



Landlord Letter

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How a Bond Can Speed Up an Eviction

Utah law requires an eviction trial to be held within 60 days. Last month the featured article discussed how landlords may be entitled to an emergency eviction hearing in certain eviction cases. If an eviction does NOT fit into one of the emergency eviction categories (non-payment of rent, criminal nuisance and post-foreclosure evictions), the landlord may want to consider posting a Possession Bond to speed up the eviction. The Owner's Possession Bond is another option available in most other evictions that can help speed up your eviction.

What is a Possession Bond? It is a deposit that the landlord pays it to the court in order to receive an expedited eviction. Posting a Possession Bond



does not make the landlord's case stronger, it simply helps to speed up the process to get a quicker decision from the court. With a Possession Bond, most tenants are removed within 2-3 weeks instead of 60 days (saving the landlord lost rents and additional damage to the property). A Possession Bond is similar to a security deposit in that it belongs to the landlord unless proven otherwise. If the landlord is successful, the bond is returned in full. However, if the tenant wins and obtains a judgment, the tenant can collect their damages from the Possession Bond.

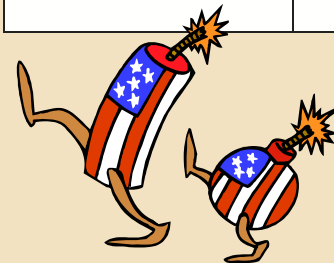
Under Utah law, most evictions do not require a Possession Bond because the large majority of evictions are al-

(Continued on page 2)

Evictions in Weeks, Not Months!

INSIDE THIS ISSUE:

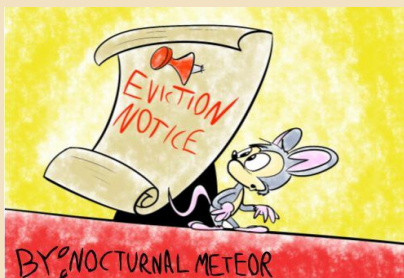
Do's & Don'ts	2
Know Your Notice	3
Dear Attorney	3
Fast Facts	4



Landlord Laughs — Evicting Animals... Dead or Alive

Sometimes you may be okay with your tenants living in the home, but it's their animals that are causing the problems. Recently we were asked to evict the tenant's cats, but the landlord wanted the tenant to stay. So can you evict the animals and not the tenants? How do you serve a cat (or any animal) an eviction notice?

The legal answer is "maybe" (you could see an order of specific performance for the tenant to finish the lease without the animals), but the better route is probably to have the tenant either comply with the lease or face eviction.



We had another case where the animals causing problems were no longer living. The landlord received a call from a neighboring tenant complaining that the tenant had buried several deer heads in the front yard with only

the antlers sticking out of the ground (apparently as an attempt to prepare the head for mounting). While this may be appealing yard décor to some, you can't really blame the upstairs tenant for wanting them removed. If a simple verbal request to the tenant doesn't work, a 3 day notice for nuisance and/or lease violations should help.

I promise we don't make these things up!!!

(Continued from page 1)

ready entitled to an expedited eviction.

So when should a landlord consider filing a Possession Bond? Normally under two circumstances: (1) when the landlord is NOT entitled to an expedited eviction hearing (for evictions based on non-payment, criminal nuisance or post-foreclosure evictions), or (2) commercial evictions (Utah law specifically states that commercial evictions are not entitled to an emergency eviction hearing).

When a Possession Bond is paid by the landlord, the eviction is expedited and the tenant must chose from the following four options: (1) vacate the property, (2) request a three-day emergency eviction hearing, (3) post a Counterbond, or (4) pay the entire amount owed (this fourth option is not available if the eviction is based on grounds other than failure to pay rent — the tenant cannot pay their way out of being a nuisance).

The amount of the Possession Bond is usually two months of rent because a trial should be held within

60 days. However, Utah law states a different standard to set a Counterbond (the bond that the tenant pays). The Counterbond should cover the landlord’s potential damages, PLUS the attorney fees and court costs. The primary difference is that the Possession Bond does NOT include attorney fees and costs but the Counterbond must include them.

Our office recently had a trial involving possession bonds. After some credits in our favor, we were able to have the Possession Bond paid by the landlord set at just under \$500. The Counterbond paid by the tenants included several other charges totaling \$8,000. This was a significant benefit to the landlord because at trial we were awarded a judgment in the amount of \$31,000. Since we had a Counterbond, that \$8,000 was then released to our client as a partial payment toward the judgment.

Under Utah law, most evictions are able to be handled without any bonds in place. But if you feel a bond may be helpful, call us for a free consultation.

Jeremy M. Shorts

If you feel a bond may be helpful, call us!



DOs & DON'Ts of...



