

TENANT'S AFFIDAVIT/DECLARATION
(Other than Nonpayment of Rent - Private Housing)
TENANT INSTRUCTIONS
(Form #16)

You should use this instruction sheet when the landlord is evicting you from private (not publicly-subsidized) housing, but is doing so for some reason other than that you are behind in the payment of your rent. You will be filling out Form #16, **TENANT'S AFFIDAVIT/DECLARATION (Other than Nonpayment of Rent - Private Housing)**. Under Nevada law, assuming the proper notices are given, the landlord may try to evict you without giving any reason (a "no-cause" eviction) or the landlord may allege that you did something wrong (a "for-cause" eviction). The landlord may do this by serving a sequence of two notices, one after the other.

The last notice should contain language advising you of your right to contest the notice by filing within 5 judicial days¹ an affidavit with the court that has jurisdiction over the matter that you are not guilty of an unlawful detainer. The law requires that you file your Tenant's Affidavit/Declaration by noon of the 5th judicial day following getting served the notice to leave the rental unit by your landlord. If you don't arrive by noon, some court clerks may accept it up until closing, but some will not. If the 5th day ends on a Saturday, Sunday, or holiday, you have until noon on the next day the court is open to file your Tenant's Affidavit/Declaration.

If you fail to file your Tenant's Affidavit/Declaration within the required number of days, the eviction will be granted by default and you may be evicted within 24 hours. If you file an affidavit, the court will schedule a hearing where you may appear to explain to the judge why you should not be evicted. If you fail to appear, you may be evicted within 24 hours.

¹ "Judicial Days" do not include date of service, weekends or legal holidays.

FILLING OUT FORM #16

Heading

Fill in the name of the township and county of the Justice Court where the rental unit is located.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant.

Case No. and Dept. No.

Leave blank. The court will assign a Case Number and a Department Number.

Body of Affidavit

Number 1

Fill in the name of the township and county.

Number 2

Fill in the date you started renting.

Number 3

You will most likely have received two notices.² The first one is likely to be one of the following:

- A. 30-Day Notice – No-Cause Termination Notice to Vacate (NRS 40.251),
- B. 7-Day Notice – No-Cause Termination Notice to Vacate (NRS 40.251),
- C. 5-Day Notice – Notice of Termination for Violation of Lease or Rental Agreement (NRS 40.2516), or
- D. 3-day Notice – Notice of Termination and Notice to Vacate for Wrongful Assignment or Subleasing, Waste, Unlawful Business, Nuisance or Violations of Controlled Substances Laws (NRS 40.2514).

² Only one notice is required if your tenancy has expired by its very terms, i.e., the end of a one-year lease.

Depending on which one you received, you should check the appropriate notice (A, B, C, or D) that applies. Following the first notice you should have received a second 5-day notice, usually called a Five-Day Notice of Unlawful Detainer (NRS 40.253 or NRS 40.254).

Numbers 4 - 13

Check those that apply to your situation

These sections state that you have a legal defense or defenses, that is, a reason or reasons why you should not be evicted which are recognized by state law or your lease. State law, generally found in Nevada Revised Statutes (NRS) Chapters 40 and 118A, is available in many libraries or on the internet at <http://www.leg.state.nv.us/NRS/Index.cfm>.

Number 4

This sentence states that you have received a no-cause notice but your lease has not expired (ended). For example, you are in the middle of a 12-month lease, but the landlord has served you with a 30-day, no-cause notice.

Fill in the date.

Number 5

This section states that you received the wrong type of notice required by Nevada law. For example, the landlord has served you with a 5-day, no-cause notice when you are entitled to 30 days.

Check A, B, C, or D, depending on the statutorily required number of days.

Number 6

This section states that you received a Five-Day Notice of Unlawful Detainer, but that you have a defense.

You may simply disagree with the landlord that you broke the lease. For example, the notice states that you failed to cut the grass and you know that you did.

You may not have received a notice of your right to cure an alleged breach of your lease within 3 days. The notice should include language informing you that you can cure the breach of your lease within 3 days. For example, if the lease requires you to cut the grass and you get a notice saying you have not cut the grass, you may cure the breach by cutting the grass within 3 days.

If you are an NRS 118A tenant,³ you have a right to cure an alleged breach of your lease within 5 days. You are not an NRS118A tenant if you reside in conventional public housing. The notice should include language informing you that you can cure the breach of your lease within 5 days. For example, if the lease requires you to cut the grass and you get a notice saying you have not cut the grass, you may cure the breach by cutting the grass within 5 days.

