



# **Your Rights as a Landlord or Tenant in Illinois©**

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# Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

## Warning to all readers

**Before you proceed with using this packet, you should ask yourself the following questions:**

**1. Have I tried to consult a private attorney?**

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

**2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?**

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed below. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

### **3. Is this something that I can do on my own?**

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

#### **Legal Service Providers**

##### **Land Of Lincoln Legal Assistance**

Serves the 65 southernmost counties in Illinois Toll Free:

877-342-7891 For additional information, you may visit

their website at [Http://www.lollaf.org](http://www.lollaf.org)

##### **Prairie State Legal Services**

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

**800-331-0617**

##### **Coordinated Advice and Referral Program for Legal Services**

Serving Cook County

312-738-9200

##### **Will County Legal Assistance**

Serving Will County

815-727-5123 Free sources

of legal help

## **HOW TO USE THIS SELF HELP PACKET**

**It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.**

**Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:**

### **People you should know**

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

### **What these legal terms mean**

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

### **Summary of the law in this area**

This section contains summaries of important areas of the law that you need to know.

### **How to file a document in a court file**

This section answers commonly asked questions about filing documents.

### **Myths and Tips**

These two sections discuss commonly held misbeliefs about the law and steps that you should take (or not take) that could make your task easier.

## **WHO THESE PEOPLE ARE**

### **Judge:**

The judge is the person who presides over the courtroom. In most cases, including eviction cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.

**Circuit Clerk:**

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.

**Sheriff:**

The Sheriff's main duty is to keep the peace and to enforce the law. His/her role in the legal system, however, is usually to "serve" (give notice) to people that they are being sued. The sheriff does this by giving the person a notice called a "summons" . The sheriff also enforces the judge's orders.

**Attorney:**

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.

## **OTHER OPTIONS YOU MAY HAVE**

### **Mediation**

In some cases, you may be able to work out an agreement with your landlord or tenant as to what should be done about a particular situation or problem. A mediator is someone who can meet with you and the person with whom you are having a dispute and help you both come to a resolution you can both agree on. A mediator is not a judge and does not make decisions, but rather helps you and the other person make a decision. In some counties, mediation is offered in certain types of cases, including landlord/tenant cases.

### **Local or municipal law**

In some cities or municipalities, you may have additional rights not mentioned in this packet. For more information on whether a local ordinance affects your situation you will probably need to consult an attorney.

## OTHER PUBLICATIONS ON LANDLORD/TENANT LAW

### Disclaimer: Please Read !!

The following is a list of publications which discuss the issues of landlord/tenant relations. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular publication will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

Landlord/Tenant (pamphlet); Illinois State Bar Association [available at the Self Help Legal Center]

You can also **Search** the SIU Law Library catalog for [Self-Help Law Books](#), written for the nonlawyer.

## WHAT THESE LEGAL WORDS MEAN

### **answer or response**

The written response to a complaint or a petition that is filed by the defendant (the person being sued) in a lawsuit. In small claims court, you are not required to file an answer as long as you show up to the first scheduled hearing on the plaintiff's complaint.

### **breach or "breaking" an agreement**

To do something that an agreement prohibits you from doing or failing to do something that you had agreed to do.

### **circuit**

The judicial system in Illinois is divided into circuits. Each circuit defines a geographic area in Illinois.

### **exemption rights**

In Illinois, certain property (including cash, income, personal property, and a portion of your car and home) cannot be taken from you to pay a debt. This property is called exempt property. If a judgment is entered against you in Illinois, you have the right to claim this property as exempt and not use it to pay a debt against you. For a discussion of your rights as a debtor, see the debtor's material on the Self Help Legal Center website.

### **default**

If a person who is sued fails to appear at the first scheduled hearing (or any subsequent hearings) and/or if he/she fails to file an answer to a complaint, petition, motion, etc. filed against him/her, he/she can be held in default. Being held in default means that the other side (the person who filed the complaint, motion, petition) will usually receive whatever relief or money they were asking for.

### **defendant**

A person who is sued.

### **evicted**

To have your ownership terminated in and be physically removed from a piece of property you used to lease or own.

### **hearing (trial)**

An opportunity for both parties to tell the judge or jury their side of a dispute. Some hearings are court ordered so missing them can result in being held in contempt of court. For hearings which are not court ordered, failure to appear can result in the other side getting what they want in relief.

