

NEW YORK STATE UNIFIED COURT SYSTEM

TENANT QUESTIONS & ANSWERS IN HOLDOVER EVICTION CASES



In this Guide:

- Learn how to:
 - o Answer a case
 - o Go to court
 - o Ask to stop an eviction
- Find places to get help
- See sample forms

DISTRICT, CITY, TOWN & VILLAGE COURTS OUTSIDE NEW YORK CITY

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If you live in New York City in the Bronx, Brooklyn, Manhattan, Queens, or Staten Island, this guide is not for you. Visit:
<http://nycourts.gov/courts/nyc/housing/pdfs/tenantsguide.pdf>.

WHAT HAPPENS IF THE LANDLORD/OWNER IS SUING TO EVICT ME?

The landlord/owner starts a *holdover* case to evict a tenant or another person (also called an *occupant*) in your home. A holdover case is started for a different reason than nonpayment of rent. For example, a holdover case is started because your lease expired, or you are too noisy, or the tenant gave you the apartment without telling the landlord/owner, or you put a wall up without permission.



If the landlord/owner starts a case only to collect rent, that is not a holdover case. That is called a *nonpayment* case. If the landlord/owner started a nonpayment case against you, this guide is not for you. You can read the nonpayment guide at: http://nycourts.gov/courthelp/pdfs/TenantsGuide_nonpayment.pdf.

Can the landlord/owner start a case to evict me even if I didn't do anything wrong?

Maybe. If you do not have a written lease, or your lease expired and you don't live in *rent regulated* housing, the landlord/owner may be able to go to court to evict you even if you did not do anything wrong. It is the landlord/owner's right to evict you without a reason. Rent regulated apartments are rent stabilized or rent controlled. If your apartment is rent regulated the landlord/owner is supposed to renew your lease if you want to stay.

When does the landlord/owner have to give me a Notice of Termination before starting a case?

This depends on the what kind of tenancy you have and the timing of the eviction case.

Termination Notice	Type of Tenancy/Timing
Yes	• Your lease ended, but the landlord/owner took rent from you after the lease ended • You have no written lease, but you pay rent each month (<i>month to month tenant</i>) • The landlord/owner wants to evict you during the lease • You live in rent regulated housing • You have a Section 8 subsidy • Your lease says so
No	• If your lease ends the landlord/owner can start a holdover case without any notice

What does the Notice of Termination have to say?

The landlord/owner gives you *Notice of Termination* to end your tenancy. The Notice of Termination should:

- tell you the reason, and
- tell you the date that you must move, and
- tell you the landlord/owner will start a case if you don't move by the deadline.

What is a Notice to Quit?

The landlord/owner gives you a 10-day Notice to Quit when the landlord/owner thinks you do not have any right to stay in the apartment. You get this notice if you started living in the apartment without the landlord/owner's permission, like a "*squatter*" or a "*licensee*." If you don't move out by the deadline in the notice, the landlord/owner can start a case against you.

I got a Notice to Cure, what is that?

If you live in a rent regulated apartment, or you rent or own a mobile home in a mobile home park, the landlord/owner is supposed to give you a *Notice to Cure* when the landlord/owner thinks you are not following the lease. For example, the notice may tell you to remove an illegal washing machine, or give up your pet, or stop making noise. The Notice to Cure gives you time to fix the problem.

Important! If you don't correct the problem by the deadline in the notice, the landlord/owner must give you *Notice of Termination* ending your lease before starting a case against you.

How does the landlord/owner start the case?

To start a holdover case, the landlord/owner must give you court papers called a *Notice of Petition and Petition*. The landlord/owner must give you the papers the right way ([see page 6](#)). The papers tell you the date, time and place (courtroom or *Part*) when you must come to court.

What do I do when I get a Notice of Petition and Petition?

If you get a Petition, you must come to court on the court date. When you come to court you should *Answer* the Petition.

An Answer lets you tell the court your side of the story. Your Answer says the legal reasons why the landlord/owner should not win the case. [See page 4](#) for how to Answer.

What happens if I don't come to court?

If you don't come to court the landlord/owner can ask the Judge for a *judgment on default* against you. If the landlord/owner gets a judgment against you then you can be evicted. [See page 17](#) to learn about stopping an eviction by going back to court to ask the Judge to do something on your case.

What if I can't come to court on the date I was given?

You can ask the landlord/owner to agree to a new date. If the landlord/owner agrees, get this in writing and bring it to the Court Clerk before your original court date. Or, some courts may allow you to do this over the phone. Call the court. (Use the Court Locator: <https://www.nycourts.gov/courts/index.shtml> to find the court's phone number). You can also send someone to court on your court date to tell the Judge why you can't be there. But, you must have a good reason why you can't come to court.

Should I pay the rent?

If you try to pay, the landlord/owner may not accept the money. But, if the landlord/owner takes your money after the deadline in the Notice of Termination or a Notice to Quit and before the case is started, this can be a defense. Tell the court. The landlord/owner may have to start all over again.

Once the case has started, the landlord/owner can take your money. This is called *use and occupation* instead of rent. A Judge can order you to pay use and occupation while the case is going on.

Is the court going to give me a lawyer?

No. There is no right to a free lawyer in landlord-tenant cases.

Do I have to have a lawyer?

