

**LANDLORD'S GUIDE TO
HOLDOVER EVICTION PROCEEDINGS
For Courts Outside New York City**

**New York State Unified Court System
Office of Trial Court Support
May 2024**

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Introduction

This guide helps landlords who do not have a lawyer. It covers legal procedures to remove (evict) tenants from a rental property if they fail to leave the property when their right to stay ends.

A similar guide gives tenants information about how to respond when a landlord files an eviction case against them.

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

- Fails to pay the rent
- Fails to leave the property after their right to stay ends

When one of these things happens, a landlord can start a civil lawsuit called a Summary Proceeding, which is commonly called an eviction. There are two types of evictions:

- Non-payment – claims the tenant failed to pay the rent
- Holdover – claims the tenant failed to leave the property after their right to stay has ended

In both types of evictions, the landlord requests a judgment to evict the tenant. The judge may also order the tenant to pay past due rent to the landlord.

This guide is for holdover evictions. It can help when:

- You are a landlord
- Your tenant has not left the rental property after their rental term ended
- You want to file a Holdover Summary Proceeding to evict the tenant

A Holdover Summary Proceeding is not the correct type of lawsuit to file for:

- unpaid rent
- property damage caused by tenant, but you DO NOT want to evict the tenant

You can also go to the court clerk's office for help. Court staff can give information on filing procedures, but they are not permitted to give legal advice and may not be able to answer all your questions.

If you need legal advice at any time during your case, talk to a lawyer. If you cannot afford a lawyer, or do not know how to find one, these resources may help you:

- Visit www.lawhelp.org/ny;
- Call the New York State Bar Association Lawyer Referral Service (toll free) at 1-800-342-3661
- Visit <https://nycourts.gov/courthelp/>, choose "Find a Lawyer" in the Quick Links Section, and click on "Lawyers"
- Ask at any courthouse about lawyer referral services

Where do I start an eviction case?

You must start an eviction case in the court where the rental property is located.

Rental property location	Court
Village	*Village Court
Town	Town Court
City	City Court
Nassau County	District Court
Suffolk County (EXCEPT towns of East Hampton, Riverhead, Shelter Island, Southampton, and Southold)	District Court
Suffolk County (Towns of East Hampton, Riverhead, Shelter Island, Southampton, and Southold)	Town or Village Court

**If a village does not have a Village Court, start the eviction case in the Town Court of the town that surrounds the village.*

In a City or District Court, a landlord that is a corporation or voluntary association must appear with a lawyer.

In a Town or Village Court, a landlord that is a corporation must appear in court with either a lawyer or with an authorized officer, director, or employee of the corporation.

What to do Before Starting a Holdover Eviction Proceeding

A tenant's right to occupy the rental property ends when the lease or other rental agreement ends and is not renewed.

Before you can start a holdover eviction case you must ask your tenant in writing to vacate the property (move out). This is called a **written notice to terminate**.

A written notice to terminate tells the tenant:

- their right to occupy the property has ended
- the date they must leave

NOTE: The date the tenant must leave after being served with the **written notice to terminate** depends on how long the tenant has occupied the rental property. The tenant must leave within:

- **30 days** if the tenant has occupied the unit for less than 1 year and does not have a lease term of at least 1 year
- **60 days** if the tenant has occupied the unit for more than 1 year but less than 2 years and has a lease term of at least 1 year but less than 2 years

- **90 days** if the tenant has occupied the unit for more than 2 years or has a lease term of at least 2 years

A **Written Notice to Terminate (Move Out)** form is included in the Forms section of this guide.

You must have someone “serve” the tenant with the **written notice to terminate**. You cannot serve it yourself. A person who is over 18 years old and is not a party in the case must serve the tenant [see page 5 of this guide for the rules on “serving” legal papers].

If you accept a full or partial rental payment from the tenant after giving the tenant a written notice to terminate, a judge may decide that a new rental agreement was made and dismiss your case.

