Possession Bonds

This information applies only when you received a notice that the landlord posted a possession bond and you asked the court to set a hearing in response to that notice.

At your immediate occupancy hearing, the judge will determine who gets possession of your rental unit. Either the landlord gets the rental unit back or you get to stay there. In order of likelihood, here is what might happen:

- You and the landlord agree on a move-out date
- The judge sets a counterbond for you to pay if you want to stay
- You and the landlord enter into a repayment agreement
- The judge dismisses the eviction action against you or cancels the hearing
- A judgment is entered

Move-out date.

You and the landlord (or the landlord's lawyer) can agree to a move-out date. This is often the best option if you just couldn't pay the rent on time. Even if you move voluntarily, you do not lose the right to argue your case in court later on. You may not have paid the rent because of all the problems in the rental unit and the landlord's failure to fix those problems. You will still have the opportunity to tell a judge about all those problems and why you should not have had to pay rent. But that will not happen at the immediate occupancy hearing; it will happen some weeks later if the case is set for a trial.

Usually, the landlord and tenant can agree to a move-out date about one week after the immediate occupancy hearing. If you agree on a move-out date but don't move out by that time, the landlord will get an order telling the sheriff to evict you without any more warning or time to pack.

Many landlords won't seek a judgment for money against you if you agree to move out. If the landlord does try to get a judgment against you, the landlord must give you notice of any future hearings. You should make sure the court has your current address.

Counterbond.

If you believe that you are being wrongfully evicted and you want to stay in the rental unit until a full hearing before a judge, you will have to post a counterbond. The judge will determine how much you should pay. It is the amount that will pay off the landlord in the event you lose. Some judges set the counterbond equal to two or three months' rent. You may ask the judge to set the counterbond at the amount of rent you believe is due. If no rent is due, you can ask the judge to set the counterbond at $0 but most judges will not accept this argument.

The judge will give you two or three business days to pay the money in cash or money order to the court clerk. If you don't pay the bond amount on time, the landlord will get an order telling the sheriff to evict you. This is called a Writ of Restitution. You will usually have three days after you first get that order from the sheriff to actually move out. But a judge can shorten that time. In other words, you will have about a week to move out if you have a counterbond set, don't pay it, and the landlord gets the order of restitution after the time expires for paying the counterbond.

If you do pay the bond then you can stay in the rental unit until there is a hearing before a judge, which may happen 3 or 4 weeks after the immediate occupancy hearing. If you post a counterbond then the landlord will try to get a judgment against you in order to get your counterbond. You can counterclaim against the landlord for problems with the rental unit. If the landlord wins a bigger judgment against you than you win against the landlord, you will likely lose your bond amount.

Please note. If you are a month-to-month tenant (no long term lease), the landlord can give you a "no cause" eviction notice at least 15 days (sometimes 30 days) prior to the next time the rent is due. There is almost never a defense to a no cause eviction.

Repayment agreement.

If you want to stay and the landlord agrees, you can enter into a repayment agreement. If the landlord has hired a lawyer, you will almost certainly have to pay attorneys fees -- which can amount to $300 or more by the time of this immediate occupancy hearing -- in addition to the back rent, late fees and court costs. And you

will probably have to pay off the whole amount within a few weeks. If you agree on a schedule but then miss a payment, the landlord can evict you immediately without giving any of your money back to you and without advance warning that you must leave. Therefore, you should enter into a repayment agreement only if you are sure you can keep the agreement.

Dismissal.

In very rare circumstances a judge will dismiss the eviction action against you or cancel the immediate occupancy hearing. For instance, if the landlord gave you a three-day notice to vacate the rental unit because you failed to pay the rent but that notice did not tell you that you could pay the rent within the 3 days, then that notice is bad; that notice cannot be used to start an eviction action against you. In such a case the judge will dismiss the eviction action. In other cases, the judge may cancel ("strike") the immediate occupancy hearing. This will happen if the landlord posts a property bond (instead of cash) but doesn't do it correctly. However, judges rarely dismiss cases or cancel hearings unless someone brings a problem to their attention.

Judgment.

When both the landlord and tenant agree on all the facts, such as the amount of rent that's due, and there are no additional disputed issues, a judge may enter a final judgment. If the landlord wins, the judgment will have two parts: an amount of money owed by the tenant to the landlord and an order evicting the tenant from the rental unit. Under Utah law the judge may order treble damages against a tenant who fails to pay the rent. That is, the rent is tripled for the number of days after the expiration of the three-day notice to pay or vacate. Also likely included in the judgment (but not trebled) are the rent that wasn't paid prior to the three-day notice, late fees, attorneys fees, and court costs.

If you do not agree on all the allegations made by the landlord, the judge should not enter a money judgment against you at the immediate occupancy hearing. But you will still be evicted if the judge orders you to post a counterbond and you do not pay it.

The information in this site is not intended as legal advice.

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