



United Tenants of Albany
33 Clinton Avenue
Albany, New York 12207
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EVICITION

If you break the terms of a lease or fail to pay rent, the landlord can bring a legal proceeding to force you to move. **YOU CANNOT BE EVICTED WITHOUT A COURT ORDER SERVED BY THE SHERIFF, MARSHALL, OR CONSTABLE.**

Before you can be forced to move out, the landlord must commence a summary proceeding to evict you legally from the apartment by serving upon you a petition and notice of petition (or order to show cause). The notice of petition must be issued by the party bringing the proceeding. An ordinary letter from the landlord or the landlord's attorney to the tenant is not enough.

The petition and notice of petition will generally:

- state that the landlord owns the premises from which he seeks to evict the tenant
- state that a landlord/tenant relationship exists
- describe the premises from which removal is sought
- state the facts upon which the eviction is based
- state the remedy that the landlord is seeking (i.e. eviction from the apartment and/or the amount of rent due).

If you receive a legal eviction proceeding notice, you should seek legal advice immediately. Contact the Legal Aid Society, community action agency, or tenants' organization in your area. If you wish to fight the eviction, you must file an answer with your defenses within the time allowed or appear at a hearing on the date given on the notice. *If you do not appear in court on the given day or fail to answer within the time allowed, you will automatically lose, so it is important not to ignore any petition for eviction.* Also, check the rules of the court involved.

If you are being evicted for failure to pay rent, you might offer to pay late. If the landlord accepts the offer, the eviction proceedings stop, but it is still in your best interest to appear in court on the given day, just to be safe. Be sure to get a signed receipt from the landlord whenever you pay rent

If you do not respond to a legal eviction petition, or if the court decides against you, the court will order a final judgment and issue a warrant signed by the judge to the Sheriff, Marshall or Constable. If payment is not forthcoming, the warrant will be served on you and you will be given three days notice (72 hours) to leave the house or apartment. If you are on welfare, contact the caseworker and let her/him know of your situation.

If you do not leave within 72 hours, the Sheriff/Marshall/Constable has authority to remove your belongings and/or lock you out. ONLY THE SHERIFF, MARSHALL, OR CONSTABLE MAY LEGALLY EVICT THE TENANT. The landlord cannot do this.

A judge, at her/his discretion, may grant a stay (postponement) of an eviction against a tenant for good cause (i.e., so that children may finish school year at the same school, difficulty in finding housing for a large family, etc.). However, the tenant should not rely on the granting of such a postponement, since it is solely up to the judge and it may not be granted. The tenant may have to deposit with the current court the rent due through the postponement and any rent unpaid prior to the postponement, such a stay is limited to four months.

Illegal Evictions

It is against the law for the landlord to evict you without a court order and if he does, you may press criminal charges. Also, you may break into or recover possession of the apartment **if illegally locked out** by the landlord before the Sheriff, Marshall, or Constable has come to evict you. If you do this, you should notify the police first and be prepared to show them proof that this is your current address.

(Section 751 of the Real Property Actions and Proceedings Law.)