

Landlord & Tenant Eviction Handbook

*A Guide to Legal and Efficient Evictions
in Illinois*

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INTRODUCTION

Your tenant hasn't paid rent in two months; you know you have the right to evict, but do you know the procedure? What do you do when your tenant is partying late into the night, disturbing other tenants? What happens when the lease terminates and your tenant refuses to move out? As a Landlord of residential property, it is important to understand your eviction options and the process you will face to regain possession of your unit. At Kovitz Shifrin Nesbit, we believe that following our simple set of guidelines, with quick and consistent action, will keep non-compliant tenants from becoming an issue and will produce effective, positive results. If you are unable to collect rent or preserve the condition of your unit, you will not be able to maintain the value of your property and your rental income.

This pamphlet is intended to provide a general overview of the residential eviction process. The law allows for certain procedures which, when followed, provide a quick and cost-effective method of regaining possession of your unit.

This pamphlet covers:

- Types of evictions
- Notice requirements
- Eviction procedures
- Post-judgment collection

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Why take quick action?

It is crucial that you deal with delinquent accounts and non-compliant tenants promptly. Our firm recommends that as soon as the monthly rent is deemed late pursuant to the terms of the lease, you serve the appropriate Notice of Termination on your tenants. If rent remains unpaid upon expiration of the Notice, refer the matter to our office to begin eviction proceedings in order to minimize the amount of lost rent.

If you begin the eviction process when the arrearage is low, you may also find that tenants are more likely to pay the past due amount to stay in the unit. Once the balance is three to four months delinquent, it becomes more difficult for tenants to come current, or even to adhere to a payment plan. We recommend that you begin the process early and maintain strict guidelines for all tenants without exceptions.

By not having a tough, but fair eviction policy in place, you may suffer one or more negative consequences, such as:

- Essential maintenance may become unaffordable and ignored when actually needed
- The property may begin to appear run-down – which, in turn, will reduce property values and attract lower-income, less desirable tenants
- Second mortgages or equity credit lines may become necessary to cover the shortfalls
- Rents may need to be increased, but higher-income tenants may avoid a run-down property, thereby leading to increased vacancy

By taking action quickly, you will experience a higher rate of payment, less vacancies, and more secure tenants.

Types of Residential Evictions

Quickly regaining possession of your unit when your tenant fails to pay rent or violates provisions of the lease may be one of the most important actions you can take as a Landlord of residential property.

Although evictions can arise from other circumstances, you will most often encounter evictions for three main reasons: unpaid rent, lease violations, and holdover tenants.

First, and most recognized, is the **eviction for non-payment of rent**. This is usually also the simplest eviction, since payment or non-payment is a fairly black and white issue. However, these lawsuits may become needlessly complicated and drawn-out when a Landlord fails to document payments or negotiations with the tenant. Any reduction or waiver of rent should be memorialized in writing and signed by both parties, so that the eviction trial does not hinge on a “he said/she said” debate about the amount due.

Second, a tenant may violate any number of lease provisions, from noise and nuisance rules to occupancy restrictions. The first action any Landlord should take in the case of a lease violation is to issue a notice to the tenant, giving him or her an opportunity to correct the problem. Litigation can often be avoided with a simple conversation. However, if the violations continue, the law allows you to file an eviction lawsuit and the Court will rule whether the circumstances are egregious or continuous enough to warrant an Order for Possession against the tenant. This eviction is commonly referred to as an **eviction for cause**.

Unlike evictions for non-payment of rent, these evictions are rarely black and white, and often go to a contested hearing or trial. Although a pet violation may be more straight-forward, either she has a dog or not, repeated noise violations for parties may require the testimony of surrounding tenants who witnessed the offensive conduct in order to prevail. Again, documenting any conversations, violation notices, and compliance negotiations (i.e., she can keep the dog for one month while she finds it a home), will support a favorable outcome at trial.

Finally, you may have a tenant who consistently pays rent, but you need to terminate the lease when the term has expired, and the tenant refuses to move out. Your tenant then becomes a **holdover tenant**. Upon expiration of a written lease for a term of more than one month, the tenancy will become month-to-month and the law allows for certain eviction procedures in this situation. You are not required to keep a tenant beyond expiration of the lease, even if they are

faithfully paying rent, so it's important to be aware of your rights and the first steps you will need to take to institute eviction procedures.

Notice Requirements

Different types of evictions require different Landlord's Notices. Although this pamphlet will guide you in understanding the requirements for content and service of the most common notices, you should always consult our firm when you are unsure if your Notice complies with Federal and State law, as well as local ordinances.

Failure to use the correct notice and properly serve it will result in dismissal of your lawsuit.

