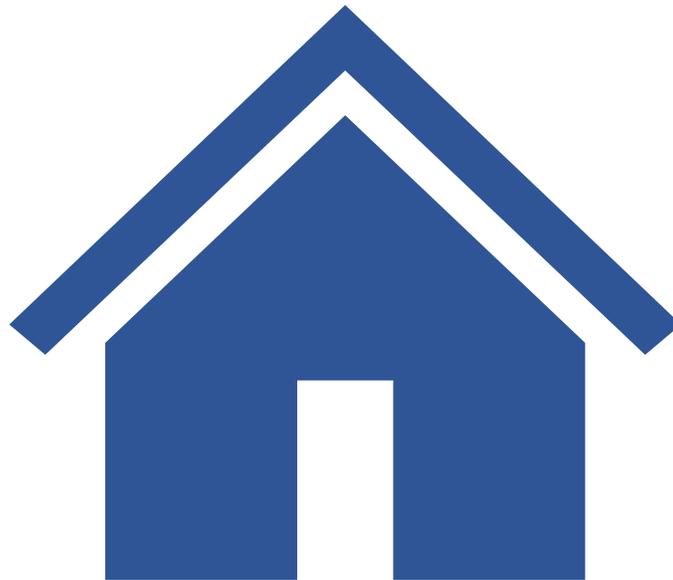


# How to Answer Your Eviction During and After COVID-19



**Legal Services of North Florida**

## **TEMPORARY COURTHOUSE CLOSURES OR MODIFIED HOURS DUE TO COVID-19**

Some courthouses are temporarily closed or have modified hours due to the current COVID-19 pandemic. You should call or email the court to find out its current hours of operation. If the courthouse is closed and you had any court deadline between the time when the court closed and when it will reopen, you need to be ready to meet your deadline on the day it reopens. If you fail to meet a court deadline or attend a hearing, you might lose the lawsuit, and the Judge may enter a Final Judgment of Eviction against you. If the courthouse is operating in a limited capacity, follow the current procedures of that particular court to meet your deadlines.

### **WHAT IS AN “EVICTION”?**

An eviction is a lawsuit where the landlord asks a court to remove you from your unit. Before starting an eviction, the landlord must give you a written notice. If you do not do what the notice requests or you do not leave, the landlord will file an eviction against you in County Court.

**NOTE: Your landlord cannot change the locks, turn off the utilities, or do anything else which forces you to move out. This is called an illegal eviction or a “prohibited practice,” and is a violation of the Florida Law. It can make your landlord liable to you for three times your rent or actual damages, whichever is higher, and the attorney’s fees and costs.**

### **REASONS WHY YOU CAN BE EVICTED**

- **Non-Payment of Rent Notices Under the Normal Rules**

Before you can be legally evicted for non-payment of rent, the landlord must give you a **THREE-DAY NOTICE** under the normal rules. The Three-Day Notice must list the amount of rent that you owe and tell you to either pay the rent or move out within three days. The Three-Day Notice must clearly state the day the rent is due. The three days cannot include the day you received the notice, Saturdays, Sundays, or legal holidays. For example, if you get the notice on Thursday, then Friday is day one, Monday is day two, and Tuesday is day three – the day you must pay your rent.

The Three-Day Notice can only ask for rent. It cannot ask for late fees, repairs, or other charges. But make sure you read your lease. If the lease says that late fees are considered rent, then the landlord can include them in the Three-Day Notice.

Once a Three-Day Notice has expired, the landlord has the right to file an eviction complaint with the Court. If the Three-Day Notice is defective or has a mistake on it, the landlord will have the opportunity to fix the notice before the judge will dismiss the eviction. Even so, you should still point out to the judge that the notice is defective.