It is always better to have a lawyer, but you do not have to have one. Voluntary associations and corporations must have a lawyer for cases in the District or City courts, but not in a Town or Village court.

When the landlord/owner starts a case against you he or she is the *petitioner*. You are the *respondent*.

HOW DO I ANSWER A HOLDOVER PETITION?

There are two ways to answer the Petition:

- when you go to court tell the Clerk or Judge your Answer (oral Answer),* or
- give or mail a copy of a written Answer to the landlord/owner and give the Clerk or Judge the Answer.

*If you tell the Court your Answer check to see that the Court wrote down everything you said. The Clerk or Judge must do this under the law.

There is a [sample Answer](#) in the back of this guide that you can use as a written Answer, or as an information sheet to help you tell the Clerk or Judge your Answer.

What do I say in the Answer?

An Answer lets you tell the court your side of the story. Your Answer says the legal reasons that you should not have to move. Your Answer also says any other reasons why the landlord/owner should not be able to win the case. The legal reasons are called *defenses*. You will have to prove your defenses in court. You may have several defenses depending on the facts of your case. You may have a defense not listed.

You may have a defense about the way you got the court papers, like:

- You didn't get a copy of both the Notice of Petition and the Petition.
- The landlord/owner didn't give you the court papers the way the law says. ([See page 6](#)).
- You didn't get a Notice required by law before the landlord/owner started the case. ([See page 1](#)).

You may have a defense about the way the parties are listed on the Petition, like:

- Your name is not correct or is missing from the court papers.
- The Petitioner is not the landlord or owner of the building.

You may have a defense about the home you rent, like:

- You have or had conditions in the apartment/building which need to be repaired and/or services which need to be restored.
- Your home is not listed correctly on the Petition (wrong address or missing information about rent regulation).
- You fixed the problem that the landlord/owner is complaining about.
- The conditions or behavior that the landlord/owner is complaining about are not that bad.
- The conditions or behavior that the landlord/owner is complaining about are not true.

You may have other defenses, like:

- The landlord/owner accepted rent from you after the date in the Notice of Termination.
- The landlord/owner started this case against you to retaliate for your actions.
- You serve in the military or are dependent on someone in the military.

- The landlord/owner has harassed you by trying to force you to move or give up your rights. Explain what the landlord/owner did to the Court Clerk.

You may have a defense because you are not sure that everything the landlord/owner is saying in the Petition is correct. This is called a *general denial*.

Important! If you do not tell the Clerk about a defense in your Answer you might not be able to talk about it later in your case.

Does the landlord/owner have to give me court papers in a special way?

Yes. The Notice of Petition and Petition must be given to you the right way. This is called *service of papers*. If the landlord/owner does not serve you the right way this is a defense. Tell the court. The Judge may make the landlord/owner start all over again. [See page 6](#) to learn how legal papers are delivered.

The landlord didn't say anything or give me anything before starting the case, is that a defense?

Maybe. The landlord/owner may have to give you notice before starting the case. [See pages 1-2](#).

Can the landlord/owner bring me to court for complaining?

Not legally. If the landlord/owner is suing to "get even" because you complained to the landlord, the landlord's agent or a government agency about your housing conditions or you joined a tenants' association, this is a defense. This is called "*retaliatory eviction*." Retaliation is not a defense if you live in a building with less than 4 apartments and the landlord/owner lives in the building too.

What if I live in a rent regulated apartment?

If your apartment is rent stabilized or rent controlled, you may have other defenses. For example, the landlord/owner may have to give you a renewal lease or may not have given you a Notice to Cure. Call DHCR for more information.

Can I make a claim against the landlord/owner?

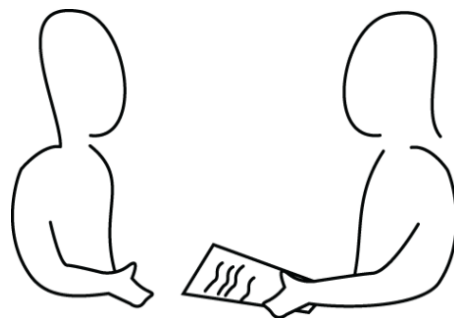
Yes! You may add "*counterclaims*," to your Answer. A counterclaim is a claim that you may have against the landlord/owner. In a counterclaim you are asking the landlord/owner to pay you money. The counterclaim must be related to your home, like the landlord/owner owes you money for repairs you had to make.

Are there any fees to file my answer?

No.

HOW ARE LEGAL PAPERS DELIVERED?

The Notice of Petition and Petition must be given to you the right way. This is called *service*. The person who served the papers must swear how they were given to you in an *Affidavit of Service*. The landlord/owner files the Affidavit of Service with the court.



The landlord/owner handed the papers to me, is that ok?

No, the landlord/owner can't serve the papers. Someone who is 18 or older - **not** the landlord/owner - can hand legal papers to you. This is called *personal delivery*. If papers are handed to you, they don't have to also be mailed.

The papers were given to someone else to give to me, is that ok?

Maybe. Legal papers can be given to someone who lives or works in your home, this is called *substituted delivery*. Papers left with a neighbor or doorman are not served the right way.

The person the papers are left with must be responsible and likely to give you the papers. This person does not have to be an adult but it should not be a small child. Papers also must be mailed to you.

The papers were left on my door, is that ok?

