



Landlord Letter

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What To Do If Your Tenant Threatens Bankruptcy?

Any long-time landlord has probably been told by a tenant that they plan to file bankruptcy. Handling financial matters while a tenant is in bankruptcy can be tricky. Legally, the landlord does not need to change their approach toward dealing with a tenant who states they intend to file bankruptcy because the tenant only receives protection under the bankruptcy laws AFTER actually filing bankruptcy. The landlord may continue to demand rent and performance of the lease until receiving notice that the tenant filed bankruptcy. Only then must they change their approach to comply with bankruptcy laws.

Once a tenant files bankruptcy, the landlord must be cautious of making demands on the tenant because the bankruptcy court oversees all financial matters related to the tenant. Any balance owed as of the date of bankruptcy filing is handled in the bankruptcy action. If the



tenant again defaults on the lease or fails to make the payments owed, the eviction can normally only proceed with permission from the bankruptcy court.

If handled improperly, you run the risk of violating bankruptcy laws that can negatively impact your case should you need to evict your tenant. Under normal circumstances, if handled properly, Utah law allows an eviction to be completed within approximately 2-3 weeks. However, a tenant that files bankruptcy during an eviction will turn that 2-3 week process into a 2-3 month eviction. Even an experienced landlord would benefit from a knowledgeable attorney during a regular eviction. When the eviction is complicated by the tenant filing bankruptcy, it is critical to ensure that the eviction process is handled correctly.

Upon filing of bankruptcy, the bankruptcy code places

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Landlord Laughs...

Evictions are often unique cases that most attorneys don't regularly encounter. We often see the benefits of hiring an attorney that focuses on the area of law you need. We recently attended an eviction hearing in Provo where it was obvious opposing counsel didn't regularly handle evictions.

At a hearing the opposing attorney was adamant that the judge would NEVER issue a three day eviction order (even though the statute specifically references a



three day eviction order). He continually told the tenants they would have a couple of weeks to move. They wouldn't consider or agree to anything else. With no agreement, we were forced to let the judge decide.

You can imagine our pleasure, and the tenant's displeasure, when the judge used the statute we were relying on to issue a three day eviction order requiring the tenants to leave MUCH sooner than they and their attorney were anticipating.

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an “Automatic Stay” in place that protects the tenant from any collection action without bankruptcy court approval. Prior to proceeding with any eviction action (including serving any eviction notices), the landlord must first receive a court order allowing an eviction to proceed. This requires the landlord to file a “Motion For Relief From Automatic Stay” with the bankruptcy court stating the proper grounds to proceed with eviction. Upon filing the motion for relief, the tenant will have several weeks to dispute the motion, which may require a hearing in front of the bankruptcy judge prior to deciding the motion.

As long as the motion is based on solid ground, is properly drafted and filed, it should be a matter of time for the eviction to continue. Also, it is rare for the tenant to fully comply with the requirements of the bankruptcy forms. For example, the “Voluntary Petition” (the initial bankruptcy filing) contains a “Certification by a Debtor Who Resides as a Tenant of Residential Property.” This certification requires the tenant to (1) notify the landlord of the bankruptcy filing, and (2) deposit any “rent that would become due

during the 30-day period after the filing of the [bankruptcy] petition.” When a landlord follows the law in seeking assistance from the bankruptcy court, coupled with the tenant’s failures to strictly follow bankruptcy laws, the landlord increases their chances of moving through the bankruptcy court as quickly as possible.

Finally, several years ago bankruptcy laws were changed to provide a significant protection for landlords. Under the old laws, the automatic stay went into effect as long as the tenant filed bankruptcy while still in the property. Under the new law, if the landlord obtains the eviction order prior to the tenant filing bankruptcy, then the sheriff or constable may continue with the eviction. However, the landlord can only enforce the eviction order by physically removing the tenant. Any financial issues related to the balance owed would be subject to the automatic stay. I’ve used the “Dear Attorney” section on page 3 as a specific example of how this rule operates.

Both eviction and bankruptcy laws require strict compliance. If you find yourself facing these situations, please call us for our free landlord consultation.

