

THE EVICTION PROCESS (UNLAWFUL DETAINER LAWSUITS)

Overview of the eviction process

If the tenant doesn't voluntarily move out after the landlord has properly given the required notice to the tenant, the landlord can evict the tenant. In order to evict the tenant, the landlord must file an unlawful detainer lawsuit in municipal court (justice court in some rural areas).

In an eviction lawsuit, the landlord is called the "plaintiff" and the tenant is called the "defendant."

An unlawful detainer lawsuit is a "summary" court procedure. This means that the court action moves forward very quickly, and that the time given the tenant to respond during the lawsuit is very short. For example, in most cases, the tenant has only *five days* to file a written response to the lawsuit after being served with a copy of the landlord's complaint.¹⁴² Normally, a judge will hear and decide the case within 20 days after the tenant files an answer.¹⁴³

The court-administered eviction process assures the tenant of the right to a court hearing if the tenant believes that the landlord has no right to evict the tenant. The landlord *must* use this court process to evict the tenant; the landlord *cannot* use self-help measures to force the tenant to move. For example, the landlord cannot physically remove or **lock out** the tenant, cut off utilities such as water or electricity, remove outside windows or doors, or seize (take) the tenant's belongings in order to carry out the eviction. The landlord *must use the court procedures*.

If the landlord uses unlawful methods to evict a tenant, the landlord may be subject to liability for the tenant's damages, as well as penalties of up to \$100 per day for the time that the landlord used the unlawful methods.¹⁴⁴

In an unlawful detainer lawsuit, the court holds a hearing at which the parties can present their evidence and explain their case. If the court finds that the tenant has a good defense, the court will not evict the tenant. If the court decides in favor of the tenant, the tenant will not have to move, and the landlord may be ordered to pay court costs (for example, the tenant's filing fees). The landlord also may have to pay the tenant's attorney's fees, if the rental agreement or lease contains an attorney's fee provision and the tenant was represented by an attorney.¹⁴⁵

If the court decides in favor of the landlord, the court will issue a **writ of possession**. The writ of possession orders the sheriff to remove the tenant from the rental unit, but gives the tenant five days from the date that the writ is served to leave voluntarily. If the tenant does not leave by the end of the five-day period, the writ of possession authorizes the sheriff to physically remove and lock the tenant

out, and seize (take) the tenant's belongings that have been left in the rental unit. *The landlord is not entitled to possession of the rental unit until after the sheriff has removed the tenant.*

The court also may award the landlord any unpaid rent if the eviction is based on the tenant's failure to pay rent. The court also may award the landlord damages, court costs, and attorney's fees (if the rental agreement or lease contains an attorney's fee provision). If the court finds that the tenant acted maliciously in not giving up the rental unit, the court also may award the landlord up to \$600 as a penalty.¹⁴⁶ The judgment against the tenant will be reported on the tenant's [credit report](#) for seven years.¹⁴⁷

Eviction of "unnamed occupants"

Sometimes, people who are not parties to the rental agreement or lease move into the rental unit with the tenant or after the tenant leaves, but before the unlawful detainer lawsuit is filed. When a landlord thinks that these "occupants" might claim a legal right to possess the rental unit, the landlord may seek to include them as defendants in the eviction action, even if the landlord doesn't know who they are. In this case, the landlord will tell the process server to serve the occupants with a [Prejudgment Claim of Right to Possession](#) form at the same time that the eviction summons and complaint are served on the tenants who are named defendants.¹⁴⁹ See additional discussion of "Unnamed Occupants" and Claim of Right to Possession forms in [Appendix 2](#).

Pretrial rent deposit program

If you live in El Cajon, Downey, Santa Maria, the City of Los Angeles, the City of San Bernardino, or Riverside County, you may be in an area that is participating in the Experimental Pretrial Rent Deposit Program. Tenant-defendants who live in areas participating in this program may be required to deposit future rent with the court before they can defend eviction actions against them. See [Appendix 1](#) for an explanation.

Appearing in court

Before appearing in court, you must carefully prepare your case, just as an attorney would. Among other things, you should:

- Talk with a housing clinic, tenant organization, attorney, or legal aid organization. This will help you understand the legal issues in your case and the evidence that you will need.
- Decide how you will present the facts that support your side of the case - whether by witnesses, letters, other documents, photographs or video, or other evidence.
- Have at least four copies of all documents that you intend to use as evidence - an original for the judge, a copy for the opposing party, a copy for yourself, and copies for your witnesses.
- Ask witnesses to testify at the trial, if they will help your case. You can [subpoena](#) a witness who

will not testify voluntarily. A subpoena is an order from the court for a witness to appear. The subpoena must be served (handed to) the witness, and can be served by anyone but you who is over the age of 18. You can obtain a subpoena from the Clerk of Court. You must pay witness fees at the time the subpoena is served on the witness, if the witness requests them.

