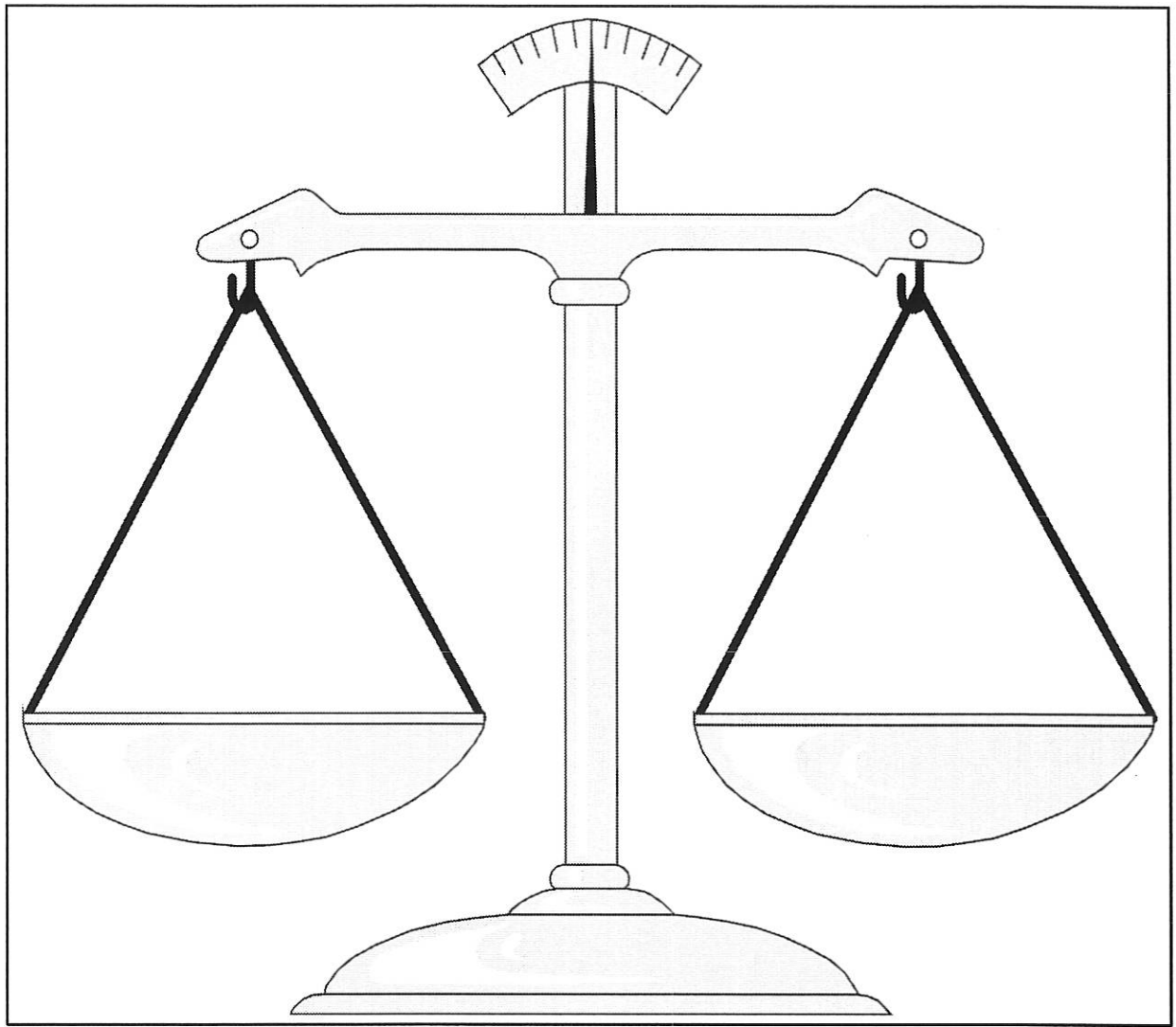




**REPRESENTING YOURSELF IN AN
EVICTION CASE IN
MAGISTERIAL DISTRICT JUDGE COURT
SELF-HELP KIT**

REMEMBER

The Law often changes. Each case is different. This self-help kit is meant to give you general information, not specific legal advice.

REPRESENTING YOURSELF IN AN EVICTION CASE
IN THE MAGISTERIAL DISTRICT JUDGE COURT

If your landlord is taking you to Magisterial District Judge court to try to evict you, **you can represent yourself even if you cannot get a lawyer.** If you defend yourself in court you may convince the judge to let you stay in your home. If you have a good case and file a counterclaim, you might even win some money from your landlord. If you do not defend yourself in court, the chances are that the magistrate will order you to move out.

