

Termination of Rental Agreements and Eviction Under The Residential Landlord and Tenant Act of 1977

Since 1977 the residential landlord-tenant relationship in Montana has been governed by the provisions of 70-24-101, MCA. The Act is very broad in scope and covers the relationship from its inception to termination and eviction of tenants. The provisions of the Act do not apply to commercial agreements, or housing which is supplied in conjunction with employment. Mobile homes are governed under a different section of Montana law. (See 70-33-1-1, MCA). Perhaps the most important consideration is the fact that the law governs what can and cannot be done by both landlord and tenant irrespective of what may be agreed to orally or in a written agreement. Both landlord and tenant have responsibilities under the law which must be followed. The practice of "self help" or taking things into your own hands is strictly prohibited!

Termination of Relationship: Before a tenant can be evicted by the court the agreement under which the tenant occupies the premises, oral or written, must first be terminated. If the term of the agreement has simply expired, and the landlord has not in any manner agreed to continue it, the landlord may immediately file a case in Justice Court or Municipal Court for possession of the property, as well as any rent which may be unpaid and any damages to the premises.

In the event the landlord and tenant are on a **month to month rental basis**, the landlord must serve upon the tenant a **written** termination notice which terminates the tenancy and provides at least **thirty days** notice of the date upon which the agreement ends. (See 70-24-441, MCA).

In the event the tenant is behind on rent the landlord may terminate the tenancy by serving a **three day written notice** to the tenant of the intent to terminate the relationship if the stated amount of rent is not paid in full within three days **after** receipt of the notice. If the tenant pays the rent in full the tenancy does not terminate and the landlord cannot evict the tenant for non-payment. (See 70-24-422, MCA). **The tenant has the legal right to pay the required money to prevent the relationship from terminating.**

If the tenant is not in compliance for reasons other than rent the amount of written notice required to be given changes. (See 70-24-422, MCA). It is the landlord's responsibility to provide written notice and be able to prove that notice was given. If notice was not given there is no legal right to proceed. **The notice must specify the acts or omissions which must be corrected and must advise that if they are not corrected that the relationship will terminate on the date specified in the notice.** Acceptance of rent by the landlord is not a waiver of the right to terminate for violations other than non-payment of rent.

Any notice required **must be in writing and must be served on the tenant.** Notice can be served by anyone, including the landlord. While notice may be mailed, an additional three days is given because of the delay resulting from the fact of mail. (See 70-24-108, MCA). **Notice cannot be posted on the property, served on a minor, or some other person who promises to deliver it to the tenant.**

If the reason for the termination is not corrected by the stated deadline the agreement terminates and the landlord may then proceed with a lawsuit to regain possession of the property and obtain a money judgment for unpaid rent, fees, and damages to the property.

If you are unsure how to proceed you should seek legal advice!!

Termination of Rental Agreements and Eviction (continued)

Once the rental agreement has terminated, and the tenant has failed to leave and return possession of the property, **the landlord must go to court to begin an action for possession.**

An action for possession is simply a civil lawsuit in which the landlord requests that the court rule that the agreement was terminated, that the tenant is unlawfully keeping the landlord from the property. The landlord can also request a money judgment for unpaid rent, damages to the property beyond normal wear and tear, and any monetary loss not covered by any Security Deposit. **The landlord must comply with the requirements of the Residential Tenants' Security Deposits Law as a condition of obtaining a money judgment.** (See 70-25-101 MCA).

A lawsuit is started by requesting a civil filing packet from the clerk of the Justice Court. Carefully read and follow the instructions in the packet. The clerk cannot give the landlord or tenant legal advice! Type or write on the Complaint form the basis for the lawsuit in the space provided. If a termination notice was given be sure to indicate what type of notice was given, when, and by what means the notice was served. If damages are unknown then make sure you indicate that on the blank line provided on the Complaint.

When you file the Complaint you will have to pay a filing fee of \$35.00. A Summons will be prepared and issued by the clerk. **The Summons and the Complaint must be personally served** on the tenant(s) and any other person with whom the landlord does not have a landlord-tenant relationship. Anyone other than a party to the lawsuit who is over eighteen can serve the Summons and Complaint by personally handing it to the person(s) being sued. **The original Summons must be returned by the plaintiff to the court along with a completed Certificate of Service.** If service is not complete, or is not accomplished legally, the court cannot proceed.

The tenant has **ten business days to file a written Answer to the Complaint.** The tenant must also serve the Answer on the landlord. The Answer can be personally served or mailed to the landlord. **Proof of service must be filed when the Answer is filed.** A Certificate of Service may be obtained from the clerk of court. A \$20.00 answer fee must also be paid before an Answer is accepted for filing. If you are indigent and cannot pay the filing fee you may apply to the court for an order allowing you to file without first paying the fee.

The tenant may also file with the Answer a separate Counterclaim for a money judgment against the landlord for money the tenant(s) believe is owed to them. The landlord has twenty days to file a written Reply to the Counterclaim. The Reply must be served on the tenant, and must be filed with the clerk of court along with a Certificate of Service.

A trial on the issue of who is entitled to possession must be heard within twenty days after the tenant's answer is filed. The **only issue** to be determined at that time is whether the agreement has been terminated and whether the landlord is legally entitled to possession of the property involved. A separate trial on the issue of whether money is owed, damages to the property, and whether the deposit has been accounted for will be held at a later date. At that trial the tenant will be allowed to present evidence on the Counterclaim.

Only the Sheriff, or one of his Deputies, may physically evict a tenant and only if a Writ of Possession has been issued by the court.