



## SAN MATEO COUNTY LAW LIBRARY

### RESEARCH GUIDE #12

## TENANT GUIDE: EVICTIONS AND UNLAWFUL DETAINER ACTIONS

This resource guide only provides guidance, and does not constitute legal advice. If you need legal advice you need to speak with an attorney. To find an attorney to assist you, you may contact the San Mateo County Lawyer Referral Service at (650) 369-4149.

### CAN MY LANDLORD EVICT ME?

It depends. In California, your Landlord may be able to evict you, but only after they have served you with a three day, 30 day, or sixty day notice (these different types of notices will be explained further below). If you do not do what the notice asks before the time period runs out, the Landlord then must file an Unlawful Detainer action.

**The notice must contain a statutory notice that you have a right to reclaim your personal property** (California Civil Code [Section 1946](#) and [1946.1\(h\)](#)).

### WHAT DO I DO IF I AM SERVED WITH A THREE DAY NOTICE?

This type of notice can be used when a tenant is behind on rent, is committing a nuisance, or is violating a term(s) of the lease agreement.

- **Three Day Notice to Pay Rent or Quit:** This type of notice is when a tenant is behind on rent.
  - This type of notice must be in writing; state the name of the tenant(s); state the address of the rental property; the amount of rent that is overdue; the dates for which rent is unpaid (this can only go back for one year); the address of where the payment may be made; and if the rent is not paid, then the tenant must move out if the rent is not paid in full before the three days is up.
- **Three Day Notice to Perform Covenants or Quit:** This type of notice is used if a tenant is violating a term of the lease agreement that can be fixed (has moved pets in, additional persons in, etc.). The notice must ask the tenant to correct the violation or move out.
  - This type of notice must be in writing; state the name of the tenant(s); state the address of the rental property; say what the tenant did to violate the lease or

rental agreement; and say the tenant has the chance to fix the problem or move out in three days.

- **Three Day Notice to Quit:** This type of notice is used for tenants that have an ongoing problem. This type of violation is not correctable, and the tenant has to move out as soon as the three days are up.
  - This type of notice must be in writing; state the name of the tenant(s); state the address of the rental property; say everything that the tenant did to break the lease or deserve a three-day notice to leave, and include details and dates; and say clearly that the tenant has to move out as soon as the three days are up.

#### **WHAT DO I DO IF I AM SERVED WITH A 30 DAY NOTICE?**

A Landlord can use a 30 day notice to end a month to month tenancy if you (or the tenant) have been renting for less than one year. A Landlord should use a 60 day notice if the tenant has been renting for a year or more and the Landlord wants the tenant to move out.

The notice must be in writing, and state the full name of the tenant and/or tenants. The notice must also give the address of the rental property, and state that the month to month tenancy will end in 30 days. There is no requirement that the three day notice be signed; therefore it appears that an unsigned notice is sufficient. However, if the notice is prepared by someone other than the Landlord, the Landlord may be required to show that he/she authorized the person to serve the notice.

**NOTE:** In rent-controlled cities, a Landlord cannot cancel a month to month tenancy for just any reason. If the rental property is in an area that is under rent control, certain guidelines need to be followed that are beyond the scope of this Resource Guide. Please review your local rent control ordinances and/or seek legal advice from an attorney.

#### **WHAT DO I DO IF I AM SERVED WITH A 60 DAY NOTICE?**

A Landlord should use a 60 day notice if you (or the tenant) have been renting for a year or more and the Landlord wants the tenant to move out.

The notice must be in writing, and state the full name of the tenant and/or tenants. The notice must also give the address of the rental property, and state that the month to month tenancy will end in 60 days. There is no requirement that the three day notice be signed; therefore it appears that an unsigned notice is sufficient. However, if the notice is prepared by someone other than the landlord, the Landlord may be required to show that he/she authorized the person to serve the notice.

#### **WHAT DO I DO IF I AM SERVED WITH A 90 DAY NOTICE?**

A Landlord must use this kind of notice if the tenant is in subsidized housing (Section 8). The Landlord must explain why he or she is asking the tenant to move out, and the Landlord must have “just cause” to do so.

**NOTE:** Unlawful Detainer is a unique area of the law and its procedures are entirely separate from the procedures pertaining to civil actions generally; thus, where provisions in the Unlawful Detainer Act relate to practice, they supersede (take priority) over the rules of practice

contained in the Code of Civil Procedure. (*Losornio v. Motta* 78 Cal. Rptr.2d 799, 67 Cal.App.4<sup>th</sup> 110).

If you are unsure of a procedure, you should consult an attorney for advice. At the end of this Resource Guide, contact information for two legal clinics is provided.

### **WHAT DO I DO IF I AM SERVED WITH AN UNLAWFUL DETAINER?**

You must file a response (called an Answer) to the Unlawful Detainer within five (5) calendar days if you were *personally served* with the notice. If the Unlawful Detainer was served by *substitute service and mailed to you; or posted on your front door and mailed to you*, you have 15 days to respond with your Answer after the date the server mailed the court papers to you, NOT the date that you received the notice.