**WHAT YOU SHOULD KNOW TO
REPRESENT YOURSELF**

DON'T MOVE!

You do **NOT** have to move out just because your landlord has given you a **Notice to Quit** or court papers. The landlord must file the eviction in court and **you have to move out ONLY if a judge orders an eviction.**

READ ALL COURT PAPERS

In most cases you cannot be evicted unless you received a **Notice to Quit**, which is a paper from your landlord telling you to leave. After the time period on this notice runs out, a constable may serve you with court papers called the **Landlord-Tenant Complaint**. A sample complaint is attached to this packet.

The Complaint tells you the day that your case is scheduled for trial. The Complaint also tells you what the landlord is claiming. In the majority of Landlord Tenant cases there will be **two main issues to be addressed at the hearing: 1. Whether or not the landlord is entitled to make you move from the home which you are renting. 2. Whether or not you owe the landlord any money.** If the landlord owes you money and you file a Counterclaim the Magisterial District Judge will also decide whether the landlord owes you any money.

FYI

If the landlord wins the hearing, the Magisterial District Judge can order you to move even if:

1. You have children.
2. You are handicapped or ill.
3. It is cold outside.
4. You don't have another place to go.

PREPARE FOR YOUR DAY IN COURT

This packet is designed to help you prepare for the hearing. You need to think about what the landlord is suing you for and what your defenses are. **Figure out what you want the judge to order.** For example, if you want the judge to take \$50 a month off the rent you owe because your heat didn't work, and you want to pay the rest of the rent and stay in your home, ask for that.

Remember to bring all the papers having to do with your case to court. **Bring your lease, and agreements with the landlord, rent receipts, code reports, utility bills, security deposit papers, photos, and anything else that will prove your case.**

If you have witnesses who will support your side of the story, it is not enough for that person to sign a notarized statement for you. The witness must be present at the hearing. If the witness is not present at the hearing and you attempt to tell the Magisterial District Judge what that person would have said if they had been at the hearing, the other side can object.

If your witnesses are either unwilling to come to the hearing or unable to get off work to attend, you may need to serve them with **subpoenas**.

CONTINUANCES

If you have a very good reason why you cannot go to the hearing at the date and time scheduled, call and ask for a continuance. Some examples of a very good reason are: you didn't get five (5) days notice of hearing, you have filed a counterclaim against landlord, you are very sick, or you need to subpoena a witness. It is up to the Magisterial District Judge to decide if you have a "good cause" for a continuance.

SUBPOENA

Subpoenas can be obtained from the Magisterial District Judge who is going to hear the case. You must contact the Magisterial District Judge and tell him whom you want to subpoena. The magistrate will prepare the subpoena(s) for you. Service of the subpoena(s) is your responsibility.

PREPARING YOUR DEFENSE

As we explained before the landlord is usually asking the Magisterial District Judge for two things: 1. MONEY and 2. EVICTION (POSSESSION OF THE HOUSE OR APARTMENT HE WAS RENTING TO YOU). There are certain defenses to the landlord's money claim and there are other defenses which, if proven, should allow you to remain in your house or apartment.

This booklet is designed to help you figure out if you have any defense to either of the landlord's claims. The following pages are divided into sections that will help you defend against the possession claim and sections that will help you defend against the money claim.

As you read through the booklet check off any paragraph that applies to you. After you have gone through the entire booklet you should go back to everything you checked off and figure out how you will be able to prove these things. Do you have receipts? Do you need to subpoena a witness? Did the landlord make a statement to you?

DEFENSES TO EVICTION

The category "Defenses to Eviction" is divided into the following topics:

1. Notice to Quit (Eviction Notice)
2. Breach of Lease
3. Nonpayment of Rent
4. Lease term has ended
5. Discrimination
6. Public and Subsidized Housing

DEFENSES TO LANDLORD'S MONEY CLAIM

The category "Defenses to Landlord's Money Claim" is divided into the following topics:

1. Rent
2. Damages
3. Bad conditions in home

DEFENSES TO EVICTION

NOTICE TO QUIT

- In most cases you cannot be evicted unless you receive a Notice To Quit which is a paper from the landlord telling you to leave by a certain date. (This can be hand written and on any kind of paper. It does NOT have to be notarized.)

WRITTEN LEASE

- If you have a written lease, it may say that the Landlord does not have to give you a notice to quit. The lease may also shorten the amount of notice that you are required to get.

