

Evictions based on Iowa Code Chapter 562A

I. FED based on Non-Payment of Rent

Forms/Notices required – (1) 3 Day Notice of Non-Payment of Rent; and, (2) Forcible Entry and Detainer Petition

Example: Tenant's rent of \$400 is due on the 1st of each month. Tenant did not pay rent on February 1st. Landlord prepares a "3 Day Notice of Non-Payment of Rent" and intends to serve it upon the tenant on February 2nd. The notice informs the tenant that he has not paid February's rent and that he has 3 days from service of the notice to pay said rent. The notice further states that if tenant does not pay February's rent within 3 days of service, that the Landlord shall commence eviction proceedings.

- Service of Notice - Landlord may serve the "3 Day Notice Non-Payment of Rent" by one of the following ways:

- **personal service by process server or sheriff** – if served on February 2nd, the three days that the tenant has to pay you rent begins the next day, or through the end of the 5th. If rent is not paid within three days after being served the notice, the landlord can file FED on the 6th;

- **signed and dated acknowledgement by adult resident of dwelling** – if served on February 2nd, tenant has through the 5th to pay February's rent; if rent is not paid landlord can file FED on the 6th. Landlord, or agent thereof, serves tenant, has tenant sign notice, landlord gives tenant a copy and provides original with signature to Court; signed acknowledgement to one is notice to all residents;

- **posting of notice on primary door of residence and mailing copy of notice to each resident by ordinary and certified mail** – notice is deemed complete 4 days after mailing date. If mailed on February 2nd, notice is deemed complete by end of February 6th, then the tenant has three additional days to pay landlord rent (through the end of February 9th), if rent is not paid landlord can file FED on the 10th.

- If February's rent is paid to landlord within 3 days of service of notice, landlord must accept it and cannot file the FED.

- Service of FED Petition - If February's rent is not paid, the landlord can file the FED and must then properly serve the FED petition on the tenant by one of the following ways:

- **personal service by process server or sheriff** – not less than 3 days prior to hearing;
- **signed and dated acknowledgement by adult resident of dwelling** – not less than 3 days prior to hearing;

- **posting of notice on primary door of residence and mailing copy of notice to each residence by ordinary and certified mail** – But only if service cannot be made personally or by written acknowledgement **following two attempts**. Posting shall not be less than 3 days prior to hearing. If notice is posted and mailed, Plaintiff must fill at or before hearing one or more affidavits describing the time and manner in which the notice was posted and mailed and shall attach copies of documents posed and mailed.

- FED trial must be set within 8 days from date it is filed (15 days if agreed to by landlord or requested to obtain service on tenant)

Typical defenses to an FED

1. A precondition notice is defective or was not served properly.
 - 3 Day Notice of Termination for Rent demanded more than the most recent past due rent (e.g. January, December rent / late fees / utilities, etc.) (**You do not give up your right to sue for past due amounts or for damages by not requesting them in the 3 Day Notice to Terminate for Non-Payment of Rent**)
DO NOT ASK FOR MORE THAN THE MOST IMMEDIATE PAST DUE RENT IN YOUR THREE DAY NOTICE OF NON-PAYMENT OF RENT!!
2. The FED was filed prior to expiration of the time to cure.
3. Plaintiff waived its right to terminate the rental agreement upon the grounds claimed because it has accepted performance different from that appearing in the agreement (e.g. landlord accepted partial payment of February's rent within 3 days following service of Notice to Terminate or after 3 days expired).
4. Plaintiff's conduct deprives it of the remedy either under equitable standards or Chapters 562A/562B (e.g. failure to maintain habitable premises)
5. Thirty day peaceable possession with the knowledge of the plaintiff after the cause of action accrues bars the claim. (This is why you cannot demand more than the most immediate past due rental amount in the 3 Day Notice to Terminate).
Section 648.18

II. FED Based on Clear and Present Danger

Forms/Notices required – (1) Notice of Termination of Lease Based on Creating a Clear and Present Danger; and, (2) Forcible Entry and Detainer Petition

A landlord may terminate a rental agreement if a tenant has created or maintained a threat constituting a clear and present danger to the health and safety of other tenants, the landlord or the landlord's employee or agents, or to other persons within 1000 feet of the landlord's property. Section 562A.27A (1)

1. A clear and present danger includes, but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant:
 - i. physical assault or threat of physical assault
 - ii. illegal use of a firearm or other weapon, or threat to use same, or possession of an illegal firearm.
 - iii. possession of a controlled substance, including possession by another on the premises but only if the tenant knew of the possession by the other person.
- a. The landlord must give a single **combined three-day written notice of termination and notice to quit** stating the **specific activity** causing the clear and present danger **and setting forth the language of subsection 3, which**

includes certain exemption provisions available to the tenant, and may file suit against the tenant for possession of the premises if the tenant has not vacated within the time period required by the notice.

