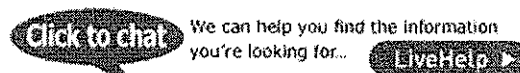


Common Questions: Evicting a Tenant



Last updated: January 2014

1. As a landlord, when can I evict my tenant?

As a landlord, you can evict your tenant if:

- Tenant fails to pay the rent when it is due;
- Tenant violates any of the terms and conditions of the lease agreement;
- Tenant damages your property;
- Lease comes to an end and your tenant does not leave your property; or
- If the tenant does not have a written lease, but pays rent monthly and you give them notice that you wish to end the tenancy.

2. When can I not evict my tenant?

You cannot evict your tenant:

- For complaining to the building inspector about your property. That is called retaliatory eviction;
- Based on not paying rent if the tenant left the premises for a period of time because of domestic violence or the immediate threat of domestic violence; or
- Based on race, color, ethnicity, sex, disability, religion, discharge from the military, military status, age, marital status, sexual orientation, or source of income.

3. Do I need to give notice before I evict my tenant?

Yes. There are different types of eviction notices that the landlord must serve the tenant depending on the circumstances in each case.

Five-Day Notice: If your tenant fails to pay the rent on time, you can serve the tenant with a five-day written notice. The notice must state the amount of rent due and advise the tenant that the lease will terminate if the tenant does not pay it within five days. The tenant can pay the rent owed within the next five days and stop you from evicting them. If the tenant pays within the five days you must accept the money. If the tenant does not pay the rent within those five days, you may proceed to evict the tenant. Note that some local laws may require more than a five-day notice for nonpayment of rent. For example, Evanston's Residential Landlord Tenant Ordinance requires 10 days written notice for non-payment. Under the City of Chicago Residential Landlord and Tenant Ordinance, if you accept the rent after the 5 day period you cannot proceed with eviction.

Ten-Day Notice: If your tenant violates any terms of the lease, except for payment of rent, you can serve the tenant with a ten-day written notice. The notice must state the terms violated and the dates on which the violation occurred. The tenant does not have a right to fix the violation. But there are some local ordinances, including the City of Chicago Residential Landlord and Tenant Ordinance, which allow the tenant a right to fix the violation within the ten-day notice period.

Seven-Day Notice: If the lease is a week-to-week lease, then you can serve a seven-day written notice that says the tenant must move out in seven days.

Thirty-Day Notice: If the lease is a month-to-month lease, you can terminate it by serving a 30-day notice to your tenant without giving any reason. The last day of the 30-day notice period must be the last day of the lease period. i.e. you must serve the notice at least 30 days before the rent is due. If you accept rent the next month, you must serve a new 30 day notice.

Sixty-Day Notice: If the lease is a year-to-year lease, a landlord must give a 60-day written notice. This notice must be served no earlier than 4 months before the end of the year.

You may not be required to give a written notice if your tenant has waived their right to a notice in the lease or the lease sets a fixed time for it to end.

However, this is not always true. For example, Chicago and Evanston have their own laws which do not allow a tenant to waive their right to a notice.

Go to the "Forms/Letters" section to view forms some of the different notices that you can send to your tenant.

4. How do I calculate the notice period?

The notice period begins on the day after the notice is served. If the last day of the notice period falls on a Saturday, Sunday, or holiday, then the notice period ends on the next business day. If you serve your tenant by mail, the notice period starts from the day after the tenant actually received the notice.

For example, suppose you mail a five-day notice to the tenant on January 1. The tenant receives the notice on January 4. The five-day notice period starts on January 5 and the tenant must pay the rent amount by January 9.

5. What should the notice say?

The notice should:

- Describe the premises well enough so that it can be identified;
- If it is a five-day notice, have the amount of rent due and to whom the amount should be paid;
- If it is a ten-day notice, have the terms of the lease that have been violated;
- Say that the tenancy will come to an end at the end of the notice period;
- State the number of days after the service of the notice that the tenancy will come to an end; and
- Be signed by the landlord.

Go to the "Forms/Letters" section to view forms of the three different notices that you can send to your tenant.

6. Are there ways my tenant can stop the eviction?

If you sent your tenant a five-day notice for not paying rent, the tenant can stop the eviction by paying the full amount of the rent due.

If your tenant can pay only part of the rent, you can accept it and still continue to evict your tenant. However, if you agree in writing to allow the tenant to stay when they pay partial rent, then you must let the tenant stay for the period in the Agreement.

In some cities, such as Chicago, your tenant can stop an eviction action based on a violation of the lease (a ten-day notice eviction). The tenant can fix the violation within the ten-day notice period. This is called "curing" the lease violation. If they do, you may not evict the tenant. Be sure to check the local laws to see if the tenant can fix the violation, and demand documented proof of what action the tenant took to fix the violation.

If you serve a tenant with a 30-day notice to end a month-to-month tenancy and you accept rent the following month, you have renewed the month to month tenancy and must serve a new notice.

Landlords should not file an eviction case before the end of a notice period.

7. Does my tenant get a chance to speak in court?

Yes. Once you have presented your case to the court, the judge will ask your tenant some questions if they are present in court. If the tenant asks for a continuance, the judge may grant the first request. This means that you have to appear in court again on another date.

If your tenant does not show up in court, the hearing will be held and the tenant will most likely be held in default. This means that the tenant will lose. The court will grant the order for eviction (Order for Possession) and may order the tenant to pay you the money that you asked for in the complaint.

8. Does my tenant have to leave immediately after the court orders the eviction?

No. After the judge grants an order of eviction, he will probably give your tenant between 7 and 14 days to move out. You cannot do anything to evict the tenant during this time. Only the Sheriff can evict the tenant on a judge's order.

9. What can I do if my tenant does not leave in the time fixed by the court?

If your tenant does not leave when the time set by the court is over, you can go to the Sheriff's department with the Order for Possession and ask to have your tenant evicted. Only the Sheriff has the authority to evict the tenant; you as the landlord cannot do it on your own. Lockouts are illegal and may expose you to civil liability.

In some counties, the Sheriff will require a deposit in order to place the eviction on their calendar. This deposit is refundable at any time before the Sheriff evicts the tenant.

When the Sheriff performs the eviction, your tenant's possessions may be removed and put on the curb and no protection is provided. But some counties, including Cook County, the Sheriff does not take the tenants belongings out of the apartment. This is the landlord's job, but there are rules you have to follow. Check with the Sheriff's office on what you need to do.

If you decide to keep the tenant (for example, if the tenant pays the rent due), you must call the Sheriff to cancel the eviction.

10. What if my tenant wins and I lose the case?

If your tenant wins at the trial, your complaint will be dismissed and you will not take possession or receive any amount in damages that you may have asked for in the complaint. The judge might also ask you to pay the costs and attorney's fees for the other side, if any.

You may also have a right to request the court to reconsider the decision and you have a right to appeal the decision to a higher court. You should try and get help from an attorney if you want to appeal the court's decision.

11. Do I have any options other than a trial?

Mediation is an alternative to a trial. It is an informal negotiation. You and your tenant try to reach a settlement with the help of a mediator instead of letting a judge or jury decide. You can ask for mediation before meeting with a judge. Mediation has a few advantages over a trial, including:

- You have more control over your case
- You and your tenant can agree to a settlement based on what seems fair to you, instead of a judge deciding based on what the law says
- You can keep a mediation agreement secret, unlike a trial where everything is public record
- You can talk about what is important to you, and not just legal issues

If you and your tenant do not settle your case before trial, the judge can also send you and your tenant to mediation.