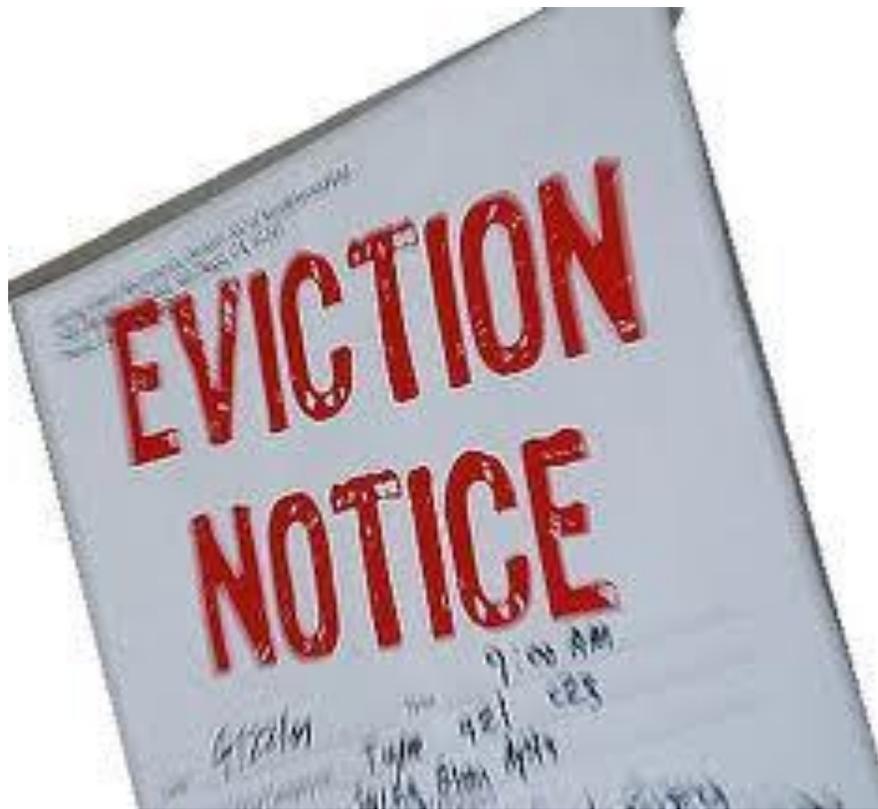


How to Answer Your Eviction Case in Monroe County



Legal Services of Greater Miami, Inc.

Tenants' Rights Project

WHAT DOES THE TERM “EVICTION” MEAN?

An eviction is a lawsuit where the landlord asks a court to remove you from your unit. Before starting an eviction, the landlord has to give you a written notice. If you do not do what the notice requests or you do not leave, the landlord will file an eviction against you in County Court.

NOTE: Your landlord cannot change the locks, turn off the utilities, or do anything else which forces you to move out. This is called an illegal eviction or a "prohibited practice," and is a violation of the Florida Law. It can make your landlord liable to you for three times your rent, or actual damages, whichever is higher, and attorney's fees and costs. See our brochure “What to Do If Your Landlord Locks You Out or Shuts Off Your Utilities”

REASONS WHY YOU CAN BE EVICTED

- **Non-Payment of Rent**

Before you can be legally evicted for non-payment rent, the landlord must give you a **THREE DAY NOTICE**. The three day notice must list the amount of rent that you owe and tell you to pay the rent or move out within three days. The Three Day Notice must clearly state the day the rent is due. The three days cannot include the day you received the notice, Saturday, Sundays, or legal holidays. For example, if you get the notice on Thursday, then Friday is day one, Monday is day two, and Tuesday is day three -- the day you must pay your rent.

The Three Day Notice can only ask for rent. It cannot ask for late fees, repairs, or other charges. Make sure you read your lease. If the lease says that late fees are considered rent, then the landlord can include them in the Three Day Notice.

Once a Three Day Notice has expired, the landlord has the right to file an eviction complaint with the Court. If the Three Day Notice is defective or has a mistake on it, the landlord will have the opportunity to fix the notice before the judge will dismiss the eviction. Even so, you should still point out to the judge that the notice is defective.

- **Breach of Lease or Violation of Rules and Regulations**

Your landlord can also file an eviction against you because the landlord says you violated the lease, violated its rules, or engaged in some behavior that threatens the health, safety, and welfare of the other tenants.

Under Florida law, the landlord has to give you at least 7 days written notice of the problem. If the problem is one that can be fixed, the landlord has to give a **SEVEN DAY NOTICE TO CURE**. The purpose of giving you the notice is so that you can stop doing what the landlord says is a violation. For example, your landlord sends you a notice that says your broken truck in the parking lot is a violation of the lease. If you move the truck, you have “cured” the problem and the landlord cannot file an eviction. But if you move the broken truck back into the parking lot in the next 12 months, the landlord can file an eviction.

