

# Telling Your Landlord that the Notice to Vacate was Improper

(You should not use this form letter if you own a mobile home and rent only the lot that it sits on from your landlord.)

**Note:** Use these instructions and form letter to write a letter to the landlord. In the letter you will tell the landlord that the notice to vacate that the landlord gave you is not proper under the law.

These instructions and form letter may not be right for your case. They cannot take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

Do not change this form letter. If you change the form letter, you might lose language you need.

Do not use these instructions and form letter if you own a mobile home and rent only the lot from your landlord, or if you have a federal rent subsidy such as Section 8 (also known as "Housing Choice Voucher"). The laws are different laws for those situations.

## What form will I need?

You only need one form. The form is the form letter that follows these instructions. The form letter begins on page 7 of this packet.

## Who can use this form letter?

You can use this form letter if:

- You rent an apartment, house, room, or mobile home (NOTE: If you rent both a mobile home and a lot, you can use this form. But if you own your mobile home and only rent the lot, do not use this form); AND
- The landlord is trying to evict you; AND
- The landlord's notice to vacate did not meet all of the requirements of the Montana Residential Landlord Tenant Act.



## **How do I know if the landlord's notice is proper under the law?**

Any notice to vacate from the landlord must:

- Be in writing; AND
- Specify the correct number of days for you to vacate, depending on the reason for the notice as set out in Montana law. The next section gives the correct number of days for the most common situations.

## **What if the landlord orally told me to move but did not give me a written notice?**

The law requires a landlord to give a tenant written notice to vacate a rental. Requiring a written notice helps avoid arguments between landlords and tenants about whether a landlord actually gave notice. The law also helps avoid arguments about whether the landlord included all the information the law requires in the notice.

## **What are the requirements for the landlord's notice to vacate in the most common situations?**

1. Month-to-month tenancy. You have a month-to-month tenancy if (1) the rental agreement is oral (spoken, not written) and you pay your rent by the month, or (2) the rental agreement is written and its term is month-to-month. According to Section 70-24-441(2), MCA, the landlord must give you written notice at least 30 days before the date the landlord wants to end the tenancy. ("MCA" stands for "Montana Code Annotated.") The landlord does not need to have a good reason to end the tenancy. The landlord can end a month-to-month tenancy for no reason at all.
2. Week--to-week tenancy. You have a week-to-week tenancy if (1) the rental agreement is oral (spoken, not written) and you pay your rent by the week, or (2) the rental agreement is written and its term is week-to-week.

According to Section 70-24-441(1), MCA, the landlord must give you written notice at least 7 days before the date your landlord wants to end the tenancy. The landlord does not need to have a good reason to end the tenancy. The landlord can end a week-to-week tenancy for no reason at all.

3. Nonpayment of rent. If you are behind on the rent, the notice must give you at least 3 days to pay the rent, according to Section 70-24-422, MCA.
4. Repeated violation. A repeated violation of the rental agreement means that the landlord gave you a notice for violating the rental agreement and you committed the same violation again within six months. According to Section 70-24-422, MCA, the new notice of the repeated violation must give you at least 5 days to vacate.
5. Arrest. The landlord may give you notice to vacate if you were arrested or charged with one of the three criminal offenses provided under Section 70-24-321(3), MCA: 1) criminal production or manufacture of dangerous drugs, 2) operation of an unlawful laboratory, or 3) gang-related activities. The notice must say that the landlord is ending the tenancy because of the arrest or charge. The notice must also say what you were arrested or charged with. According to Section 70-24-422, MCA, the notice must give you at least 3 days to vacate.
6. Unauthorized pet or person. You have an unauthorized pet or person if you have a person or pet living with you that is prohibited under the rental agreement. Section 70-24-422, MCA, says that the landlord's notice must give you at least 3 days to either vacate the premises or get rid of the unauthorized pet or person.

7. Destruction of the rental property. If you have destroyed or removed any part of the rental property, Section 70-24-422, MCA, says the landlord's notice must give you at least 3 days to vacate. The law is not clear about whether you have the right to fix the problem within those 3 days to avoid eviction. If you prefer to fix the problem within 3 days rather than to move, talk to the landlord.
  
8. Other violations. For any violation not specifically mentioned in the law, the landlord must give you at least 14 days to vacate.

