

## THE EVICTION PROCESS

*The Texas eviction process has three steps a property owner must complete before a tenant can be required to relocate. All evictions must go through the judicial process. If you are a tenant that has been removed from your rental home or apartment without a signed order by a judge, please refer to TRLA's Illegal Lockout Toolkit or call (833) 329-8752.*

**1. NOTICE TO VACATE:** Your landlord must give you a written “notice to vacate” or “notice to pay or vacate”

A notice to vacate is a document that informs the tenant their lease is being terminated and gives a set amount of time for you to move out before an eviction lawsuit is filed. This notice to vacate **does not** mean that a landlord can force you to move out by the date in the notice.

- Private landlords: The amount of notice the landlord is required to provide is listed in your lease. If your lease does not say anything about a notice to vacate period, then you are entitled to a 3-day notice to vacate.
- Federally Subsidized Housing: Certain types of federally subsidized housing require longer notice periods regardless of what is stated in your lease.

For nonpayment of rent evictions: If you have not been late or missed a rent payment before the month you receive the notice to vacate, you are entitled to a “notice to pay or vacate.” This gives you one last opportunity to pay your rent. If you are able to make that payment before the deadline listed in the notice, you should not be evicted.

Example: A tenant has never been late on rent or missed a rental payment. In February, the tenant is unable to make their rent payment in full, by the due date.

- If the landlord would like to move forward with the eviction process in February, the tenant is entitled to a “notice to pay or vacate.”
- If the landlord would like to move forward with the eviction in March, the landlord is only required to give a “notice to vacate.”

**2. LAWSUIT IN JUSTICE COURT:** If you are unable to move by the deadline in the notice provided to you, your landlord can file an eviction lawsuit against you.

This lawsuit is filed in the local Justice Court (aka JP Court) and should state the specific reason that you are being evicted. The landlord can ask for possession of the unit (to have the tenant move out), court costs, attorney fees, and back rent *only*. The landlord cannot ask for any unpaid fees to be awarded.

You should be given official notice of the lawsuit by a law enforcement official, including off-duty law enforcement officers. This notice will tell you when and where to appear for your trial, so read it carefully.

**CAUTION:** *If any of the court papers you received say something like “**Request for Immediate Possession**” it is extremely important that you show up at the trial date that is listed in the citation. If you do not show up, the landlord can request a writ of possession immediately after the trial.*

**3. TRIAL IN THE JUSTICE COURT:** You have the right to appear in front of a judge to tell the judge why you should not be evicted.

If you do not appear, or are running late, your landlord can ask the court to issue a *default judgement* against you when your case is called. A “default judgment” is where the landlord wins “by default” because you did not show up to the trial.

When your case is called, the judge will direct you and your landlord to stand in front of the courtroom. Your landlord will be able to speak first. Make sure to listen carefully to what they say so you can correct anything that is inaccurate when it is your time to speak.

After, the judge will allow you to speak and tell your side of the story. Make sure to speak up when it is your turn. The judge will not know about the case unless you tell the judge about it. You can bring any witnesses, receipts, cancelled checks, photographs, letters, or other evidence that will help you defend yourself.

After hearing from both parties, the judge will decide whether you should be evicted and if you owe any rent, court costs, or attorney fees to the landlord.

**4. FILING AN APPEAL:** If you believe the judge’s decision was wrong, you may appeal your case to the County Court at Law within five calendar days.

To appeal you must affirm under penalty of perjury that you have a good-faith belief there is a “meritorious defense” to your eviction case (meaning a legal reason why you disagree with what the judge decided, including how much rent the landlord says you owe). You also must affirm you are not filing the appeal for the purpose of delay.

You can appeal by either: (1) paying a cash deposit in the amount of the appeal bond; or (2) filing an appeal bond with a surety in the amount set by the judge in the judgment; or (3) file a Statement of Inability to Afford Payment of Court Costs in which you say that you are financially unable to pay the appeal bond and court costs.

After you submit your appeal, you **must** pay one month’s rent into the justice court registry within five days of filing the appeal if you want to stay in the home during the appeal. **This is required to stay in the home during your appeal, regardless of whether your eviction case is about nonpayment of rent, and regardless of whether you owe rent that month.**

**5. WRIT OF POSSESSION:** A writ of possession is a court order that allows for you and your property to be removed from the rental property. If you received a judgment, your landlord **cannot** remove you and your property without a writ of possession. A judgment is not enough for your landlord to remove you or your property.

If you do not appeal on time, or you do not make the one month’s rent payment to the justice court on time, the landlord can ask the court for an order (called a “writ of possession”) that allows the constable, after 24 hours of your receiving notice of the order, to supervise the landlord changing the locks to your home and removing you and your belongings from the home. **The writ of possession can be given to the landlord without a hearing or a chance for you to object.**