

Frequently asked questions about eviction

The following are common occurrences and questions that may come after receiving an eviction notice or after a MDJ's decision.

My landlord has threatened to lock me out. Can the landlord do so?

The landlord is not allowed to lock you out of your apartment even if you are behind in your rent. The landlord must follow the eviction procedure in this handout if the landlord wants you to vacate the apartment or house. The landlord also cannot turn off services to the apartment (for example, water, electricity, or heat). If your landlord has threatened to lock you out, you should carry a copy of your lease with you, if you have one, or copies of any current utility bills as evidence that you live in the apartment or home. If your landlord does lock you out or turn off services, contact NPLS or a private attorney immediately for assistance. You may also wish to contact the local police department, as they will sometimes intervene with the landlord to get you back into the apartment at once.

It's wintertime, so I can't be evicted. Is that right?

Wrong. The eviction process is the same in summer and winter. The only exception is for Manufactured Homes, where the park owner must give a 30 day Notice to Quit for non-payment of rent from September through March.

If I pay everything I owe, can I stop the eviction?

If the only reason you are being evicted is non-payment of rent, you should request that the MDJ enter a judgment of "Possession Granted if Money Judgment Not Satisfied." This is also called "pay and stay" judgment. If you pay everything you owe on the judgment, including the court costs, to the landlord or to the constable before the lock-out, you will stop the eviction. But you will lose the right to pay and stay after the constable changes the locks.

I do not have anywhere to go. What should I do?

You need to find a place for both you and your belongings. You should not leave your possessions behind. Your landlord must safeguard your possessions, but only for a limited amount of time following an eviction and you can be charged a storage fee. However, a landlord cannot hold your possessions until you pay the rent you owe. If you cannot find a new place to live, then contact family or friends. You should also contact local shelters, although they may have waiting lists or other limitations on staying there.

What if my landlord is evicting me for something related to my disability?

You should ask for a reasonable accommodation of your disability if your landlord is evicting because of your disability. An example would be if your landlord is evicting you for behavior while you weren't getting treatment. Your request would be to ask your landlord to stop the eviction and give you time to get treatment that will help your behavior. Another example would be if your landlord is evicting you for housekeeping violations and you cannot clean because of a disability. You could ask your landlord to stop the eviction and give you time to find someone to help you clean.

Landlord-Tenant eviction process & time table for legal proceedings <i>(continued on next page)</i>	
MDJ schedules hearing	7-15 days after landlord files complaint
MDJ will enter judgment at conclusion of the hearing or within	3 days
Order of Possession is obtained by the landlord	After the 10th day following judgment

Office executing the 10 days order of possession can evict the occupants if they remain on the premises more than	10 days after service of order
Appeal to Court of Common Pleas If judgment affects delivery of possession of residential property, appeal within	10 days after judgment
If judgment is for money, or possession of non-residential property, appeal within	30 days after judgment

The Magisterial District Judge eviction process

A Magisterial District Judge (MDJ) is a locally elected official who can decide small civil lawsuits such as landlord-tenant matters. MDJs are also called magistrates or district judges.

When will the MDJ schedule the hearing?

The landlord or tenant can file a civil complaint with the MDJ. The landlord may file a landlord-tenant action if the landlord is seeking eviction of the tenant and possession of the property. The tenant will receive notification of the complaint and will be given a hearing date within 7 to 15 days of the filing date.

Should I go to the hearing?

Yes! If you don't go to the hearing, the MDJ will decide in favor of the landlord. The hearing gives you a chance to present your "defense" or "cross-complaint" against the landlord. You should go even if you made an agreement with your landlord, unless you confirm with the MDJ that the hearing was canceled. If you cannot go on the scheduled date of the hearing, call the MDJ and ask if the hearing can be rescheduled. The MDJ may grant your request, but only if the landlord agrees or you have a good reason.

Do I need an attorney?

No. Lawyers are not required during the hearing although it may be to your benefit to have a lawyer present at the hearing.

What happens at the hearing?

The MDJ calls the hearing to order.

The party filing the complaint, or plaintiff (landlord in an eviction case), presents evidence and testimony and can bring additional witnesses. After each witness, the defendant (tenant in an eviction case) is given the opportunity to question the witness. The landlord must prove there was a lease and a violation of the lease.

