

# **TENANTS' RIGHTS WHEN SERVED WITH AN EVICITION NOTICE**

Prepared by Jacksonville Area Legal Aid, Inc. ("JALA")  
a United Way Agency



**The information provided in this document is not a substitute for legal advice. The laws described here may change without notice.**

## **YOU HAVE RIGHTS AS A TENANT!**

Although your landlord may own the property you live in, it is your home. It gives your family stability, security and shelter. If your landlord tries to evict you, you can act to protect your home. This document explains your basic rights when your landlord tries to evict you.

This document does not talk about specific defenses to an eviction case or how to file a written answer in court. For information about how to file an answer in court, you should ask for other pamphlets available from JALA or, for assistance in a particular case, you should apply for services at JALA.

## **CAN MY LANDLORD JUST THROW ME OUT?**

No! Landlords may not change your locks, remove your belongings, shut off your utilities or do anything else to force you out of your rental home. Those kinds of self-help eviction measures are illegal. If your landlord tries to do any of those things, you should immediately call the police. You should also ask for JALA's separate pamphlet about illegal evictions.

In order to evict you lawfully, your landlord must file an eviction case against you in court and obtain an eviction order from the judge. Your landlord may not evict you unless/until the judge enters an eviction order and the Sheriff comes to the property to enforce the judge's order.

## **WHAT IS THE PROPER EVICITION PROCESS?**

A landlord must follow these steps before the tenant can be lawfully evicted:

1. Give the tenant a written notice of lease termination (or notice to vacate), asking the tenant to move out by a certain date;
2. File an eviction case in court if the tenant does not move out by the date in the landlord's notice;

3. Win the eviction case and get an eviction order from the judge;
4. Get a final 24-hour notice (“Writ of Possession”) from the court and have it posted on the rental home; and
5. Have the Sheriff come out to the property and evict the tenant. (The Sheriff will then allow the landlord to change the locks and remove any of the tenant’s belongings that are still inside the home.)

## **WHAT IS THE DIFFERENCE BETWEEN A NOTICE OF LEASE TERMINATION AND AN EVICTION CASE?**

The notice of lease termination (or notice to vacate) is the landlord’s written demand to the tenant. It demands that the tenant move out by a certain date. If the tenant has a written lease that has not expired, the landlord’s notice must give a reason for terminating the lease. If the tenant does not have a written lease, the landlord is generally not required to give a reason for asking the tenant to move out. The landlord’s notice is delivered to the tenant, but it is not filed in court.

If the tenant does not move out as demanded in the landlord’s notice, the landlord may file an eviction case in court. To start an eviction case, the landlord files an Eviction Complaint, which is the landlord’s request to the County Court to evict the tenant. The landlord’s Eviction Complaint, along with an Eviction Summons, is delivered to the tenant by a process server and by mail. After receiving the Eviction Summons and Complaint, the tenant has only five (5) business days to respond.

The tenant must do two (2) things in order to respond to an Eviction Summons and Complaint:

1. File a written answer. The answer contains the tenant’s defenses (the reasons the tenant believes he/she should not be evicted).
2. Deposit rent into the court’s registry.
  - If the landlord claims (in the Eviction Complaint) that some amount of rent has not been paid, the tenant must either deposit that amount OR, if the tenant disputes that amount, file a “Motion to Determine Rent.” For more information about this, ask for JALA’s pamphlet titled “Eviction for Unpaid Rent.”
  - If there is no claim that the tenant has failed to pay rent, the tenant must deposit his/her next rent payment when it comes due.

In addition to filing a written answer, Florida law requires the tenant to deposit any unpaid rent with the court and to continue depositing the rent with the court each month as it comes due (instead of paying it to the landlord) until the eviction case is resolved and closed by the court. IF THE TENANT DOES NOT COMPLY WITH THIS REQUIREMENT, HE/SHE MAY LOSE THE CASE BY DEFAULT, WITHOUT ANY HEARING. If the tenant files a written answer and deposits the unpaid rent (if any) in court, the case should be scheduled for a hearing with the judge, who will decide whether eviction is appropriate or not.

A separate pamphlet is available from JALA about how to defend an eviction case when the landlord is claiming that rent has not been paid.

## **MUST I MOVE OUT AFTER RECEIVING A NOTICE OF LEASE TERMINATION?**

No. You have the right to stay in your home until the landlord files an eviction case against you and a judge decides your case.

If you have a written lease that has not expired, and if you believe that you have not done anything to deserve eviction and that you are likely to win an eviction case, you may wish to stay and fight the eviction case in court. On the other hand, if you believe you are likely to lose an eviction case because of something you or your family members have done in violation of your lease, you may wish to move out before any eviction case is filed against you. That decision is yours to make.

If you do not have a written lease, your landlord may not be required to prove that you did anything wrong in order to evict you, and you may wish to move out before any eviction case is filed. That decision is yours to make.

You should be aware that an eviction case is a public record. Other landlords can see the case in the court's records, and that might make it difficult for you to find another place to rent.

You should also be aware that in an eviction case, the losing party may be ordered to pay the winning party's court costs and attorney fees.

If you would like specific advice for your situation, you should apply for services at JALA or contact another attorney.

## **HOW LONG DOES AN EVICTION CASE TAKE?**

It depends on whether the tenant properly responds to the Eviction Summons and Complaint. If the tenant properly responds as described above, the judge should schedule a hearing. The hearing is usually scheduled within a few weeks after the case is filed. At the hearing, each party gets a chance to speak to the judge and present evidence. After the hearing, the judge decides whether or not eviction is appropriate. If the judge enters an eviction order, the landlord may have a final 24-hour notice ("Writ of Possession") posted on the rental home. If the tenant is still in the rental home 24 hours after that final notice is posted, the landlord may request the Sheriff to come out and evict the tenant.

Even if the tenant does not properly respond to the eviction summons as described above, the eviction process in court usually takes at least 10 days from the date when the tenant received the Eviction Summons and Complaint.

## **SPECIAL NOTE:**

The information in this document applies to normal landlord-tenant situations, such as the rental of a house, a mobile home, or an apartment. It does NOT apply to some other situations, such as occupancy in a hotel room or in a treatment facility. If you are not sure if you are covered by the landlord-tenant laws, you should apply for services at JALA or contact another attorney.

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You may contact JALA's main office in downtown Jacksonville by calling (904) 356-8371.

If you are a qualified individual with disability, you may request a reasonable accommodation / auxiliary aid at no charge to you by contacting the JALA ADA Coordinator at (904) 353-1320 (V/TTY) or (904) 245-1121 (Video Phone).