

# SUMMARY EVICTION AND LOCKOUTS

*Your Rights as a Tenant: A Fact Sheet from Nevada Legal Services, Inc.*

## **What is summary eviction?**

Summary eviction is one of two eviction processes. It is faster and simpler than formal eviction but has limitations. Summary eviction cannot be used against mobile homes in mobile home parks or after foreclosure. It can only be used to evict a tenant and cannot be used to get money damages.

The process begins when the landlord serves the tenant with an eviction notice. There are different types of eviction notices, including, a 7-Day Notice to Pay Rent or Quit if rent is owed or a lease violation, nuisance, tenancy-at-will, or no-cause notice. In order to use the summary eviction process, the landlord must issue a Notice of Unlawful Detainer. For non-payment of rent, the 7-Day Notice to Pay Rent or Quit is an unlawful detainer notice. For issues other than non-payment, the landlord must serve the tenant with a 5-Day Notice of Unlawful Detainer to finalize the eviction process. The Notice of Unlawful Detainer must come after the expiration of a 5-day Lease Violation Notice, a 3-day Nuisance Notice, or a 30/7/5-day No-Cause Notice.

**\*\*Please see our fact sheet on Non-Payment of Rent notices for more information on how to contest a summary eviction action for non-payment of rent.**

## **What do I do if I get a 5-Day Notice of Unlawful Detainer?**

You have three options: 1) fix the lease violation or cause of nuisance if applicable, 2) vacate the property, or 3) respond to the 5-Day Notice of Unlawful Detainer. The notice does not have to be filed in a court to be valid and the landlord does not have to initiate a court action. In order to stop the eviction, the tenant must file a Tenant's Affidavit with the Justice Court explaining why you should not be evicted before the 5 days of the notice expires. You can respond to the eviction by filing the Tenant's Affidavit with the Justice Court explaining why you should not be evicted. If you do not file the Tenant's Affidavit before the end of five days, the eviction will automatically be granted.

## **What is a Tenant's Affidavit?**

The Tenant's Affidavit is a sworn statement where you state your defense to the eviction. Even though it is filed in court first, it is the tenant's answer to the allegations in the eviction notice.

## **Is there a filing fee?**

Yes. Filing a Tenant's Affidavit costs \$71 but this fee can be waived. If you cannot afford to pay the filing fee, you can file an application to have the court costs waived at the same time you file the Tenant's Affidavit. If the judge grants the request, you will not have to pay the filing fees. If your request is denied, you will have to pay promptly to avoid having the Affidavit dismissed.



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[www.nevadalegalservices.org](http://www.nevadalegalservices.org)

# Resources

You can access additional information and forms on the NLS website at [nlslaw.net](http://nlslaw.net).

For additional information and resources in Southern Nevada:  
[civillawselfhelpcenter.org](http://civillawselfhelpcenter.org).

For general forms, including fee waivers statewide:  
[selfhelp.nvcourts.gov](http://selfhelp.nvcourts.gov).

## *What are my defenses?*

In your Tenant's Affidavit, you will need to explain why you have not violated your lease or were not a nuisance. While your defense will depend on your specific situation, the following are examples of some general defenses.

- You did not violate any terms of your lease agreement, you cured the violations, or the allegations are not a serious or material breach of the lease to warrant eviction.
- You did not cause or maintain a nuisance that meets the definition in NRS 40.2514.
- If the eviction is for no cause, meaning that the tenant did nothing wrong, the defense may include that the lease has not expired, that the notice does not contain the required language advising the tenant of the right to request additional time pursuant to NRS 40.251, or that the eviction is discriminatory or retaliatory against the tenant.
- If you received a tenant-at-will notice but are actually a tenant, you want to describe the terms of the tenancy, any oral or written lease agreements, history of the rental agreement.

## *What happens after I file my Tenant's Affidavit?*

The Justice Court must grant you a hearing no matter what your affidavit says. NRS 40.253. The filing of the Tenant's Affidavit also stays (stops) the eviction proceedings until the hearing. Each jurisdiction varies in how hearings are set on evictions. For example, in Reno and Las Vegas Justice Court the hearing will not be set until your landlord files its Affidavit of Complaint for Summary Eviction. The court will then notify you of the hearing date, possibly by phone so you will want to make sure you check with the court periodically to see if a hearing is set.

At the hearing, the judge will decide whether you have a valid legal defense to the eviction. If the judge decides you do not have a legal defense, the landlord's request for an eviction will be granted. The eviction order will be sent to the Sheriff or Constable who should post the order for removal in a conspicuous place on the premises. After posting it then the sheriff or constable can lock the tenant out 24 hours later.

If the judge decides to evict you, you can ask for 10 extra days to move. NRS 70.010. The judge is not required to give you any extra time but may choose to do so.

If you disagree with the decision you can appeal it. You have to post a \$250 bond to stop the eviction during the appeal. NRS 40.385. You may also have to pay another filing fee. See our Post Eviction Fact Sheet for more information.

## *What happens if I don't file a Tenant's Affidavit?*

If you do not file a Tenant's Affidavit, the landlord can get an eviction order signed by a judge and proceed with the lockout. With an eviction order the landlord can have the constable or sheriff lock you out 24-36 hours after posting the order. It will not matter whether you are sick, disabled or have children, you will be locked out after 24 hours.

If you get a Lockout Order, you can file a Motion to Stay the Eviction and ask the court to give you 10 days to move out. You can also ask the court to set aside the eviction if you have a good reason for not filing the Tenant's Affidavit and a legal defense to the eviction.

## TENANTS' RIGHTS CENTERS

Nevada Legal Services offers 2 Tenants' Rights Centers—one in our Las Vegas office and one in Reno. Please feel free to contact either Center for further assistance and information if you are a tenant facing eviction or other housing issues:

Las Vegas TRC: (702) 383-6095

Reno TRC: (775) 284-3491 x. 316 or email to [renotrc@nlslaw.net](mailto:renotrc@nlslaw.net).