How to Begin a Holdover Summary Proceeding

If the tenant does not leave the rental property after the date to leave occurs, you can file a holdover eviction case with the court. To start the case you must:

- Complete and file a **Notice of Petition – Holdover (UCS-LTH1)** form.

The form must:

- show the name and address of the court
- list the date and time the parties must go to court
- be signed by an attorney, judge, or court clerk

- Complete and file an **Eviction Petition – Holdover (UCS-LTH2)** form.

The form must:

- be completed by you (the landlord)
- list the name of every tenant you want evicted from the rental property
- give information about:
 - the rental property
 - why you want to evict the tenant

NOTE: Attach a copy of the written notice to terminate to the petition with proof that it was served on each tenant.

- Pay the court filing fee – Contact the Court Clerk’s Office for the fee amount
 - Once the fee is paid, the court clerk will:
 - assign an index number to your case
 - schedule a date and time for the case to be heard by the judge

NOTE: You must write the index number on the Notice of Petition and Petition before they are served on the tenant. You must write or type the index number on all other papers that you file with the court in your case.

Serving Court Papers

Please note that, if court papers are not served according to the general rules and methods of service described in this section, a tenant can use “improper service” as a defense to the eviction proceeding. There is more information about defenses later in this guide.

General rules about serving the court papers

- The landlord cannot serve the papers.
- The person who serves the papers must be over 18 years old and cannot be a party in the case.
- The papers cannot be served on any day of religious observance.
- Each tenant that is listed as a respondent in the case must be served with the papers.
- The Notice of Petition and Petition must be served on the tenants no more than 17 days and no less than 10 days before the court date on the Notice of Petition.
- The person who serves the papers must complete a separate Affirmation of Service form for each person they served.
- The completed Affirmation of Service form must be filed with the court no more than three days after the personal delivery or mailing.

Methods of Serving Court Papers

There are three ways that court papers can be delivered or “served”:

1. Personal Delivery

The person serving the papers must hand the papers to the tenant. This can be done anywhere (home, workplace, school, gym, etc.).

OR

2. Substituted Service

When the person serving the papers tries to serve the tenant at home and the tenant is not there, the server can give the papers to the person who answers the door as long as:

- the person lives or works in the property; and
- is an appropriate age and has appropriate judgment to take the papers

Then, no later than 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.

OR

3. Conspicuous Place Service (also known as “Nail and Mail”)

When the person serving the papers cannot serve by either personal delivery or substituted service on their first try, they must make a second attempt at a different time. For example, if no one is home during business hours (9:00AM to 5:00PM), the server can try again at 7:30PM when the tenant might be home from work. After two unsuccessful attempts to serve the tenant by either personal delivery or substituted service, the server is then allowed to use conspicuous place service.

Conspicuous place service requires the person serving the papers to either:

- attach the papers to the tenant’s front door, or
- slip the papers under the tenant’s front door

Then, no later than 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.

What Happens in Court?

You must “appear” (go to court) on the date and time specified in the Notice of Petition. If you “default” (do not appear on the court date), the judge can dismiss your case against the tenant. If the tenant “defaults” (does not appear on the court date), the judge can grant a judgment of eviction against the tenant without a trial.

Bring your evidence and witnesses to court with you.

Evidence might include:

- a lease or other written agreement between you and the tenant
- rent statements or receipts
- photographs showing the condition of the rental property

Witnesses may testify about:

- your rental property
- your tenant

When your case is called, follow the judge’s and court clerk’s directions.

The judge may ask you and your tenant:

- if you are the people named in the Notice of Petition and Petition
- if you want to try settling the case without a trial
- if you want to try mediation
- if a trial is necessary

What are the differences between settlement, mediation, and trial?

Settlement

A settlement is an agreement between you and your tenant that resolves the case without a trial. The terms of settlement are negotiated between you and your tenant. For example, the terms of a settlement might include:

- tenant agrees to pay overdue rent by a specified date if the landlord makes certain repairs to the rental property by a specified date
- landlord allows the tenant to stay in the rental property for a certain period of time so the tenant can find another place to live
- landlord and tenant agree to the judge entering a judgment of eviction against the tenant, but delaying when it will happen until a specified date

Some courts call a settlement a “stipulation and agreement.” The judge may read the settlement out loud in court to avoid any misunderstanding about what each party has agreed to do.

