



Preparing for Your Landlord/Tenant Hearing Before a Magisterial District Judge

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WHAT CAN A LANDLORD DO TO EVICT A TENANT?

If a landlord is seeking possession of a rental property, Pennsylvania's landlord/tenant law allows them to file a "Landlord and Tenant Complaint" before a Magisterial District Judge (MDJ) for the following reasons:

- Lease expiration
- Breach of lease conditions
- Unpaid rent

It is not legal for your landlord to physically force you to move out or to change the locks or to shut off your utilities to get you to move out. Pennsylvania law only allows a landlord to evict you by going to court, usually before an MDJ. If you do not move out of your rental property voluntarily by the date indicated in an eviction notice, if one is required, the landlord can file an eviction Complaint with the MDJ.

WHAT DO THE PAPERS I RECEIVED MEAN AND DO I HAVE TO GO TO COURT?

After your landlord files the eviction papers with the MDJ, you will be served with a copy of a Landlord and Tenant Complaint with a Notice of Hearing. The Complaint is a form that is completed by the landlord and should explain the reasons for the eviction and what money is claimed to be owed. The form also should indicate if a Notice to Quit was provided to the tenant by the landlord or if no notice is required under the terms of the lease.

If you don't show up on time for the hearing before the MDJ and your landlord does, it is likely that the landlord will win and the MDJ will enter a Judgment in favor of your landlord and against you for "possession" (which means you must move out) and for all the money and court costs the landlord requested. Although you won't get in trouble for not appearing at the hearing, it is often a good idea to do so, even if you don't have a lawyer to represent you, and even if you agree you owe rent, to try to work out an agreement with the landlord, or to dispute anything in the papers you received that you don't agree with. You should be careful not to accept the landlord's promise that he will let you make payment arrangements to catch up and that you don't need to go to the hearing and he'll take care of it, since no such verbal agreement is binding on the landlord, who could obtain a judgment for possession and rent and proceed with the eviction without you even knowing about it if you don't show up for the MDJ hearing.

WHAT IF I OWE RENT BUT I NEED MORE TIME TO MOVE?

Even if you agree that you owe some rent you might have some legal defenses that you don't even realize, which could stop an eviction. Here are some examples as to why you may want to attend the MDJ hearing:

- A Notice to Quit

Unless your written lease provides that you have agreed to give up your right to a written notice before an eviction is filed in court, the law requires that your landlord must give you a Notice to Quit prior to filing a Complaint with the Magisterial District Judge. In Paragraph # 4 of the Complaint, the landlord must state that the Notice to Quit was given in accordance with the law or no notice is required under the terms of the lease. You should review your lease to see if it says you have given up your right to a Notice to Quit. If your lease does not waive notice, the law requires a 10 day notice for failure to pay rent or 15 days notice for breach of lease conditions or expiration of lease term with lease terms of 1 year or less. The notice must be in writing and delivered personally or posted in a noticeable location on the leased premises. The notice must state the reason for eviction along with the required time to move. If your landlord has not followed the law, you can ask the MDJ to dismiss the eviction case and require the landlord to start over and do it right.

- Warranty of Habitability

If your rental unit has serious problems which affect your ability to use it (e.g. severe roach infestation; a furnace that is broken so that there is no heat in winter; plumbing that doesn't work so you can't take a shower or flush the toilet; leaking from the roof when it rains, etc.) and you have told your landlord of the problems but he doesn't make the needed repairs within a reasonable time, you can legally withhold rent because of your landlord's breach of the "implied warranty of habitability" in every residential lease. (See brochure on Your Right as a Tenant to a Decent Home for more details.) You should be sure to prepare for and attend your MDJ hearing to present your defense to your landlord's unpaid rent claim based on the landlord's breach of his warranty of habitability.

- Other Defenses
Payment

You may disagree that you owe rent or other charges that the landlord claims in his complaint, because you have paid it and he hasn't given you credit for your payment. You should show up for the hearing with proof such as receipts, cancelled checks, money order stubs, witnesses who saw you give the money to the landlord, or you can tell the MDJ yourself.

- Improper Charges

Sometimes a landlord may claim that you owe money that he may not legally be able to charge you for. Examples would be unreasonable late charges that are excessive and not related to the actual loss from not getting the rent paid on time (e.g. \$5 /day late charge for every day the rent is not paid); future rent for months that have not yet come due; other charges such as attorneys' fees that have not been actually incurred or are not reasonable. You should show up at the hearing and question your landlord about any such claims and when it is your turn to testify, you should object to such claims and give your reasons.

- Disputed Facts

If you don't agree with what your landlord claims in his court papers because it isn't true, you will need to convince the judge that your side of the story is true. For example, if the eviction is for having extra people living in your apartment who are not on the lease, you should have as much proof as possible to show at the hearing that the person(s) claimed to be living with you actually live somewhere else and they only visit you. You can have the person(s) come to the hearing with their lease and rent receipts and be prepared to testify that they don't live with you. The same applies to any disputed facts. Think if there is any other person who has personal knowledge of the "fact" the landlord claims that you know is not true and ask that person to come to the MDJ hearing with you to tell the MDJ and to bring with them anything that would help convince the judge that they are telling the truth. If they need a subpoena from the MDJ to get off work or because they don't want to get involved, you can contact the MDJ office and request a subpoena to require them to appear. You will need the witness' name and address and you can serve the subpoena yourself or you can pay a constable to do so.

