



AUSTIN TENANTS  
COUNCIL  
*Safe • Decent • Fair • Housing for All*

# A Brief Look at the Eviction Process in Travis County

Common challenges for tenants  
and suggested approaches.

# The Default (AKA the Breach)

The eviction process usually begins with a landlord alleging that the tenant is in default (or breach) of the lease agreement (oral or written).

Commonly, a landlord alleges that the tenant has not paid rent, has disturbed the peace, has unauthorized guests or is otherwise in default of their lease. Tenants frequently describe a long list of vague allegations made against them by the landlord that they believe are a retaliatory response for the tenant's attempts to enforce their rights or apartment community policies.

**Challenge:** In most instances, landlord need only *allege* the breach. Burden is tenant's to dispute / disprove.

# The Notice to Vacate (NTV)

Before filing an eviction, Texas Property Code requires a landlord to give the tenant a written three-day NTV (unless a shorter period is agreed to in a written lease. I.e. 24 hours).

## Challenges:

1. No legal requirement for landlord to state a reason for the NTV
2. Irrespective of the reason, once NTV is issued, the tenant faces a stark choice: move out or face an eviction hearing
3. Most tenants can't move out within 3 days or 24 hours as required by many leases

NOTICE OF INTENT TO TERMINATE RIGHT OF OCCUPANCY  
IF RENT, UTILITIES OR OTHER SUMS ARE NOT PAID

May 29, 2018  
Date

Johany Smith  
Jane Garcia

(Names of all residents)

1350 Oak Bend

(Street address and dwelling unit number, if applicable)

Austin, TX 78741

(City, State, Zip)

Re: Notice of intent to terminate right of occupancy regarding  
Lease Contract dated January 1, 2018  
between residents named above and  
ABC Apartments, Inc. (owner)

Dear Resident(s):

Since you have not paid all  rent,  utilities or  other sums due under your lease contract, we intend to terminate your right of occupancy and possession under paragraph 32 of your Lease Contract. If you do not pay all unpaid sums within 3 days from delivery of this notice, we intend to send a notice to vacate. The unpaid sums due are described as follows:

Rent: \$ 2,500.00 (April and May) Utilities: \$ 250.00  
Damages: \$ 500.00 (Door, window, carpet)

If you receive a notice to vacate because of such non-payment, the notice will require you to move out within 24 hours of receipt of the notice. Failure to vacate can result in appropriate legal action before the Justice of the Peace.

IF YOU WISH TO AVOID THIS TERMINATION OF YOUR OCCUPANCY RIGHTS, YOU WILL NEED TO PAY ALL PAST DUE SUMS AND POSSIBLY MAKE A MUTUALLY AGREEABLE INCREASE IN YOUR SECURITY DEPOSIT. PLEASE CONTACT US IMMEDIATELY.

May 29, 2018  
DATE notice was given by the method checked below

[Signature]  
SIGNATURE of owner's representative

512-123-456  
Telephone Fax

The notice was: (check at least one)

- hand delivered to any one of the residents named above
- posted on the inside of the dwelling's main entrance (not the mailbox)
- sent by first class mail; return receipt requested

# The Eviction Filing

If the tenant does not comply with the NTV, the landlord must file the eviction lawsuit to reclaim possession of property.

Tenants report:

- Landlord merely verbally threatened eviction
- Never received proper written NTV
- NTV is deficient in giving 3 full days to vacate
- NTV is deficient in required language
- NTV is delivered but falsely backdated
- NTV was not delivered in manner required by statute
- Have already moved out but eviction was filed nevertheless

**Challenge:** Many tenants are not equipped with the knowledge or resources to move through the eviction process in compliance with their obligations.

# Delivery of the Eviction Notice

Only a sheriff or constable may deliver the court's eviction notice issued by the court.

The constable may deliver the notice in person or by mailing a copy of the citation along with a copy of the original petition to the tenant by registered or certified mail.

Tenants report:

- Did not receive court eviction hearing notice
- Moved out prior to eviction filing so tenant is not aware of hearing
- Notice delivered to guest (i.e. non-resident) / guest never gave notice to tenant

**Challenge:** Even if tenant receives eviction notice, tenant may not understand the demands described in the notice or the allegations levied against her/him.

>>>> EVICTION CITATION <<<<<

THE STATE OF TEXAS

TO: <\_AddresseeName\_>  
<\_AddresseeAddr\_>

Defendant, in the hereinafter styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. YOU ARE HEREBY ORDERED TO APPEAR before <\_CourtAdminName\_> for a hearing on <\_HearDate\_>, <\_HearSTime\_> at 4717 Heflin Lane, #107, Austin, Texas 78721.