## How do I use the form letter?

### 1 Complete the form letter and sign it

- Make sure all of the blanks on the form letter are filled in completely.
- Sign the form letter on the blank that says "*(sign your name).*"

### 2 Make a copy

- Make one copy of the completed and signed letter for yourself. Keep the copy in a safe place. It may be important if you have to go to court.



### 3 Deliver the letter

You have two choices of how to deliver the letter to the landlord:

- Hand-deliver the letter to the landlord. If you choose this option, you must either (1) actually hand the letter to the landlord in person, or (2) leave it at the landlord's place of business if the landlord made the rental agreement through that business. It is a good idea to bring two copies of the letter. If possible, ask the landlord to sign and date one copy of the letter as "received." Keep that copy as

proof that the landlord got your letter, and give the landlord the second copy. In case the landlord will not sign the letter, it is a good idea to bring someone with you when you hand-deliver the letter to the landlord. That person can testify in court later if the landlord denies receiving your letter.

## **OR**

- Mail the letter to the landlord. It is a good idea to mail the letter by first-class mail with a Certificate of Mailing. The post office will charge you more for the Certificate of Mailing, but it is worth it. Keep the Certificate of Mailing receipt. The Certificate of Mailing is your proof that you sent the letter. With a Certificate of Mailing, the landlord will not have to sign anything to get your letter. The landlord cannot refuse delivery.

## **Where can I get more information?**

The laws of Montana are called the Montana Code Annotated or “MCA.” The laws about giving notice to a tenant to vacate are located in the MCA at Title 70, Chapter 24, Section 422 and Section 441. An easier way to write that is: § 70-24-422, MCA, and § 70-24-441, MCA. The symbol § means section. The MCA can be found at your local library or on the Montana State Law Library website at [www.lawlibrary.mt.gov](http://www.lawlibrary.mt.gov). Click on the “Laws” option near the top of the page on that website, and then click on “MCA.”

The letter to the landlord refers to specific sections of the law. It is a good idea to read those sections of the law before you send the letter to the landlord.

## Where Can I Get Legal Help?



These organizations may be able to help you:

- **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.
- **The State Bar Lawyer Referral and Information Service (LRIS)** refers people to Montana lawyers who might be able to help. Call LRIS at 1-406-449-6577.
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at [www.lawlibrary.mt.gov](http://www.lawlibrary.mt.gov). Or you can contact a Reference Librarian at 1-800-710-9827 or by email at [mtlawlibrary@mt.gov](mailto:mtlawlibrary@mt.gov).

### Please take a short survey about this form.

When you are done with the form, please take our online survey at this address:

[http://www.surveymonkey.com/s.aspx?sm=fCBhbBj4MdOWw\\_2fjsCjlg\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=fCBhbBj4MdOWw_2fjsCjlg_3d_3d)



Or you can access the survey on the “Forms” page of the State Law Library website, at [www.lawlibrary.mt.gov](http://www.lawlibrary.mt.gov). Your answers will help make the form better. Thank you!

**Note:** You can use this form if you rent a house, room, apartment, or mobile home from the landlord. Do not use this form if you own a mobile home and rent only the lot that it sits on from the landlord.

Date: \_\_\_\_\_ (date you mail or hand-deliver the letter)

From (write your name and address):

\_\_\_\_\_ (name)

\_\_\_\_\_ (street address or P.O. Box)

\_\_\_\_\_ (city, state, ZIP)

\_\_\_\_\_ (phone—optional)

To (write the landlord's name and address):

\_\_\_\_\_ (name)

\_\_\_\_\_ (street address or P.O. Box)

\_\_\_\_\_ (city, state, ZIP)

\_\_\_\_\_ (phone)

Dear (write the name of the landlord): \_\_\_\_\_,

I am currently living in your rental property located at (write the address of the rental you live in): \_\_\_\_\_.

Your recent notice of termination of my tenancy was improper according to the Montana Residential Landlord and Tenant Act. The notice was improper for one or more of the following reasons:

1. Your notice was not in writing.

2. Your notice did not give me the number of days to move that is required by the law (Section 70-24-422, MCA, or Section 70-24-441, MCA).
3. Your notice accused me of a violation that I have not committed.
4. Your notice did not give me the opportunity to correct the violation, and the law (Section 70-24-422, MCA) requires that I have that opportunity.
5. Your notice did not comply with the law for other reasons.

Because your notice of termination of my tenancy was improper, you cannot legally evict me at this time. I may raise this as a defense if you sue me for eviction.

Sincerely,

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*(sign your name)*