

INSTRUCTIONS FOR LANDLORDS FILING DETAINER ACTIONS

A Detainer is used to file an action against your tenant asking that the court restore possession to you (and pay you damages) because the tenant did not pay rent on time or breached the lease in some other manner.

A Detainer may be used in General Sessions Court (where almost all cases of this type are tried) or Circuit or Chancery Courts.

Talk to an attorney, if possible. These instructions are not a substitute for legal advice. Even if you do not hire a lawyer to appear in your case, a lawyer can give you more information about how to represent yourself in court.

How to complete the filing:

- Complete the form itself by filling in the heading and your allegations and signature. Don't forget your address and telephone number. It is both a summons and a complaint, two separate documents in many other cases.
- Copies. **Make at least three copies. You will need one for the court, one for each Defendant, and one for yourself.**
- Filing. Take the original of the Detainer to the court clerk's office for filing. You can also take one copy which the Clerk will stamp and return to you showing the date and time you filed with the Court. The Court will keep the original and one copy for each Defendant.
- Costs. Contact the clerk's office first to see how much money you need to bring with you. The clerk's office requires cash or a money order. If you cannot afford to pay the filing fee, contact the clerk and ask to file an Affidavit of Indigency (a separate document). Be prepared to pay the filing fee if your request is denied.

Service of the Detainer on the Defendant. Service must be done in one of the ways permitted by Tennessee law. (See the separate booklet on this subject.) Service in person is the most common way. **Service in person cannot be made by you. The Detainer must be delivered by a person over 18 years of age who is not a party to the action and who then signs an Affidavit of Service (a separate document) before a Notary Public after service has been completed.** This document is then filed with the Court to prove that the Defendant has been served. (The Sheriff can also serve process and will complete and file the Affidavit of Service.) Keep a copy of the Affidavit of Service if the Sheriff does not serve process.

Court Date. Check with the clerk about when service by the Sheriff occurred. Ask when the case is scheduled to be heard, regardless of who served the process.

Attend the trial at the time scheduled. Make sure you notify the clerk if the problem is resolved before the court date.

Trial. At the trial, you must present testimony under oath and provide exhibits establishing a right to possession. The testimony presented in court and the exhibits offered must establish:

- a. You are the owner of the property described in the Detainer.
- b. The tenant entered into an oral or written agreement with you for the rental of the property. (If the agreement was in writing, provide a copy of the lease to the court and ask the judge to mark the rental agreement as an exhibit and admit the agreement into evidence.)
- c. The tenant did not pay rent on time or breached the lease by, for example, damaging the property.

If you have copies of written requests to the tenant to pay delinquent rent or to repay the cost of repairs, they may be introduced into evidence as exhibits. You should have certified mail receipts, copies of letters or requests, or personal appearances by individuals who know that requests were presented to the tenant either by mail or personal delivery.

Judgment. The tenant will be ordered to move out, to pay damages to you, or both, if the judge rules in your favor. However, if the court rules against you, you may be ordered to pay any court costs you have not paid already.

Appeal. The losing party has the right to appeal but must file both an appeal and a bond. See the separate forms used for appeals.

Adapted from documents available through the Self-Help Center of the Idaho Supreme Court.