

# SO YOUR LANDLORD WANTS TO EVICT YOU...

A Handbook on Tenants'  
Rights During Evictions

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## **IMPORTANT!**

This booklet is for general educational use only. *It is not a substitute for the advice of an attorney.* The information in this booklet is accurate as of March 2019. *There is a one year statute of limitations on all claims brought under the Oregon Residential Landlord and Tenant Act.* To sue your landlord for claims under this Act, you must file your claims in court within one year of the date that your landlord violated the Act.<sup>1</sup>

## **MOBILE HOMES AND SUBSIDIZED HOUSING RESIDENTS**

If you are a tenant in subsidized housing (such as Section 8 Voucher, Low Rent Public Housing or HUD subsidized housing) or you rent space for a mobile home, you may have *important additional rights*. For example, your landlord may only be able to evict you for good cause. You should consult an attorney. If you are low income you should consult Legal Aid Services of Oregon at 503-224-4086.

## **A NOTE ABOUT THE FOOTNOTES**

Throughout this packet, there are footnotes that give you the applicable Oregon law (known as the Oregon Revised Statutes). These citations provide you first with the chapter number followed by a period and then the section number. For example, ORS 90.510 means that it is in Chapter 90 of the Oregon Revised Statutes, Section 510. You can find the law online at: <http://www.leg.state.or.us/ors/>.

## **ADDITIONAL RESOURCES**

Legal Aid Services of Oregon serves low-income residents: 503-224-4086;  
[www.oregonlawhelp.org](http://www.oregonlawhelp.org)

The Lawyer Referral Service of the Oregon State Bar offers referral to private attorneys for a \$35 advice appointment: 503-684-3763

The Bureau of Labor and Industries (BOLI) Civil Rights Office investigates complaints of housing discrimination and enforces fair housing law: 971-673-0761

The Fair Housing Council provides information, resources and assistance in fair housing cases: 1-800-424-3247

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<sup>1</sup> 90.510(10)

**The most important things to remember are:**

## **Go to court and be on time**

If you do not go to court or are late to court and your landlord is there, you will lose automatically.<sup>2</sup> This means your rental record will show an eviction and you may have trouble renting in the future.

No matter what your situation is, it is best to go to court. You should go even if you do not think you can win your case or if you have already moved out. If you go to court you may be able to get more time to move and/or avoid getting an eviction on your record. If you have not moved out yet, the judge will encourage you and your landlord to reach an agreement without a trial.

*Most cases are settled without a trial. Even if you expect your landlord to win, you have something to gain by going to court.*<sup>3</sup>

## **Make sure you will be able to keep any agreement that you reach with your landlord in court**

At court, the judge will encourage you and your landlord to reach an agreement without a trial. If you reach an agreement with your landlord, make sure you will be able to keep it! This kind of agreement is called a “stipulated agreement”<sup>4</sup> and will be presented to the judge. Once the judge signs it, it is the court order. If you are unable to keep any part of the agreement, your landlord can go back to court and evict you very quickly, and you will have little opportunity to defend yourself.<sup>5</sup>

If you are trying to reach an agreement with your landlord but your landlord keeps suggesting an arrangement that you cannot stick to, ask for a mediator to help. Tell the mediator about your situation and explain what you *can* do. Try to reach an agreement that will really work for you.

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<sup>2</sup> 105.137(1)

<sup>3</sup> 105.137(2)

<sup>4</sup> 105.145(2)

<sup>5</sup> 105.146

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## HOW TO GET TO COURT

In Multnomah County, eviction cases are heard in Room 120 of the County Circuit Courthouse. The Courthouse is located in downtown Portland at 1021 SW 4<sup>th</sup> St., between Salmon and Main. There is usually a line to go through security before entering the Courthouse so get to court about 20 minutes early.

In Clackamas County, eviction cases are heard either at the Clackamas County Circuit Courthouse **OR** the County Justice Court. The Clackamas County Circuit Courthouse is located at 807 Main St. in Oregon City. The Justice Court is located at 11750 SE 82nd Ave Suite D, Happy Valley, OR 97086; Phone:(503) 794-3800 (in the far NE corner of the Clackamas Town Center parking lot). Read the summons carefully regarding the location of your court case.

In Hood River County, eviction cases are heard at the Hood River County Circuit Courthouse. The Courthouse is located at 309 State St. in Hood River.

In Wasco County, eviction cases are heard at the Wasco County Circuit Courthouse. The Courthouse is located at 511 Washington St. in The Dalles.

In Sherman County, eviction cases are heard at the County Justice Court. The Courthouse is located at 500 Court Street in Moro.

## EVICITION PROCESS OVERVIEW

The following is a brief overview of the eviction process.

