

## **How Can a Landlord Remove a Tenant?**

If a Landlord wants their tenant to move out of the rental property and the tenant is not willing to move, the landlord must go to court and seek an order permitting him to remove the tenant. Self help evictions, including changing the locks or threatening the tenant, are illegal under Georgia law. The tenant can take legal action against the landlord for damages suffered due to a wrongful self-help eviction. It is best that such action be pursued with the assistance of a legal representative. If the tenant can not obtain an attorney, the claim can be filed in the magistrate court of the county where the landlord is located.

Before a landlord contacts the court to file a legal action to have a tenant removed, the landlord should read the lease and be familiar with its provisions and comply with its terms regarding notice and termination. Once the terms of the lease have been followed, Georgia law requires the landlord to demand or request that the tenant immediately give up possession and vacate. This demand is best made in writing. If the tenant refuses or fails to give up possession, the landlord or the landlord's agent or attorney must go to the magistrate court and file a dispossessory affidavit under oath.

## **What Can a Landlord Do When it Looks like the Tenant Has Abandoned the Property?**

When it appears that a tenant has moved without giving notice, the landlord must be cautious in treating the rental property as abandoned and taking possession. If a landlord mistakenly assumes that the tenant has abandoned the property and takes possession and removes the tenant's property, the landlord may be held liable for the property the tenant lost.

While the tenant's property may not seem valuable to you, the tenant may consider it to be very valuable and could sue you to recover. It is best for a landlord not to consider property abandoned while rent is paid. Once rent is past due it is best for the landlord to file a dispossessory affidavit and obtain a court order for possession of the property. This will protect the landlord from liability.

In cases where the landlord elects to treat the property as abandoned, he should first send a letter to the tenant's last known address asking the tenant to remove the property by a stated date or the landlord will have the items removed. If the landlord removes the tenant's property, it is good practice to take pictures of the property before disposing of it. The pictures will be helpful if the tenant claims you disposed of items that were valuable.

## **What is a Dispossessory Affidavit?**

The dispossessory affidavit is the legal document the landlord files with the court requesting that the court return possession of the property to the landlord and award money for any unpaid rent owed to the landlord. The landlord can also request that the court require the tenant to pay the landlord for the cost of filing and serving the dispossessory affidavit. The affidavit states: the name of the landlord, the name of the tenant, the grounds for the eviction, verification that the landlord demanded possession of the property and as refused, and the amount of rent or other money owed the landlord.

## **When Can a Landlord Begin Legal Proceedings to Evict a Tenant?**

The basis for evicting a tenant are:

- Non-payment of rent,
- Failure to surrender the premises at the end of the lease term, or
- Breach of the lease, including any rules that are part of the lease, if the lease provides such breach entitles the landlord to terminate the lease.

## **If a Dispossessory Is Issued for Nonpayment and the Tenant Now Has the Money to Pay My Rent must the Landlord Accept It?**

A tenant whose landlord has filed a dispossessory affidavit because of non-payment of rent may be able to avoid being evicted by paying all that the landlord alleges is due plus the court costs. This amount should be stated on the dispossessory summons served on the tenant. The tenant must offer payment within seven (7) days of receiving the summons. The landlord is required to accept such payment from the tenant only once in a twelve month period. *This is called the tender defense.*

If a landlord refuses to accept an offer of tender, the tenant should file an answer to the dispossessory affidavit stating that tender was offered, but refused. If a court finds that a landlord refused a proper tender, the court can order the landlord to accept payment of rent, late fees and court costs and require that the landlord allow the tenant to remain in possession, if the payment is made within three days of the court's order. If the court finds that the landlord refused a proper tender and orders the landlord to accept payment, that payment will not count as use of the tender defense which can only be used once every twelve months.

## **Who Can Issue the Dispossessory Affidavit?**

The dispossessory affidavit is issued by the judge of the superior court, the state court, or any other court with jurisdiction over the subject matter or the judge, clerk, or deputy clerk of the magistrate court

## **Who Can Serve the Dispossessory Affidavit?**

The sheriff or his deputy or any lawful constable of the county where the land is located shall serve the tenant with the affidavit.

## **How Is the Dispossessory Served?**

The sheriff must attempt to personally served the defendant by delivering the summons and the affidavit to any person who is sui juris (a competent adult) residing on the premises (not visiting)

OR

If after reasonable effort no such person is found residing on the premises, by posting a copy of the summons and the affidavit on the door of the premises and, on the same day of such posting, by enclosing, directing, stamping, and mailing by first-class mail a copy of the summons and the affidavit to the defendant at his last known address, if any, and making an entry of this action on the affidavit filed in the case. This is called tack and mail service.

## **What is the Importance of Tack and Mail Service?**

A dispossessory warrant taken due to non-payment will usually request possession and a judgment for the amount of rent owed. If the dispossessory warrant is served by "tack and mail" service, a copy being placed on the door and a second copy sent by mail, the court cannot issue a money judgment. However, if the tenant served by tack and mail files an answer, the court can award a money judgment.

