



Fact Sheet: How to Answer an Eviction Lawsuit

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This fact sheet gives information on how tenants can protect their rights when their landlord files an eviction lawsuit. An eviction lawsuit is called an “Unlawful Detainer.” Once a landlord files an “Unlawful Detainer” lawsuit, a tenant can prevent being thrown out of their home by formally responding to the lawsuit and filing documents in court. One way to respond to the lawsuit is to complete and file an “Answer.” This fact sheet provides information on:

- what an “Unlawful Detainer” lawsuit looks like,
- how to complete and file an “Answer” form,
- how to fill out other court documents to protect your rights.

For a flowchart on the eviction process in court see:

https://www.disabilityrightsca.org/system/files/file-attachments/Link_1_UD_Process_Flowchart_Final.pdf

Before the Eviction Lawsuit: Notice

Before the landlord starts the Unlawful Detainer process, the landlord needs to give the tenant a written notice. This notice usually tells the tenant that the landlord wants to end the tenancy.

Some notices will allow the tenant to fix a violation of the rental agreement to prevent a lawsuit. For example, the Notice may say that the tenant has an unauthorized pet in the rental unit, and needs to “cure” the problem by getting rid of the pet within 3 days.

A tenant can request a reasonable accommodation for their disability if needed. This accommodation might ask for more time to fix a violation of the rental agreement. Or the tenant might ask for an accommodation related to the violation itself. For example, if the unauthorized pet is an emotional support animal, and the tenant has requested an accommodation, the notice is invalid. See this sample reasonable accommodation letter for more time to fix a violation of the rental agreement. This link should be used as a template and edited to include your individual information.

https://www.disabilityrightsca.org/system/files/file-attachments/Link_2_Template_RA_More_Time_to_Comply_with_Notice.pdf

The Eviction Lawsuit: Summons and Complaint

A landlord can start the Unlawful Detainer (eviction) process by filing and serving an Unlawful Detainer “Summons” and a “Complaint.” The landlord is the “Plaintiff,” the individual or entity filing the lawsuit, and the tenant is the “Defendant,” the individual defending the lawsuit.

The “Summons” notifies the tenant (Defendant) that they are being sued. It also has important information like the location of the courthouse, the name and contact information of the landlord or the landlord’s attorney, and the case number. This information is important for the tenant when completing the “Answer.” The “Complaint” has the reason(s) why the landlord is trying to evict the tenant. Some common reasons why a landlord can evict a tenant is for not paying rent, violating the rental agreement, or doing something that impacts the health and safety of other tenants in the building. The “Complaint” should include a copy of the notice given to tenant before the lawsuit was filed.

The “Summons” and “Complaint” are filed with the court and needs to be served (delivered) to the tenant, so that the tenant knows that there is a lawsuit filed against them.

Responding to the Eviction Lawsuit: The Answer

Once a tenant (Defendant) receives the “Summons” and “Complaint,” the tenant has **5 court days** to file a formal response with the court. One such

formal response is the “Answer.” If a response is not filed, then the tenant will be automatically evicted without a trial.

The “Answer” is the tenant’s (Defendant’s) response to the landlord’s (Plaintiff’s) eviction claims. It is where the tenant can deny any false statements made by the landlord in the “Complaint” and also put in defenses. The following are common defenses a tenant can put in their “Answer.”

1. The Notice is Illegal

In some cases, if the tenant receives a notice that does not provide a reason why the tenancy is ending, the notice and the lawsuit are illegal.

The Tenant Protection Act of 2019 is a state law that requires some landlords to have “just cause” to evict a tenant. The Act lists the specific reasons for which the landlord can evict a tenant. This applies to tenants who have lived in their home or apartment for at least 12 months and live in multi family housing and apartments. Some single-family homes and condos are covered as well. For more information on the Tenant Protection Act of 2019: https://www.disabilityrightsca.org/system/files/file-attachments/Link_3_Tenant-Protection-Act-AB-1482-Fact-Sheet.pdf

Some cities have local eviction protections that provide specific reasons for which the landlord can evict a tenant.

2. The Notice is Defective

The landlord needs to give the tenant a Notice stating why the landlord wants to potentially evict the tenant. If the Notice states that the tenant did not pay rent or violated the rental agreement in some other way, the landlord needs to give the tenant an opportunity to fix the problem. If the notice does not provide this opportunity to fix the problem, then it is defective.

If the Notice claims that the tenant did not pay rent, then the Notice needs to include:

- the amount of rent owed,
- the person to whom the rent should be paid,
- where the rent can be paid,

- and the available days of the week when the rent can be paid.

The notice cannot overstate the amount of rent owed.

If the Notice claims that the tenant violated the rental agreement, then the Notice should state what term of the rental agreement was violated, and how the tenant can fix the problem. The notice should be descriptive enough of the problem so that the tenant knows how to fix it. The violation also needs to be substantial, meaning that a small, minor violation of the rental agreement should not be a reason for eviction.

If the Notice claims that the tenant caused a nuisance or danger on the property, then the Notice needs to describe how the tenant caused a nuisance.

3. Breach of Warranty of Habitability

The landlord has an obligation to maintain the property so that it is safe and livable. For example, the landlord must make sure that the roof does not leak, that the property has adequate heat, and that all the light fixtures are working in proper order. If the landlord does not maintain the property and there are large problems, the tenant can argue that they do not owe full rent to the landlord.

