

Before the constable or sheriff comes to remove you, they are required to give you at least a 24-hour notice. The notice must be posted on your front door, be at least 8 ½ x 11 inches, and tell you when the Writ will be enforced. When the constable arrives, they will order you to leave and if you refuse, they can physically remove you and your property. The constable can place your belongings outside the unit. The landlord is not required to store your belongings.

HOW DO I APPEAL?

Either side can appeal the decision of the Justice Court (J.P.) and have the County Court hear the case. The appeal must be filed within 5 calendar days after the decision. In counting the 5 calendar days to appeal, Saturdays, Sundays, and legal holidays are included. If you are unable to file your appeal because the J.P. is officially closed before 5:00 p.m., your deadline is extended to the court's next business day. If the fifth day falls on a weekend day, then the appeal is due the following Monday. During the appeal, you may remain in possession of the property if the following procedures are followed:

In order to file an appeal, you must pay a cash bond, appeal bond or file a pauper's affidavit. A cash bond is money paid to the court and the judge sets the amount. An appeal bond is a bond signed by the tenant and 2 good and sufficient sureties approved by the Justice of the Peace. If you cannot afford to pay a cash bond or file an appeal bond with 2 sureties, you may file a pauper's affidavit. This is a signed statement from you stating that you are unable to pay the appeal costs. If you file an affidavit and are being evicted for non-payment of rent, in order to remain in the unit you must also pay a rental period's rent (usually one month of rent) into the court registry

within 5 days of filing the appeal and, during the appeal, you must pay future rent to the county court registry whenever rent is due under the lease. If you do not pay the monthly rent when it is due, the court can issue a writ of possession, giving you 24 hours to move out.

The appeal process may take one month or longer. Eventually there will be another trial and the judge will make a decision without taking into consideration what happened in the J.P. court. If you win in county court, you can stay in the rental. If you lose, you will have to move out or file a supercedas bond with the county court at law within 10 days and appeal to an appellate level court. This process is very complicated and you would need to hire an attorney to assist you. You can only prevail if the county court judge made legal errors and not if you just disagree with the decision.

NOTICE: THE EVICTION PROCESS IS OFTEN COMPLICATED AND YOU SHOULD CONSULT AN ATTORNEY FOR LEGAL ASSISTANCE. THIS BROCHURE IS SOLELY MEANT TO PROVIDE YOU BASIC INFORMATION ON EVICTIONS.



For Assistance: 1-888-988-9996
www.trla.org

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A Tenant's Guide to Eviction

WHAT IS AN EVICTION?

An eviction is a lawsuit filed by a landlord to remove someone from the landlord's property. The eviction is filed in a Justice of the Peace Court (J.P.) in the county precinct where the property is located. The legal term in Texas for an eviction is "forcible detainer" or a "forcible entry and detainer".

WHEN CAN A LANDLORD EVICT A TENANT?

As a tenant, you can be evicted for violating the terms of the verbal or written lease agreement. Common reasons for eviction are:

- Not paying the rent
- Causing damage to the property
- Criminal activity
- Excessive noise or disturbing other tenants

In addition, if your landlord chooses not to renew your lease and you do not move out, the landlord can evict you. This is called "holding over." Landlords can choose not to renew your lease for any reason, unless it is for a discriminatory reason under the Fair Housing Act or in retaliation for requesting repairs or asserting your rights. If you live in public housing, federally subsidized housing, or a Low Income Housing Tax Credit apartment complex, the landlord must have good cause not to renew.

If your eviction is for a reason other than non-payment of rent, continue to pay your rent to the landlord as usual during the eviction process.

MY LANDLORD TOLD ME HE IS GOING TO EVICT ME. NOW WHAT?

A landlord can only evict a tenant by filing an eviction lawsuit in J.P. court. The landlord must take the following steps:

- The landlord must first give you a written notice to vacate. The notice must be given to you in person or to anyone over 16 years of age in the unit. The landlord may also send the notice by mail or post it on the inside of the front door of the rental property.
- The notice must state the date by which you must leave or vacate the unit. This is not the date when you will be removed from the property. The notice period will depend on the lease. If the lease is not specific about the notice period, the landlord must give you at least a 3-day notice to vacate for breaching the lease.
- If the tenant does not move out of the unit after the notice expires, the next step is for the landlord to file a Forcible Detainer (Eviction) lawsuit in the J.P.
- If the landlord does not renew your lease, he or she is required to give you notice as required by the terms of the lease. If you pay rent monthly, the landlord must give you at least a 30-day notice of termination of the lease, followed by a notice to vacate.
- If you live in public or subsidized housing, or a Low Income Housing Tax Credit apartment complex, the notice requirements are set by federal law and the regulations differ depending on the

program. You should consult an attorney to see if the notice was proper.

WHAT IF I DO NOT MOVE OUT BY THE DATE ON THE NOTICE TO VACATE?

If you do not leave the property by the date on the notice, the landlord can file an eviction. The eviction papers, also called the “citation” and “petition” may be served on you by a county constable. The constable can give the citation papers to anyone over 16 years old at the property. If the constable tries at least two times and cannot find anyone to serve, the constable can post it to the door or slip it under the door. The petition should list specifically why you are being evicted.

WHAT SHOULD I DO IF I HAVE BEEN SERVED BY THE CONSTABLE?

If you are served with an official notice (an eviction citation) and a copy of the lawsuit by the constable, those papers will tell you when you must appear in the J.P. court. You should closely follow the instructions in the eviction citation. If you prefer that a jury rather than the Judge hear your case, you can request a jury and pay \$22.00 at least 3 days before the trial. If you cannot afford the \$22.00 fee, you can file with your jury request, a sworn statement of your inability to pay the fee (“pauper’s affidavit”).

If any of the court papers you received are called something like “Request for Immediate Possession” or “Immediate Possession Bond”, you must show up at the trial setting that is listed in the citation; otherwise, the landlord can get possession of the premises immediately after the hearing.

WHAT WILL HAPPEN AT THE TRIAL?

Be sure to arrive at the court early and do not miss your hearing. **If** you fail to attend the hearing, the landlord will likely ask for a **default judgment** against you. The judge will give each side an opportunity to present their side of the case. You must be prepared to tell your side of the story before you get to court. Remember to take copies of important documents such as your lease, proof of payment, or written communication between you and the landlord. If you have witnesses who can support your side of the case, have them come to the hearing also.

The judge will likely rule against you if he or she finds: 1) that you have violated your lease agreement; 2) that the landlord has given proper notice to vacate the premises or terminate the lease; and 3) you have no legal defenses.

The judge will likely rule in your favor if he or she finds: 1) you have not violated your lease; 2) the landlord did not give you proper notice; or 3) you have a legal defense.

WHAT IF I WIN IN COURT?

If the judge rules in your favor, the landlord cannot take possession of the property and you can remain living there. The lawsuit will be over unless the landlord appeals. You will have to keep paying rent and following the lease terms because they can file a new eviction if you violate the lease.

WHAT IF I LOSE IN COURT?

If the landlord wins, the judge will sign an order giving your landlord the right to possession of the rental. If you do not appeal or move out within 5 days, the court can issue a “Writ of Possession” telling the constable or sheriff to give the landlord possession of the property.