

## INTRODUCTION

This pamphlet will give you information about how you can represent yourself in court to defend against a threat of eviction.

Your right to defend yourself against eviction is based on both the Mississippi Residential Landlord and Tenant Act (Miss. Code Ann. § 89-8-1 et. seq.) and Mississippi landlord and tenant law (Miss. Code Ann. § 89-7-1 et. seq.). This pamphlet is intended only for residential landlord-tenant dispute involving your rented apartment or house and not disputes involving rented commercial property.

In addition to reading the material presented here, **read your lease**. If you do not have a copy, request one from your landlord. Your lease might give you additional rights beyond those guaranteed by Mississippi law. Your lease might also restrict rights that you might otherwise have, but some rights are yours regardless of the terms of your lease. Certain tenants' rights cannot be undone, waived, or negated by a rental agreement. This pamphlet will tell you which ones.

If you are reading this pamphlet, you probably have received a "summons" to appear for an eviction proceeding before the Justice Court. This summons does not mean that you have been evicted; it only means that an eviction proceeding has been scheduled. **You have the right to appear before the Justice Court** at the date and time listed to **defend yourself** by explaining why you should not be evicted (also see the pamphlet entitled "*How To Represent Yourself In Civil Cases In Justice Court*"). If your landlord is suing for eviction because you have not paid your rent, you can avoid eviction by paying the overdue rent and your landlord's expenses for the eviction suit, either before the eviction hearing or at the hearing itself (discussed in "Step 2" below).

Although this pamphlet will inform you how to defend yourself against the threat of eviction, you should try to resolve the dispute out of court with your landlord as soon as possible after receiving the summons. You might be able to work out an agreement with your landlord and there by avoid the eviction hearing. **This agreement should be in writing, signed by both parties and acknowledging any payments that you made as part of the agreement.** You should file a copy of this written agreement with the Clerk of the Justice Court, so that you will not be at risk of paying for the same debt twice.

**TIP:** There is a difference between a Summons and Landlord's Notice of Eviction. If you only received a Landlord's Notice of Eviction, the landlord cannot lock you out unless he serves you with a summons and the Court evicts you.

### STEP 1: READ THE SUMMONS AND ATTACHED MATERIALS CLOSELY.

**FIRST**, the summons itself will tell the date, time, and place of the eviction proceeding. Be sure to write this information on your calendar and request time from work to attend.

**SECOND**, read the "declaration" or "affidavit" attached to the summons closely. This document will tell you why your landlord is suing for eviction. You will need this information to defend yourself and because it might affect your rights. If the affidavit or declaration is not attached, go to the Court Clerk and request a copy. Even if it is attached, go to the Justice Court because other material might be in the court file.

### STEP 2: DETERMINE WHETHER YOUR LANDLORD IS SUING YOU FOR NON-PAYMENT OF RENT OR FOR ANOTHER REASON INSTEAD.

As previously stated, your landlord's reasons for seeking eviction will affect your rights in the proceeding:

**FIRST**, if your landlord is suing because of overdue rent, you can avoid eviction by paying the overdue rent along with your landlord's expenses in seeking eviction. You can pay this money either at the hearing or beforehand. If you pay beforehand, the benefit is that your landlord should dismiss the eviction suit. If you make a payment to your landlord or work out any other type of pre-trial agreement, you should follow these steps described earlier to protect yourself (i.e. get it in writing, signed, filed with the Clerk, etc.)

**SECOND**, if your landlord is suing because of nonpayment of rent, you are only entitled to **3 days notice of the hearing**; that means you must receive the summons at least 3 days before the hearing. If your landlord is suing for eviction for another reason, you are entitled to at least **5 days notice of the hearing** (Miss. Code Ann. § 11-9-105). If the hearing date does not comply with these requirements, you can challenge the date of the hearing by speaking with the Clerk for the court for the hearing. You should write about your challenge to the date of the hearing in your "answer" (described in Step 4), and file it with the Clerk.

### STEP 3: CONSIDER WITNESSES WHO MIGHT HELP IN YOUR DEFENSE.

Are there people who have information about your defense or who can help you provide support for your own version of the facts? As soon as you receive a summons, you should immediately ask these witnesses to appear with you at the hearing. If the witnesses refuse, you should immediately ask the Court Clerk to issue a document called a subpoena, which will mean that the witness will be legally required to appear in court. **You need to act prior to the hearing to get a subpoena issued.** If your subpoenaed witnesses do not appear in court on the scheduled hearing day, you can ask the court to reschedule the hearing.

