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(We suggest that notices not be used without first consulting HOME, Inc. counselors or private attorneys for advice.)

- Exhibit A – Notice to Repair and Deduct
- Exhibit B – 30-day Termination Notice
- Exhibit C – 7-day Termination Notice to Landlord for Non-compliance
- Exhibit D – Notice for the Return of the Rental Deposit
- Exhibit E – Notice of Wrongful Access
- Exhibit F – Notice to Enter Tenant’s Rental Unit
- Exhibit G – Notice to Repair and Add rent
- Exhibit H – Notice to Tenant of Rent Increase
- Exhibit I – 30-Day Termination Notice to Tenant
- Exhibit J - 7-day Termination Notice to Tenant for Non-Compliance
- Exhibit K – 3-day Notice to Quit
- Exhibit L – Notice to Tenant of Past Due Rent (Notice to Cure or Quit)

## I. INTRODUCTION

### About HOME, Inc.

HOME, Inc. was founded in 1967 as a private, nonprofit corporation concerned about improving the quality and quantity of housing for the low-income housing consumer.

HOME, Inc. provides a variety of services to the Central Iowa community including: counseling on housing rights and responsibilities; information and referral on community and housing services; mediation of landlord and tenant disputes; educational sessions on housing issues; distribution of educational materials and a newsletter; homeownership opportunities for low income families; and acquisition and rehabilitation of housing.

The corporation is funded by an annual grant from the United Way of Central Iowa, public and private grants and fees for services.

### Purposes of the Handbook

The purpose of this handbook is to offer tenants and landlords basic information about renting, rental agreements, rental deposits, eviction actions, state and local housing laws, and a summary of tenant and landlord rental housing rights and responsibilities. **The information found in this handbook is based on the Uniform Residential Landlord and Tenant Law (Chapter 562A, the Code of Iowa) that was enacted in 1979.**

HOME, Inc. hopes that this handbook will assist tenants and landlords in resolving rental housing problems and disputes, and will contribute to the improvement of rental housing conditions in the City of Des Moines and the State of Iowa.

### **THIS HANDBOOK IS NOT INTENDED AS A SUBSTITUTE FOR LEGAL ADVICE**

**This handbook does not contain all state and local rental housing laws. The information provided in this handbook is necessarily brief and general. It is offered as an aid to assist tenant and landlords in resolving problems and not as a substitute for legal advice.** The following resources are available for legal counseling:

- A private attorney (yellow pages of the phone book)
- Lawyer Referral Service of Polk County (white and yellow pages)
- Iowa Legal Aid (white and yellow pages)

## Evidence

Most rental problems are resolved in the courts in the same manner as contract disputes. The court decides the issue upon the evidence before it and the merits of each case. **The best kind of evidence in courts is written evidence.** Tenants and landlords will be reminded throughout this handbook of the importance of obtaining as much information as possible in writing and keeping a copy of all correspondence, receipts, and other written materials. Photographs are also considered excellent evidence.

## Ethical Guidelines

The following ethical guidelines are offered by HOME, Inc. to both tenants and landlords as a means of maintaining good rental housing relations:

1. Be informed of federal, state and local rental housing laws to better understand your rights and responsibilities.
2. Maintain clean, safe, code-level rental housing conditions.
3. Comply with all terms of the rental agreement faithfully and promptly.
4. Seek a just settlement of rental disputes through mediation and counseling assistance.
5. Do not discriminate regarding race, religion, creed, color, sex, national origin, ancestry, or physical disability.
6. Work cooperatively with your neighbors and if available neighborhood association.

## II TENANTS - BEFORE YOU RENT

### Determine Your Needs and Abilities

Before you start looking for a new home you should take some time to determine your housing needs and abilities. By doing this you will save time, energy, and money. This will also help you find a home that really suits you.

**First, establish a housing budget.** In order to do this you will need to figure out what your monthly expenses are. This should include food, living expenses (gas, day care, laundry), and any long term bills that you have such as loans and insurance. Once that is finished, subtract your expenses from your income. This figure should be the maximum amount that you can afford to spend on rent and utilities. The following is an example of a budget worksheet.

### SAMPLE HOUSING BUDGET

#### MONTHLY EXPENSES

Food	_____
Utilities (if not included in the rent)	_____
Household Supplies	_____
Personal Care Items	_____
Clothing	_____
Day Care	_____
Laundry	_____
Phone	_____
Recreation	_____

Transportation	_____
Medical Expenses/Insurance	_____
Emergency Savings	_____
Debts/Loans	_____
Miscellaneous	_____
<b>TOTAL EXPENSES</b>	_____
<b>MONTHLY INCOME</b>	_____
<i>minus</i>	
<b>TOTAL EXPENSES</b>	(_____)
<i>equals</i>	
<b>HOUSING BUDGET</b>	_____

**The next step is to assess your housing needs.** This involves asking yourself the following kinds of questions:

1. Where do I want to live?
2. Do I want to live in a house or an apartment?
3. How large a unit do I need?
4. What type of facilities do I need in the rental unit and/or neighborhood? (Laundry facilities, a play area or schools for children, a furnished or unfurnished unit, a unit near shopping or public transportation, etc.)
5. What kind of neighbors and/or landlord do I want?

Remember, as you are looking at the want ads or rental units, to consider what you determined to be your needs and abilities.

### **Sources of Rental Housing Information**

In locating a rental unit, take time to look at a large number of units. The following list of resources is offered by HOME, Inc. and may assist you in finding suitable housing:

1. Friends, neighbors, and co-workers.
2. The classified ad sections of local newspapers and shoppers.
3. Realtors and real estate agencies listed in the yellow pages of the phone book.
4. The yellow pages of the phone book apartment section.
5. Rental Property Guide available from the Chamber of Commerce.
6. Signs posted on rental units.
7. Bulletin boards at shopping centers, stores, laundromats, churches, and your place of employment.
8. Private commercial rental agencies. (There are several such agencies in the Des Moines area. These agencies offer lists of rental units in Des Moines and the surrounding area for a fee. In using their services the tenant should understand their policies. Find out information such as: 1) the cost, 2) if the fee is refundable if you do not locate housing, and 3) if all of the units listed with the service comply with the local housing code.) **IN MENTIONING THIS SERVICE, HOME, INC. DOES NOT MEAN TO IMPLY THAT WE ENDORSE SUCH AGENCIES OR THE SERVICE THEY PROVIDE.**
9. Internet sites

### **Determine the Condition of the Rental Unit**

The condition of the rental unit can be determined by the tenant's personal inspection of the premises and by the presence or absence of a **Certificate of Inspection**. When you have located one or more rental units which interest you, contact the City of Des Moines Office of Housing Safety to find out whether or not these units meet current standards and are certified. If a rental unit has been inspected, this City agency will have a record of that inspection and a list of all violations. This information will assist you in determining the conditions of the unit. **HOME, INC. URGES ALL TENANTS TO RENT ONLY UNITS THAT HAVE A CURRENT CERTIFICATE OF INSPECTION.**

Cities of 15,000 or more are required by state law to enact and enforce a housing code related to the safety and condition of rental units. Contact the City Hall in your community to determine if there is a housing code. The county may have records on the property or the landlord if the city does not monitor or certify rental housing.

### **The Dangers of Lead-Based Paint**

**Children can be poisoned by eating lead-based paint.** If you have children, you should find out whether or not a rental unit contains lead-based paint. This can be done by specifically asking about lead-based paint when you call to check on the Certificate of Inspection. Federal law also requires landlords to disclose lead-based hazards and EPA-approved pamphlets for most units built prior to 1978.

### **Inventory of the Unit**

Before you decide to rent a particular unit, you may want to take a **written inventory** of the premises. This inventory will help you decide upon the best rental unit if you are looking at a number of units. The inventory can also be useful if you decide to rent the unit. It will provide you and the landlord with **written evidence** concerning the condition of the unit at the beginning of your tenancy. This information will help you avoid a dispute later about the use of the rental deposit because you will have written evidence of the condition of the unit when you moved in, consequently, you can avoid being charged for damages that you did not cause.

**The best inventory is taken with the landlord present.** Each party should sign the inventory and keep a copy. If this is not possible, the tenant should inventory the unit with a third, disinterested party, and give a signed, dated copy of that inventory to the landlord. Remember, you, the tenant will be held responsible for the condition of the unit upon termination. Therefore, in obtaining a written inventory of the unit at the beginning of your tenancy, you are making certain that you will be charged for only those damages that you caused. **Also, both tenant and landlord should take photographs of the unit at the time the tenancy begins.**

The following list is offered to help tenants in selecting the most suitable rental unit, and to help tenants and landlords in taking an inventory of the rental unit.