## SPECIAL CONSIDERATIONS DUE TO COVID-19

Due to COVID-19, several laws went into effect related to evictions. The CARES Act is a **federal law** prohibiting certain landlords from filing new eviction lawsuits and from charging late fees. This applies only to landlords in federally subsidized housing programs, HUD Housing Programs, Low-Income Housing Tax Credit properties, most affordable housing properties where at least one tenant has a Section 8 voucher, and private landlords with a federally backed mortgage. The moratorium went into effect on March 27, 2020 and extends for 120 days (until July 25, 2020). After the moratorium ends, the landlord must provide at least 30 days' notice before filing a lawsuit for eviction. The earliest a landlord covered by the CARES Act can file an eviction is on August 23, 2020. Additionally, the landlord cannot charge you late fees before July 25, 2020.

If you are a tenant trying to determine if your landlord has a mortgage that is federally backed, you could inquire with your landlord or you could review this data for a non-exhaustive database of federally backed mortgages: <http://nlihc.org/federal-moratoriums>.

Note that the CARES Act does NOT prevent the landlord from proceeding with evictions filed before March 27, 2020.

In addition to the federal CARES Act, there is a separate **Florida statewide** eviction moratorium beginning on April 2, 2020. This Statewide moratorium applies to all non-payment evictions. Evictions will be suspended for 45 days due to non-payment of rent. This moratorium will last until June 2, 2020. **However, you still owe rent for this time.** Additionally, you may need to demonstrate that the failure to pay rent is due to the COVID-19 Crisis. It will be important to gather as much evidence showing that your inability to pay rent is related to COVID-19. For example, documentation of when and why you lost your income may be helpful to show you could not pay rent due to the COVID-19 Emergency.

- **Breach of Lease or Violation of Rules and Regulations**

Your landlord can also file an eviction against you because the landlord says you violated the lease, violated its rules, or engaged in some behavior that threatens the health, safety, and welfare of the other tenants.

Under Florida law, the landlord must give you at least 7 days written notice of the problem. If the problem is one that can be fixed, the landlord must give a SEVEN-DAY NOTICE TO CURE. The purpose of giving you the notice is so that you can stop doing what the landlord says is a violation. For example, your landlord sends you a notice that says your broken truck in the parking lot is a violation of the lease. If you move the truck, you have "cured" the problem and the landlord cannot file an eviction. But if you move the broken truck back into the parking lot in the next 12 months, the landlord can file an eviction.

If the problem is one that cannot be fixed the landlord must give you a seven-day notice terminating your tenancy. For example, if you severely damage the apartment, your landlord may terminate your tenancy and tell you to move out in 7 days.

If you are living in a property covered by the CARES Act, review the section above. The CARES Act prohibits a landlord from sending any notices before July 25, 2020. After July 25, the landlord must send you a 30-day notice.

- **Termination or Expiration of the Rental Agreement**

You can be evicted because the agreement with the landlord has been terminated or expired.

If you are a PRIVATE TENANT and have no lease, then the landlord must give you a written notice to make you move. The amount of notice depends on how often you pay your rent. If you pay rent weekly, then the landlord must give you a written notice to move out at least 7 days before your rent is due. If you pay rent monthly, then the landlord must give you written notice to move at least 15 days before your rent is due.

If you live in private housing with no written lease, the landlord can evict you for any reason, as long as it is not discriminatory and not done in retaliation.

If you are living in a property covered by the CARES Act, review the section above. The CARES Act prohibits a landlord from sending any notices before July 25, 2020. After July 25, the landlord must send you a 30-day notice.

If you are in subsidized or public housing, different rules and laws apply to your situation. You need to speak with an attorney for more information.

If you are behind in your rent and the landlord cannot bring a non-payment of rent eviction because of the moratorium, the landlord may try to terminate your lease without giving a reason as a way to get around the new changes in the law. If the landlord tries to terminate your tenancy as a month to month tenancy after you have not been able to pay your rent, you should assert in your Answer that the moratorium applies.

