



# Termination & Eviction

## Fair Housing Guidelines

### Tenant/Landlord Rights and Responsibilities

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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, locking out, 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 effects 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 judgment, as well as the risk of not being able to collect the unpaid rent or cost of repairs even after winning a judgment. 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 effects to both parties and prevents an eviction.

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 proper 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, a 30- or 60 day Notice to Terminate Tenancy, or a 90-day Notice to Terminate Tenancy.

2. After the 3, 30, 60 or 90 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 of being served with the paperwork or risk a default judgment against him/her.
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 obtains a "Writ of Execution" from the clerk and gives it, and eviction instructions, to the sheriff or marshal.
4. The sheriff or marshal gives the tenant written notice by posting it on the door that he'll be forcibly evicted within 5-7 days if he/she doesn't move out first.
5. After the expiration of time on the notice posted by the sheriff or

marshal, the sheriff or marshal forcibly evicts (by locking out) any tenants who have not left, and turns the property over to the landlord.

### **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 landlord may not refuse a tenant's rent when offered within the 3 day notice period.

The three-day notice to pay or quit must state the exact amount of rent due at the time the notice is served and where and when it can be paid. 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 within the 3 days, 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. Typically tenants receive written or verbal warnings prior to this type of notice being served. This type of notice is only

permitted under certain circumstances which are generally provided for in the lease:

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 and 60-Day Notices**

A 30 or 60 day notice is required to terminate a month-to-month tenancy except where the owner seeks to terminate tenancy following foreclosure or when the tenant resides in subsidized housing (Public Housing, Section 8 housing, or other assisted housing based on income). 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 his/her intent to terminate the

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 or unit receives assistance from the federal or state government.(e.g. subsidized housing) If the tenant or unit receives this type of assistance, different rules for terminating the tenancy apply and the tenant should seek legal assistance immediately to determine his/her rights.

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 and also:

- When the tenant fails to pay rent or has repeatedly failed to pay rent in a timely manner
- When a landlord wants the rental property to move in him/herself or 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.
- Termination of employment of resident employee.
- Death of the tenant.

### **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, and sexual orientation.

- They complain to health authorities or exercise their statutory rights, such as the right to "repair and deduct" (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. For residents of the City of Davis, the non-profit organization Yolo Conflict Resolution Center provides low cost, confidential and voluntary conflict resolution services. To request this service and for more information, call (530) 564-2324.

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