**Step:**

**Options:**

Step 1 – Landlord gives tenant a notice to move out (called a “Termination Notice”)	<ul style="list-style-type: none"> <li>• Settle and stay</li> <li>• Move out</li> <li>• Decide to fight eviction in court</li> </ul>
Step 2 – If the tenant does not move out by the move out date in the Termination Notice, landlord files an eviction complaint against tenant	
Step 3 – Tenant served with Summons to appear in court at <i>First Appearance</i>	<ul style="list-style-type: none"> <li>• Settle and stay</li> <li>• Move out</li> <li>• Decide to fight eviction in court</li> </ul>
Step 4 – <i>First Appearance</i> at court	<ul style="list-style-type: none"> <li>• Report settlement</li> <li>• Ask for mediation</li> <li>• Ask for time to move</li> <li>• Ask for trial</li> <li>• Case dismissed because landlord does not show up</li> <li>• Landlord wins because tenant does not show up</li> </ul>
Step 5 – File an <i>Answer</i>	(See p. 21 for details)

Step 6 – Trial	<ul style="list-style-type: none"> <li>• Tenant wins and gets to stay</li> <li>• Landlord wins and tenant has to move in four days</li> </ul>
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**If the landlord wins...**

Step 6 – Court orders tenant to move (called a “Judgment of Restitution”). This may come at <i>First Appearance</i> or after Trial	<ul style="list-style-type: none"> <li>• Tenant moves</li> <li>• Tenant stays past date in order.</li> <li>• Sherriff can remove tenant if tenant stays past date in order</li> </ul>
Step 7 – Sheriff removes tenant from the property. Sheriff or landlord moves tenant’s belongings	<ul style="list-style-type: none"> <li>• Tenant contacts landlord within 5 days (8 days if notice served by mail) and arranges to get belongings back within 15 days</li> <li>• If tenant fails to claim belongings in 15 days, landlord can sell or dispose of belongings</li> </ul>

**SO YOUR LANDLORD WANTS TO EVICT YOU...**

The technical term for an eviction case is *Forcible Entry and Detainer* (“FED”). If you hear the term “FED” in court or elsewhere, it refers to the legal process of eviction.

An eviction starts with a set of legal papers (a Summons and a Complaint).<sup>6</sup> The legal papers will require you and the landlord to appear in court on a certain date because your landlord wants to get a court order to evict you from the place you are renting. The court date shown in the legal papers is called a *First Appearance*. The legal papers will be served to you by the Sherriff who will either post the eviction papers on your door or personally hand them to you. You will also be mailed a copy of the legal papers.

The complaint was filled out by the landlord and is attached to the summons. It states the reason the landlord believes you no longer have a right to remain in the place you rented. Your landlord must also attach a copy of the Termination Notice which he or she gave you before filing a lawsuit.<sup>7</sup> The landlord can only file an eviction once the date to move out in the Termination Notice has passed and you have failed to move out. If the date has not passed yet, you have a defense to the eviction.

The FED is *not* a lawsuit for money even though you may owe back rent.<sup>8</sup> Back rent could be the *reason* the landlord is going to court to evict you, but your landlord cannot force you to pay back rent as part of the eviction court case. If your landlord wants to get the back rent, he or she will have to sue you for it separately unless you agree to pay it voluntarily (for example, in a stipulated agreement -- see p. 10). *If the landlord wins, however, he or she can get a money judgment for his or her costs (service fee, filing fee, etc.), and if he or she hires an attorney the court can order you to pay the attorney fees.*

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<sup>6</sup> 105.113

<sup>7</sup> 105.124

<sup>8</sup> 105.110

## PART I: FIRST APPEARANCE

### Do I have to go to *First Appearance*?

You should always go to *First Appearance*!!

The legal papers will tell you the date and time that both you and the landlord are required to appear at *First Appearance*. No matter what your situation is, you stand to gain from showing up in court. Make sure you get to court on time. Some courthouses can have long lines to get through security so you should plan on being there early.

If you do not show up in court and your landlord does, your landlord will win automatically.<sup>9</sup> This means you will have to move. If you do not move voluntarily, the landlord will have the court post a notice stating that the sheriff will remove you in four days.<sup>10</sup> If you move without taking your belongings, your landlord can have your belongings moved out of the rental unit and into storage until you either claim them or give up the right to have them returned (see pg. 23 below).<sup>11</sup>

If you have a good reason for missing the *First Appearance* and you act quickly, you may be able to have the default judgment in favor of the landlord set aside.<sup>12</sup> You will need to go to speak with the court clerk as soon as possible after your missed *First Appearance* and ask for the paperwork to fill out if you missed *First Appearance*. You will have to appear in front of the judge to explain why you missed your *First Appearance*. If the judge finds that you had good cause for missing your court date, he or she will give you a new court date.

If you show up at *First Appearance* and your landlord does not, you should request that the case be “dismissed with prejudice.”<sup>13</sup> It is in your interest to go to the *First Appearance* even if you believe your landlord may not show up. If your landlord has a good reason for missing the *First Appearance*, he or she may also be able to get the case reinstated. If this happens, you will get a card in the mail setting a new date and time for you to show up in court.

If neither you nor your landlord show up, the case will also be dismissed.

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<sup>9</sup> 105.137(1)

<sup>10</sup> 105.151(1)

<sup>11</sup> 90.425(7)

<sup>12</sup> ORCP 69(C)

<sup>13</sup> ORCP 54(B)(4), saying that unless the court otherwise specifies a dismissal is without prejudice

## What Happens at *First Appearance*?

The way *First Appearance* is handled varies from judge to judge. The purpose is to let the court know whether:

- the tenant has moved;
- the tenant plans to move shortly;
- the landlord wants to dismiss the case;
- the landlord and tenant have agreed to settle the case; or
- the tenant requests a trial.

When you get to the courthouse go straight to the courtroom and find a seat. Be sure to shut off your cell phone or other electronic device. The judge will begin to call the names of all the people who are scheduled for *First Appearance*. When you hear your name, stand up and tell the judge that you are present and that you are the defendant. Do not leave the courtroom until your name has been called and the judge knows you are there.

