

EVICTIONS AND THE DISPOSSESSORY PROCESS

My tenant has not been seen for several weeks; rent is paid. Can I consider the property abandoned?

When the tenant vacates the premises before the end of the lease term, it is a breach of the lease. If a tenant needs to move out before the end of the lease, they should tell the landlord that they are moving and explain why. Sometimes, tenants move out without telling the landlord. In this situation the tenants are considered to have abandoned the rental unit. Often tenants will leave personal items in the unit when they leave. A landlord must be cautious in declaring rental property abandoned and taking possession. If a landlord mistakenly declares the unit to be abandoned and removes the tenant's property, the landlord may be held liable for the items the tenant lost and for a wrongful eviction. While the tenant's property may not seem valuable to the landlord, the tenant may consider it to be very valuable and could sue to recover for its loss. A landlord should not consider property abandoned while rent on the unit is paid. The landlord should also determine if the tenant is still paying to have utilities furnished to the unit. The safest course of action is for the landlord to wait until rent is past due and file a dispossessory affidavit and obtain a court order for possession of the property. This will protect the landlord from liability if the tenant claims they had not abandoned the unit and their personal items. If the landlord does remove the tenant's property without a court order, it is a good idea for the landlord to take pictures of the property disposed of in case the tenant raises a claim against the landlord.

I do not have the money to pay my rent. My landlord says my furniture will be placed on the street if I don't pay the rent by the due date. Can my landlord do this?

No, the landlord cannot put your possessions on the street without a court order. A dispossessory proceeding can be brought by the landlord that could result in your being evicted. A sheriff, marshal, or constable would then remove your property from the premises, if a court has ordered that they may do so. Your landlord cannot file a dispossessory for nonpayment of rent until the rent is past due.

My landlord removed all my possessions and changed the locks on the apartment. He did not give me any warning or go through the courts to evict me. What can I do?

Self help evictions, including changing the locks, are illegal in Georgia. You may file a lawsuit against the landlord for any damages you suffer due to his wrongful conduct. It is best if this type of action is pursued with the assistance of an attorney. If you cannot obtain an attorney, you can file a claim in the magistrate court of the county where the landlord is located.

My tenants have not paid rent in several months. Can I turn off their utilities?

No. Under Georgia law (O.C.G.A. § 44-7-14.1), a landlord who wants to force tenants to move must go through court and follow the dispossessory process. A landlord who suspends a tenant's utility service prior to the final judgment in a dispossessory action has broken the law and may be subject to a fine up to \$500.

When can a landlord begin legal proceedings to evict a tenant?

A landlord can file a dispossessory action to remove a tenant if the tenant fails to pay rent, violates a term of the lease, or remains in possession after the lease has ended. The grounds for evicting a tenant are nonpayment of rent, failure to surrender the premises at the end of the lease term, or breach of the lease, including any rules that are part of the lease.

Where does a landlord file a legal claim to remove a tenant?

The action must be filed in the county where the rental property is located. Dispossessory actions are usually filed in the magistrate court since they are easier for a non-lawyer to navigate. Dispossessory actions can also be filed in municipal, civil, state, or superior court. For more information on how the Georgia courts operate go to the website of the Administrative Office of the Court of Georgia at www.georgiacourt.gov. This site can help you locate the courts in your area. Some magistrate courts have their own websites with information on their specific rules and a few courts even allow landlords to file dispossessory affidavits online.

What must a landlord do to evict a tenant?

Before contacting the court to begin eviction proceedings, the landlord should read the lease and be familiar with its provisions and comply with its terms regarding notice and termination. Once the terms of the lease have been followed, Georgia law requires a landlord to go through court to remove a tenant. First, before filing a dispossessory action, the landlord must demand that the tenant immediately give up possession and vacate. This demand is best made in writing. If the tenant refuses or fails to give up possession, the landlord or the landlord's agent or attorney may go to the magistrate court and file a dispossessory affidavit under oath.

The affidavit states:

- The name of the landlord,
- The name of the tenant,
- The reason the tenant is being removed,
- Verifies that the landlord has demanded possession of the property and has been refused, and
- The amount of rent or other money owed, if any.

What is “service” and why is it important?

