

IN THE MUNICIPAL COURT OF WARREN, OHIO

Plaintiff
-vs-

Defendant

CASE NO. _____

JUDGE: _____

COMPLAINT

FIRST CAUSE OF ACTION:

1. Plaintiff for the first cause of action says that the Defendant(s) have ever since the _____ day of _____, 20__ unlawfully and forcibly detained from the plaintiff possession of the following described premises situated in the City of Warren, County of Trumbull and State of Ohio, and known as _____ together with the lot of land on wich said property is located.
2. The said defendants entered upon said premises as tenants of the plaintiff the lease thereof having expired at the time herein first mentioned, and from that time said defendant(s) have unlawfully and forcibly held over said term.
3. On the _____ day of _____, 20__, plaintiff duly served upon the defendants as required by law, notice in writing to leave said premises.
4. Plaintiff asks for process and restitution.

SECOND CAUSE OF ACTION:

1. Plaintiff for the second cause of action says that there is due money for the rent of said premises from the defendants, _____, the sum of _____ Dollars (\$_____), plus _____ per day for each day thereafter from _____.
2. Plaintiff further states that there are damages caused to the premises by Defendant(s) are in the amount of \$_____.

WHEREFORE, Plaintiff prays for judgment against defendant(s) _____, for the sum of _____ Dollars (\$_____) with interest thereon at the rate of 10% per annum from the _____ day of _____, 20__, and the costs incurred.

_____, PRO SE

THREE(3) DAY NOTICE

_____, 201__

TO: _____

The purpose of this letter is to ask you to LEAVE the premises now in your possession, situated in _____ [city], _____ [county], Ohio, and known as _____ [full address and suite number of rental premises] together with the lot of land on which these premises are located. You are being asked to leave for the following reason:

Your compliance with this Notice within [number of days] days after its service will prevent any further eviction action against you.

YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.

Yours respectfully,

Dated this _____ day of _____, 201__.

Service:

Mailed (_____)

Personally served upon tenant(s) _____

TEN(10) DAY NOTICE

_____, 201__

TO: _____

The purpose of this letter is to notify you of the Landlord's intention to terminate your tenancy for the premises now in your possession, situated at _____,

Ohio and known as _____ together with the lot of land on which these premises are located. This action is being taken for the following reason(s):

You have ten (10) days within which you may discuss the proposed termination of your tenancy with your Landlord. Your compliance with the notice on or before _____ may prevent and further eviction actions against you.

If you fail to vacate and remain in the premises or otherwise make satisfactory arrangements with the Landlord, the landlord may seek to enforce the termination of your tenancy only by bringing a judicial action at which time you may present a defense. Nothing herein shall constitute an election of remedies by the Landlord.

You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance.

Yours respectfully,

Dated this _____ day of _____, 201__.

Service:

[] Mailed (_____)

[] Personally served upon tenant(s) _____

30 DAY NOTICE

NOTICE TO LEAVE THE PREMISES

TO _____

Tenant:
(MONTH AND DAY)
(YEAR)
(TO)

You are hereby notified that I/we want you out on or before

to leave the premises you now occupy and have rented of me/us, situated
and described as follows:
(EVICTION ADDRESS)

In _____, Trumbull County, Ohio.

Grounds:

YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN
EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT
REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS
RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.
(NOTICE MONTH AND DAY)
(NOTICE YEAR)

_____, 20_____

Notice given on this date

Owner _____

Address
(OWNER CITY STATE ZIP) _____

Telephone Number

**Warren Municipal Court
141 South Street S.E.
Warren, OH 44483
Phone: (330) 841-2525**

Eviction Process

There is only one way to perform an eviction in the State of Ohio, and that is by going through the court system. Any attempt to force a tenant out without going to court is considered a "constructive eviction" and is illegal. Some examples of constructive eviction are:

- Removal of tenant's belongings without court order
- Changing of the locks
- Utility shutoff by landlord

Landlords who attempt a constructive eviction can be sued for damages and attorney fees caused by the attempt.

To begin an eviction, the landlord must issue the tenant a three-day notice. The notice must contain the following words in large type:

YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.

The three-day notice must be delivered either in person, by certified mail, or by posting the notice at the apartment, usually on the door. Any mistake in working or delivery of this notice can be used as a defense for the eviction.

After four days, the landlord may file a "forcible entry and detainer" action with the court that has jurisdiction in the area. The first cause of action asks the court to remove the tenant and the tenant's belongings. A filing fee is required. The second cause of action asks the court to award the landlord money for unpaid rent or damages.

A hearing on the first cause of action will be scheduled quickly, usually within ten days to two weeks. The second cause may be heard at a later date. Be aware that you may have to attend a second hearing if the landlord sues for money. If the Judge or Magistrate allows the eviction, the landlord can then request a "writ of restitution" from the clerk. There is an additional cost for the writ.

The defendant has ten days to voluntarily move. If the defendant has not moved within the ten-day period, then the landlord can arrange a time with a bailiff to oversee the removal of the tenant's property. It is up to the landlord to have movers to move the tenant's belongings out of the premises. The bailiff only oversees the process.

Rent Escrow

If a serious repair problem exists and the landlord has failed to make the repairs after being given notice, you may begin paying your rent into escrow with the court. The court will hold the rent until the repairs are done. You cannot be evicted for nonpayment while the court is receiving the rent. The rent must be paid on time to the court.

Possible Defense to Eviction

The landlord, by filing for eviction, is making an accusation against the tenant. If the accusation is untrue or unjust, the tenant should prepare a defense for the hearing. The tenant can prepare a written defense explaining to the judge his or her side of the story. Take the answer to court with you and make sure to have a copy for both the judge and the landlord.

A tenant may challenge an eviction in two ways; either by pointing out mistakes in the procedure of the eviction or by defending against the grounds for the eviction. Procedural defenses are defense based on mistakes made by the landlord in serving the notice or in filing the eviction. A defense challenging the grounds of the eviction must directly address the claim that the landlord makes. Your basic purpose in providing a defense is to answer the specific complaint your landlord makes. For more detailed information on filing an answer and/or counterclaim, please consult an attorney.

THE ABOVE INFORMATION CAN BE FOUND ON THE WARREN MUNICIPAL COURT WEBSITE AND IS NOT INTENDED AS LEGAL ADVICE

Eviction Procedures (Residential) (OH)

by Practical Law Real Estate

Law stated as at 28 Mar 2016 • Ohio

*This Practice Note discusses the processes and **procedures** for evicting a **residential** tenant through an action for forcible entry and detainer under the Ohio Revised Code.*

Contents

Conditions Precedent to Eviction
Termination of Tenancy
Three-Day Notice to Leave the Premises
When Three-Day Notices are Not Required Due to Alternative Notice
Effect of Post-Notice Acceptance of Rent
The Eviction Lawsuit
Jurisdiction and Venue
Eviction Complaint
Service of Summons and Complaint
Tenant's Response to Eviction Complaint
Demand for Trial by Jury
Answer Day for Claims Other than for Possession of the Premises
Inspection of Premises at Any Time during Proceedings
Eviction Trial
Scheduling the Eviction Trial
Trial Procedure
Dismissal of Eviction Complaint
Joinder of Claim for Past Due Rent and Damages
Bench Trial Procedure
Jury Trial Procedure
If the Defendant Does Not Appear, Court Tries the Case Anyway
Execution on Judgment
Writ of Possession
Summary of Termination of Tenancy

In Ohio, a landlord evicts a tenant from leased property (and regains possession) through an action for forcible entry and detainer (FED). An FED is a summary process, providing expedited relief for the landlord. (*Gara v. Gara*, 2015-Ohio-4401, ¶ 16 (2nd Dist. Montgomery)). The Ohio Revised Code (Revised Code) governs FED actions (R.C. 1923.01 *et seq.*).

