

**TENANT'S AFFIDAVIT/DECLARATION
(NON-PAYMENT EVICTION - PUBLIC/PUBLICLY SUBSIDIZED HOUSING)
TENANT INSTRUCTIONS
(Form #14)**

If you live in public or subsidized housing, use Form #14, **TENANT'S AFFIDAVIT/DECLARATION (Non-Payment Eviction – Public/Publicly Subsidized Housing)**. These instructions apply to this form.

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.

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.

FILLING OUT FORM #14

Heading

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

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

Check the situation which applies to you, 2.A. or 2.B., indicating whether you reside in conventional public housing (owned and operated by a housing authority and financed through an operating subsidy from the federal government) or another type of government subsidized housing like Section 8, Section 202, etc.

Number 3

Fill in the date you started renting.

Number 4

Fill in the amount of rent the Housing Authority or your landlord says you owe.

Number 5

This sentence states that you have a legal defense or defenses, that is, a reason or reasons recognized by law why you should not be evicted. The defenses you can state are on the Tenant's Affidavit/Declaration, Numbers 6 – 14.

NUMBERS 6 THROUGH 14

Check the items that apply to your situation

Number 6

This section contains defenses related to improper notice, e.g., that you did not get notice as required by law.

The type of notice that the landlord must serve on you depends upon what type of housing you live in. For example, if you live in conventional public housing, the Housing Authority must give you a 14-day notice in addition to a 5-day notice. The 5-day notice must give you the option to either (a) pay the rent by the end of the 5th day after the notice is given or (b) leave. The 14-day notice should come before the 5-day notice and should mention that you have the right to a grievance hearing. Under certain circumstances, the landlord can combine those two notices or give the 5-day notice before the 14 days expire. These are complicated legal situations and you should call an attorney to assist you with this defense.

Other subsidized housing does not require a 14-day notice. For example, if you have a Section 8 Voucher and rent from a private landlord, that private landlord is not required to give you a 14-day notice. All that is required is a 5-day notice. Moreover, a grievance hearing is not required if you live in other subsidized housing or have a Section 8 Voucher.

Check A, B, or C, whichever applies to your situation. Note that A requires an explanation.

Number 7

This section contains defenses that you have paid or tried to pay your rent.

If you paid your rent, check A and fill in the amount you paid and the date you paid. Check 1, 2, 3, and/or 4, indicating how you paid. If you checked 4, "Other," that you paid by another method (e.g., providing agreed upon repairs or improvements), explain in the blank space how you paid the rent.

Check B if you attempted to pay the rent, but the landlord refused to accept it. Explain.

Check C if you tried to pay the rent, but the landlord refused to accept it because you refused to pay additional unauthorized charges, like collection fees or attorney fees. Explain

Check D if you have made other arrangements, like paying extra to catch the back rent. Explain.

Number 8

This sentence states that the amount of the rent which the landlord claims you owe is incorrect. 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. Also, since you live in public or subsidized housing, the landlord may have calculated your share of the rent incorrectly. This may happen if you recently lost a job or have been cut back on the hours you work. If this happens, you may be entitled to reduced rent. Remember, however, that the landlord is only obligated to recalculate (reduce) your rent if you tell the landlord in writing that your income has decreased. The amount you owe should be reduced in the month following the month you report the decrease in income. (Remember, you also have an obligation to report any increases in your income as soon as you know about them.)

Provide an explanation as to why you do not owe the amount.

Habitability Defenses **Available Only to Tenants in Conventional Public Housing**

Number 9

If you live in Conventional Public Housing, federal regulations (and probably your lease) require the housing authority to maintain the rental unit and the project in a decent, safe and sanitary condition. You may be able to claim an abatement of rent or a set-off against any rent owed. You should have given the housing authority

a written notice of the problems by mail or delivering a copy to the main office.

Check item Number 9 and the conditions (A through H) that apply to your situation. Note that A, B, C and D require explanations.

**Defenses Available to Tenants in Publicly- Subsidized Housing
other than Conventional Public Housing**

Number 10

This sentence states that the housing authority has not paid its share of the rent. If you have a Section 8 voucher, you pay a part of the rent to the landlord and the housing authority pays the remainder. If you have paid, but the housing authority has not paid its portion of the rent to the landlord, the landlord should not evict you.

Check Number 10 if this situation applies to you.

Number 11

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

Check Number 11 if this situation applies to you, provide the date that you gave notice and explain.

Numbers 12 and 13

These two sections explain various set-offs against rent. A “set-off” is a claim you may have against your landlord or a debt which your landlord owes you which the court could deduct from any rent you may owe.

Check Numbers 12 and/or 13 if the situations apply to you and provide explanations.

Number 12

This sentence states that you are claiming a set-off against any rent owed because the landlord is intentionally failing to provide essential services (doing it on

purpose). In such cases, NRS 118A.390 allows the tenant to set-off actual damages plus up to \$1,000.00 in additional statutory damages.

Number 13

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 the 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 room) 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.

All Subsidized Housing

Number 14

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 the 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 that you plan to ask your witnesses. Also prepare the questions that 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.