



# Landlord Letter

Free Forms & Notices — [www.utaheviictionlaw.com](http://www.utaheviictionlaw.com)

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## *To Evict, Or Not to Evict — That is the question.*

Anytime a lawsuit may come up, there are two primary questions that you should ask. First, do you have a valid claim? Based on the law and facts, you want to be reasonably certain that a judge would grant you a judgment. Before any legal action is taken, do your due diligence to decide whether you have a good claim that is likely to end in a successful outcome. It doesn't make much sense to file a lawsuit that you will end up losing.

Second, once you win your case and are granted a judgment, can you collect from the defendants? Even if the facts and law are on your side, if the defendant is in poor financial state (i.e. they have little or no assets to even pay a judgment), a lawsuit may not be in your best interest. It does not do any good to have a valid claim that you will be able to prevail on, but



then collection will be impossible.

If you can say yes to both of those questions, then it may make sense to move forward with the lawsuit.

It does you no good if you have an excellent claim that a judge would agree with, but the defendant is judgment proof and will never be able to pay you. A judgment in this situation isn't worth the paper it's printed on. However, if you say no to one or both of the questions, probably best to consider cutting your losses and moving on without taking legal action.

I remember a law school professor that explained a horrible lawsuit where both sides suffered greatly. After discussing the case the professor asked "So who won?" Someone stated "the Plaintiff", but the professor loudly

*(Continued on page 2)*



## Courtroom Chronicles — The Anti-Government Tenant

Tenants usually take the eviction process very serious. They do what they can to comply with deadlines and other requirements imposed by the court. One such tenant made no such effort. Instead of filing an answer to our complaint, he filed a "Notice of Non Consent" explaining that he, as a resident of "the territory of Utah" and as a natural living man, didn't consent to the jurisdiction of the court or the US Government for that matter.

We requested an eviction hearing and planned to explain our case to the judge. However, when the judge saw the Notice of Non Consent, she skipped an eviction hearing immediately issued a ruling that they were "nonsensical documents" and gave us an eviction order.

With the eviction order, we were then prepared to have the Sheriff remove the tenants. When the Sheriff's office showed up, the tenant continued to explain that he doesn't consent to the Sheriff's office's jurisdiction and that his family wouldn't be moving out. The Sheriff calmly left, but only to call for backup. They returned to the house with 10-15 officers and arrested anyone that wouldn't leave.

After charges against the tenants for criminal trespass, they were removed and learned that the owner had started removing their personal items while they were in jail. Of all of the defenses used by tenants, this is NOT one we would recommend.

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said “Nope!” Well, that left only one other option so someone else replied “the Defendant”, but the professor stated again “Wrong again!” Everyone looked at the professor puzzled until he said “The attorneys won, they probably got paid!”

You never want to file a lawsuit where the only winner is your attorney. Make sure you have a successful claim that you can collect on.

However, evictions are a bit different. Most lawsuits are simply based on monetary damages and the “Two Questions” above are critical. Evictions, however, often have a focus more important than simply collecting on past-due rents – regaining possession of the property and limiting your out of pocket expenses (in terms of lost rent and repairs/damages to the property).

Obviously a landlord is harmed by a non-paying tenant. But the landlord of a dead-beat tenant cannot even consider placing a new tenant in the property until they regain possession of the premises. In this situation, it very often makes sense for a landlord to pursue an eviction even if they can’t collect.

There are several advantages of filing an eviction. The case can be handled as both an eviction and collection case at the same time, but it also allows you to (1) regaining possession of the property, (2) seeking a judgment for the balance owed, and (3) collection of the judgment once it is issued. There is no need to separate each of those aspects out, because an eviction case will allow you to claim all three of those within the same lawsuit. Additionally, Utah law allows a landlord to claim treble damages for the balance owed, which can result in tripling of the charges. These treble damages are important in either negotiating with the tenant to set up voluntary payments or help to pay attorney fees and costs if the landlord has to collect on the judgment.

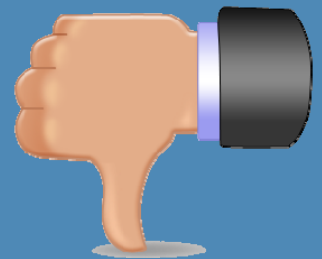
Keep “The Two Questions” in mind whenever you’re faced with a lawsuit. And talk to your attorney to do what you can to build a strong case and increases your ability to collect on the judgment. Doing so will increase your chances of being successful in court and being able to collect on any judgment you are able to obtain.

*Attorney Jeremy Shorts*



## DOs & DON'Ts of...

## Payments from Tenants



### DO

- Require the tenant to make the initial payment (rent & security deposit) via certified funds (if you give them the keys and their check bounces, it's too late).
- Make yourself available to accept payment as required by the lease.
- Issue an eviction notice once payments are past due or if any payment bounces.

### DON'T

- Accept partial payments after an eviction notice unless you're willing to restart the eviction process.
- Avoid a tenant who is legitimately attempting to make a full payment.
- Accept a payment if there are strings attached to the payment that you are not comfortable with.

"Our greatest happiness does not depend on the condition of life in which chance has placed us, but is always the result of a good conscience, good health, occupation and freedom in all just pursuits."

~Thomas Jefferson



# Know Your Notice

## • Three Day Pay or Quit •

### Purpose:

Assists the landlord in re-taking possession when a tenant owes "rent or other amounts due."



A landlord is NOT required to accept a partial payment, but if partial payment is accepted the pay or quit is cancelled. The landlord must serve a new notice showing the new balance.

A Pay or Quit requires the tenant to do just that: (1) pay entire balance owed, or (2) vacate within three days. Those are the only two ways for a tenant to comply with this notice and avoid an eviction.