**FAILURE TO APPEAR FOR TRIAL MAY RESULT IN DEFAULT JUDGMENT BEING ENTERED AGAINST YOU FOR POSSESSION OF THE PREMISES AND/OR RENTS AND COSTS. PLEASE REVIEW THE ATTACHED PETITION. FOR FURTHER INFORMATION, CONSULT PART V OF THE TEXAS RULES OF CIVIL PROCEDURE. WHICH IS AVAILABLE ONLINE AND ALSO AT THE COURT LISTED ON THIS CITATION.**

THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ.), OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE.

EN CUANTO A ESTA DEMANDA DE DESALOJAMIENTO, EXISTEN FECHAS LIMITES PROXIMAS QUE DEBERAN CUMPLIRSE. UN INQUILINO QUE SE ENCUENTRE EN SERVICIO ACTIVO EN LAS FUERZAS ARMADAS PUEDE TENER DERECHOS ESPECIALES O PROTECCION, RELATIVE A ESTA DEMANDA AL AMPARO DE LO ESTABLECIDO POR LAS LEYES FEDERALES. INCLUYENDO LA LEY PARA LA PROTECCION CIVIL DE MIEMBROS DE LAS FUERZAS ARMADAS (50 U.S.C. APP. SECCION 501 ET SEQ.) O POR LAS LEYES DEL ESTADO, INCLUYENDO LA SECCION 92.017, DEL CODIGO DE PROPIEDAD DE TEXAS. SI REQUIERE ALGUN TIPO DE AYUDA PARA ENCONTRAR UN ABOGADO, POR FAVOR LLAME AL COLEGIO DE ABOGADOS DEL ESTADO DE TEXAS, MARCANDO 1-877-9TEXBAR (ES UNA LLAMADA GRATUITA). SI NO DISPONE DE RECURSOS NECESARIOS PARA CONTRATAR UN ABOGADO, ES POSIBLE QUE CALIFIQUE PARA RECIBIR AYUDA LEGAL GRATUITA O DE BAJO COSTO.

Your cause number <\_CaseNum\_> was filed in Justice Court, <\_CourtLoc\_>, on <\_DateFiled\_>, styled

<\_AllPlaintif\_>, Plaintiff/s vs.  
<\_AllDefenda\_>, Defendant/s

In order to obtain a jury trial, you must request one and pay a jury fee of \$22.00 dollars no later than 3 days before the day set for trial. Issued on the <\_CurrDate\_>.



\_\_\_\_\_  
<\_UserLogged\_>, Deputy Clerk  
4717 Heflin Lane, #107, Austin, Texas 78721  
Justice of the Peace, Precinct One  
Yvonne M. Williams, Judge

# The Eviction Hearing

Tenants report:

- No childcare to accommodate attending hearing
- Can't secure time off work to attend hearing
- Had no representation in court
- Landlord had an attorney or a professional eviction service provider
- Eviction hearing was too fast; only lasted a few minutes
- Did not feel they were heard or had opportunity to tell their story in full
- Judge did not clearly explain tenant's 5-day period for appeal or move-out
- Did not understand what came next in the process, etc.
- Left court without a copy of the court judgment
- Cannot afford to pay the required appeal bond and did not know that they could file a pauper's affidavit for appeal

**Challenge:** Without pre-court counseling or representation, tenant is at a decided disadvantage. If eviction is granted, tenants leave court without a meaningful understanding of their post-judgment rights. Tenants frequently seek ATC guidance after 5-day appeals period or move-out period expires. There are no social service providers based in justice court ready to serve the newly evicted individual.



Cause No. J5-CV-17-245561

THE BLOCK/AMERICAN CAMPUS  
COMMUNITIES

§

IN THE JUSTICE COURT

Vs

§

PRECINCT FIVE

§

John Doe

§

TRAVIS COUNTY, TEXAS

**JUDGMENT**

On June 12, 2017 came to be heard the above entitled and numbered cause. The Plaintiff appeared and announced ready for trial. The Defendant, duly notified did not appear and announce ready for trial. No jury was demanded and all issues were submitted to the Court. After hearing and considering pleadings, evidence and argument, the Court is of the opinion and finds that the Plaintiff/Defendant is entitled to judgment.

