

Evictions Part I: Filings & Procedure

Plus 2020 Updates to Ohio Rules of Civil Procedure

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Agenda

I. Introduction to R.C. 1923

II. Pre-Filing: notice issues

III. Pre-hearing

IV. FED hearing procedure, continuances, jury demands, rent bond

V. Post-hearing

VI. Civil Procedure Rules Updates

Poll Question: What eviction experience do you have?

- A. I have mostly represented landlords
- B. I have mostly represented tenants
- C. I have represented an even mix of landlords and tenants
- D. I'm new to evictions

Pertinent Laws

- Landlord Tenant Act - R.C. 5321
- **Eviction Procedures - R.C. 1923 (focus today)**
- Land Installment Contracts - R.C. 5313
- Manufactured Home Parks - R.C. 3733
- Fair Housing Act - 42 U.S.C. § 3601 et seq.
- Cincinnati Muni. Code - Ch. 871
- Health & Building Codes

Eviction Process

Five Steps:

1. Termination Event
2. Notice of Lease Termination/Notice to Leave Premises
3. Complaint
4. Hearing
5. Writ - "Set Out"

Poll question: What is the most common reason an eviction is filed?

- A. Lease has expired
- B. Non-payment of rent
- C. Lease violation
- D. Violation of tenant duties

Grounds for Eviction: The Termination Event

R.C. 1923.02

- ✓ Nonpayment of Rent – most common
- ✓ Expiration of Lease
- ✓ Violations of Tenant Duties of 5321.05
- ✓ Breach of a Written Lease
- ✓ Certain Drug Violations

Poll question: How long of a notice period is required before a landlord files for eviction?

A. 3 Days

B. 10 Days

C. 30 Days

D. It depends on the grounds for the eviction

Notice required depends on grounds for eviction

- Nonpayment of rent: Only three-day R.C. 1923.04 notice required (private housing)(breach of lease)
- Expiration of lease: 30-day R.C. 5321.17 notice required to terminate month-to-month lease; 7 days if week-to-week; THEN 3-day R.C. 1923.04 notice required to be served
- Violation of tenant duties: 30-day R.C. 5321.05 notice and opportunity to cure; THEN 3-day R.C. 1923.04 notice required to be served
- Breach of a written lease: Only three-day R.C. 1923.04 notice, UNLESS can be construed as violation of 5321.05 duties that materially affects health and safety (then 30-day required + 3-day)

R.C. 5321.05 Tenant Duties

- (1) Keep that part of the premises that he occupies and uses safe and sanitary;
- (2) Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;
- (3) Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits;
- (4) Use and operate all electrical and plumbing fixtures properly;
- (5) Comply with the requirements imposed on tenants by all applicable state and local housing, health, and safety codes;
- (6) Personally refrain and forbid any other person who is on the premises with his permission from intentionally or negligently destroying, defacing, damaging, or removing any fixture, appliance, or other part of the premises;
- (7) Maintain in good working order and condition any range, refrigerator, washer, dryer, dishwasher, or other appliances supplied by the landlord and required to be maintained by the tenant under the terms and conditions of a written rental agreement;
- (8) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;
- (9) Conduct himself, and require persons in his household and persons on the premises with his consent to conduct themselves, in connection with the premises so as not to violate the prohibitions contained in Chapters 2925. and 3719. of the Revised Code, or in municipal ordinances that are substantially similar to any section in either of those chapters, which relate to controlled substances.

R.C. 1923.04 Notice

- Jurisdictional prerequisite for eviction claim
- Must wait 3 days (not counting day filed) prior to filing
- Must have exact language of statute in notice, “printed or written in a conspicuous manner”

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.

What notice must be served prior to filing?

Notice to Leave

Notice to Remedy

Notice to Terminate

R.C. 1923.04

R.C. 5321.11

R.C. 5321.17

Always required!

**Required if tenant
failing obligations
(besides paying rent)**

**Required to
terminate tenancy**

3 days

30 days

7 or 30 days

**Warns tenant:
eviction is coming**

**Warns tenant:
remedy or leave**

**Warns tenant:
tenancy is expiring**

What notice must be served prior to filing?

