



# Landlord Letter

Free Forms & Notices — [www.utahevictionlaw.com](http://www.utahevictionlaw.com)

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## Claiming Attorney Fees During an Eviction

If legal action is taken to enforce your lease or proceed with an eviction, most landlords want an assurance that they will be able to recover their attorney fees and court costs. Utah's Supreme Court has consistently held that attorney fees may be awarded to the prevailing party based either : (1) a written contract, or (2) a state or federal statute. See Footte v. Clark, 962 P.2d 52, 54 (Utah 1998). Without a contract or statute allowing attorney fees, neither party can claim them. Also, where a contract awards attorney fees, they "are allowed only in strict accordance with the terms of the contract." *Id.* Courts pay close attention to EXACTLY when the contract allows attorney fees.

Utah's statutes are fairly limited in outlining the cases where attorney fees are allowed. For example, attorney fees are permitted when dealing with evictions, mechanic's liens, wrongful liens, foreclosures, nuisance claims or if any claim or defense is brought in bad faith. Instead of relying on a statute solely for attorney fees, it is best to simply include an attorney fees provision in your contracts. Doing so can protect you in the event that a statute concerning attorney fees is not applicable. For example, if you are required to evict your



*(Continued on page 2)*

## Think You Have a Tenant at Will? Maybe Not...

Many landlords mistakenly serve a 5 Day Notice to a Tenant at Will when the tenant is not actually a "tenant at will." The "Five Day Tenant at Will" notice is used when the tenant does not have any legal right to occupy the property. The most common examples are (1) a squatter that moved in without your permission, (2) a subtenant that your tenant allowed to move into the property without your permission, or (3) a tenant who remains in possession after a foreclosure or after their lease was properly terminated.

The most common mistake is believing they have a tenant at will because there isn't a written lease. Under Utah law, giving a tenant verbal permission to live in your property is just as enforceable as your tenant having a written lease. It is more easy for disputes to arise with a verbal lease. Even if your tenant never signed a lease, if they have been living in the property and paying rent, they are NOT a tenant at will. In this situation, you would want to serve another eviction notice (either a no cause termination notice or a three day notice based on failure to pay rent or other lease violations).

Serving the incorrect notice can delay or dismiss your eviction. To make sure you are serving the correction notice, call us for a free landlord consultation.

## A Tenant With Fifteen Evictions???

For many of the tenants we evict, it's not their first rodeo. They've often been through this before. Anytime a landlord complains about their tenant always being late on the rent, I normally say "Let me do a quick background check to check for prior evictions." With just a name, I can usually see any prior evictions, judgments, and bankruptcies.

I remember a call from one landlord who told me the same story about consistently late rent. He gave me the first name (that was a unique name) of his tenant, but he couldn't remember her last name. Based on the unique first name, I replied "Please don't

say it's \_\_\_\_\_" and gave the last name of a tenant we had already evicted two other times. The landlord was shocked that I knew the last name, but was even more shocked when I told him that this particular tenant had 15 (yes, FIFTEEN) prior evictions. A simple background check would have exposed this significant flaw.

Before they move in, before they sign a lease, make sure you have performed a thorough background check. If you find out they have 15 prior evictions after they've moved in, it's too late. Chances are, we WILL be helping you with an eviction.

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# DOs & DON'Ts of... Background Checks



## DO

- Get a background check — EVERY TIME.
- Get a full check on EVERY person that will be living there.
- Have it done professionally.
- Be selective up front. Once they're in, it may be difficult to get them out.



## DON'T

- Let anyone move in unless they've (1) passed a background check, (2) signed a lease, & (3) paid rent/deposit.
- Sign a lease without a background check.
- Don't negotiate on this. Background checks are a necessity.

### How to Terminate a Lease (No Cause Notice)

If the lease term is coming to a close and you want your tenant out, it is crucial to provide your tenant (1) with the correct notice and (2) with sufficient time to terminate the lease. You should use the "No Cause Notice."

Utah law only required 15 days written notice in order to terminate the lease (however, if your lease states a different time-frame you should use the time stated in your lease). Also, the termination date must be the last day of the term (usually on the last day of the month).

Giving 15 or 30 days notice does not mean the lease may be terminated in the middle of a month. For example, a 15 day No Cause Notice served on February 5th does not mean the tenant

must leave by February 20th (Feb. 20th is in the middle of the monthly term). The notice would be effective at the end of the month (February 28th).

If your lease requires 30 days notice and you give a written No Cause Notice on February 5th, your No Cause Notice to Vacate would state the termination date as March 31st. We're too late to give your tenant 30 days notice to terminate as of February 28th, so it would continue until March. The tenants would have to pay rent and comply with the lease until March 31st. If the tenants fail to pay rent or violate the lease in other ways, you can issue a three day eviction notice to require compliance with the lease until they vacate the property.



*(Continued from page 1) Claiming Attorney Fees*

tenant, Utah's statutes would permit you to claim attorney fees. However, if your tenant moves but leaves a balance or damages the property, you no longer have a claim for eviction and cannot rely on the eviction statutes to claim attorney fees. It is simply best to always include an attorney fees provision in any contract.

