

# FREQUENTLY ASKED QUESTIONS ABOUT EVICTION PROCEDURES IN ILLINOIS

In Illinois, the law which defines the process of eviction is known as the Forcible Entry and Detainer Act. The Forcible Entry and Detainer Courts are known as the Courts of Limited Jurisdiction. This means that only claims for possession and rents can be heard.

**When should I consider evicting a tenant?**

*Non-payment* of rent is an obvious reason for evicting a tenant. However, the decision to evict a tenant for *failing to abide by specific terms of a lease* is a more difficult decision. Effective property management includes the early recognition of non-compliance and immediate response to the problems associated with these behaviors. If you move quickly, you will find that tenants will believe they can't get away with non-compliant behaviors. If you fail to take action against a tenant who is engaged in non-compliant behavior and that behavior later causes damage or injury to another tenant, you may find yourself liable for damages. The end result may very well be deterioration in the value of the property and an inability to get good, high quality tenants.

**Can I evict a tenant for dealing drugs or engaging in illegal activity inside their unit?**

Yes you can. Successful eviction of this type of tenant is dependent on the use of the **Crime Free Lease Addendum**. The biggest hurdle you have to overcome in evicting a tenant for drug use is proving that the drug use is happening. The City of Rolling Meadows is seeking to evict drug dealers from the community and actively encourage the landlords of rental properties to take action. To help the landlords can record the number of visitors that come and go into the rental property and talk to the police department regarding your suspicions. Even if you can't ultimately prove that the tenant is taking or dealing drugs, through detailed observations can probably prove that this behavior has unduly disturbed other tenants and neighbors, by interfering with their peaceful enjoyment of the premises.

- **5-Day Notice Pursuant to 735 ILCS 5/9-120:** This type of notice is used to terminate the lease of a tenant using or permitting the use of the leased premises for the commission of any act that would constitute a Felony or a Class A Misdemeanor under the laws of the State of Illinois.

A written lease (Crime Free Lease Addendum) shall notify the tenant that if tenant or occupant, on one or more occasions, uses or permits the use of the leased premises for the commission of a crime, the landlord will have the right to void the lease and recover the lease premise. *However, failure to include this language in written lease or the use of an oral lease shall not waive or impair the rights of the landlord*

### **Do I need an attorney to start the eviction process?**

Not necessarily. However, some areas of eviction law are very complicated and detailed. Strict compliance with the statute is necessary, because eviction is a drastic remedy. An attorney that is familiar with the Forcible Entry and Detainer Act can cut down continuances and ultimately save you money.

If you do choose to file a forcible action without an attorney, take the time to become familiar with court procedures. Many eviction cases are lost simply because the landlord is unfamiliar with the court process and does not have the proper paperwork at the time of the hearing.

### **Do I need to serve any notices on a tenant before actually starting the court proceedings?**

Yes. Serving proper notice on a tenant is generally a prerequisite to filing a Forcible Entry and Detainer Action. Generally, the proper service of notice is "jurisdictional". This means that if you don't do it correctly, the judge will have no choice but to dismiss your lawsuit. You will then have to start all over again. The following is a brief summary of the types of notice which can be served on a non-compliant tenant:

- **5-Day Notice:** This type of notice is served when a tenant is behind in the payment of rent. It provides that if all amounts are not paid within the five days, the landlord will terminate the lease. It is important that the landlord not accept anything less than the full payment of all amounts due and owing during the five day period. Partial payments void the five day notice and a new five day notice will have to be served to collect the outstanding amount.
- **10-Day Notice:** When a default is made in any of the terms of the lease, it is not necessary to give more than ten days of notice of the landlord's intent to terminate the lease.

Such notice may be in the following form:

*"You are hereby notified that in consequence of your default in (insert character of default) of the premises now occupied by you being (describe the premises), I have elected to terminate your lease and you are hereby notified to quit and deliver up possession of the same to me within ten days of this date."*

This type of notice can be used in cases where a tenant is engaged in behavior which disturbs the peace, damages property, or otherwise is prohibited under the terms of the lease.

- **30-Day Notice:** This notice is used to terminate a tenant who is occupying the premises on a month-to-month basis, or whose lease term is close to expiration.

### How do I serve these notices?

There are three basic methods for service of a notice on a tenant:

1. You can service notice on any person at least 13 years of age who resides in the premises.
2. The notice can be sent by Certified or Registered Mail, with a returned receipt from the tenant.
3. If no one is in actual possession of the premises, the notice can be posted on the door.

**Make sure you do not serve the original notarized copy of the notice. This portion of the notice should be completed only after a copy has been served. The original notarized copy should be brought to court on the day of the Forcible Entry and Detainer Hearing.**

**Now that I have made the decision that I need to have a tenant leave, what are the basic steps for evicting a tenant for non-compliance of the lease?**

The process is relatively simple. It is also what is called an expedited process. This means that you can obtain relief relatively quickly.

Process:

1. The tenant should be served with the appropriate notice.
2. A Forcible Entry and Detainer Action is filed.
3. The landlord must serve the tenant with Order of Possession paperwork.
4. An Order of Possession should be entered at the court hearing.
5. The Order of Possession must be placed with the Sheriff for eviction.

**What forms does a landlord need to have in dealing with evictions actions?**

The most frequently used forms are:

- Five-Day Notice
- Forcible Entry and Detainer Complaint
- Forcible Summons
- Order of Possession
- Motion for Special Process Servicer
- Notice of Posting
- Affidavit for Posting

Copies of these forms can be obtained at the Cook County Clerk's at the Rolling Meadows Courthouse.

**How do I actually file the case once I get to the courthouse?**

The initial eviction cases will be filed in the clerk's office. You will need to have your Complaint, Summons, and Civil Cover Sheet at the time of filing. After the clerk files the case, you will need to place the Summons for Service with the Sheriff's office.

**What should I bring to court?**

There are several documents that are absolutely essential to a forcible case. The following documents should be brought to every court call:

- An executed copy of the lease
- A signed copy of your Notice
- A copy of your complaint
- A copy of your proof of property service on the Defendant
- Any other documents to support your claim against the Tenant

If your claim is for non-payment of rent, be sure to have a list of payments that have been made by the tenant.

### **What happens after I am awarded an Order of Possession by the Judge?**

The entry of an Order of Possession is not the end of the Forcible Action. Until the tenant is evicted the court case has not really accomplished anything. Generally, the Judge will enter the order and "Stay Execution" for a period of 7 to 14 days. This means that the Order cannot be placed with the Sheriff for eviction for that period of time. After the "Stay" has expired, the Order of Possession must be given to the Sheriff for service. You need to be available on the day of eviction; the Sheriff's Department will require your presence at the premise.

### **Can I do anything to protect my rights to evict a tenant, even before he moves in?**

Yes. Careful drafting of your lease can increase your chances of successfully managing your tenants. Include the Crime Free Lease Addendum, required per City Ordinance. Make it clear that drug use on the property will not be tolerated. *The Illinois Supreme Court has stated that an owner can evict a tenant whose guests violate the leasing rules.* Most importantly, do criminal background checks on prospective tenants.