



# GEORGIA LANDLORD- TENANT AND EVICTION PROCESS

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# ATLANTA LEGAL AID SOCIETY

Since 1924, Atlanta Legal Aid Society has offered free civil legal aid for low income people across metro Atlanta. With five neighborhood offices, three offices in Children's Healthcare of Atlanta hospitals, three county courthouse projects, a variety of self-help clinics, and countless community education programs, Legal Aid lawyers and volunteers reach tens of thousands of people annually.

More than 20,000 cases are opened for assistance and representation by our staff of 75 attorneys and 1,200 volunteers every year.



# LANDLORD-TENANT BASICS

- Always pay rent, in full and on time, every month
  - Never pay in cash
  - Keep receipts
  - If the rent is refused or returned, save the evidence
- Always put it in writing and keep a copy of that writing

## Landlord-Tenant Relationship

“The relationship of landlord and tenant is created when the owner of real estate grants to another person, who accepts such grant, the right simply to possess and enjoy the use of such real estate either for a fixed time or at the will of the grantor.”



# TYPES OF TENANCIES

- Leaseholds
- Tenancy at Will
  - No specified end date
  - Proper notice must be given to end or change the terms
- Tenancy at Sufferance
  - Tenant no longer has legal right to be in the property

# TYPES OF TENANCIES

- Sale of the Property
  - New Owner takes property subject to the terms of the tenancy
  - New Owner at Foreclosure takes property subject to Protecting Tenants at Foreclosure Act (PTFA)
    - At least give 90 day notice to vacate before filing eviction



# TYPES OF TENANCIES

- Extended Stay Hotels
  - *Efficiency Lodge v. Neason* was appealed to GA Supreme Court
    - Order, which allowed an injunction to stop immediate eviction, is under review
    - Basis for argument remains
      - After 90 days, no hotel tax is due, resident is a tenant
- Not all housing situations are tenancies
  - Intention of the parties
  - Specificity of the contract, if any

# DURING THE TENANCY

- Follow the Terms of the Lease
  - Pay the Rent
  - Be Careful with Guests
  - Pets, Service Animals, and Support Animals
- The Landlord is Just as Bound to the Lease as the Tenant
- Check the Lease!





# RIGHTS AND RESPONSIBILITIES

- Tenant has the right to use and possess the property
  - Landlord has only a limited right to enter the premises during the tenancy
- Landlord may only evict tenant through the court eviction process

## RIGHTS AND RESPONSIBILITIES

- Early Termination of the Lease is Possible, But Only Sometimes
  - If there is a provision in the lease
  - An active duty service member may terminate his or her lease with a 30-day notice of termination under certain circumstances
  - A tenant may terminate his or her lease after providing the landlord with a written 30-day notice when a civil family violence order or criminal family violence order has been issued

## RIGHTS AND RESPONSIBILITIES

- The obligation to pay rent is separate from the obligation to make repairs
  - In general, tenants cannot withhold their rent, event if the landlord has failed to make repairs
  - In general, landlords must maintain and repair the property even if the tenant does not pay rent
    - Landlord “may not waive, assign, transfer, or otherwise avoid” the duty to maintain and repair.
    - Tenant may waive right to damages by remaining after lease term.

# RIGHTS AND RESPONSIBILITIES

- What To Do When Something Needs Repair
  - Tenant must give notice to Landlord
  - Tenant and Landlord should work together to allow access for repairs
- What To Do If Repairs Are Not Made
  - Repair and Deduct
  - Housing Code Enforcement
  - Lawsuit for Damages

# RIGHTS AND RESPONSIBILITIES

- **Constructive Eviction:** An action by the landlord which is of a grave and permanent character, done with the intent of depriving the tenant of the enjoyment of the premises, results in actual expulsion from the property.
- **Retaliatory Eviction:** Landlord may not terminate a tenant's lease, increase the rent, or file a dispossessory action against a tenant within three months of the tenant complaining about the conditions of the premises to a governmental agency responsible for enforcing housing codes.
- **Illegal Eviction:** Landlord may not forcibly remove the tenant from the premises.

# EVICTIIONS

- Court process is required by Georgia law
  - Landlords must complete the entire process to lawfully evict
- Consider the Court to be a party to the case
  - Keep The Court Informed!
- There are no more moratoriums



# EVICTIONS

- May be filed for any breach of the lease or terms of the tenancy
- Landlord must demand possession before filing the eviction (also known as dispossessory) case in court
  - County where property located
- Expedited process



# EVICCTIONS

## MAGISTRATE COURT OF FULTON COUNTY PROCEEDING AGAINST TENANT HOLDING OVER

Dispossession Division  
185 Central Avenue, S.W.  
16100  
Atlanta, Georgia 30303  
(404) 513-5990  
www.magistrateoffulton.org

PLAINTIFF'S NAME, ADDRESS & PHONE NO.

VS.

