

Eviction – Going to Court

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.

TIME LIMIT WARNING Under state and federal laws there are time limits for taking action to enforce your rights. Most lawsuits related to the rental agreement and the Oregon Residential Landlord and Tenant Act must be filed (started in court) within one year of the incident. There may be other — shorter — time limits that apply in other cases. *Ask a lawyer about the time limits that could apply in your situation.*

What happens if I don't move out after getting a termination notice?

The landlord must go to court to legally force you to move. The landlord will file an eviction court case against you called an FED, forcible entry and detainer. The sheriff or someone serving the court papers (Summons and Complaint) will hand them to whoever answers the door at your home or will tape them to the door and mail a copy later. The papers will tell you when and where to appear for court for what is called **First Appearance**. The date will be about 7 days from the date your landlord filed the case in court in most counties. It is a good idea to get legal advice as soon as you get the papers.

What happens at the First Appearance in court? What happens if I don't go?

When you go to court on the date on the Summons, this is called "First Appearance." The process varies from county to county. In most counties in Oregon, tenants may:

- Ask the judge to dismiss the case if the landlord does not show up;
- Tell the judge about any agreements you made with the landlord either before court or that day in court. If you and the landlord reached an agreement before court, both you and the landlord should go to First Appearance and tell the judge the terms of the agreement;
- Ask the judge for a little time to move and have a good reason; or
- Ask the judge for a trial and a fee waiver or deferral if you have a defense. See the resource 'How to Use a Form Answer in an Eviction' for information about defenses.

The judge may ask you to try to work the problems out with your landlord by going through a mediation, before a trial is scheduled.

If you and your landlord have reached an agreement, you will likely need to sign a "**Stipulated Agreement**." "Stipulated" means that both you and the landlord agree to the terms of the paper that you sign. The Stipulated Agreement will sometimes say that you can stay in your place if you pay all of the back rent and other costs by a certain date. It can also require you to stay current on your rent for the next 3 months after you make the agreement. If you do not follow what the Stipulated Agreement says, the landlord can go back to court and get an eviction judgment against you that will require you to move out in four days. **Once you are served with the eviction judgment**, you have the

right to ask for a hearing on [whether you lived up to the agreement or not](#) before the sheriff moves you out. **You should carefully read any papers the landlord gives you before signing.** ORS 105.146.

If you ask for a trial and you do not have a lawyer, you must fill out a form Answer and file it on the same day that you first go to court. Most courthouses have form Answers you can use to describe your defenses. (See the resource 'How to Use a Form Answer in an Eviction'.) There will be a filing fee to file your Answer in court. If you cannot afford the filing fee, the court will have paperwork to fill out to ask the court for a fee waiver or deferral. **Get a trial date from the clerk when you file the Answer. It is a good idea to talk to a lawyer before asking for a trial,** even if you are going to represent yourself.

When you go to court, you should get there on time and be neatly dressed. Look at the judge while speaking, stay calm, and be polite.

If you do not show up in court at the date and time set for First Appearance, your landlord wins automatically. The landlord will get a court order directing you to move and may have the sheriff or process server post a four-day notice. See the question '*Can I be forced to leave my home if the landlord gets a court order that requires me to move?*' below.

What happens at an eviction trial?

When you file your Answer and ask for a trial, the court clerk will give you a date for your trial. Prepare for your case before you go to court. See the resource 'How to Use a Form Answer in an Eviction'.

At the trial you will need to prove the defenses listed in your Answer. Bring photos of the condition of your place, copies of letters from and to your landlord, and other papers (receipts, rental agreements) that prove your case. Take witnesses who will help you prove your defenses. **Get to court on time and dress neatly. Stay calm and be polite to the judge and the landlord.**

If you win, the judge should order the landlord to pay your court costs and, if you have a lawyer, your attorney fees. **If the landlord has a lawyer and you ask for a trial and lose, the judge will order you to pay for the landlord's attorney fees and court costs.** The judge may also require the losing side to pay the winning side additional costs called a "prevailing party fee." **If you do not have much income or property, state law may protect you against this order.** See the resource 'Getting Your Things Back After You Move'.

Can I go to eviction court without a lawyer?

Yes, but you should try to talk to a lawyer before going to First Appearance. Many tenants and landlords go to the First Appearance without a lawyer. Most courts have form Answers that you can fill out describing your defenses. See the resource 'How to Use a Form Answer in an Eviction' for information on how to use the form Answer.

It is helpful to have a lawyer if there is a trial in your case. At the trial you will need to prove the defenses that you listed in your Answer. See the question '*What happens at an eviction trial?*' above for information about trials.

Can I be forced to leave my home if the landlord gets a court order that requires me to move?

Yes. The landlord may get a court order if:

- 1) you don't show up for court;
- 2) you enter into a **Stipulated Agreement** (See the question '*What happens at the First Appearance in court? What happens if I don't go?*' above) **and you don't live up to the Agreement:** or
- 3) you go to trial and lose. **If you lose at trial, the judge will order you to move out by a certain date.**

If you do not move by the date listed on the court Order, the landlord can have the sheriff or process server post a 4-day notice on your door. If you don't move out by the time and date listed on the notice, the sheriff will come back and require you to leave while the landlord changes the locks. After that, you risk criminal charges if you return without permission.

If there is a trial in my eviction case and the landlord wins, do I have to pay back rent and legal costs?

In most cases, the landlord must sue you in a separate court case to get rent that is owed. If you ask for a trial and lose, you may be ordered to pay your landlord's attorney fees and court costs.

If you have signed a "Stipulated Agreement" and don't pay the money that you agreed to pay, the landlord will have a judgment against you for the rent if the Agreement provides for this. See the question '*What happens at the First Appearance in court? What happens if I don't go?*' above for more information about Stipulated Agreements.

Even if the landlord wins a judgment for back rent or for attorney fees and costs, your income might be exempt from certain forms of collection, and the landlord could not take it until your income increased. You should speak with a lawyer about this. See the resource 'Getting Your Things Back After You Move' for more information.

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