

The Eviction Process

When can a landlord evict a tenant?

A landlord is entitled to file an Unlawful Detainer (UD) lawsuit to evict the tenant and regain possession of the property typically after expiration of a notice provided to the tenant that has not been complied with. For example, an Unlawful Detainer lawsuit may be filed after a termination of tenancy notice (usually 30 or 60-days) has been given, and the tenant has not vacated by the expiration date; or after service of a three-day notice to pay rent or quit, and the tenant has not paid the rent.

What is the procedure for evicting?

First, the tenants must be served with a complaint. After completion of service, the tenants will have five days to answer (or more depending on how service was made). If no answer is filed, the landlord may file for a “default judgement” immediately without going to court. Thereafter, the clerk will issue the order for possession. With this, a sheriff can post notice giving the tenant a final five days to vacate. If the tenant contests the eviction, then a court date will be set, which is typically three weeks after the answer is filed. Assuming the landlord wins, the clerk will issue the judge’s order, and then the sheriff may be asked to post a five-day notice.

How long does an Unlawful Detainer lawsuit take?

Adding together the steps of the unlawful detainer procedure, it typically takes between 1 to 3 months to obtain a court judgement for possession. However, even though an Unlawful Detainer is an “expedited” court proceeding, it is still subject to various legal maneuvering that can be used to extend the litigation for many more months.

May a tenant request a jury trial?

Yes. In fact, this is a common tactic. A jury trial will have two effects immediately detrimental to the landlord. One, it could mean that the trial date must be set much farther out than the three-week expedited procedure. And two, the landlord’s attorney will ask for a substantial retainer as a condition of fighting the jury trial. Additionally, the tenant may even demand that *the landlord pays* the tenant to settle the case and regain possession. The best defense for a landlord is to not back down and not settle. But many landlords may find it more expedient to give in to the tenant’s demands and begin the process of finding and entering into a new agreement with a different tenant.

May a landlord avoid this whole procedure and simply lock out the tenant?

The landlord should resist the urge to resort to various short cuts such as locking the tenant out, cutting off their utilities, any type of intimidating, harassing, threatening or humiliating behavior. These actions can come back to haunt the landlord in the form of legal claims for trespass, assault, battery, slander, intentional infliction of emotional distress, forced entry, and more. Instead, the landlord should avoid contact with the tenant, and let their attorney do the talking.