Generally, the Ohio Rules of Civil **Procedure** (Civil Rules) govern proceedings in Ohio courts (Ohio Civ. R. 1(A)). The Civil Rules apply to FED actions except where their application are clearly inapplicable (Ohio Civ. R. 1(C)) or frustrates the purpose of an expedited, summary process (*Miele v. Ribovich*, 90 Ohio St.3d 439, 442, 2000-Ohio-193, 739 N.E.2d 333, 335 (2000)). Where the Civil Rules do not apply, the Revised Code supplies the **procedure**. The statutory **eviction procedures** are set out in the Revised Code (see R.C. 1923.02 *et seq.*).

Conditions Precedent to Eviction

Generally, there are two conditions precedent to **eviction** under Ohio law:

- Termination of the tenancy (see Termination of Tenancy).
- Delivery of a three-day notice to leave (see Three-Day Notice to Leave the Premises).

Lease provisions may impose additional conditions precedent. Best practice is to always review a copy of the lease to determine all applicable conditions precedent.

Termination of Tenancy

Depending on the type of tenancy and the reason for **eviction**, the landlord may have to give the tenant a notice to terminate before serving the three-day notice and commencing an FED action (R.C. 5321.17, R.C. 5321.11, R.C. 5321.05(A)(9) and see 30-Day Notice Required for Tenant's Violation of Duties Imposed by Law and Notice to Terminate Tenancy When there is No Written Lease). The time and type of the notice depend on both the grounds for **eviction** and the type of tenancy.

Residential tenancies are governed by the Ohio Landlord-Tenant Act (Act) (R.C. 5321.01 *et seq.*). **Residential** premises subject to the Act include all dwellings, including those owned or operated by a college or university solely for student tenants (R.C. 5321.01(C) and R.C. 5321.01(H)). **Residential** tenancies do not include:

- Commercial tenancies (R.C. 5321.01(A)-(C)).
- Tenancies involving a manufactured (mobile) home park operator as landlord for the rental of either:
 - lot space in a manufactured home park; or
 - lot space and manufactured home in manufactured home park (R.C. 4781.01(D), (E) and

(T-X), R.C. 4781.26 *et seq.* and *Wood v. Crestwood Assoc., L.L.C.*, 2010-Ohio-1253, ¶ 12 (3rd Dist. Allen)).

- Tourist homes, hotels, motels, recreational vehicle parks, and similar facilities for transient occupancy (R.C. 5321.01(C)(3)).
- Hospitals, nursing homes and other facilities that primarily provide medical care (R.C. 5321.01(C)(2)).
- Incarceration or correctional facilities, such as jails, prisons, and halfway houses (R.C. 5321.01(C)(1)).
- Elementary and secondary boarding schools if room and board is included in the tuition (R.C. 5321.01(C)(4)).
- Orphanages and similar facilities (R.C. 5321.01(C)(5)).
- Farm labor camps (R.C. 5321.01(C)(7)).
- Owner-occupied condominium units (R.C. 5321.01(C)(8)).
- Temporary occupancy of certain SRO facilities under the Revised Code (R.C. 5321.01(C)(9) and see R.C. 3731.01 *et seq.*).
- Farm residences included with lease of at least two acres of land for agricultural use (R.C. 5321.01(C)(6)).

For a summary of the requirements in connection with the various circumstances and methods for terminating a tenancy, see Summary of Termination of Tenancy.

For more information on commercial **evictions**, see Practice Note, **Eviction Procedures (Commercial) (OH)**.

No Notice to Terminate for Tenant's Breach of Written Lease

Unless the written lease requires otherwise, a landlord is not required to provide a notice of termination of the lease if the tenant fails to timely pay rent or breaches another provision of a written lease agreement (R.C. 5321.17(D), *Denney v. Carroll*, 2015-Ohio-1693, ¶ 18-19 (3rd Dist. Van Wert)). The tenancy terminates automatically (*Georgetown Park Apts. v. Woernley*, 112 Ohio App.3d 428, 430, 679 N.E.2d 16, 18 (8th Dist.1996)).

The Revised Code requires that the landlord only give the tenant a written three-day notice to leave the premises before filing the **eviction** lawsuit. (R.C. 1923.04(B), *Lorain Metro. Hous. Auth. v. Fonseca*, 110 Ohio App.3d 292, 294, 673 N.E.2d 1019, 1020 (9th Dist.1996) and Three-Day Notice to Leave the Premises.)

Many leases require a notice of default. Some may also allow the tenant a right to cure a default before a landlord may terminate the tenancy. Review the lease agreement to ensure that the landlord has complied with all contractually required notices.

Where the tenant's conduct is both a breach of a written lease and a violation one of the tenant's

statutory duties, the landlord must give 30-days' notice to the tenant before commencing an FED action (*Denney v. Carroll*, 2015-Ohio-1693, ¶ 18 (3d Dist. Van Wert), *Parker v. Fisher*, 17 Ohio App.3d 103, 103-04, 477 N.E.2d 654 (9th Dist.1984) and see 30-Day Notice to Terminate Required for Tenant's Violation of Duties Imposed by Statute). The landlord cannot avoid the 30-day notice requirement by simply including the statutory duties in the terms of the written lease (*Parker v. Fisher*, 17 Ohio App.3d 103, 477 N.E.2d 654 (9th Dist.1984)).

Exceptions for Certain Tenancies Subject To a Written Lease

Where the tenant's conduct is both a breach of a written lease and a violation one of the tenant's statutory duties, the landlord must give 30-days' written notice to the tenant before commencing an FED action (R.C. 5321.11, *Denney v. Carroll*, 2015-Ohio-1693, ¶ 18 (3d Dist. Van Wert) and *Parker v. Fisher*, 17 Ohio App.3d 103, 103-104, 477 N.E.2d 654 (9th Dist.1984) and see 30-Day Notice Required for Tenant's Violation of Duties Imposed by Law). The landlord cannot avoid the 30-day notice requirement by simply including the tenant's statutory duties in the terms of the written lease and treating them as a lease obligation (*Parker v. Fisher*, 17 Ohio App.3d 103, 477 N.E.2d 654 (9th Dist.1984)).

Notice to Terminate Tenancy When there is No Written Lease

Ohio law requires that leases be in writing (R.C. 1335.04 and R.C. 1335.05).

However, if a tenant takes possession under an invalid written lease, the law creates a tenancy-at-will. (*Vlcek v. Brogee*, 2013-Ohio-4250, ¶ 42 (2nd Dist. Montgomery)).

Additionally, a tenancy converts to a "periodic tenancy" when the landlord accepts rent without a valid written lease. A periodic tenancy may be a tenancy from year-to-year, month-to-month or week-to-week, depending on the frequency and terms of rental payments (*Reid v. Plainsboro Partners, III*, 2010-Ohio-4373, ¶ 33 (10th Dist. Franklin)).

A landlord may terminate a **residential** periodic tenancy by providing a notice equal to the frequency of rental payments. For instance:

- The landlord terminates a week-to-week tenancy by giving written notice to the tenant seven days before the intended date of termination.
- A landlord terminates a month-to-month tenancy by giving written notice to the tenant 30 days before the intended date of termination.

(R.C. 5321.17(A-B) and see Standard Document, Notice of Termination (Periodic Tenancy) (**Residential Evictions**) (**OH**)).

