

GARFIELD HEIGHTS MUNICIPAL COURT

EVICTIONS

1. What is a forcible entry and detainer case or eviction?
 - a. When a landlord seeks to have a tenant removed from rental property, the lawsuit filed in the Garfield Heights Municipal Court is an action in forcible entry and detainer but commonly known as an eviction action.
 - b. This type of case is governed by the law of the State of Ohio and all procedures must be strictly followed in order for the Court to grant the landlord a Writ of Restitution which is the order permitting the tenant to be removed from the rental property.
 - c. The forcible entry and detainer statutes in Ohio confer rights and obligations on each party to a rental agreement which may be more complicated than first imaged. The Court strongly recommends that both the landlord and the tenant consult legal counsel to ensure that his or her rights are protected during these cases.
 - d. For more information for both landlords and tenants, please contact the Cleveland Tenants Organization at (216) 432-0617, 5700 Broadway Avenue, Cleveland, Ohio 44127, <http://www.clevelandtenants.org>.

2. As a tenant who is behind on rent, utilities or other obligations and who is facing eviction, what do I do if I have no place to go?
 - a. Contact the Coordinated Intake which is the FRONT DOOR to Emergency Shelter for individuals and families with no place to safely sleep. Coordinated Intake provides exploration of alternatives to shelter and shelter placement. The Coordinated Intake program is operated by FrontLine Service and Cleveland Mediation Center and is federally mandated and funded.
 - b. Call **211/First Call For Help by dialing 2-1-1 or 216-436-2000 (available 24 hours/every day of the week)**
 - c. For **Victims of Domestic Violence**, call the Domestic Violence Helpline at 216-391-HELP or the Family Helpline at 216-229-8800
 - d. For **Veterans**, call the VA Cleveland Community Resource and Referral Center (CRRC) at 216-391-0264. The CRRC is located at 7000 Euclid Avenue, Suite 202. Hours of operation are Monday-Friday (8:00 a.m.-8:00 p.m.)

3. I am a landlord and want to file an eviction case, what do I do?

- a. If you have a claim for money damages that does not exceed \$15,000, and you meet the requirements for jurisdiction and venue, then you may file an eviction case in Garfield Heights Municipal Court. To file an eviction case, you will need to file a complaint and other necessary documents.
4. How much does it cost to file a small claims complaint?
 - a. The cost for filing a small claims complaint is \$180.00 for one tenant. An additional \$10.00 fee is required for each additional tenant being sued. There may be additional costs as the case proceeds. All fees for Municipal Court cases are listed on the Clerk's Civil Cost Sheet.
5. Who can be sued and who can file an eviction case?
 - a. Individuals or business entities such as corporations, limited liability companies, or partnerships are parties that may sue and be sued in eviction cases. The landlord is the plaintiff. The tenant is the defendant. If you are filing the eviction case, it is very important that you list each tenant accurately. If there is more than landlord or more than one tenant, list each one separately.
6. What if I do not know the names of each person occupying the rental property I am trying to recover?
 - a. Frequently, tenants permit other persons to live in the rental property who are not parties to the rental agreement. Those persons must be named in the complaint for eviction and receive notice to leave the property. They must receive notice of all hearings too.
 - b. If the names of these persons are unknown to you at the time you file the eviction action, you can name them as "John Doe" or "Jane Doe" initially but you must identify them by name by amending the complaint and causing a copy of the amended complaint to be served upon them prior to any hearing which might result in a decision against them.
7. Must the landlord give the tenant notice to leave the rental premises prior to going to court?

Yes there are two types of notices that may be required.

 - a. In all cases, the landlord must give the tenant a 3 day notice to leave the premises before starting the eviction action.
 - i. The notice must inform the tenant of the landlord's intent to commence an eviction action and the reason the tenant is being asked to leave the premises.

- ii. The notice must be delivered to the tenant by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in person, or by leaving it at the defendant's usual place of abode or at the premises from which the defendant is sought to be evicted.
 - iii. In cases involving all residential premises, the 3 day notice must contain the following language: "You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."
 - iv. The eviction action may not be filed with the Court until 3 days has expired after service of the notice on the tenant during which time the tenant has not vacated the premises.
- b. The 3 day notice to leave the premises required by law is not the same as the notice to terminate a month-to-month tenancy. If the tenancy at issue is a month-to-month tenancy, the landlord must give the tenant a separate 30 day notice to terminate the tenancy.
- c. In addition to the 3 day notice to leave the premises, the landlord may be required to also give the tenant a 30 day notice to terminate the rental agreement if the tenant fails to fulfill an obligation under Ohio law that materially affects health and safety.
- d. If the premises in issue are subject to a federal subsidy or commonly known as "Section 8 housing," the landlord must comply with the notice requirements set by federal laws and/or regulation in addition to giving the 3 day notice to leave the premises required in Ohio. There are potentially three different time periods for notices of termination of a tenancy under federal law. It is best that the landlord consult an attorney to ensure that he or she is giving the correct notice.

