

# Discovery in Landlord and Tenant Cases

## What is discovery?

Discovery is the process of exchanging information between the parties to a lawsuit. Court rules require a party, if asked, to answer the other side's questions before trial. In a landlord-tenant case, this means finding out the information your landlord has and what he plans to use in the case against you.

Discovery can be informal, such as simply asking the landlord for a copy of your lease or for an accounting of your rent payments. The problem with informal requests is that the court cannot force the landlord to answer if he does not cooperate. If he does not respond, you will then have to begin formal discovery.

Formal discovery is the process of serving interrogatories (written questions), requests for documents, or even conducting depositions (sworn, recorded testimony taken before trial). Your landlord must respond to these requests under oath; they are then admissible in court if you need them. If the landlord does not answer, you can ask the court for a delay until you get a response and for help in forcing the landlord to answer.

Your landlord may also serve you with discovery requests. If this happens, you must respond honestly, and sign your responses in front of a notary before sending them back to the landlord or his attorney. The discovery process takes place between the parties and does not involve the court unless something goes wrong. Discovery requests or copies of requests are not ordinarily sent to the court.

## What information do I ask for?

You should ask any questions that might help you know what your landlord plans to use against you in court or that would help you prepare for the eviction hearing. Your questions can be about anything having to do with your tenancy or with your relationship with your landlord. You do not have to limit your questions to the eviction or to the reason stated on the notice to quit. You may want to "go fishing," particularly if you think your landlord is evicting you for a different reason than the reason on the notice to quit. For example, if you think

the landlord is evicting you in retaliation for reporting a health code violation, you can try to find out his real reasons through interrogatories. You can ask questions that you might not be allowed to ask at the trial.

Common areas to question are:

- details about the stated reason for the eviction,
- month-by-month (or week-by-week) accounting of rent payments,
- recent code enforcement inspections,
- repairs made or not made by landlord,
- names of witnesses, with addresses and phone numbers,
- descriptions of the incidents each witness may testify about,
- any complaints about you, from other tenants or anyone else,
- names of other tenants who were recently evicted or who are about to be,
- reasons for those other evictions,
- unwritten deals you may have made with the landlord,
- any efforts or arrangements you made to catch up on back rent,
- efforts you made to change behavior that the landlord warned you about,
- times that the landlord violated your rights (lockouts, utility shutoffs),
- the eviction process itself, such as what papers were served and when.

You can also insist that your landlord provide copies of documents that are in his control, such as:

- any documents that landlord intends to introduce at the hearing,
- your entire tenant file,
- your lease, including old leases,
- any written agreements outside of the lease,
- account books or ledgers recording your rent payments,
- receipts for rental payments and security deposits,
- written complaints about you from other tenants or any other source,

- landlord's records of other complaints that were not in writing,
- code inspection reports and letters from code officers (local or state),
- correspondence from you to the landlord, such as requests for repairs,
- if the apartment is subsidized, correspondence from the housing authority.

## How do I start?

If you have enough time and think that your landlord will cooperate, you may want to simply ask, by mail or by phone, for the information and documents that you want. If you get the information you need, then you have saved yourself some trouble. Unfortunately, this method may not get you the information you need. If this does not work, you will need to mail or deliver written interrogatories and requests for documents to your landlord. If he has an attorney, you should serve your requests on the attorney; you will often get more cooperation from an attorney than from a landlord who does not understand his legal obligations. You do not need to file a copy with the court. You should keep a copy of everything you send to the other side.

Although your interrogatories and your requests for documents are two different types of discovery, you can combine them in one document. Your opponent must provide you with access to all of the documents you request. Copies are often provided without charge, although your opponent may want you to pay if you ask for an unreasonable number of copies. As noted above, you can also arrange for depositions, which allow you to ask your landlord questions which he must answer under oath. Because depositions take time to schedule and involve paying for both a stenographer's time and a typed transcript, they are generally impractical for defendants in a landlord-tenant case.