Most judges will start by explaining how the court process will work. After your name is called, the judge may encourage you and your landlord to go into the hall to see if you can reach an agreement that will resolve the case. If you have not settled the case already when your name is called, and you do not already have a lawyer, you should go into the hall to try to reach an agreement. If you cannot reach an agreement with your landlord, you may want to ask your landlord if they would be willing to go to mediation.

When the judge calls your name and you have answered “present,” you may:

1. Report a Settlement: If you and your landlord reached a settlement before you got to court, then you should tell the judge the details of the agreement. The judge will issue a formal court order to enforce the terms of the agreement. You will have to obey the order. The tenant usually cannot change or challenge this type of order. Before you sign such an agreement you should see the section on *Agreements With Your Landlord* below.
2. Go Out Into the Hall With Your Landlord to Reach a Settlement: If you did not reach an agreement with your landlord before you got to court, then the judge may ask you to go into the hall to try and work things out. If you are having trouble negotiating with your landlord, you may want to see if the landlord would be willing to talk to a mediator. You should ask the judge for a mediator. If you reach an agreement with your landlord in the hallway, see the section on *Agreements With Your Landlord* below for more information. When you have reached an agreement, you must return to the courtroom to tell the judge about it.
3. Ask That the Case Be Dismissed: If your landlord is not present, you should ask the judge to “*dismiss the case with prejudice.*” You may get a card later in the mail telling you to return to court if the landlord had a good reason for missing the *First Appearance*.



4. Report That You Have Moved: If you have moved already, tell the judge that you have moved already and ask the judge to “*dismiss the case with prejudice.*”
5. Ask for a Trial: If you are unable to work out an agreement with your landlord, you may ask for a trial. If you do think you want a trial, you should consider this decision carefully and review the section on trials (see pg. 24 below).

## Agreements With Your Landlord (Stipulated Agreements)

It may be to your advantage to make an agreement with your landlord rather than go to trial. If you reach an agreement, you and your landlord will need to write it down and both sign it. You will then present it to the judge who will review it and make sure you understand the agreement. It will then become the court *Order* and can be enforced by the landlord by going back to court. If your landlord says you failed to keep the agreement, you can be evicted very quickly. You should be sure that your agreement is one that you can realistically keep.

Things to keep in mind when making agreements with your landlord:

- If you owe your landlord money, part of your agreement will probably be that you will pay your landlord what you owe. Your agreement can include any amount of back rent you owe, but it cannot include anything about *future* rent for more than three months from the date of the agreement.<sup>14</sup> Also, if you set up a repayment schedule for past due rent or other monies owed, this schedule cannot last for more than six months.<sup>15</sup>

*For example, if you are at First Appearance on September 10 and owe your landlord \$600 in back rent, your agreement could state that you will pay \$100 per month for the next six months. Your repayment schedule could not bind you to pay \$50 per month for twelve months, because a payment schedule for money owed cannot last more than six months from the date you come to court. The agreement could also say that you will pay your rent for October, November, and December on time. However, your agreement could not say that you will also pay the rent for January or February on time because that is more than three months from the date of the agreement. If you did not pay rent in January or February on time your landlord would have to go through the regular eviction procedure (although you would still have to pay the \$100 towards back rent for these months to avoid an eviction for noncompliance).*

- Your agreement may say that you will abide by other provisions of your rental agreement besides repaying your landlord money you owe. For example, you might agree not to have loud parties during quiet hours or not to have guests stay with you for longer than the rental agreement allows. Your landlord cannot ask you to do these things for more than six months past the date of the agreement.<sup>16</sup>

Regardless of what your agreement is, the eviction case will be dismissed by the court after 12 months if you follow the terms of the stipulated agreement.<sup>17</sup> When you present the stipulated agreement to the judge, you can ask that case be dismissed earlier than 12 months: such as one month after the last date you are agreeing to do something under the

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<sup>14</sup> 105.146(2)(c)

<sup>15</sup> 105.146(2)(b)

<sup>16</sup> 105.146(2)(a)

<sup>17</sup> 105.146(3) and 105.146(7)(b)

stipulated agreement. It is always better for the tenant to have the case dismissed as soon as possible. If you comply with the terms of the stipulated agreement and no further action is taken, you will not have an eviction judgment on your record once the case is dismissed.

If you are served with a “Red Card” (a notice which says the sheriff will come to remove you from your home in four days) after you have signed a stipulated agreement and you believe you have followed the agreement with your landlord or that you have a defense to your failure to follow the agreement, go down to the Courthouse immediately and ask for a hearing. At the hearing you can give evidence of compliance as well as other defenses, including whether:<sup>18</sup>

- Your landlord agreed to change the stipulated agreement;
- Your landlord failed to do his or her part of the stipulated agreement which caused you to be unable to follow the terms of the agreement;
- Your landlord prevented you from complying with the stipulated agreement;
- The agreement was made in bad faith or is “unconscionable” under the law;
- You have monetary claims under the Oregon Landlord Tenant Act that have arisen after the date that the court entered the stipulated agreement **and** those claims offset the amount of rent owed; or
- Compliance with the stipulated agreement would conflict with other rights you have in your tenancy
  - *For example, if you live in public housing you cannot sign away your right to “good-cause only” eviction, even with a stipulated agreement which might indicate that such rights had been waived.*

## **PART II: TRIALS**

### **Trials Overview**

If you do ask for a trial you should be sure you have a legal defense (see pg. 10). If you can prove one of the following then you may have a defense:

- That your landlord’s complaints are not true;
- That the rental unit was not properly maintained;
- That the termination notice was not delivered properly;
- That your landlord is evicting you because you are a victim of domestic violence, stalking or sexual assault;
- That the landlord is evicting you because you are a member of a protected class under fair housing laws;
- That your landlord entered your unit unlawfully; or
- That your landlord shut off your utilities or otherwise violated the law.

