
THE ABC'S OF UNLAWFUL DETAINERS

A. WHAT IS AN UNLAWFUL DETAINER ACTION?

An Unlawful Detainer is a summary court proceeding to evict someone from a place they rent to live or work. The Unlawful Detainer action's primary purpose is to remove the Tenant from the rented premises, but it may also seek recovery of rent. An Unlawful Detainer action usually is filed by a Landlord when the Tenant stays after the lease is up or the lease is cancelled due to a default — often the failure to pay rent.

B. WHO CAN EVICT A TENANT?

Only the Sheriff can physically evict a Tenant. It is against the law for a Landlord to physically evict a Tenant. That means the Landlord cannot:

- Lock the Tenant out.
- Get rid of the Tenant's things.
- Cut off the water or electricity.
- Remove the doors or windows.

Upon a default, the Landlord can serve the Tenant with a notice to cure the default or terminate the lease and regain possession of the property. The Landlord must wait for the notice to expire. If the Tenant does not cure the default or move out, the Landlord has the option to file an Unlawful Detainer action.

If the Landlord obtains a judgment for possession of the premises, the Landlord must give it to the Sheriff with a fee. The Sheriff will notify the Tenant that s/he will return on a particular date to escort the Tenant off the property. When the Sheriff returns to evict the Tenant, the Landlord should return as well to assess any damage the Tenant may have caused to the property and change the locks.

C. WHEN CAN I FILE AN UNLAWFUL DETAINER ACTION?

- When the Tenant does not leave after the lease ends.
- When there is a month to month lease, and the Tenant does not move out after a 30-day or 60-day notice (as applicable) to quit.
- When the Tenant does not pay the rent when due and does not move out after being served with a 3-day notice to pay rent or quit.
- When the Tenant breaks some other part of the lease, they are served with a 3-day notice to cure or quit, and they do not correct the violation or quit.
- When the Landlord accepts the Tenant's offer to vacate the premises but the Tenant does not leave.

D. WHAT CAN AN UNLAWFUL DETAINER ACTION NOT DO?

- An Unlawful Detainer action cannot be filed solely to obtain past due rent.

- An Unlawful Detainer action generally does not resolve disputes about damages or security deposits.
- The Tenant cannot file a cross-complaint in an Unlawful Detainer action. Except under very limited circumstances, the Tenant must file a separate action if he or she wants to get money back from the Landlord.
- The Court cannot give the Landlord damages for rent lost after the judgment.
- The Landlord cannot use an Unlawful Detainer action to regain entry into a rented storage unit.

For more information:

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