### **hold-over**

When a tenant fails to leave the premises even though the period of the lease has expired, he/she is said to be "holding over".

### **judgment**

The final decision or order of the court.

### **Jurisdiction**

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a thing. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state that gave rise to the case.

**lease**

The agreement by a landlord to allow a tenant to live in or use his property in exchange for something — usually money.

**motion**

A written or oral request to the judge after a lawsuit has been started (see petition).

**notary public**

A person who verifies that a signature on a document is made by the person whose signature appears. The notary public does not verify the content of the document itself.

**petition or complaint**

A written request to the court. A petition usually starts a lawsuit and contains the facts that one person alleges has happened along with the relief that they are requesting from the court.

**plaintiff or petitioner**

The person who starts a lawsuit.

**pro-se**

A person who is not represented by an attorney and is involved as a party in a lawsuit.

**serve or service**

The process where a person is officially notified of a pending lawsuit.

**statute**

The law that the state legislature or federal government enacted on a particular subject.

**Sublease**

To lease from someone who is leasing the property him/herself.

**SUMMARY OF LAW IN THIS AREA**

**The eviction process is discussed in Article 9 of Act 5 in the Illinois Code of Civil Procedure. The Code of Civil Procedure can be found in Chapter 735 of the Illinois Compiled Statutes. Article 9 is called the Forcible Entry and Detainer section of the Code of Civil Procedure.**

### **What is Forcible Entry and Detainer?**

Forcible entry and detainer is a section of the Code of Civil Procedure which governs how leases in Illinois are terminated and how the eviction process of a tenant is started.

### **What kind of relief can you get in Forcible Entry and Detainer?**

The only relief that you can get when you file a complaint under this section is a judgment for money and an eviction.

### **Do you need an attorney to file a claim or represent you in an eviction proceeding?**

No. The procedure for evicting a person does not require the assistance of an attorney. This does not mean, however, that the person you are suing or the person suing you cannot have an attorney.

### **Jury demands**

A person can have a jury in an eviction proceeding if he/she requests it at the time they file their complaint or if they are the defendant, at the time they show up to the first scheduled hearing on the plaintiff's complaint. A party demanding a jury may have to pay a fee for the jury.

### **Ex parte (one party) hearings**

In any eviction case the judge may conduct a hearing on the dispute even if the defendant does not appear.

### **Special rules for public housing**

Public housing tenants have rights which are not discussed in this packet. For more information about these rights, you should contact a legal services office or a private attorney.

### **Duty to mitigate**

Even when the tenant violates or breaks the lease, the landlord has a duty to mitigate (or lessen) the amount of damages he/she may incur. This would include, but is not limited to: finding a new tenant, agreeing to a sublease, etc.

## **WHAT IS A LEASE?**

A lease is a written agreement between two people in which one party agrees to allow the other to reside or use his real estate in exchange for something — usually money. This money is called rent.

While no particular words are needed to create a lease, a lease should include the names of the parties, a description of the real estate, the starting and ending date of the lease agreement, the amount of rent, and when the rent is due.

## **The types of leases**

### **oral v. written**

Leases can be oral or in writing. Keep in mind, however, that the terms of an oral lease would be difficult to prove in court, so it is a good idea to get your lease in writing. A lease must be in writing if it is for a period of more than one year.

### **unspecified term v. periodic**

Leases can be for a specific period of time like a year, a month, or a week, or they can be for an unspecified period of time. The term of a lease affects how much notice the tenant must receive before an eviction proceeding can be started by the landlord.

## **COMMONLY ASKED QUESTIONS ABOUT LANDLORD/TENANT LAW**

### **Q: Do I have the right to sublease my apartment/home?**

A: No. Unless your lease agreement gives you this right, you do not have the right to sublease the property you are renting to someone else without the permission of the landlord.

### **Q: When can the landlord enter my apartment/home?**

A: Unfortunately, there is no rule or law in Illinois which states when a landlord can or can't enter the property he/she is renting. As such, the general rule is that a landlord may enter with reasonable notice during reasonable times except in case of an emergency unless a local ordinance or the lease agreement specifically states otherwise.

