



WEST VIRGINIA
LANDLORD-TENANT
EVICTION
LAW OUTLINE

2016



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1. The Eviction Process

- a. The Eviction Process typically moves very quickly in West Virginia. In most Magistrate Court cases, the hearing will be no more than 10 days after the landlord files the wrongful occupation petition in Magistrate Court.
- b. After the landlord files the wrongful occupation petition, it will be served on the tenant.
- c. The tenant can be served anytime between the filing of the petition and the date of the hearing (which is no more than 10 days after the filing).
- d. If the tenant has not been served prior to the hearing, the hearing is supposed to be continued.
- e. Tenants often get served only a day or two before the hearing, and they may not know that the landlord was planning to evict until they receive notice.
- f. The tenant will need to collect any records, such as canceled checks, receipts, copies of correspondence with the landlord, and any other documentation relating to the tenancy.
- g. The tenant has a right to a jury trial.
- h. To get a jury trial, a Jury Demand will need to be filed with the court.
- i. There is a cost associated with having a jury trial. If the client qualifies for a Fee Waiver, this should cover the costs of a jury.
- j. Discovery is limited to production of documents, so the tenant has a right to any documents in the landlord's possession prior to the hearing.
- k. Witnesses may testify on the tenant's behalf at the hearing.
 - i. If necessary, a subpoena can be issued for a witness.
 1. If the client qualifies for a fee waiver, it will cover the cost of subpoenas.

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1. The case can be removed to Circuit Court if the case involves more than \$2,500.
 - i. The amount in controversy requirement can be met with the total of both the landlord's claims as well as any counterclaims that the tenant may have.
 - ii. There is a filing fee to remove the case, unless the client qualifies for a fee waiver.

2. Grounds for Eviction (Wrongful Occupation)

- a. Non payment of rent
 - i. Most evictions occur because the tenant has not paid some or all of the rent.
 - ii. In cases where the tenant is behind on rent with no other reason for non-payment, the eviction will likely be successful and there will be a judgment against the tenant for the amount of back due rent. However, it is possible to negotiate with the landlord before the hearing for a more favorable result for the client.
 - iii. The tenant may have a defense against the landlord if rent was not paid for the following reasons:
 1. Breach of Agreement by the Landlord
 - a. If the landlord breached a written agreement, a signed copy of the lease, or other agreement, is necessary for this defense.
 - b. If the promises made were factors the tenant relied upon when deciding to sign the lease, an argument can be made as to the amount of rent based on the premises as it is and not as it was promised to be. This may reduce the amount owed.
 - c. It is beneficial if the tenant has the money owed in escrow or otherwise available for immediate payment.
 2. Breach of Warranty of Habitability

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- a. The Warranty of Habitability is an implied warranty that cannot be contracted around.
 - i. **WV Code §37-6-30, Teller v. McCoy, 253 S.E.2d. 114 (WV 1979).**
- b. This is the landlord's duty to maintain the home in a fit and habitable condition.
 - i. Requirements include:
 1. Compliance with health, safety, fire, and housing codes unless failure to meet those requirements is the fault of the tenant;
 2. Maintain in good and safe working order all electrical, plumbing, sanitary, heating, and other facilities and appliances, including elevators, supplied or required to be supplied to the landlord by written or oral agreement; Supply running water and reasonable amounts of hot water at all times, and reasonable heat between October 1st and the last day of April.
 - ii. If a landlord's duty under the rental agreement exceeds requirements of **West Virginia Code §37-6-30**, the rental agreement controls.
- c. The landlord is not required to make repairs when the tenant is in arrears in payment of rent.
- d. If the landlord violates the Warranty of Habitability, the tenant may vacate the premises without further liability and may sue the landlord for contract damages.
- e. The tenant may also sue for the difference between fair market value of the rental unit if it was habitable and the fair market value of the unit in its actual condition.

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- f. Evidence that the tenant informed the landlord of habitability issues in the rental unit and pictures of the premises are important for this defense.
 - g. The tenant's credibility is enhanced if they offer to post withheld rent in escrow.
3. Rent was Tendered and Refused
- a. This can occur if the landlord wants the tenant to leave but the tenant wants to stay.
 - b. If the tenant has offered or tried to pay rent, but the landlord has refused, proof of tender along with still having the money to pay the rent is usually an adequate defense.
 - c. However, in a month-to-month tenancy, the landlord will need only give one rental period notice to terminate the tenancy.
 - d. Advise clients that they may win the eviction case only to receive notice of termination of the agreement and will then have to vacate the premises.
4. Tenant also has the option to "Pay and Dismiss" if non-payment of rent is the only reason for the eviction proceeding.
- a. **WV Code §37-6-23**
 - b. 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.
 - c. The full amount must be offered up front, at which point "all proceedings shall cease."
 - i. Payment must be by cash, certified check, or money order.

