

Best Practices for Evicting a Tenant

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Best Practices for Evicting a Tenant

While there is no single right or wrong way to go about evicting a tenant, there are certain industry standards that every real estate professional should follow to avoid legal and financial difficulty. The primary considerations that a landlord must face when it comes to evicting a tenant include local eviction law, termination agreements, eviction etiquette, tenant notice, and enforcement. The eviction process is not a pleasant one, but by following these basic guidelines you can make it a much smoother one.

Reasons for Eviction

Eviction laws vary by state and local government, but there are some common laws that apply to nearly every rental situation. The first step of the eviction process is to determine whether you actually have the right to evict. While there are many reasons that are grounds for eviction, others that seem as though they are grounds for eviction do not meet those standards. At the very least, the tenant must violate some element of the lease or rental agreement that they signed. Doing damage to property is not always grounds for eviction if the damage falls under normal wear and tear due to living and is typically covered by the amount of the security deposit.

One of the main reasons that you can evict a tenant is if the lease has expired and the tenant refuses to vacate the property. At that point, there is no contractual justification for the tenant's continued occupation of your rental property and they can successfully be evicted. Other common reasons are violations of a portion of the rental agreement, including the addition of unauthorized pets, renovation to the property, damage done to the property that vastly exceeds the amount covered by the security deposit, unauthorized occupants, or failure to pay rent.

Failing to pay rent is by far one of the most common reasons for eviction as it directly affects your ability to pay the mortgage on the rental property. Landlords require tenants who pay the rent on time in order to cover the financial burden of the rental property and make a profit, which is something that most judges are sympathetic to. However, simply being a few days late is rarely ever grounds for legal eviction. A judge will want to see proof that you gave the tenant fair notice of their violation and ample time to fix the problem. In fact, many apartment complexes and individual real estate professionals choose to allow for a late payment grace period in which the tenant can pay rent up to one week late, usually with the addition of a small late payment fee.

In the case of property damage that exceeds the amount covered by the security deposit, it is essential to fully document the damage before trying to prove your case in court. The judge will want to see photographic evidence as proof of the damages caused by the tenant. You will likely need reasonable repair estimates to prove that the amount you will have to pay to repair the damage is significantly greater than the security deposit.

Other violations of the rental agreement, such as the addition of unauthorized pets or house guests, are often more difficult to prove as grounds for eviction. It is especially necessary to provide the tenant written notice of these violations before you attempt to serve an eviction notice through the court system. The violation must clearly be spelled out in the lease agreement and you need to provide the tenant with notice of the violation before you attempt to evict them.

As you can see, even when a tenant is obviously violating the lease agreement, there are still plenty of gray areas in the eviction process. When it comes to determining whether you have the right to evict a tenant, the first step is determining your reasons for eviction. All of the aforementioned reasons have a few factors in common. First, the infraction must always be in violation of a written lease agreement. The infraction must also affect your ability as a real estate professional to benefit financially from the property. Even once the tenant meets these important criteria, there are still other considerations to take into account, particularly the Landlord and Tenant Act.

The Landlord and Tenant Act

Like eviction laws, tenant rights vary from state to state. There are different rights that apply to complexes but do not apply to privately owned property, and vice versa. The Landlord and Tenant Act, officially known as the Unified Residential Landlord and Tenant Act, began in 1972 as a way to unify the basic rules and regulations related to landlord and tenant interactions from state to state. Nearly all 50 states recognize this act as a basis for landlord-tenant legality issues with some common modifications depending on the state.

The first element of the Landlord and Tenant Act is the lease agreement. While a handful of states allow the landlord to create an oral lease, the best practice for the real estate industry is to have a hard copy of a written lease for both the landlord and tenant. The lease must be signed by both, and in some states it must be notarized before it is determined official. Oral leases are nearly impossible to hold up in a court of law, so even if your state allows them, it is in both your best interest and your tenant's to draft a written lease agreement.

The written lease should cover the basics of the Landlord and Tenant Act, including the security deposit, rent amount and payment due date, grace periods as applicable, maintenance responsibilities, guest policy, and pet policy. Under the Landlord and Tenant Act, landlords are authorized to add to a lease agreement as long as they are not violating tenant rights in their state. The most important part of the eviction process occurs before the tenant even moves in. When you draft a lease agreement, plan for the worst.

