

March 13, 2020

LANDLORD TENANT GUIDE: WHAT EVERY UTAH HOUSING ADVOCATE MUST KNOW ABOUT DEFENDING
A TENANT AGAINST UTAH'S HARSH EVICTION LAWS

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INTRODUCTION:

Unlawful Detainer

78B-6-801(7) "Unlawful detainer" means unlawfully remaining in possession of property after receiving a notice to quit, served as required by this chapter, and failing to comply with that notice.

78B-6-801(6) "Tenant" means any natural person and any individual, INCLUDING a commercial tenant.

78B-6-801(5) "Owner:"

- (a) means the actual owner of the premises;
- (b) has the same meaning as landlord under common law and the statutes of this state; and
- (c) includes the owner's designated agent or successor to the estate.

78B-6-801(8) "Willful exclusion" means preventing the tenant from entering into the premises with intent to deprive the tenant of entry.

All Unlawful Detainer Eviction Actions Begin with WRITTEN Notice.

78B-6-805: Notice to Quit - How served

WRITTEN Notice may be served upon a tenant:

1. ***personally***;
2. mailing a copy to tenant at tenant's address by ***registered or certified mail***;
3. if tenant is absent, service may be left with a person of ***suitable age and discretion AND mailing*** a copy to tenant at tenant's residence;
4. if there is no one of suitable age and discretion, ***affixing a copy in a conspicuous place*** on the leased property; or
5. if the court has ordered abatement of the nuisance by eviction, the ***parties present are on notice*** that the order is effective ***immediately***. Any absent party should be noticed by the methods listed above.

Service upon a sub-tenant is to be effected by one of the methods listed above.

There are five (5) main of notices:

1. Three Day Notice to Pay Rent or to Vacate (See 78B-6-802(1)(c))

This notice means three calendar days and is used when rent is not timely paid. The time commences the first day after the rent due date. For example, if the rent is due on the 5th of the month, the landlord should serve the tenant with a Three Day Notice to Pay or Quit after the 5th. The tenant will have three calendar days, or by the 8th, to tender the rent to keep lawful possession of the home.

case Law: *Hous. Auth. v. Delgado*, 914 P.2d 1163 (Utah Ct. App. 1996) affirms that the “substantial compliance” doctrine may be relevant to residential lease situations, and thus prevent an eviction. In *Delgado*, the tenant made a rent payment \$.96 cents short, and did not immediately initiate a trace on a money order when the Housing Authority asked her to. The court determined that the tenant had substantially complied with the terms of her lease.

Practice Pointer: nonpayment of rent issues are 80% of the cases you are likely to consider. There is virtually no defense to a tenant who has not tendered the rent within the time demanded in the Notice.

2. Three Day Notice to Vacate for Nuisance-

- a. This is used for a criminal act committed on the premises (See 78B-6-802(1)(g) (Criminal Nuisance). A more detailed analysis follows below under Expedited Procedures-Criminal Nuisance (2).
- b. Violations of building or health codes
- c. Damage or waste to the property (See 78B-6-802(1)(d));
- d. Illegal subletting (See 78B-6-802(1)(d))

3. Three Day Notice to Comply or Vacate (This should be distinguished with 2. Above.)

- a. This notice is used by landlords whose tenants use the premises for an unlawful business (See 78B-6-802(1)(e)); or
- b. When a tenant permits or maintains any nuisance (See 78B-6-802(1)(f)); or
- c. When a tenant neglects or fails to perform any condition of the lease (See 78B-6-802(1)(h))

The notice is similar to a Three Day Notice to Pay or Quit, where the landlord gives notice of the lease breach. If the Tenant complies with the notice to cure within the statutory time demanded in the notice (three calendar days), the tenant is not in unlawful detainer. The issue for the court would likely be whether or not the tenant complied with the notice within the three days.

4. Fifteen Day Notice to Vacate (See 78B-6-802(1)(b)(i))

This is used for leases of indefinite time periods. For example, if the lease is month to month and there is no written rental agreement, the landlord can serve the notice during the first 15 days of the month, to terminate the lease by the end of the month. If there is a written lease with a 30 day notice requirement, the landlord would have to serve a notice 30 days prior to the end of the month. For example, if the landlord wants to terminate a lease by the end of January, he/she would have to serve a 30 day notice by January 1, to get a tenant out by January 31.

