



EVICTON - COURT PROCESS

KNOW YOUR RIGHTS

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****IF YOU HAVE BEEN PETITIONED TO COURT TO FACE THE POSSIBILITY OF EVICTION, THE WORST THING TO DO IS NOTHING.****

Failure to appear can result in a "default" where an immediate warrant of eviction and judgment for any unpaid rent is issued. This can leave tenants with as little as 72 hours to vacate their home.

If you are unable to make your court appearance, you may be able to request an adjournment. Requests usually must be made in writing. For questions about appearances in Albany City Court, Civil Part, call (518)453-4640 x3.

FOR LEGAL ADVICE, CALL LEGAL AID AT (518)462-6765. Some cases may qualify for full representation.

Your landlord may have given you a termination notice at the end of your lease, given you a termination notice for your month to month agreement (see the month to month handout), or if rent is owed your landlord may have given you a written or verbal - "3 day notice to pay or quit", also known as a demand for rent. Before you can be forced to move out, the landlord must "commence a summary proceeding" - meaning start the court process for eviction - to evict you legally from the apartment through a court process by filing a petition and notice of petition. The petition & notice of petition should be served upon the tenant by someone who is not the landlord, between 5-12 days before the court date. An ordinary letter from the landlord or the landlord's attorney is not enough to take back possession of your apartment.

An eviction proceeding can be brought for one of three reasons:

- 1) Nonpayment of rent
- 2) Holdover - for remaining past the date of termination
- 3) Holdover - for violation of lease terms

The reason for the court appearance will normally be written towards the top, right side of the court petition, near the index or LT number.

**These cases must be brought by the OWNER of the property, not a property manager or agent. The owner can, however, be represented by an attorney. An attorney may appear on the owner's behalf. **

1) If you are being petitioned to court for **nonpayment of rent**, there is much to consider. If you believe that you have actually paid the rent, make sure you appear for court and bring your rent receipts or other proof that the rent was paid to show the judge. If the landlord did not ask for you to pay the rent before filing for court, you should let the judge know that the rent wasn't demanded. If you had a financial hardship and can pay the rent going forward, you can ask for a payment arrangement to pay back the rent that is owed, or for extra time to apply for assistance from your local department of social services for help with the back rent. These arrangements are common & if both the tenant and landlord agree on a schedule, the court can put it on the record & "stay the proceeding", meaning hold the eviction, pending payments.

If you held back the rent because of **non-repair issues**, make sure you have the rent held off to the side so that when the judge determines how much, if any, is to be paid you are able to comply with the court's decision. These types of cases usually get set down for "abatement hearings" where you will need to show the court what the non-repair issues were & illustrate how those issues impacted your livability at the apartment. You may be able to ask the court for "injunctive relief", which means the court will order that the landlord make specific repairs before rent is to be paid. Remember, the rent money that is held back should not be used for other expenses until the judge issues a decision that confirms the money is not owed - otherwise you could end up at risk of losing your housing.

****SEE BACK****

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2) If you are being petitioned to court for **holdover for remaining past a date of termination** on either the date of a month-to-month termination notice or the end of a lease agreement, there will be less defenses to that type of proceeding. If you are a month to month tenant, you should have been given a calendar month notice prior to the court proceeding being filed. (For more information, see the Month to Month Tenants handout!) If the landlord accepted the rent again in the month following the expiration of that termination notice, tell the judge. This may have canceled the notice given & could start the process over, giving the tenant more time. If the landlord gave the notice for a retaliatory reason (see the Retaliatory Eviction handout for more information) then you may be able to defend yourself against eviction by informing the judge that you believe the landlord is retaliating. If you have no defense to the action, the judge might give you some time to vacate by discretion. It will depend, but it cannot hurt to ask in a respectful manner.

3) If you are being petitioned to court for **holdover for violation of lease**, you should be given the opportunity to give your side to the court. If you believe that you in fact did not violate your lease at all, you should be allowed to prove this to the court (probably at a trial and not at the first appearance, though this will depend). If you took action to correct the lease violation in a reasonable time or in the time-frame specified in your lease (i.e.: relocating a pet brought into the home that wasn't allowed, engaging in housekeeping if there were cleanliness issues, etc.), you should be given a chance to show that to the court as well. Most leases give 3, 5, or 10 days to the tenant to cure a violation. If you are found by the court to be in violation of your fixed term lease to the extent that the landlord should be awarded an eviction, the court may give some additional time to the tenant to vacate, but this will be by the judge's discretion and will depend.

In any of the three eviction proceedings outlined above, if there is a factual dispute that cannot be resolved between the landlord and tenant at their first appearance, the case should be set down for a trial. At the trial the judge will hear from both the landlord and tenant to ultimately render a decision about the case. Parties are almost always given an opportunity to work out a settlement (a payment arrangement, an agreeable vacate date, etc.) at the first appearance.

Notice to PUBLIC HOUSING TENANTS - Albany Housing Authority (AHA):

AHA tenants living in public housing who are petitioned to court for nonpayment of rent or for lease violation will usually have a different process than what has been described here. Notices received prior to receiving court papers will be different & usually give the tenant more time to pay unpaid rent or to comply with their lease, around 10 days. AHA tenants are often given opportunities to pay their arrears in installments through a payment arrangement if they have paid the current month's rent prior to appearing for court. When the tenant is not eligible for a payment arrangement, they are usually still given until the end of the month to pay arrears back so long as they appear for court.

AHA tenants usually do not appear before a judge & instead meet with a representative of AHA to go over a payment ledger that will show what rent payments were missed, or what fees have been added to the account that must be paid. If there is a disagreement between what is claimed to be owed by AHA and what the tenant believes is owed, it is important to speak to a manager of the housing authority or to an attorney **PRIOR TO SIGNING A CONFESSION OF JUDGMENT**. Tenants can usually speak to a manager of the housing authority the same morning as court. If you are an AHA tenant who is confused about their balance, appear for court as early as possible to have a timely opportunity to meet with a manager. AHA tenants who appear in court will be asked to sign this confession of judgment which allows parties to enter into an agreement to pay back rent that is owed. Once this document is signed, it is very difficult to dispute the judgment.

This handout is designed to be informational and to outline the basic steps of the eviction court process. It is not intended as a substitute for the advice of an attorney.