

NEW YORK STATE UNIFIED COURT SYSTEM

TENANT QUESTIONS & ANSWERS IN NONPAYMENT 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](http://nycourts.gov/courts/nyc/housing/pdfs/tenantsguide.pdf) 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 THINKS I OWE RENT?

The landlord/owner starts a *nonpayment* eviction case to sue you for rent. The landlord/owner is asking the court to evict you if you don't pay.

If the landlord/owner starts a case for a different reason, such as your lease expired, or you make too much noise, or you put a wall up without permission, that is not a nonpayment case. That is called a *holdover* case, even if the landlord/owner is also asking for rent. If the landlord/owner started a holdover case against you, this guide is not for you. Visit:

http://nycourts.gov/CourtHelp/pdfs/TenantsGuide_holdover.pdf.



Is the landlord/owner supposed to ask me for the rent in writing before starting a nonpayment case?

Yes! The landlord/owner must ask you for the rent first in writing. The landlord/owner must do two things:

1. The landlord/owner must send you a notice by certified mail telling you that the rent is overdue when it is at least 5 days past the due date.
2. The landlord/owner must send you a *written rent demand*. This warns you that the landlord/owner wants the rent, and that if you don't pay, you can be evicted. The rent demand must list the months and amounts of rent the landlord/owner says you owe.

If the landlord/owner starts a case without first sending you both of these notices, tell the Clerk or Judge when you go to court.

How much time after the rent demand do I have before the landlord/owner starts the case?

A written rent demand must give you at least **14 days'** notice to pay the rent before a court case can be started.

What kind of a rent demand must the landlord/owner give me if I own a mobile home and I rent space in a mobile home park?

A mobile home park owner or operator must give you a **30-day** written Rent Demand.

Does the landlord/owner have to give me the written rent demand in a special way?

Yes. The rent demand must be given to you the right way. This is called *service of papers*. [See page 6](#) to learn how legal papers are delivered.

A *written rent demand* does not mean you have to move. It is different from the *Notice of Eviction*, the paper that tells you that you have to move. [\(See page 15\)](#). Make sure you know what you got.

How does the landlord/owner start the case?

To start a nonpayment case, the landlord/owner must give you court papers called a *Notice of Petition and Petition*. The Notice of Petition tell you the date, time and place (courtroom or *Part*) when you have to come to court. The court date must be between 10 and 17 days after you get the court papers.

Does the landlord/owner have to give me Notice of Petition and Petition in a special way?

Yes. The Notice of Petition and Petition must be given to (*served on*) you the right way. [See page 6](#) to learn how legal papers are delivered.

What does the Petition say?

The Petition says who the landlord/owner is; who you are and how you came to live there; the address of your rented home; the reasons the landlord/owner is starting the case; the amount of rent the landlord/owner is asking the court for in a judgment against you; and a request that the court order your eviction if you don't pay.

Note! The Petition can only ask for rent. It can't ask for any other fees, like late charges, attorney's fees or court filing fees, even if your lease calls these charges additional rent. If the Petition ask for this, tell the court when you Answer.

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

Go to court on the court date written in the Notice of Petition. When you get there *Answer* the Petition. Your Answer tells the court and the landlord/owner your side of the story. It responds to what the landlord/owner said in the Petition. [See page 4](#) for how to Answer.

If I pay the rent, do I still have to go to court?

If you pay all the rent at any time before the court date, the landlord/owner must take the money and cancel the court case. But, it is best to come to court with proof of payment to make sure the court knows that you paid.

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:

1. you can be evicted, and
2. the landlord/owner can take your salary, money or property.

[See page 17](#) on going back to court to ask the Judge to do something on your case.

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

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 yourself.

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.

HOW DO I ANSWER A NONPAYMENT 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 the landlord/owner and the Clerk or Judge a written 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 don't owe all or part of the rent. 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 below.

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 rent demand or the court papers the way the law says. ([See page 6](#)).
- The landlord/owner gave you less than 14 days' notice in the rent demand.

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 tenant listed on the papers passed away and the estate of the dead tenant is not listed as a respondent.
- The Petitioner is not the landlord or owner of the building.

You may have a defense about the rent, like:

- You were not asked in writing to pay the rent before the landlord/owner started the case.
- You tried to pay the rent, but the landlord/owner refused to take it.
- The monthly rent listed in the Petition is not the amount you are supposed to pay.
- You paid all or some of the rent to the landlord/owner.
- The landlord /owner is asking for additional fees, like court filing fees, attorney's fees or late fees, that are not part of the rent (even if the lease says they are).

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).

- The apartment is an illegal apartment.