The issue for the court will be whether or not the notice complied with the statute. If yes, the tenant has no defense. If no, the landlord will have to commence the eviction action again.

Some judges generally suggest the parties get together and work out a tenant out date, as the tenant will have no defense if served with proper notice.

5. Five Day Tenant At Will Notice (See 78B-6-802(1)(b)(ii))

This is used for at-will leases. For example, in a foreclosure action where the rental property is foreclosed upon, the tenant will generally be served with a Five Day Tenant at Will notice. It should be noted, the Federal Tenant Protection Act, (FTPAA) has expanded the five day tenant at will notice to 90 days, where the lease was bona fide, meaning the lease rental amount was market.

If the purchaser of the property immediately post foreclosure was to move into the foreclosed home, the protections under the FTPAA would not apply to protect tenant.

Case Law:

Sovereign v. Meadows, 595 P.2d 852 (UT 1979): Requires strict compliance with Unlawful Detainer Act.

Facts: Defendant fell into arrears on rent payments, and was served with a faulty Three Day Notice to Quit (no pay or quit language). After failing to reply to the Notice to Quit and the subsequent Summons and Complaint, the defendant moved to set aside the default judgment entered against her. The trial court granted this motion on the condition the defendant pay attorney's fees within 30 days. The defendant failed to do so, and the trial court then denied the motion to set aside the judgment against her. Defendant appealed.

Issues:

1. Whether tenant was in lawful detainer and the judgment void because the notice to quit did not comply with the provisions of the appropriate statute, in that the notice did not give her the option of paying the delinquent rent;
2. Whether the trial court erred in awarding attorney's fees
3. Whether plaintiff was entitled to recover costs; and

4. Whether the court committed reversible error in conditioning the order setting aside the default judgment upon payment of attorney's fees.

Rule: UCA §78-36-3(3) required a Three Day Notice to Vacate for Non-payment give the option to pay the rent due. (This statute is now 78B-6-802-(1)(c), amended by Chapter 66, 2010 General Session.)

Analysis: "The unlawful detainer statute is a summary proceeding and in derogation of the common law. It provides a severe remedy and this Court has often held that it must be strictly complied with before the cause of action may be maintained." *Sovereign* at 853.

The lessor's Notice to Quit was defective in the same way as in previous cases when the Court held that an unconditional notice to quit served on a holdover tenant is insufficient "to place [the tenant] in unlawful detainer."

As the statute was not strictly complied with, the lessee was not in unlawful detainer, and the lessor was not entitled to maintain the unlawful detainer action against her.

Conclusion: The court reversed the trial court's judgment that denied the tenant's motion to set aside the default judgment entered against her in the landlord's unlawful detainer action. ***The default judgment should have been set aside without any conditions because plaintiff failed to state a claim upon which relief can be granted.***

78B-6-802(2) provides that the condition or covenant of a Notice to Pay or Vacate or a Notice to Comply or Vacate may be corrected by the tenant, sub-tenant, mortgagee or other interested person. The lease is thereby saved from forfeiture.

However, if the condition cannot be corrected, the Three Day Notice to Quit may be served.

SUMMONS AND COMPLAINT:

78B-6-807 Allegations permitted in complaint -- Time for appearance -- Service of summons.

The plaintiff shall state in the complaint:

1. The facts on which he seeks to recover;
2. Any circumstances of fraud, force, or violence that may have accompanied the unlawful detainer;
3. Claim damages or compensation for the occupation of the premises, *or both*.
4. If the unlawful detainer charged is after default in the payment of rent, the complaint shall state the amount of rent due.

A judge, court clerk, or plaintiff's counsel shall endorse on the summons the number of days within the defendant is required to appear and defend the action. This shall be **3 business days** from the date of service. A pro se litigant is not permitted to waive the summons from 20 days to three days.

If the defendant objects to the number of days, the court may determine the facts of the case should allow more time.

Service

The court may authorize service by publication or mail for cause shown.

1. Service by publication is complete **one week** after publication.
2. Service by mail is complete **three days** after mailing.

