

Sample Q& A: Housing Law

Eviction – proper notice



Q

I never got served by the sheriff court papers on eviction. All I got is one letter. My sister is also living here with me. I didn't see the letter until last night when I got home from work. It was on my bed. I never got served by the sheriff for the papers to go to court for eviction. All I got was this letter.

-- Tammy G., Boone County

A

Hi Tammy, I am sorry to hear about your housing issue. One question that could be key to your case is the letter that was found on your bed. Do you know how the letter got there for sure? It could help your case if your landlord did not properly give you the eviction notice.

Illinois Legal Aid Online has a nice summary on how the landlord may give you such a notice: [How your landlord can you an eviction notice:](#)

- By mailing the eviction notice to you by certified mail with a return receipt;
- By giving the eviction notice to you personally; or
- By giving the eviction notice to someone over the age of 13 who lives in your home.

Also important is what the eviction notice says. If the notice does not say the proper things or have the proper dates listed, then you will be able to get the case dismissed. This gives you more time. Again, Illinois Legal Aid Online provides a summary of what the notice must say: [Written eviction notices:](#)

- The address of the apartment;
- If it is a 5 day notice, the amount of rent due and who it should be paid to;
- If it is a 10 day notice, the rule in the lease that was broken;
- That the tenant's right to stay in the apartment will come to an end at the end of the notice period;
- The number of days after the notice is given that the tenant's right to stay in the apartment will end; and
- The landlord's signature.

I highly recommend showing up for any court dates for which you are summoned. Showing up will strengthen your chances of a good outcome. I also recommend having a lawyer show up with you. Prairie State Legal Services has a Fair Housing Program. All of their contact can be found on their website: [Prairie State Legal Services](#)

Best wishes, Nicole

Applicable Law

Eviction Act, [735 ILCS 5/9, 101](#) et seq.

Landlord and Tenant Act, [765 ILCS 705/5](#) et seq.

Background of the Law

Notice to Terminate

All tenants are entitled to a notice of termination of tenancy or demand for rent before the lessor may bring an eviction action.

Exceptions

No notice of termination of tenancy is required at the expiration of the lease period. [735 ILCS 5 / 9-213](#). However, if the Chicago ordinance (CRLTO) governs the rental agreement, the landlord must notify the tenant in writing at least 30 days prior to the date of termination of the lease or the landlord's intention not to renew the lease. [Section 5-12-130\(j\)](#)

Some courts have held that notice may not be required if the tenant has agreed in the lease to waive it. Lessors may waive their right to assert the waiver of notice provision in a lease. See e.g., [Avdich v. Kleinert](#), 69 Ill.2d 1, 370 N.E. 2d 504, 12 Ill. Dec. 700 (1970). A lease provision that waives the right to notice of termination is not enforceable under the CRLTO. [Section 5-12-140\(d\)](#).

Written Notice

Notices of termination must be in writing and describe the premises with reasonable certainty.

Timing of Notices

Notices must afford the tenant the full number of days required by statute. [Hoefler v. Erickson](#), 331 Ill.App. 577, 73 N.E. 2d 448 (1st Dist. 1947). The date of service is excluded, and if the last day falls on a Saturday or Sunday or holiday, it is also excluded. [5 ILCS 70 / 1.11](#).

Service of Notice

[735 ILCS 5 / 9-211](#) Any notice of termination of tenancy, including a five-day or thirty-day notice must be served by one of the following means:

- Personal service on the tenant;
- Service on a person 13 years old or older if residing on the premises or in possession of the premises;
- Certified or registered mail, with return receipt; or
- Posting, but only where no one is in actual possession.

In [Prairie Mgmt. Corp. v. Bell](#), 289 Ill. App. 3d 746, 752, 682 N.E.2d 141, 145 (1st Dist. 1997), the court held that the methods of service identified in this statutory provision are not meant to be exhaustive. Furthermore, a tenant's acknowledged receipt of the notice cures any defect in the landlord's manner of service. *Id.* However, in construing the posting

section of the statute, the Appellate Court found that there was no jurisdiction over a tenant who was in actual possession of the premises and whom the landlord served by posting. [*Figueroa v. Deacon*, 404 Ill.App.3d 48, 935 N.E.2d 1080 \(1st Dist.2010\)](#).

Legal Aid Referrals

Prairie State Legal Services – Fair Housing Project, (888) 347-7757

Help is available for the following counties: Lake, McHenry, Winnebago, Boone, Peoria, or Tazewell

Link clients to the “Get Legal Help” page: <https://pslegal.org/psls-apply-online.asp>

Relevant ILAO Content

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[Giving a tenant an eviction notice](#)

[Filing an eviction case](#)

[Timeline for an eviction case](#)

[Responding to an eviction case](#)

[If you don't move out by the date ordered by the court](#)

For legal professionals

[Landlord and tenant manual](#)