Attorney Jeremy Shorts



DOs & DON'Ts of... Inspections or Entering



DO

- DO give your tenant 24 hours notice prior to entering the property.
- Even if it’s not required, DO give a WRITTEN notice (if there is a dispute concerning the notice, this will be very helpful).
- DO take a camera to EVERY inspection and be ready to take pictures just in case (lease violations, damage, etc.).



DON'T

- DON'T inspect or enter your property too often (be reasonable).
- DON'T interfere with your tenant’s right to privacy during an inspection.
- DON'T assume everything is going well with your property just because you get the rent check each month! You should perform regular inspections!

Dear Attorney,

Q: *My tenant is behind on their rent, but when I ask them about it they say they're filing bankruptcy. What can I do?*

A: Mentioning or threatening bankruptcy does not grant the tenant any rights or protection under bankruptcy laws, they must actually file. My standard recommendation in this situation is to serve the tenant with an eviction notice ("Three Day Pay or Quit").

Why should you serve an eviction notice in a potentially risky situation? Two reasons: (1) If your tenant has any intentions of following the lease, an eviction notice is a great way to figure that out; (2) If your tenant has no intention of following the lease, an eviction notice is a great way to figure that out. The information you receive (usually in the form of the tenant's reaction) is invaluable in telling you how you should proceed.

If you are NOT satisfied with the tenant's response or proposals after three calendar days, we can help you proceed with the eviction. The typical eviction process will proceed unless they actually file bankruptcy. If they file bankruptcy

during that time, the eviction is put on hold until we receive an order from the bankruptcy court allowing us to evict them.

Many times a tenant may not realize how quickly an eviction can occur (2-3 weeks). As an exception to the automatic stay, 11 U.S. Code §362(b)(22) states that if the landlord receives the eviction order ("Order of Restitution") prior to the tenant filing bankruptcy, then the bankruptcy laws allow the sheriff or constable to enforce the eviction order. However, all financial matters for any balance owed must be handled with the bankruptcy court.

Hopefully this explains why we recommend handling the eviction process as quickly as possible when a bankruptcy may be involved. It is literally a race to see whether the landlord obtains the eviction order first before the tenant files for bankruptcy. Even if the tenant files for bankruptcy the landlord may proceed, the process is simply prolonged to allow the bankruptcy court to ensure that the landlord is properly handling the eviction.

The sun was warm but the wind was chill. You know how it is with an April day.

—Robert Frost

Spring



Did You Know?

Lessons from the Courthouse...

What we've learned in the last month as we've been in court.

If you, in "bad faith", fail to provide an itemized report on how a tenant's deposit was used, the judge can return the entire deposit to the tenant plus a \$100 penalty.

If you accept any payments after a three day pay or quit is served to your tenants, you must re-serve a new eviction notice showing the new balance owed.

Your tenant cannot withhold rent for repairs unless they have complied with the Utah Fit Premises Act by serving a "Notice of Deficient Conditions" and allowing the landlord sufficient time to make the repairs themselves.

Landlords that don't do background checks are 18 times more likely to end up with an eviction? Okay, we made that statistic up, but you'd be surprised how quickly we can find prior evictions that the landlord simply wasn't checking for.

**Mark Your
Calendar for
April 16, 2014**

The Utah Apartment
Association Trade
Show

@ The South Towne
Expo Center

8:00 A.M. — 4:00 P.M.

Stop by our booth, meet
the team, and receive
some goodies!



Meet the Team:
Kelsey Smith



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Kelsey Smith

- Born and Raised in Glendora, CA.
- Graduated from BYU with a BS in Sociology.
- She and her husband are expecting their first baby in early September!
- Loves anything with Dark Chocolate, Reading, Playing the Piano, hiking, and wakeboarding at Lake Powell.

Calendar of Events



- April 1 — April Fool's Day
- April 10 — National Siblings Day
- April 15 — Tax Day
- April 16 — UAA Trade Show (Stop By Our Booth!!!)
- April 18 — Good Friday
- April 20 — Easter
- April 22 — UAA's Ogden Membership Meeting
- April 24 — UAA's SLC Membership Meeting



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).

