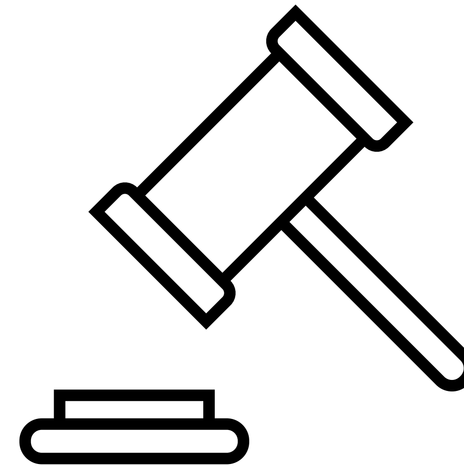
A Landlords Guide To Evictions



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INTRODUCTION

This guide is designed to educate Landlords about the process and procedures in Landlord-Tenant cases. I believe the following information will better help Landlords understand the process, make them better informed and reduce the questions they may have about the law. Landlords understanding of the procedures involved in landlord-tenant lawsuits will help them be a more effective landlord and enable more efficient action against problem tenants.

GENERAL PROCEDURE IN LANDLORD-TENANT LAWSUITS

The first step in any legal action is to file a document known as a “petition” with the court. Almost all landlord-tenant cases are filed in the Associate Division of the Circuit Court, which has statutory jurisdiction over rent-and-possession, unlawful detainer and expedited eviction cases.

After the petition is filed and the filing fee is paid, the next step is “service” of the lawsuit on the Tenant(s). It is a fundamental principle in our system of justice that you cannot obtain legal relief against another person through the courts unless that person is aware of the case and has an opportunity to respond.

The “summons” served on the Tenant along with a copy of the petition will notify the Tenant of the initial court date. Service of the lawsuit can be done by a sheriff’s deputy who personally delivers the summons and petition to the Tenant or a member of the Tenant’s family at the residence.

For faster and usually more reliable results, we use a private process server to serve the lawsuit.

SERVICE IN A LAWSUIT

Rent-and-possession and Expedited Unlawful Detainer cases can also be served by "posting" and mail – that is, by taping a copy of the summons and petition on the door of the leased premises and mailing a copy to the Tenant. The posting must be done by a sheriff's deputy or special process server, and the mailing will be from our office.

General Unlawful Detainer cases must be personally served. If personal service is not obtained, then we can ask the Court for Posting. This will delay the procedure in that we must obtain a new court date for the posting summons.

A rent-and-possession, unlawful detainer or expedited eviction lawsuit must be served on the Tenant at least four days before the initial court date (called the "return date") specified in the summons. A contract action (collection of rent or damages after the Tenant vacates) must be served at least 10 days before the initial court date. We will appear at the initial court date on your behalf.

The downside to posting is that you cannot obtain a monetary judgment (Back Rent Due or Damages) against the Tenant – only a judgment for eviction – unless the Tenant personally appears in court in response to the lawsuit.

There are three possible results of the initial court appearance:

1) If the Tenant does not appear, the court will enter a default judgment against the Tenant. (SEE POSTING ABOVE)

2) If the Tenant appears and does not dispute the allegations in the petition, the court will enter a consent judgment against the Tenant.

3) If the Tenant appears and disputes the allegations in the petition, the case will be set for trial.

In eviction cases, if the Tenant disputes the petition at the initial court appearance and is still in possession of the leased premises, the court usually sets a trial date (the Courts control their calendars and assigns trial dates) and informs the parties on the spot. However, if the Tenant has vacated the premises by the time of the initial court appearance, the court will set the trial at a later time.