After the landlord files the dispossessory affidavit, it must be legally delivered to the tenant. That delivery is called service. In most counties, the sheriff will see that the tenant is served. There are three ways in which the summons can be served on the tenant:

- It can be delivered personally to the tenant,
- It can be delivered to a competent adult who resides in the unit, or
- The summons can be tacked on the door of the home and on the same day sent by first class mail to the tenant's address. The third type of service is called tack and mail and is appropriate only if no one is at home when the sheriff attempts personal service. If the dispossessory warrant was served by tack and mail, and the tenant did not file an answer or appear in court, the court may not award rent or other money damages to the landlord. The court can still order the tenant to move.

Once a tenant is served with a dispossessory affidavit, what should they do?

The court papers served on the tenant should state that the tenant may answer either orally or in writing within seven (7) days from the date of service. If the seventh day is a Saturday, Sunday, or a legal holiday, the answer is required to be filed on the next day that is not a Saturday, Sunday, or a legal holiday. The court papers should state the last day to file an answer and the court in which the answer should be filed. If the tenant fails to respond at the end of the seventh day, the lawsuit is in default. The court can then grant the landlord a writ of possession and the sheriff can remove the tenant immediately. If the tenant answers the summons, a trial of the issues will be held in accordance with the procedures of the court.

I have been served with a dispossessory warrant. It states that I can file an answer. What is an answer?

An answer is your response to your landlord's dispossessory warrant. It can be written or you can tell your response to the court clerk and have it written for you. The filing of an answer may not be conditioned on payment of rent. Payment of the rent alleged to be owed does not have to be made with the answer. The answer is your opportunity to state why you do not feel your landlord is legally entitled to have you evicted. If your landlord is seeking to evict you alleging that you violated your lease, your answer should state why you believe that you did not violate the lease. If an answer is filed, the court will schedule a hearing in which the tenant and landlord can each present their case. Anyone who knowingly and willingly makes a false statement in an answer could be found guilty of a misdemeanor. Where an answer has been filed, even if it does not contain an adequate legal defense, the clerk must treat it as an answer until a judge determines otherwise. Before a judge can strike an answer as legally inadequate the tenant must be given notice and opportunity for a hearing on whether the answer filed has legal merit.

How long do I have to file an answer?

A tenant must answer a dispossessory **within seven days of service**. A tenant has until the close of business on the seventh day to file the answer. You need to contact the court in which dispossessory affidavit was filed to determine their business hours. Some courts have business hours other than the traditional nine-to-five each day. Georgia law (O.C.G.A. §1-3-1) provides the method for counting the seven days. The first day (the day of service) is not counted but the last day is counted. If the last day falls on Saturday or Sunday, the party has through the following Monday. When the last day prescribed for such action falls on a public and legal holiday, the party has until the next business day.

My landlord has filed a dispossessory action against me. The landlord has failed to make repairs to the leak in my ceiling and my furniture and rugs were damaged. I would like to sue my landlord for the damage to my property. How can I do this?

Your answer to the dispossessory must contain any legal or equitable counterclaims you have against the landlord. If the tenant has any claims against the landlord for damage caused by the landlord's breach of the lease or failure to perform his responsibilities those claims must be put in the answer as a counterclaim. If a tenant fails to put in their answer any logically related claims, which she has against the landlord, the tenant may not be able to raise those claims later in a separate action. This means that if a tenant has a damage claim for failure to repair it must be raised as a counterclaim or lost. In addition, a party seeking to have any potential judgment for the landlord reduced by previously paid rent deposits must raise such a claim in their answer or it is lost. Even if the dispossessory action is dismissed or a writ of possession issued before a final judgment, the tenant is still entitled to a hearing on their counterclaims.

My landlord filed a dispossessory against me. I have paid my rent on time and have not violated my lease. I am going to file an answer. Can I ask for damages for my landlord's wrongful conduct in filing a dispossessory against me for no reason?

Yes. In your answer you will need to request the court award you such damages and

prove the amount of your damages at the hearing. You will need to provide proof of the damages you suffered. Your damages may include the time you spent filing an answer, work hours you missed, travel expenses, and attorney fees. If the court enters a judgment for you, allowing you to remain in the unit, it can also award a money judgment against your landlord for all the foreseeable damages caused by his wrongful filing of the dispossessory action.

