



Evictions

What to do? How to respond?

This packet was developed from information provided by: “A Guide to Representing Yourself in an Eviction Case” from the Legal Aid Society of Greater Cincinnati

Prepared by: Ohio State Legal Services Association - NAPIL Equal Justice Fellow

© 2001

Legal Aid does not discriminate against any person on the basis of actual or perceived race, color, religion, sex, sexual orientation, gender identity or expression, marital status, national origin, disability, age, ancestry, or military status in admission, treatment, or participation in our programs, services and activities, or in our hiring and employment practices

The information on this handout is not legal advice. If you are seeking representation or legal advice, please contact LASC. An attorney client relationship does not exist between you and LASC.



OVERVIEW OF EVICTION PROCESS:

*There are two
basic parts to
most eviction
cases*

“FIRST CAUSE OF ACTION”

The first part (referred to as the “first cause”) is the actual eviction suit. In this suit, your landlord claims you no longer have the right to stay in the rented home and requests a court order to force you to leave.

“SECOND CAUSE OF ACTION”

The second part (referred to as the “second cause”) is your landlord’s attempt to sue you for money. In this suit, your landlord claims you owe money - usually for things such as: back rent (rent you failed to pay in the past), back utilities (utilities bills you failed to pay), or damage you caused to the home. Your landlord requests a court order giving him/her the right to collect money from you.

To find the amount of money your landlord is asking for look in the Complaint he/she filed against you.

How does this work?

Although both the first and second causes are filed together (in one complaint) and have the same case number, they are treated as separate cases. Two different hearings will be held: one to determine whether or not you should be evicted, and another to determine if you owe money to your landlord, and if so, how much. An exception to this is if you file an Answer and Counterclaims under 1923.061(B).

ADVICE FOR THE EVICTION HEARING

IMPORTANT!

If you are getting this packet, and the eviction hearing has already been held, please skip this section. If the eviction hearing is coming up, please read this section.

At the Eviction Hearing:

The magistrate (judge) will only decide whether or not you should be evicted. This hearing will occur regardless of whether you file an Answer, and the date of the hearing will be listed on the Summons you received when the case was first filed.

Make sure you arrive on time (8:30 AM in Courtroom 11B, or 10:30 AM in Courtroom 11A) 9:00 AM) at 375 South High Street. You will want to make sure that you leave time to find parking. Check in with the bailiff when you enter the room.

FIRST...

Your landlord will be given a chance to argue his/her side. He or she will try to prove to the court that:

- Your lease was up or you broke the lease.
- A 3-day notice to leave was served.
- No rent was accepted from you after the notice was served.
- You are still living in the rental home.

NEXT...

When your landlord is finished, you will be given a chance to argue your side.

Explain to the court why you should not be evicted. To prove your case, you can show the magistrate a copy of the lease or rent receipts, question the landlord or the landlord's witnesses, and explain to the court what really happened.

EVICTION HEARING, CONTINUED...

CAUTION! It is hard to stop an eviction when you have not paid rent, even if you think you have a good excuse for failing to pay.

Proving the following facts might help your case:

- Your landlord did not give you a Notice to Leave the Premises (“3-day notice”), or tape that notice to your door
- You have a rent receipt to prove that you did pay rent
- Your landlord accepted rent after serving the Notice to Leave the Premises,
- Your landlord has frequently accepted your rent late and surprised you by refusing it this time,
- You offered rent on time, but your landlord refused to take it,
- You paid your rent in escrow to the Clerk of Courts due to poor conditions in your apartment.
- Your rent was late because of another person’s actions (for example, your employer mistakenly mailed your paycheck to the wrong address, or your landlord misplaced your check)

LAST... The magistrate will make a decision regarding the eviction.

- **If your landlord wins**, the Court will request for the Bailiff to authorize a “set out” meaning that your belongings will be removed. You will usually have five days from the day that the “red tag” is placed on your door to move.
- **If you win**, the first cause will be thrown out and you will have the right to continue living at the rental space as a tenant.
- **No matter who wins the first cause (eviction)**, if your landlord requested money damages AND you filed an Answer or Answer and Counterclaim, a second hearing will automatically be scheduled on the second cause. You will be informed of the date in writing, so be sure to provide the court with any updated addresses. If you do not file an Answer within the required amount of time, there will not be a second hearing and if the landlord requests a “default judgment,” you will automatically lose. The Court will issue an order requiring you to pay whatever money damages your landlord requested and you will not be given an opportunity to argue that this amount is incorrect.

