

When can a landlord evict a residential tenant?

A landlord must use the courts to evict a residential tenant. It is unlawful for a landlord to remove a tenant without first obtaining a court order to do so. Before asking a judge to evict, however, the landlord must give the tenant written notice that he or she is terminating the rental agreement. There are two reasons a landlord can use to terminate a rental agreement: “good cause” and “no cause”.

Private landlords who have month-to-month or week-to-week tenants can usually terminate a rental agreement for “no cause”—so long as the reason for the termination is lawful.

How much notice must a landlord give in order to terminate a rental agreement for “no cause”?

A month-to-month tenant is entitled to a minimum of 30 days’ written notice of the landlord’s intention to end the agreement. A week-to-week tenant is entitled to one week’s written notice. A tenant who believes he or she got a “no cause” termination notice for an unstated, unlawful reason should get legal advice immediately.

When does a termination notice start to run?

If a notice is delivered in person, the tenant starts counting the notice period at the time he or she gets the notice. If the notice is mailed and posted, the date of the posting begins the notice period—not the date the tenant receives the mailed copy.

When is it unlawful for a landlord to terminate a rental agreement?

It is not lawful to terminate a rental agreement, including a month-to-month or week-to-week rental agreement because:

- a tenant requested repairs or complained about other things that the landlord is responsible for
- a tenant “abated” rent because of a significant repair need at the rental unit
- a tenant reported a building or fire code violation to an official
- the landlord learns that the tenant is involved in organizing or is a member of a tenants’ union
- the landlord learns that the tenant has filed a housing discrimination complaint against the landlord
- a tenant succeeds in winning a case in which the landlord attempted to evict the tenant

- a tenant has testified in court on behalf of another tenant in a case against the landlord

These reasons make a termination unlawful even if the landlord says it is for “no cause”. If a landlord tries to terminate the rental agreement for any of these reasons for at least six months after any of these reasons arises, the law considers them “retaliatory”. Even if a landlord uses other methods to “encourage” a tenant to move—such as reducing or stopping utilities or other services or increasing the rent or fees, a tenant who shows a court that the motive was retaliation will be allowed to remain in the unit, and should be awarded damages and a civil penalty against the landlord.

There are other reasons to evict that are unlawful because they violate the tenants’ civil rights. A landlord is unwise to try to terminate a rental agreement

- after a tenant rebuffs sexual advances by the landlord or an agent of the landlord or
- because of the tenant’s religion, race, national origin, sex, family status, sexual orientation or identity, disability or ethnic background.

A landlord who tries to evict or reduces services or engages in harassing behavior to get a tenant to move for these reasons can be liable

in a housing discrimination lawsuit for thousands of dollars in damages and can be enjoined from evicting the tenant. For more information about illegal housing discrimination, see LawHelpNewMexico topic, “Housing Discrimination”.

When can a landlord terminate a rental agreement for good cause?

Every landlord always has the right to terminate a rental agreement for a legitimate “good cause”. Like “no cause” terminations, good cause terminations must be for a lawful good cause—not for retaliation or illegal discrimination. Private landlords who use fixed-term rental agreements can terminate those agreements only for good cause during the term of the agreement. In government-operated public housing and in some kinds of rentals with government subsidies, the landlord may use only good-cause terminations.

“Good cause” means a violation of important parts of the rental agreement or valid rules by the tenant. Such violations include:

- not paying rent;
- failing to tell the landlord that the tenant will be gone for more than seven days if the rental agreement requires notice;

- allowing others to live in the unit without the landlord's consent when consent is needed;
- use of the rental for illegal activities
- use of the rental for business or other purposes not allowed by law or the rental agreement
- conduct that threatens the health or safety of others
- substantial damage to the property of the landlord
- repeatedly or excessively disturbing other tenants
- other violations of the rental agreement or house rules
- keeping an unauthorized pet

Depending on the type of violation and the type of notice the landlord gives, sometimes the tenant has the right to correct the problem the landlord is complaining about so that the tenant can continue to live in the rental. In some cases, the tenant is not guilty of the conduct the landlord is complaining about; the parties may be able to work out the problem informally. If not, the landlord and the tenant will have to give evidence to a court to decide if the tenant must leave.

What are the “good cause” notice periods?

