



**THE HOUSING HELPLINE
LANDLORD/TENANT LAW
RESOURCE GUIDE**

TABLE OF CONTENTS

Overview of Law for Summary Proceeding	3
Governing Law of Summary Proceedings	3
Course of a Summary Proceeding	4
Non-Payment v. Holdover Proceedings	5
Pre-Commencement Notices	6
Commencing a Summary Proceeding	6
Notice of Petition and Petition	6
Contents of a Petition	7
Service of Notice of Petition and Petition	7
Respondent/Tenant Answer	7
Common Defenses	7
Defective Service	7
Common Filing & Pleading Inadequacies	9
Defenses to Holdover	10
Defenses to Non-Payment	12
Warranty of Habitability	14
Court Proceeding/Trial	15
Judgment	15
Warrant of Eviction	16
Frequently Asked Topics	17
Sample Forms	24
Notice of Petition	24
Petition	25

OVERVIEW OF LANDLORD/TENANT PROCEEDINGS

A landlord may not attempt to evict a tenant in New York State without first bringing the tenant to court and obtaining a judgment of possession and a warrant of eviction. This court action is called a *summary proceeding*. There are two types of summary proceedings:

- Non-payment Summary Proceeding: The landlord claims the tenant failed to pay the rent.
- Holdover Summary Proceeding: The landlord claims the tenant failed to leave the rental property after the right to remain in the property ended.

In these two types of summary proceedings, the landlord will ask the judge to grant a judgment that will allow the tenant to be evicted. The judge may also order the tenant to pay past due rent to the landlord. The landlord is called the Petitioner and the tenant is called the Respondent

In general, summary proceedings follow a certain path:

1. Pre-commencement notices
2. Commencing proceeding
3. Responsive pleadings
4. Trial
5. Judgment
6. Warrant of Eviction

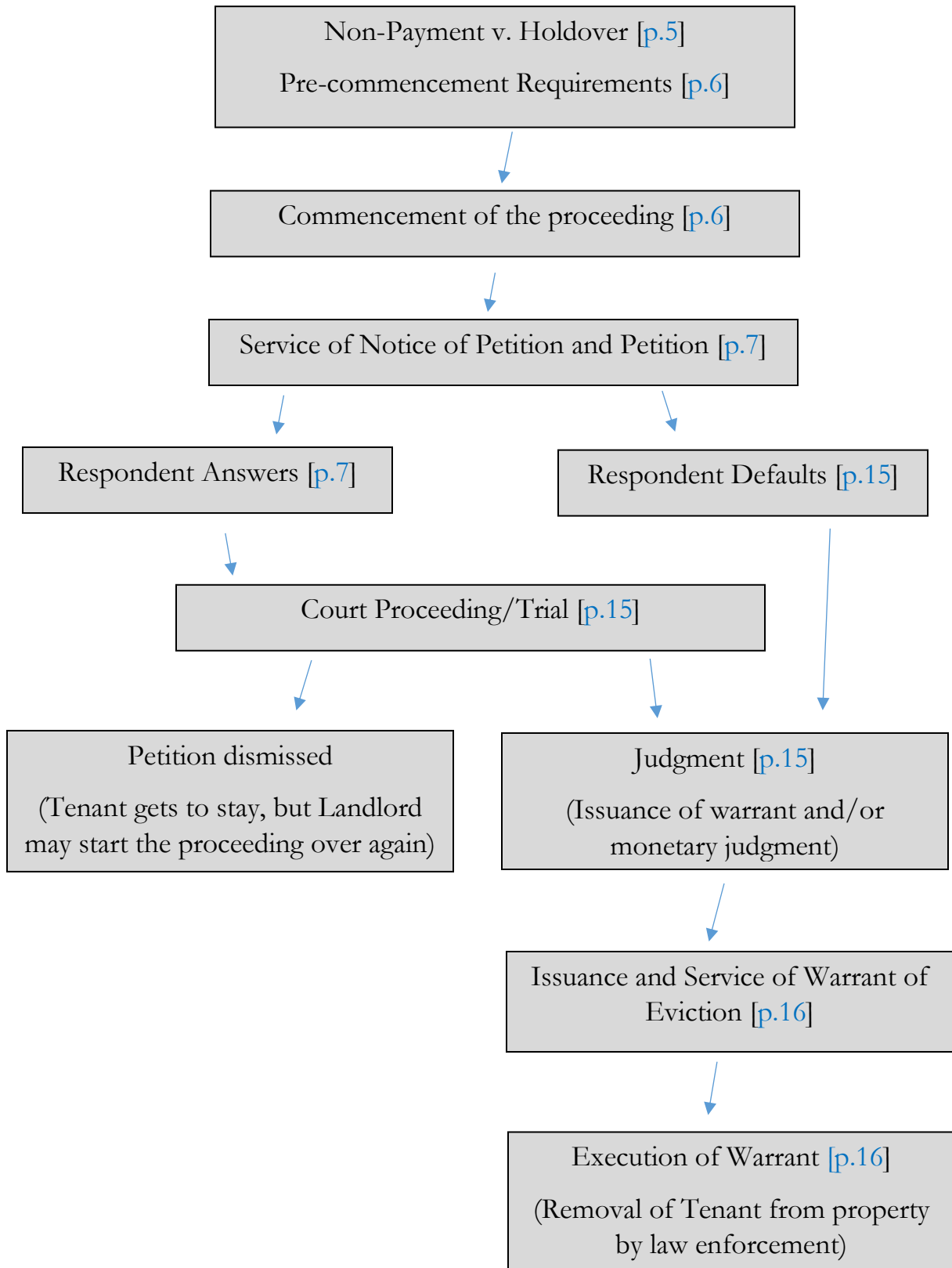
Governing Law for Summary Proceedings

The New York State Real Property Law (RPL) and Article 7 of the Real Property Actions and Proceedings Law (RPAPL) govern summary eviction proceedings. Because they are special proceedings, they are also governed by Article 4 of the Civil Practice Law and Rules (CPLR). Below are other sources of procedural law in landlord tenant matters:

- Uniform City Court Act
- Uniform District Court Act
- Uniform Civil Rules for the City Courts Outside the City of New York
- Uniform Civil Rules for the Justice Courts

Unless otherwise indicated, the information in this manual is mainly taken from the West Practice Guide, Residential Landlord Tenant Law in New York; the Neighborhood Legal Services Attorney of the Morning Manual; the Empire Justice Center Housing CATRAP; and the New York State Unified Court System Tenant's Summary Proceedings Manual.

COURSE OF A SUMMARY EVICTION PROCEEDING



Non-payment Summary Proceeding

Before a landlord can start a non-payment summary proceeding to evict a tenant for allegedly failing to pay the rent, landlord must ask tenant to pay the past due rent. This is called making a demand for the unpaid rent.

There are two types of “demands.” The landlord is allowed to use either one:

- Oral Demand: The landlord must speak to the tenant person and ask the tenant to pay the past due rent.
- Written Demand: The landlord must have someone give the tenant a written notice demanding that the tenant pay the rent or leave the rental property.

The written demand for rent must give the tenant three days to pay before the landlord can start a non-payment summary proceeding in court.

A written demand for rent must also be served according to [RPAPL 735](#): Personally, to a person of suitable age and discretion, or by affixing and mailing via regular and certified mail.

Holdover Summary Proceeding

- **When there is a Lease or Other Rental Agreement.** If there is a lease or other rental agreement that states when the rental term ends, the tenant must leave the rental property at that time indicated by the agreement, unless tenant and landlord make a new agreement.

If the lease or other rental agreement is not renewed and tenant stays in the rental property after the end date, landlord can begin a holdover summary proceeding against tenant without notifying the tenant that the lease or other rental agreement has ended (unless the lease or agreement says that the landlord has to give notice).

- **When there is No Lease or Other Rental Agreement.** This is generally considered a month to month tenancy. A landlord must give a Notice to Terminate before starting a holdover summary proceeding.

In general, prior to commencing a holdover proceeding, a landlord must serve certain notices on a tenant. The most common forms of these notices are a notice to quit, a notice to cure, and a notice of termination.

Pre-Commencement Notices

Notice to Quit

A notice that the occupant must leave the premises or summary eviction proceedings will be commenced. A notice to quit is required prior to commencement of eviction proceeding under [RPAPL §713](#), and there must be an allegation that occupant is a squatter or licensee. It must be served at least 10 days prior to commencement of proceeding.

Notice to Cure

A notice to the tenant that the tenant is in default of some obligation arising out of the lease or rental agreement and that the obligation must be met or a summary eviction proceeding will be commenced. The notice can be required by either the terms of the lease, or by statute or regulation. Generally, the notice must afford the tenant a 10 day period to cure the condition, unless otherwise provided by the lease. The lease generally dictates how the notice should be served.

Notice to Terminate

This is a notice to terminate the tenancy. It can be required by lease, by statute, or by regulation. In a month to month tenancy, the tenant is entitled to one month's notice prior to the expiration of the term under [New York Real Property Law \(RPL\) §232-b](#). RPL §232-b does not require that the notice be in writing nor does it specify the manner in which the notice is to be served. A notice to terminate is always required to terminate a tenancy governed by the *Housing Choice Voucher Section 8* program

Commencement of Summary Proceeding

The basic pleadings in a summary proceeding are the notice of petition and petition. The notice of petition is the equivalent of a summons and the petition is the equivalent of a complaint.

Notice of Petition must inform the respondent of the time, place and manner in which to respond. A notice of petition may only be issued by an attorney, a judge or a clerk of the court. [RPAPL §731](#).

Petition must be verified by a person authorized by [RPAPL §721](#) to maintain a proceeding, or by a legal representative, attorney or agent of such person pursuant to [CPLR §3020](#). See [RPAPL §741](#)

Contents of petition

The Petition must satisfy requirements of [RPAPL §741](#):

- a. State the interest of the petition in the premises from which removal is sought
- b. State the respondent's interest in the premises and her/his relationship to the petitioner
- c. Describe the premises from which removal is sought
- d. State the facts upon which the proceeding is based
- e. State the relief sought

Service of Notice of Petition and Petition

The Notice of Petition and Petition must be served at least five (5) days, and not more than twelve (12) days, before the time at which the petition is noticed to be heard.

[RPAPL 733\(1\)](#)

Service must be done in accordance with [RPAPL 735](#) and [CPLR 2103\(a\)](#): Personally, to a person of suitable age and discretion, or by affixing and mailing via regular and certified mail. Any person 18 years or older who is not a party to the proceeding may serve process.