You may have other defenses, like:

- You live in HUD or Housing Authority Section 8 housing and the Petition asks for the HUD or Section 8 part of the rent and the landlord/owner did not notify HUD or the Housing Authority.
- 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.
- The landlord/owner has harmed you by waiting too long to bring this case. This is called *laches*.

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 written rent demand and 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.

What if I need repairs in my building or apartment?

If you need repairs, this is a defense to your nonpayment of rent that you should tell the Clerk when you Answer. The landlord/owner owes you a duty called the *warranty of habitability* to keep your home and building in livable condition.

What if I live in a rent stabilized apartment?

If your apartment is rent regulated you may have other defenses. For example, rent overcharge is a defense if the landlord/owner is charging you more than the legal regulated rent.

Can I make a claim against the landlord/owner?

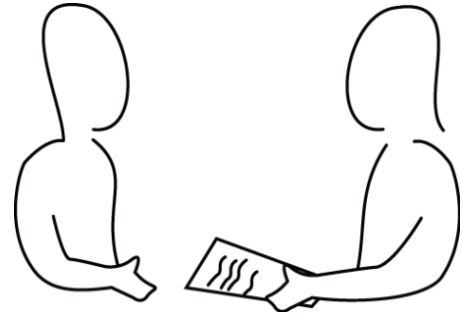
Yes! You may add "*counterclaims*," to your Answer. A counterclaim is a claim that you may have against the landlord/owner. In a counterclaim you are asking the landlord/owner to pay you money. The counterclaim must be related to your home, like the landlord/owner owes you money for repairs you had to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

Are there any fees to file my answer?

No.

HOW ARE LEGAL PAPERS DELIVERED?

The Notice of Petition and Petition and a written Rent Demand 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 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*.

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 read 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>. Written rent demands must be delivered the same way.

HOW DO I GET READY FOR COURT?

Get all your court papers together. Find your lease and lease renewals. Gather any materials you have to prove your case. Bring the original papers or certified copies to the court. It is a good idea to make a record of the dates and conversations you had with the landlord/owner so you're ready to talk about them.

What should I bring to court if I have repair issues?

You should bring:

- letters you received and copies of letters you wrote,
- photos, mark each photo with the date it was taken and what is pictured,
- housing inspection reports,
- records of all your apartment and building problems,
- bills and receipts for labor and materials.

What should I bring to court to prove I don't owe rent money or I am being overcharged?

Bring proof of your rent payments, such as rent receipts, DSS print-outs, canceled checks or copies of money orders. Bring any papers that show your legal rent, like DHCR records, your lease, or Section 8 papers.

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>.

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.

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.

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 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.

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

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.

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 and I have agreed to a payment plan?

If the Stipulation sets up a payment schedule, it should clearly list the amounts and the dates the payments are due. Be sure you can make the payments by the dates you agree to pay.

What should the Stipulation say if I need repairs?

The stipulation should list the repairs that the landlord/owner agrees to fix. The stipulation should list the dates and times the landlord/owner will come to do the repairs and the dates that the repairs will be finished.

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?

The stipulation should give you enough time to correct any issues which you have agreed to take care of. For example, if you have agreed to give up the apartment or the

landlord/owner has agreed to waive rent in exchange for giving up the apartment, the stipulation should give you enough time to find a place to move.

Will settling the case hurt my credit rating?

Maybe. Your credit rating will be affected if the Stipulation has a judgment for the landlord/owner and the credit reporting companies learn about the judgment. The court system will not sell this information but credit reporting companies may find it themselves from public records. I

If the Stipulation has a payment agreement and it says that the judgment will be vacated after payment, you can have the judgment removed after you pay if the landlord/owner gives the court a *Satisfaction of Judgment*. Ask the landlord/owner to file this with the court when you pay.

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

What happens if I don't pay the amount owed and the Stipulation has a judgment?

The owner can use the judgment to evict you. If you can't pay the amount owed in the judgment [see page 17](#) on going back to court to ask the Judge to do something on your case.

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, both of you can go back to court to ask to extend the time or force the other side to comply. 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.

Important! Unless the Judge or the Stipulation says something different, you still have to pay any rent you agreed to pay or were ordered to pay even if the landlord/owner doesn't do what he or she was supposed to do.

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?

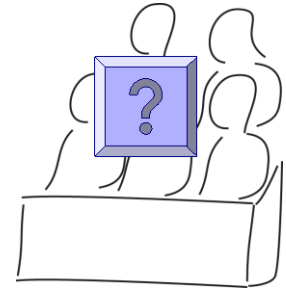
Yes, but put it in writing, keep a copy for your records and give a copy to the court.

WHAT HAPPENS AT A TRIAL?

At a trial, the landlord/owner tries to prove his or her case and the tenant tries to prove his or her 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 his or her case 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, he or she will get a *judgment* from the court for possession and for the amount of rent that is owed. 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.