### **HOW MUCH TIME DO I HAVE TO FILE MY ANSWER AGAIN?**

- Personal Service: **5 days**
- Substitute Service: **15 days after mailing**

### **HOW DO I RESPOND?**

The most common way to respond is to file an Answer – Judicial Council Form UD-105. Because there are different ways to respond, you should see the advice of an attorney to determine which response is correct for you. San Mateo County Legal Aid provides Tenant workshops to assist you should you have additional questions.

You may have a legal defense to the complaint made by the Landlord. If so, this must be contained in your Answer, and file it with the Clerk by the time applicable to the way you received service. If you do not do so, you will waive any defenses that you may have. Examples of typical defenses a tenant might have are:

- The Notice requested more rent than is actually due;
- The rental unit violated the Implied Warranty of Habitability (see Civil Code Section 1941) ; and/or
  - The Implied Warranty of Habitability simply stated means that the building being leased is fit for human beings to reside there. The ways in which it may be violated are listed in Civil Code Section 1941.1 (a-i). Additionally, the rental unit must also substantially comply with building and housing codes that affect tenant health and safety within California Health and Safety Code Sections 17920.3 or 17920.10 that apply to residential units.
- The Landlord filed the eviction in retaliation for the tenant exercising a legal right due to them, and/or complaining to the housing authority.

Once your Answer is prepared, your Landlord needs to be served. Someone other than you, who is 18 years of age or older, needs to mail the Answer to the Landlord, and also fill out a Proof of Service form – [POS-030](#). The original Answer needs to be filed, along with a copy of any documentation, as well as the proof of service form at the Courthouse.

## **DO I HAVE TO PAY A FEE FOR FILING MY ANSWER?**

There is a filing fee associated with filing an Answer. If you cannot afford the court fees, you may ask the court to waive your fees. You must fill out a Fee Waiver form - [FW-001](#), as well as the Order on Court Fees Waiver – [FW-003](#).

## **WHERE CAN I FIND THE FORMS THAT I NEED?**

You can find the forms at the County Clerk's Office, or can find them on the [California Courts](#) website.

## **WHAT HAPPENS IF I DO NOT RESPOND?**

**If you do not respond by the deadline (5 days or 15 days depending on your situation), you could:**

- Lose the case and be evicted;
- The Landlord could take your money, salary, and/or property without warning; and/or
- You could have future problems trying to rent because of an eviction on your record.

## **WILL THERE BE A TRIAL?**

If your case goes to trial, you or your Landlord may request a trial by jury. This means that a jury, and not a Judge will decide your case. To request a jury trial, you must fill out another form [UD-150](#), *Request to Set Case for Trial*. Keep in mind that Jury trials are not free. If you request a jury trial, you will have to post approximately \$150.00 with the court to pay for one day of trial. If you win, you can recover these fees from the Landlord (and vice versa). If you cannot afford to pay jury trial fees, you must fill out an additional fee waiver form [FW-002](#).

## **WHAT HAPPENS AFTER I FILE MY ANSWER?**

In approximately one week, the court clerk will mail you and the Landlord the scheduled date, time, and location of the trial. The trial is typically scheduled within 20 days after the request is filed.

## **HOW DO I PREPARE FOR TRIAL?**

Gather all the information related to your case. If possible bring any original documents, plus three copies of everything to court. These documents could include:

- The lease or rental agreement
- The Notice that was served to you
- Letters that you wrote and/or received regarding the unit (repairs needed, etc.)
- Photographs of any damage, or unhealthy conditions
- Complaints filed with the Housing Authority
- Building inspection reports if applicable

You may also bring any witnesses that have personal knowledge about the facts of your case. If a witness refuses to come to court, ask the clerk for assistance with a subpoena.

## **WHAT HAPPENS IF THE LANDLORD WINS?**

If the Landlord wins the case, the Judge will give the Landlord a Judgment form – [UD110](#). This gives the Landlord back possession of the property. The judge or jury may also order you to pay back rent, damages and/or costs (filing fees and attorney fees).

The Landlord will give you a Writ of Eviction – [EJ-130](#). This enables the Sheriff to remove you and lock you out of the property. The Landlord cannot do this without the Sheriff.

The Sheriff will serve you with a Notice To Vacate. This will give you five (5) days to move. If you do not move, the Sheriff will remove you and lock you out.

## **CAN I APPEAL IF I LOSE MY CASE?**

You can appeal or you can file a motion to set aside the judge's order. There are strict deadlines for this. If you wish to appeal you should seek legal advice (A Notice of Appeal and Notice to Prepare Clerk's Transcripts must be filed within 30 days of receiving notice that judgment was entered against you). THIS WILL NOT PREVENT THE EVICTION. The only way for a tenant to stop or delay the eviction is to ask for a Stay of Execution.

## **WHERE CAN I FIND HELP?**

[San Mateo County Legal Aid Society](#) offers assistance to Tenants. Please leave a message on their housing line (650) 517-8911; someone will return the call.

### **Community Legal Service in East Palo Alto (CLSEPA) – Housing Program**

CLSEPA is located at 1861 Bay Road, East Palo Alto

Please call (650) 326-6440 to schedule an appointment.

*Legal Aid of San Mateo County Clínicas de Vivienda tienen personas que hablan español.*