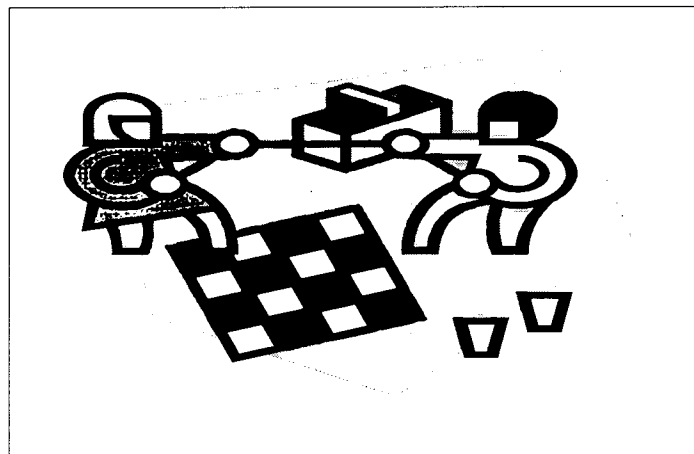


EVICTIION INFORMER

MESSAGE FROM THE PRESIDENT:

NEW LAS VEGAS EVICTION RULES

ENACTED



On July 20, the Nevada Supreme Court adopted several rule changes for the Las Vegas Justice Court. While the new rules cover a variety of matters, there are several changes to the eviction process of which landlords and agents must be aware.

Eviction Orders Good for 30 Days

Under the new rules, a signed eviction order is now valid for thirty (30) days from when it is signed by the judge. Therefore, the landlord can delay the actual lock-out of the property for up to thirty days from the time that the judge signs the eviction order. This will allow property managers some “wiggle room” to make last minute attempts to settle the matter with the tenant.

Motions to Stay Generally Decided Without Hearing

A Motion to Stay Eviction, generally filed after the Court has signed the eviction order but before actual lock-out, has up to this point delayed the

eviction process by several days to several weeks. Under the former rules, the Court would take several days to decide whether to grant the tenant a hearing and, if a hearing was ordered, would generally schedule the hearing within a week. Now, however, the Court is required to rule within one (1) judicial day as to whether to grant the stay. In addition, absent special

circumstances, the Court will decide the motion without the need for a hearing. If a hearing is scheduled, the hearing must be held within seven (7) days and the landlord will be given the opportunity to file an opposition to the stay request.

“Habitability” Defenses

The Court’s new rules will also thwart fictitious “uninhabitability” defense

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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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TOP TEN WAYS TO TORPEDO AN EVICTION BY: DONNA YOUNG, DIRECTOR OF OPERATIONS

Usually top ten lists start with number 10, and end with number 1. But I am going to begin with item number 1 – the absolute BEST way to ensure your eviction will be denied:

1) Use the wrong address, city, zip code

Probably the easiest and fastest way to ensure that your eviction will NOT go through would be to file paperwork with inaccurate address information. If you’ve filed in the wrong jurisdiction, or if the zip code is wrong, the court clerks will likely reject your

eviction filing right after they take your filing fee. (The court does not give refunds.) If the street number is wrong, or you’ve left off a unit number, the court clerk may not recognize your error, but the deputy surely will when he

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NEW EVICTION RULES (CONTINUED)

claims by tenants. As you know, if a tenant can prove that the rental property is “uninhabitable” and that, after written notice to the landlord, the landlord refused to correct the issue, the tenant may withhold rent. Many tenants, even if no such problems exist, will claim “uninhabitability” to delay the eviction process. However, under the new rules, the tenant must tender the withheld rent payment (excluding late fees) to the Court at the time that the tenant requests a hearing. If the tenant does not tender the rent, the tenant is forbidden from raising the habitability defense. If the tenant does tender the rent, the Court will hold a

hearing and, upon resolution of the habitability issue, forward payment to the landlord.

Appeals to District Court

The major rule change here is that tenants wishing to appeal their eviction order to the District Court must pay their filing fee and appeal bond (\$250) using credit card or certified funds. Previously, tenants were paying their bond with personal checks which often were returned due to insufficient funds. Under the new rules, unless the tenant pays with certified funds, he will not be permitted to file an appeal.

Conclusion

While these new rules will help landlords somewhat, they fail to address the more entrenched problems with the eviction system. Nonetheless, they are a step in the right direction of creating a fair and balanced eviction process.



