

Landlord-Tenant - Eviction

EVICCTIONS

What is an eviction?

An eviction is when your landlord makes you move out of your home, usually by getting an order from a court, but not always.

What if I'm behind on rent?

You should talk with your landlord. If you think you will be able to pay your rent soon, maybe your landlord will agree to let you stay until you are able to pay. If you are expecting to receive money soon, you should try to take proof of that to the landlord so the landlord knows you will be getting money soon. Make sure to get any agreement with the landlord in writing.

When can a tenant be evicted?

The tenant may vacate the premises, in which a landlord can bring an eviction ("forcible entry and case he/she shall be discharged from additional detainer action") in Court if:

1. The tenant is not in lawful possession of the rental unit (for example, the tenant remains in the rental unit after the time states in the termination of lease or the tenant fails to pay rent for more than three (3) days after it is due); or;
2. The tenant greatly damages the rental unit; or
3. The tenant does something which the lease states cannot be done (for example, the tenant has pets in the rental unit and the lease says the tenant

can be evicted if he/she has pets); or,

4. The tenant fails to do something which the lease states must be done, or the tenant will be evicted (for example, the tenant agrees, in the lease, to make certain repairs on the rental instead of paying the rent and then does not make the repairs); or,
5. In a monthly tenancy, the tenant fails to vacate the premises after receiving a one-month notice from the landlord of an intent to not renew the lease even if the tenant has not violated any terms of the lease.

How does an eviction work?

Under South Dakota law, these are the steps the landlord must take to remove a tenant, if the tenant will not move voluntarily from the rental unit:

1. In most cases, the landlord must provide the tenant with a written **Three (3) Day Notice**: the notice tells the tenant that he/she has three days to leave the rental unit or a legal action will begin to force the tenant out. The three days or three business days do not include Saturdays, Sundays, or legal holidays:
2. If the tenant remains in the rental unit after three days, the landlord must have a **Summons and Complaint personally served on the tenant**. A Summons and Complaint are legal papers which begin legal action in Court. The tenant should see an attorney immediately since he/she has **only four (4) business days** to respond to the Summons and Complaint of the landlord by serving a document called an **Answer**.
3. If the tenant does not answer within four days of receiving the Summons and Complaint, the landlord can get a Court Order which orders the County Sheriff to move the tenant out of the rental unit.

4. If the tenant obtains an attorney and Answers, claiming that he/she has the right to stay in the rental unit, a trial will be held in Court. The judge will then listen to both the landlord's side and the tenant's side and decided if the tenant should be evicted or if he/she can remain in the rental unit.

If the tenant moves out before the trial, the eviction action may end, but the landlord can continue the action for any rent and/or damages caused by the tenant to the rental unit, as well as Monetary damages caused by the tenant's failure to move.

If the landlord wins the trial, the Court will Order the tenant to leave the rental unit and to pay any rent due. The tenant may also be ordered to **pay the landlord's attorney fees and costs of the court action (filing and service fees, etc.)** In some cases, the landlord can recover double rent for the time the tenant has remained in the rental unit after the end of the three day notice to vacate time period.

If the tenant wins at trial, he/she will be allowed to remain living in the rental unit for the length of the rental agreement. This would not prevent the landlord from giving the tenant a **month's notice to move**, if the lease is month-to-month and not a subsidized housing lease. Even if the tenant wins, he/she will still have to pay rent.

I got a cease and desist letter. What do I do?

Cease and Desist Letters: What Are Your Options When You Receive One?

What is a Cease and Desist letter?

A cease and desist letter is a document that tells a person to stop certain activities in order to avoid further legal action. This may be a notice from a landlord to demand the tenant do things like taking better care of the yard, paying rent on time, or to stop a dog from barking too much.

What else do I need to know?

A cease and desist letter holds no real legal weight until the issue is officially taken to court to be heard in front of a judge. The cease and desist letter is simply a common first step in initiating a legal case in court.

What do you do if you receive a cease and desist letter?

You have a couple of options available to you if you receive such a letter. The first option is to simply comply with the demands of the letter. This insures the quickest resolution, and if complying doesn't hurt you, this might be the best course of action. The second option is to write a response back to the sender that says why you will not be following their demands. If the demands are unreasonable or without cause, this might be the best option for you. You can send a letter back on your own or you may employ the help of a lawyer to help you write the letter. This response should be sent by mail.



**NEED HELP WITH DRAFTING A RESPONSE? NOT SURE OF
YOUR NEXT STEPS? VISIT:**

WWW.SDLAWHELP.ORG/Apply
335 N Main Ave Suite 200, Sioux Falls, SD 57104 - (605) 336-9230

RETALIATORY EVICTIONS

A retaliatory eviction is when a landlord greatly increases rent, or decreases or disconnects utilities, or demands that the tenant move simply because the tenant has done any of the following:

1. The tenant complained to a government agency, such as a Court Housing Authority or City Building Inspector's Office, regarding housing or building code violations that affect the health and safety of the rental unit. The complaint must be "in good faith" (made honestly); or,
2. The tenant gave the landlord written notice of repairs that are needed on the rental unit; or,
3. The tenant started or joined a tenant's rights group or a "tenant's union".

The following are NOT considered a retaliatory eviction under law. If the landlord gives tenant a notice to move 180 days (6 months) or more after the tenant does one of the above, or the landlord does not renew a written lease when it ends (for example, tenant has a written month-to-month lease, tenant joins a tenant's union in early June. In late June, the landlord serves tenant notice that lease will end on July 31st, this is not retaliation under the law.)

If the landlord does violate the retaliation law, the tenant has the right to sue the landlord for damages as if the tenant had been locked out by the landlord, plus sue for up to \$500.00 in fees for the tenant's attorney.

REMEMBER: To fight an eviction, a tenant needs to contact an attorney as soon as they are served with a **Three Day Notice or Summons and Complaint**.

LOCKOUT AND LANDLORD UTILITY SHUT-OFFS

A landlord may seek an eviction order from a Court (see "Eviction" below), but a landlord cannot take matters into his/her own hands and lock a tenant out of the rental unit or cut off electricity, gas, water, or other essential services to the rental unit, the tenant has the right to sue the landlord for:

1. Return of the rental unit to the tenant, terminate the agreement and/or re-connection any cut off utilities; and,
2. An amount equal to two month's rent, plus advance rent paid and the amount of any security deposit paid by the tenant.

A landlord also does not have the right to unlawfully keep or withhold personal property of the tenant unless it is abandoned (see below).

Additional Resources

South Dakota Consumer Protection - [Landlord/Tenant Information](#)

Minnehaha County Sheriff's office - [Eviction Process](#)

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[Housing Landlord/Tenant Rights](#)

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