

3. Determine who is responsible for the shutoff – the landlord or utility company.

WHEN SHUTOFF IS CAUSED BY LANDLORD:

If the utility is in the landlord's name, the landlord cannot shutoff the service to harass or evict the tenant even if the tenant is behind in making rental payments. If the landlord deliberately causes the utility to be shutoff, there are two options:

1. Ask the utility company to restore service in the tenant's name, or
2. Ask the utility company to restore service in the landlord's name because the landlord has acted unlawfully.

If the service is shutoff because the landlord has not paid the bill, the utility company should be willing to turn it back on in the tenant's name.

WHEN SHUTOFF IS CAUSED BY TENANT'S FAILURE TO PAY UTILITY BILLS

The utility company cannot force a tenant to pay the past due bill of a prior tenant or to pay a deposit if the tenant has a good credit rating with the company. (Note: This applies only to residential gas and electric.) If either the amount of the bill or the reason for the shut off is in dispute:

1. First call the utility company to work out the dispute.
2. If the dispute is not resolved, call the Michigan Public Service Commission

(MPSC) at 1-800-292-9555. The MPSC will determine if the utility followed the law in shutting off service. The MPSC can also answer other utility service questions.

TENANT DIFFICULTY PAYING UTILITY BILLS

Eligible low-income consumers may receive help in paying their heating and electric bills through energy assistance programs administered by the Michigan Department of Human Services.

Also, most utility companies have winter protection plans that protect low-income customers and seniors age 65 and older from service shutoff December 1 through March 31. Call your local utility company to determine eligibility.

THIS BROCHURE SHOULD NOT BE USED IN PLACE OF LEGAL ASSISTANCE. IN THE EVENT OF A LANDLORD/TENANT DISPUTE, SEEK LEGAL ADVICE



**REAL PROPERTY LAW SECTION
STATE BAR OF MICHIGAN**

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TENANT-LANDLORD INFORMATION: EVICTION, UNLAWFUL EVICTION & UTILITY ACCESS



EVICTION

Eviction is the process of removing a tenant from rental property. Because Michigan law precludes self-help eviction, a landlord is required to use the court system to lawfully evict a tenant.

A landlord can evict a tenant if:

1. The tenant fails to pay rent.
2. The tenant's use of the property causes a serious and continuing health hazard, causes an extensive and continuing physical injury to the property, involves illegal activities or violates the lease.
3. The tenant fails to move out after its tenancy has been terminated.

(Note: There are additional less common grounds for eviction which are not listed.)

A landlord cannot evict a tenant in retaliation for exercising its legal rights, such as making a complaint to a housing inspector. The most common reason for eviction is nonpayment of rent. To evict a tenant for nonpayment, a landlord must file the following documents in the district court where the property is located.

1. Demand for Possession or Payment.
2. Lease (if one exists).
3. Summons.
4. Complaint.

A Demand for Possession or Payment (the Demand) is the first step in an eviction for nonpayment of rent. The Demand is the landlord's formal written notice to the tenant that the landlord intends to evict the tenant unless it pays past due rent within 7 days.

If the tenant has paid the rent, or if the tenant believes there is a good reason why it does not owe the rent, it may challenge the eviction in court. A common defense to eviction is the landlord's failure to keep the premises in good repair.

If the tenant does not pay the rent as demanded, the landlord may file an eviction action with the court. The tenant will then be served with a copy of the landlord's complaint, along with a summons stating where and when the tenant should appear. Because they contain important information, the summons and complaint should be read very carefully.

At the time set for trial, the tenant may ask the court to adjourn the hearing to obtain legal assistance. The tenant should, however, be ready to explain to the court why it believes

no rent is due. If the nonpayment is based on the condition of the premises or the landlord's failure to repair, photographs of the conditions are often very persuasive.

In actions based on nonpayment of rent, even if the court rules against the tenant, the tenant can avoid eviction by paying the amount of rent that the court has determined is past due within 10 days of the judgment. Further, if the tenant loses, it also has 10 days to settle the dispute, file a motion or appeal, or move out of the premises.

Unless the tenant takes one of the foregoing actions within 10 days after entry of the judgment, an order will be issued directing the court officer to remove the tenant and its personal property from the premises.

(Note: There are grounds for eviction other than nonpayment of rent. If the tenancy is month-to-month, the landlord may terminate the tenancy and evict the tenant on one month's notice even if the rent has been paid in full. The form used in such instances is a Notice to Quit.)

UNLAWFUL EVICTION

A landlord is precluded from using self-help to evict a tenant. The landlord must first go to court and obtain an appropriate order. Additionally, a landlord cannot harass the tenant or try to make the tenant move out by doing any of the following:

1. Using force or threatening to use force.
2. Removing, withholding, or destroying personal property of the tenant.

3. Changing, altering, or adding locks or security devices to the rental premises.
4. Boarding up the premises which prevents or makes entry difficult.
5. Removing doors, windows or locks.
6. Causing the shut-off or interruption of gas, water or electric service.
7. Causing loud noises, a bad odor or other nuisance.

A tenant may sue a landlord who does any of these things, and if the claim is proved, the tenant is entitled to recover its actual damages or \$200.00 (whichever is greater). Additionally, if the landlord uses actual force, the damages may be tripled. Damages may include things such as lost or damaged property, or the cost of other lodging.

UTILITY ACCESS

Utility services are a basic need. Utilities include gas, water and electric service. Usually, tenants put the utilities in their own name and are billed directly for their use. However, some landlords choose to keep the utilities in their own name and charge the tenant the amount of the bill or pass the cost onto the tenant by including it in the rent.

IF TENANT UTILITIES ARE SHUTOFF:

1. Contact the utility immediately.
2. Determine the reason for the shutoff.