

Chapter 11

Rental Law and the Eviction Process (Forcible Entry and Detainer)



In Illinois, the law which defines the process of eviction in this state is known as the Forcible Entry and Detainer Act. The Forcible Entry and Detainer courts are known as Courts of limited Jurisdiction. This means that only claims for possession and rents can be heard. The court will not allow unrelated counter claims regarding the operation of the property. Therefore, a Forcible Entry and Detainer action is quick, simple and efficient. There are many “horror” stories about how difficult and lengthy an eviction can be. This is true in many cases when procedures are not followed. That being said, when a rental property owner/manager is prepared and follows the process, an eviction can proceed smoothly or be avoided all together. Anecdotal information from property managers and lawyers relates that in 9 out of 10 cases, after being served proper notices, the tenant moves from the unit without the need to proceed with the court hearing.

In order to ensure that your case is heard quickly, it is important that managers and landlords familiarize themselves with some of the basic procedures for proceeding with a forcible action. This type of court action can be handled by a private landlord without the assistance of an attorney. However, the court process can be complicated and confusing. It should be considered a wise and reasonable investment to hire an attorney. The retainer paid to an attorney may easily offset losses associated with a protracted eviction process for those unfamiliar with the law and court proceedings. This chapter was written with the assistance of Attorneys at Law, Laurel Hart and John H. Bickley III. This chapter should not be considered as a substitute for competent legal advice. The following is meant to provide some insight and answer some basic questions regarding the forcible process.

Resources

Forcible Entry and Detainer Act (Illinois Eviction Law)

<http://www.ilga.gov/legislation/ilcs/ilcs.asp>

Select “Illinois Compiled Statutes”

Scroll to and select “Chapter 735 Civil Process”

Select “735 ILCS 5/ Code of Civil Procedure”

Scroll to and select “Article IX – Forcible Entry and Detainer” (Part 1,2, and 3)

Illinois Legal Aid (information and forms, i.e.: 5-day notice, 10-day notice, etc.)

<http://www.illinoislegalaid.org>

Search "Landlord Tenant"

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 the 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 don't resolve problems quickly, you will find that you may jeopardize your ability to handle problems in the future. Most problem tenants exhibit non-compliance behaviors shortly after they move in. If you move quickly, you will find that tenants will stop believing that they can get away with non-compliant behaviors. Many landlords don't take action because they don't want to get involved in the legal system. However, the penalty for indecision can be high. For instance, if you accept rent from a tenant who is non-compliant you may lose your right to evict for the non-compliance at a future date. 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. You will also find that other residents will assume that they can also get away with similar behaviors. The end result may very well be deterioration in the value of the property and an inability to get good, high quality tenants. Don't wait. Implement a policy that ensures residents are treated fairly, yet deals with problems, in a consistent, yet forcible manner. Know your options. Understand the eviction process.

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

Yes, you can. However, proving drug dealing can be difficult. In order to increase your chances of successfully evicting this type of tenant, I would also recommend that you include a drug-free addendum in your lease. Of course, it's illegal to use or deal drugs, but putting it in your rental agreement reinforces the idea that property management is committed to upholding the law. The biggest hurdle you have to overcome in evicting a tenant for drug use, is providing that drug use is happening. If there has been a drug arrest in your building, the prosecuting attorney may be reluctant to allow police officers or other witnesses to testify in a civil eviction proceeding because of the fear that the criminal case may be jeopardized. However, many municipalities are not only participating in seeking to evict drug dealers from the communities, they are actively encouraging the landlord to take action. There are some things that you can do to bolster your case at court. Keep accurate records. Record the number of visitors that come and go into the apartment. Keep records of every disturbance which is reported from the building. Talk to your local police department regarding your suspicions. Ask the police to provide you with copies of police reports relating to disturbances at the building. Even if you cannot ultimately prove that the tenant is taking or dealing drugs, you can probably prove that his behavior has unduly disturbed other tenants and neighbors and is interfering with the neighbor's peaceful enjoyment of the premises.

Do I need an attorney?

Not necessarily. However, some areas of evictions 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 on continuances and ultimately save you money. Many eviction attorneys will charge only two or three hundred dollars for a simple eviction. As long as your lease contains a provision for recovery of attorney fees, you also may be able to have your tenant reimburse you for this cost.

If you do choose to file a forcible action without an attorney, take the time to become familiar with court procedures. Spend an hour in the forcible court before your cases is heard so that you can become familiar with the way these types of cases are handled. Many eviction cases are lost simply because the landlord is unfamiliar with the court process and does not have the proper paper work at the time of hearing.

Do I need to serve any notices on a tenant before I actually start 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 five days, the landlord will terminate the lease. It is important that the landlord not accept anything less than full payment of all amounts which are due and owing during this five day period unless very specific steps are followed. The first step in voiding the lease is the service of a five day notice that the lease is being terminated. The notice should state the reasons for eviction.

- A. 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 notice of the landlord’s intent to terminate the lease. Such a notice may be in the following form:
“You are hereby notified that in consequence of your default in “insert character of the default) of the premises now occupied by your being (here 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.”

