TENANT'S SUMMARY PROCEEDINGS MANUAL

For Courts Outside New York City

New York State Unified Court System

DIVISION OF COURT OPERATIONS
OFFICE OF TRIAL COURT OPERATIONS

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LABEL FOR LOCAL COURT INFORMATION

Introduction

The New York State Unified Court System has published this booklet to give tenants without a lawyer information about what to do if a landlord starts an eviction. Similar court system booklets give landlords without a lawyer information about what to do in order to bring eviction cases in court.

The two most common reasons a landlord wants to evict a tenant are:

1. The tenant has failed to pay the rent;
2. The tenant's right to stay in the rental property has ended, but the tenant has failed to leave.

When one of these things happens, a landlord may start a lawsuit called a Summary Proceeding. There are two types:

- Nonpayment Summary Proceeding. The landlord claims the tenant failed to pay the rent.
- Holdover Summary Proceeding. The landlord claims the tenant failed to leave the rental property after the right to remain in the property ended.

In these two types of Summary Proceedings, the landlord will ask the judge to grant a Judgment that will allow the tenant to be evicted. The judge may also order the tenant to pay past due rent to the landlord.

This booklet can help if your landlord starts a Nonpayment Summary Proceeding or a Holdover Summary Proceeding against you. You may also want to ask for help from the Court Clerk's Office, which may be able to answer some of your questions about the lawsuit. Please keep in mind, however, that court staff are not allowed to give legal advice, and so may not be able to answer all of your questions.

If you feel you need legal advice at any time during your case, talk with a lawyer. If you cannot afford a lawyer, or are unsure how to find one, these resources can help you:

- Go to www.lawhelp.org/ny;
- Call the New York State Bar Association Lawyer Referral Service (toll free) at 1-800-342-3661;
- Go to www.nycourthelp.gov and click on "Lawyers";
- Go to www.nycourts.gov/attorneys/nybarassociations.shtml;
- Ask at any courthouse about lawyer referral services.

Which Courts Handle Nonpayment Summary Proceedings and Holdover Summary Proceedings?

The landlord must start the case where the rental property is located.

Rental Property Location	Court
Village	* Village Court
Town	Town Court
City	City Court
Nassau County	District Court
Part of Suffolk County with District Court	District Court
Part of Suffolk County without District Court	Town or Village Court

*** If a village does not have a Village Court, the summary proceeding can be started in the Town Court of the town that surrounds the village.**

If you are a tenant that is a corporation or a voluntary association, you must be represented by a lawyer when a landlord starts a Summary Proceeding against you in a City Court or a District Court.

However, if the landlord starts a Summary Proceeding against a tenant that is a corporation in a Town Court or a Village Court, the tenant may choose either to have a lawyer answer the case in court or, if not, to have any authorized officer, director or employee appear in court instead.

What to Look for Before the Case Starts

Nonpayment Summary Proceeding

Before your landlord can start a Nonpayment Summary Proceeding to evict you for failing to pay the rent, your landlord must ask you to pay the past due rent. This is called making a Demand for the unpaid rent.

There are two types of "demands." The landlord is allowed to use either one:

- **Oral Demand.** Your landlord must speak to you in person and ask you to pay the past due rent.
- **Written Demand.** Your landlord must have someone give you a written notice demanding that you pay the rent or leave the rental property. See pages 5 and 6 of this booklet for the rules on delivering or "serving" court papers in a Summary Proceeding.

After the landlord makes a Demand, you have three days to pay the rent before the landlord can start a Nonpayment Summary Proceeding in court.

If you pay the entire amount of the past due rent to your landlord within those three days, your landlord no longer has the right to begin a Nonpayment Summary Proceeding against you.

Important Note:

- A landlord may start a Nonpayment Summary Proceeding against a tenant even if the tenant pays the entire amount of the past due rent within the three-day period. If that happens to you, ***your rent receipt will be a crucial piece of evidence when you go to court to stop the eviction***. Be sure to get a rent receipt when you pay the rent and bring it with you when you go to court.

Holdover Summary Proceeding

- **When There is a Lease or Other Rental Agreement.** If you have a lease or other rental agreement that states when your rental term ends, you must leave the rental property at that time unless you and your landlord make a new agreement.

  If the lease or other rental agreement is not renewed and you stay in the rental property after the end date, your landlord can begin a Holdover Summary Proceeding against you ***without notifying you that the lease or other rental agreement has ended*** (unless the lease or agreement says that your landlord has to give you notice).

