



PREVENTIVE LAW SERIES
THE EVICTION PROCESS



Prepared by:
Legal Assistance Department
Region Legal Service Office Southwest
3395 Sturtevant Street Suite 9
San Diego CA 92136-5072
(619) 556-2211

RESIDENTIAL EVICTION PROCEEDINGS IN CALIFORNIA

There are several grounds upon which a landlord may properly evict a tenant in California: non-payment of rent, lease violations, property damage, nuisance, or after the termination of a month-to-month tenancy after thirty or sixty days' notice, as appropriate.

Because there is so much to know about each one of these evictions, this handout will focus on evictions for non-payment of rent. If you have any questions about the other reasons for eviction, please contact the Legal Assistance Office for further information.

Please be advised that this handout is not meant to replace sound legal advice and is merely a tool to give you a general overview of the process. If you are being evicted, you should contact the Legal Assistance Office to speak to an attorney.

THREE DAY NOTICE TO PAY OR QUIT

The first thing a landlord must do is properly serve the non-paying tenant a written notice to pay rent or quit within three (3) days. This is a court form, not just a personal note from the landlord. If the tenant pays the amount of rent due before the end of the third business day after receiving the notice (the day the notice is given is not counted as one of the three (3) days), the tenant may remain and no further proceedings will take place.

IF THE TENANT DOES NOT PAY BUT MOVES OUT

Even if a tenant moves out within the three (3)-day notice period, the tenant is fully liable for the past due rent. Generally, a landlord will keep the tenant's deposit to pay for this amount. If the security deposit does not cover the amount due, the landlord may sue the tenant in Small Claims or Superior Court. An Unlawful Detainer action will not be necessary. Nevertheless, moving out may increase the possibility of settling with the landlord for the amount of rent due and may reduce the total rent due by allowing the landlord to rent the unit quickly.

IF THE TENANT DOES NOT PAY AND DOES NOT MOVE OUT

Complaint and Summons: If the tenant does not pay the amount due and remains on the premises, the landlord must then go to the Superior Court and begin the proceedings for an Unlawful Detainer Action. The landlord must properly serve a copy of the complaint and issue a court summons on the tenant. The complaint must not allege any other amounts due the landlord other than past due rent.

Answer: Upon proper service, the tenant then has five (5) days to answer the complaint, if served by personal service. The answer must be completed by court form. The form is available at the Superior Court and is titled ANSWER—Unlawful Detainer. A tenant must use this form to deny any allegations made by the landlord and to raise any defenses he or she may have. To obtain an Unlawful Detainer Answer form, you can also go to <http://www.courts.ca.gov/forms.htm>. The forms then must be filed with the proper court.

There are other ways in which to respond to the complaint, such as a Demurrer or a Motion to Quash Service of Summons. Please speak to an attorney about your options. A tenant may have ten (10) days after filing his or her answer to amend the answer. Therefore, always be sure to answer in some way during the time allotted for your response because you may have additional time to amend your answer. If you do not file a response, the landlord may be granted a Default Judgment, and you will lose simply because you did not act.

WARNING: PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT INTENDED TO BE TAKEN AS SPECIFIC LEGAL ADVICE. FOR LEGAL ADVICE IN A PARTICULAR SITUATION, ALWAYS CONSULT WITH AN ATTORNEY.

Trial: After the answer is filed and any and all amendments made, the court will notify the parties of the court date. Unless the parties demand a jury trial in a timely manner when the case is first set for trial, a judge will generally hear the trial alone.

Eviction: If the landlord wins at trial or if there is a default judgment, the tenant will have to move out. A copy of the judgment or Writ of Possession should be given to the Sheriff or Marshall's office by the landlord to enforce the eviction. The Sheriff or Marshall will post a five (5)-day notice on the door of the premises to notify the tenant of their involvement. If the tenant has not moved by the end of this five (5)-day period, the Sheriff or Marshall may remove the tenant's belongings from the premises and place them on the sidewalk or street. Immediately thereafter, the landlord generally changes the locks to the premises.

ILLEGAL EVICTIONS

Self-Help Evictions: Landlords are prohibited from changing the locks, cutting of the utilities, or removing the belongings of a tenant, unless the Marshall does this by court order or the landlord follows procedures for property abandoned by the tenant.

Retaliatory Evictions: Landlords are prohibited from evicting tenants as retaliation against the tenant for complaints made to housing authorities.

Cases where landlord is restricted from evicting tenant:

- The tenant lawfully withheld rent because the rental unit was not fit to live in.
- The tenant lawfully withheld part of the rent to pay for repairs that were necessary to make the rental fit to live in or the tenant exercised a legal right.

Cases where landlord may not evict tenant:

- The notice to vacate the unit is defective (e.g., no service; more rent is demanded than actually due).
- The landlord does not have just cause to end the rental agreement.
- The landlord is terminating the tenancy because of race, religion, or another illegal reason.
- The basis for the eviction stated in the notice is false.

LEGAL ASSISTANCE SERVICES

A legal assistance attorney is available by appointment Monday from 0800 - 1100 and 1300 - 1500, Tuesday through Thursday from 0900 - 1100 and 1300 - 1500, and Friday from 0900 - 1045. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island - Coronado, Building 318 - Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

RESOURCES

California Department of Consumer Affairs: (800) 952-5210; www.dca.ca.gov

California Courts Self-Help: www.courtinfo.ca.gov/selfhelp

San Diego County Superior Court: www.sdcourt.ca.gov

California Civil Code §§ 1951.2, 1952, 1952.3 (2015)

Servicemembers Civil Relief Act, 50 U.S.C. Appx. §§ 501 et seq. (2015), § 531 (includes prohibitions against eviction of service member's dependents under some circumstances)

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