

SUMMARY EVICTION IN NEVADA LANDLORD GENERAL INSTRUCTIONS

WHERE TO BEGIN

There are two ways to initiate an eviction action in Nevada:

1. Filing and serving a formal, civil eviction known as an unlawful detainer action, and
2. Using the summary eviction procedures contained in NRS 40.253 and NRS 40.254.

The summary eviction process is generally a simpler and quicker process than the formal unlawful detainer eviction proceeding. Note that summary eviction may not be used against tenants of mobile home parks. Summary eviction may be used when the only issue to be adjudicated by the court during the proceeding is possession of the rental unit. Summary eviction does not allow the landlord to seek damages;¹ it does allow the tenant to counterclaim up to the alleged rent amount owed claimed by the Landlord. Additionally, the summary eviction process only provides for a court hearing, rather than trial; there are no “discovery” rights for either party. **These forms and instructions apply only to summary eviction actions.**

¹ The landlord may claim attorney fees only in limited situations. See NRS 40.254(3).

Summary Eviction versus Unlawful Detainer

The summons and complaint procedure (unlawful detainer) must be used to initiate an eviction action against tenants in mobile home parks and may be used for other tenancies. It allows the landlord to seek a Temporary Writ of Restitution in addition to the eviction itself and also allows the landlord to seek damages. The tenant may file both an answer and counterclaim and likewise seek damages. If the summons and complaint procedure is used and the tenant answers the complaint, the court will hold a trial, with its attendant procedures, such as cross examination and discovery. Thus, a landlord who either must use, or who chooses to use, the summons and complaint procedure is well advised to retain counsel. These forms and instructions do not apply to the summons and complaint procedure and should only be used for the summary eviction procedures described below.

In either case, whether the landlord proceeds with an eviction action via the summons and complaint process or the summary process, the tenant must first be in “unlawful detainer” before the court has the authority to hear or grant an eviction. Unlawful detainer means that a tenant is allegedly in unlawful possession of the rental unit.

In all cases, other than non-payment of rent, the tenancy must first be legally terminated by the landlord before the tenant can be in unlawful detainer. A tenancy is legally terminated by proper service of written notice of termination upon the tenant, and the subsequent expiration of that notice. Only after the tenancy is legally terminated and the tenant is in unlawful detainer, may the landlord invoke the eviction process of the Court by filing and serving either a summons and complaint or, for the summary eviction procedures described in this packet, a Five-Day Notice of Unlawful Detainer. Thus, in all cases, other than non-payment of rent, the law requires a two-notice procedure:

1. The proper service of the correct “notice of termination” upon the tenant; and
2. The proper service of the correct “Five-Day Notice of Unlawful Detainer.”

TERMINATION NOTICE OVERVIEW

The type of written termination notice as well as the notice time frames to terminate a tenancy are dependent on the type of tenancy (e.g., fixed-term tenancies, month-to-month tenancies, week-to-week tenancies), whether the tenancy is covered under Chapter 118A of the Nevada Revised Statutes (NRS) (almost all tenancies are so covered), and the grounds for the termination of the tenancy, e.g., termination for no-cause (NRS 40.251), termination for breach of the lease (NRS 40.2516), termination for wrongful assignment or subleasing, waste, unlawful business, nuisance or violations of controlled substances laws (NRS 40.2514). The landlord must properly serve (see NRS 40.280) the tenant with a termination notice that is in strict compliance with the particular statute relating to the type of termination.

In the case of a fixed-term lease (one with a specific ending date), all landlords subject to Chapter 118A of the Nevada Revised Statutes (most landlords) now are required to give written notice of termination of tenancy to tenants even if the fixed-term lease has expired.

In the case of non-payment of rent, the tenant is considered to be in unlawful detainer once the rent is past due (NRS 40.2512). The landlord may initiate a summary eviction at any time after rent is past due by properly serving a Five-Day Notice of Unlawful Detainer for Non-Payment of Rent, Form #7, upon the tenant.

FIVE-DAY NOTICE OF UNLAWFUL DETAINER (EVICITION NOTICE) OVERVIEW

Once a tenancy has been legally terminated, if the tenant still remains in possession, the landlord can allege that the tenant is guilty of an unlawful detainer, and may initiate a summary eviction action against the tenant. The summary eviction procedures are contained in NRS 40.253 (non-payment of rent) and NRS 40.254 (all other bases for summary eviction). Note that NRS 40.254 must be read in conjunction with NRS 40.253.

To start a summary eviction, the landlord must properly serve the correct Five-Day Notice of Unlawful Detainer upon the tenant. The three methods of legal service are listed in NRS 40.280(3) and are:

1. Personal service on the tenant in the presence of a witness.

2. If the tenant is absent from his residence or usual place of business, by leaving a copy of the notice with a person of suitable age and discretion at the tenant's residence or usual place of business and mailing a copy to the tenant at his residence or place of business.
3. If the place or residence or business cannot be ascertained, or a person of suitable age and discretion cannot be found, by posting a copy of the notice in a conspicuous place on the leased property, delivering a copy to any person residing there if available, and mailing a copy to the tenant at the residence.

