

# Eviction for Nonpayment

## **Q: Can I withhold rent if the landlord fails to make needed repairs?**

A: No. The only exception is to follow the requirements of the Utah Fit Premises Act. You must be current on your rent payment and all other requirements of your rental agreement. If your apartment is in need of major repairs, please read our page on [Bad Housing](#).

## **Q: If the property is “in foreclosure” can I stop paying the rent?**

A: No! A Notice of Deficiency or Notice of Foreclosure Sale is often posted on the renter’s door by the lender when the owner is not paying the mortgage. But that is not a reason to stop paying the rent. The current owner can still give a 3-business-day notice to pay or vacate and then file a lawsuit to evict a non-paying tenant. It is no defense that the landlord isn’t paying on the mortgage.

## **Q: Can the landlord evict me if they claim that I damaged something and I refuse to pay?**

A: Except for some subsidized rentals, a landlord can give a written 3-business-day notice to pay or vacate for unpaid rent, late fees, damage allegedly caused by the tenant, or anything else that’s included in the rental agreement. As a rule, the tenant is responsible for any damages caused by the tenant or the tenant’s guests over and above reasonable wear and tear. The landlord can demand payment for the cost of repairs. If the tenant doesn’t pay or move within 3 business days, the landlord can file a lawsuit to evict the tenant.

## **Q: What kind of notice is required to start the eviction process for nonpayment?**

A: Except for some subsidized rentals, Utah law requires that the landlord give at least a 3-business-day notice to pay or vacate. It must be in writing. It must give the tenant the choice to pay or to leave. It must state an amount of rent and/or late fees and/or other amounts that must be paid, even if the tenant does not agree with the amount. The 3 days are business days (not including day of service) unless the notice states otherwise. "Business days" exclude weekends and holidays recognized by Utah when the courts are closed. This 3-day notice does not have to be notarized. It can be given by the manager or the maintenance worker or anyone else. It can be posted to your door.

## **Q: If the landlord accepts part of the rent, does that stop an eviction?**

A: Generally, no. Even if the landlord accepts most of the rent from you, the landlord can give you another 3-business-day notice to pay or vacate. If you think you and the landlord have agreed to a repayment plan over a period of time, get that agreement in writing and signed by the landlord. The safest way to stop the eviction process is to pay the full amount demanded in the 3-day notice.

## **Q: What happens if I can't pay or leave within 3 business days?**

A: The landlord must file an eviction lawsuit against you. The landlord cannot change the locks, shut off utilities, take your property, call the police or harass you for payment. If the landlord tries to use self-help methods to evict you, call the police. For more information, please see our page on [being locked out without a court order](#).

## **Q: What is "unlawful detainer"?**

A: If a tenant continues to live in the rental unit more than 3 days after receiving a 3-business-day notice to pay or vacate, a judge may find that tenant is unlawfully

keeping possession of the premises. This is called “unlawful detainer.”

## **Q: How does an eviction lawsuit begin?**

A: An eviction lawsuit begins with a summons and complaint served on the tenant usually by a constable. These papers can't be posted on the door but must be given to someone living in the rental unit. If the constable cannot find anyone at home after several tries, the court will allow alternate service which is usually by mail.

## **Q: What happens after I get the summons and complaint? What must I do?**

A: In eviction cases, the tenant (“defendant”) usually only has 3 business days to file a written response with the court. You must file your written response (called your “Answer”) directly with the clerk of the court. You can't mail it to the court. Do not count the day you were served with the summons. Count the next three working days. Your Answer is due on or before the third working day.

## **Q: Can I pay the rent & late fees after getting the summons and complaint to avoid eviction?**

A: Once the 3 business days to pay or vacate has passed, the landlord can refuse to accept payment. If the landlord agrees, however, the amount will almost certainly include court costs (likely \$100 or more) and attorney fees (at least \$250) if the landlord hired an attorney. Some attorneys who represent landlords might agree to accept payment. **Warning!** The terms may be very harsh. You may be allowed to pay in 2 or 3 installments. If you fail to pay exactly the amount due by the exact time specified (often 2:00 p.m.), you will almost certainly be evicted that same day without any warning and have a large monetary judgment entered against you. Do not agree to a repayment plan unless you are certain you can make each and every payment in full at the time specified and can pay next month's rent on time.

## **Q: What happens if I miss the deadline to answer the complaint?**

A: The landlord (“plaintiff”) can get a default judgment against you that includes both an order evicting you from the rental unit and a money judgment. If you are only a few days late, call the court clerk to find out if a default judgment has been requested by the landlord. If not, file your answer immediately. If a default judgment has already been entered, you may ask that the judgment be set aside if you have a good reason. “I waited too long” is not a good reason.

## **Q: What happens after I file my answer?**

A: The landlord must request a hearing before a judge unless you agreed to everything the landlord said in the complaint. The hearing will almost always occur within 10 days after you file your answer, often even sooner. You will get notice by mail or a phone call. If you agreed to everything in the complaint, the landlord may just ask the judge for a judgment “on the pleadings” and then the result will be a monetary judgment and an order evicting you. If you filed an Answer then you **MUST** go to the hearing or else you will almost certainly be evicted the same day as the hearing and without any further notice!

## **Q: What happens at the hearing before the judge? What is an Order of Restitution?**

A: At the first hearing in non-payment cases, the judge will determine whether it’s likely that you owe something to the landlord (rent, late fees, deposit, damages, etc.) based on the 3-business-day notice. Except in rare cases, the exact amount owing will not be determined at the first hearing. But the judge will issue an Order of Restitution, restoring possession of the rental unit to the landlord. The judge may tell you at the hearing how long you can remain before you must move out. This is usually 3 calendar days. Otherwise, you will be served with the Order by a constable usually giving you 3 more days. But if at the hearing the judge already gave you 3 additional days, this Order may be enforced immediately. That is, you will be forced out as soon as the constable comes. This is when the landlord can change the locks.

## **Q: What are “treble damages”?**

A: Treble means triple or three times. If the judge finds that you had no right to remain in the premises after the 3-business-day notice to pay or vacate period and if

the landlord pursues a monetary judgment against you, then the judge must award three times the normal rental value to the landlord for every day you were “unlawfully detaining” the rental unit after the 3 day notice period expired. Most landlords do not go after a tenant for a monetary judgment once the tenant has vacated the rental unit. But some landlords and their lawyers will wait a long time before mailing a notice about another court hearing and when you don’t come to the hearing, a monetary judgment will be entered against you. Make sure that the landlord or the attorney as well as the court has a current mailing address for you.

## **Q: What are the consequences of being evicted?**

A: An eviction looks bad on your credit history. Future landlords may not rent to you. If a monetary judgment is entered against you, the landlord can force you to come to court every so often to ask you about your financial resources (where you work, what kind of car you have, how much money you have in the bank). If you are mailed a notice to appear in court on a “supplemental proceeding,” you must go. Otherwise, a warrant for your arrest may be issued. Much of what you have will be exempt from execution. But your wages can be garnished. And even if you have nothing that the landlord can take to satisfy the judgment, you must still appear in court to answer questions when ordered.

## **Q: Can I get a lawyer to help me with my non-payment eviction case?**

A: We generally do not represent tenants in simple non-payment eviction cases. But if your rent is subsidized (section 8, public or project-based housing) or your situation is different than what is described on this website, please call us. You can use the self-help flyer on our website [Basic Guide to Answering an Eviction Complaint](#) or you can use the State’s system for creating an answer <http://www.utcourts.gov/ocap/utah/landlordtenant/>. Both are free.

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