

THE EVICTION PROCESS FOR NONPAYMENT OF RENT

TENANT RECEIVES A 3-DAY "PAY OR VACATE" NOTICE

If a tenant fails to pay rent in full by the due date in their lease, the landlord can serve the tenant with a 3-Day Pay or Vacate Notice. See [Idaho Code § 6-303\(2\)](#).

The 3-Day Notice must allow the tenant to either:

1. Pay the rent in full; or
2. Vacate the residence within 3 days.

The 3-Day Notice must also include a notice that if a judgment is entered against a tenant, the tenant will have 72 hours to remove their belongings. See [Idaho Code § 6-303\(2\)](#).


The 3 days starts when the tenant is served the Notice. See [Idaho Code § 6-304](#). To see how 3 days is counted, see [Idaho Rule of Civil Procedure 2.2](#).

THE LANDLORD FILES A COMPLAINT FOR UNLAWFUL DETAINER OF THE RESIDENCE


If the Tenant fails to pay rent in full or vacate the residence within 3 days of the Notice, the Landlord may start an unlawful detainer eviction proceeding against the Tenant by filing a Complaint with the Court.

THE TENANT IS THEN SERVED WITH A SUMMONS

The Court will issue a Summons requiring the Tenant to appear before the Court on a specified date and time in which both parties will argue their case.

 The Summons must be served on a Tenant at least 5 days prior to the Hearing.

THE TENANT FILES AN ANSWER

 The Hearing/Trial will take place within 12 days of the filing of the Complaint.

After the Tenant is served with the Summons, the Tenant should file an Answer with the Court and admit or deny each allegation in the Landlord's Complaint before the Hearing.

In the Answer, the Tenant must also state every Affirmative Defense they intend to claim and support in their argument. See the next page for available Affirmative Defenses.

Even if you do not file an Answer, you should still attend your hearing/trial to argue your side of the case.

THE HEARING/TRIAL

If the Judge finds in the Tenant's favor, they will not be ordered to move from the premises.

If the Judge finds in favor of the Landlord, the Judge will sign a Judgment of Eviction requiring the Tenant to vacate the property and move their personal property within 3 days.

See [Idaho Code § 6-316](#).

THE SHERIFF'S WRIT

If the Tenant fails to comply with the Judgment of Eviction, the Landlord may request the Court Clerk to issue a Writ for removal.

The Landlord will supply the Writ to the Sheriff whom will then physically remove the Tenant from the property.

See [Idaho Code § 6-316](#).

UNLAWFUL DETAINER—A tenant is guilty of unlawful detainer when they continue in possession, without the permission of the landlord, or after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three (3) days notice, in writing, has been served upon them. [Idaho Code Section 6-303\(2\)](#).

AFFIRMATIVE DEFENSE—A defendant's assertion, that raises new facts and arguments that, if true, will defeat the plaintiff's claim, even if all allegations in the Complaint are true. [Fuhriman v. State Dept. of Transp., 153 P.3d 480 \(Idaho 2007\)](#).

COMMON DEFENSES FOR NONPAYMENT OF RENT

THE RESIDENCE IS UNINHABITABLE

If a Landlord fails to maintain the leased premises in a condition suitable for living purposes, the Tenant has options for remedying the unfit conditions:

- Tenant may give notice to the Landlord of defects in the premises. If the Landlord fails to remedy them, the Tenant may do so and deduct the reasonable cost of the repairs from the rent;
- Tenant may treat the condition as constructive eviction and quit the leased premises without further liability for rent;
- Tenant may bring an action for abatement of rent during any period in which the premises remains uninhabitable; or
- Tenant may assert uninhabitability as an affirmative defense or counterclaim to a Landlord's suit for unpaid rent or possession of the lease premises.

Idaho Code §6-320;

43 Am. Jur. Proof of Facts 3d 329 (Originally published in 1997).



Tenant must show that:

1. A materially defective condition existed affecting the habitability;
2. That notice was given to the Landlord within a reasonable time after discovery; and
3. That the Landlord was given a reasonable amount of time to correct the condition.

For further explanation, see:

Worden v. Ordway, 672 P.2d 1049 (Idaho 1983).

RENT WAS PAID IN FULL BEFORE OR DURING THE 3-DAY PERIOD

If the Tenant paid rent in full and has proof of payment and acceptance by the Landlord, but was served with a 3-Day Notice to Pay or Vacate, the Tenant may defeat the eviction proceedings by providing such proof to the court.

The best way to ensure protection is to keep a form of proof for each rental payment made during the tenancy period.

Within three (3) days after service of the 3-Day Notice to Pay or Vacate, the Tenant or may pay the stipulated rent and the lease will remain in effect. **Idaho Code §6-303(3).**

TENANTS SHOULD ALWAYS READ THE LEASE IN ITS ENTIRETY BEFORE SIGNING!

Under Idaho Law, a Property Manager or Landlord has the authority to apply a Tenant's rental payments to other charges or amounts "owed" if there is a lease provision that expressly creates the authority to do so.

If the rental lease contains such a provision, the Tenant's rental payments can be reallocated to other monies "owed" and the Landlord can then claim nonpayment of rent.



