

1. The rent due was either paid or offered to the landlord and rejected within the five-day notice period.

2. The landlord filed the eviction lawsuit before the notice period expired.

3. The landlord is trying to evict the tenant in retaliation for the tenant complaining to the government about health and safety violations in the building.

4. The landlord is discriminating against the tenant because of the tenant's race, sex, religion, national origin, or disability.

If the judge grants the eviction, the tenant must move out of the apartment within the time the judge gives the tenant; otherwise, the sheriff can physically evict the tenant. If the tenant cannot move within the time allowed by the judge, he or she should call the landlord and request more time or, if that fails, file a motion with the judge asking for more time. If the tenant files such a motion, the tenant must give the landlord a copy of the motion and a notice of when the hearing on the motion will be held by the court. The landlord has the right to object to, or attempt to limit, the additional time.

HOW TO APPEAL AN EVICTION ORDER

A tenant can appeal an eviction order entered by a judge by filing a notice of appeal within 30 days after the judge orders the eviction. The notice of appeal must be filed in the Illinois Appellate Court. The tenant then files a copy of the notice with the Clerk of the Circuit Court of Cook County and serves a copy of it on the landlord (or in care of the landlord's attorney if the landlord is represented by an attorney).

If the tenant wants to stay in his or her apartment until the end of the appeal, the tenant must also post a bond. The amount of the bond is usually equal to 12 months' rent; however, the judge can reduce the amount if the tenant cannot afford it.

This pamphlet was issued to give you some general advice about the law in Chicago. It is not intended as legal advice about any particular problem. If you have a question about the law, you should consult a lawyer. If you do not know a lawyer, you should call the Lawyer Referral Service of The Chicago Bar Association at (312) 554-2001.

Looking for an Attorney?

The Chicago Bar Association Lawyer Referral Service makes referrals to experienced lawyers in all areas of the law, including adoption, wills and estate planning, consumer fraud, employment law and real estate.

For referral to a lawyer right away:

- Call (312) 554-2001 (M-F, 9:00 a.m. - 12:00 noon, 1:00 - 4:30 p.m.)
- www.chicagobar.org/lrs.htm (24 hrs.)



**THE CHICAGO BAR
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THE COMMUNITY'S FOUNDATION FOR ACCESS TO JUSTICE

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Eviction:

Basic eviction procedure, types of notice, how a trial works and how to appeal an eviction

Eviction



A public service pamphlet by the Young Lawyers Section of The Chicago Bar Association

CONSTRUCTIVE EVICTION

It is illegal for a landlord to change the locks, cut off the utilities (including gas, electricity, water, heat, hot water or plumbing), refuse to make repairs if the building becomes structurally unsafe or in any way make it impossible for the tenant to live in his or her apartment. If the landlord does any of these things, the tenant can move out without having to pay any rent. The tenant must notify the landlord in writing that he or she is moving out and explain why. In the alternative, the tenant can file a lawsuit asking the court to stop the landlord from the illegal conduct and order the landlord to pay the tenant for the time that the tenant was unable to use his or her apartment.

WHEN A LANDLORD CAN EVICT

A landlord may not forcefully evict a tenant. If a landlord wants to evict a tenant and the tenant refuses to leave voluntarily, the landlord must file an eviction lawsuit. An eviction lawsuit can be filed for several reasons:

1. The oral or written lease has expired.
2. The tenant has breached some part of the lease, such as (a) not paying rent; (b) refusing to allow the landlord lawful access to the apartment; (c) disturbing the neighbors; or (d) abandoning the apartment.
3. The tenant is doing something illegal in the apartment, such as those involving marijuana, narcotics, controlled substances, or a felony or class A misdemeanor.

If the landlord wins an eviction lawsuit and the tenant still does not leave voluntarily, the landlord can have the sheriff physically evict the tenant, but the landlord cannot do so him or herself.

WHEN NOTICE IS REQUIRED

In some situations, the law requires a landlord to give written notice of termination to a tenant and to wait until the notice period ends before filing an eviction lawsuit. These situations include:

1. Where a tenant is living on a week-to-week basis,

the landlord must give notice at least 7 days before the end of a weekly term. The notice must tell the tenant to move out of the apartment at the end of the next full weekly term. The landlord does not have to give any reason for wanting the tenant to leave.

2. Where a tenant is living on a month-to-month basis, the landlord must give notice at least 30 days before the end of a monthly term. The notice must tell the tenant to move out of the apartment at the end of the next full monthly term. The landlord does not have to give any reason for wanting the tenant to leave.

3. Where the tenant has not paid rent on time, unless a different period is required by the lease, the landlord must give a written five-day notice that the lease or possession of the apartment will be terminated unless the rent is paid. If the tenant pays the rent within this five-day period, the landlord must accept it and cannot terminate the lease or evict the tenant.

4. If the tenant violates some other requirement of the lease, the landlord can give the tenant a written 10-day notice explaining the violation and asking the tenant to move out if the problem is not fixed within ten days. The landlord may pursue eviction only if the problem is not fixed within the 10-day notice period.

NOTE: Notice periods for CHA or other subsidized housing may be longer depending on federal regulations.

WHEN NOTICE IS NOT REQUIRED

The landlord is not required to give any notice of termination if the lease automatically ends on a certain date. If the lease includes an automatic termination provision, the landlord simply can ask the tenant to move out. If the tenant refuses, the landlord can file an eviction suit without giving any other notice or waiting any time beyond the end of the lease term.

Even where notice normally is required by law, the tenant may waive such a requirement. Many written leases include a waiver of notice. If the tenant does

not want to have such a waiver in the lease, he or she should negotiate with the landlord to have it removed before signing the lease.

HOW SUMMONS IS SERVED

If the landlord decides to file an eviction lawsuit, he or she must write a complaint explaining why the tenant should be evicted and file the complaint with the court.

At that time, the landlord must have the sheriff serve a summons. A summons is a notice that the lawsuit has been filed and that a response is required by a certain date. The summons is served upon the tenant with a copy of the complaint. The law requires the sheriff to personally give the summons and complaint to the tenant or to a member of the tenant's household over the age of 13 and mail a copy to the tenant.

If the landlord is suing only to evict and not for rent, and the sheriff has been unable to serve the summons, the tenant may be notified by both mail and a posted notice at the county building. Under such circumstances, the court hearing the eviction complaint can order that the tenant be evicted, but cannot enter a judgment against him for any unpaid rent.

After the tenant receives the summons and complaint, he or she should appear in court at the time required on the summons and present any defense he or she may have to the judge if the tenant wants to challenge the eviction. The tenant can demand a jury trial.

HOW THE TRIAL WORKS

At the trial, the landlord will present his or her argument first. This usually means that the landlord must prove that the tenant has breached the lease, that the landlord has served the tenant with all required notices, that the tenant did not fix the problems within the required notice period, and the amount of rent, if any, that is due under the lease. The tenant then presents his or her argument. The tenant's defenses may include: