

SUPERIOR COURT
COUNTY OF LASSEN
STATE OF CALIFORNIA
ACCESS TO JUSTICE CENTER
145 SOUTH LASSEN STREET
SUSANVILLE, CA 96130
530-251-8353

- EVICTIONS -
(UNLAWFUL DETAINER)
TENANT INFORMATION

A lawsuit to evict a tenant is called an **unlawful detainer**. The eviction process begins when the tenant is given a notice from the landlord to move out. If the tenant does not move out in time, the landlord can file a lawsuit. Eviction papers the landlord serves on the tenant are called the “Summons” and “Complaint.”

The Summons:

- Names your landlord or manager as the “Plaintiff”, the person who is complaining;
- Shows your case number;
- Names the Plaintiff’s attorney, if there is one;
- Sometimes names people as defendants, even if they don’t live there;
- Everyone whose name is on the Summons as a defendant must file papers or they risk having a court judgment against them.
 - The Summons says that you have 5 calendar days to file your papers. See “How to count the 5 days” below.
 - “File your papers” just means “take your papers to the court and give them to the court clerk.”
 - The Summons says that you must type your papers. Lassen County only requires that you print neatly in black or blue ink.
 - Use the information on the Summons to complete your papers. If there’s a lawyer, you send your papers to the lawyer, not directly to the Plaintiff/Landlord.

The “Complaint”

- Is the form for the landlord to tell his/her side of the story, including the reason for the eviction;
- Asks the judge to order you to move out;
- May also ask the judge to order you to pay back rent;
- May ask for “Damages”. This means “rent for the days after the eviction notice expired.” It does not mean that you are accused of causing any damage.

If you are sued, you have several choices:

1. You can defend yourself by filing an “Answer” to the lawsuit in the Superior Court Clerk’s office. The answer is the only way for tenants to tell their side of the story, state their legal defenses, and get their day in court. To see if you have a legal defense, read the packet Legal Reasons Why I Should Not Be Evicted.
2. You can choose not to defend yourself and allow the landlord to get a default judgment against you. A default means that you failed to answer the complaint in the time required by law. If you allow a default to be entered against you, you cannot defend yourself in the case, and you may be forced to move from the property as early as 11 days from when you received the complaint. **WARNING:** a judgment against you could show on your credit report and make it more difficult for you to rent another place.
3. You can try to reach an agreement with the landlord. If you reach an agreement **BE CAREFUL** to make sure the landlord dismisses the lawsuit before the time is up for you to file your answer. Otherwise, a default may still be entered against you. You can make sure the case is dismissed by calling the court clerk. You will need to give the case number to the file clerk.

If You Want To File An Answer To The Lawsuit, All You Have To Do Is:

1. Fill out 4 forms
 - a. Application for Waiver of Court fees and Costs
 - b. Order on Application for Waiver of Court Fees and Costs
 - c. Answer – Unlawful Detainer
 - d. Proof of Service by Mail
2. Make two copies
3. Send copies to the landlord or landlord's attorney
4. File the papers with the Court

Counting The Time to File Your Answer

You have five (5) days to file your Answer in court after you receive a copy of the lawsuit filed against you. The 5 days includes Saturdays and Sundays. Do not count the day you were given the lawsuit, but begin counting with the next day. If the 5th day falls on a Saturday, Sunday or holiday, you can file your answer on the next business day.

What If I Missed the 5-Day Filing Deadline?

If you do not file an Answer by the 5th day, on the 6th day, the landlord can file a Request to Enter Default and WIN THE ENTIRE CASE BY "DEFAULT" and you will not be allowed to present a defense to the case. If your land lord has not filed a Request to Enter Default, you can still file your Answer even after the 5th day.

Where Do I Get The Forms?

You can get the forms from the Access to Justice Center at 145 South Lassen Street, Susanville or on-line at www.courtinfo.ca.gov.

What Does It Cost to File An Answer?

Each person named as a defendant will need to file an Answer. The court filing fee is \$180.00 per defendant. If your income is below a certain level, you can apply for a waiver of the filing fee. You can get a Fee Waiver Application from the Access to Justice Center at 145 South Lassen Street, Susanville, CA.

How do I “Serve” the Answer?

To “serve” the Answer, you will need to have a person over the age of 18 years old that is not a party to the case mail a copy of the Answer to the landlord or landlord’s attorney at the address listed on the Complaint. The “server” will then need to complete a Proof of Service form and file it with the Clerk’s office with the original Answer.

Where Do I File My Papers?

You must file your papers at the Clerk’s Office located in Department 2 of the Lassen Superior Court. The office hours are 7:30 to 5:30 Monday thru Friday.

