



Know Your Rights: Pre- and Post- Eviction

Pre-Eviction:

How to Avoid Eviction

Getting restored back to possession of your apartment is much harder than avoiding eviction. Pre-eviction, the law is more in your favor and you can get more time to avoid eviction and resolve all your tenancy issues. Therefore, it is important to keep up to date with your court case, show up for all court proceedings, and file the necessary orders to show cause to keep from getting evicted.

How to Answer

If you get court documents from the landlord or a postcard from Housing Court, be sure to “answer” them. Answering means letting the court know your side of the case.

If it is a nonpayment case, the papers will say “Notice of Petition” and “Non-Payment” on the first page. You will have 5 days from service of the Petition to answer (though usually in practice you have a little longer). To answer, you will need to go to the clerk in the housing court located in your borough. You will tell the clerk of any defenses you have, such as you already paid, you never received the notice, and you need repairs. If you can’t think of one, state “general denial”. You will receive a court date after you answer. (For examples of defenses, see p. 4, <http://www.nycourts.gov/courts/nyc/housing/pdfs/tenantsguide.pdf>)

If it is a holdover case, the papers will say “Notice of Petition” and “Holdover Proceeding.” You will give your answer on the court date and you do not have to go to the clerk before the court date. The date is on the papers the landlord gives you. (For more information see p. 8, <http://www.nycourts.gov/courts/nyc/housing/pdfs/tenantsguide.pdf>)

When and How to File an Order to Show Cause

If you did not answer on time or did not go to court on your court date, a “default judgment” will be awarded to the landlord and s/he can evict you soon after the judgment. Do Not Wait. Go to Housing Court to file an Order to Show Cause to “vacate the default judgment” and get a new court date. (To find out what to do, go to p. 24 of <http://www.nycourts.gov/courts/nyc/housing/pdfs/tenantsguide.pdf>)

After your court date, if you signed an agreement with your landlord (stipulation) but need more time to pay the landlord or move, you need to file an Order to Show Cause to get a new court date and ask the judge for more time. Be sure to bring proof of why you need more time to show to the judge. The documents will not be returned to you so give the court copies and keep the original documents.

Do-It Yourself online forms, such as Order to Show Cause to vacate the default judgment or restore a case to the calendar, are available online at www.NYCHousingRights.org, or in print at Housing Courts. In an emergency, always go to the Housing Court Clerk.

Post Eviction:

Illegal Lockout

It is illegal for the landlord to evict you or lock you out without getting a judgment and order to evict you from the court. If you were not served with Marshal's papers but are locked out, call the police and let them know you were illegally evicted. Show the police proof that you live in the apartment (e.g. driver's license or mail with your name and address on it) and they should let you back in.

Marshal Eviction

If there is a Marshal's notice of eviction on your door, you will have to go to Housing Court to ask a judge to let you back in. File an order to show cause with the Housing Court Clerk and get a court date.

You need to prove to the judge why you should be restored back to possession of your apartment. Bring any and all documents you have to back up your statements and claims.

After you file the order to show cause, *immediately go to the Human Resources Administration (HRA) to start the process for a One Shot Deal*. If you already have an application pending, tell HRA you have an emergency and you need the One Shot Deal so you won't become homeless. Starting the process as soon as possible is important since the judge will only give you a short time to pay. For more information on the One-Shot-Deal, go to the following: <http://www1.nyc.gov/nyc-resources/faq/339/how-do-i-apply-for-the-one-shot-deal-to-avoid-eviction>

Court Proceeding

The easiest way to be restored back to possession is if the landlord will agree to give you back the apartment if you pay all the money owed, along with legal fees and marshal's fees.

If the landlord does not agree, you will need to present your case to the judge and the judge can order the landlord to put you back into possession if it is in the "interest of substantial justice" and you pay all of the money owed (including legal and marshal fees).

The judge will consider factors such as:

- Failure to pay was due to a delay or error in getting paid, or in getting a One-Shot Deal, or other housing benefit that you needed to pay the rent.
- You show that you were diligent in trying to get the money owed, such as the fact that you applied to HRA or other charity right away, or other facts that demonstrate how diligent you are in trying to solve the problem.
- There was a misunderstanding. For example if you paid the landlord and the landlord told you not to worry about court or the Marshal's notice.
- Other equities or issues that the Judge can consider such as the type of tenancy (rent stabilized, rent controlled), how long you've lived there, whether you or your family members have disabilities or are seniors, if you have children or any other hardship.

If you are successful, the judge will write an order/decision with the exact amount you have to pay and a short deadline to do so. You need to pay the amount to be restored to possession. If HRA is paying the amount, you will then have to give a copy of the order to HRA to let them know how much to pay.

Restoration by vacating a Default Judgment

If you can demonstrate to the court you had no idea a housing court case was started against you, and were never given any paper work, the court can vacate (throw out) the judgment and restore you back to possession.

This is done through a “traverse hearing” where you will have to disprove or discredit the landlord’s “Affidavit of Service.” An Affidavit of Service is a statement to the court describing how the landlord delivered or served you court papers. You can read the affidavit of service before the hearing by requesting to look through your court file. Be ready to disprove what it says.

Summary of the Timeline Post Eviction

1. File an Order to Show Cause at Housing Court to be “Restored to Possession.”
 2. Apply for One Shot Deal with HRA.
 3. On the Court’s return date, ask the judge to restore you to the apartment. If you win, the judge will give you an order with an amount to be paid and a deadline to pay it.
 4. Take the order to HRA and finish your One Shot application.
 5. Check with the HRA worker constantly if you are approved and when the payments are to be made to the landlord.
 6. After HRA confirms payment, call the landlord and arrange to be restored to your apartment.
-

