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possession and have you removed from his property no earlier than the eighth (8th) day following your trial. If the judge put in his order that you owe your landlord money, your landlord many try to collect that money by garnishing your paycheck, back accounts or property. The landlord may also use a collection agency to try and collect the money from you.

Is There Any Appeal?

After the court issues its decision after the hearing, either party may appeal but must do so within seven days of the judgment. The law now requires that if you wish to continue living in the rental property while you appeal, you must pay to the court at the time you file your appeal any rent the lower court ordered you to pay the landlord. You will also have to pay the court to file your appeal. You can ask the court for a paupers affidavit, if you can not afford to pay the court costs. If you want to continue living in the rental property while your appeal is pending, you will have to pay your monthly rent into court each month as it becomes due. If you fail to pay the rent into court each month, the court will allow the landlord to remove you from the property. Be aware that superior and state courts are more complicated than magistrate court and you may need the assistance of an attorney to be successful.

What Protection Are There for Tenants?

A tenant whose landlord has filed a dispossessory affidavit because of nonpayment of rent may be able to avoid being evicted by paying all that the landlord alleges is due plus the court costs. This amount should be stated on the dispossessory summons served on the tenant. The tenant must offer payment within seven (7) days of receiving the summons. The landlord is required to accept such payment from the tenant only once in a twelve-month period. *This is called the tender defense*. If the landlord accepts the tender payment, the tenant must still file an answer which states that tender was offered and accepted.

If a landlord refuses to accept an offer of tender, the tenant should file an answer stating that tender was offered, but refused. If a court finds that a landlord refused a proper tender, the court can order the landlord to accept payment of rent, late fees and court costs and require that the landlord allow the tenant to remain in possession, if the payment is made withing three days of the court's order. If the court finds that the landlord refused a proper tender and orders the landlord to accept payment, that payment will not count as use of the tender defense which can only be used once every twelve months.

The information contained in this brochure applies only in the State of Georgia. In November of 2007 the information contained in this brochure was correct. The law changes and the information in this brochure may no longer be correct. The information in this brochure is intended only as information and does not constitute legal advice. Anyone seeking specific legal advice should contact an attorney. This information was created by the Georgia Legal Services Program.

The Dispossessory Process: How to File an Answer

When Can a Landlord Remove a Tenant?

If a Landlord wants a tenant to move out of rental property and the tenant will not voluntarily move, the landlord must go to court and seek an order for the tenant to be removed. Once the terms of the lease have been followed, Georgia law requires the landlord to demand or request that the tenant give up possession and move. This demand is best made in writing. If the tenant refuses or fails to give up possession, the landlord can file a Dispossessory Affidavit.

Self help evictions including changing the locks or threatening the tenant are illegal under Georgia law. A landlord who suspends a tenant's utility service prior to the final judgment in a dispossessory action has broken the law and may be subject to a fine up to $500 under Georgia Law found at O.C.G.A. § 44-7-

14.1. A tenant can take legal action against the landlord for damages suffered due to a wrongful self-help eviction. The claim can be filed in the magistrate court of the county where the landlord is located or as a counterclaim in the dispossessory action brought by the landlord.

How Does the Landlord Ask the Court for an Eviction Order?

The landlord can seek an order from either the Magistrate, State, or Superior Court located in the county where the rental property is located. In the warrant the landlord can request possession of the rental property and money for any unpaid rent. The landlord can also request that the court require the tenant to pay the cost of filing and serving the dispossessory affidavit.

How Will the Tenant Receive Notice of the Legal Action?

The sheriff, his deputy, or any lawful constable of the county will serve the tenant with the affidavit. The sheriff must attempt to personally serve the defendant by delivery to any competent adult person residing on the premises(not just visiting). If no one is found residing on the premises, the sheriff can serve the tenant by posting a copy of the summons and the affidavit on the door of the premises and, on the same day of such posting, mailing a copy of the summons and the affidavit to the defendant at his last known address. This is called tack and mail service.

Importance of Tact and Mail Service

A dispossessory warrant taken due to nonpayment will usually request possession and a judgment for the amount of rent owed. If the dispossessory warrant is served by "tack and mail" service, a copy being placed on the door and a second copy sent by mail, *the court cannot issue a money judgment*. However, if the tenant served by tack and mail files an answer, the court can award a money judgment.

How Does the Tenant Respond?

A tenant served with a dispossessory can file an answer with the court. *The tenant must answer either orally or in writing within seven days* from the date of actual service unless the seventh day is a Saturday, a Sunday, or a legal holiday, in which case the answer may be made on the next day which is not a Saturday, a Sunday, or a legal holiday. The tenant should file a written answer stating why the landlord does not have the right to remove them from the property. If the tenant cannot write, the answer can be made orally, written down by the clerk and signed by the tenant. The answer may contain any legal or equitable defense or other claims that the tenant may have against the landlord, including claims for damages due to the landlord's failure to repair. If an answer is filed, the court will schedule a hearing in which the tenant and landlord can each present their case.

Can the Tenant Stay on the Property While Waiting for the Hearing Date?

If the tenant files an answer, the landlord can request that the tenant be required to pay all future rent due into the registry of the court until the hearing. In most counties in Georgia, the court will not automatically require payment of rent into court, the landlord must file a motion asking the court to require payment of rent into the court. If the court does order payment, the tenant must make the payments to remain in possession while waiting for the hearing.

What If the Tenant Does Not File an Answer?

When a tenant has been served with the dispossessory action and does not answer, the tenant has waived the right to challenge their landlord's claims against them. This means they have lost their day in court and a default judgment will be entered against them and they can be force to move immediately after the order is signed by the judge.

If You Filed an Answer But Lost At Your Magistrate Court Trial

If you lost your dispossessory trial in magistrate court, the judge will issue an order for you to be removed from the property (called a writ of possession). The judge may also hold that you owe your landlord money for rent and/or other charges. You have seven (7) days from the date of the judgment (usually the day of your hearing) to file your appeal. You can check with the court to find out when your appeal must be filed. If you do not file an appeal, your landlord can use the writ of