

**TENANT'S AFFIDAVIT/DECLARATION
(NON-PAYMENT EVICTION - PRIVATE HOUSING)
TENANT INSTRUCTIONS
(Form # 13)**

These instructions are only for tenants who do not live in public housing or housing where there is a government subsidy involved. You will be filling out Form #13, **TENANT'S AFFIDAVIT/DECLARATION (Non-Payment Eviction - Private Housing)**.

Nevada law allows no grace period for late payment of rent. Your landlord can serve you with the appropriate non-payment notice whenever your rent is late. You have 3 options:

1. Pay the rent requested.
 2. Vacate the rental unit.
- OR**, if you have a legal defense,
3. Fill out and file the Tenant's Affidavit/Declaration which will get you a hearing before a Justice of the Peace. To file the Tenant's Affidavit/Declaration you will be required to pay a filing fee unless the court waives it due to your inability to pay.¹

The law requires that you file your Tenant's Affidavit/Declaration by noon of the 5th judicial day² following getting served the notice to leave the rental unit by your landlord. If you don't arrive by noon, some court clerks may accept it up until closing, but some will not. If the 5th day ends on a Saturday, Sunday, or holiday, you have until noon on the next day the court is open to file your Tenant's Affidavit/Declaration.

FILLING OUT FORM #13

Heading

Fill in the name of the township and county of the Justice Court where the rental unit is located.

¹ See the section entitled "How to File a Tenant's Affidavit/Declaration" to request waiving fees and costs.

² "Judicial Days" do not include date of service, weekends or legal holidays.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant.

Case No. and Dept. No.

Leave blank. The court will assign a Case Number and Department Number.

Body of the Affidavit

Number 1

Fill in the name of the township and county.

Number 2

Fill in the date you started renting.

Number 3

This sentence states that you have a legal defense or defenses. A legal defense is a reason why you should not be evicted which is recognized by law. Numbers 4 – 13 state the defenses you can select on the Tenant's Affidavit/Declaration.

NUMBERS 4 THROUGH 13

Check those items that apply to your situation

Number 4

This sentence states that you were not served with the proper notice. In other words, did the notice give you the option to pay rent by the 5th judicial day after the notice is given or to leave?

Explain the circumstances.

Number 5

This sentence states that you have paid the rent.³ If so, there is a space to fill in the amount you paid and the date you paid. Check either A, B, C and/or D to show how you paid. If you check D, "Other," that you paid by another method (for example: by providing agreed upon repairs or improvements), explain in the blank space.

³ You are not excused from paying rent simply because you have paid a security deposit.

Number 6

This sentence states that you tried to pay the rent (you offered but the landlord did not accept it).

Explain the circumstances.

Number 7

This sentence states that you tried to pay the rent due, but that the landlord has refused to accept it because you would not pay additional charges, such as attorney fees, collection fees or other charges not authorized in the rental agreement.⁴

Number 8

This sentence states that you made other arrangements with the landlord about paying the rent (like an agreement to pay \$50 extra each month until the arrearage is caught up).

Explain those arrangements in detail.

Number 9

This sentence states that you do not owe the amount of the rent which the landlord claims to be in arrears. For example, the amount may be incorrect because the landlord made a math error, because the landlord is wrong about the amount which you agreed to pay each month, etc.

Explain why you do not owe this amount.

Number 10

This sentence states that you are exercising your right under the authority of NRS 118A.380(1)(c) to withhold the payment of rent until essential services (heat, running water, hot water, electricity, gas, etc.) have been restored. To lawfully

⁴ If they are agreed to in the rental agreement, the landlord may evict you for failure to pay a reasonable charge for late payments of rent or dishonored checks, or a security deposit. See NRS 40.253(9) and NRS 118A.200(3)(c). A landlord shall not refuse to accept rent offered after a notice simply because the tenant has not paid collection fees, attorney fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. NRS 40.253(9). There is a presumption that the tenant does not owe late charges or charges for dishonored checks unless these terms are in a written

withhold rent, you must first give the landlord a written notice to restore essential services within two working days.

Provide the date you informed the landlord and explain why you are withholding the rent.

Number 11

If this pertains to your situation, this sentence states that you are claiming a set-off against any rent owed because the landlord is intentionally failing to provide essential services. In such cases, NRS 118A.390 allows the tenant to recover actual damages plus up to \$1,000.00 in additional statutory damages.

Explain the reasons.

Number 12

If this pertains to your situation, this sentence states that you are claiming a set-off against any rent owed because the landlord is failing to maintain the rental unit in a habitable condition. In such cases, NRS 118A.350, NRS 118A.360 and NRS 118A.380 allow you to claim actual damages if you have followed the steps set out in the statutes (see following three paragraphs).

If your house or apartment is in need of substantial repair, you may claim as damage the decreased value of the apartment or house under NRS 118A.350. You generally must give your landlord a 14-day written notice of the problems. However, if the landlord admits to the problems during the hearing, or if the landlord received written notice from a public health or building inspector, the court can allow a set-off even if you did not give a written notice.

If the cost to repair is less than \$100.00 or one month's rent, whichever is greater, you may notify the landlord that you will correct the condition at the landlord's expense. If the landlord fails to use his best efforts to comply within 14 days after being notified by the tenant in writing (or more promptly in emergencies), the tenant may pay for repairs, submit an itemized statement to the landlord and deduct the cost of the repair from his rent under NRS 118A.360.

If you have been without essential services such as electricity, hot water, or the plumbing is broken, you may claim as damage the decreased value of the rental unit, the cost of substitute housing (like renting a motel or the cost of directly buying the services – for example, purchasing a space heater). You must give your landlord a written notice of two (2) working days under NRS 118A.380 before you may claim damages.

