

SOME BASICS ABOUT EVICTIONS

A tenant is late on the rent, there have been complaints from neighbors or you suspect drug activity. If you are a new landlord or even an experienced landlord that, miraculously, just has not had this problem before, then there are some basics that will help as you weave your way through the process. First of all, resolve the problem quickly and fairly. Don't wait. Don't let it become a habit with that tenant. Address the situation and don't let it fester until both emotions and finances get away from you.

IMPORTANT PRELIMINARIES

Know how to evict. Get a copy of the landlord-tenant law and read it. If you're not sure what something means, call an IERA mentor (a list is always in the back pages of each issue of the *Rental Review*), call the IERA office during business hours, or contact an attorney experienced in landlord-tenant relations (listed on page 23 of the *Rental Review*). Cases are often lost due to technicalities. You should

- Know the types of eviction notices available to you
- Know the process for service notices and feel confident using it
- Understand the entire eviction process from beginning to end (see the Eviction Timeline in this issue).

Effective landlording or property management includes early recognition of noncompliance and immediate response. Don't wait for rumors of drug activity, let rent payments get later and later each month, or other noncompliant behaviors to drag on. Be sure to give consistent messages that you are committed to keeping the property up to code, appropriately used, and rent paid in full on time.

Use the eviction process or lose it. Many landlords don't take swift action because they are intimidated by the complexity of the legal process. However, the penalty for indecision can be high—if you accept rent after knowing that a tenant is in noncompliance, you may lose your legal ability to evict for that cause. Your position is weakened when you look the other way.

Swallow your medicine and get on with it. Some landlords procrastinate thinking the matter will resolve itself soon and some don't act for fear the tenant will damage the rental. If you do that, the situation will only get worse and you lose what control you have over the renter's noncompliant behavior...you lose options to evict while allowing a renter to abuse your rights. And if the tenant is the sort that does not respect the property of others, you will likely get a damaged rental anyway.

Some landlords have misplaced belief in their tenants will get their rent current "soon," that the problems will go away, or speaking to the tenant about the problem will be adequate encouragement to change the noncompliant behaviors. But some drug/alcohol/anger behaviors are difficult for the tenant to address without support services, and the landlord may not have the many months or years it will take to accomplish satisfactory results.

If the eviction began with a complaint from a neighbor there are definite ways to approach the situation.

- Don't be defensive and, equally, don't jump to conclusions. Your goal is to get as much information as you can from the neighbor about what they have observed. You

also want to avoid setting up an adversarial relationship with either the tenant or the neighbor.

- Promise you will not reveal their name to the tenant without prior permission, unless subpoenaed. Keep this promise.
- Ask for 1) a detailed description of what they have observed, 2) A letter documenting what was observed, sent both to you and to the proper police department (narcotics division, vice, domestic violence, gangs, etc), 3) Names of other citizens you can call who could support what they are seeing. Also ask that they encourage other neighbors to contact you immediately. Emphasize that this is for their protection, as well as the importance of collecting enough information to support action, 4) their name, address, phone number.

Get in touch with other involved neighbors and find out what their perceptions are. It is likely, even if your tenant is running a high volume drug dealing operation or some other illegal activity, some neighbors will not have been observant enough to suspect what is going on. However, it is also likely that there are at least a couple other neighbors that *will* have noticed.

Collect data through other channels as seems appropriate – contact a patrol officer, the narcotics division, etc to determine what, if anything, they have on record that can be revealed. Consider a 48-hour Landlord’s Notice to Enter the Premises to inspect the property for maintenance, check for working batteries in the smoke detector, or similar reasons.

