

**TEXAS LANDLORDS –
TENANT’S RIGHTS**

By:
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EVICITION PROCESS

1. Notice to Vacate

The first step in the eviction process requires the service of a notice upon the tenant. Under Texas law, a landlord is required to give you a written notice to vacate before filing an eviction lawsuit. “If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three days’ written notice to vacate the premises before the landlord files a forcible detainer suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement.” Texas Property Code § 24.005(a).

The notice to vacate shall be either hand delivered to the tenant or a resident age 16 or older, or mailed to the rental property. In lieu of the foregoing, it is also appropriate to post the notice to the inside of the main entry door. Texas Property Code § 24.005(f).

2. Eviction Suit (Forcible Detainer Suit)

After the time period set forth in the notice to vacate expires, the landlord has the right to file an eviction suit. Once the eviction suit is filed, the sheriff or constable will attempt to effect service upon the tenant. If the sheriff or constable is unsuccessful in their efforts, service may be properly effected by posting the eviction suit papers in a visible location on the outside of the rental property and mailing the same to the tenant.

3. Answer the Eviction Suit

A response to the eviction suit must be made if the tenant wishes to challenge the eviction. The eviction suit papers (eviction citation and petition) contain information as to how to respond and when to appear for court. Follow the instructions carefully. A tenant should call the court clerk with any questions.

If any of the eviction suit papers indicate the posting of a “Bond for Possession” or “Possession Bond pursuant to Rule 740” a trial must be demanded within six days of service or the landlord will obtain possession without a hearing.

4. Attend the Hearing

The hearing affords the tenant an opportunity to tell their side of the story. The court will want to review the lease and any relevant photographs as well as hear testimony from witnesses. The court will not likely take much interest in letters or affidavits as such documents are likely to be objectionable as a violation of the hearsay rule.

5. Some Defenses

Some common defenses to an eviction suit are as follows: (1) Defective Notice; (2) Waiver; (3) Retaliation; (4) Discrimination; and (5) Unclean Hands.

A) Defective Notice

The eviction notice must be timely and proper. Some examples of defective notice are: (a) oral notice; (b) filing eviction suit too soon after notice to vacate; (c) notice is ambiguous; (d) delivery of notice was not proper; (e) notice to vacate was sent prematurely; and (f) failure to give tenant an opportunity to cure (if provided in lease).

B) Waiver

Acceptance of rent by the landlord after serving to the notice to vacate will likely result in a waiver of the

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landlord’s right to pursue the eviction suit. Moreover, if the landlord has previously accepted late payments there may be an affirmative defense justifiable reliance. In other words, the landlord accepted late payments previously and there was no reason to believe late payments would not be accepted this time.

C) Retaliation

If there is a belief that the eviction suit was commenced because of demands for repair or complaints against the landlord, the defense of retaliation may be available.

D) Discrimination

A landlord cannot evict based on race, color, religion, familial status (having children), sex, national origin, or disability.

E) Unclean Hands

If the landlord’s conduct is what precipitated the default under the lease and the resulting eviction suit, the landlord has “unclean hands” and should not succeed in the eviction suit. An example would be the landlord that refuses to accept rent that is tendered timely and then files an eviction suit for nonpayment of rent.

6. Losing the Eviction Suit or Failing to Appear

If the tenant fails to appear at the hearing on the eviction suit, the landlord will obtain a judgment for possession by default. Texas Property Code § 24.0061(a). A copy of the default judgment for possession must be mailed to the tenant within 48 hours of the entry of the judgment. Texas Property Code § 24.0061(c). Likewise, if the tenant loses the eviction suit the landlord will obtain a judgment for possession. Texas Property Code § 24.0061(a). Upon receipt of the judgment, the landlord will request a writ for

possession of the rental property. The writ cannot be issued until at least five (5) days (counting weekends and holidays) after the entry of the judgment for possession. The writ of possession must be posted by the sheriff or constable on the outside of the front door and must state when the eviction will take place. The writ must be posted for at least 24 hours before the eviction process can commence. Texas Property Code § 24.0061(d). The writ authorizes the sheriff or constable, at the stated time, to evict (forcibly if necessary) the tenant and to have removed all of the tenant’s belongings. Texas Property Code § 24.0061(d).

THE LANDLORD’S LIEN

When a tenant fails to pay rent, the landlord acquires a lien upon all of the tenant’s non-exempt property located within the rental unit. Property located outside of the unit, but on the rental property, are not subject to the lien. Texas Property Code § 54.041. A landlord’s lien is only enforceable if the lease agreement provides for such a lien and that provision is underlined or printed in conspicuous bold print. Texas Property Code § 54.043.

