



## EVICTION FOR TENANTS

### An Informational Guide to a North Dakota Civil Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided in this informational guide is not intended for legal advice but only as a general guide to a civil court process.

**If you decide to represent yourself, you will need to do additional research to prepare.**

**When you represent yourself, you must abide by the following:**

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
  - North Dakota Rules of Civil Procedure;
  - North Dakota Rules of Court;
  - North Dakota Rules of Evidence;
  - North Dakota Administrative Rules and Orders;
  - Any local court rules.

Links to the laws, case law, and court rules can be found at [www.ndcourts.gov](http://www.ndcourts.gov).

A glossary with definitions of legal terms is available at [www.ndcourts.gov](http://www.ndcourts.gov) by clicking on the “Self Help” link.

**When you represent yourself, you are held to same requirements and responsibilities as a lawyer, even if you don’t understand the rules or procedures.** If you are unsure if this information suits your circumstances, consult a lawyer.

***This information is not a complete statement of the law.** This covers basic information about the process of eviction in a North Dakota State District Court from a tenant’s perspective. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state of North Dakota. Use at your own risk.*

**WARNING – EVICTION CAN HAVE SERIOUS LEGAL AND FINANCIAL CONSEQUENCES.**

***It is strongly recommended that you consult a lawyer as early as possible in the eviction process, and carefully consider all of your options before you represent yourself in an eviction action.***

***When you represent yourself, you are held to the same requirements and responsibilities as a lawyer, even if you don’t understand the rules or procedures.***

**IMPORTANT! REQUIREMENTS THAT MUST BE FOLLOWED IN ORDER TO EVICT:**

- See Page 10 for the requirements of serving the Notice of Intent to Evict.
- See Page 15 for when a landlord **MUST** be represented by a lawyer.
- See Page 16 for the requirements of serving the Summons and Complaint.

If the requirements are not followed, the eviction case does not automatically stop. However, at the eviction hearing, the tenant can present evidence of how the requirements were not followed and ask for the eviction case to be dismissed.

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## SECTION ONE: INFORMATION ABOUT EVICTION IN NORTH DAKOTA

### What is an Eviction?

In North Dakota, a landlord may evict a tenant for one or more of the eight grounds (reasons) for eviction allowed by North Dakota law.

Eviction is an accelerated, or sped up, civil legal action to determine the right to possess the property. North Dakota eviction law strictly limits the ability to combine eviction with other claims related to the lease agreement.

### What are the Eight Grounds (Reasons) for Eviction?

A landlord may evict a tenant for one or more of the eight grounds (reasons) for eviction. ([North Dakota Century Code Section 47-32-01](#)) The most common grounds are in **bold**.

The eight grounds (reasons) for eviction are:

1. A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same.
2. A party, after peaceably entering upon real property, turns out by force, threats, or menacing conduct the party in possession.
3. A party, by force or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the possession was acquired peaceably or otherwise.
4. **A lessee, in person or by subtenant, holds over after the termination of the lease or expiration of the lessee's term, or fails to pay rent for three days after the rent is due.**
5. A party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process and after the expiration of the time fixed by law for redemption, or after the execution and delivery of a deed, or after the cancellation and termination of any contract for deed, bond for deed, or other instrument for the future conveyance of real estate or equity in the real estate.
6. A party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a district court.
7. **A lessee or a person on the premises with the lessee's consent acts in a manner that unreasonably disturbs other tenants' peaceful enjoyment of the premises.**
8. **The lessee violates a material term of the written lease agreement between the lessor and lessee.**

## **\*CAUTION\*** Repairs and Non-Payment of Rent

Tenants must pay the rent on time according to their verbal or written lease. There is no defense for non-payment of rent, even when repairs became necessary and the landlord did not make the repairs in a reasonable amount of time.

However, if a ground (reason) for the eviction is non-payment of rent and the tenant made the repairs and deducted the amount from the rent, the tenant may challenge the amount of rent the landlord claims is past due.

### **Who are the Parties in an Eviction?**

**Plaintiff** – The person who leased the property to another; a landlord.

If the property is owned by an individual, the Plaintiff is the individual. If the property is owned by a legal entity, such as a corporation or limited liability company, the Plaintiff is the legal entity.

**Defendant** – The person who rents or holds the lease to a property; a tenant.

### **What are the Definitions of Some Commonly Used Terms in an Eviction?**

**Attorney's Fees** – the amount an attorney charges a client to represent them in a court case. Attorney's fees may be awarded as costs to a successful plaintiff if there is an enforceable agreement between the plaintiff and defendant. Written leases sometimes include an agreement that, if evicted, the tenant will pay attorney's fees. (See also, Costs.)

