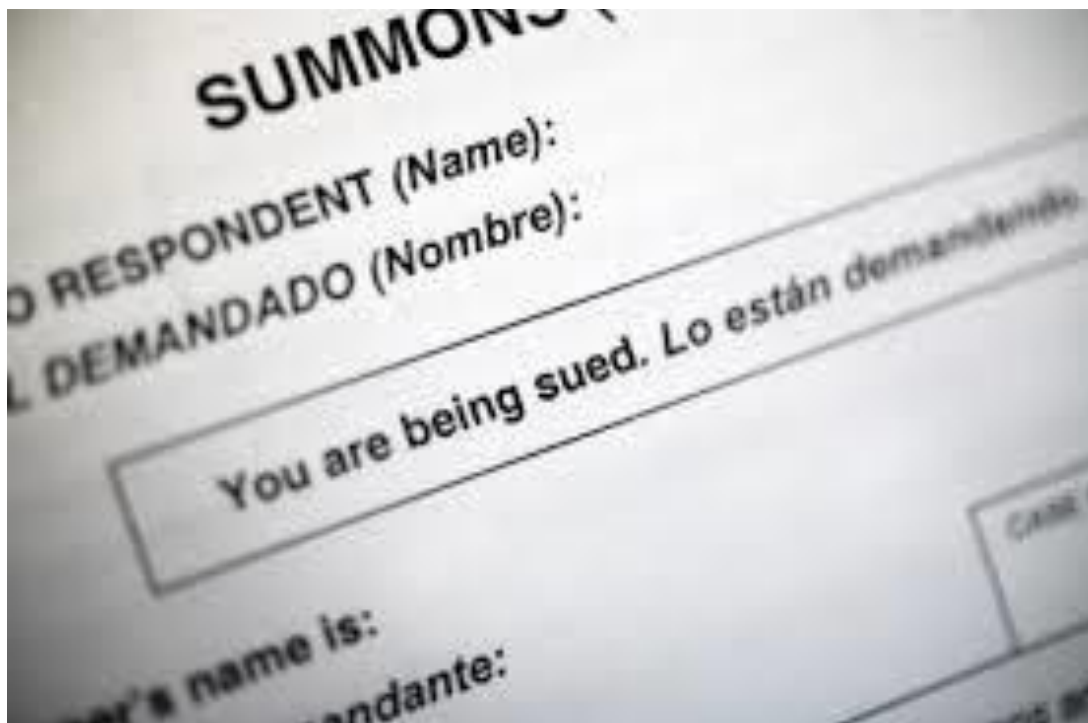


# What to Do if You Are Sued for Unpaid Rent



**Legal Services of Greater Miami, Inc.**

**Tenants' Rights Project**

## **WHAT HAPPENS IF I OWE MY FORMER LANDLORD RENT?**

Your former landlord may sue you in Small Claims Court or County Court if you owe rent. If you are living in the unit and owe rent, most landlords will file an eviction lawsuit asking the court to remove you. Read our eviction brochure for information about this situation.

Occasionally, a landlord will sue a tenant for unpaid rent after the tenant moves out of the property. If you moved out and had a *written lease* which had not expired, you may be responsible for unpaid rent at the time you moved, plus rent that is due through the end of the lease. How much you may owe depends on what your lease says. You must carefully review the lease to see what it says you owe for breaking the lease and moving out early.

If you are sued in Small Claims Court, you are not required to file an Answer, but you must appear at the pre-trial conference. If you the landlord sued you in County Court, as opposed to Small Claims Court, use the sample "Answer and Affirmative Defenses" form in this brochure. Include any defenses you may have, and submit it to the Court. This usually happens when you owe more than \$5,000. Make sure you keep a copy for your records and mail a copy to your landlord or his attorney. It is important that you read carefully the papers you get from the court so know exactly what you need to do to defend the case.

