

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



**Legal Services of North Florida**

## **COURTHOUSE CLOSURES & ATTENDING HEARING DURING COVID-19**

Most courthouses are closed for in-person hearings/events and may have modified hours due to the current COVID-19 pandemic. You should call or email the Clerk of Court to find out its current hours of operation and/or the Zoom or telephonic log-in information for your hearing. (Please see the last page of this brochure, which lists for the Clerk of Court's contact information for your county). Please know that the Clerk of Court is not closed to the public in most counties, and you are still able to file documents in person and online.

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 this is the case, contact the Clerk of Court immediately and ask how you can file for a "Motion for Rehearing." 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"?**

In an eviction lawsuit, the landlord asks a court to remove the tenant from their unit. Before starting an eviction lawsuit, your landlord must serve you with a written notice. If you do not comply with the notice or you do not leave the property, the landlord could file an eviction lawsuit 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 (sec. 83.67, Fla. Stat.). It can make your landlord liable to you for three times your rent or actual damages, whichever is higher, and attorney's fees and costs.**

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

#### **❓ Non-Payment of Rent (Three-Day Notices)**

Before you can be legally evicted for non-payment of rent, the landlord must give you at least a **THREE- DAY NOTICE** under Florida law (Florida Statute § 83.56). The Three-Day Notice must list the amount of rent that you owe and demands that you pay the rent or move out of the property within three (3) days. The Three-Day Notice must clearly state the back rent is due. The three days cannot include the day you received the notice, nor can it include Saturdays, Sundays, or legal holidays as a part of the three days when rent is due. 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 or vacate the property.

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 carefully. If the lease says that late fees are considered rent,

then the landlord can include them in the Three-Day Notice.

If the landlord accepts partial rent during the 3 days, the landlord should provide you with a new Three-Day Notice with the remaining amount owed.

Once a Three-Day Notice has expired, the landlord has the right to bring an eviction lawsuit against you by filing a complaint in county court. If you notify the court that 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 lawsuit.

## **Breach of Lease or Law (Seven-Day Notices)**

Your landlord can also file an eviction lawsuit 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 (i.e. discharging a firearm on the property).

- A Seven-Day Notice to Cure: Under Florida law (Florida Statute § 83.56), the landlord must give you at least seven (7) days written notice of the problem. If the problem is one that can be fixed, the landlord must give you a SEVEN-DAY NOTICE TO CURE. The purpose of the notice to cure is to provide you with the opportunity to comply with the lease by stopping the prohibited actions.
  - 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 lawsuit against you.

However, if you breach the lease in the same way (by committing the same prohibited action/conduct) within 12 months of receiving the Seven-Day Notice to Cure, your landlord can file an eviction lawsuit against you.

- For example, if you move the broken truck back into the parking lot in the next 12 months, the landlord can file an eviction.
- A Seven-Day Notice: Under Florida law (Florida Statute § 83.56), if the lease violation/prohibited action is one that cannot be fixed, your 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.

## **Termination of an Oral Rental Agreement**

Your landlord may bring an eviction lawsuit against you because your oral lease agreement has been terminated. Under Florida law (Florida Statute § 83.57), if you are a PRIVATE TENANT and have no lease, your landlord can terminate your lease for any reason and bring an eviction lawsuit against you, as long as it is not discriminatory and not done in retaliation.

Before filing for an eviction lawsuit, your landlord must give you a written notice requesting that you

move. The notice must give you a specific length of time to move out, which depends on how often you pay your rent:

- If you pay rent weekly: your landlord must give you a written notice to move out at least 7 days before your rent is due.
- If you pay rent monthly: your landlord must give you written notice to move at least 15 days before your rent is due.
- If you pay rent quarterly: your landlord must give you written notice to move at least 30 days before your rent is due.
- If you pay rent yearly: your landlord must give you written notice to move at least 60 days before your rent is due.

### **Termination of an Expired Rental Agreement**

When a lease agreement has expired and you do not vacate the property and your landlord will not accept any more rent, the landlord may bring an eviction lawsuit against you in county court. At this point, you are considered a 'holdover tenant' and the landlord can file an eviction and request double rent as damages.

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

## **HOW TO WRITE YOUR ANSWER**

1. If your landlord has filed an eviction action against you and serves you with a Summons and a Complaint, you only have five (5) days to respond (not including the day you were served, holidays or weekends).
2. 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.
3. Next, read the Complaint for eviction and respond to each of the numbered paragraphs in the complaint in writing. Here are some of the ways that you can respond:
  - You can "ADMIT" what your landlord says (i.e. I ADMIT this is an eviction action in County Court).
  - You can "DENY" what your landlord says, which means you disagree with what your landlord wrote. You can provide an explanation of why you disagree.
  - "Without knowledge" means that you do not know whether your landlord's statements are true or false.
4. Then, select or write your defenses and explain why you should not be evicted. These defenses are the reasons why Florida Law protects you from eviction. **Below is a list of some**

**defenses to evictions under Florida law. If any of these defenses apply, you should include them in your Answer and ask the court to rule in your favor:**

