

Renters' Guide to Eviction Court

This booklet briefly describes the eviction process for Chicago renters who are in eviction court at the Daley Center – 50 W. Washington St.



Subsidized Housing and Housing Choice Vouchers (Section 8)

Renters who live in public housing or have a Housing Choice Voucher are at risk of permanently losing their benefit if evicted, so it is very important to seek legal assistance! This booklet does NOT address the additional issues involved with evictions from subsidized or public housing or where there is a Housing Choice Voucher.

Foreclosure or Condo Associations

This brochure does NOT address the additional issues involved with evictions where foreclosure or condominium associations are involved. These are complicated situations and it is very important to seek legal assistance. More information about renters in foreclosure is available on LCBH's website at www.lcbh.org.

PLEASE READ CAREFULLY

Going to court can be confusing and stressful. This is especially true of eviction court because someone's home is on the line. Eviction court cases move very quickly and there is little time to prepare. Most trials happen on the first court date and last only a few minutes. Renters should find an attorney to assist them, if possible. Free legal aid is often available to lower income families and individuals.

Once an eviction case is filed, it becomes part of the public record. The eviction case outcome will be decided either by a court (the judge or jury) or by agreement ("settlement") between the renter and the landlord. Understanding the eviction process can help a renter make an informed decision about settling or going to trial. If a renter and landlord agree on a solution to settle the case, there will not be a trial. However, **renters are not required to agree to anything that the landlords or the landlords' attorneys demand.** Renters always have the right to a trial where a judge (or jury) decides if they have to move.

Renters who have received eviction court papers should ask themselves these questions:

- Can I find an attorney to help me?
- Is there any way to stop the eviction? Can I fix the problem? Can I make an agreement with the landlord?
- Do I have any legitimate (valid) defenses? Not paying part of the rent because the renter made some repairs may be legitimate, but not paying rent because of a recent job loss—while very difficult—is not a legitimate defense.
- Do I have a place I can move to—either to a new unit or in with family or friends? If not, check to see what emergency housing services are available. Chicago residents can call 311.

Termination Notice

Illinois law requires that landlords (owners) give renters (tenants) a written termination notice before filing an eviction court case. In most cases, a renter can still fix (cure) the problem within the notice period and avoid an eviction filing.

Common notice periods are:

- 5 days for non-payment of rent.
- 10 days for a lease violation.
- 30 days to end a month-to-month lease (no cure).
- 90 days for a termination after a new owner buys a foreclosed building (no cure).

Renters who did not receive proper service of notice or enough time to cure may have a defense to the eviction.

Court Summons and Complaint

After the landlord files the eviction case, the renter must be served with court papers (a “summons” and a “complaint”). Court papers cannot be served by the landlord and will probably be served by a sheriff or by someone called a process server.

In most cases, court papers are served in one of three ways:

- Personal service (hand-delivered to the renter).
- Substitute service to someone living at the renter’s home who is at least 13 years old.
- By “posting” or “publication”—but only if personal or substitute service was not possible.

The summons tells the renter when and where to appear in court. The complaint states why the landlord wants to evict the renter.

Renters who did not receive a summons and complaint or were not properly served these court documents may be able to challenge “service” in court, and reverse any orders the court may have entered.

Preparing for Court

The trial usually happens on the first court date and may be the only opportunity a renter has to avoid being evicted. Knowledge is power and one of the most important things a renter can do to prepare for eviction court is to learn a little about the process.

In an eviction court case, the renter is the “defendant,” the landlord is usually the “plaintiff,” and both are referred to as “parties” (participants) to the case.

Evidence and Discovery

Renters should bring evidence that is legally important to the case and supports any defenses, such as the rental agreement (lease), records of payments, receipts, and/or photos of the residence. Witnesses may also be called. Additionally, the parties have a right to pre-trial “discovery” (to ask written questions and request documents).

Trial by Jury

If renters want a jury—not a judge—to decide whether they have to move, they must file an “Appearance and Jury Demand” **before the first court date**. If a renter is unable to file their jury demand before the first court date, the judge may grant a “continuance” (more time) to do so. There is no guarantee that the judge will grant an extension, but the inclination of the court should be to protect and to enforce the right to a jury trial. Renters will have to pay a fee to request a jury trial. If a renter cannot afford the fee, they may request a fee waiver.

Translation Services and Accommodations

The court provides free translation and interpretation services. The court can also accommodate individuals with disabilities. Renters needing assistance should arrive early and tell the clerk when checking in.

Going to Court

The court summons should list the date, time and location of the court call. Several cases will be heard during the same court call.

