

Tenant's Guide to Eviction Court

Two Trials

Most eviction cases have two parts. On the Complaint you get from the court these are labeled the First and Second “Causes” or “Claims.” Although they are part of the same lawsuit, the court treats them like separate cases with separate trials.

First Cause: Eviction

The landlord claims you no longer have the right to stay in your home. The landlord is asking for a court order to force you to leave.

First Trial

The date and time for your eviction trial will be on the “Summons” you received from the court. You may receive two summonses—one by mail, a second delivered by the sheriff.

The only thing that will be decided at this trial is whether you will be evicted.

Second Cause: Money

The landlord claims you owe money. This is usually for back rent or damage you caused to the home.

Second Trial

Whether you win or lose the eviction trial, the court may hold another trial to decide money claims. This includes any money claims you have against the landlord.

The date for this trial may not be set until after the eviction trial.

You must file an Answer to the Complaint within 28 days if you want to fight the money claims.



Eviction Terms

Complaint - The paper the landlord files in court with claims against you.

Summons - The official notice that you have been sued.

Answer - Your response to the claims in the landlord's complaint. Your Answer to the money claims is due 28 days after you receive the summons.

Counterclaim - Your complaint against the landlord. “You sued me. I’m suing you back.”

Default Judgment - You lose because you did not file an answer. Like forfeiting a ball game.

Magistrate - The person who hears and decides eviction cases.

Writ - The court order authorizing the landlord to put you and your things out of the home.

Set-Out - The physical eviction, removing you and your stuff from your former home.

Bailiff - The court official who must be present at the set-out. This may also be a deputy sheriff.

Clerk of Courts - The office that keeps all court records.

The Eviction Process

Notice to Leave the Premises

This notice is required by law. The landlord usually puts it on or under the door. If you don't leave by the deadline on the notice, the landlord can file an eviction in court.

You Don't Move

- You think the landlord is wrong.
- OR

- You can't move that fast.

Landlord Sues to Evict You

You will receive a court summons & complaint by mail, attached to your door, or hand delivered by a court official.

Your Court Date

- The date, time, and place will be on the summons.
- Be early! Lines to get through security can be long.
- If you're late or absent...you will lose!

When Your Case is Called

You and the landlord are sworn to tell the truth, stand in front of the magistrate, and have your trial.

Landlord goes first & must prove:

- You broke the lease or stayed past the lease date; &
- Landlord served the Notice to Leave; &
- Landlord accepted no rent after serving the notice; &
- You haven't moved or turned in your key.

Your Turn

- Ask the landlord or witnesses questions.
- Tell the magistrate why you should not be evicted.
- You or your witnesses tell the magistrate what really happened.
- Show the Magistrate your rent receipts or other evidence.

Eviction Judgment

The Magistrate makes a decision on the eviction claim.

- You WIN! The first cause is dismissed, and you have the right to stay in your home.

OR

- You lose. The landlord gets a court order called a "writ" to put you out.

Common Eviction Defenses

I paid the Rent.

If you can prove it, this is the best defense to an eviction for not paying rent. Take your rent receipts or other proof of payment with you to court.

The landlord refused to accept my rent.

If you can prove you offered rent on time, this can be a good defense.

The landlord accepted a rent payment after giving me the 3-day Notice to Leave.

You'll need a receipt or other proof that you paid. You could win.

I have often paid rent late, but this time the landlord surprised me by refusing to take it.

This can be a good defense. But you'll need receipts or other proof of your history of tardy payments.

I didn't break the lease.

You'll need evidence—documents or witnesses.

I put my rent into escrow with the court before the landlord gave me the Notice to Leave.

If you have done rent escrow properly, this can be a good defense. Read the Legal Aid brochure on rent escrow.

I didn't receive a copy of the 3-day Notice to Leave.

This is hard to prove. The landlord will probably swear it was put under your door. You will swear, "I didn't get it." The magistrate has to decide whom to believe.

Weak Defenses to Non Pay Eviction

I didn't pay because...

I lost my job...was sick...lost my money...
You'll almost certainly lose.

My landlord wouldn't make repairs.

Usually not a good defense. Unless you put your rent into court escrow, the magistrate is not likely to listen to complaints about bad conditions. You'll be told to file an answer and counterclaims for the second cause...and you'll probably be evicted.

Answers to Common Questions About Eviction

Can I postpone my eviction trial?

- Maybe. But no more than one week.
- You can ask the magistrate or judge for a “continuance.”
- If you lose the case after getting a continuance, you will probably get no more than 3 days to move.

What happens if I don’t show up in court?

- You will lose.
- The landlord will get an eviction order.
- You will be forced to move.

I’ve already moved. Do I still go to court?

- Yes. If you don’t go, there is a risk that the landlord will still get an eviction writ.
- If you have turned in your keys, the case should be dismissed.

If I lose, how much time will I get to move?

