



Landlord Letter



Enforcing Leases, Fees, & Violations

This month we wanted to review a few problem areas we see when enforcing leases. Our clients use a variety of different leases, and those leases contain a variety of different terms, fees and charges. Some leases are horrible – They have unenforceable provisions that don't comply with Utah law, or they aren't strong enough to protect the landlord. Make sure you're using a lease that protects your interests, but also complies with Utah law. This is where we give a shameless plug for our own free lease agreement on our website – [Click Here](#). Our lease is based on Utah law and has held up in court hundreds of times.

Apart from just listing rent payments, leases commonly address other fees for lease viola-

tions or miscellaneous fees. Utah law is largely a "contract state", meaning our state legislature generally allows the parties to enter into a contract that outlines what they've agreed to instead of having the state statutes step in to tell the parties what they can or can't do. Generally speaking, the contract will outline what fees or interest can be charged.

While Utah is considered a contract state, there are some exceptions. For example, under Utah law ([Utah Code Ann. §57-22-4\(5\)](#)), late fees on residential leases are capped at the greater of either (1) 10% of the monthly rent, or (2) \$75. Make sure you are not charging your tenant late fees that exceed 10% or \$75. This law

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What people are saying about US!!!



Google
REVIEWS



This is a great service and a wonderful company with very kind and patient legal professionals. I would honestly recommend these folks. I received a knowledgeable legal consultation for a reasonable price. -Mary

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was changed in 2021, but we are still seeing leases that list late fees above these amounts. Check your lease and make sure it is updated to reflect this change (or use our lease and it's updated already).

For other fines and fees, make sure they are reasonable. Some leases charge fees for serving eviction notices or if an unauthorized dog is found on the property. Utah law does not set specific limits on fees like this, but the amount should be reasonable and tied to the violation. Listing a fee of \$1,000 is very likely to be unreasonable (and unenforceable) for basic lease violations, but if that violation forced you to incur \$1,000 in cleaning or repair costs, a judge would likely consider and grant that if the violation was tied to the tenant's actions or obligations under the lease.

One final piece of advice on this issue. If a tenant has failed to pay fees owed under the lease, be cautious about listing misc. fees on a pay or quit notice. For clear amounts due under the

lease (rent, late fees, or other specific amounts stated in the lease), we recommend listing them in a 3 day pay or quit notice. For other items that the tenant is responsible for (cleaning, damage, repairs, misc. fees, etc.), it may be better to list these fees in a separate "lease violation – comply or vacate" notice. The forms are basically identical in form and substance, but separating out unusual fees and listing them in a comply or vacate notice is generally the better way to go. Separating balances out this way helps to build a stronger case if you end up in court.

Attorney Jeremy Shorts



QUICK TIPS—Late Fees and Charges

- ✓ If you want to charge late fees, make sure they are clearly outlined in your lease agreement.
- ✓ Late fees can not exceed 10% of the monthly rent or \$75 a month.
- ✓ Keep track of all documents related to any other fees and charges, such as utilities, HOA fees, eviction notice charges, etc.
- ✓ Apply any tenant payments to late fees and other charges, BEFORE it goes to rent. That way you can let the tenant know that rent is still due, not just the fees. It makes a potential eviction case stronger.

Dear Attorney,

My tenant requested an Emotional Support Animal (ESA), but the letter from their doctor is in Portuguese. What should I do? Does the tenant have to provide a copy in English? Do I have to have it translated?

Generally speaking, housing providers are not obligated to translate letters from those requesting a reasonable accommodation. The tenant is likely responsible to provide their reliable documentation supporting their ESA request in a way that allows the landlord to verify the request. But you should be reasonable, especially if you have the ability to verify the information in the letter.

Under state and federal law, a landlord may require "reliable documentation" to evaluate a reasonable accommodation request for an ESA. If the landlord cannot understand or speak the language that the ESA documentation is provided in, the tenant should take steps to allow the landlord to process their request.

However, if the property is state or federal financial assistance, you should be even more cautious as you may have an increased obligation to work with your tenants in this situation. There may be community resources available to both the landlord or the tenant that may help with translation services.

Having said that, it's best for both sides to be reasonable in their approach to come to a resolution. If the landlord has a staff member that speaks the same language and can help to verify the information, it makes sense to do so. But the tenant is usually responsible to provide the documentation in English.



Know Your Notice • Unlawful Business •

Purpose: To evict your tenant for conducting an unlawful business on your property.

Make sure your evidence is strong (witnesses, police reports, activity logs, etc.).

Keep good records of the unlawful business being conducted (i.e. pictures, emails, texts, etc.).

Like other eviction notices, it must be served in person, posted or sent via certified mail. It cannot be given verbally, texted or emailed.

This notice does NOT give the tenant an opportunity to cure. The tenant must vacate within 3 days or face an eviction.

Courtroom Chronicles

Experience really matters when you're hiring an attorney. You should make sure they know what they're doing. If you have a landlord/tenant issue, we can help. If it's something outside of that, we are happy to refer you to an attorney with that specialty.

A while ago we were waiting for our case to be called and witnessed a train wreck with another big-shot law firm. A very seasoned (but very inexperienced) attorney took an eviction case all the way to a hearing in front of the judge. The court pointed out that the attorney failed to make certain disclosures that are required for eviction cases (basic things that we do in our sleep).

When the judge denied their eviction based on his failure to comply, the attorney was stumped and, honestly, looked silly. In frustration, he blurted out, "Your honor, is that a local rule specific to this court?!? I haven't heard anything about it!" He had to have been embarrassed when the judge replied, "No, it's a statewide rule that's been in effect for nearly five years now."

Ouch! Maybe next time the landlord will hire us!



Contact us for a Landlord Consultation!

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Parting Thoughts

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