent. A late charge may not be imposed until five (5) days after the agreed upon time for the payment of the rent.

**2. Tenant's failure to pay the rent. (§5502)**

If the tenant fails to pay rent, the landlord may, on the day after rent is due, send the tenant a notice that rent must be paid within five (5) days from the date the notice was given or sent, or the rental agreement will be terminated.

If the tenant remains in default after the notice period, the landlord may bring an action in Justice of the Peace Court for summary possession (eviction). If the tenant pays all rent due:

- a. *Before* the landlord files the action for summary possession, the landlord cannot start an action for summary possession unless the landlord accepted the rent subject to a written reservation of rights (that is, the landlord confirmed in writing that he or she still reserved the right to proceed with the eviction action).
- b. *After* the landlord has filed an action for summary possession, the landlord cannot maintain the action for summary possession unless the landlord accepted the rent subject to a written reservation of rights (that is, the landlord confirmed in writing that he or she still reserved the right to proceed with the eviction action).

3. Renewals of rental agreements - with changes. (§5107)

If the landlord intends to renew the lease but with changes such as a rent increase or other changes, the landlord must give the tenant a minimum of sixty (60) days written notice prior to the end of the rental agreement term. Unless the tenant informs the landlord, in writing, within fifteen (15) days of receipt of the notice that the tenant rejects the change(s), the change(s) shall take effect. If the tenant rejects the change(s), the lease will be terminated at the end of the term.

4. Tenant's obligations relating to rental unit. (§§5503,5511 &5513)

The tenant must obey all applicable laws, requirements of the rental agreement and all reasonable rules as established by the landlord at the time of the signing of the rental agreement, or as amended during the rental period. The tenant's general responsibilities include the following:

- a. Keeping the premises clean and disposing of garbage in a clean and safe manner;
- b. Keeping all plumbing fixtures clean and safe;
- c. Using all electrical, plumbing, sanitary, heating, ventilation and other facilities in a reasonable manner;
- d. Not damaging any part of the unit, nor permitting others to damage the unit;
- e. Complying with all rules (§§5511,5513);
- f. Informing the landlord in writing of any repairs that the tenant believes the landlord should make (§5505);
- g. Inform the landlord beforehand of any extended absence if the rental agreement requires such notice (§5506).

5. Tenant breach of rules or neglect of unit. (§5513)

If the tenant does not properly care for the rental unit or breaks any rule or provision that is material to the rental agreement, the landlord must give the tenant written notice of the violation and allow the tenant seven (7) days after the notice to correct the problem. If the tenant fails to correct the problem, the landlord may terminate the rental agreement and bring an action in Justice of the Peace Court for summary possession (eviction). The landlord may rely upon any notice of a breach for a period of one year, in the event a substantially similar violation occurs and no further notice need be given in that case.

If the landlord can correct the violation, the landlord may do so and bill the tenant for the actual costs of correcting the violation. If the violation also is a violation of a state or local code or ordinance, the landlord may terminate the agreement and bring an action in the Justice of the Peace Court for summary possession.

If the violation causes or threatens to cause irreparable harm, or if the tenant is convicted of a class A misdemeanor or a felony during the term of the tenancy which caused or threatened to cause irreparable harm, the landlord may without further notice either correct the violation, or immediately terminate the rental agreement and bring an action for summary possession.

6. Access to the rental unit. (§§5509,5510)

The tenant is required to provide reasonable access to the landlord to enter the unit in order to inspect the unit, make repairs, decorations, alterations or improvements or to show the unit to prospective tenants, purchasers or mortgagees.

The landlord cannot abuse this right of access. The landlord is required to give the tenant forty-eight (48) hours notice of intent to enter the unit for any purpose other than to make repairs requested by the tenant or in the case of an emergency.

As to prospective tenants and purchasers only, the requirement of forty- eight (48) hours notice may be waived in a written, signed addendum to the rental agreement.



## **V. TERMINATING A RENTAL AGREEMENT**

### **1. Term. (§5106)**

The term of the rental should be set out in the rental agreement. No rental agreement can be effective for a term longer than one (1) year unless it is in writing.

### **2. Notice of termination. (§5106)**

The landlord or the tenant must give a minimum of sixty (60) days written notice to the other party if either intends to terminate an existing rental agreement. If the rental agreement is for more than a month-to-month period, the notice must be given at least sixty (60) days prior to the expiration of the rental agreement. If the agreement is on a month to month basis, the sixty (60) day notice will be effective sixty (60) days from the first day of the month following the day actual notice is given. The notice must indicate that the rental agreement will terminate upon its expiration date.

If a tenant rejects a notice of renewal of the rental agreement with changes sent by the landlord under §5107, that rejection will be treated as an effective termination notice.

### **3. What if termination notice is not given? (§5108)**

If the landlord fails to give the sixty (60) days notice or the tenant fails to give forty-five (45) days notice to terminate the rental agreement the rental agreement continues as a month-to-month rental agreement and all other terms of the agreement remain in effect.