**Complaint** – an eviction complaint is a written, legal document that is served with the eviction summons. The complaint states the grounds (reasons) for the eviction, the basic facts of the eviction, and identifies the action the landlord is asking the court to take.

**Costs** – generally refers to expenses and fees for going to court. For example, costs may include filing fees, charges for serving legal documents, and making copies of papers and exhibits. If the court orders the eviction, the plaintiff is usually awarded costs. (See also, Attorney's Fees.)

**Damages** – money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries. In an eviction, damages are limited to rents or profits that are past due, and damages caused by the tenant's possession of the property. Landlords cannot request an award of future rent when bringing an eviction.

**Forcible Detainer** – a civil, legal process that is used to evict a tenant in North Dakota. It is an accelerated, or sped up, civil legal action to determine the right to possess the property.

**Lease** – a contract by which one gives to another the temporary possession and use of real property for reward and the latter agrees to return such possession to the former at a future time.

**Lessor** – the person who leases a property to another; a landlord.

**Lessee** – the person who rents or holds the lease to a property; a tenant.

**Lien** – a right given to another by the owner of specific property to secure a debt, or one created by law in favor of certain creditors.

**Real Property** – real or immovable land including anything that is affixed to the land that is incidental or immovable by law.

**Personal Property** – anything that is not real property.

**Summons** – an eviction summons is a written, legal notice that comes with the eviction complaint. The summons notifies the tenant that an eviction action has been filed with the District Court, and includes the date, time and location of the eviction hearing.

**Writ of Execution** – an order from the Judge or Judicial Referee needed to give possession of the property back to the landlord. (The writ may also be referred to as a Writ of Execution for Possession, a Writ of Restitution, or a Writ of Eviction.) A writ of execution cannot be issued until after the court orders an eviction.

## **What are North Dakota Laws and Rules Related to Eviction?**

### **Chapter 23-11 of the North Dakota Century Code**

<http://www.legis.nd.gov/cencode/t23c11.html> governs housing authorities.

### **Chapter 47-16 of the North Dakota Century Code**

<http://www.legis.nd.gov/cencode/t47c16.html> governs leases.

### **Chapter 47-32 of the North Dakota Century Code**

<http://www.legis.nd.gov/cencode/t47c32.html> governs evictions.

**Rule 4 of the North Dakota Rules of Civil Procedure** <https://www.ndcourts.gov/legal-resources/rules/ndrcivp/4> governs how documents in evictions must be served (delivered) to tenants.

**Rule 6 of the North Dakota Rules of Civil Procedure** <https://www.ndcourts.gov/legal-resources/rules/ndrcivp/6> governs how to calculate the time for certain events and deadlines during eviction.

**The North Dakota Rules of Civil Procedure** apply to civil matters in North Dakota district courts. The rules are available at <https://www.ndcourts.gov/legal-resources/rules/ndrcivp>.

**The North Dakota Rules of Court** apply to civil matters in North Dakota district courts. The rules are available at <https://www.ndcourts.gov/legal-resources/rules/ndrct>.

**The North Dakota Rules of Evidence** apply to civil matters in North Dakota district courts. The rules are available at <https://www.ndcourts.gov/legal-resources/rules/ndrev>.

**North Dakota Case Law (Court Opinions) related to eviction** is found at [www.ndcourts.gov](http://www.ndcourts.gov). Click on the “Supreme Court” link, the “Docket Search” link, and then use the drop down menu to find the topics that correspond to Landlord/Tenant Law.

When the decision of a case is appealed from a North Dakota State District Court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.

**Laws constantly change through legislation, administrative rulings and case law (court decisions).** To determine how a law applies to your situation, review the applicable law or laws, administrative rules and rulings, and case law (court decisions). Notes of case law (court decisions) related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your situation.

### **Other Tenant Resources and Contacts**

**Legal Services of North Dakota publishes a Landlord Tenant Law brochure.** The brochure contains useful information about landlord/tenant rights and responsibilities. You may find the answer to your question in the brochure. The brochure is found online at [www.legalassist.org](http://www.legalassist.org) by clicking on the “Education Materials” link.

**The North Dakota Office of the Attorney General publishes consumer resources.** One consumer resource is a Tenant Rights brochure. You may find the answer to your question in the brochure. The brochure is found online at <https://attorneygeneral.nd.gov/consumer-resources>.

