



GWINNETT

**County**

**Edition**

For private market renters

# Eviction Defense Manual

First Edition

ADAPTED  
FROM  
MATERIALS

by the Housing Justice League

# Neighbor,

If you are dealing with an eviction, **you are not alone.**

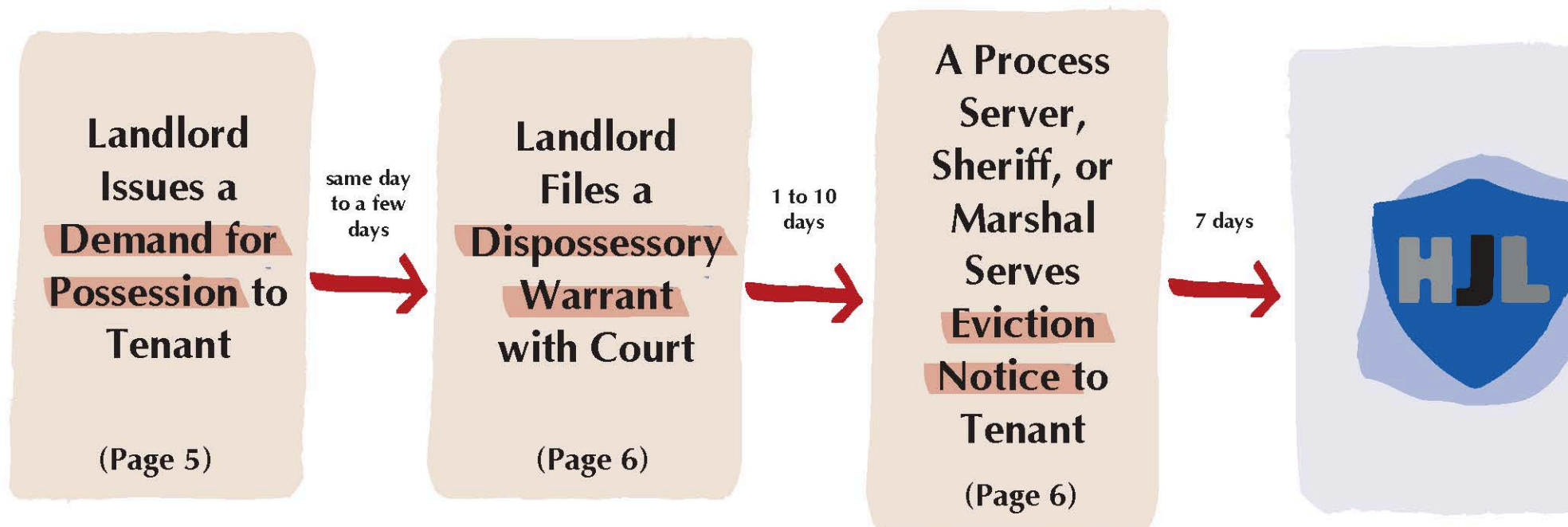
When it comes down to it, you and your landlord have opposing interests. You need a safe, affordable place to live, but your landlord's top priority is to make a profit. To make matters worse, **Georgia law gives landlords powerful rights, while tenants have few rights.** All renters experience this power imbalance, but it is especially harmful for lower-income people and people of color.

Even though the law is not on your side, understanding your rights can get you a better outcome. **This manual is for you and your neighbors to learn the legal eviction process so you can defend yourselves, buy more time, and prevent large debts.**

## The Eviction Timeline is Fast

One of the most challenging aspects of the eviction process is how quickly it moves. Generally, **you have only 14 - 30 days from the day you receive an eviction notice to the day the judge makes a decision.** Below is a timeline that shows how the eviction process unfolds. It assumes that all actors are acting within the law and understand the law.

**Tenant  
Prepares  
Their  
Answer**  
(Pages 8-11)





# How To Use This Manual

This manual will cover each step of the eviction process, starting from the day you receive the first notice, through to your court date, ending with how to cope with eviction and prevent future displacement. Even if you are not experiencing eviction, this information is very important to learn and share because informed renters means stronger communities! Any mention of *you* in this document refers to a tenant at risk of eviction. This manual is specific to renters on the private market (non-subsidized) in **GWINNETT** County and the State of Georgia. Be aware the rules of eviction in other counties and states can be different.



