

APPEALING AN EVICTION

Suit to Evict:

The landlord must deliver to you a **written** *Notice to Vacate* with a move-out date. If you don't move out by the date, the landlord must file an eviction case in Justice Court with a *Justice of the Peace* (a type of judge). A constable will serve you with the lawsuit, and the first page will state the **date of the trial**.

No-show/Default:

If you don't appear at the trial, the landlord wins by a *default judgment*. **Six days after the judgement**, they can ask the Justice Court for a *Writ of Possession* to remove you. The constable will then post a 24 hours' notice to vacate on your front door. After that period, the sheriff and constable can remove you and your belongings.

Stay Pending Appeal:

If you lose the hearing or there is a *default*, you can appeal within five days and **remain in the property while the appeal is pending**. You still must pay rent as set forth below if the eviction is for *nonpayment of rent*. If part of your rent is paid with federal funds (public housing, subsidized housing, Section 8 rental voucher), make sure the Justice Court's judgment states the amount paid by the government and the amount to be paid by you. If this isn't correct, you must file a *written objection* in Justice Court **within five days** of the date of the judgment. This is important because you must deposit your part of the rent while your appeal is pending when the eviction is for nonpayment and you appeal by filing an *Affidavit of Inability to Pay*. You want it to be what you actually owe.

BASICS OF APPEALING AN EVICTION FROM JUSTICE COURT:

Pay attention to deadlines!

Five Calendar Days to Appeal (filed in Justice Court): You have only five days to appeal the Justice Court's decision to the County Court (the next highest court). The five days include weekends and holidays. If the deadline falls on a day that the Justice Court is closed (or is not open until 5:00PM), you can file the appeal on the next day that the Justice Court is open. If you miss the deadline, the judgment stands and the landlord can get an *Writ of Possession* to have you and your belongings removed.

Appeal (filed in Justice Court): You can appeal with a (1) bond or (2) cash deposit OR (3) an *Affidavit of Inability to Pay*.

Appeal Bond or Cash Deposit: A *bond* is a promise to pay the judgment if you lose the appeal. The amount of the bond is set by the Justice Court, usually at two to three times your monthly rent. You can deposit cash or file a bond with the Justice Court. A bond must be signed (*guaranteed*) by you and one or more people (for example who have assets in Texas) who are approved by the Justice Court. If the eviction is for nonpayment of rent and you file an appeal bond rather than a cash deposit, you must then also pay one rental period's rent into the Justice Court's court registry within five days. And you will also have to pay a filing fee for the appeal once it arrives at the County Court.

Affidavit of Inability to Pay: If you can't afford the bond or a cash deposit, you can file an *Affidavit of Inability to Pay* (also called a *Sworn Statement of Inability to Pay*). The Justice Court should provide you a form *Affidavit* upon request. If you appeal with an *Affidavit*, you are not responsible for County Court filing fees. If the landlord disagrees with your *Affidavit*, you must prove in a Justice Court hearing that you cannot afford to pay the cash deposit or file the bond. If you disagree with the Justice Court decision, you can appeal to County Court.

Paying rent into Court Registry:

If the eviction is for nonpayment of rent and you appeal with an Affidavit of Inability to Pay, you must pay one rental period's rent (per the judgment) to the Justice Court **within five days of filing your Affidavit**, and then you must pay rent every rental period (usually monthly) to the county clerk until your appeal is decided. Pay within five days of the date it's due under the lease; if you are late, your landlord can get a Writ of Possession to have you removed. If you file an appeal bond (not a cash deposit) in a nonpayment of rent eviction, you must pay one rental period's rent into the Justice Court's court registry, but you do not have to pay additional rent into the County Court because of the filed appeal bond.

Paying rent:

If the eviction is for some reason other than nonpayment of rent, you should continue to pay the rent to the landlord directly to prevent eviction for nonpayment. If the landlord refuses to accept your rent, you should put it aside and not touch it, because you will still owe it.

Written answer:

If you didn't file a *written answer* to the lawsuit in the Justice Court, you must file one in the County Court within eight days after the County Court receives your case. The Clerk will send you notice by certified mail (check with the Court frequently!). If you don't file a written answer, the landlord may win by default. Your answer can be a simple hand-written letter asking for a trial and giving the reasons why you shouldn't be evicted.

Filing fee:

(County Court): If you did not appeal with an Affidavit of Inability to Pay, you must pay a filing fee to the County Court within 20 days after receiving notice of the fee. If you can't afford the filing fee, you can file an Affidavit of Inability to Pay Costs.

Trial on Appeal:

Your appeal means you will have a new trial in the County Court. The same evidence you used in Justice Court (papers, witnesses, photographs) can be presented again. If you have new evidence, you can also present it. The judge will listen first to the landlord's side and then to your side, and then make a decision about whether to evict. You also have the right to ask questions of the landlord in court.

If you lose the appeal: You have 10 days to file a *supersedeas bond* set by the County Court if you wish to appeal to the court of appeals and remain in possession. The process is complicated; consult a lawyer immediately to discuss your next steps.

Find more help from the Texas Tenant Advisor, www.texastenant.org