What Happens After I File?

The Court will send you notice of the date, time and place of trial. It is very important to give your current mailing address on your Answer.

COMMON LEGAL REASONS FOR NOT EVICTING A TENANT (AFFIRMATIVE DEFENSES)

Although many tenants believe they have a moral defense for not paying rents, such as losing a job or a spouse, the law only recognizes certain kinds of defenses in eviction cases. Affirmative defenses are defenses which the law recognizes which raises facts not stated in the Complaint. Affirmative defenses must be stated in the Answer in order to be considered at trial. The person who states the defense has the burden of proving it at trial. The following are common defenses:

1. Breach of the warranty to provide habitable premises.

Every property rented for people to live in has to meet certain minimum health and safety standards. The standards for keeping a property safe and sanitary are called the warranty of habitability. You have the right to a secure property free of leaks, with working plumbing, safe gas and electricity, heat, hot and cold running water, clean and safe common areas (areas shared with other such as sidewalks and laundry rooms), and free of rats, mice roaches or other butts. If the health or safety problem was caused by normal wear and tear, and not by you or your guests, and if you told the landlord about the problem and he or she failed to make the repairs in a reasonable time, you may be able to withhold the rent money until the repairs are made. If you do withhold the rent, you should have the money when you come to trial.

(For researching the law for this defense, you can find it in the Code of Civil Procedure (CCP) section 1174.2 and Civil Code (CC) sections 1941-1942.5; *Green vs. Superior Court* (1974) 10 Cal.3d 616, 631-632, 111 Cal.Rptr. 704)*

2. Deducting Needed Repairs from the Rent.

If the landlord does not maintain the property, and you need to make repairs yourself, you must first give your landlord written notice of the things to be fixed, and your intent to fix them and subtract the costs from your next months rent; if the repairs are not made in a reasonable time. You must allow your landlord a “reasonable” time to make the repairs before you do them yourself and deduct the cost. A “reasonable” time is usually considered 30 to 60 days, unless the problem creates an emergency situation in which health or safety are put at risk if not repaired immediately.

(For researching the law for this defense, you can find it in Civil Code (CC) section 1942.)

3. Landlord’s Refusal to Accept the Rent.

If your landlord gave you a 3-Day Notice to Pay or Quit, and you tried to pay your landlord the full amount of rent due before the end of the three (3) days, but the landlord refused to accept it, you can check box “c” and state the date when you tried to pay the rent. **You should have the rent money with you at the trial.**

4. Landlord Waives or Cancels the Notice to Quit.

If your landlord tells you to ignore the notice to quit, or accepts rent from you after giving you the 3-day notice to quit, this defense may apply. If the landlord gave you a 30 day notice to quit, and later accepted rent to cover a period of time after the 30 days, this defense may also apply. If you use this defense, save the rent money in a separate bank account and leave it there until your trial. Having the rent money will help show the judge your good faith, and will help you to settle the case, or make it easier if you have to move.

(For researching the law for this defense, you can read the case of *EDC Associates vs. Gutierrez* (1984) 153 Cal.App.3d 167, 170, 200 Cal.Rptr. 333

5. Retaliatory Eviction

If you think the landlord is evicting you to get even because you exercised your legal rights, this defense may apply. An example might be a landlord evicting a tenant for reporting the landlord to the building and safety department for code violations.

(For researching the law for this defense, look at Civil Code (CC) section 1942.5© and the case of *Barela vs. Superior Court* (1981) 30 Cal.3d 244, 249, 178 Cal.Rptr. 618.)

6. Discrimination

If the landlord is evicting you for reasons which are not related to how good a tenant you are, you may have a defense based on discrimination, such as race, color, sex, religion, national origin, marital status, etc. A landlord cannot evict or refuse to rent to a tenant based on discrimination. Besides being a defense to an eviction, housing discrimination is against the law, and the landlord can be sued for damages in a separate case.

(For researching the law for this defense look at Civil Code section 51, et seq.: *Abstract Investment Co. vs. Hutchinson* 1962) 204 Cal.App.2d 242, 255, 22 Cal.Rptr. 309; *Marina Point, Ltd vs. Wolfson* (1982) 30 Cal.3d 721, 724-726, 180 Cal.Rptr. 496.)

7. Rent Control

This defense only applies in those areas where local rent control laws are still enforced, such as certain mobile home parks and federal housing projects.

8. Acceptance of Rent After Expiration of Notice

This defense might apply if the landlord has accepted rent from you after the 3 or 30 day notice given to you by the landlord has expired.