If the case must be tried, you and any witnesses needed will need to meet at least briefly with one of our attorneys before the trial to prepare. At the trial, you and your witnesses' will present testimony and exhibits first. Your attorney will ask questions to bring out the necessary points (direct examination). Then the tenant or the tenant's attorney will have an opportunity to ask questions (cross-examination). After all of your evidence has been presented, the tenant and his or her witnesses will have the opportunity to present testimony and witnesses. You or your attorney will be able to cross-examine them. When both sides have finished presenting evidence, the court makes its decision and enters a judgment based on the evidence presented. The court usually announces its judgment at the conclusion of the trial. Most landlord-tenant trials are relatively short in duration – usually no more than 30 minutes, and often as little as 5 or 10 minutes

SERVICE OF NOTICE BY LANDLORDS (Not to be confused with Court Service)

One of the most important things for a landlord to know, even before filing a lawsuit, is what is proper “Notice” and when must it be given.

As interpreted by Missouri courts, service of a notice generally requires personal delivery of a notice to the tenant. This simply means handing or at least offering to hand the notice to the tenant so that the person serving the notice can testify, if necessary, that the tenant received the notice, or at least had the opportunity to receive it. The tenant does not have to sign the notice, or even touch it. If the tenant sees you, puts his hands in his pockets and says, “I’m not taking that,” you only need to say, “You’re served,” and place the notice where the tenant can retrieve it if he chooses. If a tenant jumps into her car and locks the doors, you can place the notice on the windshield under the wipers and tell her she is served. The same would apply if a tenant won’t open the screen door to his unit, or if he looks out a window. The point is, there needs to be some personal contact with the tenant. You must make the tenant aware you are serving the notice and make it available to her in some fashion.

If you do not make personal contact with the tenant, it is not sufficient service of a notice to simply tape the notice somewhere you think the tenant will see it (unless you have provided for this method of service in a written lease).

Note that if more than one tenant signed the lease for the particular unit, a separate copy of any notice should be served on each such tenant. It is not sufficient to serve one tenant and hope that tenant will also give the notice to the other tenants unless you have a lease clause saying that service on one tenant is service on all.

Sometimes landlords try to serve notices by certified mail. The courts usually accept notices served this way only if the landlord can present a certified mail receipt signed by the tenant. ***A receipt signed by someone other than the tenant will not suffice***.

TIPS FOR RECORD-KEEPING FOR NOTICES

Fill out the original of the notice form to fit the particular situation.

If there is more than one tenant to be served, make copies for the additional tenants.

Also make two more copies – one for your office file and one for your attorney if it becomes necessary to file suit. The service information at the bottom of the notice does not have to be completed for the copy or copies served on the tenant(s). However, the service information should be completed on your office copy and attorney's copy.

By statute, certain notices can be served by either handing a copy to the tenant, handing a copy to someone else at least 18 years old who resides at the leased premises, or posting (taping) the notice on the door if no one comes to the door. When this statute applies, the recommended notice forms on the Forms page include those options in the "certificate of service" area.

NOTE: Do not confuse the service of notices discussed in this section with the ability to have a court summons in an eviction lawsuit served by the sheriff by posting the summons on the rental unit. Landlords should follow the guidelines in this section for serving any required pre-lawsuit notices.

TYPES OF CASES

In general, there are three types of lawsuits landlords can file against tenants, which are discussed in more detail in the following sections.

Rent-and-possession – the most-often-used remedy when tenants do not pay rent

Unlawful detainer – eviction cases when tenants breach leases or stay after their leases expire or are terminated

Expedited evictions – for illegal drugs, or threatened injury or property damage

Before discussing these types of lawsuits, there is an important distinction to be made between rent-and-possession lawsuits and unlawful detainer cases:

If the tenant's only breach of the lease is non-payment of rent, and you do not mind if the tenant stays so long as the rent is paid, then a rent-and-possession case will be appropriate. This is because under the rent-and-possession statutes, ***the tenant has the right to continued possession of the leased premises if he or she pays the rent and court costs before judgment is entered or the entire amount of the judgment within 10 days after the judgment is entered.***

On the other hand, if you want to evict the tenant even if the rent is paid, then an unlawful detainer action would be the appropriate type of eviction lawsuit because there is no right to "pay and stay" in unlawful detainer cases. Subject to proper notice being given and having appropriate language in your written lease, most breaches of a lease, will give rise to an unlawful detainer action.