The parties to an unlawful detainer lawsuit have the right to a jury trial, and either party can request one. After you have filed your answer to the landlord's complaint, the court will send you a document called a [Memorandum to Set for Trial](#). This document will indicate whether the plaintiff (landlord) has requested a jury trial. If not, and if you are not represented by a lawyer, tenant advisers usually recommend that you *not* request a jury trial.

There are several good reasons for this recommendation: first, presenting a case to a jury is more complex than presenting a case to a judge, and a nonlawyer representing himself or herself may find it very difficult; second, the party requesting a jury trial will be responsible for depositing the initial cost of jury fees with the court; and third, the losing party will have to pay all of the jury costs.

After the court's decision

If the court decides in favor of the tenant, the tenant will not have to move, and the landlord may be ordered to pay the tenant's court costs (for example, filing fees) and the tenant's attorney's fees. However, the tenant will have to pay any rent that the court orders.

If the landlord wins, the tenant will have to move. In addition, the court may order the tenant to pay the landlord's court costs and attorney's fees, and any proven damages, such as overdue rent or the cost of repairs if damage was done to the premises.

It is possible, but rare, for a losing tenant to convince the court to allow the tenant to remain in the rental unit. This is called [relief from forfeiture](#) of the tenancy. The tenant must convince the court of two things in order to obtain relief from forfeiture: that the eviction would cause the tenant or the tenant's family severe hardship, and that the tenant is able to pay all of the rent that is due or that the tenant will fully comply with the lease.¹⁵⁰ A tenant cannot obtain relief from forfeiture when the term of the tenancy has already expired (for example, in a month-to-month tenancy).¹⁵¹ Any petition for relief of forfeiture should be filed *immediately* after the court issues its judgment.¹⁵²

A tenant who loses an unlawful detainer lawsuit may [appeal](#) the judgment if the tenant believes that the judge mistakenly decided a legal issue in the case. However, the tenant will have to move before the appeal is heard, unless the tenant files a petition for stay of enforcement of the judgment, or a petition for relief from forfeiture (described immediately above). The court will not grant the tenant's request for a stay of enforcement unless the court finds that the tenant or the tenant's family will suffer extreme hardship, and that the landlord will not suffer irreparable harm. If the court grants the request for a stay of enforcement, it will order the tenant to make rent payments to the court in the amount ordered by the

court.¹⁵³

A landlord who loses an unlawful detainer lawsuit also may appeal the judgment.

Writ of possession

If a judgment is entered against you and becomes final (for example, if you do not appeal or if you lose on appeal), and you do not move out, the court will issue a **writ of possession** to the landlord.¹⁵⁴ The landlord can deliver this legal document to the sheriff, who will then forcibly evict you from the rental unit if you don't leave promptly.

Before evicting you, the sheriff will serve you with a copy of the writ of possession.¹⁵⁵ The writ of possession instructs you that you must move out within five days after the writ is served on you, and that if you do not move out, the sheriff will remove you from the rental unit and place the landlord in possession of it.¹⁵⁶ The cost of serving the writ of possession will be added to the other costs of the suit that the landlord will collect from you.

After you are served with the writ of possession, you have five days to move. After five days, if you have not moved, the sheriff will return and physically remove you.¹⁵⁷ If your belongings are still in the rental unit, the sheriff may either remove them or have them stored by the landlord, who can charge you reasonable storage fees. If you do not reclaim these belongings within 18 days, the landlord can mail you a notice to pick them up, and then can either sell them at auction or keep them (if their value is less than \$300).¹⁵⁸ If the sheriff forcibly evicts you, the sheriff's cost will also be added to the judgment, which the landlord can collect from you.

Setting aside a default judgment

If the tenant does not file a written response to the landlord's complaint, the landlord can ask the court to enter a **default judgment** against the tenant. The tenant then will receive a notice of judgment and writ of possession, as described above.

There are many reasons why a tenant might not respond to the landlord's complaint. For example, the tenant may have received the summons and complaint, but was not able to respond because the tenant was ill or incapacitated, or for some other very good reason. It is even possible (but not likely) that the tenant was never served with the landlord's summons and complaint. In situations such as these, where the tenant has a valid reason for not responding to the landlord's complaint, the tenant can ask the court to set aside the default judgment.

Setting aside a default judgment can be a complex legal proceeding. The most common reasons for seeking to set aside a default judgment are the tenant's (or the tenant's lawyer's) mistake, inadvertence, surprise, or excusable neglect.¹⁵⁹ A tenant who wants to ask the court to set aside a default judgment

must act promptly. The tenant should be able to show the court that he or she has a satisfactory excuse for the default, acted promptly in making the request, and has a good chance to win at trial.¹⁶⁰ A tenant who thinks that grounds exist for setting aside a default judgment should first seek advice and assistance from a lawyer, a legal aid organization, or a tenant organization.

Retaliatory Actions, Evictions, and Discrimination

Retaliatory actions and evictions

A landlord may try to evict a tenant because the tenant has exercised a legal right (for example, using the [repair and deduct remedy](#)) or has complained about a problem in the rental unit. Or, the landlord may raise the tenant's rent or otherwise seek to punish the tenant for complaining or lawfully exercising a tenant right.

