

EVICTIONS - WHAT CAN I DO IF MY LANDLORD WANTS ME OUT?

NOTE: In some places in Kentucky, landlords and tenants have certain rights that are not available in other parts of Kentucky, through the *Uniform Residential Landlord-Tenant Act* (“URLTA”). Be aware that, at this time, the **only** places in AppalReD’s service area that have adopted these rules are Barbourville and Pulaski County. For the rest of AppalReD’s service area, the following rules will apply.

What is a “forcible detainer”?

To evict a tenant from the landlord’s property, the landlord must file “forcible detainer” papers with the court. This means that the landlord is stating that the tenant (you) do not have the right to stay in the house or apartment but that you are, in fact, still occupying it. The landlord must follow very specific rules in order to evict a person; it is important to know what these rules are, because if the landlord does not follow them, the tenant has the right to contest the eviction in court.

The rules are different depending on whether or not there is a written lease, but **whether or not** a lease is in place, the following rules apply:

- Your landlord cannot evict you without a court order.
- Your landlord cannot cut off your power or other utilities without a court order.
- Your landlord cannot “lock you out” without a court order.

Following are rules that apply if you *have* a written lease:

- If you have a written lease, you may not break any of the rules you agreed to follow. In evictions, this often involves paying rent. You cannot withhold rent because you are having a problem with your housing or your landlord. If you do not pay your rent, the landlord has the right to evict you.
- In order to evict you, the landlord must give you a written notice to leave the house or apartment. The landlord can either deliver the notice by hand or send it through certified mail. This notice is known as a “notice to vacate”, and it must tell you the specific reasons your landlord wants you to leave.
- The amount of time you have between receiving a written notice and having to be out of the apartment or house should be written in your lease. If it is not written in the lease, that amount of time will be thirty (30) days.
- In Floyd County, and in most surrounding counties, the landlord **may** allow you to pay your back rent and stay in your apartment or house after you receive your written notice, **but is not required to do so**. If your landlord does accept back rent from you, he or she cannot continue with the eviction.
- If the landlord follows the rules and gives you a written notice, and you do not leave the house or apartment within the time (i.e. 30 days) stated in that notice, then the landlord can file a “forcible detainer” with the Court. This will trigger the Court to give you a hearing date (a day and time to appear in court before a judge, who will decide whether or not you must leave the apartment or house).

- You will receive the notice of an upcoming court date at least three (3) days before you must be in court. This notice is called a “Summons and Complaint”, and it must state the date of the original written notice to vacate (leave), as well as the reasons for the eviction.
- If you do not want to be evicted, you must attend the court hearing. The judge will ask you if you broke the lease; if he or she finds that you did so, she or he will find that you do not have a right to stay in the apartment or house.
- If you do not go to the hearing (and you **must** appear on time, or the judge may decide the case before you arrive), you will automatically lose your case. If you appear but your landlord does not appear, the judge will dismiss your case and the landlord may not evict you at that time (although he or she may start the process over, and give you another written notice).
- At court, there are two ways you can fight the eviction.
 - A. You can try to prove you did *not* break the lease. For example, if you are being accused of not paying your rent (and if you did, in fact, pay it), bring checks and receipts showing these payments. *(The judge will not, and cannot, consider hardship arguments in such a case – for instance that you could not afford to pay the rent.)* If other issues are involved, you can bring letters to and from the landlord regarding the problem, your written lease, and any other information that supports your case.
 - B. You can try to prove that your landlord did not give you “sufficient (enough) notice” of having to leave your house or apartment. For instance, keep all of the paperwork you receive regarding your landlord’s attempts to get you to leave. **Remember, your lease might tell how much warning the landlord must give you before you have to leave.** If there is nothing in the lease about this, then you have thirty (30) days. If your landlord does not give you enough time, then you have a case against him or her. (However, this will not prevent the landlord from starting the process over again with the proper procedures.)
- **Appeals:** If the judge decides against you and you believe this is incorrect, you can appeal the decision if you do so within seven (7) days after the court order of eviction. In order to file this appeal, you must:
 - A. Have a good reason for the appeal (for instance, you do not believe the judge properly considered evidence that should have been considered).
 - B. Fill out and file appeal papers with the Court Clerk. You may need to pay a fee.
 - C. Post an “appeal bond”. This is a deposit that you leave with the Court. The amount of this bond will be all of the back rent that the landlord claims you owe, plus any future rent that will be due during the appeal process.
 - D. If you win your appeal, and the court says that you do not owe back rent, the court will give you back the appeal bond money for the back rent. They will not return the money for rent owed during the appeal process. If you win the case (either initially or at appeal) the landlord will not be able to evict you at that time (although, again, he or she may try again at some future date.)
 - E. If you lose your case (either initially or at appeal), you must leave your house or apartment within seven (7) days of the order. If you do not move out, your landlord can have the sheriff go with him or her to force you to leave. **Your landlord cannot make you leave unless the sheriff is present.**

Following are rules that apply if you have a month-to-month or other “periodic” agreement with your landlord:

- Your landlord must give you one time-period notice that he or she intends to evict you (for example, if you have a month-to-month lease, the landlord must give you a one (1) month’s notice; if it is a week-to-week agreement, the landlord must give you one (1) week’s notice, etc).
- If you do not leave your house or apartment by the time your landlord’s notice tells you to leave, your landlord may file a “forcible detainer” triggering a court hearing, and the steps in the section above will apply. You must have at least three (3) days’ notice from the time you receive the notice about a court hearing until the time of that hearing.

Following are rules that apply if you do NOT have ANY kind of lease:

- If you do not have a lease you are, in legal terms, a “tenant-at-will”. The landlord must give you thirty (30) days’ written notice for you to leave.
- If you do not leave within those thirty (30) days, the landlord may file a “forcible detainer” triggering a court hearing, and the steps in the section above will apply. You must have at least three (3) days’ notice from the time you receive the notice about a court hearing until the time of that hearing.

In ANY case, your landlord cannot evict you for exercising a legal right, such as:

- Complaining to a government agency about the condition of the house or apartment or in retribution (“pay-back”) for something illegal the landlord did that you complained about, or:
- Because of your race, skin color, family status, national origin, sex or disability.

Last minute agreements with landlord:

- You may settle the disagreement with your landlord BEFORE the court hearing. If you do this, you should:
 - a. Write down the agreement;
 - b. Sign the agreement and have your landlord sign the agreement;
 - c. Make a copy of the agreement and keep it safe;
 - d. At the hearing, show the judge your agreement.

Security Deposits:

- If you are evicted and you do NOT owe the landlord money, the landlord must return your entire deposit.
- If you owe money, but less than the amount of the deposit, the landlord must return what is left of the deposit after subtracting what you owe.
- You must give the landlord your current address so that he or she can return your deposit (or a portion of it). If the landlord does NOT return what he or she owes you, you must take him or her to Small Claims Court to try to get your deposit returned. (Note: The judge at the EVICTION hearing CANNOT order the landlord to return what your landlord owes you.)