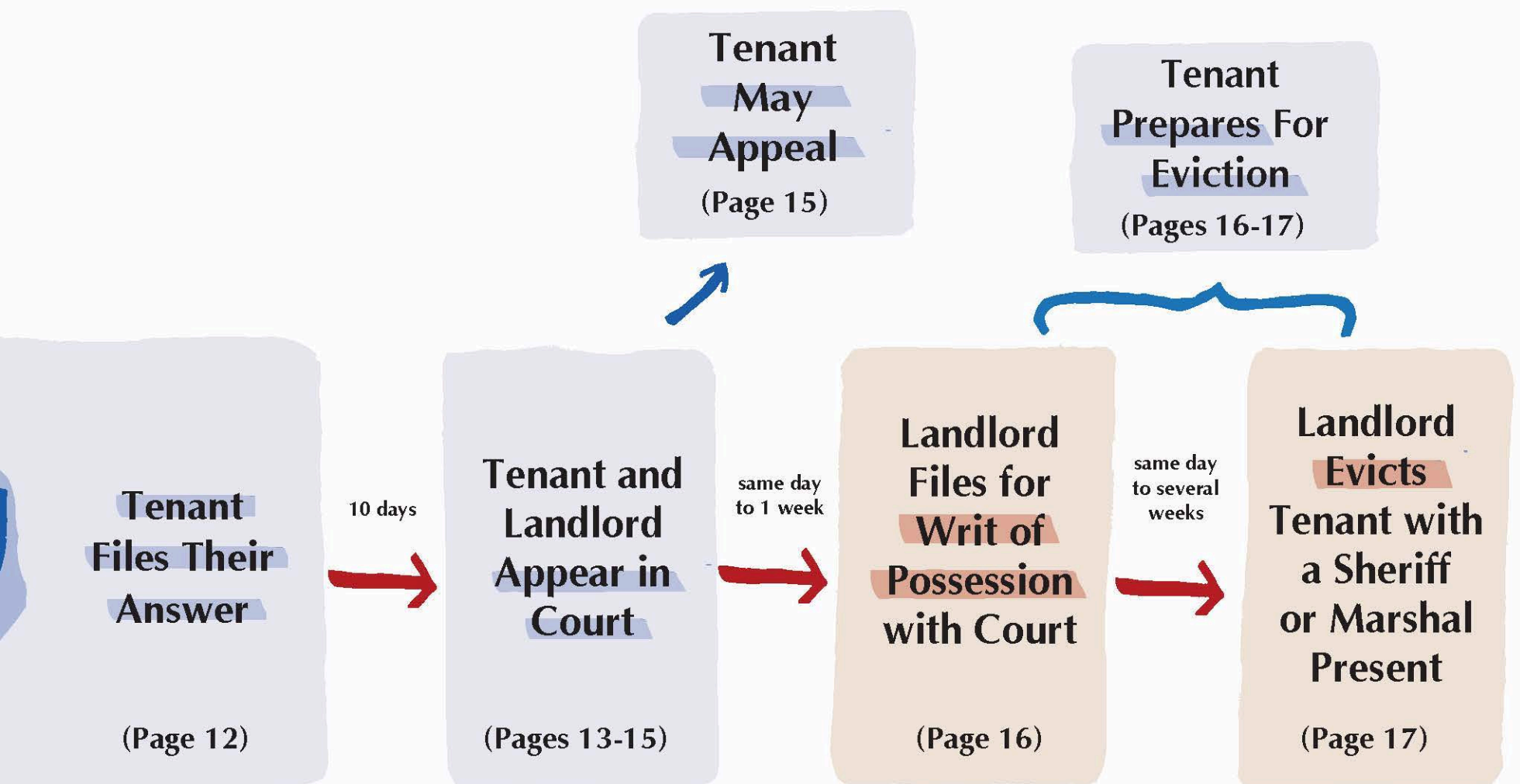
**Beware** information is in **red**. It alerts you to **illegal tactics** and **common problems** to look out for.



**Tenant Actions** - ways to **defend yourself from eviction** or **slow down the process** - are highlighted in **blue**.

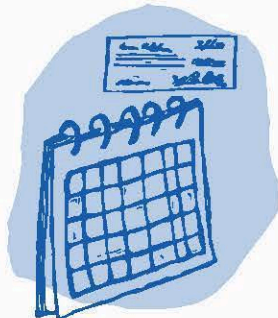
**Unfamiliar words** and **legal terms** appear in **green** and we define them in the glossary in the back!

**Yellow** refers you to other **helpful resources and organizations**. When it comes to **Counterclaims**, **Repair and Deduct**, **Evidence** and **Subpoenas**, **Mediation**, and **Appeals**, each of these processes is pretty complex, so we made separate guides that can be downloaded from our website here: [www.housingjusticeleague.org/evictiondefense](http://www.housingjusticeleague.org/evictiondefense). Also, check the back cover for **free legal aid** information.



# Eviction Defense Basics

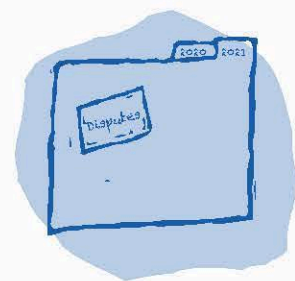
**Why?** Tenants should always work to protect themselves from eviction. Here is a list of important preventative practices for **every** tenant - not just those facing an eviction.



**Pay Rent On Time & In Full** Do not withhold rent for any reason. Under Georgia law, withholding rent will most likely give your landlord legal cause to evict you. Get a receipt for cash payments, or use money orders. Your landlord is also not required to accept partial rent payments. Even if they accept it, understand that they can decide to refuse partial payments in the future, and start the eviction process.



**Keep Copies of all Paperwork & Get It In Writing** Keep copies of your lease, move-in inspection reports, receipts, and any letters, emails or texts from your landlord. These can be used to build evidence if you need to dispute an eviction. Never use verbal agreements to conduct business with your landlord, especially with matters related to lease and rent. Use written communication whenever possible, such as texts, emails, or dated and signed hand written notes.



**Document All Maintenance or Dispute Issues** Take photos of your unit, including any damage, the day you move in. Always document maintenance issues as they arise. Record the date, time, and content of all maintenance requests you make, and keep any copies of complaints you submit to **GWINNETT** County or **CITY POLICE OR CODE ENFORCEMENT** authorities. Audio record any conversations you have with your landlord for which you do not have a witness. Having a clear written record and a timeline of any disputes with your landlord is key to tenant protection.



**Know Your Resources!** Legal aid information is on the back of this manual. You can also download the Georgia Landlord-Tenant Handbook at <https://www.dca.ga.gov/node/2945> and check out <https://housingjusticeleague.org>. Talk with your neighbors about these issues; being more connected leads to being organized.



