

# General Eviction Information for New York

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## What is an eviction?

An eviction is a court procedure that a landlord can use to evict tenants or occupants from a property. A landlord can use the eviction process to evict a tenant from a rented room, apartment, house, or mobile home.

An eviction case, called a “Summary Proceeding,” begins with the landlord filing paperwork called a “Notice of Petition” and a “Petition”. The "Notice of Petition" has the documented date, time, and location of the first court hearing. The "Petition" describes the reason(s) the tenant has received the “Notice” and why the landlord is requesting the eviction. Proper service of these documents must be made by someone other than the landlord, and both papers must be served at least 10 days before the court date (found on the “Notice of Petition”) but no more than 17 days before the court date.

Just because a landlord starts an eviction case does not mean that the landlord will automatically win. Tenants have certain rights, and there may be defenses to an eviction case.

## Can my landlord evict me without going to court?

No.

The landlord must go to court, win the case, then pay a fee to have a law enforcement officer serve a Warrant of Eviction and execute that Warrant of Eviction (at least 14 days after it was served) in order to evict a tenant or occupant legally. This is true even if: (1) you owe rent; (2) your lease has ended; (3) you live in a rooming house; or (4) you have stayed in a hotel room for at least 30 days.

It is a class A misdemeanor for anyone to evict you by illegally:

- Changing the locks,
- Padlocking the doors,
- Taking out your furniture or property,
- Removing the door of the apartment or house,
- Turning off the electricity or water,
- Doing, or threatening to do, anything else that keeps you out of your house or apartment (Real Property Actions and Proceedings Law Section 768).

If your landlord tries any of these things without a court order, call the state, city, or village police. Please see our article on [Illegal Evictions](#) for more information.

## When can I be evicted?

The following information does not apply to mobile homes. See the section below, and visit [Summary of the New York State Manufactured Home Park Tenants' Rights Under Section 233 of Real Property Law by Homes & Community Renewal](#), for information specific to mobile homes.

**1. Holdover cases - Your landlord is not renewing your lease.**

If you have a written lease for a specific amount of time, you can only be evicted if the lease is ending and your landlord gives you the appropriate notice.

If you are given a correct notice based on the table below and you do not move out by the date documented on the notice, your landlord can then start a “holdover” eviction case against you.

If you had an original written lease that was never renewed, you are most likely a month-to-month tenant, and your landlord must still provide you with notice if they choose to end your tenancy and do not want to rent to you anymore.

Types of notices required: How long you have lived at the property or how long your lease period is determines the amount of notice required:

Below are the types of notice required:

How long you have lived at the property or how long is your lease period (whichever is longer)	Amount of Notice
Less than one (1) year without a 1-year written lease	30 days in advance
At least one (1) year, but less than two (2) years	60 days in advance
Two (2) years or more	90 days in advance

**2. Nonpayment cases - Your landlord says you are behind on rent.**

If your landlord thinks you are behind on rent, they must give you specific notices.

First, they should send you, by certified mail, a notice if they do not receive rent from you within five (5) days of the date rent is due. They should do this every month if they believe you haven't paid rent.

Second, they should give you a fourteen (14) day rent demand notice. This notice should inform you that you have fourteen (14) days to pay the entire amount your landlord claims you owe; otherwise, they will initiate a nonpayment eviction case against you.

**Mobile Home Rules**

If you own or rent a mobile home, special rules apply to you when your landlord wants to evict you. These rules are more complex, and you may wish to contact an attorney with any questions.

In general, your landlord must have a specific reason to evict you from your mobile home, such as non-payment of rent or violating the terms of your lease. Please note that there are exceptions to this rule.

There are also different kinds of notices that mobile home tenants must get. For example, if you are behind on your lot rent, the park owner must give you a thirty (30) day rent demand notice. If the park owner believes you have violated some rule or lease term, they must give you a notice describing the violation and give you ten (10) days to fix the violation.

### **Special Protections for Subsidized Housing**

If you live in public housing or subsidized housing, also called "HUD housing" or "Section 8 housing," there are special rules for evictions. Read any notices you get carefully. See our [Subsidized Housing](#) article on these programs. You may wish to contact an attorney if you receive a violation, termination notice, or official court paperwork.

### **Should I go to court?**

Yes. If you are served with eviction papers, you should go to court.

At your first court appearance, you have the right to ask for the case to be postponed by asking for an adjournment. If you ask for an adjournment, the court must postpone the case for at least fourteen (14) days. The judge should schedule a new date to return to court, at least fourteen (14) days later. You may use the time after your first court appearance to try to find an attorney or additional resources.

If you do not go to court, the judge will most likely grant the landlord a judgment for all documented amounts, including rental arrears believed to be owed. This is called a "Default Judgement."