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- d. Offer payment to the landlord before the hearing. If the landlord accepts, still go into the hearing and inform the magistrate.
 - e. 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.
 - f. 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.
 - g. See Legal Aid's website for more information on Pay and Dismiss.
- b. Damages to the premises
- i. Damage to premises above normal wear and tear is a ground for eviction.
 - ii. Normal wear and tear is not a valid ground for eviction.
 - 1. Normal wear and tear is chipped paint, worn carpet, peeling wallpaper, worn finish on hardwood, etc.
 - 2. It is not broken windows, broken doors, holes in walls, etc.
 - iii. The tenant is responsible for damages caused by tenants, guests, or invitees.
 - iv. The only defense is that the tenant did not invite or knowingly permit the person who caused damage onto the premises.
 - v. There is no distinction between the damage being intentional or accidental. The issue is who caused it.
 - vi. There is a defense if the damage was caused by defects to the property, especially if the tenant had requested the defect to be repaired.
 - vii. For example, if the landlord was informed that the roof had a leak and the leak wasn't repaired causing damage to hardwood floors.

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- c. Disturbance or threat
 - i. There are many factual arguments about what constitutes a disturbance or threat.
 - ii. Examples that may or may not be a disturbance are: loud arguments, loud kids, intimidating guests, loud stereo or television, fights, foul or offensive language.
 - iii. The defense is whether the action is reasonable within the context it is being challenged.
 - iv. The standard should be whether a reasonable person would find the behavior objectionable, and not merely whether the landlord disapproves.
 - v. If police are called to the premises because of conduct by the tenant or tenant's guest or invitee, the courts generally find cause for eviction.
 - vi. The burden is on the tenant to show that they were not the cause, but the victim of the criminal activity.
- d. Pets
 - i. When pets are the basis for eviction, it is important what is in a written lease.
 - 1. If the lease does not prohibit pets, then the mere presence of pets is not a violation.
 - a. However, if the pet is causing damage or a disturbance, eviction can be sought under those grounds.
 - ii. If the landlord changes their mind regarding pets, then the agreement would need to be modified.
 - iii. If a written lease: any change will depend on whether the lease allows for a change before the end of the lease term or if the tenant agrees to the change.
 - iv. If there is a verbal month-to-month lease: the landlord must technically terminate the existing lease with proper notice and offer a new lease with the pet provision.

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- v. Service animals are protected by the Fair Housing Act and the Americans with Disabilities Act and require landlords to make reasonable accommodations of the tenant's disability.

- 1. **In re: Kenna Homes Cooperative Corporation, 210 W. Va. 380, 557 S.E.2d. 787 (2001)** addresses the difference between service animals and comfort animals.

3. Answering the Eviction Petition

- a. The Answer to a wrongful occupation petition must be filed within 5 days of service of the petition.
- b. Respondents will typically receive the court's answer form when they are served with the petition.
- c. The tenant can admit, deny, or admit in part, deny in part what the landlord alleges in the petition.
- d. If the tenant denies, or denies in part, there are various defenses that can be raised and explained on the answer form.
- e. Available defenses included on the form are:
 - i. The premises are defective and violate the warranty of habitability.
 - ii. The action was filed in retaliation for complaints I made about the premises.
 - iii. The duty to pay rent depended on an express or implied covenant or warranty.
 - iv. Other defense.
- f. Defenses need to be described on the answer form and space is provided to describe the circumstances. Additional pages can be used if necessary, but the explanation should be concise.
- g. Tenants can also assert a valid counterclaim or cross-claim. These must also be adequately explained in the answer.
- h. The Court's Answer form is not required and an Answer may be filed in a separate pleading