**HUD Housing Complaint Line:** 1-800-669-9777

**Fair Housing and Enforcement Center:** 1-800-877-7353

**ND Department of Labor - Human Rights Division:** 1-800-582-8032;

<https://www.nd.gov/labor/>

**Community Action Partnership (Emergency rental assistance money - call for availability)**

Bismarck, 701-258-2240      Devils Lake, 701-662-6500      Dickinson, 701-227-0131

Fargo, 701-232-2452      Grand Forks, 701-746-5431      Jamestown, 701-252-1821

Minot, 701-839-7221      Williston, 701-572-8191

**Vulnerable Adult Protective Services (VAPS)**

The North Dakota Legislature passed the Vulnerable Adult Protective Service Law in 1989. The law authorized the Department of Human Services to develop, administer, and implement a program of protective services for vulnerable adults. A vulnerable adult is any person older than age 18, or emancipated by marriage, that has a substantial mental or functional impairment.

Any person who reasonably believes that a vulnerable adult has been subjected to abuse or neglect or observes conditions or circumstances that reasonably would result in abuse or neglect may report the information to the department or to an appropriate law enforcement agency.

Report online at <http://www.nd.gov/dhs/services/adultsaging/vulnerable.html> or call toll-free 1-855-GO2LINK (1-855-462-5465).

**Attorney Resources and Limited Legal Representation**

You are not required to hire an attorney to bring a civil action in a North Dakota State District Court. If you decide to represent yourself, you must follow all of the rules, laws and procedures that an attorney is required to follow.

**Attorney Resources**

Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is [www.legalassist.org](http://www.legalassist.org).



The State Bar Association of North Dakota provides a lawyer referral service to match paying clients in need of legal services with attorneys. The phone number is (866) 450-9579 and the website is [www.sband.org](http://www.sband.org). The cost is \$30.00 for a 30 minute consultation with an attorney.

For a list of all attorneys who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at [www.ndcourts.gov/Lawyers](http://www.ndcourts.gov/Lawyers). You can narrow your search by name or location.

### **Limited Legal Representation**

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that an attorney can help you with part of your case while you do the rest of your case. You pay for the part of the case the attorney handled. For example:

- You may want an attorney to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with an attorney to prepare or review your legal documents, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire an attorney just to make court appearances for you.

You and the attorney must agree in writing to Limited Legal Representation.

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## SECTION TWO: THE EVICTION PROCESS IN NORTH DAKOTA

### An Overview of the Eviction Process

- Step One: 3 Day Notice of Intention to Evict**  
Required for some grounds (reasons). Not an eviction order.
- Step Two: Service of Eviction Summons and Complaint**  
Starts District Court eviction process to obtain an eviction order.
- Step Three: Prepare for the Eviction Hearing**  
Gather information, documents, etc. to tell your side of the eviction.
- Step Four: Attend the Eviction Hearing**  
Your opportunity to tell your side/request more time to move out.
- Step Five: After the Eviction Hearing**

The eviction process moves quickly! If you have questions about your rights and responsibilities, contact a lawyer as soon as possible. Legal Services of North Dakota may represent you for free if you meet certain criteria. Submit an application as soon as possible because it takes time for a form to be reviewed and eligibility to be determined. (See the **Attorney Resources** section above for the website and phone number.)

### STEP ONE IN AN EVICTION: 3 Day Notice of Intention to Evict

**\*Warning\* DO NOT ignore the 3 day notice of intention to evict.**

#### **What is a 3-day notice of intention to evict:**

For some grounds (reasons) for eviction, before the landlord can start the eviction process in North Dakota district court, the landlord is required to serve (deliver) a 3-day notice of intention to evict to you.

A 3-day notice of intention to evict is a document that gives you notice the landlord intends to evict you. The notice may be a letter, or may be a clearly labeled legal document.

The 3-day notice of intention to evict is not an eviction order. Eviction requires a North Dakota District Court order.

### **When is a 3-day notice of intention to evict required to be served (delivered) to the tenant:**

A 3-day notice of intention to evict is required to be served (delivered) to you when one of the eight grounds (reasons) for eviction includes:

- 4) A lessee, in person or by subtenant, holds over after the termination of the lease or expiration of the lessee's term, or fails to pay rent for three days after the rent is due.
- 5) A party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process and after the expiration of the time fixed by law for redemption, or after the execution and delivery of a deed, or after the cancellation and termination of any contract for deed, bond for deed, or other instrument for the future conveyance of real estate or equity in the real estate.
- 6) A party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a district court.
- 8) The lessee violates a material term of the written lease agreement between the lessor and lessee.

The landlord is not required to serve (deliver) a 3-day notice of intention to evict to you when the ground (reason) for eviction does not include one of the grounds listed above.

### **What must be included in the 3 day notice of intention to evict:**

The 3 day notice of intention to evict must state the grounds (reasons) for eviction.