- **When There is No Lease or Other Rental Agreement.** If you are renting the property without an agreement about how long you can stay, your landlord must give you a Notice to Terminate ***before*** starting a Holdover Summary Proceeding. This notice tells you the day when you must leave the rental property.

There are two types of Notices to Terminate. The landlord is allowed to use either one:

- **Oral Notice to Terminate.** The landlord speaks to the tenant in person, tells the tenant that the right to occupy the property has ended, and tells the tenant the date the tenant must leave.

- **Written Notice to Terminate.** The landlord has someone give the tenant a written notice telling the tenant that the tenant's right to occupy the property has ended and giving a date when the tenant has to leave. See pages 5 and 6 of this booklet for the rules on delivering or "serving" court papers in a Summary Proceeding.

A Notice to Terminate must allow you to stay in the rental property for at least one full rental period before you have to leave. For example, if you are renting month-to-month and your landlord wants you to leave the rental property on June 30th, the landlord must give you the notice no later than May 31st.

If you stay in the rental property after the date contained in the Notice to Terminate, your landlord can begin a Holdover Summary Proceeding in court.

How Does a Summary Proceeding Start?

The Nonpayment Summary Proceeding and the Holdover Summary Proceeding both start the same way: with a Notice of Petition and a Petition.

- **Notice of Petition.** This court paper tells you the name and address of the court where the landlord is bringing the case and the date and time for you to appear in court.
- **Petition.** In this court paper, the landlord gives you and the judge information about your rental property and why the landlord wants to evict you.

If your landlord wants to evict you because you have not paid the rent, the Petition must list the months when you did not pay the rent and the total amount of rent due.

"Serving" the Court Papers

There are only three ways that a Notice of Petition and Petition in a Nonpayment or Holdover Summary Proceeding can be delivered or "served" on a tenant. A Written Demand and a Notice to Terminate also should be served in one of these three ways.

- **Personal Delivery**. The person who serves the papers must first try to give the papers to the tenant personally, by giving them to the tenant in his or her hand. The papers can be handed to the tenant anywhere.
- **Substituted Service.** If the person serving the papers tries to serve the tenant at home and the tenant is not present, the server can give the papers to the person who answers the door as long as (1) the person resides in the apartment; and (2) is of an appropriate age and has appropriate judgment to take the papers. By the next business day, the server must mail two copies of the papers to the tenant, one by regular mail and one by certified mail.
- **Conspicuous Place Service ("Nail and Mail").** If the person serving the papers is unsuccessful on the first try to serve the papers either by personal delivery or substituted service, then he or she must make a second attempt during a different time period. For example, if no one is home during working hours (9:00 a.m. to 5:00 p.m.), the server can return at 7:30 p.m. during non-working hours. After two unsuccessful attempts have been made to serve the person at home either by personal delivery or substituted service, the server may then use conspicuous place delivery. This is also known as "Nail and Mail."

  "Nail and Mail" requires that a copy of the papers be attached to the door of the actual residence of the tenant or be slipped under the entrance door of that residence. By the next business day, the server must mail two copies of the papers to the tenant, one by regular mail and one by certified mail.

Important rules about "serving" the court papers:

- The landlord ***cannot*** serve the court papers himself or herself. The person who serves the papers must be over 18 years of age and not involved in the proceeding.
- The court papers cannot be served on a Sunday, Sabbath day, or any other day of religious observance.
- The person who serves the court papers must complete an Affidavit of Service form for each person served. The completed Affidavit of Service must be notarized and submitted to the court within three days of the personal delivery or mailing.
- The Notice of Petition and Petition must be served on the tenant no more than twelve days and no less than five days before the court date shown on the Notice of Petition.

If the papers are not served as described above, you may tell this to the court clerk or judge as a Defense to the Summary Proceeding. You will read more about Defenses later in this booklet.

Summary of Time Periods for Starting a Summary Proceeding

Tenant was served with...	*The rule is...*
A Demand	Landlord can begin a Nonpayment Summary Proceeding after three days if Tenant does not pay the full amount of unpaid rent.
A Notice to Terminate	Landlord can begin Holdover Summary Proceeding if Tenant does not leave the rental property by the date stated in the Notice to Terminate; the date stated in the Notice to Terminate must be at least one full rental period from the date the Tenant gets the notice.
A Notice of Petition and Petition	Court date shown on Notice of Petition must be no more than 12 days and no less than 5 days after the Tenant is served with the court papers.

Filing an Answer

You have been served with the landlord's Notice of Petition and Petition. What happens next?

