



Evicting a Tenant

Eviction

Landlords always want to put their best foot forward in the interview process and select/screen potential tenants to find the best tenant for their property. This doesn't always work out and therefore landlords should be aware of the eviction process.

Use the pages that following to further understand this process.

How to evict a tenant

Though Nevada has many jurisdictions relative to court policy and proceedings, the majority of the state's population resides in Clark County. Therefore, this course uses Clark County for its primary example. Though other district courts exist within the state, these courts proceedings are vary similar if not identical to Clark County.

The recent shift within the real estate economic marketplace has created a larger number of tenants and thus a larger number of all aspects of the tenant / landlord relationship. The eviction process is often an important step in this relationship, as landlords must retain the legal recourse to recover all property interests when required. Following the legal methods to properly evict is imperative to quick property recovery.

Many summary articles, forms and laws will be presented within this text. Before such items are presented, it is important to understand what eviction is and a quick summary of the process. It is also important to understand that aside from law, the most important document to consider when evaluating the eviction of a tenant is the acknowledged lease. When prepared by a landlord or property manager, leases should always be strong enough to support the landlords best interest with the minimum tenant law represented. Creating a "Bullet proof" or tenant proof lease can make the landlords job much easier when it comes to the eviction process.

What is eviction as a definition –

The disturbance of a tenant's enjoyment of all or any material part of the leased premises by act of the landlord or by claim of a superior title by a third party. It is the legal process of removing a tenant from the premises for some breach of the lease. In the case of partial eviction, the tenant is deprived of the use of part of the premises. Upon eviction, the tenant is no longer responsible for paying rent, unless the lease contains a survival clause stating that the tenant's liability for rent survives eviction.

Typical grounds for the eviction of a tenant by a landlord include nonpayment of rent, unlawful use of the premises violating the use provisions of the lease or non compliance with health and safety codes.

Summary of the eviction process in Nevada

1. A notice must be served to the tenant. Depending on the reason for the landlord's decision to evict your tenant this notice may be a 3/5/30 day notice. Some evictions require a secondary notice to be served prior to eviction. Some notices require a tenant's right clause to be printed on it.

Notices are \$45.00 or \$65.00 each depending were the property is located.

2. At the expiration of the notice excluding the date of service, weekends and holidays. The court will allow the landlord or agent for process to file a motion for summary eviction on the 9th business day with the court of proper jurisdiction. Eviction Costs are between \$250.00-\$275.00 this includes court costs and Constable Mileage fees. Most agents for process will require a copy of the lease to proceed.
3. The tenant may contest this filing and file an answer with the court within the time indicated on the notice and days allotted by the court. If this is the case a hearing will be set within 7 days. The average rate for attorney representation or agent for process is \$350.00-\$450.00 per case requiring litigation.
4. If no answer by tenant the Court will sign the order and authorize the 24 hour lockout. A 24 hour notice is served to the tenant requiring the tenant to vacate the premises within 24 hours (if notice served on Fri. the lockout would occur on next business day) During the 24 hour period the Tenant may file a motion for stay if granted a hearing will be set within 7 days.
5. After the 24hour notice is served the Constable will return to the property and remove the tenants; the landlord or agent for process will be present and secure the dwelling at no additional charge and to meet the Constable and the locksmith of landlord's choice.

Commonly asked questions relative to the eviction process (From a Landlords perspective)

The tenant has caused the landlord nothing but problems. Can the landlord just change the locks?

Nevada law does not allow landlords to simply throw out tenants without the proper legal procedure. A landlord who evicts a tenant without utilizing the proper legal devices can be subject to damages and other legal headaches.

What reasons can I evict my tenant?

Much of this answer depends on the original acknowledged lease.

Nevada law allows landlords to evict their tenants for numerous reasons such as failure to timely pay rent, destruction of the rental property, violations of the law, disturbing other tenants and unauthorized tenants/subtenants. However, the reason for the eviction will dictate the type of notice that should be used and the overall eviction process. Therefore, it is important to choose the right type of legal notice.

Can a landlord evict a tenant themselves?

