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Evictions

Tenant: a person who rents or leases a house, apartment, mobile home, or storage space
Landlord: an individual person, persons, or business that owns, manages, and maintains a property

Reasons for an Eviction

- Major Lease Violations:
  - Failure to pay rent (most common); dollar amount past due (late fee) is most often subject to landlord's discretion
    - *Can I not pay rent if a repair isn't made?* A tenant can withhold rent by depositing it in a separate account and show the good faith desire to pay their rent. There are strict rules regarding withholding rent; it's advisable to seek legal guidance prior to withholding rent.
  - Property Damage: damage caused by the tenant and/or guests (determined by the landlord)
  - Illegal or Drug related activity either on the property or by the tenant
  - Expiration of Lease: refusing to leave a dwelling after a lease has expired
- Minor Lease Violations: includes things such as unauthorized pets, extended or unapproved guests that are not on the lease, unapproved subletting, improper use of a home for a business without prior landlord knowledge and approval, or noise and nuisance complaints.

Eviction Notice Process

- It is important to note that the ONLY lawful way for a landlord to evict a tenant is to obtain a court order, called a "forcible entry and detainer", signed by the circuit court or magistrate judge. The judge will assign a date when the tenant must be out.
- After the initial notice is served, the tenant has three (3) days to vacate the property. If the tenant does not leave, the next step for the landlord is to file a lawsuit for eviction, called a "Summons and Complaint", which requires the tenant to acknowledge the lawsuit and respond with a written answer that is properly filed and served. If the tenant chooses to fight the eviction, they must respond to the Summons and Complaint within the timeframe listed.
- Law enforcement may get involved if the tenant refuses to vacate the property after all the steps and measures to resolve the issue have been completed.
- **NOTE* A landlord CANNOT lock a tenant out of their home, take their property, or shut off essential utilities.*
- A landlord is not able to force a tenant to move by raising rent, decreasing services, or start eviction because of incomplete repairs to the home or complaining to a governmental agency about repairs.
- If a tenant willingly vacates within the first three (3) days, the eviction is complete and no further action is needed.

Federal or state assistance programs may require different notice periods.

For more information, call 211 or search our online database:

- www.helplinecenter.org/2-1-1
    - Enter your zip code
        - Select Housing/Shelter category

Sources:

- Termination of Lease by Tenant, SD Codified Laws: https://sdlegislature.gov/Statutes/Codified_Laws/2065579
- Termination of Lease by Landlord, SD Codified Laws: https://sdlegislature.gov/Statutes/21-16
- https://www.minnehahacounty.gov/dept/so/divisions/civil/eviction_process.php
- https://consumer.sd.gov/fastfacts/landlordtenant.aspx

Disclaimer: This HelpSheet is developed by the Helpline Center. HelpSheets provide a brief overview of the designated topic. For more information, call 211 or text your zip code to 898211.

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