Respondent's Answer

Defenses to a summary eviction proceeding may be asserted in an answer to the petition or, where warranted, in the form of a motion to dismiss the petition.

[RPAPL §743](#) provides that the respondent may answer orally or in writing. If notice of petition and petition are served at least 8 days prior to return date, and petitioner requests an answer, respondent must answer at least 3 days prior to the return date, or defenses may be waived. [RPAPL §743](#).

Common Defenses

I. Defective Service

If service of process has not been properly done, the court lacks jurisdiction over the respondent. The hearing held on the issue of service of process is called a "traverse hearing".

As a general rule, objection to personal jurisdiction must be made at the time respondent first appears in the proceeding or before the time to amend the answer without leave of the court has expired, or it is waived.

A. Timeliness

1. Not timely: less than five days before court date or more than 12 days before court date

The petition in a summary proceeding under RPAPL Article 7 must be dismissed if the Notice of Petition and Petition are not served at least five (5) days, and not more than twelve (12) days, before the time at which the petition is noticed to be heard.

[RPAPL 733\(1\)](#)

B. Lack of Service

2. Respondent not served at all.
3. Respondent served by unauthorized person

[CPLR 2103\(a\)](#) precludes service of the notice of petition and petition by a party to the proceeding and any person who has not attained the age of eighteen. Therefore, the Landlord is not permitted to serve the Notice of Petition and Petition.

[RPAPL 735](#) sets forth the requirements for service of process. The notice of petition and petition may be served one of three ways:

- a) Personally;
- b) To someone of suitable age and discretion with copies sent via both certified and regular or;
- c) By "nail and mail" –a copy posted to the door with copies sent via both certified and regular mail

C. Defective "Alternative" Service: i.e. Conspicuous Place ("Nail and Mail") or Substituted Service

5. Nail and mail: not mailed within 1 day of "nailing"
6. Nail and mail: not sent by regular AND certified or reg. mail
7. Substituted: left with person not of suitable age or discretion
8. Substituted: left with non-resident/non-employee

Service is defective when a process server attempting "nail and mail" conspicuous place service, or substituted service pursuant to, fails to comply with the express

requirements of [RPAPL 735](#), which require that Notice of Petition and Petition be mailed to the respondent within one day of the alleged delivery by both regular first class, and by either certified or registered mail.

Practice Tips:

Tenant will likely have difficulty establishing improper service if there is a completed affidavit of service filed with court. Tenant will need to get a copy of affidavit of service to see how Petitioner is stating tenant was served. This may not be available until day of court. If Tenant has any witnesses who observed improper service, or documentation showing that they were somewhere else other than home or place of service, Tenant should bring these to court.

II. Common Filing and Pleading Inadequacies

A. Defective Issuance of Notice of Petition

9. Not issued by judge, clerk or attorney.

Notice of Petition must be issued by a judge, clerk or attorney. See [RPAPL 731\(1\)](#)

B. Improper Respondent, Failure to name Respondent

10. General non-compliance w/ RPAPL

In a summary eviction proceeding, all person with rights of possession in the premises must be name in the petition as respondents. This includes tenants, co-tenants and other occupants with rights vis-à-vis the owner or independent rights of possession.

If petition has John or Jane Doe, that is sufficient. If there is a lease, all individuals who signed the lease must be named and must be served separately.

C. Improper Petitioner

11. Petitioner not authorized, [§721](#)

Persons who may bring a proceeding under RPAPL Article 7 are limited to those identified in [RPAPL § 721](#). When a proceeding is attempted to be brought by a person other than one enumerated in § 721, the proceeding must be dismissed.

Generally, the petitioner must be the Landlord or owner of property.

D. Content of Petition, Failure to Plead

12. Failure to plead [§741](#) requirements: Petitioner's interest/Respondent's interest/description of premises/facts upon which proceeding based

Must satisfy requirements of [RPAPL §741](#):

- a) State the interest of the petition in the premises from which removal is sought
- b) State the respondent's interest in the premises and her/his relationship to the petitioner
- c) Describe the premises from which removal is sought
- d) State the facts upon which the proceeding is based
- e) State the relief sought

Failure to do the above renders the petition an insufficient basis to grant relief.

The petition must seek possession of the premises and may seek a money judgment. If possession of the premises is not at issue (i.e., the tenant has already vacated and turned in the keys to the landlord) the court does not have jurisdiction over the proceeding. The petition may seek a money judgment for rent or “use and occupancy”.

III. Defenses to Holdover Proceedings

13. Failure to provide statutory termination notice to month-to-month tenant

A prerequisite to commencing a holdover proceeding, based on the termination of a month-to-month tenancy outside New York City, is that the tenant was provided a notice of termination. [RPAPL §711\(1\)](#); [RPL §232-b](#).

14. Failure to provide timely notice of termination to month-to-month tenant

To maintain a holdover proceeding to remove a month-to-month tenant on the ground of expiration of term pursuant to [RPAPL §711\(1\)](#), a landlord must allege and prove that the tenancy expired prior to the commencement of the proceeding, and that the tenant was provided a definite and unequivocal notice of termination one full month before the expiration of the term. Otherwise, the proceeding is premature and must be dismissed.