Maybe. Legal papers can be left on or under your door as long as the landlord/owner has first made two attempts to find you at home. Papers also must be mailed to you. This is called *conspicuous place delivery* or *nail and mail*.

I only got the papers by mail, is that ok?

No. Before copies of the papers are mailed to you by regular and certified mail, someone must go to your home and leave a copy of the papers:

- with someone who lives or works in your home, or
- on or under your door.

I didn't get any papers by mail, is that ok?

Maybe. If the papers were handed to you in person, a copy of the papers doesn't have to be mailed. If the papers were left for you, copies of the papers must be mailed by regular and certified mail.

You can ask the Clerk for a copy of the Affidavit of Service to see how the landlord/owner's server says the papers were given to you.

I got papers, but the other people that live with me didn't, is that ok?

No. Every person named in the case must get his or her own set of papers. If the landlord/owner doesn't know someone's name, the person may be listed on the papers as "J. Doe" or "John" or "Jane Doe."

What do I do if I was not served the right way?

It is a defense if you were not served the right way. You must tell the Court Clerk or the Judge when you answer or you may not be able to say this later. The Judge may hold a hearing to decide if the papers were served the right way. This is called a *traverse hearing*. You can ask the Clerk for a copy of the Affidavit of Service to see how the landlord/owner's server says the Notice of Petition and Petition were given to you.

If you win the hearing, the case will be dismissed. But the landlord/owner may start the case over again by giving you a new set of legal papers.

What do I do if I get a certified mail pick-up slip from the Post Office?

If you get a notice from the Post Office that there is registered or certified mail for you, go pick it up. The court considers the papers served whether you picked them up or not, as long as the rest of the rules were followed.

Where can I find the law that says how legal papers must be delivered?

Section 735 of the Real Property Actions and Proceedings law says how a Notice of Petition and Petition must be delivered.

<https://www.nysenate.gov/legislation/laws/RPA/735>.

HOW DO I GET READY FOR COURT?

Get all your court papers together. Gather any materials you have to prove your case. This may include witnesses or papers, such as:

- copy of the lease and lease renewals
- letters you wrote or received about the apartment,
- photos, mark each photo with the date it was taken and what is pictured,
- record of dates and conversations you had with the landlord/owner,

Bring the original papers to the court.

What can I do if a witness refuses to come to court or I can't get documents I need?

If a witness refuses to come to court or you are having trouble getting documents you need, you can *subpoena* them. Go to court and tell the Clerk you need a subpoena issued. A subpoena must be served at least 48 hours before the trial.

What if I don't speak English well?

The court will give you an "official" interpreter for free. It is a good idea to tell the court before your court date so they can have an interpreter ready for you. Visit: <http://nycourts.gov/Accessibility/listbycounty.shtml> to find the phone number. If you are having problems, call the Office of Language Access: 646 386-5670.

What if I need accommodations for a disability (ADA)?

Many courts have a contact person to help you. Ask the Court or visit: <http://nycourts.gov/Accessibility/listbycounty.shtml> to find the phone number.

Is there anywhere I can go to get answers to legal questions or questions about procedure?

You can visit a law library or a Court Help Center if there is one in your county. You can speak to court staff for legal information. Find one close to you: <http://www.nycourts.gov/courthelp/GoingToCourt/gettingHelp.shtml>. There may be more help for you from one of the resources listed in this guide [on page 20](#).

WHAT DO I DO WHEN I GO TO COURT?

What time should I get to court?

Get to court early. Plan to arrive 45 minutes before your court time. You may have to go through a security line. Remember you may be in court for several hours.

Can I bring my children with me?

Yes, but it is better to find someone to watch them during your court appearance.

How should I dress for court?

Court is a formal place and you should dress respectfully. Do not wear t-shirts with curses, belly shirts, sunglasses, or torn clothing. You will be asked to take your hat off. You do not have to buy new clothing for court.

Is the court going to give me a lawyer?

No. There is no right to a free lawyer in landlord-tenant cases outside New York City.

Should I speak to the landlord/owner or the attorney by myself?

The landlord/owner or the landlord/owner's attorney may call out your name to talk to you alone. You can talk to the landlord/owner or the attorney to try to settle the case, but you do not have to. You can tell the attorney that you want to wait until the case is called.

What happens on my first court date?

Go see the Clerk seated at the front of the courtroom and let the Clerk know you are there. Tell or give your Answer to the Clerk. Then take a seat and wait for the Clerk to call all the cases. This is called the *calendar call*. Listen for your name.

The Judge may ask you and the landlord/owner or the landlord/owner's attorney some questions and may try to settle the case. If you do not settle and both sides are ready, the Judge may hold a trial. In some courts, the Judge will hold the trial right away. In other courts, the Judge will schedule the trial for another day. Make sure to tell the court if you are not ready.

What should I do if I am not ready?

At your first court date, if you need more time for any reason, you can ask the Judge to postpone the case. This postponement is called an *adjournment*. The Judge must adjourn the case for at least 14 days, even if the landlord/owner disagrees. You will get a new court date.

If you are still not ready at your next court dates, you can ask the court for another adjournment but it's up to the Judge if the landlord/owner doesn't agree. It's important to have a good reason why you need more time, like your witness is away or your waiting for records.

What can happen when the court calls my case?