## When do I file?

The court rules require you to serve your discovery requests no later than **5 days** after the return date. The return date is the date on your landlord-tenant writ (in the first paragraph) that tells you when you have to file your appearance. After this date, you can still ask for information and even serve interrogatories, but your landlord is not required to answer. In order to make the best use of the information that you get, it is usually best to serve discovery as soon as possible, rather than wait until the deadline.

Your landlord then has **14 days** to respond to your discovery requests. He can answer sooner, but he can also take the full 14 days if he wishes.

**Note:** When you were served with the landlord-tenant writ, you should also have received a copy of the court's discovery rules. These rules will help you understand the process and to be sure that you have met all deadlines. If you did not receive a copy, you can get one from the district court.

## What if my landlord doesn't cooperate?

RSA 540:13,IV now gives you the right to this information in landlord-tenant cases, which means that your landlord must respond, and can be forced by the court to do so. If your landlord has not answered your requests by the day before the hearing and the 14 days has not yet expired, you can ask the court to postpone the hearing to give the landlord time to respond. You can also make this motion orally on the day of your hearing, if necessary.

If the 14 days has expired and the hearing has not yet been held, you can ask the court to order a response. The judge has several ways to penalize a party for not answering discovery requests including dismissal of the landlord's case, although that would be unusual – but usually a direct order from the court will produce a response from the landlord.

If the 14 days is up and the hearing is held, you can ask that the landlord be required to answer and that the hearing be delayed until he does so.

Your opponent may not answer all your questions or produce all the requested documents. There are a few types of information that he is not required to provide, and the court will decide whether he must answer a particular question. If he has objected to one of your questions, you can ask the court to rule on the objection and to order the landlord to respond. If the landlord refuses without good reason to answer a particular question, you should ask the court, at trial, to require an answer or to bar any evidence favorable to the landlord on that subject.

Your opponent may try to supply answers to your requests on the day of the hearing or even at the courthouse, just before the hearing. Unless the answers are very routine or simply confirmation of things you already knew, an answer at this late date is probably not useful to you. Although your opponent and even the judge may try to persuade you to go forward with the hearing, you should insist on your right to the

information you have requested. You should get it with enough time to go over it and to use it effectively in preparing for the hearing, so ask the court for a continuance if you need it. Of course, if the judge does not allow a continuance, you must go forward with the hearing as best you can. If necessary, you can ask that the court give you a few minutes or an hour to go over the responses.

## How do I use this information?

The best use of this information is in getting ready for the hearing. Study the answers and the documents carefully, and combine them with what you already know. You are always better off in court if you know what the other side plans to do and if you have prepared what you plan to say. Knowing as much as you can about your landlord's reasons for evicting you will help you prepare. Knowing as much as you can about his evidence will help you decide what evidence or witnesses you should bring to the hearing. Also, his responses to your questions may give you clues about things your landlord may not want brought out in court. If you think there are other, unstated reasons for the eviction, you may find something that will help you prove your case.

Bring the responses with you to court. People sometimes contradict themselves when they get on the witness stand, and if your landlord changes his story, that can hurt his case and help yours. At the trial, if your landlord says something significantly different from his interrogatory response, you can ask him to read his original answer and then submit the interrogatory as evidence. You can ask the court to either accept his earlier response as the truth or to use it as evidence that the landlord is not believable.

## Final words

You can use the discovery process to know what's in store for you at your eviction hearing, to be better prepared, and to make it more possible to tell your side of the story. Do **not** use this process simply for delay or to harass your opponent. Do not wait until the last minute. The more you prepare ahead of time, the better your chances will be. Feel free to call 603 Legal Aid if you have questions.

Call 603 Legal Aid at 603-224-3333

\*This pamphlet is based on the law in effect at the time of publication. It is issued as a public service for general information only, and is not a substitute for legal advice about the facts of your particular situation.

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- [Fair Housing Laws](#)
- [Rental Housing and Service Animals: ADA and FHAA- when does each apply?](#)
- [To Withhold Rent Or Not To Withhold Rent - That Is The Question](#)
- [Saving Your Personal Property Left in Apartment](#)
- [Filing a Petition Under RSA 540-A](#)
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