WHAT DO I DO WHEN I RECEIVE A COMPLAINT FOR EVICTION AND MONEY DAMAGES?

ANSWER *(Sample below)*

If you do not think you owe your landlord money or you disagree with the amount of money he/she claims you owe, you **MUST** file what is called an “Answer”. An answer is your written response to your landlord’s claim that you owe money. If you do not file an Answer, the landlord could get a default judgment and get whatever money he/she asked for.

The answer states:

- a denial that you owe part or all of the money your landlord claims you owe;
- the reasons you feel you do not owe your landlord part or all of the money;
- request that your landlord return your security deposit, plus interest

ANSWER & COUNTERCLAIM *(Sample below)*

If you feel your landlord actually owes you money, you should file an “Answer and Counterclaim”. A counterclaim states your claims against your landlord and explains why your landlord owes you money. In a counterclaim you are actually suing your landlord.

Possible reasons you’re owed money include:

- You overpaid on rent,
- Your landlord will not return your security deposit,
- You made improvements/repairs to the apartment,
- You or a family member suffered an injury because of something that is the landlord’s fault

TIMING IS IMPORTANT:

Your “Answer” or “Answer and Counterclaim” must be filed with the court and a copy sent to the landlord (or to the landlord’s attorney if landlord has an attorney in the case) within 28 days of the date you were handed the eviction summons and complaint or the eviction summons and complaint was left at your residence.

If you don’t file within this time period, your landlord will be able to get a judgment against you for the amount of rent he/she claims you owe and court costs. You will also lose the opportunity to sue for the money you think your landlord owes you.

If you believe the landlord owes you more money than you owe, then file the Answer and Counterclaims Under 1923.061(B) before the eviction hearing. The court will then give the case to a judge who will hear all the claim at the same time.

STEPS TO FILING ANSWER OR ANSWER & COUNTERCLAIM

STEP ONE: Decide which you will file, the Answer or Answer and Counterclaim.

STEP TWO: Calculate when you must file your Answer or Answer & Counterclaim. You have 28 days from the date you received the court papers or the court papers were left at your residence (summons & complaint) to file your papers. If the last day of the 28-day period falls on a Saturday, Sunday, or national holiday, you have until the next business day to file. If you do not remember when you received your papers, call the Clerk of Courts office at the court where your case was filed - give them your case number and tell them you need the date you were "served". If you are in Franklin County, you can look up this information on the clerk's website here: <http://www.fcmclerk.com/case/> and look for the date the court says you were served.

STEP THREE: Complete the necessary paperwork. *(See samples below)*

What do I say in the answer?

Deny any part of the complaint you believe to be untrue. (**If you do not deny something, the court will assume it is true and you will not be given a chance to deny it at the hearing.**)

What do I say in the counterclaims?

State your counterclaims (if any). To do this, simply describe why your landlord owes you money and how much you believe you are owed.

At the end, tell the Court what you want it to do.

- If you have no counterclaims, you want the court to dismiss the case and require your landlord to pay court costs.
- If you have counterclaims, write the amount you want the court to award you.

TIPS

- *You (the tenant) are the Defendant and your landlord is the Plaintiff.*
- *The Case Number is listed on the top, right-hand side of the Complaint you received.*

STEPS TO FILING ANSWER OR ANSWER & COUNTERCLAIM

(Continued...)

STEP FOUR: Make two copies of the completed paperwork and take the original and copies to the Clerk of Court's office to file. In Franklin County, the clerk's office is located on the 3rd floor at 375 South High Street. The clerk will keep the originals and return "time-stamped" copies to you.

Keep one copy of the time-stamped documents for yourself and send the other to the person who signed the complaint (your landlord or your landlord's lawyer) by regular United States mail. The name and address of the landlord or the landlord's attorney should be on the eviction paperwork.

WILL I HAVE TO PAY ANYTHING?