When the written lease does not say anything about the Notice to Quit or when you do not have a written lease, the following amount of time must usually be given in the notice to quit:

NOTICE TO QUIT

10 DAYS □ **FAILURE TO PAY RENT OR DRUG-RELATED EVICTIONS.** If the landlord is evicting you for non-payment of rent or for drug-related reasons, **you are only entitled to ten (10) days' Notice to Quit.**

15 DAYS □ **VIOLATIONS OF LEASE OR THE LEASE ENDED:** If the landlord is evicting you because you disobeyed the rules in the lease or your lease has expired, **then you are entitled to fifteen (15) days' Notice to Quit.**

30 DAYS □ **IF THE TERM OF YOUR LEASE IS FOR MORE THAN ONE (1) YEAR, OR YOUR LEASE PROVIDES FOR A 30-DAY NOTICE,** you are entitled to a 30-day Notice to Quit for breach of lease or end of lease.

IF YOU OWN A MOBILE HOME, YOU GET MORE TIME AS FOLLOWS:

Reason for Eviction	Length of Lease/Season	Notice
The lease has ended/expired -or- you have violated the terms of the lease	Length of lease: (a) one year or less (b) more than one year	(a) 30 days (b) 3 months
FAILED TO PAY RENT	Season: (a) Summer (April 1- Aug 31) (b) Winter (Sept 1- March 31)	(a) 15 days (b) 30 days

DEFENSES TO EVICTION *continued*

NOTICE TO QUIT *continued*

1. If you have a lease, read it to find out what kind of Notice to Quit is required. **UNLESS YOUR LEASE SAYS OTHERWISE** a proper notice to quit should give you the amount of time previously outlined. Check below if the requirements outlined in the lease are not met.

☐ I have a written lease which has not ended and the landlord has not given me a valid Notice to Quit.

Your right to receive a Notice to Quit can be shortened or eliminated altogether by a waiver in a written lease. However, a waiver must be an intentional and voluntary waiver of a known right. If you signed a small print, form lease and didn't know you were giving up your rights to a Notice to Quit, you may still be able to argue that the landlord has to give you the type of notice specified on the preceding page.

2. If you do **not** have a written lease this does not mean that you do not have a lease, it just means that your lease is oral or verbal. Check here if you did not receive a Notice to Quit which gives you the amount of time applicable to your case.

☐ I do not have a written lease and I have not received a valid Notice to Quit.

3. Check here if your landlord accepted your rent after you received a Notice to Quit and led you to believe that you would then be able to remain in the property. You may be able to argue that the landlord waived (lost) his right to evict you by accepting the rent.

☐ Even if my tenancy was terminated, I have a new tenancy because my landlord has accepted rent after he served me with a notice to quit **and** led me to believe that I would then be able to stay.

4. Check here if your landlord did not wait the full time stated in the Notice to Quit before he filed the Landlord-Tenant Complaint. The date on which the landlord filed can be found on the upper left hand corner of the complaint.

☐ The landlord started this case before the Notice to Quit expired.

DEFENSES TO EVICTION continued

NOTICE TO QUIT continued

5. The landlord Tenant Act provides that the Notice to Quit must be served (given) to the tenant by handing a copy to the tenant, leaving a copy with an adult at the tenant's home or posting a copy conspicuously at the tenant's home. UNLESS THE LEASE SAYS OTHERWISE the Notice to Quit is not supposed to be mailed. Check here if the landlord did not serve the Notice to Quit correctly.

() The landlord did not serve the Notice to Quit properly

because: _____

FYI

The Notice to Quit does not have to be notarized, typed or on a special form in order for it to be a legal Notice to Quit.

A LANDLORD CAN EVICT YOU FOR THREE REASONS: (1) YOU HAVE BREACHED YOUR LEASE; (2) YOU HAVE NOT PAID RENT; (3) THE LEASE TERM HAS ENDED.

BREACH OF LEASE

Check each paragraph that is applicable to you.

() My landlord is evicting me because s/he says that I breached my lease; but I didn't do what the landlord is saying I did.

() My landlord is evicting me for violating part of my lease; but my landlord waived (lost) the right to evict me for that reason. (For example, the landlord knew about your pet for years and never objected. This landlord may have lost the right to evict you for the pet.)

() The breach of the lease is too minor to be a basis for the landlord to evict me

NONPAYMENT OF RENT

() My landlord is evicting me because he says that I didn't pay my rent; but I have paid the landlord all the rent that I owe him/her.

LEASE TERM HAS ENDED

() My lease hasn't ended. (For example, the landlord says that he is evicting me because my lease has ended; however my lease doesn't expire for 6 more months.)

