

# General Eviction Information for New York

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IMPORTANT NOTE: THIS IS GENERAL EVICTION INFORMATION THAT HAS BEEN RECENTLY UPDATED.

NOTE ON PROTECTIONS FROM EVICTION DUE TO COVID-19:

If your landlord was trying to evict you for rent due during the pandemic, but you could not pay due to a financial hardship, you could get a stay from paying the rent until January 15, 2022. You had this protection if you submitted a hardship declaration under the “TENANT SAFE HARBOR ACT” before January 15, 2022. If you received protection under this law, but you still have not paid rent, your landlord will likely ask the court for a hearing date to evict you. You should ask for time to contact an attorney.

## **What is an eviction?**

An eviction is a court process a landlord can use to evict a tenant from a rented room, apartment, house, or mobile home.

An eviction case, called a “Summary Proceeding,” is started when the landlord has someone else serve the tenant with a “Notice of Petition” and a “Petition.” The “Notice of Petition” has the time, date, and place of the court hearing. The “Petition” describes the reason(s) why the landlord wants to evict the tenant. You must be served with both of these papers at least 10 days before the court date (found on the “Notice of Petition”) but NOT more than 17 days before the court date.

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

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

No.

The landlord must go to court, must win the case, and then must pay a fee to have a law enforcement officer properly evict you. 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 illegally evict you by:

- 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, 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 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 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 do not want to rent to you anymore.

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	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

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

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

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

First, they should give you, by certified mail, a notice if they do not receive rent from you within five (5) days that it is due. They should do this for every month that they think you have not paid rent.

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

If they have given you these notices, and you have not paid the entire amount they say you owe by the end of the fourteen (14) days, they can start a “nonpayment” eviction 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. Because these rules are more complex, you should contact an attorney with any questions.

In general, your landlord must have a specific reason to evict you from your mobile home, such as being behind on rent, or violating terms of your lease.

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 are violating some rule or lease term, they must give you a notice stating the violation, and giving 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 flyer on these programs and contact a lawyer if you get a violation or termination notice, or court papers.

## **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. This means that nothing should happen at that first court appearance, and the judge should schedule a new

date that is at least fourteen (14) days later.

If you do not go to court, the judge will most likely grant the landlord a judgment for everything they asked for in their papers. This is called a "Default Judgment."

## **What happens in court?**

Be on time or early. Your case may be the last one called, or it may be the first one called. If you are even a few minutes late, the judge may have already called your case and decided it. There are rules for how long the judge should wait, but you do not want to rely on those rules because you missed your hearing.

When your case is called, answer "Here, Your Honor" loudly and clearly. Go to the front of the courtroom. 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 and calm, call the judge "Your Honor," and do not talk while someone else is talking. This can be difficult when you are nervous or angry, but it helps your case. 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, as well as bring in records or documents to show the judge.

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 not received at least five (5) days after it was due.
- 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.
- 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 were seriously bad conditions in the residence, the court should hear your proof, and 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 agrees with the landlord, and you lose, the judge will sign a Warrant of Eviction. This document gives law enforcement the authority to remove you from your home at a certain time. It will say specific dates on the document, so it is important to read it carefully, but in no event can law enforcement evict you before 14 days pass from the day the Warrant is signed by the judge.

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 stop 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.

## **The Actual Eviction**

If the judge signs a Warrant of Eviction, it must be served on you at home by a law enforcement official. 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 be sure of when they will come back. If you have not moved out by the date they say, the officer can remove your property and let the landlord change the locks.

The landlord is supposed to store your property somewhere safe. Your property should not just be thrown out, or put on the curb. Also, your landlord cannot refuse

to give back your property until you pay rent. If your landlord does any of these things or even threatens to, call a lawyer right away. Although the law is not clear about how long the landlord must store your property, landlords often will try to throw away or sell the property after thirty days. If you have not contacted the landlord to get your property back, you may not be able to successfully sue the landlord for the value of your property. If your property is put in storage, try to move it into your new home as soon as you can. After thirty (30) days, it can be difficult to recover property which has been placed in storage.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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