## **HOW TO WRITE YOUR ANSWER**

1. Included with this brochure is a form “Answer, Affirmative Defenses, and Motion to Determine Rent.” You need to first write the case number and the names of the parties on the top of the paper. The landlord is the Plaintiff, and you are the Defendant.

2. Read the complaint for eviction and respond to each of the paragraphs in the complaint. You respond by writing in your answer that you either admit or deny what is in each paragraph. If you do not know whether to admit or deny the paragraph, you can state that you are “without knowledge.”
3. Then, select or write your defenses and explain why you should not be evicted (i.e.: the landlord is retaliating because I called the housing inspector, there are bad conditions, I already paid my rent, etc.).
4. You have a constitutional right to demand a trial by a jury of your peers. You can waive this right in your lease. If you want to demand a jury trial, you should do it when you file your answer or within 5 days after filing your answer; otherwise, you may waive your right to demand a jury trial. There are pros and cons to demanding a jury trial. While it is your absolute right to demand a jury trial, it may be difficult to represent yourself at a jury trial. If you have questions about whether to demand a jury trial, you should speak with an attorney.
5. Sign your answer. Include your name, address, and telephone number.
6. File your original with the Court, mail a copy to your landlord, and keep a copy for your records.

**FILING A MOTION TO DETERMINE RENT**  
**OR**  
**DEPOSITING MONEY INTO COURT REGISTRY**

To defend an eviction in Florida, you **MUST** pay into the court registry the rent the landlord asks for in the eviction complaint **OR**, if you disagree with the amount owed, ask the judge to determine how much rent is due. A form for the “Answer, Affirmative Defenses, and Motion to Determine Rent” is included with this brochure.

Things you might include in your Motion to Determine Rent:

- The amount demanded by the landlord is wrong.
- The landlord demands extra amounts that are not rent.
- You already paid the rent.
- The landlord failed to make repairs and the rent should be reduced.
- Your landlord turned off water or electricity or has illegally locked you out of your home.
- If you are covered under any of the moratoriums listed above you should assert in the motion to determine rent that you are not required to post money into the court registry because the landlord should not be permitted to move forward with the eviction at all.

Many judges will not consider a rent reduction until after you deposit all of the rent into the court registry.

Whatever your reasons, you should include proof of why you are asking the Court to determine how much rent you owe. For example, if you already paid your rent, include copies of the receipts. If you think your rent should be reduced for bad conditions in your home, include photographs.

You must also continue depositing your rent into the court registry while the eviction is pending.

**NOTE: If you do not pay the rent into the court registry or do not file a motion to determine rent, you will waive all of your defenses, except for payment. This means you will lose your case automatically and the landlord wins the case. You will not get to see a judge and you will be evicted from your home.**

### **ALL RENT REMAINS DUE AND OWING**

Even under the COVID-19 protections, you still owe rent. The landlord will not be able to evict you, but when the protections expire, you will need to pay all rent that you owe.

### **WHEN AND WHERE TO FILE YOUR ANSWER**

Your answer is due in court on the fifth day after the eviction complaint was personally served on you or a member of your household or posted on your door. You do not count Saturdays, Sundays, or legal holidays. Also, the day you are served does not count.

**REMINDER:** Currently, some courthouses are temporarily closed or have modified hours due to the current COVID-19 pandemic. You should call or email the court to find out its current hours of operation. If the courthouse is closed and you had any court deadline between the time when the court closed and when it will reopen, you need to be ready to meet your deadline on the day it reopens. If you fail to meet a court deadline or attend a hearing, you might lose the lawsuit, and the Judge may enter a Final Judgment of Eviction against you. If the courthouse is operating in a limited capacity, follow the current procedures of that particular court to meet your deadlines.

Filing your answer means that you go to the Clerk of Court and say “I want to file an answer to an eviction.” Bring the original answer and 2 copies (one for yourself and one for your landlord). Make sure that the clerk date-stamps all copies.