A landlord is not subject to these notice requirements if the tenant has committed certain

drug-related crimes (R.C. 5321.17(C) and see Notice to Terminate for Drug-Related Offense on the Leased Premises (**Residential**)).

After terminating the tenancy, the landlord also must give the tenant the three-day notice to leave before commencing an **eviction** action (see Three-Day Notice to Leave the Premises).

30-Day Notice to Terminate Required for Tenant's Violation of Duties Imposed by Statute

The Revised Code imposes specific duties on **residential** tenants. The tenant's failure to perform the statutory duties is grounds for **eviction**. The statutory tenant duties include the following:

- Keeping the premises safe and sanitary.
- Disposing of rubbish, garbage and other waste.
- Cleaning plumbing fixtures.
- Using and operating all electrical and plumbing fixtures properly.
- Complying with the requirements imposed by state and local housing, health and safety codes.
- Refraining and forbidding guests from destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises.
- Maintaining appliances supplied by the landlord, as required under the lease agreement.
- Not disturbing neighbors' peaceful enjoyment of the premises.
- Not permitting the use or sale of drugs or controlled substances in, on, or about the leased premises (see Notice to Terminate for Drug-Related Offense on the Leased Premises (**Residential**)).

(R.C. 5321.05(A)).

When the cause for **eviction** is the tenant's violation of one of the duties imposed by law that materially affects health and safety, the landlord must provide the tenant with a 30-day written notice to terminate the tenancy as a condition precedent to an FED action (R.C. 5321.11, *Denney v. Carroll*, 2015-Ohio-1693, ¶ 18 (3d Dist. Van Wert) and *Lorain Metro. Hous. Auth. v. Fonseca*, 110 Ohio App.3d 292, 294, 673 N.E.2d 1019, 1020 (9th Dist.1996) and see Standard Document, 30-Day Notice to Terminate (Breach of Statutory Duties) (**Residential Evictions**) (**OH**)).

Ohio courts have not defined "health and safety" for purposes of the 30-day notice requirement. Best practice is to give the 30-day notice for violation of any of the statutory obligations. This prevents the tenant from arguing that the tenant was entitled to the 30-day notice if one was not given.

After terminating the tenancy, the landlord also must give the tenant the three-day notice to leave before commencing an **eviction** action (see Three-Day Notice to Leave the Premises).

The landlord and tenant may not waive the statutory duties. The landlord cannot avoid the 30-day notice obligation by altering or incorporating the statutory duties into the written lease agreement.

If the tenant has otherwise breached the lease, the landlord also must provide any other notice required by the written lease agreement.

Notice to Terminate for Drug-related Offense on the Leased Premises

A landlord must evict a tenant on three days' notice to terminate a **residential** tenancy if the tenant has violated certain drug-related offenses and either of the following conditions exists:

- The landlord has actual knowledge that the tenant, someone in the tenant's household or the tenant's invitee committed a drug-related offense in, on or about the leased premises or connected to the leased premises in any way.
- The landlord has a reasonable belief that the tenant, someone in the tenant's household or the tenant's invitee committed a drug-related offense in, on or about the leased premises or connected to the leased premises in any way.

(R.C. 5321.17(C), R.C. 5321.05(A)(9) and R.C. 1923.02(A)(6)(a)(i).)

The Act prescribes a specific three-day notice of termination for use in connection with drug-related offenses (R.C. 5321.17(C) and see Standard Document, Notice of Termination (Drug-Related Offense) (**Residential Evictions**) (**OH**)). Service of a three-day notice to terminate on drug-related grounds is compliance with requirement that a tenant be served with a three-day notice to leave the premises as a condition precedent to an **eviction** action. (R.C. 1923.04(B) and see Three-Day Notice to Leave the Premises).

A landlord is presumed to have actual knowledge or reasonable belief if all of the following conditions are met:

- A search warrant named or described the tenant or person as the individual to be searched.
- The search warrant or affidavit to obtain the warrant described the tenant's leased premises as the place to be searched.
- The warrant named or described a controlled substance to be searched for and seized.
- The warrant substantially stated the particular drug-related offense that is the subject of the search occurred in, on or about the tenant's leased premises.
- The warrant otherwise stated a factual basis that controlled substances are located in, on or

about the tenant's leased premises.

- Law enforcement found controlled substances while properly executing the warrant.
- After the search and seizure, the landlord was informed by law enforcement that the tenant is a suspect who is or was engaged in a drug-related offense that occurred in or is connected with the tenant's leased premises.

The landlord may use the suspected drug-related offense as grounds for **eviction** whether or not the tenant or other person charged pleaded guilty or the court convicted the tenant. (R.C. 1923.02(A)(6)(a)(i).)

Three-Day Notice to Leave the Premises

Ohio law requires that the landlord serve the tenant with a written three-day notice to leave the premises if the tenant has defaulted under the terms of the written lease agreement and the landlord desires to evict the tenant (R.C. 1923.04(A) and see Standard Document, Three-Day Notice to Leave Premises (**Evictions**) (**OH**)).

The three-day notice to leave is a jurisdictional condition precedent to filing an FED complaint (R.C. 1923.04(A), *Amick v. Sickles*, 2008-Ohio-3913, 894 N.E.2d 733, 736, ¶ 17 (4th Dist.) and *Voyager Village Ltd. v. Williams*, 3 Ohio App.3d 288, 291, 444 N.E.2d 1337, 1342 (2nd Dist.1982) and *Mularcik v. Adams*, 2004-Ohio-1383, ¶ 21 (7th Dist. Jefferson)).

Language of the Three-Day Notice

The three-day notice to leave the premises informs the tenant that the landlord requests the tenant leave the premises on or before the expiration of the three-day period (R.C. 1923.04(A)). The three-day notice must specifically contain the following warning:

You are being asked to leave the premises. If you do not leave, an **eviction** action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, seek legal assistance.

(R.C. 1923.04(A).)

Service of the Three-Day Notice

Serve the three-day notice to leave the premises by at least one of the following methods:

- Certified U.S. mail, return receipt requested.

- Hand a written copy of the three-day notice to the defendant in person.
- Leave the three-day notice either:
 - at the tenant's residence; or
 - at the leased premises from which the landlord wishes to evict the tenant.

(R.C. 1923.04(A).)

Posting the three-day notice to leave outside the leased premises meets the statutory requirement (*Cincinnati Metro. Hous. Auth. v. Morgan*, 104 Ohio St.3d 445, 447, 2004-Ohio-6554, ¶ 7 (2004)).

It is common to post or tape the three-day notice to leave to the door of the leased premises and take photographic evidence of the posting. This ensures the landlord can prove service of the three-day notice to leave the premises.

Landlords also commonly slip an additional copy of the notice under the door. Unless the landlord also posts a copy of the notice on the outside of the premise, this practice may not comply with R.C. 1923.04(A), which does not provide for the delivery of the notice to reach the interior of the premises (*Cincinnati Metro. Hous. Auth. v. Morgan*, 104 Ohio St.3d 445, 2004-Ohio-6554, ¶ 6-7).

The service of only a termination notice for a tenant's violation of statutory duties does not satisfy the three-day notice to leave requirement (*Denney v. Carroll*, 2015-Ohio-1693, ¶ 16 (3d Dist. Van Wert) and *Voyager Village Ltd. v. Williams*, 3 Ohio App.3d 288, 290-92, 444 N.E.2d 1337, 1341-42 (2d Dist.1982)).

The three-day period begins the day after the landlord serves the three-day notice to leave the premises. (R.C. 1923.04(A).) The landlord may file the **eviction** action after the third full day of the notice period. For instance, if a landlord serves the three-day notice on Monday, the tenant's three-day period to vacate consists of Tuesday, Wednesday, and Thursday. The landlord may file an **eviction** lawsuit on Friday.