Past-Due Rent: If rent is past-due, the amount of past-due rent is included in the 3 day notice of intention to evict. The only amounts that can be claimed are the rent amounts that are past due. A landlord cannot include any other amounts, i.e. utilities, other costs (unless these items are included in the rent amount). If the landlord has claimed any other amounts other than the rent in the 3 day notice of intention to evict, or included rent that is not due, this may become a defense in your eviction.

Late Fees: if your lease says that as additional rent you pay a late fee if the rent is paid late, the late fees may be included in the 3-day notice of intention to evict.

If a ground (reason) for eviction includes failure to pay the rent for three days after rent is due, the 3 day notice of intention to evict must provide the opportunity for the tenant to pay the past-due rent before the end of the 3 day deadline.

### **When can a 3 day notice of intention to evict be served (delivered) to a tenant:**

Failure to pay rent: When ground (reason) four, failure to pay rent, applies, the 3-day notice can be served after the rent is three days past the due date. A landlord must wait until after you are three days late with the rent.

Violation of material term of written lease agreement: When ground (reason) eight applies, the 3-day notice can be served after you violate a material term of the written lease.

**How is a 3-day notice of intention to evict served (delivered):**

When the tenant can be found, there are two ways the landlord can arrange for service of the notice of intention to evict to you.

- Personal Service by a Sheriff:

A landlord may arrange for the sheriff of the county to personally serve the 3-day notice of intention to evict to you.

In other words, the 3-day notice of intention to evict is personally delivered by the sheriff of the county to you or a person of suitable age and discretion in your household.

- Personal Service by a Person 18 years or older:

A landlord may arrange for person who is at least 18 years of age and not a party to or interested in the eviction action to personally serve the 3-day notice of intention to evict to you.

In other words, the 3-day notice of intention to evict is personally delivered by a person who is at least 18 years of age and not a party to or interested in the case to you or a person of suitable age and discretion in the your household.

At least one attempt must be made to serve the 3-day notice of intention to evict on you using either of the two methods above. An attempt must be made between the hours of six p.m. and ten p.m.

When a tenant CANNOT be found, and after at least one attempt to serve the 3-day notice of intention to evict using either of the two methods above, the sheriff of the county or a process server may post the notice in a conspicuous place at the leased premises, i.e., tape it to the front door.

Incorrect service of the 3-day notice of intention to evict does not automatically stop the eviction process. However, you may dispute service of the notice with your landlord. If the landlord continues the eviction process, you may present your side to the court at your eviction hearing. (See “If the tenant disputes the 3-day notice of intention to evict” below.)

### **Calculating the deadline of a 3 day notice of intention to evict:**

Review [Rule 6 of the North Dakota Rules of Civil Procedure](#) carefully! When a law doesn't specifically say how to calculate time, Rule 6 applies.

When calculating days:

- Do not include the day of the event that triggers the start of the period;
- Count by calendar days, including Saturdays, Sundays, and legal holidays; and
- Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

If you dispute the deadline in a 3 day notice of intention to evict, notify your landlord. If the landlord continues the eviction process, you may present your side to the court at your eviction hearing. (See "If the tenant disputes the 3-day notice of intention to evict" below.)

### **Tenant payments during the 3-day notice of intention to evict period:**

#### Full payment of rent and late fees:

If the reason for the 3-day notice of intention to evict is non-payment or late payment of rent, you may pay the full amount of rent and late fees, if any, within the 3-day notice deadline.

If you pay the full amount listed within the 3-day notice of intention to evict deadline, the landlord must accept the payment and cannot continue with the eviction process to evict you for non-payment or late payment of rent.

#### Partial payment of rent and late fees:

If you attempt to make a partial payment, the landlord does not have to accept it. Some landlords may agree to accept partial payments or a payment plan for the outstanding amount (per a written agreement).

### **If the tenant disputes the 3-day notice of intention to evict:**

Do not delay! If you dispute the information in the 3-day notice of intention to evict, inform the landlord in writing. Be specific.

For example:

- A landlord must wait until you are late with the rent. If there is a written lease, consult the lease to verify the due date of the rent.
- Repair expenses made by you may be deducted from the rent in certain circumstances.

- A landlord cannot include any other amounts, i.e. utilities, or other costs (unless these items are included in the rent amount).
- The notice of intention to evict was not served correctly. (See “How is a 3-day notice of intention to evict served (delivered)” above.)

Make a copy of the letter for your records. Deliver the letter to the landlord in a way that shows actual delivery.

By having a copy of the letter and proof of delivery, if the landlord moves forward with the eviction you can bring this documentation with you to the court hearing.

