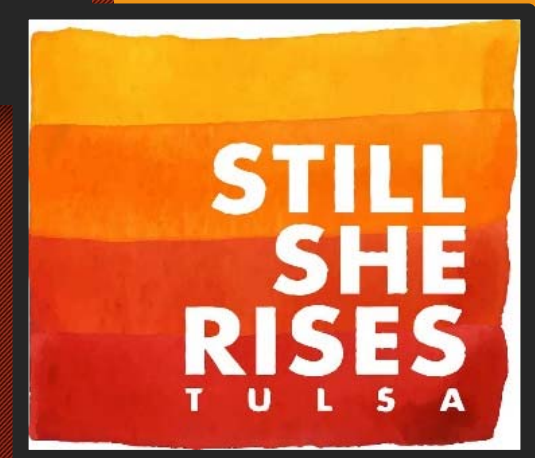


Illegal Evictions

William Lonn and Christopher Peña
Still She Rises, Tulsa

918-392-0867 - stillsherises.org

williaml@stillsherises.org christopherp@stillsherises.org



A Note on Documentation

Get it in writing!

1. Your lease
2. Receipts for rent paid
3. Communications with your landlord

A Note on Documentation

Record/have witnesses!

1. Landlord changing your locks
2. Throwing your things out

Illegal v. legal - An Overview

Legal evictions typically require:

- proper notice to vacate
- case filed in small claims court
- summons
- case ending in agreement or judgment
- Writ of Execution Signed by Judge
- 48 hours' Notice posted by Sheriff

Illegal v. legal - An Overview

Illegal evictions usually involve landlords:

- changing their tenants' locks
- removing tenants' personal property
- threatening or harassing tenant to leave

Illegal evictions can also occur when any of the above take place after a legal eviction has begun but before such legal eviction properly concludes (*i.e.*, filing a small claims case, but changing locks before the hearing date)

Process of a Legal Eviction

Notice Requirements

Change depending on why your
landlord is trying to evict you

Notice of Termination

Fixed-term lease

No notice required

E.g. *"This lease will end on May 1, 2020 unless extended in writing."*

Notice of Termination

Fixed-term lease

Statute: 41 O.S. § 111 C

"Unless earlier terminated under the provisions of the Oklahoma Residential Landlord and Tenant Act or unless otherwise agreed upon, a tenancy for a definite term expires on the ending date thereof without notice."

Notice of Termination Month-to-month

Month: At least 30 days notice required. Must end on last day of given month.

E.g., 30 days notice delivered on April 2, termination date is May 31.

Less than a Month: 7 days notice before termination date

Notice of Termination Month-to-month

41 O.S. § 111 A, B

A. Except as otherwise provided in the Oklahoma Residential Landlord and Tenant Act, when the tenancy is month-to-month or tenancy at will, the landlord or tenant may terminate the tenancy provided the landlord or tenant gives a written notice to the other at least thirty (30) days before the date upon which the termination is to become effective. The thirty-day period to terminate shall begin to run from the date notice to terminate is served as provided in subsection E of this section.

B. Except as otherwise provided in the Oklahoma Residential Landlord and Tenant Act, when the tenancy is less than month-to-month, the landlord or tenant may terminate the tenancy provided the landlord or tenant gives to the other a written notice served as provided in subsection E of this section at least seven (7) days before the date upon which the termination is to become effective.

Notice of Termination Non-payment

5 days

If not paid within 5 days, then lease terminates

Notice of Termination Non-payment

41 O.S. § 131 B

A landlord may terminate a rental agreement for failure to pay rent when due, if the tenant fails to pay the rent within five (5) days after written notice of landlord's demand for payment. The notice may be given before or after the landlord files any action authorized by subsection A of this section. Demand for past due rent is deemed a demand for possession of the premises and no further notice to quit possession need be given by the landlord to the tenant for any purpose.

Notice of Termination

Lease Violation
(non-emergency)

10 Days: to fix

15 Days: termination

*The 15 days began on the same day the 10 days did,
i.e., 5 days after failure to fix in 10 days.*

Notice of Termination

Lease Violation (non-emergency)

41 O.S. § 132 B

Except as otherwise provided in the Oklahoma Residential Landlord and Tenant Act, if there is a material noncompliance by the tenant with the rental agreement or with any provision of Section [127](#) of this title, the landlord may deliver to the tenant a written notice served as provided in subsection E of Section [111](#) of this title specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date not less than fifteen (15) days after receipt of the notice unless remedied within ten (10) days. If the breach is not remedied within ten (10) days from receipt of the notice, the rental agreement shall terminate as provided in the notice. If within the ten (10) days the tenant adequately remedies the breach complained of, or if the landlord remedies the breach according to the provisions of subsection A of this section, the rental agreement shall not terminate by reason of the breach. Any subsequent breach of the lease or noncompliance under this section shall be grounds, upon written notice to the tenant, for immediate termination of the lease.

Notice of Termination

Lease Violation
(emergency/criminal)

Immediate

Criminal activity must be on or near property

Notice of Termination

Lease Violation
(emergency/criminal)

41 O.S. § 132 C, D

C. Notwithstanding other provisions of this section, if there is a noncompliance by the tenant with the rental agreement or with any of the provisions of Section 127 of this title, which noncompliance causes or threatens to cause imminent and irremediable harm to the premises or to any person and which noncompliance is not remedied by the tenant as promptly as conditions require after the tenant has notice of it, the landlord may terminate the rental agreement by immediately filing a forcible entry and detainer action.