# The Demand for Possession

**What's Happening?** Your landlord informs you of the consequences for violating your lease. Under Georgia law you can be evicted if:

#1

You don't pay your rent

#2

You don't move out at the end of your lease

#3

You violate other terms of your lease

**Tenant Action** If you can't pay rent and have somewhere else to go, **you might avoid an eviction record by moving right away**. It's possible your landlord may not file for eviction if you move. Page 11 explains how this tactic can also likely save you from a money judgment.



## It's Not An Eviction Notice!

Your landlord has only **demand possession**. They must file in court before you receive an eviction notice (aka: **Dispossessory Warrant**).

## The First Sign of Eviction

Your landlord makes the first move to start the eviction process called the **demand for possession**, a notice that you have violated your lease in some way. This does not require you to leave your home immediately. The demand for possession is not approved by or issued by the court, but it must legally abide by a few rules. **The notice can be written or verbal**. It could say:



The **demand for possession** is also called the **notice to quit, notice for termination, demand notice, or 3-day notice**. Often, this notice has no title at all.

You must receive a demand for possession before the landlord files in court and before you receive an eviction notice. Even though **many landlords use the demand for possession as a warning tool to get you to comply**, you should work from the assumption they intend to follow through with an eviction.

## Tenant Action

**Negotiate** Try and work out a deal with your landlord. At this point they should not have filed in court yet. You may still be able to prevent court proceedings and an eviction record.

**Get it in Writing** If your landlord demands possession verbally and gives you a set time to comply, immediately request this deadline in writing.

**Settle Your Debt** If you can pay what your landlord claims you owe (and you do owe that amount) pay it ASAP. Get a money order or a receipt for cash payments! This may not prevent the eviction case from going to court, but it can potentially save you from additional fees or accruing interest down the road.

**Defense: Premature Filing** is a defense you can use when filing your answer (page 9) if:

- ☐ Your landlord gave you a specific time frame to correct your lease violation, **and**
- ☐ Your landlord did not wait that amount of time before filing for an eviction notice

This is considered an unlawful practice and may help you defend yourself in court!



# The Dispossessory Warrant

**What's Happening?** Your landlord goes to court to file an eviction lawsuit against you.

## Filing in Court

After your landlord issues the demand for possession they can file a **dispossessory affidavit** in court. This means they swear their claims under oath and request the court's power to evict you.

Dispossessory  
warrant =  
"Eviction  
notice"

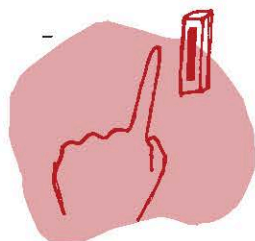
## Being Served

Anywhere from one day to several weeks from when your landlord files in court, you can expect to be served an eviction notice (**dispossessory warrant**). A court Marshal, Sheriff, or private "process server" must serve it to you. If you receive this notice, you still have to pay rent. The **dispossessory warrant** requires you to give a legal response within 7 days. It tells you:

Date of service  
The amount of \$ your landlord  
claims you owe (including late fee,  
court filing and process server fee.)  
Your answer deadline  
Where to file your answer

Landlord, management or lawyer's  
address and name  
Your address and name  
Your case number  
The reason for your eviction

Eviction notice can legally be served in **two ways**:



### In Person

Process server or Marshal  
gives the eviction notice to  
someone "of suitable age"  
who lives at the address (it  
cannot be a small child).



### Tack and Mail

The server must knock first. If  
no one answers they can tape a  
copy to the door. They are then  
required to mail a copy to you on  
the same business day.

## Watch out for Improper Service

Was the second copy of the eviction  
notice **mailed on a different date** than  
the day it was tacked to your door?

Did **your landlord attempt to serve  
you the warrant** themselves?

If this is the case, you did not receive  
proper service.

## Tenant Action

**Check for Improper Service** Document the date, method, and who delivered your eviction notice.

**File Your Answer** The most important action you can take to protect yourself is filing an answer on time with a proper legal defense. Not doing this can result in getting evicted in as little as 8 days after receiving the eviction notice. Detailed instructions on filing an answer begin on page 8.



# Stopping Your Eviction In Its Tracks

## You've Received the Eviction Notice - What Now?

There are now two main legal routes you can take to prevent your eviction before going to court:

### Option 1: Settle your Debt in Full

**Sometimes landlords will refuse overdue payment because they want you out.** There is a Georgia law that is meant to protect you from this. It requires landlords to allow you to settle your debt in full to avoid eviction.

If your landlord refuses to accept full payment for overdue rent and late fees, you can challenge them in court by claiming **"tender defense."** For this, you must meet all of the following:

- ☐ Your landlord is evicting you for failing to pay rent
- ☐ This is the **only time in the past 12 months** your landlord has filed against you
- ☐ You **offered full payment** (including all rent owed, late fees, & the cost of the court filing), **and**
- ☐ You **attempted to pay by the answer deadline** shown on the eviction notice

If you can check all of these boxes, include the tender defense when you file an answer!

### Payment Tips

#### Keep A Trail

Use a money order for proof in case your landlord refuses payment!

#### Hold Onto the Money

You will still owe part or all of it later on.

#### Consider Bringing a Witness

But make sure this is also someone who can appear in court if needed.

### Option 2: Come to an Agreement

Any time *after* receiving an eviction notice and *before* your court date, you can try to work out a deal with your landlord. There are two ways to file to close a case if you both come to an agreement.

#### Consent Agreement

You or your landlord can file a consent agreement as long as you both sign it. It can be filed online or in-person. This agreement is binding, so pay close attention to what it includes. Landlords often write the agreement to state they can evict you immediately if you break it. **Only sign it if you are sure you will be able to hold up your end of the bargain.** Bring a copy with you to court.