4. Tenant's Rights

- a. Notice of Proceeding

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- i. The tenant has the right to receive notice of the proceedings pursuant to **W. Va. Code §55-3A-1(c)**.
 - ii. Notice is to be immediately served upon the tenant (respondent) and will include the time and place of the hearing.
 - iii. Notice can be served in compliance with the **West Virginia Rules of Civil Procedure, Rule 4**, or by certified mail, return receipt requested.
 - iv. The hearing should not go forward if there is not proof of service.
- b. Discovery
- i. The extent of discovery available varies depending on whether the case is being heard in Magistrate or Circuit Court.
 - ii. In either court, the tenant has the right to get copies of any of the landlord's documents or photos that may be important to the case.
 - iii. Examples of what might be requested in discovery are: rent payment records, records showing repairs, photos of alleged damage, and a copy of the lease if the tenant does not have it.
 - iv. Magistrate Court:
 1. If the case is heard in Magistrate Court, discovery is limited to production of document, entry on land, or physical examination, in accordance with **Magistrate Court Rules of Civil Procedure—Rule 13**.
 - v. Circuit Court:
 1. If the case is removed to Circuit court, the full rules of discovery available under the **West Virginia Rules of Civil Procedure** apply.
- c. Removal to Circuit Court
- i. Pursuant to **W. Va. Code §50-4-8**, a case can be removed to Circuit Court if the case involves more than \$2,500.
 1. A counterclaim by the tenant may be considered in meeting the amount for removal according to the W. V. Supreme Court

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in **State ex re Strickland v. Daniels**, 173 W. Va. 576, 318 S.E.2d 627 (1984).

- ii. There is a filing fee associated with removing a case to Circuit Court.
 - 1. If the client qualifies for a fee waiver, the costs should be waived.
- d. Jury Trial
 - i. Under **West Virginia Rules of Civil Procedure for Magistrate Court—Rule 6A**, parties have a right to request a jury trial. Cases are automatically set for a bench trial unless a party files a written request for a jury trial before the date of the hearing.
- e. Appeal
 - i. Tenants have a right to appeal an unfavorable magistrate decision to the Circuit Court.
 - ii. The Magistrate’s Clerk’s office has the necessary forms for appeal and the appeal will be filed with the Magistrate Court Clerk.
 - 1. There is a fee to appeal, but a fee waiver can be filed for qualifying clients.
 - iii. The appeal must be filed within 20 days of the date of the magistrate’s order.

5. What Landlords Can and Cannot Do

- a. Can a landlord change the locks while a tenant is still living on the premises?
 - i. Maybe.
 - 1. A landlord cannot change the locks when a tenant is still living on the property unless proper notice of termination of the tenancy has occurred or the tenant has been evicted through a court proceeding.
 - 2. If the tenant has been evicted following a court hearing, a date will be set by which the tenant must vacate the premises.

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- a. If the tenant does not vacate by said date, the landlord can change the locks (anytime the tenant is absent from the premises or with the accompaniment of the sheriff pursuant to **W. Va. Code §55-3A-3(f)**.
- b. Can a landlord charge the tenant for storage of personal property that a tenant leaves?
 - i. In most circumstances, yes.
 1. **W. Va. Code §55-3A-3(h)**
 2. After a tenant has been evicted and the vacate date has passed, the landlord is obligated to store the tenant's personal property for 30 days unless the tenant notified the landlord, in writing, that the property is abandoned or garbage.
 3. The landlord cannot charge "storage fees" for time periods when the landlord refuses to permit the tenant to reclaim their property.
 4. The landlord is permitted to dispose of the property after 30 days if the tenant has not paid the "reasonable costs" of storage and removal or if the cost of storage is equal the value of the property being stored.
 5. The landlord will be required to store for an additional 30 days if the tenant pays the reasonable costs of storage and the personal property is worth more than \$300.
 6. To avoid being charged for storage, the tenant should attempt to retrieve their property as soon as possible after the vacate date if all the property cannot be removed by the vacate date.
- c. Can a landlord shut off the utilities while a tenant is still living on the premises?
 - i. Landlords should not turn off utilities while a tenant is still occupying the premises.
 1. If the utilities are in the tenant's name and paid by the tenant, and the landlord attempts to have the utility disconnected, the

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tenant may have a claim for tortious interference with contract. Judges and magistrate's also weigh such measures by landlords when hearing cases and making decisions.

2. When utilities are in the landlord's name, it is easier for landlords to have utilities shut off, however, that does not make it proper.
 - a. Landlords are required to provide running water and reasonable amounts of hot water at all times and adequate heat from October through April pursuant to **W. Va. Code §37-6-30(a)(7)**.
- d. Can a landlord sell the premises while a tenant is still living there?
 - i. Yes, a landlord can sell the premises while a tenant is living on the premises unless the lease agreement states otherwise.
 - ii. If the new owner bought the premises at a regular sale (not foreclosure), then the new owner must comply with the lease agreement.
 1. In general, the new owner "steps into the shoes" of the previous owner and is bound by the existing agreement.

6. The Eviction Hearing

- a. Most Eviction hearings will be before a Magistrate and will be relatively short.
- b. If the eviction is for non-payment of rent only and the tenant has all monies owed plus late fees and costs, the tenant can offer the money to the landlord at the beginning of the hearing and the case will be dismissed. This is known as "pay and dismiss."
- c. In a hearing before the Magistrate or Circuit Judge, both parties will have an opportunity to put on evidence and witnesses.
- d. West Virginia Rules of Evidence and Trial Court Rules apply.
- e. Witnesses can be subpoenaed if necessary.
- f. There is a right to a jury trial in eviction cases.

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- i. A jury trial must be requested in writing before the hearing date on the notice.
- ii. The court will have a status conference at the first scheduled hearing time and schedule a trial date.
- g. At the conclusion of a non-jury hearing, the magistrate or judge will make findings of fact and issue a ruling.
 - i. Magistrates can order “immediate possess” of the premises to the landlord.
 - 1. This is particularly common when the tenant has not filed an answer and does not appear at the hearing.
 - ii. Normally, a “set-out” date will be set.
 - 1. This is the date by which the tenant must vacate the premises. Oftentimes, this is between 24 hours and three days.
 - 2. The set out date refers to the tenant only and possessions or personal property cannot be discarded and set out by the landlord if the tenant does not remove them from the premises.

7. After the Hearing

- a. Based on the results of the hearing, there are a few things that will happen:
 - i. Tenant prevails
 - 1. If the tenant prevails at the hearing, they will be permitted to remain in the rental unit so long as the lease term has not expired.
 - 2. The tenant must continue to abide by the lease terms and pay rent.
 - 3. However, if the tenant has a month-to-month tenancy, it is likely that the landlord will give the required notice and terminate the tenancy.
 - 4. If the tenancy is terminated with proper notice, the tenant will have to vacate at the end of the notice period.
 - ii. Landlord prevails-No appeal, set out date

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1. If the landlord prevails and the tenant does not wish to appeal, the tenant must vacate the premises by the set out date issued by the magistrate or judge.
2. If the tenant does not remove their possessions, the landlord has a duty to store the possessions for at least 30 days and cannot just leave the tenant's property out on the curb.
- iii. Landlord prevails-Appeal and Stay of Possession
 1. If the landlord prevails and the tenant believes the decision went against the evidence, the tenant can appeal the eviction.
 2. The tenant has 20 days from the date of the order to appeal, but if the set out date is before 20 days, it is beneficial to file the appeal as soon as possible since the tenant has a right to maintain possession while the appeal is pending so long as the tenancy has not otherwise expired.

8. Appealing an Eviction

- a. Tenants have a right to appeal an unfavorable magistrate court decision to the circuit court.
- b. How is the appeal filed?
 - i. Petitions to Appeal a Bench or Jury Trial can be found on the West Virginia Judiciary's website, or can be obtained from the Magistrate Court Clerk's Office.
 - ii. The appeal will be filed with the Magistrate Court Clerk, and will be reviewed by a Circuit Court Judge.
- c. Can the tenant remain in the unit during the appeal?
 - i. Most of the time, yes, the tenant can remain in the rental unit.
 1. However, the tenant will have to pay all rent that comes due during the appeal and comply with all aspects of the rental agreement.
 - ii. **W. Va. Code §55-5-12(a)** states that "the filing or granting of an appeal shall automatically stay further proceedings." The **West Virginia Rules of Civil Procedure of Magistrate Court** say that

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“execution of the judgment shall be stayed until the appeal or motion has been decided.”

- iii. While the stay is supposed to be automatic, attorneys may need to advocate for the stay for their client in cases where the magistrate or circuit judge is reluctant to allow the tenant to remain in the rental unit.
- iv. A magistrate is not permitted to specify in or on the court order that there is “no appeal of possession” permitted, as this is contrary to state law. (See **Sines v. Hale, civil No. 96-C-AP-155, Circuit Court of Kanawha County, 1996**).
- v. A tenant will not be permitted to stay in the unit if the rental agreement has otherwise expired or has ended for reasons other than the reason for the eviction proceedings pursuant to **W. Va Code §55-3A-3(g)**.

9. Common Eviction Questions

- a. Does a tenant have to pay rent after getting the eviction notice?
 - i. Yes, the tenant must continue to pay rent even after receiving the eviction notice.
 1. The tenant is legally obligated to pay rent for the time that they occupy the property.
 - ii. Example
 1. Sally received an eviction notice on June 28.
 2. The eviction is because Larry Landlord found out that Sally was keeping exotic pets on the premises in violation of the lease agreement.
 3. The hearing is on July 7.
 4. Sally’s rent is due on July 1.
 5. Sally must pay July’s rent per the lease.
 6. If Larry Landlord refuses the rent, Sally should either keep it available in cash, or put the money in escrow.
- b. Can a tenant be evicted if they are pregnant, sick, or disabled?

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- i. Yes, a tenant can be evicted despite being pregnant, sick, or having a disability.
 1. So long as the basis for the eviction is proper and not based solely on the presence of the condition.
 2. However, the tenant may be able to receive a longer amount of time to vacate the premises because they are pregnant, sick, or disabled.
- ii. Example:
 1. Tara Tenant is eight months pregnant.
 2. She has been unable to work and on bed-rest for the past month of her pregnancy.
 3. Tara does not have sick leave from her job and is not being paid.
 4. Tara was unable to pay the rent for the past two months.
 5. Lucy Landlord files a wrongful occupation suit in magistrate court to have Tara evicted for non-payment of rent.
 6. If Tara cannot come up with all the money owed and assert her right to “Pay and Dismiss” at the hearing, she can be evicted.
 7. However, the magistrate and/or Lucy Landlord may be sympathetic and allow Tara extra time to move out.
- c. Can a tenant be evicted in extreme weather when they have no other place to live?
 - i. Yes, a tenant can be evicted despite extreme weather conditions
 1. A landlord has the right to file for eviction, so long as they have valid grounds, regardless of whether there is a blizzard or a heat wave.
 2. However, the tenant may be able to receive a longer amount of time to vacate the premises because of the severe weather conditions.
 - ii. Example:

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1. Tommy has been disturbing his neighbors by banging on the walls and ceiling and stomping around at night because he thinks the children are too loud during the day.
 2. Several neighbors have complained to the building supervisor because Tommy is keeping them up at night and the banging is scaring the children.
 3. It is the middle of the summer and there is a severe heat wave; which is why the children are inside.
 4. Louie Landlord has filed an eviction action against Tommy because of his actions.
 5. Tommy has said he has no place else to go and he would die of a heat stroke if he was homeless.
 6. Tommy can be evicted despite the weather absent a valid defense to the eviction action.
- d. Can a landlord evict because they want to rent the premises to someone else?
- i. While this is not a reason for a court eviction of the tenant, absent non-payment of rent or other violations of the lease agreement, the landlord can give proper notice to terminate the lease.
 1. If the lease is naturally ending, the landlord does not have to renew the lease and the tenant will be required to leave once the lease expires.
 2. Likewise, if the notice is proper under the terms of the lease, or as required by law, the landlord can end the lease by a written notice to vacate.
 - ii. Example:
 1. Tammy has a month-to-month tenancy. She pays her rent on the first of every month. She likes the house she is renting and plans to stay for a few years.
 2. Tammy comes home from work on the tenth of the month to find a note on her door from her landlord saying “Notice of

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Eviction” and giving her 30 days to vacate. It did not come through the court.

3. Tammy finds out that her landlord’s son got kicked out of college will be moving into her house as soon as she leaves. Tammy does not want to leave.
 4. This is not an “eviction” through the court and Tammy cannot be forced to leave without a court order. (But keep in mind the self-help measures the landlord may take even though he is not permitted to.)
 5. Landlord is required to terminate the month to month tenancy by providing a full rental period’s notice, unless a written lease states otherwise. The earliest Tammy can be forced to leave is the last day of the following month, but not by the tenth day of the following month.
- e. Can a landlord evict because the tenant requested repairs to the premises?
- i. In general, no, a landlord cannot evict a tenant through a court proceeding merely because the tenant has requested that the landlord make repairs to the premises.
 1. However, if the lease is a month-to-month tenancy, the landlord can terminate the lease with proper notice of at least one month’s rental period in advance.
 - ii. Example:
 1. Annie Tenant has repeatedly informed her landlord that there is a large crack in her bathtub/shower and has asked for it to be replaced.
 2. According to Annie’s written lease, the landlord shall make repairs within ten days of receiving notice.
 3. After 3 written requests, the landlord comes to Annie’s apartment to look at the tub.
 4. The landlord leaves but never repairs or replaces the tub.