- It varies by counties. Make sure you ask.
- It will usually be 7-10 days, but can be shorter if you have had a continuance or if the landlord convinces the court that you have been tearing up the home or using illegal drugs.

Can I get extra time to move?

Probably not. 10 days is the longest Ohio law lets the court give you. Anything beyond that is between you and your landlord.

What happens if I don’t move before the deadline?

A court official will watch while your landlord removes all of your stuff from the home and locks you out.

What happens to my stuff after it is set out?

- Everything in your home goes on the sidewalk. It’s up to you to protect it from thieves and weather.
- Your landlord does not have the right to seize your things from the apartment to recover back rent.

How long will an eviction stay on my court record?

Forever! Even if you win, the court record will always show that you were sued for eviction. Unfortunately, many prospective landlords don’t check to see whether you won or lost.

I think the magistrate was wrong. Can I stop the eviction by filing an appeal?

Maybe. But it’s not easy.

- Ask the Clerk of Courts about forms for filing “objections” to the magistrate’s decision.
- You may have to pay your rent to the court if you want to delay the set out.

Will I get a notice before the set out?

Maybe. You can check on the set-out date by calling the clerk of courts and talking with the civil bailiff or sheriff’s office.

Mobile Homes

I own my mobile home. What happens to it if I am evicted by a mobile home park?

The eviction writ forces both you and your home to leave the park. If you leave the home in the park:

- The sheriff or bailiff can have the home towed to a storage lot.
- If your home is worth less than \$3,000, the court official may order it to be destroyed.
- The park can go through a process to transfer the title from your name to its name.

- If your home is worth more than \$3,000, the park can sell it. The money from the sale will be applied to court costs, tax liens, and judgments by the park. Anything over that will go to the county’s unclaimed property fund. Until the home is sold or destroyed, you have the right to reclaim it by paying any tax liens, court costs, and storage costs. You must then remove the home from the park.

Fighting the Landlord's Money Claims

If you do not file an answer to the second cause in an eviction case, you may lose by default. The landlord will win the right to collect all the money the landlord claims you owe.

What's an Answer?

The Answer is a defendant's written response to a plaintiff's claims. Filing an Answer forces your landlord to prove those claims in court

Answer Deadline: 28 Days

- Court rules require you to file an Answer no later than 28 days after you receive court papers. But you should file even if you are late.
- File your Answer by giving it to the Clerk of Courts. Send a copy to the landlord or his lawyer. And keep a copy for yourself.
- There is no fee for filing an Answer unless you file a counterclaim.

What should the Answer say?

Read the landlord's complaint.

- Deny anything that you do not believe is true.
- The court will assume that landlord statements you do not deny are true.
- Include any counterclaims.
- Sign the Answer and include your present address and phone number.

Your Counterclaims

If you believe the landlord owes you money, you can add a Counterclaim to your Answer.

- In a Counterclaim you are actually suing the landlord.
- The Counterclaim should be in simple sentences that describe what the landlord did wrong and how much you are owed.
- The court will charge a small fee for filing the counterclaim.
- If you also file a poverty affidavit, the court should waive the fee.

Typical Eviction Counterclaims

- Leaky roof, no heat, or other bad conditions that made the home worth less than your rent;
- Security deposit was not refunded;
- Money you spent to replace stuff that the landlord threw away before he had a writ;
- Damage to your furniture or other personal property;

How will I know the date of the trial for money claims?

- If you file an Answer, you may get a notice in the mail.
- You can also call the Clerk of Courts or look up your case on the Clerk's website.

What kind of evidence should I have at the second trial?

Your goal is to prove that you do not owe some or all of the money claimed by the landlord. If you have counterclaims, you must also show why the landlord owes you money.

- Your own testimony about what happened
- Rent receipts to show you paid the rent
- Receipts for things you had to replace because of the landlord's bad actions
- Photos to show how you left the home
- Photos to show things the landlord did not repair
- Testimony of people who personally saw you pay the rent or saw the leaky roof

But

Letters or affidavits from your witnesses are no good. These are "hearsay," and the magistrate will not look at them.

What if I can't afford a fee to file a counterclaim?

Ask the clerk about filing a poverty affidavit. This is a sworn, notarized statement that you cannot afford the court costs.

Answer Form

You can use the form on the last page for your Answer. You can also get a form from the Clerk of Courts or make your own. The Answer does not have to be typed. But it must be readable! Be sure to include your present address so you can get court notices. Send a copy to the landlord. If the landlord has an attorney, send the copy to the attorney instead of the landlord.

_____ County Municipal Court

Case No. _____

Plaintiff Landlord

Vs.

Defendant Tenant

Answer

Counterclaim

I certify that I sent a copy of this to _____ (plaintiff or plaintiff's attorney),
by mailing it to (address) _____
on _____ (date).

Signature: _____ Date: _____

Address: _____