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<sup>18</sup> 105.149

You should carefully consider whether you want to ask for a trial. Ask a lawyer for advice. Read this booklet carefully to determine whether your defense is likely to win.

If you ask for a trial and lose, you may have to pay the landlord's court costs and attorney fees.<sup>19</sup> Your obligation to pay these costs will last for ten years (and this period of time may be extended). If you earn only minimum wage and you do not have valuable possessions, it will be difficult for a landlord to collect this money. If you do not ask for a trial at *First Appearance* then your landlord cannot collect attorney's fees unless you have agreed to pay these fees as part of a stipulated agreement or you fail to follow the terms of the agreement and lose at a hearing on whether you have a defense to not following the agreement.

If you ask for a trial, you must file an *Answer*.<sup>20</sup> The clerk will give you an *Answer* form if you do not have a lawyer. *Answer* forms are also usually available in the courtroom where your First Appearance is held. You must fill out the *Answer*, sign it, and return it to the clerk on the same day as *First Appearance* if you are requesting a trial. You must give a copy of the *Answer* to the landlord and you should keep a copy for yourself.

When you file your *Answer*, you will also have to pay a filing fee the day of *First Appearance*.<sup>21</sup> There is also a per-day trial fee.<sup>22</sup> If you cannot afford the fees, you can request either a fee waiver or a fee deferral by filling out an Application for Waiver or Deferral of Fees. This Application is available at the clerk's counter and must be filed with your *Answer*. Along with the Application, you will also need to show 2 months of proof of your income and expenses (such as a copy of your rental agreement to show how much rent you pay, utility bills, pay stubs, benefit award letters, etc.) to the clerk. The clerk will review this proof along with your Application when you file your *Answer* to determine if you are qualified for either a waiver or a deferral based on your income. If you are granted a fee deferral, the clerk will likely establish a payment schedule for your court fees.<sup>23</sup> If you win your case, ask the court to order the landlord to pay your fees.

### **Using the form *Answer***

The *Answer* is a form that lists the most common defenses to an eviction. It is an easy way to tell the court how you want to defend yourself. If you want to use the answer, you must also want to stay in your rental unit and must have a good defense.. You cannot use the *Answer* to get money from your landlord. If you think your landlord owes you money, you should see a lawyer. If you are low income and cannot afford a lawyer, Legal Aid may be able to help you.

Before you fill out the *Answer*, look at the Complaint that came with your Summons to see which reason your landlord checked for the eviction. Also, look at the Termination

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<sup>19</sup> 90.255

<sup>20</sup> 105.137(7)(a)

<sup>21</sup> 21.110

<sup>22</sup> 21.270

<sup>23</sup> 21.682 and 21.685

Notice you received from the landlord to see if it matches the reason the landlord checked.

The *Answer* is shown on the following page. **Note:** this is an example only and not an actual *Answer*. Do not fill this out and return it to the court! You must pick up a copy of the *Answer* at either the courtroom that your *First Appearance* is held in or the clerk's counter of the Courthouse.

**IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR MULTNOMAH COUNTY**

In the Matter of	)	
	)	
Plaintiff(s)-Landlord,	)	Case No.
	)	
vs.	)	ANSWER TO EVICTION
	)	
Defendant(s)-Tenant.	)	

I (we) deny that the plaintiff(s) is (are) entitled to possession because:

The landlord did not make repairs.

List any repair problems: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The landlord is attempting to evict me (us) because of my (our) complaints (or the eviction is retaliatory).

The landlord is attempting to evict me because of my status as a victim of domestic violence, sexual assault or stalking.

The eviction notice is wrong.

List any other defenses: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I (we) may be entitled as the prevailing party to recover attorney fees from plaintiff(s) if I (we) obtain legal services to defend this action pursuant to ORS 90.255.

I (we) ask that the plaintiff(s) not be awarded possession of the premises and that I (we) be awarded my (our) costs and disbursements and attorney fees, if applicable, or a prevailing party fee.

Date: \_\_\_\_\_.

\_\_\_\_\_ Defendant's Telephone Number  
 \_\_\_\_\_ Signature of Defendants(s) – Tenants

## How to Decide What Defenses You Can Claim

A defense to an eviction is a legal reason that you should not be evicted. The kind of defense that you can claim depends on which type of Termination Notice the eviction is based. For example, lack of repairs can be a defense to an eviction based on a 72-hour notice for nonpayment of rent, but it may not be a defense to an eviction based on a 30-day notice. The chart below shows the most common types of Termination Notices and the defenses that can be used. More details about each defense are provided in the descriptions below.

