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# TENANT

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## RESOURCE CENTER

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## Small Claims Court Process: Evictions

### Applicable Laws

Eviction proceedings are heard in small claims court. The eviction legal process must follow the requirements in [Wisconsin Statutes ch. 799](#) and the applicable county court rules. This Fact Sheet is based on [Dane County court rules](#).

### Definitions

**Defendant:** The party who has a legal action brought against them. In eviction cases, the tenant is generally the defendant.

**Plaintiff:** The party filing the legal action. In eviction cases, the landlord is generally the plaintiff because the landlord is filing the legal action to evict the tenant.

**Pleadings:** Pleadings are the written papers submitted at the beginning stage of a lawsuit, such as an eviction, in which the parties formally submit their claims and defenses with the court. Pleadings include the:

- **Summons:** The summons notifies the defendant that the plaintiff has filed a legal action against them, and includes the information on when and where to appear in court.
  
- **Complaint:** The complaint includes basic information about the legal proceeding, including what type of legal action and the basic facts so that the defendant knows what the action involves and can respond. At a bare minimum, under Wis. Stat. 799.41, the complaint must:
  - Be in writing
  - Identify the parties involved
  - Include a description of the property

- The address generally is enough but additional information may be necessary if, for example, the tenant is renting a room in a house, or a room above a garage
  - State the facts that authorize the eviction, e.g. a 5-day non-curable notice had been given to the tenant and they did not move out
  - State any claim for money, e.g. back rent owed, a claim for damages
- **Answer:** The defendant may respond to the complaint with an answer. This may be in writing or verbally at the initial court appearance. However, if the plaintiff's ownership in the property is disputed, the answer must be in writing. Wis. Stat. 799.43.
  - The answer may include **counterclaims**, which are legal claims the defendant is filing against the plaintiff that are related to the claims in the complaint. For example, a tenant may counterclaim that the landlord unlawfully failed to return their full security deposit.

**Service of Process:** The summons and complaint must be properly **served** on the defendant, meaning the documents are delivered to the defendant in compliance with the legal requirements so that the defendant is notified about the legal action. Wis. Stat. 799.05, 799.12.

**Writ of Restitution:** A court order from a judge evicting the tenant and granting possession of the rental property to the landlord.

# Legal Process

## **1. Landlord must prepare a summons and complaint**

- a. Most plaintiffs in small claims court use the [court-provided forms](#) but that is not required as long as the form contains the required information.
- b. Landlords must contact the Dane County Clerk's Office to get a date to include in the summons for the initial appearance.
- c. A [Declaration of Nonmilitary Service](#) must also be filed with the court
- d. [Dane County](#) also requires landlords to attach all eviction notices given to the tenant leading up to the eviction filing to the summons and complaint.

## **2. Service of Process**

- a. For [Dane County](#) eviction actions, the landlord must serve the summons and complaint *through a process server or the sheriff's department*. The landlord cannot serve the complaint themselves. The service must be personally or by substitute service.
  - i. Personal service = service on the tenant themselves
  - ii. Substitute service = service by leaving the summons and complaint at the tenant's residence in front of a competent member of the tenant's family who is at least 14 years old or a competent adult and explaining what the documents are.
- b. The landlord can hire a process server (can be the sheriff) to serve the summons and complaint by "posting and mailing" (also called "nail and mail") if personal or substituted service has been diligently attempted and can't be accomplished.
  - i. Generally, courts will require 3 attempts at service on 3 different days to show diligent efforts.
  - ii. Posting and mailing means the process server posts the summons and complaint at the tenant's residence *and* mails the summons and complaint to the tenant.
- c. The summons and complaint must be served at least 5 days before the initial court appearance.

## **3. Proof of Service**

- a. The landlord must file an affidavit of service with the court.
- b. This proves to the court that the tenant has been served within the time required, with the required documents, and through the required process.