Pursuant to [Utah Code Ann. §78B-8-811](#), attorney fees "shall" be awarded in an eviction. In applying this statute, Utah courts have gone on to explain that based on the eviction statute's mandatory language, the judge is **required** to award attorney fees to a landlord in a successful eviction. (See [Red Cliffs Corner, LLC v. J.J. Hunan, Inc.](#) 219 P.3d 619, 630 (Utah App. 2009)). This statute gives landlords two separate grounds for an award of attorney fees (lease and statute).

A landlord may try to draft a one sided attorney fee provision, such as "If tenant breaches this rental agreement the landlord shall be entitled to any attorney fees and/or court costs incurred in relation to tenant's breach.". The plain language of that provision does not allow the tenant to claim attorney fees. However, Utah law states that an attorney fees provision CANNOT be written in such a one sided manner (See [Utah Code Ann. § 78B-5-826](#)). The opportunity to claim attorney fees in Utah is not a one-way street.

Including an attorney fees provision keeps both sides honest in fulfilling the terms of the contract. It also protects the non-breaching party in the event of problems with the lease. Without such a provision, your attorney fees may become an out of pocket expense that you are unable to claim from the tenant.

*Attorney Jeremy M. Shorts*

# Know Your Notice

## •Three Day Pay or Quit•

**Purpose:** When a tenant owes "rent or other amounts due."

A landlord is NOT required to accept a partial payment, but if partial payment is accepted the pay or quit is cancelled. The landlord must serve a new notice showing the new balance.



The three days stated in the notice is three calendar days — counting weekends and holidays. Do not count the day it was served. Day #1 begins the following day (For example—if served on Wed., the 3 days are Thurs., Fri. & Sat.).

A Pay or Quit requires the tenant to do just that: (1) pay entire balance owed, or (2) vacate within three days. Those are the only two ways for a tenant to comply with this notice and avoid an eviction.

A landlord cannot modify the pay or quit to become a "pay AND quit" or a "notice to quit". It MUST allow the tenant to either pay OR quit in order to comply with the eviction notice statutes.



## Dear Attorney,

**Q:** My tenant is completely ignoring our lease, damaging my property and refusing to pay rent. Can I turn off utilities? How can I get them out?

**A:** It can be very frustrating to deal with a tenant that is ignoring your lease. Utah law allows only two ways to get a problem tenant out of your property. They must either (1) voluntarily vacate the property or (2) if they don't voluntarily leave state law requires you to file an eviction with the court (See [Utah Code Ann. §78B-6-814](#)).

Whether they leave voluntarily or you have to file an eviction, it is best to first serve an eviction notice outlining the reasons for the eviction. An

eviction notice is required before you file an eviction, but it also gives the tenants an opportunity to leave voluntarily. If they don't voluntarily comply with the eviction notice, you have done what is required in order to file an eviction.

**DO NOT turn off utilities, remove doors or windows, or similar actions to evict a tenant.**

You should NOT turn off utilities, remove doors or windows, or similar actions to evict a tenant. Doing so can give your tenants an argument that you are improperly evicting them instead of using the proper court procedures. If they do not leave voluntarily, you must file an eviction.

*The important thing is to not stop asking questions.*

~Albert Einstein





Meet the Team:  
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Attorney Jeremy Shorts

- Originally from Price, Utah.
- Earned Bachelor's Degree from BYU (2003).
- Earned Law Degree from U. of Nebraska (2005).
- Loves spending time with his wife and 3 kids.
- Enjoys fishing and boating.
- Favorite Place—Dunnottar Castle in Scotland (Google it to see the amazing pictures!).

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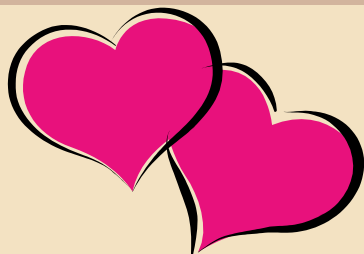
*Next Month...*

- *Did You Know?*
- *Dear Attorney*
- *Meet the Team Dave Todd*

***Evictions in Weeks, Not Months!***

### Parting Thoughts

- We're working to build our readership, tell your friends to subscribe to this FREE newsletter. Send us an email at [info@utahevictionlaw.com](mailto:info@utahevictionlaw.com).
- Have an eviction question? Email it to us for a future newsletter!
- Help us build our online presence! You can "Like" our Facebook page ([www.facebook.com/utahevictionlaw](http://www.facebook.com/utahevictionlaw)).
- You can also give us a Five Star Google Review (search "Utah Eviction Law Reviews" and click on our link).



A variety of photos are provided by [freedigitalphotos.net](http://freedigitalphotos.net)

# Calendar of Events

- February 2 — Groundhog Day
- February 12 — South Ogden Good Landlord Classes
- February 14 — Valentine's Day
- February 17 — President's Day
- February 25 — Ogden UAA Membership Meeting
- February 26 — Orem UAA Membership Meeting
- February 27 — SLC UAA Membership Meeting
- February 28 — UAA's Good Landlord Class