Best practice is to determine what you would evict a tenant for. Then, be sure those reasons are clearly spelled out in the lease agreement. If you attempt to evict a tenant based on reasons that are not included in the lease agreement, a judge can easily determine that your eviction is without grounds.

The Landlord and Tenant Act also covers eviction itself. In the event that a tenant refuses to pay their rent, is significantly late on rent, causes significant property damage, harasses other tenants, or breaks a clause that is clearly outlined in the lease agreement, the Landlord and Tenant Act supports the real estate professional's right to evict. However, it is absolutely essential that you provide written notice of the infraction before attempting to evict.

Many states require a waiting period from a week to a month in which the tenant has the chance to correct the infraction. This is often frustrating for the landlord, especially if the tenant's failure to pay rent is affecting your ability to find a respectful tenant who pays on time. It is important to resist the urge to bypass protocol and evict the tenant immediately. The process of evicting a tenant without receiving an eviction notice through a local court is known as self-eviction. Self-eviction is not a legal practice, and not only will it fail to stand up in court, but your tenant can turn around and sue you for unlawful eviction as well. It is essential that you first provide the tenant written notification of their violation and warn them that they have a specified amount of time to correct the violation before you will begin the eviction process.

The Eviction Process

Contrary to popular belief, the eviction process typically does not begin with a visit to your local court. Eviction stays on a tenant's record for years. It damages their credit severely and makes it nearly impossible to rent anywhere else. For these reasons, the court system puts the burden of proof largely on the landlord's shoulders. Not only must you provide the tenant written notice of their violation and give them time to fix the problem, but many states require several stages of notice. A termination notice is often the next step, even after a tenant has ignored multiple written notices to pay the rent or clean up other violations of the lease agreement.

Before you go to court for an eviction notice, many states require that you give the tenant a softer termination notice. Many landlords actually find the termination notice preferable to a formal court-ordered eviction notice because the process is not as messy. The termination notice does not necessarily stay on the tenant's record or carry the same severe consequences as an official eviction, but it does send a clear message that the time to leave has come. Many tenants will leave once a termination notice is served in order to avoid an eviction on their record. This is often the best way to get a tenant to legally leave your property without having to go through the hassle of an eviction process.

Another important element of the Landlord and Tenant Act is that you must give the tenant 30 days to vacate. While court-ordered eviction is immediate, a termination notice must give the tenant 30 days to fully vacate the property. If by that time the tenant refuses to leave or leaves property behind, you can serve an official eviction notice and the police will come to the property to enforce the eviction.

The most important practice during the eviction process is to do everything through legal channels. From the drafting of the lease agreement to serving a termination notice, everything you do should have full documentation to stand up in court. Once you decide to go to court and request an eviction notice, the eviction process is in the hands of the law. To stay on the right side of the law, and to make the eviction process go smoothly, it is important that you never attempt to physically evict the tenant or their property. If it comes to the point where the tenant refuses to move from the property, even once an eviction notice is served, let the police and the court handle it. Attempting a self-eviction does not follow best practices in real estate or the law, and the tenant then has grounds to sue you for unlawful eviction and damages.

Eviction Forms

Now that you know the best practices for evicting a tenant, it is time to cover the best practices for drafting a termination and notice. It is important that you do not attempt to draft your own eviction notice. Again, this practice falls under self-eviction and will not hold up in a court of law. If the court does not provide you with an official eviction notice, visit your local government website. Local governments have previously-drafted eviction notice forms available on their websites.

A standard eviction notice must contain the names of all tenants and occupants, the date of the notice, the date by which the tenant must fully vacate the property and the reason for the eviction. Both the landlord and any property manager or other individual who is responsible for serving the notice should sign the eviction notice. Once the document is signed and officiated, there are still other best practices to follow.

The person who serves the eviction notice must actually place the notice in the hands of the tenant on the lease. The notice cannot be served to a legal occupant or anyone other than the tenant or tenants on the lease. If only one tenant on the lease is present, it is fine to serve the notice to them.

You must actually have the tenant sign a receipt acknowledging that they have received the eviction notice. In the event that an angry tenant refuses to sign an eviction notice receipt, you can still deliver the notice but be sure to record their refusal for your records. Refusal to sign an eviction notice will typically work against the tenant in court.