**Begin gathering documentation:**

If the landlord moves forward with the eviction (see Step Two) you will need to prepare to present your side of the eviction to the North Dakota District Court. Begin preparing by gathering documentation that you believe will prove your side.

For example:

- The lease agreement (original and renewals).
- Documentation of your rent payments.
- List of witnesses.
- If you dispute the amount of past-due rent due to repair expenses:
  - Receipts for work and material if you made repairs yourself.
  - Records of apartment and building problems, including problems with heat, hot water, and all other repairs and services.
  - Photos – labeled by date and description.
  - List of dates that you spoke with the landlord, maintenance, or building staff about problems with your apartment/housing.

**STEP TWO IN AN EVICTION: Service of Eviction Summons and Complaint**

**What happens if a tenant does not leave after receiving the 3-day notice of intention to evict?**

When you receive a 3-day notice of intention to evict and do not comply, the landlord may start the North Dakota district court eviction process. The North Dakota district court eviction process starts with service of the Eviction Summons and Complaint on the tenant.

**IMPORTANT! The eviction process moves very quickly once the Eviction Summons and Complaint are served!**

If the property is part of a legal entity, such as a business, a corporation or a limited liability company, the landlord CANNOT represent the legal entity in the eviction UNLESS the landlord is a lawyer licensed to practice in North Dakota.

ONLY a lawyer licensed to practice in North Dakota can represent a legal entity in an eviction. Non-lawyers are not allowed to represent legal entities in evictions.

(See [Wetzel v. Schlenvogt](#), 2005 ND 190; and [State ex rel. Department of Labor v. Riemers](#), 2008 ND 191.)

A non-lawyer's signature on an eviction summons and complaint may not automatically stop the eviction process. At your eviction hearing, you may present evidence that the property is owned by a legal entity and a non-lawyer signed the eviction summons and complaint on behalf of the legal entity.

The North Dakota Secretary of State website offers a registered business database. The database is free to search by business name. Go to [sos.nd.gov/business/business-services/business-records-search](http://sos.nd.gov/business/business-services/business-records-search).

Every lawyer licensed to practice in North Dakota is searchable by name at [www.ndcourts.gov/lawyers](http://www.ndcourts.gov/lawyers).

### **What is an Eviction Summons?**

An Eviction Summons is a written, legal notice that comes with the Eviction Complaint. The Eviction Summons notifies you, the defendant, that an eviction action has begun.

The Eviction Summons contains the date, time and location of the eviction hearing in a North Dakota district court. You, the defendant, are required to appear in person at the eviction hearing and answer the complaint.

An example of an Eviction Summons is found online at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) by clicking on the "Eviction for Landlords" link in the "Landlords and Tenants" section.

### **What is an Eviction Complaint?**

An Eviction Complaint is a legal document that:

- Identifies the parties in the eviction – Plaintiff (Landlord) vs Defendant (Tenant);
- States the grounds (reasons) for eviction;
- States the basic facts of the eviction; and
- Identifies the action the landlord is asking the court to take and any other relief the landlord wants the court to grant.

The Eviction Complaint is served with the Eviction Summons.

An example of an Eviction Complaint is found online at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) by clicking on the “Eviction for Landlords” link in the “Landlords and Tenants” section.

**NOTE:** If the property is part of a legal entity, such as a corporation or limited liability company, non-lawyers are generally not allowed to represent legal entities in a North Dakota state district court. Court documents signed by non-lawyer agents of a legal entity may be considered void.

### **How are an Eviction Summons and Complaint served (delivered)?**

There are two ways a landlord may arrange for service of a copy of the summons and complaint on you. The timeline for service depends on the way the copy of the summons and complaint are served.

- In person service on the tenant(s).

The sheriff of the county may serve the Eviction Summons and Complaint personally on you or a person of suitable age and discretion in your household.

A person who is at least 18 years of age and not a party to or interested in the eviction action may serve the Eviction Summons and Complaint personally on you or a person of suitable age and discretion in your household.

- If the person cannot be found in the county, the following conditions apply to service:

- Proof that the sheriff or process server attempted service, and that service was attempted at least once between the hours of six p.m. and ten p.m.
- An affidavit must be filed by the landlord or the landlord’s attorney that states:
  - The tenant cannot be found, or the tenant is not in this state.
  - A copy of the eviction summons has been mailed to the tenant at the tenant's last-known address if any is known to the landlord.
- Then, service of the Eviction Summons may be made upon you by the sheriff or process server posting the summons upon the door of the residential unit.

- Timelines for services of the summons and complaint on the tenant(s):

If the tenant was personally served a copy of the summons and complaint within the county, service must be completed at least three days before the time set for the eviction hearing.

Otherwise, service must be completed at least seven days before the time set for the eviction hearing.



