

A.: A tenant is guilty of "unlawful detainer" when he or she, in person or by subtenant, continues in possession without the landlord's permission after default in the payment of rent and three days' written notice (stating the amount due and requiring its payment or possession of the property) has been served on the tenant and on any subtenant in actual occupancy of the premises. (Code of Civil Procedure 1161(2)).

Unlawful detainer is a statutory proceeding governed solely by the statutes creating it (Code of Civil Procedure sections 1161-1179a), and is not based on contract. The statutes are procedural and provide a summary procedure for regaining possession of real property once the consensual basis for the tenant's occupancy is at an end. The statutory rights and remedies are given in lieu of the landlord's common law rights and remedies (which had included the right to enter and expel the tenant by force). The statutory remedy is intended to be a relatively simple and speedy remedy that obviates any need for self-help by landlords. Thus, the primary purpose of an unlawful detainer proceeding is to obtain possession of real property in the cases specified by statute. The recovery of damages and rent by the landlord from a defaulting tenant is merely incidental to the proceeding to recover possession.

While a landlord is not required to be represented by an attorney in an unlawful detainer proceeding, I would strongly recommend it (due to the fact that there are several specific procedures that must be strictly complied with). In addition, make sure that your lease or rental agreement is in writing, and has an "attorney's fees clause" in it (that allows the "prevailing party" in an unlawful detainer action the right to recover reasonable attorney's fees and costs); otherwise, you will not be able to recover your attorney's fees (because they are not authorized by statute). I recently had a client who did not have a written rental agreement, and had to pay his attorney's fees in an unlawful detainer action out of his own pocket.

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