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Disclaimer

Please understand that by ordering this eviction kit, you are not retaining a lawyer for legal advice, nor are you retaining the services of either Andrew J. Ruzicho nor Eric E. Willison. This kit is provided to you for informational purposes only. Further, please understand that the information in this kit is specific to the State of Ohio, and that the laws of other states may vary quite a bit from Ohio's laws. Using this kit to fight a case outside of Ohio is a bad idea.

Nothing in this kit is a substitute for retaining an attorney to work on your case. It is recommended that you seek out an attorney rather than trying to fight the eviction yourself. However, if you cannot find an attorney to work for you, then the information herein may be of some assistance to you.

The Eviction Process

I. Introduction

If your landlord is seeking to evict you, he must do so in accordance with Ohio law, specifically the Revised Code Section 1923. It is important to note that he cannot simply change the locks on your apartment door and throw all of your stuff out to the curb without any sort of warning or judicial process. That judicial process that the landlord must follow is described in Ohio Revised Code Section 1923. Your landlord may fail to observe the requirements of this section, but he does so at his own legal peril. At the end of this kit, there is a section on these illegal self help evictions.

A. The Order of Battle: Understanding the Chronology of the Process

Before you can begin to fight an eviction, you must first know how the process works from start to finish, so that you know where in the process you are. Once you breach the lease and the landlord decides to proceed with an eviction, the process goes something like this. The first thing that has to happen is that the landlord must put a three day notice to vacate upon your door. This three day notice to vacate is of vital importance to later proceedings, because it is what gives the Court the jurisdiction to hear a case of eviction. Without this three day notice, or if the three day notice is defective or was waived (meaning that the landlord did something that would cause the court to ignore the fact that the three day notice was posted, and there will be more about this later) then the Court is without jurisdiction to hear the matter and any decision that it comes to is null and void if the tenant objects to the three day notice. This statute describing this Three Day Notice is reprinted in its entirety at the end of the kit.

Once the landlord has stuck this notice on your door, you will have three days to move out. Weekends, holidays, and the day the notice was posted don't count, so if your landlord posts the notice on Friday, he must wait through Monday, Tuesday and Wednesday and come back Thursday morning to see if you are still at the Apartment before he can file his motion for forcible entry and detainer.¹ If you live in the Tenth Appellate District, then this is how you calculate the three days. However, you have to watch out, because if you live in the Second Appellate District, then there is a case ruling to the contrary on this issue of timing.² If you live in one of the other ten appellate districts in Ohio and you are fighting an eviction, then you will want to argue that Davis (the case holding that weekends and holidays don't count) is the case your district should be following.

If the landlord comes back after the end of the third day and finds that you are still there, he can go down to the Court and file a Forcible Entry and Detainer Action against you. A Forcible Entry and Detainer Action is an action for possession of the rented premises, and this is what most people think of when they say an eviction was

¹ Midtown Apartments v. Davis, 1985 Ohio App. LEXIS 10449 (March 6, 1985) Franklin Co. App. No. 84AP-1121, unreported.

² Federal Property Management v. Daughtery, 1991 Ohio App. LEXIS 3048 (June 28, 1991) Montgomery App. No. 12591, unreported.

filed. This is basically a lawsuit in Small Claims Court alleging that he has the right to have you removed from the premises. A hearing date will be set for you and the landlord to come in and argue it out in front of the Court. You can present witnesses and other evidence in your favor, as can the landlord. If your landlord loses, then his Forcible Entry and Detainer Action will be dismissed, and he will have to wait until you breach the lease again before he can start the eviction process anew with another three day notice. If he tries to evict you again for the same thing, you can show the Court a copy of your previous decision and argue that it is Res Judicata. Res Judicata means that once an issue has been decided, that is the end of it, and the Court will not let the landlord have another chance at the same dispute.

But I am going to assume that your landlord won at Court (so that we can move on through the eviction process) and that the Judge issued a decision in his favor. Just getting a decision from the Judge is not sufficient. We are now at the point wherein the landlord will want to convert the Judgment Entry in his favor to that of a Writ of Restitution (also known as a red tag because it looks like a red parking ticket). What this looks like is determined by the statute R.C. 1923.13, reprinted at the end of the kit.

