



## EVICITION

### **What is an eviction?**

Eviction is the legal process used by a landlord to remove a tenant from rented property with or without the consent of the tenant. The eviction process is clearly laid out in Michigan law and includes protections for the tenant to get a chance to oppose the eviction in court before being forcibly evicted.

### **What starts the eviction process?**

The eviction process starts with a notice to quit, from the landlord to the tenant. Only after this notice has been given and the time the tenant is given to leave has passed, can the landlord start the eviction procedure in court. There are two types of a Notice to Quit.

#### *Seven day Notice*

Under Michigan's landlord tenant law, a seven day notice is used when one of a list of violations occurs. The tenant has seven days to 'fix' the violation or move out. The seven day notice violations are: nonpayment of rent, unreasonable damages to the rental property, causing a continuing health hazard, or using, possessing, delivering or manufacturing controlled substances at the rental property when a formal police report has been filed.

#### *Thirty day Notice*

When a written lease includes a clause that violation of any lease requirement is grounds for forfeiture of the lease, or if the lease has a specific ending date and the tenant stays on, the landlord can start an eviction for violating the lease with a thirty day notice to quit.

Some leases do not have a specific ending date, such as one year from signing, but instead automatically renew each time the landlord accepts rent. Most often these are month to month leases, but some are week to week.

These agreements are known as ‘periodic tenancies.’ If you rent under a periodic tenancy the landlord may give you notice to quit for any or no reason, so long as the eviction is not retaliatory or against a discrimination law. The notice to quit in a periodic tenancy must be in writing and give the tenant at least one rental period to move. This means if you rent month to month, the landlord must give you a month to leave. This notice to quit is often called the “thirty day notice to quit,” or “termination of tenancy.” Note: even if the tenant has a periodic tenancy, the landlord can give a seven day notice to quit if the reason for the eviction is one of those listed above (nonpayment of rent, etc.).

### *24 hour Notice*

A 2004 amendment to the Summary Proceedings procedure allows a landlord to use a 24 hour Notice to Quit, if the tenant, a member of the tenant’s household or other person under the tenant’s control has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises. There must be a provision in the lease allowing for this Notice and the landlord is required to have filed a police report alleging that the person has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises

### **Eviction notice requirements.**

The eviction notice to quit must be in writing and include the tenant’s name and address, the reason for the eviction if it is a seven day notice, the date of the notice, and the landlord’s signature. There are District Court forms available, but they do not have to be used if all the required information is provided.

The notice to quit also must be properly served. This means: 1) giving the notice to the tenant personally, 2) delivering it to the tenant’s address and giving the notice to a responsible person there, or 3) sending to the tenant by first class mail.

## **The eviction court case.**

If the tenant does not move within the time set in the notice to quit, the landlord's next step is to file a legal action in court. The landlord cannot start the court case until the time in the eviction notice runs out.

The court case is filed in District Court. District court forms are available. To start the case, the landlord must show that he or she has properly given the tenant the Notice to Quit. The landlord can sue to get the tenant out, for money damages (including rent owed), or both. The starting court papers (Complaint and Summons) also must be properly served on the tenant(s). The Summons tells the tenant when to be in court. As a tenant, it is important to show up in court on the date you are given. Otherwise the landlord is very likely to get a judgment for whatever eviction or damages are requested in the Complaint. If you disagree that the landlord has grounds for evicting you – you have paid the rent, your lease does not expire for another six months, etc. – you need to show up with written evidence and/or witnesses to support your claim. You may also want to consult with a lawyer.

After the evidence in support and opposing the eviction is heard, the judge will make a ruling, known as the judgment. This judgment may order the tenant to pay money damages for rent owed or injury to the rental unit. It may also include the ruling that the tenant must pay the rent due within 10 days, or move out of the property, or it may order (in the case of termination of tenancy) that a tenant must move within 10 days, with no option to stay. If after the 10 days pass the tenant has not done what was ordered, the landlord may get an immediate "Writ of Restitution" signed by the judge. This is a court order commanding a sheriff or court officer to physically and forcibly, if necessary, remove the tenant and all his or her belongings from the rental unit.

## **Just cause evictions.**

A landlord must show "just cause" to evict a tenant from government subsidized housing or from a mobile home park. Examples of just cause include nonpayment of rent or violations of the lease agreement—like engaging in illegal activity, having too many people living there, making improvements without permission, etc. This means the Landlord has to give a reason for the eviction.

## **Illegal evictions.**

### *Self-help Evictions.*

In Michigan, evictions must be handled in court. One type of illegal eviction that still happens, despite the Michigan law setting out the eviction process, is the “self-help” eviction. The landlord goes ahead and forces the tenant out of the rental property without going to court or following all the steps required by law. A landlord may not turn off the utilities, change the locks, remove or nail shut doors or windows, call an enforcer to threaten the tenant, or remove the tenant’s property from the rental unit.

Under Michigan law, tenants can receive damages if the landlord uses any of these self-help remedies to evict. Damages are set at \$200 or actual damages, whichever is greater. In some circumstances, the damages can be the greater of \$200 or three times actual damages.

### *Retaliatory Evictions*

Michigan law also does not allow the eviction procedure to be used if the reason the landlord is evicting is to retaliate for the tenant trying to enforce his or her rights. There is a presumption that the landlord is retaliating if the tenant made report of a health or safety violation to the local government authority within 90 days of the eviction lawsuit. Other tenant rights that the landlord is not to retaliate against are: attempts to enforce rights under federal, state or local laws; joining a tenant organization; or starting legal action against the landlord.

## **Legal help.**

If you are being evicted it is wise to get some legal advice. If you are 60 or older, you can get specific questions answered at the Legal Hotline for Michigan Seniors, at no charge. Call **1-800-347-5297**, weekdays, to speak to a receptionist to set a time to have a lawyer call you back. A Hotline attorney can give you advice about your situation to help you understand your legal rights and decide if you should contest the eviction—it is best to

be represented by a lawyer if you decide to do this. The Hotline may be able to direct you to an attorney who can represent you at no cost.