

SHERIFF'S DEPARTMENT
COURT SERVICES DIVISION

EVICTIION NOTICE

CASE NUMBER: _____

YOU ARE ORDERED TO VA

DEFENDING EVICTIIONS

SEAN ROWLEY AND

ROBERT JACK

LEGAL SERVICES OF GREATER
MIAMI

WHY DO THIS WORK?



Evictions trap people in poverty and instability.



Largest unmet need of clients contacting our office.

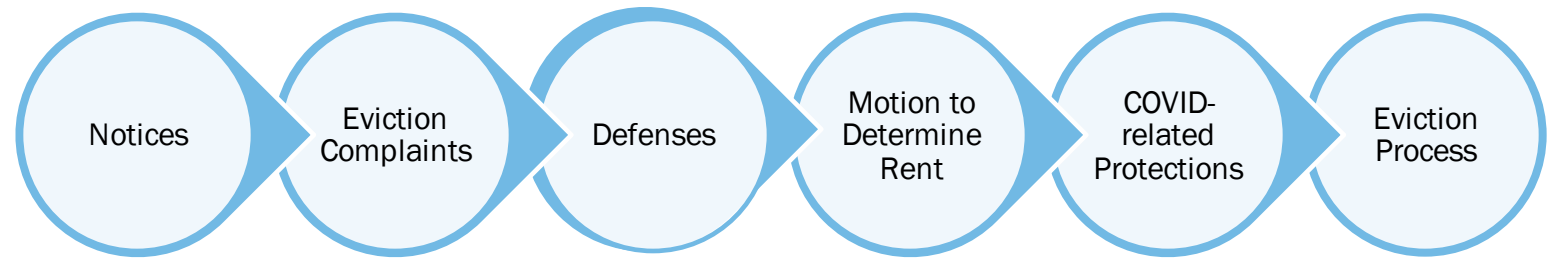


Process is not user-friendly and most tenants lose without consideration of their case on the merits.



Huge impact for that client.

AGENDA



APPLICABLE LAW

Florida's Residential Landlord Tenant Act

- Florida Statutes, Chapter 83, Part II

Summary Procedure

- Florida Statutes Chapter 51

Case Law

- Florida Law Weekly Supplement

TYPES OF EVICTIONS

Non-payment
of rent

Other lease
violations

Termination of
month-to-
month tenancy

End of lease
term



- The failure to serve a proper, non-defective termination notice is a statutory condition precedent to the filing of an eviction lawsuit.
- It must be completed *before* the lawsuit is filed. – Fla. Stat. § 83.59
- Since 2013 – exception for non-payment cases *only*

NOTICES OF TERMINATION – 83.56, 83.57, AND 83.575

3-Day Notice to Pay
or Vacate

7-Day Notice for
Lease Violation

- Cure
- Termination

60-Day Notice
Terminating Month-
to-Month Tenancy

- County Ordinance

Expiration of Lease

- Look to lease
- Written Notice Required

Lease Can Expand
Notice Requirements





EVICTION COMPLAINT

- Filed in County Court
- Branch court by zip code
 - (05) – Downtown
 - (20) – Caleb Center
 - (21) – Hialeah
 - (23) – North Dade
 - (24) – Miami Beach
 - (25) – Coral Gables
 - (26) – South Dade
- One count (possession only) or Two Count (possession and damages)
- Service – Fla. Stat. §48.183
 - Personal Service
 - Posting after two attempts
 - Clerk mails a copy

IN THE COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

DIVISION <input type="checkbox"/> CIVIL	RESIDENTIAL EVICTION SUMMONS	CASE NUMBER
PLAINTIFF(S)	VS. DEFENDANT(S)	SERVICE
TO DEFENDANT(S)	ADDRESS	

PLEASE READ CAREFULLY
 You are being sued by _____
 To require you to move out of the place where you are living for the reason(s) given in the attached complaint.
 You are entitled to a trial to determine whether you can be required to move, but you MUST do All of the things listed below. You must do them within FIVE (5) days (not including Saturday, Sunday, or any legal holiday) after the date these papers were given to you or to a person who lives with you or were posted at your home.
THE THINGS YOU MUST DO ARE AS FOLLOWS:
 (1) Write down the reasons why you think you should not be forced to move.
 The written reason(s) must be given to the clerk of the court at the court location checked below:
"For those unable to pay for an attorney, information on how to seek free legal assistance can be found at www.dadecountyprobono.org."