### **Kitchen**

Yes No

- Sink (in working condition, connected to hot and cold water)
- Cabinets or shelves (in good condition, easily cleaned)
- Stove (clean, connected properly, no gas leaks)
- Refrigerator (clean and operating properly, maximum temperature 45 degrees)
- Window or vent fan (window opens and or fan works)
- Electrical outlets, two separate and remote outlets (working and secured)

- Floor (clean and water resistant)
- Ceiling or wall type light fixture (workable condition, secured properly)

### **Bathroom**

- Toilet (works properly, does not leak)
- Sink-Lavatory (working condition, connected to hot and cold water, in the same room as the toilet)
- Door or other means of making the room private (closes, in good shape)
- Floor (clean and water resistant)
- Towel racks (secured properly)
- Window or vent fan (window opens and or fan works)
- Ceiling or wall type light fixture (workable condition, secured properly)
- Electrical fixture (working and secured properly)

### **Utilities**

- Water heater (enough hot water, vented and connected properly)
- Plumbing (good condition, no leaky pipes)
- Heating (adequate vents, maintains at least 68 degrees)
- Electricity (at least two outlets in every room, good condition)
- Utility meters (easily accessible to meter reader)

### **Ventilation**

- Air vents (good condition, workable)
- Fans (good condition, workable, proper electrical connection)
- Air conditioner (adequate size, proper connection, service agreement if repairs are needed)
- Windows in rooms other than above (at least one in small rooms, two in larger rooms, all operable)

### **Structural Condition**

- Windows (weather tight, not cracked or broken)
- Screens (no holes, insect-proof)
- Storm windows (not broken or cracked, weather-tight)
- Doors (good condition, exterior doors weather-tight)
- Door locks (in working condition, no keys in possession of previous tenants)
- Handrails (of more than four steps)
- Stairs, exterior and interior (treads and risers intact)
- Walls and ceilings (no holes, falling plaster, or peeling paint)
- Floors (in good condition, not warped, no stains, or burns)

### **Furnishings**

- Furniture (in good condition, make a list of all furniture and give a copy to the landlord)
- Draperies (in good condition)
- Carpet (in good condition)

### **Other**

- Exits (every unit in a multiple dwelling of three units or more, above the first floor, must have access to two exits from that floor)
- Storage space (is there enough for your needs)
- Garbage cans (must be supplied by the landlord if more than two units in the building)



- Rat and roach free (must be free before you move in)
- Lighting (adequate light fixture in each room)
- Smoke Detector (in the unit)
- Fire extinguisher (in common area of multiple units)
- Inspection Certificate (must be current)
- Landlord is willing to have an inspection by the Housing Code Enforcement Office (if there is no current Inspection Certificate)

## Determine the Kind of Rental Agreement You Want

After you have determined your rental housing needs and abilities and located a suitable rental unit, the next step in renting is to determine the kind of rental agreement you want. **A rental agreement is a binding contract made between the landlord and tenant which outlines the terms and conditions of the tenancy.** Rental agreements can be oral or written agreements.

With an oral agreement all the terms and conditions are made verbally. Usually the term or length of the tenancy is on a month-to-month basis. This allows the landlord and tenant flexibility in terminating the tenancy (Iowa law requires a written 30 day notice, see Chapter 5). **Although an oral agreement is legally binding, it provides less protection against violations of the agreement because there is no documented verification that the agreement existed.** Both parties are subject to the rights and responsibilities of the Uniform Residential Landlord and Tenant Act **whether or not those obligations are put in writing.** Those rights and responsibilities cannot be signed away or waived by either party.

A written agreement outlines the terms and conditions of the tenancy, clearly and concretely. The written agreement also provides the best protection because the agreement is in black and white and can be easily referred to. However, a written agreement may not provide the same flexibility in termination as does an oral agreement, because the tenant is usually bound to the written agreement for a specific period of time. **If the tenant terminates the tenancy prior to the end of the written agreement without the permission of the landlord, s/he may be held liable for the payment of the rent until the end of the agreement or until the unit has been re-rented.**

## Terms Which Become Part of the Lease if Not Agreed Upon By the Parties.

The law will make these terms part of the lease if the oral or written lease does not discuss these subjects, 1) Rent will be set at the "fair rental value" if not set in the rental agreement. 2) Rent will be paid at the beginning of the rental term, which usually means the beginning of the month, if a due date is not set in the rental agreement. 3) Rent will be payable at the rental property unless otherwise specified. 4) The rental period will automatically be on a month-to-month basis unless the tenant is a "roomer" who pays rent on a weekly basis, then it is on a week-to-week basis. 5) Garbage, heat, water, repairs, and maintenance for a single-family dwelling are the landlord's responsibility unless otherwise written.

## Negotiate the Rental Agreement

A rental agreement, whether oral or written, is a legally binding contract between the tenant and the landlord. Both parties have the right to negotiate the terms of the agreement before signing it or paying rent and/or deposit. While the circumstances may require the tenant to accept the landlord's terms, it is in the interest of the tenant to at least negotiate for more favorable terms.

In negotiating, the tenant should be aware that Iowa housing law prohibits the following provisions in any rental agreement: 1) that one party agrees to pay the other party's attorney fees, 2) that one party agrees to a limitation of any liability, 3) that one party agrees to a confession of judgment (automatic judgment) for any potential violation of the lease, 4) terms which would

require one party to waive his/her rights under the law, and 5) terms which allow one party to avoid his/her duties under the law. Furthermore, the law states that if a landlord uses such terms, the tenant may recover damages not more than three months' rent and reasonable attorney fees.

## **Unsigned Rental Agreements**

**Iowa law also provides that a rental agreement may become effective if one party fails to sign a rental agreement that has been signed and delivered by the other party.** If a party pays or accepts rent without signing the agreement, it has the same effect as if both parties had signed the agreement. The terms and conditions of the agreement then become binding for the duration of the lease or 1 year, whichever occurs first. If a tenant has any questions about the rental agreement, ask the landlord to explain, contact an attorney, or call HOME, Inc. for assistance.

## **Items You May Want in Your Rental Agreement**

1. Address of the rental unit.
2. Name, address, and phone number of the landlord or manager.
3. The date the rental agreement begins and ends.
4. A statement explaining the amount of rent, when it is due, where it is payable, the penalty for late payment, and persons authorized to receive it.
5. A statement explaining the amount of rental deposit, what it will be used for, and the procedure to gain its return after termination.
6. A statement explaining repairs that are needed, who will make them, and when they will be completed.
7. A statement explaining the landlords right to access.
8. A statement explaining who is responsible for payment of utilities.
9. A statement explaining the tenant's rights concerning pets, visitors, guests, number of occupants, etc.
10. A statement explaining the tenant's and landlord's maintenance responsibilities such as mowing the lawn, removing snow, painting, trash removal, etc.
11. A statement explaining whether or not the landlord will accept a rent voucher from the Department of Social Services.
12. A statement explaining the tenant's right regarding subletting and assigning.
13. A statement explaining whether or not the rental agreement is self-renewing and the procedure for doing this.
14. A statement explaining termination procedures and a termination clause in the event of change of employment.
15. A statement explaining the transfer of the rental deposit and rental agreement in the event of the sale of the rental property.
16. The names and phone numbers of repair persons to contact in case of an emergency.
17. A list of all furnishings or appliances that the landlord agrees to supply.

## **Items You Do Not Want in Your Rental Agreement**

1. A statement requiring you to rent for a specific period of time before you can recover the rental deposit.
2. A statement permitting the landlord to terminate the rental agreement at any time during the rental agreement.

3. A statement permitting a new landlord to terminate the agreement upon sale of the rental property.

## **Disclosure**

The Uniform Residential Landlord and Tenant Law (Iowa's rental housing law) requires that the tenant receives the name and address of the landlord, manager, or rental agent. The tenant must also be informed of utility rates, charges, and services unless paying the utilities directly to the utility company. Furthermore, the tenant has the right to be furnished with current information whenever changes occur.

Federal law also requires the landlord of most residential rental properties built prior to 1978 to disclose all information about any known lead-based paint or other lead-based hazards, provide copies and relevant records and supply the tenant with an EPA pamphlet or EPA approved state substitute pamphlet. 42 U.S.C. §4852d.

## **The Rental Deposit**

There is a great deal of confusion about rental deposits. **A rental deposit can be referred to as a security deposit, a damage deposit, or deposit. No matter what it is called, the rental deposit is money paid to the landlord as a guarantee that the landlord will be reimbursed for damages resulting from the tenant's violation of the rental agreement or law.** In this case damages refer to: 1) any unpaid rent owed by the tenant, 2) any other verifiable debts (such as utility charges) or funds owed by the tenant, 3) the cost of returning the unit to its original condition and appearance before the tenancy began, excluding ordinary wear and tear, and 4) any additional expenses as are incurred in recovering the property from an uncooperative tenant (eviction cost). **A rental deposit, or any other name it is called, is not for the purpose of holding the unit while the tenant decides if s/he wants it.**

In Iowa a landlord cannot demand a rental deposit in excess of an equivalent of two months' rent. The landlord is also required to keep the rental deposits in a separate account, not to be co-mingled with personal funds. Any interest accrued from the rental deposit account during the first five years of a tenancy belongs to the landlord. Any interest accrued after that period of time can be requested by the tenant.

