

**MOTION TO VACATE SUMMARY EVICTION ORDER,
TENANT'S AFFIDAVIT/DECLARATION IN SUPPORT
OF MOTION TO VACATE SUMMARY EVICTION ORDER, and
ORDER VACATING SUMMARY EVICTION
TENANT INSTRUCTIONS
(Forms #23, #24 and #25)**

INTRODUCTION

This information explains how to file a Motion to Vacate Summary Eviction Order, Form #23. Use this Motion if you have failed to file a Tenant's Affidavit/Declaration and therefore are in default. If you have received a summary eviction order, the Motion to Vacate will allow a judge to stop or delay the constable/sheriff from locking you out. You must file this Motion to Vacate with the Justice Court clerk as quickly as possible, preferably before the 24-hour lockout notice has ended. If you have already received the 24-hour lockout notice, any delay in filing may result in your eviction.

LEGAL REQUIREMENTS

Nevada law allows a tenant to file a Motion to Vacate Summary Eviction Order in response to a summary eviction order. If you have not received a summary eviction order (also called the 24-hour lockout order), you cannot file a Motion to Vacate. If you did not receive a copy of the order, ask your Justice Court clerk or the constable/sheriff for a copy of the order.

If your Motion to Vacate Summary Eviction Order is granted, the judge should stop the eviction and schedule a hearing to hear your side of the case. Generally, a judge should grant a Motion to Vacate Summary Eviction Order if evidence can establish (1) a reasonable basis for your not responding to an eviction notice or not appearing at the hearing and (2) a prompt response by you, like a Motion to Vacate Summary Eviction Order. For example, if you did not receive a copy of an eviction notice prior to receiving the summary eviction order, and you filed your Motion to Vacate Summary Eviction Order within a day of receiving your summary eviction order, then you would probably satisfy the legal requirements for a Motion to vacate. If you

received a prior eviction notice, like a 5-Day Pay Rent or Quit Notice or a 3-Day Nuisance Notice, a judge may also require a legal defense to the eviction notice.

The judge has the authority to deny your Motion to Vacate Summary Eviction Order and to allow the eviction order to stand. It is important to provide the judge with a reasonable basis for granting the Motion to Vacate Summary Eviction.

The Motion to Vacate Summary Eviction Order covers three specific situations:

1. When you have not received an eviction notice;
2. When you have received an eviction notice and have a legal defense to the action; and
3. When you have missed your summary eviction hearing.

This form cannot possibly address all of the possible reasons for filing a Motion to Vacate. For those situations, you can write in any other excuse or justification. If you think you do not have a legal basis for filing a Motion to Vacate and just want more time, consider filing a Motion to Stay Eviction Order, Form #26.

FILLING OUT FORM #23

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Body of Motion

Fill in your name and provide the date requested.

POINTS AND AUTHORITIES

You do not need to fill out anything here. The reason the Points and Authorities are here is because they explain the law that supports the motion.

SIGNATURE SECTION

You must sign, print your name, and put in the date where indicated in the signature block.

CERTIFICATE OF SERVICE

This document requires a "Certificate of Service." The purpose is to prove you notified the other party that you have filed or intend to file the document. The service of this document on the other party may occur before or after actual filing with the court. It is best to serve and file on the same day.

Provide the date and name of the document you delivered to the landlord or the landlord's attorney.

Fill in the address of the landlord or landlord's attorney. If the landlord is represented by an attorney, the Certificate of Service must indicate that the document is being sent to the attorney and indicate the attorney's address. If the landlord is represented by an attorney, you should not send a copy to the landlord.

Check the method by which the document was delivered.

The signature and printed name of the server are required.

FILLING OUT FORM #24

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Body of Motion

Fill in your name on the line provided.

Number 1

States that you are the tenant in the caption.

Number 2

Provide the date requested.

Number 3

If you received an eviction notice, check Number 3 and provide the date requested.

Number 4

This sentence states that you were not served with an eviction notice. If you check Number 4, provide the date requested.

Number 5

If you check Number 5, check Numbers A, B and/or C, providing requested explanations on the blank lines.

Number 6

If you did file an affidavit, explain on the blank lines provided.

Number 7

If you did not file an affidavit, explain on the blank lines provided.

Number 8

If you did appear at the hearing, explain on the blank lines provided.

Number 9

If you did not appear at the hearing, explain on the blank lines provided.

Number 10

Check Number 10 if you believe you have a meritorious defense and explain.

Number 11

This sentence states that you are not attempting to delay the proceedings.

Number 12

This sentence states that you will agree to pay all court costs and fees due to the entry and stay/vacate of the eviction order.

Number 13

Check Number 13 if your rent is subsidized by a Public Housing Authority.

Number 14

Check Number 14 if your rent is not subsidized by a Public Housing Authority.

Number 15

This sentence requests that the court stay the pending eviction until a decision is made.

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.

CERTIFICATE OF SERVICE

This document requires a "Certificate of Service." The purpose is to prove you notified the other party that you have filed or intend to file the document. The service of this document on the other party may occur before or after actual filing with the court. It is best to serve and file on the same day.

Provide the date and name of the document you delivered to the landlord or the landlord's attorney.

Fill in the address of the landlord or landlord's attorney. If the landlord is represented by an attorney, the Certificate of Service must indicate that the document is being sent to the attorney and indicate the attorney's address. If the landlord is represented by an attorney, you should not send a copy to the landlord.

Check the method by which the document was delivered.

The signature and printed name of the server are required.

FILLING OUT FORM #25

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Body of Motion

Do not complete this part of the order; the judge will complete this part of the order after reviewing your documents.

FILING FEES

The Justice Court may charge a small filing fee for the Motion. 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 Motion with it. The court will not officially file your Motion 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. Once you have completed the paper work, file it with the Justice Court as soon as possible.

FILING WITH THE JUSTICE COURT

Once you have completed the forms, you must file them with the Justice Court where your hearing was held. You will need the original and two copies of the Motion to Vacate Summary Eviction Order. You must mail one of the copies to your landlord.

WHAT HAPPENS NEXT?

Filing a Motion to Vacate Summary Eviction Order does not guarantee that the judge will stop or delay the eviction. The judge must review the paperwork and make a decision. Ask the clerk how long this will take or what you should do to find out the judge's decision as quickly as possible. The court may deny your Motion (and they frequently do) and you be may evicted without any further notice. Or, you may be evicted before the court considers your Motion. Stay in touch with the court clerk. Usually, you will have some advance notice of the judge's decision. Finally, if your Motion is denied, your only recourse is to appeal the summary eviction order. Your Motion to Vacate may take a few days to be decided and may mean that you miss your time to appeal the summary eviction order. You have only ten (10) judicial days to make an appeal of your summary eviction order and a decision on your Motion to Vacate may take longer than ten (10) judicial days. Carefully consider which course of action you want to take. You may want to consult with an attorney before making a decision.

If the judge decides to grant your request for an Order to Vacate, the court will schedule a hearing. You must appear at the hearing and present your arguments and legal defenses as to why the summary eviction should not be granted.