

issuance of the Writ of Removal, which will not be longer than three (3) days after the hearing.

Writ of Removal

The landlord must take one additional step in the eviction process. A Writ of Removal will be issued upon the ordered date. The landlord will need to take the Writ of Removal, fill out a Praecipe, and give instructions to the Sheriff on how to dispose of the property. The landlord will be responsible for removing the property at the appointed time the Sheriff executes the Writ of Removal.

Important Numbers:

City of Des Moines Neighborhood Inspection Services283-4046

Iowa State Bar Association
Lawyer Referral Service280-7429

Legal Aid Society of Polk
County243-1193

Polk County Clerk of Small
Claims Court286-3921

Polk County
General Relief286-2088

Prepared as a public service by
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04/00

Landlord/ Tenant



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What You Should Know:

Leases

A lease is a contract. A lease can be oral, but for protection of both parties, it should be in writing.

The lease should set out the terms and conditions of the tenant and landlord relationship. The lease will normally state how many months the lease will run, the monthly rent, and the remedies afforded to the tenant and landlord in the event a violation of the lease occurs.

Rental Certificate

In the City of Des Moines it is a requirement that the landlord have a current rental certificate issued on the property prior to its being rented. Other cities may have similar requirements. It is best to check with the local housing agency prior to entering into a lease.

Duration

A lease will expire at the end of its stated term. At the conclusion of that stated term, if no new lease is entered into, the lease will become a month-to-month lease. A month-to-month lease expires upon thirty (30) days written notice to either party. The thirty (30) days must begin on the first day rent is due, generally the first of the month. For example, if rent is due on the 1st, and the notice is given on May 20th, the lease will end on June 30.

Security Deposit

Most landlords require a security deposit be paid to cover potential damage to their rental units.

Landlords cannot ask the tenant to pay a deposit greater than an amount equal to two months rent.

Once the tenant leaves, the landlord must return the security deposit in its entirety, or give a written accounting of any portion withheld, within thirty (30) days of the tenant's departure. The landlord can only withhold the deposit for damages in excess of ordinary wear and tear. Failure to refund the security deposit in the manner prescribed may subject the landlord to \$200 in punitive damages and attorney's fees, if the tenant brings suit.

Landlord Remedies for Breach of the Lease

The landlord can seek to terminate the lease for an alleged violation by the tenant in one of three ways.

Normally, the landlord would be required to give the tenant a 7-Day Notice to Cure, giving the tenant an opportunity to correct the alleged lease violation. If the tenant does not correct the alleged violation, such as excessive noise, the landlord can seek to evict the tenant at the expiration of the 7-Day notice. If the tenant fails to pay his or her rent, the landlord can give a 3-Day Notice to Quit/Cure for Non-Payment of Rent. This gives the tenant 3 days to pay the rent due. If the tenant fails to pay within the 3 days, the landlord can seek to evict the tenant. Lastly, if the tenant causes a "clear and present danger", the landlord can give a 3-Day Notice to Quit/Cure for Clear and Present Danger. If the danger can be cured within the 3 days, but is not, the landlord can seek to evict the tenant after the expiration of the 3 days.

Tenant Remedies for Breach of the Lease

The tenant, likewise can serve notices upon the landlord if he or she breaches the lease.

The tenant's remedies are two-fold. First, the tenant can serve the landlord a 7-Day Repair and Deduct Notice for an alleged breach. This will give the landlord 7 days to correct the alleged breach, or, after 7 days have expired, the tenant will have the right to repair the problem and deduct the cost of the repair from the next month's rent. The other remedy is a 7-Day Notice of Termination. This gives the landlord 7 days to correct the alleged breach. If, after 7 days, the problem has not been corrected, the tenant will consider the lease terminated, and will move.

Eviction

Before a landlord may bring an eviction action, he or she must first serve a 3-Day Notice to Quit, giving the tenant three days to move-out. This is so, except where the eviction is based upon nonpayment of rent, or clear and present danger. In these two cases, the Cure Notice and 3-Day Notice to Quit are combined. The landlord must then file a Forcible Entry and Detainer or FED action with the Clerk of Court.

Hearing

A hearing must take place no sooner than four (4) days from the date the FED is served on the tenant, but no later than seven (7) days from the date of filing. Generally, in Small Claims eviction actions, both parties will have the opportunity to negotiate a settlement prior to the hearing. If a settlement cannot be reached, a hearing will be held. If the tenant successfully contests the allegation at the hearing, the eviction action will be dismissed, and the tenancy will continue. If the landlord is successful at the hearing, a Judgment for Possession will be entered, and a date set for