

LANDLORD'S PROCESS FOR EVICTING A TENANT



Metropolitan Court - Civil Division

This pamphlet concerns only residential leases and does not pertain to leases of commercial property, mobile homes and/or government housing. This pamphlet is general in nature and is not designed to give legal advice. The Court does not guarantee the legal sufficiency of this pamphlet or that it meets your specific needs. Also, as the law is constantly changing, the information in this pamphlet may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

WHAT IS A RESIDENTIAL LEASE?

A residential **Lease** is an agreement between a person or entity (the “**Landlord**”), who owns a residence, such as a home or apartment (the “**Residence**”), and who grants to another person (the “**Tenant**”) the right to possess, use and live in the **Residence** in exchange for the **Tenant’s** payment of **Rent**.

WHAT IS EVICTION AND HOW DOES IT BEGIN?

Eviction is when the **Landlord** ends the **Tenant’s** possession of the **Residence** under the **Lease**. The **Eviction** process starts with a written notice from the **Landlord** to the **Tenant** regarding the **Lease**. There are four basic types of eviction notices:

▶ A **30-day notice**, where the **Landlord** tells the **Tenant** that the **Lease** is ending and that the **Tenant** must move out by a specific date (This type of notice must be given at least **30 days** before the **Tenant** is required to move out.);

▶ A **7-day notice**, which is used to correct the **Tenant’s** violations of the **Lease** or to enforce obligations imposed on the **Tenant** by law;

▶ A **3-day notice of non-payment of rent**, which gives the **Tenant** 3 days to pay **Rent**; and

▶ A **3-day notice of substantial violation**, which the **Landlord** gives when the **Tenant** or another person, with the **Tenant’s** consent, *knowingly* commits a substantial violation of the **Lease** or the law and which gives the **Tenant** 3 days to move out of the **Residence**. (See NMSA 1978, §47-8-33(I) and Rule 4-901A NMRA regarding “substantial violations.”)

After the time in the **3-day**, **7-day** and/or **30-day** notice has expired, the **Landlord** can pursue a lawsuit to evict the **Tenant** by filing a *Petition by Owner for Restitution* with the Court. However, if the number of days stated in the notice has not passed or if the **Tenant** pays the rent or corrects the violations in the time set out in the notice, then the Judge may not allow the **Eviction**. Also, if the **Residence** is in foreclosure, the **Tenant** may be entitled to additional notice before the **Tenant** has to move out. For more information see the “*Protecting Tenants at Foreclosure Act of 2009*,” which was signed into law by President Obama on May 20, 2009.

WHAT DOES A LANDLORD NEED IN ORDER TO FILE AN EVICTION CASE?

A **Landlord** will need to bring the following to Court:

- A *Petition by Owner for Restitution* form, which has been completed and signed and to which copies of all of the written notices (**3-day**, **7-day**, and/or **30-day**) from the **Landlord** to the **Tenant** and the **Lease** are attached as **Exhibits**;
- Copies of the *Petition by Owner for Restitution* with **Exhibits** for the **Landlord** and for service on each of the **Tenants**; and

- The fee to file a *Petition* is \$77.00.

When the **Landlord** files a *Petition by Owner for Restitution*, the Clerk of the Court will prepare a **Service Packet**, which includes the date of the **Trial**, a copy of the *Petition*, a blank form *Answer to Petition*, and the *Summons*. The Clerk sets the **Trial** 7 to 10 days *after* the date when the **Landlord** will be serving the *Petition* on the **Tenant**. The **Judge** can extend the **Trial** date for good cause.

HOW DOES THE TENANT GET NOTICE OF THE EVICTION AND COURT DATE?

The **Tenant** **MUST** be notified that a lawsuit has been filed. It is the **Landlord's** responsibility to have the **Service Packet** served on the **Tenant** at least **7 days before** the **Trial/Court** date.

Although the **Service Packet** **cannot** be served by the **Landlord** or any employee of the **Landlord**, the **Service Packet** can be delivered by:

- ▶ **The County Sheriff; or**

- ▶ **A private process server; or**

- ▶ **Any person 18 years of age or older who is not a party in the lawsuit.**

(**Note:** The Sheriff's office and private process servers charge a fee for their services.)

There are specific rules that **must** be followed to give proper notice of the **Eviction** lawsuit to the **Tenant**. If the **Tenant** is a person, the three basic ways to properly serve are by:

- Giving the **Service Packet** directly to the **Tenant** (personal service); or
- Posting the **Service Packet** on the front door of the **Tenant's Residence**. If posted, a complete copy of the **Service Packet** also **must be mailed** to the **Tenant** (posting and mailing); or
- Giving the **Service Packet** to someone who lives at the **Tenant's Residence** and is 15 years of age or older (substitute service).