Mediation

In some courts, you and your tenant can agree to have a mediator handle your case instead of the judge. A mediator is a professional, neutral (impartial) person trained to help you and your tenant reach an agreement about your case without needing a judge to decide it.

Trial

If you and your tenant cannot settle the case, the judge will hold a trial. During the trial, you must offer evidence to show the court why your tenant should be evicted. The judge will give the tenant a chance to ask you questions about your evidence. The judge may also ask you questions about your evidence. Then, the tenant will offer evidence, including any witnesses they may have. The judge will give you a chance to ask questions about the tenant’s evidence, and the judge may also ask the tenant questions about their evidence.

During the trial, the tenant may claim certain defenses. Some of the more common defenses used by tenants are:

- The landlord did not make a written demand for the rent before starting the eviction case
- The landlord did not follow the rules for serving the Notice of Petition and Petition
- The person named as the “petitioner” in the case (usually you as the landlord) is not a person authorized to file a non-payment eviction proceeding
- The overdue rent amount is wrong

- The tenant paid some or all of the overdue rent
- The tenant tried to pay the rent but the landlord refused to accept it
- The landlord owes the tenant money for a rent overcharge
- Conditions in the rental property make it unsafe and/or unlivable for the tenant

After all the evidence has been presented, the judge will make a decision.

The Judge's Decision

The judge may:

- reject your claims, decide in the tenant's favor, and dismiss the lawsuit. This means that you cannot evict your tenant on this lawsuit; OR
- decide the case in your favor and award you a judgment giving you the right to:
 - evict your tenant
 - take back possession of the rental property
 - collect overdue rent

Even if you win a judgment, the judge may “stay” (delay) the eviction date giving the tenant some time to find another place to live.

The court clerk will issue a judgment order and warrant of eviction. Once the judge signs the order and warrant you must bring the papers to an enforcement officer to have your tenant removed from the property.

An enforcement officer may be a:

- sheriff
- constable
- marshal

Only an enforcement officer — not the landlord — can evict a tenant after the landlord wins a judgment. Contact the enforcement officer for more information about their procedures and fees.

The enforcement officer must give the tenant 14 days written notice that they will be evicted if they do not leave the rental property. The enforcement officer can remove them and their personal possessions from the rental property if they do not leave.

After a Judgment

Order to Show Cause

After you win a judgment, your tenant(s) may ask the judge to re-open the case for one or more reasons by filing an:

- Order to Show Cause
- Affidavit in Support of Order to Show Cause

If you are served with an Order to Show Cause, read it carefully. The Order to Show Cause will have a court date and time, and you must go to court on that date and time. The Affidavit in Support of Order to Show Cause will give the reasons your tenant is asking to re-open the case. The Order to Show Cause “stays” (delays) the eviction until the judge hears and decides it.

Appeals

You and the tenant both have the right to appeal the judge’s decision if you disagree with it. When you appeal, the judge’s decision is reviewed by a higher court. There are strict time limits to file an appeal, so if you want to appeal, ask the court clerk about the procedures to file an appeal right away.

FORMS

Written Notice to Terminate (Move Out)

Landlord:

Tenants:

Property Description

- Property address: _____
- Apartment number: _____
- Number of rooms: _____
- On what floor(s): _____
- On what side [*check all that apply*]: left right front back middle

This property is used as a [*check one*]: business residence

List the names of every tenant, under-tenant, assignee, and person in possession of the premises:

- | | |
|----------|-----------|
| 1. _____ | 7. _____ |
| 2. _____ | 8. _____ |
| 3. _____ | 9. _____ |
| 4. _____ | 10. _____ |
| 5. _____ | 11. _____ |
| 6. _____ | 12. _____ |

[If you need more space to list tenants, please attach an extra sheet to this form.]