No other notice is necessary to terminate the tenant’s lease. This type of notice can be used in cases where a tenant engaged in behavior which disturbs the peace, damages property or otherwise is prohibited under the terms of the lease.

- B. 30 day notices. 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. In addition, a thirty day notice is required in order to evict a unit owner who is delinquent in the payment of condominium assessments.

How do I serve these notices?

There are three basic methods for service of a notice on a tenant. (1) You can serve the notice on the person or a 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 for the tenant. (3) If not one is in actual possession of the premises, the notice can be posted on the door. Make sure that 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.

For unknown occupants, you may also serve the unknown occupant by posting the Notice on the premises to "Unknown Occupants."

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 with a lease?

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

- 1) A tenant should be served with the appropriate notice.
- 2) A Forcible Entry and Detainer action is filed.
- 3) The landlord must serve the tenant.
- 4) An order of possession should be entered at the court hearing.
- 5) A copy of the Order of Possession should be given to the tenant;
- 6) In the event the tenant does not move out in the time frame set forth in the Order of Possession, the order of possession must be placed with the Sheriff for eviction.

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

The most frequently used forms include:

- A. Five day Notice/ Notice of Termination of Tenancy
- B. Forcible Entry and Detainer Complaint
- C. Forcible Summons
- D. Order of Possession
- E. Notice of Posting
- F. Affidavit for posting

Which courthouse do I have to use when I want to file an eviction action?

Eviction actions for Aurora rental units must be filed in the perspective counties they are located in (DuPage, Kendall, Kane and Will).

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

The initial eviction case will be filed in the clerk's office. You will need to have your Complaint and Summons at the time of filing. The cost for filling a forcible entry and detainer case may vary from county to county. After the clerk files the case you will need to place the Summons for service with the Sheriff's office or a special process server.

What do I need to do before I go to Court?

The most important thing you need to do is to make sure that your tenant is properly served. There is nothing that a Judge can do until you obtain service on the Defendant. If the Sheriff cannot serve your tenant with legal papers, there are several options that will supplement the Sheriff's department. First, you can use a special process server. The special process server must be at least 18 years of age, not a party to the action, and licensed in the State of Illinois. The advantage of having your papers personally served is that you can get a monetary judgment against your tenant. This means that you can collect your debt more easily. If your main objective is to evict the tenant, you can also obtain service by "posting". Posting service allows you to obtain possession of the property, but not a money judgment. This type of service is accomplished by the filing of an Affidavit with the clerk's office. This Affidavit and the posting notice is file with the Sheriff. The Sheriff posts the summons at the Sheriff's office and sends a post card to the tenant. After ten days posting, service is completed and you can proceed with the entry of an Order of Possession.

What should I bring to Court?

There are several documents that are absolutely essential to a forcible case. These documents should be brought to every single court call. These documents include:

- an executed copy of the lease,
- a signed copy of your Notice;
- a copy of our complaint;
- a copy of your proof of proper service on the Defendant; and
- any other documents which support your claim against the tenant.

If your claim is for non-payment of rents, be sure and have a list of payments that have been made by the tenant. Many tenants will try and confuse the issues by producing a cancelled check and suggesting it was for payment of rent for the months in question. You may find that this check was actually used for back rental payments. Be organized. You will find that forcible court is what is commonly called a "high volume" courtroom. There may be thirty or forty cases on a typical morning court call. Watch the cases that are called before you. You will find that each judge has his or her own procedures. Try to organize your documents in a way that will complement the Judge's procedures.

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, our 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 can not 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. The fee for

eviction may vary by county. Depending on the County it may take one to several weeks for the Sheriff to actually come out to the unit and evict the tenant. You will also need to be available on the day of the eviction. You may be required to bring your own people to assist with the physical eviction of the tenant's belongings, while the Sheriff supervises and secures the premises thereafter. You may also need to have a locksmith present to change the locks after the Sheriff has completed the physical eviction.

I am on the Board of a Condo Association. Can we do anything about a unit that is occupied by a tenant who refuses to abide by Association rules?

Absolutely. The Condominium Property Act provides that all of the Associations declaration, bylaws and rules and regulations shall apply to a tenant and shall be incorporated into any lease executed for a unit located in the Association. The Board of managers may proceed directly against a tenant at law or in equity, or under the provisions of the forcible act, for any other breach by tenant of any covenants, rules, regulations, or bylaws. This means that even if a landlord won't take action against a tenant who is violating Association rules, the Board can. In addition, the Board can charge back all of the attorney fees, court costs and expenses in removing the tenant from the property.

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

Yes. Carefully drafting of your lease can increase your chances of successfully managing your tenants. Include a drug free addendum in your lease. Make it clear that drug use on the property will not be tolerated. Include a provision that clearly states that Tenants will be held responsible for the conduct of their guests as well as for their own conduct. The Illinois Supreme Court has stated that an owner can evict a tenant whose guests violate the leasing rules. Ensure that the tenant will be responsible for ensuring that anybody in his unit will conduct themselves in a manner that will not interfere with the neighbor's peaceful enjoyment of the premises.