## **If You Change Your Mind**

If you establish an oral or written rental agreement and then decide not to move in, you do not automatically have the right to a full refund of the money you paid to the landlord, nor does the rental agreement automatically terminate. You can be held liable for the full term of the rental agreement and the damages incurred by the landlord because you failed to live up to the agreement. In this case damages refer to the rent and re-renting costs. In a month-to-month agreement the tenant can be held responsible for one month's rent and in a written agreement the tenant can be held responsible for the full term of the agreement if the landlord cannot find another tenant. The landlord is, however, required to make a reasonable effort to rent the unit as soon as possible.

**In order to prevent this from happening, never pay the rental deposit, prepaid rent, or sign the rental agreement unless you are absolutely sure that you will take the unit.** If you do find yourself in this position, check with the landlord from time to time to ensure proper advertisement of the unit and to learn when the unit is re-rented.

## **Rental Housing Discrimination Laws**

When renting a unit the landlord may not discriminate against a person's race, color, creed, sex, religion, national origin, ancestry, disability, or familial status (the presence of children). The discrimination laws for housing, however, do not include age or marital status. If you feel that you have been discriminated against, contact your local human rights commission or the Iowa Civil Rights Commission.

### **III TENANTS -- WHILE YOU RENT**

#### **Responsibilities of the Tenant**

The following is a brief list of tenant responsibilities.

1. Comply with all obligations imposed by the housing code and the rental housing laws.
2. Keep your rental unit clean and safe.
3. Dispose of all ashes, rubbish, garbage, and other waste.
4. Keep plumbing fixtures clean.
5. Use all electrical, plumbing, sanitary, heating, ventilation, air conditioning, and other facilities in a reasonable manner.
6. Do not destroy, deface, damage, or remove any part of the premises without the landlord's consent.
7. Conduct yourself in a manner that will not disturb your neighbor's peaceful enjoyment of the premises.

**\*\*\* The failure to uphold the responsibilities of a tenant may result in the termination of the tenancy by the landlord and an eviction. See Chapter XI for an explanation of the eviction process and the various means for eviction. \*\*\***

#### **Rights of the Tenant**

The following is a general description of rental housing rights of tenants. It is not a complete list of all tenant rights under the Uniform Residential Landlord and Tenant, but is intended to explain those major rights that tenants have and that tenants should be aware of.

#### **Right to Possession of the Rental Unit**

The tenant's right to possession includes the right to physical access to the unit. The right to possession also includes the right to have the unit delivered in a clean, fit and habitable condition as well as a condition that complies with the requirements of the lease, the building code and the housing code.

The tenant's right to possession of the rental unit begins the date the rental agreement begins and continues until termination. If the landlord fails to deliver possession as promised, the rent abates until the tenant has possession.

If this occurs the tenant may terminate the rental agreement with a least five days' written notice, and the landlord should then return all prepaid rent and rental deposit, or the tenant may bring an action for possession against the landlord or person in wrongful possession.

In the event that the landlord unlawfully removes the tenant from the unit, the tenant may recover possession of the rental unit or terminate the tenancy. In either case the tenant may bring an action against the landlord to recover actual damages and reasonable attorney fees.

#### **Right to a Safe and Sanitary Living Environment**

The tenant has the right to expect that the rental unit in which s/he resides will be

maintained in a safe and sanitary condition. The landlord has an obligation to comply with the local housing codes, make necessary repairs (those not caused by the tenant, tenant's family or guests), keep the common areas of the property clean, supply reasonable amounts of heat, hot and cold running water, and provide adequate trash receptacles.

The tenant has an obligation to keep the individual rental unit in a clean and sanitary condition, to repair all tenant-related damages, and to notify the landlord of needed repairs.

### **Right to Repair and Deduct**

When a landlord fails to make repairs or maintain the rental unit, a tenant may have the repair or maintenance work done and deduct the cost from the rent. **If a tenant does this s/he must remember that whenever rent is not paid in full and/or on time, the landlord may bring an eviction action (based on non-payment of rent) against the tenant.**

In this type of situation the Iowa rental housing law provides the tenant with a defense to an eviction action if the tenant can prove that: 1) the landlord failed to comply with the rental agreement or the local housing code; 2) the tenant notified the landlord in writing, at least 7 days prior to the rent being due, of his/her intention to have the repair made and deduct the cost from the rent; 3) the tenant waited at least 7 days after the landlord received the notice before deducting the cost from the rent; 4) **the cost of the repair was less than or equal to one month's rent;** and 5) the tenant in good faith caused the repair to be made prior to the receipt of the landlord's notice of eviction.

### **Right to Privacy**

Under Iowa law the landlord has the right to access of the rental unit to inspect the unit, make necessary repairs, decorations, supply services, and to show the unit to prospective buyers, sellers, and tenants. **Except in cases of emergency or if it is impractical to do so, the landlord must give the tenant at least 24 hours notice of his/her intention to enter the unit, and enter only at reasonable times.**

If the landlord abuses the right to access, the tenant may obtain an injunction against the landlord or terminate the rental agreement if the tenant believes that his/her right to privacy is being violated. In either case, the tenant may recover actual damages of not less than an amount equal to one month's rent and reasonable attorney fees.

### **Right to Utility Service**

The tenant has the right to utility services as long as the utility company is satisfied with the credit status of the party paying the bills. **According to Iowa rental housing law, the landlord must explain utility rates, charges, and services to the tenant before the rental agreement is signed unless the utilities are paid directly to the utility company by the tenant. At no time may the landlord disconnect services without just cause.** The landlord may cause temporary interruptions of service while actual repairs or alterations are in process or during emergencies.

If the landlord deliberately or negligently fails to supply running water, hot water, heat, or essential services the tenant may give written notice of this failure to the landlord and take one of the following actions: 1) obtain reasonable amounts of running water, hot water, heat, or essential services and deduct the actual and reasonable costs from the rent; or 2) recover damages based upon the decreased value of the rental unit as a result of decreased service; or 3) recover any rent paid during the time of the landlord's failure to provide services. (This rent shall be recovered on a pro rata basis.) If the tenant takes one of the above actions, then s/he may not use the landlord's

violation to submit a 7 day notice of termination, or recover additional damages, or obtain injunctive relief. Furthermore, the tenant's rights regarding the above actions do not arise until the tenant has given notice to the landlord, or if the condition was caused by the deliberate or negligent act or omission of the tenant, tenant's family, or guests.

If the landlord willfully diminishes utility services and the tenant is forced to vacate, the tenant may recover possession or terminate the rental agreement, and in either case recover actual damages and reasonable attorney fees. If the rental agreement is terminated, the landlord shall return all prepaid rent and rental deposit money.

### **Right to Sublet or Assign**

While you rent, you may find that subletting or assigning your rental unit is necessary. Subletting is the act of giving your right to occupancy to another person for a period of time, which is less than the full period of your rental agreement. Assigning is the act of giving your right of occupancy to another person for the entire period of your rental agreement. The tenant retains the right to sublet or assign unless the rental agreement expressly prohibits the exercise of this right.

**A tenant should remember that subletting or assigning the rental unit does not terminate the rental agreement.** In the event that the other person fails to pay rent or causes damage to the unit, the landlord may hold the original tenant responsible for the cost. **It is always preferable to have the tenancy terminated, rather than sublet or assigning the tenancy.**

## **IV OTHER CONSIDERATIONS**

### **Rules**

The landlord may from time to time adopt rules describing the tenant's use and occupancy of the rental unit. A rule must have the purpose to promote the tenant's safety, convenience, or welfare or to protect the property. **According to Iowa law, a rule is enforceable only if it is reasonably related to the purpose for which it was adopted, clearly written, and applies to all tenants in a fair manner.** Rule changes which work a substantial modification of an existing rental agreement (such as a rent increase, or a change to a no pet policy), or a made for the purpose of the landlord evading his/her obligations, are not enforceable against the tenant.

### **Late Fees**

The landlord may charge a fee if rent is late. However, the late fee cannot be higher than \$10.00 per day and the late fee may not exceed a total charge of \$40.00 per each month. (535.2 #7 of the Iowa Code)

### **Counting Days**

Many provisions of the Uniform Residential Landlord and Tenant Act require that the landlord or tenant respond to the other party within a certain number of days or give the other party a certain number of days to take action. When counting days under this law, start counting the day after the Notice is served and include the last day. (Example: If a 3-day Notice is served on the 3<sup>rd</sup> of the month, start counting days on the 4<sup>th</sup> of the month and include the whole of the 6<sup>th</sup> of the month. No action can be taken on this Notice until the 7<sup>th</sup> of the month). Additionally, if the last day falls on Sunday or a holiday recognized by the Iowa Code, the count will end at the close of the following day.

