

FILING A FORCIBLE DETAINER / EVICTION SUIT

VENUE:

Suit for possession of property and delinquent rent shall be filed in the precinct in which all or part of the property is located.

REQUISITES:

If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or hold over beyond the end of the rental term or renewal period at least **THREE DAY WRITTEN NOTICE TO VACATE PREMISES** before the landlord files a Forcible Detainer Suit, **unless the parties have contracted for a shorter or longer period in a written lease or agreement.**

To recover attorney's fees in a Forcible Entry and Detainer Suit, the written demand to vacate the premises must state that if the tenant does not vacate before the 11th DAY after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. Notice by mail may be registered or certified mail, return receipt requested, to the premises in question.

JURISDICTION:

In a Forcible Entry and Detainer Suit, the Court may render judgment for possession of the property in question. The landlord may receive judgment for back rent if the amount in controversy is not more than \$20,000.00.

FILING SUIT:

The responsibility for filling out your petition rests with you, the Plaintiff. Court Clerks will assist you if you have a procedural question. List each adult tenant on the lease or in a verbal agreement. State the tenant's full address including apartment number. List any known work address or other address where the tenant may be located for service.

Paragraph #3 of the attached petition describes three separate causes of action. The first cause is for **NON-PAYMENT OF RENT**. The second cause is for **BREACH OF LEASE/CONTRACT** by the tenant. The third is for **HOLDING OVER THE LEASE PREMISES** by the tenant.

If neither is chosen, then the last paragraph will cover the cause of action known as owner wants possession.

When filing, the landlord should bring the following:

- a. A copy of the lease (if you have one);
- b. A copy of the notice to vacate;
- c. Filing fee is \$54.00 and service fee is \$100.00 person.

Generally, all parties named in the lease should be sued and served with citation in the eviction proceeding. Any judgment granted will run only against those who are specifically named and served.

CITATION:

The Constable will serve each tenant with citation based on the information you give to the Court. The tenant will be informed in the citation the DATE and TIME of the hearing and a DEFAULT JUDGMENT may be rendered against him/her if he/she does not appear at the time designated.

REPRESENTATION:

The landlord's agent may file any type of eviction suit and may represent the landlord at any default judgment hearing. If the case is contested, an agent may represent either party if the case involves non-payment of rent or holding over.

HEARING:

Always arrive at least ten (10) minutes prior to the trial and check in with the clerk and identify yourself by name along with the names of any witnesses that you want sworn to give testimony.

IF THE TENANT APPEARS AT HEARING:

- A. The Judge will hear both sides:
- B. The Judge will render a judgment:
- C. If the Judge rules in the landlord's favor, the tenant will have five (5) days to appeal to County Court and or must vacate the premises by the date set by the Court.

IF THE TENANT FAILS TO APPEAR AT HEARING:

- A. The landlord or the landlord's agent will present their case to the Judge;
- B. If the Judge rules in the landlord's favor, a Default Judgment will be granted.

IF THE TENANT DOES NOT MOVE WITHIN SEVEN (7) DAYS AFTER JUDGMENT OR DOES NOT APPEAL TO COUNTY COURT;

- A. A Writ of Possession may be requested and filed.
- B. The Cost of the Writ of Possession is \$100.00
- C. A Writ of Possession will order the officer executing the Writ to instruct the tenant to remove or allow the landlord, the landlord's agent, or persons acting under the officer's supervision to remove all personal property claimed to be owned by the tenant and place or have an authorized person to place the removed personal property outside the rental unit at a nearby location or street and NOT while it is raining, sleeting or snowing.

NO LEGAL QUESTIONS WILL BE ANSWERED BY THIS OFFICE. If you have additional PROCEDURAL questions, please contact this office at (361) 645-3663.

All correspondence should be addressed to:

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