Eviction: What's the worst that can happen to me?

Q: Does an eviction show up on my record?
A: Eviction cases are civil, not criminal. Criminal convictions can sometimes be expunged. Civil cases are always in the public record. This public record only includes cases actually filed with the District Court. So a three-day notice to pay or quit is NOT part of this public record unless it becomes the basis for an eviction complaint that is filed with the District Court. Once the complaint is filed, it's on your record even if you are never served with a summons and complaint.

Q: Do background checks show evictions? What about credit checks?
A: Yes, if the person checking looks at the District Court case filings using the correct name(s). And if a monetary judgment is entered against you, it will likely affect your credit rating.

Q: Can a landlord refuse to rent to me if an eviction action has been filed against me?
A: Yes. Some landlords don't bother to ask what the eviction was about or even if the tenant won the case. Discrimination is only unlawful if it is based on some protected status, such as race or religion. Landlords can choose not to rent to anyone as long as the reason for the refusal is not unlawful. You could write an explanation about a prior eviction and include it with an application to rent from a prospective landlord.

Q: If I am served with court papers, what should I do?
A: No matter what the opposing party or lawyer tells you, file a written response (usually called an Answer but could also be a Motion to Dismiss) with the District Court within the time specified in the summons (usually 3 business days) and mail a copy to the landlord or landlord's lawyer. Then wait for a mailed notice about an eviction hearing in court. See our flyer: *Basic Guide to Answering an Eviction Complaint*. Or go to www.utcourts.gov/ocap to create your answer. If you have no good defense to the eviction (e.g., you could not pay the rent on time), try to move out of the rental unit as soon as possible. This will reduce the final money judgment against you. (See "How large a money judgment…" below.)

Q: What happens at an eviction hearing?
A: The first hearing ("immediate occupancy") in an eviction case is almost always limited to "possession". You have the right to explain why you should not be evicted. If the judge believes that the landlord has good cause to evict the tenant, the judge will order the tenant to vacate the premises, usually giving the tenant 3 more calendar days before the landlord can change the locks. This is called an Order of Restitution. The judge can also let the tenant stay in the premises as long as the rent is paid timely. All the other issues (amount of rent due, damages, habitability complaints, etc.) are usually not decided at the first hearing.

Q: What if I don't go to the eviction hearing?
A: If you don't go to the hearing, the landlord will likely get a default judgment that includes a monetary award for the amount claimed in the complaint as well as an Order of Restitution. That Order must be served on the tenant by a constable but it can just be posted on the door. The Order will usually give 3 more calendar days before the landlord can lock the tenant out. But often when the tenant does not go to the hearing after filing an Answer, a judge will issue an **immediate** Order of Restitution allowing the landlord to change the locks as soon as the Order is served or posted. And if the Order is posted on the door and you don't see it for 3 days, you may find yourself already locked out. In that case there is not much you can do immediately to get back into the property. Look at our housing flyers: *Request for Return of Personal Property, Setting Aside a Default Judgment,* and *Hearing Request after Order of Restitution*.

Q: If I am served with court papers but I have already moved out, can I ignore the court papers?
A: No! If you are served with a summons and complaint for eviction, you must file a written response (usually called an Answer but could also be a Motion to Dismiss) with the District Court. If you don't file a written response, the landlord will be able to get a default judgment against you for the full amount asked in the complaint. Inform the lawyer (or landlord) that you have moved. The "possession" hearing may be stricken but the process explained below will likely continue.

Q: Should I agree to a payment plan in order to stay in my rental unit?
A: Landlords and their lawyers sometimes offer a payment plan. Read it carefully. If you cannot make any one of the payments on time or cannot come up with the full amount of a payment, you will likely be immediately evicted and have a large money judgment entered against you. Do not sign such an agreement unless you are very sure you will be able to make all the payments and pay the next month's rent on time.

Q: Is the case over after I leave the property?
A: Many eviction cases end when the tenant leaves the property. Eventually (between 6 mos. and 2 years) such cases are dismissed by the court for "no activity". (These cases are still "on the record" however.) But a landlord can ask the court for a monetary judgment and some lawyers who represent landlords always seek monetary judgments against evicted tenants. If you don't file a written answer with the court or don't go to the hearing that's scheduled after you file your answer, a monetary judgment will almost certainly be entered against you. After the first eviction hearing, the landlord can continue the legal process and try to get a money judgment against you. But the landlord can wait a year or more before continuing.