Special Rules for Section 8 and Other Federal Rent Subsidy Programs and Housing

Special protection is afforded to a tenant whose rent is subsidized by the federal government, such as a Section 8 voucher program.

A landlord may terminate a tenancy under a Section 8 voucher program only on the following grounds:

- Serious violation of the lease.

- Repeated violation of the lease.
- Violation of federal, state, and local statutory obligations related to the occupancy or use of the premises.
- Criminal activity or alcohol abuse.
- Other good cause, which may include:
 - refusal by the tenant to accept the landlord's offer of a lease revision or renewal;
 - history by tenant or tenant's family of nuisance, property damage, or poor housekeeping;
 - landlord's desire to use premises for personal or family use; or
 - business or economic reason, such as the sale, renovation, or re-letting of the premises.

(24 C.F.R. § 982.310(a).)

A "serious violation" of the lease includes failure by the tenant to pay rent or other amounts owed under the lease (24 C.F.R. § 982.310(a)(1)). However, the failure of the government agency to pay the housing assistance payment (HAP) portion of the rent is not grounds to terminate the lease (24 C.F.R. § 982.310(b)).

Exercise of the "other good cause" grounds is limited during the initial lease terms when the grounds are based on something other than the tenant's conduct (24 C.F.R. § 982.310(d)(2)). For example, a landlord may not terminate the lease during the initial term due to:

- Refusal by the tenant to accept the landlord's offer of a lease revision or renewal;
- History by tenant or tenant's family of nuisance, property damage, or poor housekeeping;
- Landlord's desire to use premises for personal or family use; or
- Business or economic reason, such as the sale, renovation, or re-letting of the premises.

(24 C.F.R. § 982.310(d)(2).)

The landlord must give the tenant a written notice of grounds that specifies the grounds for termination of tenancy during the term of the lease (24 C.F.R. § 982.310(e)(1)). The termination of the tenancy is not effective until the landlord has given the notice of grounds to the tenant (24 C.F.R. § 982.310(e)(1)). The notice of grounds must be given at or before commencement of the **eviction** action, or at the same time, the landlord commences an **eviction** action (24 C.F.R. § 982.310(e)(1)).

The landlord must also serve the **eviction** notice (typically the three day notice to vacate) on the public housing agency that is administering the local voucher program (24 C.F.R. § 982.310(e)(2)(ii)).

A single document can serve as both the notice of grounds and three day notice to vacate to the Section 8 tenant, if it follows the requirements of state law, federal law and the lease (24 C.F.R. § 982.310(e)(1)(ii) and *Bella Vista Apts. v. Herzner*, 2003-Ohio-4872, 796 N.E.2d 593, ¶ 6).

Rules governing the termination and **eviction** of federally subsidized tenancies vary depending on the type of program. For example, tenants of a project-based Section 8 housing unit (or HUD housing) is allowed the opportunity to meet with the landlord before **eviction** proceedings may commence (24 C.F.R. § 880.607(c)(1)). Due to the complex rules and practices of these programs, and their interplay with Ohio and local **eviction** laws and **procedures**, plaintiff or plaintiff's counsel should carefully research plaintiff's rights and obligations under the applicable program before commencing the **eviction** process.

When Three-Day Notices are Not Required Due to Alternative Notice

The service of certain other notices identified in the statute is compliance with the three-day notice requirement for purposes of satisfying the condition precedent to an action for FED (R.C. 1923.04(B)). If either of these other notices is used, the landlord does not need to serve a standard three-day notice to leave the premises:

- Ten-day notice initiating forfeiture of a defaulting vendee's interest under a land installment contract (R.C. 5313.06).
- Three-day notice terminating a **residential** tenancy based on actual or suspected violation of drug laws (R.C. 5321.17(C) and see Notice to Terminate for Drug-Related Offense on the Leased Premises and Standard Document, Notice of Termination (Drug-Related Offense) (**Residential Evictions**) (OH)).

(R.C. 1923.04(B).)

Effect of Post-Notice Acceptance of Rent

A landlord is deemed to have waived the demand to leave if the landlord accepts payment for any future rental periods after serving the three-day notice (*Urban Partnership Bank v. Mosezit Academy, Inc.*, 2014-Ohio-3721, ¶ 14 (8th Dist. Cuyahoga)). Acceptance of future rent indicates a willingness to permit the tenant to remain in occupancy and a waiver of the three-day notice to vacate. If the three-day notice is waived, any FED action based on the notice must be dismissed. (*Urban Partnership Bank v. Mosezit Academy, Inc.*, 2014-Ohio-3721, ¶¶ 13-14 (8th Dist. Cuyahoga).)

A future rent payment is deemed accepted if it is:

- Automatically deposited into the landlord's bank account (*Urban Partnership Bank v. Mosezit Academy, Inc.*, 2014-Ohio-3721, ¶ 16 (8th Dist. Cuyahoga)).
- Cashed (*N. Face Properties, Inc. v. Lin*, 2013-Ohio-2281, ¶ 11 (12th Dist. Warren)).

- Held by the landlord without informing the tenant that:
 - the landlord was not waiving the three-day notice; or
 - the check was being used as evidence in an **eviction** hearing (*Urban Partnership Bank v. Mosezit Academy, Inc.*, 2014-Ohio-3721, ¶ 16 (8th Dist. Cuyahoga)).

However, the following actions by a landlord after serving a three-day notice does not operate as a waiver of the demand to vacate:

- Acceptance of past due rent.
- Temporarily holding a money order and then tendering it back to the tenant:
 - before trial; or
 - at trial.

(See *Eureka Multifamily Group v. Terrell*, 2015-Ohio-1861, ¶ 12-13 (6th Dist. Lucas).)

Best practice is to refuse any post-notice rent payments to avoid any potential claim of waiver. If refusing payment by check, do not retain the uncashed check without informing the tenant in writing both that:

- The check is not being accepted as payment.
- The check is being retained for evidentiary purposes only.

(See *Wingate at Belle Meadows v. Higgenbotham*, 179 Ohio App.3d 645, 647-48, 2008-Ohio-6229, 903 N.E.2d 349, 351, ¶¶ 12-14 (2nd Dist.).)

The Eviction Lawsuit

After the landlord satisfies all conditions precedent, the landlord may file an FED lawsuit to evict the tenant.

Jurisdiction and Venue

Ohio's Municipal Court Act confers original jurisdiction on municipal courts in any action for FED (R.C. 1901.18(A)(8)). Most of Ohio's 88 counties have a municipal court (R.C. 1901.01(A)). Some of the larger or more populated counties have several municipal courts, organized by city or town (R.C. 1901.01). For example, the Cleveland Municipal Court and the Toledo Municipal Court have housing divisions (R.C. 1901.011). Some municipal courts have jurisdiction over multiple cities and towns. For example, Stow Municipal Court has jurisdiction over the cities of Stow and Cuyahoga Falls (R. C. 1901.01(E)-(F)). Access a list of Ohio courts, municipal courts, and links to local rules on the Ohio court's website.

File the **eviction** complaint in the municipal court of the territory where the subject property or any part of the leased property is located (Ohio Civ. R. 3(B)(5) and *Middletown Park Realty, LLC v. Bar BQ Junction, Inc.*, 2010-Ohio-2171, ¶ 13 (12th Dist. Butler).) If the leased property is located in multiple counties, venue is proper in any county where part of the property is located.

