



Landlord Letter

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Eviction Two-Step — Two Options to Evict

Landlords often use several strategies to remove a problem tenant from their property — Some legal, some not. It is critical for landlords to understand the legal methods available to evict a problem tenant.

Utah law allows two primary methods to remove a problem tenant: Either (1) the tenant leaves voluntarily, or (2) if the tenant will not leave voluntarily, the landlord is required by law to obtain an eviction order from the court.

Pursuant to [Utah Code Ann. § 78B-6-814](#), "It is unlawful for an owner to willfully exclude a tenant from the tenant's premises in any manner except by

judicial process..." This means that if a tenant refuses to leave, the landlord's sole option is to use the court process to obtain an eviction order.



The statute states that the landlord cannot forcibly evict "in any manner" outside of the judicial process. A common violation of this provision is when a landlord attempts a "self help" eviction (i.e. turning off utilities, changing locks, harassing the

tenant, etc.). Self-help methods are improper and illegal. A tenant who is a victim of these actions may claim triple damages from the violating landlord.

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Evictions in Weeks, Not Months!



Landlord Laughs...



Every landlord has probably heard excuses explaining why rent can't be paid on time. Some excuses are easier to believe than others.

A death in the family is a very serious issue that can cause major problems. One tenant explained that they needed a break on the rent because their grandmother had passed and funeral expenses needed to be paid. Not wanting to appear insensitive, the on-site manager wanted to give the tenant a break.

After the management company took a closer look at the tenant's file, their notes revealed that this tenant had, on 5 previous occasions, asked for a break

on rent because his Grandmother had recently passed away. The management company quickly changed their approach and required payment in full.

Keeping good records can save a lot of problems and (if necessary) build a good eviction case. The agent stated that "we sometimes keep things in the file, and in this case the same grandmother had indeed apparently received 6 different funerals."

Also, don't be afraid to ask for documentation and proof from the tenant verifying what they are saying. If they are telling the truth, most tenants will cooperate by providing proof.

DOs & DON'Ts of... Security Deposits



DO

- Do require the tenant to pay a security deposit upfront to cover potential damages.
- Do provide the tenant with a deposit closing statement when the tenant leaves.
- Do keep accurate records showing what charges were applied to the deposit.



DON'T

- Don't use the deposit for charges not caused by the tenant (i.e. normal wear & tear).
- Don't apply the deposit to rent owing until you have first applied it to cleaning, repairs, damages, etc.
- Don't forget to apply deposited funds to amounts still owing.

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From basic negotiations, to warnings of eviction, to "cash for keys", most tenants do not want to have an eviction or judgment on their record and many voluntarily leave. Hiring an attorney for an eviction is NOT the FIRST option, but when you have a problem tenant it may be the BEST option.

If the landlord feels they have a tenant that may end up in an eviction, it is important to make sure the landlord's actions are legal so the eviction case is not jeopardized. We often tell our clients that most evictions never make it in front of a judge, but we always should act as if this is one of those cases that a judge will have to decide.

Even after an eviction is filed, the court process provides other opportunities to voluntarily allow the tenant to vacate the property. For example, sometimes the tenant will simply move out during the process. If they refuse to leave and a court hearing is required, we always attempt to meet with the tenant prior to the hearing in order to negotiate a settlement that the land-

lord is satisfied with.

Depending on the desires of the landlord, it is fairly common to come to an agreement on a move out date and payment plan. Because of the open eviction case, these settlement documents can be presented to a judge for review and approval. If the tenant fails to abide by the settlement, the court is then in a position to assist the landlord in enforcing the provisions agreed to.

A grey area in this topic is abandonment. If a property is considered abandoned because the tenant voluntarily vacated the prop-

erty, the landlord should not have to proceed through the court process. Next month we will continue to discuss this topic with a specific focus on Utah's laws concerning abandonment. If a property is truly abandoned, the landlord is permitted to take possession of the property and re-lease it. There are risks with abandonment, however, because it is done without a court order. Stay tuned for more next month.

Attorney Jeremy M. Shorts



*May you live as long as
you want and never
want as long as you live.*

~Irish Saying



Know Your Notice

No Cause—Lease Termination

Purpose: Used to terminate your lease at the end of the initial term or during a month to month tenancy.

Like other eviction notices, it must be served in person, posted or sent via certified mail. It cannot be given verbally, texted or emailed.



Unless your lease requires more or less time, Utah law only requires 15 days notice to terminate a lease (but most written leases require 30 days notice).

You normally can't terminate a lease in the middle of a month. If a 15 day notice is given March 20, the lease would terminate April 30.

Even if both the landlord and tenant have verbally stated a termination date, it is best practice to follow up with a written no cause notice.



Have a question for our attorneys? Email us at info@utaheviictionlaw.com or call 801-610-9879 for a free 15 minute landlord consultation!



Dear Attorney,



Q:

My tenant promised (in writing) to be out by February 28, 2014. If not, they've allowed me to move his stuff out on my own. That timeline passed, can I just throw his stuff out?

A:

No, Utah law is very strict on this issue. You cannot throw their personal items out or do anything else to evict them unless you have a court order allowing the sheriff or constable to do so. Forcibly evicting a tenant with anything short of a court order is considered a "self-help" eviction, which is illegal under Utah law.

However, prior to obtaining a court order you have many other options and methods to try to get them out. One approach is a "cash for keys" option where the landlord agrees to pay the tenant a small amount if they immediately cooperate to move out. From the landlord's perspective, a

cash for keys may make sense if the amount paid to the tenant is less than the attorney fees for an eviction AND if the tenant will move faster than the 2-3 weeks it normally takes to get an eviction order through the court process.

If you decide to proceed with a cash for keys, include several key provisions such as: (1) if the tenant damages the property then nothing will be paid, (2) and do NOT make the payment until AFTER the tenant has moved out — you don't want to pay them only to find out they still haven't left and/or they've caused damage to the property. If these methods are unsuccessful, you will have to file an eviction with the court to obtain the eviction order.





Don't forget to set your clocks one hour **AHEAD** on March 9!



Meet the Team:
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Attorney Dave Todd

- Originally from Bountiful, Utah.
- Earned Bachelor's Degree at the U of U (2008).
- Earned Law Degree at the U of U (2011).
- Has two awesome kids and one on the way.
- Enjoys playing basketball, tennis and hockey.
- Loves the Denver Broncos (even after their complete meltdown in the Super Bowl).

Calendar of Events



- March 5 — Ash Wednesday
- March 9 — Day Light Savings Begins
- March 17 — St. Patrick's Day
- March 20 — Ogden UAA's Good Landlord Class
- March 25 — Ogden UAA Membership Meeting
- March 26 — Orem UAA Membership Meeting
- March 27 — SLC UAA Membership Meeting
- March 28 — UAA's Good Landlord Class



Parting Thoughts

- We're working to build our readership, tell your friends to subscribe to this FREE newsletter. Send us an email at info@utahevictionlaw.com.
- Have an eviction question? Email it to us for a future newsletter!
- Help us build our online presence! You can "Like" our Facebook page (www.facebook.com/utahevictionlaw).
- You can also give us a Five Star Google Review (search "Utah Eviction Law Reviews" and click on our link).

