



LEGAL AID
SOCIETY OF HAWAI'I



THE HAWAI'I RESIDENTIAL LANDLORD-TENANT CODE: SURVIVORS OF DOMESTIC VIOLENCE

This brochure provides information about the rights of tenants who are survivors of domestic violence under the Hawai'i Residential Landlord-Tenant Code.

This brochure pertains to you if, and only if:

- You are a tenant or the immediate family member of a tenant, who is a survivor of domestic violence, AND
- You or your immediate family member have a rental agreement not lasting more than twelve months with a *private* landlord.

IMPORTANT: If you reside in subsidized housing (e.g., Public Housing, Section 8, LIHTC), this brochure does not apply. However, as a survivor of domestic violence, you have additional rights under the Violence Against Women Act (VAWA). Contact the Legal Aid Society of Hawai'i to learn more about your situation.

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REMEMBER: The following information obtains if, and only if:

- You are a tenant or the immediate family member of a tenant, who is a survivor of domestic violence, AND
- You or your immediate family member have a rental agreement not lasting more than twelve months with a *private* landlord.

PART I: TERMINATING YOUR RENTAL AGREEMENT EARLY

If you or an immediate family member are a survivor of domestic violence, you may “terminate” your rental agreement (move out of your unit) before the date on which your rental agreement expires. However, you may only do so without penalty or fees for “early termination” if the incident of abuse occurred within ninety (90) days prior to the date on which you provide *written* notice to your landlord.

PROPER NOTICE:

The notice you provide to your landlord must meet the following criteria:

- The notice must be written,
- The notice shall be given at least fourteen (14) days prior to the early termination date specified in the notice,
- The notice shall be accompanied by *one* of the following documents:
 - A copy of a valid order of protection issued by a court of *any* state to the tenant or immediate family member of the tenant as a result of an incident of domestic violence;
 - A copy of a police report filed with an agency of *any* state that states that the tenant or immediate family member of the tenant is a survivor of domestic violence; or
 - A copy of the conviction of a person for an act of domestic violence against the tenant or immediate family member of the tenant.

IMPORTANT: In addition to your written notice, and one of the above-mentioned documents, you shall also provide your landlord with a written statement describing *how* and/or *why* you believe that the person who committed the domestic violence knows the address or location where you or your immediate family member reside. **IF THE PERSON WHO COMMITTED THE DOMESTIC VIOLENCE RESIDES IN THE SAME DWELLING UNIT, YOU DO NOT HAVE TO PRODUCE THIS STATEMENT.**

NOTE: If the tenant or immediate family member of the tenant knowingly submits false notice or accompanying documentation to the landlord in support of the right to be released from the rental

agreement for being a survivor of domestic violence, the landlord may recover an amount equal to three (3) month's rent or three (3) times actual damages, whichever is greater, plus costs and reasonable attorney's fees.

RIGHTS AND RESPONSIBILITIES: THE TENANT

Your rental agreement will expire on the date described in the notice that you provided to your landlord ("early termination date"). Make sure that you can check each of the following boxes on or before the early termination date.

- You should be fully prepared to move out of your unit and relocate to another dwelling.
- You are required to pay rent *through* the early termination date. *For example, if the early termination date you provided to your landlord is January 20th, you are required to pay "prorated" rent for the month of January. That is, January 1st through January 20th. You do not have to pay rent for January 21st or any day thereafter.*
- In addition to paying rent, you are required to pay *any* outstanding balances (e.g., back rent, late fees, pet fees, utilities). You are required to pay the total amount (Rent + Outstanding Balances) on or before the early termination date.

NOTE: If there are other tenants on the rental agreement, they must continue to meet the demands of the original rental agreement. They are required to pay the full amount of rent that they agreed to in the original rental agreement even after you leave the unit "early." If the landlord determines that the other non-terminating tenants are incapable of continuing to pay their rent in full, the landlord may terminate their rental agreement by giving fourteen (14) days written notice.

RIGHTS AND RESPONSIBILITIES: THE LANDLORD

AFTER you move out of your unit on the early termination date described in the notice to your landlord, your landlord is legally bound to the following:

1. Your landlord must return all or a portion of your security deposit and/or prepaid rent. For more information, see the "SECURITY DEPOSITS" section that follows.
2. Your landlord cannot charge any additional fees or penalties for exercising your right to terminate your rental agreement early.
3. Your landlord cannot disclose any information about your personal history of domestic abuse unless one or more of the following conditions apply:
 - a) You provided your landlord with a written statement of consent, authorizing him/her to release information about your personal history of domestic abuse;
 - b) Information about the incident of abuse is required or relevant in a judicial action; or
 - c) Disclosure of information is required by other law.