You may have corrected the breach of your lease within 3 days (or 5 days if your tenancy is governed by NRS Chapter 118A - see above). For example, if the lease requires you to cut the grass and you get a notice saying you have not cut the grass, you may cure the breach by cutting the grass.

You should receive a second 5-day notice following a 5-day notice for breach of lease. The second notice is usually called a Five-Day Notice of Unlawful Detainer (NRS 40.254).

Check A, B, C, D, or E, depending on which applies to your situation.

Number 7

This sentence states that your landlord has renewed the lease. If your lease expired, but the landlord accepted rent or entered into a new agreement after it expired, then your lease may have been renewed or extended as a matter of law.

If you checked Number 7, fill in the date.

³ Generally you are a NRS Chapter 118A tenant if you do not reside in either (1) a hotel/motel for less than 30 days or (2) a conventional public housing unit. There are some additional exceptions. See NRS 118A.180.

Number 8

This sentence states that you have received a 3-day notice alleging that you have illegally sublet the rental unit, carried on an unlawful business or created a nuisance and that you deny it.

Number 9

This sentence states that you have received a 3-day notice alleging that the rental unit has been foreclosed upon or sold. The summary eviction process may not be used with this type of notice. NRS 40.255 requires the landlord to proceed under NRS 40.290 - NRS 40.420 (formal unlawful detainer).

Number 10

This sentence states that you have a defense of housing discrimination. Housing discrimination is when the landlord is taking some action against you because of your race, religion, sex, disability, or familial status (e.g. if you have children in the family).

For example, if the landlord or housing authority failed to honor your request to provide a "reasonable accommodation" for your disability, you may have a legal excuse for violating a rule or lease provision. Your chances of convincing the judge that you do have a legal defense are improved if you, at the same time, file a complaint with the United States Department of Housing and Urban Development (HUD). For assistance in filing, contact the Silver State Fair Housing Council at (775) 324-0990 or the Nevada Fair Housing Center at (702) 731-6095.

Number 11

This sentence states that the notice failed to inform seniors and people with disabilities of their right to seek extra time to move. If you received a 30-day notice to quit and are a tenant who is 60 years of age or older or who has a physical or mental disability, NRS 40.251(3), requires that the notice informs you of your right to request to be allowed to continue in possession for an additional 30 days.

Number 12

This section states that the landlord is retaliating against you, i.e., evicting you to get even with you for exercising one of your legal rights.⁴ For example, if a tenant reports to a city health department that the rental unit has no heat, a landlord might retaliate by trying to evict the tenant.

If you checked Number 12, check A through I as applicable to your situation. Note that D and F require you to briefly explain why you believe those defenses fit your situation. In addition, H requires you to identify the person or agency to whom you complained (Numbers 1 through 5).

Number 13

As only the more common defenses are listed above, this section provides you with the opportunity to state other potential defenses/reasons that you believe apply to your situation. Specifically, explain those defenses/reasons.

Request for a Stay

If the judge decides that you have not raised a legal defense, you may be required to move within 24 hours. However, if you would experience extreme hardship, you can ask the judge for a delay in the eviction for up to 10 judicial days. This is called a “Stay,” but will probably be granted only for a really good reason. You may request a Stay in case you lose by placing a check mark on the line in the last paragraph prior to your signature at the end of the form. NRS 70.010(2) allows the judge to give you up to 10 judicial days to move.

For example, you might have no money to rent a new place until your Social Security check arrives in 5 days which would cause you and your children to be

⁴ This defense is available only to NRS Chapter 118A tenants. Generally you are a NRS Chapter 118A tenant if you do not reside in either (1) a hotel/motel for less than 30 days or (2) a conventional public housing unit. There are some additional exceptions. See NRS 118A.180.

homeless.

Fill in the number of days you are requesting and provide an explanation as to why you are in need of additional time.

SIGNATURE AND NOTARY PUBLIC / DECLARATION SECTION

You have a choice between signing the document in front of a notary, making the document an affidavit, or signing a declaration without a notary. Generally, clerks are available to certify that you signed the document. However, both alternatives mean that if you are not being truthful, you could be prosecuted for perjury.