The tenant presents evidence and witnesses in their defense and presents any evidence or witnesses for cross-complaints. After each of the tenant's witnesses, the landlord is given the opportunity to question the witness.

The MDJ listens to all the evidence both parties have to present and makes a decision. The MDJ could make a ruling that day or may take several days to make a decision, which each party receives in the mail.

The MDJ is in charge of the hearing and must be treated with respect. If the MDJ interrupts to ask a question or give a ruling, listen carefully and respond if the questions are directed to you. Do not interrupt the MDJ, or be rude or uncooperative.

What is a “defense”?

A defense is your reason(s) why the landlord should not be allowed to evict you. Some common defenses are that the landlord did not allow you enough, or any, written notice to vacate the apartment, the apartment had many problems due to the landlord’s failure to make repairs, or the landlord’s reasons for wanting to evict you are untrue.

You should bring any paperwork you have that is relevant to your case. For example, if you are being evicted for non-payment of rent and have a written agreement with the landlord that you could pay in installments, then you should bring that agreement to the hearing. Likewise, if you didn’t pay the rent because of poor conditions in the apartment, you can ask that the amount of rent be reduced because of the poor conditions. You should bring pictures of those conditions, copies of the letters you sent to the landlord about the problems and proof that the rent money is in an escrow account. These items will be helpful to the MDJ in making a decision about the case.

What is a “cross-complaint”?

You also have the right to file a cross-complaint if you believe the landlord owes you any money. For instance, if your property was damaged because of a water leak or other problems in the apartment, you may have a claim against the landlord for money damages. You must file a cross-complaint before the hearing. You file a cross-complaint at the Magisterial District Court where the landlord’s complaint was filed. Although there is no filing fee for such a complaint, you will have to pay to have the complaint served on the opposing party. You can ask the MDJ’s office to serve it by certified or registered mail or in person. The fee for service will depend on how it is served.

How should I prepare for my hearing?

If you have an attorney, the attorney will talk with you about the information or witnesses needed. At the hearing, the attorney will ask questions of the witnesses and cross-examine the landlord. If you do not have an attorney, you should practice saying your side of the case. Make a written outline or checklist to use at the hearing. Be brief and to the point. Be ready to explain each item of evidence, such as photographs or receipts, and when the actions you took occurred. It is important that you arrive on time for the hearing and that you dress appropriately, as you might for a job interview.

What happens after the hearing?

Within 3 days of the hearing, the MDJ will issue a written decision called a Notice of Judgment. If the judgment is in your favor, the landlord cannot evict you from the apartment. If you filed a cross-complaint, the landlord may owe you money unless an appeal is filed.

If the MDJ finds in favor of the landlord, the judgment will be entered against you. There are three types of judgments that can be issued against a tenant:

- Possession Granted;
- Possession Granted if Money Judgment Not Satisfied by time of eviction; and
- Possession NOT Granted but Money Judgment Awarded;

The Notice of Judgment will show you what type of judgment was issued. Both the landlord and tenant have the right to file an appeal to the Court of Common Pleas.

Is there any way I can prevent the eviction?

Possession granted if money judgment not satisfied (“pay and stay”)

If a judgment is for **Possession Granted if Money Judgment Not Satisfied** (known as “pay and stay”) and you pay the money owed in full any time prior to the eviction date, you will be able to avoid an eviction and remain in the home. If you pay the landlord in full, including court costs, within 10 days of the judgment, no eviction will be scheduled. If you do not pay within 10 days or file an appeal and pay a bond if required, the landlord may request an Order for Possession. An

eviction date will be scheduled ten days after the Order for Possession is posted on your door by a constable. Up to and including that date, you can pay the judgment in full to avoid the eviction.

If you pay before the eviction date, you should make arrangements with the landlord and the constable and keep a receipt for proof of payment. If you plan to pay on the date of the eviction, you will have to pay the constable directly. Make sure you have the money owed in cash. If you try to pay by check, the constable will not take the money and the eviction will proceed as scheduled. If you paid the landlord in full, the landlord should tell the MDJ to have the judgment marked "satisfied." Call the court to make sure the landlord did this.

What happens if the judgment is possession granted, or I can't pay a money judgment against me before the eviction?