15. Termination Notice sent by unauthorized person

A notice to terminate a lease may only be issued by a person authorized to do so, as specified in the lease.

16. Acceptance of rent prior to initiation of proceeding; reinstatement of tenancy

The landlord's acceptance of rent after the date of the termination of the tenancy and before the commencement of the holdover proceeding waives the termination notice and creates a new tenancy; thus, it necessitates the dismissal of the proceeding. Landlord may accept rent after commencement of holdover proceeding without undermining the prosecution. See [RPAPL § 711](#).

Practice Tip: Generally, if Landlord accepts rent after service of Notice of Petition and Petition tenancy is not renewed, the proceeding will not be dismissed.

17. Lease not terminated in manner provided for by the lease itself

In order for a landlord to maintain a holdover proceeding pursuant to [RPAPL § 711\(1\)](#) prior to the expiration of the term, the lease must first be terminated in the manner specified in the lease itself. The proceeding must be dismissed where the tenancy was not terminated in accordance with its own terms

18. Lease Term not expired

To maintain a summary proceeding to remove a tenant who is occupying the premises under a written lease for a "fixed" or "definite" term, a landlord must allege and prove that the tenancy expired prior to the time of the commencement of the proceeding. Otherwise the proceeding is premature, and must be dismissed

19. Lease contains automatic renewal clause

When a lease with an automatic renewal clause has not been terminated, a summary proceeding based upon the tenant holding over must be dismissed, because the lease term has not expired.

20. Respondent has violated no lease provision authorizing mid-term termination

A lease may be terminated prior to the expiration of the term only when so authorized by the lease itself. Where the termination of the lease is based upon the tenant allegedly violating specific provisions of the lease, it is a defense to a holdover proceeding that the tenant did not violate obligations under the Lease which would permit termination.

Practice Tip: A notice to cure may also be required prior to termination of tenancy for lease violation. If Tenant has a lease and is being evicted for lease violation, please refer client to Neighborhood Legal Services for possible representation.

21. **Retaliatory eviction**

[Real Property Law § 223-b](#) prohibits a landlord from serving a notice to quit or commencing any action to recover real property in retaliation for a) a good faith complaint, by or on behalf of tenant to a governmental authority regarding violation of health or safety law, regulation, code or ordinance...; b) or, action taken in good faith, by or on behalf of tenant, to secure or enforce rights under the leased or rental agreement, under RPL section 235-b (warranty of habitability) or laws of New York state; c) or, tenant's participation in the activities of a tenant's organization.

The statute provides a presumption that certain actions by the landlord within a specified period (6 month period) are retaliatory.

IV. Defenses to Non-Payment Proceedings

22. **No demand for rent**

An oral demand for rent or proper service of a statutory 3-day notice is a jurisdictional prerequisite under [RPAPL §711\(2\)](#).

23. **Written demand not served as provided for in [RPAPL 735](#)**

If a written 3-day notice is provided pursuant to [RPAPL §711\(2\)](#), it must be served in the same manner as provided for service of the petition and notice of petition under §735. Service may be done in the following ways: a) Personally; b) To someone of suitable age and discretion with copies sent via both certified and regular mail or; c) By “nail and mail” –a copy posted to the door with copies sent via both certified and regular mail

24. **Demand includes rent increase not agreed to by Tenant**

A tenant may not be evicted in a non-payment proceeding by virtue of the tenant's failure to pay an increased rental amount which the landlord has unilaterally attempted to impose and which the tenant has not agreed to pay. See [RPL §232-b](#); [RPAPL §711\(2\)](#)

25. **Tenant is a holdover, has not agreed to new lease**

Where there has been no agreement between the parties for a specific amount to be paid as rent, a non-payment proceeding is not available under [RPAPL §711 \(2\)](#); [RPL §232-c](#)

26. **Respondent tendered rent due, but Landlord refused to accept**

Where a tenant tenders the rent due, and the landlord refuses to accept the payment, no judgment or warrant of eviction may issue for non-payment. See [RPAPL §751\(1\)](#).

Caveat: However, unless the tenant has the money in court, it is likely that the landlord will be awarded a warrant of eviction.

27. **Respondent tendered a check for rent which Petitioner has accepted but not cashed**

Where the landlord retains but does not cash a rent check for the period after the tenancy has been terminated, the retention constitutes acceptance of rent and waiver of the termination. See [RPAPL §711\(1\)](#); [RPL §232-c](#).

28. **All rent due has been paid in full**

A non-payment summary proceeding does not lie where the tenant has paid in full all rent due and owing the landlord.

29. **Laches/Landlord's delay in initiating proceeding has prejudiced the Respondent**

A landlord who in bad faith delays initiation of a non-payment proceeding thereby cumulating an amount of rent arrears that, as a practical matter, cannot be paid within the timeframe of a summary proceeding should not be permitted the benefit of the court's power to expeditiously remove the tenant by issuance of a warrant in a summary eviction.

Laches is a defense based upon petitioner waiting too long to take action on a claim. Laches cases are determined on a case-by-case basis. The burden of proof to show the elements is on the tenant. Then the burden shifts to the landlord to demonstrate a reasonable excuse for the delay.

