



NEW YORK CITY LANDLORDS & OWNERS

QUESTIONS & ANSWERS
ABOUT
HOUSING COURT

BRONX | BROOKLYN | MANHATTAN | QUEENS | STATEN ISLAND

July 2012

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People who don't have a lawyer are called "Pro Se" or "Self-Represented" or "Unrepresented" litigants.

What is Housing Court?

The New York City Housing Court is a Part of the Civil Court where landlords/owners and tenants go to solve their housing problems.

Landlords/owners start cases in Housing Court to:

- collect rent, and to
- evict tenants and roommates.

Tenants start cases in Housing Court to:

- get repairs,
- move back in after an eviction, or to
- stop harassment by the landlord/owner.

A Housing Court Judge can order:

- rent to be paid,
- a tenant out of an apartment,
- a tenant back in the apartment,
- repairs, or
- money due to the tenant from the landlord/owner on counterclaims.

Can I change my tenant's locks, or turn off the heat, water or electricity to force the tenant to move?

No!

Is there a way to solve my problem *without* going to court?

Yes. You do not have to go to court for all your housing problems. Many problems are solved by talking to your tenant. You can go to a local community mediation center for help with the problems or to help you talk to your tenant. You can find the location of a community dispute resolution center near you in the phonebook or at:

<http://www.nycourts.gov/ip/adr/ProgramList.shtml>.

Does Housing Court charge any court fees?

Yes. Possible fees:

- It costs \$45.00 to start a case.
- It costs \$70.00 if you ask for a jury trial.

Fees must be paid by cash, or certified check, money order or bank check made out to the "The Clerk of the Court." Personal checks are not accepted.

What if I don't speak English well?

Tell the Clerk when you go to court that you need an interpreter. The Clerk will assign an "official" interpreter for free.



Is the court going to give me a free lawyer?

No. There is no right to a lawyer in a Housing Court case.

What if I am homebound and can't come to court?

The landlord/owner must come to court to prove the case. Someone else can bring the papers to court to start a case for you, but that person can't settle or go to trial for you, even if he or she has your power of attorney. You can ask the court to appoint a *guardian ad litem* to act on your behalf. It is best to hire a lawyer.

What if I can't come to court on the date I was given and need a new date?

You can't call the court to get a new date no matter what the reason. You can ask the tenant to agree to a new date. If the tenant agrees, get this in writing and bring it to the Court Clerk before your original court date.

If the tenant won't agree to a new court date:

- write a letter to the Judge or get an *affidavit of unavailability* from the Clerk to explain why you can't be there and bring it and copies of any papers that explain why you can't come (plane ticket, hospital appointment slip) to the court Clerk before the court date, or
- send someone to court on your court date to tell the Judge why you can't be there.

Warning! If you send someone to court, or write a letter, the Judge may not agree to give you a new date and you may lose the case.

Who decides cases in Housing Court?

Cases are usually decided by Judges without a jury. You or the tenant can ask for a jury trial if your lease doesn't prevent it or if you have no lease. You can file a *jury demand* and pay the jury fee at any time before the trial.



The tenant can ask the Judge to file a late jury demand, but the Judge may say no.

Where do I find more information about Housing Court?

All of the information in this guide is also on the Housing Court's website. On the website there are free court forms, helpful how-to videos and more detailed information to help you represent yourself in court. If you have the internet, visit the website at: www.nycourts.gov/nychousing.

- If you start a case in Housing Court you are the *petitioner*.
- If a case is started against you in Housing Court you are the *respondent*.

What do I do if the tenant is not paying me rent?

If the tenant is not paying, you can start a *nonpayment* case to sue the tenant for rent. In a nonpayment case you ask the court to evict the tenant if the tenant doesn't pay.

Can I start a nonpayment case if the tenant moved out?

No. You can't start a nonpayment case in the Housing Court if the tenant has left the home for good by giving you back the keys or letting you know in writing. You can start a civil or small claims case for the money in the Civil Court.

What do I do if the home is illegal?

If the home is not legal, for example, you turned the basement into an apartment, you won't be able to get rent money back in a nonpayment case. You can start a holdover case to evict the tenant. See page 8, *How do I evict someone for a reason other than rent?*

Do I have to do anything before starting a case?

Yes. The tenant must be asked for the rent first. This is called a *rent demand*. It warns the tenant that you want the rent, and that if the tenant doesn't pay, the tenant can be evicted. The rent demand must tell the tenant the months and amounts of rent that the tenant owes. Also list additional rent, like water charges or taxes, that the lease says you can collect.

The rent demand can be:

- said to the tenant (oral demand), or
- written to the tenant (written demand).

Is there anything special I have to do if I have a Section 8 tenant?

Yes. There are special rules for Section 8 tenants. Read your contract before starting a case.

How do I make an oral rent demand?

You, or someone who works for you, must ask the tenant for the rent. Check your lease because it may say that you have to give the tenant a written rent demand.

How do I make a written rent demand?

A written rent demand must be sent to the tenant at least three days before you can start the case. But check your lease it may say that you have to give the tenant more than three days' notice.

If the tenant's home is not rent regulated you can use the court's free DIY (Do-It-Yourself) Form program to make a written rent demand. The DIY program can be used in the courthouse or on the internet:

http://www.nycourts.gov/courts/nyc/housing/int_smallproperty.shtml. You can buy a rent demand form over the internet or at a legal stationary store, like Blumberg.

Is there a special way that the written rent demand must be given to the tenant?

Yes. The written rent demand must be given to the tenant the right way. This is called *service*. If you don't serve the tenant the right way the Judge may make you start all over again. See page 16, *How are legal papers delivered?*

What do I do if the tenant doesn't pay the rent after I give the tenant a rent demand?

If the tenant doesn't pay the rent by the date requested you can start a nonpayment case in Housing Court.

How do I start a nonpayment case against the tenant?