That depends on why you are in the courtroom:

- If you are there for your court date, you will see the Judge to see if your case can be settled. [See page 11](#) about settlements.
- If your case can't be settled, the case will be tried. [See page 13](#) about trials.
- If you need more time, you may be asking for an adjournment.
- If you and the landlord/owner settled your case, you will tell the court.
- If you are there because you or the landlord/owner served papers asking the Judge to do something on your case by an *Order to Show Cause*, you will see the Judge. The Judge will listen to you and the landlord/owner and make a decision. [See page 17](#) about Orders to Show Cause.

People who don't have a lawyer are called "*Pro Se*" or "Self-Represented" or "Unrepresented" litigants.

CAN THE LANDLORD/OWNER AND I AGREE TO SETTLE THE CASE?

You and the landlord/owner can settle your case with or without the help of the court.

What should I do if the landlord/owner and I agree to settle the case before the court date?

If you and the landlord/owner make an agreement, you should:

- Put your agreement in writing.
- Both you and the landlord/owner must sign the agreement.
- Make a copy for the court and another for your records.
- Go to court to give the Clerk or Judge what you and the landlord/owner agreed to.

How do the landlord/owner and I settle the case in court?

If you want to try to settle the case, find the landlord/owner or the landlord/owner's attorney. If you and the landlord/owner make an agreement it is best to write it down in a *Stipulation of Settlement*. When settling the case:

- Only agree to what you think is fair.
- Be sure you can do what you promise by the dates you promise.
- Make sure the agreement takes care of all your defenses.
- Ask the Judge to explain any legal terms.
- Do not sign anything unless you have read and understand it. If something is not clear, you can ask the Judge questions.

What should the Stipulation say if the landlord/owner agreed to reduce the rent I owe?

If the landlord/owner agrees to reduce or *waive* some of the rent you owe because of conditions you have lived with in the apartment, or because you have agreed to move, the Stipulation should say the amount of money waived and the time period covered.

What should the Stipulation say if I have agreed to correct any issues or move out?

The Stipulation should give you enough time to correct any issues which you have agreed to take care of. If you have agreed to move, the Stipulation should give you enough time to find a new place to live. Put the dates by when things must be done in the Stipulation.

Must the Stipulation have a judgment for the landlord/owner?

No. You can agree to settle the case without a judgment. If the Stipulation has a judgment, and you do not do what you promised to do, the landlord/owner can use the judgment to have you evicted without you coming back to court. The landlord/owner may not agree to a settlement without a judgment.

What if the landlord/owner doesn't do what is supposed to be done in the Stipulation? What if I need more time to do what I am supposed to do?

If you **or** the landlord/owner do not do what you agreed to in the Stipulation of Settlement, or you need more time to do what you agreed, you can go back to court. This is called an *Order to Show Cause*. [See page 17](#) on how to go back to court to ask the Judge to do something on your case.

What if I don't want to settle the case?

If you don't want to settle the case you do not have to. Nobody can force you to settle the case. If the case is not settled there will be a trial.

Can the landlord/owner and I make an agreement that changes the Stipulation or a Judge's decision?

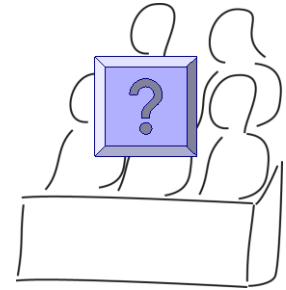
Yes, but put it in writing, keep a copy for your records and give a copy to the court.

WHAT HAPPENS AT A TRIAL?

At a trial, the landlord/owner tries to prove the case for eviction and the tenant tries to prove the defenses or counterclaims. Both sides testify and show their proof to the Judge.

Who decides cases my case?

Cases are usually decided by Judges without a jury. You or the landlord/owner can ask for a jury trial if your lease allows it or you have no lease. Most leases do not allow jury trials. You must file a *jury demand* and pay the jury fee on the court date. In the District or City courts it costs \$70.00 if you ask for a jury trial. In the Town or Village it costs \$10.00.



You can ask the Judge to file a late jury demand, but the Judge may say no.

How do I act during the trial?

During the trial:

- be yourself and just say what happened,
- give complete answers about the question,
- don't argue with the landlord/owner or the landlord/owner's attorney or the Judge.

What happens during the trial?

The landlord/owner tries to prove the case for eviction first. This is called *testifying*. You will also have a turn to testify and ask each witness questions. The Judge may also ask questions. Everyone who testifies must swear to tell the truth.

You and the landlord/owner can *object* to questions, answers or documents.

How do I object?

You can *object* if you think there is a reason why the testimony or the document should not be allowed by the Judge, not just because you disagree with it. You can object if:

- the witness is only repeating what someone else told him or her (this is called *hearsay*),
- you think that the testimony or document has nothing to do with the case (this is called *irrelevant*),
- a document is not certified or an original document has been changed.

If you have an objection you must interrupt the trial and say, **objection**. The landlord/owner can also object. The Judge will decide whether to agree with the objection, *sustain*, or disagree with the objection, *overrule*, before going on with the trial.

What happens at the end of the trial?

When you and the landlord/owner are finished explaining your sides of the case, the Judge will make a decision. If the landlord/owner wins, the landlord/owner will get a *judgment* from the court for possession and for money that is owed. Money for living in

the home during the case is called *use and occupation*. The Judge issues a warrant for your eviction. You will get a Notice of Eviction telling you when you must move.

