

Eviction - Second Cause: When Your Landlord Sues You for Rent



What to do?
How to respond?

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OVERVIEW OF EVICTION PROCESS:

There are two basic parts to most eviction cases.

1. The first part (referred to as the “first cause”) is the actual eviction suit. In this suit, your landlord claims you no longer have the right to stay in the rented home and requests a court order to force you to leave.
2. The second part (referred to as the “second cause”) is your landlord’s attempt to sue you for money. In this suit, your landlord claims you owe money – usually for things such as: back rent (rent you failed to pay in the past), back utilities (utilities bills you failed to pay), or damage you caused to the home. Your landlord requests a court order giving him/her the right to collect money from you.

To find the amount of money your landlord is asking for, look in the Complaint he/she filed against you.

Although both the first and second causes are filed together (in one complaint) and have the same case number, they are treated as separate cases. Two different hearings will be held, one to determine whether or not you should be evicted and another to determine if you owe money to your landlord and if so, how much.

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WHAT DO I DO WHEN I RECEIVE A COMPLAINT FOR EVICTION AND MONEY DAMAGES?

If you do not think you owe your landlord money or you disagree with the amount of money he/she claims you owe, you **MUST** file what is called an “**Answer.**” An answer is your written response to your landlord’s claim that you owe money. If you do not file an Answer, you will automatically lose (your landlord will get a default judgement).

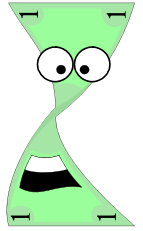
A N S W E R

If you feel your landlord actually owes you money, you should file an “**Answer and Counterclaim.**” A counterclaim states your claims against your landlord and explains why your landlord owes you money. In a counterclaim you are actually suing your landlord.

A N S W E R
& Counterclaim

TIMING IS IMPORTANT:

Your “Answer” or “Answer and Counterclaim” must be mailed to your landlord or your landlord’s attorney within 28 days of the date you received the eviction summons and complaint, and then filed with the court within 3 days of mailing. If you don’t file within this time period, your landlord will get a judgment against you for the amount of rent he/she claims you owe and court costs. You will also lose the opportunity to sue for the money you think your landlord owes you.



Your landlord has 14 days to reply (answer) to your counterclaims. If the landlord does not reply, then you can ask for a default judgement (order in your favor because the other side did not respond as required or failed to show up in court) against your landlord.

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STEPS TO FILING ANSWER OR ANSWER & COUNTERCLAIM:

1. *Decide which you will file, the Answer or Answer and Counterclaim.*

ANSWER: If you only wish to dispute the fact that you owe money to your landlord or the amount of money he/she claims you owe, you want to file an Answer.

The answer states:

- a denial that you owe part or all of the money your landlord claims you owe;
- the reasons you feel you do not owe your landlord part or all of the money;
- a request that your landlord return your security deposit, plus interest;

ANSWER & COUNTERCLAIM: If there are reasons why your landlord actually owes you money then you want to file an Answer and Counterclaim.

Possible reasons why your landlord could owe you money include:

- you overpaid on rent,
- your landlord will not return your security deposit,
- you made improvements/repairs to the apartment,
- you or a family member suffered an injury because of something that is the landlord’s fault

2. *Calculate when you must file your Answer or Answer & Counterclaim.* You have 28 days from the date you received the court papers (summons & complaint) to serve (mail) your papers. You then have 3 days to file the ORIGINAL with the Clerk of Courts (always send a copy to other parties and file the original with the court). If the last day of the 28-day period falls on a Saturday, Sunday, or national holiday, you have until the next business day to serve (mail). If you do not remember when you received your papers, call the Clerk of Courts office at the court where your case was filed – give them your case number and tell them you need the date you were “served.”



3. *Complete the necessary paperwork.*

What do I say in the answer?



Deny any part of the complaint you believe to be untrue. (If you do not deny something, the court will assume it is true and you will not be given a chance to deny it at the hearing.)