NOTICE

To the above-listed tenants, under-tenants, assignees, and other persons in possession of the premises, you do not have permission to stay at the above property because [*check one*]:

- your lease expired on ____/____/_____
- your verbal/written rental agreement expired on ____/____/_____
- the landlord is ending your lease or verbal/written rental agreement

You must move out by ____/____/_____, or the landlord will start an eviction case against you in court.

Landlord or Agent Signature Print Landlord or Agent Name ____/____/_____
Date

Landlord or Agent Address
(____) ____-_____
Landlord or Agent Phone _____
Landlord or Agent Email



Notice of Court Date: Eviction Case

Landlord: attach this form to your petition. If you want an eviction for unpaid rent only, this is the wrong form. Use form UCS-LTN1 instead.

UCS-LTH1 (05/2024)

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nycourthelp.gov

County of _____ City Town Village District Court

Index Number: _____

Name of Court: _____

Landlord: the name of the court is usually a location, like Buffalo City Court or Concord Town Court. For Suffolk County District Court, write the district number and location, like 2nd District Lindenhurst.

TO: Tenant/Occupant (Respondent): _____
Names of all tenants/occupants the landlord is asking the court to evict.

Property Address: _____

FROM: Landlord (Petitioner): _____
Name of landlord or owner asking the court to evict the tenant/occupant.

Landlord's Address: _____
Landlord: write your business address if you have one or your home address if you don't.

Landlord's Phone No.: _____
Landlord: write your business number if you have one or you home number if you don't.

Warning! Your landlord is asking the court to evict you. If you do not want to be evicted, you **must** go to court on the date and time below. If your name is not on this form but you live at this address, you have a right to go to court.

Your landlord is also asking for a money judgment.



Go to Court on

Date: _____ (mm/dd/yyyy)

Time: _____ AM PM

Court address: _____

Courtroom #: _____

Acuda al tribunal

Fecha

Hora

Dirección del tribunal

de sala

How to Respond to the Petition

1. Your response to the Petition is called an Answer. You can speak your Answer in court. Or you can write your Answer and take it with you to court.
2. **Your Answer tells your side of the case and the reasons why you should be allowed to stay. These reasons are called defenses.** If you do not tell the court about a defense, you might not be able to use it to support your case or any other case. **You may also talk about money that the landlord owes you.** These are called counterclaims. Learn more about *Answers* at: nycourts.gov/forms/landlordtenant/.

Need more time to get ready for court?

You have a right to postpone the case for 14 days, but you must go to court and ask for the postponement. (RPAPL 745)



Landlord's Lawyer's Signature (Landlord: If you do not have a lawyer, skip this section and bring your papers to court for the judge or clerk to sign. If you do have a lawyer, ask your lawyer to fill in this section.)

Lawyer Signature

Print Lawyer Name

____/____/____
Date

Lawyer Address

(____) ____-____

Lawyer Phone

Lawyer Email

Court Signature (The court's signature is required if the landlord does not have a lawyer.)

Signature of Judge Clerk


Judge/Clerk Name

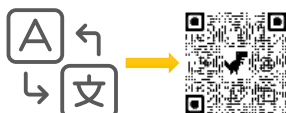
____/____/____
Date

Resources for Landlords and Renters

Translation of this Form

nycourts.gov/forms/landlordtenant/

- Spanish | español
- ASL | Video 



Free Interpreters

Spoken & Sign Language
1-800-COURT-NY
(1-800-268-7869)

nycourts.gov/courtinterpreter
courtinterpreter@nycourts.gov



Find a Lawyer Legal Help & Information



- nycourts.gov/courthelp/Homes/evictions.shtml
- lawhelpny.org
- tenanthelpny.org
- NYS Bar Association Lawyer Referral Service (low cost), findalawyernys.org



ADA Accommodations

1-800-COURT-NY
(1-800-268-7869)

nycourts.gov/accessibility
ada@nycourts.gov

Financial Help from 2-1-1

- Call 211
- Go to www.211.org
- Get 211 help at some courthouses





Eviction Petition – Holdover (Recover Possession of Real Property)

