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EVICCTIONS

Frequently Asked Questions

Q. How much does it cost to file an eviction suit?

A. The total filing fee for an eviction suit is \$31.00. A fee of \$55.00 is charged for service of process in a Justice Court case in Jefferson County.

Q. Where do I file my Eviction suit?

A. An eviction suit must be filed in the Justice Court in the Justice of the Peace Precinct of the county in which the rental property is located.

Q. How much does it cost to request a Writ of Possession?

A. The fee for issuing the Writ of Possession is \$5.00. The fee for service of the Writ of Possession is \$150.00. The total cost is \$155.00.

Methods of Payment

It is the better practice to file your eviction case in person. You should be prepared to pay the filing fees at the time of filing. The court accepts the following:

- Cash
- Check
- Cashier's check payable to Jefferson County
- Money order payable to Jefferson County

This information is furnished to provide basic information relative to the law governing evictions and eviction procedures in the Jefferson County Justice Courts. The Jefferson County Justice of the Peace, Precinct 7 and the Clerk's of the Jefferson County Justice of the Peace Court, Precinct 7 are not allowed to give legal advice. You are urged to review the applicable laws and to consult an attorney of your choice for further information or answers to specific legal questions.

Laws governing evictions and the landlord and tenant relationship are found in the Texas Property Code. Chapter 24 of the Texas Property Code governs Evictions; Chapter 91 governs the Landlord and Tenant Relationship; Chapter 92 governs Residential Tenancies; and Chapter 93 governs Commercial Tenancies.

Provisions governing Manufactured Home Tenancies are found in Chapter 94 of the Texas Property Code, and are not discussed here.

Procedural rules governing eviction proceedings are found in the Texas Rules of Civil Procedure, Part VII, Section 3, Forcible Entry and Detainer, Rules 738 et seq.

Disclaimer: *The law is constantly changing and there may be times when the information on this web site will not be current. This information is provided for general informational purposes only and is not intended as legal advice. This information is not a comprehensive treatment of the subject and is not a substitute for advice from an attorney.*

It is not possible to include information sufficient to meet all facts and circumstances and you are urged to consult with an attorney. We have made every effort to set out information accurately, but we do not warrant the reliability or appropriateness of the information for a particular purpose, and we do not assume liability for any consequences resulting from your reliance on the information presented.

Filing an Eviction Case

In eviction suits in the Justice Courts for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys.

In any eviction suit in Justice Court where a default judgment is taken, an authorized agent requesting or obtaining the default judgment need not be an attorney.

Notice To Vacate Prior to Filing Eviction Suit

Default or Holdover - Under Section 24.005 of the Texas Property Code, if the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three (3) days' written notice to vacate the premises before the landlord files an eviction, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement.

A landlord who files an eviction on grounds that the tenant is holding over beyond the end of the rental term or renewal period must also comply with the tenancy termination requirements of Section 91.001.

Tenant at Sufferance - If the occupant is a tenant at will or by sufferance, the landlord must give the tenant at least three (3) days' written notice to vacate before the landlord files a forcible detainer suit unless the parties have contracted for a shorter or longer notice period in a written lease or agreement.

Tax Foreclosure - If a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease. The tenant is considered to timely pay the rent under this subsection if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lien holder or the purchaser at foreclosure not later than the fifth (5th) day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. Before a foreclosure sale, a foreclosing lien holder may give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner of the property and specifying the date of the foreclosure.

Opportunity to Respond to Notice

If the lease or applicable law requires the landlord to give a tenant an opportunity to respond to a notice of proposed eviction, a notice to vacate may not be given until the period provided for the tenant to respond to the eviction notice has expired.

Delivery of Notice to Vacate

The notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question. If the dwelling has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to leave the notice to vacate on the inside of the main entry door, the landlord may securely affix the notice on the outside of the main entry door.

The notice period is calculated from the day on which the notice is delivered.

If before the notice to vacate is given as required by this section the landlord has given a written notice or reminder to the tenant that rent is due and unpaid, the landlord may include in the notice to vacate required by this section a demand that the tenant pay the delinquent rent or vacate the premises by the date and time stated in the notice.

