

EVICTON FOR BREACH OF LEASE

In General

A Landlord evicts a Tenant by filing an eviction case in court. The legal name for an eviction case is a "Forcible Entry & Detainer," or "FED," case.

In an eviction case, the Landlord sues to retake possession of the apartment, or the "premises," from the Tenant. The Landlord can also sue the Tenant for money.

The 2 main steps in the eviction process are: Notice, and a court case.

Step 1: The Notice

The first step is a Notice. The Landlord must serve a written eviction Notice on the Tenant. The Notice formally terminates the lease between the Landlord and Tenant. The Landlord cannot file a court case unless the lease has been properly terminated.

If the Tenant breaches the lease, the Landlord can serve a 10 Day Notice.

A 10 Day Notice gives the Tenant 10 days to move out. If the Tenant does not move out within 10 days of getting the Notice, the lease is terminated. The Landlord can then proceed to Step 2.

There are three ways to serve the Notice:

1. Personally handing it to the Tenant.
2. Personally handing it to someone over the age of 12 who is at the Tenant's apartment.
3. By certified or registered mail to the Tenant, with a return receipt signed by the Tenant.

It is important that the Tenant, or someone over the age of 12 at the apartment, actually receive the Notice. Taping the Notice to the door, or slipping it under the door, is not proper service.

Step 2: The Court Case

The second step of the eviction process is a court case. If the Tenant does not move within 10 days of receiving a 10 Day Notice, the Landlord can file a court case.

The Tenant must have 10 full days to move out. The 10 days start the day after the Tenant receives the Notice. For example, if the 10 Day Notice is served on a May 1, May 2, is Day 1, and Day 10 is May 11. The Landlord cannot file in court until May 12.

The case is filed at the Circuit Clerk's office, on the first floor of the Champaign County Courthouse.

The Landlord files a Complaint in Forcible Entry & Detainer, and has the Clerk issue a Summons that will be served on the Tenant. In the Complaint, the Landlord can also sue the Tenant for money. A copy of the 10 Day Notice should be attached to the Complaint. The Landlord should keep another copy of the Notice to bring to court with them.

To file, the Landlord must fill out the Complaint, and the top part of the Summons. The filing fee for an FED case is \$129.00 (or \$239.00 for money claims above \$15,000.00). It also costs about \$30.00 to \$50.00 to have the Sheriff serve these papers on each Tenant. If the Landlord gets a judgment against the Tenant, the judgment can include these court costs.

When the Complaint is filed, the Clerk will schedule the first court date. That is called the "First Appearance." It is usually about 2 to 4 weeks after the case is filed. The First Appearance is not a trial, but simply a chance for the Defendant to appear and request a trial.

The Sheriff serves the Summons, and a copy of the Complaint, on the Tenant. The Tenant cannot be evicted unless they get served.

The Summons notifies the Tenant of the court case, and tells them of their right to come to court and participate in the case.

In Court: The First Appearance

At the First Appearance, the Judge will "call" the case by announcing the names of the parties, and the case number. When the case is called, the Landlord and the Tenant must stand and go in front of the Judge. Then, several things could happen:

Landlord does not appear. If the Landlord does not show up at the First Appearance, their case will be dismissed.

Tenant has not been served. If the Tenant has not been served, the case will be re-scheduled for another First Appearance. The Landlord then has another chance to serve the Tenant.

Tenant has been served but does not appear. If a Tenant gets served, but does not show up, they lose by default. A Judgment can then be entered against them for everything the Landlord asked for. That Judgment could be for an eviction, and for money.

Tenant appears. If the Tenant shows up, the Judge will ask them if they admit or deny the Landlord's claim. The Tenant can admit, or deny, all or part of the Landlord's Complaint.

Tenant admits. If the Tenant admits all of the Landlord's Complaint, a judgment will be entered against the Tenant for an eviction, for the amount of money the Landlord sued for, and for court costs.

Tenant denies. If the Tenant denies the claim, a trial will be scheduled. Eviction trials are usually scheduled on the following Wednesday morning, at 8:30 a.m., in Courtroom E. See below under the heading "**In Court: Eviction Trials**" for more information about what happens at an eviction trial.

The Tenant may admit part of the claim, but deny another part. For example, Tenants often say they have moved out, and admit that an eviction judgment can be entered against them. They can deny, however, that they owe the amount of money claimed by the Landlord.