DEFENDANT'S NAME & ADDRESS

PLAINTIFF'S ATTY. NAME, ADDRESS & PHONE

1. Defendant is in possession as tenant of premises at the address in Fulton County as stated.
2. Affiant is the ( ) Owner, ( ) Attorney, ( ) Agent, ( ) Lessee of the owner of said premises.
3. Tenant: ( ) fails to pay the rent which is now past due,  
( ) holds the premises over and beyond the term for which they were rented or leased to him,  
( ) other grounds:

4. Plaintiff desires and has demanded possession of the premises.
5. Defendant has failed and refused to deliver possession of the premises.

WHEREFORE, Plaintiff DEMANDS:

- (a) possession of the premises.
- (b) past due rent of \$\_\_\_\_\_ for the month(s) of \_\_\_\_\_
- (c) rent accruing up to the date of judgment or vacancy at the rate of \$\_\_\_\_\_ per \_\_\_\_\_
- (d) other: \_\_\_\_\_

Sworn to and subscribed on \_\_\_\_\_, 20\_\_\_\_\_

Signature of Affiant

Name of Affiant (Print or Type)

Phone Number/ Email Address

Witness the Honorable Chief Judge of said Court: The above affidavit was sworn to and subscribed before the undersigned Deputy Clerk by affiant as provided by O.C.G.A. §44-7-50 and summons issued pursuant thereto.

Magistrate/Deputy Clerk/ Notary Public:

### SUMMONS

TO THE CONSTABLE MARSHAL OF FULTON COUNTY or his lawful deputies and to Sheriff of Fulton County of his lawful deputies:  
GREETINGS: The Defendant must file either an oral or written Answer at room 16100, 185 Central Ave., S.W. Atlanta, Georgia 30303 between 8:30 A.M. and 5:00 P.M. or electronically at <http://www.sdcasavillages.com> (convenience fee applies) within seven (7) days from the date of the actual service unless the seventh day is a Saturday, a Sunday, or a Court holiday, in which case the Answer may be made on the next day which is not a Saturday, a Sunday, or a Court holiday. If the Answer is oral, the substance thereof shall be entered on the dispossession affidavit. The Answer may contain any legal or equitable defense or counterclaim. If no valid legal or factual Answer is filed, a writ of possession may be issued pursuant to O.C.G.A. § 44-7-53. If no Answer is made, a writ of possession shall issue instantly.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_ DEPUTY CLERK

### CONSTABLE MARSHAL ENTRY OF SERVICE

I have served the foregoing affidavit & summons on the Defendant(s) by delivering a copy of same: ( ) Personally ( ) Notoriously (name) \_\_\_\_\_ ( ) By posting a copy to the door of the premises & depositing a copy in the U.S. Mail, First Class.

in an envelope properly addressed, said copy containing notice to the Defendant(s) to answer at the hour & place in said summons. \_\_\_\_\_ D.M.

DATE OF SERVICE

DEFENDANT TO ANSWER ON OR BEFORE

### WRIT OF POSSESSION

You are hereby commanded to remove said Defendant(s) together with his property therein from said house and premises and to deliver full and quiet possession of same to Plaintiff herein.

This

PER ORDER DATED

JUDGE

TENANT: ( ) VACATED ( ) EJECTED ( ) SETTLED W/ PLAINTIFF ( ) HELD UP ( ) LABOR \_\_\_\_\_  
DATE \_\_\_\_\_ DEPUTY MARSHAL

# EVICTIONS

- Served by Marshal or Process Server
  - Personal
  - Notorious
  - Tack and Mail
    - Must be mailed the same day that is was tacked - save the envelope!
      - If no answer filed and served by tack and mail, then landlord gets possession, but no money judgment

# EVICCTIONS

Dispossessory Division  
 185 Central Avenue, SW, TG-100  
 Atlanta, Georgia 30303  
 (404) 513-0260  
 www.magisocourt.org

**IN THE MAGISTRATE COURT OF FULTON COUNTY  
STATE OF GEORGIA**

PLAINTIFF: \_\_\_\_\_ Case Number: \_\_\_\_\_  
 v \_\_\_\_\_  
 DEFENDANT: \_\_\_\_\_ Email: \_\_\_\_\_

\*\*\*EACH DEFENDANT MUST FILE HIS OWN ANSWER\*\*\*  
 Attorneys may file answers for more than one defendant.

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**DISPOSSESSORY ANSWER**  
 (Please note and then use initial(s), for additional space, as needed)

I am the: (check one) ☐ Defendant **OR** ☐ Occupant of the subject premises

I am filing an Answer and I state the following in response to Plaintiff's claim(s) in this lawsuit:

☐ The plaintiff is not my landlord.  
☐ I do not have a landlord-tenant relationship with the plaintiff.  
☐ My landlord did not give me proper notice that my lease or rental agreement was terminated in accordance with the terms of our lease.  
☐ The landlord did not properly demand that I move before filing the lawsuit.  
☐ My landlord terminated my lease without a valid reason.  
☐ I do not owe any rent to my landlord.  
☐ I offered and had money to pay my rent on or before the date I usually pay, but my landlord refused to accept it.  
☐ My landlord would not accept my rent, correct late fees, and the court costs. I had all the money to pay.  
☐ My landlord failed to repair the property. The failure has lowered its value or resulted in other damages more than the rent claimed.  
☐ My landlord is not entitled to evict me or secure a money judgment for the following additional reasons: \_\_\_\_\_  
 \_\_\_\_\_  
☐ Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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**COUNTERCLAIM**

