



THE EVICTION PROCESS

In order to evict, a landlord must always follow the correct procedure and in most situations must prove that there is good cause to evict.

The tenant must be given written notice and may ask for a court hearing.

WRITTEN NOTICE:

Demand for rent:

If you are being evicted for not paying rent, your landlord must serve you with a Demand for Rent. The demand tells you how much rent you owe, and cannot ask for more rent than you actually owe. The demand must be served personally (handed to you) or left at your home before or at the same time as the notice to quit.

Eviction Notice - formerly known as Notice to quit:

In all evictions your landlord must serve you with an Eviction Notice. This notice must:

1. Be in writing;
2. Be served personally or left at your door (a sheriff does not have to serve it);
3. State the specific reason for the eviction;
4. Give you at least 7 days' notice to leave if the reason for the eviction is because: of nonpayment; your behavior has harmed the health or safety of other tenants or the landlord; or you have caused substantial damage to the premises;
5. Give you at least 30 days' notice to leave in all other cases;
6. Tell you of your right to cure, if the eviction is for nonpayment of rent.

7. Both the Demand for Rent and the Eviction Notice must be either handed to you directly or left at your home.

The **right to cure** means that you can avoid eviction by paying all of the back rent – plus \$15 – by the date the notice to quit expires. If you pay on time, you can defeat the eviction and do not have to move. You can only cure three times in a 12 month period.

If a landlord fails to take any of the steps described above, a tenant can ask the court to dismiss (drop) the eviction.

THE COURT PROCESS:

You do not have to move out by the date the Notice expires. Only a judge can issue an order requiring you to move out.

Landlord/Tenant Writ:

If you have not left by the time the Notice expires, the landlord can begin the legal process at the District Court. The sheriff will serve a Writ, either on you personally or at your home. Read the entire Writ carefully. The first paragraph will indicate the return date.

If you want a hearing to challenge the eviction or to ask for more time, you must ask for a hearing before the return date.

THERE WILL NOT BE A HEARING ON THE RETURN DATE.

THERE WILL NOT BE A HEARING AT ALL UNLESS YOU ASK FOR ONE.

If your landlord has asked for unpaid rent on the Writ, the hearing may also result in a money judgment which can be enforced against you. Unless you agree with the amount the landlord claims you owe, you should ask for a hearing, even if you have already moved.

Appearance form:

You ask for a hearing by filing an appearance form before the return date. It is a simple form that you get from the court. You need to fill out the appearance form, leave it with the clerk, and send a copy to the landlord or the landlord's attorney.

After you file your appearance, you will receive a notice in the mail telling you the date of your hearing, which will usually be within the next 10 days.

If you want your hearing to be recorded you can check a box on the appearance form.

IF YOU DO NOT FILE AN APPEARANCE FORM, YOU WILL LOSE YOUR EVICTION CASE. THE COURT WILL MAIL YOU A NOTICE THAT YOU HAVE LOST YOUR CASE, AND CAN ISSUE A WRIT OF POSSESSION AGAINST YOU 3 DAYS LATER.

DISCOVERY:

Discovery is how you find out more about the evidence your landlord has against you. You do this by asking the landlord written questions (interrogatories) about your case. You have the right to ask the court to postpone the date of your eviction hearing if the landlord does not respond in time to your written questions. For more information about using discovery, please call LARC.

GOING TO COURT:

IF YOU MAKE AN AGREEMENT BEFORE THE HEARING, PROTECT YOURSELF BY GETTING IT IN WRITING OR BY MAKING SURE THE CASE IS WITHDRAWN.

Landlord's burden of proof:

In most cases your landlord has to have good cause to evict you. The Eviction Notice must state the specific reason for the eviction. At the eviction hearing, your landlord must prove that

you are being evicted for one of the reasons stated in the Notice. Your landlord may evict you for one of the following reasons:

- Nonpayment of rent;
- Substantial damage to the premises;
- Violation of the lease;
- Behavior of the tenant or members of the tenant's family that harms the health or safety of others;
- Lead paint hazard, please call LARC if this is the given reason;
- Other good cause. Before beginning an eviction for other good cause based on something you did or failed to do, the landlord must first give you a written warning.

Retaliation & discrimination:

Your landlord cannot evict you for the following reasons: retaliation (for activities such as reporting housing code violations), non-payment when you are rent withholding, or discrimination on the basis of race, age, or other protected category. Any one of these can be a defense that can defeat an eviction. See our Tenant Rights pamphlet for details.

Tenant's defenses:

To win the right to stay in your rental property, you must convince the court:

- that the landlord has not followed the correct procedure (see the section "WRITTEN NOTICE"); or
- that the landlord does not have good cause to evict you; or
- that you do not owe the money in an eviction for nonpayment of rent.

Non-payment evictions:

In a non-payment eviction, the only money a landlord can ask for is unpaid rent. To prove that you do not owe the landlord money, and to be able to stay, there are several defenses that you may raise. The defenses include that:

- you do not owe the rent the landlord claims you owe; or

- you were rent withholding; or
- the landlord owes you more than you owe the landlord.

Your landlord might owe you money due to:

- violations of the security deposit law (see our Security Deposit pamphlet);
- poor conditions in your apartment which made it worth much less than the rent your landlord charged; violations of RSA 540-A, for locking you out or shutting off your utilities (see our Tenant's Rights pamphlet);
- money your landlord owes you for any other reason.

You must notify the court and the landlord by the return date on the Writ if you want to raise defenses that will reduce the amount of money you owe the landlord. You do this by writing on the appearance form that you intend to raise these defenses (see the section "Appearance form").

Before you raise any of these defenses, please call LARC for further assistance.

DISCRETIONARY STAY:

In all evictions, the court has the authority to grant a stay of up to 90 days, during which time the Writ of Possession is "stayed" (delayed) by the court. The judge may grant all, none, or part of the 90 days allowed by law. You must pay rent weekly in advance during the stay period. If you miss a payment, the landlord can immediately go back to the court and obtain a Writ of Possession.

You should request a stay prior to the end of the hearing. The judge will consider how difficult it will be for you to move, whether your children will have to change schools, your ability to pay rent during the stay, whether you have a date for moving, and how a delay will hurt the landlord. If the court grants a stay, at the end of the stay period the landlord still must serve you with a Writ of Possession.

WRIT OF POSSESSION:

If the court finds against you or if you are defaulted for failing to file an appearance, the court will issue a Writ of Possession. This writ authorizes your landlord to remove you from the property. You may receive a warning or a visit from the sheriff first, and then the sheriff will return to remove you from the property. It is best to remove your personal property before this happens.

Until the writ of possession is served on you by the sheriff, it is unlawful for your landlord to force you to leave the property. If your landlord locks you out, shuts off your utilities, or tries in any way to make you leave without the eviction process, you can go to your District Court, ask for 540-A petition, and request the court to order your landlord to stop. See our Tenant Rights pamphlet for more information.

Important: If you cannot take your belongings with you when you move, your landlord must take care of your personal property for 7 days after you move out. During this period, the landlord must allow you to return for your property upon request without requiring payment of any rent or storage fees. After 7 days, the landlord may give away your belongings without notice to you.

APPEAL:

You can appeal your case to the NH Supreme Court. To be able to appeal, you must file a Notice of Intent to Appeal with the District Court within 7 days of the date on the notice of judgment, followed by a formal appeal to the Supreme Court within 30 days of the judgment. Please call LARC for more information.

Legal Advice & Referral Center
48 South Main Street
Concord, NH 03301
1-800-639-5290 or 603-224-3333