Notice for Terminating Certain Tenancies

Unless the landlord and tenant have otherwise agreed in a written instrument, or there has been a breach of contract, Section 91.001 of the Texas Property Code provides that (a) a monthly tenancy or a tenancy from month to month may be terminated by the tenant or the landlord giving notice of termination to the other. If the rent-paying period is at least one month, the tenancy terminates on whichever of the following days is the later:

1. the day given in the notice for termination; or
2. one month after the day on which the notice is given.

If the rent-paying period is less than a month, the tenancy terminates on whichever of the following days is the later:

1. the day given in the notice for termination; or
2. the day following the expiration of the period beginning on the day on which notice is given and extending for a number of days equal to the number of days in the rent-paying period.

If a tenancy terminates on a day that does not correspond to the beginning or end of a rent-paying period, the tenant is liable for rent only up to the date of termination.

Suit to Evict and to Recover Unpaid Rent

A suit for rent may be joined with an eviction wherever the suit for rent is within the jurisdiction of the Justice Court. In such cases, the court, at the same time it renders judgment for possession, may render judgment for any rent due the landlord by the tenant; provided the amount thereof is within the jurisdiction of the Justice of the Peace Court. *Rule 738, Texas Rules of Civil Procedure.*

When the landlord files a sworn statement seeking judgment against a tenant for possession of the premises and unpaid rent, personal service on the tenant or service on the tenant under Rule 742a, Texas Rules of Civil Procedure, is procedurally sufficient to support a default judgment for possession of the premises and the unpaid rent. See *Section 24.005, Texas Property Code.*

A landlord may recover unpaid rent regardless of whether the tenant vacated the premises after the date the landlord filed the sworn statement and before the date the court renders judgment.

Recovery of Attorney's Fees and Costs

To recover attorney's fees in an eviction suit, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the date the suit is filed.

If the landlord gives this notice, or if a written lease entitles the landlord to recover attorney's fees, a prevailing landlord is entitled to recover reasonable attorney's fees from the tenant.

If the landlord gives this notice, or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover reasonable attorney's fees from the landlord. A prevailing tenant is not required to give notice in order to recover attorney's fees under this subsection.

The prevailing party is entitled to recover all costs of court.

See *Section 24.006, Texas Property Code.*

Jurisdiction

Eviction cases must be filed in the Justice Court in the Justice of the Peace Precinct in the county in which the real property is located. See *Section 24.004, Texas Property Code.*

Filing a Suit for Eviction

Complaint Must Be Made Under Oath. To begin an eviction proceeding, the landlord must file a written and sworn Petition for Eviction. *Rule 739, Texas Rules of Civil Procedure.* The complaint must describe the premises of which the landlord is claiming possession with sufficient certainty to identify the premises, and state the facts which entitle the landlord to possession. *Rule 741, Texas Rules of Civil Procedure.*

Each tenant who has signed a lease must be joined in the eviction proceeding.

A suit for rent may be joined with an eviction proceeding wherever the amount of rent due does not exceed \$10,000. *Rule 738, Texas Rules of Civil Procedure.*

The complaint should list all home and work addresses of each tenant and state that the landlord knows of no other home or work addresses of the tenant in the county where the premises are located.

Filing Fees

The Justice of the Peace must collect total fees of \$31.00 for the filing of a Petition in the Justice Court. Section 118.121, Texas Local Government Code governs the filing fee, and additional fees for basic civil legal services to indigents (*Section 51.941, Texas Government Code*) are applicable.

Citation

When the landlord files the sworn complaint, the clerk will immediately issue a citation directed to each tenant commanding the tenant to appear before the Justice of the Peace, Precinct 7 at a time specified in the citation. *Rule 739, Texas Rules of Civil Procedure.*

The officer receiving the citation will deliver a copy of the citation to the tenant, or leave a copy with some person over the age of 16 years at the tenant's usual place of abode, at least 6 days before the return date of the citation. *Rule 742, Texas Rules of Civil Procedure.*

If the officer is unsuccessful in serving the citation, the officer will file a sworn statement chronicling the times and places of at least two attempts to serve the tenant at all addresses shown in the complaint. The Justice of the Peace, after considering the officer's statement, may authorize service of the citation by allowing the officer to place the citation inside the premises by placing it through a door mail chute or by slipping it under the front door; and if neither method is possible or practical, by securely affixing the citation to the front door or main entry to the premises. *Rule 742a, Texas Rules of Civil Procedure.*

Service Fees in Jefferson County

The Commissioners Court of Jefferson County sets the fee to be charged for services of the Jefferson County Constables. See *Section 118.131, Texas Local Government Code*. A fee of \$55.00 is charged for service of process in a Justice Court case in Jefferson County.