RENT-AND-POSSESSION LAWSUITS

Rent-and-possession actions arise simply from the non-payment of rent and are governed by Chapter 535 RSMo. To prevail in such a case, the only three things you need to prove are:

- There is rent due and payable
- Demand was made for payment, and
- The tenant has failed to pay

Note: A Tenant CANNOT be evicted for failure to pay utilities or other charges other than rent and/or late fees.

Note: While the statutes say a claim for property damage cannot be included in a rent-and-possession case, you have the right under court rules to plead more than one legal claim in the same lawsuit, so our local judges have held that you can ask seek compensation for property damage so long as you do so in a separate count of your lawsuit.

Jury Trials

There is no right to a jury trial in the original trial of rent-and-possession cases, but if a new trial is requested, either side can request that the new trial be heard by a jury. **Also, because jury trials are available in unlawful detainer cases, it is strongly recommended that landlords include a prominent clause in their leases whereby both the landlord and the tenant waive the right to a jury trial in any litigation involving the lease. To be clearly enforceable, attention must be drawn to a jury waiver clause in larger bold type immediately adjacent to the signature area on a lease.** (Note: Jury waiver clauses are not permitted in Section 8 leases, however, and if included, they will not be deemed enforceable.)

There is a special requirement to be aware of if you have purchased (or acquired through foreclosure or tax sale) rental property subject to pre-existing leases. In such a situation, you become the new landlord under the existing lease, but you must give written notice to the tenants that you own the property before you will be entitled to sue for rent and possession. This notice does not need to be given, however, until and unless you need to sue for rent-and-possession. Be aware that a copy of your deed to the property must be attached to the notice.

UNLAWFUL DETAINER LAWSUITS

An unlawful detainer lawsuit should be filed if you want to evict the tenant no matter what – even if the rent is paid. Unlawful detainer is appropriate in any situation where the tenant retains possession of the leased premises after the lease terminates, including:

- The tenant retains possession after the date specified in a written lease for termination of the lease, or the tenant under an oral lease gives written notice that he intends to vacate the premises on a specified date and then fails to do so (no pre-lawsuit notice is required in these cases).
- The tenant retains possession beyond the date specified in a landlord's properly served 30 day notice to terminate an oral lease (You must give a complete month, starting at the first of the month).
- The tenant retains possession beyond 10 days after you have served a proper notice to terminate a written lease for breach of the lease. (The breach can include non-payment of rent, but see the caution below.)

You can give a notice to terminate a lease for cause 10 days after the notice is served if the tenant does any of the following:

- Breaches (violates) any of the provisions of the lease
- Assigns or transfers his interest in the lease without your written consent
- Causes damage to the premises beyond ordinary wear and tear
- Allows the possession, sale or distribution of illegal drugs on the premises
- Permits the premises to be used for gambling or prostitution

LEASE TIP: If you wish to pursue an unlawful detainer action for breaching the lease by failing to pay rent, it is strongly recommended that your leases include a clause waiving common law notice of default and termination procedures and substituting a contractual method of giving notice. The following language should suffice:

"Upon lessee's default or breach in the performance of any condition or covenant of this lease, including tenant's obligation to pay rent, lessor shall be entitled to terminate this lease by giving written notice to lessee specifying lessee's default or breach. Lessee agrees that such notice shall constitute sufficient notice to terminate the lease and for lessor to initiate an unlawful detainer action. Lessee waives all other common law or statutory notices."

