
THE THREE-DAY NOTICE BECAUSE OF A TENANT'S VIOLATION

The landlord can serve you with a three-day notice if you or another tenant has violated the terms of your lease or rental agreement.

a. Kinds of Three-Day Notices

There are basically three types of three-day notices.

Three-Day Notice to Pay Rent or Quit:

If you fail to pay your rent on time, the landlord must serve a three-day notice on you before he may sue to evict you on that ground. The notice must tell you to pay the rent or move in three days. The notice must state the amount of rent you must pay to avoid eviction, and this amount may not be more than what you actually owe in rent. (The three-day notice can ask for less than what you owe, but not more.) It must not, for example, include late charges, check-bounce or other fees of any kind or interest or utility charges. The landlord can deduct these amounts from the security deposit or sue for them in small claims court.

Some judges also require landlords to include the dates for which the rent is due. Because rent is almost always due at the beginning of a month (or other rent period), the landlord is entitled to request the total rent for the period for which rent is late, less any partial payments you have made. Thus, if your \$350 rent is due on the first of the month, the landlord has the right to ask you in a three-day notice for the entire \$350 on the second day of the month¹.

If you pay before the end of the three days, the notice is cancelled, and you don't have to leave². After three days, the landlord may refuse your money and proceed with the eviction. If he accepts the rent after the three-day

period, however, he waives his right to evict for the late payment³.¹⁰

Three-Day Notice to Perform Covenant (Correct Violation) or Quit:

If you are accused of violating some other provision of your lease or rental agreement, the three day notice must tell you to stop the conduct if it's curable. For example, suppose the landlord believes that you have a dog in violation of a lease provision which prohibits pets. The notice must say in effect, "Either get rid of the dog in three days *or* move out in three days." In all cases, the violation of the lease or rental agreement must be substantial, not minor, in order to justify evicting you from your home⁴.

Unconditional Three-Day Notice to Quit:

A landlord can serve you with a three-day notice to vacate if she believes that you are committing "waste" (that is, wrecking the place), creating a "nuisance" on the premises (for example, dumping garbage in the backyard or seriously and repeatedly disturbing other tenants or neighbors) or using it for an illegal purpose (such as to sell illegal drugs). In this situation, however, the notice need not give you the alternative of stopping your misbehavior⁵. The landlord can also give you this kind of three-day notice if you sublet the premises, contrary to a lease or rental agreement provision prohibiting sublets.

b. How a Three-Day Notice Must Be Served on You

To be effective, the three-day notice must be properly served on you⁶. First, the landlord (or

¹ CCP § 1161(2); *Werner v. Sargeant* (1953) 121 Cal.App.2d 833.

² CCP § 1161(3).

³ EDC Associates Ltd. v. Gutierrez (1984) 153 Cal.App.3d 169.

⁴ McNeece v. Wood (1928) 204 Cal. 280, 285. CCP § 1161(3).

⁵ CCP § 1161(4).

⁶ If there is more than one tenant, it is legally sufficient for a landlord to serve just one. *University of Southern California v. Weiss* (1962) 208

his agent) must try to find you and hand it to you. If he tries to find you at home and at work but can't, he may then hand it to "a person of suitable age and discretion" at your home or work and also mail a copy to you. If he can't find someone at your home or work to leave it with, then—and only then—may he serve it on you by the "nail and mail" method. This involves posting a copy in a conspicuous place on your premises, such as the front door, and mailing another to you⁷

Landlords are often sloppy about following these procedures. It is common, for example, for a landlord to make one attempt to find the tenant at home, and no attempt to find the tenant at work, and then simply nail the notice to the tenant's door and mail a copy. This is not proper service. Sloppy landlords often fall back on a legal doctrine that states that if the tenant actually receives the notice, it doesn't matter that it wasn't served properly. The theory is that actual receipt of the notice "cures" any defect in service. If the case later goes to court, the landlord can prove you received the notice by calling you to the witness stand and asking you. For this reason, it is usually unwise for a tenant who actually received the notice to rely on a landlord's faulty service of notice as a defense.

WHO SIGNED YOUR 3-DAY PAY OR QUIT NOTICE?

