


Tenant's Relief and Response to Landlord's Eviction Process



Magistrate Court - Civil Division

This pamphlet concerns only residential leases and does not pertain to leases of commercial property, mobile homes and/or government housing. This pamphlet is general in nature and is not designed to give legal advice. The Court does not guarantee the legal sufficiency of this pamphlet or that it meets your specific needs. Also, as the law is constantly changing, the information in this pamphlet may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

WHAT IS A RESIDENTIAL LEASE?

A residential **Lease** or **Rental Agreement** is an agreement between a person or entity (the “**Landlord**”), who owns a residence, such as a home or apartment (“**Residence**”), and who grants to another person (“**Tenant**”) the right to possess, use and live in the **Residence** in exchange for the **Tenant’s** payment of **Rent**.

WHAT ARE THE LANDLORD’S DUTIES UNDER A RESIDENTIAL LEASE?

A **Landlord** must follow the **Lease** and is responsible to provide the **Tenant** with possession of the **Residence** until the **Lease** is terminated or the **Tenant** is **Evicted**. Subject to the terms of the **Lease**, the law requires the **Landlord** to:

- ❖ Comply with applicable minimum housing codes materially affecting health/ safety;
- ❖ Make repairs so that the **Residence** and all common areas are kept in a safe condition as required by applicable laws/rules;
- ❖ Maintain in good and safe working order the electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, if any, supplied or required to be supplied by the Landlord;
- ❖ Provide and maintain trash receptacles; and
- ❖ Supply running water and a reasonable amount of hot water.

WHAT ACTIONS CAN A TENANT TAKE AGAINST THE LANDLORD?

Until a **Lease** ends or is terminated, so long as a **Tenant** is paying **Rent** and not violating the **Lease** or the law, the **Tenant** may possess, use and occupy the **Residence**. If the **Landlord** violates the law or a material term of the **Lease** or if the **Residence** being rented is dangerous or unhealthy, then the **Tenant** can give the **Landlord** a **7-day written notice** requesting the **Landlord** to follow the law, perform its obligations under the **Lease**, and/or repair/remedy the dangerous or unhealthy conditions at the **Residence**. If the **Landlord** fails to perform and/or the repairs are not finished within **7 days** (or not begun if such repairs reasonably cannot be completed within 7 days), then the **Tenant** can:

- Terminate the **Lease**;
- Reduce (abate) the **Rent** usually by 1/3 of the pro-rata daily rental amount for each day that the repairs are unfinished (unless the **Residence** is completely unlivable in which case the **Tenant** may be able to abate more **Rent**); or
- **File a *Petition by Resident for Relief*** (for example, to bring a claim for damages against the **Landlord** or for quiet enjoyment of the **Residence**) and proceed through the Court process.

For example, if a **Tenant** is illegally locked out of or denied access to the **Residence**, or if the utilities are wrongfully disconnected by the **Landlord**, then the **Tenant** can file a ***Petition by Resident for Relief*** claiming that he/she is entitled to damages due to the **Landlord’s** wrongful actions and/or that **Tenant** be allowed to move back into the **Residence**. (See **How to File a Civil Lawsuit** pamphlet for information on how to file a ***Petition*** with the Court and serve it on the **Landlord**.) However, the ***Petition by Resident*** is not proof; it is only a statement of what the **Tenant** hopes to prove at **Trial**. The **Tenant** must appear at **Trial** to prove his/her case to the **Judge**.

WHAT IS EVICTION AND HOW DOES IT BEGIN?

Just as a **Tenant** can bring a claim against a **Landlord**, so too can a **Landlord** bring a claim against a **Tenant**. **Eviction** is when the **Landlord** ends the **Tenant's** possession of the **Residence** under the **Lease**. The **Eviction** process starts with a written notice from the **Landlord** to the **Tenant** regarding the **Lease**. There are four basic types of **Eviction** notices:

▶ A **30-day notice**, where the **Landlord** tells the **Tenant** that the **Lease** is ending and that the **Tenant** must move out by a specific date (This type of notice must be given at least **30 days** before the **Tenant** is required to move out.);

▶ A **7-day notice**, where the **Landlord** tells the **Tenant** that **Tenant** has violated the **Lease** or failed to perform obligations imposed on the **Tenant** by law and which violations or failures the **Tenant** must correct within **7-days** or be **Evicted**. If the **Tenant** receives **two 7-day notices** within a **six month period**, then the **Landlord** may be able to terminate the **Lease** and the **Tenant** would have to move out within **7 days** of the notice being delivered to the **Tenant**;

▶ A **3-day notice of non-payment of rent**, which gives the **Tenant** 3 days to pay **Rent** to the **Landlord**; and

▶ A **3-day notice of substantial violation**, which the **Landlord** gives when the **Tenant** or another person, with the **Tenant's** consent, *knowingly* commits a substantial violation of the **Lease** or the law and which gives the **Tenant** 3 days to move out of the **Residence**. (See NMSA 1978, §47-8-33(I) and Rule 4-901A NMRA regarding “substantial violations.”)