TYPE OF TERMINATION NOTICE	SOME POSSIBLE DEFENSES
72 hour notice - nonpayment of rent	<ul style="list-style-type: none"> <li>• Eviction notice is wrong/Bad notice</li> <li>• Repairs needed</li> <li>• Other defense, e.g., rent in excess of the rent stabilization limit, waiver, lockout, illegal entry by your landlord, etc.</li> </ul>
“No cause” notice: - 30 day (for month-to-month tenancies, but <u>only</u> where any of the tenants in unit have lived there less than one year) - 30 day (only allowed at the <b>end</b> of a fixed term tenancy, if the lease runs for less than 1 year) - 60 day (only allowed if the landlord lives on the same property as the tenant & there are only two units on the property & all of the tenants have lived in the unit for more than a year) - 10 day (for week-to-week tenancies)	<ul style="list-style-type: none"> <li>• Eviction notice is wrong/Bad notice</li> <li>• Retaliation</li> <li>• Discrimination</li> </ul>
30 day for cause notice or 10 day notice for repeat violation	<ul style="list-style-type: none"> <li>• Eviction notice is wrong/Bad notice</li> <li>• Retaliation</li> <li>• Discrimination</li> <li>• Incident landlord wrote in notice did not happen or is not good cause to evict</li> </ul>
24 hour notice	<ul style="list-style-type: none"> <li>• Eviction notice is wrong/Bad notice</li> <li>• Retaliation</li> <li>• Discrimination</li> <li>• Incident landlord wrote in notice did not happen or is not good cause to evict</li> </ul>
Landlord Reason notice (90 day notice)	<ul style="list-style-type: none"> <li>• Eviction Notice is wrong/Bad notice</li> <li>• Retaliation</li> <li>• Discrimination</li> </ul>

Three Strikes notice (90 day notice)	<ul style="list-style-type: none"> <li>• Eviction notice is wrong/Bad notice</li> <li>• Retaliation</li> <li>• Discrimination</li> </ul>
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## Defenses to an Eviction

### The Lack of Repairs Defense

If the eviction is based on a 72-hour notice for nonpayment of rent, you may have a defense if your landlord has not made repairs. Tenants have the right to housing that is in good condition. The law requires that landlords provide premises that have:<sup>24</sup>

- Effective waterproofing and weather protection of roof and exterior walls, including windows and doors.
- Plumbing facilities maintained in good working order.
- A water supply approved under applicable law, capable of producing hot and cold running water, furnished to appropriate fixtures, and connected to a legally approved sewage system maintained in good working order.
- Heating facilities approved under applicable law, maintained in good working order.
- Electrical system approved under applicable law, maintained in good working order.
- Been cleaned at the beginning of the tenancy, are free from debris, filth, rubbish, garbage, rodents and vermin, and with areas under the control of the landlord kept clean.
- An adequate number of garbage receptacles maintained in clean condition and good repair, unless the landlord and tenant made some other arrangement to handle garbage and garbage removal.
- Floors, walls, ceilings, stairways, and railings maintained in good repair.
- Ventilation, air conditioning, and other appliances (including elevators) in good repair, if supplied by the landlord.
- Safety from fire hazards, including a working smoke alarm or smoke detector.
- Working locks for all entrance doors, keys for those locks, and latches for windows.

If the landlord does not supply any of these things, then the tenant should be entitled to show that some of the rent is not due.

If you are claiming that the landlord did not make repairs, you should mark that line and then in the appropriate space list the specific repair problems.

*EXAMPLE:*      X      *The landlord did not make repairs. List any repair problems:*

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<sup>24</sup> 90.320



*The roof leaked for four months causing \$100 in damage to furniture and \$300 reduced rental value. Tenant notified landlord four months ago by phone.*

You cannot win on the “repairs needed” defense alone unless you can either:<sup>25</sup>

1. Show that the amount of money that the landlord owes you because of the lack of repairs is at least as much as you owe in rent, OR
2. Pay the total amount of rent due into the court before trial.

Generally, you will have to convince the judge that your landlord knew of the repair problems and failed to make the repairs.<sup>26</sup> If your only proof that you asked for repairs or that your landlord knew of the need for repairs is your word and your landlord denies that you asked for repairs, you may lose. You should **always** request repairs in writing, date your letter, and keep a copy for yourself.

You should be prepared to show that the repairs the landlord failed to make reduced the monthly rental value of your home by a certain amount or percentage, and that this amount, multiplied by the number of months the problem existed, is equal to or greater than the amount of rent you owe. You must tell the judge how much you think the lack of repairs have damaged you in monetary terms. You should have a specific figure in mind, such as “30% of the rent” or “\$50 per month.”

*For example, if the roof leaked into one of the two bedrooms in your apartment and you couldn't use that bedroom you could argue that the value of your residence by 1/3. Suppose this went on for three months in the winter. Multiply a third of a month's rent by three and you have damage equal to one month's rent.*

In addition, the tenant may make a claim for damages to personal property because of repair problems. *For example, if a leak in the roof damages furniture, the tenant may also recover the dollar value of cleaning, or, if necessary, replacing the furniture.* You will lose the case if the judge decides that the dollar value of the repair problems is less than the unpaid rent, unless you either can make up the difference with other claims under the Oregon Residential Landlord Tenant Act or you paid the amount of rent into court.

