

## RESIDENTIAL EVICTION CASES

### LANDLORD / TENANT INFORMATION

1. **Complaint** The landlord (plaintiff) fills out and files a complaint and summons form with the court, supplies the court with a copy of the notice that was given to the tenant (defendant) to terminate the rental agreement, and pays a \$75.00 filing fee, or if the landlord cannot afford the fee, requests a waiver.
2. **Service** The landlord arranges to have a copy of the summons and complaint served on the tenant. The complaint will be served the next business day. The sheriff's office will serve the papers on up to 2 people at the same address for \$36. The clerk will mail copies to the tenant's address.
3. **Court Date** The summons will give the date and time that the landlord and tenant are to appear in court, generally eight days from the day the complaint is filed. The hearings are usually at 8:15 a.m. The landlord may ask for a later date at the time of filing the complaint.
4. **First Appearance** At the date of the first appearance
  - a. If the landlord appears and the tenant does not, the landlord will be awarded possession (restitution) of the premises and a judgment for costs.
  - b. If the tenant appears and the landlord does not, the complaint will be dismissed.
  - c. If both parties appear, the judge will set the time for the next court appearance.
  - d. If the tenant has any legal reason why the landlord should not be allowed to terminate the agreement, the tenant must file an "Answer" (a form provided by the court) explaining what the reason is. The tenant must pay a fee of \$75, or if the tenant cannot afford to pay the fee, request a deferral/waiver.
  - e. If the parties settle their differences, both sides need to present the settlement to the judge in court.

**Trial** If the tenant contests the eviction by filing an answer, the judge will instruct the parties that they are entitled to a jury trial. If both parties waive a jury (either in writing, or by telling the judge) the case will be tried by the court without a jury.

The fee for a jury trial is \$150.00. per day. The fee must be paid by the landlord unless the landlord waives a jury. If the landlord waives a jury and the tenant wants a jury, the tenant must pay the fee, unless deferred or waiver.

At a jury trial, a panel of jurors will be in the courtroom. The landlord and tenant must select 6 jurors, may give opening statements, present witnesses and evidence, and submit the case to the jury for decision.

At a court trial, the parties may give opening statements and present witnesses and evidence. The case is heard and decided by the judge. The fee for a court trial is \$125.00 and must be paid by the landlord.

6. **Judgment** If the landlord wins, the judge will order the tenant to move out (the legal term is restitution of the premises) on a certain date . To enforce that order the landlord must:
  - a. Wait until the move-out date has passed and if the tenant has not moved out, have the court clerk issue a "Notice of Restitution". The notice will give the tenant 4 days (as calculated by statute) to move out. There is a \$15. fee for the notice.
  - b. Arrange for the sheriff to serve the notice on the tenant. The sheriff charges a \$36 fee for service up to 2 people at the same address.
  - c. If the defendant does not move out by the time and date on the notice, the next day have the court clerk issue an "Execution of Judgment of Restitution". There is a \$35 fee for the Execution. The landlord must request the execution within 60 days of the date the judgment was entered, or the date the tenant was to move out, whichever is later.
  - d. Arrange for the sheriff to serve the Execution. The sheriff charges a \$106.00 fee for service up to 2 people at the same address. The sheriff will serve the execution on the tenant and physically remove the tenant from the premises.
7. If either party gets a judgment against the other for costs which includes any service and filing fees that have been paid, that judgment can be collected by any legal means. The court does not provide forms for garnishment or any type of execution to collect on a judgment

This information is not a complete statement of residential eviction law, but it does describe the usual court process. The information may not apply to every case. **If you have any questions, or need legal advice, you should contact a lawyer.**