The length of the notice period, and the right of the tenant to correct the problem, depends on the cause that

the landlord claims as the basis to terminate the tenancy.

When a tenant has not paid rent on the day it is due, the landlord can deliver to the tenant a written notice (or post a notice on the main entry door to the tenant's unit) the next day that gives the tenant three days in which to pay the rent so as to avoid having to go to court to face eviction. If the tenant offers the rent within the three-day notice period, the landlord must accept it and allow the tenancy to continue. A tenant who offers late rent within the time limit should have a witness to the attempt to pay.

For most other kinds of lease violations, the landlord can give a for-cause written notice of the violation. The notice must state very specifically what the violation is, the date the violations occurred, and the date the notice is issued. The notice must tell the tenant he or she has the right to “cure” the violation within seven days beginning the day after receiving the notice. The landlord can deliver the notice, or post the notice on the tenant's front door and then immediately send a copy of the notice in the mail. The date of the posting starts the time period for the correction. This kind of notice must be delivered or posted and sent within 30 days of when the problem occurred or when the landlord first learned about it or the notice is no longer valid. A tenant who does “cure” should let the

landlord know in person or by phone, and follow up with a written statement that the problem has been fixed. It is smart to keep a copy of this report to the landlord. If the seven-day notice is for something like a loud party that disturbed neighbors and that is now over, the tenant need do nothing to “cure” except refrain from having more parties. If the tenant cures within the seven-day period, the tenancy should not end. If the tenant does not cure the problem within the period allowed, the landlord can start the court eviction process. The court does not have to let a tenant stay in the rental if the tenant cured the problem after the deadline passed. In a few cases, a tenant may have started to fix the problem but was unable (for reasons outside the tenant’s control) to finish curing before the time limit. If the court believes the tenant made a good-faith effort to fix the problem as quickly as possible, the tenant may be allowed to stay.

If the tenant violates the rental agreement again within six months after receiving a seven-day notice, the landlord can give another seven-day notice. This time, however, the notice does not have to allow the tenant to cure the problem. If there are no problems within the six months after the original notice, the landlord can no longer use that notice as the basis for a later seven-day notice without giving the tenant the chance to fix the problem.

In some cases, the landlord may have given a seven-day notice for such minor problems that they do not qualify as reasons to evict the tenant. The tenant should get legal advice as soon as possible about how serious a claim must be for it to allow a landlord to terminate the agreement.

For a very few kinds of lease violations, the tenant gets a very short notice—and no opportunity to cure. This notice gives the tenant three days in which to move out after the landlord claims that the tenant has committed a “substantial violation”. In this kind of notice, the landlord says that the tenant or someone at the rental with the tenant’s consent committed a serious crime or the equivalent of a crime. Just as with a seven-day notice, the landlord must state very clearly what the violation was that gave rise to the notice, including times and dates.

Some landlords use this notice when they have no right to do so—when the violations they are complaining about were not serious and were problems the tenant had the right to cure. It is important for the tenant who receives this kind of notice to get legal help right away to determine if the notice was justified. If it was not, the landlord likely will be unsuccessful in getting the court to evict the tenant based on the notice.

Can a landlord ever evict a tenant without going to court first?

No. Some landlords try to “evict” by locking tenants out of their homes, shutting off utilities, even claiming they have already been to court without notifying the tenant. A few landlords are even able to convince police officers to accompany them and assist them in illegal attempts to evict. A tenant should demand to see any court order the landlord claims to have obtained, and to call the police if the landlord tries to remove the tenant physically from the home.

The tenant should report any police officer who offers to help the landlord “encourage” the tenant to move without first going through the court process. The tenant should get legal advice and assistance as soon as possible to find out how to protect his or her rights in these situations.

Are the termination rules the same in public housing and in mobile home parks?

The definition of “public” housing can include housing operated by a housing authority or other government entity, private housing in which landlords accept tenants who receive a rent subsidy, and various kinds of

housing that are government-funded and operated by private persons. The rules are similar among these different types of housing, but they are not the same. Tenants in these types of housing may have different rights that they should talk about with an attorney as soon as they receive a notice of termination.

The rules for terminating rental agreements in mobile home parks also differ from non-park rentals; getting legal advice about tenants’ rights in parks is important.