

# EVICTATION NOTICE NOTICE NON-PAYMENT OF RENT

# The Summary Eviction Process and Common Defenses

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**According to 2022 eviction data reported to the Nevada Supreme Court, 99 percent of new Nevada residential evictions use the summary eviction process, amounting to roughly 60,000 evictions each year. Due to Nevada's unique filing structure, the true number of tenants who receive summary eviction notices is estimated to be far greater, but the actual data is undeterminable. While a formal eviction process exists, summary eviction is the de facto eviction process in Nevada.**

This article discusses the summary eviction process for nonpayment of rent and no-cause/for-cause residential evictions, in addition to explaining common defenses generally recognized by the justice courts. Though many of the processes overlap, this article does not address weekly rentals, subsidized housing, or mobile home park rentals. While Nevada statutes outline the summary eviction process, application of those statutes varies widely between justice

courts, even justice courts within the same county; *therefore, it is imperative attorneys contact the relevant justice court directly for accurate information on the court's current processes and filing timelines.*

## Overview

As discussed in greater detail below, summary eviction begins when a landlord serves a tenant with a summary eviction notice. Pursuant to NRS 40.280, a summary eviction notice must be served by a sheriff, a constable, a licensed process server, or an agent of a Nevada-licensed attorney. The notice can be served personally, left with a person of suitable age and discretion at the residence or usual place of business and mailed, or posted in a conspicuous place and mailed. The statute does not require that the tenant receive a declaration of service with the notice, and in practice, the declaration of service is often included but left blank.

*The summary eviction notice is not simultaneously filed with the court, in most jurisdictions.* If the eviction is for nonpayment of rent, only one notice needs to be served. For all other evictions, a second notice of unlawful detainer must be served before an eviction can proceed. The tenant has three options: (1) comply with the notice (i.e., move out or remedy the issue); (2) file a tenant affidavit in justice court stating a legal defense or seeking additional time, which creates an eviction case with the justice court; or (3) do nothing.

Once the time set forth in the notice(s) expires, the landlord can file a landlord affidavit with the court, and the court must set a hearing on the eviction if the tenant first filed a tenant affidavit. At the hearing, the judge will determine if eviction is appropriate under Nevada law, and if a lockout order is issued, the tenant will have an eviction record. If no tenant affidavit is filed, the court will usually grant the eviction immediately and issue a lockout order.

## Nonpayment of Rent Evictions

Pursuant to NRS 40.253, if a tenant is in default of rent, the landlord may serve the tenant with a notice (e.g., a Seven Day Pay-Rent-or-Quit notice) stating a default exists and the tenant must either pay rent, leave, or contest the default by filing a tenant affidavit in the appropriately listed justice court within seven judicial days. The notice must identify the court with jurisdiction over the matter and advise the tenant: (a) of the right to contest the matter by filing a timely tenant affidavit; (b) that if the court finds the tenant guilty of unlawful detainer and issues an order, law enforcement will remove the tenant 24-36 hours after the posting of the order; and (c) that a tenant can seek relief, under NRS 118A.390, for unlawful removal or willful interruption of essential services.

The notice must also contain the amount of rent owed. Under Nevada Revised Statute (NRS) 118A.150, rent is defined as "all periodic payments to

be made to the landlord for occupancy of a dwelling unit,” which includes late fees, but not utilities, legal fees, property damages, etc.

If the tenant cures the default within seven judicial days, the tenant should demand a receipt, which the landlord must provide pursuant to NRS 118A.250 or the tenant can withhold rent. If the tenant files a tenant affidavit, the court will either set a hearing once the landlord files a landlord affidavit or seal the eviction automatically if the landlord fails to pursue the eviction after 30 days. Finally, if the tenant does not file a tenant affidavit with the court, the court will issue a lockout order once the landlord files a landlord affidavit.

### No-cause Evictions

Pursuant to NRS 40.251, a landlord can evict a tenant not protected by a lease for “no-cause.” A no-cause notice provides the tenant 30 days to leave the property.

The notice must be served and contain information stating tenants 60 or older, or tenants who suffer from a disability, may receive an additional 30 days to leave the property upon submitting a written extension request with proof of age or disability.

