

Legal Assistance of Western New York, Inc. ®



We provide free legal aid to people with civil legal problems in western New York.

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General Eviction Information for New York

What is an eviction?

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

An eviction case, which lawyers call 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 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. The court date can't be more than 17 days after you are served.

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

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 you owe rent, your lease has ended, or if you live in a rooming house or 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?

1. Written Lease:

If you have a written lease for a specific amount of time, you can only be evicted if:

- The lease is up. If your lease expires after October 12, 2019 your landlord must also notify you that the lease is not going to be renewed. If the lease was for less than one year, the notice must be at least 30 days in advance. If the lease was for at least one year, but less than two years, the notice must be at least 60 days in advance. If the lease was for two years or more, the notice must be at least 90 days in advance. If you did not receive this notice, you should not be evicted.)
- You owe rent and you were served with a 14 day demand for the rent, or
- You have seriously violated the terms of your lease and a term of your lease causes it to expire as a result of the violation.

Your landlord must prove in court that one of the above is true.

2. Month-to-Month Tenant:

If you don't have a written lease and you pay rent monthly, or your written lease is month-to-month, you can be evicted only if:

- You owe rent and you were served with a 14 day demand for the rent, or
- You received a full month's notice that the landlord is not going to renew your month-to-month lease. If your landlord terminates your month-to-month agreement after October 12, 2019, there are new notice requirements. If you have lived there less than one year, the landlord must provide at least 30 days' notice. If you have lived there more than one year, but less than two years, the landlord must provide at least 60 days' notice. If you have lived there more than two years, the landlord must provide at least 90 days' notice.

Again, the landlord must prove in court that you owe rent and the landlord made a proper demand, or that you got a proper termination notice.

Special Protections

If you live in subsidized housing, also called "HUD housing" or "Section 8 housing", there are special rules for evictions. Read any notices you get carefully. See our flier on these programs and be sure to call a lawyer if you get a violation or termination notice, or court papers.

How do I defend myself in an eviction?

If you appear in court and tell the judge that you disagree with the landlord, then you have the right to have the case postponed. If you ask for an adjournment, the court must postpone the

case for at least 14 days.

You may have defenses that will cause the court to dismiss the landlord's case against you. If the landlord is trying to evict you for "Non-Payment of Rent," you should tell the judge if any of the following apply:

- You did not receive a letter by certified mail telling you the rent was not received at least five days after it was due.
- You were not served with a written 14 day demand for the rent.
- 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. Bring proof (receipt or witness) to court.
- You are holding back the rent because the landlord won't make repairs. (See our flyer "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 is holding back the rent because the landlord won't make repairs. Bring a copy of the notices from your worker.
- Your landlord did not give you rent receipts.

If the landlord is trying to evict you as a "Holdover Tenant" (when the landlord says your lease is up or they want you to leave regardless of whether you owe rent), you should tell the judge if any of the following apply:

- 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 "Retaliation" 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.

There are also very specific rules for how your papers have to be served. If a landlord does not follow the rules, the law often requires the judge to dismiss the case.

Should I go to court?

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

If you disagree with what the landlord says, and you ask the judge to postpone the case, the judge is required to postpone the case for at least 14 days.

If you lose the case, or if you agree that the landlord's claims are correct, the court will choose a date by which you must move. If you are in court, you can ask the judge for extra time to move. If you do not move out by the date the judge gives you, the landlord can ask a law enforcement officer to serve you with a Warrant of Eviction. When law enforcement gives you the "Warrant," they will also give you at least 14 more days to move. If you own your own home in a mobile home park, the "Warrant" will be for 30 days or 90 days.

If you don't go to court, the judge will probably 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 be early. Your case may be the last one called, or it may be the first one. If you are even a few minutes late, the judge may have already called your case and made a decision. There are rules for how long the judge should wait, but you don't want to have 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 don't talk while someone else is talking. This can be hard when you are nervous or angry, but it helps your case. Show the judge any proof you brought to court with you.

If you ask for a postponement, the judge is required to postpone your case for at least 14 days. If the judge won't even let you talk, or won't let you raise any defenses or counterclaims, you can complain to the New York State Commission on Judicial Conduct. <http://www.scjc.state.ny.us/> You can also call 585-784-4141.

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 serious bad conditions in the residence, the court should hear your proof that rent should be reduced. A reduction in rent is called an abatement. Unfortunately, some judges incorrectly think that you can't raise this defense if you owe rent.

The Decision

If the judge agrees with you, the case will be dismissed. You win, and do not need to move out.

If the judge agrees with the landlord, and you lose, there is still a chance that you will not have to move. If you are being evicted for “Non-Payment 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 are being evicted for a lease violation, the judge should give you 30 days to correct the lease violation. If you correct the violation, that should stop the eviction, but you need to notify the court and ask the judge to cancel the warrant.

The Actual Eviction

If the judge orders you to move, but you do not move, the landlord can ask a law enforcement officer to serve you with a “Warrant of Eviction.” When you receive the Warrant, law enforcement must give you 14 days to move. You will have 30 days or 90 days if you own a mobile home in a mobile home park (30 days if you are being evicted for non-payment of rent and 90 days if you are being evicted for some other reason).

The officer is required to notify you when they will be coming back to enforce the “Warrant of Eviction.” They can only enforce the Warrant on a business day (Monday thru 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, 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 to your new home as soon as you can. After thirty 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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