



Termination & Eviction

Fair Housing Guidelines

Tenant/Landlord Rights and Responsibilities

FAIR HOUSING SERVICES

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What is an Eviction?

The word "eviction" refers to the process of a sheriff or marshal ordering a tenant to get out or be forcibly removed from a rental property. In order for a sheriff or marshal to evict a tenant, they need a court order known as an "unlawful detainer judgment". To obtain an unlawful detainer judgment, the landlord must first file an eviction lawsuit against the tenant. This eviction lawsuit is known as the "unlawful detainer action." Before an unlawful detainer action is filed, a landlord is required to provide the tenant with proper written notice of termination of the tenancy.

A landlord cannot evict, or exercise what is known as "self-help" eviction to forcibly remove a tenant from the property. Threats, shutting off utilities, invading a tenant's privacy, or other attempts to physically remove a tenant from the property may be considered part of an illegal self-help eviction.

Although sometimes necessary, the eviction process can be costly, time consuming and carry negative consequences for the affected parties. For tenants, the negative affects of an eviction may mean the family loses their home and has difficulties finding other rental housing due to an eviction judgement on their record. For a landlord, an eviction can mean the loss of time and money involved in filing the eviction lawsuit and obtaining a judgement, as well as the risk of not being able to collect the unpaid rent or cost of repairs even after winning a judgement. Because of the negative affects of eviction actions, it is worthwhile for both the tenant and the landlord to work on finding a way to terminate the tenancy in a way that minimizes the negative affects to both parties and prevents an eviction.

Mediation services are available in the City of Davis to help tenants and landlords resolve problems and avoid the expense and negative impacts of the eviction process (see section on Resources for contact information).

This fact sheet provides general information on the eviction process as it applies to residential rental property. The information in this fact sheet should be used as a guideline and

is not intended to serve as legal advice.

The Eviction Process

The eviction process following service of a 3-day notice to pay rent or quit and a 30- day notice of termination of tenancy usually goes like this:

1. The landlord terminates the tenancy by serving a termination notice on the tenant, which may be a 3-day Notice to Pay Rent or Quit, a 3-day Notice to Perform Covenant or Quit, an Unconditional 3-day Notice to Quit, or a 30- or 60 day Notice to Terminate Tenancy.
2. After the 3, 30 or 60 days are up, and if the tenant hasn't paid the rent, corrected the violation or left, the landlord can begin an eviction lawsuit by filing an "unlawful detainer complaint" in superior court. The tenant must file a written response in court, usually within 5 days.
3. If the tenant files a response, the court will set the case for trial. After trial, (or if the case is decided summarily by a judge), if the landlord wins, the landlord gets a judgment for possession of the property and for rent and court costs.

The landlord gets a “Writ of Execution” from the clerk and gives it, and eviction instructions, to the sheriff or marshal.

4. After several days, the sheriff or marshal gives the tenant written notice he’ll be forcibly evicted within 5 days if he doesn’t move out first.
5. After 5 more days, the sheriff or marshal forcibly effects any tenants who have not left, and turns the property over to the landlord.
6. After eviction, if the landlord got a Default Judgment for Possession, the landlord can go back to court and get a judgment for rent and court costs.

Termination Notices

Before an unlawful detainer lawsuit is filed against a tenant, the law requires the landlord to properly terminate the tenancy by giving the tenant adequate written notice. There are several types of written notices used to terminate residential tenancies.

Three-Day Notice To Pay Rent or Quit

A landlord can terminate a tenancy for non-payment of rent by giving the tenant a *three*-day advanced written notice using a form called a “Notice to Pay Rent or Quit”. If within three days after the notice is properly served on the tenant (the three days are counted starting one day after the notice is served), the tenant pays

the rent and the landlord accepts it, the termination is ineffective and the tenant may continue to stay. If the tenant does not pay rent or move from the property by the end of the third day, the landlord may proceed to file the unlawful detainer lawsuit.

The three-day notice to pay or quit must state the exact amount of rent due at the time the notice is served. The notice is considered properly served when:

- The notice is personally handed directly to the tenant; OR
- The notice is personally handed to an adult at the tenant's address when attempts to personally serve the notice to the tenant fail; OR
- The notice is posted on the tenant's front door and a copy of the notice is mailed to the tenant's home after attempts to personally serve the notice fail.

Three-Day Notice to Perform Covenant or Quit

This notice, known as a “conditional 3-day notice”, is similar to the 3-day notice to pay rent or quit discussed above in that it gives the tenant the option of continuing the tenancy if the stated violation is corrected. This type of notice must be served on the tenant in the same manner as the 3-day notice to pay rent or quit and must state the specific lease or rental agreement provision that has been violated. If the tenant corrects the violation, their tenancy continues and if the violation is not corrected within the three-day period, the landlord

may proceed with the unlawful detainer action.

Unconditional Three-Day Notice to Quit

The most severe type of notice is called an unconditional 3-day notice to quit. This notice does not give a tenant the alternative of correcting any alleged lease violations or stopping inappropriate behavior, but instead requires that the tenant vacate the rental unit within the three-day period. This type of notice is only permitted under certain circumstances:

1. The tenant has sublet all or part of the rental unit and the lease prohibits subletting.
2. The tenant is causing a nuisance by seriously interfering with other tenants' ability to live normally in their homes (e.g. constant loud music or noise, or selling illegal drugs).
3. The tenant is causing significant damages to the property.
4. The tenant is using the property for an illegal purpose (e.g. dealing drugs, running a prostitution house, operating a legitimate business in violation of a zoning code.)

