

**RENTING AN APARTMENT IN ST. JOSEPH
COUNTY, INDIANA**

LEGAL INFORMATION FOR RENTERS

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The purpose of this pamphlet is to provide general information to renters about the law governing apartment rentals in Indiana. Renters should not rely on this pamphlet for legal advice about a specific problem.

Low income renters in St. Joseph County needing legal advice or assistance should call Indiana Legal Services at 574-524-8121.

BASIC RIGHTS AND RESPONSIBILITIES OF LANDLORDS AND RENTERS

A. Landlord Responsibilities

The Indiana landlord-tenant law states that landlords have the following duties:

- Provide the rental house or apartment in a “*safe, clean and habitable* condition.”
- Comply with all provisions of the lease
- Comply with all “health and housing codes.”
- Keep common areas such as hallways in a “clean and in proper condition.”
- “Provide and maintain the following items in *good and safe working condition*”:
 - Electrical systems
 - Appliances
 - Sanitary systems
 - Elevators
 - Plumbing sufficient to accommodate a reasonable supply of hot and cold running water at all times
 - Heating, ventilating and air conditioning systems. The heating system must be sufficient to adequately supply heat at all times
- Fix problems that a renter brings to the landlord’s attention within a reasonable time.
- Return a renter’s security deposit within forty five days after the renter moves out and provides the landlord with a forwarding address.

B. Renter Responsibilities

The Indiana landlord-tenant law states that renters have the following duties:

- Keep the premises “*reasonably clean*.”
- Comply with obligations imposed on renters by health and housing codes.
- “Use utilities, appliances and facilities in a reasonable manner”

- “Refrain from defacing or damaging the premises”
- Comply with all provisions of the lease
- Provide the landlord with reasonable access to inspect the apartment and perform maintenance and repairs
- At the end of the rental, return the premises in a *clean and proper condition*.
 - This excludes damages from *normal wear and tear*.
- Refrain from shutting off or reducing utility services to the apartment if such an action would result in serious damage to the rental unit.
- *Always pay rent*—even if the landlord has not fixed problems that the renter has reported. Failure to pay rent, even if the landlord has violated a legal duty, will subject a renter to eviction. See below for information about the procedures that renters can follow if a landlord fails to live up to his or her legal obligations.

C. Prohibited Conduct By Landlords

Without a court order, a landlord may NEVER:

- Evict a renter.
- Interfere with a renter’s normal use of the premises
 - A landlord may never change the locks, remove fixtures, or cut off utilities without a court order.
 - A landlord may never remove a renter’s possessions from the premises without a court order.
 - A landlord may not make unreasonable entry into the premises. A landlord has the right to inspect the premises occasionally, but it must be reasonable.
 - A landlord may not take other actions that would interfere with a renter’s “quiet enjoyment” of the premises.
- Require additional payments that are not identified in the lease.
 - If a renter has a written lease, the landlord may only collect rental payments that are set forth in the lease. A landlord may not require additional “under the table” payments.

MOVING IN AND MOVING OUT

Landlords often withhold portions of security deposits because they claim that renters have left their houses or apartments in a dirty or damaged condition. It is also common for landlords to file lawsuits against renters for amounts over and above the security deposit on account of damage or failure to perform adequate cleaning. The following suggestions are intended to help renters avoid such claims for damages and increase their chances of recovering their security deposits.

A. The Lease

- Every lease is different. Read your lease carefully before you sign it. Make sure you understand:
 - The length of the lease
 - How much you will pay
 - Rent
 - Security deposit
 - Late fees
 - When you must pay
 - Who pays for utilities
 - Move in and move out procedures
- Discuss any questions / concerns you might have with your landlord.
 - It is better to talk before there is a problem rather than after there is a problem.
- File a copy of your lease where you won't lose it.

B. Moving In

- Walk through your rental property,
 - Preferably with your landlord .
 - Preferably before you sign the lease.
 - See the unit *you will live in*.
- Search your rental property thoroughly for any signs of wear or damage.
 - Marks on the wall or paint chips
 - Broken doors, light fixtures, windows, etc.
 - Stained or frayed carpet.
 - Malfunctioning appliances
- Make a record of all damage. Take photos if possible. Such records may be useful upon move-out to prove that the renter was not the cause of that damage.
- Present a copy of your damage description to the landlord and ask the landlord to sign it.
- Keep a copy and with your lease.

C. During Your Tenancy

- Inform the landlord immediately of any damage to the apartment or anything that needs repair.
- Inform the landlord in writing, if possible.
- The landlord cannot be held responsible to fix a problem unless the landlord knows it exists. More importantly, a landlord may seek to hold a tenant liable for further damage that occurs to an apartment as a result of a problem (such as a water leak) that the renter failed to bring to the landlord's attention.

D. Moving Out Before The End Of The Lease Term

Each lease specifies how long it will last. Some leases are month-to-month. Others have a term of a full year. If a renter breaks a year-long lease and moves out before the end of the term without the landlord's permission, the renter may be held liable for paying the rent for the remainder of the lease term. **HOWEVER**, a landlord has a legal duty to make reasonable efforts to find another tenant to fill out the remainder of the lease term. If the landlord finds another renter, then the renter who broke the lease will be liable only to pay rent for any period the apartment may have been empty between his or her move-out and the new renter's move-in. A renter who is planning to break a lease early should give the landlord as much advance notice as possible in order to give the landlord the best opportunity to find another tenant.

