

TENANT-LANDLORD INFORMATION: EVICTION, UNLAWFUL EVICTION & UTILITY ACCESS

I. Eviction

Eviction is the process of removing a tenant from rental property. Because Michigan law precludes self-help, do-it-yourself eviction, a landlord is required to use the court system to lawfully evict a tenant.

A landlord can evict a tenant if a tenant:

- fails to pay rent;
- causes a serious and continuing health hazard on the property, or causes an extensive and continuing physical injury to the property;
- violates the lease agreement;
- fails to move out after a tenancy has been terminated or a landlord does not renew a lease;
- is involved in illegal drug activity on the rental property;
- cause or threatens physical injury to another person on the rental property
(there are a few other types of eviction cases which are not discussed in detail in this pamphlet.)

A. The most common reason for eviction is nonpayment of rent. To evict a tenant for nonpayment, a landlord must first personally deliver or mail (serve) to the tenant a Demand for Possession ("DFP"). The DFP is a written notice on which the landlord states there is unpaid rent and the amount due. If the tenant does not pay that amount within 7 days of the DFP's service, the landlord may start an eviction case by filing these documents in the state district court where the rental property is:

1. **Complaint**, with a copy of the written Lease Agreement (if one exists) and the DFP attached to it.
2. **Summons**.

The landlord must serve the tenant with the Complaint and other documents. DFP, Complaint and Summons forms are available at the court clerk's office and also on the State Court Administrative Office's (SCAO) website: <http://courts.michigan.gov/scao/courtforms/index.htm>.

The complaint and the summons should be read very carefully. The Complaint is a statement of the landlord's case. For most courts, the Summons states the hearing date for the case. At the hearing, the tenant may ask the court for an adjournment (a postponement of the hearing) to seek legal assistance. **If the tenant does not appear** at the scheduled hearing, the landlord can ask for a **default** which generally results in the court entering a judgment against the tenant.

If there is a trial in an eviction case, the landlord must prove its allegations. The tenant should be ready to present defense to the landlord's rent claim. Common defenses include payment, and the landlord's failure to keep the premises in good repair, which state law requires. To support a landlord's failure to keep the property in good repair defense, photographs of the repair problems, copies of letters to the landlord, and building department inspection reports can be persuasive. If the court (judge or jury) finds that the landlord has not met

its repair duties, the tenant is entitled to a full or partial reduction (sometimes called an “abatement”) of the rent amount the landlord claims is due.

In a nonpayment of rent case, if the court determines that the tenant owes rent, a judgment will be entered against the tenant. The judgment will state the amount of rent, plus any court costs that the tenant must pay, usually within 10 days, to avoid an eviction. Within that 10 day (or more) “redemption” period, the tenant may pay the judgment amount, file a motion to set aside or modify the judgment, file an appeal to the circuit court, or move out.

Unless the tenant pays the judgment amount or moves out during the redemption period, the landlord can file for an eviction order (also called a “writ of restitution”). If the court issues an eviction order, it will direct a sheriff’s deputy or court officer to remove the tenant and its personal property from the rental premises.

B. Other Eviction Case Types. For the other than non-payment types of eviction cases mentioned above, the landlord must usually serve a written notice on the tenant before filing a complaint.

- for termination of a month-to-month tenancy, one month's notice (called a Notice to Quit) is necessary;
- for a case alleging health hazard/injury to the rental property, or causing or threatening physical injury to another person, 7 days notice is required;
- for a case alleging illegal drug activity on the rental property, only a 1 day notice is required.

II. Unlawful Eviction

A landlord generally cannot legally use self-help to evict a tenant. The landlord must first go to court and obtain a judgment, as described above. Additionally, a landlord cannot harass the tenant or try to make the tenant move out (the law uses the phrase “unlawful interference with possessory interest”) by:

- using force or threatening to use force;
- removing, withholding, or destroying personal property of the tenant;
- changing, altering, or adding locks or security devices to the rental premises;
- boarding up the premises which prevents or makes entry difficult;
- removing doors, windows or locks;
- causing (by action or inaction) the shut-off or interruption of gas, water or electric service;
- causing offensive noise, odors or other nuisance.

A tenant may sue a landlord who does any of these things. If the claim is proved, the tenant may recover its actual damages or \$200.00 (whichever is greater). The court may also order the landlord to allow the tenant to resume living in the rental property or take some other action such as restoring utility service (these types of orders are called “injunctive relief”.) If the landlord uses actual force, the damages may be tripled. Damages may include things such as lost or damaged property, the cost of other lodging, and mental anguish.

III. Utility Access

Utility services are a basic need. Utilities include heat, water, hot water and electric service. Usually, tenants put the utilities in their own name and are billed directly for their use. However, some landlords choose to keep the utilities in their own name and charge the tenant the amount of the bill or include it in the rent.

A. If Tenant Utilities Are Shut Off

1. Contact the utility company immediately and determine the reason for the shutoff.
2. Determine who is responsible for the shutoff - the landlord or the utility company.

B. When Shutoff Is Caused By Landlord

If the utility is in the landlord's name, the landlord cannot shut off the service to harass or evict the tenant even if the tenant is behind in making rental payments. If the landlord deliberately causes the utility to be shut off, there are two options:

1. Ask the utility company to restore service in the tenant's name, or
2. Ask the utility company to restore service in the landlord's name because the landlord has acted unlawfully.

If the service is shutoff because the landlord has not paid the bill, the utility company should be willing to turn it back on in the tenant's name.

C. When Shutoff Is Caused By Tenant's Failure To Pay Utility Bills

The utility company cannot force a tenant to pay the past due bill of a prior tenant or to pay a deposit if the tenant has good credit history with any electric or gas utility company. (Note: This applies only to residential gas and electric.) If either the amount of the bill or the reason for the shutoff is in dispute:

1. First call the utility company to work out the dispute.
2. If the dispute is not resolved, call the Michigan Public Service Commission (MPSC) at 1-800-292-9555. The MPSC will determine if the utility company followed the law in shutting off service. The MPSC can also answer other utility service questions.

D. Tenant Difficulty Paying Utility Bills

Eligible low-income consumers may receive help in paying their heating and electric bills through energy assistance programs administered by the Michigan Department of Health and Human Services.

Also, most utility companies have winter protection plans that protect low-income customers and seniors age 65 and older from service shutoff November 1 through March 31. Call your local utility company to determine eligibility.

This pamphlet should not be used in place of legal assistance. In the event of a landlord / tenant dispute, seek legal advice.

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