Justice Court, Pct. 6
Jefferson County

TENANT'S INFORMATION SHEET

Eviction

An eviction is a lawsuit filed by a landlord to remove persons and belongings from the landlord's property. In Texas law, these are also referred to as "forcible entry and detainer" or "forcible detainer" suits. There are hundreds filed every day with Texas justice courts (also called justice of the peace or J.P. courts).

A landlord should start this process by terminating a tenant's right to possession by giving a notice to the tenant. A landlord might do this for a number of reasons -- the number one reason is for nonpayment of rent. Sometimes a landlord may claim the tenant is staying past the agreed lease term ("holding over"). So long as a landlord is not discriminating in violation of the Fair Housing laws, or retaliating in violation of the Texas Property Code, a landlord can refuse to renew a lease for any reason.

(If you are faced with an eviction you should seriously consider getting advice and assistance from an attorney. If you have a very low income you may qualify for free or low cost legal aid from a nonprofit legal aid organization in your area.)

Court approval required

If a tenant refuses to move after a landlord asks the tenant to leave, the landlord must file an eviction case with the J.P. court to get approval to remove the tenant. The landlord must prove that the tenant has either violated the lease or has not moved after the landlord lawfully did not renew the lease. While it may be the landlord's property, before a tenant can actually be forced from their home a court rule for the landlord and a constable must supervise the actual eviction. Court approval is required because landlords make mistakes and because they sometimes have improper motives. And, if a landlord did not have to get court approval prior to evicting someone from their home these problems would be even worse.

Blacklisting

Of course, if you do not get out when a landlord asks you to, and the landlord files an eviction, win or lose, other landlords may not want to rent to you in the future. Court records are public information, and a landlord might refuse to rent to you just because you have had an eviction filed against you. So sticking up for yourself may come at a price. (It is possible to leave under protest and then sue the landlord for wrongful termination of the lease.)

Process

Step #1: You receive notice to vacate

Step #2: Talk to your landlord

Step #3: You receive eviction papers from court

Step #4: Answer the eviction case

Step #5: The eviction hearing

Step #1: You receive notice to vacate

Under Texas law, a landlord is required to give you a written notice to vacate before filing an eviction lawsuit. After you get the notice to vacate, consider whether or not you have any defenses to stay in your rental unit.

You may not have violated the lease as is claimed by the landlord. The landlord may not have given you a proper notice. Know that it is illegal to evict a tenant because the tenant requested repairs or called a housing inspector (see retaliation). An eviction should also be denied if your landlord is discriminating against you based upon race, religion, disability, sex, national origin, color, or having children. The landlord also may have miscalculated the rent owed because of the abuse of late fees. Despite what some landlords say, there are defenses to an eviction suit. These and other issues are discussed more in the Defenses section below.

Step #2: Talk to your landlord

Try to talk to your landlord about the vacate notice, either to understand what happened or to see if you can get more time to fix the situation. You may want to ask the landlord to hold off on filing an eviction lawsuit in return for your fixing the lease violation. For example, you may be able to stop the landlord from filing an eviction suit by paying rent that you might owe, getting rid of pets not allowed under the lease, or cutting down loud noise.

We have a **form agreement** at the bottom of this page that you and your landlord can sign to hold off on an eviction while you correct the lease violation or agree to make payments on the rent you owe. It is best to put an agreement you reach in writing and have both you and the landlord sign it.

Step #3: You receive eviction suit papers from court

Once the landlord files an eviction suit, a constable will try to hand deliver the eviction suit papers to your home. If the constable or sheriff makes two (2) unsuccessful attempts, they should post the papers in a visible location on the outside of the rental unit and mail you a copy. (It is best to get the papers so you know what is happening. Avoiding being served does not delay the process and might result in you losing the case automatically if you do not know when or where to defend yourself.) Only the constable or the sheriff can legally deliver the eviction suit papers from the court.

You will need to make a decision about whether you want to fight the eviction suit. As soon as the landlord files an eviction suit, it becomes a permanent court record and will likely become a part of your tenant history record for future rental applications. Of course, once it is filed, it is best to have it dismissed or have a judgment rendered in your favor. Even if you do not have defenses, you can often make an agreement that may result in a dismissal of the eviction case. This may help preserve your rental history, but the suit is still part of the public records.