If the problem is one that cannot be fixed the landlord must give you a 7 day notice terminating your tenancy. For example, if you severely damage the apartment, your landlord may terminate your tenancy and tell you to move out in 7 days.

- **Termination or Expiration of the Rental Agreement**

You can be evicted because the agreement with the landlord has been terminated or expired.

If you are a PRIVATE TENANT and have no lease, then the landlord must give you a written notice to make you move. The amount of notice depends on how often you pay your rent. If you pay rent weekly, then the landlord must give you a written notice to move out at least 7 days before your rent is due. If you pay rent monthly, then the landlord has to give you written notice to move at least 15 days before your rent is due.

If you live in private housing with no written lease, the landlord can evict you for any reason, as long as it is not discriminatory and not done in retaliation.

If you are in subsidized or public housing, different rules and laws apply to your situation. You need to speak with an attorney at Legal Services.

HOW TO WRITE YOUR ANSWER

1. Included with this brochure is a form “Answer, Affirmative Defenses, and Motion to Determine Rent.” You need to first write the case number and the names of the parties on the top of the paper. The landlord is the Plaintiff, and you are the Defendant.
2. Read the complaint for eviction and respond to each of the paragraphs in the complaint. You respond by writing in your answer that you either admit or deny what is in each paragraph. If you do not know whether to admit or deny the paragraph, you can state that you are “without knowledge.”
3. Then write your defenses and explain why you should not be evicted (i.e.: the landlord is retaliating because I called the housing inspector, there are bad conditions, I already paid my rent).
4. You have a constitutional right to demand a trial by a jury of your peers. You can waive this right in your lease. If you want to demand a jury trial, you should do it when you file your answer or within 5 days after filing your answer; otherwise, you may waive your right to demand a jury trial. There are pros and cons to demanding a jury trial. While it is your absolute right to demand a jury trial, it may be difficult to represent yourself at a jury trial. If you have questions about whether to demand a jury trial, you should speak with an attorney.
5. Sign your answer. Include your name, address, and telephone number.
6. File your original with the Court, mail a copy to your landlord, and keep a copy for your records.

MOTION TO DETERMINE RENT OR DEPOSIT MONEY INTO COURT REGISTRY

To defend an eviction in Florida, you MUST pay into the court registry the rent the landlord asks for in the eviction complaint OR if you disagree with the amount owed, ask the judge to determine how much rent is due. A form for the “Answer, Affirmative Defenses, and Motion to Determine Rent” is included with this brochure.

Things you might include in your Motion to Determine Rent:

- The amount demanded by the landlord is wrong.

- The landlord demands extra amounts that are not rent.
- You already paid the rent.
- The landlord failed to make repairs and the rent should be reduced.
- Your landlord turned off water or electricity, or has illegally locked you out of your home.

Many judges will not consider a rent reduction until after you deposit all of the rent into the court registry.

Whatever your reasons, you should include proof of why you are asking the Court to determine how much rent you owe. For example, if you already paid your rent, include copies of the receipts. If you think your rent should be reduced for bad conditions in your home, include photographs.

You must also continue depositing your rent into the court registry while the eviction is pending.

NOTE: If you do not pay the rent into the court registry or do not file a motion to determine rent, you will have waived all of your defenses, except for payment. This means you will lose your case automatically, and the landlord wins the case. You will not get to see a judge and you will be evicted from your home.

WHEN AND WHERE TO FILE YOUR ANSWER

Your answer is due in court on the fifth day after the eviction complaint was personally served on you or a member of your household, or posted on your door. You do not count Saturdays, Sundays, or Holidays. Also, the day you are served does not count.

Filing your answer means that you go to the Clerk of Court and say “I want to file an answer to an eviction.” Take the original answer and 2 copies (one for yourself and one for the landlord). Make sure that the clerk date stamps all copies.

Take your answer to the courthouse where your eviction was filed, which is usually the courthouse closest to your home. The “Summons” will tell you where your case is filed. Here is a list of the Courthouses in Monroe County:

500 Whitehead Street
Key West, FL 33040
Telephone: (305) 294-4641

3117 Overseas Highway
Marathon, FL 33050
Telephone: (305) 289-6027

88820 Overseas Highway
Plantation Key, FL 33070
Telephone: (305) 852-7145

AFFIRMATIVE DEFENSES

You may be able to use these defenses in your answer. Write them under “Affirmative Defenses.” If any of these apply, you should argue that you win the case because of these defenses.

- *Failure to serve a proper, non-defective termination notice.* This means that the landlord’s notice did not comply with your lease or Florida Statute § 83.56. The judge must give the

landlord the opportunity to fix a defective notice for non-payment.