Yes. However, the landlord should realize that this is a legal proceeding. If the landlord fails to follow the proper format for the notice and eviction, or if the landlord fails to notify the tenant in the proper manner, the eviction will not be granted and the landlord will have to begin the entire process over again. That is why using an eviction service, makes sense.

NRS 40.253 Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant for default in payment of rent.

1. Except as otherwise provided in subsection 10, in addition to the remedy provided in NRS 40.2512 and 40.290 to 40.420, inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or his agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

(a) At or before noon of the fifth full day following the day of service; or

(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

As used in this subsection, “day of service” means the day the landlord or his agent personally delivers the notice to the tenant. If personal service was not so delivered, the “day of service” means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the “day of service” shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.

2. A landlord or his agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of NRS 40.280. If the notice cannot be delivered in person, the landlord or his agent:

(a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and

(b) After the notice has been posted and mailed, may deliver the notice to the sheriff or constable for service in the manner set forth in subsection 1 of NRS 40.280. The sheriff or constable shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when he took possession of the premises, that the landlord or his agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the sheriff or constable shall serve the notice within 48 hours after the request for service was made by the landlord or his agent.

3. A notice served pursuant to subsection 1 or 2 must:

(a) Identify the court that has jurisdiction over the matter; and

(b) Advise the tenant of his right to contest the matter by filing, within the time specified in subsection 1 for the payment of the rent or surrender of the premises, an affidavit with the court that has jurisdiction over the matter stating that he has tendered payment or is not in default in the payment of the rent.

4. If the tenant files such an affidavit at or before the time stated in the notice, the landlord or his agent, after receipt of a file-stamped copy of the affidavit which was filed, shall not provide for the nonadmittance of the tenant to the premises by locking or otherwise.

5. Upon noncompliance with the notice:

(a) The landlord or his agent may apply by affidavit of complaint for eviction to the Justice Court of the township in which the dwelling, apartment, mobile home or commercial premises are located or to the district court of the county in which the dwelling, apartment, mobile home or commercial premises are located, whichever has jurisdiction over the matter. The court may thereupon issue an order directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order. The affidavit must state or contain:

(1) The date the tenancy commenced.

(2) The amount of periodic rent reserved.

(3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month’s rent, by the tenant.

(4) The date the rental payments became delinquent.

(5) The length of time the tenant has remained in possession without paying rent.

(6) The amount of rent claimed due and delinquent.

(7) A statement that the written notice was served on the tenant in accordance with NRS 40.280.

(8) A copy of the written notice served on the tenant.

(9) A copy of the signed written rental agreement, if any.

(b) Except when the tenant has timely filed the affidavit described in subsection 3 and a file-stamped copy of it has been received by the landlord or his agent, and except when the landlord is prohibited pursuant to NRS 118A.480, the landlord or his agent may, in a peaceable manner, provide for the nonadmittance of the tenant to the premises by locking or otherwise.

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the Justice Court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that there is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. If the court determines that there is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief, and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive. The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which he may be entitled. If the alleged unlawful detainer was based upon subsection 5 of NRS 40.2514, the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with NRS 40.251.

7. The tenant may, upon payment of the appropriate fees relating to the filing and service of a motion, file a motion with the court, on a form provided by the clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord pursuant to NRS 118A.460 for the inventory, moving and storage of personal property left on the premises. The motion must be filed within 20 days after the summary order for removal of the tenant or the abandonment of the premises by the tenant, or within 20 days after:

(a) The tenant has vacated or been removed from the premises; and

(b) A copy of those charges has been requested by or provided to the tenant, whichever is later.

8. Upon the filing of a motion pursuant to subsection 7, the court shall schedule a hearing on the motion. The hearing must be held within 10 days after the filing of the motion. The court shall affix the date of the hearing to the motion and order a copy served upon the landlord by the sheriff, constable or other process server. At the hearing, the court may:

(a) Determine the costs, if any, claimed by the landlord pursuant to NRS 118A.460, and any accumulating daily costs; and

(b) Order the release of the tenant's property upon the payment of the charges determined to be due or if no charges are determined to be due.