Q: How can a judgment for money be entered against me?
A: After the first hearing about "possession", the landlord can ask the court to schedule a pre-trial conference or a hearing date to offer evidence about unpaid rent and other fees, damage to the rental unit, court costs, attorney fees and treble damages. A notice of this pre-trial

conference or hearing date will be mailed to you at your last known address. We strongly advise you to let the court clerk know every time your address changes (tell the clerk the civil case number for the eviction action) and have your mail forwarded by the post office (forwarding lasts 12 months). You can also inform the landlord or landlord's lawyer about your current address. If you don't get the notice, you won't go to court. If you don't go to court, you will be defaulted. That is, the landlord will get a money judgment for all the amounts asked in the original complaint plus whatever else the landlord can prove. This happens even if you have already filed an Answer and you went to the first hearing.

Q: How long can the landlord wait to schedule a pre-trial conference or hearing date?
A: As long as the case is active (hasn't been dismissed), the landlord can ask the court to schedule a date. Normally, the court mails the notice to the defendant (tenant), which is why it is important to keep your address current with the court. Some landlords and their lawyers wait a year or more after the first hearing to schedule the next hearing.

Q: What happens at a pre-trial conference or hearing?
A: This will be another opportunity to tell the judge why you should not have been evicted and to challenge the landlord's claims for a money judgment. You should bring your witnesses and documentary evidence (like receipts) to court.

Q: How large a money judgment can be entered against me?
A: The landlord can claim all rent due plus any additional charges you agreed to pay in the written lease such as late fees and service-of-notice charges. (If there was no written agreement, the landlord cannot charge late fees.) If you remained in the rental unit after the notice expired (e.g., after a three day notice to pay or vacate) then the landlord can ask for "treble" damages, that is, three times the normal daily rental amount for every day you were there after the notice expired. For instance, if your rent was $600 per month and you remained in the premises for 2 weeks after the end of the three-day notice period, then treble damages will be $840 ($60 per day times 14 days). (The landlord cannot also get daily rent for this 2-week period but only treble damages.) The judgment against you will include court costs (filing fee of at least $75 plus the fee charged by the constable for service of the summons and complaint). If the landlord hired a lawyer, the landlord can get "reasonable" attorney fees. In cases like this, $500 may be reasonable and will be higher if the case goes to trial. If the landlord can prove damage to the rental that is over and above normal wear and tear, the judgment will include that amount too. And interest may accrue at the contract ("rental agreement") rate which might be 25%.

Q: How can the landlord collect a judgment against me?
A: Garnishment of income or bank accounts and seizure of property (like stereo equipment or vehicles) are the most common ways for a landlord to collect a judgment unless the tenant agrees to (and keeps up) a voluntary payment plan. Garnishment requires prior notice to both the tenant (called a "judgment debtor") and to the garnishee (usually the employer or bank). Seizing property requires a Writ of Execution signed by a judge. This writ allows the landlord to take anything belonging to the debtor (tenant) that is not exempt under Utah law and then sell it at an auction. The cost for garnishment and execution is added to the judgment. If you get low-income benefits (like SSI), disability payments, child support or some other types of income, that income cannot be taken from you and you need not agree to a voluntary payment plan. But savings accounts might be frozen until you prove the money came from protected income. See the flyer: *Request for Return of Personal Property* for an abbreviated list of property that is exempt from execution.

Q: How does the landlord find out where I work or what property I have?
A: After a judgment is entered, the creditor (landlord) can ask the court to schedule a "Supplemental Proceeding". A notice stating the date and time is served on the debtor (tenant). If the debtor does not go to court, the court usually issues a warrant for the arrest of the debtor and sets a bail amount. You cannot be put in jail for owing a debt. But you can be put in jail for failing to go to court when the court orders you to appear. At the Supplemental Proceeding, the creditor can ask the debtor about anything regarding the debtor's income or assets, e.g., name and address of employer, where the debtor has bank accounts, what cars or RVs or realty the debtor owns. If you do not go to court when ordered and an arrest warrant is issued, the constable or a law enforcement officer may appear at your door without notice and demand either that you immediately post bail (usually more than $100) or go to jail until the next court date.

Q: How often can the landlord require me to come to court to answer questions about my income and assets?
A: The creditor (landlord) cannot harass or intimidate the debtor (tenant) but can schedule a Supplemental Proceeding every so often. Every six months is probably not unreasonable. Costs associated with trying to collect a judgment are added to the judgment.

Q: How long can the landlord try to collect a judgment?
A: Judgments last 8 years in Utah. If a judgment has been filed as a lien against real property, the lien can be renewed after 8 years.

Q: If I vacate the rental during the 3-day notice period, can the landlord still sue me?
A: Yes, but only in a collection action, not an eviction. The landlord might use small claims court (claims up to $10,000) to collect unpaid rent, late fees, damage to the rental unit, etc. This may affect your credit rating; it is not an eviction case on the court's records. But all the collection methods noted above do apply to small claims court judgments; the landlord can garnish wages and seize property to pay off the judgment.

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