8. What documents must the landlord file with the Court to commence an eviction action?

- a. Complaint
- b. Instructions for Service
- c. Copy of any written rental agreements
- d. Copy of the 3 day notice to leave premises
- e. Copy of any mandatory notice to terminate tenancy

- f. Written proof of ownership of the real property, including the deed to the property;
 - g. Written proof that the person appearing on behalf of the corporation or partnership is an authorized representative of the owner of the property, if the person appearing is not an attorney
 - h. Written proof that the City in which the property is located has issued a current certificate of occupancy or registration if required by local ordinance.
9. Are there limitations on the money damages that a landlord can recover in an eviction cases?
- a. The maximum monetary jurisdiction of the Garfield Heights Municipal Court is \$15,000. If the landlord has damages greater than that amount, he or she should file the claim in the Common Pleas Court for Cuyahoga County.
 - b. A landlord cannot recover damages in excess of the amount of damages claimed in the complaint. If the landlord determines that the damages exceed the amount originally sought, the landlord must file an amended complaint and cause a copy thereof to be served on the tenant within a reasonable period of time prior to the second hearing. To avoid amendments, the landlord may sue for up to \$15,000.00 in the original complaint event if the evidence later shows that the damages are less.
10. What is service of process and why is it necessary?
- a. **Service of process** is the delivery of the complaint to the tenant. When you file a complaint the Court will attempt to send the Complaint to the tenant at the address you provide. Service of process notifies the tenant that you have filed a lawsuit and enables him or her to prepare to admit the claim or prepare a defense. If the tenant is not served, your case cannot go forward.
 - b. There are two ways the Court attempts to serve tenant. The first method is one copy of the Complaint and Court Summons is served **by USPS certified mail plus one copy is served by regular USPS mail with proof by certificate of mailing**. If the certified mail is returned unclaimed or refused but the regular mail envelop is not returned, the Court is required to consider the tenant properly served. If the certified mail is returned for any other reason, is not returned at all or the regular mail envelop is returned to the Clerk, service is not completed and the case cannot proceed to trial. The burden is then on you to instruct to Clerk on further action to be taken to serve the tenants
 - c. The second method is a copy of the Complaint and Court Summons is **personally served** on the tenant or posted in a conspicuous place on the rental property by the Court Bailiff. The landlord may file a written request with the Clerk requesting personal service or residence service instead of certified mail or after certified mail service is unsuccessful. An additional fee of \$50.00 will be charged for personal service. If the

Bailiff is unable to locate or serve the tenant for any reason, the case cannot proceed to trial.

- d. If there is no service, your case will be dismissed and you will need to file the case again when you are able to obtain service.

11. How many hearings are there in an eviction case?

- a. Unlike other types of cases, there may be two hearings in eviction cases, i.e. one for restitution of the rental property and one for to obtain a judgment for money damages.
- b. If the landlord is requesting both the return of the rental property and money damages, the Clerk will schedule two hearings about a month apart and notify the landlord and tenant of those dates by mailing them a copy of the Summons. The first hearing will only address whether the landlord is entitled to have the tenant removed from the property. The second hearing will be about any unpaid rent, utilities or other damages.
- c. If the landlord is requesting only the return of the rental property to his or her possession, the Clerk will schedule only one hearing and notify the parties by mailing them a copy of the Summons.

12. Should the tenant give the Court and landlord notice of his or her new address if the tenant leaves the rental property in the middle of an eviction case?

- a. YES! Frequently the tenant decides to leave the property before a Court hearing or before the Bailiff makes him or her move but does not give the Court or landlord notice of a new address.
- b. The Court will have no way to notify the tenant of continuance of hearings or other notices regarding their rights and obligations if the Court does not have the new address.