_____ Court

County of _____

Landlord/Petitioner (person/entity that started the case):

Tenant/Respondent (person whom the case is against):

Index Number:

I am the landlord of the premises located at the following address:

The tenants listed below are currently in possession of the premises [*list the names of every tenant, under-tenant, assignee, and person in possession of the premises*]:

- | | |
|-----------|-----------|
| 7. _____ | 7. _____ |
| 8. _____ | 8. _____ |
| 9. _____ | 9. _____ |
| 10. _____ | 10. _____ |
| 11. _____ | 11. _____ |
| 12. _____ | 12. _____ |

The tenants agreed to pay \$_____ rent per month due on the _____ day of each month.

The tenant's lease or verbal/written rental agreement ended on ____/____/_____.

The tenants were served with a written demand to vacate the premises instructing them to move out within [*check one*]:

- 30 days (tenant has occupied the unit for less than one year and does not have a lease term of at least one year)
- 60 days (tenant has occupied the unit for more than one year but less than two years and has a lease term of at least one year but less than two years)
- 90 days (tenant has occupied the unit for more than two years or has a lease term of at least two years)

A copy of the form and proof (affidavit or affirmation) of service are attached.

The tenants continue to occupy the premises without permission after the lease or verbal/written rental agreement ended.

I request a final judgment:

- returning possession of the premises to the landlord
- issuing a warrant of eviction to remove the tenants from the premises
- issuing a judgment against the tenants for rent owed after the lease or verbal/written rental agreement ended in the amount of \$_____
- issuing a judgment against the tenants for court costs

VERIFICATION

STATE OF NEW YORK

COUNTY OF _____

_____, being duly sworn, states the following:

1. I am the petitioner in this case.
2. I have read this Petition to Recover Possession of Real Property – Holdover, and I know what it says.
3. The information above is true, accurate, and complete to the best of my knowledge and belief.

Petitioner SignatureSworn to before me this _____
day of _____, 20_____._____
Notary Public**Resources for Landlords and Renters****Written Translation of this Form**nycourts.gov/forms/landlordtenant/

Spanish | español

ASL | **Free Interpreters**

Spoken & Sign Language

1-800-COURT-NY (1-800-268-7869)

nycourts.gov/courtinterpretercourtinterpreter@nycourts.gov**Find a Lawyer, Legal Help & Information**

- nycourts.gov/courthelp/Homes/evictions.shtml
- lawhelpny.org
- tenanthelpny.org
- NYS Bar Association Lawyer Referral Service (low cost), findalawyernys.org

**ADA Accommodations**

1-800-COURT-NY (1-800-268-7869)

nycourts.gov/accessibilityada@nycourts.gov**Financial Help from 2-1-1**

- Call 211
- Go to www.211.org
- Get **211 help** at some courthouses



GLOSSARY

Action	A lawsuit or proceeding in a court.
Adjournment	Postponing a court date to another time.
Affidavit	A signed, written statement that is sworn before a notary and made under the penalties of perjury stating something is true or believed to be true.
Affidavit/Affirmation of service	A signed, written statement by someone over 18 years old who is not a party in the case saying they delivered certain legal papers or documents to someone.
Affirmation	A signed, written statement made under the penalties of perjury declaring something is true or believed to be true.
Agent	A person legally authorized to do business or manage legal affairs for someone else. For example, a property management company may be authorized as a landlord's agent.
Allegation	A statement or claim against someone that has not been proven to be true or false.
Allege	To say something that has not been proven is true.
Answer	A legal paper filed with the court by a respondent addressing the claims made in the petitioner's written complaint. An answer can give defenses to the petitioner's claims and/or make counterclaims.
Appearance	Going to court. (NOTE: If you do not have a lawyer, you must go to court in person. If you have a lawyer, you and your lawyer can go to court together, or your lawyer can go to court for you.)
Bench	Refers to the judge's seat ("the judge took the bench") and/or the judge ("the lawyer addressed the bench").
Calendar	A list of cases scheduled to be heard in court.
Calendar call	Calling the parties and/or their attorneys whose cases are scheduled in court that day to come up and stand in front of the judge.
Caption	Heading on legal papers that shows the court's name, party names, index number, and type of paper (for example, summons, complaint, answer, motion, etc.).
Case file	The court file containing papers submitted in a case.
Certified copy	A copy of a court paper officially marked as a true copy of the original by a court clerk.
Complaint	A legal paper filed with the court by a petitioner giving the petitioner's claims against the respondent.
Conspicuous	Obvious or easy to notice.
Costs	Expenses for prosecuting or defending a lawsuit (does not include lawyer's fees).
Counsel	Lawyer or attorney.