E. Moving Out, Step-By-Step

- Re-read the lease. Determine what it requires you to do before you move out (e.g., some leases requires renters to steam clean the carpets).
- Give the landlord as much advance notice of your move out date as possible. Some leases require you to inform the landlord of your intent to move out well in advance of the move out date. Be careful.
- Move *everything* off the property. Move property out of the house, common areas, lawn, garage; *anywhere that is the landlord's property*. The landlord may charge you if the landlord has to remove property you leave behind.
- Clean the apartment thoroughly. The landlord may charge a renter for any cleaning the landlord has to do after a move-out.
 - Clean all appliances, floors, walls, etc.
 - Save receipts for all cleaning expenses.
- Walk through the empty apartment or house with the landlord.
 - Agree in writing on any damage you may have caused.
 - Get a copy of the list of damages for yourself.
- Inform the landlord that you have moved out.
 - Return all keys to the landlord.
- Give your landlord a letter with your forwarding address. This is essential to ensure that you receive your security deposit (see below).

- Deliver it in person or by certified mail.
- Keep a copy of the letter and a receipt if it was sent by certified mail.
- Confirm that the landlord received it.
- Record and remember the date that you delivered the forwarding address.

RETURN OF SECURITY DEPOSITS

- Upon moving out, a renter must provide the landlord in writing with a forwarding address. (See instructions above)
- Within 45 days after a renter provides a written forwarding address to a landlord, the landlord must either:
 - Return the security deposit in full, or
 - Give the renter a detailed written list of charges that the landlord plans to deduct from the security deposit. For example, a landlord may withhold all or part of a security deposit to reimburse the landlord for:
 - Unpaid rent or late fees
 - Physical damage to an apartment such as holes in the walls, broken windows, or damaged fixtures
 - Cleaning charges, if the renter did not clean the apartment to the extent required by the lease.
- If the landlord does not provide a detailed, written list of damages within 45 days, *the landlord must refund the security deposit in full*. In such a circumstance, the landlord has waived any right to collect back rent or damages from a renter.

LANDLORDS' AND RENTERS' REMEDIES WHEN THINGS GO WRONG

A. What If A Landlord Fails To Make Repairs?

Unlike other states, Indiana does not allow renters to withhold rent and make repairs themselves. When something in an apartment needs repair, renters should:

- Give the landlord immediate notice of the problem, and keep a record of that notice.
- Give the landlord a reasonable amount of time to make repairs or provide a remedy for the problem described in the notice.
- Provide the landlord with reasonable access to the premises to make repairs.
- Continue paying rent (otherwise the landlord may have grounds for eviction).

- If the landlord fails to repair or remedy a problem that may be serious enough to violate the local building code, call the local code enforcement office and request an inspection.
- If all else fails, a renter may file an action in Small Claims Court to force the landlord to fix the problem. Renters may file complaints in Small Claims Court without an attorney.

B. What If A Landlord Locks Out A Renter Or Shuts Off Utilities?

If a landlord changes the locks, cuts off utilities, removes a renter's belongings, or takes other action to deprive a renter of the use of a rental unit without a court order, the renter may go to Small Claims Court and request an Emergency Possessory Order to be restored to the apartment or to recover belongings. The Court should provide a complaint form for the renter to fill out. The Court should also schedule a hearing within three business days.

C. What If A Landlord Seeks To Evict A Renter?

- A landlord may not evict a renter without a court order.
- A landlord may be required by the lease or by Indiana law to provide the renter with a "Notice to Quit" before commencing eviction proceedings in court. A "Notice to Quit" is not the same as a court order; a renter is not required to move out by the date specified in the Notice to Quit. The Notice gives the renter a chance to catch up on back rent or resolve any other problems and prevent eviction proceedings. The landlord may not file an eviction proceeding until after the date specified in the Notice to Quit.
- Eviction proceedings normally take place in Small Claims Court.
- A landlord begins eviction proceedings by filing a complaint for "Immediate Possession." The sheriff serves the complaint on the renter.
- The complaint will list a date (no sooner than five days after the renter receives the complaint) for an eviction hearing. Renters should always attend the hearing.
- At the hearing, the renter will have a chance to present his or her side of the case. The renter should bring to the hearing any documents, receipts, photos or other information that will show the renter paid rent and is otherwise in compliance with the lease. The renter may also bring witnesses to court to testify in his or her behalf.
- If the judge rules in favor of the landlord, the judge will issue an order for immediate possession of the property. The sheriff will serve a copy of the order on the renter, usually within a few days. The renter must move out of the apartment within 48 hours of receiving a copy of the order. If the renter fails to do so, the landlord may remove all of the renter's belongings and put them in storage.
- If the court determines a renter should be evicted, the court will normally schedule a "damages hearing" for a month or two later to determine whether the renter owes the landlord any money for back rent or physical damage to the rental unit.

D. What Happens At A Damages Hearing?

- At a damages hearing, the landlord may present evidence of any money the renter may owe for back rent, late fees, or physical damage to the rental unit.
- The renter should always attend the damages hearing. If a renter fails to appear at the hearing, the court may enter an order for the renter to pay the landlord everything the landlord claims.
- The renter should bring all relevant documents, photos and witnesses to the damages hearing.
- The renter need not simply respond to the landlord's claims. The renter may also present any claims that the renter may have against the landlord, including a claim for return of the security deposit.

E. What If The Landlord Fails To Return The Security Deposit?

- A landlord is permitted to keep part or all of a security deposit to cover unpaid rent or damage to a rental unit. The landlord must provide the renter with a written accounting of the amounts the landlord claims are owed by the renter. (See above)
- If a landlord fails to return a renter's security deposit within 45 days of the time the renter provides the landlord with a written forwarding address, the renter may file a complaint in Small Claims Court to require the landlord to return the deposit. The Court will schedule a hearing. A renter does not need an attorney to file a claim for the return of a security deposit.