Keep in mind that a renter does have a right to use enjoy the premises and the landlord cannot interfere unreasonably with that right by frequently entering the property or failing to give notice of entry.

**Q: What happens if a tenant breaks the lease and decides to move?**

A: Unless the landlord says otherwise, the tenant is obligated to pay rent for the remainder of the term of the lease whether he/she actually lives in the premises or not.

As such, the tenant can and should, however, work with the landlord as soon as he/she discovers that he/she must move and break the lease.

Keep in mind that by law, a landlord has a duty to mitigate (try to reduce) any losses that may occur if a tenant breaks the lease. Consequently, if after the tenant moves, he/she can find a suitable person to take over his/her lease or if the landlord finds someone to take over the tenant's lease, the tenant should not have to pay for the remainder of the lease period.

**Q: Does a tenant have the right to have utilities in his/her own name?**

A: If the landlord fails to pay the utility bill, the tenant has the right under Illinois law to ask the utility to put the utilities in his/her name as long as he/she pays whatever security deposit and/or has the proper credit to otherwise obtain utility service.

## **WAYS IN WHICH A LANDLORD CAN BE IN VIOLATION OF A LEASE**

A landlord can be said to have violated or "broken" a lease when he/she does any of the following acts. Please note that just because a landlord has "broken" or "violated" a lease agreement, it does not mean that you can take whatever action you want, including breaking the lease yourself.

In most cases, your only option will be to sue your landlord in Small Claims Court for money damages. For more discussion on how to sue someone in Small Claims Court see the SmallClaims packet.

**1) Violates the terms of the lease agreement;**

The lease agreement may state something specific that the landlord must or can't do (like mow the yard or enter the tenant's apartment). If the landlord fails to meet an obligation under the lease or commits an act prohibited by the lease, he/she can be said to have "broken" the lease agreement.

**2) Permits uninhabitable conditions to exist in the rented property;**

If the landlord fails to maintain the property he/she is leasing in a livable condition, he/she may be violating a warranty called the "implied warranty of habitability". By law, this warranty automatically comes with every lease in Illinois whether the lease

specifically mentions it or not. If you do not have heat, water, sewer, or electricity or if you have a severe pest infestation problem, the landlord may be in violation of this implied warranty.

### **3) Fails to return a security deposit.**

The landlord must promptly return the security deposit if no damage has been done beyond normal wear and tear and the rent is fully paid.

If the landlord owns 5 or more units (one of which you are renting), he/she must give the tenant written notice of the actual damage caused and the cost of repairing the damage within 30 days of the date the tenant leaves. If the landlord does not give the notice within the 30 day period, he/she must return the security deposit in full within 45 days of the date the tenant leaves.

If the landlord owns 25 or more units (one of which you are renting), he/she must also pay 5% interest on the security deposit from the date the security deposit was paid, if it is held for more than 6 months.

## **WAYS IN WHICH A TENANT CAN VIOLATE THE LEASE**

A tenant can be said to have violated or "broken" a lease when he/she does any of the following acts. Please note that just because a tenant has "broken" or "violated" a lease agreement, it does not mean that you can take whatever action you want, including breaking the lease yourself.

In most cases, your only option will be to either evict the tenant for breaking the lease and/or sue the tenant for money damages.

### **1) Violates the terms of the lease agreement;**

The lease agreement may state something specific that the tenant must or can't do (like mow the yard or sublease to other parties). If the tenant fails to meet an obligation under the lease or commits an act prohibited by the lease, he/she can be said to have "broken" the lease agreement.

### **2) Fails to pay rent when it is due;**

If the tenant does not pay the landlord the rent when it is due, he/she can be said to have "broken" the lease agreement.

### **3) Doesn't leave at the end of the lease term;**

If a tenant fails to leave the property he/she is renting at the end of the lease term, the tenant can be said to have "broken" the lease agreement. This is called "holding over" and

in some cases, can cause the tenant to have to pay twice the rent payments for the period beyond the lease agreement.

#### **4) Causes damage to the rental property;**

If the tenant damages the property he/she is renting, he/she can be said to have broken the lease agreement.