### STEP 4: IF YOU CAN, WRITE AN "ANSWER" THAT EXPLAINS WHY YOU SHOULD NOT BE EVICTED, SIGN THE ANSWER IN FRONT OF A NOTARY PUBLIC, AND THEN FILE THE ANSWER WITH THE COURT CLERK.

You might defend yourself on one or more of the following grounds:

- 1.) Overdue rent to the landlord was already paid, or will be paid at the eviction hearing (discussed earlier).
- 2.) Landlord failed to give you 3 days notice of how much you owed prior to filing the summons. Miss. Code Ann. § 89-7-27.
- 3.) The landlord filed the eviction suit in bad faith for reasons other than those claimed by the landlord.
- 4.) The landlord filed for eviction in retaliation for exercising your rights. For example, because you exercised your right to request repairs in writing under the Residential Landlord & Tenant Act.
- 5.) The landlord lied in his affidavit, or misstated certain facts.
- 6.) The landlord did not file an affidavit when he filed for eviction.
- 7.) The landlord's own actions caused the reason for the eviction.

If you have claims against your landlord (for example, you never received reimbursement or reduction in rent for making repairs), you can write these claims in your answer by including a **separate section titled "Counterclaims."** In this section, you can explain why the landlord owes you money or other relief. These claims will be heard in the same proceeding as the eviction proceeding. The Justice Court has a \$2,500 jurisdictional limit, so claims in excess of this amount should probably be saved and filed later in a different court, such as County Court. This pamphlet only covers proceedings in Justice Court, so please consult a lawyer for actions in other courts.

After you have written the answer, **you should sign the statement in front of a notary public while swearing to its truth**; the notary will then place this notarial stamp on the document. Usually the courthouse will have a notary, so you can have the document "notarized" and then file it with the Clerk at the courthouse. Otherwise you will have to find a notary public elsewhere (try any bank) and then file the notarized answer at the courthouse. Sometimes notaries charge money, so be sure to call in advance to find out the cost.

When you file the answer, **ask the clerk for two copies, stamped "filed."** You should have a copy for your records and a copy to give your landlord either at or before the eviction hearing. You can file the answer any time before the eviction proceeding, or at the eviction proceeding.

### STEP 5: ATTEND THE EVICTION HEARING.

**FIRST**, at the hearing, **dress appropriately** (no shorts, T-shirts, sandals, off-the-shoulder dresses, hats or short skirts). If you have

a religious belief requiring you to violate this dress code, call and communicate this information to the Court Clerk of Bailiff before the hearing.

**SECOND, bring and documentation that could help you prove your case.** For example, bring cancelled checks or other evidence of rent payments, copies of letters sent to your landlord about the subject matter of the dispute, and confirmations of mailing or receipts that document letters that you sent to your landlord.

You should arrive at the courthouse on the date listed in the summons at least 30 minutes before the proceeding is scheduled to begin. Typically the court will call the case set for hearing that day. This is known as "calling the docket."

If your landlord is not present when the docket is called, you will be given a "default judgement" which means that you will not be evicted. If your landlord is there, your case will be called in turn, usually after the uncontested cases are resolved.

When your case is called, your landlord will have the opportunity to tell the judge why he believes you should be evicted. Afterwards, you will be able to ask your landlord questions about his statements, which is known as "cross-examination." (Tip: begin each question with "Isn't it true that..."). After this cross-examination, you will have an opportunity to tell your side of the story, and then your landlord will be able to ask you questions about your testimony. Depending on what has been said, the judge might give your landlord a chance to testify again. This additional testimony is known as a "rebuttal." When you and the landlord are both finished testifying, the judge will make a decision.

If the judge rules in your favor, you will not be evicted. If the judge rules in favor of your landlord, the court will issue a "removal warrant," which will allow a sheriff, marshal, or constable to evict you from your residence on a specified date. **You have the right to appeal the judge's decision within 30 days.** If you want to avoid being evicted while your case is on appeal, you will need to file an appeal and request a "supersedes bond" before the effective date of the removal warrant. For information on how to do this, see the pamphlet entitled "Appeals Process In Justice Court."

*Disclaimer: The law often changes and each case is different. This pamphlet is meant to give you general information and not specific legal advice. While every effort has been made to be accurate as of the time of writing, no warranties, express or implied, are made regarding the foregoing information. This pamphlet is provided free of charge and no attorney/client relationship is created.*

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*Special thanks to lawfirm of Mintz Levin, Boston MA*



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# HOW TO DEFEND YOURSELF AGAINST EVICTION IN JUSTICE COURT

## AN INFORMATION GUIDE