1. You must appear in court on the date and time indicated in the Notice of Petition. If you don't, you are likely to lose the case and be evicted.

2. You must "answer" the Petition. There are two ways to do this:

   - **Oral Answer.** On the day you appear in court, tell the clerk or judge in your own words if you agree or disagree with the statements made by your landlord in the Petition. You may also tell the clerk or judge about any Defenses and counterclaims you may have to the proceeding. You will read more about Defenses later in this booklet. The court clerk or the judge will write down your Oral Answer on the petition so that the court has a record of it.

   - **Written Answer.** This is a written document that tells the judge if you agree or disagree with the statements made by your landlord in the Petition. The written answer also may contain your Defenses and counterclaims to the Petition. You will read more about Defenses in the next section of this booklet. A copy of the Written Answer must be sent to the landlord or to the landlord's lawyer, if your landlord has one, and to the court, along with an Affidavit of Service that shows how you sent a copy to the landlord.

Generally, the Oral Answer or Written Answer can be made on the date you are supposed to come to court. However, if the landlord wants you to provide an Oral Answer or Written Answer before the court date, the landlord must include a demand that you answer by an earlier date in the Notice of Petition. In order to demand that you answer by an earlier date, the landlord must serve the Notice of Petition and Petition at least eight or more days before the court date.

A tenant should always appear on the court date even if he or she did not answer the demand in the Notice of Petition. The judge may still accept an Answer from the tenant on the day your case is scheduled.

Filling in the Answer Form

The Answer form and instructions for preparing it are in the Forms and Instructions section of this booklet. Before you begin to fill in the form, however, you should think about whether you have any Defenses to the landlord's claims.

If the judge accepts one or more of your Defenses, the judge may dismiss the Summary Proceeding. That will stop the eviction.

Some of the more common Defenses are described below. If you believe that one or more of these are true in your case, you should check ☑ them on the Answer form. There is also space on the form to describe other Defenses.

Common Defenses

- Your landlord did not make a Demand for the rent or did not have you served with a Notice to Terminate;
- Your landlord did not follow the rules for having the Notice of Petition and Petition served on you;
- The person named as the "Petitioner"on the case papers (usually the landlord) is not a person who is allowed to file the Summary Proceeding;
- The amount of claimed past due rent is wrong;
- The landlord owes you money for a rent overcharge;
- You have already paid some or all of the past due rent;
- You offered the rent to your landlord, but your landlord refused to accept it;
- There are conditions in the rental property that make it unsafe and/or unliveable.

Important Note

- If you believe you have a Defense, it is important to come to court and tell the court clerk or judge what the Defense is. ***You can tell the court clerk or judge about these Defenses (and others you may have) even if you are giving an Oral Answer instead of a Written Answer.***

What Happens in Court?

You must appear in court on the date and at the time specified in the Notice of Petition. If you fail to appear on the court date, the judge is allowed to decide in favor of your landlord without hearing your side of the story. The judge may give your landlord a money judgment against you and may give your landlord the right to have you evicted from your rental property.

Bring all of your evidence to court with you. This might include, for example, rental receipts, a lease or other written agreement, or photographs of the condition of the rental property. You can bring witnesses to tell the judge about your rental property or about your landlord.

When the court clerk or the judge announces your case, say that you are present. Then follow the clerk's and the judge's directions.

The judge may ask both you and your landlord if you are the people named in the Notice of Petition and Petition. The judge may also ask other questions to see if there is any possibility of a Settlement, in order to learn whether you or your landlord would like to work with a mediator or if a trial will be necessary.

What is the Difference between Settlement, Mediation and Trial?

- **Settlement**. A Settlement is an agreement between you and your landlord about the case. The terms are determined by you and your landlord. For example, you may agree to pay the past due rent if the landlord agrees to make repairs to the rental property. Or, your landlord may agree to let you stay in the rental property for a certain time period so that you can find another place to live. You and your landlord may agree to have the judge enter a Judgment against you, allowing the eviction, but delaying when it will happen.

  In some courts, a Settlement is called a Stipulation and Agreement. The judge may read the agreement aloud while you and the landlord are in court to avoid any misunderstanding on your part, your landlord's part, or the court's part about what each party has agreed to do.

- **Mediation**. In some courts, you and your landlord can agree to have a mediator handle your case instead of the judge. A mediator is a professional, neutral person who is trained to help you and your landlord come to an agreement about your dispute without the need for a judge to decide it.

- **Trial**. If you and your landlord cannot settle the case, the judge will hold a trial. During the trial, your landlord will give evidence to show why you should be evicted. The

judge will give you a chance to ask your landlord questions about the landlord's evidence. The judge also may ask questions. Then you will have the chance to present evidence, including any witnesses you may have. The judge will give your landlord a chance to ask questions about your evidence and also may ask you questions about it. After you and your landlord have offered all of your evidence, the judge will make a decision.

For further information about what you can expect at a trial, see *How to Prepare for a Landlord-Tenant Trial* (New York City Civil Court), available at http://www.nycourts.gov/publications/L&TPamphlet.pdf.

The Judge's Decision

If the judge decides the case in your favor, the judge will dismiss the landlord's lawsuit against you. This means that your landlord cannot have you evicted in this lawsuit.

If the judge decides the case in favor of the landlord, the judge will give your landlord a Judgment.

If your landlord's case was a Nonpayment Summary Proceeding, the Judgment will give your landlord the right to have you evicted and to take back possession of the rental property. The Judgment also may give your landlord the right to collect past due rent.

If your landlord's case was a Holdover Summary Proceeding, the Judgment will give your landlord the right to have you evicted and to take back possession of the rental property.

Even if your landlord wins a Judgment, you can ask the judge to delay or "stay" the date when you have to move in order to give you time to find another place to live.

Only a sheriff, constable, marshal, or other enforcement officer — ***not*** the landlord — can evict a tenant after the landlord wins a Judgment. A landlord must get a Warrant of Eviction from the court, then ask a sheriff, constable, marshal, or other enforcement officer to use the Warrant of Eviction to evict the tenant.

Important Note:

- ***The sheriff, constable, marshal, or other enforcement officer must notify you at least 72 hours in advance, in writing, that you will be evicted if you do not leave the rental property.*** If you do not leave the rental property by the deadline in the written notice, the sheriff, constable, marshal, or other enforcement officer is allowed to remove you and your possessions from the rental property.

Procedures After a Judgement

Stopping an Eviction After a Judgment

Even after the judge gives the landlord a Judgment allowing you to be evicted, you may make a written request to the court that the eviction be "stayed" or delayed, and that the case be reopened. To do this, you must submit two forms to the court: (1) an Affidavit in Support of Order to Show Cause and (2) an Order to Show Cause.

Affidavit in Support of Order to Show Cause:

In this form, you must explain, in writing, why you believe the judge should sign the Order to Show Cause. Several common reasons why a tenant may be entitled to an Order to Show Cause:

1. **You failed to come to court.** If you did not appear in court on the day your case was scheduled to be heard, the first thing to do is to contact the Court Clerk's Office to find out what happened in court.

   If the judge gave your landlord a Judgment allowing the landlord to evict you, you can request that the judge issue an Order to Show Cause in order to schedule another court date to give you an opportunity to present your side of the case. In the Affidavit in Support of Order to Show Cause, you must show two things: (1) a good reason for not going to court when you were supposed to, such as: "I never received the court papers" or "I was sick"; and (2) a good defense against the Landlord's claim in the petition, such as, "I paid part or the full amount" or "I need repairs."

2. **You want to pay the past due rent.** You may ask for an Order to Show Cause for the judge to allow you to pay the past due rent and to stop the eviction.

   Bear in mind that paying the past due rent after a Judgment and Warrant of Eviction have already been issued does not stop the eviction unless you get a court order.

3. **You have another reason (besides failure to come to court or paying the rent) why you think the judge should reopen your case.** You must ask the judge to give you an Order to Show Cause. In the Affidavit in Support of Order to Show Cause, you will need to explain your reason(s) why the case should be reopened.

   If the judge agrees with the information in the Affidavit in Support of Order to Show Cause the judge may sign and issue an Order to Show Cause.

Order to Show Cause

If the judge grants your request for any of the above reasons or for any other reason, he/she will sign and issue the Order to Show Cause which will "stay" or delay the eviction. The Order to Show Cause will include instructions about the date and time when you and your landlord must appear in court. Be sure to come to court on that date.

The Order to Show Cause will also tell you when and how the court papers must be served on your landlord or your landlord's attorney. You are not allowed to serve the court papers. A person at least 18 years of age must serve the court papers and must complete an Affidavit of Service form for each person who was served. If the judge has already signed a Warrant of Eviction, you also must have the sheriff, constable, marshal, or other enforcement officer served with the Order to Show Cause. (The Court Clerk's Office can tell you if a Warrant of Eviction was already signed.) ***You must file the Affidavit of Service with the court after you receive it from the person who made service.***

Sample Order to Show Cause, Affidavit in Support of Order to Show Cause and Affidavit of Service forms and instructions are included in the Forms and Instructions section of this booklet.