EVICTION FACT:

While a residential tenant may withhold rent due to the “uninhabitability” of the rental property, a commercial tenant may not. The “habitability” defense to a Pay or Quit Notice is contained in NRS 118A which pertains exclusively to residential properties. Therefore, while the commercial tenant has the right to file a separate civil action to either break the lease or to seek compensation for unsatisfactory conditions in the property, he cannot unilaterally withhold rent.

TOP TEN WAYS TO TORPEDO

gets to the property. (No eviction, and no refunds)

2) Use the wrong type of notice

Pick the right notice for the right job. For non-payment of rent, you must start with a Pay or Quit notice. For other violations (nuisance complaints, HOA violations, failure to pay security deposit) you must start with a 3 Day Nuisance Notice. To terminate a monthly tenancy without cause, use a 30 Day Notice. **Note that you cannot terminate a tenancy without cause if a lease is in effect.** *(To evict occupants from post-foreclosure properties, you must comply with additional/different requirements – see The Informer Vol. 1, Issue 2 – June 30, 2010 for details).* If you use the wrong notice for the situation, your eviction will be denied. (The court does not issue refunds.)

3) Serve notice improperly

If the court clerk notices the improper service, he may reject the eviction before he takes your fee. In order for a notice to be used for an eviction filing, it must have been served correctly. If the notice is to be served via posting and mailing, then you must have the appropriate proof of mailing (certificate of mailing) and affidavit of service in order for the court to accept the filing. If the court accepts the filing initially, and then notices the improper service, the court will deny the eviction, and, you guessed it – no refund.



4) Omit required information in court filing

If your eviction paperwork is not complete, you can hope the court clerk notices that fact before he takes your filing fee. If the paperwork is incomplete, the filing will be rejected. (If you’ve already paid-no refunds) Remember to include all required proofs of service, instructions, correct number of copies of documents and a lease.

5) Fail to show up for a court hearing

The court may notify you that there will be a hearing on your case, either before (North Las Vegas) or after (Las Vegas/Henderson) you have filed your eviction paperwork. If you do not show up for your hearing, the eviction will be denied. If you are late and miss your appointed time, you MAY file a motion to place on calendar, but that will take some time. Oh, and you won’t get a refund of your fees.

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

Have a story
 suggestion or a
 landlord-tenant
 subject you would like
 to learn more about?
 Let us know and it may
 be addressed in an
 upcoming issue!

TOP TEN WAYS (CONTINUED)

6) Miss the constable's call on lock-out day

The deputy will call you on the morning of lock-out to let you know what time he will be at the property. You must arrange for someone to meet him there to change the locks. He will leave a message so you can call back, but if you do not make arrangements with the deputy, he will cancel the eviction. You will have some time to re-activate his service, but you will pay an additional fee.

7) Give the tenant a legitimate complaint

If you do not provide essential services, a judge may deny your eviction, whether or not the tenant has properly notified you of the problem. You may not have a tenant's utilities turned off. So, if a judge decides that your tenant has a legitimate complaint, you will not get the eviction order.

8) Keep poor records

It is imperative that you are able to show a judge how much a tenant owes. If you tell the judge that the amount of rent due is "around" \$1000, you probably won't get an eviction.

9) Allow a notice to lapse

Generally, you have 30 days to act on a notice. In Las Vegas, count 30 days from when the

notice expired. In Henderson and North Las Vegas, count 30 days from when the notice was posted. After that time has elapsed, you will have to start over again.

10) Take a partial payment

After you've posted a pay or quit notice, you must take payment in full if it is offered, but you are not obligated to accept partial payment. If you do accept any payment, you cannot obtain an eviction. It is assumed that a tenant would pay you nothing if he thought you would still proceed with the lock-out.

Conclusion:

Keep in mind that the eviction process is a legal process, and therefore, it is important that your paperwork be correct. Anything less than accurate and complete paperwork will result in a delayed or denied eviction.



DON'T FORGET- PUPPIES ARE PEOPLE TOO

Many renters and foreclosed property owners are leaving their animals in the property after they depart. These poor cats and dogs often have little food or water and are left in the hot Las Vegas sun. If you believe that an animal has been abandoned, call Animal Control at 702-455-7710. Fluffy and Spot will thank you!

