



My Tenants are in Default, and I Want Them Out! Now What? A Brief Overview of the Eviction Process

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There almost always comes a time when a landlord has had all it can take from a problem tenant and decides it's time to pull the trigger to start the eviction process. Most often, the tenant has built up a hefty balance in past-due rent, but a landlord might also decide to evict a tenant who has failed to comply with other important lease provisions.

Certainly, there are reasons why, despite repeated defaults, a landlord might decide *not* to evict a problem tenant. For example, evicting one tenant without a substitute tenant ready to occupy the premises might cause the landlord's own default of a co-tenancy provision with respect to a more important anchor tenant in a shopping center. In that event, it might make more sense to simply sue the recalcitrant tenant for the past due balance without an eviction. But, frequently, eviction is the preferred route for dealing with a tenant who, for whatever reason, cannot keep current on its rent payments.

How does the eviction process work? And how long will it take to get rid of the problem tenant? A typical eviction cycle involves the following steps:

- 1. Demand for Possession.** The first step in any eviction process involves demanding that the tenant surrender possession of the premises if it does not cure the default within any cure period provided in the lease. The landlord should send a demand letter stating the amount due or identifying the other default to be cured, demanding that the default be cured within the period set forth in the lease, if any, and requesting that, if the tenant fails to cure the default, it surrender possession to the landlord. Significantly, although the lease may afford the landlord a number of remedies, making an actual demand for possession is an absolute prerequisite to a successful eviction proceeding; failure to make a demand for possession gives the tenant an effective defense in court.
- 2. File a Dispossessory Complaint.** Terminology varies depending on the jurisdiction (e.g., eviction, detainer, or dispossessory), but, following the tenant's failure to cure the default, the landlord must commence litigation. The eviction process is an expedited proceeding designed to move through the court faster than other cases. The process typically involves completing a short form, stating the basis for the eviction proceeding, and paying the applicable filing and service fees (usually between \$150 and \$250). Significantly, the landlord must raise any and all claims it might have against the tenant, even if the claims do not concern the default that resulted in litigation.
- 3. Serve the Tenant.** After filing the lawsuit, the tenant must be served with the eviction papers. Normally, the local sheriff's or marshal's department will perform this function, but a landlord might also elect to hire a private process server to expedite service. Service of process is extremely important because the manner in which a tenant is served establishes the court's jurisdiction over the tenant and determines the type of relief available to the landlord.
- 4. Tenant's Answer.** After service, the tenant must file its answer within a specified time. Failure to answer will result in a default judgment (as opposed to a default under the lease), entitling the landlord to possession of the premises. In many jurisdictions, a tenant cannot cure the failure to file an answer.

5. **The Court Hearing.** The court will usually schedule a hearing to take place a couple of weeks after the tenant's answer is due. At the hearing, the landlord's representative (usually an employee of the landlord entity or, in some cases, a property manager) will give testimony regarding the lease, the tenant's default, and evidence of the amount due or other default. The tenant will also have an opportunity to present any available defenses. A successful hearing will frequently depend on documentary evidence, so it is important that the landlord maintain an organized file, including copies of any correspondence with the tenant concerning the default, accounting records, and related paperwork.
6. **Judgment and Writ of Possession.** If the landlord prevails, the court will issue a judgment in favor of the landlord for the amount past due, including any costs and attorney's fees, and a Writ of Possession. The Writ of Possession is the document that officially authorizes the landlord to evict the tenant. In many jurisdictions, the landlord must wait a certain period of time (e.g., 10 days in Georgia) before the eviction can take place (except where the tenant defaults by failing to file an answer). This waiting period allows the tenant time to vacate the premises voluntarily.
7. **Eviction Day.** If the tenant refuses to vacate during the statutory waiting period, the local law enforcement agency, such as the sheriff's or marshal's department, will conduct the eviction. Significantly, notwithstanding any waiting period, it may take several weeks before the sheriff or marshal can conduct the eviction, depending on their schedule. The landlord must provide its own labor force to conduct the eviction; the sheriff or marshal is present to preserve order but will not remove the tenant's property from the premises. The eviction crew will remove the tenant's property and, usually, will place it outside the premises at a suitable location, such as a sidewalk or other right of way, at which point it will be considered abandoned. (Only property of the tenant will be considered abandoned, and the landlord should not assume that all property removed from the premises belongs to the tenant.) The eviction concludes with the sheriff or marshal signing off and delivering possession to the landlord.
8. **Collection Efforts.** If the court has awarded the landlord a monetary judgment, the landlord must undertake additional collection efforts (assuming the tenant does not, or cannot, pay the judgment voluntarily). The Writ of Possession does not authorize the sheriff or marshal to seize the tenant's property for the benefit of the landlord, as the primary goal of an eviction is returning possession of the premises to the landlord. However, other collection options may be available to the landlord.

Each eviction is different, and there may be additional considerations that require other steps (e.g., eviction of a restaurant, liquor store, or firearms store). The landlord should always consult an attorney experienced in eviction proceedings to ensure that it does not run afoul of the applicable rules, thereby subjecting itself to liability for a wrongful eviction. The process may vary somewhat, depending on the jurisdiction, but the steps described above outline the process by which the landlord typically recovers possession of its premises.

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