HOW TO FILE A TENANT'S AFFIDAVIT

There is a fee to file your Tenant's Affidavit/Declaration. However, if you do not have the money, you may file an Application to Waive Fees and Costs, Form #37. You will list all of your income (earnings, rental income and government checks) plus your assets (real property, bank accounts, motor vehicles, etc.) and expenses (rent, utilities, insurance, childcare, credit card payments, car payments, etc.) on this form. (See the specific instructions involved with this process – Forms #37, #38 and #39.) When you complete the Application to Waive Fees and Costs, file your Tenant's Affidavit/Declaration with it. The court will not officially file your Tenant's Affidavit/Declaration until either (1) the judge grants your Application to Waive Fees and Costs (and gives you an Order Regarding Waiver of Fees and Costs, Form #39) or (2) you pay the filing fee.

Next, the clerk will file the original of your Tenant's Affidavit/Declaration and you should ask the clerk to file-stamp your copies. The law requires that the landlord receive a file-stamped copy of your Tenant's Affidavit/Declaration. Some courts may deliver it to the landlord for you. Ask the clerk. The safest course of action is to deliver it yourself. If you are filing at the beginning of your notice period you can mail your Tenant's Affidavit/Declaration to the landlord. If you are at the end of your notice period, it is faster to deliver a copy to the landlord personally or leave one with someone at his/her residence or place of business. If there is a later dispute about whether or not you provided a file-

stamped copy of your Tenant's Affidavit/Declaration to your landlord, you can prove that you did so by obtaining a "Certificate of Mailing" from the United States Postal Service or taking a witness with you when you deliver it in person to your landlord.

Once you have filed your affidavit, the court should schedule a hearing. Each court sets hearing dates differently, so ask the clerk of the court when the hearing will take place.

WHAT SHOULD YOU DO TO PREPARE FOR A HEARING?

Gather all documents and arrange for all witnesses that will help you prove your defense(s) to come to your court hearing. Prepare the questions which you plan to ask your witnesses. Also prepare the questions which you plan to ask the landlord and the landlord's witnesses. Remember, you will typically get only one day in court. It will do you no good to tell the judge, for example, that you left a receipt at home or that you have an eyewitness who is not with you in court.

If you (or any of your witnesses) speak Spanish or another language other than English, you should ask the clerk whether the court will provide an interpreter or whether you may bring your own interpreter with you to court. An interpreter should be able to speak both your native language and English fluently. A person cannot act as an interpreter who is (a) the spouse of or otherwise related to a witness, (b) is biased, or (c) has an interest in the outcome of the case. If you (or any of your witnesses) is a person with a disability who cannot readily understand or communicate in English or who cannot understand the proceedings, you should ask the court in advance to appoint a qualified interpreter.

You may also want to arrange in advance for a court reporter to be present at the hearing. A court reporter records everything that happens at the hearing and that record may be important if you lose the hearing and later decide to appeal. You should call the court clerk in advance to find out how to arrange for a court reporter to be present at the hearing. You should then contact the court reporter in advance to discuss the fees and when payment is expected. If an appeal is filed after the hearing, there will typically be an

additional charge per page.

WHAT HAPPENS AT THE HEARING?

At the hearing you should be prepared to tell your story. Bring all documents and witnesses necessary to prove your defense(s). You may also question the landlord and his witnesses. Although the hearing is informal, dress nicely, be polite and call the judge "Your Honor." Also, do not argue, roll your eyes, scowl, interrupt the judge or the other side, etc.

If you win (the judge decides that you have raised a legal defense) the judge should dismiss the eviction. The landlord may attempt to evict you later in a more formal lawsuit. If you are served with court papers, contact an attorney.

If you lose (the judge decides that you have not raised a legal defense) you will be required to move within 24 hours. However, if you would experience extreme hardship, you can ask the judge for a delay in the eviction for up to 10 judicial days. This is called a "Stay," but will probably be granted only for a really good reason. If the judge appeared to make a major mistake of law (described in the specific instructions for each of Forms #13 through #16), you may wish to contact an attorney immediately to discuss the possibility of an appeal.

Unless the judge has granted a stay, you should remove all of your personal property from the rental unit immediately. The sheriff or constable may lock you out within 24 hours. If you do not remove all your personal property or do not make other arrangements with the landlord, the landlord may put your property into storage and refuse to return it until you pay a reasonable storage fee. If the landlord is demanding an unreasonable fee, you can ask the court to determine what is reasonable. See the instructions for Forms #20, #21 and #22.