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Renter information: evictions and landlord liens

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Quick Facts

A landlord can evict a tenant only by a process of formal legal proceedings.

Types of eviction proceedings are: eviction at the end of the rental period, eviction for nonpayment of rent, and eviction because of violations of the lease agreement.

In certain situations a landlord may hold and sell a tenant's property for payment of back rent.

A landlord of a house (single-family dwelling) cannot take a tenant's property for payment of back rent.

A lockout in an apartment or house is illegal; it denies tenants access to their own property without due process.

Evictions

To be evicted, a tenant must clearly violate the lease agreement. The violation must be based on legally binding clauses in the lease. A landlord can legally evict a tenant through formal legal eviction proceedings called forcible entry and detainer. There are generally three types of eviction proceedings:

1) **At the end of the rental period (usually month to month) or at the end of the lease period;** a landlord does not have to give a tenant any reason for eviction at the end of this period. The landlord can evict the tenant for no reason even if the tenant has lived there for 10 years, always paid the rent on time and has done no damage to the apartment.

However, the landlord must follow technical legal procedures to accomplish an eviction.

a) The landlord must give the tenant written

notice, signed by the landlord or agent, that the rental period will end at a certain time.

The written notice must say that the tenancy will end on the last day of the rental period—not before or after that day. The notice must be written, signed by the landlord or agent and must describe the property to be vacated.

b) The notice must be served to the tenant in a specified number of days before the end of the rental period. The required time is as follows:

Rental period	Time period before the end of rental period that notice must be served
one year or longer	three months
six months to one year	one month
one month to six months	ten days
one week to one month	three days
less than one week	one day

When the tenant plans to move out, the tenant also must give the landlord written notice within the same time periods as above or the tenant could be liable for the following month's rent.

2) **Eviction for nonpayment of rent.** A landlord can evict a tenant for nonpayment of rent at any time a tenant is behind in the rent. But again, the landlord must follow technical procedures:

a) The landlord must serve a written, signed notice to the tenant.

b) The notice must give the tenant the option to pay the rent within three days or get out.

c) The notice must be written and signed and must describe the property.

3) **Eviction for violating a lease.** A tenant can be evicted for violating a lease if the clauses in the lease are legal. Some clauses, such as the tenant must forfeit their entire security deposit for damages regardless of costs, are illegal.

As in the other two types of eviction proceedings, the landlord must follow strict procedures:

¹Original text by Colorado State University Student Legal Services; and Alice M. Morrow, former Cooperative Extension faculty. Reviewed by Judy McKenna, Cooperative Extension family management specialist and associate professor; and Office of Renter's Information, Student Legal Services (6/89)

a) The landlord must give the tenant a written, signed notice that the lease has been violated. The notice will command the tenant to vacate the property in three days from the day the notice is served.

b) The notice must describe exactly the conditions that have been violated. The charges must be clear to allow the tenant an opportunity to defend against the charges if necessary.

If eviction notices are ignored, the landlord must go to court and file a lawsuit. The landlord must serve a summons and complaint on the tenant. The summons and complaint can be served on the tenant personally or posted on the tenant's door (or a conspicuous place on the premises) with a copy mailed on the same day it is filed with the court.

The summons must tell the tenant to appear in court in no less than five days. If the tenant does not appear in court as required, the landlord can get judgment for possession on that day.

If the tenant does appear and files an answer, a trial will be set in about five days and the landlord cannot get a judgment until after the trial. Once the landlord obtains a judgment, he or she must wait 48 hours and then get a writ of restitution to have the sheriff put the tenant out. (The sheriff usually will give the tenant a day or two to vacate voluntarily before taking forcible action.)

Landlord's Lien on Tenant's Property

In certain situations a landlord may have a lien on a tenant's personal property for money the tenant owes the landlord. In situations where the landlord has a lien, he or she may take and hold a tenant's property to pay back rent or other amounts due. Some courts, however, have held this statute unconstitutional and landlords were required to pay charges.

The law distinguishes between three types of rentals:

a) temporary guests at a hotel, motel, inn or boarding house;

b) tenants in an apartment;

c) tenants in a single-family house.

A landlord of an apartment or room can take only certain property of the tenant to pay back rent. A landlord cannot take small kitchen appliances, cooking utensils, bedding, beds, necessary clothes, personal or business records, or personal effects. The landlord may take such things as stereos, records, television and tools. A landlord of a single-family house cannot take a tenant's property.

The landlord may enter the apartment or room at a reasonable time and in a peaceable manner to take possession of the property covered by the lien.

If the tenant is at home, the tenant can resist the entry and order the landlord out. If the tenant is not at home, the landlord may use a pass key to go in and get the property.

If the landlord takes a tenant's property and the tenant does not pay money owed to the landlord within 30 days, then the landlord must file a foreclosure action in court. When the landlord has

received a judgment, the landlord can sell the property after he or she has given 10 days prior notice of the sale in the newspaper and after having given written notice to the owner of the personal property. From the proceeds of the sale, the landlord may retain an amount for reasonable sale cost (not to exceed \$90) and the amount owing from the tenant. The remainder of the proceeds and any unsold property belong to the tenant.

If the landlord sells or otherwise disposes of the tenant's property without properly complying with the Colorado law, the tenant is entitled to bring a court action to recover the value of the property or \$100 (whichever is greater), and reasonable attorney's fees.

This procedure is complicated. A landlord who is taking a tenant's property because of amounts owed to the landlord should seek legal advice.

A tenant who has had property taken by the landlord should keep a record of all actions and property taken and notices received. The tenant should also seek legal advice.

Constructive Evictions

A constructive eviction is when a landlord does something to interfere with the tenant's possession, use and enjoyment of the rented premises. A tenant can elect to move out of the apartment and not be responsible for the remainder of the lease. Often the tenant does not want to move out but wants to take corrective actions.

Lockouts: A lockout is a constructive eviction done by the landlord to lock the tenant out of the rented premises. A lockout in an apartment, motel or house is illegal. By placing a lock on the tenant's door, the landlord has denied the tenant access to personal property without due process of law. The tenant may slip or break the lock on the door; however, the tenant may run the risk of being arrested when taking this action. Be sure and notify the police, and seek legal advice before taking this step.

At most, the tenant will be liable for the cost of the damaged lock. A tenant cannot be prosecuted for breaking into his or her own apartment. If police were called while the tenant was breaking into the rental premises, the tenant would have to prove that he or she is the tenant. A tenant has a legal right to free access to the apartment. If the tenant is forced to stay in a motel or car due to being locked out, the landlord is liable to pay for damages. The tenant, however, must prove physical injury or deprivation. Payment of hotel fees is sufficient for damage suit.

Utility shutoff: The utility shutoff is another constructive eviction done by the landlord to shut off the utilities in the rented premises. When this happens, the tenant can have the utilities turned back on at his or her own expense. The tenant can take legal action against the landlord to recover the expense incurred in having the utilities turned on.

(This material should not be used as a substitute for seeking needed advice from attorneys and other qualified advisors.)