

YOUR DAY IN COURT

If You Do Not Show Up for Trial

- If you don't go to court, or are not on time, you are likely to lose your case. The Court may rule in favor of (enter a judgment for) the landlord. The landlord will get a "Default Judgment" and a "Writ of Possession" that will give the Sheriff permission to evict you from the property. **Make sure you get to court early for the trial!**



If there was an emergency that kept you from being at (or on time to) your trial, ask Legal Services for a "Set Aside" packet to try to reopen your case.

If You Win in Court

- If the court decides in your favor, you do not have to move. The judge may order the landlord to pay court costs (for example, your filing fees).
- You must pay any rent that the court orders.



If You Lose in Court

- If the court decides in favor of the landlord, the court will issue a **writ of possession/notice to vacate**.
- The "writ of possession" orders the Sheriff to remove you from the rental unit. It gives you **5 days** from the date that the writ is posted on your door to leave on your own.
- If you do not leave by the end of the **5th day**, the Sheriff will physically remove you from the property and lock the doors.
- The residence will then be turned over to the landlord.
- You will have **18 days** to get any personal belongings left behind, before the landlord may sell, keep, or throw them away.

Court Information

Helpful Websites

- ✓ http://www.dca.ca.gov/r_r/lanldtoc.htm
- ✓ <http://www.dca.ca.gov/legal/landlordbook/index.html>
- ✓ <http://www.courtinfo.ca.gov/selfhelp/other/landten.htm>
- ✓ <http://www.courtinfo.ca.gov/selfhelp/espanol/> (Spanish Website)

Legal Help Information



Legal Services Northern California
Fighting for Fairness; Promoting Justice

Evictions

How To Fight Your Eviction and Represent Yourself in Court



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EVICCTIONS: RESPONSE



Time to Answer

Once served with an unlawful detainer (eviction) complaint, you (the tenant) have **5 days** to file a written response with the Clerk of the Court. This is called your "Answer." If you have a legal defense to the landlord's complaint, you must state the defense in your written response.

Tenant's Defenses

To defend an unlawful detainer (eviction) action, you must file a response. The most common response is a document called an Answer, listing your affirmative defense(s). Examples of affirmative defenses are:

Breach of warranty of habitability — Your Landlord broke the implied (unspoken) agreement to rent you a livable unit.

Waiver of eviction notice — your landlord accepted rent during the period of a 3-day Notice or beyond the period of a 30- or 60-day Notice.

Curing — you took care of the problem(s) listed in 3-day Notice within the 3 days.

Retaliatory Eviction — your landlord cannot evict you in retaliation (to get back at you) for exercising your legal rights, i.e., complaining about repairs needed, calling the health or building inspector.

Discrimination — your landlord cannot evict you because of your race, color, religion, national origin (including language), sex (gender), disability, sexual orientation, or age, having children (except in senior housing), marital status, medical condition or age.

Repair and Deduct: you fixed something, took it off your rent, and the landlord did not give you credit for it.

Rent Withholding — you held back all or some of the rent because the landlord

wouldn't fix something.

Other Affirmative Defenses.

What Happens Next?

After you file your response, the landlord will ask for a trial date. The trial will be held within 20 days. You will get a notice of the trial date in the mail. You **MUST** be on time for your trial date.

Confidentiality Rule

Under § 1161.2 (c) Code of Civil Procedure, no one can see your unlawful detainer (eviction) court file for 60 days unless they are the people involved in the case. These are the landlord and lawyer, and anyone who can prove they live at the property, and their lawyers.



After the complaint is filed, the court clerk immediately will mail a notice of the unlawful detainer (eviction) action to each tenant listed in the court papers. The notice tells you that an unlawful detainer (eviction) complaint has been filed naming you as a defendant, and that the court file will keep people from looking at the file for 60 days.

What to Do Before Trial

• **Organize and outline** all the facts and defenses you want to prove. Make it clear and to the point.

• **Collect** all the evidence you want to bring. Make at least **3 copies** of all documents you plan to use as evidence (one for the court, one for the landlord, and one for you).

• **Contact** witnesses who will testify for you. If a witness is not willing to testify, you can get a subpoena from the court, which will order them to appear at trial.

• **Practice** your argument.

• Have a **clear** idea what you want. If you decide on your needs in advance, then you will be less likely to agree to something that

is not in your best interest.

Examples: Do you want to move? How much time do you need to move? Do you want to stay? How much money is the landlord reasonably owed?

Court Behavior Tips

- Get to court early
- Dress neatly
- Respect the judge: address him/her as "Your Honor," and do not interrupt or argue with the judge
- Treat the landlord, lawyer, and any witnesses with respect



At the Trial

The judge may suggest that you try to settle the case with your landlord (perhaps with the help of a mediator) before going to trial. This means trying to reach an agreement with your landlord, that each of you must follow.

If it is not in your best interest, you do not have to settle your case. If you go ahead with your trial, the case will go as follows:

- Opening statements — a short statement by each side of what their case is about.
- The landlord will present his/her case first.
- You have a right to cross-examine (question) the landlord's witnesses, including the landlord, if he or she testifies.
- You present your case. Have your witnesses testify, and turn in the documents you have as evidence.
- Your landlord may cross-examine you (if you testify) and your witnesses.
- Closing arguments — a summary of your arguments and why you should win.
- The judge will make a decision.