

EVICTION INFORMER

MESSAGE FROM THE PRESIDENT:

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The Eviction Informer is a bi-monthly newsletter produced by Southern Nevada Eviction Services. Please feel free to distribute it to industry professionals who may be interested in learning more about the eviction process.

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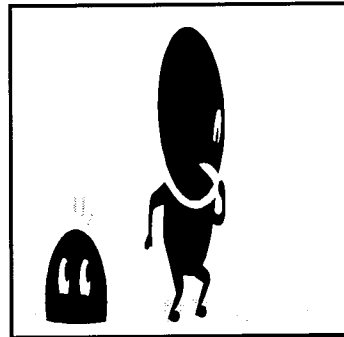
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TENANTS AND ABANDONMENT: PEEK-A-BOO...I DON'T SEE YOU

We often receive calls from clients asking for some clarification as to when they can deem a property "abandoned" and therefore re-take possession of the unit. In a perfect world, your tenant would pay the rent on time, keep your rental property clean and tell you once they have vacated the premises at the end of the lease. However, as we are well aware, many tenants don't pay the rent, damage the rental property and often vanish in the middle of the night. But, even worse than simply vanishing is when you are unsure whether the tenant is still in the property or has vacated. Given the potential liability of locking out a tenant before they have vacated the property, it is important for property managers to have a plan for dealing with these types of situations.

The penalty for illegally locking out a tenant without good cause can be quite severe. Pursuant to NRS 118A.390, a tenant who has been illegally locked out of a property by a landlord or his



agent can file a Motion for Illegal Lockout with the Justice Court. The judge will give the tenant an expedited hearing and, if the Court finds that the property manager has locked out the tenant without authorization, the property manager would be required to not only allow the tenant back into the property but might also be liable for financial damages (hotel rooms, meals) caused by the lockout. Consequently, managers must make sure that they can show the court that they have taken all reasonable steps to determine if the tenant abandoned the property.

Whether a property is "abandoned" rests on whether the tenant has removed all of his belongings from the property and whether outward signs are that the tenant has no intention of returning to the property. The first step is to try to contact the tenant to determine whether he has left the property. Managers should try to call, email and text the tenant to determine the tenant's status. While the tenant's failure to respond to these requests is not, on its own, sufficient to decide that the tenant has abandoned the property, it is evidence that the tenant is no longer contacting the manager and may have abandoned the property.

The next step in determining whether the property is abandoned is actually visiting the property to see the current condition. After posting the appropriate inspection notice, the manager should survey the situation at the rental property. Are the utilities

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WHAT IS A "TENANT"?

BY: DONNA YOUNG, DIRECTOR OF OPERATIONS

Here is a one-question quiz.

(Warning: This is more difficult than it seems)

In which of the following situations is the occupant a tenant:

A) You have a lease signed by an occupant, which details how much he will pay monthly to live in your rental property

B) You have agreed to allow a friend to stay in your rental

property, and she agrees to pay you monthly. There is no written lease.

C) You ask your girlfriend to move in; you do not discuss financial arrangements

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TENANTS AND ABANDONMENT (CONT.)

turned off? Have all personal belongings been removed from the property? Does it appear that anyone is still living in the property and are there still clothes, toiletries or a sleeping bag or bed in the property? Also, the manager should talk to neighbors to determine if they have spoken to the tenants recently regarding moving or if the neighbors have seen moving vans at the property.

Once the manager has surveyed the property, she can assess whether it appears that the property is abandoned. The property must definitively appear to be abandoned. Therefore, if the utilities are turned off but

there are personal items in the property, the property is not abandoned. Similarly, if most of the personal items are removed but some, non-trash items remain, the tenant has not yet abandoned the property. It is important to document what was found at the property (lights off, doors left open, no personal items left in the property, etc.) as, if there is a hearing on an illegal lockout, the Court will need to make a determination as to whether it was reasonable for the manager to deem the property abandoned based on the conditions at the property.

If the manager does determine that he, in good faith, believes that the property is abandoned, the next step is to

post a Notice to Deem Property Abandoned. As detailed in NRS 118.195, this notice places the tenant on notice that the manager will deem the property abandoned within five days unless the tenant contacts the manager within that time. To utilize this notice, the manager must reasonably believe that the property has been abandoned and the tenant's rent must be in arrears. The notice is posted and mailed to the tenant's address. If the tenant contacts the manager within five business days after the posting of the notice, the property cannot be deemed abandoned. However, if the tenant does not answer, the manager may then deem the property abandoned and change the locks. While the

Notice to Deem Property Abandoned is not an absolute protection against a claim of illegal lockout, it does provide strong proof to the court that the manager tried to determine the status of the rental property and will likely prevent the court from imposing any financial sanctions on the manager.

There are no easy solutions or guides to determining whether a property is abandoned. The best weapon against an illegal lockout claim, however, is doing one's homework and being able to prove it in Court.

WHAT IS A "TENANT"? (CONTINUED)

D) You go to inspect your rental property, which you thought was vacant, and find a family living there. They tell you a real estate agent let them in and they've been paying rent to that agent all along. Apparently, they have been scammed.

- 1) A only
- 2) A and B
- 3) A and B definitely, C probably, and D good chance

The Nevada Revised Statutes 118A.170 defines tenant as follows: "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Notice that the rental agreement does not have to be written. Notice that a person does not have to be

paying rent to be a tenant. So what is the difference between a non-paying tenant without a written lease and a squatter? Practically no difference.

And even if the person in your property is not a bona fide tenant, how can you remove him? Numerous property owners have gone to their rental properties and found people have broken in and are living there. The owner then calls the police, and finds the police cannot help. The occupant claims to be a legitimate tenant, may have ID showing that address. Law enforcement cannot make a determination; they will tell you it is a civil matter and will take no action without a judge's order.

If a landlord locks an occupant out of his property, the occupant may

go to court and file a complaint charging the landlord with illegal lock-out. If the court finds that the lock-out was indeed illegal, the occupant would be granted possession of the property, the landlord could be liable for damages and/or a fine, and could be held in contempt of court.

It is difficult to claim an occupant is not a bona fide tenant. An occupant may be a tenant even if 1) he is not required to pay rent; 2) there no written lease; and 3) the landlord does not know the occupant's name.

The bottom line is, if you want to remove people from your rental property, you will almost certainly have to use the eviction process.

VISIT OUR WEBPAGE AT
WWW.VEGAS-EVICTIONS.COM
 TO LEARN MORE ABOUT THE
 EVICTION PROCESS AND TO
 READ OUR BLOG

EVICTION FACT:

The Court will reject any eviction notice or eviction filing which does not include the first and last name of the tenant/occupant. Therefore, "Smith Family", "Bob J." or "Ralph" are not acceptable to the Court. If you do not know the correct first and last name, insert "Jones" or some other filler name.