9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or his agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in NRS 118A.240.

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215.

(Added to NRS by 1967, 195; A 1969, 263, 575; 1973, 1085; 1975, 1202; 1977, 418, 1346; 1979, 1398, 1879; 1985, 229; 1987, 1239; 1989, 1082, 1232; 1991, 113; 1995, 1851; 1997, 3511; 1999, 981)

NRS 40.254 Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant from certain types of property. Except as otherwise provided by specific statute, in addition to the remedy provided in NRS 40.251 and in NRS 40.290 to 40.420, inclusive, when the tenant of a dwelling unit which is subject to the provisions of chapter 118A of NRS, part of a low-rent housing program operated by a public housing authority, a mobile home or a recreational vehicle is guilty of an unlawful detainer, the landlord is entitled to the summary procedures provided in NRS 40.253 except that:

1. Written notice to surrender the premises must:

(a) Be given to the tenant in accordance with the provisions of NRS 40.280;

(b) Advise the tenant of the court that has jurisdiction over the matter; and

(c) Advise the tenant of his right to contest the notice by filing within 5 days an affidavit with the court that has jurisdiction over the matter that he is not guilty of an unlawful detainer.

2. The affidavit of the landlord or his agent submitted to the Justice Court or the district court must contain:

(a) The date when the tenancy commenced, the term of the tenancy, and, if any, a copy of the rental agreement.

(b) The date when the tenancy or rental agreement allegedly terminated.

(c) The date when the tenant became subject to the provisions of NRS 40.251 to 40.2516, inclusive, together with any supporting facts.

(d) The date when the written notice was given, a copy of the notice and a statement that notice was served in accordance with NRS 40.280.

(e) A statement that the claim for relief was authorized by law.

3. If the tenant is found guilty of unlawful detainer as a result of his violation of any of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, the landlord is entitled to be awarded any reasonable attorney's fees incurred by the landlord or his agent as a result of a hearing, if any, held pursuant to subsection 6 of NRS 40.253 wherein the tenant contested the eviction.

(Added to NRS by 1985, 227; A 1989, 1084, 1234; 1991, 115; 1995, 1853; 2001, 1065; 2003, 561)

NRS 40.255 Removal of person holding over after 3-day notice to quit; circumstances authorizing removal.

1. Except as provided in subsection 2, in any of the following cases, a person who holds over and continues in possession of real property or a mobile home after a 3-day written notice to quit has been served upon him, and also upon any subtenant in actual occupation of the premises, pursuant to NRS 40.280, may be removed as prescribed in NRS 40.290 to 40.420, inclusive:

(a) Where the property or mobile home has been sold under an execution against him or a person under whom he claims, and the title under the sale has been perfected;

(b) Where the property or mobile home has been sold upon the foreclosure of a mortgage, or under an express power of sale contained therein, executed by him or a person under whom he claims, and the title under the sale has been perfected;

(c) Where the property or mobile home has been sold under a power of sale granted by NRS 107.080 to the trustee of a deed of trust executed by such person or a person under whom he claims, and the title under such sale has been perfected; or

(d) Where the property or mobile home has been sold by him or a person under whom he claims, and the title under the sale has been perfected.

2. This section does not apply to the tenant of a mobile home lot in a mobile home park.

(Added to NRS by 1961, 412; A 1969, 263; 1979, 1880)

NRS 40.260 Tenant of agricultural lands may hold over if not notified. In all cases of tenancy upon agricultural land where the tenant has held over and retained possession for more than 60 days after the expiration of his term, without any demand of possession or notice to quit by the landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in the estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during the year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of the tenant to hold for another year.

[1911 CPA § 647; RL § 5589; NCL § 9136]

NRS 40.270 Tenant has similar remedies against subtenant. A tenant may take proceedings similar to those prescribed in this chapter, to obtain possession of the premises let to any under tenant, in case of his unlawful detention of the premises underlet to him.

[1911 CPA § 648; RL § 5590; NCL § 9137]

NRS 40.280 Service of notices to quit; proof required before issuance of order to remove.