Take your answer to the courthouse where your eviction was filed, which is usually the courthouse closest to your home. The “Summons” will tell you where your case is filed.

You should check with the courthouse your case is filed in to determine when and how to file your “Answer of Eviction.” If your case is filed in the First Judicial Circuit of Florida you can contact the First Circuit Court Administrator, who will be able to answer questions about specific courthouses via email at [robin.wright@flcourts1.gov](mailto:robin.wright@flcourts1.gov) or telephone at 850-595-4400. If your case is filed in the Second Judicial Circuit of Florida you can contact the Second Circuit Court Administrator, who will be able to answer questions about specific courthouses via email at [SlaydenG@leoncountyfl.gov](mailto:SlaydenG@leoncountyfl.gov) or telephone at 850-606-4420. If your case is filed in the Fourteenth Judicial Circuit of Florida you can contact the Fourteenth Circuit Court Administrator, who will be able to answer questions about specific courthouses via email at [gabler@jud14.flcourts.org](mailto:gabler@jud14.flcourts.org) or telephone at (850) 747-5370.

If you are unable to get to the courthouse, you also may be able to file through the online filing system: <https://www.myflcourtaccess.com/default.aspx>.

## **DEFENSES**

You may be able to use these defenses in your answer; write them under “Defenses.” If any of these apply, you should argue that you win the case because of these defenses.

- *Failure to serve a proper, non-defective termination notice.* This means that the landlord’s notice did not comply with your lease or Florida law (Florida Statute § 83.56, “Termination of Rental Agreement”). The judge must give the landlord the opportunity to fix a defective notice for non-payment only.
- *Corporation not represented by an attorney.* A corporation cannot represent itself and cannot appear in court without an attorney.
- *Improper party.* Only the owner or lessor of the property may file an eviction complaint. Check the property records to see who owns the property.
- *Failure to attach.* The landlord must attach certain documents to the complaint (i.e. the lease or three-day notice).
- *Payment.* If the landlord accepts rent after serving a three-day notice, he or she has waived the right to file suit. The landlord cannot accept rent after the complaint has been filed.
- *Tender.* You were ready, willing, and able to make payment during the three-day notice period, but the landlord refused to accept your money. The landlord must accept your rent during the three-day notice.

- *Failure to maintain.* The landlord refuses to make repairs and has failed to maintain the property (i.e.: no hot water, leaking roof, roach infestation, mold).
- *Retaliatory eviction.* Your landlord filed the eviction because you asserted your rights. For example, you contacted code compliance about conditions and then the landlord filed the eviction.
- *Discriminatory conduct.* The landlord is discriminating based on race, color, national origin, religion, sex, disability, domestic violence, having children, sexual orientation, gender identity, source of income, or some other protected class.

**You may also assert defenses under the CARES Act or Executive Order 20-94.**

If you are suffering from COVID-19 or your health condition puts you in a high-risk category for COVID-19, you may want to ask your landlord for Reasonable Accommodation. Make a request to your landlord for more time to find new housing since it is not safe for you to leave your home due to your health condition. If your landlord will not grant your request and files an eviction, you can assert that this is a violation of the Fair Housing Act which requires the landlord to make accommodations due to your disability. You may need to obtain medical documentation to support this request.

### **WHAT HAPPENS NEXT?**

If you filed a Motion to Determine Rent, the court will either schedule a hearing on the motion or enter an order requiring you to deposit rent. If there is a hearing, be prepared to tell the judge why the rent is wrong and how much you should deposit. If the court orders you to deposit rent, you must do it or you will lose your case automatically.

When you go to court, the judge will encourage you to negotiate a resolution. If you reach a resolution, then the judge will enter an agreed order. This is a binding legal document. It is unlikely that you will be able to get out of this agreement if you change your mind. It is important you understand the agreement before you sign it.