It will not cost you any money to file an Answer, but the court may have a charge for filing an Answer & Counterclaim. In Franklin County, the fee is \$20 for a Counterclaim. If you don't know, you should call the clerk's office or look up the clerk's website for the county in which you live to check on the cost of filing a Counterclaim. You must bring the money with you or the Clerk will not let you file your documents. If you cannot afford to pay the \$20 fee for the Counterclaim, ask for a copy of the "Poverty Affidavit" which is a statement you file with the court explaining your financial situation and why you cannot pay. A judge will decide whether you are permitted to file the Counterclaim without paying this fee, but note that you could be responsible for paying it at the end of the case.

STEP FIVE: After filing your Answer or Answer & Counterclaim, the court will usually send you a notice of the time and place of a Pretrial Hearing. At the Pretrial Hearing the judge will usually just ask for some basic facts about the case, set a schedule for further hearings, and ask if the parties can reach an agreement. The court may also set a mediation and eventually a final hearing. Be on time for any hearings. Go to the courtroom indicated on the court paperwork and check in with the bailiff. The bailiff is usually sitting next to where the judge sits. If you fail to appear at a hearing, the judge could decide to rule in the landlord's favor.

I FILED AN ANSWER OR ANSWER AND COUNTERCLAIM... NOW WHAT HAPPENS?

At the Hearing for the Second Cause of Action:

Bring evidence and witnesses with you to this hearing to prove that your landlord owes you money. For example...

If you are arguing that bad conditions in the home made it worth less than your rent...

Bring photos of these bad conditions or copies of housing code violation notices, or witnesses who have seen these conditions and can explain them to the court. Also tell the court your opinion on the reasonable rental value of the property in its poor condition. For example, "If I had known the property would be in this state of disrepair, I would only have agreed to pay \$400 per month, not \$600."

If your landlord claims you damaged the property or left it full of trash...

Show the judge pictures of the way the property looked when you left it. If things were broken or damaged but you didn't cause them to be broken or damaged, tell this to the judge. You should only have to pay for things you broke or damaged. If something broke because it is old, or because someone other than you or your guest broke it, you shouldn't have to pay for that.

If your landlord has not returned your security deposit, or credited it to you:

Show the judge the proof of the security deposit payment. Ask that the amount be credited towards any amounts you owe.

If you are arguing that you paid too much rent for one month and your landlord owes you a refund of the amount overpaid:

Show the court the cancelled check for this overpaid amount or a copy of a rent receipt for that month.

What to Bring With You to Court

- **"Physical documents"** relevant to your counterclaims such as: rent receipts, security deposit receipts, utility receipts, your lease or rental agreement, letters between you and your landlord, inspection notices, code violation notices, and any receipts you may have for supplies you used to make repairs. Bring the originals and photocopies.
- **Photographs** relevant to your counterclaims, such as photos of the conditions of your apartment or repairs that need to be made. If photos are on your phone, print them out.
- **Witnesses** who have actually seen the things or actually heard the conversations that you are testifying about at trial.

Sample Court Forms:

Answer

Answer & Counterclaims

**IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO**

_____ : Case No. _____
 Plaintiff (landlord) :
 vs. : Judge _____
 :

_____ Defendant(s) (tenants)

ANSWER OF DEFENDANT(S)

ANSWER

1. Defendant(s) deny owing Plaintiff the amount of money alleged in Plaintiff's Complaint.
2. Defendants' reasons for denying that this amount money is owed include the following:
 - Defendants already paid Plaintiff the money claimed due and owing.
 - Defendants paid Plaintiff a portion of the money claimed due and owing in the amount of _____.
 - In order to keep the rental property fit and habitable, and due to Plaintiff's failure to remedy conditions issues requested by Defendants, Defendants remedied conditions problems at the property in the amount of approximately \$ _____. This amount should be credited to any amount found due and owing.
 - Plaintiff agreed that Defendant(s) would not have to pay rent if Defendant(s) did certain work for Plaintiff. Defendant(s) did this work and should be credited as was agreed.
 - Defendant(s) paid a security deposit of \$ _____ that has not been credited or otherwise returned to Defendant(s).
 - Defendant(s) paid a security deposit in the amount of \$ _____ that has been wrongfully withheld from the Defendants and therefore, pursuant to O.R.C.5321.16, twice the amount of the security deposit, or \$ _____, should be returned to the Defendants, or credited against any amount found due and owing.
 - The late charges Plaintiff claims are owed are unconscionable (they bear no relation to the minor financial damage (e.g. loss of interest) Plaintiff suffered as a result of the late payment).
 - Defendant(s) did not cause damage to the rental property beyond normal wear and tear, nor was any damage to the rental property due to the negligent or intentional acts of Defendant or Defendant's guests.