When your tenant has failed to pay rent, the Forcible Entry and Detainer Act, and most residential leases, require service of a **5 Day Landlord's Notice**. However, this is the minimum requirement and some Leases require a 7 or 10 Day Notice. Your notice must include the name and address of the tenant(s) and "all unknown occupants", the amount past due, a demand for possession of the property with the complete property address, the amount of time in which the tenant has to pay, a date on which the tenancy will terminate, and statutory language pertaining to payment in full of the rent demanded. The Notice must be signed and dated by the Landlord.

Although a 5 Day Notice specifically allows a Landlord to accept partial payment without invalidating the Notice, most circuit court judges agree that if you accept any rent payments within the 5 days, you have, in effect, reinstated the tenancy and the 5 day is void.

If your tenant does offer you partial payment within the 5 day notice period, there are actions you can take that will allow you to accept these payments and still proceed with an eviction for the remaining balance. But the general rule is: do not accept any payments unless you are prepared to serve a new Notice for the remaining balance.

To proceed with an eviction for cause, the statute requires a **10 Day Notice**, giving the tenants 10 days in which to correct the non-compliant behavior or move out. Along with the name and address of the tenant(s) and a demand for possession of the property with the property address, a proper 10 day notice must also include required statutory language regarding termination of the tenancy.

The tenant then has 10 days to comply with the terms of the notice: either correct the conduct or move out. Compliance may become very difficult to judge, however. If you served the 10 Day Notice due to excessive partying and noise violations, and your tenant remains quiet for ten days after service of the notice, only to throw an obnoxious soiree on the eleventh night, can you proceed on that Notice? Most judges will find that an eviction for cause lawsuit is properly founded when the conduct was repeated or continued within a reasonable time after service of the 10 Day Notice. Determining what amount of time the judge in your case considers “reasonable,” however, will take experience and familiarity with his rulings, so do not hesitate to seek guidance from our office.

Finally, in the case of a holdover tenant where the tenancy has converted to month-to-month, or to terminate a month-to-month or year-to-year lease, you must serve a **30 Day Notice**. The “30 days” of a 30 Day Notice are misleading, however, as the Notice does not refer to a period covering thirty 24-hour rotations. Instead, a 30 day notice requires a full calendar month to pass. Therefore, if you serve a 30 day notice on May 4, it does not expire on June 4, but on June 30, because the tenant is entitled to a full calendar month, i.e., the full month of June, to vacate.

The simplest eviction lawsuit under the Forcible Entry and Detainer Act arises when the lease term has expired and the Landlord has given proper notice of non-renewal. Under these circumstances, an action can be filed without serving a Notice on the tenant at all. However, certain lease provisions or addendums may contradict this general rule, so contact our office to determine whether the facts of your case fall within this limited scenario.

The Chicago RLTO requires that a Landlord notify a tenant in writing at least 30 days prior to the termination of the Lease that he does not intend to renew the Lease. If the Landlord fails to give this required notice, the tenant may stay in the unit for 60 days after the expiration of the Lease and shall not be considered a holdover tenant during that period.

In order to properly serve any of these notices, you must personally hand the Notice to your tenant, or an occupant of the unit who is over the age of 13. You cannot post the Notice on the door of the unit, unless that unit is vacant and abandoned. Too often, eviction lawsuits are dismissed on the first return date because the Landlord failed to properly serve the notice. Simply posting it on the door and mailing a copy to your tenant is not good enough. If your tenant is evading service of the Notice, consider hiring a process server to find more creative means of getting your tenant to open the door.

Last, but definitely not least, it is essential to wait the required time before filing the eviction complaint. Under a 5 Day Notice, the tenant is entitled to 5 full days to make payment in full of the past due rent after receipt of the Notice. That means if you serve the notice on the 15th of the month, the tenant gets the 16th, 17th, 18th, 19th, and until midnight on the 20th; you cannot file the lawsuit until the 21st. Further, if the Notice period expires on a weekend day or holiday, then the period will be extended to midnight of the first following business day. Advice from our office regarding the tolling period of your Notice may be imperative to avoid dismissal of your eviction lawsuit for premature filing.

The Eviction Lawsuit

When turning over an account for eviction, it is essential that we have as much information as possible from you. We need a detailed breakdown of all payment activity on the account, the name(s), phone number(s) if known, off-site or work addresses, and any other relevant information for all occupants and tenants. Provide this data to our office as soon as it is available.

As a Landlord, you must strictly comply with all Federal and State statutes, as well as local ordinances, to prevail in your eviction action.

