

How to Use a Form Answer in an Eviction

IMPORTANT: This is an excerpt from the 2016 *Landlord-Tenant Law in Oregon* booklet. The booklet is available on the Oregon Law Help website at <http://www.OregonLawHelp.org>. **All Resources referred to below are available on this website.** This information is for general educational use only. **It is not a substitute for the advice of an attorney. If you have a specific legal question, you should contact an attorney.** The information included here is accurate as of March 2016. Please remember that the law is always changing through the actions of the courts, the legislature, and agencies.

A sample form and list of possible defenses follows these questions.

When should I use the form Answer?

If you have decided to ask for a trial on your eviction and want to represent yourself, you can use a form answer that you can get at the courthouse. An “answer” is a legal paper that gives your defenses to the “complaint” filed by your landlord. **You should only ask for a trial and use the answer form if you really want to stay in the rental unit and believe you have defenses to the eviction. If you lose, a judgment for your landlord’s court costs and attorneys’ fees will be entered against you. If you want to request money owed to you by your landlord, file in Small Claims Court or see an attorney.**

How should I decide what defenses to claim?

A defense to an eviction is a legal reason why your landlord should not be able to evict you. The kind of defense you claim depends on the type of notice the eviction is based on. **Before you fill out the form Answer, look at the Complaint attached to your Summons to see which reason the landlord checked for the eviction.** Also, look at the termination notice you received from the landlord to see if it matches the reason the landlord checked and if a copy of this notice has been attached to the Summons. **(If these things are not right you may have a “bad notice” defense, see below.)**

Not all defenses can be used in all evictions. For example, lack of repairs can be a defense to an eviction based on a 72-hour or 144-hour notice for nonpayment of rent, but it is not a defense to an eviction based on a 30-day notice. **The inset box below, *Types of Notice and Their Possible Defenses*, shows the most common types of notices and the defenses that can be used.**

How do I fill out the form Answer?

There is a sample of the form Answer at the end of this document. Fill in the appropriate court and county at the top of the page. **(These will be the same as the ones on the eviction papers that you received.)** Put your landlord’s name in as Plaintiff and yours as Defendant. **Use the number from your eviction papers to fill in the blank after “case no.”** Fill in the appropriate defenses (see below) and sign and date the form. **Make three copies, one for the court clerk, one for the landlord, and one for yourself. Ask the court clerk when your trial will be held.**

What are some possible defenses in the form Answer?

Call a lawyer for advice on how to fill out the form Answer. Even if a lawyer cannot represent you in court, s/he may be able to help you fill out the form Answer. A sample of the form Answer is shown below.

Repair Problems – In the resource ‘Getting the Landlord to Make Repairs’ you will find a list of repairs that a landlord should make. If your landlord did not make repairs, you should check the first blank on the form Answer and describe the needs for repair. Also, indicate how and when you told the landlord about the needs for repair.

You should be prepared to prove damages that equal or are larger than the rent that you owe. You must testify about how much less your place was worth each month because your landlord refused to make repairs. For example, if you rented a four room apartment for \$400 per month but a leak in the roof prevented your use of one room for 3 months, you might testify that the apartment was worth 25% less or \$100 less per month because you could not use 1 of 4 rooms. In addition, you should describe any damages caused to furniture or clothing and the costs for repairing or replacing the property. Remember the one-year limitation to file this kind of case.

Retaliation Defense – If your landlord retaliated by serving a 30-day or 10-day no-cause termination notice after you complained about the need for repair, testified against the landlord, joined a tenants union or engaged in other protected activity, you may check the second blank on the form Answer to allege retaliation. See the resource ‘Retaliation by a Landlord’ on Oregon Law Help for more information.

Domestic Violence, Dating Violence, Stalking, or Sexual Defense Notice – If your landlord gave you a for-cause termination notice for a violation of the rental agreement that was caused by an incident of domestic violence, dating violence, stalking, or sexual assault where you or another member of your household was the victim, you may use this defense. You may also use this defense to a no-cause termination notice if you believe that your landlord gave you this notice because you or a household member is a victim of domestic violence, dating violence, stalking, or sexual assault or because of an incident of domestic violence, dating violence, stalking, or sexual assault. If your landlord can convince the judge that s/he had a lawful non-discriminatory reason for giving you a no-cause notice, you may not be able to win. See the resource ‘Discrimination Against Tenants’ for more information.

Notice Defense – If your landlord did not use the right type of notice, did not give it to you the right way, or did not give it at the right time (including 3 extra days for mailing), you should check the third blank on the form Answer indicating that the notice is wrong. See the questions ‘What does a landlord have to do to evict me?’ and ‘What kinds of termination notices can a landlord give me?’ in the Oregon Law Help resource ‘Eviction’ for more information on notices.