WHAT CAN I DO TO PREPARE FOR THE HEARING?

Carefully review the Landlord/Tenant Complaint to see what your landlord is claiming and what he is asking the MDJ to do. Also, read any written notices that you may have received from your landlord before you got the eviction papers from the MDJ's office. Also, find and review your written lease (if you have one) to see what you agreed to and if you have waived your right to a Notice to Quit before your landlord can file to evict you. Look for any lease provisions that relate to the facts the landlord is claiming in the Landlord/Tenant Complaint and/or the Notice to Quit. Gather and review all of your receipts for rent payment or other payments you made under the lease and try to figure out whether you agree or if you don't agree with what the landlord claims. If there are any disputed facts, re-read the section above and prepare your case before going to the hearing.

WHAT HAPPENS AT THE HEARING?

At the time set for the hearing the MDJ will call the case and you and your landlord and any witnesses that either of you has will go into the Courtroom. The Judge should explain the purpose of the hearing and how he/she will proceed. The landlord will go first and present his/her case. While you should listen carefully and take notes and not interrupt, if the landlord starts talking about things which he/she has no personal knowledge of (i.e. he didn't see it with his own eyes, he didn't hear it with his own ears) but rather, someone, (other than you) told him about what he is telling the judge are the "facts" you should interrupt the landlord (or any of his witnesses) by saying – "Your Honor, I object to this testimony. It is hearsay. The witness has no personal knowledge of what he is testifying to." If this is true, the MDJ should sustain your objection and not allow the landlord/witness to say what someone else told him/her.

Cross-Examination- After the landlord is finished testifying you have a chance to ask questions of the landlord. This is not the time for you to tell the judge that the landlord is wrong or present your side of the case – that time will come later. Most times you would not ask the landlord questions, unless you know that the answers you will likely get will help your case. An example of a question you might want to ask the landlord would be:

-Where the issue is whether rent was paid for the month of June and the landlord testified that you owe rent for June and July and you have rent receipts with you, signed by the landlord or someone who works for him –
Q: Your honor, may I show the witness a document and ask him a question about it? Yes. Mr. Smith, I show you a receipt dated June 1, 2011 in the amount of \$500 and I would ask is that your signature at the bottom.
Yes.

-If the receipt was signed by Jim, the landlord's brother, you could ask-
Q: Does your brother Jim Smith work for you? Yes.

An example of a question you should not ask your landlord would be:

-Where you didn't receive a written Notice to Quit before your landlord filed the eviction and the written lease didn't waive this requirement and where the landlord didn't address this at all in his direct testimony-
Q: You didn't give me a Notice to Quit before filing this eviction, did you?

This is a bad question to ask as the landlord could answer as follows:

A: Yes, I did. Here is a copy of it and I personally taped it to your door on the day the notice is dated.

Now you are stuck with his answer and you can only tell the judge when it is your turn to testify that you never got a Notice to Quit and the judge will have to decide who he believes. It would have been better not to ask this question and just wait until the landlord had finished his testimony and rested his case and then when it is your turn to present your case, to testify that you never were served with a Notice to Quit and this is required by law before an eviction can be filed and the landlord rested his case and didn't mention anything about giving you a Notice to Quit.

Use these examples to decide what questions you want to ask your landlord on cross examination.

Your testimony- After the landlord and any witnesses for the landlord complete their testimony it will be your turn to testify and to ask questions of any witnesses you have brought with you or who have been subpoenaed by you. You should tell the MDJ the relevant facts as you see them that relate to the landlord's Complaint, his testimony, and what he is asking for. It may be a good idea for you to use an outline or a checklist or some notes to help you remember what you want to tell the judge.

You should clearly and directly state what in the landlord's testimony is not true and explain your version of the facts. Don't lie or stretch the truth. If you have any proof other than your testimony, (such as documents, photographs, etc.) use them when they come up as you tell your story. (Example: "After complaining to my landlord 3 times in one week about the ceiling in my child's bedroom having caved in and water gushing in from the rain, I took pictures and here they are. I took the photos which show the crumbled ceiling tiles and debris and water on the bed, floor, and the pictures accurately show what I saw on June 10th).

Be sure to ask the judge to consider any documents or photos as evidence in making his decision. When you finish your testimony, your landlord can ask you questions. He can do the same for any one of your witnesses. You should answer the questions truthfully.

Closing Argument- After the testimony is closed you should ask the judge if you can make a brief closing statement. If this is permitted, it is your last chance to summarize the important points that came out in the hearing that you want the judge to consider. You should also tell the judge what you are asking him to decide and what evidence or law supports this. If the judge permits a closing statement, the landlord will also get a chance to make one as well.

THE MDJ'S NOTICE OF JUDGMENT- WHAT NEXT?

Either at the conclusion of the hearing or within 5 days after the hearing, the MDJ will enter a Judgment in the case and send a copy to the landlord and the tenant. The Notice of Judgment is an important document and you should read it carefully. It will indicate if the landlord obtained a Judgment for Possession; if the tenant has the ability to pay unpaid rent and avoid eviction; what rent or other damages may be owed; and what the timeline and procedure are for appeal, supersedeas and for the next step in the eviction process.

For a more detailed description of a Tenant's Rights to Appeal an MDJ Judgment for Possession (which must be done within 10 days of the date of the Notice of Judgment) see the Brochure entitled Appealing a Landlord/Tenant Judgment For Possession Pro Se.

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