

A Question/Answer Walk Through the Eviction Process

When do I have to leave?

Your landlord tells you to get out. You think that you've just been "evicted." But when does the law really require you to leave? Most tenants in New Hampshire aren't required to leave their homes on just the landlord's say-so. Most tenants are entitled to a hearing where they get a chance to defend themselves before a judge. And a landlord must get the judge's permission before the tenant has to leave.

So who are the tenants entitled to this kind of eviction process? When must a landlord follow all the steps in New Hampshire's lawful eviction process and ultimately get permission from a judge before you, the tenant, must leave? Here are some examples...

- You rent a "typical" apartment with your own kitchen and bathroom facilities. Your landlord may or may not live in another apartment in the same building. Your landlord has to get a judge's permission before you must leave.
- You rent a single family home that is never rented to vacationers during the year, and the landlord does not live with you. Your landlord has to get a judge's permission before you must leave.
- You rent a mobile home that is never rented to vacationers during the year, and the landlord does not live with you. Your landlord has to get a judge's permission before you must leave.
- You rent a lot from a mobile home park or co-op and your mobile home sits on the lot. Your landlord has to get a judge's permission before you must leave.
- You rent a room in a rooming house and have been there for at least 90 days straight. Your landlord has to get a judge's permission before you must leave.
- You rent a public housing unit that is managed by either a local housing authority or a management company (your rent is based on your income rather than on the fair market rate). Your landlord has to get a judge's permission before you must leave.

- You rent an apartment or a single family home and use a section 8 voucher to subsidize the rent. Your landlord has to get a judge's permission before you must leave.
- You rent an apartment or a single family home which your landlord has just lost to foreclosure. Now a bank/mortgage company owns the building and they want you out. Your new landlord - the bank/mortgage company - has to get a judge's permission before you must leave.

Not sure whether you're the type of tenant whose landlord is required to get a judge's permission before you must leave? Call 603 Legal Aid at 1-800-639-5290 or [apply online](#).

So how does a landlord begin the lawful eviction process in New Hampshire? What are the steps?

Let's Take a Walk....

Let's take a walk through all the steps in New Hampshire's lawful eviction process. By the end of this walk, you'll be more familiar with this process. And you'll have a better idea as to how long it takes.

- Step 1 The Written Eviction Notice
- Step 2 The Landlord & Tenant Writ
- Step 3 The Appearance Form
- Step 4 The Notice of Hearing
- Step 5 Raising Defenses at the Hearing
- Step 6 The Writ of Possession
- Step 7 Asking for a Discretionary Stay
- Step 8 Filing a Notice of Intent to Appeal
- Step 9 The End of the Line
- What if the Landlord Doesn't Follow the Required Steps?

STEP 1 The Written Eviction Notice

Your landlord begins the lawful eviction process by serving you with a written notice that tells you to leave.

What if my landlord just tells me, face-to-face or over the phone, to leave?

A verbal order to leave from your landlord doesn't count. The notice must be in writing.

Is a sheriff the only person allowed to serve an eviction notice?

No. Your landlord can have anyone serve the eviction notice. A sheriff, a property manager, an attorney, the landlord's spouse, or the landlord can hand it to you or leave it on or near your door.

Is my landlord required to use a certain legal form for the eviction notice?

No. A written eviction notice may be an official looking notice like the one the court makes available to landlords. Or it may be scribbled on a piece of notebook paper. The point is, it must be in writing.

My eviction notice says I'm being evicted for refusing to pay rent. I want to pay the rent, but I don't have the money. Is there anything I can do to stop this?

YES! Call your town or city welfare office immediately! Town or city welfare may help you pay the rent. You may be able to avoid eviction if you pay all the rent plus any other lawful charges that may apply. Read about town and city welfare. If you have problems applying for welfare or to challenge welfare's denial of help, or if you need more help with the nonpayment eviction you're currently facing, call 603 Legal Aid at 603-224-3333 or 800-639-5290.

OK, I received a written eviction notice. But the reason for eviction doesn't make sense! Is this legal?

The reason on the written eviction notice may be clear. Or the reason may not make much sense to you. It may even be 100% wrong. Don't panic. Remember, this is just the first step in the process. Ultimately, it will be up to a judge whether you are evicted because of this "reason."

But my eviction notice has scary legal language on it. It says: "Pursuant to the provisions of RSA 540:2, you are hereby given notice to quit, on or before [date]." Is this the end?

No. You are NOT required to leave, or quit, on the expiration date of your eviction notice. Of course, this is what your landlord wants. That's why the landlord has given you "notice to quit." But your landlord is not a judge. Your landlord has to get a judge's permission before you must leave.

Official looking or unofficial looking. Clear reason or unclear reason. Legal language or everyday language. What matters is, you the tenant are being told in writing to leave your home. This is the eviction notice. This is NOT the end of the process. This is just step #1 in the process. The landlord must take more steps before you might have to leave your home.

STEP 2 The Landlord & Tenant Writ

You cannot be lawfully evicted unless the landlord brings the matter to court after the eviction notice expires.

Why does my landlord have to drag this eviction....and me...into court?

Because the landlord can't lawfully evict you unless the landlord gets permission from a judge. And court is where judges listen to these evictions.

Exactly how does my landlord bring this eviction into court?

Your landlord brings the matter into court by filing a summons. It's called the landlord & tenant writ. The writ will look official because it IS official.

Can anyone serve me with the landlord & tenant writ?

No. After your landlord fills out the landlord & tenant writ at court, the writ must then be brought to the county sheriff's office. A sheriff will then come to your home and hand the landlord & tenant writ to you or leave it on or near your door.

STEP 3 The Appearance Form

There is a lot of important information on the landlord & tenant writ. Most important is the **return day**. The return day is a date. You will see the return day about halfway down on the first page of the landlord & tenant writ.

Is the return day my hearing date?

No. The return day is NOT your hearing date. It's your deadline for telling the court you want a hearing scheduled.

Exactly how do I tell the court to schedule a hearing for me?

You get your hearing scheduled by filing a simple, one page form called an [Appearance form](#). You get the appearance form from the court clerk or complete it electronically and print it out. The appearance form will take you 2 or 3 minutes to fill out. When you're finished, mail it or hand it to the clerk. The clerk will give 2 copies back to you. Keep one copy for your records. Mail the other to your landlord.

Click this button to fill out your Appearance form right now.

CREATE MY FORM

What if I don't file my appearance by the return day?

You MUST file your appearance before the return day passes. If you don't, you'll be in DEFAULT. Being found in default by the court means you could be removed from your home within just a few days! Don't let this happen to you!!

What if I reach an agreement with my landlord before the return day?

File your appearance anyway!!!

What if my landlord tells me not to worry about the return day?

File your appearance anyway!!!

What if...

File your appearance anyway!!! We at 603 Legal Aid can't think of one good reason for not filing the appearance by the return day. Filing an appearance keeps you in the case so you will always have a chance to talk to the judge. In fact, we at 603 Legal Aid suggest you file your appearance as close to the return day as possible. This will set the hearing out until the last possible day...about 6 to 10 days from the day you file the appearance.

STEP 4 The Notice of Hearing

You've filed your appearance. Smart!

But how will I know exactly when the hearing takes place?

The court will use the mailing address you wrote on your appearance form to mail you a **notice of hearing**. The notice of hearing typically arrives 2 to 3 days after the Appearance is filed. It tells you the day and time your hearing is schedule.

But I'm having problems getting my mail. What if I don't get my notice of hearing in the mail?

If for some reason you don't get your notice of hearing in the mail by the 3rd day, call the court. Ask the clerk for the hearing date. Don't take any chances! Eviction hearings are scheduled quickly....6 to 10 days from the day you file the appearance. You don't want to default by not showing up for your hearing. To get information on a case in any court in New Hampshire, just call the New Hampshire Judicial Branch's toll-free phone number: **1-855-212-1234**.

STEP 5 Raising defenses at the hearing

Your landlord will be there at the hearing. The landlord may also have an attorney present.

Do I have the right to speak up at the hearing?

Yes! You do have the right to speak up for yourself at the hearing. And you should! If you don't exercise your rights to speak against eviction, no one else at the hearing will do that for you. Remember: Just because your landlord takes you to court for eviction doesn't mean the landlord will automatically win. Nothing is guaranteed for either a landlord or a tenant. It's all based on the facts and the law! Need help figuring out your defenses? Contact 603 Legal Aid. Our toll-free phone# is: 603-224-3333. You may also [apply online](#) to receive a callback by one of our housing advocates.

STEP 6 The Writ of Possession

What if I lose the eviction hearing? Will I have to leave my home the day of the hearing?

No! If you lose the eviction, you will not be required to leave your home the day of the hearing. Losing the eviction means the writ of possession will issue to the landlord sometime in the future.

What is the writ of possession?

The writ of possession is the brass ring every landlord grabs for when a landlord brings a tenant to eviction court. The writ of possession is the court order that allows a landlord to have a tenant lawfully removed from the home.

If I lose the eviction, how soon can my landlord get the writ of possession?

The writ of possession is never given to your landlord any sooner than 8 days from the day of the hearing. This is why 603 Legal Aid can tell you clearly that you are never required to leave your home on the day you lose an eviction hearing.

If I lose eviction, are you telling me I will be able to stay on for at least another 8 days?

Yes. If everything goes against you at the hearing, you will be able to stay in your home for at least 8 more days.

When my landlord finally gets the writ of possession, will my landlord come to my door, hand it to me, and order me to leave?

No. The eviction process does not allow your landlord to serve the writ of possession on you. Your landlord must bring the writ of possession to a sheriff. A sheriff is an officer of the court. A sheriff carries out court orders. Only a sheriff can serve you with the writ of possession and order you out.