## **Waiver**

A written or oral rental agreement is a legally binding contract between tenant and landlord. This agreement can be changed by the actions of both parties. This is called a waiver. For example, if a rental agreement prohibits pets but the landlord accepts rent with the full knowledge that the tenant has pets, then the landlord may have waived or cancelled that portion of the rental agreement regarding pets. If this occurs, then the landlord may not evict the tenant or increase the rent later because the tenant is keeping pets. Such changes or waivers in the rental agreement are difficult to prove. It is best for both the tenant and the landlord to **write any changes on the rental agreement** itself and then sign their names and date each change or waiver.

## **Utility Budget Billing Plan**

While you rent, you may find that your utility bills are higher in the winter than during other times during the year. If this is the case, then you may want to establish a long term, low-payment plan with the utility company. This plan will allow you to spread the burden of high utility bills over a period of several months. For more information contact your local power company.

## **Rent Vouchers**

If you are unable to meet your monthly rent payments, you may be eligible for financial assistance from the your county Department of Social Services. You should contact your nearest neighborhood office for more information.

## **Renter's Insurance**

While you rent, you may want to consider obtaining insurance for your personal property in the event of fire, theft, etc. The landlord's property insurance will not protect you against such losses. A policy may be written to protect you from liability in a personal injury lawsuit, if someone is injured in your rental unit. Other special insurance coverages are also available. You can obtain information and compare costs of various kinds of renter's insurance by contacting several insurance companies.

## **Fire or Casualty Damage**

If a rental unit is damaged by fire or casualty to the extent that the enjoyment of the unit is impaired, the tenant may immediately vacate the unit, and notify the landlord in writing within 14 days of the tenant's intention to terminate the rental agreement. In this case the rental agreement terminates as of the date the tenant vacates. If continued occupancy of the rental unit is lawful, the tenant may vacate that portion of the unit that is unusable. In this case, the tenant is responsible for paying in proportion to the reduced rental value of the unit so occupied. Furthermore, the law states that if the rental agreement is terminated after a fire or casualty, the landlord shall return prepaid rent and any recoverable rental deposit money. Accounting for such rents and deposits is to occur as of the date of the fire or casualty.

## **Sale of a Rental Property**

When a rental property is sold the rental agreements are transferred to the new landlord. The tenant's and the landlord's rights and responsibilities after the sale depend upon the terms of the rental agreement.

Upon the sale of the property the former landlord may make any lawful deductions from the deposit, and return the remaining portion to the tenant or to the new landlord. The full deposit may be transferred to the new landlord or returned to the tenant. If the deposit is transferred to the new landlord, the former landlord must notify the tenant of the amount transferred and the name and address of the new landlord. The tenant has 20 days after receipt of the notice to make objections concerning the amount transferred.

## **Notification**

Many of the provisions of the Uniform Residential Landlord and Tenant Law require that notice of the tenant's actions or intentions be given to the landlord. Some provisions state the method of notification, others do not. When giving a notice, HOME, Inc. suggests you follow these procedures: 1) Put all notices in writing. 2) Keep copies of all notices you give to the landlord or receive from the landlord. 3) Send the notice by certified mail and request a return receipt or hand deliver the notice with a witness present.

## **V TENANTS -- TERMINATING A TENANCY**

### **Proper Notice of Termination**

Termination of a tenancy depends on the type of rental agreement that is used. A written rental agreement (for a specific period of time) should outline the procedure needed for termination. (If the agreement fails to do this, the tenant should follow the termination procedures used for a month-to-month tenancy.) **If a tenancy is terminated prior to the expiration date of the rental agreement, the tenant may be held responsible for the rent for the remaining period of the rental agreement.**

In a month-to-month tenancy, the tenant may terminate the tenancy by providing the landlord with a **written 30-day termination notice**. In the case of a week-to-week tenancy the landlord must receive a written 10-day notice. A tenancy should be terminated at the end of a rental period, never in the middle of a rental period. (A rental period runs from the day that rent is due to the day before the next rent due date. The common practice is for the rental period to begin on the first day of the month and end on the last day of the month.)

In order to give the landlord proper notice, a tenant should count forward 30 days from the end of their last rental period. The notice should be given to the landlord prior to that date. **If a termination notice ends during the middle of a rental period, the tenant may be held responsible for the full month's rent.**

If a tenant does not move on the date of termination the landlord may initiate an eviction action and may recover actual damages sustained as a result of the tenant's failure to vacate. The damages may also include reasonable attorney fees.

### **Termination for Noncompliance**

If a tenant believes that the landlord has failed to comply with the laws, local housing codes, or the rental agreement, the tenant may have cause to terminate the tenancy for noncompliance.

In order to terminate a tenancy for noncompliance, the tenant must give the landlord **written notice** that explains the specific violations. The notice should further state that the tenant



will terminate the tenancy in no less than 7 days (after receipt of the notice) unless the violations are corrected within 7 days. If the landlord does correct the violations the termination notice is cancelled. However, if the same violations occur within 6 months (following the first notice) and the landlord has not exercised due diligence in correcting the breach, the tenant may terminate by providing a 7 day written notice to the landlord which explains the violations and gives the date of termination. If a tenant decides to terminate a tenancy for noncompliance, s/he should consult an attorney or request assistance from HOME, Inc. (See Appendix, Exhibit C for a sample 7-day termination notice for noncompliance.) If a tenant terminates under this procedure, the landlord must return prepaid rent and deposit and may be forced to pay damages and attorney's fees by a court.

## **Cleaning the Unit**

After a tenant gives the landlord a termination notice, it is a good idea to go through the unit and begin making notes on cleaning and repair tasks that are needed. Often a landlord will go through the unit with the tenant in order to help the tenant determine what must be done prior to moving. If it's possible begin the cleaning and repairing well in advance of moving in order to avoid a last minute rush to clean and repair. **Remember, it is a tenant's responsibility to make sure that the rental unit is in as good, or better condition when leaving as it was upon entering, except for any ordinary wear and tear that might have occurred.** The amount of rental deposit that is returned may depend upon this. It is in the tenant's best interest to take photographs of the rental unit. The pictures should focus on items that the landlord did not repair: the carpet, walls, screens, appliances, etc. Once the tenant leaves the rental unit, s/he will not be allowed back into the unit.

## **Fixtures**

Fixtures are basically those things that are fixed to the rental unit in such a way that they appear to be permanent. For example, if the tenant installs wall to wall carpeting, that may be considered as a permanent fixture if it is attached to the floor. If the tenant does install fixtures during the course of his/her tenancy, the landlord may hold the tenant responsible to return the rental unit to its original condition before the tenancy began, or to leave the fixtures. **Get written permission before installing anything and specify who gets the fixture when you move.**

## **The Final Day**

**Utilities:** If any utilities have been billed directly to the tenant, the tenant should arrange to have meters read, services disconnected, and arrange for the final billing to be sent to his/her new address.

**Inspection:** On the final day of a tenancy the tenant and the landlord should inspect the unit for damages. At this time both parties should reach an understanding concerning the condition of the unit and what amount if any the tenant owes for damages. The inventory in this handbook will serve as a valuable guide for this purpose. Also, photographs should be taken showing that there was no damage to the property and everything, including the insides of appliances, was clean when the tenant left.

A written inventory of the unit should be taken and then both the tenant and the landlord should sign the inventory and keep copies. If an inventory was made at the beginning of the tenancy it should be compared to the exit inventory to determine the damages. This written record of the condition of the rental unit will assist both parties in determining the use of the rental deposit and in avoiding court action.

**Return the Keys:** After the inventory has been taken and during the final day, the tenant

should return all keys to the unit and obtain a **written receipt** for them from the landlord.

**Notice of Your Forwarding Address:** The last step on the final day of a tenancy is to provide a notice of your forwarding address to the landlord and request that s/he return your rental deposit. **This notice is a legal requirement that must be fulfilled before the landlord is obligated to return the rental deposit.** (It is a good idea to give the landlord **written notice**, although the law does not require this.) If the tenant does not notify the landlord of his/her forwarding address within one year of termination, then the landlord may keep the entire rental deposit.

### **Return of the Rental Deposit**

Iowa law allows the landlord to retain the rental deposit for 30 days after termination and after receipt of the tenant's forwarding address or delivery instructions. (See Appendix, Exhibit D for a sample notice for the return of the rental deposit.) During this time the landlord may either return the entire rental deposit or make deductions and send the tenant a **written explanation** of these deductions.

The landlord may lawfully deduct: 1) the cost of unpaid rent or other money which the tenant owes as a result of the rental agreement; 2) the cost of repairing tenant related damages, **except those caused by ordinary wear and tear**; 3) the cost of cleaning the unit if it is not left in the same or better condition than the tenant found it, except for ordinary wear and tear; 4) the cost of evicting a tenant for violating the rental agreement.