If the person who committed domestic violence is on the rental agreement, the above-mentioned rules still apply. Additionally, your landlord has legal rights to do one of the following:

- A. Your landlord can choose to allow the person who committed the domestic violence to remain in the unit. The person who committed the domestic violence will be responsible for making all future rent payments under the terms of the original rental agreement;
OR
- B. Your landlord can terminate his/her rental agreement with the person who committed domestic violence by notifying the person in writing at least five (5) days before the date of termination. Your landlord can evict the person who committed domestic violence if the person does not leave the unit after the date on which their rental agreement was terminated.

Your landlord can also sue the person who committed domestic violence against you or your immediate family member for “actual damages.” In this case, “actual damages” typically means rent that your landlord missed out on due to your decision to exercise the legal right to terminate your rental agreement early.

SECURITY DEPOSITS

If there are several people on the rental agreement and you terminate your rental agreement early, your landlord can do one of the following:

- A. Your landlord can choose to allow the other tenants on the rental agreement to remain in the unit following your early termination; or
- B. Your landlord can terminate the rental agreement with the remaining tenants by giving fourteen (14) days written notice.

If your landlord chooses **option A** (he/she allows the other tenants to remain in the unit), you (the “terminating tenant”) are entitled to an equal portion of the original security deposit on the date of early termination. *For example: Suppose you share a rental unit with three of your friends. All four of your names are on the rental agreement and together you paid a \$1,000.00 security deposit on the day you moved in. On the day of your early termination, your landlord should give you a security deposit refund of \$250.00. [$\$1000.00 \div 4 \text{ tenants} = \$250.00 \text{ per tenant}$].*

If your landlord chooses **option B** (he/she terminates the rental agreement with the remaining tenants), your landlord is not required to refund any portion of the security deposit until every tenant on the rental agreement moves out of the unit.

If you are the sole tenant on the rental agreement and you exercise your right to terminate your rental agreement early, your landlord is required to refund all or some of your security deposit on the early termination date.

REMEMBER: Your landlord may have a legal right to keep all or some of your security deposit depending on things not related to your personal history of domestic violence such as, damage you may have caused to the unit and/or violations of house rules during your tenancy. Legal Aid Society

has brochures on Security Deposit refunds. You can access these brochures directly from our website, www.legalaidhawaii.org, or you can call our Intake Hotline to learn more about your situation.

PART II: CHANGING THE LOCKS ON YOUR UNIT

If you are a tenant or the immediate family member of a tenant who is a survivor of domestic violence, and you want to stay in the unit in which you currently reside, then you have a legal right to change the locks on your unit. You must pay this expense. There are two (2) sets of rules for changing the locks on your unit.

If the person who committed the domestic violence IS NOT on the rental agreement, then:

1. You must provide your landlord with a *written* request asking him/her to change the locks on your unit.
2. Your landlord is required to change the locks within three (3) days of receiving your written request.
 - a) If your landlord does not change the locks on your unit within three (3) days after receiving your written request, then you may change the locks on your unit without your landlord's permission. If you change the locks on your unit without your landlord's permission, you must provide your landlord with a key to the new locks.

If the person who committed the domestic violence IS on the rental agreement, then:

1. You must obtain a court order requiring the person who committed the domestic violence to leave the unit.
2. You must provide your landlord with a copy of the court order requiring the person who committed the domestic violence to leave the unit.
3. You must provide your landlord with a *written* request asking him/her to change the locks on your unit.
4. Your landlord is required to change the locks within three (3) days of receiving your written request.
 - a) If your landlord does not change the locks on your unit within three (3) days after receiving your written request, then you may change the locks on your unit without your landlord's permission. If you change the locks on your unit without your landlord's permission, you must provide your landlord with a key to the new locks.

PART III: TAKING ACTION IN COURT

In a court action relating to domestic violence (e.g., Temporary Restraining Order “TRO”), the court may order the person who committed domestic violence to immediately “vacate” (leave) the unit.

Upon issuance of this order, the person who committed domestic violence is prohibited from accessing the unit unless the person is accompanied by a law enforcement officer. Your landlord and you are NOT required to provide the person with a set of keys to the unit.

If the person who committed domestic violence is on the rental agreement, the court’s order to vacate effectively terminates the person’s stake in the rental agreement. Note, however, that the person who committed domestic violence may be entitled to recover a portion of the security deposit and/or any prepaid rent. (*See Part I: “Security Deposits”*). Additionally, your landlord and you may be entitled to recover “actual damages” (compensation money) for certain hardships resulting from the exclusion of the person from the rental agreement. You (“the tenant”) are not required to pay any additional rent, fees, or security deposit resulting from the termination of the person’s rental agreement.

Legal Aid Society of Hawai'i
Hawai'i Immigrant Justice Center

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Honolulu, HI 96813

www.legalaidhawaii.org

Legal Aid's Hotline:

O'ahu: 808.536.4302

Neighbor Islands: 1.800.499.4302

REMEMBER:

This brochure is meant to provide general information, and does not provide specific legal advice about your individual case. The law often changes. Each case is different.