

## Renter's Rights

## Renter's Rights Cont'd

### **Can I get out of my lease if my home is damaged?**

Yes, if your lease says that you can or if any part of the premises is rendered partially or wholly unusable by fire or other casualty that wasn't your fault.

If you leave you must notify the landlord within one week of leaving otherwise you will be liable for the rent up until the time that the landlord has knowledge that you have moved.

If only part of your home is unusable due to fire or other casualty you may continue to use the undamaged portion of your home. In this case, your liability for rent shall be no more than the fair rental value of that part of the home which you continue to use and occupy.

### **What will happen if I lost my job because of the disaster and can't pay rent? Will FEMA pay my rent?**

Your landlord may notify you in writing that you must pay your rent within 5 days after you receive the notice or your rental agreement will be terminated. If you don't pay the past-due rent in full after receiving the landlord's notice the landlord may start eviction proceedings.

FEMA is not authorized to pay your rent; however, you may be eligible for unemployment benefits through FEMA's Disaster Unemployment Assistance (DUA) program.

### **Can my landlord change the locks or turn off my utilities?**

No. The landlord cannot lock you out without cause or a court order. The landlord cannot turn off your utilities if you are still in the home.

### **Can my landlord make me move out immediately if I can still live in the home?**

No. If you have a valid lease your landlord must notify you in writing the reason for the eviction. The following specific number of days are required to give the tenant time to respond:

Non-payment of rent: 5 business days  
Lease violation: 10 days  
Month-to-month lease: 45 days

If you fail to fix the reason for the eviction notice the landlord can file a complaint for summary possession in court to start the eviction process.

Make sure you do not miss your court date. You want to be able to tell the judge your side of the story. You can represent yourself or call Legal Aid for assistance if you qualify.

### **What happens if my landlord won't return my security deposit?**

Landlords have 14 days from the termination of the lease to return your security deposit. If they don't refund the full amount they must provide an itemized statement that spells out why some of the deposit was retained. If you disagree with the amount refunded you can file a complaint in small claims court.

## DISASTER LEGAL ASSISTANCE

# Landlord/Tenant



Provided as a community service by Legal Aid Society of Hawaii, the Hawaii State Bar Association, the Hawaii County Bar Association and the West Hawaii Bar Association



Phone: 808-536-4302

[www.legalaidhawaii.org](http://www.legalaidhawaii.org)

[www.lawhelp.org/hi](http://www.lawhelp.org/hi)



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## Landlord Tenant Handbook - *Frequently Asked Questions and Answers:*

### Deposits

**Q** Is the landlord required to pay interest on security deposits?

A The landlord is not required to do so by law.

**Q** May landlords impose a general excise tax charge on the security deposit?

A No. The deposit is the tenant's money held by the landlord.

**Q** Are final inspections required?

A Not by law, but they are considered a good way to prevent further disputes.

**Q** After an inspection of the premises, are landlords required to give the tenants a second chance to correct those conditions found unsatisfactory?

A Not by law. It is advisable for tenants to have everything in order prior to inspection. In practice, many landlords do give tenants a second chance, thereby saving the time it would otherwise take for the landlord to have the conditions corrected. If an inspection is made prior to an agreed upon termination date, it would be reasonable to allow the tenant an opportunity to make the required corrections prior to that date.

**Q** What can the tenant do to insure full refund of the deposit?

A To insure full refund a tenant should:

1 Repair all damages to the unit caused during the tenancy. Damages may include such things as holes put into walls for the hanging of pictures. Any holes should be puttied and repainted.

2 Clean the unit thoroughly.

3 Return all keys on the termination date.

### Taxes

**Q** May the landlord charge, in addition to base rent, an amount equal to the landlord's general excise tax obligation?

A Yes. The landlord must pay an excise tax of 4% for rent received because it is gross revenue. This cost may be added to

the base amount, provided that the amount added and the percentage charged (no more than 4.166%) are stated and agreed to in the rental agreement.

**Q** What is transient accommodations tax?

A This is a 7.25% tax on the amount paid for lodging by any person who takes accommodations which he or she does not intend to make a permanent home. The types of lodgings include, but are not limited to, rooms, apartments or suites which are usually occupied for less than 180 consecutive days.

### Rent

**Q** Is there a grace period for paying rent?

A Not in the Landlord/Tenant Code. Many landlords permit a certain number of days beyond the due date to pay rent without penalty and many rental agreements include such a provision. If not otherwise stated, rent is due on the due date.

**Q** Are there any limits on how often a landlord can increase the rent or the amount by which a landlord can increase the rent?

A The landlord must give "adequate" written notice of the intent to increase the rent according to the type of tenancy (see chart at end of handbook). There is no limit on the amount of the rent increase as there is no rent control in Hawaii.

**Q** How much notice must be given by the landlord or tenant to terminate a tenancy at the expiration of a lease? To increase rent after the expiration of the lease?

A No notice is required in either case. A lease is a contract for a set period of time at a set rate. In order to continue the tenancy beyond the expiration of the lease, new terms would have to be negotiated. It is recommended that either the landlord or tenant advise the other of their intention to continue or terminate the agreement after its expiration to avoid misunderstanding and unnecessary problems. This applies equally to changing the amount of rent to be paid. also. If the landlord wishes to terminate the tenancy, the tenant must vacate the unit or become a holdover tenant (see TERMINATION OF TENANCY: "Holdover").

**Q** May a condo association ask a tenant to use the rental payment to pay for association dues that the tenant's landlord owes to the association?

A Yes. Under the State condominium law, a condo association may collect delinquent maintenance fees directly from a tenant as long as

the amount paid does not exceed the tenant's monthly rental obligation. The payment to the condo association reduces the rent owed to the landlord by the amount paid and the landlord cannot retaliate against a tenant for making the payment.

### Abandoned Possessions

**Q** How may the landlord dispose of a tenant's abandoned possessions?

A The landlord may sell the abandoned possessions in a commercially responsible manner or store the possessions at the tenant's expense, or donate the possessions to a charitable organization. Before selling or donating the possessions, the landlord must mail a notice of his intent to sell or donate the possessions to the tenant at the tenant's forwarding or last known address. In addition, after the 15-day notification before selling the possessions, the landlord must advertise the sale in a daily paper of general circulation for at least three consecutive days.

The proceeds of the sale of possessions [under subsection (a)] shall, after deduction of accrued rent and costs of storage and sale, including the cost of advertising, be held in trust for the tenant for 30 days, after which time the proceeds shall be forfeited to the landlord.

### Discrimination in Real Property Transactions

**Q** If an individual believes that he or she has been denied housing on the basis of race, sex, color, religion, marital status, ancestry, handicapped status, HIV (human immunodeficiency virus) infection, or because his or her family includes children, to which agency may the individual direct a complaint?

**For more Landlord-Tenant information, including a complete copy of the Landlord-Tenant Handbook, please visit:**

[http://hawaii.gov/dcca/areas/ocp/landlord\\_tenant/](http://hawaii.gov/dcca/areas/ocp/landlord_tenant/) Information regarding Landlord-Tenant issues may also be obtained by calling the Residential Landlord-Tenant Volunteer Center at: 586-2634 (for Oahu residents). The center is open from 8am-12pm, Monday through Friday, except State holidays. For toll-free access from neighbor islands, call:

**Big Island:** 974-4000, x62634      **Kauai:** 274-3141 x62634

**Maui:** 984-2400 x62634      **Molokai/Lanai:** (800)468-4644 x62634

Information may also be obtained by calling the Department of Commerce and Consumer Affairs Hotline at: 587-1234.