Incorrect service of the summons and complaint does not automatically stop the eviction process. However, you may dispute service of the summons and complaint when you present your side to the court at your eviction hearing.

**A Judicial Referee May Hear and Decide the Eviction:**

[Rule 13 of the North Dakota Supreme Court Administrative Rules](#) allows eviction cases to be heard and decided by a Judicial Referee, rather than a District Court Judge.

If a Judicial Referee is assigned to the eviction case, any party to the case may request that a District Court Judge hear and decide the case instead. The party must file a written request with the Clerk of Court within seven days after service of the notice of hearing.

**STEP THREE IN AN EVICTION: Prepare for the Eviction Hearing**

**Circle and note the date of your eviction hearing** on your summons and complaint. If you do not attend the hearing, the Judge or Judicial Referee may rule against you and evict you.

The Eviction Summons and Complaint includes the date, time and location of the eviction hearing. The eviction hearing will be between three and fifteen calendar days from the date the Eviction Summons was issued.

The eviction hearing is your only opportunity to tell the court your side of the eviction. Even if you do not dispute the grounds (reasons) for the eviction, you may ask the court to allow you up to 5 additional days to move out.

**If you need special assistance at the hearing:**

If you have a disability, do not read or understand English well, or require special accommodations in the courtroom, contact the Clerk of District Court's office as soon as possible.

**Review pre-trial or trial guidebooks for self-represented individuals and lawyers:**

Preparing for an eviction hearing is often a complex and confusing process. Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Your local public or academic library may have resources available.

**Continue gathering documentation:**

Since the landlord moved forward with the eviction, you will need to prepare to present your side of the eviction to the North Dakota District Court at the eviction hearing. If you received a 3-day notice of intention to evict, you may have already begun to gather documentation.

Continue preparing for the eviction hearing by gathering documentation that you believe will prove your side.

For examples of documentation, see “Begin gathering documentation” in Section Two, above.

**Finish your eviction hearing preparations:**

Review the North Dakota Rules of Evidence carefully! The North Dakota Rules of Evidence govern whether your evidence is admitted at the hearing. The Rules also govern how you object to evidence the landlord wants to admit at trial.

An Evidence Research Guide is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) by clicking on the “Evidence” link in the “District Court Civil” section.

Review Rule 45 of the North Dakota Rules of Civil Procedure carefully! If you require a witness to appear at the hearing or require production of documents, electronically stored information or other tangible things, you may need the Clerk of District Court to issue a subpoena. Only a Clerk of District Court or a lawyer for a party may issue a subpoena.

A Subpoena Informational Guide is available at [www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help) by clicking on the “Subpoenas” link in the “District Court Civil” section.

Organize the information, documents, etc. that you think you will need for the hearing. At minimum, prepare an outline of your remarks and arguments.

**Prepare a contingency plan:**

If the Judge or Judicial Referee decides in the landlord’s favor, you will be evicted the same day as the court hearing unless you claim hardship, in which case the Judge or Judicial Referee can give you up to five days to move out.

This means that if your court date is Tuesday, October 19, 2017, the Judge or Judicial Referee may evict you on Tuesday, October 19, 2017.

Before you go to the eviction hearing, prepare some contingency plans. For example, find a relative to stay with or find an emergency homeless shelter. You also need to have a plan for your belongings, such as a storage facility.

The North Dakota homeless shelter directory is available at <https://www.homelessshelterdirectory.org/northdakota.html>

**\*Warning\*** Many of the shelters have waiting lists. Contact the shelter before going there.

## **STEP FOUR IN AN EVICTION: Attend the Eviction Hearing**

The eviction hearing is an examination of the facts and law, presided over by the Judge or Judicial Referee. The landlord and tenant each have an opportunity to tell their side of the facts of the eviction and argue how the eviction laws apply to the situation. The Judge or Judicial Referee weighs the facts and arguments presented by the landlord and tenant and either grants or dismisses the eviction.

The eviction hearing is your only opportunity to tell the court your side of the eviction. Even if you do not dispute the grounds (reasons) for the eviction, you may ask the court to allow you up to 5 days to move out.

### **Contact information for Clerks of District Court by County:**

Contact information for Clerks of District Court by county is available at [www.ndcourts.gov](http://www.ndcourts.gov).

### **If you need special assistance at the hearing:**

If you have a disability, do not read or understand English well, or require special accommodations in the courtroom, contact the Clerk of District Court's office as soon as possible.

### **Do not be late!**

Do not be late for your eviction hearing. If you have a serious, unavoidable reason why you cannot go to the eviction hearing on the scheduled day or will be late, call the Clerk of District Court's office as soon as possible.