Hearing

Once served, the tenant is required to appear for a trial scheduled not more than 10 days nor less than 6 days from the date of service of the citation. If the tenant fails to enter an appearance or file an answer before the case is called for trial, the statements made in the complaint will be taken as true and the landlord will be awarded a judgment by default. *Rule 743, Texas Rules of Civil Procedure.*

In eviction cases, the only issue that the court will determine is the right to possession. *Rule 746, Texas Rules of Civil Procedure.*

Trial by Jury

Either the landlord or the tenant shall have the right to a trial by jury by making a request for a jury trial on or before five (5) days from the date the defendant is served with the citation, and by paying a jury fee of \$5.00. *Rule 744, Texas Rules of Civil Procedure.*

Postponement of Trial

Either the landlord or the tenant may request that the trial be delayed by filing an affidavit with the court stating good cause for the delay. This is approved by the Judge. The court may postpone the trial for no longer than six (6) days. *Rule 745, Texas Rules of Civil Procedure.*

Who May Represent the Parties

Non-Payment of Rent - In eviction cases for non-payment of rent, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys.

Holding Over - In eviction cases for holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys.

Default Judgment - In any eviction suit, an authorized agent requesting or obtaining a default judgment need not be an attorney. See *Section 24.011, Texas Property Code, and Rule 747a, Texas Rules of Civil Procedure.*

The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment. *Section 24.0061, Texas Property Code.*

Judgment

If the landlord prevails, the court will enter judgment for the landlord for possession of the premises, and will award a writ of possession. The writ of possession cannot issue until the expiration of five (5) days from the time the judgment is signed. *Rule 748, Texas Rules of Civil Procedure.*

If the tenant prevails, the court will give judgment for the tenant against the landlord for costs.

Writ of Possession

A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession. "Premises" includes the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral rental agreement, or that is held out for the use of tenants generally.

A writ of possession may not be issued before the sixth (6th) day after the date on which the judgment for possession is rendered.

The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment.

The writ of possession shall order the officer executing the writ to:

1. post a written warning of at least 8-1/2 by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted; and
2. when the writ of possession is executed:
 - (A) deliver possession of the premises to the landlord;

(B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;

(C) instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and

(D) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

The writ of possession authorizes the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.

The officer may not require the landlord to store the property.

The writ of possession must contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(h) A sheriff or constable may use reasonable force in executing a writ under this section.

See *Section 24.0061, Texas Property Code*.

Appeal

There is no motion for new trial in an eviction proceeding.

Either party may appeal from a final judgment to the Jefferson County Civil Courts at Law. An appeal is initiated by filing an Appeal Bond with the Justice of the Peace Court, Precinct 7, within five (5) days after the judgment is signed. The bond is in favor of the adverse party, conditioned that the appeal will be diligently prosecuted, or the party appealing will pay all costs and damages which may be adjudged against that party. Rule 750 of the Texas Rules of Civil Procedure sets out a form for an Appeal Bond, the substantial compliance with which satisfies the requisites for appealing the judgment in an eviction proceeding.

In computing the period of time within which an appeal bond is to be filed, the day of the signing of the judgment is not included, but the last day of the period is included. For purposes of counting time limits for filing this appeal bond, Saturdays, Sundays and legal holidays are counted. If the last day of the period is a Saturday, Sunday, or legal holiday, the next day which is not a Saturday, Sunday, or legal holiday becomes the last day of the period. See Rule 4, Texas Rules of Civil Procedure.

The Justice of the Peace sets the amount of the bond, and may take into consideration loss of rentals during the time of the appeal. Rule 749, Texas Rules of Civil Procedure.

If the landlord prevails in a residential eviction, the court will specify in the judgment the amount of rent to be paid each rental pay period during the pendency of any appeal.

Please contact the court for the correct filing fee amount.

Contact the Court

If you have any questions about the information provided in this packet, please contact the Justice of the Peace Court or visit the Justice of the Peace Court in person.