If the landlord fails to send a written explanation to the tenant within the 30 day time period, the tenant has the right to claim the deposit and \$200 in punitive damages if the landlord's actions are willful. If the landlord makes deductions that the tenant believes are unreasonable, or fails to return the rental deposit as the law requires, the tenant may need to seek assistance in Small Claims Court. The court may award attorney's fees also.

### **Abandonment**

**The tenant should contact a private attorney or Iowa Legal Aid to obtain information about the proper procedures regarding these matters.** Iowa law states that if a tenant abandons a unit, the landlord shall make reasonable efforts to re-rent the unit at a fair rental price. If the landlord does rent the unit before the expiration of the tenant's rental agreement, then the agreement is terminated as of the date the new tenancy begins and no further rent is owed. The law further explains that if the landlord fails to use reasonable efforts to re-rent the unit, or if the landlord accepts abandonment as surrender, then the agreement is terminated as of the date that the landlord has notice of its abandonment.

### **Retaliatory Eviction**

Iowa rental housing law prohibits retaliatory actions against the tenant in the form of rent increases, decreased services, or eviction actions when: 1) the tenant has complained to a governmental agency of building or housing code violations materially affecting health and safety of the tenant: 2) the tenant has complained to the landlord of a housing violation or problem: and 3) the tenant has organized or become a member of a tenant's union or similar organization.

If the owner does evict the tenant for one of the above reasons, the tenant may recover actual damages and reasonable attorney fees, and have a defense against the landlord for possession. The law further states that evidence of good faith complaint by the tenant within one year, before an increase in rent, decrease in services, or eviction action, creates a presumption that the landlord is acting in a retaliatory fashion. The law explains that this presumption does not arise if the tenant complained after receiving a notice of rent increase, reduction of services, or

notice of eviction.

## **VI TENANT ORGANIZATION**

Many rental housing problems require group action by tenants to solve. If you are interested in such efforts or would just like to meet with other tenants to discuss your rental housing rights and responsibilities, contact HOME, Inc. According to Iowa's rental housing law tenants may not be evicted for organizing or becoming members of a tenant's union or similar organization.

## **VII LANDLORDS -- BEFORE YOU RENT**

### **Certificates of Inspection**

**Before a landlord can rent a house or multiple dwelling in Des Moines the rental property must have a current Certificate of Inspection.** A Certificate of Inspection is issued when the property meets the requirements of the Des Moines housing code. The housing code sets minimum standards for health and safety of the occupants of the rental property.

In Des Moines multiple dwellings must be issued an Inspection Certificate every 18 months. Single family dwellings and duplexes are issued Inspection Certificates every three years. For more information concerning Inspection Certificates and the housing code contact the Des Moines Housing Code Enforcement Office at 283-4046.

If you live outside the Des Moines area you should contact your local City Hall to find out if your area has a housing code. **In Iowa all cities with a population of 15,000 or more must have a housing code and a method of enforcement.**

### **Lead-Based Paint**

**Landlords, remember that children can be poisoned by exposure to lead-based paint.** If children will be occupying or visiting your rental property you should act to remove this hazard from the premises. The housing code of Des Moines describes the landlord's responsibilities regarding lead-based paint and the Housing Code Enforcement Office will provide you with information. Failure to protect your tenants from lead poisoning may result in a lawsuit for a substantial amount of money. Additionally, federal law requires landlords to disclose lead-based hazards and provide EPA-approved pamphlets for most units built prior to 1978.

### **Determine the Kind of Rental Agreement You Want**

After you have obtained an Inspection Certificate, the next step in renting is to determine what kind of rental agreement you want to offer tenants. **A rental agreement is a binding contract made between the landlord and the tenant which outlines the terms and conditions of the tenancy.** Rental agreements can be oral or written agreements.

With an oral agreement all terms and conditions are made verbally. Usually the term or length of the tenancy is on a month-to-month basis. As long as the tenant pays rent and the landlord accepts the rent, the tenancy continues. In order to terminate an oral agreement one party must provide the other party with a written 30-day termination notice (required by Iowa law). **Although an oral agreement is legally binding, it provides no protection against violations of the agreement because there is no verification that the agreement exists.** Both parties are subject to the rights and responsibilities of the Uniform Residential Landlord and Tenant Act whether or not those obligations are put in writing. Those rights and responsibilities cannot be signed away or waived by either party.

A written agreement outlines the terms and conditions of the tenancy, clearly and concretely. The written agreement also provides the best protection because the agreement is in black and white. However, a written agreement may not provide the same flexibility in termination as does the oral agreement because the landlord is usually bound to the agreement for a specific period of time. **Under a written agreement a landlord cannot terminate the tenancy unless the tenant has violated the terms and conditions of the agreement. This type of termination requires court action.**

In developing your rental agreement you should understand that there is no standard written agreement in Iowa. Several kinds of agreements specifically drafted for use in Iowa are available from stationary stores, Realtors, and the bar association. HOME, Inc. is also available to help landlord in developing rental agreements. **Be advised that generic forms may NOT comply with Iowa law.**

### **Terms Which Become Part of the Lease if Not Agreed Upon By the Parties.**

The law will make these terms part of the lease if the oral or written lease does not discuss these subjects, 1) Rent will be set at the "fair rental value" if not set in the rental agreement. 2) Rent will be paid at the beginning of the rental term, which usually means the beginning of the month, if a due date is not set in the rental agreement. 3) Rent will be payable at the rental property unless otherwise specified. 4) the rental period will automatically be on a month-to-month basis unless the tenant is a "roomer" who pays rent on a weekly basis, then it is on a week-to-week basis. 5) Garbage, heat, water, repairs, and maintenance for a single-family dwelling are the landlord's responsibility unless otherwise written.

### **Items You May Want in Your Rental Agreement**

1. Address of the rental unit.
2. Name, address, and phone number of the landlord or manager.
3. The date the rental agreement begins and ends.
4. A statement explaining the amount of rent, when it is due, where it is payable, the penalty for late payment, and persons authorized to receive it.
5. A statement explaining the amount of the rental deposit, what it will be used for, and the procedure for its return after termination.
6. A statement explaining the landlord's rules regarding the cleaning of the unit after the tenant's termination.
7. A statement explaining the landlord's rules regarding pets, visitors, guests, children, etc.
8. A statement explaining the landlord's right to access.
9. A statement explaining the landlord's and the tenant's maintenance responsibilities such as mowing the lawn, removing snow, removing trash, etc.
10. A statement explaining the landlord's rules regarding the tenant's use of the public or shared areas of the rental property.
11. A statement explaining the landlord's rules regarding parking.
12. A statement explaining the landlord's rules regarding subletting and assigning.
13. A statement explaining whether or not the rental agreement is self-renewing and the procedure for doing this.
14. A statement explaining the termination procedures.
15. A statement explaining the transfer of deposit and rental agreement in the event of sale of the property.
16. A statement requiring the tenant to notify the landlord of extended absences and needed repairs.

## Advertising

For information on advertising rental properties see the Tenants Section, Chapter II, Sources for Rental Housing Information, in this handbook.

## Negotiating the Rental Agreement

A rental agreement is a legally binding contract. It is a negotiable agreement between the tenant and the landlord. When you offer a rental agreement to the tenant be receptive to discuss the terms of the agreement. Such an attitude on your part may establish a basis for mutual respect, which will work toward maintaining a good rental relationship. Negotiation is not a compromise. It can be a business investment that can help you avoid considerable expense and inconvenience.

In negotiating the landlord should be aware that Iowa rental housing laws prohibit the following provisions in any rental agreement: 1) that one party agrees to pay the other party's attorney fees; 2) that one party agrees to a limitation of any liability, 3) that one party agrees to a confession of judgment (automatic judgment) for any potential violation of the lease, 4) terms which would require one party to waive his/her rights under the law, and 5) terms which allow one party to avoid his/her duties under the law. Furthermore, the law states that if a landlord uses such terms, the tenant may recover damages of not more than three months' rent and reasonable attorney fees.

**The Iowa law also provides that if one party fails to sign a rental agreement that has been signed and delivered by the other party, this does not mean that the agreement is not binding or is invalid.** If a party pays or accepts rent without signing the agreement, it has the same effect as if both parties signed it.

## The Rental Deposit

**A rental deposit is money paid to the landlord by the tenant as a guarantee that the landlord will be reimbursed for damages resulting from the tenant's violation of the rental agreement or the law.** In this case, damages refer to not only physical damages caused by the tenant, but also cleaning costs over and above normal wear and tear, money that is owed to the landlord by the tenant, and the cost of an eviction action if a tenant violates the rental agreement or law. **HOME, Inc. suggests that landlords call it a rental deposit rather than a damage or security deposit, and explain its use to tenants at the time of collection.**

**In Iowa, the landlord may not collect a rental deposit in excess of an equivalent of two months rent.** Once a rental deposit is collected the landlord must hold the deposit in a bank or savings and loan association or credit union which is insured by an agency of the federal government. The deposit may not be commingled with the personal funds of the landlord, or used for any purpose other than tenant related damages. Rental deposits can be held in interest bearing accounts. If this is done the first five years of interest belongs to the landlord. Any interest earned after five years can be requested by the tenant.