A nonpayment case in Housing Court is started with court papers called a *Notice of Petition and Petition*. The court papers tell the tenant that he or she has 5 days to come to court and answer the Petition.

If the tenant's home is not rent regulated it may be easier to use the court's free DIY (Do-It-Yourself) Form program to make your court papers to start a nonpayment case. The DIY program can be used in the courthouse or on the internet:

http://www.nycourts.gov/courts/nyc/housing/int_smallproperty.shtml. The DIY program gives you instructions on what to do next. You can buy a Notice of Petition and Petition online or at a legal stationary store, like Blumberg. After you fill out the papers, you have to sign them in front of a notary and then bring them to the Housing Court.

If there is more than one person living there, who do I list as the *respondent* in the Notice of Petition and Petition?

You have to list all the adults that are 18 years old or older on the Notice of Petition and Petition. If you don't know the name of someone living there you should list him or her as John or Jane Doe.

Who do I list as the Petitioner in the Notice of Petition and Petition?

A person who owns the property and is listed on the deed can be the *petitioner* that starts the case. If there is more than one owner of the property, only one person needs to be listed as the petitioner.*

A tenant that sublets the home can be listed as the petitioner in the Notice of Petition and Petition.

Other people, like a friend or relative, can't be the petitioner instead of you.

*The person listed as the petitioner has to come to court.

Where do I start the case?

The case must be started in the county where the home is located. See page 27, *Where are Housing Courts located?*

What happens when I go to court to start the case?

Before you go to the courthouse make copies of the Notice of Petition and Petition and the rent demand if you made one in writing and the Affidavit of Service of the rent demand. Give the papers to the Clerk and pay the filing fee. The Clerk can tell you how to set-up the papers. Now the papers need to be given to the tenant.

Is there a special way that the Notice of Petition and Petition must be given to the tenant?

Yes. The Notice of Petition and Petition must be given to the tenant the right way and you can't deliver the papers. This is called *service* of papers. If you don't serve the tenant the right way the Judge may make you start all over again. See page 16, *How are legal papers delivered?*

What do I do after the Notice of Petition and Petition are given to the tenant?

After service of the court papers, and any mailings, you must bring back the original Notice of Petition and the Affidavit of Service to the Clerk's Office **within 3 days** of the mailing or hand delivery of the papers. Bring stamps for postcards with you to give to the Clerk. The Clerk will mail a postcard to the tenant that says that you started a court case. The tenant will then have to answer the Petition.

When do I get a court date?

The tenant has 5 days after getting the court papers to go to court to *Answer* the Petition. When the tenant answers, the court will send you a court date. The court date is usually a week later. You must be in court on your court date and be on time.

You will also get a copy of the tenant's Answer. An Answer says the legal reasons that the tenant thinks he or she does not owe all or part of the rent. The legal reasons are called *defenses*. The tenant has to prove the defenses in court.

Can the tenant make a claim against me in the Answer?

Yes. The tenant may add "*counterclaims*," to the Answer. A counterclaim is a claim that the tenant may have against you. In a counterclaim the tenant is asking the court to order you to pay the tenant money. If the tenant's answer has a counterclaim, you should Answer the counterclaim.

What happens if the tenant does not answer the Petition?

If the tenant doesn't answer the Notice of Petition before the deadline, and doesn't pay the rent, you can get a *judgment on default* and a *warrant of eviction* to evict the tenant. See page 25, *How do I evict the tenant after a judgment?*

Warning: If the tenant was not served with the court papers by *personal delivery* (see page 16, *How are legal papers delivered?*) you can't get a judgment for the money you are owed. You can only get a judgment to evict the tenant. You can start a civil case for the money.

Can the tenant and I settle the case?

Yes. Most nonpayment cases never go to trial and are settled by a *Stipulation of Settlement*, often called a Stip. See page 21, *Can the tenant and I agree to settle the case?*

What do I need to bring to court?

Bring proof of the rent amount and rent payments, including:

- lease and lease renewals,
- records of rent payments,
- agreements by the tenant to pay for improvements,
- copies of rent increases from government agencies,
- the deed, and
- the multiple dwelling registration if the building is a multiple dwelling.

What happens if the tenant doesn't come to court?

If the tenant doesn't come to court on the court date, and hasn't paid the rent, the Judge will give you a *judgment on default*. See page 25, *How do I evict the tenant after I have a judgment?*

What happens if the tenant says I didn't make repairs or give services?

The tenant may ask the court for an *Inspection* to show the repair problem in the home. Someone from the Department of Housing Preservation and Development goes to the tenant's home to inspect. You can be there for the inspection. The Judge can also send a court employee to visit the tenant's home and report back. The case will be postponed in court until the inspection or visit is finished.

If the Judge finds at the trial that the repairs were very serious, and that living without them hurt the tenant, the Judge may lower the amount of money the tenant owes you. This is called a *rent abatement*. The Judge can also order you to make repairs.

My tenant owes me rent from a long time ago, what can happen?

A Judge may not let you evict a tenant for rent owed in a nonpayment case if it is from a long time ago, like more than six months, and you never talked about it with the tenant. The Judge may give you a money judgment for the old rent or tell you to sue the tenant in a small claims or civil case.

What happens if the Judge holds a trial and decides that the tenant owes me rent?

The Judge will decide the amount that the tenant owes you and that amount will be put in a judgment. The tenant has 5 days to pay you that amount.

If the tenant pays, the case is over and you can't evict the tenant. You need to give the tenant and the Court a *Satisfaction of Judgment*. A Satisfaction of Judgment tells the Court that the money was paid.

What happens if the tenant doesn't pay the amount owed in the judgment?

You can use the judgment to get a warrant to evict the tenant. See page 25, *How do I evict the tenant after I have a judgment?*

What happens if the tenant wants to pay me all the money and stay in the home after I get a Notice of Eviction?

That is up to you. You don't have to let the tenant stay.

How do I evict someone for a reason other than rent?