State your counterclaims (if any). To do this, simply describe why your landlord owes you money and how much you believe you are owed.

At the end, tell the Court what you want it to do.

- * If you have no counterclaims, you want the court to dismiss the case and require your landlord to pay court costs.
- * If you have counterclaims, write the amount you want the court to award you.

TIPS:

- You (the tenant) are the Defendant and your landlord is the Plaintiff.
- The Case No. is listed on the top, right-hand side of the Complaint you received.

4. *Make two copies of the completed paperwork and take the original and copies to the Clerk of Court's office to file.* The clerk will time-stamp all of the copies, take the original and return the copies to you.



It will not cost you any money to file an Answer, but the court may have a charge for filing an Answer & Counterclaim. You should call the clerk's office to check on the cost of filing a Counterclaim. You must bring the money with you or the Clerk will not let you file your documents.

Keep one copy of the time-stamped documents for yourself and give the other to the person who signed the complaint (your landlord or your landlord's lawyer). You must send this copy by regular mail or hand-deliver it to your landlord/landlord's attorney.



5. After filing you Answer or Answer & Counterclaim, *the court will send you a notice of the time and place of your trial.* The trial will usually be held 2 to 3 weeks after the case is filed. You must *appear on time for the trial* or the court will dismiss your case and the landlord will get everything he/she asked for in the complaint. If you move, you must give the court notice of your new address.

What to Bring With You to Court:

1. "Physical documents" relevant to your answer or counterclaims such as: rent receipts, security deposit receipts, utility receipts, lease or rental agreement, letters written between you and your landlord, and any receipts you may have for supplies you used to make repairs. Bring the originals and photocopies.



2. Photographs relevant to your counterclaims, such as photos of the conditions of your apartment or repairs that need to be made.
3. Witnesses who have actually seen the things or actually heard the conversations that you are testifying about at trial.

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**I FILED AN ANSWER OR ANSWER AND COUNTERCLAIM,
NOW WHAT HAPPENS?**

1. *An eviction hearing will be held.* This hearing will be held whether you file an answer or not. At this hearing, the judge/magistrate will only decide whether or not you should be evicted. The court will not decide how much money you owe your landlord or vice versa.



First, your landlord will be given a chance to argue his/her side. He or she will try to prove to the court that:

- ⇒ Your lease was up or you broke the lease.
- ⇒ A 3-day notice to leave was served.
- ⇒ No rent was accepted from you after the notice was served.
- ⇒ You are still living in the rental home.

When your landlord is finished, *you will be given a chance to argue your side.*

Explain to the court why you should not be evicted. To prove your case, you can show the judge or magistrate a copy of the lease or rent receipts, question the landlord or the landlord's witnesses, and explain to the court what really happened.



CAUTION: It is hard to stop an eviction when you have not paid rent, even if you think you have a good excuse for failing to pay.

Proving the following facts might help your case:

- your landlord did not give you Notice to Leave the Premises,
- you have a rent receipt to prove that you did pay rent,
- your landlord accepted rent after serving the Notice to Leave the Premises,
- your landlord has always accepted your rent late and surprised you by refusing it this time,
- you offered rent on time, but your landlord refused to take it,
- you paid you rent in escrow to the Clerk of Courts because of bad conditions in your apartment.

Last, the magistrate will make a decision regarding the eviction.

If your landlord wins, the Bailiff will set you out. You will usually get 10 days to move, but the magistrate may give you as few as 3 days to move.

If you win, the first cause will be thrown out and you will have the right to continue living at the rental space as a tenant.

2. No matter who won the first cause (eviction), *if your landlord requested money damages AND you filed an Answer or Answer and Counterclaim, a hearing will automatically be scheduled on the second cause.* You will be informed of the date.

However, if you did not file an Answer, there will not be a second hearing and you will automatically lose. The Court will issue an order requiring you to pay whatever money damages your landlord requested and you will not be given an opportunity to argue that this amount is incorrect.

Bring evidence and witnesses with you to this hearing to prove that your landlord owes you money.