DEFENDANT HAS FILED AN ANSWER:

78B-6-810. Court Procedures - EXPEDITED PROCEDURES

RULE 26.3 URCP-Critical Disclosures in Unlawful Detainer Actions (See Attached)

HEARINGS: There are several ways in which landlord/tenant cases can be expedited:

(1) NON PAYMENT OF RENT:

In a case involves allegations of nonpayment of rent- a hearing, as the request of either party, SHALL be held within 10 days of answer being filed (78B-6-810 (2)(a)).

At expedited hearing, the court determines who has the right to possession, and if the court determines possession and all other issues can be adjudicated without further proceedings, the court SHALL adjudicate those issues without further proceedings and enter judgment on the merits (78B-6-810 (2)(b)(i)(ii)).

case Law: *Hous. Auth. v. Delgado*, 914 P.2d 1163 (Utah Ct. App. 1996) affirms that the “substantial compliance” doctrine may be relevant to residential lease situations, and thus prevent an eviction. In *Delgado*, the tenant made a rent payment \$.96 cents short of the notice demand, and did not immediately initiate a trace on a money order when the Housing Authority asked her to. The court determined that the tenant had substantially complied with the terms of her lease.

As a practical matter, if the tenant owes rent money, the court will determine the issue of possession leaving all other issues in dispute reserved for future litigation.

One frequent issue generally reserved for litigation has to do with a tenant who claims to not owe the rent money demanded by the landlord. The allegation relates to property conditions, as the tenant claims, based upon the poor property conditions, that she is getting less than what she bargained for. The leading case is this fact situation the case of *Wade v. Jobe*.

Case Law: *Wade v. Jobe*, 818 P.2d 1006 (Utah 1991) Warranty of Habitability

After tenant moved into property, she discovered many problems, including no hot water, no sewage connection, standing water in the basement, foul odor throughout the house, etc. The landlord temporarily solved the problem several times, but made no permanent repairs. When the tenant

moved out, the landlord sued for rent. The trial court granted unpaid rent to the landlord, as Utah had not yet adopted a warranty of habitability, and the tenant appealed.

The Utah Supreme Court determined that Utah does have a warranty of habitability, and the payment of rent by the tenant and the landlord's duty to provide habitable premises are dependent covenants.

“The determination of whether a dwelling is habitable depends on the individual facts of each case.” *Wade v. Jobe*, p. 1010. “Substantial compliance with building and housing code standards will generally serve as evidence of the fulfillment of a landlord's duty to provide habitable premises. Evidence of violations involving health or safety, by contrast, will often sustain a tenant's claim for relief. See *Green v. Superior Court*, 517 P.2d at 1182-83. At the same time, just because the housing code provides a basis for implication of the warranty, a code violation is not necessary to establish a breach so long as the claimed defect has an impact on the health or safety of the tenant. *Hilder v. St. Peter*, 478 A.2d at 209.” *Id.* p.1011.

From a practice standpoint, the court should offset the rent owing based upon a theory of diminished value. For example, a rental home has 2000 sq. feet. 25% of the home cannot be used because of roof leakage. Should that mean the rent should be offset by 25%? In some courts, the diminished value of the rental unit was reduced by the habitable living space

(2) **CRIMINAL NUISANCE:**

In a case involving allegation of CRIMINAL NUISANCE, the court SHALL hold an evidentiary hearing WITHIN 10 DAYS after the day on which the complaint is filed. NOTE, the hearing SHALL be set at the time the complaint is filed with hearing notice to the defendant served with the summons and complaint at least three calendar days before the hearing date (78b-6-810(3)(a)(b)).

A CRIMINAL NUISANCE includes **ONLY** the following:

- (1) An act that would be considered a felony
- (2) An act that would be considered criminal affecting the health or safety of a tenant, the landlord, landlord's agent, or other persons on the landlord's property.
- (3) An act that would be considered criminal that causes damage or loss of any tenant's property or the landlord's property.
- (4) A drug or gang related act that would be considered criminal
- (5) An act or threat of violence against any tenant or other person on the premises, or against the landlord or the landlord's agent; and
- (6) Any other act that would be considered criminal that the court determines directly impacts the peaceful enjoyment of the premises by any tenant (78B-6-810(3)(g)).

EVIDENTIARY STANDARD:

If the court determines that it is more likely than not that the alleged criminal act occurred, the court shall issue an order of restitution (78B-6-810(3)(c)).

