

THE FOLLOWING INFORMATION IS SUBJECT TO THE GCBA LEGAL DISCLAIMER. THIS IS NOT INTENDED AS LEGAL ADVICE AND YOU SHOULD CONSULT AN ATTORNEY REGARDING YOUR LEGAL RIGHTS.

Eviction in New York:

There are 2 types of cases that Landlords can bring against Tenants in New York: "**Nonpayment Cases**" and "**Holdover Cases.**" A nonpayment case is brought against a Tenant to evict them for not paying the rent, and to collect the overdue rent. A Holdover case is to evict a Tenant for some other lease violation, such as staying after a lease has expired, or using the premises for criminal activity.

3 Day Demand for Rent (for nonpayment cases)

First the landlord must give the Tenant a written demand for the overdue rent which warns the Tenant that they will be evicted if they do not pay. This warning must be delivered to the Tenant at least 3 days before the landlord can file a Court Petition for Eviction (see below). It is highly recommended that this notice be "served" using one of the methods below under "Serving the Tenant."

Notice of Termination (for holdover cases)

The "Notice of Termination" is used to evict a tenant for reasons other than non-payment of rent, such as remaining after the lease has expired, damaging the property, criminal activity, etc. If a landlord needs to evict a "squatter" or someone who was simply staying with them and not paying rent, the landlord needs to serve them with a written Notice of Termination that gives them 10 days notice to leave. If the person to be evicted is an actual Tenant, they are to be given 30 days notice to leave (or one full "rental term," usually from the 1st to the end of the month). This means they need to usually be served before the 1st of the month.

Petition and Notice of Petition

If the Tenant has not paid after their 3 day warning (in a nonpayment case) or has not vacated after the applicable period (in a holdover case), the landlord may file a "Petition" against the Tenant in Civil Court for the jurisdiction where the property is located. The Petition is what states the reason for the eviction. The Court Clerk will give the landlord back a "Notice of Petition" which contains the time and place of the Court Date. The landlord must have the Tenant "served" or delivered a copy of both the Petition AND the Notice of Petition.

Serving the Tenant

There are three accepted ways in New York to serve a Tenant. It is important to note that in New York, the landlord himself or herself can NOT be the person that actually serves the Tenant.

1. Personal Delivery

In New York, the landlord may not serve the Tenant personally. The landlord must use a process server or a friend if they are going to have the Tenant served personally. In this method for eviction, the process server or friend hands the Petition and Notice of Petition to the Tenant directly. The process server or friend must then sign and notarize an affidavit that swears the papers were in fact served upon the Tenant.

2. Substituted Service

If the friend or process server goes to the premises and the tenant is not there, the friend or process server may leave the papers with a person of "suitable age and discretion" who also lives there, AND they must immediately and simultaneously mail two copies of the papers to the tenant: One by regular mail and one by certified mail. An affidavit attesting to this method must be signed and notarized.

3. Conspicuous Place Service

If after two attempts at getting someone to answer the door at the premises (one during working hours and one during off hours) still nobody answers, the friend or process server

may attach the papers to the front door or slide them under the door, AND they must immediately and simultaneously mail two copies of the papers to the tenant: One by regular mail and one by certified mail. An affidavit attesting to this method must be signed and notarized.

Going to Court

The Court Clerk will let you know when your Court Date is. Sometimes there is a reminder by postcard, and usually it is on the Notice of Petition. Show up to Court early, and ask where you are supposed to be. Make sure you bring all the paperwork on your case, including copies of your 3 Day Demand for Rent (or Notice of Termination), the Petition and Notice of Petition, the process server's affidavit, a copy of the lease, any evidence or witnesses, and anything else the court requires. If this is a nonpayment case, and the judge rules in your favor, the judge will enter a judgment giving the Tenant 5 days to pay the rent. If this is a holdover case, the judge may give the Tenant more time to leave, or time to cure the lease violation.

Warrant of Eviction

If the tenant does not pay the rent in the 5 day period (in nonpayment cases), or comply with the judge's orders (in holdover cases) you must have a City Marshal or other Law Enforcement Official issue a Warrant of Eviction. The City Marshal or Law Enforcement Official will serve the Tenant the Warrant of Eviction which will give the Tenant 72 hours to vacate. If the tenant does not either vacate or go back to court in the 72 hour period (see below), the Marshal or Law Enforcement Official will physically remove them.

Order to Show Cause

Once the Tenant has received the Warrant of Eviction, they can quickly go back to Court and Ask for an "Order to Show Cause" giving them more time and giving them another Court Date. If the judge signs the order, the landlord will have yet another Court date to attend in order to defend the eviction. If the landlord does not attend this hearing, it could cancel the entire eviction and the landlord will have to start all over.