CLOCK IN

MIAMI-DADE COUNTY COURT LOCATIONS

<input type="checkbox"/> Dade County Courthouse (05) Room 138 73 West Flagler Street Miami, Florida 33130	<input type="checkbox"/> Joseph Caleb Center Court (20) Suite 103 5400 N.W. 22nd Avenue Miami, Florida 33142	<input type="checkbox"/> North Dade Justice Center (23) Room 100 15555 Biscayne Blvd. North Miami Beach, Florida 33160	<input type="checkbox"/> Hialeah District Court (21) Room 100 11 East 6th Street Hialeah, Florida 33010
<input type="checkbox"/> Miami Beach District Court (24) Room 200 1130 Washington Avenue Miami Beach, Florida 33139	<input type="checkbox"/> Coral Gables District Court (25) Room 100 3100 Ponce De Leon Blvd. Coral Gables, Florida 33134	<input type="checkbox"/> South Dade Justice Center (26) Room 1200 10710 S.W. 21st Street Miami, Florida 33189	

(2) Mail or give a copy of your written reason(s) to:
 Plaintiff/Plaintiff's Attorney _____
 Address _____

(3) Pay to the clerk of the court the amount of rent that the attached complaint claims to be due and any rent that becomes due until the lawsuit is over. If you believe that the amount claimed in the complaint is incorrect, you should file with the clerk of the court a motion to have the court determine the amount to be paid. If you file a motion, you must attach to the motion any documents supporting your position and mail or give a copy of the motion to the plaintiff/plaintiff's attorney.
 (4) If you file a motion to have the court determine the amount of rent to be paid to the clerk of the court, you must immediately contact the office of the judge to whom the case is assigned to schedule a hearing to decide what amount should be paid to the clerk of the court while the lawsuit is pending.
IF YOU DO NOT DO ALL OF THE THINGS SPECIFIED ABOVE WITHIN 5 WORKING DAYS AFTER THE DATE THAT THESE PAPERS WERE GIVEN TO YOU OR TO A PERSON WHO LIVES WITH YOU OR WERE POSTED AT YOUR HOME, YOU MAY BE EVICTED WITHOUT A HEARING OR FURTHER NOTICE.
 (5) If the attached complaint also contains a claim for money damages (such as unpaid rent), you must respond to that claim separately. You must write down the reasons why you believe that you do not owe the money claimed. The written reasons must be given to the clerk of the court at the address specified in paragraph (1) above, and you must mail or give a copy of your written reasons to the plaintiff/plaintiff's attorney at the address specified in paragraph (2) above. This must be done within 20 days after the date these papers were given to you or to a person who lives with you or were posted at your home. This obligation is separate from the requirement of answering the claim for eviction within 5 working days after these papers were given to you or to a person who lives with you or were posted at your home.
THE STATE OF FLORIDA: To each Sheriff Of The State: You are commanded to serve this summons and a copy of the complaint in this lawsuit on the above-named defendant(s). DATED ON _____, 20_____.

COPY OF THE COMPLAINT AND SUMMONS WAS MAILED ON _____	HARVEY RUVIN Clerk Of The County Court	COURT
BY: _____	BY: _____	SEAL
	AS DEPUTY CLERK	

AMERICANS WITH DISABILITIES ACT OF 1990 ADA NOTICE

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Alean Simpkins, the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2400, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174; Email ADA@jud11.flcourts.org; Fax (305) 349-7355 at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711."

SUMMARY PROCEDURE

FLA. STAT. §51.011



Tenant has 5 days to file response, excluding weekends and holidays

All defenses must be contained in the answer

Motion practice allowed – *Pro Art Dental* case

File Motion to Dismiss with the Answer

Counterclaims allowed

Demand of Jury Trial – if not waived in the lease.

Demand for Attorney Fees & Costs – §83.48

Motion to Determine Rent, if appropriate

COMMON DEFENSES

Defective Notice of Termination

- Insufficient time in notice
- Failure to add mail time
- Demands imprecise amount of rent
- Lack of specificity or no opportunity to cure
- Language doesn't substantially comply with statutory notice

If the notice is defective (failure of condition precedent), the case must be dismissed without leave to amend.

Effective July 1, 2013, in an eviction for nonpayment of rent, “the landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.” Does not apply to evictions for reasons other than non-payment of rent. 83.60(1)(a)

THREE-DAY NOTICE

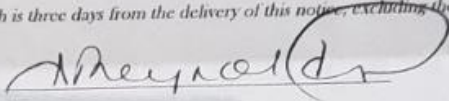
From:	
Date:	May 15, 2020

Dear: _____
Tenant's Name

You are hereby notified that you are indebted to me the sum of \$ \$1175.00
(insert amount owed by Tenant)

for rent and use of the premises _____
(insert address of leased premises, including county)

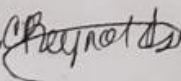
now occupied by you and that I demand payment of the rent or possession of the premises within Three (3) days (excluding Saturday, Sunday and legal holidays) from the date of delivery of this notice, to wit: On or before the 15 day of May, 2020 (insert the date which is three days from the delivery of this notice, excluding the date of delivery, Saturday, Sunday and legal holidays).



(Address)
Miami, Florida 33142

City, State Zip Code

Note: This notice may be delivered by mail or by delivering a copy to the property.
This notice must be delivered, and the three day time period must run, before starting suit to evict the tenant or to past due rent.
SOURCE: Section 83.56(3), Florida Statutes (1990) Approval for use under rule 10-2.1(a) of the Rules Regulating the Florida Bar 2010.

This notice was served upon the person owing the rent.
 The person owing rent was absent from residence, posted to door.
Date served: May 15, 2020
Time served: 12:50 P.M. 

COMMON DEFENSES

Waiver

- Accepting rent with knowledge of non-compliance, 83.56(5)(a)
- Since 2013, Landlord can accept rent after posting notice if it provides receipt, deposits rent with court, and serves a new three-day notice.

Failure to Maintain Premises

- Tenant is required to send a rent withholding notice demanding repairs within 7 days.
- Statute does not require it to be sent before rent is due, but some of the case law requires it.
- “Complete Defense” to eviction for non-payment – 83.60(1)

Retaliation

- Landlord cannot evict tenant, increase rent, or decrease services primarily because the tenant complained to code enforcement or complained about conditions.
- Defense to any eviction – 83.64(2)

COMMON DEFENSES

Improper Party

- Fla. Stat. §83.43(3): “‘Landlord’ means the owner or lessor of a dwelling unit.”

Corporation Without Attorney

- A corporation, unlike a natural person, cannot represent itself and cannot appear in a court of law without an attorney.

Property Managers

- Can file complaints for eviction and motions for default final judgments and writs of possession in uncontested residential evictions for nonpayment of rent.
- Must have written authorization by landlord.

Payment

- Tenant has already paid the rent demanded by the landlord.

COMMON DEFENSES

Discrimination

- Tenant treated differently because of a protected class.
- Prohibited by Fair Housing Act – race, color, national origin, religion, sex, familial status, disability.
- Miami Dade Ordinance provides broader protections, including Source of Income & DV. § 11A-12

Equity in Forfeiture

- Florida courts have long held that equity and law abhor forfeitures of lease agreements and that a court may refuse to declare forfeiture of a lease when the circumstances would render it unconscionable, inequitable, or unjust.

Violation of Obligation of Good Faith

- Florida Statute § 83.44 – obligation of good faith imposed in every rental agreement.

**RENT DEPOSIT
REQUIREMENT
FLA. STAT.
83.60(2)**

In addition to answer,
tenant **must** do one of
the following within 5
days after service:

Deposit the rent
alleged in the
complaint (plus
court registry fee)

Assert payment
as a defense

File a Motion to
Determine Rent
disputing amount
owed



RENT DEPOSIT REQUIREMENT

Failure to comply with 83.60(2)

- Waiver of all defenses
- Immediate judgment for possession without a hearing or mediation



DEPOSITING RENT



Tenant goes to the courthouse.
Must have cash or money order or wire transfers accepted



Clerk has window to accept rent deposits.



Fee for depositing – 3% of first \$500 and then 1.5% for amounts over.

Example -- \$1000 rent
Court registry fee is \$22.50

3% of \$500 = \$15

+

1.5% of \$500 = \$7.50



Must be waived if the tenant is indigent. Fla. Stat. 57.081(1) and Fla. Stat. 57.082.



Application for Determination of Civil Indigent Status:
<https://www.miami-dadeclerk.com/library/Civil/480-Web.pdf>

POSSIBLE MOTION TO DETERMINE RENT (STARTING WITH STRONGEST)

- Rent demanded is incorrect
 - Late Fees
 - Partial Payments
- Reduction in rent because of conditions
- Refusal of LL to participate in rental assistance programs
- Tenant has applied for rental assistance program
- Set-off for counterclaim

MOTION TO DETERMINE RENT

Best to attach documentation to Motion

Hearing required? Probably.