☐ My landlord owes me \$\_\_\_\_\_ for the following reasons:  
☐ My landlord failed to repair the property. Due to this failure, its value has been reduced \$\_\_\_\_\_ each month for \_\_\_\_\_ months.  
☐ Since my landlord failed to make requested repairs, I made these repairs. I made these repairs that cost \$\_\_\_\_\_. I have all my receipts. I will bring the receipts and all documents concerning these payments to my trial.  
☐ My landlord's failure to repair resulted in damages of \$\_\_\_\_\_ to my person and/or property.

WHEREFORE, I ask this Court to:

(a) Dismiss Plaintiff's lawsuit with all costs assessed against Plaintiff.  
 (b) Enter a judgment in Defendant's favor and against Plaintiff; and  
 (c) Grant such other and further relief as the Court deems just and proper.

Signed to and subscribed before me  
 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Deputy Clerk \_\_\_\_\_

PRINT NAME \_\_\_\_\_

SIGNATURE \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_

**ALL PARTIES  
SHOULD APPEAR  
IN COURT  
15 MINUTES  
EARLY**  
  
**JUSTICE CENTER  
TOWER  
185 Central  
Avenue, SW  
Atlanta, Georgia  
30303**

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**NOTICE OF TRIAL DATE**

The Plaintiff and Defendant are required to appear for trial on:

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Time: \_\_\_\_ AM/PM in Courtroom: \_\_\_\_

IF YOU HAVE AN ATTORNEY, PLEASE NOTIFY HIM/HER TO BE PRESENT WITH YOU.

DEFENDANT: \_\_\_\_\_

Plaintiff's Notice of Trial was — Picked-up ☐ Mailed ☐ E-mailed ☐

DEPUTY CLERK \_\_\_\_\_

# EVICTIIONS

- Answer due within 7 days of the date of service
  - Named defendant(s) must answer
  - Raise defenses to Landlord's claims
  - Raise counterclaims against Landlord
- If no answer is filed, a default judgment will be entered against the Tenant
  - There is no way to appeal a default judgment in eviction cases

# EVICTIONS

- Mediation
- Hearing
  - Both sides get a chance to talk to the Judge, present documents, witnesses
    - Writ of Possession will issue in 7 days if judgment entered against tenant.
- Automatic Default Judgment if tenant fails to appear in court
- If right to possession cannot be determined within two weeks of the date of service, tenant may be required to pay rent and utilities into the registry of the court.

# COMMON DEFENSES

- No landlord-tenant relationship
- Improper Service
- No demand or improper notice
- No breach of the lease agreement
- Tender of Rent
  - Partial Payments
  - Irregular Payments
- Waiver of Grounds to Terminate Lease
- Bankruptcy

# COMMON COUNTERCLAIMS

- Failure to maintain and repair the property
- Breach of the lease agreement
- Improper eviction
  - Utility disconnection
- Interference with use and enjoyment of the property
- Violation of fair housing laws



# EVICTIIONS

- De novo appeal from Magistrate Court to State or Superior Court.
  - Appeal must be filed 7 days from the date the judgment is entered
  - Appeal may be dismissed if appeal costs not paid timely or waived
- Rent must be paid into court pending the outcome of the appeal in order for tenant to remain in possession.
  - Past due rent due by appeal deadline
  - Ongoing rent usually by 5th day of each month
    - Late payments or failure to pay may result in loss of possession, but not right to pursue appeal.

# EVICCTIONS

- Landlord required to obtain writ of possession and coordinate with the Marshals to lawfully complete the dispossession process
  - Generally, execution of the writ must occur within 30 days of the date it issued
    - There is usually no way to know when eviction will happen, so make sure possessions (important papers, medications) are secured

# END OF THE TENANCY

- Proper notice must be given
- Keys must be returned
- Conduct a move-out inspection

A photograph of a city skyline with various skyscrapers under a clear blue sky. A prominent building in the foreground has "CRISTO REY" written on its facade. A solid orange vertical bar is positioned to the right of the image.

# SECURITY DEPOSITS

- Landlord has 30 days from date possession returned to either:
  - Return deposit
  - Return part of the deposit with an explanation
  - Keep all of the deposit with an explanation
- Deposit may be kept for damage beyond normal wear and tear or if rent or other money owed

# QUESTIONS?





**THANK YOU!**

**Margaret L. Kinnear**  
**(404) 524-5811**

**Atlanta Legal Aid Society**  
**54 Ellis St. NE | Atlanta, GA 30303**  
**[www.atlantalegalaid.org](http://www.atlantalegalaid.org)**