- b. The FED petition shall state the incident or incidents giving rise to the notice. Section 562A.27A
 - c. The tenant shall be given the opportunity to contest the termination in court and must be given at least three days prior notice of the court hearing. Section 562A.27A
 - d. **Exemptions:** The section does not apply to a tenant if the activity causing the clear and present danger was conducted by a person other than the tenant and the tenant, *prior to* commencement of an action by the landlord
 - i. seeks a protective order pursuant to Chapter 236, 598, or 915 against the person causing the clear and present danger or
 - ii. reports the activities to law enforcement in an effort to initiate a criminal action against the person causing the clear and present danger or
 - iii. writes a letter to the person, telling the person not return to the premises and sends a copy of the letter to law enforcement
2. **Bring your witnesses to Court (e.g. police officers who executed the search warrant). You must prove that the tenant’s behavior presented a “clear and present danger”.**
 3. Service of the combined 3 day Notice to Terminate Lease and Notice to Quit based on Clear and Present Danger” and the FED petition must be served on the tenant in the same manner as set out above (for evicting based on non-payment of rent).

III. Termination of Lease for Material Lease Violations

Forms/Notices required – (1) 7 Day Notice to Terminate Lease Based on a Material Lease Violation; (2) Notice to Quit; and, (3) Forcible Entry and Detainer Petition

If a tenant is in violation of a provision of the lease (e.g. unauthorized occupants; animals present; not keeping property in habitable condition, etc.) a landlord may serve on the tenant a “7 Day Notice to Terminate Lease Based on a Material Lease Violation”. The Notice to Terminate Lease must set out the violation with specificity and must state that if the breach is not remedied within 7 days of receipt of notice, the landlord will proceed with an eviction. If the violation is not remedied, a Notice to Quit must be served. After the expiration of three days following service of the Notice to Quit, the landlord may file the FED.

If, however, the breach is remedied within 7 days of service of the Notice to Terminate Lease, the matter has been resolved. If **same** breach happens within 6 months, Landlord may again serve a Notice to Terminate Lease in 7 days, and then serve a Notice to Quit,

followed by FED. In this situation, the tenant **does not** have the right to remedy the violation to stop an FED from being filed.

Service of the “Notice to Terminate Lease Based on a Material Lease Violation”, the “Notice to Quit”, and the FED petition must be served on the tenant in the same manner as set out above (for evicting based on non-payment of rent).

IV. Termination of Month to Month Lease

Forms/Notices required – (1) 30 Day Notice to Terminate Lease; (2) Notice to Quit; and, (3) Forcible Entry and Detainer Petition

A month-to-month tenancy under a residential rental agreement may be terminated without cause by giving a “30-day Notice to Terminate Lease” prior to the usual rent-due date. Once that period expires it is still necessary to serve the defendant with a three day “Notice to Quit” before the action for possession can be brought. Section 562A.34(2)

V. Service Requirements (see Iowa Code Section 562A.29A & 648.3)

The *Notices to Terminate Lease and the Notices to Quit* may be served by one of three methods, to-wit:

- **personal service by process server or sheriff** – the time starts the very next day after service;
- **signed and dated acknowledgement by adult resident of dwelling** – the time starts the very next day after service;
- **posting of notice on primary door of residence and mailing copy of notice to each resident by ordinary and certified mail** – notice is deemed complete 4 days after mailing date, then the time starts.

The *FED Petition* may be served by one of three methods, to-wit:

- **personal service by process server or sheriff** – the time starts the very next day after service;
- **signed and dated acknowledgement by adult resident of dwelling** – the time starts the very next day after service;
- **posting of notice on primary door of residence and mailing copy of notice to each residence by ordinary and certified mail** – But **only** if service cannot be made personally or by written acknowledgement **following two attempts**. Posting shall not be less than 3 days prior to hearing. If notice is posted and mailed, Plaintiff must fill at or before hearing one or more affidavits describing the time and manner in which the notice was posted and mailed and shall attach copies of documents posed and mailed.

VI. Miscellaneous

1. In general, a landlord has no duty to care for a tenant's personal property after eviction. However, a landlord who takes possession of any of the tenant's property after a writ of possession is entered may be responsible to the tenant as to that property on a theory of bailment. Kahn v. Heritage Property Management, 584 N.W.2d 735 (Iowa App. 1998).
2. Neither a notice to quit nor a notice of intent to terminate is required where defendant is a licensee who enters the premises for his/her own convenience, pleasure or benefit since a licensee has no interest in the property but his/her use of the premises is a matter of suffrage or permission only. Bernet v. Rogers, 519 N.W.2d 808 (Iowa 1994) (girlfriend evicted); Arns v. Arns, 671 N.W.2d 531 (Iowa App. 2003)(ex-wife evicted)
3. FED trial must be set within 8 days from date it is filed (15 days if agreed to by landlord or requested to obtain service on tenant)
4. Keep in mind: Iowa Code Section 4.1(34) states in part: In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. However, when by the provisions of a statute or rule prescribed under authority of a statute, the last day for the commencement of an action or proceedings, the filing of a pleading or motion in a pending action or proceedings, or the perfecting or filing of an appeal from the decision or award of a court, board, commission, or official falls on a Saturday, a Sunday, a day on which the office of the clerk of the district court is closed ...the time shall be extended to include the next day which the office of the clerk of the court or the office of the board, commission, or official is open to receive the filing of a commencement of an action, pleading or a motion in a pending action or proceeding, or the perfecting or filing of an appeal.

