

INSTRUCTIONS FOR FILING COMPLAINT FOR RETURN OF SECURITY DEPOSIT (DEBT ACTION)

Before initiating a case, you should obtain a copy of the booklet entitled *How to File and Defend a Civil Case in the Justice of the Peace Court of the State of Delaware*. This booklet will explain the process involved. In order to initiate a case, you must fill out the Complaint (J.P. Civil Form No. 1) and submit it, along with the filing fee, to the Court. The attached form may be used as an example to help fill out a complaint for the return of a security deposit.

(The following information is not legal advice and is not a substitute for seeking legal advice from an attorney. This information is not binding on the Court if incorrect or misunderstood. The sample form is illustrative only and may or may not apply to the specific facts of your case.)

The sections of the sample complaint will be identified by capital letters in parentheses, i.e., (A), (B). These do not appear on the actual complaint but are used to help you follow the instructions to the sample form.

(A) Fill in the County, Court No. and Court Address. You should leave blank the space "Civil Action No." (not on the sample).

(B) In the section marked PLAINTIFF(S), you must fill in your name, address and telephone number. If you are not the only plaintiff, you must include the same information for all other plaintiffs in the case. If you are filing with your spouse and have the same address, you may include both spouses in the same section. However, you must list the first and last names of both spouses.

(C) In the section marked DEFENDANT(S), you must fill in the name, address and phone number of each defendant. **It is extremely important that the addresses given the Court are complete and correct.** If the party you are suing has a post office box, you should include their street address as well as their post office box. If you are suing a husband and wife, you must list the names of both spouses.

(D) If you will use an attorney, you should include the name of the attorney. The attorney's address and phone number should be included, if known. If you list an attorney under your name on the complaint form, the Court will send all mail directly to the attorney and not to you. Therefore, before you put an attorney's name on the complaint form, you should be certain that the attorney is willing to represent you in your case.

(E) You should also fill in the name of the defendant's attorney, if any, and the attorney's address and phone number, if known. You may leave this blank or write unknown if you do not know if the defendant has an attorney.

(F) You must state whether you are an individual or are an organization such as a corporation or partnership. If you are not suing as an individual, you must obtain a Form 50 from the Court and file this, along with the required filing fee with the Chief Magistrate if you will not have an attorney represent you. A copy of the Form 50 must be attached to

the Complaint. Filing the Form 50 permits a person who is not an attorney to represent an organization in the Justice of the Peace Court.

(G) You must also state whether the party you are suing is an individual or an organization, if you know. (The defendant will also be required to file a Form 50 if it is an organization and does not wish to be represented by an attorney).

(H) Type of Service. The Court will attempt to serve (deliver to) the defendant unless you tell the Court that you wish to hire a special process server. A special process server is an individual approved by the Court to serve documents in lieu of the Court.

(I) Rental Unit Address. Fill in the street address of the unit for which you are seeking the return of the security deposit.

(J) Type of Action. Check Debt. (Since possession of the rental unit is not claimed, this is a debt rather than a summary possession action.)

(K) Statement of the Facts. A debt action is a claim for a sum of money – in this case, for the return of a security deposit. Although only a very short statement of facts is required, it should state:

- 1) when the unit was leased from the defendant and when the lease ended.
- 2) the date that the landlord was asked in writing for the deposit; and
- 3) either that the defendant has not returned the security deposit or an itemized list of the damages **or** that the defendant has returned a list of itemized damages and that the plaintiff disputes some or all of these damages.

If the landlord fails to remit the security deposit or the difference between the security deposit and the amount set forth in the list of damages within 20 days from the expiration or termination of the lease, the tenant shall be entitled to double the amount wrongfully withheld. *25 Del.C. § 5514(g)(1)*. **However, a doubling of the amount due may be awarded only if a forwarding address is provided to the landlord at or prior to the termination of the rental agreement. For those seeking double the security deposit, the complaint should state the date of the expiration or termination of the lease and the date the forwarding address was provided to the landlord.**

(L) Relief Sought. This section should state what you want to obtain as a result of the suit.

* The amount of money which is being claimed should be put on the first line and should not include interest. If double the security deposit is being sought, that amount should be specified on the first line.

* Be sure to complete all other relief which you are seeking.

(M) Finally, be sure to date and sign your complaint. Then, you should submit it, along with the filing fee to the Court.