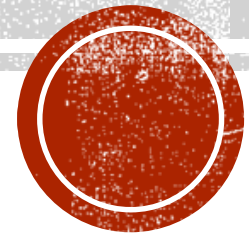


EVICTIIONS



Presented by Elena Cordonean & James Ponce



EVICTION

Even the homeless can be evicted.

Eviction is the process used by landlords to recover possession of leased real property from tenants who do not want to leave.

Evictions are difficult, painful, and expensive for all parties involved.



REASONS FOR EVICTION

Landlords may legally evict tenants for one of three basic reasons.

1. most frequently, **for not paying rent.**
2. for other, non-trivial violations of lease agreements.
3. landlords may evict tenants whose lease expired.

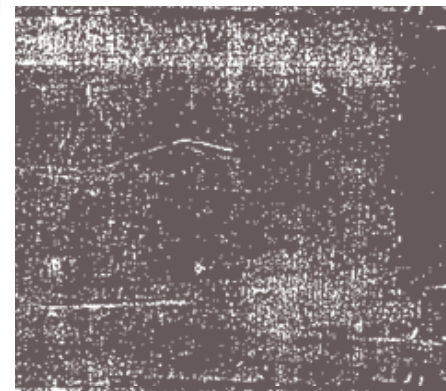


**I ATE THEM FOR BACK RENT
AND REPOSSESSED THE
PROPERTY FOR MY OWN USES**



- Landlords have no general duty to allow tenants to renew their lease, and may choose not to renew for any reason, or even no reason at all. They may not, however, evict tenants or refuse to renew tenants' leases for improper reasons. For example, a landlord could evict a tenant for having a dog in violation of a "no pets" clause in their lease. The landlord could not, however, evict a tenant because a cat dashed into a "no pets" apartment while the door was open and the tenant immediately removed the cat. Similarly, a landlord can choose not to renew a lease simply because he does not like a tenant, but he may not refuse to renew a tenant's lease because she is an African-American.

Tenants Giving You The Runaround?



**KNOCK KNOCK. WHO'S
THERE?**



EVICTED NOTICE

quickmeme.com

NOTICE OF TERMINATION FOR CAUSE

Although terminology varies somewhat from state to state, there are basically three types of termination notices that you might receive if you have violated the rental agreement or lease in some way:

- **Pay Rent or Quit Notices** are typically given to you when you have not paid the rent. These notices give you a few days (three to five in most states) to pay the rent or move out ("quit").
- **Cure or Quit Notices** are typically given to you if you violate a term or condition of the lease or rental agreement, such as a no-pets clause or the promise to refrain from making excessive noise. Usually, you have a set amount of time in which to correct, or "cure," the violation.
- **Unconditional Quit Notices** are the harshest of all. They order you to vacate the premises with no chance to pay the rent or correct a lease or rental agreement violation. In most states, unconditional quit notices are allowed only if you have:
 - repeatedly violated a significant lease or rental agreement clause
 - been late with the rent on more than one occasion
 - seriously damaged the premises, or
 - engaged in serious illegal activity, such as drug dealing on the premises.



NOTICE OF TERMINATION WITHOUT CAUSE

Even if you have not violated the rental agreement and have not been late paying rent, a landlord can usually ask you to move out at any time (assuming you don't have a fixed term lease) as long as the landlord gives you a longer notice period.

- A **30-Day Notice to Vacate** or a **60-Day Notice to Vacate** to terminate a tenancy can be used in most states when the landlord does not have a reason to end the tenancy. (The length of the required notice can be slightly longer or shorter in some states.)
- **Rent Control Exceptions**. Many rent control cities, however, go beyond state laws and require the landlord to prove a legally recognized reason for termination. These laws are known as "just cause eviction protection."