The landlord should also obtain proof of legal service for certain documents (e.g., Five-Day Notices of Unlawful Detainer) by having the person serving those documents complete the Affidavit/Declaration of Service. If the landlord uses personal service, the server must obtain the signature of the tenant and a witness. If the service is done by leaving a copy with a person and mailing a copy to the tenant, the server must attach a United States Postal Certificate of Mailing (this is not certified mail) to the Affidavit/Declaration of Service to prove mailing. Likewise, if service is done by posting and mailing, the server must attach a United States Postal Certificate of Mailing to the Affidavit/Declaration of Service to prove mailing. This proof of service must be filed with the court before the judge can grant an eviction order in a default case (where the tenant does not appear at the eviction hearing). Arguably, filing of such proof of service may be required in all cases (even where the tenant appears at the hearing) before the judge may grant an eviction order. Therefore, it is good practice for the landlord to obtain a proof of service anytime he or she serves certain documents, such as a Five-Day Notice of Unlawful Detainer, even if it is likely that the tenant will not appear at the eviction hearing.

A Five-Day Notice of Unlawful Detainer for Non-Payment of Rent, Form #7, must inform the tenant that the tenant must vacate the rental unit by noon of the fifth full judicial day² after service of the notice, or in the alternative, pay the rent by noon of the fifth full judicial day after service of the notice. In all cases other than non-payment of

² "Judicial Days" do not include date of service, weekends or legal holidays.

rent, the Five-Day Notice of Unlawful Detainer must advise the tenant, in writing, that the tenant must vacate the rental unit by the fifth judicial day after service of the notice.

All Five-Day Notices of Unlawful Detainer, whether for non-payment of rent or for other issues, must advise the tenant, in writing, of the court that has jurisdiction over the matter. Additionally, all Five-Day Notices of Unlawful Detainer must inform the tenant that he or she may contest the eviction action by filing a Tenant's Affidavit/Declaration with the court, by noon of the fifth judicial day after service upon the tenant and delivering a file-stamped copy of the Tenant's Affidavit/Declaration upon the landlord. In the case of a Five-Day Notice of Unlawful Detainer for Non-Payment of Rent, the written notice of the tenant's right to contest the eviction by filing a Tenant's Affidavit/Declaration must also advise the tenant that he or she must state in the Tenant's Affidavit/Declaration that he or she has tendered rent or is not in default in the payment of rent. If the tenant timely files his or her Tenant's Affidavit/Declaration with the court, a hearing will be set and the court will adjudicate the matter. If the tenant fails or chooses not to file a Tenant's Affidavit/Declaration, a hearing may or may not be held, depending on local court practice.

If the tenant fails to comply with the Five-Day Notice of Unlawful Detainer, either by not paying the rent (in the case of non-payment of rent) or by not vacating the rental unit by noon of the fifth full day following service of the Five-Day Notice of Unlawful Detainer upon the tenant, the landlord may then apply for an eviction order by filing a Landlord's Affidavit/Declaration for Summary Eviction to the Justice Court of the township where the rental unit is located. The contents of the Landlord's Affidavit/Declaration must be in conformance with NRS 40.253(5)(a) for a non-payment of rent summary eviction or with NRS 40.254(2) for all other summary eviction actions. Note that the landlord cannot lock out the tenant until and unless the judge signs an eviction order. Moreover, as noted above, in a default hearing (where the tenant does not appear the hearing), the judge cannot grant an eviction order unless the landlord files proper proof of service and arguably, may not grant an eviction order absent proof of service even when the tenant appears at the hearing.

TERMINATING THE TENANCY

Before an eviction action can be initiated, the landlord must first legally terminate the tenancy. Only after a tenancy is legally terminated and the tenant fails to vacate is a tenant in unlawful detainer. Only then may the eviction action (the Five-Day Notice of Unlawful Detainer) be initiated. The requirements to terminate a tenancy are dependent on the reasons for the termination and are set out by statute. The landlord must strictly adhere to the notice requirements when terminating a tenancy in order for the tenancy to be legally terminated. If the tenancy is not legally terminated, the tenant cannot be in unlawful detainer, and the court has no power to grant an eviction. The landlord must first determine what the grounds are for the termination and then properly serve the correct written termination notice upon the tenant. The requirements for proper service and proof of proper service are set out in NRS 40.280. If the tenant fails to comply with the termination notice within the time allotted and fails to vacate the rental unit, the landlord may then allege that the tenant is guilty of an unlawful detainer and initiate a summary eviction action by serving the applicable Five-Day Notice of Unlawful Detainer upon the tenant.