You can start a *holdover* case in Housing Court to evict a tenant or another person (also called an *occupant*). A holdover case is started for a different reason than nonpayment of rent.

Do I need a reason to evict a tenant that I don't like?

Not if the lease has ended or if the tenant has no lease. If the lease is not over you must have a legal reason to evict the tenant, like the tenant did something that is not allowed by the lease.

What do I have to do before I can start a holdover case?

Nothing if the lease has ended and you haven't taken any rent after the end of the lease. But, if the lease has not ended you must give (*serve*) the tenant a written notice before you can start a case. If the tenant or occupant has no lease you must give (*serve*) the tenant a written notice.

There are different written notices and you must give the tenant the right one. The written notices are called a *Notice to Cure*, a *Notice to Quit*, and a *Notice of Termination*.

My tenant has done something that is not allowed by the lease, what notice do I have to serve?

If the tenant has done something that is not allowed by the lease like, has a pet, or has a washing machine, or is too loud all the time, you must give the tenant a written notice called a *Notice to Cure*. The Notice to Cure tells the tenant what he or she is doing wrong and gives the tenant 10 days to fix the problem.

Important! If the tenant doesn't correct the problem by the deadline in the notice, you must give the tenant a second written notice called a *Notice of Termination* before you can start a case.

My tenant never had a lease, and is supposed to pay me every week or every month, what notice do I have to serve?

A *Notice of Termination*. You do not serve a Notice to Cure.

What is a Notice of Termination?

A *Notice of Termination* is given to a tenant to end the tenancy. The notice tells the tenant:

- the reason,
- the date that the tenant must move, and
- that a case will be started if the tenant doesn't move by the deadline.

How much time do I have to give the tenant in the Notice of Termination?

If the tenant pays rent weekly, give the tenant at least 7 days notice to leave. If the tenant pays rent monthly, give the tenant at least 30 days notice to leave.

The last day in the notice must be the last day of a rental period. For example, if the tenant pays rent on the 15th of every month then the last day should be the 14th of the month, or if the tenant pays rent every Monday then the last day should be on a Sunday.

What do I do if the tenant tries to pay the rent after the deadline in the Notice of Termination and before I start a case?

Taking the rent cancels the Notice of Termination and restarts the tenancy. The tenant can tell this to the court and your case will be dismissed.

There is someone living in the home that I didn't rent to, what notice do I have to serve?

A Notice to Quit. A Notice to Quit tells the occupant that he or she has 10 days to move and gives the reason that the occupant has to move. The reason is either that the occupant has to move because he or she:

- is a *licensee* that the tenant invited to live in the home without your permission, or
- is a *squatter* that started living in the home without anybody's permission.

If the occupant doesn't move out by the deadline in the notice, you can start a holdover case.

How do I start a holdover case against the tenant?

A holdover case in Housing Court is started with court papers called a *Notice of Petition and Petition*. The papers say the date, time and place (courtroom or *Part*) when you and the tenant have to come to court. You can buy a Notice of Petition and Petition at a legal stationary store, like Blumberg. After you fill out the papers, you have to sign them in front of a notary and then bring them to the Housing Court.

Who do I list as the Petitioner in the Notice of Petition and Petition?

A person who owns the property and is listed on the deed can be the *petitioner* that starts the case. If there is more than one owner of the property, only one person needs to be listed as the petitioner.*

A tenant that sublets the home can be listed as the petitioner in the Notice of Petition and Petition.

Other people, like a friend or relative, can't be the petitioner instead of you.

**The person listed as the petitioner has to come to court.*

If there is more than one person living there, who do I list as the *respondent* in the Notice of Petition and Petition?

You have to list all the adults that are 18 years old or older on the Notice of Petition and Petition. If you don't know the name of someone living there you should list him or her as John or Jane Doe.

Is the building a *multiple dwelling*?

If the building has one or two apartments it is not a multiple dwelling.

If the building is a multiple dwelling the Petition must list the name and address of the managing agent and the multiple dwelling registration number. Find this information on the NYC Department of Housing Preservation and Development website:

<http://www.nyc.gov/html/hpd/html/home/home.shtml>.

Where do I start the case?

The case must be started in the county where the home is located. See page 27, *Where are Housing Courts located?*

What happens when I go to court to start the case?

Before you go to the courthouse make copies of the Notice of Petition and Petition, any Notices that you served and Affidavits of Service of the Notices. Give the original signed papers, not the copies, to the Clerk and pay the filing fee. Choose the court date. Attach copies of any Notices to the Notice of Petition and Petition. The Clerk can tell you how to *conform* the papers. Now the papers need to be given to the tenant.

How fast a court date can I choose?

The Clerk can help you choose a date. The date:

- can't be sooner than 5 days away,
- can't be more than 12 days after you serve the papers on the tenant*

Important: Choose a date when you know you can come to court!

* The court date must be between 5 and 12 days after you finish serving the tenant.

Is there a special way that the Notice of Petition and Petition must be given to the tenant?

Yes. The Notice of Petition and Petition must be given to the tenant the right way and you can't deliver the papers. This is called *service* of papers. If you don't serve the tenant the right way the Judge may make you start all over again. See page 16, *How are legal papers delivered?*

What do I do after the Notice of Petition and Petition are given to the tenant?

After service of the court papers, and any mailings, you must bring back the original Notice of Petition and the Affidavit of Service to the Clerk's Office **within 3 days** of the mailing or hand delivery of the papers. Bring stamps for postcards with you to give to the Clerk. The Clerk will mail a postcard to the tenant that says that you started a court case.

What do I do if the tenant tries to pay the rent after I've served the papers and started the case?

You can take the money, but you might wait until you come to court. The Judge can order the tenant to pay you during the case. This is called *use and occupancy*.

What happens if the tenant does not come to court?

If the tenant does not go to the court date, the Judge will hear and decide your case without hearing the tenant's side of the case. This is called an *inquest*. If you win the inquest you will get a *judgment*. You can evict the tenant. See 25, *How do I evict the tenant after I have a judgment?*

Can the tenant and I settle the case?