DEFENSES TO EVICTION *continued*

DISCRIMINATION

It is illegal for a landlord to discriminate against you on the basis of your race, sex, religion, handicap, age, color, ancestry, national origin or because you have children.

Check here if the landlord is evicting you based on an illegal discriminatory reason.

() the landlord is discriminating against me because:

Note: If you think you have been discriminated against you can use that as a defense to your eviction or it can be a counterclaim. You can also file a Complaint with the Pennsylvania Human Relations Commission (PHRC). The phone number for PHRC is 570-787-9784.

PUBLIC OR SUBSIDIZED HOUSING

Public housing and subsidized housing are government programs which provide decent and affordable housing to people of lower incomes. If you are living in public or subsidized housing you have additional legal rights in an eviction.

1. Check here if you are a public housing or subsidized tenant and your landlord failed to comply with all program rules for an eviction. In order to determine this you will need to look at your lease and any handbooks you were given when you moved in.

() I am a tenant in public or subsidized housing and my landlord did not terminate my tenancy as required by the lease or program rules.

2. Check here if you are a public housing or subsidized tenant and your landlord does not have “good cause” to evict you. (Examples of “good cause” for eviction include seriously damaging the apartment or frequently disturbing neighbors.)

() I am a tenant in public or subsidized housing and my landlord does not have good cause to evict me as required by the lease or program rules.

3. Check here if you are a public housing or subsidized tenant and your landlord failed to give you a grievance hearing or an informal conference as required by your lease or program rules.

() I am a tenant in public or subsidized housing and my landlord did not give me my right to a grievance hearing or conference as required by the lease or program rules.

DEFENSES TO LANDLORD'S MONEY CLAIM

RENT

Check here if the landlord is claiming rent on the landlord tenant complaint and the **amount** of rent that the landlord is claiming is **not correct**.

() The landlord is claiming a rental amount that I do not owe.

DAMAGES

Check here if the landlord is asking for a judgment for damages and you do not think that you owe the amount that the landlord is claiming.

() The damages which the landlord is claiming **do not exist**.

() The damages which the landlord is claiming were **not caused by a member of my family or one of my guests**.

() A member of my family or one of my guests caused the damages which the landlord is claiming; but the **amount** which s/he is asking for is **too much**.

BAD CONDITIONS IN MY HOME

In Pennsylvania there is an “implied warranty of habitability” in all residential leases. This means that the landlord must provide you with a home that is safe and sanitary and which provides you with facilities and services vital to life, health and safety. If the landlord has breached (broken) the implied warranty of habitability you can use this at the hearing in three different ways:

1. You can ask the Magisterial District Judge to reduce your rent by a certain amount for each month that you had the defective housing condition.

2. You can ask the Magisterial District Judge to reduce your rent by the amount of money you had to pay because of the defective condition. For example, repairs which you made or excessive utility bills which you paid.

3. You can file a counterclaim if your claims are more than the landlord's (see last section of this handbook)

FYI

The implied warranty of habitability applies to conditions that affect health and safety. It **does not** apply to conditions which only affect the appearance of the home. For example, it does not apply if you don't like your carpet or the color of paint.

DEFENSES TO LANDLORD'S MONEY CLAIM *continued*

BAD CONDITIONS (*continued*)

FYI

In order to use the implied warranty of habitability the tenant must show that:

1. S/he gave notice to the landlord of the problem;
2. The landlord had a reasonable opportunity to repair; and
3. The landlord failed to repair.

Check here and list all bad conditions in your home that your landlord knew or should have known about or that existed when you moved in or that existed when a new landlord bought the building. Before you go to court decide how much the rent should be reduced for each problem, then multiply by the number of months the problem existed. Be prepared to explain this to the judge. (For example, you might claim that no heat in the bedrooms lowered the rent by 1/3. If the rent is \$300 per month, claim \$100 for each month the problem existed.)

() I have a defense and counterclaim because of the following problems in or around my home that my landlord knew or should have known about:

() I notified the landlord of the problems on

(Dates)

() The Bureau of Fire and Codes inspected my home on

(Dates)

() I have pictures of the problems in my home taken on

(Dates)

DEFENSES TO LANDLORD'S MONEY CLAIM continued

BAD CONDITIONS (continued)

() I have the following witnesses to the bad conditions:

() The bad conditions affected my ability to live in my home in the following ways:

() Because my home was not not up to code, I should recover the extra rent I paid above what my home was worth. This defense (or counterclaim) entitles me to have my rent reduced or returned in an amount to be decided by the judge.

FILING A COUNTERCLAIM

If you have claims against the landlord which are not merely a defense to the landlord's claims or claims which exceed the dollar amount which the landlord is requesting, you may want to file a counterclaim against your landlord.

