

# Your Day In Court

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 Sunday, 25 March 2007  
 Last Updated Monday, 26 March 2007

The first hearing on an eviction case is 2 p.m. There is no sign in required. Owners represented by an attorney are called first. The rest of us are called in alphabetical order by the landlords last name. Eight years of college to save a half hour in eviction court, humph .....

Potential Problem: When you come back on a second court date on the same case the hearing time will be 1:30. Show up at two and your case will have already been dismissed.

Potential Problem: Remember this is written for Milwaukee county. Times and procedures vary greatly. Some other counties require the plaintiff to sign in. If you don't, your case may be dismissed. Most counties do not have evictions every day so you must allow the court to set the date.

When your case is called, walk up to the front of the court. The two people sitting there are the small claims clerk of courts. They handle most of the cases when the tenant doesn't appear without requiring you to see the Court Commissioner.

If the tenant does not show up, and many don't, the clerk will ask you what you want to do. You reply, you want an immediate writ. In those cases you believe you will never collect from the tenant, you can save yourself an additional court date by asking for an immediate judgment on the 2nd and 3rd cause for the amount that you have listed on the face of the summons. Tip: If the tenant has a job, the potential of having a job in the future, or may marry a person with a job, you may want to set a second court date to get a judgment the total amount that the tenant owes you; which could include moving costs, and damages to the apartment.

If the tenant shows up the clerk will set the case on the side so the Court Commissioner can hear the case.

Tip: If you can get the tenant to agree to a date they will be out you can speed up the process. Owner: "How much time do you need to be out?" Tenant: "A week" Owner: "Fine, lets stay the writ for a week" Commissioner: "Is that agreeable to both of you?" "Yes" and you both can go home.

Potential Problem: If you accepted rent after the 5-day notice it could cancel the notice and prevent the eviction. If you want them out don't accept any money between the service of the notice and the service of the summons.

If the tenant shows up in court, they have a very limited number of defenses. The first defense is they paid all the rent due. If they raise that defense, they must prove you received the rent. Their next defense could be that they never received either the notice or the eviction summons. If they are in court they have received the evictions summons and the clerks realize this. The law does not require the tenant to have actually received the notice, only that you followed the proper procedure for service. Finally, they may raise the issue that the eviction is in retaliation for them going to the Building Inspector or something of that nature. It is illegal to retaliate, however, simply going to the building inspector does not permit the tenant to remain in the unit, without paying. In the court case Scassion V. Anderson the court found that there was not defense for nonpayment of rent. Here is a list of possible defenses used by Legal Action.

If your case is sent to the Commissioner, you will have to sit down and wait for your case to be called a second time. When you are called the second time you will go into one of the back rooms with the Commissioner and the tenant. The Commissioners job is to try and reach a solution agreed upon by both you and the tenant. It is often to your advantage to allow the tenant to stay an extra couple of days to have the matter settled. Remember the first rule of pro se law: The party who loses their temper loses the case.

Should the Commissioner be unable to resolve the case you will have to go in front of the calendar judge in room 409. Most of these cases are resolved the same day as the original court date. In a few rare instances you may have to return at a future date, usually within the next couple of days. Tip: Here again, if you can get the tenant to agree to a date they will be out you can settle it