

# **NILES POLICE DEPARTMENT CRIME FREE HOUSE PROGRAM**

## **When to Serve Notice**

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**Disclaimer:** To ensure that you are following all local, state and federal laws it is encouraged that you contact an attorney for proper legal advice.

### **Written Notices Required**

Illinois law generally requires a written eviction notice. The landlord must serve the tenant with the written notice before filing a court case. There are two exceptions:

- A lease can waive the right to notice. Ill. 2d. 1, 370 N.E. 2d 504 (1977); *Frocks v. Ziff*, 397 Ill. 497, 74 N.E.2d 699 (1947);
- If the lease sets a fixed time for its expiration, no written notice is required. 735 ILCS 5/9-213.

If the landlord gives a notice anyway, it must comply with the statute. Local ordinances can also require a written notice, as is the case in Chicago.

### **Service of Notices**

Service of notices is governed by 735 ILCS 5/9-211. They can be served in one of three ways in most cases:

- Personal service on the tenant
- Personal service on someone at the tenant's home, more than 13 years old
- Mailing to the tenant by certified or registered mail, with a return receipt from the tenant

If no one is living at the tenant's house, the landlord may post the notice.

If the tenant gets the notice, improper service may be waived. *Prairie Management Corp. v. Bell*, 289 Ill. App.3d 746, 682 N.E.2d 141 (1<sup>st</sup> Dist. 1997). Proof of nonreceipt can be difficult if the service of notice is proper on its face. Sometimes the landlord acknowledges improper service, by, for example, posting the notice when the tenant is in possession.

### **Contents of Notice**

**Premises Described** - The notice must describe the premises well enough so they can be identified. *Brite-House Co. v. Cary*, 345 Ill. App. 509, 104 N.E.2d 125 (1<sup>st</sup> Dist.1952); *Worley v. Ehret*, 36 Ill.App.3d 48, 343 N.E. 2d 237 (5<sup>th</sup> Dist. 1976).

**Notice of Termination** -The notice must say that the tenancy will be terminated. It does not have to use the word "terminated," but it must make clear that at the end of the notice period, the tenant will lose rights to the home.

Certificate of Service

The affidavit of service does not need to be completed on the copy given to the tenant. After the tenant is served, the landlord should complete the affidavit of service and sign in front of a notary. A copy of the notice with a completed affidavit of service and a notary's signature must be filed with the court file.

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**Dates**

**Date of Service**

Notices may not be served until after the default, if the notice is based on a default. Regardless of the date on the notice, the notice period does not begin to run until after service.

**Date of Termination**

Notices do not have to give the date on which the tenancy will terminate. They must give the number of days after service of the notice that the tenancy will terminate. The landlord may give more days than the statutory requirement.

Even after the tenancy is terminated, the landlord still must proceed with a court order for the eviction. It is the termination of the tenancy that gives the landlord the right to file a court action seeking eviction.

Until the full notice period given for the notice runs, the landlord cannot file in court for an eviction action. *Hoefler v. Erickson*, 331 Ill. App. 577, 73 N.E. 2d 448 (1st Dist. 1947).

**How to Count the Period**

The notice period is counted starting with the day after the notice is served. 5 ILCS 70/1.11. The last day of the period is also excluded if it falls on a Saturday, Sunday, or holiday. If the tenant was served by mail, the notice period starts from the day after the tenant actually received the notice. *Avdich v. Kleinert*, 69 Ill.2d 1, 370 N.E. 2d 504 (1977).

**Landlord's 5-Day Eviction Notice**

735 ILCS 5/9-209. A five day notice is given for nonpayment of rent. It must state the amount of rent due and give five days for the tenant to pay the rent.

**Amount of Rent Due**

**What Rent Is Due**

The notice can only ask for the rent that is actually due at the point the notice is issued.

The notice must give a definite amount of rent as due and owing. *Weinberg v. Warren*, 340 Ill. App. 365, 92 N.E.2d 217 (1st Dist. 1950).

Only rent can be included in the notice. Note, though, that "rent" can potentially include a number of other charges other than just use of the property, including things like utility bills, depending on how the lease is written. *Am. Mgmt. Consultant, LLC v. Carter*, 392 Ill. App. 3d 39, 46 (3d Dist. 2009)

**If the Tenant Owes Less than Demanded**

If the tenant owes less money than the landlord has demanded, the tenant needs only to pay the actual rent money due and owing to defeat the eviction notice. The tenant must pay all that is due, however; payment of less than what is due will not defeat the eviction, even if the landlord demands more than what is owed. *Elizondo v. Medina*, 100 Ill. App. 3d 718, 427 N.E. 2d 381, 56 Ill. Dec. 301 (1<sup>st</sup> Dist. 1981).

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**Tender** - If the tenants can pay the rent due, they should tender the money. Tender is when a tenant offers the rent due to the landlord. Ideally, tender should be made in the presence of witnesses. The tenant should get a receipt if the landlord accepts the money. Tender must be made before the five days are up. Tender will defeat the eviction action even if the landlord refuses the money. *Madison v. Rosser*, 3 Ill. App. 3d 851, 279 N.E. 2d 375 (1<sup>st</sup> Dist 1972).

**Full payment** - If the notice does not contain language saying only full payment will waive the notice, then the landlord's acceptance of even partial payment can be argued to reinstate the tenancy.

735 ILCS 5/9-210. A 10-day notice is given for violating any lease provision. There is no right to cure a 10-day notice under state law. There is a right to cure under some ordinances. Acceptance of rent for a period after the notice is issued can waive the notice.

### **Typical Landlord's 10 Day Eviction Notice.**

#### **Lease violations**

The violation cited must be a violation of the lease, not a side agreement. *Knaus v. Beuck*, 331 Ill. App. 356, 73 N.E. 2d 160 (1<sup>st</sup> Dist. 1947). Landlord need not specify conduct but must give the "character of the default," or a general description of what provision of the lease was violated. Any ambiguities in the lease are construed against the drafter.

Where the 10-day notice is based on nonpayment, the Illinois Supreme Court has permitted the tenant to cure by tendering the rent within the 10 day period. *Woods v. Soucy*, 166 Ill. 407, 47 N.E. 67 (1897).

Repeated nonpayment or late payment of the rent could also be grounds for a 10-day notice, possibly without a right to cure.

#### **Annual Leases**

Landlords are required to give a minimum of 60 days' notice of the termination of a year-to-year lease, and no more than six months' notice. 735 ILCS 5/9-205.