#### Voluntary Dismissal

You and your landlord make an informal agreement that you do not report to the court. Your landlord then files to voluntarily dismiss the case. Only your landlord can file this, not you the tenant. **It is not common for landlords to use this approach** because if you break the agreement, they have to start the eviction process from the beginning.



### When in Doubt, File an Answer & Go to Court!

If your landlord has filed to dismiss the case too close to the court date, your agreement may not yet be in the database. **You must still file an answer and you and your landlord must both appear in court to announce your agreement.** Until you see a document in the court database that is dated, stamped, clearly indicating your case is closed, assume that it is active.

**Consult a lawyer** to help you decide whether to sign a consent agreement. **Whatever the case, you still must file an answer and appear in court!**



# Preparing Your Answer

**Time To Act!** You will now learn the ins and outs of eviction defense to respond in the best way for your best outcome.



**Filing An Answer  
Is The Most  
Important Step**

**Why?** Filing an answer is your **chance to tell your side of the story**. From the day you receive an eviction notice, you have **7 calendar days** to file your answer by 5:00 pm on the 7th day. If filing online the deadline is exactly 11:59pm. If the 7th day is a weekend or court holiday, you have until the next day the court is open.

**What's At Stake?** A lot. **You risk automatically losing your case** if you: file a **late answer**, **do not file** an answer, or file an **improper legal defense**.

**Default Judgment?** A **default judgment** occurs if you do not file an answer or do not appear in court. It is possible to be evicted in as little as 8 days after getting the eviction notice or within 1 day after your court date. It also requires you to pay the full amount your landlord claims you owe.

## The Answer Form

You can download the answer form at <https://www.gwinnettcourts.com/magistrate/dispossessory-action-forms> File it online or in person at the court clerk's office. It provides a list of reasons that tenants may choose from, but not all of the options are legal defenses that will prevent an automatic eviction! **Beware of the options that refer to back rent amounts or inability to pay rent -- those will not serve as a defense to eviction.**

Many tenants end up automatically losing their case because they did not file an answer with a proper legal defense. This is one of the worst things you can do for your case, especially if you do have a legal defense. The next three pages help you choose the best legal defense to buy you time and allow you to challenge your landlord in court.

## Some Bad Answers...

I lost my job  
and could not pay  
my rent

I paid my rent late,  
but could not afford  
the late fee

I had a family emergency  
and was forced to spend my  
rent money on that

While these are completely understandable reasons for non-payment, **they are not legal defenses.** You need a legal defense in order to avoid automatically losing your case.

## Thinking Ahead

If you want to bring a witness to court, you will need to also file a **subpoena** form with the court clerk. Pick up a subpoena form on the same day you file your answer. You will need to serve your own witness and file "proof of service" with the court. Talk with the court clerk to make sure you understand all the proper steps.

Is your landlord refusing to provide you with a copy of your lease or other important paperwork? You can subpoena for these items too!



# Preparing Your Answer

**Time To Act!** You will now learn the ins and outs of eviction defense to respond in the best way for your best outcome.

## Answer Set 1: Legal Reasons for Eviction

If your landlord is evicting you for one of three reasons a tenant can legally be evicted in Georgia, and you want to argue against it, the following answer choices may apply to you.

### Legal Reason #1: You Did Not Pay Your Rent

**Your Defense:** I paid my rent on time and my landlord accepted it.

\_\_\_\_ “I do not owe any rent to my landlord.”

**Your Defense:** I offered my rent on time and the landlord refused to accept it.

\_\_\_\_ “I offered and had money to pay my rent on or before the date I usually pay, but my landlord refused to accept it.”

**Your Defense:** **Tender defense** (page 7).

\_\_\_\_ “My landlord would not accept my attempt to pay the rent and the cost of the warrant.”

### Legal Reason #2: You Violated The Terms of Your Lease

**Your Defense:** I do not believe I have violated my lease.

\_\_\_\_ “My landlord terminated my lease without a valid reason.”

### Legal Reason #3: You Did Not Move Out At The End of Your Lease

**Your Defense:** My lease has not yet ended **or** My landlord did not properly terminate my lease.

\_\_\_\_ “My landlord did not give me proper notice that my lease or rental agreement was terminated or that I had to move before filing this lawsuit.”

## Counterclaims

**Has your landlord been neglecting to make repairs and/or have you been living in bad conditions?** If so, you should include a **counterclaim** when you file an answer. Doing this will prevent an automatic loss. Try to check off a legal defense on the top half of the form as well because a counterclaim is not necessarily a defense to your eviction.

A counterclaim may also help you get money your landlord owes you for damage to the property that resulted from their failure to repair issues they knew about. If your eviction was filed for nonpayment, you can avoid eviction if you can prove the cost of the damages are more than the amount of rent you owed when you were served the eviction notice.

Including a counterclaim in your answer can be complicated - **get advice from a lawyer** and see **Counterclaims Info Sheet** at [www.housingjusticeleague.org/evictiondefense](http://www.housingjusticeleague.org/evictiondefense).



# Preparing Your Answer

**Time To Act!** You will now learn the ins and outs of eviction defense to respond in the best way for your best outcome.

## Answer Set 2: Landlord Mistakes

Sometimes, landlords make mistakes during the eviction process that are not legal. **Mistakes on their part may help you get into mediation, in front of a judge, or lead to the case being dismissed and therefore buy you more time.**

**Mistake #1** My landlord did not issue a demand for possession prior to filing in court.

\_\_\_\_ “My landlord did not give me proper notice that my rental agreement was terminated **or that I had to move before filing this lawsuit.**”

**Mistake #2** When demanding possession, my landlord gave me a time frame in which to comply with my lease again, but they did not honor the set time and instead filed before it was up.

