

Tenants' Rights + Landlord Responsibilities



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Topics



- *Basic tenants' rights*
- *The eviction process*
- *Repair issues*
- *Housing discrimination*
- *Resources*

Who is a Tenant?

- Tenants are -
 - Someone with an agreement with owner to possess the property
 - Agreement can be written or oral
 - Hotel guests are generally not tenants (though some extended stays might be a gray area)
- Tenants without a lease - “tenant at will”

Tenants at Will

- Tenant can end agreement with 30 days notice
- Landlord can end agreement with 60 days notice
 - or earlier for nonpayment of rent
- A landlord can terminate a tenancy at will with 60 days notice, no matter how long the tenant has lived at the property.
- A landlord can raise the rent on a tenancy at will with 60 days notice.

Tenants' Rights

- * Right to Repair of Property
- * Right to Quiet Enjoyment
- * Right to Court Process Before an Eviction
 - Called a “dispossessory” suit in Georgia
 - Self-help evictions are ILLEGAL. Landlord cannot:
 - lock out the tenant
 - turn off utilities
 - do anything else to force the tenant out before getting a court order

The Eviction Process

The Eviction Process

- Landlord should make a demand for possession before filing anything in court
- Landlord will file a “dispossessory,” usually in Magistrate Court
- Sheriff will serve court papers
 - Including a “summons” & “complaint”
- Service
 - Personal, or
 - Tack and mail



Eviction

3 Main Reasons a Landlord Can File An Eviction:

- Nonpayment of Rent
- Lease has ended
- Termination of the lease



Tenant's Answer



- Answer must be filed within 7 days of being served
 - Calendar days, not work days (weekend days count)
- File at courthouse (some courts allow e-filing of answer)
- Most courts have forms tenant can use to admit or deny each reason in the landlord's complaint.
- If tenant does not raise a defense in the answer, that defense will not be considered at the court hearing.
 - Such as the LL's failure to make repairs or retaliation

What Happens Next

No answer filed or answer is late -

- Default judgment - LL will get a writ of possession
- Writ of possession allows Sheriff to evict tenant
- Money judgment possible if
 - money was asked for in dispossessory
 - tenant was personally served or
 - tenant answered tack and mail service

If timely answer is filed -

- Court will probably be scheduled within 7 days
- Very unlikely court date will be continued



At the Hearing

- Judge may ask parties to discuss settlement.
- A mediator might be available in some counties.
- Tenant must have evidence or witnesses at the hearing (letters from witnesses not allowed)
- Judge will probably announce decision in court
- Writ of possession - Sheriff can evict as soon as 7 days after trial
- Tenant may appeal within 7 days but has to pay court judgment (back rent, late fees. etc.) to stay in the property

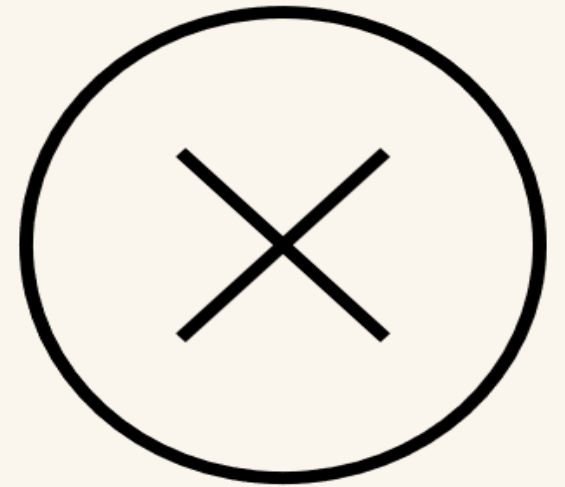


Defenses to Eviction

- **Tender defense** - payment of rent plus court costs within 7 days of service
- **Retaliation for asking for repairs or reporting to the Office of Inspections & Code Inspection**
 - (will not stop eviction for nonpayment of rent)
- **Discrimination** - based on race, sex, disability, religion, familial status.
- **History of Partial Payments**
- **Termination that is not proper or valid under lease**
- **Failure to repair** - will prevent nonpayment eviction only if value of damages is greater than the rent owed (diminution of value)

Non-Defenses

- Unemployment, other financial hardship, or illness are NOT legal defenses under Georgia law
- Security deposit does not apply to unpaid rent at an eviction hearing