ORDER OF RESTITUTION:

The court may allow up to 72 hours before restitution may be made if the court determines the time is appropriate under the circumstances (78N-6-810(3)(e)).

IF THE COURT RULES FOR THE TENANT IN (1) OR (2) ABOVE in which the tenant remains in possession of the premises, the court SHALL begin the trial within 60 days after the day in which the complaint is served, unless the parties agree otherwise (78B-6-810(1)(b); and (c). If a hearing is to be held within a specified time, the time MAY be extended to the first date thereafter on which the judge is available to hear the case in a jurisdiction in which a judge is not always available.

MOBILE HOMES

Owners of mobile homes can only be evicted from the park for good cause, such as:

1. Failure to repair, maintain or build awnings, skirting, decks or sheds for **60 days** after the notice to comply is served; (See UCA 57-16-5(1)(a)(i))
2. Failure to comply with any other rule within **7 days** after notice; (See UCA 57-16-5(1)(a)(ii))
3. Repeated failure to comply with a rule, if the original notice indicated that another violation of the same rule or another rule might result in no need to give more time to comply; (See UCA 57-16-5(1)(b))
4. Bad behavior that endangers the security and health of other residents or may result in damage to park property. (No need to give an opportunity to cure); (See UCA 57-16-5(1)(c))
5. Non-payment of rent, fees or service charges for a period of **5 days** after the due date; (See UCA 57-16-5(1)(d))
6. A change in the park's land use or condemnation by the authorities (after a **90 day** notice). (See UCA 57-16-5(1)(e))

In all cases except in cases of non-payment, after the service of a notice to comply or vacate, the resident must continue paying rent to the park until the situation is corrected, but after the resident is served with court papers, the resident must pay the rent into the court while the proceeding lasts. UCA 57-16-8.

Rule 26.3. Disclosure in unlawful detainer actions.

(a) Scope. This rule applies to all actions for eviction or damages arising out of an unlawful detainer under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer.

(b) Plaintiff's disclosures.

(b)(1) Disclosures served with complaint and summons. Instead of the disclosures and timing of disclosures required by Rule 26(a), and unless included in the complaint, the plaintiff must serve on the defendant with the summons and complaint:

(b)(1)(A) any written rental agreement;

(b)(1)(B) the eviction notice that was served;

(b)(1)(C) an itemized calculation of rent past due, damages, costs and attorney fees at the time of filing;

(b)(1)(D) an explanation of the factual basis for the eviction; and

(b)(1)(E) notice to the defendant of the defendant's obligation to serve the disclosures required by paragraph (c).

(b)(2) Disclosures for evidentiary hearing.

(b)(2)(A) If the plaintiff requests an evidentiary hearing under Section 78B-6-810, the plaintiff must serve on the defendant with the request:

(b)(2)(A)(i) any document not yet disclosed that the plaintiff will offer at the hearing; and

(b)(2)(A)(ii) the name and, if known, the address and telephone number of each fact witness the plaintiff may call at the evidentiary hearing and, except for an adverse party, a summary of the expected testimony.

(b)(2)(B) If the defendant requests an evidentiary hearing under Section 78B-6-810, the plaintiff must serve the disclosures required by paragraph (b)(2)(A) on the defendant no less than 2 days before the hearing. The plaintiff must serve the disclosures by the method most likely to be promptly received.

(c) Defendant's disclosures for evidentiary hearing.

(c)(1) If the defendant requests an evidentiary hearing under Section 78B-6-810, the defendant must serve on the plaintiff with the request:

(c)(1)(A) any document not yet disclosed that the defendant will offer at the hearing; and

(c)(1)(B) the name and, if known, the address and telephone number of each fact witness the defendant may call at the evidentiary hearing and, except for an adverse party, a summary of the expected testimony.

(c)(2) If the plaintiff requests an evidentiary hearing under Section 78B-6-810, the defendant must serve the disclosures required by paragraph (c)(1) on the plaintiff no less than 2 days before the hearing. The defendant must serve the disclosures by the method most likely to be promptly received.

(d) Pretrial disclosures; objections. No later than 14 days before trial, the parties must serve the disclosures required by Rule 26(a)(5)(A). No later than 7 days before trial, each party must serve and file counter designations of deposition testimony, objections and grounds for the objections to the use of a deposition and to the admissibility of exhibits.