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## The Legal Process of an Eviction

By dan the roommate man

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In the event that a landlord decides to evict their tenant, he or she must follow certain guidelines. The landlord can legally evict you for three different reasons:

1. You miss a rent payment.
2. You violate the rules stated in the lease i.e. unauthorized pets, failure to leave after lease is up, etc.
3. You abandon the rental unit for more than half of the rental period and did not notify the landlord you would be leaving.

You can NOT be evicted for race, religion, children, nationality, or marital status. This is called discrimination. If you think this is why you are being evicted, you should contact an attorney because these things should not be a factor in your residency.

If the landlord has legal grounds to evict you, he or she must first notify you that there is a problem and tell you that you will be evicted if the problem is not fixed.

Once the problem has been spoken about, the landlord and tenant will usually draw up a written agreement to have whatever seems to be the problem fixed by a certain date (usually within 7 to 10 days).

If you refuse to correct the problem within the time frame agreed on, the landlord then must file a complaint with the county court. You will receive a copy of this complaint along with a summons to appear in court. The land lord CAN NOT legally evict you without a hearing. An eviction notice is much different than a court order. If he or she attempts to do force you out of your home without a hearing, contact the police or an attorney.

Once the complaint has been filed with the court, you will receive a "Notice of Hearing" setting a hearing date. If you wish to contest the eviction, you must file an answer with the court within five business days. You will also need to deposit any outstanding rent with the clerk of the court. If you decide to ignore the summons, the court is allowed then to issue the landlord a final judgement

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allowing the sheriff to evict you.

Failure to appear at the hearing at all causes eviction without question. If you go to the hearing and win, you have nothing to worry about. If you go and lose, you have the right to appeal. If you lose and do not appeal, you will be served with a "Writ of Possession". This is the eviction order of the court. In some states, you will also owe double the rent for the time which you stayed over, your landlord's legal expenses, and possibly court costs. After the time specified at the hearing is up, your landlord can legally change the locks on your apartment and assert a lien on your possessions for the money which you owe him.

Hopefully you will never receive an eviction notice, but if you do, at least you'll know what to expect!

Since 1989 dan the roommate man has helped 1000's of people find roommates. Need help? Contact him at 800-487-8050 or [www.roommateexpress.com](http://www.roommateexpress.com)

### **Common Misunderstandings About Evictions**

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According to Diane L. Silva, an attorney at law in California, "The purpose of filing an eviction action, an "unlawful detainer," is to obtain possession of the premises. The landlord may also obtain a judgment for rent owed, court costs and attorney's fees (sometimes). The award of rent in the action is considered to be incidental to the primary purpose—the recovery of the premises."

The process is difficult, and in order to clarify these things, Lane County Legal Aid Services put together the following list of common misunderstandings:

1. Common misunderstanding: The landlord can have the police throw you out or arrest you if you don't pay your rent or get out when the landlord tells you to.

Truth: You cannot be arrested or jailed for not paying rent. The police will remove a tenant from the rental unit only if a crime has been committed or if a judge (after an eviction hearing, or FED) has ordered the tenant to get out. Failure to pay rent or to get out when the landlord says so are not crimes.

2. Common misunderstanding: The landlord has to have a good reason in order to evict a tenant.

Truth: In a month to month tenancy — which is what most tenants have; the alternative would be a tenancy for a specific period of time, such as one year — the landlord can evict you for no reason or even for a crummy, mistaken reason, so long as the reason is not illegal discrimination (race, religion, children, nationality, marital status) or illegal retaliation (complaints about lack of repairs, for example). In other words, the landlord can evict the tenant for such crummy reasons as the color of hair or for not smiling enough, or for mistakenly thinking that the tenant broke some rule or did something bad.

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3. Common misunderstanding: If the tenant is pregnant or has young (or even any) children, the tenant cannot be evicted.

Truth: Being pregnant or having young children (or any children) does not prevent or delay an eviction.

4. Common misunderstanding: If there is a good reason why the tenant does not have the rent money, the tenant cannot be evicted for nonpayment of rent.

Truth: Inability to pay the rent is not a legal defense, unless the landlord caused the inability. Becoming disabled and unable to work, losing you job, losing your welfare check, or having your money stolen does not prevent or delay an eviction.

5. Common misunderstanding: If the tenant has been trying to move out but can't find a new place, the eviction hearing judge will not make the tenant get out.

Truth: Inability to find a new place is not a legal defense, and the judge will order you to get out — even if it means that you and your children will become homeless.

6. Common misunderstanding: If the tenant goes to the eviction hearing, the judge will automatically give the tenant more time to move.

Truth: Sometimes, if there is a really sad situation (a health problem, young children), the judge may ask the landlord to give the tenant extra time. Rarely, the judge may require the landlord to give extra time. Often, the judge will not require any extra time, in part because the judge knows that the landlord still has to wait another 3 days

7. Common misunderstanding: If the tenant gets or gives a 30 day eviction notice, the tenant does not have to pay rent during the 30 day period.

Truth: The tenant's rent obligation continues for every day the tenant is in the rental unit, through the 30 day period, even though the landlord (or the tenant) has given a termination of tenancy notice. It is understandable that the tenant may need the rent money, in order to move to a new place. But if the tenant does not pay the rent as it comes due, then the landlord can give the tenant a 72 hour nonpayment of rent notice and evict the tenant, long before the 30 day period runs out.

8. Common misunderstanding: The landlord may make you pay any unpaid rent at an eviction hearing (an FED).

Truth: The only things a landlord can get at an FED are: 1) a judge's order (called a judgment) that the tenant must get out at a certain day and time, and 2) a judge's order that the tenant pay the landlord for the landlord's court costs, prevailing party fee, and attorney fees (if any). If the landlord wants to make the tenant pay any unpaid rent, the landlord will have to sue the tenant in a separate lawsuit, often in Small Claims Court, for a judgment for the rent money. (Legal Aid has other handouts which explain how the landlord must go about collecting the judgment from the tenant).

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