- An unlawful detainer lawsuit is a "summary" court procedure, which means that the court action moves forward very quickly, and that the time given the tenant to respond during the lawsuit is very short. For example, in most cases, the tenant has only five days to file a written response to the lawsuit after being served with a copy of the landlord's complaint.
- A judge will hear and decide the case within 20 days after the tenant files an answer.
- In an unlawful detainer lawsuit, the court holds a hearing at which the parties can present their evidence and explain their case. If the court finds that the tenant has a good defense, the court will not evict the tenant. If the court decides in favor of the tenant, the tenant will not have to move, and the landlord may be ordered to pay court costs (for example, the tenant's filing fees). The landlord also may have to pay the tenant's attorney's fees, if the rental agreement contains an attorney's fee clause and if the tenant was represented by an attorney.
- If the court decides in favor of the landlord, the court will issue a writ of possession. The writ of possession orders the sheriff to remove the tenant from the rental unit, but gives the tenant five days from the date that the writ is served to leave voluntarily. If the tenant does not leave by the end of the fifth day, the writ of possession authorizes the sheriff to physically remove and lock the tenant out, and seize (take) the tenant's belongings that have been left in the rental unit. The landlord is not entitled to possession of the rental unit until after the sheriff has removed the tenant.

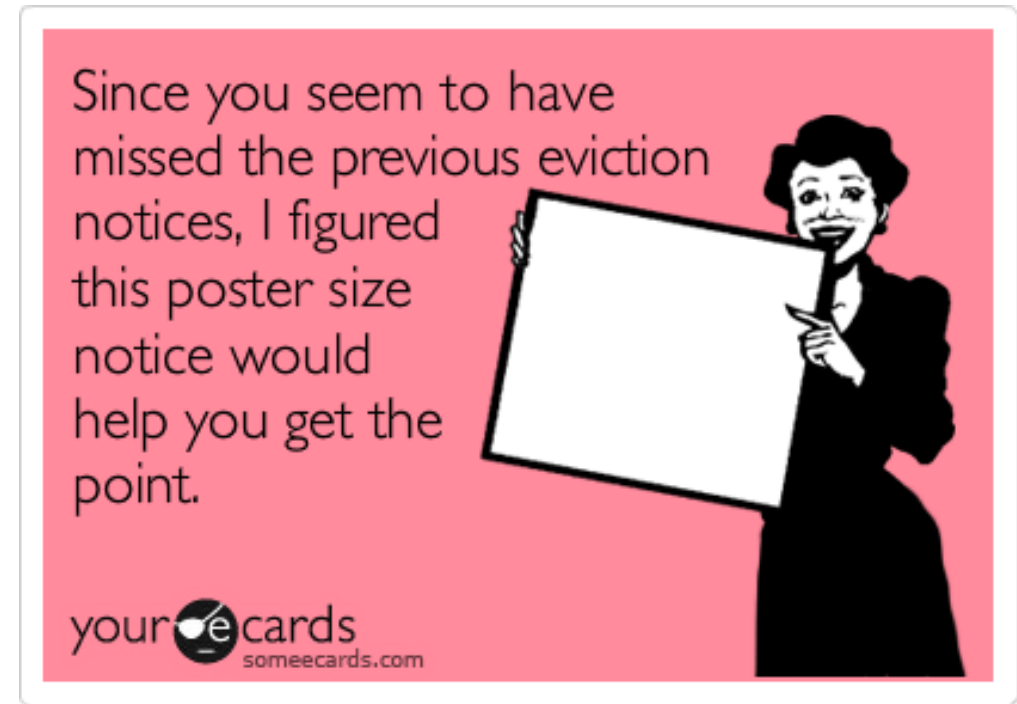


WAYS TO SERVE THE EVICTION NOTICE

Generally, California law requires that residential tenants be served notices by:

- personal service;
- posting on the property and mailing a second copy, normal mail the same day; or
- substituted service by delivery to someone of suitable age and discretion and mailing a second copy, normal mail the same day.

Personal service should generally be attempted before resorting to substituted service or posting and mailing.



THREE-DAY NOTICE

A landlord can use a written three-day notice ([eviction notice](#)) if the tenant has done any of the following:

- Failed to pay the rent.
- Violated any provision of the lease or rental agreement.
- Materially damaged the rental property ("committed waste").
- Substantially interfered with other tenants ("committed a nuisance").

Begin counting the three days on the first day after the day the notice was served. If the third day falls on a Saturday, Sunday, or holiday, the three-day period will not expire until the following Monday or noholiday.



It is in the landlord's interest to evict an unwanted tenant as quickly as possible, as such a tenant may not be paying rent, could be damaging the premises, or could be engaging in behavior that may cause other tenants to vacate. For this reason, California gives eviction lawsuits priority over all legal matters except for criminal cases.