If the judgment is for **Possession Granted**, you will have to leave the home on the scheduled eviction date even if you pay all monies owed in full. In these cases, whether or not you have the money to pay does not make a difference. If you disagree with the decision and want to stay in the apartment, you must file an appeal to the Court of Common Pleas within ten days of the judgment date and post a bond, if required. If you are not planning to appeal, or you can't pay the money judgment before the eviction, you should make plans to move out as soon as possible. If you can't physically be out before the scheduled eviction date, then at least move all your belongings out of the rental unit. Remember, you will only have minutes to vacate when the constable arrives. The fewer things you have to gather, the easier it will be for you to leave. If you cannot remove all of your belongings, you should gather medication, important documents (such as a birth certificate or Social Security card), and anything irreplaceable (such as photos) to take with you before the constable locks the doors. If you leave the home before the scheduled eviction date, make sure you contact the landlord to let them know the apartment will be vacant and return the keys.

Order for Possession

This action can be taken by the landlord to seize your apartment. After the 10-day appeal period has passed, the landlord can file for an Order of Possession. This order requires the tenant to vacate the home within 10 days of the date of service by the constable. Service will be either by hand delivery or by posting on your door if nobody is home to receive the notice. If you do not vacate, the constable will come to the home with the landlord on the 11th day and forcibly evict you, locking the apartment. If the constable comes to evict, he will only give you about 15 minutes to get out of the apartment with any belongings you can carry.

I didn't get all my stuff out before the constable evicted me. What can I do to get it back?

You must notify your landlord in writing within 10 days that you want the belongings you left behind and would like to make a plan to pick them up in the next 30 days. Contact your landlord to arrange a time to get the rest of your belongings. Your landlord must store your belongings for 30 days if you give your landlord written notice when you move out that you want your belongings. But your landlord can charge you storage fees if you wait more than 10 days to pick up your belongings. The landlord can dispose of your property if you do not retrieve it.

What happens if the landlord gets an order for possession but a constable never comes to evict me?

Sometimes, a landlord will get an Order for Possession against a tenant, but because the parties reach an agreement, the eviction is postponed or canceled. If you receive a judgment against you and then work out a payment arrangement with the landlord, you should make sure the payment agreement is in writing and that the landlord agrees to withdraw the order for possession.

A landlord may request the re-issuance of an Order for Possession. The request generally must be made within 120 days of the judgment date. After that time, the landlord may collect upon any unpaid money judgment, but would have to file a new complaint to evict the tenant.

Appeal of the MDJ's judgment – staying in rental unit

If you want to appeal a judgment and remain in the unit, you must do so within 10 days of the judgment date. All appeals must be filed in the Clerk of Court's (also called the Prothonotary) office in the county courthouse on forms you can get from the Clerk's office and online at the Administrative Office of Pennsylvania Courts (AOPC) website.

There is a filing fee for filing an appeal, which can be waived if you have limited income and no money to pay the fee. To request a waiver of the fees, you need to fill out an IFP (in forma pauperis) application. Your petition must be approved by a judge of the Court of Common Pleas. The Clerk's office will be able to tell you the local procedure. If you do pay the fees and win your case, these costs will usually be added to the judgment amount.

If you follow the correct procedures, you will be granted a supersedeas, which allows you to remain in your apartment during the appeal. What you have to do in order to receive the supersedeas depends upon your income.

- If your income is **above** the Federal Poverty Income Guidelines, you will be required to pay the filing fee as well as a certain amount of money as bond. This bond is either three (3) months' rent, or the judgment amount, whichever is less.
- If your income is **below** the Federal Poverty Guidelines, you will not be required to pay the bond. If you owe rent for the month in which you file the appeal, you are required to pay one-third of the month's rent at the time you appeal and the remaining two-thirds within 20 days. You will be required to sign an affidavit that your income is below the guidelines and disclose your household income and expenses on a form provided by the court. The Clerk's office will have the current guidelines.

In either case, you must continue to pay the rent each month every 30 days from the date of the appeal at the Clerk of Court's office where you filed the appeal. An appeal is a complicated legal action that requires you to file legal papers. If you do not follow the correct procedures, your landlord may be able to proceed with the eviction despite your appeal.