If an eviction judgment is entered, but the money part of the case is disputed, a trial over the money part will be scheduled for a later date. Trials that are only about money, and not about evicting the Tenant, are scheduled several weeks after the First Appearance.

In Court: Eviction Trials

If the Tenant does not show up for the eviction trial, they lose by default. A Judgment can then be entered against them for everything the Landlord asked for. That Judgment could be for an eviction, and for money.

If the Tenant shows up, the Landlord has the "burden of proof." The Landlord must prove that they have the right to evict the Tenant.

The Landlord proves their case by presenting evidence. In a non-payment of rent case, a Landlord must prove that:

1. The Landlord leased the premises to the Tenant.
A copy of a written lease will usually prove this. If there is no written lease, testimony must be presented that shows there was an agreement to rent the premises to the tenant, and the terms of that agreement. The terms would include the address of the premises, the monthly rent, when it was due, and any deposit the Tenant paid.
2. The Tenant breached the lease.
Someone with personal knowledge of the facts can testify about what the Tenant did to breach the lease.
3. After the Tenant breached the Lease, the Landlord served a proper 10 Day Notice.

The 10 Day Notice attached to the Complaint should include an Affidavit that states how and when it was served. The person who served the Notice can also testify about how and when they served it.

4. The Tenant did not move out.
Someone familiar with the facts can testify about this.
5. The Landlord waited 10 full days after the 10 Day Notice was properly served before filing their Complaint.
The court file shows when the Complaint was filed.

To get a judgment for money, the Landlord must also prove the amount of any rent or other charges the Tenant owes.

Often, one witness can provide all of the required evidence. That witness could be the Landlord, or a property manager.

The Tenant can cross-examine any witnesses the Landlord has testify. After the Landlord has presented all of their evidence, and has "rested" their case, the Tenant can present evidence. The Landlord can cross-examine any witnesses the Tenant presents.

After both sides have presented all of their evidence, the Judge will make a decision. That decision is called a "Judgment."

In Court: Judgments

A Judgment in favor of the Landlord will award possession of the premises to the Landlord. This means the Tenant must move out. A written version of the Judgment can be taken to the Sheriff, and the Sheriff can enforce the Judgment by removing the Tenant and their property. The Sheriff's fee to enforce an eviction Judgment is \$37.00 in Urbana, and \$39.00 in Champaign.

A Judgment in the Landlord's favor can also include an amount of money that the Judge has decided that the Tenant owes.

A Judgment in the Landlord's favor can also include court costs. This is the cost of filing the case, and of serving the Summons.

A Judgment in the Tenant's favor means the Landlord cannot evict the Tenant. It can also mean that the Tenant does not owe any money.

After Court: Enforcing an Eviction Judgment

Only the Sheriff can enforce an eviction judgment in the Landlord's favor. That means that a Landlord with an eviction judgment in their favor cannot themselves remove the Tenant. Instead, the Landlord must take their judgment to the Sheriff's office, and arrange for the Sheriff to enforce the judgment. The Judgment is good for 90 days, after that time period the Judgment is no longer enforceable. This means that if you want the

Sheriff to enforce the Judgment you must take it to them within 90 days of the date when the Judgment was entered.

The Sheriff charges \$37.00 to enforce an eviction Judgment in Urbana, and \$39.00 in Champaign. Outside of Urbana and Champaign costs slightly more.

The Sheriff usually enforces an eviction judgment by first notifying the Tenant, at the premises, that an eviction judgment has been entered against them. The Sheriff usually informs the Tenant that they must leave, and that if they have not left when the Sheriff returns a few days later, they will be removed.

Usually, then, the Sheriff returns to the premises a second time, a few days later. If the Tenant or their property is still there, the Sheriff supervises the removal of the Tenant or their property. The Tenant's property is removed and placed somewhere outside the premises, usually between the sidewalk and the street.

If the Landlord has a valid eviction judgment that is enforced by the Sheriff, the Landlord is not liable to the Tenant if, after removal by the Sheriff, the property is lost or damaged.

If the Landlord gets a valid eviction judgment against the Tenant, the Landlord has no duty to store the Tenant's property. However, if the Landlord chooses to store the Tenant's property, the Landlord may then be liable to the Tenant if that property is damaged or lost. Landlords who want to store, use, or sell a Tenant's property after an eviction judgment should therefore be careful, and should consult with an attorney before doing so.