Appeals

You and the landlord both have the right to appeal the judge's decision to another court if you disagree with it. If you want to appeal, discuss this promptly with the Court Clerk's Office because there are strict time limits that must be followed.

Glossary

ACTION
A lawsuit or proceeding commenced in a court.

ADJOURNMENT
A temporary postponement of the proceedings of a case until a specified future time.

AFFIDAVIT
A sworn or affirmed statement made in writing and signed; if sworn, it is notarized.

AFFIDAVIT OF SERVICE
An affidavit intended to certify the service of a writ, notice, or other court document.

AFFIRMATION
An act of declaring something to be true under the penalty of perjury.

AGENT
A person authorized by another to transact business or manage some affairs on his/her behalf, an agent for the landlord.

ALLEGATION
The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what the party expects to prove.

ALLEGE
To assert a fact in a pleading.

ANSWER
A paper submitted by a defendant/respondent in which he/she responds to and/or denies the allegations of the plaintiff/petitioner.

APPEARANCE
The participation in the proceedings by a party summoned in an action, either in person or through an attorney.

AT ISSUE
Whenever the parties to a suit come to a point in the pleadings that is affirmed on one side and denied on the other, that point is said to be "at issue".

BENCH
The judge's seat or the judge, himself/herself, (e.g., the attorney addressed the bench).

CALENDAR
A schedule of matters to be heard in court.

CALENDAR CALL
The calling of matters requiring parties, or their attorneys, to appear and be heard, usually done at the beginning of each court day.

CAPTION
The heading or introductory clause which shows the names of the parties, name of the court, index number, etc., in a pleading, deposition or other paper connected with a case in court.

CASE FILE
The court file containing papers submitted in a case.

CERTIFIED COPY
Copy of a document signed and certified as a true copy of an original by the Clerk of the Court or other authorized persons (e.g., lawyer).

CONSPICUOUS
Easy to notice, obvious.

COSTS
An allowance for expense in prosecuting or defending a suit (ordinarily does not include attorney's fees).

COUNSEL
Lawyer or attorney.

CROSS-EXAMINATION
Questioning by a party or his attorney of an adverse party or a witness called by an adverse party.

DEFAULT
A default in an action occurs when a defendant fails to plead or otherwise defend within the time allowed, or fails to appear at the trial.

ENFORCEMENT OFFICER
An authority, usually the County Sheriff, Constable, or Marshal, who is empowered to execute a mandate of the court.

EVICTION
A legal proceeding to remove a tenant from possession of rental property.

EVIDENCE
Facts presented at the trial of an issue through witnesses, records, documents, physical objects, etc.

EXHIBIT
A paper, document or other article produced and exhibited to a court during a trial or hearing and, on being accepted, marked for identification or admitted in evidence.

EX PARTE
A proceeding, order, motion, application, request, submission, etc., made without notice to any other party.

FEE
A fixed charge for service rendered by a court.

INDEX NUMBER
A number issued by the court clerk which is used to identify a case. In civil matters there is a charge to obtain an index number.

JUDGMENT
A final determination of the rights of the parties in an action or special proceeding.

JURISDICTION
The court's legal power, right and authority to hear and decide cases; geographical area within which court's authority may be exercised. The parties may not waive a court's lack of jurisdiction.

LANDLORD
The owner of the property to whom the tenant pays rent.

LEASE
A legally enforceable agreement between two or more persons or parties (oral or written) which gives rise to the relationship of landlord and tenant.

MOTION
An oral or written request made to a court at any time before, during or after court proceedings, asking the court to make a specified finding, decision or order.

MEDIATION
A confidential dispute resolution process during which an impartial mediator helps parties to identify issues, explore options and reach a mutually acceptable solution to their dispute.

NOTICE OF PETITION
Written notice by a petitioner that a hearing will be held in a court to determine the relief requested in an attached petition.

OATH
A solemn declaration that one's statement is true or one that will be bound to a promise.

ORDER TO SHOW CAUSE
An order by a court requiring a party to appear and show cause (argue) why a certain thing should or should not be done or permitted.

PARTY
A person having a direct interest in a legal matter, transaction or proceeding.

PETITION
A formal written application to a court requesting specific relief.

PETITIONER
One who files a formal written application beginning a special proceeding.