1. Except as otherwise provided in NRS 40.253, the notices required by NRS 40.251 to 40.260, inclusive, may be served:

(a) By delivering a copy to the tenant personally, in the presence of a witness;

(b) If he is absent from his place of residence or from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at his place of residence or place of business; or

(c) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the leased property, delivering a copy to a person there residing, if the person can be found, and mailing a copy to the tenant at the place where the leased property is situated.

2. Service upon a subtenant may be made in the same manner as provided in subsection 1.

3. Before an order to remove a tenant is issued pursuant to subsection 5 of NRS 40.253, a landlord shall file with the court a proof of service of any notice required by that section. Except as otherwise provided in subsection 4, this proof must consist of:

(a) A statement, signed by the tenant and a witness, acknowledging that the tenant received the notice on a specified date;

(b) A certificate of mailing issued by the United States Postal Service; or

(c) The endorsement of a sheriff, constable or other process server stating the time and manner of service.

4. If service of the notice was not delivered in person to a tenant whose rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, proof of service must include:

(a) A certificate of mailing issued by the United States Postal Service or by a private postal service to the landlord or his agent; or

(b) The endorsement of a sheriff or constable stating the:

(1) Time and date the request for service was made by the landlord or his agent;

(2) Time, date and manner of the service; and

(3) Fees paid for the service.

[1911 CPA § 649; RL § 5591; NCL § 9138]—(NRS A 1961, 413; 1967, 196; 1985, 231, 1418; 1987, 701; 1995, 1854; 2007, 1287)

EVICTION IN NEVADA

There are two ways to initiate an eviction in Nevada:

1. Filing and serving a forma, civil eviction known as an unlawful detainer action, and;
2. Using the summary eviction procedures contained in NRS 40.253 and NRS 40.254

The Summary eviction process is generally a simpler and quicker process than the formal unlawful detainer eviction proceeding (Note: Summary eviction may not be used against tenants of mobile home parks).

Summary eviction may be used when the only issue to be adjudicated by the court during the proceeding is possession of the rental unit. Summary eviction does not allow the to seek damages; it does allow the tenant to counterclaim up to the alleged rent amount owed claimed by the Landlord. Additionally, the summary eviction process only provides for a cour hearing, rather than trial; there are no “discovery” rights for either party. These forms and instructions apply only to summary eviction actions.

Different types of Evictions and their instructions are available and can be printed. Available forms for Summary Evictions are:

5 DAY NO PAY

Step 1 – Unlawful Detainer for Non Payment of Rent

Step 2 – 24 Hour Landlords Affidavit/Declaration for Summary Eviction Non Payment of Rent

NO CAUSE 5/7/30 – Day

Step 1 – No Cause Termination Notice to Vacate

Step 2 – 5 Day Notice of Unlawful Detainer for Failure to Vacate Rental Unit & Notice of Summary Eviction

Step 3 – 24 Hour Landlords Affidavit/Declaration For Summary Eviction for No Cause

5 DAY BREACH

Step 1 – Notice of Termination of Violation of Lease or Rental Agreement

Step 2 – 5 Day Notice of Unlawful Detainer for Failure to Vacate Rental Unit for Violation of Lease/Rental Unit

Step 3 – Landlords Affidavit/Declaration for Summary Eviction for Breach

NUISANCE/WASTE/UNLAWFUL BUSINESS

Step 1 – Notice of Termination for wrongful Assignment or Subleasing Waste, Unlawful Business, Nuisance or Violations of Controlled Substances Laws 3-Day

Step 2 – Unlawful Detainer 5 Day

Step 3 – 24 Hour Landlord Affidavit/Declaration for Summary Eviction

Step #1 – Read the entire set of instructions

Please print, read and understand all the instructions.

Step #2 – Complete the notice requirements.

Once you have read the instructions for the eviction and decide that this process is necessary, you will have to give notice to your tenants.

Step #3 Filing the eviction

If the tenant fails to comply with the terms set in the notice issued to them, you may proceed to the next step, which will formally evict the tenant from the housing.