The tenant who receives such a notice can leave within 30 days, request additional time, or wait for service of the next notice: the unlawful detainer. The unlawful detainer, which provides the tenant five judicial days to either vacate the property or file a tenant affidavit, must identify the court with jurisdiction over the matter and advise the tenant of: (a) the right to contest the matter by filing a timely tenant affidavit; and (b) the right to request a stay of eviction, at the court’s discretion, for up to 10 days under NRS 70.010. At this point, the tenant can either file a tenant affidavit and wait for the landlord to file a landlord affidavit, which would trigger a hearing, or the tenant can wait for the lockout order once the landlord files an affidavit.

### For-cause Evictions

For-cause evictions follow the same notice structure as no-cause evictions: the initial notice identifies the reason for eviction and the subsequent unlawful detainer allows the tenant to file a tenant

affidavit to contest the eviction. Under NRS 40.2514, a landlord can evict a tenant for assigning or subletting the premises contrary to the lease, committing waste, running an unlawful business, or being a nuisance, by serving the tenant with a three-day notice identifying specific instances of the alleged violation(s). Under NRS 40.2516, a landlord can evict a tenant for violating the lease by serving the tenant with a five-day notice identifying specific instances of the alleged violation(s) and lease provision(s) violated; however, the tenant can cure the violation(s) to avoid an eviction. Finally, under NRS 40.251, a landlord can evict an at-will tenant by serving the tenant with a five-day notice.

After the tenant receives the subsequent five-day unlawful detainer, the tenant can either file a tenant affidavit and wait for the landlord to file a landlord affidavit, which would trigger a hearing, or the tenant can wait for the lockout order once the landlord files an affidavit.

### Eviction Hearings – Rules and Standard of Proof

Per Justice Court Rule of Civil Procedure (JCRCP) 105, summary eviction hearings are informal, as the “intent of such hearings [is] to

determine the truthfulness and sufficiency of any affidavit, notice or service of any notice and to dispense fair and speedy justice.” What this looks like in practice is that each judge adopts a hybrid model of the Nevada Rules of Civil Procedure to evaluate the claims of each party.

Under standards set by NRS 40.253 and *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 163 P.3d 405 (2007), the court uses a summary judgment standard to grant or deny a summary eviction. If the court determines there is a genuine issue of material fact or the tenant has a legal defense, the court must halt the proceeding and require the landlord to pursue a formal eviction under NRS 40.290 *et seq.* In practice, this results in dismissal of the eviction, as it is almost always faster and easier to re-file the eviction than pursue formal eviction. On the other hand, if the court determines there is no genuine issue of material fact and the landlord is entitled to a lockout as a matter of law, the court will issue a lockout order.

Pursuant to NRS 40.280, a summary eviction notice must be served by a sheriff, a constable, a licensed process server, or an agent of a Nevada-licensed attorney.

### Common Defenses

Tenant affidavits provided by the court usually list standard defenses to the eviction. Below is a list of common defenses.

- **All evictions** – the filing of the landlord affidavit was premature. Clerks make mistakes when calculating judicial days, and some courts apply Nevada Rule of Civil Procedure (NRCP) 6(d), which adds three days to mailed notices, including nonpayment and unlawful detainer notices.
- **All evictions** – the notice is non-specific or incorrect. JCRCP Rule 101 requires notices to be specific, and if the rent amount is incorrect (beyond simple arithmetic or scrivener errors), the notice is inaccurate. As a legal defense exists, the court must dismiss the eviction.
- **Nonpayment evictions** – landlord accepted partial payment and tenant relied on acceptance to halt eviction.
- **No-cause and for-cause evictions** – retaliation, under NRS 118A.510, for complaints made to enforce lease or NRS 118A provisions.
- **Nuisance evictions** – alleged activity does not satisfy the definition of nuisance. It is common for lease violations to be labeled, incorrectly, as nuisance.
- **Tenant-at-will evictions** – periodic payments have been made to the landlord, even though lease conditions may be oral.

Summary eviction is the overwhelming choice for landlords seeking eviction in Nevada. By understanding the eviction timeline and process in a client’s jurisdiction, practitioners can maximize their effectiveness and avoid unnecessary mistakes.

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