PLEADINGS
The formal written allegations (petition; answer) by the parties in an action of their respective claims and defenses.

PROCEEDING
A lawsuit commenced in court.

PRO SE
See Self-represented

REPLY
A paper submitted by a petitioner in response to the answer of a respondent.

RESPONDENT
One who formally answers the allegations stated in a petition which has been filed with the court. Also known as a defendant.

SATISFACTION
Discharge of a legal obligation, as in a "Satisfaction of Judgment."

SELF-REPRESENTED
A party is self-represented when he/she is not represented by an attorney (also referred to as pro se).

SERVICE
The actual delivery of a paper officially notifying a person of some action or proceeding in which that person is concerned.

STIPULATION OF SETTLEMENT
A formal agreement between litigants and/or their attorneys resolving their dispute.

STAY
A judicial order whereby some action is forbidden or held off until some event occurs or the court lifts its order.

SUBTENANT
See Under-tenant

TENANT
The person(s) who has the use and occupancy of property owned by another person (the landlord). The duration and terms of the tenancy are usually fixed by an instrument called a lease.

TESTIMONY
An oral declaration made by a witness or party under oath.

TRIAL
The formal examination of a legal controversy in court so as to determine the issue.

UNDER-TENANT
A person renting from the tenant named in the rental agreement. Also referred to as the sub-tenant.

VERIFICATION
A signature before a notary public, or other officer authorized to administer an oath, attesting to the accuracy or truth of an allegation or statement.

WARRANT OF EVICTION
A legal mandate authorizing an enforcement officer to remove persons and their personal property from a premises.

WITNESS
One who testifies in court to what he/she has seen, heard, or otherwise observed.

Sample Forms & Instructions

Instructions for Preparing:

Tenant's Answer

Find the number on the form for each instruction below.
Type or print in black ink only.

1. Write the name of the court where the case is being heard.
2. Write the name of the county where the court is located.
3. Write the Index Number or Docket Number that is on the Landlord's court papers.
4. Write the name and address of the property owner.
5. Write your name and address.
6. Write the property address.
7. Put a check mark(s) ☑ next to your defense(s). ***You may check more than one.***
8. Write the date you are filling out the form.
9. Sign the form. Print your name below your signature.

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1)_____
COUNTY OF (2)_____

(4) _____

_____
Petitioner(s)/Landlord(s)

(3) Index/Docket No. _____

-against-

TENANT'S ANSWER

(5) _____

_____
Respondent(s)/Tenant(s)

(6)_____

(7) **ANSWER**

General Denial

SERVICE

_____ The Respondent did not receive a copy of the Petition and Notice of Petition.

_____ The Respondent received the Petition and Notice of Petition, but service was not correct as required by law.

_____ The Respondent did not receive a Notice to Terminate (for Holdover Proceeding).

PARTIES

_____ The Respondent is identified improperly, by the wrong name, or is not identified on the Petition and Notice of Petition.

_____ The Petitioner is not the Landlord or Owner of the building.

RENT

_____ The Respondent was not asked, either orally or in writing, to pay the rent before the Petitioner started this proceeding.

_____ The Respondent tried to pay the rent, but the Petitioner refused to accept it.

_____ The monthly rent being requested is not the legal rent or the amount on the current lease.

_____ The Petitioner owes money to the Respondent because of a rent overcharge

_____ The rent, or a portion of the rent, has already been paid to the Petitioner.

APARTMENT

_____ There are conditions in the apartment that need to be repaired and/or services that the Petitioner has not provided.

_____ The apartment is an illegal apartment.

OTHER

_____ Other defense/answer _____

(8) _____ (9) _____ _____

Date Signature Print Name

Instructions for Preparing:

Order to Show Cause

Find the number on the form for each instruction below. Type or print in black ink only.

1. Write the name of the court where your case is being heard.
2. Write the name of the county where the court is located.
3. Write the Index Number or Docket Number that is on the court papers that started the case.
4. Write the name of the petitioner (your landlord) the same way it is written on the court papers that started the case.
5. Write your name (you are the respondent/tenant) the same way it is written on the court papers that started the case.
6. Write your name the same way it is written on the court papers that started the case. (You are the person who is requesting the Order to Show Cause.)
7. You will be filling out a form called an Affidavit that will be given to the court with this Order to Show Cause. (The Affidavit form and instructions for filling it out follow the Order to Show Cause.) In # 7, write the date that you sign the Affidavit after you have filled it out.