Tenant must continue to deposit rent as it comes due

Any discretion?

If you can overcome this hurdle, the tenant will be in a better position to negotiate a favorable outcome.

HELP FILING AN ANSWER & MOTION TO DETERMINE RENT

- Sample Answer with most common defenses – available on www.legalservicesmiami.org website.
- Floridaevictionanswerbuilder.org – Jacksonville Area Legal Aid created with input from attorneys across state



THE CASE PROGRESSES

If there is a pending Motion to Determine Rent, most judges will require resolution first – Fla Stat. 83.56(5)(b)

Mediation

- Most judges require the parties to attend.
- Free and conducted by the mediation division of the court
- If impasse, some judges notice the “final hearing” after the mediation.
- If you settle and use the “form” settlement, you **must** change the default language which allows the landlord to file an affidavit without notice and obtain a final judgment without a hearing.

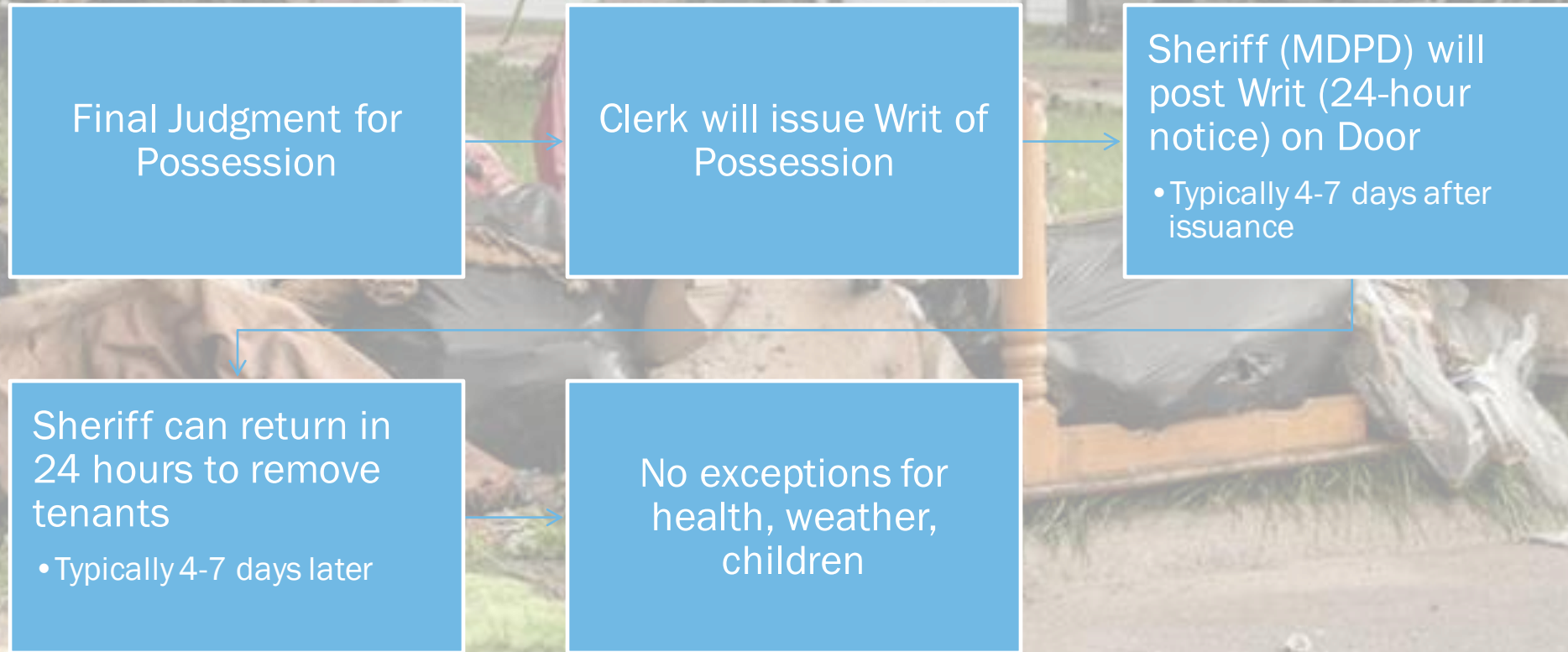
Discovery

- Only depositions under summary procedure
- Can obtain court order for other discovery

Motion to Dismiss

Trial

EVICTION PROCESS



APPEALS

30 days to file Notice of Appeal

Heard by Circuit Court Appellate Panel

Must file Motion to Stay Pending Appeal to remain in possession

If tenant is evicted, appeal is **not** moot because of collateral legal consequences

