

INTRODUCTION

Florida law strictly regulates eviction practices. A landlord must follow all the requirements of law to properly evict a tenant. Before eviction, the following must take place:



- The tenant receives a written **notice to vacate**;
- The tenant is served a **summons** and **complaint** by a **sheriff**;
- The tenant is allowed an **opportunity to respond** (in some cases, this may include a court hearing);
- A **Writ of Possession** is posted.

If your landlord is trying to evict you without going through the procedures above, he or she is **breaking the law**.

In order to force a tenant to move, landlords sometimes shut off water, electricity or gas, or change the locks on the door. **These kinds of tactics are illegal**. If your landlord attempts to do any of these things to get you to move, immediately contact the police, sheriff and/or a lawyer.



Florida law says that a landlord who engages in one of these prohibited practices can be liable to the tenant for damages for up to three months' rent. You will have to take the landlord to court to recover these damages.

About FloridaLawHelp.org

FloridaLawHelp.org is administered by Florida Legal Services, Inc. and is produced in cooperation with Pro Bono Net and the legal services organizations and government agencies throughout Florida and the United States.



The Florida Bar Foundation, with *Interest on Trust Accounts* program funding, provides support for this service.

This brochure is for general education only. It is not intended to be used to solve individual problems.

FloridaLawHelp.org

To locate your local legal aid or legal services office, please visit us on the web at

www.floridalawhelp.org

Your local legal aid or legal services office can be located through either the "Find Local Help" or "Directory" links at the top of the page.

If you don't have access to the internet, consult your local Directory Assistance for the number of the legal aid or legal services office nearest to you.



FloridaLawHelp.org

What every tenant should know about...



Evictions

Steps in a Legal Eviction

There are certain **steps a landlord MUST** take in an eviction action. A landlord cannot force a tenant to move without going through these procedures:

1. Written notice

A. **Nonpayment of rent.** In order to evict a tenant for nonpayment of rent, the landlord must first deliver to the tenant a **written notice** stating that the tenant has 3 days (not counting the day the notice is given, weekends, or holidays) to pay the rent or vacate. *If the tenant offers the full rent within 3 days, the landlord must accept it.* However, the landlord need not accept less than the full amount owed.

B. **Eviction for cause:** The landlord may evict a tenant for violations of a written lease agreement such as excessive noise, property damage, failure to keep the premises clean and sanitary, etc. The landlord must give the tenant **7 days written notice specifying the violation(s)** and warning the tenant of the intent to end the lease.

If the violation by the tenant is serious or reoccurs within 12 months of a written warning by the landlord, the tenant may be required to vacate in 7 days. However, if the violation is not serious and can be remedied, the landlord must allow the tenant 7 days to take care of the problem. If the problem is solved, the landlord cannot evict for that incident.

C. Termination of rental

agreement: If the lease is not for a specific length of time or if there is no written lease, **a landlord may end the**

lease without reason by giving proper notice. If rent is paid monthly, the notice must be given at least 15 days before rent is due. If rent is paid weekly, the notice must be given at least 7 days before rent is due.

Termination notices must be in writing.



2. Summons and complaint

If the tenant does not pay rent owed after receiving a 3-day notice or does not cure the problem within 7 days after receiving a 7-day notice and opportunity to cure or if the tenant fails to move out after the lease is terminated, **the landlord may file a complaint** with the Clerk of the Court. The complaint and a summons are served upon the tenant by the sheriff. These legal papers may be posted on the tenant's door (if the paperwork is also mailed to the tenant by the clerk) after two unsuccessful attempts to serve the tenant in person.

3. Filing a complaint for eviction

Since 1993, property owners, attorneys, and property managers may file a complaint for eviction. However, if the property manager files the complaint and the tenant files an answer, the eviction proceeding must **stop** until the owner or an attorney becomes involved. If the owner lives out of state, the property manager files the complaint and the tenant files an answer. The eviction immediately **stops** until the owner comes to Florida to continue the process or until the owner hires an attorney to complete the process.

4. Response by tenant

The tenant has **5 days to answer the complaint**. The days are counted based on the date of service by the sheriff or the date of posting on the door, *not* by the mailing from the clerk. Days not included are the day of service, weekends, and legal holidays.

A written answer setting forth proper defenses to the eviction must be filed with the Clerk of Court and a copy must be mailed to the landlord within the same 5 days. The tenant must also deposit with the court the amount of rent alleged in the complaint to be owed unless the defense is that the tenant has paid the landlord.

If the tenant **does not answer**, or **answers but fails to deposit** this rent, the landlord is entitled to an immediate default, which means the landlord wins.

If the tenant disputes the amount of rent owed, he or she must file a written *motion to determine the amount of rent to be paid* into the registry along with the answer. The motion should state the reason why a different amount should be deposited *and* ask the judge to decide the correct amount. Any receipts or documentation must be attached to the motion. At that point, the judge may schedule a hearing to determine the correct amount. Future rent must be deposited as it becomes due.

If you are served with a complaint, you should immediately contact a lawyer. You should not wait until the fourth or fifth day since that would not allow adequate time to prepare a defense.

5. Court hearing

If the tenant files an answer and deposits rent with the court or files a motion to determine rent and no default is issued, either the tenant or the landlord may set a date for a hearing before the judge. If neither party schedules a hearing, the judge will.



The parties will be notified of the time and place of the hearing, and they will have an opportunity to present their cases. If the landlord wins, the landlord will obtain a **Judgment for Possession**. If the tenant fails to attend the hearing, the landlord wins automatically.

6. Eviction

If the landlord wins (either by default or after a hearing) and obtains a *judgment for possession*, the court will issue a **writ of possession** to the sheriff. The sheriff then posts the writ on the tenant's premises. The tenant has **24 hours to vacate**, after which the sheriff or landlord may forcibly evict the tenant and padlock the door, with or without the tenant's belongings inside. The landlord may impose a lien on the belongings up to the amount of rent due.