In either situation, the landlord's action is said to be [retaliatory](#) because the landlord is punishing the tenant for the tenant's exercise of a legal right. The law offers tenants protection from retaliatory eviction and other retaliatory acts.¹⁶¹

The law infers (assumes) that the landlord has a retaliatory motive if the landlord seeks to evict the tenant (or takes other retaliatory action) within six months after the tenant has exercised any of the following tenant rights:¹⁶²

- Using the repair and deduct remedy, or telling the landlord that the tenant will use the repair and deduct remedy.
- Complaining about the condition of the rental unit to the landlord, or to an appropriate public agency after giving the landlord notice.
- Filing a lawsuit or beginning arbitration based on the condition of the rental unit.
- Causing an appropriate public agency to inspect the rental unit or to issue a citation to the landlord.

In order for the tenant to defend against eviction on the basis of retaliation, the tenant must prove that he or she exercised one or more of these rights within the six-month period, that the tenant's rent is current, and that the tenant has not used the defense of retaliation more than once in the past 12 months. If the tenant produces all of this evidence, then the landlord must produce evidence that he or she did not have a retaliatory motive.¹⁶³ If both sides produce the necessary evidence, the judge or jury then must decide whether the landlord's action was retaliatory or was based on a valid reason.

A tenant can also assert retaliation as a defense to eviction if the tenant has lawfully organized or participated in a tenants' organization or protest, or has lawfully exercised any other legal right. In these circumstances, the tenant must prove that he or she engaged in the protected activity, and that the landlord's conduct was retaliatory.¹⁶⁴

If you feel that your landlord has retaliated against you because of an action that you've properly taken against your landlord, talk with an attorney or legal aid organization. An attorney also may be able to advise you about other defenses.

Retaliatory discrimination

A landlord, managing agent, real estate broker, or salesperson violates California's Fair Employment and Housing Act by harassing, evicting, or otherwise discriminating against a person in the sale or renting of housing when the "dominant purpose" is to retaliate against a person who has done any of the following:¹⁶⁵

- Opposed practices that are unlawful under the Act;
- Informed law enforcement officials of practices that the person believes are unlawful under the Act; or
- Aided or encouraged a person to exercise rights protected by the Act.

A tenant who can prove that the landlord's eviction action is based on a discriminatory motive has a defense to the unlawful detainer action. A tenant who is the victim of retaliatory discrimination also has a cause of action for damages under the Fair Employment and Housing Act.¹⁶⁶

Endnotes

¹⁴² Code of Civil Procedure Section 1167.3.

¹⁴³ Code of Civil Procedure Section 1170.5(a).

¹⁴⁴ Civil Code Section 789.3.

¹⁴⁵ Civil Code Section 1717.

¹⁴⁶ Code of Civil Procedure Section 1174(b).

¹⁴⁷ Civil Code Sections 1785.13(a)(2),(3).

¹⁴⁸ Code of Civil Procedure Section 1167.

¹⁴⁹ Code of Civil Procedure Section 415.46.

¹⁵⁰ Code of Civil Procedure Section 1179.

¹⁵¹ California Practice Guide, Landlord-Tenant, Paragraph 9:432.4 (Rutter Group 1996).

¹⁵² California Practice Guide, Landlord-Tenant, Paragraph 9:444 (Rutter Group 1996).

¹⁵³ Code of Civil Procedure Section 1176.

¹⁵⁴ Code of Civil Procedure Section 715.010.

¹⁵⁵ Code of Civil Procedure Section 715.020.

¹⁵⁶ Code of Civil Procedure Section 715.010(b)(2).

¹⁵⁷ Code of Civil Procedure Section 715.020(c).

¹⁵⁸ Code of Civil Procedure Sections 715.030, 1174(h); Civil Code Sections 1965, 1988. See the Department of Consumer Affairs' Legal Guides LT-4, "How to Get Back Possessions You Have Left in a Rental Unit," and LT-5, "Options for a Landlord: When a Tenant's Personal Property has Been Left in the Rental Unit."

¹⁵⁹*Code of Civil Procedure Section 473(b). See Moskowitz, California Eviction Defense Manual, Section 12.12 (Cal. Cont. Ed. Bar 1997).*

¹⁶⁰*Moskovitz, California Eviction Defense Manual, Sections 12.15, 12.16 (Cal. Cont. Ed. Bar 1997).*

¹⁶¹*Civil Code Section 1942.5.*

¹⁶²*Civil Code Section 1942.5.*

¹⁶³*Civil Code Sections 1945.2 (a),(b); see California Practice Guide, Landlord-Tenant, Paragraphs 7:368- 7:380 (Rutter Group 1996).*

¹⁶⁴*Civil Code Section 1942.5(c).*

¹⁶⁵*Government Code Sections 12955(f), 12955.7.*

¹⁶⁶*California Practice Guide, Landlord-Tenant, Paragraphs 7:205, 7:391 (Rutter Group 1996).*

eviction forms