### **What happens in court?**

First, arrive 10 minutes early—this will ensure you're on time. If you are a few minutes late, the judge may have already called your case and made a ruling. Your case could be the first or last case called, so you do not want to be late. There are rules for how long the judge should wait; however, you do not want to rely on those rules. If you are late to court, you may miss your hearing.

When your case is called, answer, "Here, Your Honor," loudly and clearly. Go to the front of the courtroom. If you would like to ask for the fourteen-day adjournment described above, we recommend that you do so first. When the judge asks for your side of the story, briefly tell the judge the facts of your case and any defenses you want to raise. Be polite, calm, and do not allow your emotions to take over. Always address the judge as "Your Honor" and never talk over or interrupt while someone else is talking. This can be difficult when you are nervous and/or angry, but it does help your case if you remain calm. Show the judge any proof you brought to court with you.

If the judge will not even let you talk, or will not let you raise any defenses or counterclaims, you can complain to the [NYS Commission on Judicial Conduct](#). You can also call 585-784-4141.

### **1. Defenses to eviction**

In court, you should have the opportunity to present your side to the judge. You may explain the situation to the judge and bring in records or documents to support your case.

You may have legal defenses that may cause the court to dismiss the landlord's case against you. Below are some examples of defenses.

#### **A. Nonpayment eviction defenses**

- You did not receive a letter by certified mail telling you the rent was at least five (5) days overdue.
- You were not served with a written fourteen (14) day demand for the rent (or thirty (30) day demand if you live in a manufactured home park).
- The landlord is trying to charge you for late fees or other charges that are not part of your regular rent.
- You paid the rent, or you tried to pay the rent (for example, the landlord refused to take it). Bring proof (receipt or witness) to court.
- You are holding back the rent because the landlord will not make repairs. (See our article "[When a Landlord Won't Make Repairs](#)" before withholding rent.) Bring a copy of the housing inspector's report, photos, and any other proof. Depending on the nature of the needed repairs, you may only get a partial rent reduction.
- The Department of Social Services (DSS) is holding back the rent because the landlord will not make repairs. Bring copies of any notices from your case worker.
- Your landlord did not give you rent receipts when you paid rent.

#### **B. Holdover eviction defenses**

- You did not receive a notice from the landlord telling you that they were not going to renew your rental agreement, within the times set out above.
- The landlord gave you proper notice, but did it because you complained about poor conditions or called the housing inspectors ([see our flyer here for more information](#)). Bring proof that you made the complaint to court.
- Your lease has not expired.
- You have taken steps to correct any lease violations that might have occurred.

#### **2. Counterclaims:**

You have the right to raise any counterclaims you have against the landlord in court. For example, if you have proof that there are/were any problems with the conditions in the residence, the court should hear your proof, and the rent should be reduced.

A reduction in rent is called an "Abatement." Unfortunately, some judges incorrectly think that you cannot raise this defense if you owe rent.

#### **3. The Decision:**

If the judge agrees with you, the case will be dismissed. You win, and you can stay in your home.

If the judge sides with the landlord and you lose, the judge will sign a Warrant of Eviction. This document authorizes law enforcement to remove you from your home at a specified time. It will include specific dates, so it is important to read it carefully; however, law enforcement cannot evict you before 14 days have passed from

the date the judge signs the Warrant.

Even if the judge signs a Warrant of Eviction, you may still be able to stop the eviction. If you are being evicted for “Nonpayment of Rent,” you can prevent the eviction by paying all of the rent that is owed. You can do this any time up until the Warrant of Eviction is executed.

If you lose and think the judge made a mistake, you can appeal. An appeal asks a higher court to decide if the judge was wrong. In local housing courts, you may want to appeal to the county court in which the town court is located. You may wish to consult an attorney to discuss a potential appeal of your housing case.

#### **4. The Actual Eviction:**

If the judge signs a Warrant of Eviction, it must be served on you at home by a law enforcement official (likely your local police department or the County Sheriff). When you receive the Warrant, law enforcement must give you fourteen (14) days to move.

There are more special rules about the timing of Warrants of Eviction in mobile home parks. But in general, mobile home park tenants will get more time to move. Because these rules are more complex, you should contact an attorney with any questions.

When the officer serves you with a Warrant, they are required to notify you when they will be coming back to enforce it. They can only enforce the Warrant on a business day (Monday through Friday, and not on a holiday). Check with the officer who gives you the notice to confirm when they will return. If you haven't moved out by the specified date, the landlord can remove your property and change the locks.

The landlord should store your property in a safe place. It should not be thrown out or left on the curb. Additionally, your landlord cannot refuse to return your property until you pay rent. If your landlord does any of these things or even threatens to, you may wish to contact an attorney. Although the law does not specify how long a landlord must store your property, they often try to throw away or sell it after thirty days. If you haven't contacted the landlord to retrieve your property, you may not be able to sue for its value successfully. If your property is stored, try to move it into your new home as soon as possible. After thirty days, it becomes difficult to recover property stored for too long.

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Table of Contents

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