Eviction Complaint

To initiate an **eviction** action, the landlord files a written complaint (R.C. 1923.05). A complaint can be comprised of two parts:

- A cause of action for FED (sometimes referred to by courts as the first cause).
- A cause of action for back rent, damages, and other relief (sometimes referred to by courts as the second cause).

Courts typically bifurcate the first cause from the second cause and hold separate hearings for each (see Answer Day for Claims Other than for Possession of the Premises). (See, for example, Loc. R. 6.02 and Loc. R. 6.021 of the Cleveland Municipal Court, Housing Division.)

This discussion will focus on a proceeding on the first cause of the **eviction** complaint. A complaint in FED is sufficient if it conforms to the provisions of the Revised Code (*Woodruff Village Apts. v. Jones*, 6th Dist. Lucas No. L-90-145, 1991 WL 35165, *3 (Mar. 15, 1991) and *Columbus Metropolitan Hous. Auth. v. Stires*, 84 Ohio App. 331, 332, 84 N.E.2d 296, 297 (2nd Dist.1949)). The Revised Code requires that the complaint:

- Describes the leased premises with particularity.
- States that the defendant unlawfully
 - entered and detains the premises; or
 - detains the premises after lawful entry.
- Seek restitution of the premises.

(R.C. 1923.05 and see Standard Document, **Eviction Complaint (OH)**.)

Special Rules for Plaintiffs Who are Not the Property Owners

The Civil Rules require that all actions be prosecuted in the name of the real property interest (Ohio Civ. R. 17(A)). The Revised Code's definitions of an interested party in **eviction** actions, "landlord," can include someone other than the owner of the property, such as a property manager (R.C. 1923.01(2), R.C. 5321.01(B) and *Ebbing v. Lawhorn*, 2012-Ohio-3200, ¶ 13-14 (12th Dist. Butler)). Furthermore, the main issue in an **eviction** action is whether the plaintiff is

entitled to possession, not whether the plaintiff is an owner of the property (see *Tucker v. Pfirsch*, 2014-Ohio-3151, ¶ 24 (5th Dist. Richland)).

A management company or other person who is not the property owner may bring an **eviction** action in their own name, if they are either:

- A party to the lease agreement.
- Otherwise authorized to either:
 - manage the property; or
 - receive rent from the tenant under the rental agreement.

(R.C. 1923.01(2) and R.C. 5321.01(B) and *Ebbing v. Lawhorn*, 2012-Ohio-3200, ¶ 13-14 (12th Dist. Butler).)

The statutory definitions of “landlord” do not authorize a non-attorney to prosecute an **eviction** action in the name, or as an employee or agent, of the individual owner or landlord. To do so would be engaging in the unauthorized practice of law (see *Ebbing v. Lawhorn*, 12th Dist. Butler No. CA2011-07-125, 2012-Ohio-3200, ¶¶ 21-22).

Special Rules for Plaintiffs Who are Entities

If the plaintiff is an entity, it is prohibited from prosecuting an **eviction** action *pro se*. This is because a non-attorney prosecuting or defending a plaintiff-entity in an **eviction** action is considered to be engaged in the unauthorized practice of law. (*Cleveland Bar Assn. v. Pearlman*, 106 Ohio St.3d 136, 2005-Ohio-4107, 832 N.E.2d 1193, ¶ 8.) An officer or salaried employee of a corporate landlord may be permitted to represent a corporation in a small claims case against a tenant for damages, if the person refrain from actively advocating the case, such as cross-examining a witness (*Cleveland Bar Assn. v. Pearlman*, 106 Ohio St.3d 136, 2005-Ohio-4107, 832 N.E.2d 1193, ¶ 24).

If the plaintiff is a foreign corporation transacting business in Ohio, it must be licensed through the Ohio Secretary of State before maintaining an **eviction** action. (R.C. 1703.29(A) and *Premier Capital, L.L.C. v. Baker*, 2012-Ohio-2834, 972 N.E.2d 1125, ¶ 26 (11th Dist.)). “Transacting business” can include owning real estate in Ohio (see *State ex rel. Physicians Commt. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees*, 108 Ohio St.3d 288, 2006-Ohio-903, 843 N.E.2d 174, ¶ 22). If the plaintiff is a foreign limited liability company, it must register with the Ohio Secretary of State before maintaining an **eviction** action (R.C. 1705.58(A) and *CACV of Colorado, L.L.C. v. Hillman*, 2009-Ohio-6235, ¶ 21 (3d Dist. Union)).

Failure of a foreign entity to timely comply with these licensing and registration requirements may invite a challenge under Ohio Civ. R. 9(A) or otherwise result in a dismissal of the action.

Plaintiff should make sure that it complies with the local laws and ordinances of the particular jurisdiction within which the real property is located before commencing an **eviction** action. For example, the City of Cleveland criminalizes real estate transactions, including leasing, by a foreign entity that has not obtained a corporate license from, or registered as a foreign limited liability company with, the Ohio Secretary of State (Cleveland Codified Ordinances 3103.092).

Service of Summons and Complaint

The Revised Code specifies the form and content of the summons in a **residential eviction** action (R.C. 1923.06(B)). The clerk of court prepares and serves the summons (R.C. 1923.06(C)). The following language must be in the summons for every **residential eviction** action:

A complaint to evict you has been filed with this court. No person shall be evicted unless the person's right to possession has ended and no person shall be evicted in retaliation for the exercise of the person's lawful rights. If you are depositing rent with the clerk of this court you shall continue to deposit such rent until the time of the court hearing. The failure to continue to deposit such rent may result in your **eviction**. You may request a trial by jury. You have the right to seek legal assistance. If you cannot afford a lawyer, you may contact your local legal aid or legal service office. If none is available, you may contact your local bar association.

(R.C. 1923.06(B).)

The plaintiff or plaintiff's counsel should inform the clerk at the time of filing the complaint that the property is **residential** to ensure the required language is included in the summons. Best practice is to indicate on the clerk's civil cover sheet or the complaint if the action concerns **residential** property.

Methods of Service

The Revised Code requires that the clerk serve the summons and complaint on the tenant by multiple methods (R.C. 1923.06(C)-(E)). In every **eviction** action, the clerk serves the complaint by ordinary mail to the address listed for the defendant(s) on the **eviction** complaint (R.C. 1923.06(C)). The clerk evidences the mailing by a certificate of mailing that the clerk completes and files (R.C. 1923.06(C)).

In addition to the automatic ordinary mail service, the landlord must request service of the

summons and complaint by at least one of the following other methods:

- Certified mail (R.C. 1923.06(E)).
- Personal service made by:
 - the sheriff of the county where the premises are located (R.C. 1923.06 (D)(1)(a));
 - the bailiff of the court (R.C. 1923.06(D)(1)(b)); or
 - a process server designated by a court order (R.C. 1923.06(D)(1)(c)).

The Revised Code contains specifics regarding how to make personal service of the summons and complaint. The sheriff, bailiff or process server makes personal service by:

- Locating the defendant at the premises and handing the defendant copies of the summons and complaint (R.C. 1923.06(D)(2)(a)).
- Leaving a copy of the summons and complaint with a person of suitable age and discretion found at the premises if the server cannot find the defendant (R.C. 1923.06 (D)(2)(b)).
- Posting a copy in a conspicuous place on the subject premises if the server finds no one at the subject premises (R.C. 1923.06(D)(2)(c)).

The sheriff, bailiff, or process server must return proof of making service to the court within five days of making service (R.C. 1923.06(D)(3)). The person must indicate on the process the method used to serve the summons (R.C. 1923.06(D)(3)). The clerk makes an entry on the court's docket indicating service was made and noting the type of service (R.C. 1923.06(D)(3)).

