

**CONTESTING A SUMMARY EVICTION
TENANT GENERAL INSTRUCTIONS
TO PREPARE TENANT'S AFFIDAVIT/DECLARATION
(Refers in general to Forms #13 through #16)**

HOW CAN I CONTEST A SUMMARY EVICTION?

To be sure that a judge will listen to your reasons why you should not be evicted, you must file a Tenant's Affidavit/Declaration with the clerk of the Justice Court in the township where your rental unit is located. If you do not file a Tenant's Affidavit/Declaration, you may be evicted without a hearing and may be evicted as early as the sixth working day after you receive your notice(s) from the landlord. Your Tenant's Affidavit/Declaration tells the court two things:

1. That you think you should not be evicted; and
2. Why you shouldn't be evicted.

If you fail to file a Tenant's Affidavit/Declaration, the eviction will be granted by default, and you may be evicted within 24 hours. If you file a Tenant's Affidavit/Declaration, the court should schedule a hearing. If you fail to appear at the hearing, you may be evicted within 24 hours after the hearing.

WHAT IS A TENANT'S AFFIDAVIT/DECLARATION?

Any of Form #13 through #16, when completed properly, is a Tenant's Affidavit/Declaration. The Tenant's Affidavit/Declaration is the document the tenant uses to respond to the Landlord's Affidavit/Declaration for summary eviction.

WHICH AFFIDAVIT/DECLARATION FORM SHOULD I FILE?

(The instructions for each of the Affidavit/Declaration forms will inform you of common defenses and will tell you how to fill out the Tenant/s Affidavit/Declaration.)

Form #13: If you reside in private housing¹ and the landlord is attempting to evict you for non-payment of rent, use Form #13, Tenant’s Affidavit/Declaration (Non-Payment Eviction – Private Housing).

The most common reason that a landlord may wish to evict you is for non-payment of rent. You will know this because the landlord’s notice to you will say that you must pay the rent by noon of the fifth (5th) judicial day [fourth (4th) day for weekly tenancies of less than 45 days] following the day you receive Form #7, Five-Day Notice of Unlawful Detainer for Non-Payment of Rent and Notice of Summary Eviction.

Form #14: If you reside in publicly-subsidized housing² and the landlord is attempting to evict you for non-payment of rent, use Form #14, Tenant’s Affidavit/Declaration (Non-Payment Eviction – Public/Publicly Subsidized Housing).

Form #15: If you reside in publicly-subsidized housing and the landlord is attempting to evict you for reasons other than non-payment of rent, use Form #15, Tenant’s Affidavit/Declaration (Public or Publicly Subsidized Housing: Other than Non-Payment of Rent).

Form #16: If you reside in private housing and the landlord is attempting to evict you for reasons other than non-payment of rent, use Form #16, Tenant’s Affidavit/Declaration (Other than Non-Payment of Rent – Private Housing).

MUST MY LANDLORD HAVE A REASON TO EVICT ME?

Maybe. If you reside in private housing, a landlord generally does not need to have any reason to evict you. This is sometimes called a “no-cause eviction.” Here, the landlord must give you at least two notices one after the other. The first is generally a 30-day notice, No-Cause Termination Notice to Vacate, Form #1, (or 7-day notice if you rent week

¹ “Private housing” means neither the federal, state or local government subsidizes your rent. A “subsidy” may be in the form of a lower than market value rent payment or payment of a portion of your rent.

² “Publicly-subsidized housing” means that the federal, state or local government subsidizes your rent. A “subsidy” may be in the form of a lower than market value rent payment or payment of a portion of your rent.

to week). The second notice is a Five-Day Notice of Unlawful Detainer for Failure to Vacate Rental Unit, Form #4, sometimes called a “notice to quit.” Unless you are a public or subsidized housing tenant, it is rare that you will have a defense for this kind of an eviction, but you may. For example, if you are a victim of either discrimination or retaliation you may have a defense. These defenses are explained in the instructions to Forms #15 and #16.

If you receive a 30-day, no-cause notice and if you are either a senior citizen (age 60+) or you have a physical or mental disability, you may ask to keep possession for an extra 30 days beyond the time specified in the notice. You must give the landlord a written request for an extended period and provide proof of your age (like a copy of your driver’s license) or disability (like a letter from Social Security awarding disability benefits). The 30-day notice should inform you of this right. For further explanation, see the instructions to Form #16.

If you (a) have a lease, (b) live in publicly- subsidized housing or (c) your landlord wants to evict you more rapidly than under a 30-day notice, the landlord may attempt to evict you “for cause.” A landlord may evict you if you have violated your rental agreement, created a nuisance, used the premises for an unlawful purpose, violated apartment rules, violated your basic obligations under Landlord/Tenant laws, or if a new owner obtains the property by foreclosure, etc. The rental agreement does not have to be in writing. This is called a “for-cause eviction.” There may be a number of defenses available, depending upon the circumstances which are explained in the instructions to Forms #15 and #16.

