

## Evictions

### How can landlords force tenants to leave their rental home?

**Landlords must first go to court to force a tenant out of the rental unit.** They cannot legally change the locks, shut off utilities, remove tenants' property, threaten to do these things, or take any other action to force tenants to move without first getting a court order (ORS 90.375). Only a judge can issue an eviction order, which is officially called **Notice of Restitution**.

There are only three ways that a landlord can legally take back the rental unit:

- The tenant moves out and returns the keys to the landlord;
- The tenant abandons the unit and doesn't notify anyone that he/she has plans to return;
- The landlord gets a court order, after a hearing, to have a sheriff force the tenant out of the rental unit. Only a sheriff with a court order can physically remove you from the property.

**A landlord must give a tenant a termination notice before the landlord can go to court to get an order forcing the tenant to move, unless the rental agreement has an expired move-out date.**

### I just received a termination notice, what does that mean?

A landlord issues a termination notice when he/she has decided to end your tenancy and has given you notice to move. This is the first step of the process. Many For Cause termination notices can be resolved and the tenant can stay, if the tenant fixes the problem, by paying back rent for instance. A termination notice must be written, delivered to the tenant in a certain way, and provide the date in which the notice period ends and the tenant should leave if the problem is not fixed.

**The landlord cannot lock you out at this point.** Carefully read the termination/eviction notice, it may include a deadline to fix the problem, depending on what kind of termination it is. There are several kinds of eviction notices:

30-day No Cause	60-day No Cause	30-day For Cause	10-day For Cause
10-day Pet Violation	72-hour Nonpayment of Rent	24-hour Outrageous Conduct	24-hr Unlawful Occupant

**Tenants with a fixed-term lease** such as a 6-month or 1 year lease can be given a 30-day for-cause eviction notice, or 72-hour Nonpayment of Rent notice. This means the landlord claims that the tenant has violated the lease in some way. The landlord is telling the tenant to move out unless the tenant can fix the problem described in the eviction notice.

**Landlords don't have to provide a reason why they are giving the eviction notice if the tenant is on a month-to-month rental agreement-** it can either be a 30-day or 60-day No Cause notice. These can be difficult to fight, unless the tenant can prove retaliation or discrimination. If the tenant does not move by the date listed in the notice, the landlord may take the tenant to court.

Termination notices are not court documents and they do not usually appear on the tenant's record. If the tenant has not moved or fixed the problem by the end of the termination period, the landlord can go to court to file an FED (Forcible Entry and Detainer). **An FED is not a final eviction order.** It notifies the tenant that the landlord has filed for an eviction, and notifies the tenant of the court date.

**If you receive an FED (either by mail, posted on your door, or given to you in person), it is important that you go to court on the date given, even if you have already moved out, or fixed the problem with the landlord.** If either the landlord or the tenant does not show up in court, it is a default judgment against them.

Whether you win or lose in eviction court, or the case is dismissed, the FED may show up on your court file, **but this is not the same as having an eviction on your record.** Tenants with FEDs will be better protected when looking for a new place in 2014. **Beginning January 1<sup>st</sup>, 2014, landlords cannot deny a tenant rental housing due to an FED on the tenant's rental history unless it resulted in an eviction.**

#### **Tips:**

- Carefully read the termination/eviction notice.
- Make sure the termination notice was properly delivered to you (ORS 90.155, 90.160).
- There are eight types of evictions that a landlord can give a tenant but sometimes landlords don't give the correct type of notice. Did your landlord give you the correct eviction notice, does it apply to your situation or do you feel like it is a false accusation?
- Try to talk with your landlord and prevent the termination if possible.
- Consult an attorney and call CAT for referrals for attorney resources and numbers.

## **Eviction Court**

It is important to try to talk to a lawyer before going to eviction court. The Renters' Rights Hotline can give tenants some resources to speak to attorneys. If you can't speak to a lawyer, ask a friend or family member to accompany you to court. The court provides free interpretation services if needed but you must put in your request for the service.

**First appearance.** The judge often does not make a decision at the first appearance. He/she first checks to make sure that both parties are present and sends them into the hall to negotiate an agreement. A Stipulated Agreement is often a tenant's best chance to stay in the home and avoid an eviction.

**Stipulated Agreement** (ORS 105.146). Often the landlord has already drafted up a stipulated agreement for the tenant to sign. If the landlord offers you an agreement to sign, make sure to read it very carefully. If there is a section you don't agree with, you have the right to ask to change it. If you brought a lawyer, family member or friend, ask them to read it as well. If both parties sign a stipulated agreement, the eviction is suspended for the duration of the agreement, usually six months. **If you sign a stipulated agreement, but are not able to fulfill the terms, the process to force you out is very fast.**

**Trial.** If the tenant and landlord do not negotiate an agreement, the judge sets a trial date for a later date. Both sides present their arguments and the judge makes a decision. **Take witnesses or other documentation as evidence.** If the judge decides against the tenant, a **Notice of Restitution** is given, which includes the date when the tenant has to be out.

If the judge has issued a Notice of Restitution, and the tenant has not moved out by the date given, the landlord can have the sheriff or process server post a four-day notice on your door. If you don't move out within those four days, the sheriff will come back and require you to leave while the landlord changes the locks. If you can't get your belongings out, you will have 5-8 days to contact the landlord and arrange to pick them up (ORS 90.425).

