

## **RESIDENTIAL EVICTION INFORMATION FOR TENANTS**

If you have received a ***Residential Eviction Complaint*** and ***Summons***, your landlord is trying to evict you. An eviction is formally called an FED (Forcible Entry and Detainer). It is a complaint filed with the court by a landlord to remove a tenant from a dwelling (residence) or piece of property owned or managed by the person filing the complaint. **You have to appear in court on the date listed on the Summons.**

### ***COURT CLERKS CANNOT GIVE LEGAL ADVICE!***

Landlord/Tenant law is *very* complex and detailed. Most of the laws are in chapters 90 and 105 of the Oregon Revised Statutes (ORS). You must also follow other laws, procedures, and prior appellate court decisions, including the Oregon Evidence Code (OEC), the Uniform Trial Court Rules (UTCRC), and the Oregon Rules of Civil Procedure (ORCP).

([www.courts.oregon.gov/rules/Pages/default.aspx](http://www.courts.oregon.gov/rules/Pages/default.aspx)) If you do not follow the laws *exactly*, the court may order you to pay the landlord's lawyer fees. You should talk to a lawyer before you respond to an eviction on your own.

Contact the Oregon State Bar at 503.620.0222 or (in Oregon) 800.452.8260 or go to [www.oregonstatebar.org](http://www.oregonstatebar.org) for information and help finding a lawyer

**Following these instructions will not guarantee that you win your case.** These instructions are general and may not apply in a given situation. These forms do NOT provide legal advice. If you lose your case, you may have to move out of your home immediately and your credit may be damaged. You may have difficulty renting property in the future.

### **The landlord is the *plaintiff*, and the tenant is the *defendant* throughout the case**

A judgment for the plaintiff (landlord) means that you will probably have to move out and pay the costs of filing and serving the complaint. The plaintiff (landlord) must file a separate case to collect back rent or damages. A judgment for the defendant (tenant) usually means that you do not have to move out of the property. It may also include the costs of responding to the complaint, including any lawyer fees.

### **Fees**

You do not have to pay a fee to appear in court on the date listed on the *Summons*. If you do not settle the case with the plaintiff (landlord) on that date, you can file an *Answer* and go to trial. **You have to pay a fee to do this.** If you are low-income, you can ask the court to defer or waive the fee. Fill out an *Application and Declaration for Deferral or Waiver of Fees*, and an *Order Regarding Deferral or Waiver of Fees* and give it to the court clerk with your *Answer*.

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### **YOUR FIRST COURT DATE**

Eviction cases move very quickly; you need to decide what you want to do before the first appearance date

#### **Your choices are:**

- **Pay the full amount that you owe.** If your eviction is because of nonpayment of rent or fees, you can pay the full amount that you owe at any time before trial and ask the judge to dismiss the case. You still have to appear in court to tell the judge that you have paid. You may still have to pay the plaintiff's filing fees, but you do not have to pay those fees to have the case dismissed.
- **Make an agreement** with the plaintiff (landlord) before your court date. You still have to appear in court to file your agreement with the judge. You may still have to pay the

plaintiff's filing and service fees and a prevailing party fee.

- Your agreement can be for a move-out date, a payment plan for back rent, repairs, or anything else that you and your landlord need to resolve.
  - ◆ If you've already moved out, you still need to appear in court to avoid a judgment on your record.
- You can also try to reach an agreement at court. Appear at the time listed on the *Summons*. The judge will call your name and then you can talk to your landlord. A mediator may be available. A mediator can help you resolve your dispute, but *cannot* make decisions for you or order either party to do anything. Mediation is confidential. If you do not reach an agreement, see "**File an Answer**" below.
- Make sure that you can actually do what you agree to. If you don't, the landlord can go back to court and ask that you be ordered to leave in 4 days. You will then have the right to ask for a hearing. If you lose, you may have to pay the landlord's filing and service fees and a prevailing party fee.
  - ◆ At the hearing, you will only be able to argue that you followed the agreement or that the landlord prevented you from doing so. There may be other limited reasons you can get a hearing about your agreement. Talk to a lawyer to find out if you think this applies to you.
  - ◆ This hearing will only be about the agreement that you made with the landlord, not about the reasons for the eviction or your lease.

➤ **File an *Answer* to dispute the eviction**

**If you are the parent of a child under 1 year of age**, you can file a motion asking the court to reschedule ("continue") your eviction trial for 90-104 days if:

- the eviction is based on non-payment of rent
- the child lives with you
- you receive medical assistance through the Oregon Health Plan
- you have been approved for health-related social needs housing support through the Oregon Health Authority or a coordinated care organization *and*
- you delivered documentation of the approval for housing support to Plaintiff (your landlord)

Go to [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms) (in the "Civil" category) to find the motion form. Your *Motion* must be filed more than 3 days before your trial is scheduled unless you have good cause to file less than 3 days before.

