

Small Claims Court in Erie County

What is Small Claims Court?

Small Claims Court handles cases with claims of \$3,000.00 or less (\$5,000.00 or less in Small Claims Court in Buffalo). The judge in Small Claims Court only has the power to award money judgments.

How can I use Small Claims Court?

You can use Small Claims Court for many different types of cases. Some examples are given below:

- Disputes over money owed for security deposits, utility bills or rent;
- Claims for the value of damaged, lost or destroyed personal property;
- Money damages resulting from an unlawful eviction.

Small Claims Court is not a separate court, but part of your local City, Town, Village or Justice Court.

Do I need a lawyer to go to Small Claims Court?

No. Lawyers are not necessary in Small Claims Court. You can use a lawyer if you want to.

How do I start a case in Small Claims Court?

You may only sue in the Small Claims Court in the county where the person you are suing ("the defendant") lives, has a place of business, or has a regular place of employment. This usually means you can use the Small Claims Court in Erie County.

Call the Small Claims Court to find out how to file your claim. The number for Small Claims in Buffalo is 845-2663. Look in the blue pages of the phone book for the number to Small Claims Court in other areas of Erie County. If you are under 18, an adult must file for you. The filing fee is \$15.00 for claims under \$1,000.00. The filing fee for all claims over \$1,000.00 is \$20.00.

What should I take when I go to file my case?

When you go to file, make sure you have:

- the name and the mailing address of the person you are suing (the defendant)
- the reason you are suing
- the date the problem occurred
- the amount the defendant owes you
- any proof you have, such as letters, etc., showing your attempts to settle the dispute.

You will be given a hearing date. The court will contact the person you are suing.

Can the person I am suing try to sue me?

Yes! The person you are suing (the defendant) may decide to sue you for money owed from the same event. This is called a "counterclaim". Before you sue someone in Small Claims Court, you should think carefully whether that person could

prove that you owe them even more money. In Small Claims Court the limit on a counterclaim is \$3,000.00 (\$5,000.00 in Buffalo Small Claims Court).

What should I do if the case is settled before the hearing?

If you and the defendant settle your case before the hearing, put your agreement in writing, and tell the Small Claims Court clerk before the hearing date.

What do I do to prepare for the hearing?

To prepare for the hearing, plan what you want to say and show. If there are any witnesses, ask them to go to the hearing. If they will not go, ask the Small Claims Court clerk for a subpoena for the witness. You can ask the clerk for a subpoena when you go to court to file the claim or any time before the date of trial. The clerk will tell you how to serve the subpoena.

Decide what you need to bring to the hearing to prove your case. The following are examples of some evidence you might need for different kinds of cases:

My landlord won't return my security deposit.

If you sue your landlord because your security deposit was not returned, you must prove first how much security you paid. Then you must show that you do not owe your landlord for rent or damages if your landlord says you do.

- Bring your lease or rental agreement if you have one along with any receipts you have that show how much security deposit you paid.
- If your landlord might say you damaged the apartment, bring photographs or witnesses who can talk about the condition of your apartment on the day you moved in and on the day you moved out.
- If your landlord might say you moved out owing rent money, bring rent receipts to show that you paid your rent.

My landlord has kept my property.

Bring a list of your lost possessions and what they are worth. If possible, bring receipts or estimates that show how much you spent for your things. You can also bring pictures or witnesses who can describe what your possessions looked like and how much they were worth.

If you believe that your landlord still has your possessions, tell the judge. You must prove that your landlord took your possessions, what those possessions were and how much they are worth.

I didn't pay my rent because the landlord refused to repair my apartment.

If your landlord has refused to make repairs, you may be able to get money back from the rent you have already paid. This is called a "rent abatement". If you want a rent abatement, call us and we will send you more information on how to prove your case.

Can I ask for a jury?

No, but if the defendant wants one, he or she may request one.

What will happen at the hearing?

Both sides tell their story to the judge. The judge will probably ask questions. You and the defendant will have a chance to question each other and any witnesses. Don't try to act like a lawyer. Tell your story clearly and honestly. Show the judge any evidence (letters, bills, etc.) you have. Don't interrupt or argue with your opponent.

When will the judge or hearing officer make a decision?

The judge or hearing officer will make a decision after listening to both sides. The judge may tell you the decision in court or you may have to wait for it in the mail.

What happens if I miss my court date?

Your claim will be dismissed.

What happens if the defendant misses the court date?

If the defendant doesn't show up, you will most likely win by default.

Can I appeal if I lose?

If your case was heard by a hearing officer, you may demand a *trial de novo* (a new trial). Your request for a new trial must be made within 35 days from the time you receive the Court's decision. You will have to pay a filing fee of \$75.00 for the *trial de novo*. The case will then be heard by a judge.

If your case was heard by a judge the first time, you may need an attorney to appeal. You must file a notice of appeal and pay the required fee within 30 days after the judgment is entered. Technical mistakes would not be grounds for reversal of the decision. The court on appeal will only consider whether substantial justice was done.

If you are interested in requesting a trial de novo or in appealing a Small Claims Court decision, you should contact the Small Claims Court clerk for more information.

How do I collect my money if I win?

If the defendant has little or no money or property, it may be impossible. In other cases, if the defendant does not pay you in a reasonable time, go to the Clerk of Small Claims Court for help. Take with you any information you have about the defendant's bank accounts, property and employment. You will probably be directed to the Marshal's office or Sheriff's Department for assistance. There will be a fee for their services.

If I receive public benefits, will my Small Claims Court award affect my eligibility?

Yes. If you are successful in Small Claims Court, and you receive an award that is more than \$2,000.00, AND you actually collect more than \$2,000, you may become ineligible for some types of governmental programs including but not limited to food stamps, Medicaid, SSI, and cash assistance. For more information about this, you should contact the Public Benefits unit at Neighborhood Legal Services.

What should I do if I am sued in Small Claims Court?

- Do not ignore a notice saying you are being sued, even if you think you have done nothing wrong.
- If you don't know why you are being sued, call the person who sued you.
- If you settle, put it in writing; if not, go to the hearing ready to tell your side of the story.
- If you can't go to the hearing on the day you are supposed to, call your opponent and the Small Claims Court beforehand to change the date.
- If you think your opponent owes you money, call the Small Claims Court clerk before the hearing for information on how to file a counterclaim.
- You may request a jury. Call the Small Claims clerk in advance to request one. There will be some costs involved.