If you and the landlord cannot agree in negotiation, then the case will go to trial. At the trial, the landlord goes first and presents his case. You can question the landlord and his witnesses. This is called cross-examination. When the landlord is done, you present your case. You can have your own witnesses testify and submit your own evidence and documents. The landlord or his attorney can question you and your witnesses.

After hearing from all the witnesses and looking at all the evidence, the judge then makes a decision. If the judge rules for you, there is no eviction and you remain living there. However, sometimes the judge may put conditions in the ruling. Make sure you understand the judge's

decision before you leave. Sometimes the judge will try to get the parties to reach an agreement. For example, a judge may ask the landlord to agree that the case will be dismissed if you move out by a certain date to avoid a final judgment.

If you lose the Court hearing or if you did not answer the lawsuit in the first place, the court will enter a final judgment of eviction. The judge can also make you pay the landlord's attorney's fees and court costs. If the landlord sued you for unpaid rent, the judge could enter a judgment against you stating that you owe money to your landlord.

To appeal the decision, you must file a notice of appeal within 30 days, but an appeal will not keep you from being evicted unless the judge gives you a "stay pending appeal." Typically, you must have the rent to get a stay during the appeal.

### **WRIT OF POSSESSION**

If you do not move out, the Court will tell the Sheriff to move you and your family and everything you own out of the place where you are living. The notice that the Sheriff will post on your door is called the "Writ of Possession." It gives you 24 hours' notice to move out. If you have not moved out by the time the Sheriff comes back, the landlord or the landlord's agent may remove your belongings from the unit. The landlord will also change the locks when the Sheriff is there. They can do this whether you are home or not, have children, or are sick.

Due to the **COVID-19 Emergency** there will be a significant delay in executions of Writs of Possession. Florida Supreme Court Administrative Order 20-08 explicitly states that Writs of Possession cannot be forwarded to the sheriff to be executed until after May 29.

### **HOW DO I CHECK THE STATUS OF THE CASE?**

In some jurisdictions, you can check the status of your eviction case online by looking at the Clerk of Court's website.

## **COURTHOUSES IN THE FLORIDA PANHANDLE**

### **First Judicial Circuit of Florida**

Escambia County Courthouse  
M.C Blanchard Judicial Building  
190 Governmental Center  
Pensacola, Florida 32502

Okaloosa County Courthouse  
101 James Lee Boulevard East  
Crestview, Florida 32536

Santa Rosa County Courthouse  
6865 Caroline Street  
Milton, Florida 32570

South Walton County Courthouse  
31 Coastal Centre Blvd.  
Santa Rosa Beach, Florida 32549

Walton County Courthouse  
571 Hwy 90 East  
DeFuniak Springs, Florida 32433

### **Second Judicial Circuit of Florida**

Franklin County Courthouse  
33 Market Street #203  
Apalachicola, Florida 32320

Gadsden County Courthouse  
10 East Jefferson Street  
Quincy, Florida 32351

Jefferson County Courthouse  
1 Court House Circle  
Monticello, Florida 32344

Leon County Courthouse  
301 South Monroe Street  
Tallahassee, Florida 32301

Liberty County Courthouse  
10818 NW, FL-20  
Bristol, Florida 32321

Wakulla County Courthouse  
3056 Crawfordville Hwy  
Crawfordville, Florida 32327

### **Fourteenth Judicial Circuit of Florida**

Bay County Courthouse  
300 East 4th Street  
Panama City, Florida 32401

Calhoun County Courthouse  
20859 East Central Avenue  
Blountstown, Florida 32424

Gulf County Courthouse  
1000 Cecil G. Costin, Sr. Blvd.  
Port St. Joe, Florida 32456

Holmes County Courthouse  
201 North Oklahoma Street  
Bonifay, Florida 32425

Jackson County Courthouse  
4445 Lafayette Street  
Marianna, Florida 32446

Washington County Courthouse  
1293 Jackson Ave  
Chipley, Florida 32428