

## Residential Eviction Instructions

A residential eviction is a court action by a landlord against a tenant to remove the tenant from a rented property, typically a house, an apartment, a mobile home, a mobile home space, or a floating home. The landlord must use established court processes to evict a tenant from residential property located in Oregon. The landlord in a residential eviction court case is called the plaintiff, while the tenant is the defendant.

### Notice to Vacate a Property

Initially the landlord must have provided written notice to the tenant to vacate the property by a certain date, sometimes based upon violations of the rental agreement. Notices to vacate property can be obtained from most office supply or stationary stores. After the specified date to vacate the property has passed, and the tenant continues to occupy the property, the landlord may begin the eviction process. **It is important to note that the Sheriff's Office will only act upon the court issued documents mentioned below.**

### Eviction Complaint and Eviction Summons

A **residential eviction complaint** and **residential eviction summons** must be filed with a clerk in the circuit court in the county where the residential property resides. The complaint and the summons must be signed by the landlord or agent for the landlord. The landlord must attach a copy of the original notice to vacate the property, that was served upon the tenant, to the complaint and to the summons. See the current fee schedule to determine the cost for filing the complaint and the summons. Checks for costs of the complaint and the summons should be made payable to Yamhill County Circuit Court.

After the complaint and summons are filed with a court clerk the landlord must hire someone to serve the copies of the original complaint and summons upon the tenant, typically a Yamhill County sheriff's deputy or a private process server. The cost for this document service upon the tenant is determined by the sheriff or the private process server.

A clerk will set a first appearance court hearing between seven (7) and ten (10) days based upon the date of filing the complaint and the summons. The first appearance hearing cannot be postponed unless both parties agree.

### First Appearance

Situation 1: If the tenant fails to appear at the first appearance, a judgment shall be entered in favor of the landlord for possession of the property, and the landlord will be awarded all costs and the prevailing fee.

Situation 2: If the tenant appears at the first appearance but the landlord fails to appear the case will be dismissed and the tenant could be awarded all costs and the prevailing fee.

Situation 3: If both the landlord and tenant fail to appear at first appearance the case will be dismissed.

At first appearance either side may ask the judge to continue the case to a later date in order to gather additional facts, or for additional time to consult a lawyer. The tenant may receive a continuance for only two days unless the tenant deposits the full amount of rent that is due the landlord, with the clerk of the court.

### Judgment

At first appearance the judge will ask the landlord and the tenant if they have settled the case. If the landlord and tenant have not yet discussed a settlement but believe a settlement may be reached the judge will ask them to attempt a settlement before the case proceeds. Landlords and tenants often settle cases by agreeing

on a date when the tenant will move out. In other instances the tenant will agree to pay rent owed and the landlord will agree to allow the tenant to remain on the property. If the landlord and tenant agree to a settlement of the case the settlement terms will be included in a **general judgment for restitution of premises**, which is filed with the court. (See Failure to Follow an Agreement below)

If the landlord and tenant cannot settle the case after some discussion between them, and neither party wishes to go to trial, the judge will make a decision in the case. The judge, the landlord and the tenant will sign a **general judgment for restitution of premises** which includes the terms and conditions of the decision and is filed with the court. Any time allowed for the tenant to move off of the property will depend on the circumstances of the landlord, the tenant and the discretion of the judge.

## **Trial**

If a landlord or tenant would rather present the case at a trial the request should be made during the first appearance. The trial will not be held that day but will be scheduled as soon as the court calendar will allow. A court clerk will notify the landlord and the tenant of the date and time set for trial. A trial fee must be paid to the court by the requesting party and the fee is due before the trial date. If the trial is not held within 15 days the landlord may have some additional rights which may be acted upon. In a trial the landlord and the tenant present evidence to a judge or a jury and can introduce and/or ask questions of witnesses called to testify about matters of the case. At the conclusion of the trial a **general judgment** with findings, terms and conditions is issued by the judge and filed with the court.

Typically within a **general judgment for restitution of premises** is the first date the tenant must vacate the property of the landlord. When the tenant continues to reside on the property after this date to vacate has passed, the landlord may request a **notice of restitution** from a clerk of the court. The landlord must take the notice of restitution to the Sheriff's Office where a deputy will write a second date for the tenant to vacate the property. The deputy will serve the notice of restitution to the tenant. See the fee schedule to determine the cost for the notice of restitution, then contact the Sheriff's Office to discover the fee for that service.

When the tenant does not vacate the property of the landlord by the second date specified in the notice of restitution the landlord may request a **writ of execution of judgment of restitution** from a clerk of the court. Once the writ of execution is filed with the court the landlord will immediately contact the sheriff to schedule a day and time to have the sheriff's deputy physically remove the tenant from the property of the landlord. See the fee schedule to determine the cost for the writ then contact the Sheriff's Office to discover the fee for service of the writ.

Once the tenant has been physically removed from the property the deputy will post an **eviction trespass notice** on the property. Once the trespass notice has been posted the tenant may not return to the property without permission from the landlord. If the tenant enters the property without permission of the landlord the tenant at least commits a criminal misdemeanor, but may commit a criminal felony if the tenant breaks and enters the property.

Once the tenant has been physically removed from the property it is typical for the landlord to change all locking devices associated with the property to prevent the tenant from gaining access. If the tenant has personal property remaining on the property it is up to the tenant to schedule a future day and time with the landlord to remove the personal property. It is possible that the landlord may remove the personal property and store it in a secure facility, then charge the tenant for the cost of the storage.

## **Failure To Follow An Agreement**

In the instance where an agreement between the landlord and tenant was reached at first appearance without

assistance by a judge or jury, but the tenant does not comply with the written agreement, the landlord may file an **affidavit of noncompliance** with the clerk of the court. In the affidavit the landlord explains how the tenant has not followed the agreement. Once the affidavit has been filed the court issues a **general judgment** in favor of the landlord, then sends a copy to the landlord and the tenant. If the tenant disagrees with the complaints of the landlord in the affidavit of noncompliance the tenant may file a **defendant's request for hearing to contest an affidavit of noncompliance**, within four days of the file date stamped on the landlord's affidavit of noncompliance. In the defendant's request for hearing to contest, the tenant must provide a written explanation why the tenant should be entitled to keep possession of the property. A court clerk will notify the landlord and the tenant of the date and time set for the hearing. The only issue discussed at the hearing will be if the landlord or the tenant has complied with the agreement. If the landlord does not attend this hearing the writ of execution may be withdrawn. If the tenant does not attend this hearing the result may be that the writ of execution will be enforced and tenant removed from the property by a sheriff's deputy.

Yamhill County Circuit Court  
535 NE 5<sup>th</sup> Street, Room 206  
McMinnville, Oregon 97128-4504  
503-434-7530

Yamhill County Sheriff's Office  
535 NE 5<sup>th</sup> Street, Suite 143  
McMinnville, Oregon 97128-4504  
503-434-7506

The fees and the process for using the eviction process are provided by the Oregon State Legislature. Failure to follow the procedures may result in the case being dismissed.

To collect delinquent rent or damages, a separate court action must be filed. See the section on small claims.

Process Servers may be located in some telephone directories. If you have an Internet connection some process servers in Yamhill County may be located using a search engine.

Additional information concerning the eviction process may be obtained from the Oregon State Bar Association by calling their toll free 24 hour telephone number at 1-800-452-4776. You may listen to the relevant topics in the **Tenants and Landlords Directory**.