Elements of laches defense:

- i. Petitioner must have a valid claim
 - a. The claim must be valid, but for the laches defense.
- ii. Petitioner must have delayed asserting claim without good cause
 - a. If a petitioner has for some reason been unable to sue, or has attempted unsuccessfully to assert the claim, laches will not be a defense.
 - b. Laches will not be found where there were extensive settlement negotiations.
- iii. There must be lack of notice to respondent that petitioner would pursue claim
 - a. If the landlord gave repeated demands for rent, an agreement to wait pending outcome of third-party assistance, prior non-payment proceedings, etc., then laches would not apply.
- iv. Respondent must be prejudiced

30. **Respondent refused to pay rent because Landlord required cash payments but refused to provide receipts**

A landlord is required by [Real Property Law §235-e](#) to provide a written receipt when a tenant makes payment by cash or any form other than a personal check. When a landlord fails or refuses to provide receipts, any disputes in testimony regarding payment should be resolved against the landlord.

Practice Tip: Tenant will be required to have all rent due and owing available in court in order to avoid a warrant of eviction or to get petition dismissed.

Generally, please note that in most of non-payment proceedings situations, if the client has some money, they may be able to negotiate some time to move or set up a payment plan to repay what is due.

V. Warranty of Habitability

31. **Warranty of Habitability w/ abatement claim**

[Real Property Law § 235-b](#) creates an implied warranty applicable to every residential lease -- oral or written -- that the property will be fit for human habitation, fit for the uses reasonably intended by the parties, and that the occupants will not be exposed to dangerous or unhealthful conditions.

Can be asserted as a defense to a non-payment proceeding or an affirmative claim. If tenant did not cause conditions and landlord had notice of conditions, an abatement of rent may be appropriate. When there is a breach, the tenant is entitled to damages, generally calculated in terms of abatement of rent and injunctive relief ordering the breach to be remedied.

Practice Tip: Generally, Tenant should keep rent that is being withheld, and have all of it available at court in case the Judge does not give a rent abatement. If Tenant does not have any of the rent that was being withheld due to conditions, a warrant of eviction will likely be issued. If a tenant is a) experiencing severe conditions or b) conditions that require them to leave, or not use a portion of, the apartment, refer that individual to Neighborhood Legal Services for extended representation.

Court Proceeding/Trial

Most summary eviction proceedings are resolved on the day of court, either through a settlement or a trial. A trial must be held if the parties cannot reach agreement. This is where the Judge takes testimony and considers any necessary evidence to make a decision.

Adjournments in summary eviction proceedings are governed by [RPAPL §745](#). A court cannot adjourn a trial for more than 10 days unless all parties consent to a longer adjournment.

Judgment

- a. A judgment can be rendered after a trial of a matter, after the default of a party, or upon the stipulation of the parties to a dispute.
- b. A default judgment is taken upon request of a petitioner when the tenant fails to appear.
- c. If the tenant defaults in a non-payment proceeding by failing to appear at all, the petitioner may only have a possessory judgment and not a money judgment for rent due, unless the respondent was personally served or served in compliance with the CPLR§308“due diligence” standard. The landlord can still seek to recover any money owed through a small claims court proceeding.

Practice tips:

If a tenant was not personally served and does not appear for the proceeding, the landlord may only have a possessory judgment and not a money judgment for rent due. This is especially beneficially for tenants who work or have already moved out.

Warrant of Eviction

- a. The warrant of eviction is the document that authorizes an eviction. The warrant of eviction is issued by a judge to a county sheriff, a city marshal, or a constable.
- b. The warrant describes the property and directs the officer to remove all persons and put the petitioner in possession of the premises.
- c. In a non-payment proceeding, a tenant can effect a stay of the eviction prior to the issuance of the warrant by depositing all rent due with the clerk of the court. See [RPAPL §751\(1\)](#).
- d. A county sheriff, a city marshal or a constable serves the warrant of eviction.
- e. The warrant of eviction notice advises the tenant that they have 72 hours to vacate the premises.
- f. The 72 hour notice period does not run on Saturdays, Sundays or holidays. See [RPAPL §749\(2\)](#).

Frequently Asked Topics

[Lease violations](#)

[Respondent is being evicted by a family member](#)

[Respondent is not a tenant](#)

[What to do if tenant receives section 8 or other subsidized rental assistance?](#)

[What to do if tenant is being evicted from public housing?](#)

[What to do if Landlord is only evicting for unpaid fees \(late, water, pet, etc.\) and not actual rent?](#)

[Housing Conditions - Landlord won't fix](#)

[Pets v. Service and Support Animals](#)

[Utilities and Water Bills](#)

[Landlord's Right to Enter Property](#)

[Tenant wants to move \(no lease\)](#)

[Tenant has been served with 72 hour warrant](#)

[What happens to Tenant's belongings if the tenant can't move it?](#)

[Loss of personal property?](#)

[Illegal Evictions / Landlord changed locks](#)

[Security Deposits](#)

[Money Judgment](#)

[Smalls Claims Court](#)

[What to do if person entered into a rent to own contract?](#)

[Mobile Home tenants](#)

[Foreclosure](#)

Lease violations - What to do if client has an unexpired lease and being evicted for a reason other than non-payment?

Generally, the lease provides for a period of time to cure. Tenant will have to establish that there was no violation of the lease, or the violation was cured, or that the violation does not trigger a breach warranting termination of tenancy. Refer for extended representation to Neighborhood Legal Services.