IT IS THEREFORE ORDERED that the Plaintiff, THE BLOCK/AMERICAN CAMPUS COMMUNITIES recover from the Defendant, John Doe, as follows:

Possession of the premises at 2501 PEARL ST, UNIT 103A AUSTIN, TX 78705

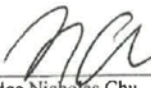
\$ 2290.12 rent;  
\$ 0 attorney's fees; or  
\$ 2290.12 as total sum; plus

court costs; and post judgment interest at a rate of 5.00% per annum on all amounts from the date of judgment until paid.

THE COURT FINDS THAT THE MONTHLY RENT IS \$1103.00; OF WHICH  
0 IS PAYABLE BY A GOVERNMENT AGENCY AND \$1103.00 IS PAYABLE BY  
THE TENANT.

APPEAL BOND SET: \$4580.24

SIGNED June 12, 2017

  
Judge Nicholas Chu  
Precinct Five  
Travis County, Texas



To appeal, a bond must be filed within five (5) days from the judgment.

# The Writ of Possession

After 5<sup>th</sup> day post-eviction hearing, if tenant has not vacated dwelling, landlord must file a writ of possession to reclaim the property. Writ is delivered by constable and demands tenant vacate within 24 hours of delivery or be removed.

Tenants report:

- Tenant is frequently made homeless by the execution of the writ
- Tenant's belongings are placed on the street curb and strangers begin taking the belongings as they are in the public way
- No recourse to delay or postponement of the writ
- Traumatizing for the tenant
- No required special consideration by the constable if tenant is elderly, disabled or is responsible for children
- Infrequently, tenants seek ATC assistance within 24 hour writ period
- Infrequently, tenants seek ATC assistance after the writ is executed

**Challenge:** Immediate homelessness; trauma; loss of possessions, etc. No on-site social service referral or services information imparted to tenant.



# WARNING



**THIS IS A NOTICE TO VACATE  
THE FOLLOWING ADDRESS:**

**Este es un aviso de desalojo de esta dirección:**

\_\_\_\_\_

**TO ALL OCCUPANTS:** A Writ of Possession, Cause # \_\_\_\_\_ has been issued by (court) \_\_\_\_\_ ordering your eviction from this property. The Writ will be executed on or after \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_:\_\_\_\_\_ .M.

You are hereby instructed to vacate the premises by that time. Your failure to do so will result in you being removed from the premises and may result in the loss of any personal possessions remaining.

## ADVERTENCIA

**ATENCIÓN TODOS LOS INQUILINOS:** La corte \_\_\_\_\_ Caso # \_\_\_\_\_ ha ordenado el desalojo de la propiedad que ocupan al momento. Si no cumplen la orden voluntariamente para la fecha \_\_\_\_\_ serán retirados y correrán el riesgo de perder sus pertenencias. (Move Out Date)

Posted \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_:\_\_\_\_\_ .M.

Constable, Precinct 5

By Deputy \_\_\_\_\_

# Suggested Approaches

- Raise Travis County emergency rent payment amounts based upon dwelling size. Presently, the amounts are a fraction of market rates
- Accelerate payments to landlords (Fred Fuchs, TRLA)
- Revise Austin/Travis County Health & Human Services Direct Financial Assistance contract to include language requiring landlord to withdraw pending eviction filing and/or NTV.  
(Fred Fuchs, TRLA)
- Revise contract to address landlord concerns that 30 day period frequently overlaps with next rent pay period.

# Suggested Approaches cont...

- City/state ordinance or law requiring landlords to give tenants ten days minimum written notice to cure a late payment of rent prior to giving NTV. Include provision giving tenants the right to cure and reinstate the tenancy by paying all rent, court costs, and attorney's fees, if any, prior to execution of a writ of possession. (Fred Fuchs, TRLA)
- City/state ordinance or law prohibiting eviction for nonpayment of late fees and applying late fees as rent.
- City/state ordinance or law ordinance or state law requiring rent late fees have reasonable relationship to contractual rent amount.

# Suggested Approaches cont...

- City/state ordinance or law requiring NTV to give tenant at least two weeks to move out, ideally a minimum of 30 days
- City/state ordinance or law requiring NTV contain statement: “This notice is not an eviction. This notice is a demand for possession of the property. You have rights under Texas law” or similar language
- City/state ordinance or law requiring NTV state reason for demand for possession

# Suggested Approaches cont...

- Provide housing/homelessness advocate / case worker (I.e. Caritas, ARCH, Front Steps, ECHO, etc.) in court for immediate referral of tenant if evicted.
- Justice Courts to allow ATC staff to attend eviction hearing as informational counselor with permission to offer witness testimony