An action in Forcible Entry and Detainer, commonly referred to as an eviction, is filed after the Landlord's Notice has expired and full payment was not received or the tenants have not come into compliance. Prior to filing suit, we will confirm that the tenant has neither moved out, nor paid in full or complied.

Complaint and Summons

In order to file the eviction suit, we prepare a Complaint, requesting that the Court award possession of the unit, together with a judgment against the tenant if there are amounts owed. In addition, we prepare a Summons which contains the return date. The Circuit Court Clerk's office will schedule the return date approximately 14-30 days after the filing date.

Depending on the county in which the lawsuit is filed, we may use a process server for service of the Complaint and first Summons, or be required to use the Sheriff for service. If the tenants are avoiding service of the Summons, the Summons will be returned "Not Found" and the Court will require that we issue a second or "Alias" Summons and attempt service once again. All counties allow service of the Alias Summons by special process server, although some require a specific order appointing the process server.

If the Summons is again returned "Not Found," then the case must be continued for approximately 21 days for return of a Notice by Posting, in lieu of preparing additional summonses. A Notice by Posting is a document posted in the Sheriff's office and sent to the tenants which advises of the pending lawsuit, but does not constitute personal service. If the case proceeds on a Notice by Posting, we will still be able to obtain possession of the unit, but the Court will not award a personal money judgment against the tenant for any amounts due. It is very important that any information regarding work addresses or off-site addresses be provided to us at the time of the initial turnover, so that we can pursue personal service.

In Court

At the first court date after service is obtained, most of these cases will proceed as a “default” because the tenant was served but fails to show up. The Court will enter an Order for Possession, terminating the tenant’s right to possession of the unit and awarding a personal money judgment, if there are amounts due and we obtained personal service. In the Order for Possession, the Court will also assign a stay date for the eviction and enter a judgment for attorneys’ fees and costs, if provided for in the Lease. When an Order for Possession and Judgment enters upon default, it may not be necessary for a witness to appear in court, as long as the Landlord or property manager has provided our office with a signed affidavit of damages.

The Chicago Residential Landlord Tenant Ordinance prohibits the recovery of attorneys’ fees by a Landlord in an eviction action. If your property is covered by this ordinance, you may not request an award of attorneys’ fees in Court, even if your Lease allows for it.

If the tenant does appear in Court to contest the eviction lawsuit, a witness (either the Landlord or the manager) must be present in Court at trial to testify under oath to the allegations made in the Complaint. Because the Landlord brought the lawsuit, he has the burden of proving that rent and other charges are owed, or that the tenant violated the provision(s) of the Lease. Therefore, the testifying witness must be familiar with the books and records of the property. Further, the records we introduce to the Court during that testimony, to support our claims, must be clear and concise.

In a case for non-payment of rent, a witness must testify to the amounts due and service of the Landlord’s Notice. We will present an account ledger to the Court in support of the amount due and also introduce the original Notice, with an executed affidavit of service.

In an eviction for cause, witnesses who have personal knowledge of the Lease violations must testify in Court. If the Landlord did not witness the parties or offensive behavior, then we may need to subpoena surrounding tenants or neighboring homeowners. Simply testifying that another tenant complained about loud parties will not result in an eviction. Those witnesses must appear in Court and

testify to their personal knowledge of the events. Sometimes, this may require numerous witnesses to establish a pattern of continuous disruptions.

Once we have presented our evidence in support of the claims made in our Complaint, the tenant may then have an opportunity to present evidence in an attempt to establish a defense.

Defenses to Non-Payment of Rent

One defense to non-payment of rent is that the property is uninhabitable. The standard is fairly high for this defense; slight damage or leaks will not negate the rent due. However, the effect of these complaints could reduce the award of rent, late fees, attorneys' fees, or other miscellaneous charges. In a case where the Court thinks that the Landlord in some way dropped the ball, the Court will probably not allow the Landlord to recoup all of his money.

Tenants may also claim that they paid for repairs and withheld the rent to be reimbursed for the cost of the repairs. In most cases, the tenants must show a written agreement with the Landlord in which the Landlord consents to the withholding. However, judges often find that if the tenant gave written notice of their intent to withhold the rent, and the Landlord never responded, that silence may be construed as consent. If the dispute over repair charges comes to a "he said/she said" controversy, the Court will decide who is more credible. This is why it is crucial to document all negotiations with your tenant. If you have a written agreement about repair charges and rent reductions, or more importantly, a written denial of any reductions, the trial will never come to that "he said/she said" dispute.

