# EVICTION PROCEDURES FOR REASONS OTHER THAN NON-PAYMENT OF RENT

# (20 DAY EVICTION)

This handbook has been prepared for you by

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This brochure contains general information on landlord-tenant law and is intended for educational use only. It is not a substitute for legal advice and does not create any attorney-client relationship between the reader and Rhode Island Legal Services, Inc. The reader should get legal advice about his or her own housing problems from an attorney.

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# 1. YOU HAVE THE RIGHT TO REMAIN IN YOUR APARTMENT UNTIL A JUDGE ORDERS THAT YOU MUST LEAVE

When you rent an apartment, you have the right to stay there until your landlord gets a court order stating that you must leave. It is illegal for the landlord to try to force you out of the apartment by changing the locks, shutting off the gas or electricity or by taking other similar actions to force you to leave. This is called a "self-help eviction". If the landlord does this, you should immediately call the police. They should be willing to protect your right to remain in the apartment unless the landlord has a court order for your eviction.

# 2. REASONS YOUR LANDLORD MAY USE TO ASK YOU TO MOVE

Under Rhode Island law, if you do not have a lease, a landlord does not need to have any reason in order to ask you to move from your apartment. Even if you have never been late with your rent and are the best tenant in the state, your landlord can still ask you to move.

If you have a lease, your landlord must prove that you have violated one or more of the terms of the lease before you can be evicted.

# 3. YOU MUST RECEIVE A WRITTEN NOTICE TO QUIT

In all evictions, except for non-payment of rent, the landlord must first send you a written notice to quit, which asks that you move out of your apartment by a specified day. If you have a written lease, the notice should state why the landlord thinks that you have violated the lease. If you do not have a written lease, the notice does not have to give any reason for the eviction.

In order to be proper, the written termination notice must i) clearly say your time in the apartment will end, ii) advise you to move out on a specific day and iii) be sent far enough in advance. A sample notice that meets all legal requirements is attached to this brochure. These requirements are discussed in more detail below.

#### a. Specific Date to Move

The written notice must specify the date on which you must move out of your apartment. In order to be proper, the date listed must be the date that you normally would pay rent. That date is also the same day after the last day in your current rental period. For example, if you pay rent on the first day of the month, the notice must advise you to move on the first day of the month.

#### b. Length of Notice

The notice must be sent to you as far in advance as required by law. If you pay rent monthly, you must be given a thirty-day notice of termination. If you pay rent weekly, you must be given a ten-day notice of termination.

# 4. STARTING THE COURT CASE

If you have not moved by the day specified in the notice, the landlord may begin court proceedings to evict you. The landlord may not force you to move or change the locks without first going to court.

You will be given a paper called a Summons and another called a Complaint by a sheriff or constable. You will have 20 days from the day you received these papers to give the court a paper called an Answer. A blank Answer will be delivered to you with the Summons and Complaint.

#### IT IS VERY IMPORTANT FOR YOU TO GIVE AN ANSWER WITH THE COURT SO THAT YOU WILL BE INFORMED OF THE TRIAL DATE. IF YOU FAIL TO FILE AN ANSWER WITHIN 20 DAYS, YOU MAY AUTOMATICALLY LOSE THE CASE.

The blank Answer that will be delivered to you contains a listing of the most common defenses. A brief description of some of these defenses is listed below in the section labeled "Reasons to Stop the Eviction". Put a check mark in the box next to any of the listed defenses that you feel apply in your case. If you feel you have any other defenses to the eviction, you should also list them in your answer in the space provided.

File the original of the Answer with the court and send a copy to the landlord's lawyer or your landlord if your landlord is representing herself or himself. Be sure to keep a copy for yourself. In order to obtain, as much time in your apartment as possible, you might want to wait and file your answer between the 15th and 19th day after you received the Summons and Complaint.

After you file your Answer, the landlord's lawyer will ask the court to schedule a trial on the eviction. As long as you have filed your answer, you will get notice of the trial date. Depending on how quickly the landlord acts, the trial can be held as quickly as one week after you file your answer.