## Disclosure

The landlord must provide the following information to the tenant **in writing** at or before the beginning of the tenancy: the name and address of the landlord or manager and the person authorized to receive service of process for owner or other notices and demands. The landlord must then keep the tenant informed of any changes in the management or the address.

In addition to the above disclosure requirements, Iowa rental housing laws require the landlord to disclose the utility rate charges and services to the tenant before the rental agreement is signed, unless these services are to be paid by the tenant directly to the utility company.

Federal law also requires the landlord of most residential rental properties built prior to 1978 to disclose all information about any known lead-based paint or other lead-based hazards, provide copies of relevant records and supply the tenant with an EPA pamphlet or EPA approved State substitute pamphlet. 42 U.S.C. §4852d.

### **Inventory of the Unit**

Before you rent you may want to take a **written inventory** of the rental unit. A written inventory will provide you and the tenant with written evidence concerning the condition of the unit at the beginning of the tenancy. This information will help you avoid a dispute later about the use of the rental deposit.

The best inventory is taken with the tenant present. Each party should sign the inventory and keep a copy. If this is not possible, the landlord should inventory the unit with a third, disinterested party and give a signed, dated copy of that inventory to the tenant. Photographs showing the condition of the unit immediately before delivery to the tenant are also suggested. For a list of items that should be included in the inventory see the Tenant Section, Inventory of the Unit.

### **Right to Possession of the Rental Unit**

After you and the tenant have agreed upon the date of occupancy, then you must deliver the unit to the tenant. The landlord is responsible to have the premises prepared for possession. This means that the dwelling must be clean and free of health and safety hazards as well as fully comply with the lease terms, the building code, and the housing code.

If you are unable to supply the premises to the tenant on the agreed date, it is best to notify the tenant as soon as possible. In this event, no rent may be charged until the tenant is able to occupy the rental unit. Furthermore, if the landlord willfully withholds possession from the tenant, the tenant may recover damages and attorney fees.

### **Rental Housing Discrimination Laws**

Before you rent you should also be knowledgeable of the rental housing laws regarding discrimination. **The law states that the landlord may not discriminate on the basis of race, color, creed, sex, religion, national origin, ancestry, disability, or familial status (the presence of children).** For more information concerning your rights and responsibilities in this matter, contact your local human rights commission or the Iowa Civil Rights Commission.

## **VIII LANDLORDS -- WHILE YOU RENT**

### **Responsibilities of the Landlord**

The following is a brief list of landlord responsibilities.

1. Comply with all obligations imposed by the building and housing codes, and the rental housing laws.
2. Make all repairs and do whatever is necessary to keep the premises in a fit and habitable condition.
3. Keep common areas of the property clean and safe.
4. Maintain all electrical, plumbing, sanitary, heating, ventilation, air conditioning, and other facilities and appliances (including elevators) in a good and safe working order.
5. Provide receptacles for central collection and removal of ashes, garbage, and rubbish and arrange for their removal.
6. Supply running water, hot water, and reasonable heat at all times.

7. Take steps to protect the tenant from reasonably foreseeable harm, including the criminal activity of third parties.

## **Rights of the Landlord**

The following is a general description of important rental housing rights of landlords. It is not a complete list of all landlord rights, but is offered to explain those rights of which landlords should be aware.

### **Right to Access**

Iowa rental housing laws provide landlords the right to enter a rental unit to inspect: make necessary repairs, decorations, alterations or improvements: supply necessary or agreed service: and show the unit to prospective buyers, tenants, workmen, and contractors.

**In all cases, the landlord must provide the tenant at least 24 hours notice before entering the unit. The landlord may only enter at reasonable times and may not use the right to access to harass the tenant.** (See Appendix, Exhibit E for a sample notice to enter the tenant's rental unit.) In the event of an emergency or when it is not possible to do so, the landlord may enter the property without advance notice to the tenant.

If the tenant is absent for more than 14 days, the landlord may enter at times when reasonably necessary. If the landlord abuses the right to access, the court may award at least one month's rent and attorney's fees.

### **Right to Sanitary Conditions**

The landlord has the right to expect the tenant to maintain his/her rental unit in a clean and safe condition. This right is explained in Chapter 14 of the Des Moines housing code which states that every occupant of a dwelling, dwelling unit or rooming unit should maintain in a clean and sanitary condition those parts that s/he occupies. Iowa housing laws also require the tenant to dispose of all ashes, rubbish, garbage, and other waste in the unit in a clean and safe manner.

### **Right to Repair and Bill**

The Iowa law allows the landlord to repair tenant-related damages and bill the tenant for the cost on the next rent payment. In order to use this provision of the law, the landlord must notify the tenant **in writing** of the needed repair. The tenant must be allowed 7 days after receipt of the notice to make the repair. (Less time is required for emergency repairs.) If the tenant fails to make the repair within the time limit, the landlord may have the repair made. After the repair has been made the landlord must submit an itemized bill to the tenant of the cost. This bill may then be added to the following month's rent. (See Appendix, Exhibit G for a sample notice to repair and add to rent.) **The landlord may not use this procedure to avoid landlord responsibilities.** (See Section VIII – Responsibilities of the Landlord)

### **Right to Disconnect Utility Services**

**The landlord has the right to disconnect utility services only for temporary interruptions as may be necessary while actual repairs or alterations are in process, or temporarily during emergencies.** Failure to pay the utility bill is not considered an emergency. Chapter 14 of the Des Moines housing code explains the landlord's rights and responsibilities regarding this matter.

**The landlord does not have the right to disconnect utility services as a retaliatory action against the tenant.** If the landlord takes such action the tenant may respond with action

that may involve considerable expense for the landlord. The actions available to the tenant are described in the Tenant Section, Right to Utility Service.

## **IX OTHER CONSIDERATIONS**

### **Rules**

The landlord may adopt rules describing the tenant's use and occupancy of the rental unit. A rule must have the purpose to promote the tenant's safety, convenience, or welfare or to protect the property. **According to Iowa law, rules are enforceable only if they are clearly written, are reasonably related to the purpose for which they are adopted, apply to all tenants in a fair manner and are not for the purpose of evading landlord responsibilities under the law and are given to the tenant at the time they enter the rental agreement.** Rule changes which substantially modify an existing agreement (such as rent increases, or changes to a no pet policy) may only be made in month-to-month tenancies, and require a **written 30 day notice.** (See appendix, Exhibit H for a Sample notice to tenant of rent increase.)

### **Late Fees**

The landlord may charge a fee if rent is late. However, the late fee cannot be higher than \$10.00 per day and the late fee may not exceed a total late charge of \$40.00 per each month.

### **Counting Days**

Many provisions of the Uniform Residential Landlord and Tenant Act require that the landlord or tenant respond to the other party within a certain number of days or give the other party a certain number of days to take action. When counting days under this law, start counting the day after the Notice is served and include the last day. (Example: If a 3-day Notice is served on the 3<sup>rd</sup> of the month, start counting days on the 4<sup>th</sup> of the month and include the whole of the 6<sup>th</sup> of the month. No action or filing can be taken on this Notice until the 7<sup>th</sup> of the month.) Additionally, if the last day falls on Sunday or a holiday recognized by the Iowa Code, the count will end at the close of the following day.

### **Waiver**

A rental agreement can be changed by the actions of both the tenant and the landlord. If this occurs, it is called a waiver. For example, if a rental agreement prohibits pets and the landlord accepts rent from the tenant with full knowledge that the tenant is keeping a pet, then that portion of the rental agreement regarding pets is changed or waived. After this occurs the rental agreement is changed to allow pets even though no written change was made on the rental agreement. The landlord may not take retaliatory action against the tenant, in the form of a rent increase, or eviction, for keeping pets because a new rental agreement has been established which permits pets. **To avoid any problems regarding waivers, it is important that you enforce the rental agreement fairly and effectively and promptly.**

### **Rent Vouchers**

County Department of Social Services offers emergency financial assistance to tenants who are unable to meet their rent payment. If the landlord agrees to accept a rent voucher and the tenant is able to meet eligibility requirements, a voucher can be issued to the tenant. It is the responsibility of the landlord to submit the completed voucher to the Department of Social Services. The total processing time may involve several weeks.



## Fire and Casualty Damage

The procedure involved in determining the tenant and landlord rights and responsibilities concerning fire and casualty damage is explained in Chapter IV of this handbook, in the Tenant Section, Fire or Casualty Damage.

## Sale of Property

In the event of a sale of the rental property all rights and responsibilities that have been established between yourself and the tenant may be transferred, depending on the content of the rental agreement, to the new landlord.