If you choose to fight an eviction suit and lose, be aware that you may be responsible for court costs and the landlord's attorney's fees (if the landlord uses an attorney, and either the lease says the landlord can get attorney fees or the landlord gives you an 11 day notice to vacate by certified mail that specifically indicates you will be responsible for attorneys' fees). Section 24.006, Property Code.

IMPORTANT: If any of the court papers you received is called something like "Bond for Possession" or "Possession Bond pursuant to Rule 740" you have to demand a trial; otherwise the landlord can obtain possession of the premises without a hearing. You must demand the trial in writing within 6 days of receiving the court papers. Even if the J.P. court has already set up the hearing, you still should request one in writing. This will ensure that if you lose, you get five days after the hearing to move out or appeal. You can use the form answer we have provided to demand the trial. (Because many J.P. courts follow different procedures regarding possession bonds, you should contact an attorney to help you and also communicate with the court clerks to confirm how their court interprets the rule on possession bonds.)

Step #4: Answer the eviction suit

Once you receive the eviction suit papers (also known as an eviction citation and petition), make sure you read them carefully. The eviction citation is signed by the court clerk and will tell you when you have to appear in court. You should call the court clerk and find out if this is your actual hearing date. In some counties you can answer the case any time prior to the deadline in person, in writing or even over the phone, and then the court will give you a date for your hearing. You can use our answer form to file a written answer. It other areas, you are required to go to court on the specific date and time. In these cases it is not necessary to file a written answer.

The date and time by which you must answer the suit or appear for trial will be stated on the citation page of the eviction suit papers. Generally, you will have between six to ten days to answer the eviction suit after you receive the eviction papers. If you do not answer or appear by the deadline given in the eviction papers, the court will award a default judgment against you automatically.

If you want a jury trial, then you have to go to the justice court within five days after receiving the eviction papers. You should file a request for a jury trial in writing and pay a $5.00 jury fee.

Note: If you were served with a "Bond for Possession" the rules are different. You must demand a trial within 6 days of receiving the bond. You can use the answer form we have provided to demand the trial. Then talk to the court clerks about when the hearing will be held. If you do not demand a trial, the landlord could obtain a court order to evict you without a hearing at all.

Step #5: The eviction hearing

At the hearing you will need to be prepared to present your side of the story. Take your copy of the lease, any pictures, letters, documents, receipts, or witnesses to show the judge as evidence. The judge may not consider letters and affidavits from witnesses. You need to bring live persons with you if you want the court to hear what they have to say. You can request that the clerk issue a subpoena to compel the attendance of a witness at the hearing (the subpoena can be served by any person over 18 and not a party to the case). Constables charge fees (Jefferson County $50).

The judge or the jury will make a final decision after hearing the case. If the landlord wins, the law allows you five days to appeal the decision or move out. If you win, the landlord also has five days to appeal the decision.

Defenses

Types of defenses

Once you receive the notice to vacate and even before you receive the notice from the constable for your court hearing, you should consider whether you have any defenses available to the eviction suit. In a nonpayment of rent eviction case, the judge will not consider most cases of hardship (e.g., car breaking down, being in the hospital, losing your job).

If you are in public housing, federally subsidized housing or have a Section 8 voucher, you should call your local legal aid organization because there are many more defenses available (e.g., you may have a defense to nonpayment of rent if your landlord or public housing authority did not reduce your rent after you lost income).

Defenses will be either *procedural*, meaning that the suit was improperly brought before the court, or *substantive*, meaning that the eviction suit is invalid because you have not done anything to violate the lease agreement.

Procedural defenses include:

Defective notice to vacate (there are a variety of ways it can be defective):

Oral notice

Eviction suit filed too soon

Notice is unclear

Lease non-renewals

Improper delivery

Premature notice to vacate

Failure to give tenant an opportunity to correct (cure)

Substantive defenses include:

Waiver

Retaliation

Discrimination

Landlord caused tenant to default

Defective notice

The landlord must follow very strict guidelines in providing a tenant with notice to vacate the rental unit. If the landlord fails to provide proper notice, the tenant can get the eviction suit dismissed (through what is known as

a Plea in Abatement). Be aware, however, that even though the case will be dismissed, dismissal does not bar the landlord from fixing the mistake. The landlord can give proper notice then file another eviction suit.