   It is best to fill out and sign the Affidavit form on the same date that you fill out the Order to Show Cause.

Important Note:

- ***Do not write anything below line 7.*** The court will complete the remainder of the form. Go to the next form and instructions to complete the affidavit.

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1)_____
COUNTY OF (2)_____

(4)_____

_____

_____
Petitioner(s)/Landlord(s)

(3) Index/Docket No._____

-against-

ORDER TO SHOW CAUSE

(5)_____

_____

_____
Respondent(s)/Tenant(s)

Upon the annexed affidavit of (6)_____, sworn to the (7) _____day of _____, 20___.

LET the petitioner or petitioner's attorney SHOW CAUSE before one of the Judges of this Court, to be held at the (8) _____ Court located at (9) _____ _____ in the County of (10) _____State of New York, on the _____ day of _____, 20____, at _____a.m./ p.m., or as soon thereafter as counsel can be heard, WHY an order should not be made vacating and setting aside the Judgment and Warrant of Eviction entered herein in favor of the petitioner and against the respondent, and dismissing the Petition or, in the alternative, restoring this case to the calendar upon the grounds set forth in the annexed affidavit, and why such other and further relief should not be granted as may be just and proper.

ORDERED, that pending the hearing and determination of this motion, LET all proceedings on the part of the petitioner, petitioner's attorney and agents, and any Sheriff, Marshal, Constable or other enforcement officer for the enforcement of said judgment and warrant of eviction be stayed.

ORDERED that the respondent deposit with the clerk the sum of $_____ (cash, certified check or money order), said sum to be transmitted to the _____ pending further direction of the Court.
APPROPRIATE FISCAL AUTHORITY

SUFFICIENT CAUSE THEREFORE APPEARING, LET service of a copy of this order, together with the affidavit and any exhibits annexed hereto on the petitioner/ petitioner's attorney at: _____

_____

_____by personal service/personal delivery/certified mail, return receipt requested, on or before the _____ day of _____, 20___ and upon the Sheriff, Marshal, Constable or other enforcement officer, by personal delivery on or before the _____day of _____, 20__ be deemed sufficient. Proof of service of a copy of this order and its accompanying affidavits and exhibits must be filed with the Clerk of the Court BEFORE the above-scheduled return date of this Order to Show Cause.

ENTER:

DATE: _____

_____
CITY/ DISTRICT/TOWN/VILLAGE COURT JUDGE/JUSTICE

Instructions for Preparing:

Affidavit in Support of Order to Show Cause

Find the number on the form each instruction below. Type or print in black ink only.

1–5. Write the same information as in # 1–5 of the Order To Show Cause.

6. Write your address.

7. Write the county where you live.

8. Write your name.

9. Check ☑ if you are the tenant.

10. Do not fill in this box if you are the tenant.

11. Check ☑ the line before the word "Stipulation" if you and your landlord had entered into a written agreement about the eviction.

Check ☑ the line before the words "a Trial/Inquest" if the judge heard the case in court, either with you present or without you present.

Check ☑ the line in front of the word "Other" if some other action was taken by the court.

12. Explain why you want the judge to re-open the case. If you did not come to court on the day the case was heard, explain why.

13. Check ☑ if this is the first Order to Show Cause you are submitting in this case.

14. Check ☑ if you have previously submitted an Order to Show Cause in this case. Give the date(s) of the previous Order(s) to Show Cause and explain any new facts that were not previously provided to the court that support this new motion.

15. If you have had a previous case with this landlord, write the Index # or Docket # of the case. Otherwise, leave this space blank.

THIS FORM MUST BE NOTARIZED. Leave the rest of this form blank until you are in the presence of a Notary Public.

16. The person who served the papers should sign here in the presence of a Notary Public.

17. The notary will complete the date and sign his/her name. The person who served the papers must sign and print his/her name in the presence of a Notary Public.

Important Notes:

- You must have the Order to Show Cause and this Affidavit served on your landlord. The person serving these court papers must fill out the form shown on the next page. (Affidavit of Service of Order to Show Cause and Affidavit In Support) and return it to you to give to the court.
- ***You may NOT serve these papers.*** The person serving the papers must be over 18 and must not be a named party on the case.

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1)
COUNTY OF (2)

(4)

Petitioner(s)/Landlord(s)

(3) Index/Docket No.

-against-

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

(5)

Respondent(s)/Tenant(s)

(6)

State of New York, County (7)

(8) , being duly sworn, deposes and says:

PARTY _____ (9) I am the tenant named as respondent in the above summary proceeding.
_____ (10) I am the person claiming possession to these premises and am the _____ of the tenant named above.

