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*Passionately Committed to Equal Justice*

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## How to Answer Your Eviction Case



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Legal Services of Greater Miami, Inc.

Tenants' Rights Project

[www.lsgmi.org](http://www.lsgmi.org)

**Renters' Education and Advocacy Legal Lines (REAL)**

[www.real-lsgmi.com](http://www.real-lsgmi.com)

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## WHAT DOES THE TERM “EVICTION” MEAN?

Eviction is a legal way a landlord gets possession of your apartment. To start an eviction, the landlord has to give you some kind of written notice. If you do not do what the notice requests, or you do not leave, then the landlord files an eviction lawsuit against you in County Court.

**NOTE: If you do not pay the rent or you do not move when asked to by the landlord, 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.**

## 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 has to list the amount of rent that is owed and tell you to pay the rent or vacate the apartment within 3 days. The Three Day Notice must clearly state the day the rent is due and the 3 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 your rent is due.

The Three Day Notice can only ask for rent, not late fees, repairs, or other charges. Make sure you read your lease — if it says that late fees can be counted as rent, then it may be proper for the landlord to include them in the Three Day Notice. However, if your lease does not clearly state that late fees are rent, then including late fees in the Three Day Notice makes the notice defective.

Once a valid Three Day Notice has expired, the landlord has the right to file an eviction complaint with the Court.

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## WRIT OF POSSESSION

If you do not move out, the Court will tell the Sheriff's Office to move you and your family and everything you own out of the place where you are living. The notice that the Sheriff gives you is called Writ of Possession. It gives you 24 hours notice to move out. If have not moved out by the time the Sheriff comes back, the landlord or the landlord's agent may remove any property of yours to the property line. They can do this whether you are home or not, have children, or are sick.

## 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:

- (1) Go to <http://www2.miami-dadeclerk.com/Civil/>
- (2) Click on “Standard Case Search.”
- (3) Click on the “Local Case Number” tab.
- (4) Enter the case number.
- (5) Click “Search.”
- (6) Click on the word “Docket” to get the latest update on your landlord's foreclosure case.

Important things to look for:

- “Final Judgment.” This means you have lost the case, and a Writ of Possession will be issued
  - “Writ of Possession.” This means the Sheriff will soon give you a 24 hour notice to move out of the property.
  - “Motion for Default” This means your landlord is asking the court for a judgment in his or her favor because you failed to file something with the court, or usually because you did not deposit money into the court registry.
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## FINAL HEARING OR TRIAL

After you file the answer, the landlord, the landlord's attorney, or the Court sets the final hearing date. The final hearing, which is actually your trial, will be heard at the same place where you filed your answer.

Before the final hearing you will probably go to "mediation." This is a meeting between you, the landlord, the landlord's attorney, and a mediator. The mediator is a neutral person trained to help you and the landlord work out your problem. Mediation means that you try to compromise; however, do not agree to anything that you will not be able to do. If you reach an agreement at mediation, then you sign a paper called a "Stipulation." The judge signs it too. It is the final order in your case. This is a binding legal document.

If you and the landlord cannot agree then sometimes you may go directly to trial. Trials may be held in the judge's chambers which are like the judge's office, or in the courtroom.

The landlord goes first and presents his case. You can question the landlord and his witnesses. This is called cross examination. Then when the landlord is done you present your case. You can have witnesses too. This is called direct examination. The landlord or his attorney can question you and your witnesses.

The judge then makes a decision. If the judge rules for you, there is no eviction. However, sometimes the judge may put conditions in the ruling. Make sure you understand the judge's decision before you leave.

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, and you have 30 days to appeal; however, an appeal does not stop you from being evicted. The judge can also make you pay the landlord's attorney's fees and court costs.

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## Breach of Lease or Violation of Rules and Regulations

Your landlord can also file an eviction against you because the landlord says you broke the lease, violated some 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 you are doing. For example, you get a notice saying that your broken truck parked in the parking lot is a violation of the rules and regulations. If you move the truck, you have "cured."

If the problem is one that can be the landlord just has to give you a 7 day notice terminating your tenancy. For example, if you severely damage the apartment, your landlord may terminate tenancy.

## Termination of Rental Agreement

You can be evicted because the agreement you made with the landlord to live in the apartment has been terminated or expired, but you have continued to live in the apartment.

If you are a **PRIVATE TENANT** and have no lease, then the landlord has to 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 has to give you written notice 7 days before your rent is due. If you pay monthly, then the landlord has to give you written notice 15 days before your rent is due. But, if you live in Miami Beach and you pay monthly, then the landlord has to give you written notice 30 days before your rent is due.

In Florida, if you live in private housing with no written lease, the landlord can evict you **for any reason**, as long as it is not discrimination because of race, creed, color, sex, national origin, age, handicap, marital status, sexual orientation, HIV status, or because you have children.

If you are in **PUBLIC HOUSING** you can only be evicted for certain reasons, such as you did not pay your rent or you violated the lease, or you violated some rule and regulation. If you are in **SECTION 8** or

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## HOW TO WRITE YOUR ANSWER

1. Included with this brochure is a form answer. You need to first write the case number and the names of the parties on the top of the paper. That is called the “style of the case.” The landlord is the Plaintiff, and you are the Defendant.
2. Read the complaint to evict 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.
3. Then write your defenses (i.e.: the landlord is retaliating because I called the housing inspector).
4. Sign your answer, and include your name, address, and telephone number.
5. 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

You **MUST** pay into the court registry of the court the rent that is due **OR** ask the Court in writing to determine how much rent is due. You must also ask the Court in writing to give you a hearing to determine how much rent should be paid into the court registry. A form for the motion to determine rent is included in this brochure.

**NOTE: If you fail to pay the rent into the court registry or fail to file a motion to determine the amount of rent due, in addition to filing your answer within the 5 day period, you have waived all of your defenses, except for payment. If you fail to file an answer and pay into the court registry or file a motion to determine rent, you will have defaulted on your case, and the landlord automatically wins.**

## 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 simply means that you go up to the clerk at the counter at County Court and say “I want to file an answer to an evic-

tion.” Always take the original answer and 2 copies (one for yourself and one for the landlord). Make sure that the clerk date stamps all copies.

## DEFENSES

You may be able to use these defenses in your answer. If any of these apply, you should argue that the you should win the case because of these defenses.

- Failure to serve a proper, non-defective termination notice
  - ◆ The notice does not comply with Florida Statute § 83.56.
- 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 include 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/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.
- Failure to maintain
  - ◆ The landlord has failed to maintain the property pursuant to Florida Statute §83.51 (i.e.: no hot water).
- Retaliatory eviction
  - ◆ Your landlord files an eviction complaint because you contacted code compliance about conditions problems.
- Discriminatory conduct
  - ◆ The landlord discriminates based on race, color, national origin sex, handicap, familial status, or religion in violation of the Florida Fair Housing Act.