\_\_\_\_ “Other:”

**Handwrite:** My landlord gave me the opportunity to comply and failed to honor this by filing prematurely.

**Mistake #3** My landlord attempted to personally serve the eviction notice **or** I did not receive proper service.

\_\_\_\_ “Other:”

**Handwrite:** My landlord did not properly serve me the dispossessory warrant in accordance with the law.

**Mistake #4** My landlord waited too long to act on an eviction after the time I allegedly broke my lease. (ex. 2 months)

\_\_\_\_ “Other:”

**Handwrite:** My landlord is attempting to evict me for a reason they had knowledge about and did not act on for X number weeks/months.

**Mistake #5** My landlord has accepted rent for a later month than the month they are claiming I owe money for.

\_\_\_\_ “Other:”

**Handwrite:** My landlord accepted my most recent rent and is now trying to evict me for a previous month’s overdue rent.



**Is Your Landlord Evicting You in Retaliation?** If you are being evicted because you requested repairs, organized with other tenants, or your landlord is retaliating against you for another reason, you can use the law O.C.G.A. 44-7-24 as a legal defense.



\_\_\_\_ “Other:”

**Handwrite:** My landlord retaliated against me by filing this eviction after I requested repairs or reported condition violations.

## Whatever You Do, Don’t Leave It Blank!

If none of the other answer options fit your case, you should still try to choose one so you can get in front of a judge and buy yourself time. This answer below is an option, because it can apply to many cases:

\_\_\_\_ “My landlord terminated my lease without a valid reason.”

By choosing this option and not leaving the form blank, you can enter mediation or get time in front of a judge, thereby avoiding an automatic loss. **The court may disagree with your claim and “find against” you, but you will not be punished if the answer you selected turned out to not be fully true. Just be sure not to hand write a false statement, or lie under oath in court.** What matters is that you believe you filled out the form in “good faith”. Ultimately, you want to file an answer with a proper legal defense so that you can defend yourself in court. Even if your court date does not result in a good outcome, you will have bought yourself more time.



# Preparing Your Answer

**Time To Act!** You will now learn the ins and outs of eviction defense to respond in the best way for your best outcome.

## An Exception to the Rule: The One Case in Which you Wouldn't File an Answer

The one situation where it's better to move and not file an answer is in order to avoid a **money judgment**. A money judgment is a court order to pay your landlord, issued on your court date. Money judgments are common and **they often put people in deep debt**. If you receive a money judgment, you can have your wages garnished or money taken from your bank account to make up your payments.

Consider not filing an answer if **all** of the following are true:

- ☐ You were served the eviction warrant by **tack and mail**,
- ☐ You think you can **relocate within 7 days** (ex. at a family or friend's home,) **and**
- ☐ You want to avoid a large **"money judgment"** which you cannot afford to pay

This is the **only** instance in which not filing an answer could be beneficial. But you should **consult a lawyer!**

## Wait, Are There Legal Consequences?

**When a warrant is not served in person, and the tenant does not file an answer, it is not possible for a judge to issue a money judgment.** When tack and mail is used, the court cannot prove you received it unless you file an answer. The only thing they know for certain is that a document was left at the property. You can then avoid having **wages garnished** or a **bank account levy** to make your payments.

In order to get any money you owe, your landlord would have to take you to small claims court. **But** - if they do not know your new address, they cannot serve you a small claims warrant. Even with a debt collector, unless a money judgment exists, there is nothing the landlord can do to force you to pay the alleged debt. Private debt collectors may contact you, but you can hang up the phone, because there is no legal way to compel you to make a payment without a money judgment.


**Just In Case...** something **does** end up on your credit report, you can dispute that through your credit agency.

Under the fair debt collection practices act, you can request that the debt collector sends you **proof that you owe** - which the landlord cannot always do.

## What About My Record?

Moving without filing an answer will not risk you getting in trouble with the law. Evictions take place in civil court. An eviction can never be removed from your civil case history because they are public records and different from criminal records.

**Remember!** It is not a crime to move without filing an answer in any way, you are just moving.

 **!! Heads Up About Credit!**  
An eviction filing will appear on your credit report automatically for up to 7 years, no matter if you file an answer or not.

# Filing An Answer

**Time To Act!** You will now officially respond to your landlord's claims against you.

## File Your Answer -

### In Person

With the clerk at the Magistrate Court of **WINNETT** County. The Clerk will give you a notice with the date, time, and place to appear. Filing in person is free.

or

### Online

By registering at <https://efilega.tylertech.cloud/OfsEfsp/ui/landing>  
Online filings cost **\$14.40** and require a bank card and an email address. The court then mails a notice with the date, place, and time to appear after you file online.


You should also find your court date by searching online using the case number in the top right corner of your **dispossessory warrant**.


**A Key Tip!** To buy yourself more time before having to potentially move, file your answer on the morning of the 6th or 7th day - this gives you more time until your court date. But do not wait until the last minute! The deadline is very firm.


## Remember!

The following will almost surely result in you **losing your case**:

  
Not claiming a **proper legal defense**

  
**Filing** an answer **late**

  
**Not filing** an answer


  
**Failing to appear** in court

## Troubleshooting Tricky Answer Situations

After the answer deadline you still have some opportunities for taking action to get a better outcome.

### #1. Did you file an answer without a proper legal defense or want to change it for another reason?


If you did not get advice from a lawyer before filing your answer, **it's not too late!** Lawyers can help you write a proper legal defense.

  
**Tenant Action** If you filed on time, you may file an **"amended answer"**, in person or online, **up until your scheduled court time**.

### #2. Did you file your answer late or fail to appear in court?

Either one of these results in losing your case by **default judgment**, with no legal right to appeal.

If you filed late, while the **court clerk** may have stamped your late answer, it is unlikely a judge will grant your case be heard.

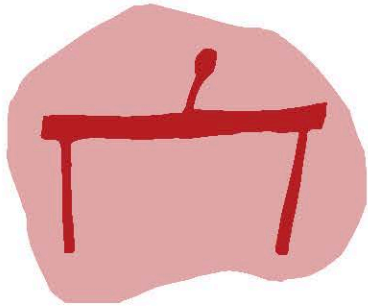
  
**Tenant Action** If you feel you have a good reason for **filing late** or **missing your court date** (e.g. improper service), you may file a **motion** with the **help of a lawyer** requesting your late answer be accepted or to ask for a new court date. It is up to the judge whether or not to allow this.



# Appearing in Court

**What's Happening?** A judge decides if you stay in your home and whether you owe money to your landlord.

After you have filed your answer, you will be notified of your court date. **Not appearing in court results in a default judgment against you.** This means the court immediately approves a writ of possession for your landlord to evict you, and requires you to pay the full amount your landlord claims you owe. There are two types of court dates you can be summoned to:



## Pro Se and Represented Hearings

If you filed a legal defense, you will have the chance to enter **mediation** with your landlord, or defend yourself before a judge. **Pro Se** means **either the tenant or the landlord are representing themselves**. Represented hearings are when both parties have lawyers.



## Judgment on the Pleadings

If you filed an improper legal defense (page 8) you will be in this kind of hearing. You will not be given the opportunity to defend yourself. There is no need to gather evidence. **You should still show up because this allows the judge to grant you more time to get out.**



## Always Double Check

Make sure to double check your eviction notice for the correct time and courtroom.

**Plus** if you show up to court but your landlord fails to appear, your case will get dismissed!



**If You Don't Show Up** you receive a **default judgment**. The court will immediately approve a **writ of possession** for your landlord to evict you, and will require you pay the full amount your landlord claims you owe.



## Preparing for Court

It can be intimidating to represent yourself in court. Stay calm, be organized and focused, take your time, and wait for your turn to speak. Remember that **you have the right to be there contesting your eviction!**



**Bring Any And All Evidence** you have. Your dispossessory warrant, a copy of your lease, photographs, printed screenshots of texts or emails, paperwork, or **subpoenaed** witnesses. Be sure your evidence is ready and organized so you can present it to a judge or in mediation quickly when asked.



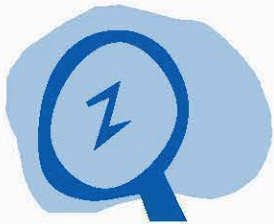
**Set Aside The Whole Morning or Afternoon** for your court day. There is no way to say for sure how long this can take. There are many cases happening at the same time, and there can be unexpected delays.



# Appearing in Court

**What's Happening?** A judge decides if you stay in your home and whether you owe money to your landlord.

## On Court Day: What to Expect



### Find the Court Building

The address of the court is: Gwinnett Justice & Administrative Center, 75 Langley Drive, Lawrenceville, GA 30046. Visitors may park in the main public lot in front of the building on Langley Drive, the new parking deck behind the building at the corner of Constitution Boulevard and Nash Street, or in the overflow lot on Nash Street.



### Get to the Courtroom

The Magistrate Court is on the first floor. Go through security and immediately take a left. Your notice will indicate the room number where you will go.



**In the Courtroom** There is no seating allowed in the front row. Cellphone use is prohibited, so be cautious when and how you use your phone.

## On Court Day: Mediation

When you appear in court, you will first go to **mediation** to resolve your case without a judge. Mediation takes place in a side room next to the courtroom with court assistants. **The vast majority of cases are settled through mediation.** Mediators are retired lawyers and law students, but **they cannot give you legal advice.** They are there to be a neutral person to help you and your landlord settle on an agreement so that you do not go before a judge.

If you know you didn't pay rent or you did violate the terms of your lease, mediation can be a better option because it is possible to make an agreement with your landlord to **buy you extra time** (more than the 7-day maximum the judge can give you). There are two possible outcomes in mediation:



**Agreement** - If you sign an agreement in mediation **it is binding** and cannot be appealed or changed after the fact. **Be sure before you sign that you can live with the terms or keep up your end of the bargain.**



**Impasse** - If you do not reach an agreement in mediation this is called an **impasse**. In this situation, you will return to the courtroom and go before a judge on the same day.

Mediation strategy can be tricky! Be better prepared with the pro tips in our **Mediation Info Sheet** at [housingjusticeleague.org/evictiondefense](https://housingjusticeleague.org/evictiondefense)



# Appearing in Court

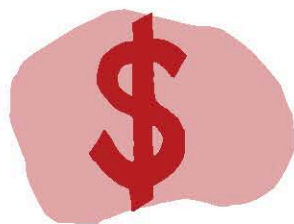
**What's Happening?** A judge decides if you stay in your home and whether you owe money to your landlord.

## Seeing a Judge

The judge will normally make a decision on your court date. This will involve one or two decisions about your eviction case:



**If you can stay in your home.** If you get an order to leave, you will have 7 days to move out.



If you owe money to your Landlord. If yes, the Judge will issue a **money judgment**.

## Tips for Representing Yourself

Have all of **your evidence organized** and ready to present when your case is called.

**Listen carefully** to what the judge is saying. Do not be afraid to **ask for clarification** when you need it.

**When the landlord or judge is speaking, do not interrupt.** You will have your turn to speak. **Take notes** so you can remember!

## Watch Out for Unfair Late Fees!

Sometimes landlords attempt to add huge late fees to the rent they claim you owe. If you get to court and your late fees are more than total rent owed, you could argue an **unfair penalty**.

Late fees should never be more than a **reasonable administrative cost** of you not paying rent on time. While there is no clear law that sets a limit, 10% is a common standard and any higher amount could be argued is a penalty and no longer a late fee.

## Appealing Your Case

As long as you filed an answer **and** appeared in court, you have the right to appeal the judge's decision to a higher court within 7 calendar days. **You do not have the right to an appeal if you failed to file an answer, failed to appear in court, or settled in mediation.** Appealing will allow you to stay in your home, but only if you are able to continue to pay your rent to the court.

Appealing is expensive (~\$250.00), and it is best to **have the help of a lawyer**. If you are eligible to appeal, please see our **Appeals Info Sheet** online for more details on the process.

**Drop the Fee!** You can get the appeal fee waived by filing a **pauper affidavit**. This is to show the court that you fall within a low enough income bracket to qualify.



# The Writ of Possession

**What's Happening?** Your Landlord files paperwork to put you out. You must move or you will be forced out by eviction.

## A Tight Timeline

Your landlord is required to file for a **writ of possession** in order to evict you if you lose your case. In rare cases a judge will rule a landlord can evict immediately.

You will not receive any notice that the court approved the writ of possession. **And once the writ is approved, you can be evicted at any time.** The landlord and Marshals are under no obligation to notify you when they are coming. You can find out if a **writ of possession** has been filed in court database. <https://odyssey.gwinnettcourts.com/Portal/> )



**Without a writ it is illegal for your landlord to evict you.**

**After 7 days, you remain at your own risk.** Don't wait until the last minute to make arrangements, or your possessions may end up on the curb.

# Eviction

**What's Happening?** Your Landlord files paperwork to put you out. You must move or you will be forced to leave.

## Watch Out! Illegal Eviction Tactics

Is your landlord threatening you with eviction or utility shut off?

Did they change the locks, shut off utilities, or move your belongings where you cannot access them?

Cause emotional distress or damage to your personal property?



Your landlord cannot **evict you without going through the court process.** They also cannot turn off the electricity, water or gas. Contact ALAS or DVLF and they can notify your landlord that this is illegal. Having a lawyer advocate for you can be impactful.

All of these actions are illegal without a **writ of possession**, and your landlord could be criminally prosecuted. Visit the **Clerk of Superior Court** to file an injunction. You may be able to see a judge on the day you file, and low income tenants can apply to waive the fee.

If your landlord tries to illegally evict you and **you experience damages, loss of property, or emotional distress**, you can claim trespass and file a lawsuit against the landlord in small claims court. This is a simple filing, and court clerks can help you with this paperwork.



# Eviction

**What's Happening?** Your Landlord files paperwork to put you out. You must move or you will be forced to leave.

## Moving Out

Try to get out before your landlord files for a **writ of possession**. This saves you the stress and uncertainty of the Marshal arriving at your door.



**Clear out all of your possessions.**

Leave the apartment or home **clean**.

**Take photos of the condition** you left the unit in.

**Bring a witness or get a receipt** when returning the keys.

**Leave a forwarding address** so your landlord can return your deposit. Use a mail forwarding service if you do not want your landlord aware of your new location.



**Without taking these steps, you could be sued for further damages, not get your security deposit back, and be charged a key fee!**

## Eviction Day

**Landlords are legally required to schedule Marshal Service to supervise move out.** A Marshal must be present during an eviction, but the landlord or a moving company will do the actual moving. They will move your belongings out even if you are not home. Any guns and alcohol are taken to the police station and held if you are not home. All other belongings are left on the curb, rain or shine.

## Safety and Community Care

**The experience of being evicted can be brutal and cause lasting trauma.** During an eviction, tenants run the risk of altercations with police, theft, or destruction of their belongings. **It is important to be as prepared as possible.**



Reach out to friends and family - don't be afraid to ask for help with packing, moving and storage, or just having loved ones present on the day for support.



From the moment the Marshal is at your door, you will be given no time to gather the belongings you want to keep. **Have a plan for the things you want to keep ahead of time.** Once you are removed from your home, you will not be allowed to re-enter.

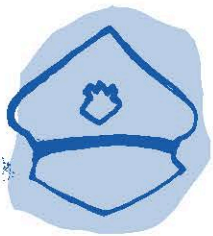
# Eviction

**What's Happening?** Your Landlord files paperwork to put you out. You must move or you will be forced to leave.

## Safety and Community Care *(continued)*



**Watch Your Back!** Eviction movers are notorious for breaking and stealing people's belongings during evictions. Especially once the tenant is forced outside and cannot oversee the moving process. **Avoid losing valuable or important items by packing them up and relocating them ahead of time. Don't wait until they are at your door!**



**The number one safety risk to you on eviction day is an escalation with police where they become aggressive.** This can sometimes occur when tenants are reluctant to leave their home, or want to take a stand and refuse to leave. This is completely understandable - it is your home after all! Here are some tips if you want to **avoid police escalation**:

**Do not put up a struggle or use verbal threats** of any kind.

**Avoid language or suggestions about defending your home space.** This makes the police think that you will not cooperate.

**Do not create any type of barricade** that prevents police from entering or having a line of sight.



**If your pet is presenting possible harm to the eviction crew it can be taken.** You will be allowed to keep your pet as long as it is kept under control. If you say you don't have anywhere to take your pet, the Marshal may call animal control to take it.