4. Waiver

If the landlord tells the tenant to ignore the notice to terminate tenancy, or accepts rent from the tenant after the notice expires, a waiver defense may apply. This means that the landlord waived their right to evict.

If the landlord knew about violations of the rental agreement and continued to let such violations occur, the tenant can argue that the landlord waived their right to evict.

5. Retaliation

The tenant can argue that the landlord is retaliating against them because the tenant did something to exercise their rights. An example might be a landlord evicting a tenant for reporting the landlord to the building and safety department for code violations.

6. Discrimination, including RA

If the landlord is evicting a tenant based on reasons related to the tenant's race, sex, religion, national origin, sexual orientation, marital status, number of children, disability, or because the tenant is receiving public assistance, the tenant has a defense based on discrimination.

It is discriminatory for a landlord to deny a tenant's request for reasonable accommodation based on disability without a lawful reason.

7. COVID-19

There are new state-wide protections for tenants who cannot pay their rent during the COVID-19 state emergency. Some of these protections can be used as defenses if a landlord files an eviction lawsuit.

Your local city or county may also have protections which can be used as defenses.

Please see our COVID-19 housing page for more details:

<https://www.disabilityrightsca.org/post/coronavirus-housing>

The Court has created an "Answer" form. Tenants can use this form to respond to the eviction lawsuit. For instructions on how to fill out the "Answer" form: https://www.disabilityrightsca.org/system/files/file-attachments/Link_4_UD_105_Instructions.pdf . You can find the blank form here: https://www.disabilityrightsca.org/system/files/file-attachments/Link_5_UD_105_Blank.pdf

There is also an attachment to the "Answer" form that you can include with your "Answer." This attachment has additional legal defenses. Please review the attachment and the defenses carefully and check off the boxes that you think apply to you.

https://www.disabilityrightsca.org/system/files/file-attachments/Link_6_Attachment_3l_Attachment_StateWide.pdf

There is short tutorial video online that shows you how to complete the "Answer" form. <https://www.youtube.com/watch?v=NZNb3WVFo8s>

A copy of the “Answer” needs to be served (delivered) to your landlord’s attorney, if there is one, or your landlord. It can be delivered my mail. Then, you need to file the “Answer” with the court.

Proof of Service

A copy of the “Answer” needs to be served (delivered) to the landlord’s attorney, if there is one, or the landlord. It can be delivered by mail. The service needs to be done by someone over the age of 18 that is not involved in the lawsuit. That person needs to complete and sign a “Proof of Service.”

For instructions how to complete this “Proof of Service” form:

https://www.disabilityrightsca.org/system/files/file-attachments/Link_7_POS_Instructions.pdf . Blank forms can be found here: https://www.disabilityrightsca.org/system/files/file-attachments/Link_8_POS_Form_Blank.pdf

After completing the “Proof of Service’ form, you need to file the form with the court.

Other Forms and Documents That You May Need to File

1. Request for a Fee Waiver

There are court costs that need to be paid for filing documents with the court. If you need a fee waiver, you can request them by filling out the necessary forms.

The “FW-002: Request for Waive Additional Fees” should be completed and filed if you want to request a jury trial.

Instructions on how to fill out these forms can be found here:

https://www.disabilityrightsca.org/system/files/file-attachments/Link_9_Instructions_on_FW_Forms.pdf

Blank forms can be found here:

1. https://www.disabilityrightsca.org/system/files/file-attachments/Link_10_fw001_blank.pdf
2. https://www.disabilityrightsca.org/system/files/file-attachments/Link_10_fw001_blank.pdf

3. https://www.disabilityrightsca.org/system/files/file-attachments/Link_10_fw003_blank.pdf

You do NOT need to serve this document to your landlord or your landlord's attorney.

2. Demand for a Jury Trial

If you want a jury, rather than a judge, to determine the outcome of your case, you can request a jury trial. You can request in your "Answer," or you can file a separate document. We have included a template Word document. **Please fill in the bracketed and highlighted sections and edit before filing with the court.** See template here:

https://www.disabilityrightsca.org/system/files/file-attachments/Link_11_Demand_for_Jury_Trial_Template.docx

You should serve this document to your landlord or your landlord's attorney. See "Proof of Service" section above.

3. Request for Accommodation

If you need a court accommodation for your disability, then you can fill out a court form and file the form with the court. Or you can call your courthouse and ask to speak to an ADA Coordinator or someone who can take down your request for accommodation.

Some examples of court accommodations you can request are a request to continue the trial date because of your disability, a request to have an ASL interpreter for court proceedings, and a request to bring your emotional support animal to court.

The form can be found here:

https://www.disabilityrightsca.org/system/files/file-attachments/Link_12_MC_410_Form.pdf

You do NOT need to serve a copy of this form to your landlord or your landlord's attorney.

What Happens Next?

After the tenant files the “Answer,” either the landlord or the tenant can request a court date. After the request, the court will set a court date and send a notice to the parties.

Please see our referral list for legal assistance or representation on your eviction matter. https://www.disabilityrightsca.org/system/files/file-attachments/Link_13_Housing_Law_List_2020-with_SR_edits.pdf