



Landlord Letter

Free Forms & Notices — www.utahevictionlaw.com
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Eviction Notices — The Foundation of Your Case

I realize that each month a significant portion of our newsletter is devoted to issues related to eviction notices. For example, every month we have our “Know Your Notice” section in order to educate landlords on the eviction notices available under Utah law. We often spend a lot of time talking about when to use each notice and how they should be served. This is because your **eviction notices are the foundation of any eviction case.** It is critical that the landlord uses the correct notice and serves it in compliance with Utah law. If the wrong notice is issued, or the correct notice is improperly served, it can jeopardize your entire case. Any landlord or property manager should have a clear understanding of when to use each eviction notice and how to serve them.



In almost all eviction cases, it is the eviction notice that makes all the difference. We recently had an eviction where the landlord first served a 30 day no cause notice to vacate which terminated the lease. When the tenants failed to pay rent, the landlord also served a three day pay or quit for the rent that was owed.

The tenant hired an attorney because they felt they had some legal arguments that the judge ought to hear. Specifically, the tenants attempted to pay some rent by directly depositing the rent into the landlord’s bank account the same day we filed the eviction with the court. Also, the attorneys were arguing that because the landlord had accepted late rent in the past, the landlord had

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Courtroom Chronicles

Utah law requires a tenant to file a written response within 3 business days. Recently, a tenant hired a law firm that focused on disputing this 3 day requirement, demanding 21 days to respond (which is the requirement for normal lawsuits). They argued that as long as they object, they can have more time.

Landlords should be aware of this tactic and be prepared to adequately address the issue if it arises. Under Utah law, their objection has to show facts that demonstrate to the court why additional time beyond the 3 days is needed. As the attorney for the landlord, we focused on requiring the tenant to show

why they needed more time since they failed to explain why this case was abnormal.

One of our recent cases dealt with this issue and was argued in front of the judge. The tenants ultimately agreed to the proposed move out date from the landlord before the judge made a decision. However, the judge could have agreed with the tenants, giving them additional time to respond leading to additional time in the property. Based on the judge’s questions at the hearing, he seemed to be leaning in our favor (to deny additional time), but each judge may be different and you should be prepared to properly address the issue.

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waived the right to strictly enforce the due date of the rent. While we felt both of these issues were insufficient to avoid an eviction, we ended up going to a hearing in front of the judge.

At the hearing the judge had several questions about the three day pay or quit which focused on the rent issue (specifically whether rent was actually paid and the judge listened to arguments related to waiver when the landlord accepted late rent in the past). However, it was the 30 day notice that seemed to catch the judge’s attention and was the most persuasive. Even if we were to lose on the rent issue (which I think was unlikely), their counter arguments related to rent had no impact on the 30 day no cause notice. If they had paid their rent in full and were never late, they were still served with a no cause notice and failed to vacate.

As a brief reminder from prior articles – a landlord can (and should) serve multiple eviction notices as long as the notice is applicable to the situation. It does not do any

good for the landlord to serve an eviction notice that does not apply. Serving multiple eviction notices gives the landlord more than one bite at the apple. We do NOT have to prove ALL of the eviction notices that were served, only one. Serving multiple eviction notices gives us multiple opportunities to successfully evict the tenant. In this case, it was the no cause notice that was served that got the judge’s attention. While I think we would have been successful with only the three day pay or quit, the case was made stronger by giving a no cause notice to vacate which terminated the lease.

Utah law is strict when it comes to eviction notices. Since these notices become the foundation of the eviction case, landlords and property managers should make sure they know which notices are available and applicable to their circumstances. If you have any questions or concerns about which eviction notices to use or how to serve eviction notices, please simply contact us for a free landlord consultation.

Attorney Jeremy Shorts

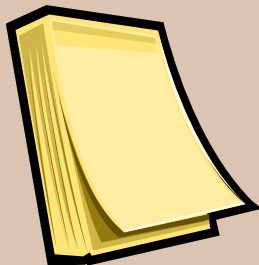
Know Your Notice

• Abandoned Personal Property •

Purpose: Properly handles personal property left behind by a tenant .



This is a recent change under Utah law when handling abandoned personal property.



Instead of storing items for 30 days, the law requires the landlord to store the items for 15 days.

If the landlord is going to sell, donate or dispose of any items, they must give a notice of sale to the tenant at least 5 days prior to the sale.

A landlord does not have to store hazardous materials, animals, garbage, perishable items, etc.



Dear Attorney,

Q:

My tenant hasn't paid rent, but they're saying I can't evict them during winter because of the cold. What should I do?

A:

Under Utah law, there are no statutory defenses or ex-

ceptions that would stop the eviction process based on cold weather. The same rules would apply to a tenant claiming they can't be evicted because they have small children or work all the time. Once the landlord proves the case, Utah law states that an eviction order should be issued allowing the tenant three days to vacate the property. However, Utah law does grant the judge discretion to modify the move out date based on the circumstances. If the tenant is able to show good cause, the

judge MAY (but does not have to) extend the normal three days.

We have also seen that discretion work against the tenant in certain circumstances. In one of our recent evictions, the tenant admitted they could finish moving out within an hour or two but refused to do so. When we explained the situation to the judge, the landlord was granted an eviction order for midnight that same day (about 16 hours or so).

It is important that the statute grant judges discretion to consider cases on a case by case basis. But Utah judges commonly use the standard three day eviction order described under Utah law.

DOs & DON'Ts of...

Lockouts



DO

- Make sure the tenant has either vacated the property or you have a valid court order allowing you to change the locks before locks are changed.
- Contact a Sheriff or Constable to enforce and eviction order.
- Contact an attorney if you are unsure whether you can lock out the tenant or not.



DON'T

- Threaten to lock your tenant out (even verbally). It may not be a violation of the law, but it's not a good idea.
- Prevent your tenants from removing personal items from the property before the lockout has occurred.
- Automatically assume your tenant has abandoned or vacated, do your due diligence to make sure.

**FREE 15 minute
Landlord Consultation!
(801)-610-9879**



A Holiday Note from Us:

We are at the end of our second year of the Landlord Letter! We have come so far since Volume 1 Issue 1 and we are excited to where we will go from here.

If you have any ideas, comments or questions about future newsletters, please email info@utahevictionlaw.com.

See you in 2016!

Calendar of Events



- December 7 — Pearl Harbor Day
- December 22—Winter Solstice
- December 24 — Christmas Eve
- December 25 — Christmas Day
- December 31 — New Year’s Eve



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).