### **4. Tenant's ability to terminate early. (§§ 5302 5304 5308 5309 5314)**

In addition to the reasons previously set forth for a tenant's early termination of the rental agreement, the Code also allows a tenant to terminate, under certain circumstances, after giving thirty (30) days written notice. The thirty-day period shall begin on the first day of the month following the day of actual notice.

A tenant may terminate a rental agreement early, that is before its expiration date, by giving the landlord thirty (30) days written notice if:

- a. The tenant is required by his or her current employer to move a distance of more than (30) thirty miles;
- b. The serious illness of the tenant or a member of the tenant's immediate family who lives with the tenant requires the tenant to move on a permanent basis;
- c. The tenant is accepted for admission into a senior citizens' facility or a group facility or retirement home;
- d. The tenant is accepted for admission into a rental unit subsidized by a governmental or private non-profit corporation, including subsidized private or public housing;
- e. The tenant, after the execution of the rental agreement, enters the military service of the United States on active duty;
- f. The tenant dies, in which case the surviving spouse or the personal representative of the estate of the tenant may terminate.

### **5. Abandonment or breaking a rental agreement. (§5507)**

If, for reasons other than those allowed by this Code, the tenant moves from the rental unit before the rental agreement expires, the tenant shall be liable for the lesser of:

- a. The rent due for the remainder of the rental term and expenses for actual damages caused by the tenant which are incurred in preparing the rental unit for a new tenant; or
- b. All rent accrued during the period necessary to re-rent the premises and all costs incurred in re-renting the unit.

### **6. Restrictions on a tenant's ability to sublease or assign the rental agreement. (§5508)**

By the terms of the rental agreement, a landlord may prohibit or restrict the subleasing or assignment of the rental agreement. If the landlord allows subleasing or assignment, then consent to the subleasing or assignment cannot be unreasonably withheld.

### **7. Retaliatory acts prohibited. (§5516)**

Retaliatory acts by a landlord are prohibited by the Code. A landlord is presumed to be acting in a retaliatory manner if the landlord pursues an action for summary possession (eviction), or otherwise attempts to force the tenant to

leave the premises, or demands an increase in rent, or decreases services to which the tenant is entitled within ninety (90) days after the tenant has:

- a. Complained to the landlord or a government authority concerning the condition of the property; or
- b. A government entity has filed a notice or complaint concerning the condition of the property; or
- c. Organized, or is an officer of, a tenants' organization; or
- d. Pursued, or is pursuing, any legal right or remedy arising out of the tenancy.

A landlord can overcome the presumption of retaliatory acts and proceed with filing an action for summary possession by showing:

- a. The landlord has given appropriate notice under the Code allowing early termination; or
- b. The landlord is seeking to recover possession to use the unit for the landlord's residence; or
- c. The landlord is not going to use the unit for rental for at least six (6) months; or
- d. The landlord intends to substantially alter, remodel or demolish the unit; or
- e. The condition complained of was caused by the tenant; or
- f. That the unit was in compliance on the date of filing the action for summary possession; or
- g. The landlord has contracted to sell the property; or
- h. The landlord is seeking possession based upon a notice to terminate which was given prior to the tenant's complaint; or
- i. The condition complained of was impossible to remedy prior to the expiration time to cure; or
- j. That the costs of operation of the unit, including taxes, have substantially increased; or
- k. That the landlord has completed a substantial capital improvement; or
- l. That the rent being demanded does not exceed that being charged to others in the same complex.

**8. Single room rentals in the landlord's residence. (§5512)**

Single room rental agreements for rooms in the landlord's residence may be terminated immediately upon written notice to the tenant for a breach of the rental agreement or rules governing the use of the rental unit. The landlord can then bring an action in the Justice of the Peace Court for summary possession.

**9. Unlawful ouster or exclusion of tenant. (§5313)**

If the tenant has been unlawfully ousted or excluded from the rental unit, the tenant can recover possession or terminate the rental agreement. The tenant may also recover either three (3) times the damages or three (3) times the daily rent for the period of time the tenant was excluded from the unit.

**VI. ACTIONS FOR SUMMARY POSSESSION OF THE RENTAL UNIT IN THE JUSTICE OF THE PEACE COURT. (§§5701-5718)**

**1. Grounds for summary possession. (§5702)**

An action for possession of the rental unit may be brought in the Justice of the Peace Court nearest the rental property by the landlord or the tenant (where appropriate) for any of the following reasons:

- a. **Holdover.** The tenant stays in a rental unit after the end of a rental agreement without the permission of the landlord or the new tenant;
- b. **Failure to pay.** The tenant has not paid the agreed upon rent, after receiving the five (5) day notice;
- c. **Wrongful deduction from the rent.** The tenant has deducted money from the rent, in a way not permitted by the Code;
- d. **Breach of obligation.** The tenant has violated a term of the lease or regulations or applicable law;
- e. **Holdover of employee.** If the tenant is an employee or agent of the landlord, the landlord may recover possession fifteen (15) days after termination or dismissal;
- f. **Holdover after sale.** When the tenant holds over for more than five (5) days after the property has been sold upon the foreclosure of the mortgage;
- g. **Ouster.** When the rightful tenant has been wrongfully ousted from the unit;
- h. **Holdover after fire or casualty.** If the tenant refuses to leave to allow the landlord to conduct necessary repairs after a fire or casualty loss;
- i. **Conviction of certain crimes during tenancy.** If a tenant is convicted of a class A misdemeanor or any felony, while a tenant, which caused or threatened to cause irreparable harm to any person or property;

- j. Commercial unit recovery of possession. If the commercial rental agreement provides grounds for an action for summary possession;
- k. Mobile home lots and leases. For any of the reasons set forth in the Mobile Home Lots and Leases Act, but only for those cases dealing with mobile home lots.

**2. Who may maintain a summary possession proceeding? (§5703)**

An action can be maintained by:

- a. The landlord;
- b. The owner;
- c. The tenant wrongfully ousted;
- d. The next tenant of the premises whose term has begun;
- e. The tenant.

**3. How to begin an action for summary possession. (§5704)**

The plaintiff starts an action by filing a complaint in the Justice of the Peace Court nearest to the rental unit. The Court then serves the defendant with the complaint and sets the time and place for the hearing on the complaint.

**4. What the Complaint must state. (§§5707,5708)**

**STANDARD COMPLAINT**

To be acceptable to the Court, the complaint is required to state:

- a. The interest of the plaintiff in the rental unit;
- b. The defendant's interest in the rental unit and defendant's relationship to the plaintiff;
- c. A description of the rental unit;
- d. The facts upon which the case is based including, by attachment, a copy of any written notice that forms the basis of the complaint;
- e. The relief sought, which may include a judgment for rent due if the complaint clearly notes that such a demand has been made.

**ADDITIONAL REQUIREMENTS OF CERTAIN COMPLAINTS**

If the complaint is based upon a claim that the tenant has violated a lawful obligation (for example, provisions of the lease or rules) in relation to the use of the unit, then the complaint must contain the following additional information:

- a. The rule or provision allegedly broken and the date upon which the rule was made known to the defendant;
- b. A copy of the rule or provision as it was provided to the tenant must be attached, and the means by which the rule was made known to the tenant;
- c. The facts that amount to a continued violation or breach;
- d. The purpose of the rule or provision;
- e. If the rule is not part of the rental agreement, an explanation that the rule does not work as a substantial change to the rental agreement.

The Court can dismiss complaints that fail to comply with the requirements set forth in this paragraph 4.

**5. Trial. (§§5710,5713)**

A summary possession trial may be heard either by a judge or by a six (6) person jury. To be heard by a jury, either the defendant must notify the Court within ten (10) days of receipt of the complaint, or the plaintiff must ask for a jury trial at the time the complaint is filed.

A verdict by a judge may be appealed to a three-judge panel for a new (de novo) trial. A verdict by a jury may be appealed but the appeal is limited to a review of the record of the jury trial. The appealing party must state in detail the points of law that are alleged to have been improperly decided by the jury trial.

**6. Execution on the judgment and writ of possession. (§5715)**

If the plaintiff is successful in trial and a judgment is entered for the plaintiff, then a writ of possession may be issued by the Court. The plaintiff has the obligation to request the issuance of the writ of possession. The sheriff will then serve the defendant with the writ, giving the defendant at least twenty- four (24) hours to move out of the rental unit.

**MOBILE HOME LOT POSSESSION**

If possession of a mobile home lot is granted to the plaintiff, then the defendant may, under certain circumstances, delay the effective date of the writ of possession. If the tenant, on or before the posting of the writ of possession, has prepaid a daily storage charge in an amount equal to seven (7) days rent, then the Court can extend the notice period for the removal of the mobile home to a maximum of seven (7) days.

**TENANT'S PROPERTY THAT IS LEFT BEHIND**

If at the time of the enforcement of the writ of possession, the tenant has left property behind in the rental unit, then the landlord may remove and store all such property. If the tenant does not pay for the removal and storage of the property within seven (7) days, the landlord may dispose of the property without further notice or obligation to the tenant.

**7. Stay of proceeding after judgment is entered. (§§5716,5717)**

No action may be taken to enforce the summary possession judgment until the period for the appeal of the judgment has ended. The only exception is if the party against whom the judgment has been entered appeals and fails to post a bond or undertaking to ensure payment of the judgment if the appeal is not successful.

The Court may also stay the execution of a judgment if the Court finds that there was a good faith dispute or other reason for the failure of the defendant to pay the rent. If the Court finds that a good faith dispute existed, then the defendant may stay the writ of possession by paying the amount of the judgment or by assuring the Court that it will be paid within ten (10) days. If the defendant fails to pay, summary possession will be granted.