The landlord will be required to file a Complaint within 20 days of service of the appeal. If the landlord does not file a complaint, you may want to get legal advice before sending a ten-day notice of intent to enter a default judgment. If the landlord files a complaint, you will be required to file a response within 20 days. If you do not respond, your landlord can send you a ten-day notice and then get a judgment if you still do not properly respond.

If you do not wish to remain in the apartment and want to appeal the money judgment only, you will have 30 days to file an appeal at the local county Court of Common Pleas. This procedure also requires a filing fee but you do not need to post bond. If you plan to file this appeal, you should contact NPLS or a private attorney for advice.

What happens if there is a judgment against me?

A judgment will stay on your record until you pay it in full. It can affect your credit rating, as well as your ability to obtain private or subsidized housing. It is a good idea to pay a judgment as soon as possible to avoid any future problems. If you can't pay the judgment in full, you can arrange a repayment agreement with the landlord.

Can the landlord sell my belongings to collect on the judgment?

If you move out of the property without getting all your possessions, your landlord must safeguard your possessions. But this is only for a limited amount of time following an eviction and you can be charged a storage fee. Most landlords don't want your possessions and want you to move them out with you, so that they can re-rent the property. The landlord cannot hold your possessions hostage until you pay the rent you owe. If they are unreasonable, you may need to pursue legal action for the return of the property in the Court of Common Pleas.

However, if you have a money judgment against you that you do not appeal, the landlord can start collection activity. This includes seeking to sell your belongings to satisfy the judgment. This order can be requested 30 days after the judgment date or any time after that. It can be reissued repeatedly within 5 years of the judgment date.

The constable, or sheriff, will serve you a copy of the order and make a list of your property to be sold (called a "levy"). Once you receive this notice, you are not allowed to sell or dispose of the personal property, as it must be available to satisfy the levy. The constable will then schedule a sale of your property and give you notice of the date.

Can I stop the sale of my belongings?

Yes. You can stop or put off a sale in several ways. You can file an appeal or objection to the levy (sale of your property). You can also file a "Claim for Exemption" at the MDJ's office. The law allows you to keep, as exempt, up to \$300 worth of property, or you can take \$300 in cash from the proceeds of the sale instead. If you think all the property the landlord wants to sell is equal to or less than \$300, the sale will be canceled and there will be a hearing by the MDJ to determine the value of your property. If the MDJ decides your property is worth more than \$300, the sale will be rescheduled. (The exemption is \$300 for an individual; \$600 for a married couple.)

If the property levied on by the constable or sheriff is owned by someone else, or by you and another party, the other party can file a claim for exemption and try to prove to the sheriff that the property should not be sold because it doesn't belong to you.

You can also stop the sale by paying the full amount of the judgment. You should make payment through the constable or MDJ office, not directly to the landlord. If you are overwhelmed by this and other debts, you may consider filing for bankruptcy. If you are able to file a bankruptcy, it will immediately stop collection of debts, including sheriff sales, levies and collection calls. Bankruptcy may be of limited help in stopping an eviction, if the tenant does not have the rent to pay or has missed appeal deadlines. There are different types of bankruptcy, including a repayment plan (Chapter 13) or a debt elimination (Chapter 7) bankruptcy. Every situation is different, so whether a bankruptcy makes sense depends upon your circumstances. Contact a credit counseling agency, NPLS or a private bankruptcy attorney if you are facing a sheriff or constable sale.

Can the landlord attach my wages from employment to satisfy the money judgment against me?

Yes. The landlord can file in court to have your wages attached to pay the judgment. This is a serious action. You must be notified that the landlord has filed a petition to take money directly out of your paycheck to satisfy the judgment. The landlord must follow all applicable state and local rules for wage attachment. The wage attachment may not be for more than 10% of your wages, and the attachment must not cause your income to fall below certain poverty guidelines. If you meet certain low income guidelines, you may be exempt from wage attachment. If you receive notice of a wage attachment, you should call NPLS or a private attorney for advice.

*This handout contains a general statement of the law and should be used only as a guide.
It should not be considered legal advice because everyone's case is different.
The complete Self-Help Handbook for Tenants is available in electronic format
at <http://www.northpennlegal.org> in our Resources Section.
NPLS videos on rental housing are available on our website and at many area libraries.*