If you discover your tenant is clearly innocent, recontact the neighbor who called and discuss it with them. If you discover no drug activity but strong examples of disturbing the neighbor’s peace or other violations, don’t let the problem fester, serve the appropriate notices. Likewise, if you become confident your property is being used for drug activity, don’t wait for someone else to force the issue. Pursue it yourself. The following are some options suggested by Spokane C.O.P.S.:

- Advise the police narcotics division of your findings and plan of action
- If you have the option, deliver a nonrenewal notice. It is a simple, legal and non-adversarial approach. The tenant has little to fight over because you are not claiming any noncompliant action.
- If you are not near the end of the lease period, pursue one of the following:
 - 1) Serve a 3-day quit notice.
 - 2) Serve a 10-day notice for cause. “Cause” in this case may be drug activity if you have neighbors or police willing to testify, or it could be disturbance of the neighbors’ right to peaceful enjoyment of the premises, or any other significant issue of noncompliance which you have *discovered since cashing the last rent check*, including failure to maintain the property as provided in the rental agreement, additional people living in the house, or some other noncompliant behavior.
 - 3) Mutual agreement to dissolve the lease. Once a tenant knows the landlord has been informed of possible drug activity and the police have been notified, most tenants will be willing to leave right away.
 - 4) Of course, if the tenant isn’t paying the rent, you should have already served a 3-day notice for nonpayment of rent.

Finally, if you evict someone for drug activity, share the information. Landlords who are screening tenants later on may not find out about it unless the information is reported to the screening companies and credit reporting companies in your area. If it is a Section 8 renter, also contact the local housing authority.

CHOICES FOR EVICTION

When a landlord wants a tenant to move out, certain procedures must be followed. The following are reasons landlords can evict and what methods must be used in Washington. Each option has a specific legal process which you must follow. More complete definitions of eviction options and serving processes can also be found in the Revised Code of Washington (RCW), and the Washington Residential Landlord & Tenant Act.

- 1. For not paying rent.** If the tenant is even once day behind in rent, the landlord can issue a 3-day notice to pay or move out. If the tenant pays all the rent due within three days, the landlord must accept it and cannot evict the tenant. A landlord is not required to accept a partial payment.
- 2. For not complying with the terms of the rental agreement.** If a tenant is not complying with the rental agreement (keeping a cat or dog in a “no pets unit,” smoking in a non-smoking unit, having additional persons living in the unit, for example), the landlord can give a 10-day notice to comply or move out. If the tenant remedies the situation within that time, the landlord cannot continue the eviction process.
- 3. For creating a “waste or nuisance.”** If a tenant destroys the landlord’s property, uses the premises for unlawful activity including drug-related activities, damages the value of the property or interferes with other tenants’ use of the property, the landlord can issue a 3-day notice to move out. The tenant must move out after receiving this type of notice. There is no option to stay and correct the problem.
- 4. For no cause.** Except in the city of Seattle, Washington State landlords can evict month-to-month tenants without having or stating a particular reason, as long as the eviction is not discriminatory or retaliatory. If the landlord wants a tenant to move out and does not give a reason, the tenant must be given a 20-day notice to leave. The tenant must receive the notice at least 20 days before the next rent is due. The tenant can only be required to move out at the end of a rental period (the day before a rental payment is due.) Usually, a 20-day notice cannot be used if the tenant has signed a lease.
- 5. Mutual agreement to dissolve the lease.** This is a frequently overlooked method. Write the tenant a letter discussing the problem and offering whatever supporting or circumstantial evidence seems appropriate. Recommend dissolving the terms of the lease, allowing the tenant to search for other housing without going through the confrontation of the eviction process. Let Section 8 renters know that mutual agreement to dissolve the lease is permissible under the program and does not threaten eligibility.

Make sure the letter is evenhanded -- present evidence, not accusations. Make no claims you cannot support. Have the letter reviewed by an attorney familiar with landlord/tenant law. Done properly, this can be a useful way to resolve a problem to both you and your tenant’s satisfaction and without getting tied up in a lengthy court process. Done improperly, this will cause more problems than it will solve. Don’t try this option without doing your homework first.

Again, if illegal activity is going on, most tenants will take the opportunity to move on without making more waves or coming to the attention of the authorities.

