

LANDLORD/TENANT EVICTION - FAILURE TO PAY RENT FREQUENTLY ASKED QUESTIONS



Historical Court House
Volusia County, Florida

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Clerk of the Circuit Court, Volusia County

My tenant has not paid rent. What can I do?

If there is a written or verbal lease between you and the tenant to pay rent, and the tenant fails to pay, you must serve the tenant with the proper Notice as required by Chapter 83 of the Florida Statutes. The Clerk has a "Three (3) Day Notice to Pay Rent" form on our website.

****WARNING: THIS MAY NOT BE THE CORRECT NOTICE FOR THE TYPE OF CASE YOU ARE FILING. PLEASE REFER TO F.S. CHAPTER 83. VARIOUS EVICTION NOTICE'S ARE AVAILABLE AT LOCAL OFFICE SUPPLY STORES.**

Refer to Chapter 723 if the rental is part of a Mobile Home Park with more than ten (10) spaces. If the tenant fails to pay or move within the required time limit, a Complaint may be filed for Removal of Tenant for Non-Payment of Rent.

What if the tenant wants to pay the rent after the Notice is served?

Refer to Florida Statutes 83.56 regarding the acceptance of rent after Notice is given.

Are there forms available?

Complaint forms for Non-Payment of Rent may be completed and printed from our website or they may be obtained from one of our civil offices in DeLand or Daytona Beach.

There are two (2) types of Complaint forms for Non-Payment of Rent.

- a. Possession of Property ONLY (Count I)
- b. Possession of Property and past due rent (Count I and II)

How much does it cost to file a Complaint?

**Fees are subject to change by County Ordinances or Florida Statutes. Please refer to the current fee schedule for filing a Complaint. The Sheriff's service fee is \$40.00 per person served in Volusia County. If a Writ of Possession is necessary to gain possession after Judgment, the fee for serving the Writ is \$90.00.

What papers do I need to begin the suit?

At the time of filing, the Complaint, a copy of the Notice, Lease and any other documents important to the case must be provided.

When filing for possession only, in addition to the original Complaint, submit two (2) copies of the Complaint and attachments and 2 stamped, pre-addressed legal envelopes addressed to the Plaintiff. Please provide a number 10 size envelope (4.13 inch x 9.5 inch) for each tenant/defendant.

If you are filing for possession and rent damages, in addition to the original Complaint and stamped, pre-addressed envelopes, you need to submit three (3) copies of the Complaint and attachments for each defendant.

What if I forgot my copies and envelopes with postage?

For a fee of \$5.00 per tenant/defendant, the Clerk will mail copies of the Summons, Complaint and attachments to the tenant/defendant.

Can a property manager file on my behalf?

A property manager may file a complaint for Non-Payment of Rent as long as it remains an uncontested case. The property manager must file his/her authority from you in writing before they can complete, sign and file all pleadings necessary to evict a tenant for Non-Payment of Rent.

What happens after the Complaint is filed?

A summons will be issued to the tenant/defendant directing them to file an answer and pay any past due rent into the registry of the court. If you are asking for the rent and/or damages, an additional summons will be issued requiring an answer to be filed as to the damages.

If the tenant/defendant files an answer, deposits all of the rent and/or files a Motion to Determine the Amount of Rent to be paid into the registry, a court date may be set as soon as possible. A hearing is not guaranteed with payment of rent. Any rent accruing during the pendency of the proceeding must also be deposited.

****An additional service charge of 3% for the first \$500.00 and 1.5% for the balance shall be charged at the time of deposit.**

****Only cash, cashier's checks, money orders or credit card payment will be accepted as payment of rent. **PERSONAL CHECKS ARE NOT AN ACCEPTABLE FORM OF PAYMENT.**

What if the tenant/defendant does not answer?

If the tenant/defendant does not answer or file a Motion to Determine Rent, it will constitute an absolute waiver of defense and a default will be entered without further notice. Landlord/Plaintiff must file a Motion for Default and a Non-Military Affidavit (if not previously filed) before the Default can be entered.

Once Judgment has been entered, you may request a Writ of Possession be issued and forwarded to the Sheriff or have it returned to you for delivery to the Sheriff.

If the Eviction is for a mobile home owned by the tenant, it is governed by F.S. 723, the Writ will not be issued for ten (10) days.

The Writ of Possession will be served by the Sheriff and will allow the tenant/defendant twenty four (24) hours to move. If the tenant/defendant has not vacated within the twenty four (24) hour period, the Sheriff will remove them and contact you regarding taking possession of the property.

Upon filing of a Motion, the Judge may allow the tenant additional time to move. A Writ may not be issued without a court Order or Judgment.

What if I want the tenant/defendant to move for reasons other than non-payment of rent?

The Clerk's Office also has available a Complaint form for *Failure To Comply With Lease*. Proper Notice must be served as required by Florida Statutes, Chapter 83. After proper Notice is given, the Complaint may be filed. A Summons will be issued requiring the tenant/defendant to answer. The procedure for obtaining a Default or scheduling a hearing shall be followed in order to obtain a Judgment. You may request a Writ of Possession in the same manner as previously stated.

The Clerk's Office recommends that you seek advice from an attorney regarding any Landlord-Tenant problems, and that both landlords and tenants become familiar with Florida Statutes, Chapter 83 (Landlord and Tenant) and Chapter 723 (Mobile Home Park Lot Tenancies). If you do not know of an attorney who will file Landlord/Tenant actions, you should contact the Lawyers Referral Service at 1-800-342-8011