Respondent is being evicted by a family member?

Refer tenant to Neighborhood Legal Services for extended representation.

Respondent is not a tenant

An individual is likely not a tenant if he/she has never paid rent and has no oral or written agreement. This person can be evicted through a summary proceeding as a squatter or licensee after they have been served a 10 day notice to quit.

What to do if tenant receives section 8 or other subsidized rental assistance?

Inform individual that due to the nature of their tenancy they may have added protection that prevents eviction, so they should contact the Neighborhood Legal Services to see if they can get extended representation.

What to do if tenant is being evicted from public housing?

Inform individual that due to the nature of their tenancy they may have added protection that prevents eviction so they should contact the Neighborhood Legal Services to see if they can get extended representation.

What to do if Landlord is only evicting for unpaid fees (late, water, pet, etc.) and not actual rent?

If tenant has a lease that indicates that these fees are their responsibility and they are labeled as “added rent”, the non-payment of these fees may result in an eviction. However, there is case law that says a landlord can’t bring a petition for “added rent” only. Refer client to Neighborhood Legal Services.

If tenant does not have a lease, tenant can argue that he/she is not responsible for payment of these fees since there was no agreement to pay.

Housing Conditions - Landlord won’t fix

Tenant should give landlord notice of things wrong with apartment in writing and take a picture. Tenant should give landlord a reasonable time to fix depending on how severe the issue is (typically 2 weeks to a month). If landlord is refusing to fix, tenant’s

remedy is to contact their local town or village inspector to come out and do an inspection, or the Health Department, as appropriate. Tenant's local town or village clerk will have the contact information for the Town inspector if it can't be found online or in the local phone book. The inspector will issue an inspection report and notice to landlord of things that needs to be fixed. Tenant should obtain a copy of the report for the tenant's records.

It is recommended that Tenant continue paying rent if the tenant does not wish to face an eviction. Tenant can also choose to withhold rent until issue is fixed but tenant should keep that money and not spend because Tenant may be evicted for non-payment of rent.

Pets v. Service and Support Animals

If Tenant's lease or oral agreement did not include having a pet, the landlord can require the tenant to remove the pet from the premises or charge a pet fee by giving a notice.

While it is legal for private landlords to have a "no pet" policy in rental housing, all landlords must waive the "no pet" policy in certain situations involving people with disabilities who have animals for reasons related to their disabilities. Service animals are not pets.

Examples of service or support animals:

- A blind person who uses a seeing eye-dog.
- A deaf person who uses a "hearing" dog to alert them to noises, such as the door-bell or a fire alarm.
- A person using a wheelchair who uses a dog to help them with tasks, such as opening doors and retrieving objects.
- A person who has an anxiety disorder, depression, post-traumatic stress disorder (PTSD), or any other psychiatric condition and who uses a dog or cat for emotional support and to relieve the symptoms of the disability.

Tenant should provide the Landlord with the appropriate documentation, such as a doctor's statement indicating the need of the animal for a disability, or any required registration or certification. The tenant should **not** be asked to turn over medical records to the landlord, provided a medical professional has already supplied a letter.

If the animal is considered a service or support animal, the landlord cannot charge an extra security deposit, pet fee or extra rent because the service animal resides at the

property. The landlord may require that the animal be licensed and that tenant takes good care of the animal, including cleaning up after it.

If Landlord is seeking to evict the tenant for a service animal or refuses to grant permission to tenant to keep a service animal, refer the tenant to the Neighborhood Legal Services and the New York State Division of Human Rights.

Helpful Resources:

[NYS Attorney General Service Animals Brochure](#)

Utilities and Water Bills

Tenants are generally responsible for their own utilities, unless otherwise agreed upon.

Generally, Landlords are responsible for water bills unless otherwise agreed to.

Tenants who are getting evicted for ONLY unpaid water bills or utilities bills should argue in Court that the summary proceedings is designed only for unpaid base rent, and that if the landlord wants to collect on unpaid water or utilities bills, this is something they should bring to Small Claims Court for monetary recovery, and a warrant of eviction should not be issued.

Landlord's Right to Enter Property

A landlord may enter a tenant's apartment with reasonable prior notice, and at a reasonable time, with the tenant's consent, either to provide routine or agreed upon repairs or services, or in accordance with the lease. In an emergency, the landlord may enter the apartment without the tenant's consent or prior notice.

Tenant wants to move (no lease)

The tenant needs to provide the landlord with a month's notice before move date. Tenant is still responsible for the last month's rent. If tenant does not give proper notice, the landlord could hold tenant responsible for the rent for the month after he/she move if landlord is unable to rent the apartment. If Tenant gives notice to move and does not move, landlord may bring Tenant to court and try to have Tenant evicted. Landlord may be able to collect double the rent for the time tenant stay over.

What happens to Tenant's belongings if the tenant can't move it?

The landlord has an obligation to store for a reasonable time frame (generally, one month) and landlord can choose to charge you a fee to store. Landlord may throw it out. Tenant should inform landlord that he/she will be leaving property behind. The landlord may put tenant's things in storage. If the landlord decides to store tenant's

belongings, he must do it according to the "truth-in-storage" act. The storage company will send an estimate of the storage cost.