If you win, the case will be dismissed. You may find out the Judge's decision right away or you may get it in the mail later on.

Do I get time to fix conditions if the landlord/owner proves that I broke (*breached*) terms in my lease?

The court will give the landlord/owner a judgment, but the landlord/owner won't be able use the judgment to evict you for 30 days. If you fix the condition during this time, the judgment will be cancelled. Make sure the court knows that you have corrected the condition.

What if I need more time to find a place to live?

You must come to court and ask the Judge for more time. [See page 17](#) on how to go back to court to ask the Judge to do something on your case. Save all ads for apartments that you tried to get, with dates and notes like "already taken," "too small" or "bad neighborhood" to prove to the Judge that you really tried to find another apartment. You can also tell the Judge reasons you were unable to look, like you were sick, or you had a death in your family.

What happens if I don't pay the amount owed in the money judgment?

A money judgment can be collected against you for 20 years, even if you moved out or were evicted.

What if I think the Judge was wrong?

If you lose and think the Judge made a mistake, you can *appeal*. An appeal asks a higher court to decide if the Judge was wrong. You can only appeal a Judge's order or judgment. An appeal is expensive and must be made quickly.

A money judgment gives the landlord/owner the right to collect money from you.

A judgment of possession gives the landlord/owner the right to evict you.

WHAT IS AN EVICTION?

In an eviction, a law enforcement officer, like a Marshal, Sheriff, or Constable, comes to your home, changes the locks, or removes your things, and makes you and your family leave.



What is a Notice of Eviction?

A Notice of Eviction is a paper given to you by a Marshal, Sheriff or Constable after the landlord/owner wins the court case. This can happen even if you missed your court date. The 14-day Notice of Eviction tells you that you will be evicted from your home.

If I got a Notice of Eviction when will I be forced to leave?

The Notice of Eviction gives you at least 14 days' notice and should have the date you must move. The eviction can be scheduled any time after that date. But you can only be evicted on a business day, so if the 15th day falls on a weekend, the eviction can't take place until Monday. You can only be evicted during daylight hours. Call the number on the Notice of Eviction and ask if the eviction has been scheduled and when it is going to happen.

Do I get more time to move if I own a mobile home and I rent space in a mobile home park from a mobile home park owner or operator?

Yes. The Marshall, Sheriff or Constable must give a tenant who owns his or her mobile home a 90-day Notice of Eviction unless the Judge ordered something different because of a dangerous situation.

Can the landlord/owner change my locks and evict me?

If you have lived in your home for more than 30 days, only a Marshal, Sheriff or Constable can evict you **and** only after the landlord/owner has taken you to court and won a judgment against you.

How can I stop an eviction?

If you want to try to stop the eviction go to court right away. You will need to fill out an *Affidavit* and *Order to Show Cause* papers and bring them to the courthouse. If a Judge signs the Order to Show Cause with a *stay* of the eviction, this will stop the eviction after you have delivered the Order to Show Cause to the landlord/owner and any Marshal, Sheriff or Constable. This does not mean that the eviction will be stopped for good. You will get a court date to come to court to talk about your reasons that the eviction should be stopped. [See page 17](#) on how to go back to court to ask the Judge to do something on your case.

Can I ask the court to postpone (stay) the eviction?

Yes. You will need to fill out *Order to Show Cause* papers and bring them to the courthouse right away. The court has the power to postpone the eviction, also called a *stay* for up to 1 year. You will need to give the court good reasons why the eviction should be stopped or why the judgment should be canceled. The court will consider the hardship that a stay may cause the landlord/owner and if the landlord/owner can prove

you are an objectionable tenant. You will most likely have to pay use and occupancy during the stay. [See page 17](#) on how to go back to court to ask the Judge to do something on your case.

Can I ask the court to put me back in my home after the eviction?

Yes. You can fill out *Order to Show Cause* papers asking to be put back in your home. But, you will need to have a very good reason for the judge to do this, like the landlord/owner was harassing you and trying to get rid of you, or that the landlord/owner was taking you to court because you complained. If the landlord/owner re-rents your home, it will be harder to get back in.

A Notice of Eviction is different from the Notice of Petition and Petition which are the papers that start a court case against you.

WHAT DO I DO IF I NEED TO GO BACK TO COURT TO ASK THE JUDGE TO DO SOMETHING ON THE CASE?

An *Order to Show Cause* (OSC) is a written court form that asks the Judge to do something on the case. It can be used:

- to ask the court to stop an eviction,
- to make a landlord/owner do what he or she was ordered to do or agreed to do,
- to ask for more time to do what you were ordered to do or agreed to do,
- to bring your case back before the Judge for any other reason,
- to explain why you missed your court date or didn't Answer.



How do I make an Order to Show Cause?

You need to fill out a written *Affidavit in Support* form and an *Order to Show Cause* form to give to the court. An Affidavit is your sworn statement that tells the Judge what you need. You give the Judge your sworn Affidavit with an OSC for the Judge to sign. The Judge will fill in the OSC and choose a new court date for everyone to come to court to talk about what you asked for. You may have to wait for some time for the Judge to review the papers.

Important! Tell the Clerk if you know that your eviction is already scheduled.

