

Defending Yourself In An Eviction Proceeding

Going to court to defend yourself in an eviction proceeding can be a stressful experience. Preparing before you go increases the chance that you will win your case and be able to continue your tenancy. The following is a list of defenses you can use to try to get the judge to throw the landlord's case out.

Before you go to court, you should read through these defenses to see if any apply to your case. Bring to court any evidence you have to support your case. It is unlikely that you will be given an adjournment to get receipts, notices from your landlord, building inspection reports, etc., so have them with you in court. If you have witnesses, bring them to court with you. The judge will not accept written statements from your witnesses. If you owe your landlord money, bring what you owe to court either in cash or in a money order. You should also bring \$45 extra to cover statutory court costs.

Read through the defenses that apply to your case (either nonpayment or holdover and the general defenses that follow). If any of them apply to you, as soon as you can after your case is called, say to the judge "I think this case should be dismissed because...." and then explain, using the defenses listed below, what your landlord failed to do and why the eviction case against you should be dismissed.

GENERAL DEFENSES

The following defenses apply to all eviction proceedings, both nonpayment cases and holdovers. Read through them to see whether your landlord followed all the necessary requirements.

Who served you?

It is unlawful for your landlord to serve you the court papers himself. Someone else must do it. If your landlord gave you your court papers, say, "Judge, I was not properly served and this case must be dismissed."

How were you served?

The papers can be served:

1. personally (someone hands them to you); OR
2. by giving them to someone in your house or putting them on your door and then by sending them to you BOTH by regular AND certified mail.

Is the owner of the property or the owner's attorney present?

Managers or other agents of the landlord cannot appear alone in court for the landlord. This is considered the unauthorized practice of law. If the owner of the property or his or her attorney is not in the courtroom and only the manager or someone who works for the landlord is, tell the judge.

Were you living in the property when you got your court papers?

If you had already moved by the time you got your court papers, ask the judge to dismiss the case.

NONPAYMENT CASES

The following defenses apply only to cases where your landlord is bringing you to court for not paying the rent. Look in the upper right-hand corner of your court papers and look to see whether it says 'nonpayment' or 'holdover' or if the box next to one of these words is checked. If the nonpayment box is checked, you are going to court for a nonpayment proceeding.

Is your landlord asking for any money other than rent?

Late fees, security deposits, and many other charges may only be asked for in a nonpayment eviction if there is a written lease that says that these items will be considered rent if not paid. If your landlord is asking for any unpaid amounts besides rent, say: "Judge, my landlord is asking for money in addition to rent. I do not have a lease agreement OR My lease agreement does not say he can do this. For that reason, he cannot ask for money in addition to rent in this proceeding." (This does not mean that the judge will dismiss your case. The judge should limit the case to the rent money you owe.)

Is the amount due and period for which rent is owed clearly stated?

Your landlord cannot simply say that you owe \$1525 in back rent. The landlord must clearly set out how the amount due was calculated by listing all the amounts that you owe and what they are owed for. If your court papers do not specify which months you owe rent for and exactly how much is due for each of those months, say: "Judge, New York State law requires that the amount that is due and the period for which it is due be explained clearly in the court papers. My landlord did not do this and this case should be dismissed."

Did your landlord demand the rent either verbally or in writing?

If your landlord did not either 1) ask for the rent or 2) give you a note asking for rent or put a note on your door, and send copies by both regular and certified mail, tell the judge "I did not get a proper pay or quit notice and the case should be dismissed."

Is the proceeding premature?

Was the petition filed before the pay or quit ran out or before rent was due? If it was, the case should be dismissed or thrown out. Tell the judge: "This proceeding is premature because my rent is not due until ____ OR this proceeding is premature because the pay or quit notice says I have until ____ to pay my rent and I received my court papers before that day."

Is your landlord attempting to collect a rent increase?

You may not be evicted in a nonpayment proceeding because you did not pay a rent increase that you did not agree to pay and have never paid. Tell the judge: "My rent is only \$____. I have never paid \$(the increased amount) and my landlord cannot ask for that amount in this proceeding." (This does not mean that the judge will dismiss your case. The judge should limit the case to the rent money you owe)

Are there conditions that affect your life, health or safety?

If you did not cause these conditions and your landlord knows about these unsafe conditions, the judge should reduce the amount of rent you owe. Say to the judge: "I want to raise a 'warranty of habitability defense' and I want a 'rent abatement'" (i.e., money off the rent). The Judge should give you an opportunity to describe the dangerous conditions in your apartment and will give your landlord the opportunity to tell his side of the story. Neighborhood Legal Services can provide you with more information about how to prepare for a warranty of habitability hearing. You can call us at 585-343-5450 if you would like us to send you this information.

HOLDOVER CASES

The next groups of defenses apply to holdover cases. Your landlord may bring a holdover proceeding against you if you were given a 30 day notice to vacate, if you broke your lease agreement in some way (perhaps by violating a rule) or if your lease came to an end and you did not move. Usually, your landlord can give you your notice of termination orally (verbally) or in writing.

Did the landlord give you a timely notice?

If your tenancy began on the first of the month and you have a month-to-month tenancy, your landlord must give you notice before the first day of the month that your tenancy will end the last day of the month. If your landlord did not give you this amount of time, say: "Judge, this case should be dismissed because I have a month-to-month tenancy and my landlord did not give me timely notice."

Did the landlord give you clear and unequivocal notice that you had to move?

The landlord's notice to you must tell you clearly that you have to move. If the landlord gives you a choice, for example, "Unless you stop parking in my spot in the driveway you have to move at the end of the month," you have not received unequivocal notice. If your landlord did not give you definite notice that you had to move, say: "Judge, my landlord never gave me a clear and unequivocal termination notice and this case should be dismissed."

Did you get court papers before the time for you to move arrived?

Your landlord can not start the court proceeding against you before the date you were supposed to be out. If you got your court papers before the day you were supposed to move, say: "Judge, this proceeding is premature and should be dismissed."

Did your landlord take money from you, from the Department of Social Services or from the Housing Choice Voucher (Section 8) Program?

If your landlord takes rent from you or on your behalf after the date you were supposed to move and before you received the court papers for the current month's rent, then your landlord has started your tenancy again. Tell the judge, "My landlord accepted rent from me (or from Section 8 or from the Department of Social Services) after the day (s)he told me to move and before I got the court papers. This eviction case should be dismissed."