On the Date of Trial:

TRIAL _____ (11) Stipulation (a written agreement) was made between landlord and tenant.
_____ a Trial / Inquest was held before Judge _____
_____ Other _____

REASON FOR APPLICATION (12) I make this application to Restore the Case to the Calendar because.

PRIOR ORDER (13) I have not had a previous order to show cause regarding this index number.

_____ (14) I have had a previous order to show cause regarding this index number but am making further application because (state any new facts that were not previously presented to the court that support this motion):

PRIOR CASES I have had a previous case with this landlord
(15) Earlier Index/Docket Numbers:

REQUEST I request that the case be restored to the calendar and that I be granted permission to serve these papers in person on Petitioner

(16) Sworn to me before this

day of _____, 20_____

Notary/Clerk

(17)

Signature of Respondent

Print or Type Name

Instructions for Preparing:

Affidavit of Service of Order to Show Cause and Affidavit in Support

Find the number on the form for each instruction below.
Type or print in black ink only.

1–5. Write the same information as in # 1–5 of the Order to Show Cause.

6. Write the name of the county where this Affidavit will be signed and sworn to.

7. Write the address of the property from which the landlord is trying to evict you.

8. Write the name of the person who is serving the Order to Show Cause.

9. Write the date that the Order to Show Cause was served.

10. Check ☑ the box that tells how the landlord was served with the Order to Show Cause. If you select the first or second box, write the address where the papers were delivered.

11. Enter the information that describes the person who was served.

12. Write the name of the Marshal who also was served with the Order to Show Cause and Affidavit.

13. If the Marshal was personally served, write the name of the person in the Marshal's Office on whom the Order to Show Cause was served.

14. Enter the information that describes the person in the Marshal's Offices who was served.

15. If the papers were mailed to the Marshal, write the name of the Marshal and the address of the Marshal's Office to which the Order to Show Cause was mailed.

THIS FORM MUST BE NOTARIZED. Leave the rest of this form blank until you are in the presence of a Notary Public.

16. The person delivering the papers should sign here in the presence of a Notary Public. The notary will complete the date and sign his/her name.

17. The person serving the papers must sign here.

SAMPLE FORM:
AFFIDAVIT OF SERVICE OF ORDER TO SHOW CAUSE AND AFFIDAVIT IN SUPPORT

STATE OF NEW YORK
CITY/DISTRICT/TOWN/VILLAGE COURT (1)_____
COUNTY OF (2) _____

(4) _____

_____

_____

Petitioner(s)/Landlord(s)

(3) Index/Docket No. _____

-against-

AFFIDAVIT OF SERVICE OF:
(1) ORDER TO SHOW CAUSE
(2) AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

(5)

_____

_____

Respondent(s)/Tenant(s)

State of New York, County of (6)_____: Address (7) : _____
Apt. _____

(8) _____, being duly sworn, deposes and says:
I am over the age of eighteen and not a party to this action. On the (9) _____ day of _____, 20__
I served a copy of the Order to Show Cause and Affidavit in this matter on:

Known to me to be the Petitioner(s) by: (10)

☐ Delivering a true copy to him/her/them at the following address:

_____

☐ Delivering a true copy to his/her/their attorney(s) or managing agent(s) at the following address:

_____

The person served is described as follows: (11)

Sex_____, Color of Skin _____, Hair Color_____ ,Approximate: Age _____ , Weight _____, Height_____ . Other identifying features _____

☐ Mailing a copy, properly sealed and enclosed in a post-paid wrapper by Certified Mail, Return Receipt Requested, in a Post Office of the United State Postal Service within the State of New York, addressed to the petitioner (or his/her registered managing agent) at the address registered with the Department of Housing Preservation and Development.
AND ALSO SERVED ON THEM
By: Enforcement Officer (12)_____by:
☐ Delivering a copy to (13) _____,a person in the Marshal's Office.
The person served is described as follows: (14) Sex_____, Color of Skin _____, Hair Color _____ _____ , Approximate: Age _____ , Weight _____ , Height_____ . Other identifying features:

_____

_____.

☐ Mailing a copy, properly sealed and enclosed in a post-paid wrapper by Certified Mail, Return Receipt Requested, in a Post office of the United States Postal Service within the State of New York, addressed to:

(15) Marshal _____

_____

_____

(16) Sworn to me before this
day of _____, 20_____

(17) _____
Signature of Person Serving Papers

Notary Public