#### 4. Initial Court Appearance

- a. The initial court appearance is also called the “return date” or “joinder conference.”
- b. A court commissioner presides over the eviction initial court appearances.
- c. At this hearing, generally one of the following will happen:
  - i. *Default judgment of eviction* → this happens if the tenant does not show up.
    - If there is good cause why the tenant did not show up, they can file a motion to reopen with the Circuit Court.
  - ii. *Judgment of eviction against the tenant* → this happens if the tenant does not dispute the facts and those facts support an eviction. This becomes the final decision, **unless** the tenant or landlord demands a trial.
  - iii. *Dismissal* → this happens if the landlord does not show up, service of process was not proper, or the landlord does not dispute that the facts do not support an eviction.
  - iv. *Stipulated dismissal* → this means the landlord and tenant have agreed to enter into an agreement that both must comply with to avoid a judgment of eviction. If the landlord and tenant comply with the agreement, the case is dismissed. However, if either does not comply with the agreement, the other party may go back to court without notice (unless the agreement required notice) and get a judgment.
    - For example, a tenant may agree in the stipulated agreement that they will pay all back owed rent by November 1. If the tenant does not pay rent on November 1, the landlord may file on November 2 and get a judgment against the tenant and a writ of restitution without a hearing.
  - v. *Set over* → the commission may postpone the hearing to a later date for a number of reasons, including to give the landlord and tenant time to work out an agreement, rental assistance is pending, or if a party notified the court of an emergency that made it impossible for them to be at the hearing.

#### 5. Trial

- a. If the eviction is contested (being disputed) or the landlord or tenant demanded it, a trial will be scheduled.
- b. The trial must be held within 30 days after the initial court appearance, **unless** the parties both agree to a later date.

- c. The trial is before a judge (a “bench trial”), **unless** the landlord or tenant properly demands a jury trial.
  - i. The plaintiff must include a demand for a jury trial with the summons and complaint. A defendant must do so with an answer or the initial court appearance.
- d. At the trial, parties can call witnesses. The Clerk’s office can help subpoena witnesses. The defendant is entitled to testify if they want to do so. Both parties (the landlord and the tenant) are entitled to question any witness called by the other side.
- e. At trial, generally one of the following will happen:
  - i. *Default judgment of eviction* → this happens if the tenant does not show up.
    - If there is good cause why the tenant did not show up, they can file a motion to reopen.
  - ii. *Judgment against the tenant* → this may be a judgment of eviction and/or a money judgment.
  - iii. *Dismissal* → this may happen if the landlord does not show up or cannot meet the required legal elements to an eviction.
    - For example, the tenant was not given a proper eviction notice, rent actually had been paid, the lease term the landlord is relying on is unlawful.
  - iv. *Stipulated dismissal* → this means the landlord and tenant have agreed to enter into an agreement that both must comply with to avoid a judgment of eviction. If the landlord and tenant comply with the agreement, the case is dismissed. However, if either does not comply with the agreement, the other party may go back to court without notice (unless the agreement requires notice) and get a judgment.

## 6. *Writ of Restitution*

- a. If a judgment of eviction is entered, the landlord may immediately request a writ of restitution.
- b. The writ is the order by the judge directing the sheriff’s deputies to remove a tenant and their belongings.

## 7. *Motion for a New Trial*

- a. A landlord or tenant may request a new trial within 20 days.
- b. These motions are rarely granted.

## **8. Money Damages**

- a. Small claims courts will also address contract and other claims for up to \$10,000, tort related claims (a legal injury that is not based on a contract) up to \$5,000, and rent claims for any amount if filed with an eviction.
- b. The landlord or the tenant can request a money damages hearing after the eviction. In almost every case, money claims are not heard at the same time as the trial regarding whether the tenant is or is not evicted.
- c. Depending on the claims raised during the initial proceedings and selected strategy, a tenant may want or be required to file a separate lawsuit for money damages.