You can stay in the property and appear in court at the time and date listed on the *Summons*. If you cannot reach an agreement with the plaintiff (landlord) at that time, you can file an *Answer* with the court clerk on the same day and pay the required fee. You must mail a copy of your *Answer* to the plaintiff (landlord) the same day you file it. The clerk will set your case for a trial where you can dispute the eviction. At trial, you will be able to present evidence and testimony to the judge to dispute the plaintiff (landlord)'s claims (*see "Trial" below*). FED laws start at ORS 90.100. Your local law librarian can help you, or go to Chapter 90 of the Oregon Revised Statutes - [https://www.oregonlegislature.gov/bills\\_laws/ors/ors090.html](https://www.oregonlegislature.gov/bills_laws/ors/ors090.html).

- Your *Answer* must state a **legal** defense to the eviction. Saying that you can't find a new home or can't afford to move is *not* a legal defense. Some possible defenses are:
  - The landlord did not make necessary repairs ([ORS 90.321, 90.360](#))
  - The damage or violation listed on the Notice has been fixed, *and* the law allows

you to fix it. See a lawyer if you do not know if the claimed damage is something you are allowed to fix. ([ORS 90.392](#))

- The landlord is discriminating against you because of your race, gender, family situation, religion, physical or mental disability, sexual orientation, or other reason covered by fair housing laws ([ORS 90.390](#))
- The landlord is trying to evict you because you complained (or the eviction is otherwise being used to get back at you – called “retaliatory”) ([ORS 90.385](#))
- The landlord is trying to evict you because you have been a victim of domestic violence, sexual assault, bias crime (see [ORS 166.155-166.165](#)), or stalking ([ORS 90.449](#))
- The eviction notice is legally incorrect. You will have to read the laws very carefully to use this defense, and you should talk to a lawyer if you think the notice was incorrect.
- There are more defenses available. If you think you have a defense that is not listed on the *Answer* form, talk to a lawyer.
- When you file the *Answer*, the court clerk will set a trial date within 14 days. Find a lawyer and prepare your defense immediately.

Read the *Instructions for Landlords* for more information about what the landlord has to do

- If you stay in the property but do not appear for your court date, the plaintiff (landlord) will usually get a judgment for you to move out and pay the costs of the case. The sheriff may remove you from the property as early as 4 days after the move-out date on the judgment. The plaintiff (landlord) can move, store, or dispose of your personal property according to state law (ORS 90.425, 90.675) and you will be responsible for the costs of moving and storage. Talk to a lawyer about how to recover your personal property.
- If you appear for your court date and the plaintiff (landlord) does not, the court will dismiss the eviction.

### **If You Are in the Military**

If you are in active military service of the United States and your service prevents you from responding to this action, you may be covered by the Servicemembers Civil Relief Act (SCRA). The SCRA has very technical and complex rules about whether you are covered and what that means. DO NOT rely on your enlistment status to protect you. Talk to a legal advisor if you believe SCRA applies to you. The Oregon State Bar Military Assistance Panel can help you find a lawyer. Go to [www.osbar.org/docs/ris/militaryflier.pdf](http://www.osbar.org/docs/ris/militaryflier.pdf) or [www.oregonstatebar.org](http://www.oregonstatebar.org).

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### **TRIAL**

At trial, the judge will hear evidence and testimony, and will make a decision (called the “judgment”). Both parties may present physical evidence (like photographs, rental agreements, and the eviction notice) and call witnesses. You may read from a prepared statement or refer to notes, but do not expect the judge to read your notes or any witness statements.

The plaintiff (landlord) must prove the case by showing facts supporting eviction of the tenant, including proof of proper notice. You should be prepared with facts supporting any defenses you have. The Oregon Evidence Code (OEC) and Oregon Rules of Civil Procedure (ORCP) govern how to admit your evidence and what you need to prove. Links to these rules are on Page 1 of this form. Anything you present to the court may be viewed by the other party and may become part of the public record. It may be possible to protect certain kinds of information from disclosure. Talk to a lawyer if you are concerned.

Talk to a lawyer about how to properly prove your case. You may believe that the facts are on

your side, but if you don't follow proper court procedures, you may lose anyway.

If the judge decides in favor of the defendant (tenant), the court may dismiss the case and require the plaintiff (landlord) to pay the defendant's (tenant's) costs and lawyer fees.

If the judge decides in favor of the plaintiff (landlord), the court may order you to leave the property (move out). The defendant (tenant) may also have to pay the plaintiff (landlord)'s costs and lawyer fees.

Go to [www.osbar.org/public/legalinfo/tenant.html](http://www.osbar.org/public/legalinfo/tenant.html) for information about what may happen after your judgment

**COURTROOM RULES:** *These are general courtroom rules. Judges may have additional rules.*

- \* Appropriate dress is required (see [UTCR 3.010](#) and local court rules)*
- \* Caps and hats must be removed upon entering the courtroom*
- \* Food and drink are not allowed in the courtroom (including gum)*
- \* Weapons are not allowed in any portion of the courthouse*
- \* Pagers, cell phones, and all other electronic devices that may disrupt court proceedings must be turned off (not just silenced, signals interfere with recordings)*
- \* Audio and video recording is not permitted without advance permission from the judge*