Forms

I. 3 Day Notice of Non-Payment of Rent

Dear *Tenant*:

You are hereby notified that you have failed to pay rent for the unit located at _____ Cedar Rapids, Iowa, in accordance with the terms of your rental agreement. You owe rent in the amount of \$ _____ for the month of _____. Payment was due on _____.

You must pay the amount owed within three days after receipt of this notice or your rental agreement will terminate and you will be expected to have vacated the premises.

If the amount owed is not paid, and the unit not vacated, within three days after receipt of this notice, a Forcible Entry and Detainer (F.E.D) action will be brought against you in order to have you removed from the premises.

Sincerely,
Landlord Name

II. Notice of Termination of Lease Based on Creating a Clear and Present Danger

TO: _____

You and each of you are hereby notified that, pursuant to Iowa Code 562A.27A, your Rental Agreement is terminated effective three (3) days from the date of this Notice, and it is demanded that you vacate and surrender within that three (3) days the possession of the premises described as follows: _____

This Notice of Termination and Notice to Quit is being given to you for the reason that you or persons on the premises with your consent have created circumstances, or maintained a threat, constituting a clear and present danger to the health or safety of other tenants, the landlord, or the landlord's employees or agents. A clear and present danger to the health or safety of other tenants, the landlord, or the landlord's employees or agents includes any of the following activities (check all that apply):

- Physical assault or the threat of physical assault.
- Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.
- Possession of a controlled substance not obtained directly from or pursuant to a valid prescription or order by a licensed medical practitioner while acting in the course of the practitioner's professional practice by you or a person on the premises with your consent and knowledge.
- Other. (specify) _____

You will therefore take action and govern yourself accordingly.

THIS WRITTEN NOTICE WILL REMAIN IN FORCE UNLESS EXPRESSLY WITHDRAWN IN WRITING. YOU MAY NOT RELY ON ANY VERBAL COMMUNICATIONS CONCERNING IT.

DATED this day ____ of _____, 20 ____.

Landlord

By: _____
Address: _____

Exemptions: This section shall not apply to a tenant if the activities causing the clear and present danger, as defined in subsection 2, are conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person conducting the activities:

- a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, 664A, or 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.
- b. The tenant reports the activities causing the clear and present danger to a law enforcement agency or the county attorney in an effort to initiate a criminal action against the person conducting the activities.

c. The tenant writes a letter to the person conducting the activities causing the clear and present danger, telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person, and the tenant sends a copy of the letter to a law enforcement agency whose jurisdiction includes the premises. If the tenant has previously written a letter to the person as provided in this paragraph, without taking an action specified in paragraph "a" or "b" or filing a trespass or other action, and the person to whom the letter was sent conducts further activities causing a clear and present danger, the tenant must take one of the actions specified in paragraph "a" or "b" to be exempt from proceedings pursuant to subsection 1.

However, in order to fall within the exemptions provided within this subsection, the tenant must provide written proof to the landlord, prior to the commencement of a suit against the tenant, that the tenant has taken one of the measures specified in paragraphs "a" through "c".

III. 7 Day Notice to Terminate Lease Based on a Material Lease Violation

TO: _____

You are notified that the undersigned claims the following material noncompliance by you of the Rental Agreement/applicable laws with the undersigned, covering the property at: _____.

The material noncompliance by you of the Rental Agreement/applicable laws is:

_____.

If the above-specified breach is not remedied within seven (7) days after you receive this notice, the rental agreement will terminate on: _____, 200__.

Dated: _____, 200__.

Landlord

Address: _____

IV. 30 Day Notice to Terminate Lease

To: _____ Date: _____

Re: (Address of Premises) _____

Next Rental Due Date: _____

You are hereby given notice that the month to month tenancy of the aforesaid premises shall terminate immediately upon expiration of thirty (30) days after the next rental due date. In the event of such termination of tenancy, you are further notified to immediately remove yourself from and deliver up possession of the aforesaid premises.

This notice is intended for the purpose of terminating the Lease / Rental Agreement by which you now hold possession of the above described premises, and should you fail to comply, legal proceedings will be instituted against you to recover

possession, to declare the Rental Agreement forfeited, and to recover rents and damages for the period of unlawful detention.

Owner / Manager

V. Notice to Quit

To:

You and each of you are hereby notified that the undersigned now demands that you vacate and surrender to said undersigned within three (3) days from the date of service of this notice upon you, the possession of the premises now occupied by you and described as follows:

For the reason that you have:

- failed to remedy a material lease violation;
- failed to vacate the premises after termination of the lease; or,
- (other) _____

Govern yourself accordingly.

Landlord