The unconditional 3-day notice must be served on the tenant in the same manner as the 3-day notice to pay or quit. The landlord may proceed with filing the unlawful detainer lawsuit one-day after the 3-day period is complete if the tenant does not move out of the rental unit.

30-Day Notice

A 30 or 60 day notice is required to terminate a month-to-month tenancy. If a tenant has been a resident for over one year, a 60 day notice is required. A tenant can use a 30-day notice to notify the landlord of their intent to terminate their month-to-month tenancy. A landlord is required to provide a 30-or 60 day notice to terminate a tenancy before taking other action to evict a tenant (unless a 3-day notice provision applies).

A 30 or 60 day notice does not have to state the landlord's reason for wanting the tenant to move out unless the tenant receives assistance from the housing authority under a "Section-8" or other similar federal, state or local agency. If the tenants receive this type of assistance, a landlord must:

- Provide the tenants with a 90-day notice of termination;
AND
- The notice must specifically state the reasons for termination (e.g. the specific actions the tenant committed that violated the terms of the lease).

A 30-or 60 day notice may be used to terminate a month-to-month tenancy for most reasons that justify issuance of any of the three-day notices discussed above including:

- When the tenant fails to pay rent.
- When the tenant has given you a number of bad checks.
- When a landlord wants the rental property to move in

him/herself or move in a relative.

- In some circumstances, when a landlord wants to conduct extensive repairs or remodeling on the rental unit.
- When rental property is being removed from the rental market by condominium conversion or "good faith" demolition (usually at the end of a long process where the tenants have been previously notified).
- When a tenant violates a significant provision of their original rental agreement.
- When a tenant is severely disturbing other tenants or seriously damaging the property.
- When a tenant conducts serious illegal activity on the rental property.

The 30-or 60 day notice can be served on the tenant any day of the month but must allow the tenant the full 30 or 60 days to comply (or 35 days if is mailed). A 30-or 60 day notice can be served in any of the ways the 3-day notices can be served. (See section on "Three-day Notice to Pay or Quit" above.)

Eviction Without Notice

These are the situations in which a landlord may file an eviction lawsuit against a tenant without first giving a written 3-day or 30-day notice:

- When the tenant refuses to leave after a fixed-term lease expires.
- When a month-to-month tenant terminates the tenancy by giving the landlord a 30-

day notice and then refuses to move out within 30 days.

Permissible Reasons for Eviction

There are several legal grounds for eviction:

- The tenant has failed to leave or pay the rent due within three days of having received a written Three-Day Notice to Pay or Quit.
- A month-to-month tenant has failed to leave within the allowable time after having received a written 30-or 60 day notice terminating the tenancy (90-day notice for certain government-subsidized tenancies).
- The tenant has failed to leave or comply with a provision of the lease or rental agreement within three days after having received the written three-day notice to correct the violation or quit.
- The tenant has sublet the property contrary to the lease or rental agreement, has caused or allowed a nuisance or serious damage to the property or has used the property for an illegal purpose, and has failed to leave within three days of having received an unconditional three day notice to vacate.
- A tenant whose fixed-term lease has expired and has not been renewed has failed to leave.
- A month-to-month tenant has failed to leave within a stated time after having given the landlord a written 30-day notice terminating the tenancy.

Impermissible Reasons for Eviction

There are certain reasons for which a tenant cannot be evicted legally. A tenant cannot be evicted because:

- Of their race or color, national origin or ancestry, religion, sex, marital status, religion, having children, disability, source of income, marital status, and sexual orientation.
- They complain to health authorities or exercise their statutory rights, such as the right to “repair and deduct” remedy (by deducting the cost of habitability-related repairs from the rent) within the previous six months.

Reasons Where A Landlord Must Evict

A landlord is required by law to evict tenants who use their rental property to sell, use, store or make illegal drugs.

Mediation

Many landlord-tenant problems can be successfully resolved with the assistance of a neutral third party in a process known as mediation. Mediation involves meeting with a trained mediator who facilitated communication between the parties and assists them in resolving their differences. For residents of the City of Davis, Community Mediation Service provides low cost, confidential and voluntary conflict resolution services. To request this service and for more information, call (530) 757-5623.

Community Resources

Assistance and information are available to City of Davis residents with eviction-related issues from:

- **Community Mediation & Fair Housing Services**
City Hall
23 Russell Blvd., Davis
(530) 757-5623

2007 UPDATE

Beginning January 1, 2007, the landlord must give the tenant 60 days’ advance written notice to end the tenancy if every tenant and resident has lived in the rental unit for a year or more.

However, the landlord can give the tenant 30 days’ advance written notice in either of the following situations:

- The landlord must have opened escrow with a licensed escrow agent or real estate broker, and
- The landlord must have given the tenant the 30-day notice no later than 120 days after the opening the escrow, and
- The landlord must not previously give the tenant a 30-day or 60-day notice, and
- The rental unit must be one that can be sold separately from any other dwelling unit. (For example, a house or a condominium can be sold separately from another dwelling unit.

correct, current information, no guarantee is given to its accuracy or timeliness. This information is not intended to serve as a substitute for obtaining legal advice. Users are urged to consult an attorney for assistance regarding their particular rights or obligations.

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