Cross-examination	Questioning an opposing party or witness called by the opposing side in a trial, hearing, or deposition.
Default	When a respondent does not answer or defend a lawsuit within the time allowed or does not appear for a trial.
Enforcement officer	An authority (usually a sheriff, constable, or marshal) who is legally authorized to carry out a court order or judgment.
Eviction	A court proceeding to remove a tenant who is occupying rental property.
Evidence	Testimony, records, documents, physical objects, etcetera, presented as proof at a court proceeding.
Exhibit	A document or physical object offered as evidence in a trial or hearing or attached to court papers.
Ex parte	A motion (application or request), proposed order, proceeding, or other submission to the court that is made without notifying the other parties in the case.
Fee	A fixed charge for a service.
Index number	A number issued by the court clerk that identifies a court case. (In civil matters, there is a fee to get an index number.)
Judgment	A final decision in a court case.
Landlord	The owner of a rental property.
Lease	A legal agreement that establishes the relationship between a landlord and tenant.
Motion	A request for a specified ruling, decision, or order by the court.
Mediation	A process where an impartial person who is not a party in the case helps the parties identify their issues, consider options, and reach a mutually agreeable solution to resolve their dispute outside of court.
Notice of petition	Written notice from the petitioner to the respondent that they are being sued and must come to court for a hearing about the relief (type of legal remedy or assistance) the petitioner has requested in the petition.
Oath	Swearing to tell the truth.
Order to show cause	A court order requiring a party to appear in court on a specific day and time to explain (show cause) why the court should or should not issue a court order for a specified relief (type of legal remedy or assistance someone wants from the court).
Party	A person who files a lawsuit or has a lawsuit filed against them in a court.
Petition	A written application filed with a court asking for a court order for a specific relief (type of legal remedy or assistance someone wants from the court).
Petitioner	A person who files a lawsuit (also known as a plaintiff).

Pleadings	Legal papers filed with the court by the parties in a lawsuit giving their respective claims and defenses (for example, a petition, complaint, answer, or reply).
Proceeding	A lawsuit filed and heard in a court.
Pro se	see Self-represented
Relief	The type of legal remedy or assistance someone wants from the court.
Reply	A legal paper filed with the court by a petitioner addressing any defenses and/or counterclaims in a respondent's written answer.
Respondent	A person a lawsuit is filed against (also known as a defendant).
Satisfaction	Paying an outstanding debt or fulfilling a legal obligation, claim, or judgment.
Self-represented	A person involved in a court case who does not have a lawyer (also known as pro se).
Service	Delivering legal papers to a person involved in a court case.
Stipulation of settlement	An agreement between the parties that resolves a lawsuit.
Stay	A court order that stops something from happening until a specific action is taken or the court lifts the order.
Sub-tenant	see Under-tenant
Tenant	A person who rents or leases a property owned by someone else (landlord) for a specific time period.
Testimony	Statements made by a witness under oath.
Trial	A formal court proceeding where parties give evidence (testimony, documents, etc.) to support their case and a judge decides the case based on the evidence.
Under-tenant	A person renting from the tenant who is named in the lease or rental agreement (also known as a sub-tenant).
Verification	A written statement declaring something is true or believed to be true that is signed and sworn in front of a notary or other officer authorized to administer oaths.
Warrant of eviction	A court order directing an enforcement officer to remove a person and their personal property from a premises.
Witness	A person who testifies to what they have seen, heard, or experienced.