### **The Retaliation Defense**

If the eviction is based on a 30-day notice, a 10-day no-cause eviction notice (week to week tenants only) or a 24-hour notice, you may have the defense of retaliation. You must mark the second line on the *Answer* to use the retaliation defense.<sup>27</sup>

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<sup>25</sup> 90.370

<sup>26</sup> 90.370(1)(a)

<sup>27</sup> 90.385(3)

Your landlord cannot evict you in retaliation for any of the following actions:<sup>28</sup>

- Testifying against your landlord in some other legal proceeding.
- Successfully defending an eviction case in the past six months against your landlord, unless the reason the tenant won is because there was an error with either the service of the Termination Notice or the time period it stated.
- Organizing other tenants or membership in a tenants' union.
- Complaining to a governmental agency regarding violations involving building, health or safety codes, housing discrimination, or delivery of mail.
- Insisting on your rights under the law.
- Complaining to the landlord in good faith about anything related to the tenancy, including:
  - the condition of the rental unit
  - a rent increase given without a proper 30-day written notice
  - landlord shutting off utilities
  - landlord locking you out of your apartment
  - landlord abusing access to your apartment
  - landlord failing to tell you the name and address of the manager and owner or person authorized to act for the owner and to receive notices
  - failure to disclose that utilities paid for by the tenant benefit the landlord or other tenants
  - violations of a written or oral rental agreement

The retaliation defense will not work if you are being evicted **for failing to pay rent**, unless you can prove that no rent is due.<sup>29</sup>

### **Status as a Victim of Domestic Violence, Sexual Assault or Stalking**

If the eviction is based on a 30-day notice, a 10-day no-cause eviction notice (week to week tenants only) or a 24-hour notice, you may have a defense if you or someone in your household is a victim of domestic violence, sexual assault or stalking.<sup>30</sup> You must mark the third line on the *Answer* to use this defense.

Your landlord cannot evict because of the fact that:

- You (or someone in your household) are, or have been in the past, a victim of domestic violence, sexual assault or stalking;
- You (or someone in your household) violated your rental agreement or Oregon law, if the reason for the violation was an act of domestic violence, sexual assault or stalking against you;
- The police came in response to a call regarding domestic violence, sexual assault or stalking against you; or
- Any other criminal activity took place relating to domestic violence, sexual assault or stalking when you (or someone in your household) were the victim.

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<sup>28</sup> 90.385(1)

<sup>29</sup> 90.385(4)(c)

<sup>30</sup> 90.449

An important exception to these rules is that a landlord *can* evict you for any of the above reasons if the landlord gave you a written warning regarding the conduct of the abuser and you either:

1. Allowed the abuser onto the premises and the abuser is a threat to others on the premises; or
2. The abuser is an unauthorized occupant and you consented to the abuser living with you without the landlord's permission.

### **The Eviction Notice is Wrong Defense**

The fourth line listed on the Answer say "The Eviction Notice is Wrong." This is the line to check and if the landlord's Complaint is not true in one or more respects. For example this defense would apply if the landlord filed the Complaint on the basis of nonpayment of rent and you have receipts to show that the rent was paid or if the landlord is evicting you for numerous noise complaints and you did not cause the noise.

This defense may also be used if the Termination Notice you were given is bad or invalid. In order to decide whether you can use this defense or not, you will have to look at the Complaint that the Sherriff served you. The Complaint has a series of boxes next to the type of Termination Notice on which the eviction is based. The copy of that Termination Notice should be attached to the Complaint. The type of notice checked should match the type of Termination Notice that is attached to the Complaint.

The Termination Notice must also have been served properly. It must be served by one of the following methods:

- Mailed via first-class (not certified) mail to your address. If the notice is served by mail, three days must be added to the move out date in the Termination Notice.
- Hand delivered to you. In this case the notice period starts immediately.
- Both posted to your door and mailed to you via first-class mail only if the rental agreement explicitly allows for this type of service by both the tenant and the landlord. In this case the notice period will start immediately.
  - If the rental agreement does not explicitly allow this type of service for both the landlord and the tenant, then the usual three days for mailing must be added to the notice period.

If your notice was not served by one of these three methods, than you have a defense that the eviction notice is wrong.

This defense can also be used if your landlord gives you a notice that is not allowed by law given how long you have lived there. For example, if you have lived in your home for over a year and your landlord does not live on the same property which only has two units, your landlord can not give you a No Cause Termination Notice.

This defense can also be used if your landlord gives you a notice that does not include all the information that is required by the law. For example, a 30 Day For Cause Notice must

specifically state the alleged lease violation and give you the right to remedy the violation. If the notice you receive does not specifically state the alleged lease violation or does not give you the right to remedy, than you should use this defense.

Another example of how this defense can be used for a bad notice is if you get a Three Strikes Notice at the end of a fixed term lease after you have lived there at least one year but the landlord did not give you three prior Warning Notices that each meet the requirements of the law.

### **Other Defenses**

The fifth line listed on the *Answer* say “List any other defenses:” followed by blank lines where you may list defenses. The following are some possible other defenses:

#### **Waiver**

The following may eliminate your landlord’s right to evict you for a violation of the rental agreement:<sup>31</sup>

- If your landlord knew of the violation but accepted your rent for three or more months and did not refund the money within ten days;
- If your landlord accepted certain behaviors of yours that may have been different that what was agreed to in the rental agreement;
- If your landlord accepted rent for a period beyond your court date; or
- If your landlord accepts a partial rent payment *after* giving a 72-hour notice, your landlord cannot file an eviction based on nonpayment of rent that month unless the tenant has signed a written agreement indicating otherwise.<sup>32</sup>

If the landlord did any of the above, check the fifth line on the *Answer* under “Other Defenses” and write the word “Waiver.”

