

## **LANDLORD'S RESTITUTION (EVICTON) PROCESS**

This pamphlet concerns residential property only. It does not discuss commercial property, mobile homes or some government housing. If a lawsuit has been filed against you, you should consult an attorney for legal advice.

### **HOW DOES THE EVICTION PROCESS BEGIN?**

The eviction process starts with a written notice from the Landlord to the Tenant. There are four basic types of notices:

- ▶ A 30-day notice tells the Tenant to move on a specific date at least 30 days after the beginning of a rental period. No reason is needed to evict the Tenant in a month-to-month tenancy or if allowed by a written rental agreement.
- ▶ A 7-day notice is used to correct violations of the rental agreement or to enforce obligations imposed on tenants by law. The Landlord must give the Tenant two 7-day notices within a 6-month period before proceeding with eviction.
- ▶ A 3-day notice is used when rent is not paid on time.
- ▶ A 3-day notice is also used when the Tenant knowingly commits a substantial violation of the law.

The total number of days set out in the notice must have passed before the Landlord can file a lawsuit. If the total number of days has not passed or if the Tenant pays the rent or corrects the violations in the time set out in the 3- or 7-day notice, then the judge may not order the eviction.

After the time in the 3-day, 7-day and/or 30-day notice has expired, the Landlord can file a Petition by Owner for Restitution, sometimes called a Complaint in Forcible Entry or Unlawful Detainer. If the Landlord files a Petition by Owner for Restitution before the time set forth in the notice has expired, the judge cannot allow the Landlord to evict the Tenant.

### **WHAT DOES A LANDLORD NEED TO FILE AN EVICTION CASE?**

When filing an eviction case, a Landlord will need to bring the following to the Clerk of the Court's office:

- A completed Petition by Owner for Restitution form.
- A copy of the 3-day, 7-day and/or 30-day written notice(s) for the court and one copy for each Tenant.
- A copy of the Lease/Agreement for the court and one copy for each tenant (if you forget the Lease a copy must be provided at the trial).
- The court filing fee.

When the Landlord files a Petition by Owner for Restitution, the Clerk of the Court will prepare a Service Packet, which includes the trial date, time and the assigned judge.

The court date will generally be set for 7 to 10 days after the date the Landlord files the Petition with the court.

### **HOW DOES THE TENANT GET NOTICE OF THE COURT DATE?**

The Landlord is responsible for proper delivery (service) of the Service Packet to the Tenant. The Tenant must be properly served as notification that a lawsuit has been filed against him/her.

The Service Packet cannot be delivered or served by the Landlord or any employee of the Landlord.

The Service Packet can be delivered by:

- the County Sheriff's Office (there is a fee for the service); or
- a private process server (prices vary); or
- any person 18 years of age or older who is not a party in the lawsuit.

There are certain specific rules that must be followed to give proper notice to the Tenant. The three basic ways are as follows:

- The process server can give the Service Packet directly to the Tenant (personal service); or
- The process server can post the Service Packet at the Tenant's residence. If the Service Packet is posted, a complete copy of the Service Packet also must be mailed to the Tenant (posting and mailing); or
- The process server can give the Service Packet to someone who lives with the Tenant and is 15 years of age or older (substitute service).

The Tenant must be served the Service Packet no less than 7 days prior to the court date.

After the process server delivers (serves) the Service Packet to the Tenant, the process server needs to complete the Return of Service on the back of the original Summons (the one with the court seal).

It is very important that the original Summons be returned to the Clerk of the Court for filing prior to the court date. If the Return of Service is not returned to the court prior to the court date, the judge will not take any action and the case will be delayed.

### **WHO WILL BE THE JUDGE?**

In courts with more than one judge, cases are randomly assigned to a judge at the time the case is filed. In an eviction case, the time limit for the Landlord or the Tenant to disqualify or excuse a judge is 3 days after service of the Petition.

If either the Landlord or the Tenant disqualifies a judge, a new judge will be assigned. The court date and time may remain the same with the new judge.

### **WHEN DOES THE TENANT HAVE TO FILE AN ANSWER?**

The Tenant has until the court date to file a written Answer. The Tenant also may file a counterclaim for damages against the Landlord. The Answer or counterclaim is not proof; it is only a statement of what the Tenant hopes to prove at trial. The Tenant must appear at trial to prove his/her case.

### **CAN THE COURT DATE BE CHANGED?**

To change a court date, a party must make a written request before the scheduled date. The judge will decide whether or not to change the court date.

### **WHEN DOES THE TENANT HAVE TO MOVE?**

If the judge awards a Judgment for Restitution in favor of the Landlord, the judge will set an eviction date, usually 3 to 7 days after the court date.

### **WHAT IF THE TENANT DOES NOT MOVE BY THE REQUIRED DATE?**

If the Tenant does not move by the date set by the judge, the Landlord can ask the clerk to issue a Writ of Restitution ordering the Sheriff to remove the Tenant. After the clerk issues the Writ of Restitution, the Landlord may deliver the Writ to the Sheriff's Department. The Sheriff will then go to the property and evict the Tenant.

Note: The Sheriff's Department is the only office authorized by the court to evict a Tenant (there is a fee for this service).

### **WHAT ACTION CAN A TENANT TAKE AGAINST THE LANDLORD?**

If a Tenant believes the property being rented is dangerous or unhealthy, the Tenant can give the Landlord a written 7-day notice requesting repairs. If the Landlord does not complete the repairs within 7 days, the Tenant can:

- terminate the lease agreement and leave the property without penalty; or
- reduce (abate) the rent, usually by 1/3 of the pro rata daily rate, until the repairs are finished; or
- make a claim for damages due to the condition of the property; or
- file a Petition by Resident for Relief and proceed through the court process.

If a Landlord illegally locks out a Tenant, meaning either that the Tenant does not have access to the rental property or the utilities are wrongfully disconnected, the Tenant can claim he/she is entitled to damages. The Tenant can ask the judge to order him/her to be allowed to move back into the rental property and to penalize or fine the Landlord due to the Landlord's illegal or wrongful actions.

**Other pamphlets are available from the Court Clerk's Office.**