If you want to evict a tenant even if the tenant cures the breach or breaches of the lease, the appropriate notice for situations in which the tenant:

- assigns or transfers his interest in the lease without your written consent,
- causes damage to the premises beyond ordinary wear and tear,
- allows the possession, sale or distribution of illegal drugs on the premises, or
- permits the premises to be used for gambling or prostitution

<u>Jury Trial</u>

There is clearly a right to a jury trial in an unlawful detainer action. To avoid the substantial additional time and expense involved in a jury trial, it is strongly recommended that your leases include a clause whereby both you and the tenant waive the right to a jury trial in any litigation involving the lease. To be clearly enforceable, attention must be drawn to a jury waiver clause in larger bold type immediately adjacent to the signature area on a lease. (Note: Jury waiver clauses are not permitted in Section 8 leases, and if included, they will not be deemed enforceable.)

- In an unlawful detainer case, you can seek the following remedies:

- Possession of the leased premises
- Rent that was unpaid before the termination date of the lease
- Twice the fair rental value for the period after termination of the lease during which the tenant remains in possession
- Reimbursement for damages to the premises in excess of ordinary wear and tear
- Late fees and other charges owed under the lease
- Attorney’s fees and litigation expenses if you have a clause in your lease authorizing them
- Court costs

EXPEDITED EVICTIONS (441)

Expedited evictions are a type of eviction case created by statute in 1997. They are covered in §§ 441.710 – 441.880 RSMo. The procedure is unique in that it can be used to exclude non-tenants as well as tenants from leased property.

You can seek expedited eviction on any one or more of the following grounds:

An emergency situation exists whereby eviction by other means would, with reasonable certainty, result in imminent physical injury to other tenants or the landlord, or physical damage to the landlord's property costing more than 12 months rent.

(However, this ground cannot be used unless you first make a reasonable effort to abate the emergency situation through public law enforcement authorities or through local mental health services personnel authorized to take action pursuant to §632.300 RSMo. et seq., which allow civil detention of persons likely to cause physical harm to others or themselves.)

Drug-related criminal activity has occurred on or within the property leased to the tenant.

The property leased to the tenant was used in any way to further, promote, aid or assist in drug-related criminal activity.

The tenant, a member of the tenant's household or a guest has engaged in drug-related criminal activity either within, on or in the immediate vicinity of the leased property.

The tenant has given permission to or invited a person to enter onto or remain on any portion of the leased property knowing that the person had been removed or barred from the leased property pursuant to the provisions of the expedited eviction statutes.

The tenant has failed to promptly notify the landlord that a person whom the landlord previously had removed from the property has returned to, entered onto or remained on the property leased by the tenant with the tenant's knowledge.

No advance notice is necessary to file for expedited eviction unless the perpetrator of the illegal activity is someone other than the actual tenant. If the perpetrator is someone other than the tenant, then you must give 5 days written notice (*See Notice Section Above*) to the tenant setting out the provisions of §441.750 RSMo. and specifying the grounds for expedited eviction. You can then file for expedited eviction against the tenant after 5 days unless the tenant delivers written notice to you within the 5-day period that the tenant has either: (1) sought a protective order, restraining order, order to vacate the premises, or other similar relief against the perpetrator, or (2) reported the illegal activity to a law enforcement agency or county prosecuting attorney in an effort to initiate a criminal proceeding against the perpetrator.

If you prove (provide evidence not just someone said) that the tenant was personally responsible for one or more of the grounds for expedited eviction, the court will order the tenant evicted.

If someone other than the tenant was the perpetrator and you prove one or more of the grounds for expedited eviction, but the tenant proves that he or she in no way furthered, promoted, aided or assisted in the illegal activity, and that he or she did not know or have reason to know the activity was occurring or was unable to prevent the activity because of verbal or physical coercion by the perpetrator, then the court can order the perpetrator excluded from the property but cannot evict the tenant. If the tenant cannot prove these defenses, however, the tenant can also be evicted.

You are entitled to continue collecting rent from a tenant while an expedited eviction case is proceeding. It appears you can ask the court to award unpaid rent in the case.