*Example: “Landlord waived right to evict based on June 10 notice by accepting rent on June 12.” Make sure you take proof of payment to the trial.*

#### **Discrimination**

Another possible “Other Defense” is Unlawful Discrimination. Federal, State, and some local laws say it is illegal for a landlord to discriminate on the basis of a tenant’s:

- race
- color
- sex (except in cases where common bed or toilet facilities would result)
- marital status
- religion
- national origin
- physical or mental handicap

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<sup>31</sup> 90.412(2)

<sup>32</sup> 90.417(4)

- source of income
- creed
- familial status (whether you have children or not)
- age
- sexual orientation<sup>33</sup>
- gender identity<sup>34</sup>

Generally, the discrimination defense will not work against an eviction for nonpayment of rent.<sup>35</sup> If you have received a 30-day notice to move without cause, and you believe the real reason is discrimination under the law, you may be entitled to use that defense. You will have to prove to the judge that your status as one of one of the protected classes of people listed above is the reason that your landlord is trying to evict you. Also if the lease breaking behavior is caused by a physical or mental disability, you can ask your landlord to overlook this lease violation and not evict you by making a Reasonable Accommodation request. If you believe you might have grounds to make a Reasonable Accommodation request, you should call Legal Aid if you are low income. Otherwise, call the Lawyer Referral Service of the Oregon State Bar (503-684-3763 or toll free in Oregon at 800-452-7636) and ask them to refer you to a lawyer. You might also call the Fair Housing Council at 1-800-424-3247.

You can also file a complaint with the Civil Rights Division of the Oregon Bureau of Labor. Complaint forms are available by calling (971) 673-0761. You have one year from the date of the discrimination to file an administrative complaint and two years to file an action in court.

### **What Do I Do With the *Answer*?**

When you have finished filling out the *Answer*, you should sign and date it. Then:

- File one with the court,
- Give one to your landlord, and
- Keep one for yourself and bring it to trial.

### **Preparing Your Case**

You should be prepared to back up every statement that you make in the *Answer* with as much proof as possible. If you are going to have witnesses besides yourself, they must go to your trial with you. The court will not accept written statements even if they are notarized. Go over the case with your witnesses carefully. Make sure your witnesses understand what you are going to ask of them and that they are prepared to state the facts honestly about what you want to prove at trial.

If you are claiming that you did pay your rent, you should have receipts, cancelled checks, and any other documents that prove that claim.

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<sup>33</sup> 659A.421(1)

<sup>34</sup> 174.100(6)

<sup>35</sup> 90.390(2)

If you are claiming that there were repairs needed and not done, it is very helpful to have photographs to show the extent of the problem. If there are other people who saw the problems that needed to be repaired, be sure to have them as witnesses. If you live somewhere that has city building inspection program and they came to inspect the property, you should be sure to have a copy of the building inspector's report with you to show the judge. If you spent money on repairs, show the receipts for what you spent to the judge.

Establishing a clear timeline of any important events that occurred will be helpful when presenting your case. It is a good idea to make timelines of these events before coming to trial, which will help you to present the story clearly and accurately to the court.

### **What If I Remember Something Later?**

Suppose you have already filed your *Answer* to the eviction and you forgot to include all of the repairs that you had been asking the landlord to make or you forgot to check all the defenses that apply. You have the right at the trial to request that these other facts and/or defenses be included in your *Answer*. If you make that request, the landlord will have the right to get a later trial date in order to respond to your new defenses.<sup>36</sup>

You should only do this if you really forgot to include all the defenses originally. You should not abuse this right just to prolong the case. You should do your best to include all defenses in your original *Answer*.

### **Should I Ask For a Jury Trial?**

Either side has the right to ask for a jury trial.<sup>37</sup> However, we recommend that you *talk to a lawyer* before requesting a jury trial. The preparation for a jury trial can be complicated. It is generally recommended that tenants without a lawyer do not request a jury trial. Failure to comply with the complex procedures related to a jury trial could result in a loss.

### **Paying Rent Into Court**

If the trial is not held within fifteen days of *First Appearance*, and the delay is not the fault of the landlord, the judge can order the tenant to pay rent into the court.<sup>38</sup> If a tenant requests a delay of trial of more than two days, the judge can also order the tenant to pay rent into the court. If the tenant cannot pay this rent amount into court on the day of the request, the trial will be held immediately.<sup>39</sup> If a tenant counterclaims, the landlord can file a special motion for an order directing the tenant to pay rent into court.<sup>40</sup> If the tenant

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<sup>36</sup> ORCP 52

<sup>37</sup> ORCP 50

<sup>38</sup> 105.137(6)

<sup>39</sup> 105.140(2)

<sup>40</sup> 90.370(1)(b)

does not then pay his or her rent into court, he or she will not be allowed to assert the counterclaim.<sup>41</sup>

## **How a Trial Works**

The first thing to remember about a trial is: STAY CALM and focus on the issues related to the Termination Notice and your defenses. The judge will not want to hear about your history with the landlord if it is not related to the case. Also, sometimes the judge may decide whether you and your witnesses are believable based on how you and your witnesses act and how present yourselves. Be professional and polite and dress as if you were going to a job interview.