Be aware that even if you contact the Clerk of District Court's office, the Judge or Judicial Referee may decide to hold the eviction hearing without you.

### **Bring the information, documents, etc. that you prepared for the hearing:**

Bring all of the files, paperwork, etc. that you gathered and organized while preparing for the eviction hearing. Bring the outline of what you want to say.

### **Conduct of the hearing:**

In general, an eviction hearing proceeds in the following order:

#### **Before the hearing officially begins:**

- Organize your files and paperwork on your assigned table in the courtroom so you can easily locate information as needed.

- The landlord or the landlord's attorney may give you copies of their documents before the hearing starts.

The eviction hearing officially begins when all are asked to rise when the Judge or Judicial Referee comes into the courtroom:

- The Judge or Judicial Referee begins the eviction hearing by identifying any documents that were submitted to the court clerk and identifying the names of the parties.
- The landlord or the landlord's attorney may give you copies of their documents, if copies were not given to you before the hearing began.

Opening statements:

- Often, each side gives an opening statement. An opening statement describes the issues in the eviction and states what the party expects to prove during the hearing.
- Usually, the plaintiff goes first and the defendant goes last.

The Plaintiff presents his or her case first:

- The landlord or, if represented, the landlord's attorney presents the landlord's case first.
- Individuals with first-hand knowledge of the facts of the eviction, such as the landlord, property manager, managing agent, or site manager, are called to testify as a witness. Each witness sits in the stand and is sworn in.
- The landlord or, if represented, the landlord's attorney asks each witness questions to present evidence of the facts of the eviction to the court. For example:
  - Who they are and how they know the tenant;
  - The location of the property;
  - Identification of the documents the plaintiff wants the court to allow as evidence, such as: the lease and payment ledger;
  - Rent amount, amount of rent owed; and
  - Anything else that pertains to why the eviction action was brought.
- If you object to the questions or evidence being presented, you may object when the question is asked, or when evidence is presented. The North Dakota Rules of Evidence govern how you object to evidence.

You have the option to cross-examine the plaintiff's witnesses:

- After the landlord or, if represented, the landlord's attorney finishes direct questioning of a witness, you have a chance to ask the witness questions. This is called cross-examination.
- **You can only ask questions about the topics covered during the plaintiff's direct questioning of their witness.**
- If you do not have any questions, the Judge or Judicial Referee will allow the witness to go back to their seat.

You present your case:

- After the landlord or, if represented, the landlord's attorney finishes presenting their case, you present the evidence of your side of the facts of the eviction. You may testify on your own behalf.
- You may call individuals with first-hand knowledge of your side of the facts of the eviction, to testify as your witness. Each witness sits in the stand and is sworn in.
- You ask each witness questions to present evidence of the facts of the eviction to the court. The North Dakota Rules of Evidence govern how you present evidence.
- If the plaintiff objects to the questions or evidence you present, the plaintiff may object when the question is asked, or when evidence is presented.

The Plaintiff has the option to cross-examine your witnesses:

- After you finish direct questioning of your witness, the landlord or, if represented, the landlord's attorney has a chance to ask your witness questions. This is called cross-examination.
- **The plaintiff can only ask questions about the topics covered during your direct questioning of your witness.**
- If the plaintiff does not have any questions, the Judge or Judicial Referee will allow the witness to go back to their seat.

Closing arguments:

- Often, each side gives a closing argument. A closing argument is a summary of the evidence presented at the hearing and an argument to the Judge or Judicial Referee on how the case should be decided.
  - Remember, you may request up to five (5) days to move out.

- Usually, the plaintiff goes first and the defendant goes last.

The Judge or Judicial Referee will then either order the eviction or dismiss the case:

- The Judge or Judicial Referee gives a summary of the documents entered into evidence and the testimony from everyone who testified.
- If the Judge or Judicial Referee orders the eviction, you will be given a date of eviction. You and all of your belongings must be moved out on that date.
  - If the case is complicated, a Judge or Judicial Referee may decide to reserve judgment. This means that the Judge or Judicial Referee will mail their decision about the case.
- The plaintiff can ask for a money judgment, which may include: outstanding rent, fees associated with the service of notice of eviction and service of summons and complaint, late charges, and attorney's fees.

**\*Important\*** Before you leave the courtroom:

Before you leave the courtroom, make sure you understand what happens next. Ask if you are not sure.

**Review of a Judicial Referee's Findings and Order:**

If the eviction case is heard and decided by a Judicial Referee, the Judicial Referee will issue findings of fact and an order. The Judicial Referee's findings of fact and order have the same effect as the findings of fact and order of a District Court Judge until superseded by a written order of a District Court Judge.