## **REMEDIES THAT YOU CAN OR CAN'T USE AS A LANDLORD OR TENANT**

**A landlord cannot use the following procedures to force a tenant to leave (sometimes called a constructive eviction) or to comply with the terms of a lease:**

- 1) Locking the tenant out or changing the locks on the tenant's property.
- 2) Evicting the tenant, including removing the tenant's personal belongings, furniture, etc., without a court order;
- 3) Having the tenant's utilities (water, sewer, heat, electricity, phone) shut off or disconnected;
- 4) Failing to make necessary repairs to the property (heat, water, electricity, pest control, etc.)

**Similarly, a tenant cannot use the following procedures to get a landlord to comply with the terms of a lease:**

- 1) Deduct money for repairs made from rent: A tenant has no right under Illinois law to make repairs themselves and deducting the cost of the repairs from the rent that is due.
- 2) Withhold rent: Similarly, under Illinois law, you have no right to withhold or refuse to pay rent no matter how bad a place is or what the landlord does or fails to do (like return a security deposit.)

**A landlord or tenant can use the following procedures to get money or to evict a tenant.**

#### **1) File a Small Claims Action**

If you believe that someone owes you money — whether for past due rent, damage to property, return of a security deposit, etc — and the only relief you want is money (not an

eviction or to force the landlord to make repairs.) you should sue the person who owes you money in Small Claims Court. For a discussion on how to sue someone in Small Claims Court, see the small claims packet.

## **2) File a Forcible Entry and Detainer (FED) complaint:**

To evict someone and/or get money damages, you will need to file a complaint in court. This is called a forcible entry and detainer lawsuit and is discussed in detail later in this packet.

# **THE EVICTION PROCESS**

## **STEP 1: SEND YOUR NOTICE TO EVICT TO THE TENANT:**

Before you can start the process of eviction, you must send a notice to the tenant of your intention to evict them. In the supplement to this packet you will find 3 types of notices that you can send. Which notice you use depends upon the reason for the eviction as well as the term of the lease. You can send the notice by certified or registered mail with a return receipt requested or you can leave it with the tenant or with someone who lives with the tenant who is at least 13 years old. If the tenant has moved from the premises, you can post the notice on the door.

### **5 DAY Notice:**

Use this notice if the tenant has not paid the rent that is due. If the tenant pays the rent that is due within the 5 days, the landlord must accept the rent and cannot proceed to evict the tenant for failure to pay rent. If the landlord accepts the rent after the 5 days have passed, he/she also cannot evict the tenant for failure to pay rent unless he/she has already filed his/her complaint (see below).

### **10 DAY Notice:**

Use this notice if the tenant has violated any term of the lease other than to pay rent. As with the 5 day notice, if the tenant corrects the violation within the 10 day period, the landlord cannot evict the tenant for that violation.

### **30 DAY Notice:**

You must use this notice if you do not have a written lease or your lease period is for one month or less.

You do not have to send any notice if the lease term has ended and the tenant is "holding over."

## **STEP 2: WAIT UNTIL NOTICE PERIOD EXPIRES**

Depending on which notice you used, you will either have to wait 5, 10, or 30 days before you can proceed with filing your eviction complaint.

## **STEP 3: FIGURE OUT WHERE TO FILE:**

The law requires you to file your complaint in the county where the premises you were leasing is located.

## **STEP 4: GO TO THE CIRCUIT CLERK'S OFFICE:**

Go to the Circuit Clerk's office at the courthouse in your county and ask the Clerk for an eviction complaint form. If they do not have a form, you can use the one found in the supplement to this packet.

**STEP 5: FILL OUT THE COMPLAINT FORM:** Using the instructions in the Forms Guide (if you are using the form in the supplement), you will need to complete the eviction complaint form. You must attach to the form copies of any relevant documents such as the lease, receipts, estimates, bills, or agreements.

## **STEP 6: FILE THE COMPLAINT:**

Take the Complaint form to the Circuit Clerk and tell him/her that you wish to file your complaint. At this time you will have to pay a filing fee and if you want a jury trial, you must demand one now. If you do not request a jury, a judge will decide your case. You will have to pay an additional charge for a jury trial. If you are a person of low income, you can apply for a fee waiver. A copy of a form called an Application To Sue As A Poor Person is at the back of this pamphlet. You should give this form to the Circuit Clerk and ask that it be presented to a judge for his/her approval.

## **STEP 7: SEND A COPY OF THE COMPLAINT TO THE TENANT**

Using the sheriff, you will need to "serve" the tenant with your complaint. If the tenant lives in Illinois, you should use Packet #1 of the Court series.

