



# LAW FOUNDATION of Silicon Valley

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## THE EVICTION PROCESS

### Who does the eviction process apply to?

Almost everyone who pays rent in order to live somewhere is considered a tenant and can only be evicted according to the process described in this handout. There are only two exceptions: (1) a person who lives in a motel or hotel for less than 30 days; and (2) a person who is the only lodger in a house where the landlord also lives.

### What is a lodger and how are the rules different for a lodger?

A lodger is a person who is renting a room in an owner-occupied house where that person is the only renter. In order to evict a lodger, the landlord only needs to give the lodger a written notice that is as long in length as the period of time that the lodger pays rent for. For example, if the lodger pays rent on a weekly basis, then the landlord only needs to give 7 days written notice to the lodger. Once the notice expires, the landlord can change the locks to regain possession of the unit or have the lodger arrested. The landlord does not need to go to court in order to evict the lodger.

### How does the eviction process begin?

Your landlord is required to give you one of the following types of written notices in order to evict you from a rental property. A verbal notice is not sufficient!

Section 8 tenants in Mountain View or San Jose should check with a lawyer about whether they should receive a good cause notice (read more below).

**60-Day Notice:** If you have a month-to-month tenancy, and if all tenants in the unit have lived in the unit for a year or more, then you are entitled to a 60-Day Notice. This notice does not need to state a reason for eviction. However, tenants in subsidized or low-income tax credit housing, in licensed board and care homes, in rental units covered by the City of Mountain's Community Stabilization and Fair Rent Act or the City of San Jose's Tenant Protection Ordinance, and those still within a fixed-term lease are entitled to a "good cause" notice (read more below).

**30-Day Notice:** If you have a month-to-month tenancy and you have lived in your unit for less than one year, private landlords can evict you for no reason with a 30-Day Notice. This notice does not need to state a reason for eviction. Tenants in subsidized or low-income tax credit housing, in licensed board and care homes, in rental units covered by the City of Mountain's Community Stabilization and Fair Rent Act or the City of San Jose's Tenant Protection Ordinance, and those still within a fixed-term lease are entitled to a "good cause" notice (read more below).

**90-Day Notice:** If you are renting private housing using a Section 8 voucher, a VASH voucher, or another tenant based subsidy and you have a month-to-month tenancy, your landlord must give you a 90-day notice to terminate your tenancy and end the landlord's participation in the Section 8 program. No cause needs to be stated on this notice. However, Section 8 tenants renting in low-income tax credit housing low-income tax credit housing or in rental units covered by the City of Mountain's Community Stabilization and Fair Rent Act or the City of San Jose's Tenant Protection Ordinance, and those still within a fixed-term lease are entitled to a "good cause" notice (read more below).

**3-Day Notice to Pay Rent or Quit:** If you did not pay your rent, the landlord can give you a notice allowing you three days to pay or leave. The landlord does not have to accept the rent if you pay after the 3 days (it is always a good idea to offer it). If the landlord does not accept the rent, save it to try to negotiate a favorable settlement (read more below).

**3-Day Notice for a Lease Violation:** A landlord can give you a 3-day notice when you have done something that you promised not to do in your lease or rental agreement, such as having pets or guests without permission or disturbing your neighbors. Usually, the landlord must give you a chance to fix the problem within 3 days. The exceptions are if you did something illegal on the property, if your behavior threatens people's health or safety, or if you sublet without permission.

**Good Cause Notice:** Tenants in subsidized or low-income tax credit housing, tenants in licensed board and care homes, and tenants in rental units covered by the City of Mountain's Community Stabilization and Fair Rent Act or the City of San Jose's Tenant Protection Ordinance are entitled to "good cause notice," which states what the tenant did to justify the eviction or why the landlord has a legitimate reason to terminate the tenancy. If you have a lease and the lease has not ended yet, the landlord has to have a reason to evict you.

### **What happens after the notice has expired?**

The landlord cannot just change the locks. Unless you are a lodger, your landlord needs to seek a court order allowing him/her to evict you and regain possession of the rental unit. To get an order from the court, your landlord must go through the following process:

**Summons & Complaint:** Once your notice has expired, the landlord can file a court eviction case, called an unlawful detainer (or "UD"). Once you receive the court papers (the Summons & Complaint), you have only FIVE DAYS (including weekends) to respond. If you do not respond, you automatically lose the court case.