Jury Trial

There does not appear to be a right to a jury trial in expedited eviction cases.

Finally, it is important to note that if you act in good faith in pursuing an expedited eviction based on information you received, you are immune from civil liability to the tenant and other persons against whom allegations may be made.

Time Frame For A Lawsuit

In rent-and-possession, unlawful detainer and expedited eviction cases, the statutes require service of the summons and petition on the Tenant at least 4 days before the initial court date. Typically the initial court date is set approximately 3 weeks after the filing of the suit to allow sufficient time for service. The initial court date will have to be delayed if the lawsuit cannot be served at least 4 days before that date.

Summonses are only valid for 30 days after issuance. If they cannot be served within that time frame, a new summons will have to be issued, leading to further delay.

Also remember the requirements for Service In A Lawsuit

ENFORCING A JUDGMENT FOR POSSESSION

The court will send a notice to the tenant advising of the judgment and the need to vacate the premises; sometimes this prompts the tenant to move, but often it does not. If the tenant does not move voluntarily after a judgment for possession is entered, how soon the eviction can be enforced depends the judge's ruling.

By statute, if the judgment was entered because the tenant defaulted or as the result of a trial, the tenant has until the 10th day after entry of the judgment to file a motion to set aside the judgment or a request for a new trial, and a request for enforcement of the judgment will not be honored by the court until the 11th day after judgment entry. (If the 10th day falls on a weekend or holiday, the next business day counts as the 10th day.)

Sometimes a judge will grant more than 10 days for a tenant to vacate before the eviction can be enforced. If so, this will be stated in the judgment.

Upon your request we will file the necessary request with the court to issue an order to the sheriff for the eviction (called an "execution for possession").

After an execution for possession has been requested, we typically receive the execution back from the court clerk within a day. We must then get the execution order to the sheriff. Ordinarily we mail the execution order to the sheriff's department.

In the City of St. Louis, you will need to contact the Sheriff at 314-662-0001 (we will send an Email to notify you)

In all other Counties the Sheriff will contact you (The Landlord) to arrange for a date for eviction.

7 Days notice is always given to the Tenant before execution, therefore this whole process could take at least 2 weeks.

INFORMATION NEEDED FOR ALL LANDLORD-TENANT LAWSUITS

When you want to take legal action against a problem tenant, we will need certain information. Martin, Leyhe, Stuckmeyer and Associates provides an intake form for you to complete which gives us all the information needed. We also have a Schedule of Fees in our Employment Agreement so that you will know in advance the costs associated with your Landlord Tenant action.

1)Name of owner of leased premises, or authorized agent for owner (landlord)

2) Name(s) of tenant(s) and addresses where they can be served (home and work), as well as their phone numbers, birth dates and Social Security Numbers if known.

3) Address of leased premises, including apartment number

4) Terms of lease

5) Copy of written lease if any

6)Essential terms of oral lease – rent amount, rent-paying date

7) Amounts of unpaid rent (and late charges, if applicable), itemized by month and totaled (with a copy of your tenant ledger if you maintain such a ledger)

8) Itemized and totaled list of damages to premises, if known

9) Specification of other breaches (violations) of lease, such as noise, trash, illegal activities, etc.

Common misconceptions and mistakes made by Landlords

Or

Things You Need To Know To Make Both Of Our Jobs Easier

Month to Month Leases

In most situations, a termination notice for a month-to-month lease must be given at least one month before the termination date (see details below).

Notices to terminate month-to-month leases must be in writing. The landlord must be able to prove the notice was served on the tenant and should follow the guidelines in the "Service of Notices" section above.

For month-to-month leases a notice served before the next rent due date will terminate the lease 30 days after the next rent due date. (Calendar Notice)

EXAMPLE

Assume the rent due date is the first of the month.

