

FILING A FORCEABLE DETAINER / EVICTION SUIT

VENUE:

Forcible Entry and Detainer or Eviction Suit must be filed in the Justice Court Precinct that covers the specific address of the rental property, not where the landlord or tenant lives.

REQUISITES:

If the occupant is a tenant under a written lease or oral agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least **THREE DAY WRITTEN NOTICE TO PAY OR 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:

A Forcible Entry and Detainer or Eviction Suits must be filed in the Justice of the Peace Court for the specific precinct where the rental/leased property is located.

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 #2 of the attached petition describes three separate course 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 cause is for **HOLDING OVER THE LEASE PREMISES** by the tenant. The fourth cause is for **SQUATTER** who moved in without permission. The fifth cause is for **TENANCY AT WILL OR BY SUFFERANCE** without a formal lease.

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 Pay or Vacate
- c. Filing fee is \$54.00 and service fee is \$100.00 per person.

Generally, all parties named in the lease should be sued and served with citation and any Judgment granted will be for those who are specially named and served with citation.

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 Judgment.
- C. If the Judge rules in the landlord's favor, the tenant will have five (5) days to appeal to County 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 THE TIME SPECIFIED IN THE JUDGMENT OR DOES NOT APPEARL TO COUNTY COURT:

- A. A Writ of Possession may be requested and filed.
- B. The cost of the Writ of Possession if \$100.00.
- C. A Writ of Possession will order the Constable executing the Writ to instruct the tenant to remove or allow the landlord, the landlord's agent, or persons acting under the Constable'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 property outside the rental unit at a nearby location or street and NOT while it is raining, sleet, 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.