# **5. REASONS TO STOP THE EVICTION**

There are several reasons you might try to use to stop the eviction. The legal term for such reasons is "defenses". The following are examples of some defenses.

#### a. Retaliatory Eviction

The landlord is evicting you because you called the minimum housing or "code enforcement" office, organized a tenants' union, or took some other action to protect your rights as a tenant. This is called a "retaliatory eviction" and is illegal under state law.

#### b. Discrimination

the landlord is evicting you because of your race, sex, religion, sexual orientation, physical

handicap, or other discriminatory reason. It is also illegal to discriminate against people because they have children.

#### c. Improper Procedure

The landlord failed to follow the proper eviction procedure. For example, the written notice to quit was no good because it did not give you the proper amount of time or did not state the date on which you were required to move.

Generally speaking, if you feel that there is something about the eviction that is unfair or wrong, you should explain these reasons in your answer and tell them to the judge in court.

### 6. WHAT HAPPENS AT COURT?

Court starts at 9AM when the judge calls the list of cases to be heard that day. Listen carefully for your name. Stand and tell the judge you are there when your case is called.

After your case has been called, you can go out to the hallway and try to settle your case with the landlord's attorney (or with the landlord if he/she doesn't have an attorney). If you can agree to a settlement it must be put in writing and signed by you, your landlord (or landlord's attorney) and the judge. If you think you settled the case DO NOT LEAVE THE COURTHOUSE unless you have a copy of a signed settlement agreement, also called a **stipulation**.

Do not be pressured into making an agreement that you do not like or cannot keep. You can be evicted very quickly if you do not keep your agreement. You have the right to have your case heard by the judge. Do not sign a stipulation you do not understand. If you are unsure about the meaning of the stipulation, ask the judge to explain it to you. Also, if you feel you have a defense to stop the eviction, you may not want to agree to a stipulation because that ends the case without a trial. (See #5 above for some defenses.) A stipulation is useful if you do not want to fight the eviction because you just need some additional time to move out. This is called a Move-out stipulation. A sample move out stipulation is attached at the end of this brochure.

With a move-out stipulation you agree to move out of the apartment by a certain date. Once you agree to move, the date is **set in stone and can be changed only if the landlord agrees to change it.** If you do not move out by the agreed upon move out date, the landlord can get an execution and move you out without even having to go back to court. There are many reasons your landlord might agree to a move out stipulation. Sometimes the landlord will give you time to move out in exchange for your promise to move and not appeal the case. In exchange for your agreement to move, your landlord might also agree to forget about any rent you might owe and/or allow you to stay rent-free (called "use and occupancy payments") until the move-out date. This gives you time to save up money for your next place.

If you sign a stipulation that you later regret signing, you have only five days from the date the judge signs the stipulation to appeal the case to Superior Court. If anyone tells you that a stipulation cannot be appealed, tell them there is a Supreme Court case that allows you to appeal called Harris v.Turchetta R.I. 622 A. 2d 487, 490 (1993). Rhode Island Legal Services has another brochure with step-by-step instructions that walk you through the appeals procedure.

#### 7. THE JUDGE'S DECISION

If you do not reach agreement with the landlord, the judge will hear the case and decide whether the eviction should be allowed, and if so whether to give you extra time to move out. The judge will also decide how much rent is due, if any.

The landlord will go first and present his or her case. The landlord will have to prove to the judge that you received a proper notice to quit and that the proper procedures were followed. You can ask the landlord questions about the case, if you want.

Next it is your turn. If you have a defense, now is the time to tell it to the judge.

If you do not have a defense, but you need time to find a new apartment, you should explain this to the judge at this time. Be prepared to describe your efforts at finding a new apartment, and any specific reasons that you may have for needing more time, e.g., children in school, new child, etc. The legal language is to ask the judge for a "stay" of the eviction. The judge may require that you pay rent for the period of time in which you are allowed to remain in the apartment.

#### 8. PROCEDURES AFTER THE TRIAL

If the judge allows the eviction, the landlord can have you evicted on the sixth day after the trial, unless the judge has given you a stay. If the judge has given you a stay, you cannot be evicted until the day after the stay period has run out.