Completion of Service

The Revised Code is also specific about completion of service. Service of the summons and complaint on the defendant is complete when any of the following occur:

- The sheriff, bailiff, or process server makes personal service on the defendant or someone at the leased premises of suitable age and discretion (R.C. 1923.06(G)(1)).
- The sheriff, bailiff or process server makes personal service by posting at the premises and the clerk completes ordinary mail service ("nail and mail" or "tack and mail" service) (R.C. 1923.06(G)(2)). If service is made on two separate dates, service is complete on the later of the two dates (*G.K.G. Builders, Inc. v. Burgess*, 2014-Ohio-2431, 13 N.E.3d 745, ¶ 15-16 (6th Dist.)).
- The clerk mails the certified mail and, as of the date of the hearing:
 - the mailing was not returned for a reason other than "refused" or "unclaimed;" or
 - the mailing was not returned endorsed and the ordinary mail has not been returned (R.C. 1923.06(G)(3)).

The court's local rules may also govern completion of service. For example, the Toledo Municipal Court deems ordinary mail service complete on the date the clerk enters the fact of its

mailing into the record (Loc. R. 35(A)(3)(c)(2) of the Rules of the Toledo Municipal Court).

Timing for Service – At Least Seven Days before Trial

The defendant in an **eviction** action must receive service at least seven days before the trial on the FED claim (R.C. 1923.06(A)). If service is not made at least seven days before the **eviction** hearing, the court must continue the hearing (R.C. 1923.06(H)).

Expedited Service when Grounds for Eviction is Drug-Related Offense on Premises

When the landlord seeks an **eviction** based on the tenant's commission of a drug-related offense, the clerk must make service within three working days of the landlord filing the complaint, if possible (R.C. 1923.051(A) and see Notice to Terminate for Drug-Related Offense on the Leased Premises).

Tenant's Response to Eviction Complaint

A tenant does not need to file an answer to the **eviction** complaint (R.C. 1923.061). A defendant may assert any defense the tenant has trial (R.C. 1923.061). The defense must relate directly to the issue of whether the landlord is entitled to possession of the premises and not frustrate the summary proceeding (Ohio Civ. R. 1(C) and *Olympic Realty v. Zaleski*, 2013-Ohio-1245, ¶ 15 (10th Dist. Franklin)).

Examples of some defenses that a tenant could raise include:

- Payment of rent when the landlord is seeking an **eviction** for nonpayment of rent (see *K & D Mgt., L.L.C. v. Masten*, 2013-Ohio-2905, ¶ 17 (8th Dist. Cuyahoga)).
- Unfit condition of the premises if the tenant is current on the rent (sometimes referred to as **Constructive Eviction**).
- Retaliatory **eviction** (see **Affirmative Defense for Retaliatory Eviction**).
- Failure of service of the three-day notice (see **Three-Day Notice to Leave the Premises**).
- Plaintiff waived the three-day notice to vacate by accepting payment for future rent (see *Mularcik v. Adams*, 2004-Ohio-1383, ¶ 8 (7th Dist. Jefferson)).
- Plaintiff is not the real party in interest.

Plaintiff lacks the legal capacity to maintain an **eviction** action. Because of the summary nature of **eviction** proceedings, counterclaims are rare. The Revised Code does not bar a tenant from raising a counterclaim in an FED case (*Jemo Assoc., Inc. v. Garman*, 70 Ohio St.2d 267, 270, 436 N.E.2d 1353, 1355 (1982)). A counterclaim not related to the possession of the property

may be disallowed if such an assertion causes delay to the **eviction** process and is contrary to the speedy relief intended by the summary process (*K & D Mgt., L.L.C. v. Masten*, 2013-Ohio-2905, ¶13 (8th Dist. Cuyahoga)).

There are no compulsory counterclaims in an FED action unless the landlord joins a claim for back rent or other damages (*Garb-Ko, Inc. v. Benderson*, 2013-Ohio-1249, ¶ 45 (10th Dist. Franklin) and *Haney v. Roberts*, 130 Ohio App.3d 293, 298, 720 N.E.2d 101, 105 (4th Dist.1998)).

Permissive Counterclaim in Dispute over Rent

In an **eviction** action concerning **residential** premises based on non-payment of rent, a tenant or resident may counterclaim for any amount the tenant or resident may recover under the rental agreement or under the Revised Code (R.C. 1923.061(B)). For example, if the landlord breaches a rental agreement to make repairs, the tenant may make the repairs and set off the cost of the repairs (*Miller v. Ritchie*, 45 Ohio St.3d 222, 24-25, 543 N.E.2d 1265, 1268 (1989)).

If the tenant asserts a counterclaim, the court may order the tenant or resident to pay into court all or part of the past due rent. After trial and judgment, the court determines which party is owed a net judgment. The funds held by the court may satisfy any judgment. The court may order that any balance be satisfied as any other judgment. If the tenant or resident paid into court an amount greater than necessary to satisfy any judgment for the landlord, the court returns any balance to the tenant or resident (R.C. 1923.061).

Condition of the Premises as an Affirmative Defense

While a tenant may use the unfit condition of the premises as a counterclaim in a dispute over rent, a tenant may not use it as a defense to failure to pay rent or in an **eviction** action. (*Shelton v. Huff*, 2014-Ohio-1344, ¶ 24 (11th Dist. Trumbull).) A tenant may only raise the condition of the premises as an issue if rental payments are current by virtue of paying rent directly to the landlord or escrowing the rent with the court.

Affirmative Defense for Retaliatory Eviction

The Act allows a tenant to assert retaliatory **eviction** as an affirmative defense against the landlord. A landlord may not bring or threaten to bring an **eviction** action against the tenant because the tenant did any of the following:

- Attempted to form a tenant's union (R.C. 5321.02(A)(3)).

- Complained to a governmental agency about a violation of a building, housing, health or safety code (R.C. 5321.01(A)(2)).
- Complained to the landlord about a breach of the landlord's statutory obligations (R.C. 5321.01(A)(2)).

(See *K & D Mgt., L.L.C. v. Masten*, 2013-Ohio-2905, ¶ 14 (8th Dist. Cuyahoga).)

If a landlord retaliates against the tenant, the tenant may do one of the following, where applicable:

- Recover possession of the premises.
- Terminate the rental agreement.
- Use the retaliatory action of the landlord as a defense to an action by the landlord to recover possession of the premises

(R.C. 5321.02(B).)

The tenant may also recover from the landlord any actual damages and attorneys' fees (R.C. 5321.02(B)).

The tenant bears the burden of proof with an affirmative defense of retaliatory **eviction**. If the tenant proves retaliatory **eviction** by a preponderance of the evidence, the burden shifts to the landlord to prove that there was legitimate justification for the **eviction** (*Ruble v. M & L Properties, Ltd.*, 2010-Ohio-6356, ¶ 30 (5th Dist. Ashland)).

There are exceptions to the retaliatory **eviction** prohibition (R.C. 5321.03(A)). A landlord may bring an **eviction** action that would otherwise be retaliatory if the tenant is not a student and any of the following apply:

- The tenant is behind in rent (R.C. 5321.03(A)(1)).
- The building, housing, health or safety violation complained of by the tenant was caused by the tenant or member of the tenant's household (R.C. 5321.03(A)(2)).
- Compliance with the applicable building, housing, health or safety code would require alteration, remodeling or demolition of the premises that would force the tenant to move out of the premises (R.C. 5321.03(A)(3)).
- The tenant is a holdover tenant (R.C. 5321.03(A)(4)).
- The premises are within 1,000 feet of a school, preschool or day care and the tenant or an occupant is a registered child-victim sex offender (R.C. 5321.03(A)(5)).