HOW TO SERVE NOTICE

How must the notice be given to a tenant? In order for a landlord to take legal action against a tenant who does not move out, notice must have been given in accordance with

the notice provisions of the unlawful detainer law (RCW 59.12.040 and 59.18.365). Under RCW 59.12.040, there are three ways to serve a notice as well as mutual agreement to dissolve the lease:

1. “By delivering a copy personally to the person entitled thereto;
2. If he is absent from the premises unlawfully held, and sending a copy with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his place of residence;
3. If the person to be notified be a tenant, or an unlawful holder of premises, and his place of residence is not known, or if a person of suitable age and discretion there cannot be found, then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated.”

What if a tenant continues to live in a rental unit after receiving notice? It is at this point the landlord must go to the courthouse or attorney to begin what is called an “unlawful detainer” action. If the court rules in favor of the landlord, the sheriff will be instructed to move the tenant out of the rental if the tenant does not leave voluntarily. The only legal way for a landlord to physically move a tenant out is by going through the courts and the sheriff’s office.

When an eviction notice is served, quite often the tenant moves out and the procedure is complete. However, in those cases when a tenant requests a hearing, the details of the eviction process will be analyzed. It is at this point that 90% of the cases that are lost are not due to the facts of the case, but due to technicalities...that is, improper filling out or service of the notices. In other words, even if there is police testimony that the tenants are dealing drugs or in violation of some other law, the notice still must be served correctly according to law.

Each of the eviction options includes a legal process which has to be followed. You may be affected by the provisions of your rental agreement or a Section 8 contract, if applicable. Begin by reading and rereading the rental contract and the Landlord/Tenant Law section about evictions. Then take the following steps:

1. **Start with the right form.** Use forms already developed specifically for each eviction option. These are available at the IERA office.
2. **Fill it in correctly.** If it is a for-cause notice, you must cite the specific breach of landlord/tenant law or section of the rental agreement, which the tenant has violated. In addition, briefly describe the tenant’s non-compliant behavior. You will need to have the correct timing of the notice recorded. If it is a Section 8 rental, you may need to note that a copy of the notice is being delivered to the local housing authority.
3. **Time is accurately.** Many cases are lost because a landlord did not extend the notice period to allow for delivery time, did not wait the correct number of days to serve a nonpayment notice, or did not accurately note the timing of the process on the notice itself. Check the landlord/tenant law, your rental agreement, and if applicable, the Section 8 contract to assure you are timing the notice properly.
4. **Serve it properly.** Again, check the law and your contracts to be certain you are serving the notices correctly. This cannot be emphasized enough.

- 5. Don't guess—get help!** Unless you are truly comfortable with the process, consult with an attorney *who is well experienced in landlord/tenant law* before you serve an eviction notice. If you have property damage or drug or gang activity on your property, you already have a major problem. Now is not the time to cut corners. Using the correct legal process will save thousands in damages, penalties, and legal fees later on.

The most common procedural violations by landlords which cause eviction cases to be lost are these: 1) forcible entry of the unit, 2) locking the tenant(s) out, 3) removal or seizure of the tenant's property, 4) destruction of property, 5) utility shutoff. Don't engage in any of these activities. Besides being against the law, any of these will end your eviction case.

Remember, an eviction trial is a civil proceeding. This means that civil levels of proof are typically all that are required to succeed. For example, in eviction court, landlords have established a strong proof of drug or other illegal activity in a rental by providing the following: 1) Credible testimony of neighbors who have observed the drug-related activities, 2) the landlord's own testimony about the signs of drug activity, 3) The subpoenaed testimony of a police officer who has made an undercover buy from a tenant, or arrested a tenant for possession of drugs. For a copy of "*Warning Signs of Drug Activity*," contact your C.O.P.S., (509-835-4572), S.C.O.P.E. offices, your local Block Watch program, or call the IERA office (509-535-1018).