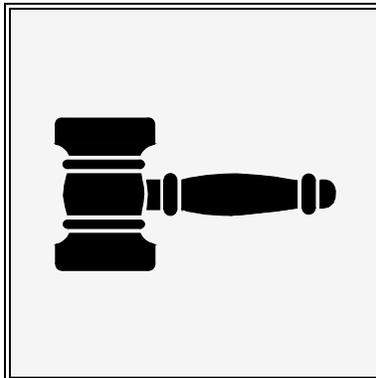


Information For Tenants
About Evictions
And the Court Process



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If you have violated your rental agreement (for example, by not paying rent):

The landlord has the right to ask you to leave.

The landlord might do this in writing or in person or by telephone. Any method is acceptable. Writing is not required.

The landlord can specify any date he or she prefers for eviction, no matter how soon or late, if you have violated your rental agreement.

The landlord is not required to give you 30 days notice, or go through any other special procedure, if you have violated your rental agreement.

Alternatively, the landlord can go directly to court and file a suit to have you evicted, without giving you any advance notification at all.

If you have violated your rental agreement, and the landlord has asked you to move, but you have refused:

The landlord can go directly to court and file a suit to have you evicted, without giving you any advance notification at all.

The landlord CANNOT physically force you out of the premises by causing a fight, even if the Landlord is entitled to possession of the premises.

The landlord CANNOT force you to leave by cutting off or interfering with utilities in your name.

If the landlord improperly cuts off utilities or changes your locks:

You can go to court to have a judge order the landlord to restore the utilities or unlock the premises. **HOWEVER--**

- > If there is any unpaid rent, for any reason good or bad, **THE COURT WILL REQUIRE YOU TO PAY THE UNPAID RENT INTO COURT** before issuing any order against the landlord. (This assures the court that whoever is right in the end will get their money.)

In no circumstances can the landlord keep your personal belongings by locking up the premises. Even if you have violated the rental agreement the landlord must release your personal possessions to you.

If a landlord locks up your personal possessions and refuses to return them you can go to court to have a judge order the landlord to return your possessions. **YOU WILL NOT HAVE TO POST THE UNPAID RENT INTO COURT IN ORDER TO GET THIS RELIEF.**

When a landlord goes to Magistrate Court and files a "Wrongful Occupation" lawsuit to have you evicted:

The court will schedule a hearing date when the landlord files the suit. The lawsays that the court hearing must take place within ten days from the day the landlord filed the suit.

After the landlord files the suit, the legal papers then must be delivered ("served") on you. Usually this is done by a deputy sheriff,

but it can be done by someone else, including an employee of the landlord.

Many times the legal papers will not be delivered to you until just one or two days before (or even the day before!!) the court hearing.

If you can show the magistrate why you do not have enough time to collect records or information, then you may be able to get a postponement.

You should ask for a postponement as soon as possible after getting the lawsuit papers.

For example, if you need to subpoena witnesses to come to the hearing, you need time. You will have to go get the subpoenas from the court, give them to the sheriff's deputy or other person who will deliver the subpoenas (and pay that person the required fee for delivery of subpoena), and have them delivered far enough ahead of time that the witness can arrange his or her schedule to be at the hearing.

If you feel you have a defense to the case, you should file an "Answer" with the Court giving your side of the story. A copy of this must be mailed to the landlord, at the address the landlord put on the lawsuit papers.

If you feel you have a defense to the case, and you would prefer to have the case heard by a judge (who is a lawyer) instead of a magistrate (who is not a lawyer), you may have the right to "REMOVE" the case to Circuit Court.

You can get forms to "remove the case" from the Magistrate Court clerk.

In order to remove the case, at least \$300 must be involved in the case. That is, the claimed back rent must be at least \$300, or the value of future rent that you wish to stay and pay must amount to at least \$300.

If you "remove" the case to Circuit Court:

Usually the Circuit Court will schedule a hearing within 7 to 10 more days. The Circuit Court will send a letter to you and the landlord telling you what the date and time of the court hearing will be.

If you wish to have a jury trial in your case, you must make this request in writing at the time you file your Answer.

When you go to the hearing in your case, be aware that this is your only chance to tell your story. This also means it is your obligation to bring the information the court needs to make a correct decision:

Bring all your records, documents, letters, pictures, witnesses and other evidence to show the judge your side of the story.

If you need to subpoena witnesses to come testify at the hearing, you must go the court ahead of time to get the subpoenas.

If you win your case (by showing you paid your rent, or that the landlord failed to maintain the place in safe condition), then you will not have to move.

You will have to pay rent for all time that you actually occupy the premises.

If you lose your case, the magistrate or judge will tell you the date on which you must leave.

That is up to the choice of the magistrate or judge, and will depend upon the facts of the case. If you have 'no case' at all, you may be told to vacate "immediately." Or you may be given a week, or 10 days, or until the end of the month, or whatever the magistrate or judge feels is appropriate.

If you lost your case in magistrate court, you have the automatic right to appeal your case to Circuit Court.

You must file your Notice of Appeal within 20 days from the date of the decision in Magistrate Court. If you file the appeal before the Set Out Date, the appeal automatically stops the Set Out order until the Circuit Court makes a decision.

If a magistrate writes "No Appeal of Possession" or something like that, and the clerk will not let you file an appeal, come to Appalachian Legal Services for assistance.

The Circuit Court usually will schedule the appeal hearing very quickly. The Circuit Court will send a letter to both sides telling you the date and time of the appeal hearing.

This appeal hearing is another chance to tell your side of the story.

There is no transcript of what was said in magistrate court, so the judge must hear the testimony of the two sides.

Bring all your records, documents, letters, pictures, witnesses and other evidence to show the judge your side of the story.

If you need to subpoena witnesses to come testify at the hearing, you must go the court ahead of time to get the subpoenas.

You cannot ask for a jury trial on an appeal.

If the judge or magistrate rules against you and tells you a date by which to be out, you can remain until that date.

If you do not leave by that date, then you may be "set out" by the sheriff. This means that a sheriff's deputy will come to your rental premises on the "set out date." If you are still in the premises when the sheriff's deputy arrives, then the landlord's employees will physically put all of your possessions out on the sidewalk outside the premises.

The sheriff's deputy is there to assure that there are no fights, that the landlord's employees do not do anything improper, and to assure that your possessions really are set out.

In "Wrongful Occupation" eviction cases, the court may in its initial order schedule the "set out day" AND also direct the sheriff to go out on "set out

day" to enforce the order. This is all done in one order, and is automatically carried out by the sheriff.

In other types of eviction cases ("Unlawful Detainer" and "Ejectment" cases), the sheriff does not automatically enforce the set out order. The landlord has to go back to the Court, report that the tenant has not departed as ordered, and request that the sheriff enforce the order to vacate.

Summary of Process

Landlord files case

Papers served on tenant

Decide whether to remove

Remove to Circuit Court

Magistrate Court hearing

Decision with evict date

If Appeal, to Circuit Court

Circuit Court hearing

Decision with evict date

Set-Out Date

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