



What Can I Do if My Landlord is Trying to Evict Me?

ASSISTANCE

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What Do I Need To Know?

We have sent you our handbook The Rights of Tenants in Maine. The "Eviction" section of the pamphlet, at page 13, tells what the landlord can and cannot do. It also tells how the eviction process works and how long it takes. It explains some common defenses to eviction actions. After you have read this information, you may have more questions. This may answer some of those questions. If you still need to know more, call us again.

What Should I Do First?

Decide what **you** want to do. If you do not want to stay, but you need more time, call your landlord or his attorney to see if you can settle the case. Your landlord must take several steps to legally evict you. These steps take a minimum of two weeks beyond the eviction date in the first notice. So, if you need more time, don't sell yourself short. If you are offering to save your landlord the expense of a court hearing by settling early, you should be able to get some extra time for that. Before you agree to a date, read more below under "What if I plan to move out but I need more time?" and "How much time do I have?" (pages 3 and 4).

If you want to fight the eviction, think about whether you can make a good case for not being evicted. Some common defenses are explained in The Rights of Tenants handbook. Also, read more below under "If I want to fight the eviction, what do I do?" (page 4).

I am being evicted for not paying rent. I want to stay where I am but I cannot afford to pay up. Is there anything I can do before being taken to eviction court?

Talk to your landlord about whether he will accept a payment arrangement to give you a chance to catch up on your rent.

If the landlord will not agree to this, you may be able to get some help from one of these places:

Family Crisis Assistance Program (Emergency Assistance)

The Department of Health and Human Services (DHHS) runs this program. It provides emergency help to low income households with children. You can get up to \$250.00 for a housing emergency. You can apply this toward a security deposit or toward back rent if it will prevent the eviction.



This program will also assist with \$150.00 to prevent utility shut-offs and will help with other crises. You have a 30-day period to get all of the emergency help you need. After the 30 days, this program will not help you again for 12 months. Therefore, once you apply, ask for information on everything they can help with and apply for everything you need within the 30 days.

To apply: Contact your local Maine Department of Health and Human Services Office. (Applications may also be available at your town office or utility company.)

General Assistance

General Assistance is a welfare program run by every city or town. If your income is too low to meet your basic necessities, such as rent, your local town should assist.

In an emergency, your town or city should do whatever is necessary to assure you have basic necessities: shelter, food, heat, medicine, etc. However, the town may require you to show that your income for the last 30 days was spent on basic necessities in order to qualify.

If you are being evicted, the town should assist with the first month's rent or, in an emergency, the security deposit or back rent. (A town will only help with a security deposit if no landlord will rent to you without a deposit.)

To apply: Contact your local town office.

If you do not know where to apply or have questions about how your town or city is handling your problem, you may call the Special Services Unit, Department of Health and Human Services, at 1-800-442-6003 or 287-2826.

Salvation Army, Red Cross, or Homeless Shelter

Your local Salvation Army, Red Cross or homeless shelter sometimes can help you with emergency housing.

The Maine State Housing Authority also has information about local shelter. Call: 1-800-452-4668.

What does a landlord have to do to evict me?

The Rights of Tenants handbook explains, in detail, what landlords (in different types of rental situations) must do to legally evict. Here is a quick overview of those rules:

1. Eviction Notice

Your landlord must give you a **written** Eviction Notice, sometimes called a "Notice To Quit." If you do not have a lease, the Notice will tell you that you have either 7 days or 30 days to move out. (An oral eviction notice is generally not legal). **Keep your eviction notice.**

The Eviction Notice is **not** the same thing as a court order. Your landlord cannot legally evict you until he gets a court order allowing the eviction. (If you live in a rooming house, these rules may not apply to you.) If your landlord tries to evict you **without getting a court judgment**, call the police. Call Pine Tree if the police won't help. Your landlord cannot legally change the locks, shut off your utilities or try to keep you out of your home.

2. Court Papers

At the end of the time period given in your Eviction Notice (usually 7 days or 30 days), your landlord can serve you with court



eviction papers. These are called a "Summons and Complaint". A Deputy Sheriff usually serves them on you. Call Pine Tree Legal right away if you get these **court** eviction papers.

3. Eviction by Court Judgment

The court papers will tell you the date of your eviction hearing. If you want to fight the eviction, you **must** go to court. In court you may ask your landlord questions, bring your own witnesses and exhibits (photos, for example), and explain your side of the story.

Your landlord can go to court to try to evict you even if you think your landlord is wrong. You can be evicted even if it is winter or you have children or you have nowhere to go. It is up to the court, not your landlord or Pine Tree Legal, to decide if you can be evicted.

If you go to court and lose, you have the right to appeal. If you lose and do not appeal, after seven days you will be served with a "Writ of Possession". This is the eviction order of the court. You then have 48 hours to move out.

What if I want to move and will be out before an eviction order will take effect?

If you know **for sure** that you will be moving before a "Writ of Possession" will be issued (see above), then the legal eviction process will not affect you. You may want to tell the landlord of your plans to save him the trouble of going to court to get an eviction order. **Be sure of your plans to move** before you decide to ignore the court eviction hearing. It is too late to fight the eviction after a court judgment has been entered against you.