Yes. See page 21, *Can the tenant and I agree to settle the case?*

What happens if I win a judgment after a trial?

The Judge will order the tenant to move, but may give the tenant some time to find a new place to live. The Judge can't give the tenant more than six months.

If the Judge finds that the tenant broke the lease and orders the tenant to move, the Judge will give the tenant 10 days to fix the problem. If the tenant fixes the problem, the case is over and the tenant gets to stay in the home.

Learn how to evict the tenant on page 25, *How do I evict the tenant after I have a judgment?*

Can the tenant ask the Judge for more time to find a place to move?

Yes. The tenant must come to court to ask the Judge for more time, but usually can't get more than 6 months. The tenant will give you papers with a court date.

How do I make my roommate leave a home that we share? (roommate holdover)

You can start a roommate holdover case in Housing Court to make a roommate leave the home that you share. You do this the same way that a landlord evicts a tenant. To start a roommate holdover case read pages 8 - 11 of this booklet *and* the information below.

Can I lock my roommate out without going to court?

No.

Can I evict my roommate if he or she is on the lease too?

No. If your roommate's name is on the lease with you and also rents from your landlord/owner, then you can't start a case in Housing Court. Your roommate is a co-tenant and has the same right to stay in the home as you do.

What can I do if my roommate is abusive to me?

Call the police. If the police charge your roommate with a crime, like assault or harassment, you may be able to get an Order of Protection from Criminal Court: <http://www.nycourts.gov/courts/nyc/criminal/index.shtml>.

My roommate is a friend that I let live with me and don't charge rent, what do I do?

You can only start a roommate holdover against someone who is supposed to pay you rent. You must start a different kind of holdover case against your friend, called a licensee holdover. See page 8, *How do I evict someone for a reason other than rent?*

Do I have to do anything before starting a roommate holdover case?

Probably yes. You have to give your roommate a *Notice of Termination* before you can start a holdover case.

But, you can start the case without giving your roommate a Notice of Termination if:

- you have a lease in writing,
- the lease term has ended, and
- you have not taken any rent money from your roommate since the date the lease ended.

What is a Notice of Termination?

A Notice of Termination is a paper sent to your roommate with details about your decision to make your roommate move. The Notice tells your roommate that the tenancy is over. The Notice must tell your roommate the date that he or she must leave the home that you share.

If your roommate does not move out by the date in the Notice of Termination, start a case in Housing Court by giving the tenant court papers called a *Notice of Petition and Petition*.

How do I make a Notice of Termination and a Notice of Petition and Petition?

You can use the court's free and easy to use DIY (Do-It-Yourself) Form program to make all the court papers that you need. The DIY program can be used in the courthouse or on the internet:

http://www.nycourts.gov/courts/nyc/housing/roommate_diy.shtml. The DIY program gives you instructions of what to do. Or, buy a Notice of Termination and Notice of Petition and Petition at a legal stationary store, like Blumberg.

What if the tenant starts a case against me for harassment?

A tenant can start a *Harassment Proceeding* against the landlord/owner if the tenant thinks you are trying to force him or her to move out. The tenant's building must have three or more apartments.

What happens if I don't come to court?

If you miss your court date the Judge may give the tenant a *judgment on default* if the Judge finds that you are harassing the tenant. The Judge will order you to stop and can order you to pay a fine. If you think the judgment is wrong you can go back to court to ask the Judge to vacate the default judgment. See page 26, *What do I do if I need to go back to court to ask the Judge to do something on the case?*

What happens if the Judge holds a trial and finds that I have been harassing the tenant?

The Judge will order you to stop and can order you to pay a fine.

Can the tenant bring me to court for harassment and for not making housing repairs at the same time?

Yes. See page 14, *What if a case is started against me for housing repairs?*

What if a case is started against me for housing repairs?

A tenant can start a HP case against you to get repairs in the home or the public areas of the building. The tenant starts the case against you by giving you an *Order to Show Cause and Petition*.

The Department of Housing Preservation and Development (DHPD) can also start a HP case in Housing Court against you if there are uncorrected violations. DHPD starts the case against you by giving you a *Notice of Petition and Petition* or by an *Order to Show Cause and Petition*.

Do I have to make the repairs if the tenant isn't paying the rent?

Yes. But, you can start a nonpayment case against the tenant to collect rent. See page 3, *What do I do if the tenant is not paying me rent?*

What is an *order to correct* and what happens if I don't make the repairs?

In a HP case, as part of a settlement agreement, or after a trial, the Judge may order you to correct any repairs in the home or building in an *order to correct*.

If you do not make the repairs in the order to correct, the Judge may order you to pay a fine to the City of New York. In some cases, you may even be jailed.

If you make the repairs the case is over.

What do I do if the tenant won't let me in to the home to make the repairs that I agreed to make or was ordered to make?

If the tenant won't let you in to make the repairs you need to go back to court and see the Judge. See page 26, *What do I do if I need to go back to court to ask the Judge to do something on the case?*

What happens if a case is started against me saying that I locked the tenant out illegally?

A tenant can start an illegal lock-out case to get back into the home when the tenant says that you evicted him or her without first going to Housing Court and getting a court order.

Can I evict someone without a court order?

Probably not. You can't evict anyone without going to court if they have lived there for 30 days or more. If someone has lived there for less than 30 days, but has paid for the month you also need a court order.

The court papers say that I have to be in court right away, can I get more time?

No. You must come to court on the date in the court papers. The court wants to see you and the tenant right away because the tenant has told the court that he or she is locked out of the home. You can ask for another court date when you come to court. The Judge will want more information about the tenant's living arrangements before making a decision.

What happens on the court date?

The Judge or Court Attorney will talk to you and the tenant to see if the case can be settled. Tell the court the legal reasons you had for locking out the tenant. These reasons are called *defenses*. If the case is not settled, the Judge will hold a hearing to decide the case. The tenant will have to prove that he or she lived in the home for more than 30 days and that you locked the tenant out.