Other Defenses

If you have any other defenses which are not listed on the answer form, you can check box “(l)” and state your defenses in section 3(j) at the top of page 2 of the form. Some other defenses which might apply are the following:

1. Material breach of Rental Agreement by Landlord

The landlord violated the rental agreement in a material way. This means that the landlord failed to do something important required by the rental agreement.

(For researching the law for this defense, read the case of *Green vs. Superior Court* (974) 10 Cal.3d 616, 634-635, 111 Cal.Rptr. 704).

2. Defective Notice

If the landlord gave you defective notice of the eviction, either because it was not in writing or was not given to you in the way the law requires, or because the 3 day notice did not state the exact amount of rent due or the place to pay the rent, this defense might apply.

3. Ownership of the Property in Dispute

If the eviction lawsuit is brought by a lender who loaned money to a homeowner, and not between a landlord and tenant; and an issue in the lawsuit affects rights to ownership of the property, this defense might apply.

(For researching the law for this defense, read the case of *Mehr vs. Superior Court* (1983) 139 Cal.App.3d 1044, 1049, 189 Cal.Rptr. 138.)

4. Subdivision Map Act

If the landlord violated the Subdivision Map Act by renting the property, this defense might apply.

(For researching the law for this defense, look at Government Code section 6410-66499.57 and read the case of *Adler vs. Elphick* (1986) 184 Cal.App.3d 642, 645-646, 299 Cal.Rptr. 554.)

5. Offset

If you previously overpaid the rent and are entitled to a refund, you may claim a defense called a set-off or offset, which means you can ask that you receive a credit on your rent for the amount of money the landlord is supposed to refund to you for earlier overpayment of rent.

(For researching the law for this defense, read the case of *Minelian vs. Manzella* (1989) 215 Cal.App.3d 457, 463-465, 263 Cal.Rptr. 597.)

WARNING

There may be other affirmative defenses which the law recognizes, but are not listed here. An attorney can best inform you which affirmative defenses are appropriate for you to raise based on the facts of your case. You are strongly urged to talk with a private attorney, if possible, to evaluate the facts of your case and advise you which affirmative defenses you should include before filing your answer.

PREPARING YOUR CASE FOR TRIAL

1. Determining the Trial Date

Eviction cases are given priority on the court calendar. This means they are scheduled for trial much faster than other types of civil cases. The court will send you notice of the trial date at the address you put on the top of your Answer. If you have not received notice of a trial date within two weeks after you file your Answer, you should call the court. **BEFORE YOU MAKE THIS CALL, LOOK AT THE COPY OF THE COMPLAINT OR ANSWER AND BE PREPARED TO GIVE THE CLERK YOUR CASE NUMBER.** The case number can be found in a box located midway on the right side of the form. You will need to give the case number to the clerk in order for the court to tell you whether a trial date has been set. As soon as you know the trial date, make it on your calendar immediately so you do not forget to appear in court.

2. Discovering What Evidence the Landlord has Against You

Usually you know what the landlord is claiming because you can read it in the Complaint, and you know how to prepare your defense to what you are accused of having done or not done. Sometimes, you may not know the basis of the eviction case, and you need to find out before the trial so you can prepare your defense. Certain methods can be used to discover the other side's evidence. These methods are called discovery. If you need to do discovery in your case, you may use the law library located at the Access to Justice Center, 145 South Lassen Street, Susanville, CA 96130.

3. Getting Your Evidence Ready For Trial

Most eviction cases are conducted before a judge or commissioner in a short period of time. Evidence the court usually considers includes documents, such as rental agreements, notices to quit, letters between the landlord and tenant, and photographs of the condition of the property. The court also considers testimony of the parties and, when

appropriate, testimony of other witnesses. Testimony is what a person tells the court under oath about what happened in the case. You should make copies of the documents and an outline of your testimony that you wish to present in court so you will be prepared to present your case. This will help you to focus on the issues in the case.

It is often helpful to watch other eviction cases in the same courtroom which your case is scheduled, before the date of your case. You can learn about court procedure, where to stand, how to speak to the court, and the time given each case. Ask the court clerk when the judge assigned to your case will be hearing other unlawful detainer (eviction) cases, so you can watch.

4. Be On Time For Your Trial

Come to the court at least ten minutes before the time set for your case. If you are late and the judge calls your case when you are not there, you will lose without being able to give your side of the case.

5. Be Well Prepared For Trial

Bring all documents you need to prove your case. Have extra copies of each document you plan to give to the court, so you can give one copy to the other side first. Any defense you present to the court must have been stated in your Answer. You have the burden of proof for each affirmative defense you put in your Answer. This means that you must convince the court that the evidence in the case supports your defense more than it supports the landlord's side.