Non-payment of Rent	R.C. 1923.04 Notice to Leave 3 days	} <i>must be followed by –</i> R.C. 1923.04 Notice to Leave 3 days
Breach of Lease <i>(no extra protections)</i>		
Breach of Statute	R.C. 5321.11 Notice to Remedy 30 days	
Tenancy Terminated	R.C. 5321.17 Notice to Terminate 7 or 30 days	

Pre-Hearing Procedure & Considerations

- Complaint filed in Municipal Court
- Summary proceeding
- Special service (nail & mail)
- Hearings generally scheduled 18-21 days after filing
- Typical initial eviction hearing takes less than one minute
- Split claims (money & possession); first cause scheduled first
- Continuances & Jury Demands

CARES Act Compliance Affidavit

CARES ACT COMPLIANCE AFFIDAVIT

I, _____, being first duly sworn, do hereby state:

I am aware of the existence of the CARES Act and specifically that it prohibits landlords of certain rental "covered dwellings" from initiating with eviction proceedings against a tenant for nonpayment of rent at any time between March 27, 2020 and July 25, 2020.

I hereby affirm that I have reviewed the law and its prohibitions, and that **either**;

1) The premises for which the plaintiff is seeking restitution by filing this civil action is not a "covered dwelling" as defined in the CARES Act, in that it is not the subject of a federally backed mortgage loan or a federally backed multi-family mortgage loan, and does not participate in the rural housing voucher program or a housing program covered by the Violence Against Women Act.

-or-

2) The premises for which the plaintiff is seeking restitution is a "covered dwelling" as defined in the CARES Act, but the plaintiff is seeking restitution of the premises for a reason other than nonpayment of rent.

I further understand that knowingly making a false statement in an official proceeding, such as filing with a civil action in a court, constitutes the offense of Falsification, as prohibited by R.C. 2921.13 and by C.C.C. 2321.13, which is a first degree misdemeanor, punishable by up to 180 days in jail and a fine of up to a \$1000.

DATE

SIGNATURE

PRINTED NAME

Sworn to before me and subscribed in my presence this _____ day of _____, 2020

NOTARY PUBLIC

Practical Considerations

Continuances

**7
days**

- If Landlord won't agree to 7-day continuance, or if unable to reach Landlord, explain to the Magistrate that you were just referred this case and require time to prepare your client.
- Voice your request for a continuance *as soon as the Magistrate calls the case.*

**8+
days**

- R.C. 1923.08 prevents continuances beyond 7 days unless:
 - (1) Landlord agrees OR
 - (2) Tenant pays rent bond

Jury Demand

Tenants have right to jury trial in eviction cases (Ohio Constitution; R.C. 1923.10)

- Stay tuned – 12th District has recently restricted when this can be made

Can file with fee waiver affidavit

Tenant required to post rent bond (R.C. 1923.08)

- Typically, current month's rent to be paid on day of hearing, then by 5th of month going forward

In Hamilton County, case then assigned to Muni Court Judge

- Then, discovery, motion practice, pretrial conferences

What happens at the hearing?

- Cases move quickly
- Possibilities for hearing:
 - Trial before magistrate
 - If LL wins, writ will issue
 - If T wins, dismissed
 - (If jury demand filed) magistrate sets rent bond
 - Continuance
 - Straight Continuance – both parties come back and Plaintiff must prove case
 - Writ or dismissal if client is moving out and parties agree to move-out date; "No testimony"

Practical Considerations

Hearings

Can client pay Rent Bond?

YES

File Answer &
Jury Demand
(and Counterclaims, if
merited)

NO

7-day Continuance
Negotiate for further
Agreed Continuances

Pay & Stay, Move, or Trial

Current State of Evictions

New Courtroom & Dockets

Hamilton County Justice Center, Courtroom B

Dockets at 9:30, 10:30, 11:30

Masks required

Only parties & counsel may attend

Check Clerk of Courts website for updates

Hamilton County Municipal Court Local Rules of Civil Procedure

Rule V. Motions

- **14 days to file Memo Contra to motions**
- **28 days to file Response to MSJ**
- **7 days to file Response to Memo Contra**

Rule VI. Jury Demand

- **File initial Jury Demand**
- **Must pay deposit or file notice of intent to proceed to jury 14 days prior to scheduled trial**