## Living With An Eviction Record

**An eviction does not count as a criminal record. It is a civil court case, which are public court records.** Evictions show up on credit reports in 2 ways - in the "public record" section, if there was a money judgment, **or**, if there was no **money judgment** the landlord could still contact a credit reporting agency and report the debt you allegedly owe them.

**3rd party data companies check for evictions on background checks, which can effect your future access to safe and secure housing.** Even in false cases, such as an eviction filed accidentally or under a child's name by mistake, it is very difficult to get your name removed even for a false eviction. **Consult with a lawyer** about your options under consumer protection laws when it comes to your credit report.



# Glossary of Terms

**Administrative Fees (or Costs)** - The sum total of the fees the landlord claims against you in addition to alleged rent owed.

**Affiant** - The person who signs the **dispossession affidavit**. Either your landlord, property manager or their lawyer.

**Amended answer** - You can change your answer and refile it up until the court date, only if you answered within the deadline.

**Answer / Answer form** - Official document of your response in court to your landlord's claims against you.

**Answer Period (or Answer Deadline)** - The 7-day time period you have to file your answer after receiving an eviction notice. This includes weekends. If the 7th day falls on a weekend or public holiday you have until the following business day.

**Appeal** - The process for taking your case to a higher court to try and reverse the decision of a lower court. You can appeal if you did not receive a **default judgment**.

**Bank Account Levy** - A process the court uses to make you pay your **money judgment** that would remove funds from your bank account.

**Caucus Meeting** - Your right to meet with the mediator separately from your landlord during court **mediation**.

**Clerk of Superior Court** - A higher court that can intervene in illegal actions by your landlord if you file an **injunction**.

**Consent Agreement** - A binding agreement you work out with your landlord to close the court case and stop your eviction. You or your landlord must file the agreement in order to close the case.

**Continuance** - Where you, your landlord, or their lawyer ask that the hearing be rescheduled.

**Counterclaim** - A claim you can make for money against your landlord due to their failure to make repairs, which have lowered the value of your unit.

**Court Calendar** - Time slots the court sets for different types of eviction hearings.

**Court Clerk** - A court employee in the main office who maintains the court's records. They cannot legally consult with you, but can answer basic questions about the process.

**Dismissed With Prejudice** - When a judge dismisses a case or a monetary claim so that it can never be refiled. Dismissed "without" prejudice means it may be refiled with certain time limits.

**Default judgment** - An immediate court ruling within the landlord's favor. Results when a tenant fails to file an answer or appear in court.

**Defendant** - In the case of eviction, "defendant" is you, "the tenant", being accused in court.

**Demand for Possession** (aka: notice to quit; notice for termination; demand notice; 3-day notice) - The notice required under Georgia law that a landlord must give a tenant before filing for eviction.

**Dispossession affidavit** - Your landlord must file this with the court in order to be granted a **dispossession warrant** summoning you to file an answer and appear in court.

**Dispossession warrant** (aka: eviction warrant; eviction notice) - Served to tenant, official court summons to file an answer and appear for a court date.

**Impasse** - When you do not reach an agreement with your landlord in **mediation**, and you will now go before a judge.

**Improper Service** - When the process for delivering an eviction notice is not followed by your landlord or their process server as required by law.

**Legal Defense** (aka: proper defense) - The argument you put on your answer form that gets you the opportunity to defend yourself in court.

**Mediation** - A free service offered by the court on your court date where an independent mediator assists landlords and tenants to resolve their case to avoid going before a judge.

**Money Judgment** - A court order to pay your landlord, issued by a judge as part of the eviction judgment.

**Motion** - A letter to the judge, requesting that something happen in the case (ie: "file a motion").

**Pauper's Affidavit** - A sworn oath you submit to the court where you explain you cannot afford the cost of an appeal to have it waived.

**Plaintiff** - The person who brings a case against another person in a court of law (ie: Landlord).

**Premature Filing** - When a landlord files in court without first issuing you a **demand for possession**, or waiting the amount of time they gave you to comply with your lease.

**Pro Se** - The status of representing oneself, either the tenant or landlord.

**Process Server** - A third party private person authorized by the court to serve you the **dispossession warrant** (eviction notice).

**Proceedings Against a Tenant Holding Over** - The official court name of your **dispossession warrant**. It appears on the top left.

**Service** - Delivery of the eviction notice by a court appointed **process server** or private **process server** asking you to file an answer and appear in court.

**Subpoena** - A writ ordering someone to appear in court. These are normally served by court Marshals. People can also be 'subpoenaed' for material evidence and documents.

**Tack and Mail** - A method of serving the eviction notice used when you are not home. It must be tacked to your door and mailed on the same day in order to count as proper service.

**Voluntary Dismissal** - When a landlord dismisses your eviction voluntarily, because you have come to an agreement before the court date. Only your landlord can file a voluntary dismissal.

**Writ of Possession** - An order issued by a judge that grants the landlord permission to possess their property, therefore evicting you. The landlord must apply for this writ to the court clerk after a judge has given a decision in the landlord's favor.

**Wage Garnishment** - A process the court uses to make you pay your **money judgment**, that would "garnish" or keep a portion of your wages directly from your employer.

Free Legal Aid

Atlanta Legal Aid Society (ALAS)

404-524-5811; atlantalegalaid.org

246 Sycamore St., Decatur, GA 30030

Income requirements for ALAS vary by county and legal issue. Call to see if you qualify and to set up a consultation with a lawyer or paralegal. ALAS may be able to provide you with legal representation.

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