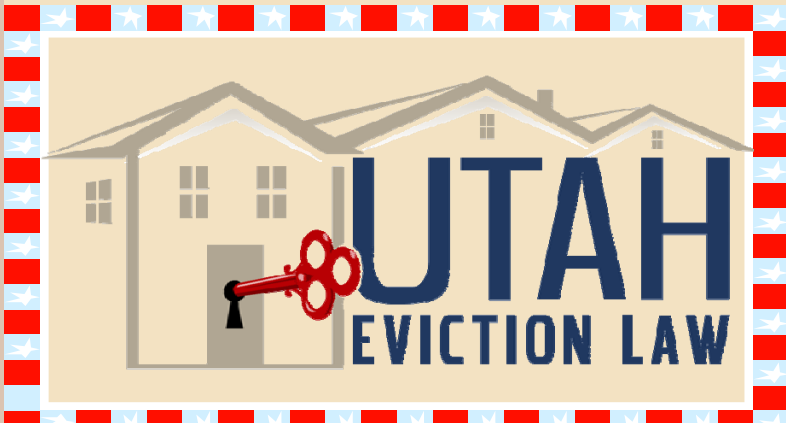
The three days stated in the notice is three calendar days — counting weekends and holidays. Do not count the day it was served. Day #1 begins the following day (For example—if served on Wednesday, the 3 days are Thursday, Friday & Saturday).

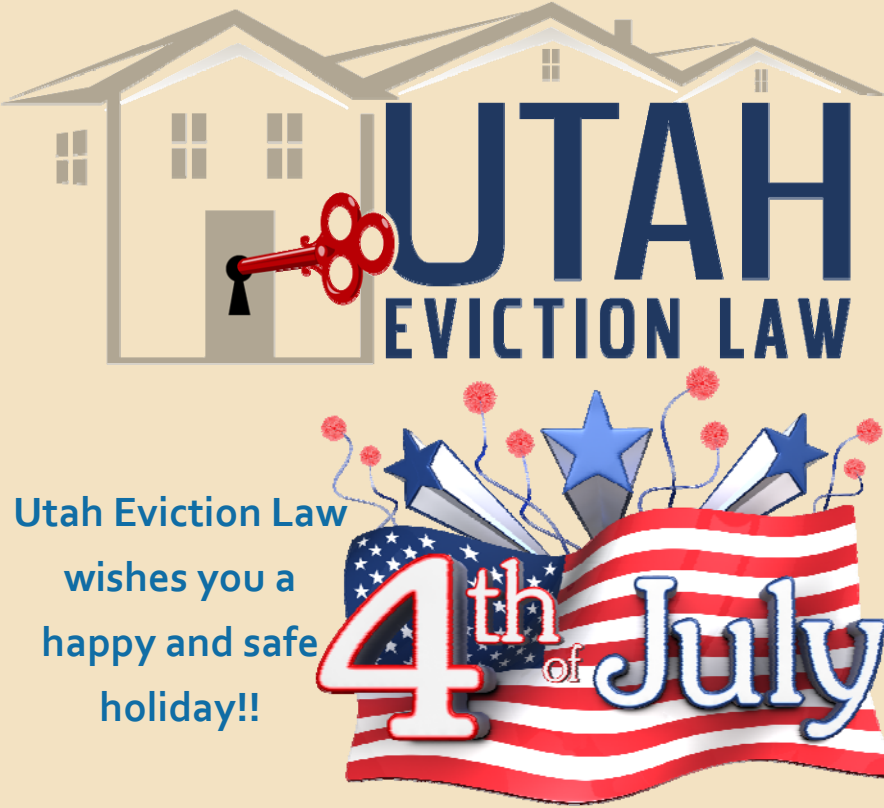
A landlord cannot modify the pay or quit to become a "pay AND quit" or a "notice to quit". It MUST allow the tenant to either pay OR quit in order to comply with the eviction notice statutes.

# Dear Attorney,

**Q:** My tenant just served me with a Notice of Deficient Conditions. What should I do?

**A:** First, it would be a good idea to contact an attorney to make sure you handle the notice properly. If the notice of deficient conditions was served on you properly, you should ask: is the tenant in compliance with the lease agreement? If the answer is no, the tenant cannot take advantage of the remedies allowed for under the fit premises act. If the answer is yes, the next question you should ask is: do I want to continue the landlord/tenant relationship? When a landlord is served with a notice of deficient conditions, the landlord can either fix the problem listed in the notice within the time period described in the notice, or the landlord can choose to not fix the problem and terminate the lease. If the landlord chooses to terminate the lease, the landlord needs to provide the tenant with written notice of the termination and notify the tenant that they need to vacate the property in ten days. Make sure that you are very careful when dealing with a notice of deficient conditions and contact our office for a free consultation regarding the issue.





Fast Facts: Month of July

July is observed as: UV Safety Month, National Picnic & Parks Month and Juvenile Arthritis Awareness Month

Flower: Larkspur & Water Lily  
National Blueberry, Ice Cream, Hot Dog and Pickle Month

The month of July was named after Julius Caesar

Birthstone is the ruby and is often associated with love , passion & integrity.

**Evictions in Weeks, Not Months!**

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](mailto:info@utahevictionlaw.com).
- Have an eviction question? Email us for a future newsletter!
- Help us build our online presence! You can "Like" our Facebook page ([www.facebook.com/utahevictionlaw](http://www.facebook.com/utahevictionlaw)).
- You can also give us a Five Star Google Review (search "Utah Eviction Law Reviews" and click on our link).

Calendar of Events

- July 4 — Independence Day
- July 24 — Pioneer Day
- July 28 — UAA's Ogden Membership Meeting
- July 29 — UAA's Orem Membership Meeting
- July 30 — UAA's SLC Membership Meeting