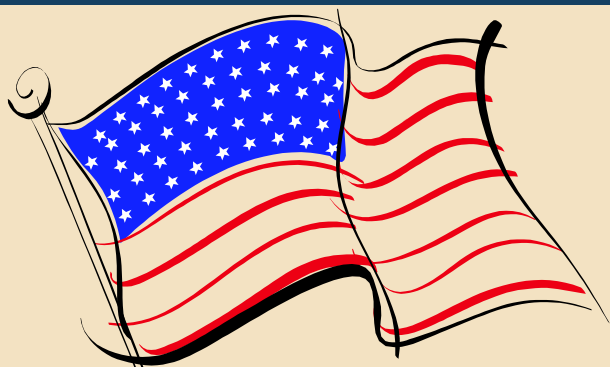
Abandonment

DO

- DO serve a Declaration of Abandonment if the premises looks to be abandoned.
- DO serve notice by posting AND mailing a copy to the last known address.
- DO be careful — if a judge later decides the property was NOT abandoned, you may be liable for treble damages.

DON'T

- DON'T change the locks unless you are sure the property is abandoned.
- DON'T remove any property without taking pictures of all abandoned items.
- DON'T store the abandoned property in an unsecure or unsafe location. If the tenant comes to pick up their items, you want to show they were properly stored.



Independence is happiness.

~Susan B. Anthony

Know Your Notice

• Declaration of Abandonment •

Purpose: Assists the landlord in re-taking possession when a tenant has abandoned the property.



The Declaration of Abandonment serves two purposes: (1) it declares the real property abandoned before the landlord re-takes possession, and (2) sets up the sale/donation of any abandoned personal property the tenant left behind.

There is no notice requirement in order to declare a property abandoned, but prior to selling or disposing of any personal property the landlord must give a Declaration of Abandonment and store the items for a minimum of 15 days.

Once the 15 days has expired, the landlord may sell/donate the items. However, the landlord must give written notice of the sale at least five (5) days before the sale.

Be cautious... A Declaration of Abandonment is a necessary and useful tool, but if a judge later determines the property was NOT abandoned, the landlord may be responsible for

Dear Attorney,

Two tenants in my four-plex do not get along. One tenant has been there for 4 years without any problems until a new tenant just moved in. Do I have to evict both tenants? Can I evict only the tenant that is the primary source of the recent problems?

Q:

A:

Sounds like you have a potential nuisance on your hands and probably some lease violations. First (and foremost), if you decide to proceed with an eviction we need to make sure you have grounds to evict. You shouldn't do anything if you won't prevail in court. If you feel there is enough evidence to support an eviction, then we can proceed.

Utah law allows a landlord to evict a tenant for cause if the landlord is able to prove a nuisance. The law doesn't clearly state that the landlord would have to evict ALL nuisances, especially if it's clear that eliminating one nuisance will take care of the situation (which is likely the case since you've had a long history with Tenant #1 without any problems).

Bottom line — It's much more clear to evict both tenants because there's not risk

of the court wondering whether you're playing favorites. However, I think you would have the option to decide whether to evict both of them or just one of them. I think a judge may question why the landlord is only evicting one nuisance, but in this situation I think you have a pretty clear reason why evicting only one tenant is reasonable.

Remember that if you decide to move forward you'll need to gather your evidence and witnesses in order to prove your case. Nuisance cases can be difficult because witnesses may be nervous about testify against their neighbors. And if a nuisance claim is unsuccessful, all of the witnesses and neighboring tenants go back home and are forced to live next to each other for at least the near future.

Jeremy M. Shorts

Tenants making you see fireworks?

Call: 801-610-9879

Email: info@utahevicitonlaw.com



UTAH EVICTION LAW

Are your tenants driving you crazy, but you don't know where to begin?

Our attorneys offer a **FREE** 15 minute landlord consultation for any questions you may have.

Call: 801-610-9879
Email: info@utahevictionlaw.com



Fast Facts:

Utah Eviction Law

- Although not common, our fastest eviction from filing to lockout was 8 days.
- Utah Eviction Law began in 2009 from Jeremy's home office.
- In 2010, we were one of the early law firms to transition to the Utah Court e-filing system when it was brand new.
- Dave Todd was added to our team in 2013 to help will collections.
- Prior to beginning with Utah Eviction Law three years ago, Lacie worked as a clerk for the Utah Courts.

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.
- Have an eviction question? Email us for a future newsletter!
- Help us build our online presence! You can "Like" our Facebook page (www.facebook.com/utahevictionlaw).
- You can also give us a Five Star Google Review (search "Utah Eviction Law Reviews" and click on our link).

Calendar of Events

- July 4 — Independence Day
- July 24 — Pioneer Day
- July 29 — UAA's Ogden Membership Meeting
- July 30 — UAA's Orem Membership Meeting
- July 31 — UAA's SLC Membership Meeting

