

# Steps in Resolving Summary Ejectment Cases:

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**Step 1:** Check for service.

No service: Is defendant present?

Service by posting: tell LL only judgment available is possession (unless defendant has made voluntary appearance). If complaint contains request for \$\$, ask if LL prefers to continue case to try for personal service.

**Step 2:** Ask for copy of lease.

**Step 3:** Establish existence of LL-T relationship between the parties.

**Step 4** (could also reverse, do step 5 next, depending on information obtained thus far):

Is there a forfeiture clause in the lease? If so,

Identify the conduct that allegedly triggered the forfeiture clause (this will often be either failure to pay rent or criminal activity);

Identify any lease provision that controls conduct required by LL (for example, written notice to tenant of intent to enforce forfeiture clause);

Consider possible defenses: Waiver? Unconscionability?

**Step 5:** Determine what kind of lease it is.

Lease for definite time: determine date it ended. Does the lease contain rules about what should happen when lease ends? Possible defense: new lease created by conduct.

Lease for repeating period (example: month-to-month lease):

Terminated by notice of intent to terminate. Questions: What does lease

say about how termination must occur? If lease is silent, what evidence is there that LL gave statutory notice of intent to terminate?

**Step 6:** If termination is not available on above grounds, consider whether LL is entitled to prevail based on failure to pay rent. This is available only in cases in which the lease does not contain an applicable forfeiture clause. What evidence is there that LL demanded rent and waited 10 days before filing complaint? Note defense: tender.

**Step 7:** If LL is seeking money damages, calculate rent up to date of judgment. Be sure to note undisputed amount of rent on judgment form. Consider other amounts if sought: damage to property, late fees, administrative fees, attorney fees. Remember these have legal restrictions.

**Step 8:** Give the parties a handout describing what happens next. If LL won, give both parties the handout about tenant's rights with regard to property. If you ruled in favor of the LL, tell LL no writ of possession is available until 10-day appeal period has expired. Tell tenant that stay of execution is available in case of appeal, and that clerk can supply details about what the requirements are for obtaining a stay. Tell the losing party that if s/he chooses to appeal, it is possible to give notice of appeal immediately, but that the appeal is not complete until the party appealing sees the clerk and pays the costs of appeal.

**Step 9:** Consider keeping information on hand for ejected tenants about local shelters and emergency housing resources.