Rule XXI. Evictions

- **Clerk schedules trial no earlier than 14 days after complaint filed**
- **Clerk submits decision to Court after 7-day objection period**

Practical Considerations

Post-Hearing, Pre-Writ Execution

- *If Court rules in favor of Landlord and, assuming Tenant received one 7-day continuance:*

1-3 Days: If T offers rent, LL can choose to accept or deny

3 Days: T has 3 days to move

4 Days: If T has not moved, LL can go to Court as early as the 4th business day to pay a \$50 “set-out” fee

5 Days: After LL pays fee, Court schedules the set-out to occur as early as the 5th business day

*Tenants can call Clerk of Court, Civil Division (513-947-5700)
to ask for status on set-out fee or Sheriff’s set-out*

Practical Considerations

Post-Eviction

Only one legal way to make tenant move: *Court-Ordered Eviction*

Always illegal for landlord to:

- a. Lock-out tenant
- b. Move tenant's property
- c. Shut-off utilities
- d. Threaten to do A - C



Amendments to the Ohio Rules of Practice and Procedure

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RULE 4: Process: Summons

(changes underlined)

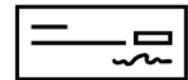
(D) Waiver of service of summons. Service of summons may be waived in writing by any person entitled thereto under Rule 4.2 who is at least eighteen years of age and not under disability.

(D) Waiver of service of summons. Service of summons may be waived in writing by any person entitled thereto under Rule 4.2 who is at least eighteen years of age and not under disability. For any civil action filed in a Court of Common Pleas, the plaintiff may request that the defendant waive service of a summons pursuant to the provisions of Civ.R. 4.7.

RULE 4.7 Process: Waiving Service

(A) A Party "has a duty to avoid unnecessary expenses of serving the summons" and "may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons." The notice and request must:

- Be in writing, name the Court, the date sent, and include a copy of the complaint
- Include two copies of the waiver form
- Include form 4.7 "Consequences of Waiving and Not Waiving Service"
- Include a "prepaid means of returning the form"
- Provide for enough time to return the waiver – minimum 28 days
- Be sent by first class mail or other reliable means



Rule 4.7 Waiver Notice

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____

(Signature of the attorney or unrepresented party)

(Printed name)

(Address)

(E-mail address)

(Telephone number)

[Form] |

Rule 4.7 Waiver Return and Notice

DUTY TO AVOID UNNECESSARY EXPENSES OF SERVING A SUMMONS

Rule 4.7 of the Ohio Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is subject to the court's personal jurisdiction and who fails to return a signed waiver of service requested by a plaintiff may be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this 195 matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

Benefits

- 4.7 (D) - If waiver is timely returned, Defendant "need not serve an answer to the complaint until sixty days after the request was sent"
- Does not limit objections/defense on jurisdiction or venue



Limits

- Only Court of Common Pleas
 - NOT municipal court
- Also – not for civil protection orders under Civil Rule 65.1

Rule 4.7 (C) - failure to waive

“Without good cause” if a defendant fails to waive the summons, the Court may impose:

- Expenses incurred in making service
- Reasonable expenses, including atty fees, for any motion to collect expenses



Rule 26: Initial Disclosures

Disclosures made without discovery request

When: "no later than the parties' first pre-trial or case management conference, unless a different time is set by stipulation or court order, or unless a party objects"

What disclosures must a party make?

- **Individuals with discoverable information**
- **Copy or description of documents, electronically stored info, tangible things in party's possession, custody, control**
- **Computation of damages**
- **Insurance agreements to indemnify/reimburse**

Rule 26(F) Conference and Discovery Plan

Required conference with opposing counsel/party "no later than 21 days before scheduling conference is held"

Must produce and file with the court written Discovery Plan within 14 days after 26(F) conference

Discovery plan states the party's views and proposals on:

- **When initial disclosures made**
- **Discovery deadlines, subjects, should discovery be completed in phases, any anticipated discovery problems, including with electronically stored info**
- **Disclosure and exchange of docs obtained through public records request**
- **Modifications to any scheduling order**

Questions?

VLP Volunteer Lawyers can always consult with Legal Aid housing attorneys,
including Housing Team Managing Attorney Nick DiNardo

ndinardo@lascinti.org / (513) 362-2816