



+ Eviction Process



Information gathered from: Austin Tenants' Council <http://www.housing-rights.org>

HOW EVICTIONS WORK:

WHAT RENTERS NEED TO KNOW

- AN EVICTION IS A LAWSUIT FILED BY A LANDLORD TO REMOVE PERSONS AND BELONGINGS FROM THE LANDLORD'S PROPERTY. **IN TEXAS LAW, THESE ARE ALSO REFERRED TO AS "FORCIBLE ENTRY AND DETAINER" OR "FORCIBLE DETAINER" SUITS.**
- **A LANDLORD MAY TRY TO EVICT A TENANT FOR MANY REASONS.** THESE REASONS INCLUDE IF A TENANT OWES ANY RENT, EVEN AS LITTLE AS \$1; IF ANY UNAUTHORIZED OCCUPANTS OR GUESTS ARE LIVING IN THE DWELLING; OR IF THERE IS ANY OTHER SUBSTANTIAL BREACH OF THE RENTAL CONTRACT. **HOWEVER, A TENANT ALWAYS HAS THE RIGHT TO FIGHT AN EVICTION IN COURT.** AN EVICTION FOR ALLEGED BREACH OF THE LEASE IS DIFFERENT FROM TERMINATING A LEASE AT THE END OF ITS TERM.
- **LANDLORDS CAN'T JUST KICK YOU OUT, EVEN IF YOU ARE BEHIND ON RENT. THEY MUST GET A COURT JUDGMENT.**

WHAT IS THE EVICTION PROCESS?

- The eviction process is a formal procedure that will include going to the justice of the peace (JP) court or possibly to a higher court.
- The landlord must first deliver a written Notice to Vacate to the tenant. If the tenant does not move out after the deadline in the notice, the landlord must file an eviction suit with the JP court. A constable will deliver an eviction citation to the tenant. The citation will set a hearing date. ***If the tenant loses the eviction, the tenant will have five days to appeal the decision or move out.***

Notice to Vacate

This notice, also known as a demand for possession, must be in writing. The landlord has to give the tenant at least three days to vacate unless written lease sets a different time period, such as 24 hours. The notice may state the date it is delivered, the reason for the eviction, and indicate the amount of rent owed, if applicable, but this is not required by Texas law. The notice must:

1. State the number of days the tenant has to vacate; and
2. Indicate the tenant's "right to occupancy is being terminated."

There are several ways to deliver this notice. However, it is best to have proof that the tenant received this notice. The notice may be delivered:

1. To the tenant or any person over 16 years of age residing at the unit;
2. By certified, registered, or regular mail;
3. By attaching it to the inside of the front entrance door; or
4. By attaching it to the outside of the front door but only if:
 - There is no mailbox; and
 - The landlord cannot enter the unit because a dangerous animal, keyless deadbolt or an alarm system prevents the landlord from entering.

Note: Normally, a notice to vacate must be unequivocal and must demand that the tenant move. However, Texas law allows a landlord to give a notice to vacate which states the tenant should pay rent or move if the landlord first gives a written notice or reminder to pay the rent.



Eviction Citation

The tenant does not have to move out of the unit by the date indicated on the Notice to Vacate. If the tenant decides to stay in the unit, the landlord can file an eviction suit at the local JP court. **The landlord cannot remove the tenant or the tenant's property without a court order, except in the case of abandonment or when exercising a landlord's lien.**

After the landlord files the eviction suit, the court clerk will send the eviction citation to the constable's office for service to the tenant. The constable will attempt to hand-deliver the citation to the tenant at the tenant's home. After two unsuccessful attempts, the constable may slip the citation under the front door or attach it to the front doors and mail a copy by first class mail.

The first page of the citation from the JP court must include the following notice in bold print and in English and Spanish:

Suit to Evict-This suit to evict involves immediate deadlines. Call the State Bar of Texas toll-free at 1-877-9TEXBAR if you need help locating an attorney. If you cannot afford to hire an attorney, you may be eligible for free or low-cost legal assistance.

Talk to Your Landlord.

Try to talk to your landlord about the Notice to Vacate, either to understand what happened or to see if you can get more time to fix the situation. You may want to ask the landlord to hold off on filing an eviction lawsuit in return for your fixing the lease violation. For example, you may be able to stop the landlord from filing an eviction suit by paying rent that you owe, getting rid of pets not allowed under the lease, or cutting down loud noise.

Lockouts

A landlord may change the lock on a tenant's door when the rent is delinquent, but only if:

1. The landlord's right to change the locks because of a tenant's failure to timely pay rent **is written in the lease; and**
2. The landlord has given the tenant advance written warning that the locks will be changed. The warning must give three days' notice if it is hand-delivered or posted and five days' notice if mailed.

The landlord is required by law to give the tenant a new key upon request, regardless of whether the tenant pays the delinquent rent, and the tenant can continue living in the unit. The intended purpose of this law is to allow for a meeting between the landlord and the tenant. **A lockout is not an eviction.**

Liens

A landlord's lien is a state law that allows a landlord to remove a tenant's property from the rental unit to secure payment of delinquent rent. **There must be a statement in a written lease, either underlined or in bold print, which allows the landlord the right to enter a rental unit and remove the tenant's personal property.** The law only allows a landlord to take certain non-exempt items such as televisions, VCRs, stereos, or computers.

If you feel like you are being discriminated against due to your race, color, national origin, religion, sex, disability (mental or physical), or familial status, you can call the Office of Fair Housing and Equal Opportunity at 1-800-669-9777.



Waco Housing & Community Development
<http://www.waco-texas.com/housing.asp>