What happens if the Judge signs the OSC?

If the Judge signs the OSC make copies of all the papers because you will have to serve a copy of the OSC and Affidavit on the landlord/owner and maybe the Marshal, Sheriff or Constable. The OSC will say how you must deliver the papers. After you serve the papers you must fill out an *Affidavit of Service* and sign it in front of a notary. An Affidavit of Service is a sworn statement that says how the court papers were delivered. You don't need to fill out an Affidavit of Service if the person you serve signs and dates a copy of the OSC *acknowledging* that he or she received the papers. (See [sample Affidavit of Service](#) in the back of this guide.)

You and the landlord/owner must come back to court on the date on the OSC to see the Judge. Bring your proof and the Affidavit of Service or the acknowledgment with you when you go back to court. The Judge will listen to you and the landlord/owner and make a decision.

What do I write in the Affidavit if I missed my court date and the landlord/owner got a judgment on default?

If the landlord/owner has a judgment against you because you missed your court date you can use the court's free and easy DIY (Do-It-Yourself) Form program to make your Affidavit and OSC: <http://nycourthelp.gov/diy/tenantVacateDefault.html>. It will help you fill in the two things you need to prove in the Affidavit

1. A good reason for not going to court when you were supposed to, for example, "I never received the court papers" or "I was sick," **and**,
2. A good defense against the landlord/owner's claim in the petition, such as "I paid some of the rent," or "I need repairs."

Note: The Affidavit form in the back will not work for this.

What do I write in the Affidavit if I got evicted and I never came to court?

If you never came to court and you were evicted already in addition to a good reason and good defense, you have to show the Judge *good cause* for putting you back in your home. This depends on the facts of your case. The Judge will want to know things like, if your home was re-rented to someone else, how long ago were you evicted, how long did you live there, or if you have any disabilities.

What do I write in the Affidavit if I need to ask for more time to do what I was ordered or agreed to?

If you need to ask for more time to do what you promised in the settlement agreement or were ordered to pay by the Judge, you must give the court a good reason. For example, "I haven't found someone to take my dog, or "I have been very ill and stuck in bed, so I couldn't clean." Your reason depends on the facts of your case.

Come to court to make an OSC to restore the case to the calendar as soon as you know that you will not be able to do what you are supposed to do. You should not wait until the date passes. See [sample Affidavit in Support](#) in the back of this guide.

What do I write in the Affidavit if the landlord/owner didn't do what was supposed to be done?

If the landlord/owner did not do what was promised in a Stipulation of Settlement or was ordered by the Judge, your Affidavit must explain what happened. Make an OSC to restore the case to the calendar. See [sample Affidavit in Support](#) in the back of this guide.

What do I write in the Affidavit if I want court to postpone (stay) an eviction?

The court can postpone the eviction for up to 1 year, if you have very good reasons why you can't find another similar place to live, or that moving now would cause you "extreme hardship." Examples of extreme hardship can be any reasons why relocating would negatively impact your quality of life, like:

- Serious illness, or
- How moving will impact your child's attendance at a local school

See [sample Affidavit in Support](#) in the back of this guide.

When is the Court open?

Most District and City courts are open Monday to Friday from 9:00 am to 5:00 pm. Town and Village courts have their own hours. Some courts are closed between the hours of 1:00 pm to 2:00 pm. Call the court before you go. Use the Court Locator box to find the court's phone number: <http://nycourts.gov/courts/index.shtml>.

Can I make more than one OSC?

Yes. But you must tell the Judge that you made an OSC before, why you made it, what happened and what's different this time.

What do I do if there is not enough space on the Affidavit Form or I have papers that prove the requests in my OSC?

You can add as many pages of your story as you want to support your OSC. Make sure any written statements are notarized too. You can also attach anything that proves the things you said in your Affidavit. The more proof, the more likely the Judge will sign your OSC.

Attach all papers to the Affidavit in Support and deliver full sets of copies when you serve the papers.

There are free sample OSC and Affidavit forms at the back of this guide. Read them carefully. They may not be right for the facts of your case.

WHERE CAN I GO FOR HELP AND INFORMATION?

Where can I find a lawyer?

The New York State Bar Association has a Lawyer Referral Service: 1-800-342-3661 or <http://www.findalawyernys.org>. This service gives you a contact information for a lawyer who will charge a \$35.00 consultation fee for the first half-hour. If you hire the lawyer after this consultation, you and the lawyer will work out the cost.

LawHelp also has phone numbers for free legal services offices all over New York: <https://www.lawhelpny.org/find-legal-help>.

Where do I get landlord-tenant information about the court on the internet?

- The Unified Court System has a website called CourtHelp with more information: <http://www.nycourthelp.gov>.
- The City, Town and Village Courts have a website at: <https://www.nycourts.gov/courts/townandvillage>.
- District Courts have a webpages at: <https://www.nycourts.gov/courts/cts-outside-nyc-DISTRICT.shtml>.

Can I call the Court?

Yes. City Court phone numbers can be found from: <https://www.nycourts.gov/courts/cts-outside-nyc-CITY.shtml>.

For Suffolk County District Courts, call: (631) 853-7500.
For Nassau County District Court, call: (516) 572-2355.

Where can I read housing laws?

Real Property Actions and Proceedings Law Article 7: <https://www.nysenate.gov/legislation/laws/RPA/A7>.