Repairs

Repairs



- **Landlord must make necessary repairs within a reasonable time after getting notice of the issue**
- A residential lease cannot waive this obligation
- Tenants may be able to sue a landlord who violates this duty
- Landlords may also be subject to fines for violating housing codes
- This does not mean tenants have the automatic right to withhold rent
 - Landlords don't have the right to withhold repairs based on nonpayment, either

Failure to Make Repairs – Possible Remedies

Repair & Deduct – tenant can pay for repairs and deduct cost of repairs from rent if landlord fails to make repairs in a reasonable time

- Tenants should give written notice to landlord both of the issue and of intent to repair & deduct
- Risky – landlord could file eviction for nonpayment of rent and court will decide if tenant used defense properly

Repair & Sue – sue for cost of repair instead of taking it out of rent



Failure to Make Repairs – Possible Remedies

- **Sue for diminished value** – claim for money damages against landlord because of failure to repair
 - Can raise in a counterclaim in an eviction case for nonpayment of rent

In an eviction case for nonpayment, tenant must prove MORE damages than rent owed to prevent eviction



Constructive Eviction

- Landlord's failure to make repairs has made the property an unfit place to live forcing tenant to move out before the lease ends.
- If constructively evicted, the tenant is excused from paying rent.
- Can raise as a defense in a lawsuit for failure to pay rent.
- A condition that is temporary or merely uncomfortable does not make the property "unfit" to live.

Retaliation

Retaliation

GA law (O.C.G.A. §44-7-24) protects tenants against retaliation from a landlord when tenant requests repairs or calls Code Enforcement:

- Court can order landlord to pay tenant 1 month rent plus \$500 as a penalty
- Successful claim also acts as a defense to an eviction



Retaliation

If the landlord does certain things within 3 months of the tenant taking certain actions relating to repairs or health/safety, then the tenant may have a claim

The burden shifts to the landlord to show a legitimate reason or other defense

Triggering Actions

By Tenant:

- Gives LL notice to repair
- Good faith complaint to gov't entity for housing code violation (LL's fault)
- Establishes, attempts to establish, or participates in tenant organization to address habitability
- Otherwise attempts to exercise right under lease or law (that is related to life, health, safety, or habitability)

By Landlord:

- Files a dispossessory (with exceptions)
- Deprives tenant of use of premises
- Decreases services to tenant
- Increases rent
- Terminates lease
- Materially interferes with tenant's rights under the lease

Retaliation – Landlord's Defenses

Possible Defenses for the Landlord:

- Tenant is behind on rent at time of notice/eviction
- Eviction is for unrelated lease violations
- Tenant has damaged the property or threatened the safety of the landlord or other tenants
- The tenant gave notice to the landlord of intent to leave and stays past that date.
- The landlord gave the tenant notice of the end of the rental term and the tenant stays past that term.

Discrimination & the Fair Housing Act

The Fair Housing Act prohibits discrimination based on:

- Race
- Color
- National origin
- Religion
- Sex
- Familial status (children)
- Disability



Fair Housing Complaints

Can be filed with HUD

- HUD investigates and attempts to reach a settlement
- If there is no settlement and HUD believes there is a valid complaint, they may file suit on your behalf

Can be filed online, by phone, or by mail

- See <https://www.hud.gov/fairhousing> for more details

The HUD complaint does NOT stop the eviction process in court

Resources

Legal Resources

Georgia Legal Services Program: www.glsp.org

- 1-833-GLSPLAW (or 1-833-457-7529)
- Housing, public benefits, family violence protective orders, unemployment insurance claims, school disciplinary hearings

UGA School of Law Public Interest Practicum: <https://pip.law.uga.edu/>

- 706-542-5213
- General legal information for civil (non-criminal) legal questions
- no direct representation

Upcoming Legal Clinics

Athens Access to Justice Pop-up Clinic, hosted by Envision Athens

- Saturday, April 15th, 9:00 a.m. – 11:00 a.m., Eastside Goodwill
- No appointment necessary

Georgia Legal Services Pro Bono Program - Housing Advice

- First Friday of each month
- Call for appointment 706-227-5344 ext. 5362

Athens-Clarke County record restriction event

- April 15th, Eastside Goodwill Career Center
- Registration required by March 20th at:
<https://www.accgov.com/recordrestriction>

General Resources

Georgia Legal Aid website: <https://www.georgialegalaid.org/>

General information on eviction and other legal issues

Ga Landlord Tenant Handbook: <https://www.dca.ga.gov/node/2945>

Published by the Georgia Department of Community Affairs

Call 2-1-1 by United Way:

List of agencies that offer other assistance – financial, food, shelters, etc.