



Landlord Letter

October 2016

Step #3—Eviction Orders & Disputed Evictions

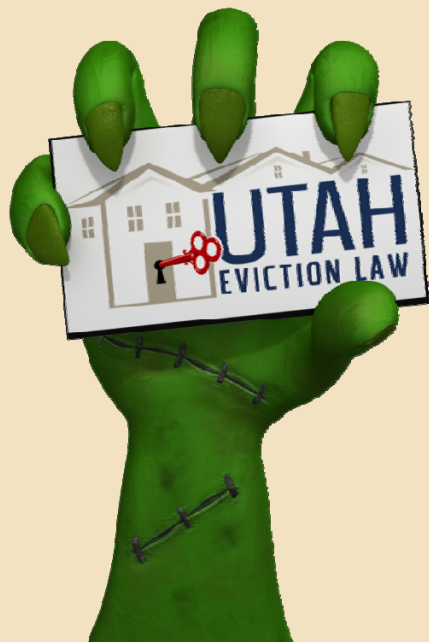
Over the last few months we've been highlighting the eviction process. This month we'll cover Step #3 – eviction hearings and disputed evictions. The only time the eviction process usually requires a hearing is if the tenant disputes the eviction with the court. If the tenant *does not* dispute the eviction, then the Court will usually issue a “default” without any hearing or other proceedings.

We commonly have clients ask “We have a strong case, what could the tenant dispute?” Under Utah law there really isn't any minimum required dispute for the tenant to fight the eviction. We joke that if the tenant used a Wendy's napkin to write “I don't think I should be evicted”, the court will probably hold a

hearing. Even with a weak answer from the tenant, we usually recommend working toward a hearing to keep the case moving forward. It can easily take more time to dispute whether their “answer” was legitimate.

Under Utah law, landlords are entitled to an emergency eviction hearing if the eviction is based on (1) non-payment, (2) criminal nuisance, (3) post foreclosure eviction, or (4) the landlord posts a possession bond with the court. Once an answer is filed with the court, an eviction hearing should be held within ten days. It is important to realize the purpose of the hearing – It is set up as an “Eviction Hearing” and not a

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★ ★ Courtroom Chronicles ★ ★ Evictions Can Run In the Family

Sometimes being a deadbeat tenant is hereditary. After filing the eviction with the court the tenant disputed the eviction claiming that they should not be evicted or be required to pay rent for a variety of reasons.

The day of the eviction hearing arrived and we met with the tenants prior to the hearing to discuss potential settlement. As we were walking into the courtroom with the tenant, we passed another couple as they were leaving the

courtroom from their eviction hearing. Our tenants and this couple said hello and had a brief conversation.

During our later discussions, we asked how our tenants knew the couple that was leaving the courtroom. Our tenant said that it was her sister who was also being evicted (same day, same courtroom, same judge, just a different case). Unfortunately for the family, both cases did not end in their favor and they were all required to leave the property.

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“Judgment Hearing”. The focus of an eviction hearing is to determine who should have possession of the property. Normally the judge makes that single decision and reserves all financial issues for future proceedings.

As the landlord’s attorney, I think it’s wise to only decide the eviction and not issue a judgment. At an eviction hearing we don’t really know the final judgment amount we should be asking for. We usually know the rent owed at that point, but the landlord hasn’t had an opportunity to inspect and assess what damage has been done to the property or determine exactly how much lost rent is owed (i.e. how long did it take to repair the property and get a new tenant paying rent?). Deciding the eviction first allows the landlord time to determine the appropriate judgment amount.

An eviction hearing is a perfect example of why you should hire an attorney. First, an attorney is going to set the case up from the beginning so that if you end up at a hearing you’ve increased your chances of success. Sec-

ond, based on the thousands of cases we have handled we know what facts are important and what the judge needs to hear to decide the case in our favor.

We recently had a case where the tenant came to the eviction hearing with large exhibits with blown up pictures they intended to present to the judge to explain why they shouldn’t be evicted. The pictures focused on two things: (1) they felt they should not have to pay rent because they felt the property was not up to code, and (2) they were experiencing personal hardships within their family that have made paying rent difficult. Both of these items impacted the tenants and forced the eviction, but as an attorney I knew (even if these facts were true) they should not impact the judge’s decision.

We presented our side to the judge very quickly and then allowed the tenant to give their story. We objected on the basis of relevance which the judge agreed. The judge ruled we were entitled to an eviction and issued a three day eviction order. Without an attorney, I’m confident that the wrong issues would have been discussed and the wrong case would have been presented to the judge.

