

START HERE

1. Has the client received a Notice from Magistrate court for Wrongful Occupation?

YES

2. Has the client filed an Answer to the Wrongful Occupation Petition?

NO

NO

YES

- Since the client has not received notice from the Magistrate Court, the eviction notice is not a court eviction.
- You may be able to negotiate with the landlord before it becomes a court proceeding.
- If the landlord is merely trying to terminate the lease, proper notice of one rental period is required.

- Since the client has already filed an Answer, be sure to get a copy of the Answer that was filed, along with the Petition.
- Discuss the reason for the eviction petition and any possible defenses the client may have.
- if the client has a defense or counterclaim that was not included in the Answer, an Amended Answer can be filed.
- The court generally does not require leave to file an Amended Answer in these cases.
- However, the Amended Answer needs to be filed and served on the landlord as soon as possible.

- The Answer to the Wrongful Occupation Petition must be filed within 5 days of receipt of service.
- if the client was served less than 5 days before the hearing, a Motion to Continue can be filed to give the client time to file an answer.
- Be sure to get a copy of the Petition from the client.
- Discuss the reason for the eviction petition and any possible defenses the client may have.

Continue to Question #3

3. Is the only reason for eviction the non-payment of rent?

NO

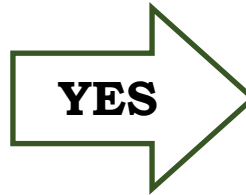
Continue to Question #4

YES

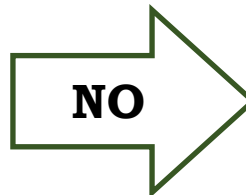
- If non-payment of rent is the only reason for eviction, the tenant may be able to “Pay and Dismiss” the action pursuant to W. Va. Code §37-6-23.
- If the tenant can come up with the amount of money owed in rent and accrued costs, (including late fees and court costs) the tenant can have the case dismissed by tendering payment at the beginning of the hearing.
- The full amount must be offered up front, at which point “all proceedings shall cease.” Payment must be by cash, certified check, or money order.
- Offer payment to the landlord before the hearing. If the landlord accepts, still go into the hearing and inform the magistrate.
- If the landlord refuses to accept, go into the hearing and inform the magistrate at the beginning of the hearing. The magistrate should require the landlord to accept payment and dismiss the case.
- Advise clients that, if they hold a month to month tenancy, they may win the eviction case only to receive notice of termination of the agreement and will then have to vacate the premises.

4. Does the client have one of the following defenses to the eviction?

- Breach of Agreement by the Landlord.
- Rent was Tendered and Refused.
- Breach of the Warranty of Habitability.
- The Action was filed in retaliation for complaints the tenant made about the premises.
- The duty to pay rent was dependent of an express or implied covenant or warranty.
- The person attempting to evict is not the owner of the property (only property owners can file eviction actions).
- Any other valid legal defense the tenant may have



- If the client has a valid defense, be sure to include it in the Answer.
- Request any supporting documentation from the client, such as lease agreement, pictures, canceled checks, receipts, etc.
- You can also get discovery from the landlord before the hearing of documents.
- You may want to consider a jury trial and/or having the case removed to Circuit Court (if applicable) if there are strong defenses against the eviction.



Continue to Question #5

5. Is the amount in controversy \$2,500 or more?
(This can include combined claims from both sides.)



Continue to Question #6



- Since the amount in controversy is \$2,500 or more, either party has the right to have to case heard in Circuit Court.
- Removal to Circuit Court
- Pursuant to W. Va. Code §50-4-8, a case can be removed to Circuit Court if the case involves more than \$2,500. A counterclaim by the tenant may be considered in meeting the amount for removal according to the W. V. Supreme Court in State ex re Strickland v. Daniels, 173 W. Va. 576, 318 S.E.2d 627 (1984).
- There is a filing fee associated with removing a case to Circuit Court. If the client qualifies for a fee waiver, the costs should be waived.

6. Does the Petitioner qualify for a Fee Waiver?



- For current qualifications and necessary forms, visit the [West Virginia Judiciary's](#) website.
- The Fee Waiver form is available as a LAWV Law Help form or as a fillable pdf on the court's website.



- If the client does not qualify for a fee waiver, the regular civil case filing fee will need to be paid at the time of filing.
- For current qualifications and necessary forms, visit the [West Virginia Judiciary's](#) website.

This is the end of the client interview.