Landlords must give at least fifteen (15) days notice of rent increases between lease terms. Therefore, if the Tenant's lease has expired, but the Tenant continues to pay the amount stipulated to in the lease, and the Landlord accepts the payments, the Landlord cannot claim nonpayment of rent in an attempt to collect a larger amount unless they provided such notice.

Idaho Code §55-307.

AFFIRMATIVE DEFENSES FOR NONPAYMENT OF RENT

RENT PAYMENT WAS ATTEMPTED BUT REFUSED BY THE LANDLORD

If a Tenant is served with a 3-Day Notice, the Landlord must give the Tenant the full three (3) day period to “cure” the violation by paying in full.

If a Tenant attempts to pay the rent amount that is owed, the Landlord must accept payment. If the Landlord refuses to accept the rent payment that is owed, such refusal may defeat the Landlord’s attempt to evict the Tenant for nonpayment of rent.



PAY BY CASHIER’S CHECK OR MONEY ORDER

The best way to prove payment of rent is to obtain a cashier's check or money order. These types of checks cannot be refuted and will prove that an attempt to cure the violation was made during the three (3) day period.

Make photocopies of the cashier’s check or money order before detaching any stubs. The photocopies will protect the Tenant if the Landlord accepts the check and destroys it or if it gets lost. If you pay with a personal check, you should obtain a signed receipt from the Landlord.

A 3-DAY NOTICE WAS NEVER SERVED ON THE TENANT

Landlords must give Tenants a 3-Day Notice that they intend to start eviction proceedings if the Tenant fails to pay the past due rent owed.

NOTICE REQUIRED MAY BE SERVED

EITHER:

1. By delivering a copy to the Tenant personally;
2. If the Tenant is absent from the residence or their usual place of business, by leaving a copy with someone of suitable age and discretion at either place, and sending a copy to the Tenant in the mail; or
3. If unable to ascertain where the Tenant lives or works, and no one of suitable age is available, by posting the notice in a conspicuous place on the property and delivering a copy to the person residing therein, and sending a copy in the mail to the Tenant.

Idaho Code §6-304

THE 3-DAY NOTICE IS FILLED OUT INCORRECTLY OR IS INCOMPLETE

A 3-Day Notice to a Tenant must be complete:

1. Fill in the names and mailing addresses for each Tenant and sub-tenant owing rent;
2. Write in the complete residential address of the rental property (street, house or apartment number, city, and state)
3. Enter the total amount of rent now due and owing, without any other fees or costs such as damage to property;
4. Provide notice that if a judgment is entered against a tenant, the tenant will have 72 hours to remove their belongings. See **Idaho Code § 6-303(2).**; and,
5. Date and sign the Notice. **This document must be signed by the owner of the property.**

If the rental property is managed by a property management company, either the Owner of the Property Manager must sign the Notice, or the property management company must have the authority to sign for the property owner.

THE COMPLAINT WAS FILED & THE SUMMONS WAS ISSUED PREMATURELY/TOO EARLY

Before a Complaint can be filed by the Landlord, they must attest that a 3-Day Notice to Pay or Vacate, (a written demand for payment of the past due rent) was served on the Tenant more than three (3) days before filing their complaint for unlawful detainer eviction.

If the Landlord filed the Complaint prior to the termination of the 3-day period listed in the 3-Day Notice to Pay or Vacate, the Tenant can claim this as a defense and the Landlord may need to serve another 3-Day Notice to Pay or Vacate and start the process over.

GENERAL AND LEGAL RESOURCES

GENERAL RESOURCES

- For further explanation of your rights and responsibilities, please see The Idaho Attorney General's Landlord and Tenant Manual here: <https://www.ag.idaho.gov/content/uploads/2018/04/LandlordTenant.pdf>
- For a more information regarding Landlord-Tenant Rights and Responsibilities, please see the brochure here: <https://courtselphelp.idaho.gov/docs/forms/H-6.pdf>
- For further explanation of the eviction process, and access to fillable forms, please see the Court Assistant Office Forms here: <https://courtselphelp.idaho.gov/Forms/housing>

LEGAL RESOURCES

Idaho Legal Aid

To see if you qualify for services, apply for legal assistance here: <https://www.idaholegalaid.org/node/2413/apply-legal-assistance>; or apply for legal assistance via phone at: (208) 746-7541.

Idaho Volunteer Lawyers Program (IVLP)

Qualified applicants can obtain free pro-bono attorneys through IVLP.

You can find their online application here: <https://isb.idaho.gov/ilf/ivlp/legal-assistance/>; or you can contact the Idaho Volunteer Lawyers Program directly at: (208) 334-4500.

Idaho State Bar Attorney Referral Program:

LRS attorneys have agreed to provide their clients with an initial up to a half-hour consultation at no fee. The fee for a referral is \$35 unless the cases are personal injury, medical malpractice, or workers' compensation which receive a free referral. After the initial consultation, any further fees are to be negotiated between the lawyer and the client.

Apply for a Referral here: <https://isb.idaho.gov/lawyer-referral-service/>; or you can contact the Idaho State Referral Program directly at: (208) 334-4500.

If you think you may qualify for free legal assistance due to income limitations, ask about the Modest Means Program