## **Can Landlord Shut off Utilities to a Tenant?**

No. A landlord who wants to force tenants to move must go through court and follow the dispossessory process. A landlord who suspends a tenant's utility service prior to the final judgment in a dispossessory action has broken the law and may be subject to a fine up to \$500. O.C.G.A. §§ 44-7-14.1 makes it unlawful for a landlord to knowingly and wilfully suspend heat, light and water service to a tenant until after the final disposition of any dispossessory proceeding. O.C.G.A. §§ 44-7-14.1(b). A landlord who improperly suspends utility service "...shall, upon conviction, be assessed a fine not to exceed \$500." O.C.G.A. §§ 44-7-14.1(c). It is unclear whether this fine is criminal or civil in nature. Some courts will award the tenant the \$500 and other courts will order payment of the fine into the court registry. It is unclear whether there has ever been a criminal prosecution for the violation of O.C.G.A. §§44-7-14.1 or whether such would be warranted under the statute.

## **What Is an Answer to the Dispossessory Affidavit?**

An Answer is the tenant's response to the landlord's legal action to have you removed from the property, the dispossessory warrant. The Answer can be written or the tenant can tell the court clerk your response and have the

clerk write it for you. The Answer is the tenant's opportunity to state why your landlord does not have the legal right to have you evicted.

If the landlord is seeking to evict the tenant because he says that the tenant violated the lease, the tenant's Answer should state why the lease was not violated.

The tenant's Answer should also include any claims that the tenant may have against the landlord, including:

- claims for money that the landlord owes to the tenant for the costs of repairs that the tenant made to the apartment when the landlord failed to make them
- claims for damages to the tenant's personal property or health that have resulted from the landlord's failure to make repairs

If the landlord owes the tenant money, the tenant must request the money in the Answer.

If the tenant files an Answer, the court will schedule a hearing to give both the tenant and landlord the chance to present their side of the case. Anyone who knowingly and willingly makes a false statement in an answer could be found guilty of a crime called perjury. Perjury is the crime of lying under oath and it is a misdemeanor.

## **How to Calculate Time for the Tenant to Answer?**

*The tenant must answer either orally or in writing within seven days from the date of actual service unless the seventh day is a Saturday, a Sunday, or a legal holiday, in which case the answer may be made on the next day which is not a Saturday, a Sunday, or a legal holiday. The last possible date to answer shall be stated on the summons.*

## **Where Does the Tenant File an Answer?**

The dispossessory warrant should state where the tenant is to go to file the answer. The tenant should file a written answer stating why they landlord does not have the right to remove them from the property. If the tenant can not write, the answer can be made orally, written down by the clerk and signed by the tenant.

\* The answer may contain any legal or equitable defense or counterclaim.

\* The landlord need not appear on the date of the tenant's response.

## **What If the Tenant Does Not File an Answer?**

When a tenant has been served with the dispossessory action and does not answer, the tenant has "waived" the right to challenge the landlord's claims against him. This means the tenant has lost his day in court and a default judgment will be entered against him. A default judgment cannot be appealed.

If there is a very good, very sympathetic reason why the tenant did not file an answer, it is possible to file a motion asking the court to:

- stop the execution of the writ of possession,
- set aside the default judgment,
- allow the tenant to file an answer and
- allow the tenant to have a hearing.

It is best to have an attorney do this, if at all possible.

## **Can a Landlord or a Tenant Appeal the Decision of the Court in a Dispossessory?**

Yes, but any such appeal must be filed within seven days of the judgment. Once appealed, the case will be placed on the court's next calendar for a non-jury hearing. If the landlord or tenant wants a jury trial, the person must request the jury trial within thirty (30) days from the filing of the appeal.

## **If the Tenant Appeals Do They Have to Pay Rent into Court?**

A tenant has seven (7) days after the judgment is entered in a dispossessory to file an appeal. The judgment is entered once it is filed with the court clerk. An appeal is filed in the court which entered the judgment being appealed. To file an appeal, the court costs must either be paid or the court orders that you do not have to pay the costs. If you cannot afford to pay the court costs to file an appeal you can ask the court to waive payment by filing a paupers affidavit, which is a request that you not have to pay the court costs. The appeal once filed prevents the judgment for possession from being executed.

Tenants must be aware that under Georgia law (O.C.G.A. § 44-7-56), if they wish to continue to live in the unit while the appeal is pending, they must pay into court the amount of rent found due by the trial court. If the tenant cannot afford to pay the rent the court found due, the tenant can still file an appeal but will have to vacate the rental unit. The court may also order the tenant to pay into court the future rent as it comes due while the appeal is pending. If the tenant fails to pay, the court will order that the tenant be removed from the property.

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## **If the Tenant Appeals Must He Pay the Lower Court's Judgment?**

Yes, if the judgment of the first court is against the tenant and the tenant appeals, the court may upon a request from the landlord and, if there is good cause, order the tenant to pay into the court all money which the first court found

that the tenant owed for rent. If the tenant does not pay, the court will issue an order to have the tenant removed from the property.

## **Is the Tenant's Required to Pay Money That Comes Due under the Lease While the Appeal Is Pending?**

Yes, the tenant can be required to pay all future rent as it becomes due into the registry of the court until the appeal is decided. In most counties in Georgia, the court will not automatically require payment of rent into court, the landlord must file a motion asking the court to require payment of rent into the court. If the landlord does not make such a motion and the court does not order payment, the tenant can remain in possession without such payment, while waiting for the decision on the appeal.