The defective notice defense will allow you more time to either come to an agreement with your landlord, prepare your case against the landlord, or give you time to move out.

Once the landlord files the eviction suit, even if the court or the landlord dismisses the case for defective notice, the eviction filing will still likely appear on your tenant history if that information has been picked up by an agency such as Tenant Tracker which reports tenant history to landlords.

Oral notice

Did the landlord provide you with written notice to vacate your rental unit before the landlord filed an eviction suit? If the landlord failed to provide you with written notice to vacate, you can to ask the court to dismiss the eviction suit. Make sure you bring all documents you have received from the landlord to the court, so that the judge will be able to determine whether your defense is valid.

Example: Larry Landlord told Terry Tenant that Terry was going to be evicted. Landlord then files an eviction suit with the Court. Terry Tenant receives the eviction papers, but does not receive a written notice to vacate, and Larry landlord is not able to show proof of written notice. The Judge should dismiss the eviction suit.
→ Eviction suit filed too soon after notice to vacate

Did the landlord provide a written notice to vacate at least one day before filing the eviction suit? Check your lease; if it does not specify a notice period, or the lease is oral, then the landlord must give you notice three days for breaching the lease before filing the eviction suit. If the landlord filed the eviction suit before allowing the proper time set out in the lease, the suit is improperly filed and must be dismissed.

Notice is unclear

In the written notice, did your landlord demand that you either pay rent or vacate? For evictions for failure to pay rent, other breaches of the leases, or failure to move after the lease term has ended, the notice to vacate has to be plain and clear. A notice that says "pay your rent or vacate" does not clearly tell you to move out and is improper (unless the landlord has provided a prior written notice that the rent is due and unpaid).

Lease non-renewals

Has your lease term expired but you still live in the rental unit? If you remain in your rental unit after your lease term ends and the lease says it will continue on a month-to-month basis, the landlord must provide you thirty days notice of non-renewal. The landlord must also provide you a three-day notice to vacate.

Options

You have 3 options if the court rules against you:

Option #1 - Move out

If you choose to move out, do not leave any of your property in the rental unit. Make sure you clean the rental unit after you move out all of your belongings. Do a walk-through with the landlord and a witness. Take pictures or videotape to document the condition of the rental unit. Leave a forwarding address with the landlord (this just needs to be a place where you can receive mail; it can be a friend's house). You can also attempt to negotiate for more time. If you do get some sort of agreement, be sure the agreement is in writing and signed by the landlord. (Be careful about giving the landlord any money in exchange for more time unless the agreement is very clear. Sometimes landlords take tenant money and evict the tenant anyway.)

Option #2 - Appeal the eviction

If you want to appeal the eviction ruling from the judge, it would be a good idea if you speak to an attorney about the appeal. If you have a low income you may qualify for a legal aid attorney.

You will have five days to file an appeal (when you count the five days, count the weekends). You will have to post an appeal bond (a promise to pay a specific amount set by the court); or a cash bond in the amount of the bond set by the court; or file an affidavit of inability to pay in order to appeal the judge's ruling to higher court. You will need two people who have property or a savings account in Texas to co-sign the bond.

If you win in County Court, your bond money will be returned to you. If you lose, the landlord may recover back money for back rent, court costs and possibly attorney's fees from the bond, with any remainder returned to you.

Option #3 - Do nothing and be forced to move out

If you choose not to move out or appeal, the Landlord will request a Writ Of Possession, which is a court order directing the constable or sheriff to give the landlord physical possession of the rental unit. The writ cannot be issued until at least five days after the judgment from the eviction hearing (counting weekends and holidays). The constable or sheriff must post a 24-hour written notice on your door stating when the constable/sheriff will come over and make you move out. You any other persons who live with you, and all of your possessions, will be removed by the landlord under the supervision of the constable or sheriff.

You have the right to reside and go into the premises until the constable or sheriff evicts you by the writ of possession. Once a writ of possession is obtained, a constable or sheriff will allow the landlord to remove you, anyone in the rental unit, and all property from the premises. If it is raining, sleeting, or snowing you cannot be removed.

