



# Landlord Letter



## Handling Tenants Who Find Themselves in Jail

We occasionally receive calls from landlords that just learned their tenant is in jail. Let's walk through some of the key items to consider, including what to do, and what NOT to do.

The most common two questions are (1) whether the lease ends or is modified based on the tenant's arrest and incarceration, and (2) whether the landlord will have to file an eviction.

The quick answer is NO – if a tenant is in jail, the lease is not usually terminated or modified automatically. The lease still continues until either side takes action to terminate the lease. Jail is usually a temporary situation (and not a permanent change in residency). Some action must be taken in order to terminate the lease.

Utah law is clear that a landlord cannot usually exclude a tenant's access to the rental unless they go through the court process. Even if your tenant is incarcerated, you may still need to proceed with an eviction to terminate the lease and regain possession of the property.

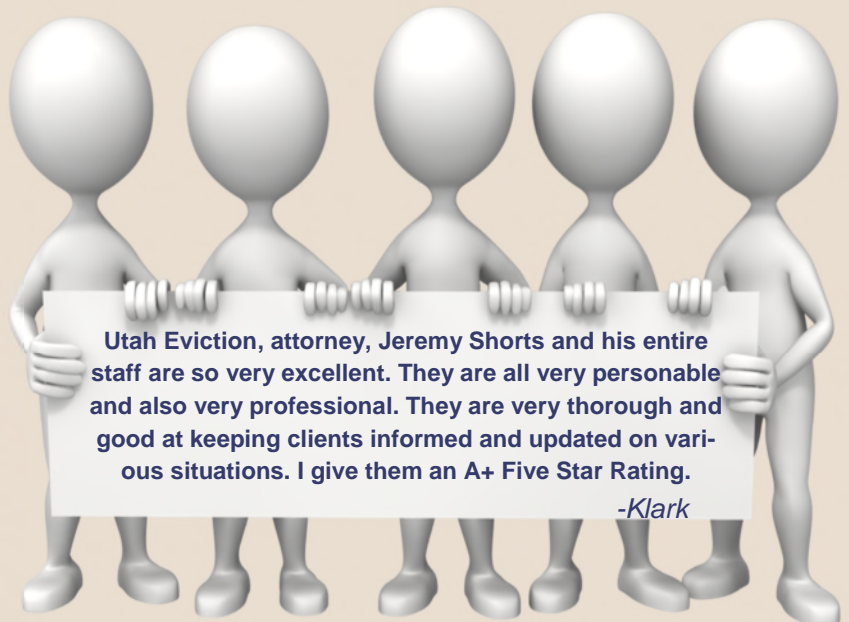
It is best to consult an attorney to confirm the best way to proceed, but you would typically serve the appropriate eviction notices (for nonpayment, criminal acts, etc.). If they fail to comply with the eviction notices, you can proceed with filing an eviction with the court. One significant advantage in this situation, is that it is usually very easy to serve papers to a defendant that is in jail.

*(Continued on page 2)*

### What people are saying about US!!!



Google  
REVIEWS



Utah Eviction, attorney, Jeremy Shorts and his entire staff are so very excellent. They are all very personable and also very professional. They are very thorough and good at keeping clients informed and updated on various situations. I give them an A+ Five Star Rating.

-Klark

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If you find sufficient grounds to consider an eviction (i.e., a lease violation or criminal act occurred on the property), you should gather the evidence to support your claim through witness statements, pictures, videos, and police reports.

However, be cautious about using police reports in court. The large majority of police reports are usually filled with hearsay – or second-hand statements the police collected from third-parties after the action has died down which are NOT based on the police officer’s personal knowledge. As hearsay, the statements are inadmissible and the police officer isn’t able to testify.

Also, one advantage of evicting a tenant that is in jail is that it is usually easy to serve the summons and complaint to begin the eviction lawsuit. While a tenant is incarcerated, the papers are served to the jail during their normal hours, meaning the tenant cannot avoid the process servers. This helps to avoid delays in the eviction process.

Incarceration is usually a temporary situation and not a change of residence, leading to a temporary absence from the property. This means that the tenant should continue to comply with the lease (including paying rent).

My tenant is in jail and his brother (who isn’t on the lease) is requesting access to the property. Should I give them access?

This one is simple – NO! The only party you should provide access to is the tenant on the lease agreement.

You should also always check your lease to see if it provides any guidance on how to handle this situation. Perhaps the lease permits you to provide access to an emergency contact in the event of incarceration.

As an alternative, you may work with the tenant to receive written consent to provide access to the brother, but you should be extremely cautious in this situation.

If you granted access to the brother and the brother removed or damaged the tenant’s personal property, you could be liable for that damage. It’s best, if possible, to have the tenant work this out with friends or family members.

In addition, because incarceration usually is temporary and wouldn’t terminate a lease or change the tenant’s primary residence. You should probably plan on proceeding with serving eviction notices followed by an eviction case with the court.

Attorney Jeremy Shorts



## DO’s and DON’Ts of Entering/Inspecting the Property



Provide your tenant with at least 24 hours written notice of any inspections.



Cause any damage or remove any property



If you’re concerned about your tenant, have someone else accompany you.



Change locks prior to receiving a court order.



Document (including pictures) any damage or lease violations you observe.



Overuse inspections. Take steps to ensure their quiet enjoyment of the property.

## Dear Attorney,

***The original one-year lease is expiring soon, the wife wants to renew the lease, but the husband is saying they're going to move out. What do I do?***

This can be a delicate situation and shows how important communication is. It's best to get the husband and wife on the same page with what is going to happen – Are they moving out or do they want to stay? If they can come to a joint decision, then you know what you're dealing with.

If they can't agree, then you need to decide what you want to do on your end. You should probably serve a termination notice that clearly terminates the current lease with both of them. But you can let them know you're willing to enter into a new lease once they decide what they want to do.

Serving that termination notice clearly ends the current lease and frees you up to sign a new lease (with both of them, with one of them, or with a completely new tenant). If only one wants to stay and sign a new lease, they would have to still qualify from an income perspective, which may be a challenge without their spouse. If they've been good tenants and they qualify under your rental criteria, then I would probably recommend that you offer them a new lease and allow them to stay.



## Know Your Notice • Unlawful Business •

**Purpose:** To evict your tenant for conducting an unlawful business on your property.

*Make sure your evidence is strong (witnesses, police reports, activity logs, etc.).*

*Keep good records of the unlawful business being conducted (i.e. pictures, emails, texts, etc.).*

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

*This notice does NOT give the tenant an opportunity to cure. The tenant must vacate within 3 days or face an eviction.*

# Courtroom Chronicles

## Failure to Appear — Kind of...

Missing a court date can have very serious consequences, including potentially having a warrant out for your arrest!

We had an eviction for criminal acts after the tenant was arrested for drug charges on the property. At our eviction hearing, we showed up on time but the tenant failed to appear. The judge still gave the tenant a few minutes, but then called the case.

Just then, the tenant finally appeared (VERY late). The judge asked why they were late, but then the judge said, “Why didn’t you appear on your

criminal case this morning?!?” Apparently, the tenant had a separate criminal case in front of the same judge and had totally skipped a hearing earlier that day!

The tenant scrambled to find an excuse. You could tell the judge wasn’t buying it, but the judge was also kind and recalled the warrant as long as certain conditions were met (including appearing at a new hearing date). I hope the tenant learned how important it is to show up to court!



## Contact us for a Landlord Consultation!

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### Parting Thoughts

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