Before Court Begins

- Everyone is required to go through security at the Daley Center. At peak hours, the lines can be long, so plan accordingly.
- Tenants should go to the courtroom listed on their summons.
- All the cases to be heard during the court call will be listed outside the courtroom along with the case's "line number" (to the left of the case name and case number). Make note of the line number as it is needed for check-in with the clerk.
- Tenants should check in with the clerk (who is usually sitting at the front of the courtroom next to the judge's seat) and then wait for court to begin. Late arrivals should enter and just wait for their case to be called.

Renters must be in the courtroom when their case is called, otherwise the judge may enter a default Order for Possession (eviction order). Renters who absolutely need to leave the courtroom should make sure someone is available to let the court know that they have stepped out temporarily (but this does not guarantee the judge will wait).

If a renter is not present when their case is called, they can speak with the clerk after the court call is over to find out what happened in the case. **If a default Order for Possession (eviction order) was entered, the renter may be able to have the order reversed.** Renters will need to file a "Motion to Vacate." Visit one of the help desks in the Daley Center for assistance with this right away.

If neither the plaintiff (landlord) nor their attorney appears for the court call, defendants (renters) can ask the judge to "dismiss the case for want of prosecution" because the landlord was not in court to pursue their case. In order to continue with the eviction, the landlord would then need to have the decision vacated OR re-file the case.

The Court Case is Called

When the case is called by the clerk, renters should approach the judge and identify themselves as the defendant. At this point, the renter can ask for time (called a “continuance”) to do something, such as find an attorney. **Otherwise the case may go immediately to trial.**

Continuances

If requested, the judge may grant a short amount of time for the parties to do something before returning to court. Renters may ask for time to find an attorney, to file a jury demand, to serve discovery (ask written questions and request documents), or to file various other motions. Renters requesting a continuance should not go into the details of the case—if they do, the judge may assume that the renter wants to immediately go to trial. **While not guaranteed**, judges typically will continue the case for one week, if it’s the first court date.

Mediation

Mediation services are free and available in the Daley Center. Mediation allows both parties (renter and landlord) to sit down together with a “mediator” (neutral person) to see if an agreement can be reached before trial. Both parties must agree to the mediation process. If the parties think that they might be able to resolve the case with the help of a mediator, they can ask the clerk at check-in for a mediator before the court call begins, or they can ask the judge to “pass” the case in order to work with a mediator.

The Trial

When the judge (or jury) decides the outcome of a court case after hearing the evidence, it is called a “trial.” Remember, if a renter does not ask for a continuance or has not filed a jury demand that has been honored by the judge, the case will typically go to trial the very first time in court.

During the trial, the landlord must prove:

1. he/she has a right to evict the renter;
2. the renter is in possession of the unit;
3. the renter committed the alleged violation in the complaint (or the lease expired);
4. the renter was properly served with the termination notice; and
5. if the landlord is suing to get both the rental unit and claims that back rent is owed (called a “joint action”), the landlord must prove that the renter owes the amount requested.

Both sides should be given a chance to tell their side of the story and ask questions of witnesses. In practice, there is very little time—usually only a few minutes—so tenants should present the most important information first: the notice, the lease, photos, receipts, etc. and should try to keep it only to the facts.

Trials in eviction court are often informal and can be very fast, especially when one or both parties are not represented by an attorney. Sometimes the parties do not even know they just had a trial. The judge may ask a few questions or look at the notice before deciding who wins.

Common Orders

Order for Possession (Eviction Order)

An Order for Possession (eviction order) is a judgment against the renter that directs the sheriff to move the renter out of the unit. Judges often grant a stay (waiting period) to allow renters a short amount of time to move themselves. The landlord may not remove the renter; only the sheriff can remove the renter from the property. If the renter is still residing in the unit after the stay period, the landlord can then present the eviction order to the sheriff to have the renter removed. Renters with special needs may wish to contact the Sheriff's office and ask to speak to the Sheriff's social workers about the Order for Possession.

Agreed Move-Out and Compliance Status

This type of agreed order sets an agreed upon move-out date with a follow-up court date. This is an alternative to an Order for Possession (eviction order). If the renter moves out on time, the case will be dismissed without any eviction judgment. If the renter does not move out, the court will enter an Order for Possession. Renters considering this option should negotiate for a realistic move-out date.

Note: If a renter must move, this is the best kind of order to get to avoid an Order for Possession (eviction order) on their record.

Dismissal with Leave to Reinstate

This part of an agreed order protects both parties. It allows for the case to be dismissed but gives the parties the option to "reinstate" (bring the case back to court) if the renter or landlord does not do what was promised in the agreed order. Renters should be careful not to waive or give up any rights to present defenses in court should the case get reinstated.

Agreed Order for Possession

The same as an Order for Possession (eviction order) with the exception that the renter agreed to it. This is still a judgment against the renter, even if the renter agrees to it (and the court record will show the renter lost the eviction case)!

