

## Eviction Basics (for nonpayment of rent)

- a. A landlord cannot start eviction proceedings or demand the tenant leave until rent is past due.
- b. Normally, the landlord or landlord's agent must first make a demand for possession before the tenant can be evicted.
- c. Before eviction can occur, the landlord must first obtain a dispossessory warrant. A dispossessory warrant is a sworn statement signed by the landlord or his agent that sets forth the reason for the proposed eviction. The landlord is also required to give the tenant a copy of this warrant, and if this is not possible, must tack the warrant on the tenant's door.
- d. A residential landlord must always use the dispossessory process even if the lease says otherwise. See GA Law 44-7-2(b)(3). Any landlord who evicts you without following these procedures may be guilty of trespass and subject to actual and punitive damages. Messmore v. Roth, 188 Ga.App. 862 (1988); Swift Loan and Finance Co., Inc. v. Duncan, 195 Ga.App. 556 (1990).
- e. Once a tenant receives a warrant, the tenant has the option to answer the warrant within **seven** days. ANY PORTION OF THE RENT NOT IN DISPUTE MUST BE PAID TO THE COURT WHEN THE ANSWER IS FILED. If the tenant fails to answer or does not pay the unpaid rent to the court, the court may issue an order to put the tenant out on the street. OCGA 44-7-75(a)
- f. You cannot be evicted if you are served with a dispossessory warrant/distress warrant and you come up with the rent and the cost of the dispossessory warrant within **7** days of being served. See GA Law 44-7-52, 44-7-73.
- g. But, under 44-7-52, the landlord can evict you and refuse your late rent when this is the second time within **12 months** that you have been served with such a summons. This is true even if you were short of rent by just a few dollars.

### The Eviction Process-Being Served With Papers

In Georgia, eviction cases are called **dispossessory actions**. These actions begin when the landlord files a **dispossessory affidavit** in court which states why the landlord should get back possession of the rented property.

The law requires that a copy of the dispossessory affidavit be served to the tenant. This gives the tenant **notice** of the court eviction action and time to respond to it.

The tenant can be served in two ways:

**1. Personal Service** can be affected by giving the court papers to the tenant in person or by giving such to a person of suitable age who lives with the tenant. Usually personal service is carried out by police officials from the Marshall's or sheriff's department.

**2. Post & Mail Service** involves posting a copy of the eviction notice and court papers on the tenant's house and also mailing a copy to the tenant. (To comply with the law, the landlord must do both.)

NOTE: If service is done by post & mail and the tenant does not Answer, the tenant can be evicted on the **8th day** after service of the papers. **But without personal service, the landlord had no right to ask the court for money from the tenant.** Any attempt to do so is illegal.

## Responding To An Eviction Notice

The tenant must ANSWER THE EVICTION PAPERS or lose the right to challenge the eviction in court. An ANSWER is the tenant's legal reply to the landlord's dispossessory affidavit.

When eviction papers have been served, the tenant has only **7** days to file his answer with the court. The last day to Answer should be written on the eviction papers served on the tenant. **Any tenant who does not file an Answer within the 7 day period can be evicted on the 8th day.** Excuses for being tardy don't count here.

It costs nothing for the tenant to file his answer with the court and the answer does not have to be in writing. All the tenant needs to do is go to the office of the clerk of the court named on the dispossessory affidavit and have the clerk write on the eviction court papers the tenant's **DEFENSES** (reasons why the eviction is unjust and should be stopped). The clerk should also list any money claims the tenant wants to bring against the landlord.

Claims of money owed to the tenant arising from the landlord tenant relationship are called **COUNTERCLAIMS** and must be submitted with the Answer. Each counterclaim should list the amount of money owed and the reasons why it is owed.

If the clerk refuses to take an answer within **7 days** of service, immediately ask the clerk to check with the judge about the tenant's right to make an answer.

After the answer is filed, the court will set up the case for a hearing before the judge, usually within **a week to ten days**. The time depends on the court. At this time, the tenant is allowed to remain in his apartment until after the hearing. In fact it is illegal for the landlord to evict the tenant before the judge hears the case.

At the hearing the tenant has the opportunity to tell the judge why he/she should not be evicted. If the tenant loses, the judge will sign a "writ of possession" and sometimes a separate "judgment" for any money the judge finds the tenant owes.

**If no answer is filed**, on the 8th day after service of the dispossessory, the landlord can ask the clerk to sign a "writ of possession." Then the landlord can check with the clerk on executing the writ. In most courts, the Marshall or sheriff's department has a schedule to supervise a physical eviction. The landlord is responsible for removing the tenant's property or arranging for another to do so.

The marshal or sheriff may put a notice on the tenant's door, sometimes called a **"24 hour notice"**, to let the tenant know that the physical eviction will happen the next day.

At this point the landlord can still settle the case with the tenant and not execute the writ. The landlord will need to call concerning the date and time for the eviction with law enforcement staff. Keep in mind that **SETTLEMENT CAN BE RISKY FOR THE TENANT BECAUSE THE LANDLORD MAY TAKE THE MONEY AND STILL EVICT THE TENANT.**

If both parties decide to settle, the tenant should make sure that the landlord voids the writ. Both parties should also be clear about whether the tenant will remain on the property. Get the landlord to spell out these issues in writing.

Landlords and tenants can agree to a move out date and time before the date and time law enforcement will be there to supervise the eviction. Landlords do not have to do this but such may save them money and time for the physical eviction.

**The landlord has no legal obligation to protect the personal property of a former tenant being evicted.** This is another good reason why both parties should make arrangements to let the tenant move out at a particular time.

If there was personal service the landlord can get a court judgment for rent and utilities. If not paid, the landlord can file a garnishment against the tenant or refer the matter over to a collection agency. If there was no personal service, the landlord cannot collect money from the court as such is illegal

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