For example:

If you are arguing that bad conditions in the home made it worth less than your rent, bring photos of these bad conditions, or witnesses who have seen these conditions and can explain them to the Court.

If you are arguing that you paid too much rent for one month and your landlord owes you a refund of the amount overpaid, show the court the cancelled check for this overpaid amount or a copy of a rent receipt for that month.

Court Forms:

Answer

Answer & Counterclaim

IN THE _____ MUNICIPAL COURT
_____ COUNTY, OHIO

Plaintiff (landlord) : Case No. _____
vs. : Judge _____

Defendant (tenant) : **ANSWER**

ANSWER

1. Defendant denies the allegations of Plaintiff's claims, specifically denying owing
(Check one or both)
 rent in the amount claimed
 damages (money other than rent owed) in the amount claimed
2. Defendant denies this money is owed for the following reasons:
(check one or more that apply)
 Defendant already paid landlord the money he/she claims is still owing.
 Defendant paid Plaintiff a portion of the money he/she claims is still owing in the amount of _____.
 Plaintiff agreed that Defendant would not have to pay rent if Defendant did some work for Plaintiff. Defendant did this work.
 Plaintiff has wrongfully withheld Defendant's security deposit in the amount of _____.
 The late charges Plaintiff claims to be owed are unconscionable (unreasonable considering the minor damage Plaintiff suffered as a result of the late payment).
 The following reason stated herein: _____

WHEREFORE, Defendant requests that the complaint be dismissed at Plaintiff's cost.

Defendant's signature

Defendant's name & address (*print*)

PROOF OF SERVICE

On _____, a copy of this Answer and Counterclaim was sent by
(date delivered/mailed)

_____ to _____ or
(fill in: mail or personal delivery) (Landlord's name)

_____ at _____
(Landlord's attorney) (Address delivered to)

this _____ day of _____, 20_____.
(date) (month)

(Tenant's signature)

IN THE _____ MUNICIPAL COURT
_____ COUNTY, OHIO

Plaintiff (landlord) : Case No. _____

vs.

:
Judge _____

Defendant (tenant) : **ANSWER AND COUNTERCLAIM**

ANSWER

1. Defendant denies the allegations of Plaintiff's claims, specifically denying owing:
(check one or both)
- rent in the amount claimed
 - damages in the amount claimed

COUNTERCLAIMS

(check one or more of the following that describe your situation)

2. Defendant paid a security deposit in the amount of \$_____ that has not been returned to Defendant and therefore twice this amount, or \$_____, should be returned to the Defendant or deducted from any rent owed.

3. Defendant made improvements and/or repairs to the apartment including: _____

These repairs/improvements are worth \$_____ and were made only after Plaintiff agreed that rent would not have to be paid for _____ months if these repairs/ improvements were made.

4. Plaintiff failed to maintain the premises, in violation of his/her obligations under the Landlord-Tenant Act. Therefore, Defendant is not obligated to pay the full amount of rent required by the lease. The landlord refused to repair the following conditions which were not caused by the tenant or the tenant's guests:

- i) _____
- ii) _____
- iii) _____
- iv) _____

5. Defendant is entitled to \$_____ in damages, which is the difference between the rent charged (what you currently pay) and the fair market rent considering the condition of the premises (what you think you should pay for a run down apartment).

6. The landlord caused personal injuries and/or damaged property belonging to the Defendant. Explanation: _____

WHEREFORE, Defendant requests that the complaint be dismissed at Plaintiff's cost and that Defendant be awarded damages on the counterclaim in the amount of \$_____.
(total of amount requested in 2-6)

Defendant's (tenant's) signature

Defendant's name & address (*print*)

PROOF OF SERVICE

On _____, a copy of this Answer and Counterclaim was sent by
(date delivered/mailed)

_____ to _____ or
(fill in: mail or personal delivery) (Landlord's name)

_____ at _____
(Landlord's attorney) (Address delivered to)

this _____ day of _____, 20_____.
(date) (month)

(Tenant's signature)