Know Your Notice

• Waste (Damages) •

Purpose: Used when your tenant damages your property, but are not necessarily a nuisance

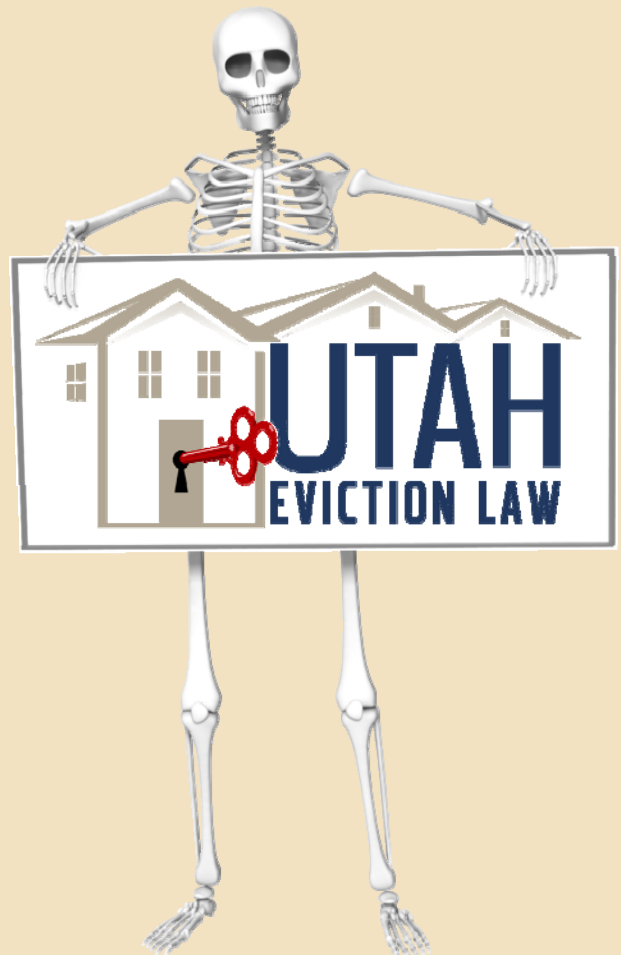


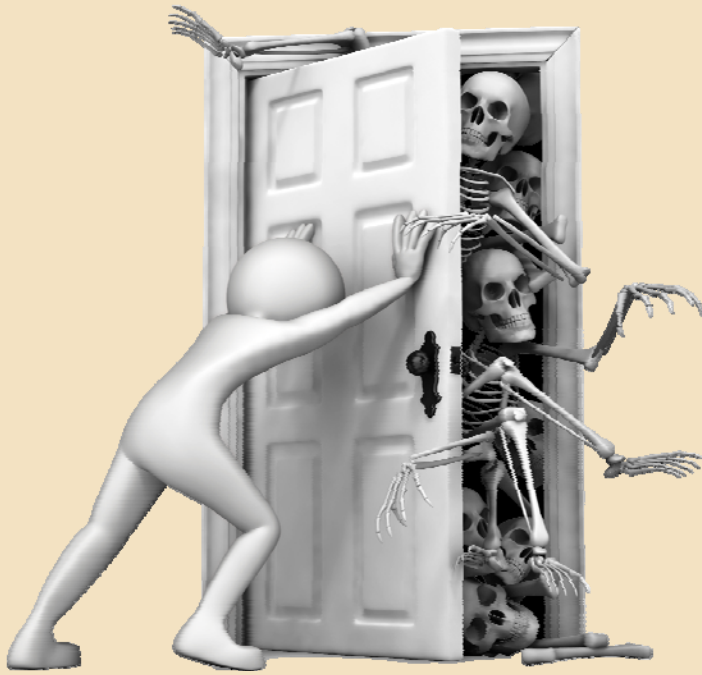
This notice requires the tenant to fix the waste or vacate the property within 3 calendar days.

Make sure the waste was caused by your tenant or those that your tenant is responsible for (guests, etc.).

Document the waste with pictures and/or witnesses. If you end up in court, a picture is worth a thousand words

*Landlords are responsible for normal wear & tear.
Tenants are responsible for waste
(or damage beyond normal wear & tear)*





Dear Attorney,

Q:

Our tenants haven't paid rent, but they're still fighting the eviction. How can a tenant fight such a strong case?

A:

Under Utah law there's really no minimum requirement to fight an eviction. As long as the tenant disputes the eviction by filing something with the court you will probably end up at a hearing.

Tenants will often file an answer in an eviction under two circumstances: (1) the tenant thinks they're right and shouldn't be evicted so they want the judge to hear the case, or (2) they know they're going to be evicted

but they know that filing an answer delays the eviction to give them more time.

No matter the tenant's reason for fighting the eviction, it's usually a waste of time to argue about whether the answer is sufficient under Utah law. The fastest and most effective route for you to take is to just move forward with an eviction hearing. An eviction hearing gets your case on the court docket where the judge will listen to both sides and make a prompt decision.

DOs & DON'Ts of... Terminating a Lease



DO

- Make sure you are familiar with your lease before serving the notice.
- Properly serve your notice (personal service or posting is best) door.
- Explain what will happen if they fail to vacate.
- Make sure that the move out date is the last day of the month (unless your lease requires something else).



DON'T

- Rely solely on text or email – it must be in writing and properly served.
- Provide too little notice (comply with your lease, or Utah law is 15 days).
- Don't guarantee to a new tenant when the old tenant will be out (sometimes they don't leave).
- Terminate the lease in the middle of a month or during the term of the lease.



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Calendar of Events

- October 10 — Columbus Day
- October 17—Boss’s Day
- October 14 — UAA Multi City Good Landlord Class
- October 27 — UAA’s Salt Lake Membership Meeting
- October 31—Halloween



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).

