



Landlord Letter

September 2016

Filing an Eviction with the Court (Step #2 of 3)

Last month we spoke about Step #1 of the eviction process – Eviction Notices. Building a strong eviction case begins with the eviction notices. Since eviction notices are the foundation of the eviction case, landlords should do everything they can to build a good case with eviction notices. If you have any questions about eviction notices or how to start an eviction, refer to last month's featured article or contact us. This month we'll focus on Step #2 – Filing the Eviction with the Court.

Eviction notices are a prerequisite prior to filing an eviction with the court. A landlord can only file for an eviction AFTER the tenant has failed to comply within the appropriate

time in the eviction notices. The judge will typically decide the eviction based on whichever eviction notices were issued to the tenants. For example, if the tenants are behind on their rent and also have a pet in violation of the lease agreement but the landlord only issued an eviction notice for the pet violation, the court cannot usually issue an eviction order based on the tenant's failure to pay.

The eviction process with the court starts by filing a summons and complaint. Most lawsuits allow for 21 days in order to respond to lawsuits. But a summons in an eviction requires a response within

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Quick Tips

Responding to tenants after beginning the eviction

- Keep communication in writing.
- Set deadlines and expectations — what exactly needs to happen, when and where?
- Maintain control of the situation — Work with your tenant but don't allow them to become a dictator.
- Once you've hired an attorney, refer them to your attorney!

Dear Attorney,

Q: *We've filed an eviction with the court and now the tenant wants to work something out. What should I do?*

A: The first thing you should do is contact your attorney immediately and let them know your tenant would like to work something out. While you may want to work it out on your own, there are challenges that will arise if you just, for example, accept a payment to resolve the issues. Your attorney will be able to communicate with you and the tenant to come up with a plan to get it resolved.

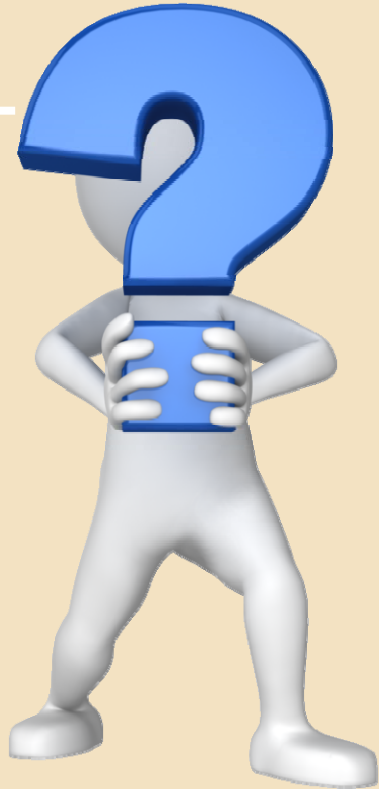
Whether you have an attorney or not, any agreement between you and the tenant to resolve the issue should be in writing and should be filed with the court. Keep in mind that most often you will have two issues with your eviction that you need to resolve.

First, the issue of what is owed. Accepting any kind of payment without something in

writing describing the agreement can create huge problems with your eviction case and may cause it to be thrown out.

Second is the issue of possession of the property. Make sure that you agree on possession in writing as well. Whether it is an agreement on a move out date or an agreement that the lease will continue, make sure you clarify in writing which party will either gain or maintain possession of the property. Without agreeing to this in writing, you are setting yourself up for potentially having to start all over once your tenant fails to comply with your agreement.

Finally, each case is different and should be carefully reviewed by your attorney. Be thorough so they have all the information they need to represent you well.



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.



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.

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.

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).

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three business days of being served with the court papers. Under Utah law, it is not uncommon for a lawsuit to last many months or even years in some situations. However, our average evictions are in the 2-3 week range to go through the court process. That is a combination of the eviction statutes allowing for expedited procedures for an eviction, but also, as an attorney, we have access to the e-filing system which allows for prompt communication with the court. As soon as we submit a file to the court, it is instantly received. Once the judge makes a decision it is usually emailed to us without having to wait for the mail or even a phone call from the court.

For an eviction that is filed with the court, the landlord bears the burden of proof to convince the judge they are entitled to an eviction. We never want to file a loser lawsuit, so we do everything we can to increase our chances of success. In our experience, judge's take evictions very seriously and only grant them when the



landlord has complied with Utah's eviction laws. In fact, Utah law requires strict compliance with the eviction laws in order to gain an eviction and be awarded attorney fees, costs and treble damages. It is important to make sure you are doing everything correct and that you also build a strong case.

Especially for a heavily disputed or contested eviction, we tell our clients to pay attention to what evidence the judge will focus on to decide the eviction. Landlords should take every effort to present convincing evidence in order to make the decision as easy as possible for the judge. Do what you can do document your file to build a good strong case. For example, if your tenant is behind on the rent and has a pet, make sure you have detailed records showing the balance owed and do what you can to document the pet violation (get statements from neighbors, take pictures, etc.).

In the end, there are never any guarantees when you're in front of a judge. But building a strong case with solid eviction notices and evidence will increase your likelihood of success when you're in front of the judge.



Landlord Laughs — Check Your Voicemail

Collecting on a judgment you have obtained against your previous tenant can be challenging. While there are several tools you can use to locate assets or employment information, sometimes it can be tricky and can take months or years to get solid information you can act on.

Recently, a landlord was trying to collect on a difficult tenant. The tenant had managed to keep information about his assets somewhat hidden. When the landlord called to discuss the debt with the tenant, the call went to their voicemail. Luckily for the landlord, the tenant, presumably in an effort to increase his own business and cash flow, had recently changed his voicemail on his phone to notify any callers that he had new employment and explained where he worked.

A couple of lessons were learned from this experience, one for the landlord and one for the tenant. For the landlord, the lesson learned is to keep trying to collect, because you don't know when circumstances will change. For the tenant, don't include your employment information on your voicemail unless you are willing to disclose that to your creditors when you avoid their calls.



We have a new Team Member — Meet Emilee!



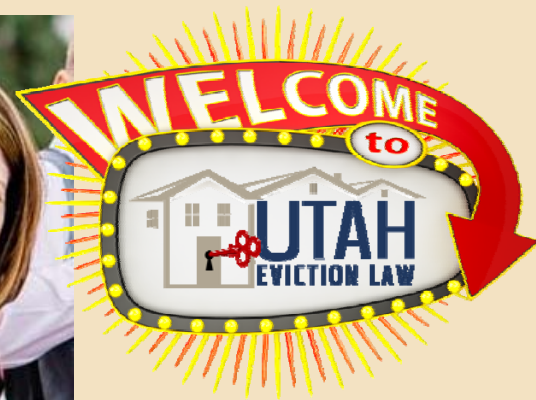
Born and raised in Provo, Utah.

Married for 12 years, two kids & a dog.

Loves spending time outdoors with the family. Camping, hiking and hunting.

Enjoys watching and playing sports.

Favorite place to visit: Lake Tahoe.



Calendar of Events



- September 5 — Labor Day
- September 11 — Patriot Day
- September 22—Fall begins
- September 27 — UAA’s Ogden Membership Meeting
- September 29— 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).

Evictions in Weeks, Not Months!