Help! I just received written notice that my landlord plans to evict me. What should I do?

- Your first step is to figure out what kind of notice you were given. Is it a **3 day notice**? If so, your landlord is stating you did one of the following:
 - Failed to pay rent
 - Violated a provision of the lease/rental agreement
 - Materially damaged the rental property
 - Used the premises for an unlawful purpose
 - Substantially interfered with other tenants
 - Committed domestic violence/sexual harassment against another tenant
 - You either illegally used, grew, sold, or manufactured illegal drugs
 - Unlawful conduct involving weapons and ammunition

Help! I just received written notice that my landlord plans to evict me. What should I do?

- The landlord must state on the 3 day notice why s/he is evicting you (i.e. which of the aforementioned reasons apply to your case)
- If the problem is correctable, the landlord must state in the notice that you may either correct the problem or leave the rental unit.
 - For example, if the problem is late rent, or violation of a lease/rental agreement, this is considered fixable in the eyes of the law. You only need to fix the problem during the 3 day period (i.e. pay the past-due rent or get rid of your pet).
 - If you fix the problem after the three day period expires, the landlord has the right to either evict you or accept the fix and waive the right to evict you based upon that particular problem.
- If it is one of the other reasons to evict, you have very little legal recourse. You need to move out before an unlawful retainer is served to you.

Help! I just received written notice that my landlord plans to evict me. What should I do?

- A landlord can also give a 30- or 60- day notice to end a periodic tenancy (like a month-to-month rental).
- The landlord can give a 30-day written notice in either of the two following situations:
 - Tenant has lived in rental unit for less than a year;
 - Landlord sold the rental unit to another who intends to occupy it for at least a year after tenancy ends.
- The landlord must give a 60-day written notice if the tenant has lived in the rental unit for over a year.
- For either of these cases, the landlord need not give a reason why s/he is evicting you.
- Try to find out from the landlord why you are being evicted. Try to convince your landlord to withdraw the notice because you will fix whatever problem you have created.
- * Some communities have rent control ordinances demanding that landlords give cause for eviction, no matter the length of notice.

Help! I just received written notice that my landlord plans to evict me. What should I do?

- If you feel that you are being illegally evicted, you can try to fight it out in court. I recommend consulting with an attorney first, as this can become costly.
- After you receive notice, you stay in your rental unit. After you refuse to leave, the landlord must legally file a unlawful detainer complaint against you, and serve you with a copy of the complaint.
- You have only 5 days to answer this complaint. You must include one of the following defenses in your answer if you wish to have any chance of winning in court:
 - The rental unit violated the Implied Warranty of Habitability (constructive eviction).
 - The landlord's 3-day notice required more rent than was actually due.
 - The landlord accepted a partial payment of rent
 - The landlord filed the eviction in retaliation for you exercising your right as a tenant.
 - Failure to maintain the property (Repair and Deduct strategy)
 - Notice was not served properly so you file a motion to quash service of summons.
 - The complaint was not written correctly so you file a demurrer and a notice of demurrer.

RETALIATORY ACTIONS AND EVICTIONS

- This happens when the landlord tries to evict the tenant for exercising their legal rights. It occurs within six months of the tenant:
 - Using the repair and deduct remedy
 - Complaining about the condition of the rental unit to landlord or an appropriate public agency after giving the landlord notice
 - Filing a lawsuit or beginning arbitration based upon the condition of the rental unit.
 - Causing an appropriate public agency to inspect the rental unit or to issue a citation to the landlord.
 - The tenant has lawfully organized or participated in a tenant's organization or protest.
- In order for the tenant to win, the tenant must prove s/he used one or more of these rights within the six-month period, that the rent is current, and that the tenant hasn't used the defense of retaliation more than once in the last 12 months.

Retaliatory Discrimination

- The defense of retaliatory discrimination comes into play when the tenant can prove that the “dominant purpose” for eviction is to retaliate against a tenant who has:
 - Opposed practices that are unlawful under California’s Fair Employment and Housing Act
 - Informed law enforcement officials of practices that the tenant believes are unlawful under this Act; or
 - Aided or encouraged a person to exercise any rights protected by this Act.
- A tenant who can prove this has a perfect defense against unlawful detainer action.
- This tenant also has a cause of action for damages under the Fair Employment and Housing Act.