



Landlord Letter

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When Can a Landlord Claim Attorney Fees?

In any legal dispute, being able to claim attorney fees can impact the strategy of the case and provide valuable leverage during negotiations. Utah law allows a claim for attorney fees in limited situations, making it important to understand when a landlord is able to claim attorney fees.

Utah law allows an award of attorney fees in two primary situations. The Utah Supreme Court has repeatedly stated that “Generally, attorney fees in Utah are awarded only as a matter of right under a **contract** or **statute**.” *Foot v. Clark*, 962 P.2d 52, 54 (Utah 1998) (emphasis added). Without a contract or statute allowing attorney fees, neither party will be able to obtain 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 what the contract states in terms of when attorney fees are allowed.

Our website has our free Lease Agreement which contains the following attorney fee provision:

ATTORNEY’S FEES AND COLLECTION COSTS If Tenant defaults in the performance of any obligation of this Agreement, Tenant and any co-signer agree to pay all court costs, attorney’s fees and all collection agency commissions and costs incurred in collecting or attempting to collect on this account, whether or not suit is filed. Tenant acknowledges such fees or commissions might be as much as fifty percent (50%) or more of the principal balance owing.

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Courtroom Chronicles

Being prepared before you go into the courtroom is probably the most important thing you can do to be successful in front of the judge. Recently, one of our cases involved an agreement that a family member would be allowed to remain in the property at issue for one year. When the court hearing began, the opposing party offered an email into evidence that was supposed to be there evidence that the tenant could stay there for as long as they wanted. When they began to read the email to the judge, we noticed that they had failed to



read the first paragraph of the email. We politely interrupted and asked that the first paragraph be read. The first paragraph explained clearly that the tenant was only to reside in the property for one year. The opposing party had legitimately failed to read the whole email prior to the hearing. Had they done so, they would have saved themselves from some embarrassment and lost credibility with the judge. After the paragraph was read, there was not much else to discuss and we were awarded an eviction order.

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This provision is very clear that only the landlord can claim attorney fees. Under the plain language of this paragraph, the tenant would not be able to claim attorney fees. However, Utah law clearly states that even with such a one-sided provision, attorney fees provisions are reciprocal, allowing the prevailing party to be awarded attorney fees even if they are the tenant. The opportunity to claim attorney fees in Utah is never a one-way street even with such one-sided language.

Utah’s statutes provide several areas of disputes where the prevailing party is entitled to attorney fees. Here is an incomplete list showing a few of the common examples: mechanic’s lien laws, wrongful lien laws, certain civil actions brought in bad faith, foreclosure proceedings, and (most importantly to our audience) eviction actions.



In fact, the statutory language awarding attorney fees in an eviction specifically requires that the judge “shall” award reasonable attorney fees. Utah case law has expounded on this provision by stating that while a judge may refuse to grant attorney fees based on a contract, “The statute’s mandatory language prohibits the trial court from declining to award treble damages and reasonable attorney fees in an unlawful detainer case.” *Red Cliffs Corner LLC v. J.J. Hunan, Inc.*, 219 P.3d 619 (Utah Ct. App., 2009).

We strongly recommend our clients include an attorney fees provision in their leases because it gives the landlord two separate options (the contract as well as Utah statute) to claim attorney fees in the event of an eviction or other dispute. Our clients are regularly awarded attorney fees in a judgment following an eviction.

Attorney Jeremy Shorts



DOs & DON'Ts of Inspections



DO

- Conduct an inspection regularly to ensure the property is properly maintained.
- Provide your tenant with a written notice of inspection, not just an email or text message.
- Provide you tenant with at least 24 hours prior notice.



DON'T

- Take your tenant’s word for it that the property is fine.
- Enter the home without having first provided written notice.
- Change locks or break locks to get in without a court order unless it is an emergency .

Know Your Notice

•Nuisance•

Purpose: Used to terminate your lease based on your tenant's acts that constitute a nuisance

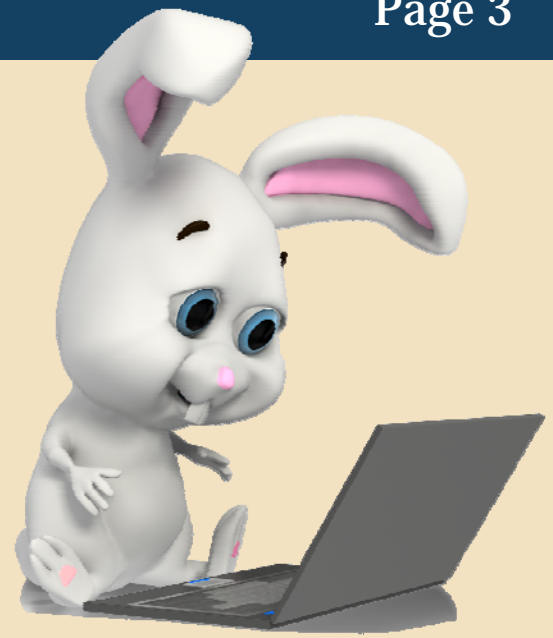
Use this notice when your tenant is interfering with someone else's comfortable and quiet enjoyment of their life or property.



A nuisance can be anything that injures someone's health, is indecent, or is offensive to the senses.

Some typical types of nuisance: Disturbing neighbors, late and loud parties, smoking, gambling, prostitution, buying/manufacturing/selling drugs.

Like other eviction notices, it must be served in person, posted or sent via certified mail. It cannot be given verbally, texted or emailed.



Bobby Bunny wants to remind you to visit our website for FREE rental & eviction forms!
www.utahevictionlaw.com

Dear Attorney,



Q:

My tenant is in a wheelchair and sent me a doctor's note stating that she needs a wheelchair ramp close to her front door for easier access.

What does the fair housing act require me to do?

A:

The fair housing act may require you to make reasonable modifications in order to allow equal access to a disabled tenant. However, such a modification isn't always automatic. If installing the ramp were to cause significant problems (i.e. requiring sprinklers and water lines to be moved), it may not be reasonable to install the ramp. If an acceptable wooden ramp can be constructed, work with the tenant to make it happen. However, perhaps it would be better to offer another unit to the tenant that provides the access they need without having to con-

struct a ramp? Whenever such a request is made, it's best to consider all options and discuss them with the tenant to find a solution that both sides are happy with.

The next question would be – Who must pay the costs for such a modification? Generally, if the tenant is making the request to modify the physical facilities to accommodate their disability, the tenant is responsible for the costs associated with the modification. These are great questions that are becoming more and more common. I'll address this in more detail during next month's featured article.

Mark Your Calendar

2015 UAA Education
Conference & Trade Show

April 29, 2015 • South Towne
8 am to 4 pm • Expo Center

Stop by, grab some goodies & meet the team!



**Have a question about
evictions for our attorneys?**

Contact us for a **FREE 15**
minute landlord consultation

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Email: info@utahevictionlaw.com

Web: www.utahevictionlaw.com



Calendar of Events

- April 1 — April Fool's Day
- April 5 — Easter
- April 15 — Tax Day
- April 28 — UAA's Ogden Membership Meeting
- April 29 — UAA's Orem Membership Meeting
- April 29 — UAA's Trade Show (Stop by our Booth!)
- April 30 — UAA's SLC Membership Meeting



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 it to 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).