If any party to the eviction case wants a review of the Judicial Referee's findings of fact and order, the party must file a written request for a review, stating the specific reasons for the review, with the Clerk of Court within seven days after service of notice of the right to review.

The party requesting review must give notice of their request to all other parties. Any party who wishes to respond to the request for review must file their written response within fourteen days after service of the notice of the request for review.

## **STEP FIVE IN AN EVICTION: After the Eviction Hearing**

### **If you are evicted, you must move out by the date in the eviction order:**

If the Judge or Judicial Referee orders the eviction, the eviction order will state the date you must leave the property. If you did not make contingency plans before the eviction hearing, you may wish to review the contingency plan information in Step Three of this informational guide.

If you do not move out before the date of eviction, the Writ of Execution goes into effect. The Sheriff or the Sheriff's staff will come and escort you off the premises.

For example: if your eviction hearing is Tuesday, November 28 and the Judge or Judicial Referee orders your eviction on Thursday, November 30, you have 2 days to move out. If you do not move out, law enforcement will come on Thursday, November 30, to escort you and your property from the premises.

**\*Important\*** Only the Sheriff or the Sheriff's staff can evict you from the property!

### **Tenant responsible for rent during the term of the lease:**

You are still responsible for the remainder of your lease even if you are evicted. But, the landlord must make an effort to find someone to take over the rest of your lease.

(See [Section 47-16-13.7 of the North Dakota Century Code](#).)

### **Security deposits:**

You may not receive your security deposit back. The Judge or Judicial Referee may apply this amount to any outstanding fees awarded to the landlord as part of the eviction.

If the Judge or Judicial Referee does not apply the security deposit to outstanding fees awarded to the landlord as part of the eviction, the landlord is permitted to use the security deposit toward the following:

- Damage to the premises caused by the tenant or their pet, or due to the negligence of the tenant or their guest;
- Unpaid rent;
- Cost of cleaning or other repairs the tenant is responsible for to return the unit to its original state, except for reasonable wear and tear.

If the landlord uses all or part of the security deposit, the landlord must provide a written description/itemized list of damages and charges. The itemized statement must be sent to the tenant at the last address they provided, and must include the amount of the refund or any amount due to the landlord.

A landlord who, without justification, withholds any portion of a security deposit is liable for triple the amount withheld.

NOTE: The landlord is required to put your security deposit in an interest bearing or checking account. If you occupied the property for 9 months or more, you are also entitled to the amount of interest that accrued on the original security deposit amount.

(See [Section 47-16-07.1 of the North Dakota Century Code.](#))

### **Abandoned property – Less than \$2,500:**

If, after you move out, you leave your personal property for 28 days or longer, your personal property is considered abandoned. If the total estimated value of your abandoned personal property is less than \$2500.00, the landlord may dispose of or sell your personal property without giving you any notice.

Before an eviction, the landlord can do the following with the proceeds from selling your abandoned property:

- Keep all the money;
- Recover security deposit;
- Reimburse the storage fees for storing your abandoned property.

After an eviction, the landlord can do the following with the proceeds from selling your abandoned property:

- Put a lien on your items for reasonable costs associated with storing and removing your abandoned property.
- Retain possession of your property until charges (court associated fees and eviction money judgment) have been paid off.

(See [Section 47-16-30.1 of the North Dakota Century Code.](#))

### **Other ways the eviction judgment against you can be enforced:**

The eviction judgment may impact your credit score or ability to lease in the future:

- North Dakota District Court eviction judgments are publically available. This may impact your credit score and have a negative impact on renting in the future.



If the landlord was awarded money as part of the eviction order, the landlord may use judgment collection options to collect the money. For example:

- Formal Discovery to Identify your Assets:
  - A landlord may use the same types of discovery options available during civil actions, such as interrogatories (written questions) and production of documents, to find assets that may be available to pay the judgment.
- Garnishment:
  - A judgment collection option where the landlord tries to obtain funds which are your property, but are held by a third party, such as an employer. If you are working, garnishment allows the landlord to take a percentage of your paycheck to pay the money the eviction order says you owe.
- Lien Against Real Property:
  - If you own real property (real estate) in North Dakota, the landlord may file the judgment in the county where the real property is located. The judgment is a lien against the property that may be satisfied if the property is sold.
- Renew the Judgment for Another 10 Years:
  - Money awarded in an eviction order is collectable for 10 years. 90 days before the eviction order expires, if the money awarded has not been collected, the landlord may renew the order for another 10 years.

This North Dakota Legal Self Help Center resource was created by Melissa L. Cosby, as part of the University of North Dakota School of Law Externship Program, Fall 2017.