If the tenant does not live in the State of Illinois, you should use the how to serve someone outside the State of Illinois packet and supplement.

**If you do not know where the tenant lives, you can serve by publication which is (discussed in a separate packet), but any claims for money (e.g., like past due rent or damages) will be postponed until the tenant is served in person. You still, however, can get possession of the premises through publication.**

### **STEP 8: PREPARE FOR THE HEARING:**

In the supplement to this packet, you will find an Order For Eviction/Payment form. You will want to take this form with you to your hearing.

In addition, you should take whatever documents, notes, receipts, pictures that you need to prove your claim. Keep in mind, however, that in some cases, documents or written statements cannot be used as evidence unless the person who wrote the document appears in court as well. If you need certain evidence to prove your claim, do not rely on a written statement even if it is a sworn statement like an affidavit. Instead, you should ask the person to appear at your hearing and if they refuse, you should subpoena them to appear.

Do not assume that the judge will give you a continuance (postpone the hearing) so that you can subpoena or ask witnesses to appear in court. Most judges will not do this. Instead, you should prepare for your hearing (including having your witnesses ready to testify) as if you will have your hearing on the date scheduled by the Clerk.

--As landlord, you carry the burden of proving your case. To get a tenant evicted, you must be able to prove that:

- a) you have a right to the property you were leasing (you own it, you lease it yourself, etc.);
- b) that the tenant violated the lease or stayed after the lease ended;
- c) that you have sent the proper notice;
- d) and that you have filed your eviction complaint and served the tenant in the proper form.

Please note that failure to show up to your hearing will likely result in your Complaint being dismissed even if the tenant does not appear.

# WHAT YOU SHOULD DO IF YOU ARE BEING EVICTED

## **Filing an answer to the complaint:**

In Illinois, you can file an answer to an eviction complaint either by filing a written answer or by showing up and telling the judge your position. Because it is often easier and more effective to present your eviction defense in written form, a form for an answer to an eviction complaint is included in the supplement to this packet.

## **Show up to the first scheduled hearing:**

If you do not show up, then the hearing will be held without you and you will, most likely, be held in default. Being held in default means that you lose, an order to evict you will be signed, and the judge may award whatever money that the other side was asking for in their Complaint. For more information, see "What happens if I lose?" on Page 22.

Similarly, if you show up and tell the judge you do not disagree with the Complaint or that you owe rent, the judge will probably rule in favor of the landlord and will give him/her a judgment in the amount of money he/she had requested in their Complaint as well as a date for you to be leave the premises or be evicted.

## **Know what you can be evicted for:**

Keep in mind that you can be evicted for any violation of your lease agreement, including, but not limited to: not paying rent, damaging the property, or disturbing neighbors. If you do not have a written lease, you can be evicted for no reason as long as you were given 30 days written notice.

## **Know what defenses you can use:**

While not all defenses will prevent you from being evicted, giving the judge a reason for your actions may cause the judge to lower the amount of past due rent or damages you owe and in some cases, may even delay the time for eviction. Keep in mind that you need to prove these defenses, you can't just raise them. If you are unsure as to what other defenses you may have, you should seek the assistance of an attorney. Some defenses are:

**I had to pay for repairs out of my own pocket:** In some cities, you can withhold part or all of your rent to make repairs needed to make the property liveable if you notify the landlord as such. In all other places, however, you do not have the right to withhold rent regardless of how bad the living conditions are. Either way, you should tell the judge if you had to make repairs to the property to keep it habitable.

**Unliveable conditions:** Similarly, if the property you were leasing did not have heat, electricity, water, sewer or was infested by pets, you should bring this to the attention of the judge.

**The landlord failed to honor the lease agreement:** If the landlord failed to honor an obligation in the lease agreement or did something the lease agreement said he/she could not do, you should raise this defense.

**No violation of the lease occurred:** If you have paid all of your rent and believe that you have not violated any provision in your lease, you should raise this defense.

**I corrected the problem in the notice:** Similarly, if you have corrected any complaint raised in the notice by the landlord, you should bring this to the attention of the judge.

**Failure to receive the correct written notice:** Finally, if you did not receive any written notice (see page 17) or the notice you received was not the right one, you should bring this to the attention of the judge.

