

EVICTION PROCEDURE GUIDELINE

The Clerks of the New Philadelphia Municipal Court are not attorneys, and they cannot give you legal advice. If you are unsure about your rights, or the procedures to follow, you should contact an attorney. This procedure guideline is intended to be informative only. As each situation is different, this guide should not be construed as replacing an attorney. Eviction statutes are found in O.R.C. Chapter 1923 and O.R.C. Chapter 5321 for further information.

An eviction, also known as a forcible entry and detainer action, is a lawsuit filed by a landlord asking the court to remove a tenant from a rental property.

You must be the legal titled owner of the property, or an attorney representing the owner, to file an eviction. All corporations, limited liability companies (LLC), trusts and partnerships must be represented by an attorney in eviction proceedings. You may not file an eviction on behalf of another person, even if you have power of attorney. Doing so will result in the dismissal of the case.

An eviction begins with the landlord serving the tenant a notice to vacate. If you have any questions about what type of notice you must use, you should contact an attorney. You will then need to file an eviction complaint with the Court. Attached to the complaint should be a copy of the notice served and a copy of a written lease agreement. You will also need to pay a filing fee. The filing fee is \$156.00 for one defendant and \$25.00 for each additional defendant.

The case will then be set for an eviction hearing. You should expect your court hearing to be within 14 to 21 days.

Every lawsuit is filed based upon a specific set of circumstances, and as such, the proof required will vary from case to case. Generally, at the eviction hearing, the landlord should be prepared to establish at least the following facts:

1. The reason for the eviction; including proof of ownership and all facts and legal reasons supporting the eviction.
2. The type of notice served, and the date upon which the notice was served;
3. How the notice was served, and by whom.

The date of the eviction hearing is the proper time for both sides to present evidence and testimony to the Court. If either side has evidence such as cancelled checks, pictures, written documents, receipts, etc., the original and a copy should be brought to Court on the day of the hearing. If either side intends to use witness testimony, the witness(es) should be at Court on the day of hearing.

Once the hearing has been concluded, the Judge or Magistrate will indicate whether the tenant must vacate the premises.

If the tenant is ordered to vacate and does not do so by the date ordered, the landlord must request a writ of restitution and pay a \$60.00 Bailiff fee. The writ is the legal authority for the landlord to retake possession of the rental unit. If the tenant has not vacated the property, the landlord will schedule a set-out date with the Bailiff and the tenant's possessions can be removed. It is the landlord's responsibility to make arrangements for the removal of the tenant's possessions. Every set-out shall be supervised by the Bailiff. On the scheduled date, the Bailiff will meet the landlord, or his/her agent, at the premises. The Bailiff may inspect the premises to determine if inhabitants need to be lawfully removed. If there are occupants who have been evicted pursuant to Court order who refuse to vacate the premises, the Bailiff will contact the appropriate police agency for assistance. The landlord shall then conduct the actual physical set-out.