Heard by trial court

Can offer rent in lieu of bond

If denied, can request from appellate court

POTENTIAL COUNTERCLAIMS

- Failure to Maintain the Premises
- Florida's Consumer Collection Practices Act
 - Fla. Stat. § 559.72
- Prohibited Practices – Illegal Evictions – Fla. Stat. 83.67
- Fair Housing, including Miami-Dade

RENTAL ASSISTANCE PROGRAMS

Axis Helps www.axishelps.org/rent - list of community resources

Miami-Dade County - Emergency Rental Assistance Program <https://miamidade.myhousing.com/>

City of Miami – Emergency Rental & Utility Assistance Program
<https://www.miamigov.com/Residents/Housing/Apply-for-Eviction-Prevention-Program>

City of Miami Beach – COVID-19 Assistance - <https://apps.miamibeachfl.gov/housing>

City of Hialeah – Landlord-Tenant Relief Fund - <https://www.hialeahfl.gov/690/Funding-Opportunities> (Closed) / ESG - <https://www.hialeahfl.gov/810/Emergency-Solutions-Grant-ESG>

City of North Miami – Emergency Tenant-Based Rental Assistance Program -
<https://www.northmiamifl.gov/827/Emergency-Tenant-Based-Rental-Assistance> (Open)

City of Miami Gardens – Rental Assistance Program - <https://www.miamigardens-fl.gov/874/Rental-Assistance-Program> (Closed)

City of Homestead – Rental & Utilities Assistance Grant Program -
<https://www.cityofhomestead.com/covidgrants> (Open)

Housing Assistance Network of Dade (HAND) / Citrus Health Network --
<https://www.citrushealth.org/programs-services/housing/HAND> (Open)

Veterans – Operation Sacred Trust – 1-855-778-3411 / Advocate Program 786-227-5842

OurFlorida (Statewide Rental Assistance) through Department of Children and Families
<https://www.ourflorida.com/>

RENTAL ASSISTANCE PROGRAMS

Miami-Dade County - Emergency Rental Assistance Program

<https://miamidade.myhousing.com/>

Requirements:

- Miami-Dade County Resident unable to pay full rent during or as a result of a COVID-19 caused financial hardship
- Current income must be below 80 percent of AMI, for example:
 - Individuals making less than \$54,600
 - Couples making less than \$62,400
 - Families of three earning less than \$70,200
 - Families of four earning less than \$78,000
- Executed lease between tenant and property owner or landlord
- * Update: ERAP now accepts applications from residents that are unable to pay an increase in rent. ERAP can help pay the difference between the tenant's current rent and the new rent for a period of 3 future months.

RENTAL ASSISTANCE PROGRAMS

OurFlorida Statewide Rental Assistance

<https://www.ourflorida.com/>

Requirements:

- Rent your home, apartment, or other residential dwelling in Florida.
- Earn an income at or below 80% of the area's median income (AMI).
- Have qualified for unemployment, experienced a loss of income, incurred significant costs or faced financial hardships due to the COVID-19 Public Health Emergency.
- Are at risk of losing your home, experiencing housing instability or are living in unsafe or unhealthy conditions.

NEW COUNTY ORDINANCES RELATED TO EVICTIONS



FAIR NOTICE ORDINANCE (SEC. 17-03)

EFFECTIVE MARCH 25, 2022

- (1) Extends the written notice requirement to 60 days prior to the end of any monthly period to terminate a month-to-month residential tenancy
- (2) Requires 60 days written fair notice to the tenant to increase the rental rate by more than five percent at the end of a lease term or a month-to-month tenancy
 - After notice, the tenant must either:
 - Accept the proposed amendment;
 - Reach an acceptable compromise; or
 - Reject the proposed amendment to their tenancy.

UNSAFE BUILDINGS AND RELOCATION ORDINANCE (SEC. 8-5)

EFFECTIVE MARCH 11, 2022

- When the Building Official orders an occupied residential building, unit, or units to be vacated...and deems that the actual or immediate danger of the failure or collapse of a building...is a result of the negligent or intentional act or failure to act by the owner, the owner shall, within eight hours from the time of the order make, or cause to be made, all necessary arrangements to relocate the displaced residents into housing that is safe, sanitary, and secure until such time that the building, unit, or units are made safe for re-occupation, or for at least a three-month period, and the owner shall pay or cause to be paid all of the reasonable expenses involved in such relocation...
- If the owner fails to relocate displaced residents County personnel shall be empowered to assist in the relocation..[and] provide displaced residents with financial assistance to obtain temporary housing.