Fill in the date that you gave the written notice and explain the reasons.

Number 13

As only the more common defenses and set-offs are listed above, this section provides you with the opportunity to state other potential defenses/set-offs that you believe apply to your situation. Specifically explain those defenses/set-offs.

Request for a Stay

If the judge decides that you have not raised a legal defense, you may be required to move within 24 hours. However, if you would experience extreme hardship, you can ask the judge for a delay in the eviction for up to 10 judicial days. This is called a “Stay,” but will probably be granted only for a really good reason. You may request a Stay in case you lose by placing a check mark on line in the last paragraph prior to your signature at the end of the form. NRS 70.010(2) allows the judge to give you up to 10 days to move.

For example, you might have no money to rent a new place until your Social Security check arrives in 5 days which would cause you and your children to be homeless.

Fill in the number of days you are requesting and provide an explanation as to why you are in need of additional time.

SIGNATURE AND NOTARY PUBLIC / DECLARATION SECTION

You have a choice between signing the document in front of a notary, making the document an affidavit, or signing a declaration without a notary. Generally, clerks are available to certify that you signed the document. However, both alternatives mean that if you are not being truthful, you could be prosecuted for perjury.

HOW TO FILE A TENANT'S AFFIDAVIT/DECLARATION

There is a fee to file your Tenant's Affidavit/Declaration. However, if you do not have the money, you may file an Application to Waive Fees and Costs, Form #37. You will list all of your income (earnings, rental income and government checks) plus your assets (real property, bank accounts, motor vehicles, etc.) and expenses (rent, utilities, insurance, childcare, credit card payments, car payments, etc.) on this form. (See the specific instructions involved with this process – Forms #37, #38 and #39.) When you complete the Application to Waive Fees and Costs, file your Tenant's Affidavit/Declaration with it. The court will not officially file your Tenant's Affidavit/Declaration until either (1) the judge grants your Application to Waive Fees and Costs (and gives you an Order Regarding Waiver of Fees and Costs, Form #39) or (2) you pay the filing fee.

Next, the clerk will file the original of your Tenant's Affidavit/Declaration and you should ask the clerk to file-stamp your copies. The law requires that the landlord receive a file-stamped copy of your Tenant's Affidavit/Declaration. Some courts may deliver it to the landlord for you. Ask the clerk. The safest course of action is to deliver it yourself. If you are filing at the beginning of your notice period you can mail your Tenant's Affidavit/Declaration to the landlord. If you are at the end of your notice period, it is faster to deliver a copy to the landlord personally or leave one with someone at his/her residence or place of business. If there is a later dispute about whether or not you provided a file-stamped copy of your Tenant's Affidavit/Declaration to your landlord, you can prove delivery by obtaining a "Certificate of Mailing" from the United States Postal Service or taking a witness with you when you deliver it in person to your landlord.

Once you have filed your Tenant's Affidavit/Declaration, the court should schedule a hearing. Each court sets hearing dates differently, so ask the clerk of the court when the hearing will take place.

WHAT SHOULD YOU DO TO PREPARE FOR A HEARING?

Gather all documents and arrange for all witnesses that will help you prove your defense(s) to come to your court hearing. Prepare the questions which you plan to ask your witnesses. Also prepare the questions which you plan to ask the landlord and the

landlord's witnesses. Remember, you will typically get only one day in court. It will do you no good to tell the judge, for example, that you left a receipt at home or that you have an eyewitness who is not with you in court.

If you (or any of your witnesses) speak Spanish or another language other than English, you should ask the clerk whether the court will provide an interpreter or whether you may bring your own interpreter with you to court. An interpreter should be able to speak both your native language and English fluently. A person cannot act as an interpreter who is (a) the spouse of or otherwise related to a witness, (b) is biased, or (c) has an interest in the outcome of the case. If you (or any of your witnesses) is a person with a disability who cannot readily understand or communicate in English or who cannot understand the proceedings, you should ask the court in advance to appoint a qualified interpreter.

You may also want to arrange in advance for a court reporter to be present at the hearing. A court reporter records everything that happens at the hearing and that record may be important if you lose the hearing and later decide to appeal. You should call the court clerk in advance to find out how to arrange for a court reporter to be present at the hearing. You should then contact the court reporter in advance to discuss the fees and when payment is expected. If an appeal is filed after the hearing, there will typically be an additional charge per page.

WHAT HAPPENS AT THE HEARING?

At the hearing you should be prepared to tell your story. Bring all documents and witnesses necessary to prove your defense(s). You may also question the landlord and his witnesses. Although the hearing is informal, dress nicely, be polite and call the judge "Your Honor." Also, do not argue, roll your eyes, scowl, interrupt the judge or the other side, etc.

If you win (the judge decides that you have raised a legal defense) the judge should dismiss the eviction. The landlord may attempt to evict you later in a more formal lawsuit. If you are served with court papers, contact an attorney.

If you lose (the judge decides that you have not raised a legal defense) you will be required to move within 24 hours. However, if you would experience extreme hardship, you

can ask the judge for a delay in the eviction for up to 10 judicial days. This is called a “Stay,” but will probably be granted only for a really good reason. If the judge appeared to make a major mistake of law (described in the specific instructions for each of Forms #13 through #16), you may wish to contact an attorney immediately to discuss the possibility of an appeal.

Unless the judge has granted a stay, you should remove all of your personal property from the rental unit immediately. The sheriff or constable may lock you out within 24 hours. If you do not remove all your personal property or do not make other arrangements with the landlord, the landlord may put your property into storage and refuse to return it until you pay a reasonable storage fee. If the landlord is demanding an unreasonable fee, you can ask the court to determine what is reasonable. See the instructions for Forms #20, #21 and #22.