13. How do I prepare my case for trial?

- a. Organize your testimony and arguments so the Court will be able to understand the facts. It is best to write down your thoughts in advance and organize them in chronological order so that you can explain them to the Court in an orderly manner on the day of trial.
- b. Gather evidence that will help you prove your case by collecting documents related to your claims (receipts, canceled checks, estimated bills, contracts, photographs, etc.). Each document or item of evidence which you want the Court to consider should be marked with an exhibit number or letter before you come to Court. The landlord should mark each item with a number and tenant should mark each item with a letter. Also you should provide a copy of each document for the opposing party. If you do not bring copies or fail to mark your exhibits in advance, your trial might be delayed until all other cases scheduled for the same day are heard or continued to another day.

- c. Find witnesses who will be able to testify and ask them to come to Court on the day of your trial. If witnesses are not willing to testify, you can have them subpoenaed. To obtain a subpoena to compel a witness to come to Court, you must complete a form provided by the Clerk of Court at least 7 days before trial and pay a filing fee of \$25.00 per defendant plus \$6.00 per witness for witness' fees.

14. What should I do on the day of trial?

- a. Be on time to your hearing! If a landlord is late or absent, the case will be dismissed. If the tenant is late or absent, a default judgment will probably be granted, which means the landlord automatically wins.
- b. Before your trial date you are encouraged to discuss your differences with the other party in an attempt to resolve the dispute prior to trial.
- c. If an out-of-court settlement is reached, you must submit a statement to the court indicating that the case has been settled **before the hearing date**.
- d. On the day of trial, if you have not already resolved your case with the other party, you may be asked by the magistrate to engage in settlement discussions. If you reach a settlement, the magistrate will ask the parties to write out the terms and sign a settlement agreement.

15. What happens during trial? (Evidence, Witnesses, and Subpoenas)

- a. **Trial** will usually be conducted by a magistrate. A magistrate has authority to decide your case. The landlord presents his or her evidence first. After the landlord has presented evidence, the tenant may ask the landlord questions. The tenant may also ask questions of any witnesses the landlord calls. The tenant may then present evidence. After the tenant has presented evidence, the landlord may ask questions of the tenant and the tenant's witnesses.
- b. **Please note:** a person representing a corporation or a limited liability company without a lawyer may not ask questions of any witnesses.
- c. **Evidence** may include the relevant testimony of witnesses, original documents, or acceptable copies of documents. Some examples of evidence include contracts, receipts, public records, authenticated business records, photographs, and tangible items (anything you can hold or touch). The court keeps any documents the magistrate accepts as evidence in the court file. **If you bring a document to offer as evidence you should bring (1) the original, (2) a copy for each party in the case, and (3) a copy for your own records.**
- d. **Witness testimony** must be from a witness with first-hand knowledge of the facts. Written or recorded statements from witnesses who are not present at trial are considered **hearsay** evidence which is not admissible and cannot be considered by the

magistrate. The magistrate cannot call witnesses on the telephone nor will he continue the hearing for witnesses you failed to bring to Court.

- e. Written estimates of value or repair costs are admissible as evidence to measure monetary loss. It is best to have at least two written estimates of repair costs for the magistrate to consider.
- f. **Subpoenas** are used to compel the attendance of witnesses. A subpoena is a court document that orders a witness to come to your trial. Any party may ask the court to issue subpoenas. Requests for subpoenas should be filed **at least 7 days before trial** with the Clerk of Court.
- g. The magistrate can ask questions at any time to clear up testimony. It is important during this procedure to remain polite; do not interrupt or argue. When all testimony is finished, the magistrate will tell you that the case is “submitted” and that you will receive a written decision in the mail or he may issue a decision orally in court.
- h. The **burden of proof** is on the party making the claim. For example, the landlord has the burden to prove the claims in the complaint; the tenant has the burden to prove the claims in the counterclaim. The burden of proof is by a **preponderance of the evidence**. The magistrate will evaluate or “weigh” all the evidence presented by the parties. If the weight of the evidence presented by the complaining party is greater than the evidence presented by the responding party, then the burden of proof will be met and the complaining party will win. If not, the complaining party loses and the case may be dismissed or judgment may be granted to the winning party.

16. What happens after trial? (Magistrate’s Decision and Judgment)

- a. After the magistrate hears the case he or she will prepare and file a **written decision**; you or your attorney will receive a copy of the decision and the Court’s entry of judgment by mail. Usually the magistrate’s written decision is a brief statement granting or denying judgment. If you wish to have a detailed finding of facts and law, you may make a written request that the Magistrate provide formal Findings of Fact and Conclusions of Law. You must make a written request within seven (7) calendar days of notice of the original decision that you receive from the Clerk of Court. Forms for requesting Findings of Fact and Conclusions of Law are available at the Clerk of Court’s Office and at the Court forms section of this site.
- b. A judge always reviews the magistrate’s decision. The Judge will then adopt or reject the Magistrate’s Decision and enter a judgment accordingly. The judgment may be appealed or enforced in the same way as any other judgment of the court.