Note: Paying back rent owed, if any, before the stay expires does not allow a renter to stay in the rental unit and does not stop the eviction. The only guaranteed way to stop the eviction is with a written and signed agreement approved by the court.

Pay-and-Stay Agreement

This type of agreed order allows the renter to stay in the rental unit as long as the rent owed is paid, following a payment plan (usually over several weeks or months). Renters considering this option should negotiate for a realistic payment plan.

Sealing the Eviction

Some eviction cases can be sealed so that they are no longer accessible by the public without a court order. If the eviction was filed “without a factual or legal basis” the judge may (but is not required to) order the case sealed.

Dismissed with or without Prejudice

In settlements where rent is at issue, the landlord may agree to “dismiss” some or all of the rent claimed. If the claim is dismissed “with prejudice” the landlord is giving up the right to collect the rent. If the claim is dismissed “without prejudice” (sometimes called “non-suited”) the landlord may try to collect the amount owed later.

Judgments

The judge's decision ("judgment") will be written in a court order and become part of the public record. In a judgment after the trial, one side wins and one side loses:

- If the landlord loses, the renter gets to stay (or the landlord has to start the eviction process over) and/or the renter may owe only some rent or no rent.
- If the renter loses, an Order for Possession (eviction order) is entered telling the sheriff to evict (remove) the renter and/or a money judgment for rent may be entered against the renter.

If the renter has no attorney, it is very common for the landlord's attorney to write the court order or use a fill-in-the-blanks form ("Form Order"). If neither party is represented by an attorney, either the landlord or the renter will need to write the order. **It is very important to review everything in the order to make sure it is correct, because what is in the order is what the court will enforce.**

Settlements

If the renter and landlord can agree on a solution to settle the eviction case, they may ask the judge to make their agreement an order of the court. If the judge accepts the agreement, it is written in a court order called an "agreed order."

In a settlement, both sides can win:

- Renter may agree to catch up on rent owed and stay
- Landlord may agree to lower rent until repairs are made
- Renter may agree to move without getting an "eviction" on their record
- The parties may resolve other points of disagreement

Why Settle?

Eviction court only decides how much rent is owed and who gets to live at the property. Without an attorney it can be very difficult for renters to get the outcome they desire in court. It is possible and many times more desirable to come to an agreement with the landlord to settle the problems that led them to court. Renters who settle their case without a trial may be able to negotiate for:

- Time to move (if they have to move)
- Reduction in rent due (if any)
- A court decision that is **not** a judgment against the renter—it is very important for the renter to **avoid** an Order for Possession (eviction order)!

Avoid Time and Expense

In eviction court, the parties have a right to pre-trial “discovery” (to ask written questions and request documents) and a trial by jury. This may mean several visits to court. Even if the court enters an Order for Possession (eviction order) the landlord must pay a fee to the sheriff and then wait for the sheriff to evict the renter.

Avoid Risk and Uncertainty

The technical rules in eviction are very important. The judge will want to know:

- Did the landlord properly deliver the termination (eviction) notice to the renter?
- Did the landlord’s termination notice give adequate time?
- Did the landlord properly serve the renter?
- Did the renter attempt to fix the problem within the cure (time) period?

Renters can also raise these (and other) defenses:

- Renter did not receive the notice or notices
- Renter does not owe some or all of the rent because of the poor conditions in the unit
- Eviction is retaliatory because the renter complained about conditions in the unit

In settlement, both sides know exactly what the eviction court outcome will be because it is their agreement.

How to Negotiate a Settlement

Negotiations (also called “settlements” or “deals”) in eviction court are often very informal. Either party may start the process by asking the other side if it would be possible to come to an agreement. The judge may also ask the landlord and the renter to go out in the hall to talk, or an attorney may try to talk with the renter before court begins to see if a settlement can be reached. **Renters without an attorney should keep in mind that the landlord’s attorney is working for the landlord, not the renter (and not the court).**

Negotiation is a Two-way Street

In negotiation, the renter and the landlord sides come together with the goal of reaching an agreement that is acceptable to both parties. Unlike a court decision, where one person wins and one person loses, in settlement, the parties try to find a middle ground. If one side has a strong case, the other party may have to give up something in order to come to an agreement. **It is very important for renters to think about what they need from a settlement.**

Some issues that can be negotiated include:

- Amount of rent owed, if any
- Moving expenses
- Time for renter to move
- “Neutral reference” to prospective (new) landlords

Beware: Landlord attorneys often ask renters “when can you move” and then write up an Agreed Order for Possession (eviction order) to present to the court. Agreeing to an Order for Possession is agreeing to lose the case and be evicted. It is a judgment against the renter and the court record will show the tenant **lost** the eviction case. Renters who want to move can negotiate for a much better deal!