If the tenant wins, what can happen?

If the Judge finds that you illegally locked-out the tenant, the Judge may order you to put the tenant back in the home.

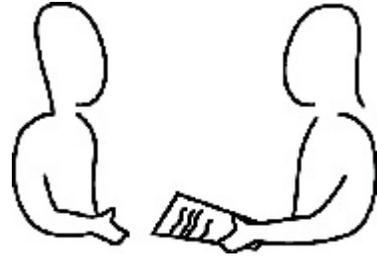
If the tenant proves that he or she spent money on a hotel, food, clothing, or household items, or missed work, the Judge may order you to pay money to the tenant. In some cases, the Judge may order you to pay the tenant three times the amount of money that the tenant spent. This is called *treble damages*.

What happens if I already rented the home to somebody else?

If the Judge orders the tenant back into the home, the new tenant will have to move. The new tenant may bring a civil case against you for damages.

How are legal papers delivered?

Legal papers, like a Notice of Petition and Petition, Rent Demand, Notice of Termination and Notice to Quit, must be delivered the right way. This is called *service*.



What happens if the papers are not served the right way?

If you don't serve the tenant the right way the Judge may make you start all over again. The case may be *dismissed without prejudice* to you starting over.

Can I serve the court papers myself?

No. You, the landlord/owner, can't serve the papers. You can hire a process server. You can find a process server in the Yellow Pages or on the internet.

Or, you can have a friend serve the papers. But, the friend is not allowed to serve more than five papers each year. The person must be 18 years old or older. You can go with your friend when the papers are served.

When can papers be served?

Papers may not be served on Sundays. Papers may be served between 6:00 in the morning and 10:00 at night. The attempt to serve the papers should not be made on religious observance days if you know that the tenant is observant and will not be home.

What is the easiest way to serve the papers?

Hand the papers to the tenant. This is called *personal delivery*. The papers can be handed to the tenant anywhere.

Can the server leave the papers with someone else if the tenant is not home?

It is O.K. to hand the papers to someone who lives or works in the home who is responsible. Responsible means that the person is likely to give the papers to the tenant. The person does not have to be an adult but should not be a small child. The person can't be someone who happens to be there. Papers can't be left with a neighbor or doorman. This is called *substituted service*.

Important: If service is done by substituted service the papers also have to be mailed to the tenant the right way.

You, the landlord/owner, can't deliver the papers to the tenant.

Can the server leave the papers on or under the door if nobody is home?

Yes, but first the server must try at least **twice** to find the tenant at times of the day when you know it is likely that the tenant will be home. If you know that the tenant works nights, then the server should not try to serve the papers at night.

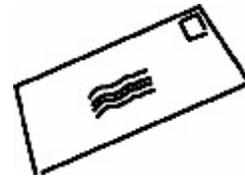
If the server is unsuccessful on the first try to serve the papers either by personal delivery or substituted service, then he or she must make a second attempt during a *different time period*. This can be the same day or a different day. After the server tries two times and can't deliver the papers by personal delivery or substituted delivery, he or she can leave the court papers on or under the door of the tenant's home. This is called *conspicuous service*. It is sometimes called *nail and mail*.

For example, if no one is home during working hours (8:00 am – 6:00 pm), the server can return during non-working hours (6:00 am – 8:00 am or 6:00 pm – 10:00 pm).

Important: If service is done by conspicuous service the person who served the papers also has to mail copies of the papers to the tenant the right way.

If the tenant is served by substituted or conspicuous service, what is the right way to mail the papers?

The server must mail a copy of the papers to the tenant by certified or registered mail **and** by regular mail. The mailings must be done by the day after the delivery of the papers. Make sure you have copies for the server to mail. Always keep the original papers to give to the Court.



What if I have another address for the tenant?

If you know that the tenant has another address then mail copies of the papers to that address too. If the tenant is in a nursing home or prison, you may have to serve them in a different way.

What if there are other people living in the home?

Every adult that you list in the papers must be served with his or her own set of the papers. This includes any papers that are mailed.

What happens if the tenant never picks up the certified copy of the papers from the Post Office?

Don't worry about it. The Court considers the papers served whether the tenant picked up or the certified mailing or not, as long as the rest of the rules were followed. But, save the proof of mailing.

Do I have to tell the court how the tenant was served?

Yes! The person that serves the papers must swear how he or she gave the papers to the tenant in an *Affidavit of Service*. The Affidavit of Service must be signed by the server in front of a Notary.

The Affidavit of Service of a Notice of Petition and Petition must be returned to the Court Clerk's Office within 3 days of the personal delivery or mailing. Make copies of the Affidavit of Service before bringing it to Court.

Where can I get an Affidavit of Service form?

If you had a friend make the service, he or she can choose the correct affidavit of service form from the Housing Court's website:

<http://www.nycourts.gov/courts/nyc/housing/forms.shtml#affsofservice>. Use the form that says for *Personal Service* if the papers were delivered by in-hand service. Use the form that says *Service Other than by Personal Delivery* if the papers were delivered by substituted or conspicuous service.

A process server will know what to do and may use his or her own form.

Remember: You need an affidavit of service for each person served.

What happens if the tenant says he or she was not served the right way?

If the tenant says that the papers were not served the right way, the Judge may set a date to hold a hearing, called a *traverse* hearing, to decide if the papers were served the right way.

What happens at a Traverse hearing?

Your friend or professional process server may be asked to tell under an oath how the papers were served. The Judge may inspect the Affidavit where your friend or professional process server swore that the papers were served.

You and the tenant can ask the process server questions about how the papers were served. You and the tenant can also testify and call witnesses. The Judge will decide whether the service of the court papers was proper. If the service was proper, you will get a court date to come back on the case. If the service was not proper, the case will be *dismissed without prejudice*. This means you will have to start the case again.

Where can I learn more?