### **Opening Statements**

Many judges will start the trial by asking that each side give their opening statements. Your opening statement should be short (a couple minutes long) and summarize what your position is in the case. You should give the judge some background including when you moved in, the amount of rent you pay, what the basis for the eviction is, what your response is to the landlord's position in the case, and what your defenses are. Also tell the judge if you have witnesses that will be testifying at the trial and what exhibits you plan to present to the court.

### **Your Landlord's Case**

Next the plaintiff (your landlord) will be allowed to present his or her case. After your landlord has finished, the judge should give you the opportunity to cross examine your landlord and any of his or her witnesses.

The claims your landlord make must be limited to what was stated in the complaint. The only exception to this rule is if you are raising a retaliation defense to a no-cause eviction. In such a case, although your landlord did not have to state a reason for the eviction originally, he or she would be allowed to show that there were other reasons for the eviction that had nothing to do with retaliation.

*For example, if the eviction is for past due rent, your landlord should not be allowed to include evidence about other complaints, such as noise complaints from your neighbors about you. You should object if the landlord tries to bring these things up -- unless they are the basis of the eviction.*

### **Your Case**

After your landlord has put on all of his or her evidence, you will be able to present your side of the case. This is your time to present any evidence you have to support your defenses. Evidence is information that supports facts you are trying to prove to the judge

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<sup>41</sup> 90.370(3)

or shows that facts the landlord is trying to prove are less likely to be true. You will want to present witness testimony and exhibits.

- **Witness testimony:** You and any witnesses you bring with you to court can tell the judge what they saw or heard. You will be allowed to ask your witnesses questions that help disprove what the landlord claims and/or prove your defense. The judge should not consider written statements of persons not present in the courtroom because you and your landlord have a right to cross-examine a witness about the statements. You should object to the use of written statements.
- **Exhibits:** Exhibits can include any documents, letters, receipts, or photos. If you have exhibits you want to present first show it to your landlord. If your landlord makes no objections, then you may bring it up to the judge to be admitted for the court to consider. Select the strongest exhibits you have and bring them to court. Be careful not to use too many exhibits because you want your case to be clear and not confusing.

### **Rebuttal**

Next, your landlord will have a chance to rebut any claims which you made in presentation of your side of the case.

### **Closing Arguments**

Finally, the judge will allow both you and your landlord time to make a closing argument. During your closing argument, you should take the opportunity to briefly summarize your case, highlighting the most important conclusions that the court should draw from your evidence or from the testimony of any witnesses.

### **The Trial Judgment and What It Means.**

After both sides have presented their cases, the judge will make a decision.

If you (the defendant) win, the Judgment means that you get to stay in your home. Make sure you find out from the judge when you will have to start paying rent again. Also make sure to ask the judge to award you prevailing party fees, court costs and attorney's costs if any.

If your landlord (the plaintiff) wins, the Judgment will say that you have to move out by a certain date. You can ask the judge for some time to move, but the judge is generally not required to give you any extra time. The Judgment probably will also award your landlord court costs and any attorney fees.<sup>42</sup> Even if you move by the date set, you will still be responsible for any fees or court costs awarded to your landlord. The landlord may take these costs out of your security deposit.<sup>43</sup> If you earn less than minimum wage, it will be difficult for your landlord to collect money from you.

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<sup>42</sup> 90.255

<sup>43</sup> 90.300(5)(a)



## PART III: AFTER THE TRIAL

### Red Card – When the Sheriff Removes You From Your Home

If you lose and do not move by the date in the Judgment, your landlord has to go to the clerk and then to the Sheriff's office in order to remove you and your belongings from the property. Under no circumstances can your landlord remove you without the Sheriff's help – ONLY the Sheriff can remove you.

After the Judgment is issued in your case, your landlord will obtain a document from the court called a Notice of Restitution. You have four days from the time you are served with this notice to remove yourself and your belongings from the property. After the expiration of the four days, your landlord must go back to the clerk of the court for a Writ of Execution of Judgment of Restitution. This Writ will be served upon you by the Sheriff, who will forcibly remove you from the property at that time.<sup>44</sup>

The Sheriff will not remove and store a tenant's belongings. Usually your landlord will store your belongings but the Sheriff must first actually remove you.

Before your landlord may lawfully sell or get rid of the items you left at the property, he or she is required to notify you in writing either by personal delivery or by first class mail, addressed to your last known address.<sup>45</sup> When you move out make sure you give the landlord your new contact address in writing so the landlord can send you the Notice of Abandoned Property. Otherwise this Notice will be sent to the property you just moved out of. Contact your landlord immediately when you receive this Notice. If you fail to contact your landlord within five days (if the landlord personally handed the Notice to you), or eight days (if the landlord mailed the Notice to you), then the landlord can dispose of your items. If you contact your landlord in time, he or she must allow you to pick up your items within the next 15 days without requiring you to pay any money. Your landlord may add storage fees to the total amount you owe and attempt to collect this money later but, if you moved out because your landlord evicted you, your landlord cannot require you to pay these extra fees before you take your items. If you have not picked up your things after 15 days your landlord will be able to sell or otherwise dispose of them.<sup>46</sup>

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<sup>44</sup> 105.151

<sup>45</sup> 90.425(3)

<sup>46</sup> 90.425(8),(9)