If you are still in the apartment either six days after the trial, or after the stay has run out, your landlord can have the sheriff or constable force you to leave the apartment and place your property into storage. You may not receive any prior notice of this event.

If your property is placed into storage, you will have to pay the moving and storage costs to obtain the return of your property. These costs typically run between \$1,000 - \$2,000, and are paid to the landlord's attorney or the sheriff. You do not have to pay back rent in order to get your property back.

You should avoid having your property placed into storage because of the expense involved.

If you receive AFDC, GPA or SSI, the welfare department can pay for the cost of moving your property before it is placed into storage. You should contact your welfare worker to arrange for the move as soon as you know that you may need assistance.

#### 9. APPEAL PROCEDURES

In the event that the Judge decides in your landlord's favor, you have the right to file an appeal of the case from District Court to Superior Court. You have only five (5) days after the hearing in District Court to file an appeal. During that five-day period, your landlord cannot take any steps to evict you. After the fifth day passes, if you are still in the apartment but have not filed an appeal, you run the risk of having the sheriff or constable come to the apartment and change the locks and place your belongings into storage.

If you wish to file an appeal, you can do so only if you have a defense to the eviction. It costs approximately \$135 to file an appeal (the clerk will give you the exact figure). If you cannot

afford the fee, you can ask the judge to "waive" it, meaning that the judge has decided that you don't have to pay the fee because you don't have the money and that you have a defense to present to the court.

If you file an appeal, you are required to pay your rent as it comes due each month as a condition of keeping your case alive until a trial is held in Superior Court. (You do not need to pay the back rent to preserve the appeal.) If for any reason you fail to pay the rent as it comes due on the date it is due, your landlord can have your appeal dismissed and you will be evicted from your apartment. You will receive notices in the mail from the Superior Court about the trial date in Superior Court. Rhode Island Legal Services has another brochure that has step-by-step instructions on how to file an appeal.

# NOTICE OF TERMINATION OF TENANCY R.I.G.L. 34-18-37

Date of Mailing: (insert date)

TO (tenant name and address)

You are hereby directed to vacate and remove your property and personal possessions from the premises located at \_\_\_\_\_\_ (address of premises) and deliver control of the premises to the landlord/owner on the first day after the end of your current rental period, namely \_\_\_\_\_\_ (insert date)

This notice is given for the purpose of terminating your tenancy. You must continue to pay rent as it becomes due until the date indicated above. If you fail to pay that rent, a nonpayment eviction action may be instituted against you.

If you fail to vacate the premises by the date specified, an eviction may be instituted against you without further notice. If you believe you have a defense to this termination, you will be able to raise that defense at the court hearing.

(signature of landlord/owner or landlord's/owner's attorney) (print name and address of landlord/owner or landlord/owner's attorney)

I certify that I placed in regular U.S. mail, first class postage prepaid, a copy of this Notice, addressed to the tenant, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(landlord/owner or landlord/owner attorney's signature)



#### STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS MOVE OUT STIPULATION

□ SUPREME COURT □ SUPERIOR COURT □ FAMILY COURT □ DISTRICT COURT

COUNTY/DIVISION

1.	2. CASE NO.
Plaintiff/Landlord <sup>VS.</sup>	
Defendant/Tenant	

In the above-entitled cause it is agreed that the following entry be made:

JUDGMENT FOR PLAINTIFF FOR POSSESSION. DEFENDANT AGREES TO VACATE THE PREMISES

ON OR	BEFORE	IF DEFENDANT FAILS TO VACATE BY	

THAT DATE EXECUTION MAY ISSUE THE FOLLOWING DAY WITHOUT NEED FOR NOTICE OR HEARING.

PLAINTIFF WAIVES ANY AND ALL CLAIMS TO BACK RENT AND/OR USE AND OCCUPANCY PAYMENTS FOR

OCCUPANCY OF THE PREMISES THROUGH

DISMISSED WITH PREJUDICE.

. SAID CLAIMS ARE

Plaintiff's Attorney (Print Name) Registration No. Signature PRO SE Defendant (Print Name) Registration No. Signature Date Judge J-7 (Rev. 9/89)