Exactly when am I legally required to leave?

The nitty gritty end of New Hampshire's lawful eviction process is when a sheriff comes to your door with the writ of possession and orders you out. You only have to leave when a sheriff orders you to leave.

When can my landlord change the locks?

The landlord isn't allowed to change the locks until after a sheriff has served and carried out the writ of possession.

A note about your personal property:

Whether you have been locked out by a sheriff or you decide to voluntarily leave, your landlord must take care of your personal property for 7 days after you've left. And your landlord must allow you to get your personal property back during this 7 day period. See our page on your

rights to personal property left behind and what to do if you think it was wrongfully seized.

Having trouble getting your personal property back? Contact **603 Legal Aid at 603-224-3333**. You may also [apply online](#) to receive a callback by one of our housing advocates.

STEP 7 Asking for a Discretionary Stay

What if the judge says at the hearing that my landlord won the eviction? I need more than 8 days. Is there any way I can get more than 8 days?

Yes. If you lose, you can ask the judge for extra time in the home before the writ of possession is carried out. It's called a DISCRETIONARY STAY.

What if the judge doesn't say who won right there in the courtroom? Can I play it safe and still ask for a discretionary stay?

Yes. Maybe the judge will say the decision will come later in the mail, so you won't know where you stand. If you need extra time, you can play it safe and still ask for a discretionary stay before the hearing ends.

How much extra time can I get with a discretionary stay?

A judge can grant you up to a maximum of 90 more days in the home, even though you lost the eviction hearing. You'll be responsible for paying rent to your landlord during any discretionary stay granted by the judge.

Is a discretionary stay a defense?

No. Your request for a discretionary stay isn't a defense. Instead, it's you giving the judge important reasons why you should have extra time in the home.

What's a good example of a reason for needing more time?

One good reason would be if you or someone else in your home has disabilities that make it tough to quickly find a new, suitable home. Another might be that you already have a new place, but it won't be ready for a month or so.

What are the chances that a judge will grant me a discretionary stay?

There's no way to predict your chances. It's called a discretionary stay because the judge is allowed to use his or her discretion....or judgment....after listening to your reasons.

STEP 8 Filing a Notice of Intent to Appeal

You've raised a defense at the eviction hearing. But you lost. If you feel the judge didn't apply the law correctly in your case, you do have the right to appeal the judge's decision.

How do I start an appeal?

The appeal process in eviction cases is a 2-step process. The first step requires you to file a form at the court where you lost the eviction. This form is called the [NOTICE OF INTENT TO APPEAL](#).

When do I file the notice of intent to appeal?

It must be filed no later than 7 days from the day you lost the eviction.

Will I need money when filing the notice of intent to appeal?

If the eviction was for non-payment, yes. You must give the court one week's worth of rent when you file the notice of intent to appeal. You must continue to pay rent to the court each week for 30 days from the day of the eviction hearing. The court holds this money for the landlord. If the eviction was for some other reason, the court will tell you on your notice of decision how to pay the current rent going forward during an appeal period.

Can I remain in the home if I file the notice of intent to appeal?

Yes. The notice of intent to appeal will keep the writ of possession at the court, and you in your home, for 30 days from the day of the hearing....as long as you continue to pay the current rent as directed by the court – whether to the landlord or to the court itself.

What happens on the 30th day?

The 30th day is your deadline for presenting your appeal to New Hampshire's State Supreme Court. This is the 2nd step in the 2-step appeal process. You must satisfy all of the Supreme Court's requirements before they will consider taking your appeal. Not all appeals are accepted. If the Supreme Court doesn't accept your appeal, the writ of possession becomes available right away to your landlord.

For more information on appeals, check out the New Hampshire Supreme Court's website.

STEP 9 The end of the line

My landlord has gone through all the steps and I've gotten legal advice and exhausted my appeal rights (or I defaulted with no good cause reason), but I've lost and I'm going to be locked out soon; the Writ of Possession is about to issue. What do I do now?

For some practical advice about what to expect and how to prepare, please read [The Sheriff is Coming to Lock Me Out...Now What?](#)

What if the landlord does not follow the required steps?

I'm pretty sure my landlord is the kind of landlord who must get permission from a judge before I can be lawfully evicted. But my landlord is not following the eviction steps you've described. What can I do to make my landlord follow the law?

Your landlord may be in violation of a law known as 540-A. Your legal remedy may be a [540-A PETITION](#).

Need help figuring out if your landlord has violated 540-A and if you should file a 540-A petition? **Contact 603 Legal Aid at 603-224-3333.** You may also [apply online](#) to receive a callback by one of our housing advocates. You can also read about [Tenant's Rights](#) and [540-A information](#).

See more resources that may help if you become homeless.

Try also reading...

- [The Eviction Process](#)
- [Evictions from Manufactured Housing](#)
- [The Sheriff is coming to lock me out... Now what?](#)
- [Property Left in Apartment after eviction](#)

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