Real Property Laws Article 7: <https://www.nysenate.gov/legislation/laws/RPP/A7>.

How can I get more information on my rights as a tenant?

The New York State Attorney General publishes a tenants' rights guide at: https://ag.ny.gov/sites/default/files/tenants_rights.pdf.

LawHelp also has a large amount of legal information:

- English: <https://www.lawhelpny.org/issues/housing/eviction>.
- Spanish: <https://www.lawhelpny.org/es/issues/housing/eviction>.

Where can I go to get financial help?

- To apply for temporary assistance: 1-800-342-3009, or go to your local office of the Department of Social Services ("DSS"). Locations can be found at: <http://otda.ny.gov/workingfamilies/dss.asp>.
- For other assistance: Call 2-1-1 for help with food, housing, employment, health care, counseling and more, or visit: <http://www.211.org/>.

Where can I find help to organize the tenants in my building?

New York State Tenants and Neighbors Information Service: (212) 608-4320, or at <https://www.tandn.org>.

Where do I go if the landlord/owner is discriminating against me?

If the landlord/owner is discriminating against you due to your age, race, gender, sexual orientation or any other grounds, call the New York State Division of Human Rights at (718) 741-8400.

Where can I find information about rent control or rent stabilization?

Call the New York State Division of Housing and Community Renewal at (718) 739-6400.

Where can I get help solving my problem without going to court?

You can find the location of a community dispute resolution center near you in the phonebook or at: <http://www.nycourts.gov/ip/adr/ProgramList.shtml>.

Where can I find information if I am in the military or dependent on someone in the military?

You can find help on the Stateside Legal website at: <http://statesidelegal.org/>. The website offers information about the protections for military personnel under the Servicemembers Civil Relief Act (SCRA), as well as free programs that will help you make your landlord-tenant forms.

How do I make a complaint about the way an attorney, Judge or court employee acted?

If you were not treated fairly and with respect, you can file a complaint. You can find out the right place to contact on the court system's website at: <http://www.nycourts.gov/howdoi/fileacomplaint.shtml>.

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT _____
COUNTY OF _____

Petitioner(s)/Landlord(s) Index/Docket No.: _____

-against-

Respondent(s)/Tenant(s)

Respondent(s)/Under-Tenant(s)

**TENANT'S ANSWER and
COUNTERCLAIMS in
HOLDOVER CASE**

State of New York
County of _____ }

_____, being duly sworn, deposes and says:

ANSWER

☐ General Denial. I am not certain that the Petition is correct.

SERVICE

- ☐ I did not get both the Notice of Petition and Petition.
- ☐ I got the Notice of Petition and Petition, but the papers were not delivered the way the law says.
- ☐ I did not get a Notice required by law before the landlord started the case.

PARTIES

- ☐ My name is listed wrong in this case.
- ☐ My name is not on the Notice of Petition and Petition
- ☐ The tenant listed is dead.
- ☐ The Petitioner is not the Landlord or Owner of the building or otherwise a proper party.

APARTMENT/HOUSE

- ☐ I fixed the problem that the Petitioner is complaining about.
- ☐ The conditions or behavior that the Petition is complaining about are not that bad.
- ☐ The conditions or behavior that the Petition is complaining about are not true.
- ☐ There are or were conditions in the apartment and/or building/house that need to be repaired and/or services that need to be restored.
Conditions in the apartment/house:

_____.

- ☐ My home is not listed correctly on the court papers: ☐ wrong apartment/house number ☐ wrong or missing information about rent regulation or laws that cover me.

OTHER

- ☐ Petitioner accepted rent from me after the date in the Notice of Termination.
☐ Petitioner started this case to retaliate for my actions taken in the past year.
☐ The Petitioner has harassed me by:

☐ I serve in the military ☐ I am dependent on someone in the military.

☐ Other defense / answer: _____

COUNTERCLAIMS

I seek a judgment and/or order against the Petitioner.

- ☐ The Petitioner owes me \$_____ because I paid for repairs or services.
☐ The Petitioner owes me \$_____ for rent overcharges.
☐ The Petitioner owes me an abatement on the rent for failing to provide services.
☐ The Petitioner should be fined for harassing me.

VERIFICATION

I am the respondent in this case and I've read this Answer and know what it says and know that it is true or believe it to be true.

Date

Signature

Print Name

Sworn to me before this _____
day of _____, 20____

Notary/Clerk

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT _____
COUNTY OF _____

Petitioner(s)/Landlord(s) Index/Docket No.: _____

-against-

Respondent(s)/Tenant(s)

Respondent(s)/Under-Tenant(s)

ORDER TO SHOW CAUSE
(order to go to court)

FINDINGS

The court reviewed the request filed by the respondent and finds there is reason to approve this order.

☐ Other findings: _____

NEW COURT DATE

The court orders the parties to go to court:

Date: _____

Time: _____

Location: _____

On the new court date, petitioner or petitioner's attorney must show cause why the court should not order the requests made by respondent

☐ and why an order should not be made vacating and setting aside the Judgment and Warrant of Eviction in this case.

☐ and why an order should not be made dismissing the Petition or, in the alternative, restoring this case to the calendar for the reasons in the respondent's affidavit.

and why such other and further relief should not be granted as may be just and proper.