You can read the law about serving papers at:

<http://www.nycourts.gov/courts/nyc/housing/rpapl735.shtml>.

Each person served must get a full set of papers.

What do I do when I go to court?

What time should I get to court?

Get to court early. Plan to arrive 45 minutes before your court time. You will have to go through a security line at the entrance to the courthouse. Remember you may be in court all day with a break between 1:00 - 2:00 pm.

Can I bring my children with me?

Yes, but if you can it is better to find someone to watch them during your court appearance.

How should I dress for court?

Court is a formal place and you should dress respectfully. Do not wear t-shirts with curses, belly shirts, plunging necklines, sunglasses, or torn clothing. You will be asked to take your hat off. You do not have to buy new clothing for court.

What should I bring to court?

Get all your court papers together. Bring your lease and lease renewals. Bring any materials you have to prove your case. Bring your deed if you have to prove you own the property. Bring the multiple dwelling registration if the property is a three family house. It is good to make a record of the dates and conversations you had with the tenant so you can talk about them in court.

What should I bring to court if the tenant has repair issues?

You should bring:

- Records of all your apartment and building repairs.
- Photos. Mark each photo with the date it was taken and what is pictured.
- Letters you received and copies of letters you wrote.
- Bills and receipts for labor and materials.

What happens on my first court date?

Your case will not be tried on your first court date.* You will go to a courtroom called a *Resolution Part* where the Judge and the Court Attorneys (or DHPD Attorney for HP cases) will speak to you and the tenant to see if an agreement can be reached to settle your case. You can watch a video to learn more about the Resolution Part: <http://nycourts.gov/courts/nyc/housing/resolutionvideo.shtml>.

**Exception! If you are in court for an illegal lock-out case, you may have a trial on your first court date.*

What do I do in the Resolution Part courtroom?

Go see the Clerk seated at the front of the courtroom and let him or her know you are there. If you need an interpreter or more time tell the Clerk. Then take a seat and wait for the Clerk to call all the cases. This is called the *calendar call*.

Should I speak to the tenant or the tenant's attorney by myself?

It is O.K. to find the tenant before the case is called if you want to talk. You can try to settle the case. You will have a chance to see if the case can be settled when you and the tenant meet with the Judge or the Court Attorney.

What should I do when my case is called in the calendar call?

When you hear your name answer **landlord**. Tell the court again if you need more time or an interpreter.

What happens if the tenant or I want more time to get ready for the case?

If you or the tenant need time to get an attorney or documents, or if you are not ready to talk about your case, this is called an *adjournment*. This means you are asking to come back on a later date.

Important! If the tenant owes rent and asks for a second adjournment, or if the case has been in court for more than 30 days, you can ask the Judge to make the tenant deposit the money in court. It may take some time to get this money back.

What happens when the court calls my case?

That depends on why you are in the courtroom:

- If you are there to see if your case can be settled, you will see the Court Attorney or Judge.
- If you have settled the case you will be called to see the Judge. The Judge will ask questions to make sure you and the tenant understand the agreement.
- If you are there because you or the tenant served papers asking the Judge to do something on your case by an *Order to Show Cause*, you will see the Judge. The Judge will listen to you and the tenant and make a decision.

What happens if the case is not settled?

If the case is not settled, you will be given a date to come back to court for a trial in a different courtroom. Before going to a Trial Part, you will see a Clerk called the *Expediter*. The Expediter sends you to the Trial Part when everyone is ready.

Important! You may get papers from the tenant or the court that tell you to come to court before your next court date. Do not ignore the papers, come back to court on that date.

Can the tenant and I agree to settle the case?

You and the tenant can settle your case with or without the help of the court.

What should I do if the tenant and I agree to settle the case before the court date?

If you and the tenant make an agreement, you should:

- Put your agreement in writing.
- Both you and the tenant must sign the agreement.
- Make a copy for your records.
- Go to court to give the Judge what you and the tenant agreed.

How do the tenant and I settle the case in court?

If you want to try to settle the case, find the tenant or the tenant's attorney. You can talk to the tenant or the attorney by yourself or you can wait until a Court Attorney calls your case. You will have a chance to see if the case can be settled when you and the tenant meet with the Judge or the Court Attorney.

If you and the tenant make an agreement it will be written down in a *Stipulation of Settlement*. The Court has Stipulation forms. When settling the case:

- Only agree to what you think is fair.
- Be sure you can do what you promise by the dates you promise.
- Make sure the agreement takes care of all claims and counterclaims.
- Ask the Court Attorney to explain any legal terms.
- Do not sign anything unless you have read and understand it.

The Judge will review the Stipulation of Settlement and speak to you and the tenant. If something is not clear, you can ask the Judge questions.

What should the Stipulation say if I need to make repairs?

The stipulation should list the repairs that you are agreeing to fix. The stipulation should list the dates and times for the repairs to be done and whether the tenant will be present. If the tenant is not going to be there, the Stipulation should say how you will get in. If the Stipulation says that the repairs must be finished by a certain date, be sure that you can finish the repairs by then.

What should the Stipulation say if I agree to reduce the rent that the tenant owes?

If you agree to reduce or *waive* some of the rent the tenant owes because of conditions in the apartment, or because the tenant has agreed to move, the Stipulation should say the amount of money waived and the time period covered.

What should the Stipulation say if the tenant has agreed to correct any issues?

The Stipulation should say the date that the issues will be corrected, what the tenant will correct, and what will happen if the tenant does not do it. For example, the Stipulation should say what will happen if the tenant does not get rid of a pet, or a washing machine, or move out of the apartment by the date in the Stipulation.

What should the Stipulation say if the tenant can't pay all the money at once?

The Stipulation can set up a payment schedule where the tenant pays you the money owed over time. It should clearly list the amounts and the dates the payments are due. For example, the Stipulation may say that the tenant will pay you \$500 today and then \$500 every 15th of the month for the next three months in addition to the current rent. The Stipulation should also say what will happen if the tenant misses a payment.