**Answer:** The most common way that you respond to a Summons & Complaint is by filing an Answer at the Superior Court within 5 days. An Answer is a court paper that states that you want to fight the eviction and lists your defenses (read MHAP's handout "Fighting An Eviction"). You must either pay \$225 (per defendant) to the court or, if you cannot afford it, file a Fee Waiver. Talk to a MHAP lawyer **right away** to find out how to fill out your Answer and Waiver. Ask your lawyer if there is anything else you need to do (such as file motions or discovery). Look for witnesses and evidence in your favor.

**Settlement:** Often, before you have a trial, you and the landlord's attorney will have a chance to make an agreement called a settlement. If you agree to a settlement, you give up your right to a trial and to a decision by a judge.

**Trial:** A trial date will usually be scheduled about 3 weeks after you file your Answer. The trial is your opportunity to testify about your defenses, to bring witnesses and evidence, and to cross-examine the landlord's witnesses. A judge or jury may decide the case.

**After the Trial:** If you win the trial, you can continue living in your apartment, if you can pay all the back rent that you owe. If you lose, the landlord will get a judgment against you to get possession of the apartment and for back rent, his or her court costs, and his or her attorney's fees. (If you receive government benefits, the landlord will not be able to collect the money you owe from your benefits.) The Sheriff will post a notice on your door, giving you 5 days to leave. If you have not left by the date on the notice, the Sheriff will physically remove you and change the locks.

**Stay:** If your landlord wins and you have not left yet, you can ask the judge for a "hardship stay" and request up to 40 more days in your home. You have to ask the court for a stay within 4 days after the service or posting of the notice from the Sheriff. You also have to be

able to pay rent (in cash or money order) for the whole stay period at the time that you ask for it. The judge will decide whether to give you a stay based on whether you have been looking for other housing and the hardships that you face.

### **What is a wrongful eviction?**

A wrongful eviction occurs when a landlord uses threats, harassment, or other illegal measures to force a tenant to move out instead of giving proper written notice to the tenant and securing a court order to regain possession of the property.

### **What can I do if my landlord is threatening to evict me without giving proper notice and without going through the court process?**

Write your landlord a letter explaining that his/her behavior may be illegal and may amount to a wrongful eviction. You can use the attached letter as an example. Keep a copy of this letter for you and another copy to give to the police if they come to your unit in response to a call from your landlord. If your landlord is harassing you, you can call the police or contact MHAP at (800) 248-MHAP or (408) 280-2420.

### **What penalties may be imposed against a landlord who wrongfully evicts me from the rental property?**

You can file a court case against your landlord to recover the cost of any actual damages that you suffered. If your landlord has tried to get you to move out by using fraud, malice, or oppression the landlord might also have to pay you between \$100 and \$2,000 for each retaliatory act in punitive damages. Your landlord might also have to pay for your attorneys fees.

If you have received an eviction notice or an Unlawful Detainer lawsuit and would like to ask for legal help, call (408) 280-2424.

***This information sheet is intended to provide accurate, general information regarding legal rights. It does not constitute legal advice. Because laws and legal procedures are subject to frequent change and differing interpretations, the Law Foundation of Silicon Valley cannot ensure the information in this information sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.***

(Tenant's Address)  
(Tenant's City, State and Zip Code)  
(Date)

(Landlord's Name)  
(Landlord's Address)  
(Landlord's City, State and Zip Code)

Dear (Mr./Ms. Landlord's Last Name):

I am a tenant at your property, located at \_\_\_\_\_  
(address). I have been a tenant at your property since \_\_\_\_\_ (move-in date). Recently, you have been telling me that you want me to leave. However, I have never received a written notice from you terminating my tenancy. Therefore, at this point, I am under no legal obligation to vacate the property.

I have rights as a tenant. Under California law, landlords must give tenants written notice of their intent to terminate a tenancy and, once the notice has expired, use the court's unlawful detainer process for eviction. Anything less than this constitutes a "self-help" eviction, which is forbidden under California landlord-tenant law. See California Civil Code § 789.3.

I feel that you have been pressuring me to move out without giving me proper legal notice. I believe that you have been trying to get around the law and illegally evict me. I expect you to follow the law and give me a proper notice of the termination of my tenancy. I request that you immediately cease pressuring or threatening me in order to make me leave.

If you wish to discuss this matter with me any further, you may contact me at \_\_\_\_\_ (your phone number).

Sincerely,

(Your name)