

TENANT'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 also is 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 IS A PETITION BY OWNER FOR RESTITUTION?

A Petition by Owner for Restitution is a lawsuit where a Landlord attempts to have the Tenant evicted. The Landlord also may request a judge to award an amount of money to the Landlord for past and future rents, late fees, utility charges, property damage, other contractual damages, attorney's fees and/or court costs. The Tenant may file a written Answer to the Petition by Owner for Restitution at any time before the court date.

WHAT INFORMATION IS INCLUDED IN THE ANSWER?

The Answer states whether the Tenant admits or denies the claims made by the Landlord in the Petition by Owner for Restitution. The Answer also may include a defense or counterclaim 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.

WHAT IS A COUNTERCLAIM?

A counterclaim is a lawsuit by the Tenant against the Landlord in the same case. A counterclaim is usually based on the same dispute or set of facts, and alleges that the Landlord violated some duty owed to the Tenant under the lease or under law.

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. For 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.

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.

WHAT HAPPENS IF THE TENANT DOES NOT APPEAR AT THE TRIAL?

If the Tenant does not appear at the trial, the Landlord can request the court to enter a Default Judgment against the Tenant.

A Default Judgment means that the Landlord automatically wins the case and is usually awarded the amount requested in the Petition by Owner for Restitution. This may include more money than any past-due rents.

Therefore, if a Tenant wants to protect his/her rights, even if the Tenant moves out of the property before the court date, it is extremely important that the Tenant file and serve an Answer and appear at the trial.

WHEN MUST A TENANT MOVE?

If the judge awards 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.

WHAT ACTIONS CAN A TENANT TAKE AGAINST THE LANDLORD?

If the 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 that he/she is entitled to damages. The Tenant can file a Petition by Resident for Relief asking the judge to order him/her to be allowed to move back into the rental and to penalize or fine the Landlord due to the Landlord's illegal or wrongful actions. The court date will generally be 3 to 5 days after the date the Petition is filed.

HOW IS NOTICE OF THE COURT DATE GIVEN TO THE LANDLORD?

When the Tenant files a Petition by Resident for Relief, the Clerk of the Court will prepare a Service Packet, which includes the Summons and Petition by Resident for Relief. The Summons will state the trial date, time of the trial, and the assigned judge.

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

The Service Packet cannot be delivered or served by the Tenant.

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 when serving the Service Packet to the Landlord. If the Landlord is not a corporation, the three basic ways are:

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

If the Landlord is a corporation, the process server must give the Service Packet to the registered agent, an officer, manager or person in charge of the corporation.

After the process server delivers (serves) the Service Packet to the Landlord, 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.