There may be other reasons the landlord may wish to evict you, such as where you have overstayed a definite lease term. The above are the most common reasons, however. If you have further questions, or if the landlord is evicting you for reasons not discussed here, you may wish to call an attorney.

HOW TO FILE A TENANT’S AFFIDAVIT/DECLARATION

There is a fee to file your Tenant’s Affidavit/Declaration. However, if you do not have the money, you may file an Application to Waive Fees and Costs, Form #37. You will list all of your income (earnings, rental income and government checks) plus your assets (real

property, bank accounts, motor vehicles, etc.) and expenses (rent, utilities, insurance, childcare, credit card payments, car payments, etc.) on this form. (See the specific instructions involved with this process – Forms # 37, #38 and #39.) When you complete the Application to Waive Fees and Costs, file your Tenant’s Affidavit/Declaration with it. The court will not officially file your Tenant’s Affidavit/Declaration until either (1) the judge grants your Application to Waive Fees and Costs (and gives you an Order Regarding Waiver of Fees and Costs, Form #39) or (2) you pay the filing fee.

Next, the clerk will file the original of your Tenant’s Affidavit/Declaration, and you should ask the clerk to “file-stamp” your copies. The law requires that the landlord receive a file-stamped copy of your Tenant’s Affidavit/Declaration. Some courts may deliver it to the landlord for you. Ask the clerk. The safest course of action is to deliver it yourself. If you are filing at the beginning of your notice period you can mail your Tenant’s Affidavit/Declaration to the landlord. If you are at the end of your notice period, it is faster to deliver a copy to the landlord personally or leave one with someone at his/her residence or place of business. If there is a later dispute about whether or not you provided a file-stamped copy of your Tenant’s Affidavit/Declaration to your landlord, you can prove delivery by obtaining a “Certificate of Mailing” from the United States Postal Service or taking a witness with you when you deliver to your landlord.

Once you have filed your Tenant’s Affidavit/Declaration, the court should schedule a hearing. Each court sets hearing dates differently, so ask the clerk of the court when the hearing will take place.

WHAT SHOULD YOU DO TO PREPARE FOR A HEARING?

Gather all documents and arrange for all witnesses that will help you prove your defense(s) to come to your court hearing. Prepare the questions which you plan to ask your witnesses. Also prepare the questions which you plan to ask the landlord and the landlord’s witnesses. Remember, you will typically get only one day in court. It will do you no good to tell the judge, for example, that you left a receipt at home or that you have an eyewitness who is not with you in court.

If you (or any of your witnesses) speak Spanish or another language other than English, you should ask the clerk whether the court will provide an interpreter or whether you may bring your own interpreter with you to court. An interpreter should be able to speak both your native language and English fluently. A person cannot act as an interpreter who is (a) the spouse of or otherwise related to a witness, (b) is biased, or (c) has an interest in the outcome of the case. If you (or any of your witnesses) is a person with a disability who cannot readily understand or communicate in English or who cannot understand the proceedings, you should ask the court in advance to appoint a qualified interpreter.

You may also want to arrange in advance for a court reporter to be present at the hearing. A court reporter records everything that happens at the hearing and that record may be important if you lose the hearing and later decide to appeal. You should call the court clerk in advance to find out how to arrange for a court reporter to be present at the hearing. You should then contact the court reporter in advance to discuss the fees and when payment is expected. If an appeal is filed after the hearing, there will typically be an additional charge per page.

WHAT HAPPENS AT THE HEARING?

At the hearing you should be prepared to tell your story. Bring all documents and witnesses necessary to prove your defense(s). You may also question the landlord and his witnesses. Although the hearing is informal, dress nicely, be polite and call the judge "Your Honor." Also, do not argue, roll your eyes, scowl, interrupt the judge or the other side, etc.

If you win (the judge decides that you have raised a legal defense) the judge should dismiss the eviction. The landlord may attempt to evict you later in a more formal lawsuit. If you are served with court papers, contact an attorney.

If you lose (the judge decides that you have not raised a legal defense) you will be required to move within 24 hours. However, if you would experience extreme hardship, you can ask the judge for a delay in the eviction for up to ten (10) judicial days. This is called a "Stay," but will probably be granted only for a really good reason. If the judge appeared to make a major mistake of law (described in the specific instructions for each of Forms #13

through #16), you may wish to contact an attorney immediately to discuss the possibility of an appeal.

Unless the judge has granted a stay, you should remove all of your personal property from the rental unit immediately. The sheriff or constable may lock you out within 24 hours. If you do not remove all your personal property or do not make other arrangements with the landlord, the landlord may put your property into storage and refuse to return it until you pay a reasonable storage fee. If the landlord is demanding an unreasonable fee, you can ask the court to determine what is reasonable. See the instructions for Forms #20, #21 and #22.