Today I received a dispossessory affidavit because I failed to pay my rent. I now have the money to pay my rent. What can I do?

A tenant whose landlord has filed a dispossessory affidavit because of nonpayment of rent may be able to avoid being evicted by paying all rent that the landlord alleges is due plus court costs. This is called the “tender defense” because the tenant tenders the rent owed to the landlord. The amount owed should be stated on the dispossessory affidavit served on the tenant. The tenant must offer payment within seven (7) days of receiving the dispossessory affidavit. The landlord is required to accept such payment from the tenant only once in a twelve-month period. If the landlord does accept the tender payment, the tenant must still file an answer to the dispossessory with the court stating that the landlord accepted payment. If the tenant does not put in their answer that the landlord accepted tender, the court will not be aware of payment and may issue an order for you to be evicted.

If a landlord refuses to accept an offer of tender, the tenant should file an answer to the dispossessory affidavit stating that tender was offered, but refused. Some courts will allow the tenant to tender payment to the court. If a court finds the landlord refused a proper tender, the court can order the landlord to accept payment of rent, late fees and court costs and allow the tenant to remain in possession, if the tenant makes payment within three days of the court's order. If the court finds that the landlord refused a proper tender and orders the landlord to accept payment, that payment will not count as use of the “tender defense” which can only be used once every twelve months.

My tenant was served with the dispossessory. When can I require her to move?

The tenant is allowed to remain in possession of the rental property until there is a court order that she vacates. If the dispossessory warrant was served and the tenant did not file an answer, the court can issue a “writ of possession” after the time to file an answer expires. If the

tenant files an answer, the court will schedule a date for a hearing. The landlord may request that the court order the tenant to pay rent into court while waiting for the hearing. If payment is ordered, nonpayment of rent into court can result in the court issuing a “writ of possession” and the tenant becoming subject to immediate eviction. The tenant must be notified by the court that they are to pay rent into court before the court can order the tenant to vacate for failure to make payment. Once an answer has been filed, and a hearing has been held, the court will issue its decision. If the court rules for the landlord, the tenant will be ordered to move after seven (7) days and may be ordered to pay past due rent.

I filed a dispossessory warrant in the middle of the month and the hearing will not be held until the middle of next month. Rent is due on the first of the month. Can I accept rent while I wait on the dispossessory hearing?

When a landlord files a dispossessory based on nonpayment of rent, the landlord cannot accept rent from the tenant because it would give the tenant a defense to the dispossessory. After the dispossessory affidavit has been filed, the landlord can request that the court order the tenant to pay rent into court. Where the dispossessory has been filed because the lease has expired or been terminated but the tenant has not vacated, the landlord should not accept payment. If the landlord accepts rent after the existing tenancy has terminated but before filing a dispossessory warrant, it creates a tenancy-at-will, which would need to be terminated before the tenant could be dispossessed. The creation of a tenancy-at-will would require the landlord to give the tenant a sixty (60) day notice to terminate.

My tenant filed an answer to the dispossessory warrant. I filed because she did not pay the rent. I use the rent money to pay the mortgage on the rental property. What can I do to collect rent while waiting for a court decision?

The tenant is allowed to remain in the rental property until the dispossessory process is complete. Under Georgia law (O.C.G.A. § 44-7-54) a landlord can request that the court order the tenant to pay rent into court as it comes due, if the dispossessory process will take longer than

two weeks before a final decision. The amount of rent due can be shown by attaching a copy of the lease or evidence of past payments. The court will order the tenant to make payments into court that can then be distributed to the landlord. If the tenant fails to make the court ordered payments, the court can order the tenant to be immediately removed from the property. The statute does not expressly state that a court order is necessary to compel payment of rent into court. However, court decisions make clear that before a court can order the tenant to vacate for failure to make payments into court there must be court order that the tenant makes payment and the amount to be paid.

The court gave me a “writ of possession” which states that my tenants are no longer entitled to remain in my rental house. How do I get my tenants and their property out of my house?

