

## TOP TWELVE WAYS TO ABSOLUTELY LOSE AN EVICTION

1. **Violate the terms of the rental agreement**, the most common one being entering without notice. In Washington State, landlords are required to give “at least two day’s notice” of intention to enter. If you want to check for drug or other illegal activities, the number of residents in the unit, damages, etc, be sure to give notice and, if you like, have a witness with no financial interest in the property to accompany you. The IERA has a Witness Program for just such circumstances, or you can ask another landlord you know to enter with you. Take a camera or video camera with you.
2. **Have outstanding repair requests.** When a tenant hasn’t paid the rent or is causing problems, check for any uncompleted repair requests from that tenant. Once in court, the tenant will be able put forth a defense that since the unit was uninhabitable in some way, that the rent was withheld legitimately and will probably get to stay. And when repairs (especially locks and plumbing) are done, be certain they are done well so as to avoid claims of a landlord’s disregard for the tenant’s health or safety.
3. **Retaliation.** If a tenant has complained to a governmental agency about a code or regulation violation on your property (even if it was done by another tenant or neighbor), you can’t evict them for several months. Then trying to evict or raising the rents can lead to claims of retaliation. You may still evict for the following four reasons:
  - if the tenant doesn’t pay the rent
  - if the tenant doesn’t follow terms of the rental agreement
  - if the tenant made the complaint in bad faith
  - if the repairs are substantial enough that a vacant unit must be available for the tenant, and you have no vacant unit
4. **Failure to provide “reasonable accommodation.”** Under Fair Housing laws, disabled tenants must be provided “reasonable accommodation” so they may enjoy their dwelling in the same way as a non-disabled person. Landlords must allow these tenants to make changes in the unit at their own expense so they can more easily use it. Take the time to review the Fair Housing Law and “reasonable accommodation” information so that in the circumstances that a disabled tenant does not pay rent or is in violation of the rental agreement and you wish to evict, you have not neglected to adhere to the law and give the tenant a defense against the eviction process.
5. **Refuse to accept rent within the three-day notice period.** When a landlord serves a 3 Day Pay or Vacate Notice, that means that during that entire three days, you must accept the rent if they offer it. You do not have to accept partial payments, but not accepting the full rent you put you in violation of the landlord/tenant law and the eviction process will not go forward, and the judge may even give the tenant some free rent.
6. **Raise the rent without an appropriate clause in the lease.** It’s tempting to raise the rent when taxes and utilities increase and repair costs skyrocket, but if the lease is for a year, the landlord can’t raise the rent until the term of the lease is up. When rents are raised before the end of the term, the tenant does not pay the increased rent, the landlord may believe he/she can file for eviction. The landlord will lose this eviction and, again, one remedy the court may give is some amount of free rent to the tenant.
7. **Accept partial payment during the eviction process.** Once you begin the eviction process (that is, filed the complaint in court), do not accept partial rent payments! Even if you are financially strapped, the law says that accepting partial rent after an eviction has begun means you waive your right to proceed with the eviction. The solution is to tell the tenant that when he has the entire rent, to pay you at that time. The trial will be approximately 2 weeks away and he/she may have time to get it all by then. If that happens, tell him you will dismiss the case. However, you are under no obligation to

accept the full rental payment and if you chose to continue the eviction of this tenant, let him know that.

8. **The Money Order.** Tenants who pay by money order are a special problem if they claim their payment is lost in the mail. During an eviction procedure, the judge will have to allow time for the money order to be traced. In order to protect yourself, make certain any tenants who pay by money order know that if they lose a money order or if the rent payment is not received by you on time and you are told it is lost in the mail, that the tenant must begin the trace immediately. Failure to do so will be considered a breach of the rental contract on his part.
9. **Act as if the late fee is part of the rent.** The late fee is a penalty for late rent and *not* part of the rent. The problem is this: the landlord refuses to accept the rent during the 3-day notice period because the late fee is not included and continues with the eviction. When they get to court, the judge lets the tenant stay. There are three ways to handle this situation:
  - Accept the rent during the 3-day period before you file the eviction. If the late fee is not included, go ahead and cash the check. Then send the tenant a 10-day to Pay Lease Obligations or Vacate Notice (the IERA office has them).
  - Send the tenant a bill for the late fee. If he doesn't pay, go to small claims court if the amount is enough to make it worthwhile.
  - If the tenant is on a month-to-month lease, forget about the late fee and give them a no-cause notice to move.
10. **Lull the tenant.** If there has been a pattern of late rent payments and the landlord has continually accepted them, although reluctantly, then once in court, the judge will have to side with the tenant who will use the defense that he “did not know you would suddenly change your policy of accepting late rent.” This is called the “lulling” defense and almost always works. The solution to this is to enforce late-payment rules from the first month a tenant rents from you. However, if you find yourself in this situation, send a notice to the tenant (or all your tenants) that as of the next month's rent that all rent is due and payable on the first of every month and subject to a late fee on the fifth. That you have previously accepted late rents but cannot do so in the future. No matter what the breach of the rental agreement, (late rent, unruly children, parking violations, loud parties, etc) do not let the breach continue. That leaves the landlord vulnerable to the “lulling” defense at the eviction hearing.
11. **Harass the tenant.** If an eviction is filed but the tenant isn't budging, don't get impatient. Don't decide to save some money on court costs by visiting the property every day to see if the tenant has moved, to knock on the door to encourage him to move, or move their belongings out when the tenant is gone. If the tenant pleads harassment, the court can rule that they can stay for up to three months, rent free. Once the eviction is filed, stay away from the property.
12. **Constructively evict.** A “Constructive Eviction” is defined as any action caused by a landlord or someone acting on his behalf, causing the premises to become unfit for occupation. In other words, do not turn off the electricity or heat, change the locks, or remove the doors. This is sometimes called the “self-help” eviction, and judges really do not look kindly on it. Once again, you may end up giving the tenants several months of free rent and having the back rent forgiven by the court.

In the end, the only eviction method that does not endanger your property, your legal standing and, in the long run, your financial well being, is the legal one, with all the notices, court appearances and strict adherence to the rental agreement and the landlord/tenant laws.