Parties must also be aware of issues that they are not willing to concede (“non-negotiables”). These non-negotiables may make it more difficult to settle. For instance, if the landlord insists that the renter must move and the landlord’s case is weak, the landlord might have to agree to give the renter time to move and/or give up or reduce rent claimed or even pay for relocation assistance. If the renter insists on not having a judgment for rent and the renter’s case is weak, the renter might have to agree to move more quickly.

Many times the parties may think that they have come to an agreement, but when it is written down, it is not what they thought they had agreed to. If the renter thinks they are being bullied or pressured to sign something they do not like, **stop**. Either side always has the right to stop negotiation and have the case decided at trial.

Both parties should read the agreement carefully before it is given to the judge for signature to ensure that it accurately reflects every detail of the agreement between the parties. **If something is not written on an agreed order or separate written agreement, it may not be enforceable later.** Once an agreement is signed or entered in court, it is difficult to change.

What Should Be Negotiated?

It is important for renters to consider the strengths and weaknesses of their case, what they need from the settlement, and what their non-negotiables are. Renters should consider these questions:

- How long, realistically, will it take to find a new place and to move?
- How much will it cost to move and will I have to pay a new security deposit?
- When will I get my current security deposit (if any) returned to me?
- If rent is owed, can I pay it and when can I pay it?
- Does the landlord owe me any money for repairs or overpayments of rent that I have made?
- What will the landlord say about me to prospective (new) landlords?
- Will the case be dismissed or will there be a judgment against me?
- Can I get the eviction court record sealed?

Important Things to Consider

- Avoid an Order for Possession (eviction order), if possible. Orders for Possession can appear on tenant screening reports and credit reports, making it more difficult for the tenant to move. Instead, consider an Agreed Move-Out and Compliance Status.
- Be realistic with agreed move-out dates and payment plans. Renters may face eviction if they promise something they cannot fulfill.
- Renters who believe that the eviction was filed “without a factual or legal basis” should ask the judge to seal their eviction record as part of any settlement.
- Don’t be afraid to ask questions. Renters who are unclear about anything should ask for an explanation.
- When in doubt, seek legal assistance.

Sealing the Eviction Record

Even if the renter wins the eviction (or has it dismissed in a settlement) the record of the eviction filing may appear on tenant screening or credit reports. Therefore, if the renter believes that the eviction was filed “without a factual or legal basis” (bad notice, the reason for the landlord’s termination notice is wrong, retaliation, etc.), the renter can negotiate to get the eviction case sealed as part of any agreement. It is still up to the judge to decide, but the landlord can agree to **not** object to the renter’s “motion” (request) to seal.

After the Final Order

Renters should make sure to get a copy of the final order that is stamped by the clerk. It is very important that both parties follow the order of the court. Failure to follow the order of the court could lead to additional court actions. If the case was not settled by agreement, the losing party may consider filing a “Motion to Reconsider” or an appeal within 30 days of the final judgment.

Motions to Extend the Stay Period

Renters with an Order of Possession should make arrangements to move before the sheriff comes out to remove the renter. Renters who move on their own have more control over packing and storing important belongings before they are locked out by the sheriff.

Renters may request more time to move by filing a “Motion to Extend the Stay Period” with the court. This motion should state the reason why renters cannot move in time. It must be properly served on the landlord, and must also be left with the Sheriff, so that the Sheriff will know to wait until the court rules on the motion. The motion should be filed within 30 days of judgment. Visit one of the help desks in the Daley Center for assistance with this.

No Legal Advice Intended

This brochure contains information that is not intended, and should not be taken, as legal advice on any particular set of facts or circumstances. You should contact an attorney for advice on how the law applies to your situation.



Lawyers' Committee for Better Housing

33 N. LaSalle, Suite 900 - Chicago, IL 60602

The mission of Lawyers' Committee for Better Housing (LCBH) is to provide free legal and supportive services to improve housing stability for lower income renters while advocating for the rights of all renters until everyone in Chicago has a safe, decent, and affordable place to call home. For more information on the eviction process, visit our website at www.lcbh.org/eviction.

Finding an Attorney

Lawyers' Committee for Better Housing (LCBH)

LCBH helps low and moderate income renters in Chicago including Housing Choice Voucher holders. LCBH accepts clients on a case-by-case basis depending on need and situation. To qualify for services ALL renters must go through the LCBH intake process. Eviction cases often move very quickly, so contact our office as soon as possible to allow enough time for us to determine if and how we can help. (312) 347-7600.

Resource Center for People without Lawyers

The Center provides brief legal advice and assistance and referrals to other services. It is located in Room CL-16 in the basement of the Daley Center.

CARPLS

CARPLS provides legal advice and referrals to individuals who cannot afford to hire a private attorney. (312) 738-9200.