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5. With Annie's next month's rent, she sends a certified letter requesting the repairs be made as stated in the contract.
6. Annie's landlord files for eviction stating the Annie has damaged the property.
7. Annie may have a defense that the crack in the tub is reasonable wear and tear depending on how old the tub is and how the crack appeared. (If Annie threw a bowling ball in the tub because she wanted a new one, that will likely be considered damage and not wear and tear and the landlord can likely evict.)
8. If the crack is found to be reasonable wear and tear, Annie will not be evicted.
9. However, her landlord will be permitted to terminate the lease at the end of the lease period and Annie will have to vacate the premises.

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10. Timeline

Eviction Process

- Tenant will receive Notice of the Eviction with a hearing date.
- The hearing date will be within ten days of the eviction filing.
- The tenant will have 5 days to file an Answer including any defenses and cross or counter claims against the landlord.
- The tenant has a right to call witness, present evidence, and have access to any documents that are in the landlord's possession.

Answering the Petition

- A written answer to the Petition must be filed within 5 days of receiving the petition and served on the landlord.
- The tenant can admit, deny, or admit in part; deny in part the allegations of the petition.
- If the tenant has any defenses, they must be stated in the answer.
- The tenant can assert and explain any counterclaims or cross-claims they have against the landlord in the answer.

Eviction Hearing

- Hearings are typically held in Magistrate Court, but can be removed to Circuit Court if the amount in controversy is \$2,500 or more.
- Tenant has a right to a jury trial upon written request at least five days before the hearing.
- Discovery is available in both Magistrate and Circuit Court; however it is limited in Magistrate Court.
- If the Eviction is based on non-payment of rent only and the tenant has "cash in hand" to pay all past rent, fees, and costs, then the case will be dismissed upon payment at the beginning of hearing.

Post-Hearing

- If the tenant is unsuccessful, the magistrate will set a vacate date at which time the tenant will need to leave the premises.
- If the tenant leaves personal property on the premises, the landlord has an obligation to store the property for a minimum of 30 days, but can charge the tenant a reasonable storage fee.
- The landlord is not permitted to "put out" the tenant's property.

Appeal

- The tenant has the right to appeal.
- The appeal must be filed with the Magistrate Court Clerk within 20 days of the order.
- The tenant has a right to a stay of possession of the premises if the tenancy did not already expire.

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11. Case Scenario

a. Case Scenario #1

- i. Kelsey receives Notice of a Wrongful Occupation Petition two days before the hearing is scheduled.
- ii. The reason for termination is non-payment of rent.
- iii. Kelsey has only been able to pay half of her rent for the past two months. She spoke to the landlord and was under the impression that he was okay with partial rent payment and promised to make it up when she could.
- iv. Kelsey may be able to get the money owed from friends and family.
- v. Kelsey is six months pregnant and doesn't think it is legal for the landlord to evict her since she is pregnant and the weather is below freezing.
- vi. Kelsey also said that her landlord hasn't fixed the hot water tank and that she has to heat up water on the stove to bathe.
- vii. Kelsey comes to you for legal advice the day she received her notice.

b. Response

- i. Issues:
 1. Kelsey needs to file an Answer to the Wrongful Occupation Petition.
 2. She may have a counter claim of Warranty of Habitability if she does not have running hot water and has notified her landlord, preferably in writing, that the hot water tank needs repaired.
 3. Since Kelsey did not get notice until 2 days before the hearing date, a continuance should be requested.
 4. Kelsey needs to be informed that there is no law that precludes her landlord from evicting her based on extreme weather or because she is pregnant.
 5. Find out if Kelsey has a written lease agreement and if she has a set term for her lease or whether it is month-to-month.

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6. Advise Kelsey that if it is a month-to-month tenancy, there is nothing that prevents her landlord from terminating the lease with proper written notice of at least one rental period's time, if she is successful in the eviction hearing.
 7. If Kelsey can get together all the money she owes the landlord, along with late fees and court costs, then she will be able to "pay and dismiss" at the beginning of the hearing.
 8. Kelsey has the right to a jury trial if she requests one in writing.
- ii. Documents:
1. Copy of written lease, if there is one.
 2. Copy of rent receipts or cancelled checks to show payment of rent.
 3. Correspondence with landlord regarding the hot water tank (letters, emails, texts, voice messages, etc.)
 4. Discovery from landlord of any documents Kelsey does not have; record of repairs; rent payment log.