A notice served before March 1 will terminate the lease at the end of March. However, a notice given after March 1 but before April 1 could only terminate the tenancy at the end of April.

CAUTION

The termination notice must state the correct termination date. In the example at left, if the notice specified a termination at the end of March but was served on or after March 1, the notice would be ineffective. In this situation, the notice would have to be served again before April 1 specifying the termination date as the end of April.

WRITTEN LEASES

The first line of defense in dealing with problem tenants is having a good written lease. While it is possible to have oral leases of residential units, written leases almost always provide superior protections for landlords (These include recovery of Attorneys Fees, Court Costs and Waiver of Jury Trial). We are always happy to make recommendations and/or draft a comprehensive lease for you.

Warning about hold-over tenants: Absent language to the contrary in a written lease, if the lease states a definite termination date, the tenant stays beyond that date and pays rent for any period beyond that date, and the landlord accepts that rent, Missouri law provides that the lease is renewed with all the same provisions of the prior written lease, except that the term of the lease is now month-to-month. If a landlord wishes to avoid this result, the landlord should not accept rent from a tenant for any period after the lease ends. If the landlord has accepted rent for a period after the lease ending date and thereby created a month-to-month tenancy, such a tenancy can be terminated by giving written notice of termination as discussed previously.

PROPERTY DAMAGE BY TENANTS

Most leases contain a specific clause requiring tenants to surrender the premises at the end of the lease in the same condition as when the tenant first occupied the premises, ordinary wear and tear excepted. Even if a lease does not contain such a clause, Missouri law imposes a duty on tenants not to commit “waste,” which has the same effect because “waste” is defined as “…the failure of a lessee to exercise ordinary care in the use of the leased premises or property that causes material and permanent injury thereto over and above ordinary wear and tear.” Intentional damage to property is also covered by this definition. Further, it may also be possible to hold the tenant responsible for property damage done by third parties such as visitors or even burglars, particularly if appropriate language is included in the lease.

While it is possible for a landlord to file a separate lawsuit against a tenant for property damage, such claims are commonly included in eviction lawsuits. In such cases, if the landlord believes there is a possibility of damages exceeding the security deposit, the recommended procedure is to first obtain a preliminary judgment to get possession of the premises so that the damages can be evaluated before returning to court to obtain a final judgment including property damage and other monetary losses such as unpaid rent.

SELF-HELP EVICTION ILLEGAL IN MISSOURI

WARNING: In Missouri, the only legal way to evict a tenant is through court action. Unless the tenant voluntarily vacates, the landlord must have an eviction judgment entered by the court and must have that judgment enforced by a sheriff's deputy.

So-called "self-help" evictions, where the landlord physically removes a tenant and/or the tenant's property without a court order, or attempts to exclude the tenant by changing locks, removing doors, or turning off utilities, are illegal. (The only exception is when you temporarily shut off utilities for health or safety reasons, such as a gas or water leak.)

If a landlord uses such self-help eviction techniques, the tenant can sue for wrongful eviction (technically "forcible entry and detainer"). The tenant can recover any actual damages proved by the tenant and can also claim punitive damages.

REMOVE EVERYTHING THE DAY OF THE EVICTION

On the day that the Sheriff arrives to return possession to the Landlord. The Landlord must be prepared to remove ALL of the contents in the Tenant's unit. ***DO NOT JUST CHANGE THE LOCKS AND CLEAN IT OUT ANOTHER DAY!!!***

You must remove the contents the day of the eviction and arrange for them to be taken to the dump. If you leave the Tenant's things in the unit, you are now responsible to them for any damage or loss. You will also be required to give them access to move their things. This does not mean that they get possession back and you can be there and supervise the removal, but they have a right to their property.

If you do not allow them to remove their things after the eviction, you could be sued for their loss and that could include punitive damages. I understand that there is a cost involved in this and that as a Landlord you have already incurred a lot of loss, but that costs could be small compared to litigation and a possible money judgment.