- *Corporation not represented by an attorney.* A corporation cannot represent itself and cannot appear in court without an attorney.
- *Improper party.* Only the owner or lessor of the property may file an eviction complaint. Check the property records to see who owns the property.
- *Failure to attach.* The landlord must attach certain documents to the complaint (i.e. the lease or three day notice).
- *Payment.* If the landlord accepts rent after serving a three day notice, he or she has waived the right to file suit. The landlord cannot accept rent after the complaint has been filed.
- *Tender.* If you were ready, willing, and able to make payment during the three day notice period, but the landlord refused to accept your money. The landlord must accept your rent during the three day notice.
- *Failure to maintain.* The landlord refuses to make repairs and has failed to maintain the property. (i.e.: no hot water, leaking roof, roach infestation, mold).
- *Retaliatory eviction.* Your landlord filed the eviction because you asserted your rights. For example, you contacted code compliance about conditions and then the landlord filed the eviction.
- *Discriminatory conduct.* The landlord is discriminating based on race, color, national origin, religion, sex, disability, having children, sexual orientation, gender identity, or some other protected class.

WHAT HAPPENS NEXT?

If you filed a Motion to Determine Rent, the court will either schedule a hearing on the motion or enter an order requiring you to deposit rent. If there is a hearing, be prepared to tell the judge why the rent is wrong and how much you should deposit. If the court orders you to deposit rent, you must do it or you will lose your case automatically.

Most likely, the judge will schedule a final hearing or trial soon after you file your answer. Trials may be held in the judge's chambers which are like the judge's office, or in the courtroom.

At the trial, the landlord goes first and presents his case. You can question the landlord and his witnesses. This is called cross examination. When the landlord is done, you present your case. You can have your own witnesses testify and submit your own evidence and documents. The landlord or his attorney can question you and your witnesses.

After hearing from all of the witnesses and looking at all the evidence, the judge then makes a decision. If the judge rules for you, there is no eviction and you remain living there. However, sometimes the judge may put conditions in the ruling. Make sure you understand the judge's decision before you leave. Sometimes a judge will try to get the parties to reach an agreement. For example, a judge may ask the landlord to agree that the case will be dismissed if you move out by a certain date to avoid a final judgment.

If you lose the Court hearing or if you did not answer the lawsuit in the first place, the court will enter a

final judgment of eviction. The judge can also make you pay the landlord's attorney's fees and court costs. If the landlord sued you for unpaid rent, the judge could enter a judgment against you stating that you owe money to your landlord. To appeal the decision, you must file a notice of appeal within 30 days, but an appeal will not keep you from being evicted unless the judge gives you a "stay pending appeal." Typically, you must have the rent to get a stay during the appeal.

WRIT OF POSSESSION

If you do not move out, the Court will tell the Sheriff to move you and your family and everything you own out of the place where you are living. The notice that the Sheriff will post on your door is called the "Writ of Possession." It gives you 24 hours notice to move out. If you have not moved out by the time the Sheriff comes back, the landlord or the landlord's agent may remove your belongings from the unit. The landlord will also change the locks when the Sheriff is there. They can do this whether you are home or not, have children, or are sick. For more information, see our brochure "Writ of Possession"

HOW TO DO I CHECK THE STATUS OF THE CASE?

You can check the status of the eviction case online, by looking at the "docket."

To check the case online:

- Go to <https://gov.propertyinfo.com/fl-monroe/SearchType.asp>
- Click on "Search Civil Cases"
- Enter the case number.
- Click "Submit."
- Click on the icon under "View Detail" to see the details of your eviction case.

IN THE COUNTY COURT IN AND FOR MONROE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: _____

Plaintiff(s),

vs.

Defendant(s).

_____ /

ANSWER, AFFIRMATIVE DEFENSES, AND MOTION TO DETERMINE RENT

ANSWER

1. I, the Defendant, ADMIT paragraphs _____ of the Plaintiff's Complaint for Eviction.
2. I, the Defendant, DENY paragraphs _____ of the Plaintiff's Complaint for Eviction.
3. I am without knowledge of paragraphs _____ of the Plaintiff's Complaint for Eviction.
4. I want to recover my attorney's fees and costs under Fla. Stat. 83.48 and 83.59 if I prevail.

AFFIRMATIVE DEFENSES

MOTION TO DETERMINE RENT AND REQUEST FOR HEARING

I am respectfully requesting that this Court determine how much rent I should deposit into the Court Registry and to set a hearing on the same because (check all that apply):

- I already paid my rent. Attached are receipts.
- I am paying my rent into the Court Registry. Attached are receipts.

The amount of money the Plaintiff is demanding is incorrect, and this is why: _____

There are bad conditions in my rental unit, which I describe in greater detail below and/or am attaching photographs of the same.

Other: _____

WHEREFORE, I respectfully request that this Court determine how much money I have to deposit into the Court Registry, set a hearing, and for all other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

- I am demanding a jury trial.
- I am not demanding a jury trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I sent a copy of this Answer, Affirmative Defenses, and Motion to Determine Rent to Plaintiff via First Class U.S. Mail at _____
_____, on this ____ day of _____, 20____.

Defendant's Name: _____

Address: _____

Telephone: _____