17. What happens if I lose or am not fully satisfied with the Magistrate’s Decision? (Objections)

- a. Any party who disagrees with the magistrate’s decision may ask the court to modify or set aside the decision by filing written **objections**. You have 7 days from the date the magistrate’s decision is entered to make a written request for detailed findings of fact

and conclusions of law. You also have 14 days to file written objections to the magistrate's decision detailing the errors you believe the magistrate has made. You must file your objections **within 14 days from the filing of the magistrate's decision**. If a party files objections within this fourteen-day period, then any other party may also file objections up to 10 days after the first objections are filed. The objections must state the specific reasons for challenging the magistrate's decision. If a party makes a request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files the decision that includes the findings of fact and conclusions of law. **A fee of \$35.00 is required to file an objection to the magistrate's decision.**

- b. When a party files objections, the case will be heard by a judge. The judge will consider the objections and any supporting memorandum. The judge may approve (sustain), reject (overrule), or modify the magistrate's decision and enter a final judgment. The judge may adopt all or part of the magistrate's decision, conduct a hearing, take additional evidence, or refer the case back to the magistrate for a new trial.
- c. If objections are upheld, a new hearing may be granted. If a party's objections are overruled, the party may appeal the Judge's ruling to the Eighth District Court of Appeals. By law, **a party has thirty (30) days from the date of the final judgment to file an appeal with the Eighth District Court of Appeals**. Before taking this step, you should consult with an attorney as the appeal is costly and requires action for which most individuals require an attorney.

18. What happens if I win?

- a. If the landlord wins at the first hearing for restitution of the premises, the landlord must make arrangements with the Court Bailiff to remove the tenants from the premises.
- b. If the landlord wins at the second hearing for money damages, the landlord becomes a **judgment creditor**. The losing party becomes a **judgment debtor**, and may voluntarily pay the judgment. If the judgment debtor does not voluntarily pay you after you have your judgment, you may choose to try different collection methods. Collection proceedings may take a great deal of time. You should consider all the steps you may take to collect the debt. It is best to speak with an attorney about your options.
- c. For more information about collecting a judgment, please see Collecting Your Judgment.

19. As the landlord, how do I make arrangements with the Court Bailiff to obtain possession of the rental property after the first hearing?

- a. After the magistrate grants the Writ of Restitution which is the order permitting the Bailiff to remove the tenants from the rental property, the Clerk of Court will send notice to the tenant before the move out date notifying him/her of the move date.

- b. The move out will be automatically scheduled **10-11 days later. Move outs will be on Mondays unless the Court is closed for a holiday. In the event of a Monday holiday, the move outs will be on Tuesday.**
- c. The parties may agree to or the Court may order a later move out date but the date chosen must be a Monday due to the limited availability of a bailiff.
- d. The move out date will be stated in the judgment entry ordering the move out.
- e. The landlord must request the move out in writing and may fax that request with his/her telephone number to the court up until the 8:00 am on the scheduled move out date at 216-475-3087. The bailiff will call the landlord to schedule a time for the move out.
- f. If the Court receives a written request to proceed with the move out, the Bailiff will notify the local police department that he is going to conduct a move out. Only the bailiff will be present during the move out unless he feels it is necessary to summon the police.
- g. The bailiff will leave the premises when the tenant(s) have been removed from the premises but will not stay an extended period of time to oversee the removal of personal property.
- h. If the bailiff leaves the premises and the tenant(s) return, the landlord should call the police and may file a criminal trespass charge.
- i. The landlord is required to have the ability to change the locks on the premises on the move out date by performing the lock change himself/herself or by having a locksmith present.

20. What should the landlord do with the tenant's personal property which is left at the rental property after the tenant leaves and the locks are changed under the Bailiff' supervision?

- a. On the move out date, property of the tenant may be disposed of by removing it to the tree lawn if permitted by the municipality in which the premises are located, locked inside the premises for disposal on a different day or moved into a storage facility off the premises. The landlord is responsible for any expense in disposing of the tenant's property, which the landlord can then seek to recovery from the Defendant at the second hearing.
- b. If the landlord has questions about the proper disposal or storage of the tenant's property, he/she should consult an attorney. Advice cannot be given by the Court, the Bailiff or the Clerk about this matter.