

Before you take your tenants to court ...

An expert on Texas evictions explains how to properly handle them.



“Regardless of the dollar amount, an eviction is handled by the justice of the peace court,” says Judge Al Cercone, justice of the peace for Precinct 3-1 in Dallas County. “Even if you’re in the right, it’s easy to lose an eviction case because you made a procedural or technical error. Evictions aren’t hard, but there are rules and steps you must follow.”

After presiding over thousands of eviction suits in his 22 years on the bench, Cercone knows what those rules and procedures are. Here, the veteran judge answers common questions about evictions for landlords and property managers.

Texas REALTOR®: Before you talk about the eviction process, do you have any tips for avoiding court?

Al Cercone: Good business practices will help prevent many disputes. You have to have solid paperwork. The contract between the parties has to be unambiguous and clear. If you screen tenants and look for red flags—instead of just filling your property with a warm body—you won’t find yourself involved in as many eviction proceedings.

What’s the first step to evict a tenant?

First, you must deliver the notice to vacate. State the breach or lawful reason for seeking possession of the property. If there’s more than one reason, it’s not necessary to state everything. It might be a good idea to hold at least one back. That way, if you lose your first eviction attempt, you can try again with another reason or breach.

Keep in mind that this notice must be unconditional. Many landlords, for example, will write that the notice to vacate is due to non-payment of rent but then ask that the tenant pay the rent or leave—“pay or quit.” That’s conditional and can create a problem if they end up in court. Landlords can still

Don’t make any verbal agreements with your tenants.

accept rent and allow the tenant to stay, but do not include this option in the notice.

What’s the best way to deliver the notice to vacate?

There are three acceptable ways to deliver the notice:

- **By mail.** A certified letter is not required.
- **In person.** Make sure you give it to someone who is at least 16 years old.
- **By posting it.** Make sure you attach the notice to the inside of the main entry door.

How long does the tenant have to vacate?

The law says it has to be for whatever time period you agreed to in



Don't refuse rent from a tenant who isn't already behind on rent and then try to evict him for non-payment.

the lease or, absent something in the lease, at least three days.

And if the tenant doesn't leave?

The landlord files an eviction suit in the county where the property is located, called a forcible detainer suit. There's a filing fee for the suit—about \$40 in Dallas County—plus you'll have to pay to have those documents served upon the tenant, who is now the defendant, so he's aware that he's being sued.

Here's a step where many landlords put themselves at risk. You need to serve those lawsuit documents upon any adult you know is occupying the property. Don't only serve one tenant because it saves money—it's about \$75 to serve each tenant in Dallas County. Name and serve everyone, even if they're not on the lease.

What's the risk for landlords who only name one tenant?

Everyone has the right to due process. If you win your eviction suit but only named one of the two tenants, the one who wasn't named could file a federal suit against a landlord, claiming that he didn't get his right to due process. Tenants rarely know this, but it could happen.

What happens in court?

Once you enter the courtroom, it's a matter of proof. If the landlord filled out the paperwork right and the ten-

ant doesn't show up, it's a default judgment for the landlord. If the tenant appears or files a written answer, the court has to take evidence to see if the landlord can prove his case.

Does the landlord need to appear in court for eviction proceedings?

No, the landlord can send a property manager or other representative. In some cases, however, that representative needs to be an attorney.

Which situations are OK for a landlord's representative who is not attorney?

Non-lawyers can only represent landlords in suits for non-payment of rent or holding over. Because non-payment of rent is 99% of eviction cases, that means it's usually OK for anyone to appear in court.

What's holding over?

Let's say a tenant's lease has expired and he's occupying the property month to month and still paying rent. On May 15, the tenant delivers notice that he's going to move out June 30. He pays rent for June but remains in the property after June 30. That tenant is holding over.

The plaintiff in eviction cases is the landlord. The eviction suit must be brought in the name of the landlord, which is in the lease.

Tips to stay out of jail

Locking someone up just because of inappropriate conduct in court is not uncommon. Act dignified and respectful to everyone. Never interrupt a judge during proceedings—it's bad manners and a bad idea.

Don't lock out a tenant during an eviction.

Why do other types of evictions require the landlord to be represented by an attorney?

Non-payment of rent and holding over are pretty straightforward and easy to prove. Other types are more complex. You need to be familiar with rules of evidence. For example, how do you prove a tenant should be evicted because he's a drug dealer?

What happens after the suit is decided?

If the landlord wins, the tenant has five days to vacate the property or appeal. If the tenant wins, the landlord has five days to appeal. An appeal will go to the county court or the county court of law, depending on where the property is located, and the case begins anew; it's as if the trial in the justice of the peace court never happened. That process takes a few more weeks. ☆