What happens if the Judge decides that I owe the landlord/owner rent?

The Judge will decide the amount you owe and that amount will be put in a judgment. The Judge will issue a warrant for your eviction for the marshal, sheriff or constable that says the earliest date you can be evicted. If you pay the judgment amount and court costs before the eviction takes place, the case is over and you will not be evicted.

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

The owner can use the judgment to have you evicted. A judgment can be collected against you for 20 years, even if you moved out or were evicted.

If you can't pay the amount owed in the judgment [see page 17](#) on going back to court to ask the Judge to do something on your case.

If the landlord/owner didn't make repairs or give me services, will the Judge lower the amount of money I owe?

Maybe. If the Judge finds at the trial that the repairs were very serious, and that living without them hurt you, the Judge may lower the amount you owe. This is called a *rent abatement*. The Judge can also order the landlord/owner to make repairs.

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.

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. So, the eviction can be scheduled any time after 14 days. 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. Immediately go to court to ask the Judge to stop the eviction.

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 30 day Notice of Eviction in a nonpayment case.

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.

Can I stop the eviction if I pay the all the money after I get a Notice of Eviction?

You can ask. Even after you get a Notice of Eviction, the court has the power to stop the eviction if you can pay all the money. Go to court to deposit the money and tell the court you want to stop the eviction. You can do this up until when the Marshal, Sheriff or Constable removes your things from your home.

Important! If the landlord/owner can prove that you didn't pay the rent due to bad faith, the court will not stop the eviction.

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

How can I stop an eviction?

You will need to fill out *Order to Show Cause* papers and bring them to the courthouse right away. If a Judge signs the Order to Show Cause with a *stay* of the eviction, this will stop the eviction after you deliver the Order to Show Cause to the landlord/owner, at least until you can come back to court and tell a Judge what happened. [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*. You will need to give the court good reasons why the eviction should be stopped or why the judgment should be canceled.

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 filed complaints. If the landlord/owner re-rents your home, it will be harder to get back in.

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. 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. 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?

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, how much money you owe and if you can pay, 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 pay what I was ordered or agreed to?

If you need to ask for more time to pay 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 was ill with the flu and couldn’t work, but I’m working now and will have the money in two more weeks.”

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. For example, “The landlord didn’t make repairs to the kitchen.” Make an OSC to restore the case to the calendar. 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 have to 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 notarized written pages and attach proof that supports 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 to
NONPAYMENT 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 written rent demand.
- ☐ I got the written rent demand, but it was not delivered the way the law says.
- ☐ I got a written rent demand, but it gave me less than 14 days' notice to pay the rent.

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.

RENT

- ☐ The landlord never sent me a notice by certified mail that my rent was 5 days overdue as required by RPAPL 235-e.
- ☐ I, or someone on my behalf, tried to pay the rent, but the Petitioner refused to accept it.
- ☐ The monthly rent asked for is not the legal rent or the amount on the current lease.
- ☐ The Petitioner owes money to me because of a rent overcharge.

- ☐ The Petitioner is asking for additional fees, late charges and penalties that are not part of the rent.
- ☐ I paid all or some of the rent to the Petitioner.

APARTMENT/HOUSE

- ☐ 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.
- ☐ The apartment is illegal.

OTHER

- ☐ The Petitioner has harmed me by waiting too long to bring this case (laches).
- ☐ The Petitioner has harassed me by:

_____.

- ☐ The Petition seeks the HUD or Housing Authority Section 8 part of the rent. The petitioner did not notify HUD or the Housing Authority about this case.

- ☐ 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 LAST COURT DATE

On the last court date:

- ☐ A Stipulation (written agreement) was made between landlord and tenant.
- ☐ A Trial / Inquest was held before Judge _____
- ☐ The case was adjourned (postponed).
- ☐ The Judge ☐ denied ☐ granted a motion/order to show cause made by ☐ me ☐ petitioner.
- ☐ 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 payments.
- ☐ I paid all the money due to the landlord.
- ☐ I need more time to make repairs or correct something in my home.
- ☐ I need more time to find another place to live.
- ☐ I tried to pay all the money due, but the landlord refused to accept it.

- | | |
|---|--|
| ☐ The case should be stayed because
Petitioner cut off utilities in the building. | ☐ Other reason or more details for reason
checked: |
| ☐ The landlord didn't make repairs that
were supposed to be made. | _____
_____ |
| ☐ There are mistakes in the Stipulation: | _____

_____ |

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

- ☐ the landlord, landlord's attorneys and agents, and any Marshal, Sherriff or Constable be stayed from enforcing the judgment or warrant against me.
- ☐ 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