OTHER ORDERS

It is ordered that until new directions from the court:

☐ Until new directions from this court, petitioner and petitioner's attorneys and agents and any Sheriff, Marshall or Constable are stayed from enforcing the judgment and warrant of eviction in this case.

☐ Respondent must deposit \$_____ by cash, certified check or money order with the clerk to be transmitted to the fiscal authority: _____ until new directions from the court.

☐ Respondent must serve (deliver) a copy of this Order to Show Cause, Affidavit in Support and any submitted papers to:

☐ Petitioner/Petitioner Attorney:

☐ Marshal/Sheriff/Constable:

by:

by:

☐ personal service (in-hand)

☐ personal service (in-hand)

☐ certified mail return receipt requested

☐ certified mail return receipt requested

☐ first class mail with certificate of
mailing at post office

☐ first class mail with certificate of
mailing at post office

on or before _____

on or before _____

Respondent must bring proof of service of a copy of these papers to the new court.

☐ Other: _____

ENTER:

DATE: _____

CITY/ DISTRICT/TOWN/VILLAGE COURT JUDGE/JUSTICE

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT _____
COUNTY OF _____

Index/Docket No.: _____

Petitioner(s)/Landlord(s)

-against-

Respondent(s)/Tenant(s)

Respondent(s)/Under-Tenant(s)

**AFFIDAVIT IN SUPPORT OF
ORDER TO SHOW CAUSE TO
RESTORE THE CASE TO THE
CALENDAR**

(request to go back to court)

Address: _____
_____ Apt. _____

State of New York
County of _____ }

_____, being duly sworn, deposes and says:

PARTY

- ☐ I am the tenant named as respondent in this case.
- ☐ I am the person claiming possession to these premises and am the
_____ of the tenant named above.

WHAT HAPPENED ON/AFTER LAST COURT DATE

On the last court date:

- ☐ A Stipulation (written agreement) was made between landlord and tenant. ☐ The Judge ☐ denied ☐ granted a motion/order to show cause made by
- ☐ A Trial / Inquest was held before Judge _____ ☐ me ☐ petitioner.
- ☐ I got a Notice of Eviction
- ☐ The case was adjourned (postponed). ☐ Other: _____

REASON FOR NEW COURT DATE

I am asking the court to restore the case to the calendar on a new court date because:

- ☐ I need more time to make repairs or correct something in my home. ☐ I need to be allowed to move back into my home because: _____
- ☐ The landlord didn't make repairs that were supposed to be made. _____

- ☐ There are mistakes in the Stipulation: _____

- ☐ Other reason or more details for reason checked: _____

- ☐ I need more time to find another place to live because I can't find a similar place in my neighborhood. I have tried by: _____

- ☐ Additional reasons/details are attached.

PRIOR ORDER/PRIOR CASES

- ☐ I have not made an Order to Show Cause before in this case.
- ☐ I have made an Order to Show Cause in this case before, but am asking for a new court date because of these new reasons that I didn't tell the court before:

- ☐ I have had a case before with this landlord.

Earlier Index/Docket Numbers: _____

REQUESTS

I ask that the case be restored to the calendar and I be given a new court date for the reasons above and I be granted permission to serve these papers myself. I also ask:

- ☐ that the court read my supporting papers submitted with this request.
- ☐ that the landlord, landlord's attorneys and agents, and any Marshal, Sherriff or Constable be stayed from enforcing the judgment or warrant against me.
- ☐ that the court vacate (cancel) the judgment and warrant of eviction against me.
- ☐ other: _____

 Signature of Respondent

 Print or Type Name

Sworn to me before this _____
 day of _____, 20____

 Notary/Clerk

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT _____
COUNTY OF _____

Index/Docket No.: _____

Petitioner(s)/Landlord(s)

-against-

**AFFIDAVIT OF SERVICE OF:
ORDER TO SHOW CAUSE and
AFFIDAVIT IN SUPPORT**
(proof of delivery of papers)

Respondent(s)/Tenant(s)

Address:

Respondent(s)/Under-Tenant(s)

Apt. _____

State of New York
County of _____ ss}

_____, being duly sworn, deposes and says:

On (date) _____, I served copies of the
Order to Show Cause and Affidavit in this case on:

☐ Petitioner/Petitioner's Attorney/Agent: (name person served):

_____ on (date) _____ at:

Street address city state zip

☐ by first class mail with certificate of mailing

☐ by certified return receipt requested

☐ by hand delivery at (time): _____ ☐ a.m. ☐ p.m.

The person served is described as follows:

Sex: _____, Color of Skin: _____, Hair Color:

Approximate: Age: _____, Weight: _____, Height: _____

Other identifying features: _____

☐ Marshal/Sheriff/Constable (name person served):

_____ on (date) _____ at:

Street address city state zip

☐ by first class mail with certificate of mailing

☐ by certified return receipt requested

☐ by hand delivery at (time): _____ ☐ a.m. ☐ p.m.

The person served is described as follows:

Sex: _____, Color of Skin: _____, Hair Color:

Approximate: Age: _____, Weight: _____, Height: _____

Other identifying features: _____

Signature of Person Serving Papers

Sworn to me before this _____
day of _____, 20____

Notary/Clerk

1-800-COURTNY
(1-800-268-7869)
www.NYCourtHelp.gov