

## **Eviction Part 2: Money Judgment**

### **Does the eviction case end when I leave the rental unit?**

NO. The landlord can pursue you for a money judgment. Some landlords (and their lawyers) never seek a money judgment. Most always do.

### **How will I know whether the landlord is seeking a money judgment?**

The landlord asks the court to set another hearing along with a statement of what the landlord claims is due. The court will give you notice of the time and date. If you previously gave an email address to the court, that is how the court will notify you of the new hearing date and amount claimed due. Otherwise, the court will mail the notice to your “last known address”. You have the duty to provide a current mailing address to the court and the landlord (or the landlord’s attorney) whenever your mailing (or email) address changes. If you rely on the forwarding of your mail, you may not get the notice of hearing in time.

### **How much money can the landlord ask the court to award?**

Here’s a list of the possible charges a court may award:

- past due rent (the amount not paid before the end of the pay-or-vacate notice period) and late fees if the contract allowed late fees
- treble damages (see below)
- attorney fees
- court costs (the charge paid by the landlord for filing the eviction case in court)
- service of process fees (the amount charged by whomever served the summons)

and complaint)

- damage to the rental unit (cost to repair/replace damage caused by the tenant above reasonable wear and tear)
- “future rent” (the value of the rent not collected by the landlord between the time you vacated and the date the unit was re-rented IF you had a long-term lease and your tenancy was terminated by the eviction. Landlords have a duty to mitigate (“reduce”) this damage claim by re-renting as soon as possible.)

## **What are “treble damages”?**

Utah law allows a landlord to collect three times (“treble”) the usual daily rental amount from the day after the expiration of the initial eviction notice until the tenant actually leaves the rental unit. This is the period of “unlawful detainer”. That first eviction notice might have been pay-or-vacate or a “no cause” notice or for nuisance. In addition, any amount (other than rent) still due under the rental contract can be trebled if the reason for eviction was nonpayment of this amount. And, if the landlord alleges “waste” in the eviction complaint and proves it in court, that too can be trebled. (“Waste” often means excessive damage to the rental unit.) If the landlord asks for treble damages in the eviction complaint, the court must award what the landlord can prove.

## **Is there any defense to treble damages?**

YES but the defense would almost certainly be rejected by a trial court judge. Utah law requires the judge in eviction cases to award three times the usual daily rent in eviction cases. The counter argument is that treble damages are meant to punish a tenant for bad behavior. That “bad behavior” is remaining in the rental unit after the end of the notice period. But sometimes a tenant has no choice. Perhaps there are no shelter beds available in the community and the tenant has no other lawful alternatives. The tenant may have no malice toward the landlord and has every intention to leave immediately. In those circumstances, it may be argued that the tenant should not be punished. Only the usual daily rent should apply. Other tenant circumstances may also warrant no such punishment.

Only an appellate court (Utah Supreme Court or Court of Appeals) is likely to look favorably on this claim. Of course, the Utah legislature can always change the law. Interested citizens may contact their elected representatives to voice an opinion.

If a tenant wishes to make the argument that trebles are punitive and should only be awarded if a judge finds the tenant's behavior "bad" or inexcusable, that argument should be made in writing to the judge. ULS can provide that written argument for a self-represented tenant. Call us if the landlord seeks a monetary judgment.

## **When can I challenge treble damages?**

As soon as the landlord sends you a list of damage claims prior to a court hearing, you can file your objections to the claim. You can also state your objections during the hearing. If a money judgment is entered against you that includes treble damages, you can ask the court to reconsider the amount. You must ask for that reconsideration within 28 days of the entry of the money judgment.

## **Can I contest the claim for damage to the rental unit?**

Yes. Landlords sometimes try to collect money for items not damaged by the tenant or for the cost to replace old or worn-out fixtures (such as a stove or carpets). A tenant should have as much evidence as possible (such as pictures taken upon moving out or damage checklists filled out when the tenant moved in). You can contest broad claims, such as a claim for "general cleanup" or "repairs" or to "replace flooring". A landlord must satisfy the judge that the claims are reasonable.

## **What happens if I ignore the notice of hearing about damages?**

The landlord will get a default judgment. That means the court will award whatever the landlord claims is due.

## **Can I get a default judgment set aside?**

Yes, in some situations. Generally, you must make that request within 3 months of the date of the judgment.

You must explain why you did not participate in the hearing (such as not receiving

notice of the hearing even though the court had your current address). You must also claim that the money judgment entered against you would have been less if you had participated in the hearing.

## **How does the landlord collect the judgment against me?**

After a money judgment is entered, the landlord can garnish wages or seize property that is not exempt from execution (such as most household goods). The landlord can also demand that you appear in court at a “supplemental proceeding” where the landlord can ask about your assets, where you work, what banks you use, etc. You must answer the questions. Some of your property will be exempt. But you must go to the hearing when ordered to do so. Otherwise, the court may issue a warrant for your arrest – not because you owe a debt but because you failed to appear when ordered.

If you get a notice for a hearing on damages or a default money judgment is entered against you, call us.

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