Must the Stipulation have a judgment against the tenant?

No. You can agree to settle the case without a judgment. But, if the Stipulation has a judgment, and the tenant doesn't do what he or she promised to do, you can evict the tenant without coming back to court.

If there is no judgment for me in the Stipulation and the tenant doesn't do what he or she is supposed to do, how do I evict the tenant?

This depends on what the Stipulation says. For example, the Stipulation may say you have to notify the tenant or the court before you can get a judgment. The Stipulation should be clear about what you have to do.

What if I don't do what I was supposed to do in the Stipulation or need more time?

If you **or** the tenant do not do what you agreed to in the Stipulation of Settlement, or you need more time to do what you agreed, you can go back to court. This is called an *Order to Show Cause*. See page 26, *What do I do if I need to go back to court to ask the Judge to do something on the case?*

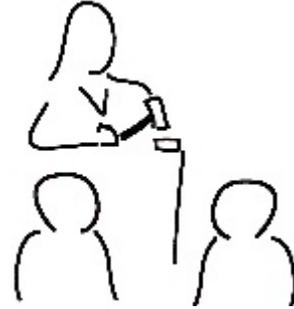
What if I the tenant and I can't agree?

The Court Attorney or Judge will try to help settle the case in the Resolution Part courtroom. If you can't agree on the settlement, there will be a trial.

What happens at a trial?

At a trial, the petitioner tries to prove his or her case and the respondent tries to prove his or her defenses or counterclaims. Both sides testify and show their proof to the Judge. Then the Judge makes a decision.*

**Your case may be decided by a jury if a jury demand was filed.*



How do I get ready for trial?

You must be ready to try the case on the trial date. Get all the information related to your case. This may include witnesses or papers, like:

- lease,
- letters you wrote or received about the apartment,
- photos,
- housing inspection reports,
- multiple dwelling registration,
- deed to the property,
- papers from government agencies, like DHCR or DHPD.

Important! Bring the original papers or certified copies to the trial.

What can I do if a witness refuses to come to court or I can't get documents I need?

If a witness refuses to come to court or you are having trouble getting documents you need, you can *subpoena* them. Go to the Landlord-Tenant Clerk's office and tell the Clerk you need a subpoena. A subpoena must be served at least 48 hours before the trial date.

What do I do when I get to the courtroom for trial?

Tell the Clerk that you are there. The Judge will ask you and the tenant or the tenant's attorney some questions and may try to settle the case. If you do not settle and both sides are ready, the Judge will hold a trial of your case that day.

What should I do if I need more time to get ready for my trial?

If you need time to have all your witnesses or documents ready or for some other reason you can ask for an adjournment. The court may say no because your case is supposed to be ready for trial by the time is sent to a Trial Part.

How do I act during the trial?

During the trial:

- be yourself and just say what happened,
- give complete answers,
- don't argue with the tenant or the tenant's attorney or the Judge.

What happens during the trial?

The Petitioner tries to prove his or her case first by *testifying* and submitting proof to the court. A person testifies by first swearing to tell the truth then telling the court his or her side. If your tenant started the case against you then the tenant goes first. If you started the case, you go first. You will have a turn to ask each witness questions.

When you testify you also submit your documents to the court that prove your case, like certified copies of the deed and the original lease.

You and the tenant can *object* to questions, answers or documents.

How do I object?

You can *object* if you think there is a reason why the testimony or the document should not be allowed by the Judge, not just because you disagree with it. You can object if:

- the witness is only repeating what someone else told him or her (this is called *hearsay*),
- you think that the testimony or document has nothing to do with the case (this is called *irrelevant*),
- a document is not certified or an original or has been changed.

If you have an objection you must interrupt the trial and say, **objection**. The tenant can also object.

What happens at the end of the trial?

When you and the tenant are finished explaining your side of the case, the Judge will make a decision and the winning side will get a *judgment* from the court. You may find out the decision right away or you may get it in the mail later on.

What if I think the Judge was wrong?

If you lose and think the Judge made a mistake, you can go to the Appellate Term of the Supreme Court to *appeal*.

How do I appeal if I lose the case?

You can only appeal a Judge's order or judgment. An appeal is expensive and must be made quickly. The Clerk can tell you what to do. The appeal is made at the Appellate Term of the Supreme Court.

How do I evict the tenant after I have a judgment?

Before you can evict a tenant you must have won a judgment from the court. There are several ways you may have won a judgment, for example:

- the tenant didn't Answer the Petition,
- the tenant didn't come to court,
- a Stipulation of Settlement gave you a judgment, or
- you won the trial.



After you have a judgment against the tenant, you must find a marshal or sheriff to complete the eviction process. Only the marshal or sheriff can complete the eviction process by changing the locks or removing the tenant's things and making the tenant leave. You can't lock the tenant out of the home.

How do I find a marshal or sheriff?

The New York City Department of Investigation keeps a list of New York City marshals at: <http://www.nyc.gov/html/doi/html/marshals/list.shtml>. You can find a sheriff by calling 311. You can also look in the yellow pages. You have to pay the marshal or sheriff a fee to do the eviction.

How long does it take to evict the tenant?

The marshal must give the tenant a Notice of Eviction that tells the tenant that he or she will be evicted in a few days. But, the marshal may not evict the tenant right away depending on his or her schedule. Call the marshal.

Can I evict the tenant if there are children, disabled persons, or elderly in the home?

Yes. But, you must tell the marshal or sheriff before the eviction if the tenant lives with someone who is disabled or elderly, or is unable to take care of him or herself. Otherwise, the marshal may not be able to do the eviction. The marshal must notify Adult Protective Services before that person can be evicted.

Can the tenant stop the eviction?

Yes. A tenant can try to stop the eviction by asking the Judge in an *Order to Show Cause*. If a Judge signs the Order to Show Cause with a *stay* of the eviction, the tenant will give you a copy that tells you the court date. The stay will stop the eviction at least until you and the tenant come back to court.

