ABANDONMENT

Q: What is "abandonment?"

A: If you move out of your rental unit without giving notice to the landlord, you have abandoned the property. The landlord may think you've abandoned the property even if you have not.

Q: Can the landlord say I've abandoned the property even if I still intend to live there?

A: Yes, if certain conditions are met. Utah law says that the landlord can take possession of the rental unit and change the locks without first going to court under two circumstances. In both cases, the landlord must claim that the tenant did not tell the landlord that the tenant would be away ("absent"). Abandonment can be presumed by the landlord if either

(1) the rent is more than 15 days overdue, the tenant's possessions are still in the rental unit but there is no other reasonable evidence that the tenant is still living there, or
(2) the rent is one or more days overdue, the tenant's possessions are gone and there is no other reasonable evidence that the tenant is still living there.

Q: What if I told the landlord that I would be away for a while. Can the landlord still say I've abandoned the rental unit?

A: Landlords who claim abandonment and retake possession of a rental unit almost always say they did not know the tenant would be gone. A tenant who must leave for a period of time should give the landlord written notice before leaving. Keep a copy of the written notice. The tenant must still pay the rent when it is due. If the rent is overdue but the landlord knows you will be gone, the landlord can post a 3-day notice to pay or vacate on your door, then file an eviction action against you if you don't pay within the 3 day period, even if you are not there.

Q: Even if the landlord claims I abandoned the rental unit, doesn't the landlord need a court order to evict me?

A: No. This is the one exception to the rule that the landlord must give written notice and then file a lawsuit in order to evict a tenant.

Q: My locks have been changed. What can I do?

A: Talk to the landlord. Try to pay the rent if nonpayment is the reason for the lockout. You can also call the local police department or county sheriff. Look at the flyer on our website called **LOCKOUT: GETTING HELP FROM THE POLICE**. If you can re-enter the rental unit without damage to the unit and without breaching the peace, you may be able to restore your tenancy. But this depends on all the facts. If you do get back inside your rental unit, you should immediately call the police to establish yourself as a non-trespasser. If you have not paid the rent, the landlord will likely begin the eviction process.

GETTING YOUR PERSONAL PROPERTY BACK

Q: How do I get my personal property?

A: After abandonment or court-ordered eviction, the landlord must hold onto the tenant's property for at least 15 days and return it to the tenant at the tenant's request. But the landlord may charge moving and storage costs. Within 5 (five) business days after eviction, the landlord must allow the tenant to retrieve clothing, documents, prescription drugs and medical equipment at no cost. If any personal possessions have been left inside the rental unit, the landlord may say that the storage cost is the daily rent. Most landlords just want former tenants to take their possessions and will not charge moving or storage costs. It is best to retrieve your property as soon as you can, at a time that is mutually convenient for you and the landlord. See our flyer called "Request for Return of Personal Property." After 15 days (with some very limited exceptions allowing for one 15-day extension), the landlord can sell your possessions or donate them to charity. Give the post office a forwarding address because notices will be mailed to you.

Q: What if the landlord won't give me back my personal property?

A: If you were evicted by court order and the landlord won't give you your property back or demands too much money, ask for a court hearing within 15 days of your eviction. A hearing request form should have been attached to the *Order of Restitution* (the court order evicting you). You can also get such a form from the court clerk. A hearing will be scheduled. The landlord may work with you rather than go back to court. But if not, you can talk to the judge about the landlord's refusal. After abandonment, there is no court case so you cannot ask for a hearing. If the landlord posts and mails to the tenant (at "last known address") a notice regarding the abandoned property, the tenant has 15 calendar days to claim the property but must pay all costs of inventory, moving, and storage first – except as noted in the paragraph above. Once the 15 days has passed, the landlord may have the right to sell or dispose of the remaining property. If notice was posted and mailed but you don't claim your property or can't pay the charges, you cannot sue in small claims court for the value of the possessions.

Q: Can the landlord legally keep my property?

A: The tenant is always entitled to have certain items ("exempt" property) returned, such as medical supplies and prescriptions, clothing, household goods, appliances and the like although the tenant may have to pay actual moving and storage costs in order to get these exempt items back. But other personal property is not exempt; TVs and stereo equipment are not exempt, nor is a motor vehicle. If the tenant does not claim the remaining property within 15 days after the landlord sends the notice (see paragraph above), the landlord can sell that property at a public auction. The landlord must mail notice (at "last known address") to the tenant. The tenant can bid on the property but then must pay to get it back. If the tenant has not requested either return of her property or a court hearing within 15 days after being evicted, the landlord can sell even exempt items. If the tenant goes to the sale, she can designate which items are sold first and then recover any items remaining after the cost of moving, storage, advertising and conducting the sale are paid. And the landlord may dispose of hazardous or perishable items and send pets to a shelter (or "animal control") immediately after a tenant is evicted.

Utah Legal Services

Offices in Ogden, Salt Lake, Provo and St. George
New clients can call Monday through Friday from 9:00 until 2:00
In the Salt Lake valley: 801-328-8891 or toll free from elsewhere in Utah: 1-800-662-4245

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[rev. 9/13]