



# Landlord Letter

July 2019

## Building a Strong Nuisance Eviction

Quite often we receive phone calls from landlords stating that they want to evict a tenant because they are a nuisance, have violated the lease, and they need the tenant out – yesterday. Some of the first questions we will ask are related to the payment of rent and the status of the lease agreement with the tenant. We do this because nuisance evictions can be tricky. If there is an easier way to evict the tenant (through a three day pay or vacate or a no cause lease termination) you should consider your options to build a strong eviction case.

Utah statutes define a nuisance as “...anything

which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.” Utah Code Ann. 78B-6-1101(1). In short terms, it’s when a tenant is being a big enough pain in the neck that their actions are impacting the quiet enjoyment of other tenants or neighbors.

Depending on the circumstances, establishing and proving a nuisance eviction can be a difficult task that may require more than a simple statement from the landlord that someone is indeed a nuisance. You may

*(Continued on page 2)*

## Know Your Notice • Three Day Pay or Quit

**Purpose:** Assists the landlord in re-taking possession when a tenant has “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.*

*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.*

*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.*

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*need additional witnesses, pictures, and video to build a strong nuisance case.*

*The difficult part here is that there is no clear black and white line as to when someone becomes a nuisance and different judges could decide nuisance cases differently. In order to be granted a nuisance eviction in front of the judge, the landlord bears the burden of proving the case and must provide enough convincing evidence to support it. Any landlord that has attended any of our eviction trainings will recall that we always discuss turning an eviction from an “opinion eviction” into a “paper eviction”. Focus on what evidence the judge will use to decide the case – Will they be listening to opinions, or will they be reviewing papers? Opinions can vary but papers are black and white. Opinion evictions require witnesses to give their opinions and often turn into a “he said, she*

*said” situation, pitting the landlord against the tenant. A paper eviction simply puts documents (or pictures) in front of the judge which usually makes a much stronger case.*

*How do you make a strong nuisance eviction? Good landlords can turn an opinion eviction into a paper eviction. Take pictures or video showing the nuisance. Keep a detailed log of all the violations, reports, or problems that you have been having with that tenant. Get witness statements and have witnesses present for inspections. The more the better so you can clearly prove a nuisance.*

*Most cases never make it in front of a judge, but you should always act as if this one will. Handling your case this way helps to build a stronger nuisance eviction in the event yours ends up in front of the judge.*



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## Dear Attorney,

**Q:** *I just received a letter saying my tenant filed a discrimination complaint against me, what happens next?*

**A:** *In today's world, it's not "if" you will be sued, but "when". Most discrimination complaints come from the state (UALD – Utah Antidiscrimination and Labor Division) or federal government (HUD – Housing and Urban Development). Once a complaint is filed, the parties are usually asked to participate in voluntary mediation (a "conciliation conference"). If the case is settled in mediation, the case is closed.*

*Second, if mediation is unsuccessful, you need to respond to the complaint to tell your side of the story and participate in an investigation. The*

*investigator (from the UALD or HUD) may interview witnesses, subpoena documents, etc. in order to fulfill their investigation. At the end of their investigation they will issue a decision to determine whether discrimination occurred and may impose penalties.*

*Finally, no matter what the decision is, either side can pursue a review or appeal of the case. Knowing what the decision is will determine whether you want to appeal the case. Sometimes it may make more sense to accept the decision and fines instead of going forward with the expense and risk of additional litigation.*

## DO's & DON'Ts of Rent, Ledgers & Cash



### DO

- Document each payment (tracking the date, amount, cash/check, and description for each payment).
- Communicate clearly with your tenant about payments and balances.



### DON'T

- Accept cash without providing a receipt (documenting EVERY payment is critical).
- Rely on your memory for payments (memory fades and is easily challenged in court).

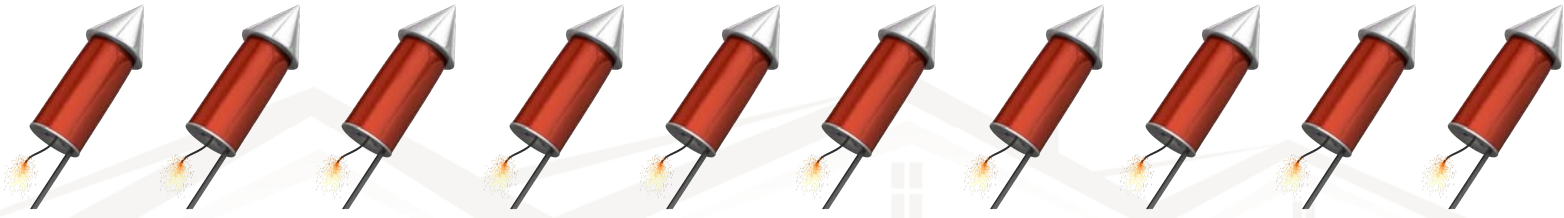
## Courtroom Chronicles

A while ago we handled an eviction for beautiful and large home. The tenants tried fighting the eviction, but they hired attorneys that weren't familiar with the eviction process. They made several mistakes along the way and we were able to obtain an eviction order, but they still had some options to challenge the order. After the appropriate time, we sent the sheriff's office over to change the locks, and that's when they started fighting. They filed for an emergency order to stop the eviction.

While the tenant's attorney was waiting for the judge to review their filings, our client had

hired a full moving crew with moving trucks to clear out the entire house. In only two hours, the house was clear with all of their belongings secured in a storage unit.

About an hour later, the judge's clerk called saying that the judge had issued a stay in the eviction. We reported that we will stop exactly where we are, but that the house was already empty. At the hearing, the judge decided to let the eviction stick. This was an excellent example of why you hire a professional that knows what they're doing. Case closed!



**Evictions in  
Weeks, Not  
Months!**

# Calendar of Events

## 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 Google Reviews" and click on our Google Plus link).

• July 4 — Independence Day

• July 19 — UAA Good

Landlord Class Salt Lake

• July 24 — Pioneer Day