The following additional reasons: _____

Wherefore, Defendant(s) request that Plaintiff’s Complaint be dismissed, at Plaintiff’s cost.

Respectfully submitted,

/S/ _____
Defendant’s signature

Defendant’s name & address

Defendant’s phone number

PROOF OF SERVICE

On the date of _____, I mailed a copy of this Answer to:

If the Landlord has an attorney . . .

If the Landlord does not have an attorney . .

The Landlord’s Attorney(s) at this address:

The Landlord at this address:

(Name of Landlord Attorney(s))

(Name of Landlord)

(Address of Landlord Attorney(s))

(Address of Landlord)

/S/ _____
(Tenant’s signature)

**IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO**

_____ : Case No. _____
Plaintiff (landlord)

vs. : Judge _____

_____ :
Defendant(s) (tenants)

**ANSWER AND COUNTERCLAIMS
UNDER 1923.061(b)**

ANSWER

1. Defendant(s) deny owing Plaintiff the amount of money alleged in Plaintiff's Complaint.
2. Defendants' reasons for denying that this amount money is owed include the following:
 - Defendants already paid Plaintiff the money claimed due and owing.
 - Defendants paid Plaintiff a portion of the money claimed due and owing in the amount of _____.
 - In order to keep the rental property fit and habitable, and due to Plaintiff's failure to remedy conditions issues requested by Defendants, Defendants remedied conditions problems at the property in the amount of approximately \$ _____. This amount should be credited to any amount found due and owing.
 - Plaintiff agreed that Defendant(s) would not have to pay rent if Defendant(s) did certain work for Plaintiff. Defendant(s) did this work and should be credited as was agreed.
 - Defendant(s) paid a security deposit of \$ _____ that has not been credited or otherwise returned to Defendant(s).
 - Defendant(s) paid a security deposit in the amount of \$ _____ that has been wrongfully withheld from the Defendants and therefore, pursuant to O.R.C.5321.16, twice the amount of the security deposit, or \$ _____, should be returned to the Defendants, or credited against any amount found due and owing.
 - The late charges Plaintiff claims are owed are unconscionable (they bear no relation to the minor financial damage (e.g. loss of interest) Plaintiff suffered as a result of the late payment).
 - Defendant(s) did not cause damage to the rental property beyond normal wear and tear, nor was any damage to the rental property due to the negligent or intentional acts of Defendant or Defendant's guests.

The following additional reasons: _____

COUNTERCLAIMS

(check one or more of the following that describe your situation)

1. Defendant paid a security deposit in the amount of \$_____ that has been wrongfully withheld from the Defendant and therefore, pursuant to O.R.C.5321.16, twice the amount of the security deposit, or \$_____, should be returned to the Defendant.

2. Defendant made improvements and/or repairs to the apartment including: _____
_____. These repairs/improvements are worth \$_____ and were made pursuant to a work for rent agreement.

3. Plaintiff failed to maintain the premises, in violation of his/her obligations under the Landlord-Tenant Act. Therefore, Defendant is not obligated to pay the full amount of rent required by the lease. The landlord refused to repair the following conditions which were not caused by the tenant or the tenant's guests:

- i) _____
- ii) _____
- iii) _____
- iv) _____

4. Defendant is entitled to \$_____ in damages, which is the difference between the rent charged (what you currently pay) and the fair market rent considering the condition of the premises (what you think you should pay for a run down apartment).

5. The landlord caused personal injuries and/or damaged property belonging to the Defendant.

Explanation: _____

WHEREFORE, Defendant requests that the complaint be dismissed at Plaintiff's cost and that Defendant be awarded damages, including attorneys' fees, on the counterclaim in the amount of \$_____.

/S/ _____

Defendant's (tenant's) signature

Defendant's name & address

Defendant's phone number

PROOF OF SERVICE

On the date of _____, I mailed a copy of this Answer to:

If the Landlord has an attorney . . .

If the Landlord does not have an attorney . .

The Landlord's Attorney(s) at this address:

The Landlord at this address:

(Name of Landlord Attorney(s))

(Name of Landlord)

(Address of Landlord Attorney(s))

(Address of Landlord)

/S/ _____

(Tenant's signature)