Once the notice is served and the allotted time for the tenant to solve any issues or vacate the property has passed, the police will typically choose a date to come and escort the tenant off your property. Most states require that you give the tenant their security deposit, if applicable, within 14 to 30 days of leaving the property. However, in the case of eviction the security deposit is not always refundable.

Security and Pet Deposits

If you find that the tenant has damaged your property, you are legally allowed to deduct the amount of the damages from the tenant's security deposit. Additionally, if the tenant has owed rent you are legally allowed to deduct the amount of the unpaid rent from the security deposit. The same applies to pet deposits. It is important to note that many states limit the amount of a security deposit to the equivalent of one month's rent. In many cases where eviction applies, this is not enough to cover the full amount of damages done. If the pet and security deposits combined do not cover the damage done to your property or rent owed, your best recourse is the court system. If you win, the tenant will be required to pay owed rent and damages as well as your court fees.

Another reason why it is so important to follow these best practices when it comes to evicting a tenant is that you might find yourself back in court to sue for damages not covered by the tenant's deposit. In many cases, an angry tenant will attempt to sue for their security deposit after eviction. The return of a security deposit is not necessarily nullified by the eviction process. In this case, you need to provide ample documentation that shows why the tenant is not entitled to a refund of their security or pet deposit.

Photographic evidence of damages is essential in winning a court case against a tenant for damages. It is important to take pictures of the property both before and after the tenant's occupation. Most landlords use a disposable camera with a time stamp so they have a physical record of the damage that they can copy and show in court as evidence. Other landlords draft an exhaustive list of all walls, furniture, and fixtures and go through the apartment with the tenant before or shortly after moving in to mark any existing damages. Both tenant and landlord sign the damages sheet, and any additional damages that were not noted on the initial sheet are then deducted from the tenant's security deposit after they move out.

Summary

The real estate industry is generally a pleasant one, but eviction can make the landlord experience difficult and unpleasant. While eviction is never an easy process, it does not have to be a long and drawn out affair that costs a significant amount of time and money. By following the best practices for evicting a tenant, you can save yourself time, money, and effort in the unfortunate but likely event that you will have to evict a tenant one day. Best practice for evicting a tenant begins before the tenant ever moves onto your property.

The first thing any landlord should do is take pictures before each new tenant moves in and after each old tenant moves out. Take pictures with a time stamp to serve as evidence in court, and consider drafting a summary of existing damages to the apartment. Have the tenant sign any notices you give them when possible. Another important preliminary step in the eviction process is to draft a comprehensive and clear lease agreement. You will have a difficult time evicting a client for even the most obvious infraction if it is not clearly spelled out in the lease agreement. The Landlord and Tenant Act provides a great summary of the rights and responsibilities of both tenants and landlords, so be sure to follow the act while drafting a lease agreement.

Once the first signs of trouble begin, resist the urge to evict the tenant yourself, even if you have had bad experiences in the past. Documentation is the most important part of the eviction process and it ensures that your court date will go smoothly if it comes to that. Never rely on verbal warnings. Instead, draft notices of the infractions and warn the tenant that you will pursue an eviction if they do not fix the infractions by a certain date. Stay polite and civil, but firmly lay down your expectations that the tenant conforms to the lease agreement.

In the event that a termination notice is ignored, it is time to pursue a formal court-ordered eviction. Bring all of your documentation to court and clearly lay out your reasons for evicting the tenant. Showing that you have provided written notice of the tenant's infractions as well as ample time for them to correct the problem will go a long way toward obtaining a legal eviction notice. Once it is time to serve the notice, follow best practices by delivering the official notice to an individual who is on the lease rather than leaving the notice on their door. Never attempt to serve a verbal eviction notice or warning, or to evict a tenant through email. These methods of notice are flimsy at best in court. By thoroughly documenting the rental and eviction process and going through official channels to evict, you are protecting yourself as well as your property.

The eviction process is unpleasant, but it does not have to be dramatic. Regardless of the tenant's behavior, as long as you work through the court system and follow local and federal regulations, the law is on your side. Knowing your rights and responsibilities as a landlord is the first step in a successful eviction.

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