TIME TO FILE

A counterclaim against the landlord can be filed any time before the landlord tenant hearing. If the counterclaim is filed five days before the hearing, the hearing will usually occur on the same day it was originally scheduled. If you file the counterclaim less than five days before the date of the original hearing, the hearing will be rescheduled so that the landlord can be served with a copy of your counterclaim.

COST

If you decide to file a counterclaim, you will not have to pay a filing fee to the magistrate.

FORM

The Counterclaim is filed on a form called a Civil Complaint form. These can be obtained from the Magistrate District Judge's office.

SERVICE

You do not have to serve the landlord with a copy of the counterclaim. The magistrate's office will do that for you.

PRACTICE TIP

When you are preparing your counterclaim think about your case and be honest about the problems you experienced. Don't exaggerate. Remember, the landlord is going to have the opportunity to reply to your counterclaim and s/he will be able to more easily discredit your defense and counterclaim if you have not been completely honest.

COUNTERCLAIMS

Possible counterclaims include the following:

REPAIR COSTS

The implied warranty of habitability may be used by the tenants as a basis to recover any amount they spent in order to make the dwelling habitable. See page 8 for more information regarding the implied warranty of habitability.

() I spent the following amount in repairs in order to make my house or apartment habitable

RENT ABATEMENT

During any period in which the premises were uninhabitable, tenants may recover the difference in the amount of rent they paid and the reasonable value of the premises. If the rent abatement which you are requesting exceeds the landlord's money claim, you may want to file a counterclaim against the landlord.

() I am entitled to a rent abatement in the amount of

CONSUMER PROTECTION

Many actions by a landlord may also be "unfair or deceptive acts or practices" in violation of the Pennsylvania Consumer Protection Law. (Examples: failing to make repairs, locking you out, mishandling your security deposit, using illegal terms in your lease). check here if:

() (a) the landlord did not repair bad conditions in my home, or

() (b) the landlord violated any other state housing law in the last two years. (Fill in details).

() I am entitled to \$100 for each violation or

_____.

OTHER

I have other counterclaims as follows:

NPLS has also produced a video titled "How to Represent Yourself In Magisterial District Judge Court." It is available at local libraries and all NPLS offices. We recommend you watch this video before your hearing.

APPEAL

IF THE MAGISTERIAL DISTRICT JUDGE ENTERS A JUDGMENT AGAINST YOU FOR POSSESSION AND/OR FOR MONEY DAMAGES AND YOU DISAGREE WITH THE DECISION, YOU HAVE THE RIGHT TO FILE AN APPEAL.

IF YOU WANT TO STOP THE EVICTION WHILE YOU ARE WAITING FOR YOUR APPEAL TO BE HEARD, YOU MUST:

File a Notice of Appeal within **10 days** from the date the judgment was entered!!

Note: You may be required to pay into court some amount toward past-due rent and you will be required to continue to pay your rent into court while the appeal is pending. Details are included in another self-help packet entitled “Appealing an Eviction”.

Details on how to file an appeal and the forms you need to do so can be found in another self-help pamphlet entitled **“Appealing an Eviction”**.

OBTAINING MORE INFORMATION AND HELP

North Penn Legal Services has prepared a number of self-help materials in the area of landlord/tenant law, including:

VIDEOS (you can find these at www.northpennlegal.org/videos)

- Renting an Apartment
- Fair Housing/Discrimination
- Common Landlord/Tenant Myths
- The MDJ Hearing

HANDBOOK FOR TENANTS

This 18-page booklet was revised in late 1996 and covers many aspects of the landlord/tenant relationship.

SELF-HELP PACKETS

- How To Represent Yourself At An Eviction Hearing
- Appealing an Eviction
- How To Appeal A Magisterial District Judge Decision
- Security Deposit Self-Help Kit

All of these materials are available at each NPLS office. Call for details:

Bethlehem (610) 317-8757

Bloomsburg (570) 784-8760

Honesdale (877) 515-7465

Stroudsburg (570) 424-5338

Towanda (877) 515-7732

Hazleton (570) 455-9512

Pittston (570) 299-4100

Sunbury (570) 286-5687

Williamsport (570) 323-8741

These materials provide general information and may not give the answers to your specific question. Court decisions or legislative changes may affect the accuracy of the information. If your case is unusual or you still have questions after studying these materials, call NPLS or a private attorney for additional help.

The Magisterial District Judge Office and County Court personnel are not allowed to give legal advice, but they may be able to assist you if you have questions about landlord/tenant procedure.