

FREQUENTLY ASKED QUESTIONS ABOUT EVICITION PROCEDURES IN ILLINOIS

In Illinois, the law which defines the process of eviction is known as the Forcible Entry and Detainer Act. The Forcible Entry and Detainer Courts are known as Courts of Limited Jurisdiction. This means that only claims for possession and rents can be heard.

When should I consider evicting a Tenant?

Non-payment of rent is an obvious reason for evicting a tenant. However, the decision to evict a tenant for failing to abide by the specific terms of a lease is a more difficult decision. Effective property management includes the early recognition of non-compliance and immediate response to the problems associated with these behaviors. If you move quickly, you will find that tenants will believe that they can't get away with non-compliant behaviors. If you fail to take action against a tenant who is engaged in non-compliant behavior and that behavior later causes damage or injury to another tenant, you may find yourself liable for damages. The end result may very well be deterioration in the value of the property and an inability to get good, high-quality tenants.

Can I evict a tenant for dealing drugs or engaging in illegal activity inside his unit?

Yes you can. Successful eviction of this type of tenant is dependent on the use of the Crime Free Lease Addendum. The biggest hurdle you have to overcome in evicting a tenant for drug use is proving that the drug use is happening. Many municipalities are not only participating in seeking to evict drug dealers from the communities, they are actively encouraging the landlord to take action. Record the number of visitors that come and go into the rental property. Keep records of every disturbance that is reported at the property. Talk to your local police department regarding your suspicions. Even if you can't ultimately prove that the tenant is taking or dealing drugs, you can probably prove that his behavior has unduly disturbed other tenants and neighbors and is interfering with the neighbors' peaceful enjoyment of the premises.

Do I need an attorney?

Not necessarily. However, some areas of eviction law are very complicated and detailed. Strict compliance with the statute is necessary because eviction is a drastic remedy. An attorney that is familiar with the Forcible Entry and Detainer Act can cut down continuances and ultimately save you money.

If you do choose to file a forcible action without an attorney, take the time to become familiar with court procedures. Many eviction cases are lost simply because the landlord is unfamiliar with the court process and does not have the proper paperwork at the time of the hearing.

Do I need to serve any notices on a tenant before I actually start court proceedings?

Yes. Serving proper notice on a tenant is generally a prerequisite to filing a Forcible Entry and Detainer action. Generally, the proper service of notice is “jurisdictional.” This means that if you don’t do it correctly, the judge will have no choice but to dismiss your lawsuit. You will then have to start all over again. The following is a brief summary of the types of notices which can be served on a non-compliant tenant:

- **5-Day Notice:** This type of notice is served when a tenant is behind in the payment of rent. It provides that if all amounts are not paid within five days, the landlord will terminate the lease. It is important that the landlord not accept anything less than full payment of all amounts which are due and owing during this five-day period, unless very specific steps are followed. Partial payments may void the five-day notice.
- **10-Day Notice:** When a default is made in any of the terms of the lease, it is not necessary to give more than ten days’ notice of the landlord’s intent to terminate the lease. This type of notice can be used in cases where a tenant engaged in behavior which disturbs the peace, damages property, or otherwise is prohibited under the terms of the lease.
- **30-Day Notice:** This notice is used to terminate a tenant who is occupying the premises on a month-to-month basis, or whose lease term is close to expiration.

How do I serve these notices?

There are three basic methods for service of a notice on a tenant:

1. You can serve notice on any person at least 13 years of age who resides in the premises.
2. The notice can be sent by certified or registered mail with a returned receipt from the tenant.
3. If no one is in actual possession of the premises, the notice can be posted on the door.

Make sure you do not serve the original notarized copy of the notice. This portion of the notice should be completed only after a copy has been served. The original notarized copy should be brought to court on the day of the Forcible Entry and Detainer Hearing.

Now that I have made the decision that I need to have a tenant leave, what are the basic steps for evicting a tenant for non-compliance with a lease?

The process is relatively simple. It is also what is called an expedited process. This means that you can obtain relief relatively quickly:

1. The tenant should be served with the appropriate notice.
2. A Forcible Entry and Detainer Action is filed.
3. The landlord must serve the tenant with Order of Possession paperwork.

4. An Order of Possession should be entered at the court hearing.
5. The Order of Possession must be placed with the Sheriff for eviction.

What forms does a landlord need to have in dealing with eviction actions?

The most frequently used forms are:

- Five-Day Notice
- Forcible Entry and Detainer Complaint
- Forcible Summons
- Order of Possession
- Motion for Special Process Servicer
- Notice of Posting
- Affidavit for Posting

Copies of these forms can be obtained at any office supply store or at the clerk's office at the appropriate courthouse.

Which courthouse do I have to use when I want to file an eviction action?

Eviction actions should be filed in the municipal district where the property is located. For example, properties in DuPage County utilize the DuPage County Court House in Wheaton, Illinois.

How do I actually file the case once I get to the courthouse?

The initial eviction case will be filed in the clerk's office. You will need to have your Complaint, Summons, and Civil Cover Sheet at the time of filing. After the clerk files the case, you will need to place the Summons for Service with the Sheriff's office.

What should I bring to court?

There are several documents that are absolutely essential to a forcible case. These documents should be brought to every court call. These documents include:

- An executed copy of the lease
- A signed copy of your Notice
- A copy of your complaint
- A copy of your proof of property service on the Defendant
- Any other documents to support your claim against the tenant

If your claim is for the non-payment of rent, be sure to have a list of payments that have been made by the tenant.

What happens after I am awarded an Order of Possession by the judge?

The entry of an Order of Possession is not the end of the Forcible Action. Until the tenant is evicted, our court case has not really accomplished anything. Generally, the judge will enter the order and “stay execution” for a period of 7 to 14 days. This means that the Order cannot be placed with the sheriff for eviction for that period of time. After the “stay” has expired, the Order of Possession must be given to the Sheriff for service. You need to be available on the day of eviction; the Sheriff’s Department may require you to be present.

Can I do anything to protect my right to evict a tenant, even before he moves in?

Yes. Careful drafting of your lease can increase your chances of successfully managing your tenants. Include the Crime Free Lease Addendum in your lease; make it clear that drug use on the property will not be tolerated. The Illinois Supreme Court has stated that an owner can evict a tenant whose guests violate the leasing rules. Most importantly, do background on prospective tenants.

In Summary:

The eviction process can be involved, but proper documentation, along with a strong lease and the use of the Crime Free Lease Addendum, can make this task smoother and more effective. While this may seem like a daunting task, there are many ways to complete it. There are many attorneys who will perform evictions quickly and efficiently. If you choose to do it yourself, the clerks at the county courthouses are helpful and have information packets available.