Illinois Eviction Notices

Written Notice Required

Illinois law generally requires a written eviction notice. The landlord must serve the tenant with the written notice before filing a court case. There are two exceptions:

- (1) A lease can waive the right to notice. *Avdich v. Kleinert*, 69 Ill.2d. 1, 370 N.E.2d. 504 (1977); *Frocks v. Ziff*, 397 Ill. 497, 74 N.E.2d 699 (1947).
- (2) If the lease sets a fixed time for its expiration, no written notice is required. 735 ILCS 5/9-213.

If a written notice is not required, but the landlord gives one anyway, the notice must comply with the statute.

Service of Notices

Service of notices is governed by 735 ILCS 5/9-211. They can be served in one of three ways in most cases:

- (1) Personally handed to the tenant;
- (2) Personally handed to someone at the tenant's home, who is at least 13 years old;
- (3) By certified or registered mail to the tenant, with a return receipt signed by the tenant.

If no one is living at the tenant's house, the landlord may post the notice.

If the tenant actually gets the notice, improper service may be waived. *Prairie Management Corp. v. Bell*, 289 Ill.App.3d 746, 682 N.E.2d 141 (1st Dist. 1997). Proof of non-receipt can be difficult if the service of notice is proper on its face. Sometimes the landlord acknowledges improper service, by, for example, posting the notice when the tenant is in possession.

Contents of Notice

Premises Described

The notice must describe the premises well enough so they can be identified. *Brite-House Co. v. Cary*, 345 Ill.App. 509, 104 N.E.2d 125 (1st Dist. 1952); *Worley v. Ehret*, 36 Ill.App.3d 48, 343 N.E.2d 237 (5th Dist. 1976).

Notice of Termination

The notice must say that the tenancy will be terminated. It does not have to use the word "terminated", but it must make clear that at the end of the notice period, the tenant will lose rights to the home.

Certificate of Service

The affidavit of service does not need to be completed on the copy given to the tenant. After the tenant is served, the landlord should complete the affidavit of service and sign in front of a notary. A copy of the notice with a completed affidavit of service must be filed with the court file.

Dates

Date of Service

Notices may not be served until after the default, if the notice is based on a default. Regardless of the date on the notice, the notice period does not begin to run until after service.

Date of Termination

Notices do not have to give the date on which the tenancy will terminate. They must give the number of days after service of the notice that the tenancy will terminate. The landlord may give more days than the statutory requirement.

Even after the tenancy is terminated, the landlord still must proceed with a court order for the eviction. It is the termination of the tenancy that gives the landlord the right to file a court action seeking eviction.

Until the full notice period given for the notice runs, the landlord cannot file in court for an eviction action. *Hoefler v. Erickson*, 331 Ill.App. 577, 73 N.E.2d 448 (1st Dist. 1947).

How to Count the Period

The notice period is counted starting with the day after the notice is served. 5 ILCS 70/1.11. The last day of the period is also excluded if it falls on a Saturday, Sunday, or holiday. If the tenant was served by mail, the notice period starts from the day after the tenant actually received the notice. *Avdich v. Kleinert*, 69 Ill.2d 1, 370 N.E. 2d 504 (1977).

Landlord's 5-Day Eviction Notice

Only For Nonpayment of Rent

A 5-Day Notice is given for nonpayment of rent. 735 ILCS 5/9-209. It must state the amount of rent due and give five days for the tenant to pay the rent.

What Rent Is Due

The notice can only ask for the rent that is actually due at the point the notice is issued.

The notice must state a definite amount of rent as due and owing. *Weinberg v. Warren*, 340 Ill.App. 365, 92 N.E.2d 217 (1st Dist. 1950).

Only rent can be included in the notice. *Payne v. Coates Miller, Inc.*, 52 Ill.App.3d 288, 367 N.E.2d 406 (1st Dist. 1977).

If the Tenant Owes Less than Demanded

If the tenant owes less money than the landlord has demanded, the tenant needs only to pay the actual rent money due and owing to defeat the eviction notice. The tenant must pay all that is due, however; payment of less than what is due will not defeat the eviction, even if the landlord demands more than what is owed. *Elizondo v. Medina*, 100 Ill.App.3d 718, 427 N.E.2d 381, 56 Ill.Dec. 301 (1st Dist. 1981).