# The Eviction Process

**Your situation may be different, particularly if you are in subsidized housing or rent a space for a mobile home. Get legal advice!**

## Notice of Termination

- ◆ Must be in writing and must be given to you properly (handed to you, mailed to you with three extra days, or posted and mailed to you if the agreement allows).
- ◆ The fact that you received an eviction notice can be reported to potential new landlords calling for references
- ◆ **Your landlord cannot lock you out until the very end of the eviction process and only with the presence of a sheriff (see Step 7).**

<p><b>30-day No Cause Notice</b></p> <p>Only permitted for tenants who have been in their unit for less than one (1) year. The Landlord does not have to give you a reason. You may have a defense if the notice was given because of retaliation (asking for repairs, for example) or discrimination. If you think the landlord is giving you this notice because of your violation of the rental agreement, try to talk with your landlord to solve the problem and prevent the termination.</p>	<p><b>60-day No Cause Notice</b></p> <p>Permitted for tenants who have been in their unit more than one (1) year, if the tenancy is month-to-month. The Landlord does not have to give you a reason. You may have a defense if the notice was given because of retaliation (after you asked for repairs, for example) or discrimination. If you think the landlord is giving you this notice because of your violation of the rental agreement, try to talk with your landlord to solve the problem and prevent the termination</p>	<p><b>30 day For Cause Notice</b></p> <p>Violation of rental agreement. Usually, you have 14 days to fix the problem. Read the notice carefully for timeline. Fix the problem! Or contact an attorney, especially if your landlord has accepted rent after the notice.</p>	<p><b>10 Day For Cause Notice</b></p> <p>For tenants who have received a <b>30 Day For Cause</b> notice within the last 6 months and have violated their rental agreement in the same way again.</p>	<p><b>10 Day Pet Notice</b></p> <p>Violation of no pets rule. Tenant has 10 days to remove the animal. Contact an attorney if the landlord has known about the pet and has accepted rent previously. Also, if the pet helps you with your disability, contact the <b>Fair Housing Council</b> 503-223-8197 ex. 2.</p>	<p><b>72 Hour Nonpayment of Rent Notice</b></p> <p>Can be given on the eighth day rent is late. Can only be used for unpaid rent (not fees, deposits, etc). Landlords must accept full payment during the notice period. See if they will accept partial payment. Call 211 or 503-222-5555 for Information about rent assistance. <b>Do not</b> withhold your rent for repairs unless advised by an attorney!</p>	<p><b>24 hour Outrageous Conduct Notice</b></p> <p>For violence, threats, and illegal (drug, prostitution, etc. ) activity by tenant or tenant's guest or pet. Get legal advice now to see if this notice is appropriate!</p>	<p><b>24 hour Unlawful Occupant Notice</b></p> <p>Landlord claims that you live there without the landlord's knowledge or the legal tenant's permission. This notice is for 'squatters' after the legal tenant has abandoned the unit, not for guests of the tenant. If you receive this notice, call a lawyer!</p>
↓	↓	↓	↓	↓	↓	↓	↓
If tenant is still in the unit....	If tenant is still in the unit....	If problem is not corrected and tenant is still in unit...	If tenant is still in unit...	If pet and tenant are still in unit....	If rent is still not paid and tenant is still in unit...	If tenant is still in unit....	If squatter is still in unit....

## STEP 2: FED (Forcible Entry and Detainer)

- ◆ Landlord must go to court to obtain an FED and file a lawsuit against the tenant. FED is the formal name for eviction proceedings.
- ◆ The landlord cannot lock you out at this point!
- ◆ FED is mailed to you and posted on the front door. The date you must appear in court in on the papers. Talk to your landlord now!
- ◆ See a lawyer if you have a legal defense! Go to court and be on time!
- ◆ **An FED may show up on your rental or credit record, although a landlord cannot deny an application based on an FED that did not result in an eviction.**

## Step 3: First Appearance at Court

If you don't show up, you may lose automatically.

In most cases, the judge will ask you to work out an agreement with your landlord if possible to solve the problem and avoid trial. It's a good idea to bring someone with you who can help you think clearly. The court might provide a mediator (who may not know about your rights) if you ask for one. If you make an agreement with your landlord and sign it, you are bound by the terms. Read the agreement carefully and try to make changes if necessary. If you don't comply, you can be forced out of your home very quickly (see steps 6-8). If you do comply with the agreement, the FED *should* be dismissed in your favor within one year, and probably can't be used against you in the future.

If you have a defense (for example you are withholding rent because your landlord won't make repairs), you can ask for a trial. If you lose, you will most likely be responsible for your landlord's attorney and court costs. **Get legal advice!**

Tenants may bring any evidence, but trial probably won't be the day of first appearance. Evidence might be helpful for mediation.

<p style="text-align: center;"><b>Step 4 → Trial</b></p> <ul style="list-style-type: none"> <li>◆ 1-7 days after 1st appearance</li> <li>◆ Talk to attorney before going to trial</li> <li>◆ Winner may get judgment against loser for attorney's fees</li> </ul>	<p style="text-align: center;"><b>Step 5 → Date to Leave</b></p> <p style="text-align: center;">Judge determines date if you lost your court case.</p>	<p style="text-align: center;"><b>Step 6 → Notice of Restitution Posted on Door</b></p> <p>(If you are not out by the day ordered by the judge or if you violate the agreement with your landlord)</p> <p>If you are still in unit, you have 4 days to leave. If you can't move out everything, move out your valuables to someplace safe.</p> <p>If you have an agreement with your landlord and complied with it or tried to but the landlord wouldn't let you, you have the right to ask for a court hearing. Get legal advice!</p>	<p style="text-align: center;"><b>Step 7 → Execution of Restitution</b></p> <p>Sheriff requires tenant to leave while landlord changes locks.</p>	<p style="text-align: center;"><b>Step 8 Getting Your Belongings Back</b></p> <p>Landlord must give you notice to pick up your left belongings. Make arrangements with your landlord now to get your things back. You have limited time to collect them.</p>
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