The landlord’s lien gives the landlord the right to seize the tenant’s non-exempt property. However, the landlord may only exercise the right of seizure if such right is provided for in the lease agreement and the seizure can be effectuated without a breach of the peace. Texas Property Code 54.044(a). Immediately after seizing the non-exempt property, the landlord must post a notice of entry and a list of all items seized. The notice is required to state the amount of rent due and that the property will be returned upon full payment. Texas Property Code § 54.044(b). Note that the landlord has the right to remove all of the contents of the rental unit, without a specific lease provision, if the tenant has abandoned the premises. Texas Property Code § 54.044(d).

Property seized by the landlord may not be sold or otherwise disposed of unless the lease agreement so provides. Moreover, prior to any sale, the tenant must be provided at least thirty days notice of any such sale. Texas Property Code § 54.045(b). Any such sale is subject to previously recorded liens (i.e. purchase money liens on furniture or electronics). The sale is to

be by auction and sold to the highest cash bidder. Texas Property Code § 54.045(c). Proceeds from the sale must be first applied to delinquent rent, then, only if authorized in the lease agreement, to reasonable packing, moving, storage and sale costs, with the remainder returned to the tenant. Texas Property Code §§ 54.045(c) and (d). The tenant has right to an accounting which accounting must be provided to the tenant no later than thirty days after such written request is made.

The following items of personal property are exempt and cannot be taken by the landlord, unless such items were abandoned by the tenant:

- Clothing;
- Tools, equipment, and books of the tenant’s trade or profession;
- School books;
- One automobile and one truck;
- Family pictures and portraits, and the family library;
- One couch, two living room chairs, one dining table and chairs;
- All beds and bedding;
- All kitchen utensils and furniture;
- Food and foodstuffs;
- Medicine and medical supplies;
- Agricultural implements;
- Children’s toys;
- Anything the landlord knows belongs to someone else; and
- Anything the landlord knows is subject to a lien.

Texas Property Code § 54.042. Note that the above exemptions have nothing to do with your bankruptcy exemptions.

THE LOCKOUT

Texas is one of the few remaining states that permit a landlord to lockout a tenant for the nonpayment of rent. On the other hand, the tenant has the right to get the new key whether or not the landlord is paid any money.

Generally speaking a landlord may not intentionally prevent a tenant from entering leased premises except by judicial process. Texas Property

Code § 92.0081(b). However, as with every rule, there often exists an exception. The exception in Texas is that the landlord is entitled to change the door locks of a tenant in paying at least a portion of the rent. Texas Property Code § 92.0081(b)(3).

Prior to any lockout for the nonpayment of rent, the landlord must provide the tenant with written notice. The lockout notice must be mailed no later than five calendar days before the lockout date or posted on the inside of the main entry door no later than three calendar days before the lockout date. Texas Property Code § 92.0081(d)(2). The lockout notice is required to state: (1) the earliest date for the lockout; (2) the amount of the rent the tenant must pay to prevent the lockout; and the name and street address of where the rent can be paid. Texas Property Code § 92.0081(d)(2)

After the lockout the landlord is required to provide the tenant with a post-lockout notice. The post-lockout notice must be posted on the outside of the tenant’s front door. The post-lockout notice must state: (1) where the tenant can go 24 hours a day to obtain a new key or a telephone number that is answered 24 hours a day that will result in the delivery of a key within two hours; (2) the fact that the landlord must provide a new key regardless of whether any monies are paid; and (3) the amount of rent due. Texas Property Code § 92.0081(c).

If the landlord violates any of the lockout procedures, the tenant is entitled to recovery actual damages, one month’s rent plus \$500.00, and reasonable fees and costs. If the landlord fails to provide the tenant with a new key without payment of any monies, the tenant may recover an additional civil penalty of one month’s rent.

TERMINATION

A lease terminates in one of three situations: (1) the parties agree to terminate the lease; (2) the lease term expires; or (3) one of the parties to the lease breached the lease. Most written leases state the lease period. However, those same leases usually provide that the lease is automatically renewed on a month to month basis after the initial term. Note that even

though the initial lease period has expired, all of the remaining terms of the lease agreement remain in effect.

Month to Month

A month to month tenancy may be terminated by either party, without cause, by simply providing a notice of termination. Texas Property Code 91.001(a). The notice effectuates a termination of the lease on the later of the date provided in the notice or one month after the day the notice is delivered (If other than month to month this period is the period of the normal rent cycle – i.e. by weekly, by monthly, etc.). Texas Property Code 91.001(b). If the notice terminates the tenancy on a day which does not correspond to the end of the billing cycle, the tenant need only pay rent up to the day of termination. Texas Property Code § 91.001(d).

Breach for Failure to Pay Rent

Failure to pay rent on time is breach of the lease which would justify termination by the landlord. However, as a practical matter, most landlords will not terminate the lease. The landlord will usually terminate the tenant’s right of possession (eviction), but maintain the lease in tact thereby obligating the tenant to honor the obligation to pay rent (subject to the landlord’s duty to mitigate damages).