## **REASONS YOU MAY NOT BE ORDERED TO PAY RENT TO YOUR FORMER LANDLORD**

Even if you moved before your written lease ended, or did not pay all of the rent you owed to the landlord, you may have some good reasons for why the Court should not order you to pay the back rent. The Court calls these reasons, "defenses." Defenses that you may have against your landlord's lawsuit include, but may not be limited to:

### **1. Substantial Housing Code Violations**

- Florida law requires landlords to maintain the rental unit in livable conditions.
- If you moved because the conditions of the unit were so bad that you were forced to move, and have proof (i.e. pictures, letters from code enforcement, code enforcement violations, notices you sent to the landlord), the Judge may decide you should not have to pay rent for the time you could not live there or reduce the rent you owe.

### **2. The Landlord Rented the Property to New Tenants**

- Tell the Judge if the landlord has rented the property to new tenants. If the landlord re-rented the property, you may not be responsible for the rent after the new tenants moved in. If the landlord re-rented the property to new tenants who are paying less rent than you paid, you may be responsible for the landlord's loss. If the landlord was unable to rent the property to anyone, you may be responsible for the entire amount due under the lease if you moved out early. *Note:* The landlord is not required by law to re-rent the apartment as long as he does not take possession of the apartment.

### **3. You Have a Credit for the Last Month's Rent You Paid In Advance or from a Security Deposit**

- Some landlords require the tenant to pay the last month's rent at the time the lease is signed. Read your rental agreement to determine how the landlord treated the money you paid when you moved in.
- If you paid your last month's rent in advance and your rental agreement does not designate it as a security deposit, the landlord must use this money as credit toward your last month's rent. If the landlord is not giving you credit for this amount, bring proof that you paid this amount to show the Court, and tell the Judge that you already paid this amount to the landlord.
- If your landlord never returned your security deposit, you should ask the Judge to deduct that from the amount the landlord claims you owe. You should refer to our brochure on "Security Deposits" for more detailed information the same.

### **4. The Landlord Made a Mistake in Calculating How Much Rent You Owe**

- The landlord may have made an error in figuring out how much rent you owe. You may not owe the landlord any rent at all, or an amount that is less than he claims you owe.
- Do your own calculation of how much rent you paid, and how much you may owe the landlord. Gather together proof of all rent payments you made to the landlord. Proof includes original receipts, money order statements, cancelled checks, and bank statements. Bring your proof to Court to show to the Judge.

### **5. The landlord is improperly charging an early termination fee.**

- A landlord may charge an early termination fee. But, the early termination fee cannot exceed 2 months' rent and it must be included in the lease. The agreement must be on a separate page of the lease agreement and signed separately by you. If the landlord charges you an early termination fee, it cannot ask you to pay the rent for the remainder of the lease.

## **WHAT HAPPENS IF I LOSE AT TRIAL?**

At trial, the landlord will be required to prove the amount you owe. You will be required to prove any reduction, so be prepared with witnesses and evidence. If you lose the case, the judge will issue a final judgment against you. The final judgment is a paper that says you owe money to the landlord. The judgment will list the total amount you owe. It should also include any reduction you prove in court. For example, the judge may reduce the amount you owe if the landlord overcharged you. You may also be required to pay the landlord's attorney's fees and court costs if you lose the case.

The landlord may try to collect on the final judgment against you. The landlord, the landlord's attorney, or a collections company may try to garnish your wages or get money out of your bank accounts. You may be exempt from garnishment, so you should contact Legal Services of Greater Miami, Inc. if your landlord tries to collect on the final judgment.

Lastly, a final judgment may also affect your credit or your ability to rent an apartment in the future. You should refer to our brochure on "How Does an Eviction Affect My Credit, or My Ability to Rent?" for more information on this.

**IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CIVIL DIVISION

CASE NO.: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff(s),

vs.

\_\_\_\_\_  
Defendant(s).

\_\_\_\_\_ /

**ANSWER AND AFFIRMATIVE DEFENSES**

**ANSWER**

1. I ADMIT paragraphs \_\_\_\_\_ of the Plaintiff's Complaint.
2. I DENY paragraphs \_\_\_\_\_ of the Plaintiff's Complaint.
3. I am without knowledge of paragraphs \_\_\_\_\_ of the Plaintiff's Complaint.

**AFFIRMATIVE DEFENSES**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**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 and Affirmative Defenses to Plaintiff via First Class U.S. Mail at \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Defendant's Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_