Tender of Rent by Tenant

If the tenants can pay the rent due, they should tender the money. Tender is when a tenant offers the rent due to the landlord. Ideally, tender should be made in the presence of witnesses. The tenant should get a receipt if the landlord accepts the money. Tender must be made before the five days are up. Tender will defeat the eviction action even if the landlord refuses the money. *Madison v. Rosser*, 3 Ill.App.3d 851, 279 N.E.2d 375 (1st Dist 1972).

Full payment

If the notice does not contain language saying only full payment will waive the notice, then the landlord's acceptance of even partial payment may be considered as reinstating the tenancy.

Landlord's 10-Day Eviction Notice

For Lease Violations

A 10-Day Notice is given for violating any lease provision. 735 ILCS 5/9-210. There is no right to cure a 10-Day Notice under state law. There is a right to cure under some ordinances. Acceptance of rent for a period after the notice is issued can waive the notice.

Lease violations

The violation cited must be a violation of the lease, not a side agreement. *Knaus v. Beuck*, 331 Ill.App.356, 73 N.E.2d 160 (1st Dist. 1947). Landlord need not specify conduct but must give the "character of the default," or a general description of what provision of the lease was violated. Any ambiguities in the lease are construed against the drafter.

If a 10-Day Notice is given for nonpayment of rent, the Illinois Supreme Court has permitted the tenant to cure by tendering the rent within the 10 day period. *Woods v. Soucy*, 166 Ill. 407, 47 N.E. 67 (1897).

Repeated nonpayment or late payment of the rent could also be grounds for a 10-Day Notice, possibly without a right to cure.

Landlord's 30-Day Eviction Notice

Where there is a month-to-month tenancy, both the landlord and tenant may terminate it at any time by giving a 30-Day Notice. 735 ILCS 5/9-207. There does not need to be any reason for terminating the tenancy.

A 30-Day Notice must give 30 days before the next rent payment is due. For example, if rent is due on the first of the month, a 30-Day Notice delivered on November 5 does not terminate the tenancy until January 1. A November 5 notice cannot terminate the lease before December 1, so the tenant gets December's full month rental period before the lease terminates.

LANDLORD'S 10 DAY NOTICE

TO: _____
TENANT

STREET ADDRESS _____

CITY _____ Illinois

YOU ARE HEREBY NOTIFIED THAT you have violated the terms of the lease for the premises you rent at the above address.

You violated the lease by:

YOU ARE FURTHER NOTIFIED THAT if you do not vacate the premises within 10 days after getting this Notice, your lease will be terminated. If the 10th day after receipt of this Notice falls on a Saturday or Sunday or holiday, then your lease is terminated on the following weekday.

After your lease has been terminated, an eviction case can be filed against you in court.

No other notice or demand is necessary before filing an eviction case against you.

DATED: _____, 2016 SIGNED: _____

AFFIDAVIT OF SERVICE

Under the penalties for perjury provided by Section 1-109 of the Illinois Code of Civil Procedure, I certify that I served a copy of this Landlord's 10 Day Notice by:

- Hand delivering a copy to the tenant named above on _____, 2016.
- Handing a copy to _____, who is at least 13 years old, and who resides at the address listed above, on _____, 2016.
- Mailing a copy to the tenant named above by certified or registered mail, with a return receipt signed by the tenant. *(Bring signed receipt to court.)*

DATED: _____, 2016 SIGNED: _____
PERSON DELIVERING NOTICE

SIXTH JUDICIAL CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

_____))
Plaintiff,))
))
v.)) No. 2016-LM-_____))
_____))
Defendant.))

COMPLAINT FOR EVICTION

_____, Plaintiff, claims as follows:

1. Plaintiff is entitled to possession of the following described premises in Champaign County, IL:

STREET ADDRESS _____

CITY _____

- 2. Defendant breached the terms of the parties' lease.
- 3. Notice terminating Defendant's tenancy has been served on Defendant. A copy of that Notice is attached.
- 4. Defendant unlawfully withholds possession of the premises from Plaintiff.

THEREFORE, Plaintiff asks for Judgment against Defendant:

- A. For possession of the premises; and for costs of this suit.
- B. For the sum of \$ _____,
for rent _____
DESCRIBE WHAT MONEY CLAIM IS FOR

CERTIFICATION

Under the penalties for perjury provided by Section 1-109 of the Illinois Code of Civil Procedure, I certify that my statements in this document are true and correct.

DATED: _____, 2016 SIGNED: _____

PRINT NAME _____
ADDRESS _____
CITY/STATE/ZIP _____
TELEPHONE _____