- *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.
  - Note: Property managers can file *on behalf of* landlords in uncontested evictions, but they cannot sue for money damages. Once you contest the eviction, your landlord must appear or hire an attorney (if they are a corporation).
- *Failure to attach.* The landlord must attach certain documents to the complaint (i.e. the lease *and* the three-day notice).
- *Estoppel.* If your landlord assisted with or participated in your application for emergency rental assistance, but then refused the funds or pursued an eviction any ways, you could raise the defense that your landlord should be "estopped" from evicting you. This means that your landlord offered to help, you relied on that offer and applied for services, but now your landlord is moving forward with an eviction.
- *Payment.* If the landlord accepts rent after serving a Three-Day Notice to pay rent or vacate, he or she has waived the right to file an eviction lawsuit (Florida Statute § 83.56(5)(a)). The landlord cannot accept rent after the Complaint has been filed; if the landlord does, it can waive its right to evict.
- *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 period.
- *Failure to maintain/material non-compliance.* The landlord refuses to make repairs and has failed to maintain the property (Florida Statutes §§ 83.51, 83.56) (i.e.: no hot water, leaking roof, roach infestation, mold).
- *Retaliatory eviction.* The landlord filed the eviction because you asserted your rights (Florida Statute § 83.64). Foreexample, 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 (Florida Statute § 83.64).

- *Reasonable Accommodation*: 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 lawsuit, 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 will need to obtain medical documentation to support this request.

5. 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.

- Note: 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.

6. Date and sign your Answer. Include your name, address, and telephone number.

7. Attach any relevant documentation to your Answer (emails, letters, rental assistance funds applications, etc.)

8. Finally, file your original Answer with the Clerk of Court, mail a copy to your landlord, and keep a copy for your records (see instructions below).

**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 (Florida Statute § 83.60(2)). Many judges will not consider a rent reduction until after you deposit all of the rent into the court registry.

Because of this, you should file a “Motion to Determine Rent” along with your Answer. A sample of an “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 have applied for or received emergency rental assistance funds, you should assert in the Motion to Determine Rent that funds are pending but you are not able to post money into the court registry because the funds are made out to the landlord. Still, the landlord should not evict you for non-payment of rent, since the funds are pending or available.

Whatever your reasons, *you must 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. If it is funds for emergency rental assistance, include documentation from the organization or state/local agency providing the funds, especially if it includes the amount of approved funds and date of disbursement (or even the status of your application).

After you file the Motion to Determine Rent, the court will schedule a hearing and determine how much rent you must pay into the court registry. Once determined, you must also continue depositing your rent into the court registry while the eviction lawsuit is pending.

- Note: If you are a public housing tenant or receive rent subsidies, you are only required to deposit the portion of the rent for which you are responsible for paying.

**CAUTION: 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.**

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

You must file your Answer with the Clerk of Court within five (5) days after the eviction Complaint was personally served on you or a member of your household, *or* posted on your door (not including the day you were served, holidays or weekends). You can file your Answer, Affirmative Defenses, and Motion to Determine Rent *in-person* or *online*:

- *Filing in-person*: 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. Tell the Clerk of Court, “I want to file an Answer to an eviction.” Bring your original Answer to file with the Court and 2 copies (one for yourself and one to mail to your landlord). Make sure that the Clerk date-stamps all copies.
  - 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 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 or telephone at (850) 747-5370.
- *Filing online:* You can electronically file your Answer, pleadings, and documents by going to: <https://www.myflcourtagency.com/default.aspx>. Sign-up and register for Florida's e-filing portal. Once registered, locate your case by typing your case number (the year (2021), the Court type (CC for County Court/Civil), and the case number (000XXX). Then you can upload your document as an "Answer," click to send a copy to all of the parties. You should receive an e-mail confirmation immediately once you have properly filed your document. The website also has a call-in number for assistance.

### **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, or that you have applied for emergency rental assistance funds and are waiting for them to be disbursed (or your landlord will not accept the funds that have been disbursed). If the court orders you to deposit rent, you must deposit rent immediately or you will lose your case automatically.

When you go to court, the judge may encourage you to negotiate with the landlord or the landlord's attorney to come to an agreement as far as money to be paid or time frame to pay it.

There are several things to remember in this negotiation process:

- You do not have to negotiate. You can opt to proceed to a trial if you do not feel comfortable trying to negotiate with the landlord.
- Often times, if an agreement is reached the Court will enter into a conditional judgement. 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 or if your circumstances change. It is important you understand the agreement before you sign it.
- Like a final judgement, a conditional judgement will still show up on your record and likely interfere with your ability to enter into rental agreements in the future.
- Unfortunately, under current Florida Law, any rental company or private landlord can access the court records and determine that you have had an eviction filed against you. Therefore, it is unlikely to make much of a difference to the future landlord that your case was resolved by a conditional judgement versus a final judgement.

- **Helpful Tip:** If you can work out an agreement with the landlord that you are comfortable with, **the better strategy may be to agree that once the terms are satisfied the landlord will *dismiss the case*.** While the filing of the eviction will still show up on your record, you can explain to your prospective landlord that the case was ultimately dismissed, which may be less damaging than having a judgement.

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 or her case. You can question the landlord and the landlord's 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 the landlord's 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 can stay on the property until the end of your lease. However, sometimes the judge may put conditions in the ruling. Make sure you understand the judge's decision before you leave.

If you lose the Court hearing or if you *defaulted* by not timely answering the lawsuit in the first place, the court will enter a final judgment of eviction and issue a Writ of Possession (see below). 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**

Once the court issues a final judgment against you and you do not move out, the Court will issue a Writ of Possession, which tells the Sheriff to move you and your family and everything you own out of the place where you are living. The Writ of Possession 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 may also change the locks when the Sheriff is there. They can do this whether you are home or not, have children, or are sick.

If you have been served with a Writ of Possession and need assistance, we recommend that you contact an attorney immediately as you may only have 24 hours before you are removed from the unit.

### **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