

Your Rights as a Tenant

These are difficult economic times. Just as high unemployment and falling prices have rocked the overall real estate market, the poor economy over the past several years has taken an especially hard toll on renters and their ability to pay their rent.

However, tenants do have rights that protect them from arbitrary eviction. This guidebook describes some of your legal rights when facing an eviction.

As you read through its contents, please contact us if you have any questions or need legal assistance.



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Are You Facing Eviction?

If you have been served with papers from your landlord, or from a company that claims to be your landlord that you have never heard of before, there are steps you must take immediately to preserve your rights.

- First, there is no need to panic because, while the landlord wants you evicted, only a court can do so, and the court will afford you a hearing before that could happen. A hearing is always required, and that takes time.
- Second, while it is possible to fight an eviction on your own, the thick and complicated volumes of laws, rules and cases on landlord-tenant law really require attorneys with experience in that field to handle your case.
- Third, the time limits to respond to the eviction papers you were served with are usually strictly enforced and short. That is why it is called a summary proceeding. You must enter an answer, whether or not the landlord has a case. Many tenants lose by not showing up in court, usually the District Court of your town, or show up late. Judges call the roll of cases, whether you are there or not, and while you can move by order to show cause to reopen (re-argue) the case, it is unwise to delay. A court may not grant more time. The eviction will stand.



Common Defenses to an Eviction

You can and usually should fight an eviction. There are very common eviction defenses, which we generally can discuss here. Let's discuss general terms you must know for fighting an eviction. A landlord is only the owner of the space you are renting, and you might not know your landlord, only his/her agent. The person's name might even be unknown to you, and this information can help you fight the eviction. It is a defense to any eviction to raise the fact that the person who is suing you isn't really the owner of the property. If a cash or check payment has been given to a person or company who is not listed in the legal papers, then you must gather up your documentation showing who was paid. Of course, in case of a cash payment for rent, you must always get a receipt for all rent paid with a name of the person paid, the date of payment, and the exact amount paid. You might even not be evicted if the court finds that the person suing you for eviction is not the owner you dealt with. A tenant is the person using the space and paying the rent. If the wrong person is being sued for eviction, as when a person is in a sublet or a common-law relationship, this is another valid defense. The court will probably dismiss the lawsuit. If you have a lease, which is a written agreement required for a rental of one year or more, you may have additional defenses. You can rent without a lease, but you have fewer legal rights. Another common defense is if the rented space is illegal, meaning that the person renting the space is living in a space which is not zoned, maintained or built as a legal two-family home (or contains even more families). But other situations which are not defenses might apply.

- If the tenant has not paid rent as agreed, the landlord must be able to prove that demand has been made for rent, that the tenant received that notice to pay rent, that no rent has, in fact, been paid, and that no arrangement has been made to correct all of this, the tenant will be evicted. If the tenant pays the back rent and the current rent, he/she cannot be evicted.
- If the tenant was crowded out of any space by the landlord, the tenant was "constructively evicted" and cannot be evicted or made to pay rent.



Other Common Eviction Grounds

- If a tenant is "objectionable," meaning a nuisance to the landlord (often found when the landlord lives in a two-family home), caused the police to respond to the rented space, or made the rented space very loud, very noisy or very dirty, he/she can be evicted. But the tenant must be consistently objectionable, and one or two incidents will not serve as enough to evict that tenant. Arguing with the landlord is not grounds for eviction.
- Commonly, if a leased space is used for illegal purposes, like running, buying or selling drugs or running a prostitution ring, this may evict the tenant. However, proving these grounds is often difficult.
- If a tenant who runs a washing machine, if that washing machine is not a portable washing machine, or who runs illegal electrical equipment, or who steals electrical current from other tenants, that tenant can be evicted.

All this being said, respond immediately to any legal papers, correct or incorrect, by going to court to respond to the eviction. It is best to hire an attorney experienced in handling any eviction, holdover or contract dispute. Gather all your rent receipts, any documents containing the name of the landlord or his agent, and any proof regarding defending against the eviction and bring them to your attorney. He or she is really better prepared to fight an eviction and get just terms.