Important! You can't change the locks and evict someone who has lived in your property for more than 30 days. Only a City Marshal can evict a tenant after you have taken the tenant to Housing Court and won a judgment.

What do I do if I need to go back to court to ask the Judge to do something on the case?

An *Order to Show Cause* is a way to ask the Judge to do something on the case. It can be used:

- to make a tenant do what he or she was ordered to do or agreed to do,
- to ask for more time to do what you were ordered to do or agreed to do,
- to fix mistakes in a Stipulation,
- to explain why you missed the court date, or
- to bring your case back before the Judge for any other reason.



How do I make an Order To Show Cause?

Go to the Housing Court Clerk's Office. The Clerk will give you an *Affidavit* to fill out. An *Affidavit* is your sworn statement that tells the Judge what you need. The Clerk will create the Order to Show Cause (OSC) and send the OSC and your *Affidavit* to the Judge. You may have to wait for some time for the Judge to review the papers.

What do I write in the Affidavit if the tenant didn't do what he or she was supposed to do?

Your *Affidavit* must explain what happened. For example, "The tenant didn't remove the gates from the windows," or "The tenant didn't make the payments."

What do I write in the Affidavit if I need to ask for more time to do what I was ordered to do or agreed to do?

Your *Affidavit* must give the court a good reason. For example, "The plumber got sick and wasn't able to come on the date I promised," or "The tenant wasn't home when I went to make the repairs." The Judge may not give you more time.

Come to court to make an OSC as soon as you know that you will not be able to do what you are supposed to do. You do not have to wait until the date passes.

What happens if the Judge signs the OSC?

If the Judge signs the OSC you will have to *serve* the papers on the tenant. The Clerk will tell you what to do.

You will have to come back to court on the date on the OSC to see the Judge. Bring your proof with you. The Judge will listen to you and the tenant and make a decision.

Where are the Housing Courts Located?

Cases must be started in the Housing Court where the home is located. Housing Courts are located in Civil Court buildings.

If the home is in the **Bronx**:

Bronx County Housing Court
1118 Grand Concourse
Bronx, New York 10456
718 466-3025

If the home is in **Brooklyn**:

Kings County Housing Court
141 Livingston Street
Brooklyn, New York 11201
347 404-9200

If the home is in zip codes 10035 or 10037 in **Harlem**:

New York County Housing Court
170 East 121st Street
New York, New York 10035
646 386-5750

If the home is in **Manhattan**:

New York County Housing Court
111 Centre Street
New York, New York 10013
646 386-5500

If the home is in **Queens**:

Queens County Housing Court
89-17 Sutphin Boulevard
Jamaica, New York 11435
718 262-7145

If the home is in **Staten Island**:

Richmond County Housing Court
927 Castleton Avenue
Staten Island, New York 10310
718 675-8452

For court hours: <http://www.nycourts.gov/courts/nyc/housing/courthours.shtml>.

Contact a Court Clerk at the numbers listed above, or call: 646 386-5750 for general landlord-tenant information. Or visit: www.nycourts.gov/nychousing.

Where can I go for help?

Where can I find a lawyer?

The Legal Referral Service of the Bar Association, (212) 626-7373, gives you a contact information for a lawyer who will charge a \$35.00 consultation fee for the first half-hour. If you hire the lawyer after this consultation, you and the lawyer will work out the cost.

Is there free help at the courthouse?

Yes. There is a Help Center in every Housing Court where you can meet with a court attorney to get legal information. The Help Center also has helpful videos, written information and forms, and internet access for legal help. No appointment is necessary. You are seen on a first come, first serve basis. Most centers are open late on Thursdays: <http://www.nycourts.gov/courts/nyc/housing/resourcecenter.shtml>.

There are also Volunteer Lawyers in the Help Center that can give you free legal advice. You can check the website to see when a volunteer will be in there: <http://www.nycourts.gov/courts/nyc/housing/vlpselfrep.shtml>.

Where do I get Housing Court information on the internet?

The Housing Court has a website with more information. There are free court forms, videos, and publications. The website is also available in Spanish and Chinese. Visit: <http://nycourts.gov/nychousing>.

For case information, visit:

<http://iapps.courts.state.ny.us/housing/HousingJcaptchaServlet>.

Can I call Housing Court?

Yes. For information on your case and legal and procedural information call (646) 386-5750. The service is provided 24 hours and is available in Spanish.

To find phone numbers to call the courthouse directly:

<http://www.nycourts.gov/courts/nyc/housing/addresses.shtml>.

How can I get more information on my rights in Housing Court?

The Rent Stabilization Association has information on its website:

<http://www.rsanyc.com/>, or you can call at (212) 214-9200. Housing Court Answers (formerly City-Wide Task Force on Housing Court) has information tables in most Housing Courts, or you can call them at (212) 962-4795.

Where can I find information about rent control or rent stabilization?

Call the New York State Division of Housing and Community Renewal at (718) 739-6400. This office hears applications and complaints about:

- rent overcharges,
- decreases in service,

- rent increases,
- deregulation, and
- lease renewals.

Where can I find information about NYCHA Section 8 rules?

For eviction information call: (212) 306-8500, or visit:

http://www.nyc.gov/html/nycha/html/section8/landlord_info.shtml.

Where can I find information about the appointment of a *guardian ad litem*?

For information visit: <http://www.nycourts.gov/courts/nyc/housing/GAL.shtml>.

Where can I get help solving my problem without going to court?

You can find the location of a community dispute resolution center near you in the phonebook or at: <http://www.nycourts.gov/ip/adr/ProgramList.shtml>.

Are there any helpful community seminars about Housing Court topics?

Yes. There are free community seminars held in the Housing Court. For information about upcoming events visit: <http://www.nycourts.gov/courts/nyc/housing/news.shtml>.

To watch past community seminars on the internet, visit:

<http://www.nycourts.gov/courts/nyc/housing/videos.shtml#seminars>.



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