The landlord might still let you stay in the premises, even after the judge has ruled for an eviction, if you pay back rent and court costs before the five days are up. If your landlord agrees to let you stay, get a written statement that the landlord will not enforce the eviction, otherwise the oral agreement will be hard to enforce.

Appeal

Standard appeal

To appeal an eviction from a J.P. court, you will have to post an appeal bond, or post a cash bond with the court. This has to be done within 5 days of the judgment being signed (count weekends and holidays unless the fifth day falls on a day when the court is closed, then the last day is extended to the next day the court is open). The bond is set by the court and is usually two times the amount of the rent. A bond is a promise to pay the landlord in case you lose the appeal and must be signed by two other persons, besides yourself, who have sufficient assets to cover the amount of the bond. The J.P. court will provide you with a bond form if you request one. The court must approve your bond before you are allowed to appeal. If the court does not accept your

bond after you post it, the court should give you sufficient time to court any defect before dismissing your appeal.

If you cannot find anyone to sign an appeal bond with you, then you must post the cash instead. This is called a cash bond and your money will be kept by the court and released by the court.

Regardless of whether you post an appeal bond or a cash bond, the county court filing fee must also be paid within twenty days of being notified that it is due. If you do not pay the fee then your appeal will be dismissed. The court will tell you how much these are.

If you are unable to find two people to sign the bond, and cannot afford to post a cash bond or pay court costs you are entitled to file an affidavit of inability and appeal as a pauper.

If you want to win your appeal, you should continue to pay any rent required under the lease agreement or at least attempt to pay it. If the landlord accepts your money be sure to get a receipt. (A money order receipt is not a receipt of anything. It proves only that you purchased a money order. Get the landlord to sign saying received your money order.)

If you appealed just to challenge the amount of back rent awarded in the judgment, make this point clear to the landlord see if you can work something out. Get any agreement you make in writing. Often, landlords do not want to go to court, and, if you have moved out of the premises, are more willing to negotiate.

Appealing as pauper

If you are unable to post an appeal or cash bond, and pay court costs, you still may appeal your eviction case to county court by filing an affidavit of inability and appeal the case as a pauper. The deadline for filing the affidavit is the same as appealing using an appeal or cash bond (five days from the judgment counting weekends).

If the court accepts your affidavit and the landlord does not challenge it, then you can appeal the case without posting a bond or paying costs. However, a landlord can file a protest with the J.P. court and require you to attend a hearing to provide testimony of your financial situation. If the court agrees with your landlord, the judge may require you to post a bond and pay costs to appeal the eviction (this decision can independently be appealed to the county court).

IMPORTANT NOTE: If you are appealing an eviction case that was filed because of nonpayment of rent and you are appealing as a pauper by filing an affidavit of inability, then within five days of filing your affidavit you must deposit one rental payment with the J.P. court, and in the future continue to pay regular rental payments into the county court registry within five days of the due date under the lease. If you do not comply, you could be removed from the premises while your appeal is pending.

If you are faced with an eviction you should seriously consider getting advice and assistance from an attorney. If you are very low income you may qualify for free or low cost legal aid. We have provided with the phone number of your local legal aid office (409) 835-4971.

Filing a written answer with the County Court

No matter how you appeal, if you did not file a written answer with the justice court, you should file a written answer with the county court within eight days after filing an appeal, or the landlord may win by default. We have provided a form answer for filing with county court for your use.

Preparing for the appeal

An appeal from J.P. court is a little different than you may think. When you appealed to county court, the J.P. court judgment became void completely -- as though it never happened. So, in county court the landlord must start all over again and attempt to prove its case again. You do not have to prove anything or point out some error that occurred in J.P. court. You just need to be able to show how the landlord is wrong and that the eviction should be denied. You also entitled to a jury trial in county court if you make a request in writing and pay the fee required. Follow some of the same advice we gave you in preparing for the J.P. court hearing.

If the county court rules for the landlord again, the court must give you at least ten days to vacate the premises before a writ of possession can be executed. (A writ of possession is an order to the constable or sheriff to remove you and your belongings from the property.) Because it costs the landlord money to have the writ executed, try to negotiate a move out date if you can. Put any agreement in writing to protect yourself. It is possible for you to appeal from the county court to the court of appeals, but that is outside the scope of these materials and you will have to consult with an attorney about the requirements to appeal further.