If the **Tenant** pays the **Rent** due and corrects the violations in the time set out in the notice, then the **Judge** may not allow the **Landlord** to **Evict** the **Tenant**. Otherwise, if the **Tenant** fails to pay **Rent**, correct the violations, and/or move out by the date set in the notice, then the **Landlord** will probably go to **Court** and file a **Petition by Owner for Restitution** asking the **Judge** to evict the **Tenant** and award the **Landlord** money for past and future rents, late fees, utility charges, property damage, other contractual damages, attorney's fees and/or Court costs.

WHAT IS AN ANSWER TO PETITION BY OWNER FOR RESTITUTION?

If a **Tenant** is served with a **Petition by Owner for Restitution**, the **Tenant** can respond by filing an **Answer to the Petition** at any time before the **Trial/Court** date. In the **Answer**, the **Tenant** can admit or deny the claims being made by the **Landlord** and can provide information to the Court such as why the **Tenant** should not have to move out of the **Residence** or why the **Tenant** does not owe the **Rent** being claimed by the **Landlord**. The **Tenant's Answer** also may include any defenses to the **Landlord's** claims and also any claims (**Counterclaim**), which the **Tenant** has against the **Landlord**. However, the **Answer** or **Counterclaim** is not proof; it is only a statement of what the **Tenant** hopes to prove at **Trial**. The **Tenant** must appear at **Trial** to prove his/her case to the **Judge**.

WHO WILL BE THE JUDGE?

A Judge is randomly assigned to a case when the case is filed. In an **Eviction** case, the time limit for excusing a Judge for the **Landlord** or the **Tenant** is 3 days after the service of the **Petition by Owner for Restitution**. In a **Petition by Resident for Relief**, the deadline to excuse a Judge for the **Tenant** is 3 days from filing the **Petition** and for the **Landlord** is 3 days from service of the **Petition**. If either the **Landlord** or the **Tenant** disqualifies a Judge, the Court will assign a new Judge to the case. However, the Court date and time probably will remain the same with the new Judge.

HOW IS NOTICE OF THE COURT DATE GIVEN TO THE LANDLORD?

When the **Tenant** files a **Petition by Resident for Relief**, the Clerk of the Court will prepare a **Service Packet**, which includes the **Petition** and a **Summons**, the **Trial** date and time and the assigned Judge. It is the responsibility of the **Tenant** to make arrangements to have the **Landlord** properly served with the **Service Packet**. (See **How to File a Lawsuit** pamphlet on how the **Landlord** as a defendant must be notified of the lawsuit being brought by **Tenant**.) It is very important that the

Landlord is properly notified that a lawsuit has been filed by the **Tenant**. This is not necessary if the **Landlord** filed a lawsuit against a **Tenant** already. In that case, the **Tenant** need only mail the counterclaim to the **Landlord**. (See How to Answer a Civil Lawsuit pamphlet.)

CAN THE COURT DATE BE CHANGED?

A party may try to change a Court date by making a request in writing before the scheduled date. The Judge will decide whether to change the Court date.

WHAT HAPPENS IF THE TENANT DOES NOT APPEAR AT THE TRIAL?

If the **Tenant** does not appear at a **Trial** on the **Tenant's Petition by Resident for Relief**, then the Judge may dismiss the **Tenant's** case. If the **Tenant** fails to respond to and/or does not appear at the **Trial** on the **Landlord's Petition by Owner for Restitution**, the **Landlord** can request the Court to enter a **Default Judgment** against the **Tenant**. (See Motions pamphlet.) A **Default Judgment** means that the **Landlord** automatically wins the case and is usually awarded the dollar amount and relief requested in the **Petition by Owner for Restitution**. Similarly, if the **Landlord** fails to respond to and/or does not appear at the **Trial** on the **Tenant's Petition**, then the **Tenant** can ask the Judge for a **Default Judgment** against the **Landlord**.

Therefore, if a **Tenant** wants to protect his/her rights, even if the **Tenant** moves out of the **Residence** before the Court date, it is extremely important that the **Tenant** respond to the **Landlord's Petition** and appear at the **Trial**.

WHEN MUST A TENANT MOVE?

If a **Judgment for Restitution** is entered in favor of the **Landlord**, then the Judge will set an **Eviction** date. The **Eviction** date will probably be not less than 3 days and not more than 7 days from the **Trial/Court** date. If the **Tenant** does not move out by the **Eviction** date set by the Judge, then the **Landlord** can ask the Court clerk to issue a **Writ of Restitution** ordering the Sheriff to remove the **Tenant** from the **Residence**. After the clerk has issued the **Writ of Restitution**, the **Landlord** may deliver the **Writ** to the Sheriff's Office. The Sheriff will then go to the **Residence** and evict the **Tenant**.

WHAT IF THERE IS A FORECLOSURE?

If the **Residence** is in foreclosure, the **Tenant** may be entitled to additional notice before the **Tenant** has to move out.