

EVICTIION FOR NON-PAYMENT

(This information does not apply to mobile home owners)

Q: Can I withhold rent if the landlord fails to make needed repairs?

A: No. The only exception is to follow the requirements of the Utah Fit Premises Act. You must be current on your rent payment and all other requirements of your rental agreement. See our flyer called ***Bad Housing*** for more info.

Q: Can the landlord evict me if he claims that I damaged something and I refuse to pay?

A: Except for some subsidized rentals, a landlord can give a written 3-day notice to pay or vacate for unpaid rent, late fees, damage allegedly caused by the tenant, or anything else that's included in the rental agreement. As a rule, the tenant is responsible for any damages caused by the tenant or the tenant's guests over and above reasonable wear and tear. The landlord can demand payment for the cost of repairs. If the tenant doesn't pay or move within 3 calendar days, the landlord can file a lawsuit to evict the tenant. Call us if the 3-day notice is based on tenant-caused damage.

Q: What kind of notice is required to start the eviction process for nonpayment?

A: Except for some subsidized rentals, Utah law requires that the landlord give at least a 3-day notice to pay or vacate. It must be in writing. It must give the tenant the choice to pay or to leave. It must state an amount of rent and/or late fees and/or other amounts that must be paid, even if the tenant does not agree with the amount. The 3 days are calendar days unless the notice states otherwise. This 3-day notice does not have to be notarized. It can be given by the manager or the maintenance worker or anyone else. It can be posted to your door.

Q: If the landlord accepts part of the rent, does that stop an eviction?

A: Generally, no. Even if the landlord accepts most of the rent from you, the landlord can give you another 3-day notice to pay or vacate. If you think you and the landlord have agreed to a repayment plan over a period of time, get that agreement in writing and signed by the landlord. The safest way to stop the eviction process is to pay the full amount demanded in the 3-day notice.

Q: What happens if I can't pay or leave within 3 days?

A: The landlord must file an eviction lawsuit against you. The landlord cannot change the locks, shut off utilities, take your property, call the police or harass you for payment. If the landlord tries to use self-help methods to evict you, call the police. See our flyer ***Notice to Landlord*** for more information.

Q: What is "unlawful detainer?"

A: If a tenant continues to live in the rental unit more than 3 days after receiving a 3-day notice to pay or vacate, a judge may find that tenant is unlawfully keeping possession of the premises. This is called "unlawful detainer."

Q: How does an eviction lawsuit begin?

A: An eviction lawsuit begins with a summons and complaint served on the tenant usually by a constable. These papers can't be posted on the door but must be given to someone living in the rental unit. If the constable cannot find anyone at home after several tries, the court will allow alternate service which is usually by mail.

Q: What happens after I get the summons and complaint? What must I do?

A: In eviction cases, the tenant ("defendant") usually only has 3 business days to file a written response with the court. You must file your written response (called your "Answer") directly with the clerk of the court. You can't mail it. Do not count the day you were served with the summons. Count the next three working days. Your Answer is due on or before the third working day. See our self-help packet ***Answering an Eviction Complaint by Yourself***.

Q: What happens if I miss the deadline?

A: The landlord (“plaintiff”) can get a default judgment against you that includes both an order evicting you from the rental unit and a monetary judgment. If you are only a few days late, call the court clerk to find out if a default judgment has been requested by the landlord. If not, file your answer immediately. If a default judgment has already been entered, you may ask that the judgment be set aside if you have a good reason. “I waited too long” is not a good reason.

Q: What happens after I file my answer?

A: The landlord must request a hearing before a judge unless you agreed to everything the landlord said in the complaint. The hearing will almost always occur within 10 days after you file your answer, often even sooner. You will get notice by mail or a phone call. If you agreed to everything in the complaint, the landlord may just ask the judge for a judgment “on the pleadings” and then the result will be a monetary judgment and an order evicting you.

Q: What happens at the hearing before the judge? What is an Order of Restitution?

A: At the first hearing in non-payment cases, the judge will determine whether it’s likely that you owe something to the landlord (rent, late fees, deposit, damages, etc.) based on the 3-day notice. Except in rare cases, the exact amount owing will not be determined at the first hearing. But the judge will issue an Order of Restitution, restoring possession of the rental unit to the landlord. The judge may tell you at the hearing how long you can remain before you must move out. This is usually 3 calendar days. Otherwise, you will be served with the Order by a constable usually giving you 3 more days. But if at the hearing the judge already gave you 3 additional days, this Order may be enforced immediately. That is, you will be forced out as soon as the constable comes. This is when the landlord can change the locks.

Q: What are “treble damages?”

A: Treble means triple or three times. If the judge finds that you had no right to remain in the premises after the 3-day notice to pay or vacate period and if the landlord pursues a monetary judgment against you, then the judge must award three times the normal rental value to the landlord for every day you were “unlawfully detaining” the rental unit after the 3 day notice period expired. Most landlords do not go after a tenant for a monetary judgment once the tenant has vacated the rental unit. But some landlords and their lawyers will wait a long time before mailing a notice about another court hearing and when you don’t come to the hearing, a monetary judgment will be entered against you. Make sure that the landlord or the attorney as well as the court has a current mailing address for you.

Q: What are the consequences of being evicted?

A: An eviction looks bad on your credit history. Future landlords may not rent to you. If a monetary judgment is entered against you, the landlord can force you to come to court every so often to ask you about your financial resources (where you work, what kind of car you have, how much money you have in the bank). If you are mailed a notice to appear in court on a “supplemental proceeding,” you must go. Otherwise, a warrant for your arrest may be issued. Much of what you have will be exempt from execution. But your wages can be garnished. And even if you have nothing that the landlord can take to satisfy the judgment, you must still appear in court to answer questions when ordered.

Q: Can I get a lawyer to help me with my non-payment eviction case?

A: We do not assist tenants in simple non-payment eviction cases. But if your rent is subsidized (section 8, public or project-based housing) or your situation is different than what is described in this flyer, please call us. You can use the self-help materials on our website (www.utahlegalservices.org/public/self-help/uploads/AnswerProSe.pdf) or you can use the State’s system for creating an answer (www.utcourts.gov/ocap/utah/landlordtenant/). Both are free. [12/10]