Your tenants may also allege that they made payments which could reduce the amount of rent the Court awards you. However, the tenants must show receipts or cancelled checks for the payments; contending that they mailed a payment, but it was never cashed, is not a defense. Another "he said/she said" dispute often arises over cash payments, so be sure to have solid, evenly-applied policies in place for accepting rent. If you can testify that neither you, nor anyone in your office, accepts cash payments from any tenant, or that

you and your staff always issue written receipts for every payment, the judge may be inclined to lend your testimony more credence.

In evictions for unpaid rent, there is truly only one defense: that the tenant made payment in full of the past due amount within the time period of the Landlord's Notice. If the tenant can show sufficient evidence of such payment, your case will be dismissed.

At a trial for an eviction for cause, after we have presented evidence to show all of the Lease violations, the tenant may call his own witnesses to testify to the contrary. In many of these cases, the tenant will introduce photographs or the testimony of friends in order to establish that no lease violations occurred. Ultimately, the decision of who is more credible will lie with the Judge and, if the Court finds in favor of the Landlord, an Order for Possession and Judgment will enter.

Order for Possession and Judgment

If the tenant does not appear or if we prevail at trial, the Court will award an Order for Possession and Judgment. The Order for Possession and Judgment has several components. First, if we personally served the tenant, a monetary judgment enters against the tenant and the Order will contain a lump sum amount for past due rent, late fees, CAM charges, back taxes, and any other lawful charges provided for in the Lease, as well as the court costs for filing and service of the lawsuit. Second, if allowed under the Lease and not prohibited by local ordinance, the Court will award the Landlord's attorneys' fees. Finally, the Court will award possession of the property and assign a "stay date," or the date by which the tenant must move out. The stay date is usually 7 or more days after entry of the Order, depending on any extenuating circumstances that the Judge finds relevant. The tenant has until midnight of the stay date to move out and clear any personal belongings. If the tenant fails to move out by midnight of the stay date, we can then place an eviction with the Sheriff.

Eviction

Once the stay date expires, we obtain a writ from the Circuit Court Clerk's office and place it with the Sheriff. The Sheriff schedules an eviction date about 3-5 weeks out, depending on their backlog. The Sheriff will then post the date of eviction in a notice at the property, and the tenant must vacate the property by that date, or be forcibly removed.

On the date of eviction, the Landlord or agent must be present. Be prompt and alert for the Sheriff. If no one is visibly present to assist in the eviction, the Sheriff may not even stop at the property, especially in Cook County. To avoid a potentially dangerous situation, do not go to the door of the property without the Sheriff. You must also have a locksmith present to change the locks. Most counties also require the Landlord to provide "three able-bodied movers" who will move all of the personal property out of the space and two tarps, one for the ground on which the personal property is placed, and one to cover the personal property from inclement weather.

Collection of Monetary Judgments

When a Landlord is able to obtain a money judgment against a delinquent tenant, in conjunction with the entry of an Order for Possession and Judgment (if personal service was obtained), the judgment has to be levied in order to collect the money. Post judgment proceedings take several forms:

1. Citation to Discover Assets. The debtor is summoned to appear in open court to testify under oath as to the amount and location of any assets. If there are assets, the Court can order them to either be liquidated or turned over to the Landlord to satisfy the judgment. If the debtor ignores these proceedings, he can be arrested for contempt of court after a body attachment is issued.
2. Wage Garnishment. If the debtor is a salaried employee, a wage garnishment can be filed and served on the employer, and the employer is then required to deduct payments from each paycheck. If the employer ignores the garnishment, they can be held liable for the full amount.

3. **Non-Wage Garnishment.** If the debtor works on commission or if the debtor has a bank account, these assets can be garnished for the full amount.
4. **Levy and Execution.** If the debtor owns assets free and clear of any secured debts, an order can be obtained to have the Sheriff seize the asset and liquidate it to satisfy the debt.

All of the above proceedings can be costly if done at an hourly rate. Because our office offers contingency arrangements for post-judgment collection work to serve our clients' financial needs, the process can be more cost-efficient.

Billing

Kovitz Shifrin Nesbit offers a flat eviction fee across all Chicagoland counties for uncontested eviction lawsuits. Upon filing the Complaint, we will issue a bill for the flat rate and court costs.

In court, we will file an affidavit with supporting documentation, asking the Court to award all of the attorneys' fees and costs, if allowed by the Lease and local ordinance. Please keep in mind that the awarding of fees is discretionary and even though most judges are cooperative, once in a while we will appear before a judge who will not award all of the fees we believe are reasonable. That is why we prepare and present detailed records to ensure the highest degree of success.

Collection Status Online (CSO)

Kovitz Shifrin Nesbit is unique in offering state-of-the-art technology to keep our clients informed of the current status of all of their eviction cases online, through our CSO service. For more information, including a link to CSO, go to www.ksnlaw.com.