The “writ of possession” allows the landlord to remove from his property the tenant and her personal property. The landlord can remove the tenant and those persons occupying the property with the tenant’s permission. Personal property includes the tenant’s general belongings such as clothing, furniture, dishes, and other household items. The landlord is responsible for the cost of the eviction and can use the service offered by the sheriff or hire a private company. Georgia law (O.C.G.A. § 44-7-55) states that when the tenant’s personal property is removed from the rental unit it is to be placed on some portion of the landlord's land. If the landlord and the officer executing the warrant agree, the tenant’s property may be placed on land other than that owned by the landlord such as the sidewalk or street. The landlord owes the tenant no duty to protect the personal property removed from the unit. After the “writ of possession” is executed and the property removed from the rental property, the tenant’s personal property is considered to be abandoned.

It is important that when a landlord removes a tenant’s property that he place it on land outside the unit. The landlord is not required to protect the property from third-parties or the

weather. It is very important that the landlord set the property outside the unit. A landlord who does not do so may be sued by the tenant for conversion. For example, it is improper for a landlord to hire persons to remove the property and transport it elsewhere. The tenant's property must be placed on the land outside the rented unit.

My tenant was personally served and did not file an answer. What happens now?

If there was personal service and the tenant did not file an answer, the court can issue a writ of possession after expiration of the last day to file an answer. The court, without hearing any evidence, can issue a money judgment for all rent sought by the landlord in the dispossessory affidavit.

My tenant was served with the dispossessory warrant by tack and mail service. The tenant did not file an answer. The court says that it can issue an order to have the tenant removed but it could not issue a judgment for money for past due rent. Why?

A dispossessory warrant will usually request possession and a judgment for the amount of rent owed. If the tenant was personally served with the dispossessory affidavit, the court can enter judgment giving the landlord possession and a money judgment for the amount stated in the dispossessory. If the dispossessory warrant is served by tack and mail service, a copy placed on the door of the rental unit and a second copy sent by mail, the court can issue an order giving the landlord possession of the unit but cannot issue a money judgment. However, if the tenant served by tack and mail files an answer, the court can award a money judgment and possession. A court can only enter a money judgment if it has personal jurisdiction over the person. Tack and mail service does not give the court that type of jurisdiction.

The court ruled in favor of my tenant in our dispossessory case. I disagree. What can I do?

Different rules apply for appeals depending on whether it is the tenant or the landlord filing the appeal. A landlord can appeal a judgment in a dispossessory case within seven (7)

days from the date the judgment is entered by the court. Once appealed, the case will be placed on the court's next calendar for a non-jury hearing. If a jury trial is desired, it must be requested within thirty (30) days from the filing of the appeal. It is wise to consult an attorney when considering an appeal.

The court ruled for my landlord at our dispossessory hearing. How long do I have to move?

By ruling for your landlord, the court found that your landlord did have the legal right to have you removed from the property. The court may also have entered a judgment that you owe money to your landlord. The money judgment can be enforced by garnishment or other methods. The “writ of possession” issued by the court allows the landlord to have you and your property removed from the rental unit. Your landlord cannot execute the writ; remove you from the property, until the expiration of the seventh (7th) day after the judgment was entered or longer if the court orders. Once judgment has been entered, even if you pay the landlord the money, you can still be removed from the property.

I disagree with the court's judgment that I owe my landlord money and that I have to move. What can I do?

A tenant has seven (7) days after the judgment is entered in a dispossessory to file an appeal. The judgment is entered once it is filed with the court clerk. An appeal is filed in the court, which entered the judgment being appealed. To file an appeal, the court costs must either be paid or the court orders that you do not have to pay the costs. If you cannot afford to pay the court costs to file an appeal you can ask the court to waive payment by filing a paupers affidavit, which is a request that you not have to pay the court costs. The appeal once filed prevents the judgment for possession from being executed.

Tenants must be aware that under Georgia law (O.C.G.A. § 44-7-56), if they wish to continue to live in the unit while the appeal is pending, they must pay into court the amount of

rent found due by the trial court. If the tenant cannot afford to pay the rent the court found due, the tenant can still file an appeal but will have to vacate the rental unit. The court may also order the tenant to pay into court the future rent as it comes due while the appeal is pending. If the tenant fails to pay, the court will order that the tenant be removed from the property.

I was served with a dispossessory warrant by tack and mail service. I was out of town for two weeks due to a death in the family. I did not receive notice of the dispossessory in time to file an answer. I have not been removed from the unit yet. What can I do?