Take a look at the signature on your three-day notice for late rent. If it is signed by a lawyer hired by your landlord to handle an eviction, or by a management company who manages the property, you may be able to sue on the grounds that the demand violates the federal Fair Debt Collection Practices Act (15 U.S.C. § 1692 and following).

The Fair Debt Collection Practices Act governs debt collectors and requires, among other things, that debtors be given 30 days in which to respond to a demand for payment. A federal appellate court in New York has ruled that when

a New York attorney signs a pay or quit notice, he is acting as a debt collector. Consequently, the tenant must have 30 days to pay or quit, regardless of the state's three-day provision. (*Romea v. Heiberger*, 988 F.Supp 712 (S.D.N.Y. 1997).)

Although this ruling governs New York landlords only, there is no reason why tenants in other states could not urge the same reasoning when they are presented with three-day notices signed by a landlord's lawyer. To raise this issue, a tenant would have to file a separate lawsuit, apart from the eviction proceeding, alleging a violation of the federal law. Filing a lawsuit of this nature may not stop the eviction, however.

To date, no such argument has been raised in California, but it's only a matter of time. If you're curious, check with the Update section on the Nolo website (www.nolo.com), or contact the Department of Consumer Affairs, Consumer Assistance Office, 400 R Street, Room 1040, Sacramento, CA 95814, 916-445-4465; 800-952-5210.

c. Counting the Three Days After Service

You have three full days to comply with the demands in a three-day notice. If you do comply, then the landlord may not sue to evict you—unless it's an Unconditional Three-Day Notice to Quit, where your compliance or change in behavior won't make a difference.

If you receive an unconditional notice or don't comply with a three-day notice to pay rent or correct some other violation, the landlord may file his lawsuit on the fourth day (or later). The date of service is the date you were handed the notice, if you were personally served. If the landlord left the notice with someone else at your home (or office) or posted a copy on the premises and mailed another copy, the date of service is the date the landlord took that action.

Cal.App.2d 759, 769, 25 Cal.Rptr. 475.

⁷ CCP § 1162.

It doesn't matter that you didn't actually receive the notice until later⁸.

To count the three days, do the following:

- Ignore the date of service and start counting on the next day.
- If you were served personally, count three days.
- If you were served by "nail and mail," count three days. (Note: There used to be some confusion about whether to add an additional five days to account for time in the mail. It is now clear that you are not entitled to the additional five days. (*Losornio v. Motta*, 67 Cal.App. 4th 110, 78 Cal.Rptr.2d 799 (1998).)
- If the third day falls on a Saturday, Sunday or holiday, ignore that day and move on to the next business day.

EXAMPLE 1

You are served with a three-day notice on Wednesday. To count the three days, do not count Wednesday; begin with Thursday. This makes Saturday the third day. But Saturday is a holiday, and so is Sunday. So the third day is Monday. Therefore, you have until the end of Monday to comply. If the landlord files his eviction lawsuit before Tuesday, it should be thrown out of court if you raise the issue. (You would do this by filing a Demurrer—see Section F5, below.)

EXAMPLE 2

You're served on Friday. Saturday is the first day, Sunday is the second day and Monday is the third day. Neither of the weekend days extends the three-day period.

d. After the Three Days

If the three-day notice does not say that your tenancy will be "forfeited" if you don't pay the rent or correct a violation in three days, then you may avoid eviction by offering to pay the rent or

comply with your rental agreement after the three days runs out—so long as you do so before the landlord files an eviction lawsuit⁹.

(Obviously, you won't have this choice with unconditional notices.)

EXAMPLE

On May 5, the landlord serves you with a three-day notice to pay \$300 rent or vacate. It does not say anything about your tenancy being "forfeited" if you fail to comply with the notice. The three days run out on May 8. On May 10, you try to give the \$300 to the landlord, but she returns it. On May 15, she files a lawsuit to evict you. If you can convince the judge (in your "Answer"—see Section F6, below) that you tried to pay the rent on the 10th, you should win the case.

⁸ *Walters v. Meyers* (1990) 226 Cal.App.3d.Supp 15, 277 Cal.Rptr. 316.

⁹ *Briggs v. Electronic Memories & Magnetics Corp.* (1975) 53 Cal.App.3d 900, 905.