After the **Service Packet** is delivered (served) on the **Tenant**, the **Return of Service** on the back of the original **Summons** needs to be completed by the person, who delivered the **Service Packet**. It is very important that the **Landlord** return the original **Summons** with the completed **Return of Service** to the Clerk of the Court, for filing, **prior to** the Court date. If the **Return of Service** is not filed with the Court **prior to** the Court date, the Judge will not take any action and the case will be delayed.

RECORD OF HEARINGS/TRIAL

If you would like a **Hearing** or **Trial** to be recorded, you will need to make a request **in writing at least 10 days before** your Court date. A recording may be important if your case is appealed. A copy of the CD will be available up to **90 days** after the *Judgment* is filed in your case. You may obtain a copy of the CD if you request it in writing and pay the fee of **\$5.00** per CD.

WHO WILL BE THE JUDGE?

A Judge is randomly assigned to a case when the *Petition* is filed. In an **Eviction** case, the time limit for disqualifying/excusing a Judge for the **Landlord** or the **Tenant** is **3 days** after service of the *Petition*. If either the **Landlord** or the **Tenant** disqualifies a Judge, a new Judge will be assigned. However, please note that the Court date and time will probably remain the same with the new Judge.

WHEN IS THE DEADLINE FOR THE TENANT TO FILE AN ANSWER?

The **Tenant** has until the deadline in the *Summons* to file a written *Answer* or the date of **Trial**, whichever is earlier. The **Tenant** also may file a **Counterclaim** for damages against the **Landlord**. Neither the *Answer* nor **Counterclaim** is proof; it is only a statement of what the **Tenant** hopes to prove at the **Trial**. The **Tenant** **must** appear at the **Trial** to prove his/her case.

CAN THE COURT DATE BE CHANGED?

A party may try to change a **Trial/Court** date by making a request in writing by filing a Motion before the scheduled date. (See Motions Pamphlet.) The Judge will decide whether to change the Court date.

WHEN DOES THE TENANT HAVE TO MOVE OUT OF THE RENTAL PROEPRTY?

If a **Judgment for Restitution** is entered in favor of the **Landlord**, the **Judge** will set an **Eviction** date. The **Eviction** date will probably be not less than 3 days and not more than 7 days from the **Trial/Court** date.

WHAT IF THE TENANT DOES NOT MOVE OUT BY THE EVICTION DATE?

If the **Tenant** does not move out by the **Eviction** date set by the **Judge**, the **Landlord** can ask the Court clerk to issue a **Writ of Restitution** ordering the Sheriff to remove the **Tenant** from the **Residence**. After the clerk issues the **Writ of Restitution**, the **Landlord** may deliver the **Writ** to the Sheriff's Office. The Sheriff will then go to the **Residence** and evict the **Tenant**. Note: The Sheriff's Office is the only office authorized by the Court to evict a **Tenant**. Also, the Sheriff's Office charges a fee for this service.

WHAT ACTION CAN A TENANT TAKE AGAINST THE LANDLORD?

If the **Landlord** violates a material term of the **Lease** or if the **Residence** being rented is dangerous or unhealthy, then the **Tenant** can give the **Landlord** a **7-day written notice of abatement or termination of rental agreement** requesting the **Landlord** to perform its obligations under the **Lease** and repair or remedy the dangerous or unhealthy conditions on the property. If the **Landlord** fails to perform or to reasonably attempt to perform repairs within **7 days**, then the **Tenant** may be able to:

- **Terminate the Lease and leave the property without penalty; or**
- **Reduce (abate) the rent usually by 1/3 of the pro-rata daily rental amount for each day that the repairs are unfinished (unless the property is completely unlivable in which case Tenant may be able to abate more rent); or**
- **File a *Petition by Resident for Relief* (for example, to bring a claim for damages against the Landlord or for quiet enjoyment of the property) and proceed through the Court process.**

For example, if a **Tenant** is illegally locked out of or denied access to the **Residence** or if the utilities are wrongfully disconnected by the **Landlord**, then **Tenant** can file a ***Petition by Resident for Relief*** claiming that he/she is entitled to damages due to the **Landlord's** wrongful actions and/or that **Tenant** be allowed to move back into the **Residence**.

OTHER PAMPHLETS ARE AVAILABLE IN CUSTOMER SERVICE ON THE 1ST FLOOR OF THE COURT, IN THE SELF-HELP CENTER, OR ON THE COURT'S WEBSITE.

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