Loss of personal property?

Tenant can sue to recover monetary value in small claims court.

Illegal Evictions / Landlord changed locks

It is illegal for a landlord to evict a tenant by changing the locks or turning off the utilities. A landlord also cannot stop a tenant from getting into the apartment. The landlord must first get a court order. In these cases, the tenant should contact law enforcement. Some examples of illegal evictions are: locking or removing a tenant's door; shutting off the utilities; taking the tenant's property out of the apartment. Tenant should also contact Neighborhood Legal Services immediately.

Security Deposits?

A security deposit is not generally used to cover the cost of rent owed while in apartment. Security deposits become at issue after the tenant has moved out of the apartment and the landlord has had an opportunity to inspect property. Landlord may keep all or portion of security deposit if there are any damages to the apartment above wear and tear, or if there is any rent owed.

After moving out, the tenant should inform the landlord in writing as to how the tenant wishes to have the security deposit returned, and the landlord has an obligation to return the security deposit within a reasonable time or to send an invoice as to what the deposit was used to fix. The landlord is not obligated to return the security deposit until after the tenant has moved from premises and the landlord has had an opportunity to inspect. Tenant can recover security deposits in small claims court if landlord refuses to return.

Money Judgment?

A landlord can receive a money judgment from the judge in a non-payment proceeding to recover any unpaid rent or fees. See NY Courts website [here](#) for more information on how the landlord can attempt to collect the judgment.

Note: If a tenant was not personally served and does not appear for the proceeding, the landlord may only have a possessory judgment and not a money judgment for rent due. This is especially beneficially for tenants who work or have already moved out.

Smalls Claims Court

Small Claims Court handles cases with claims of \$3,000.00 or less (\$5,000.00 or less in Small Claims Court in Buffalo). The judge in Small Claims Court only has the power to award money judgments.

A tenant can use Small Claims Court for many different types of cases. Some examples: • disputes over money owed for security deposits, utility bills or rent; • claims for the value of damaged, lost or destroyed personal property; • money damages resulting from an unlawful eviction.

A tenant may only sue in the Small Claims Court in the county where the person the tenant is suing ("the defendant") lives, has a place of business, or has a regular place of employment. The tenant should call or go to the court in the town or village to find out how to file a claim.

What to do if person entered into a rent to own contract?

Inform the individual that, due to the financial investment and because the contract will determine their rights, the person should contact Neighborhood Legal Services to see if he or she can get extended representation. If the individual does not have a written contract, the person will not be able to establish that he or she has rights to the home and will likely have to move.

Mobile Home tenants?

Mobile Home tenancies are governed by [RPL 233](#). If the tenant is renting a mobile home in a mobile home park, or a mobile home and is renting the space/lot in a mobile home park, that tenant may have additional protections and notice requirements under RPL. Inform the individual that because he or she may have added protections, the person should contact Neighborhood Legal Services to see if he/she can get extended representation.

See the attorney general brochure for additional information and the New York State Division of Homes and Community Renewal website.

Helpful Resources

[NY Attorney General Manufactured Home Brochure](#)

[NYS DHCR Manufacture Home Publications– Real Property Law 233](#)

Tenant has been served with 72 hour warrant?

If a tenant has been served with a 72 hour warrant the tenant will need to vacate the premises within 72 hours of been served the warrant. If the tenant has not vacated during the time frame the sheriff, marshals, or constable will be there to remove the tenant from the premise; the landlord can then change the locks.

If a tenant was not present in court when the warrant of eviction was issued, and the tenant believes that he/she is being wrongfully evicted or has a defense to the eviction, the tenant can file an Order to Show Cause to stay the eviction and have the matter be placed back on the calendar. This will give the tenant an opportunity to present his/her good cause for not appearing and the reason he/she should not be evicted. Only a judge can decide whether to grant the order to show cause, to stay the eviction and place the matter back on the calendar. This does not guarantee that Tenant will get to stay in the apartment. The tenant may also contact Neighborhood Legal Services.

Foreclosure

If Property is in Tax Foreclosure and owner is calling for assistance, please refer to General VLP line for Gretchen Gonzalez.

If Property is in Mortgage Foreclosure and owner is calling for assistance, please refer to Western New York Law Center (WNYLC).

If Tenant resides in a property that is going into foreclosure, a tenant may be evicted even if the rent is paid on time and/or there is a current lease.

The creditor the landlord has not paid (usually a bank or the government) may ask the court to appoint a receiver to manage the property. When this happens, the tenant should get what is called a *notice to attorn*. This is a notice that says that the tenant should treat the receiver as the landlord. All future rent payments should be made to the receiver, not to the landlord. If the tenant does not pay the rent to the receiver, the tenant may be evicted.

After the foreclosure, the property is sold at an auction. The purchaser at the auction may ask the Court for a writ of assistance to evict the tenants. This means that the tenant may be evicted even if the tenant is not behind in the rent and have a current lease. While most evictions take place in a city or town court, this eviction will take place in Supreme Court. If Tenant needs further assistance or extended representation in this matter, please refer to Neighborhood Legal Services.