D. Any criminal activity that threatens the health, safety or right of peaceful enjoyment of the premises by other tenants committed by a tenant or by any member of the tenant's household or any guest or other person under the tenant's control or is a danger to the premises and any drug-related criminal activity on or near the premises by the tenant or by any member of the tenant's household or any guest or other person under the tenant's control shall be grounds for immediate termination of the lease.

Lawsuit is filed

Trial is set 5-10 days after filing

Lawsuit is filed

12 O.S. § 1148.4

The summons shall be issued and returned as in other cases, except that it shall command the sheriff, or other person serving it, to summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than five (5) days nor more than ten (10) days from the date that the summons is issued. The summons shall apprise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence.

Tenant receives summons

Tenant receives summons

At least 3 days before trial summons is...

- 1) Left with resident over 15 years old, or
- 2) Posted and sent via certified mail

Tenant receives summons

12 O.S. § 1148.5

The summons may be served as in other cases except that such service shall be at least three (3) days before the day of trial, and the return day shall not be later than the day of trial, and it may also be served by leaving a copy thereof with some person over fifteen (15) years of age, residing on the premises, at least three (3) days before the day of trial; or, if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises, the same may be served by certified mail with return receipt postmarked at least three (3) days before the date of trial.

Court Date

2:00pm in Room 112

Court Date

1. Negotiation w/ landlord or their representative
2. Trial*

*If parties cannot reach an agreement, a trial in front of the Judge is typically held that same day. Tenants should bring copies of their lease, any communications with their landlord (including printed copies of text conversations) and any other evidence the Judge or an attorney should see.

Court Date

Outcomes:

1. Judgment under advisement
2. Judgment for Plaintiff
3. Case dismissed
4. Judgment for Defendant

Execution and Removal

Execution

If Judgment for Plaintiff

1. Landlord must get "execution" from the court
2. Take to sheriff

Removal

1. Sheriff posts 48 hour notice at home
2. Sheriff removes tenants from home if remaining after 48 hours

Illegal Evictions

Failure to follow process

Occurs when your landlord:

- does *not* follow the process previously explained (*e.g.*, does not properly provide notice, file case, deliver summons, etc.) but still goes to court.

Tenant should tell an attorney, or argue to judge, about the steps that the landlord skipped or failed to perform.

Default judgment after no service

Occurs when your landlord:

- acts as if they had the authority of law without giving the tenant proper notice of court date.

Talk to an attorney as quickly as possible if this happens.
You may be able to get the default judgment rescinded if you act in time.

- Template forms for “Motion to Vacate Judgment” available on 2nd floor of courthouse by the Small Claims counter.

Illegal or Self-Help Eviction

Occurs when your landlord:

- Does not even pretend to go to court
- Does not involve the Sheriff
- Changes the locks while you are out of the house
- Physically drags or forces you out of home

You *cannot* be forced out of your rental home without a court order.

Only the Sheriff can enforce a court order.

Landlords Working Around the Law

“They’re not even on the lease”

Landlord can ask off-lease occupants to leave in writing

If they don’t, the occupant can be charged with trespassing

Add all occupants to the lease in writing

“They’re not even on the lease”

41 O.S. § 117 B

A rental agreement may provide reasonable limitations upon use of a dwelling unit or premises by a tenant or occupant. A landlord shall have the right to demand that an occupant vacate the dwelling unit or the premises or both if such occupant breaches any condition of the rental agreement which would be enforceable against the tenant. If a landlord makes a written request to the tenant or to the occupant for the occupant to depart from the dwelling unit or the premises or both, the occupant shall comply. If the occupant wrongfully fails to comply within a reasonable time, the occupant shall, upon conviction, be deemed guilty of a trespass and may be punished by a fine of not to exceed Five Hundred Dollars (\$500.00) or by confinement in the county jail for a period not to exceed thirty (30) days or by both such fine and imprisonment.

"She's squatting!"

Landlords can (and do) try to tell law enforcement that tenants are squatters

Landlords avoid court and convince the police to do the landlord's job

Protect yourself: get lease in writing and save a copy on your phone.

“She’s squatting!”

41 O.S. § 111 F

The provisions of this section shall not apply to an occupant who has no rental agreement with the landlord and with whom the landlord has not consented to creating a tenancy. A landlord shall have the right to demand that such an occupant vacate the dwelling unit or the premises or both and shall not be required to commence eviction proceedings. If the occupant wrongfully fails to comply within a reasonable time, the occupant shall, upon conviction, be guilty of a trespass and may be punished by a fine not to exceed Five Hundred Dollars (\$500.00).

“It’s my stuff **nOW**”

Landlord locked you out and kept/destroyed your personal property

Your landlord is obligated to keep your personal property that has clear value for *30 days* after an eviction (or removal).

- You may be required by a court to pay for storage.
- After 30 days, your property may be considered abandoned.

“It’s my stuff nOW”

If your landlord locks you out and destroys your property, then you can sue for twice the damages that you suffered.

Speak to an attorney if this, or any type of illegal eviction, happens to you.

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