



# Landlord Letter

July 2017

## Evictions: Summer v. Winter

We occasionally hear a myth that it's easier or harder to evict a tenant depending on the season and the weather. With the middle of summer upon us, we wanted to talk about this to dispel some of the misconceptions out there but also discuss some practical advice about seasonal issues related to evictions.

First, tenants will sometimes say "You can't evict me in the winter. You'll have to wait until spring." This simply is not true. There is nothing in Utah's statutes that specifically references seasons or the weather. The issues related to an eviction are based on the landlord's ability to prove a breach of

the lease or Utah law that would justify an eviction. Exterior issues such as weather or seasons or hardships are not factored into this decision.

Once a judge considers the case and grants an eviction, the standard eviction order under Utah law allows three calendar days for the tenant to vacate the property. The large majority of the time the courts will stick with this three day time period for an eviction order (the statute states that the eviction order "shall be three calendar days" by default).

*(Continued on page 2)*



## Know Your Notice • Three Day Pay or Quit •

**Purpose:** Assists the landlord in re-taking possession when a tenant owes "rent or other amounts due."

*A landlord is NOT required to accept a partial payment, but if partial payment is accepted the pay or quit is cancelled. The landlord must serve a new notice showing the new balance.*

*A landlord cannot modify the pay or quit to become a "pay AND quit" or a "notice to quit". It MUST allow the tenant to either pay OR quit in order to comply with the eviction notice statutes.*

*The three days stated in the notice is three calendar days – counting weekends and holidays. Do not count the day it was served. Day #1 begins the following day (For example—if served on Wednesday, the 3 days are Thursday, Friday & Saturday).*

*A Pay or Quit requires the tenant to do just that: (1) pay entire balance owed, or (2) vacate within three days. Those are the only two ways for a tenant to comply with this notice and avoid an eviction.*

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However, the statute also allows the judge to adjust this three day window (either longer or shorter) based upon a finding of extenuating circumstances. This means that while the statute does not specifically reference weather or seasons, a judge may still modify the three day period if extenuating circumstances exist.

Now that we've covered the legal side of this question, let's consider some practical advice. While the law may not differentiate between an eviction in the summer versus the winter, from a practical standpoint our clients will often take extra steps to avoid an eviction dur-

ing the winter. If a landlord is going to try to fill a vacancy, it's usually much easier to do in the summer versus the winter.

Most stable and qualified applicants are settled in for the winter and don't want to consider relocating during the school year or the holidays during the winter. If the problems are not manageable, we often recommend trying to hold over through the winter until you get into a stronger market during the spring/summer. If you're having problems with your tenants now for whatever reason, you may want to consider taking action now instead of delaying the inevitable during the winter.



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# Dear Attorney,

**Q:** *My lease requires the tenant to pay for utilities, but they aren't being paid. What can I do?*

**A:** First, you should be very cautious about turning off the utilities. Utah law is clear that you cannot turn off the utilities in an attempt to evict the tenant..

If the lease requires them to pay the utilities, you can give them a 3 day eviction notice which requires them to resolve the problem within three calendar days. If they fail to rectify the situation, you can consider an eviction.

It usually takes 2-3 weeks for us to move through an eviction. Keeping the utilities on

during that time helps to avoid damage to your unit but also avoids the tenant having any argument against an eviction.

Under certain limited circumstances, you may be able use the terms of your lease to notify your tenant that the utilities are supposed to be in the tenant's name and that you're taking your name off the utilities in the future. Make sure (1) you are fully complying with your lease, and (2) you are giving the tenant sufficient notice to put the utilities in their name.

## DO's & DON'Ts of Rent, Ledgers & Cash



### DO

- Document each payment (tracking the date, amount, cash/check, and description for each payment).
- Communicate clearly with your tenant about payments and balances.



### DON'T

- Accept cash without providing a receipt (documenting EVERY payment is critical).
- Rely on your memory for payments (memory fades and is easily challenged in court).

## Landlord Laughs — I have a condition

From the very moment the tenant moved in it was obvious this would not be a good fit. The second night in the unit, the tenant had his girlfriend staying over even though the lease clearly did not allow it.

The following morning (just day three of the year-long lease), the landlord knocked on the door to confront the tenant about this lease violation. The tenant answered but wouldn't open the door very wide. It was obvious he was hiding the girlfriend that was still in the unit.

After the landlord explained the situation and reminded the tenant that he was violating the lease, the tenant tried to justify his actions by explaining "You see, I have this condition where I have to have a woman sleep with me."

The landlord didn't buy it and responded "Buddy, all men have that condition. But it's still a violation of the lease." After that discussion, the tenant decided to take his girlfriend and his condition to another apartment.



**Evictions in Weeks, Not Months!**

### Parting Thoughts

- We're working to build our readership, tell your friends to subscribe to this FREE newsletter. Send us an email at [info@utahevictionlaw.com](mailto:info@utahevictionlaw.com).
- Have an eviction question? Email us for a future newsletter!
- Help us build our online presence! You can "Like" our Facebook page ([www.facebook.com/utahevictionlaw](http://www.facebook.com/utahevictionlaw)).
- You can also give us a Five Star Google Review (search "Utah Eviction Law Google Reviews" and click on our Google Plus link).

## Calendar of Events

- July 4 — Independence Day
- July 13 — UAA Multi-City Good Landlord Class
- July 17—UAA Ogden Good Landlord Class
- July 24 — Pioneer Day