The landlord has the option of returning the rental deposit to the tenant or transferring it to the new landlord. The landlord may make lawful deductions from the rental deposit. If deductions are made, the landlord must provide a written itemized list of deductions to the tenant. In the case that the deposit is transferred to the new landlord, the tenant must be notified of the amount transferred and the name and address of the new landlord. The notice to the tenant must include a self-addressed, stamped envelope to the successor landlord. **Until the tenant has received the rental deposit or notification of its transfer, the original landlord is still responsible for the deposit.**

## Notification

Many of the provisions in the Uniform Residential Landlord and Tenant Law require that notice of the landlord's intentions or actions be given to the tenant. Some provisions state the method of notification, others do not. When giving a notice, HOME, Inc. suggests you follow these procedures: 1) Put all notices in writing. 2) Keep copies of all notices you give to the tenant or receive from the tenant. 3) Send the notice by certified mail and request a return receipt or hand deliver the notice with a witness present.

## X LANDLORDS -- TERMINATING A TENANCY

### Proper Notice of Termination

The procedure for termination of a tenancy will depend on the type of rental agreement you use. A written rental agreement (for a specific period of time) should outline the procedure for termination. **If the agreement does not specify a termination procedure, the landlord may not terminate the tenancy until the expiration date of the agreement or unless there has been a breach of the lease or violation of the law.** If the tenant has violated the rental agreement the landlord may terminate the agreement prior to the expiration date, but usually this type of termination requires court action.

If the rental agreement is a simple oral agreement, the landlord must provide the tenant with a written 30-day termination notice. This type of notice must not end in the middle of a rental period. (A rental period runs from the day that rent is due to the day before the next rent due date. The common practice is for the rental period to begin on the first day of the month and end on the last day of the month.)

In order to give the tenant a **proper notice**, the landlord should count forward 30 days from the last day of the last rental period. The tenant must receive the notice prior to that date. **If a notice ends in the middle of a rental period, the tenant may remain in the unit until the last day of that rental period.**

If the tenant does not move on the date of termination the landlord may initiate an eviction

action and may recover actual damages sustained as a result of the tenant's failure to vacate. The damages may also include reasonable attorney fees.

### **Termination for Noncompliance**

If a tenant fails to comply with the rental agreement, rules, or the law the landlord may terminate the tenancy for noncompliance. **In order to terminate a tenancy for noncompliance, the landlord must give the tenant a written notice that explains the violations.** The notice should further state that the landlord will terminate the rental agreement in 7 days (after receipt of the notice) unless the violation are corrected within 7 days. If the tenant does correct the violations the termination notice is cancelled. However, if the same violations occur again within six months (following receipt of the notice) the landlord may terminate the tenancy by providing a 7-day written notice to the tenant, which explains the violations and gives the date of termination. (No right to cure is given the second time.)

If a landlord decides to terminate a rental agreement for noncompliance, s/he should consult a private attorney or request assistance from HOME, Inc.

### **The Final Day**

**Utilities:** On the final day you will want to determine the status of all utilities and make arrangements with the tenant regarding billing procedures and disconnection. If the tenant is responsible for the payment of the water bill, make sure you contact the Department of Water Works to find out if the tenant has paid all the sewer and solid waste charges, and county tax records for liens against the property for unpaid utilities.

**Fixtures:** Fixtures are all those things that are affixed to the unit in such a way that they appear permanent. The landlord and tenant should discuss the disposition of any fixtures that the tenant may have added to the unit. If the tenant is going to remove fixtures (which s/he installed) make sure that the tenant is aware that is his/her responsibility to make sure that the unit is returned to its original condition.

**Inspection:** On the final day of a tenancy the landlord and tenant should inspect the unit for damages. At this time both parties should reach an understanding concerning the condition of the unit and what amount if any the tenant owes for damages. The inventory in this handbook will serve as a valuable guide for this purpose.

A written inventory of the unit should be taken and then both the landlord and the tenant should sign the inventory to determine damages. This written record of the condition of the unit will assist both parties in determining the use of the rental deposit and help to avoid court action.

**Return of the Keys:** On the final day the landlord should obtain all keys related to the unit from the tenant and provide a receipt for them. If the landlord wishes to charge a penalty for returning the keys late, this penalty should be explained in the rental agreement.

**Written Notice of the Tenant's Forwarding Address:** The landlord should also obtain a written notice of the tenant's forwarding address or delivery instructions on the final day of the tenancy. This information is necessary in order to notify the tenant concerning his/her rental deposit. If the landlord does not obtain this information from the tenant within one year after termination, the tenant forfeits all rights to the rental deposit.

### **Return of the Rental Deposit**

**According to Iowa law the landlord must return a written itemized list of deductions and remaining deposit, or the full deposit to the tenant within 30 days after receipt of the tenant's forwarding address or termination of the rental agreement, whichever occurs last.** If the landlord fails to supply this information within the 30 day time period, the landlord forfeits the right to keep any of the deposit. Furthermore, failure to return the deposit or bad faith retention

of the deposit may subject the landlord to punitive damages not to exceed \$200 in addition to actual damages plus attorney fees.

The deductions that a landlord may make from a rental deposit include: 1) the cost of unpaid rent or other money which the tenant owes as a result of the rental agreement; 2) the cost of repairing tenant related damages except for normal wear-and-tear; 3) the cost of cleaning the unit if it is not left in the same or better condition than the tenant found it, excluding normal wear and tear; 4) the cost of evicting a tenant for violating the rental agreement.

In addition, Iowa's rental housing laws state that in an action concerning the rental deposit the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the deposit shall be on the landlord.

## **Abandonment and Abandoned Personal Property**

Iowa law states that if a tenant abandons a unit, the landlord shall make a reasonable effort to re-rent the unit at a fair rental price. If the landlord does rent the unit before the expiration of the tenant's rental agreement, then the agreement is terminated as of the date the new tenancy begins. The law further explains that if the landlord accepts abandonment as surrender or fails to take steps to re-rent the unit, then the agreement is terminated as of the date that the landlord has notice of its abandonment.

The law is not clear regarding what constitutes abandonment or the procedures required for regaining possession of the unit or the removal of the tenant's personal possessions. Entering a unit that has not been abandoned or improperly taking possession of a unit can result in substantial liability for a landlord. **If a situation should arise where the landlord has reason to believe that the tenant has abandoned the unit, s/he should contact a private attorney.**

## **Liens on Personal Property**

The enactment of the Uniform Residential Landlord and Tenant Law abolished the landlord's right to a lien on the tenant's personal property. Retention of a tenant's property may result in criminal charges of theft, or civil claims for replevin or conversion.

## **XI EVICTION**

### **The Due Process of Eviction**

Earlier in this handbook HOME, Inc. explained the proper procedure for ending a tenancy by termination. If the tenancy is terminated and the tenant does not move, the landlord may remove them through a process called eviction. (The legal term for eviction is an Action for Forcible Entry and Detainer or FED.)

**An eviction should not be confused with a termination.** The termination process can be used by both a landlord or a tenant to voluntarily end a tenancy. Usually the landlord or the tenant does not need to have a reason for termination.

**Unlike termination, the eviction process is a court action brought by the landlord in order to regain possession of the rental unit.** The desired outcome of an eviction is for the court to give permission to the landlord to forcibly remove the tenant from the unit, if the tenant fails to do so by the date scheduled by the court.

Another difference between a termination and an eviction is that in an eviction the landlord must show the court that s/he has reason to end the tenancy. The three most common reasons for eviction are: 1) nonpayment of rent; 2) failure to comply with the rental agreement, rules, or law; and 3) failure to move after proper notice is given.

In an eviction action the landlord must first serve the tenant with the proper **Three Day**

**Notice.** (In an action based on nonpayment of rent, the notice is called a **Three Day Notice to Cure or Quit**. In an action for noncompliance or failure to terminate, the notice is called a **Three Day Notice to Quit**.) If the tenant fails to comply with the Three Day Notice, the landlord must file an **Original Notice for Forcible Entry and Detainer (FED or Eviction)**. This second notice must be filed at the Small Claims Court Office. The Original Notice will inform the tenant of the time and date of the court hearing. **Both notices should be served to the tenant in person by a disinterested third party, such as the sheriff's office.**

At the court hearing the judge will listen to both sides of the case. The judge will then decide if the landlord has the right to regain possession of the rental unit. If the case is decided in the tenant's favor, the case will be dismissed and the tenant will be able to remain in the unit. If the case is decided in the landlord's favor, the court will issue an **Order for Removal**, which states the time and date the tenant must be out of the unit. If the tenant fails to be out by that time, the landlord may obtain a **Writ of Removal** from the Small Claims Court Office. This writ will enable the landlord to move the tenant's possessions on to the curb. **The Sheriff's office must be present to supervise while the landlord does this.**

**REMEMBER, A TENANT CAN ONLY BE REMOVED FROM A RENTAL UNIT WITH THE PERMISSION OF THE COURT. THE LANDLORD DOES NOT HAVE THE RIGHT TO TAKE THE TENANT'S POSSESSIONS, LOCK THE TENANT OUT OF THE RENTAL UNIT, OR SHUT OFF ESSENTIAL SERVICES.** (See the following section on Retaliatory Evictions.)

