

Landlord/Tenant Actions

Who can file?

Lessors (Landlord/Landladies) who wish to repossess real property from their tenant. A secondary consideration is monetary judgment for rent which is past due or damage to the premises. Both issues can be processed on the same complaint.

Filing Fees: Just as in any other small claims action, the costs are scaled according to the award you are requesting. Service costs are additional. Contact the Magisterial District Judge office for current cost information. All costs are paid in advance and added to the amount of the claim.

*Service costs depend on the residence of the defendant!

Costs are recoverable as a part of the total judgment. Attorney's fees, however, are not recoverable, unless reasonably attorney fees are a part of the lease.

What happens after filing?

The constable will serve the complaint upon the defendant(s), requiring an appearance before the Magisterial District Judge no less than seven (7) or more than twenty (20) days after filing. The Magisterial District Judge can postpone the hearing for a reasonable cause.

What happens at the hearing?

At the hearing the LESSOR (PROPERTY OWNER) MUST APPEAR to offer testimony and produce physical evidence (copy of lease, rent ledgers, receipt books, photographs, etc.) in order to support the complaint. The lessor may bring other witnesses at this time. If other witnesses are not willing to come voluntarily, the lessor may request the Magisterial District Judge clerks to issue subpoenas, which would be served on the defendant AT THE COST OF THE PLAINTIFF (LESSOR). These costs are also recoverable.

If the defendant fails to arrive for the hearing, the testimony is offered and a decision made by the Magisterial District Judge in the defendant's absence. If the defendant arrives, then the defendant may offer a defense. The Magisterial District

Judge in either case will make a decision within three (3) days and notify all parties. Judgment may be for:

Possession only in favor of the Plaintiff.

Possession plus overdue rent and/or damages in favor of plaintiff.

For defendant, if plaintiff's case is weak.

Dismissal Without Prejudice—the district judge dismisses the case due to a technical violation of a court rule. In this instance the plaintiff may REFILE the case.

A final instruction: the hearings are conducted according to the Rules of Civil Procedure for magisterial District Judges and the Rules of Evidence. The plaintiff lessor has the burden of proving by a preponderance of the evidence every element of the claim. Be certain to "have your ducks in a row" to present a case, although many defendants do, usually on grounds of a violation of the implied warranty of habitability.

The implied warrant of habitability is a court-made rule which basically states that all rental properties are safe for human dwelling, that the roof doesn't leak, the doors are secure against intruders, the plumbing works properly that there is adequate electrical service, that the heating system works and that the common areas (stairways, hallways, backyards, etc) are free from dangerous conditions.

Although many individuals can properly present a civil suit, if you are unsure of your case or how to proceed, you may hire a lawyer versed in landlord-tenant law to help you navigate through the system. Generally, most parties file without the assistance of counsel. Whether or not you hire a lawyer is strictly your choice. [THE COURT STAFF CAN EXPLAIN BASIC PROCEDURE BUT MAY NOT GIVE YOU A LEGAL OPINION.]

Do I have to give the tenant notice before filing?

Yes, in case of eviction, the following time limitations are important to keep in mind when serving a Notice to Quit on your tenant:

NON-PAYMENT OF RENT: 10 DAYS

BREACH (VIOLATION OF THE LEASE OTHER THAN NON-PAYMENT OF RENT: 15 DAYS

END OF LEASE (ONE YEAR OR LESS): 15 DAYS

END OF LEASE (MORE THAN ONE YEAR): 30 DAYS

****UNREASONABLE COVENANTS IN THE LEASE, SUCH AS A WAIVER OF THE REQUIRED TIME PERIODS MAY NOT BE ENFORCED IN COURT.**

Once a Notice to Quit has been delivered to the tenant(s) you must act upon that notice within a reasonable time if in fact the tenant has failed to leave the premises. Should you allow the tenant to remain for an unreasonable time past the date he/she

is to vacate, it can be construed that a new lease has been created or that the original lease has renewed itself under that same terms and conditions.

If you allow the tenant to holdover, you may be placed in the situation of having to deliver a new Notice to Quit.

Unless otherwise specified in the lease, Notice to Quit must be served personally upon the tenant.

What if I win a Judgment?

If you win a judgment of Possession, the defendant will be directed by the Magisterial District Judge to quit the premises no later than TEN (10) days from the date the judgment is entered. IF THE DEFENDANT STILL HAS NOT LEFT THE PREMISES, you can appear on the 11th day after judgment to file an Order of Possession. The Sheriff will be ordered to serve this upon defendant. If the defendant still refuses to leave, the Constable may then proceed to eject (kick out) the defendant. If the procedure goes this far, the Sheriff or constable may require you to post a bond.

If you also win judgment for monetary damages, you cannot execute on that part of the case until 30 days has passed. You may file an Order of Execution with the Magisterial District Judge on the 31st day after judgment.

What happens if I lose the case?

The Plaintiff may file an appeal for a new hearing with the Montgomery County Prothonotary. A panel of three attorneys appointed by the Court of Common Pleas would then hear the proceeding.