Other Defenses – There is also a fourth line listed on the form answer called “Other Defenses.” This is the line to check and the space to fill in when the landlord’s complaint is not true.

For example, you might write the following: “I paid my June rent in full on June 1, and I have a receipt,” “I offered to pay June rent on June 9, during the 72-hour eviction notice period and the landlord refused to accept it,” or “The dog in question was moved out during the 10-day eviction notice period and has not returned.”

Other types of “Other Defenses” are:

Remedy/Cure If your landlord gave you a for-cause notice and you fixed the problem within the time allowed in the notice, you should write in the word “Remedy” or “Cure” under “Other Defenses.” See the question ‘*What kinds of termination notices can a landlord give me?*’, about For-Cause Notices, in the ‘Eviction’ resource.

Waiver – If your landlord accepted part of the rent after rent was past due, you should write in the word “waiver” under “Other Defenses” and describe the date and amount paid. For example, you could write, “Waiver—I paid \$50 to the landlord for rent on June 2.” See the questions ‘*Can I be evicted for nonpayment if I paid part of the rent this month?*’ and ‘*Can I be evicted if I have paid my rent?*’ in the resource ‘Eviction’ for more information on waivers.

Discrimination – If the notice or eviction is discriminatory, you should write the word “discrimination” under “Other Defenses” and describe what happened. See the resource ‘Discrimination Against Tenants’ for more information on discrimination.

Utility shut off or lock out – If the landlord changed the locks, removed your things, shut off the water, heat, or electricity or took other out of court action to force you to move, describe the action under “Other Defenses” and ask for twice the actual damages or two months’ rent, whichever is more. Talk to a lawyer. See the question ‘*What can I do if I am locked out or my utilities are shut off by my landlord?*’ in the resource ‘Eviction’ for more information.

Unlawful entry – If the landlord or someone working for the landlord came into your home without your permission or without a 24-hour notice in advance (except for an emergency or to complete repairs initiated within seven days after you asked for repairs in writing) you may claim at least one month’s rent as a penalty for each unlawful entry. Write down the date and name of the person who entered under “Other Defenses.” For example, you may write “Unlawful entry by the resident manager, John Doe, on May 14.” See the question ‘*Does my landlord have a right to enter the rented space?*’ in the resource ‘Entering Your Rented Space’ for more information.

How should I prepare for my case in court?

You should be prepared to back up every statement that you have made in the Answer with as much proof as possible. If you are going to depend on other people to be witnesses for you, you should get in touch with them immediately. **Witnesses must come to court. The judge will not accept letters or affidavits from witnesses.** 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 clearly and honestly state the facts about what you want to prove at the trial.

Make sure you have all relevant evidence like canceled checks, copies of letters, building inspector’s reports, and pictures of your place, if repairs are an issue.

Types of Notice and Their Possible Defenses

72-hour or 144-hour nonpayment of rent

Possible defenses:

- **Repairs needed** (See the resource 'Getting the Landlord to Make Repairs')
- **Bad notice** (See the questions *What does a landlord have to do to evict me?* and *What kinds of termination notices can a landlord give me?* in the resource 'Eviction')
- **Other landlord violations:**
 - **lockout** (See the question *What can I do if I am locked out or my utilities are shut off by my landlord?* in the resource 'Eviction'),
 - **illegal entry** (see the resource 'Retaliation by a Landlord'),
 - **waiver** (See the questions *Can I be evicted for nonpayment if I paid part of the rent this month?* and *Can I be evicted if I have paid my rent?* in the resource 'Eviction'), etc.

10-day notice/no cause (week-to-week) or 30-day notice/no cause (month-to-month)

Possible defenses:

- **Retaliation** (See the resource 'Retaliation by a Landlord')
- **Bad notice** (See the questions *'What does a landlord have to do to evict me?'* and *'What kinds of termination notices can a landlord give me?'* in the resource 'Eviction')
- **Discrimination** (See the resource 'Discrimination Against Tenants')

30-day notice/for cause with right to cure, 10-day (pet violation), or 24-hour (outrageous conduct, personal injury, substantial damage)

Possible defenses:

- **Bad notice** (See the questions *What does a landlord have to do to evict me?* and *What kinds of termination notices can a landlord give me?* in the resource 'Eviction'),
- **Remedy**
- **Landlord's complaints untrue**

SAMPLE FORM ANSWER

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF (YOUR COUNTY)**

(Landlord's Name))	
)	ANSWER
Plaintiff(s),)	
)	
v.)	Case No.
)	
(Your Name))	(The number listed on the complaint)
)	
Defendant(s).)	

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 otherwise 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.

Dated this _____ day of _____, 20____

Signature of Defendant(s) (Your signature)