TENANT'S BILL OF RIGHTS

CHAPTER 17, ART XIII

EFFECTIVE MAY 13, 2022

- Establishing a county Office of Housing Advocacy including referrals, training and outreach, and advising the County Mayor on housing policy
- Protection from adverse action against tenants for unlawful practices including:
 - F.S. 83.67 Prohibited Practices including terminating or interrupting utility services
 - Discrimination based on:
 - Race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, gender identity, gender expression, sexual orientation, actual or perceived status as a victim of domestic violence, dating violence or stalking, or source of income
- Landlords asking about past evictions on rental applications (until tenant has been determined qualified for admission to or continued occupancy of a unit)

TENANT'S BILL OF RIGHTS

(CONT.)

- Protection from adverse action against tenant who makes necessary repairs on their own and deducts the cost from their rental payment
 - When tenant has properly withheld rent after a 7-day notice to landlord under F.S. 83.60
- Protects tenants from retaliation if they seek government help with a landlord including a new Tenant Information Helpline and Website
- Notice of Tenants' Rights required to be provided by landlord within 10 days of start of tenancy or renewal

TENANT'S BILL OF RIGHTS

(CONT.)

- Requires landlords to notify tenants of a new owner in month-to-month tenancies where ownership change may result in tenant's tenancy being terminated
- Private Right of Enforcement
 - A tenant may file a civil action no later than two years after the alleged violation of this article

FIRST STEPS



- Step 1 -- Contact client and determine where in the process
 - Notice to Pay Rent or Eviction Suit Filed
- Step 2 – Determine Client’s Goals
 - Remain or Move Out?
 - If moving out, what are options & timing?
 - If remaining, is there a current lease?
 - Avoid eviction filing? Might be important if never had an eviction filed against them
 - Keep the family housed as long as possible?
 - Financial prospects
- Step 3 – Determine if County Ordinances Apply

STEP 4 – DETERMINE LEGAL STRATEGY

- Landlord filed eviction on July 10th based on 3-day notice
- Client has started back to work and has half of past due rent
- Another tenant at the property has a Section 8 voucher
- Client wants to stay in unit

- File Answer, Motion to Dismiss, Motion to Determine Rent, Demand Jury Trial, and Attorney's Fee Demand
- Apply for rental assistance
- Leverage to negotiate settlement – rent reduction, payment plan, avoid fees & costs

STEP 4 – DETERMINE LEGAL STRATEGY – HYPO # 2

- Client lost job and has no prospect for income
- Client received 3-day notice with incorrect amount and no eviction filed yet
- Never had eviction filed against her
- Has family she can live with

- Reach out to landlord to negotiate future move out date & avoid eviction filing
- Use your representation to leverage better terms
- Will have basis for Motion to Determine Rent if eviction filed

ISSUES TO CONSIDER



A tenant with an attorney immediately changes the dynamics



Goal is often to get more time for the tenant:

- To pay back the money owed
- To apply for rental assistance
- To wait for Reemployment Assistance
- To return to work



Moving is expensive and affordable housing is hard to find



Avoiding a final judgment is important



Security deposits

Can use as source of funds to pay past due rent

PRO BONO EVICTIONS



- Legal Services does initial intake interview.
- Weekly email with case descriptions or we may contact you directly.
- Respond to email and then our pro bono advocacy director (Jayme Cassidy) will send identifying information to run conflict checks.
- We will send you all materials and notify client.
- Once case is resolved, send us the final order or settlement and number of hours on case.

PRO BONO ATTORNEYS MAKE A DIFFERENCE

“Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.”

Justice Thurgood Marshall, *Pernell v. Southall Realty* (1974)



NEED GUIDANCE?

JAYME CASSIDY
PRO BONO ADVOCACY DIRECTOR
JCASSIDY@LEGALSERVICESMIAMI.ORG
305-438-2482

ROBERT JACK
SENIOR STAFF ATTORNEY - TENANTS' RIGHTS UNIT
RJACK@LEGALSERVICESMIAMI.ORG
305-438-2554

SEAN ROWLEY
ADVOCACY DIRECTOR - TENANTS' RIGHTS UNIT
SROWLEY@LEGALSERVICESMIAMI.ORG
305-438-2415

JEFF HEARNE
DIRECTOR OF LITIGATION
JHEARNE@LEGALSERVICESMIAMI.ORG
305-438-2403