Discrimination

A tenant may assert discrimination as an affirmative defense in an **eviction** proceeding (*K & D Mgt., L.L.C. v. Masten*, 2013-Ohio-2905, ¶ 17 (8th Dist. Cuyahoga)). Ohio's Fair Housing Act

(FHA) prohibits unlawful discrimination for any of the following reasons:

- Race.
- Color.
- Religion.
- Sex.
- Military status.
- Familial status.
- Ancestry.
- Disability.
- National origin.

(R.C. 4112.02(H).)

The FHA also makes it unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of any right granted or protected the Fair Housing Act (R.C. 4112.02(H)(12)). To the extent a landlord's filing an FED proceeding may violate Ohio's Fair Housing Act, a tenant may also assert a counterclaim against the landlord. (*K & D Mgt., L.L.C. v. Masten*, 2013-Ohio-2905, ¶ 15, 17 (8th Dist. Cuyahoga).)

Special Protections for Residents Deployed in Active Military Service

Under the federal Servicemembers' Civil Relief Act (SCRA) and Ohio law, there are special protections available when a tenant or a resident of the tenant's household is deployed on active military duty (50 U.S.C.A. § 3901 *et seq.* and R.C. 1923.062). Tenants who are military servicemembers and their families should raise special protections as affirmative defenses.

For the Ohio special protections to apply, the court must find:

- One of the following persons is deployed on active military duty:
 - the tenant;
 - a member of the tenant's immediate family;
 - a resident of the premises; or
 - a member of the resident's immediate family. (R.C. 1923.062(A).)
- The deployment materially affects the deployed person's ability to pay rent (R.C. 1923.062(A)).
- The landlord operates four or more **residential** premises (R.C. 1923.062(C)).

Where the court makes all of the above findings, it may:

- Stay the proceedings for a period of 90 days or such period the court finds justice and equity require. (R.C. 1923.062(A)(1)).

- Adjust the rental obligation under the lease to preserve the interests of all parties (R.C. 1923.062(A)(2)).

If the court grants a stay, the court may grant the landlord such other relief as equity may require (R.C. 1923.062(B)).

Demand for Trial by Jury

Either party has a right to a trial by jury in an **eviction** action (R.C. 1923.10 and *Pernell v. Southall Realty*, 416 U.S. 363, 384–385, 94 S.Ct. 1723, 40 L.Ed.2d 198 (1974), fn. 34). The plaintiff may include a jury demand with the complaint (R.C. 1923.10). A defendant may also request a trial by jury (R.C. 1923.10). A party must demand a trial by jury on the return day of the summons (R.C. 1923.09(A)). To secure a jury trial, the party demanding it must deposit the required jury fee with the court (R.C. 1923.101). The court may waive the deposit and instead tax the jury fee as court costs for an indigent defendant who submits an affidavit or presents other evidence of an inability to pay. (R.C. 1901.26(A)(3), (R.C. 1907.24(C) and *Burton Carol Mgt., L.L.C. v. Tessmer*, 2015-Ohio-4321, ¶ 8-9 (11th Dist. Lake)).

Landlords rarely, if ever, request a jury. Counsel for tenants may desire a jury because a jury may be more sympathetic to the tenant.

When a defendant requests a jury, if the court's docket is heavy, the court may take judicial notice that the demand for a jury trial will delay the proceedings more than eight days and require the defendant to post a bond and deposit additional rent. (R.C. 1923.08, *Martin v. Rogers*, 42 Ohio App.3d 110, 111, 536 N.E.2d 665, 666 (8th Dist.1987) and see Continuation of **Eviction** Trial).

Answer Day for Claims Other than for Possession of the Premises

The tenant is not required to file and serve a written answer to an action for FED (see Tenant's Response to **Eviction** Complaint). However, a tenant must file and serve a written answer to any other claims included in the second cause of the complaint (for example, a claim for unpaid rent or damage to the leased premises) to prevent a default money judgment. The summary process and expedited hearing determine only possession of the leased premises (the FED claim). All other matters asserted in the landlord's second cause are heard at a later date. File and serve an answer to all other claims in the second cause, and any available permissive and compulsive counterclaims, within 28 days from the date service is completed. (R.C. 1923.06(H)(2).)

A tenant should assert any applicable affirmative defenses against a claim for unpaid rent or damages, such as rent offsets or failure of the landlord to mitigate damages. A tenant should also file and serve any applicable compulsory counterclaims under the Ohio Civil Rules (Ohio Civ.

R. 13(A) and *Haney v. Roberts*, 130 Ohio App.3d 293, 300, 720 N.E.2d 101 (4th Dist.1998.)

For more information on the types of remedies, counterclaims and defenses that may be asserted by a landlord or tenant in a second cause proceeding, see Practice Note, Lease Defaults and Remedies (**Residential**) (**OH**).

Inspection of Premises at Any Time during Proceedings

A tenant may assert the condition of the leased premises as an affirmative defense (or may report the landlord to the local housing code enforcement agency, preemptively, to set up a potential claim for retaliatory **eviction** if the tenant is behind in rent or otherwise in breach of the lease) (see Counterclaim for Dispute over Rent and Affirmative Defense for Retaliatory **Eviction**).

A court may order an appropriate governmental agency to inspect the premises in any **eviction** proceeding (R.C. 1923.15). If the condition of the leased premises violates state or local building, housing, health and safety codes, the court may order the landlord to correct them (R.C. 1923.15).. The court also may issue an order forbidding re-rental until all conditions are corrected (R.C. 1923.15). If the tenant causes the conditions, the court may award damages to the landlord for the cost of correcting the conditions (R.C. 1923.15).

Eviction Trial

Scheduling the Eviction Trial

Each municipal court may adopt local rules regarding the scheduling of an **eviction** hearing or trial (R.C. 1923.06(H)). The court may not schedule the hearing sooner than the seventh day from the date the tenant was served (R.C. 1923.06(A), (H)).

Most counties schedule the hearing 14-21 days from the date the landlord files the complaint. For example, Franklin County (Columbus) schedules hearings within 14-21 days, depending on service. Find details regarding Franklin County Municipal Court's **Eviction** Process. The Cleveland Housing Court schedules **eviction** hearings three weeks from the date the landlord files the complaint (see Frequently Asked Questions About **Eviction**, Question 3).

When the landlord seeks **eviction** based on a tenant's commission of a drug-related offense, the court must schedule the matter for trial no later than the 30th calendar day after completion of service (R.C. 1923.051(A)(2) and see Completion of Service).

Continuance of Eviction Trial

A defendant may ask the court to continue the **eviction** trial (R.C. 1923.08). The court may not continue the **eviction** trial for more than eight days unless the defendant provides a bond to the plaintiff (R.C. 1923.08). The bond must secure payment of rent that may accrue if judgment is

rendered against the defendant (R.C. 1923.08 and *State, ex rel. GMS Mgt. Co. v. Callahan*, 65 Ohio App.3d 335, 338, 583 N.E. 2d 1339, 1342 (11th Dist. 1989)).

The plaintiff may also ask for a continuance of the trial for longer than eight days if the defendant agrees (R.C. 1923.08). In that event, the defendant does not have to post a bond (R.C. 1923.08).

The court shall not continue the **eviction** trial in an action in which the landlord states the grounds for **eviction** is a drug-related offense. (R.C. 1923.051(C) and see Notice to Terminate for Drug-Related Offense on the Leased Premises). If the tenant does not appear at the trial and service was proper, the court must proceed to trial (R.C. 1923.051(C)).