Sample Notice of Petition

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1) _____
COUNTY OF (2) _____

(4) _____

Petitioner(s)/Landlord(s)

-against-

(3) Index/Docket No. _____

**NOTICE OF PETITION
NON PAYMENT PROCEEDING**

(5) _____

Respondent(s)/Tenant(s)

To the Respondents:

PLEASE TAKE NOTICE that a hearing at which you must appear will be held at the

(6) _____
City/District/Town/Village Court

County of (7) _____ on the (8) _____ day of _____, 20____, at _____ am/pm,
upon the annexed petition, which you must answer, which requests a final judgment evicting
you from, and awarding to the petitioner the possession of, the premises designated and
described as follows:

(9) _____
Street Address Including Zip Code

the _____ rooms on the _____ floor, Apartment No. _____, in the County of (10) _____
and such other and further relief as is demanded in the petition.

TAKE NOTICE that demand also is made in the petition for judgment against you for the
sum of (11) \$ _____, with interest thereon from (12) _____, 20____.

TAKE NOTICE that your answer may set forth any defense or counterclaim you may
have against the petitioner.

TAKE NOTICE also that if you shall fail at such time to interpose and establish any
defense that you may have to the allegations of the petition, you may be precluded from
asserting such defense or the claim on which it is based in any other proceeding or action.

TAKE NOTICE that your failure to appear and answer may result in final judgment by
default for the petitioner evicting you from the premise and ordering you to pay the amount
demanded in the petition.

DATED: the _____ day of _____, 20____.

Judge/Clerk/Attorney

LT-N-NP 9-07

Sample Petition – Non-Payment

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1) _____
COUNTY OF (2) _____

(4) _____

(3) Index/Docket No. _____

Petitioner(s)/Landlord(s)

-against-

**NON PAYMENT PETITION TO
RECOVER POSSESSION OF REAL
PROPERTY**

(5) _____

Respondent(s)/Tenant(s)

THE PETITION OF (6) _____ owner and landlord of the premises alleges that:

1. The undersigned is the owner/landlord of the premises claimed herein and the petitioner in this action.
2. Respondent(s) (7) _____ is/are the tenant(s) of said premises who entered into possession thereof under (8) _____ rental agreement made on or about (9) _____ between respondent(s) and the landlord (landlord's predecessor), wherein respondent(s) promised to pay to landlord as rent (10)\$ _____ each month in advance on the (11) _____ day of each month.
3. Respondents are now in possession of said premises.
4. The premises from which removal is sought are described as follows: (12) _____ which is situated within the territorial jurisdiction of this court.
5. Pursuant to said agreement there was due to landlord from respondent tenant(s) rent as follows:
(13) (Month) _____, 20 ____ (Amount) \$ _____. (Month) _____, 20 ____ (Amount) \$ _____.
(Month) _____, 20 ____ (Amount) \$ _____. (Month) _____, 20 ____ (Amount) \$ _____.
(Month) _____, 20 ____ (Amount) \$ _____. (Month) _____, 20 ____ (Amount) \$ _____.
(Month) _____, 20 ____ (Amount) \$ _____. (Month) _____, 20 ____ (Amount) \$ _____.

Respondent/Tenant(s) have defaulted in the payments thereof, and the total rent in arrears is (14) \$ _____.

6. Said rent having been duly demanded from the respondent(s) since same became due:
(15)
 Personally by the landlord/owner.
 By the service of a written three(3)-day demand for rent on the respondent(s).

(Page 2) NON-PAYMENT PETITION TO RECOVER POSSESSION OF REAL PROPERTY

7. Respondent(s) hold over and continue in possession of premises without landlord's permission after said default.
(18)

- The landlord is in full compliance with the Emergency Tenant(s) Protection Act of 1974 (ETPA), as amended, and the rent demanded is not greater than the maximum rent permitted by law.
- The premises are subject to rent control and the rent demanded herein does not exceed the maximum rent prescribed by the New York State Division of Housing and Community Renewal (DHCR).
- The premises are presently subject to ETPA, as amended, because: _____

_____ and the owner of the premises: has registered rents and services with the DHCR pursuant to ETPA and the tenant(s) Protection Regulations promulgated thereunder; is in compliance with ETPA; and the rent demanded herein does not exceed the legal regulated rent permitted the owner under said Law, Regulations, and appropriate Rent Guidelines Board Orders.

The apartment is not subject to rent control by reason of:

- The premises are located in a community which has not adopted ETPA.
- The building in which the premises are located was constructed after December 31, 1973.
- The building in which the premises are located has less than 6 units.

Petitioner requests final judgment: awarding possession of the premises to the petitioner/landlord; issuance of a warrant to remove respondent(s) from possession thereof; judgment for rent in arrears against respondent Tenant(s) for (17) \$ _____; interest from (18) _____, 20; costs and disbursements herein.

(19) Dated: _____

(20) Petitioner _____ / _____
Signature Type or Print Name

STATE OF NEW YORK, COUNTY OF (21) _____ ss: The undersigned

(22)

- Petitioner
- Attorney for petitioner (petitioner is not within the county in which deponent's office is located)
- Agent for petitioner

Being duly sworn states: That deponent has **read / heard** the petition, and the contents of the petition are true to deponent's own knowledge except as to those matters which are alleged on information and belief, and as to them deponent believes them to be true.

(23) _____
(Signature)

(Print or Type Name)

(24) Sworn to before me this _____ day
of _____, 20 _____

Notary Public