## **AN EVICTION HEARING**

### **When do I find out when my hearing is?**

If you are filing the complaint, the Circuit Clerk will inform you as to when your hearing will be when you file your complaint. The time, date, and place of the hearing will be put on the Summons that is sent to the Defendant.

If you are the person being sued, the date and time of the hearing will be on the complaint and/or the summons you received.

If you lose your Summons or if you simply forget when your hearing is, simply call the Circuit Clerk and ask when your hearing is.

### **What do I need to take to trial?**

You should take to trial any witnesses, papers, objects, or photographs you want the judge to consider.

### **What will happen at the hearing?**

When your case is called, the judge will usually ask the person being sued if they admit or deny the allegations made and/or the amount requested in the complaint. If they do, then another hearing or "trial" will be held. The trial can either be held immediately, later in the day, or even on another day later in the week, month, or year.

When the trial is held, the person who filed the complaint will have the first chance to present his/her evidence and witnesses. When they are finished, the person who was sued will have his/her chance to present evidence and witnesses. Don't try to talk when the other side is presenting their case, regardless of what they might say. Simply allow them to finish and then present your side of the story.

The judge can then ask questions of either party as well as any of the witnesses. After hearing all of the evidence, the judge and/or the jury will then decide whether to dismiss the case or whether to award the person who filed the complaint any damages. The amount in damages may be different than what was asked for in the complaint and will be set by the judge and or the jury.

Of course, the best way to find out what will happen at your eviction hearing is to go to court and watch someone else's case. In most counties, all the eviction cases are heard on a certain day by a certain judge. Call the Circuit Clerk in the county in which your complaint is filed and find out what that day is. Then go and watch and see how the judge handles eviction cases.

## **LOSING IN AN EVICTION CASE**

### **What happens if I lose?**

#### **If you are the landlord:**

If you lose, your complaint will be dismissed and you will not receive any amount in damages. The judge might also have you pay the other side's costs or attorney's fees, if there are any.

If your request for relief was denied because you did not have enough evidence to support your request, then you will have to wait until the circumstances surrounding your request for support change before you can file another Complaint. The reason for this is because once the court makes a decision about an incident or an event, it cannot address that same incident or event again. If your request was denied because of some procedural error on your part (for example, you did not get proper service), then you should correct the error and request another hearing.

#### **If you are the tenant:**

If you lose, a "**judgment**" or an order will be entered against you. A judgment or order is simply a piece of paper signed by a judge which states when you must leave the property. Keep in mind that if you do not leave the property by that date, your personal belongings can be removed removed by the Sheriff and set out on the curb or street. If this occurs, it will be your responsibility, not the Sheriff or the landlord's, to see that your belongings are protected from weather or theft.

Do not assume that the court will give you time to move or time to find a new place to live.

The judgment may also state how that you owe the landlord money for past due rent or damages. Depending upon the terms of your lease, you may also have to pay the attorney's fees of the landlord.

The judge may then ask you to work out a payment plan with the opposing party and/or his/her attorney. You should be careful about this because any payment plan you agree to will become part of a **court order**. If you violate a court order by not making a payment, you could be held in contempt of court. Consequently, if you cannot make any payments on the judgment, you should simply inform the opposing party, their attorney, and the judge of your financial situation and tell them that you will try to make payments when your financial situation improves. If the judge and/or the opposing party tells you that you have to make payments, you should be aware of what are called your **exemption rights**. For more information on your rights as a debtor, see packet #1 of the Consumer Series

#### **If you were either the landlord or the tenant:**

Finally, whenever you lose in court, you have the right to request the court to reconsider its decision and you have the right to appeal the decision to a higher court. Please note that in most cases you have 30 days or less from the date of the judge's decision to exercise these rights or you may lose your right to reconsideration or appeal. You should seek the assistance of an attorney to exercise these rights.

## **WINNING IN AN EVICTION CASE**

### **What happens if I win?**

If you are the landlord and you win, then you will receive what is called a "judgment" against the person you are suing. As stated earlier, a judgment is simply a piece of paper signed by a judge which states when the tenant must vacate the premises and how much (if anything) in money you are owed. Keep in mind that if the tenant was ordered to pay you money, you may not get your money right away. In fact, if the person you sued has only **exempt** assets or income (see page 17), you might not get your money until some future date.