How much time do I have to move?

Again, you are not legally required to move until the following events have happened:

- First, the time period in the Eviction Notice must be over (usually 7 days or 30 days)
- Second, you must be served with court eviction papers. The Summons must give you at least 7 more days before the court hearing.
- Third, if you lose the hearing and do not appeal, you will have 7 more days to move.
- Fourth, after the 7 days, if you are still there, you can be served with a Writ of Possession. You then have only 48 more hours to leave.

What if I plan to move out but I need more time?

If you are planning to move but cannot do that before the landlord can get a "Writ of Possession" from the Court, talk to the landlord or his attorney about agreeing to extra time to move. The landlord does not have to agree to this. Remember that you already have 7 days after the court hearing before a "Writ of Possession" can issue. So if you settle, you should get more than 7 days after the court date. Once you have agreed to a date, the landlord can get the "writ" from the Court on that date and have it enforced by the sheriff's department. It will be too late to change your mind after the judge has approved the agreement.

If you come to an agreement after the court papers have been filed, then use the attached "Agreed Judgment" form to protect your rights. Fill it out and file it with the Court. Write the move out date you have agreed to on the last line of this form. It is **not** a good idea to have just an oral agreement with the



landlord and skip the court hearing. You need to be in court to protect your rights and to make sure that the written agreement is given to the judge.

If I want to fight the eviction, what do I do?

You have tried to work things out with your landlord but he is going forward with an eviction. You are served with court papers for eviction: a "Summons and Forcible Entry and Detainer Complaint". The Summons sets a court date. You want to fight the eviction.

Contact a private lawyer or Pine Tree Legal Assistance immediately.

Usually, the notice of a court date gives you only a short time to prepare (as little as 7 days). If you can find a lawyer quickly enough, provide this information to your lawyer as soon as possible:

- your eviction notice (sometimes called "Notice to Quit");
- your lease or rental agreement (if you have one);
- rent receipts or other evidence of payment (if issue is non-payment); and
- Summons and Complaint

What if I can't find a lawyer to help me at the eviction hearing?

If you cannot find a lawyer to represent you at the eviction hearing, Pine Tree Legal Assistance has written forms to help you fight your eviction.

Along with the "Agreed Judgment" form (see above), we have attached:

- A form letter to the court clerk; and

- Answer, Affirmative Defenses and Request for Electronic Sound Recording.

Here's what to do with the forms:

Step One. Fill out the letter.

- Fill in the date
- Fill in the address of the court
- Fill in the name of the case where it says "Re:." For example: Wright v. Miller.
- Sign your name, put in your address & phone no.

Step Two. Fill out the Answer, Affirmative Defenses & Request for Electronic Sound Recording.

- Fill in the names of the Plaintiff (landlord) and the Defendant (you). Fill it in just like on the Complaint that was served on you.
- Fill out the name of the court. Fill it out just like your landlord did.
- On the **Answer** at question #3, check the correct box.
- On the **Affirmative Defenses** check the one(s) that apply. Add any Defenses you have that are not listed.
- Fill in the date, sign it, and put in your address and phone number.

Step Three. Make two copies of both papers, one for yourself and one for the landlord.

Step Four. Send copies of both papers to your landlord.

If the Summons on the lower left hand side lists the name of an attorney, send copies of everything to the attorney, instead of the landlord.

Step Five. On the original Answer, sign and date the Certificate of Service. This



shows the court that you have notified the landlord of your Answer.

Step Six. Send the original letter and original Answer to the court clerk. The clerk's name and address is on the Summons, which was served on you. Try to get this to the court at least one day in advance. (You may not be allowed to get a copy or transcript of the hearing recording, if you need it later for an appeal, unless your request for sound recording was made at least 24 hours before the hearing.)

What happens when I go to Court?

- ✓ You Must Go.
- ✓ Don't Be Late.
- ✓ Bring any witnesses, pictures, and letters with you. (You cannot say that you have a picture at home or a friend who would back you up. The picture or the friend must be with you in court.)

Refer again to the above section "What if I plan to move out but need more time?" (page 4). After you get to Court, you can still talk to the landlord about settlement. If you reach an agreement, be sure to put it in writing and give it to the judge when he calls your case. (See attached "Agreed Judgment" form.) You might agree that you can stay if payments on back rent are made by certain dates. You might agree to move by a certain date (giving you more time to move than the 7 days you will have, anyway, if the court orders the eviction without an agreement).

What happens if I have a court hearing?

If you and the landlord do not settle the case, then the judge will hold a hearing. Ask for the hearing to be tape-recorded. (You may

not get this if you didn't put in your written request at least 24 hours ahead.)

All witnesses will be sworn in. The judge will ask the landlord to give his side of the story first. After he presents his case, you will be given a chance to ask the landlord questions. You may want to ask follow-up questions to clarify his earlier statements, or to bring out information he has not talked about. He may also present other witnesses. You may ask them questions, too, after they have finished telling their stories.

When it is your turn to testify, tell the judge your story as clearly and simply as you can. Think about the reasons you raised in your written answer about why you shouldn't be evicted.