Trial Procedure

The purpose of the FED statutes is to provide a summary and speedy method for the recovery of possession of real property (*Miele v. Ribovich*, 90 Ohio St.3d 439, 441, 739 N.E.2d 333 (2000)). The main issue at an **eviction** trial is whether the plaintiff or the defendant has present right to have the subject property (*White v. Bergman*, 2015-Ohio-4137, ¶ 14 (5th Dist. Ashland)).

Dismissal of Eviction Complaint

A plaintiff may voluntarily dismiss the **eviction** action at any time before the **eviction** trial commences by filing a notice of dismissal with the court (Ohio Civ. R. 41(A)). If the plaintiff and defendant resolve the **eviction** complaint before trial, the parties may also file a stipulation of dismissal with the court (Ohio Civ. R. 41(A)). Dismissal is without prejudice unless otherwise noted in the notice or stipulation of dismissal (Ohio Civ. R. 41(A)).

Joinder of Claim for Past Due Rent and Damages

In an **eviction** action, the court may combine the trial for possession of the leased premises with the plaintiff's claims for past due rent and other damages under a rental agreement (R.C. 1923.081). However, joinder is not permitted in an action against a deceased resident of a manufactured home park (R.C. 1923.081).

The defendant may prevent joinder of claims by requesting any of the following:

- An action against a deceased resident of a manufactured home park.
- An action for possession of a storage space at a self-service storage facility.

The defendant may prevent joinder of claims by requesting any of the following:

- The opportunity to file an answer or counterclaim.
- The opportunity to perform discovery.

(R.C. 1923.081.)

If the defendant requests either option, the claim for damages proceeds in the same way as other civil cases (R.C. 1923.081).

Bench Trial Procedure

A judge conducts a trial on the **eviction** complaint if neither party demands a jury on the return day of the summons.

If the judge finds the complaint to be true, the judge renders a general judgment against the defendant, in favor of the plaintiff, for restitution of the leased premises and costs of suit.

If the judge concludes that the complaint is not true, the judge enters judgment against the plaintiff for costs. (R.C. 1923.09.)

If the judge finds the complaint true in part, the judge renders a judgment for restitution of that part only, and the costs taxed as the judge considers just (R.C. 1923.09).

Judgments in an FED case are not a bar to a later action brought by either party. (R.C. 1923.03.) This is because a judgment in an FED action is limited solely to the landlord's right to immediate possession of the property. (*Hamdan v. Traish*, 2015-Ohio-4561, ¶ 39 (7th Dist. Mahoning)).

A magistrate may hear an **eviction** case where neither party demanded a jury (Ohio Civ. R. 53(C)(1)(b)). The law does not require the magistrate to prepare findings of fact or create any report of the magistrate's findings (*Miele v. Ribovich*, 90 Ohio St.3d 439, 444, 2000-Ohio-193, 739 N.E.2d 333, 338 (2000)).

Jury Trial Procedure

The Revised Code prescribes the **procedures** for a jury trial in an FED case (R.C. 1923.10). The **procedures** are simplified in comparison to a jury trial on other civil matters. The court swears the jury and asks the jury to determine whether the complaint is true (R.C. 1923.10). If it is true, the jury must render a verdict against the defendant (R.C. 1923.10). If the jury finds the complaint false, it must render a verdict against the plaintiff and in favor of the defendant (R.C. 1923.10). If the jury finds that the complaint is part true, it must render a verdict setting forth the facts that it finds are true (R.C. 1923.10).

If the Defendant Does Not Appear, Court Tries the Case Anyway

If the defendant does not appear and the summons was properly served, the court tries the cause

as though the defendant were present (R.C. 1923.07).

Execution on Judgment

Writ of Possession

When the court orders restitution of the leased premises to the plaintiff, the court issues a writ of execution on the **eviction** judgment, commonly known as a “writ of possession,” at the request of the plaintiff (R.C. 1923.13(A)). The writ of possession allows the landlord to “set out” the tenant. The writ of possession is also commonly known as a “red tag” because the executing officer tags the tenant’s door with a notice on red paper.

The Revised Code sets forth the form of the writ of possession (R.C. 1923.13(A)).

A sheriff, police officer, constable or bailiff may act on the writ of possession (R.C. 1923.14). The executing officer acts on the writ of possession by putting the plaintiff in possession of the premises within ten days of receiving the writ (R.C. 1923.14(A)). Some call the execution “set out” as the executing officer allows the landlord to remove the tenant’s personal property from the leased premises (R.C. 1923.14).

Each municipal court has its own rules for execution on the writ or set out. For example, Franklin County Municipal Court requires that the plaintiff provide at least four (4) working adults to move furniture, appliances and all other personal property on the set out day (see Franklin County Municipal Court Instruction Sheet For Obtaining Writs of Restitution and **Evictions** (Set-Outs)). Best practice is to hire a bonded moving company. The tenant voluntarily moves most of the time.

Ohio law does not impose a duty on the landlord to store the tenant’s personal property (see generally *Ringler v. Sias*, 68 Ohio App.2d 230, 428 N.E.2d 869 (10th Dist. 1980)). Most landlords put the tenant’s personal property on the curb or outside the property where the leased premises is located.

Best practice is to store the personal property for up to 90 days and give the tenant written notice to pick up the personal property. After 90 days, the landlord may deem the personal property abandoned.

The Cleveland Housing Court usually schedules a set out seven days after the **eviction** hearing (see Frequently Asked Questions About **Eviction**, Question 3).

Best practice is to check local rules and/or the clerk of court’s website for the municipal court in

which the landlord filed the **eviction** regarding set out.

Appeal and Bond by Defendant

If the defendant appeals and files any required bond, the court shall issue an order to the sheriff, police officer or bailiff commanding delay of all further proceedings (R.C. 1923.14(A)). If the defendant appeals and files any required bond and the plaintiff has already regained possession of the leased premises, the sheriff, police officer or bailiff restores possession to the defendant (R.C. 1923.14(A)).

Summary of Termination of Tenancy

Review the following for a summary of the requirements in connection with the various circumstances for terminating a tenancy (see Termination of Tenancy):

Grounds	Termination Notice Required	3-day Notice to Leave
Violation of statutory duty (not drug-related) only (R.C. 5321.05(A)(1-8)).	Standard Document, 30-Day Notice to Terminate (Breach of Statutory Duties) (Residential Evictions) (OH) (R.C. 5321.11).	Required (R.C. 1923.04(A)).
Both: Violation of statutory duty (not drug-related) (R.C. 5321.05(A)(1-8)).	Standard Document, 30-Day Notice to Terminate (Breach of Statutory Duties) (Residential Evictions) (OH)	Required (R.C. 1923.04(A)).
AND		

Breach of lease (R.C. 5321.17(D)).	(R.C. 5321.11) (longer notice period if lease requires, but at least 30 days).	
Breach of lease only (R.C. 1923.02(9)).	Whatever notice the lease requires (if any) (R.C. 5321.17(D)).	Required (R.C. 1923.04(A)).
Periodic tenancy, any non-drug-related ground (R.C. 5321.17(A) and R.C. 5321.17(B)).	Standard Document, Notice of Termination (Periodic Tenancy) (Residential Eviction) (OH) (R.C. 5321.17(A) and R.C.5321.17(B)).	Required (R.C. 1923.04(A)).
Violation of drug-related statutory duty only. (R.C. 5321.05(A)(9)).	Standard Document, Notice of Termination (Drug-Related Offense) (Residential Evictions) (OH) (R.C. 5321.17(C)).	Not required (R.C. 1923.04(B)).