Keep in mind that you cannot enforce the court order for the tenant to vacate the premises including removing personal items (like furniture, clothing) belonging to the tenant. If the

tenant won't leave or move his/her personal belongings out by the date listed on the court order or judgment, you should contact the county Sheriff for assistance. The sheriff will help you remove the tenant and his/her belongings. In some counties, the sheriff will require you to pay a fee or a deposit for this type of assistance.

If you are the tenant, and you win, then you will not be evicted and you may receive your costs, including attorneys fees, from the person who sued you. Depending upon the circumstances, you may not have to pay the person who sued you the money he/she was asking for.

### **How do I collect the money I am owed?**

Some courts allow you to simply write the judge a letter and ask for a hearing to find out why you are not being paid. Some do not. If you need help getting a hearing set or having a **lien** placed on a piece of property, you may need to contact a private attorney. For a discussion on collecting money when you win in court, see Packet #5 of the Court series.

## **Q&A about filing documents**

### **Q: What is a court file?**

**A:** The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

### **Q: When do you need to file a document in a court file?**

**A:** Generally, you will file a document when you want to:

have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

### **Q: What does it mean to file a document in a court file?**

**A:** Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

**Q: Does filing a document make it legal?**

**A:** No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

**Q: Why is filing so important?**

**A:** Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.

Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.

## **Myths**

### **5 Commonly held beliefs about landlord tenant law which are not true:**

**I have been sued for eviction, I don't have the money, so there is no reason for me to show up to court.**

Wrong, there are 3 good reasons why you should show up to your eviction hearing. First, you may have a defense that you can raise (see page xx). Second, you may be able to work out an agreement with the landlord that you can both agree with. Third, at the minimum, you may be able to convince the judge to give you time to move or find a new place to live. If you don't show up, the judge will assume that you don't care and may order your eviction to take place that day.

**As long as I pay something as a tenant, I can't be evicted.**

Wrong. Unless you pay your rent in full when it is due, you can be evicted for breaking the lease.

**Once the tenant breaks the lease, I can change the locks, shut off the utilities, or move the tenant's stuff out.**

No, you cannot. Just because the tenant breaks the lease, it does not give you permission to break the lease or the law in Illinois. If you do any of the above without a court order, you can be held in violation of the law.

**If I win, I get my past due rent right away.**

Not necessarily. As a plaintiff, if you win in court you will receive a judgment. A judgment is just a piece of paper signed by a judge saying that the other party owes you money. It is up to you to enforce the judgment if the other party refuses to pay the money you are owed. For a discussion on collecting money you are owed, see Packet #5 of the Court Series.

**If I lose, I have to pay right away or agree to a payment plan**

You may not have to pay right away or agree to a payment plan depending upon your level of income and assets. You may have exemption rights which means that you may not have to use the few resources and income that you do have to pay the debt(s) that you owe. For a discussion on your rights as a debtor in Illinois, see Packet #1 of the Consumer series.

**📌 Tips**

**Get everything in writing.**

While it is not required, you should try to get all verbal agreements with the tenant or landlord in writing in the event that you have to prove the terms of the agreement. For example, if you are paying or receiving payments of rent, you should get a receipt showing when the rent was paid and how much.

**Document damage or bad conditions with pictures**

If you are claiming that damage was done by a tenant or that a landlord has failed to make repairs, a video or picture of the premises can help you prove your claim. Make sure that the video or picture has a time and date stamp so the person watching the video or looking at the picture knows when it was taken.

### **Take whatever you need to prove your claim to your hearing**

Remember that you can only testify as to facts or events of which you have direct personal knowledge. If you need a witness, document, picture, etc. to prove something, make sure that you bring it with you on the date of your hearing. Do not assume that the judge will give you a continuance to get this information or that the judge will require the other party to give this information to you.

Similarly, keep in mind that documents like letters, estimates, and written statements may not be considered by a judge if the person who wrote the letter/estimate/or statement doesn't appear in court on the date of your hearing. If you need this evidence to prove your claim, you should either bring these people with you or subpoena them to appear in court.

### **Get help if you need it**

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, appearing in court may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if representing yourself in court proves to be too difficult a task for you, talk to an attorney.