Once this Writ of Restitution is placed upon your door, you will have about five days from the time it was filled out to get out. If you do not leave at that point, the landlord can schedule a time to meet with a Sheriff's deputy or a Court Bailiff, travel to the Apartment, forcibly enter it, and remove you and your possessions to the curb.

B. Reasons Your Landlord Can Evict You

There are several reasons why your landlord might wish to evict you. These are listed in Ohio Revised Code Section 1923.02(A), which you can find at the end of the kit. I'll go through each of the categories from the kit below in plain English.

1. Tenants of Apartments and Manufactured Housing

Ohio law allows evictions both against tenants holding over their terms in apartment buildings, and in manufactured housing. Manufactured housing is what used to be known as trailers in a trailer park. Another previously used term was that of "mobile home." So any landlord or mobile home park operator wanting you out must do so through the statutory eviction process outlined in Ohio Revised Code Section 1923. "Holding over the term" means that you have stayed beyond the lease agreement, or if you are in a mobile home, you have refused to sign a new lease and are continuing to occupy the premises against the wishes of the park operator.

This is only natural, as most people would agree that when your lease agreement is up (and park operators are required to offer you a new lease on the same terms that everyone else at the park gets), then you have to go.

2. Tenants Behind on the Their Rent

If you are behind on your rent, then it is only natural that the landlord will have a cause of action to evict you and retake the premises. Of course, there are several reasons why the tenant may not have paid rent. If you are legally escrowing the rent under Ohio Revised Code Section 5321.07 or it's equivalent in the mobile home park

law, or if the landlord has waived his rights to strict compliance with the prompt payment clauses in the lease agreement, or if the landlord's conduct has made it impossible to pay your rent, then you may have a defense against this, but more about all that later.

3. Judgment Debtors

If you are a judgment debtor and you are in possession of certain real estate, then you can be evicted from the rented premises via Ohio Revised Code Section 1923.

4. Sales by Executors, Administrators, or Guardians or Partition Sales

There are times when a property is the subject of litigation by Executors, Administrators (in the case of the owner passing away, the property needs to be transferred to the new owners) or Guardians (if the owner has been deemed incompetent to manage his or her property, a Guardian is appointed by the court). This is rare, but it happens. Further, when two or more parties (one of whom might be your landlord) own the property and one is trying to get control of it from the other, an action for partition may be filed. Once a decision is issued in such litigation, that decision may give rise to an action for eviction against you.

5. When the Tenant is Occupying the Land Without Right To Do So

It should come as no surprise that if you are squatting on some land without the permission of the owner, then he can bring an eviction action against you in Court.

6. Drug Activity on the Part of Tenant or Someone in Household

If you are engaging in certain legally prohibited activities, especially the manufacture, sale, or use of drugs at the apartment, your landlord will have cause to evict you. In fact, he would be a fool not to, because with the current state of civil forfeiture laws, if the landlord knew or should have known that the apartment is being used for the sale and distribution of drugs, the apartment building can be forfeited to the government and sold at auction. Nobody wants this. So the law provides that if you are caught in illegal activity at the apartment, especially the sale or manufacture of drugs, then the landlord has the right to evict you on that basis.

a) Drugs

However, Ohio Revised Code Section 1923.02(A)(6)(a)(i) requires that before the landlord can evict the tenant for drugs, the landlord must have "actual knowledge of or has reasonable cause to believe" that the tenant or someone in his household is engaged in violations of drug laws. I put that phrase about actual knowledge or reasonable cause to believe in quotes because the statute goes on to define the term.

A landlord does not have actual knowledge or reasonable cause to believe that there is drug activity unless:

1) A search warrant has been issued pursuant to Ohio Criminal Rule 41 or Ohio Revised Code Section 2933;

2) the tenant (or the person in the tenant's rented household) was named or described in the affidavit as the individual to be searched for drugs;