

An Overview of the Residential Eviction Process

In my years of handling evictions, it is apparent that non-paying or nuisance tenant can be extremely aggravating to the landlord. The main question or questions that the client initially asks is “how can I get them to move out” and “how long will it take”. Although it might happen, Alabama law prevents a landlord from taking the law into his own hands by taking non-legal actions to force the tenant out. However, if the landlord follows the proper legal steps, the landlord may recover, upon termination of the lease, possession of the property, unpaid rent, and fees paid to an attorney for handling the eviction process. Unfortunately, it takes time and money to legally terminate the tenant’s possessory interest in the property, but these steps are necessary to legally regain the property.

Step 1: The Alabama eviction process is generally triggered by the tenant’s failure to pay rent when due. If rent is not paid on time and the landlord wishes to evict the tenant, the landlord must deliver a proper written notice to terminate the lease to the tenant specifying the amount of rent and any late fees owed and that the rental agreement will terminate upon a date not less than seven (7) days after receipt of the notice. Please note that if the termination notice is not properly worded then the judge will lack the jurisdiction to handle the case, and the case will be dismissed, causing the landlord to have to restart the entire process.

If the landlord wishes to evict the tenant for a violation of the lease other than failure to pay rent, the written notice must specify the tenant’s acts or omissions that violate the lease and that the rental agreement will terminate in no less than fourteen (14) days after the receipt of the notice.

Whether the notice to terminate the lease was for nonpayment or another reason, the lease will not be terminated if the tenant remedies or cures the problem within the notice period. If the issue remains uncured, the rental agreement terminates, and the landlord may proceed with the eviction process. Please note that if the tenant makes a payment that is accepted by the landlord after the notice to terminate, then the eviction process would need to start again with the posting of the termination letter.

Step 2: After the notice period expires and the issue with the tenant remains uncured, the landlord may file an action in court to recover possession of the property. The county sheriff or other authorized person must serve the tenant with a notice of the action filed against him. The notice will state the tenant has seven (7) days [14 days for violations other than failure to pay rent] to answer the action filed against the tenant. Please note that in Jefferson County and Shelby County, the unlawful detainer action will only seek possession of the property; unless you obtain personal service of the tenant.

Step 3: If the tenant fails to answer, the landlord may apply for a default judgment. If the defendant answers, the judge will set a trial in the matter and the trial will be expedited. If the landlord prevails, the judge may order that the possession of the premises be restored to the

landlord.

Step 4: Once the judgment has been entered in the landlord's favor, the landlord must apply for a writ of restitution or possession in order to have the court direct a law enforcement officer to remove the tenant out of the property. This step is not necessary if it is determined that the tenant(s) have already vacated the property. The landlord needs to be extra careful when they retake the property without the court's involvement but it is normal for the tenant to move out prior to the writ of set out. If you feel that the tenant has vacated the property, then make sure you properly document the file, including taking pictures of the property and storing the remaining tenant possessions for 30 days or so.

Step 5: Once the landlord has recovered possession of the rental property, the landlord may wish to amend the lawsuit to recover unpaid rent and damages to the property. Please note that at this point in the process, the landlord is now allowed to include interest and attorney fees (allowed per statute).

Other advice:

- 1. If the tenants are moving out prior to the trial and/or entering of the default judgment, it is important that you receive the keys back from the tenants as well as a note from them stating that they have vacated the property in question.**
- 2. You can hardly ever document your file too much.**
- 3. Make sure you perform the proper due diligence before leasing the property; one should expect to have some evictions but some are avoided with the proper due diligence prior to signing the lease.**
- 4. Attorney Fee provision is not allowed in the lease per Alabama state law. If landlord has such a provision in the lease and attempts to enforce the same, then the tenant may recover actual damages, plus one month's rent plus attorney's fees.**