You will need to contact the court in which the dispossessory was filed and file a motion to set aside the judgment against you. If you can afford to hire an attorney, you should do so. You need to explain to the court why you did not file an answer and why your landlord should not be allowed to evict you. You should also ask the court to immediately issue an order preventing your landlord from removing you from the rental property, until after a court hearing. In extraordinary cases to ensure justice, the court can issue an order stopping your eviction. If granted such an order, you will need to give a copy of the order to your landlord and keep a copy with an adult living in the unit, in case the sheriff comes to remove your property.

My tenant did not file an answer to the dispossessory even though she was personally served. The court gave me a writ of possession. My tenant is now saying she is going to file an appeal.

When a tenant fails to file an answer in a dispossessory action, the court enters a default judgment against the tenant. This judgment gives the landlord the right to take possession of the rental unit and may include a money judgment against the tenant. A tenant in Georgia cannot appeal a default judgment. To be careful, the landlord should call the clerk of the court to see if any new legal action or appeal has been filed before removing the tenant.

The court awarded me a money judgment against my landlord. How do I collect the money?

In many cases collecting the court award is more difficult than proving the case in court. A judgment granting a party a money judgment gives that party the right to collect the money

- Place a lien on the defendant's property, giving the plaintiff the right to sell the defendant's property to collect the money award. You may request that the court issue a fieri facias (fifa). The fifa, (proof of your judgment) once issued, places a lien against the losing party and any property he/she may own;
- Garnish the employer or bank account of the defendant in order to seize the defendant's wages or bank deposits. The garnishment process allows the plaintiff to collect installment payments on the debt owed by the defendant. The plaintiff must file a separate garnishment action and pay a filing fee. In most counties, garnishments are filed through the magistrate court. Garnishments filed against wages are filed in the county where the employer is located. Garnishments filed against a bank account should be filed in the county where the bank is located. If you do not know the name of the defendant's bank or the location of other assets, you can file a post judgment interrogatory; or
- Hire a collection agency to recover the money damages owed. These services can be costly and are usually based on a percentage of the money collected from the defendant.

The court awarded my landlord possession of the lot on which my mobile home is located. What will happen?

Under Georgia Law (O.C.G.A. § 44-7-59) if a court issues a writ of possession for property upon which a tenant has placed a mobile home or other transportable housing, the tenant must move the same within ten days after the final order is entered. If the tenant does not do so, the landlord is entitled to have such transportable housing moved from the property at the expense of the tenant by a common carrier licensed by the Public Service Commission. There will be a lien upon the mobile home for the moving fees and storage expenses in favor of the person performing such services. Such a lien may be foreclosed in the same manner as special liens on personal property. Storage fees are not to exceed \$4.00 per day.

Six months into my 12-month lease my landlord evicted me. My landlord is now suing me to collect rent under the lease? Since I was evicted do I owe my landlord rent under the lease?

The general rule is that when a landlord evicts a tenant and takes possession of the premises, the lease is terminated and the landlord does not have the right to claim rent that comes

due after the eviction. The exception to this rule is when the lease contains language that clearly expresses the landlord's intention to hold the tenant responsible for rent under the lease, even if an eviction takes place. The landlord is required to deduct from the amount owed by the tenant any amounts recovered by the landlord's re-letting of the property.

My tenant's lease has expired but he continues living in my rental property and will not move. What can I do?

Under Georgia law the owner of real property who wants to remove a tenant can file in court to have the tenant removed. The dispossessory process can be used by the owner to remove tenants who fail to vacate when their lease ends. It can also be used to remove a tenant who has failed to make required rental payments.

I allowed a friend to move in a house I own until he could find another place to live. I did not charge him any rent. It has been more than three months and he has not moved. I need for him to move. What can I do?

Even though you did not charge rent, you created a landlord tenant relationship when you gave your friend the right to possess and use your real property. A tenancy-at-will is created when the tenant's right to possess the property does not have a specific end date. Your act of allowing your friend to use your property without a specified end date created a tenancy-at-will. To end a tenancy at will you must give a sixty (60) day notice to vacate. If you want to allow your friend to remain but wish to begin charging rent, you would have to give a sixty (60) day notice of your intent to change the terms of your agreement and begin charging rent.