Here are some common arguments against the landlord:

- You did not receive the Notice to Quit.
- The Notice to Quit did not give you 7 days to cure the non-payment of rent.
- The Notice to Quit said you have 30 days (or 7 days) before the tenancy ends, but it really gave you less than 30 days (or 7 days) after you received it.
- The 30-day notice period runs out when your rent is still paid up. The landlord is trying to evict you only because you complained to a code enforcement officer, or to the landlord in writing, of bad conditions in the apartment.
- You did not pay rent because of serious conditions, which make the house unsafe or unhealthy to live in. You have told the landlord about these problems but he has not fixed them. (If you win on this point, the



court can set a lower rent, which you must pay until the needed repairs are done.)

- The landlord's story that you are behind in rent, caused a nuisance, or broke the lease is not true. State the facts on these issues based on your own knowledge. If there are witnesses who can verify your version of the facts, you can bring them to court and ask them to testify about what they saw and heard.
- The 7-day notice given for non-payment of rent does not contain these two sentences:

"If you pay the amount of rent due as of the date of this notice before this notice expires, then this notice as it applies to rent arrearage is void."

"After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated."

If any of these defenses apply to your case, be sure to point them out to the judge.

What if I lose?

If you have a hearing and the Court orders the eviction, you will have at least seven days to move. In some cases, you may have good reasons to appeal the decision to Superior Court. (For more details on "writ of possession" and appeal, re-read these sections in The Rights of Tenants handbook.) Appealing the decision without an attorney can be difficult.

Finally, remember that if you are being evicted for non-payment of rent, you still have the right to stay if you pay all of the back rent, plus the landlord's court costs, before the court issues the "writ of possession."

Notice

Prepared by Pine Tree Legal Assistance
Revised August 2005; partially revised
September 2009

We are providing this information as a public service. We have tried to make it accurate as of the above date. Sometimes the laws change. We cannot promise that this information is always up-to-date and correct. If the above date is not this year, call us to see if there is an update.

This information is not legal advice. By sending you this, we are not acting as your lawyer. Always consult with a lawyer, if you can, before taking legal action.



STATE OF MAINE

District Court _____
Division _____
Location _____
Docket No. _____

Plaintiff

v.

AGREED JUDGMENT
FORCIBLE ENTRY AND DETAINER

Defendant

This matter came before the Court for hearing on this date. The Court finds that the summons and complaint were duly served on the defendant. The plaintiff and the defendant did appear.

Judgment is rendered: By agreement.

Judgment is granted to plaintiff for possession of the following described premises:

A writ of possession may issue on or after _____.

Dated: _____

Judge, District Court

A true copy,

Attest: _____
(Deputy) Clerk

Date:

Maine District Court Clerk

(Address)

RE: _____ v. _____

Dear Clerk:

Please find enclosed for filing the original Answer, Affirmative Defenses and Request for Electronic Sound Recording.

A copy of this letter and the Answer, Affirmative Defenses and Request for Electronic Sound Recording has been mailed to the landlord or to his attorney, if any.

Sincerely,

(Signature)

(Print Name)

(Address)

(Phone number)

STATE OF MAINE

District Court _____
Division _____
Location _____
Docket No. _____

_____, _____, _____
Plaintiff _____, _____
vs. _____, _____
Defendant _____

**ANSWER, AFFIRMATIVE
DEFENSES AND REQUEST FOR
ELECTRONIC SOUND RECORDING**

ANSWER

1. I am without knowledge as to whether the Plaintiff is the legal owner of the property.

Therefore, I deny any allegation that the Plaintiff is the owner.

2. I admit that I am the tenant in this matter

3. I admit receiving an eviction notice. I am without knowledge as to whether the eviction notice is lawful. Therefore, I deny that the eviction notice is lawful.

or

- I deny receiving an eviction notice.

4. I deny violating the terms of the tenancy.

AFFIRMATIVE DEFENSES

(Check boxes that apply)

- I do not owe the amount of rent the landlord claims is owed. The conditions in my home violate the implied warranty of habitability. The landlord has not taken prompt, effective steps to repair the condition after receiving notice of the condition. I did not create the condition.
- The landlord is evicting me because I, or someone on my behalf, have complained, in good faith, about health or safety problems in my building.

- I do not owe the amount of rent the landlord says I owe. Any amount I may owe is reduced or set off by amounts my landlord owes to me.
- The eviction notice was not lawful: because it did not give me 7 days to cure my non-payment of rent; it did not give the proper amount of time before the tenancy was to terminate; it did not tell me that I could pay all rent arrears, plus costs, as required by statute; or it was unlawful in some other respect.
- Other: _____

REQUEST FOR ELECTRONIC SOUND RECORDING

I request that the court have any hearing in this case recorded. I make this request in accordance with Rule 76H of the Maine Rules of Civil Procedure.

Date: _____
(Signature)

(Print Name)

(Address)

(Phone number)

CERTIFICATE OF SERVICE

I hereby certify that I have delivered a copy of this Answer, Affirmative Defenses and Request for Electronic Sound Recording by mailing a copy to the landlord and/or the landlord's lawyer.

Date: _____
(Signature)