## **Kinds of Evictions**

**Nonpayment of Rent:** When a tenant fails to pay rent on time and/or in full on the date that rent is due, the landlord may begin an eviction action based on nonpayment.

First the tenant must be served a Three Day Notice to Pay the Rent Default. (See Appendix, Exhibit L for a sample notice to tenant of past due rent.) This notice should state that rent is not paid for the period of (rental period) and the amount owed. If the rent is not paid in full within three days after receipt of this notice, the tenancy will terminate and the landlord will begin an eviction action. **If the tenant pays rent in full during the three day period, the landlord must accept payment.** If the tenant does not pay full rent, the landlord must file the **Original Notice for Forcible Entry and Detainer**.

**Clear and Present Danger:** If a tenant, or any person on the premises with the consent of the tenant, behaves in such a manner that could be considered a clear and present danger to individuals within 1000 feet of the landlord's property, the landlord may terminate the rental agreement with a Three Day Notice to Quit the premises and then proceed with an eviction. Examples of a clear and present danger include, but are not limited to: 1) actual or threat of physical assault; 2) illegal use, possession, or threat of a firearm or other weapon; 3) possession of an illegal controlled substance.

The landlord's notice must state the specific activity which the landlord believes constitutes a clear and present danger, and it must include the language contained in Exhibit M in the back to this handbook. **If the landlord's notice does not list the specific activity that caused the clear and present danger, or it does not include the language contained in Exhibit M, the court will not proceed with the eviction.**

The tenant is entitled to challenge this notice in court at the eviction hearing. Also, if the person responsible for the act is not the tenant, the tenant must take immediate steps, if the tenant wishes to remain in the rental unit. The tenant must either: 1) obtain a protective or restraining order against the responsible person; 2) report the activity to a law enforcement agency in an effort to initiate a criminal action against the person; or 3) send a letter to the responsible person telling them not to return to the premises and that a trespass action will be brought against them if they do

return, and send a copy to law enforcement agency that has jurisdiction.

**In any of the above remedies, the tenant must provide written proof to the landlord that they have taken one of the measures specified above, before the landlord files the eviction action against the tenant.** In other words, this remedy must be completed and the landlord notified during the Three Day Quit period.

**Noncompliance with the Rental Agreement, Rules, or Law:** If a tenant fails to comply with the rental agreement, rules, or law the landlord may serve the tenant a **7 Day Notice for Noncompliance**. (See Landlord Section, Chapter X, Termination for Noncompliance.) If the tenant fails to comply within 7 days and fails to move within 7 days, the landlord may begin an eviction action for noncompliance.

First the landlord must serve the tenant a **3 Day Notice to Quit**. This notice states that the tenant has three days after receipt of the notice to vacate the rental unit. If the tenant fails to move within the three day period, the landlord must file the **Original Notice for Forcible Entry and Detainer**.

**Failure to Move:** If a tenant fails to move after receipt of a **proper 30 Day Termination Notice** (see Landlord Section, Proper Notice of Termination), the landlord may begin an eviction action.

First the landlord must serve the tenant a **3 Day Notice to Quit**. This is the same notice that is used in an eviction action for noncompliance. If the tenant fails to move within the three day period, the landlord must file the **Original Notice for Forcible Entry and Detainer**.

### **Nonpayment of Rent as a Tenant's Defense**

In Iowa, the tenant has the right to use withholding of rent **as a defense to an action for nonpayment of rent**. However, the tenant can only use this defense if s/he can show the court that the landlord failed to comply with the rental agreement or maintain the rental unit.

If the tenant withholds rent and the landlord files an eviction action against the tenant, the tenant must file a counterclaim in Small Claims Court. In that event, the court may order the tenant to pay into the court all or part of the rent that accrues before the court hearing. At the court hearing the judge will determine the amount of money due to each party. If the tenant is not in possession of the rental unit, the tenant may file a counterclaim against the landlord but is not required to pay any rent into the court. In addition, if the tenant files a counterclaim against the landlord's action, and the counterclaim is without merit, the landlord may recover reasonable attorney fees.

**Since this is a complicated procedure, HOME, Inc suggests that tenants who wish to use this defense contact an attorney.**

### **Retaliatory Eviction**

Iowa rental housing law prohibits retaliatory actions against the tenant in the form of rent increases, decreased services, or eviction actions when: 1) the tenant has complained to a governmental agency of building or housing code violations materially affecting health and safety of the tenant: 2) the tenant has complained to the landlord of a housing violation or problem: and 3) the tenant has organized or become a member of a tenant's union or similar organization.

If the owner does evict the tenant for one of the above reasons, the tenant may recover actual damages and reasonable attorney fees, and have a defense against the landlord for possession. The law further states that evidence of good faith complaint by the tenant within one year, before an increase in rent, decrease in services, or eviction action, creates a presumption that

the landlord is acting in a retaliatory fashion. The law explains that this presumption does not arise if the tenant complained after receiving a notice of rent increase, reduction of services, or notice of eviction.

## **XII HOUSING CODE ENFORCEMENT**

Since 1919 the City of Des Moines has had a housing code. A housing code establishes minimum health and safety standards in order to insure that the housing stock in a community has a continuous maintenance program that helps prevent urban decay and the associated deterioration in the quality of life of a community's residents. In Iowa all cities with a population of 15,000 or more must establish a housing code and enforcement procedures. To find out if your community has a housing code check with your local city hall.

In Des Moines the housing code is called the **Housing Maintenance and Occupancy Code**. The Des Moines housing code requires landlords to have their rental property regularly inspected and be issued a **Certificate of Inspection**. When a Certificate of Inspection has been issued it means that the property meets the minimum health and safety standards of the housing code. **Rental Dwellings that do not have a current Certificate of Inspection cannot be used for rental purposes**. If this occurs the City of Des Moines can take legal action to prevent the landlord from renting such a dwelling.

The agency that inspects rental property and enforces the housing code in Des Moines is called the Housing Code Enforcement Office. A tenant or landlord can obtain more information about this office by calling 283-4046.

## **XIII GLOSSARY OF TERMS**

Eviction -- The legal process used by a landlord to petition a court for the removal of a tenant from a rental unit. This process is also known as an action for "Forcible Entry or Detention of Real Property" or "F.E.D." and is controlled by the law contained in Iowa Code chapter 648.

Housing Code Enforcement -- An agency that is responsible for the enforcement of the housing code.

Landlord -- A term often used to describe the owner or manager of the rental property.

Manager -- Any person designated to collect rent and/or maintain the rental property. The manager may be the owner of the property or an employee or agent of the owner.

Notice -- A written document given by one party (landlord/tenant) to notify the other party of his/her actions or intentions.

Owner -- The person who legally holds title (owns) to the rental property.

Possession -- A term used to describe the time period between the first day a tenant takes occupancy of a rental unit and the day that the tenancy is terminated.

Rent -- A sum of money paid periodically to the landlord for the use of the rental unit. In most cases rent is paid at the beginning of a rental period.

Rental Agreement/lease -- A legally binding contract made between the landlord and the tenant which outlines the terms and conditions of the tenancy. A rental agreement may be oral or written. Often written rental agreements are called leases.

Rental Deposit -- Money paid to the landlord by the tenant as a guarantee that the landlord will be reimbursed for damages resulting from the tenant's violation of the rental agreement or law.

Rental Period -- A term used to describe the period of time for which rent has been paid. A rental period runs from the day that rent is due to the day before the next rent due date. The common practice is for the rental period to begin on the first day of the month and end on the last day of the month.

Rental Unit or Rental Property -- A term used to describe an apartment, duplex, or single family house used for rental purposes.

Roommate -- Two or more persons who share a rental unit. Whether or not their names appear on the rental agreement, each bears responsibility for the payment of rent or other costs related to occupancy.

Tenant -- A person who has signed a rental agreement and/or pays rent to occupy a particular rental unit.

#### **XIV APPENDIX OF SAMPLE NOTICES**

*(We suggest that notices not be used without first consulting a HOME, Inc. counselor or private attorneys for advise.) Copies of these notices are NOT on the website.*

Exhibit A – Notice to Repair and Deduct

Exhibit B – 30-day Termination Notice

Exhibit C – 7-day Termination Notice to Landlord for Non-compliance

Exhibit D – Notice for the Return of the Rental Deposit

Exhibit E – Notice of Wrongful Access

Exhibit F – Notice to Enter Tenant's Rental Unit

Exhibit G – Notice to Repair and Add to rent

Exhibit H – Notice to Tenant of Rent Increase

Exhibit I – 30-day Termination Notice to Tenant

Exhibit J – 7-day Termination Notice to Tenant for Non-compliance

Exhibit K – 3-day Notice to Quit

Exhibit L – Notice to Tenant of Past Due Rent (Notice to Cure or Quit)

