

A TENANT'S GUIDE TO HOUSING COURT

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How Can This Guide Help Me?

This is a Guide for tenants to the Housing Part of the Civil Court of the City of New York, more commonly known as Housing Court. Lawsuits to collect rent, evict people or enforce rights regarding housing conditions are brought in Housing Court. This Guide can help you understand the kinds of cases (lawsuits) your landlord can start against you and what you can do to defend yourself. It also tells you about lawsuits that you can start against your landlord. Not all housing problems can or should be solved in Housing Court. Many problems can be solved by talking with your landlord or superintendent. If you have difficulty talking with your landlord or superintendent, you might consider contacting a local community mediation center for help with communicating your concerns to your landlord or superintendent. Even if you do not have a problem with your landlord, this Guide gives basic tips to help you be prepared for problems that may arise.

This Guide discusses the most common events and court procedures in Housing Court. No Guide, including this one, can cover every tenant's case. However, it will be helpful for you to know what is most likely to happen and how you can best be prepared.

If you have problems that you think are shared by others in your building, you may want to get together to resolve these shared problems. This Guide tells you where to go for information about working together with other tenants. This Guide also tells you where you can go for help with other housing problems, such as harassment and discrimination. This Guide is not a substitute for a lawyer. Most landlords in Housing Court are represented by lawyers. If you do not have one, you will probably be at a disadvantage. Whenever you receive legal papers, you should try to see a lawyer immediately. Information telling you how to try to get a lawyer, even if you have no money to pay for one, is included in this Guide. If you have not been able to get a lawyer by the time you go to court and are still trying to get one or to get legal advice, you have the right to ask the Judge for more time to find or talk to a lawyer. See "What do I do When I go Before the Judge?" on page 14.

You can also get legal information at the "Resource Center" located at the Housing Court in each borough. At the Resource Centers you will find written information and videos, as well as attorneys. These attorneys cannot give you legal advice or represent you, but they can give you important and helpful information about answering a nonpayment or holdover petition, and regarding what will happen when you go to court on such cases.

What Kinds of Lawsuits Are Brought in Housing Court?

Lawsuits brought by landlord. (There are two types of lawsuits *your landlord can bring* against you):

1. **Nonpayment actions.** The landlord claims you owe rent, and is suing to collect the overdue rent or to evict you if you cannot pay it.

2. **Holdover actions.** The landlord wants you evicted for reasons other than nonpayment of rent. For example, the landlord may claim that you have violated your lease or have illegally put others in the apartment; or the landlord may claim that your lease has expired or that you are not a tenant and, therefore, have no right to remain in the apartment.

Lawsuits brought by tenants. (There are three main types of lawsuits *you can bring* against your landlord):

1. **Illegal Eviction proceedings.** You ask the court to order your landlord to let you move back into your apartment after you have been illegally evicted.
2. **Housing Part ("HP") actions.** You ask the court to order the landlord to make repairs in your apartment or building.
3. **7A proceedings.** One-third or more of the tenants in a building ask the court to take control of the building away from the landlord and give it to a court-supervised administrator. If the tenants win, the administrator is appointed and collects the rent and makes repairs.

What Happens in a Nonpayment Case?

A nonpayment case is brought by a landlord to collect unpaid rent. A tenant may be evicted for nonpayment of rent.

The demand for rent. Before you can be sued, the landlord or someone working for the landlord must demand the overdue rent from you and warn you that, if you do not pay, you can be evicted. You can be told this orally or in writing. If your lease requires that this kind of demand be given in writing, then it must be in writing. If it is in writing, the rent demand must be delivered to you at least three days before the day the court papers are served, unless your lease requires more days. (See "How Are Legal Papers Served?" on page 10.)

Delivery of court papers. If you do not pay the rent after the demand for rent is made, the landlord can file a nonpayment petition (sometimes called a "dispossess") against you in Housing Court. The Court Clerk will mail you a post card when the landlord's petition is filed telling you to promptly come to court. The petition and a notice of petition (usually the front and back of the same page) must also be served on you in one of the ways described on page 10("How Are Legal Papers Served?").

Going to Housing Court. When you receive the nonpayment petition, go right away to the Landlord-Tenant Clerk's Office in the Housing Court. The address of the Court will be indicated on the notice of petition. You must do this within five days of receiving the papers from your landlord. If you are late, you still should go to the Landlord-Tenant Clerk's Office.

How to answer the nonpayment petition. You can simply tell the Landlord-Tenant Clerk your answer or you can give the Clerk a written answer. If you need help in answering the petition, there are posters on the wall in every Landlord-Tenant Clerk's Office which will give you information on how to answer a nonpayment petition. You may also go the Resource Center located in each Housing Court for information on how to answer and about what happens in a nonpayment case. At the Resource Centers you will find written information and videos, as well as attorneys. These attorneys cannot give you legal advice or represent you, but they can give you important and helpful information about answering a nonpayment petition. You should also look at the next section of this Guide called "What to say in your answer" on page 4 for some possible defenses against a nonpayment petition.

If you decide to answer in writing before going to the Landlord-Tenant Clerk's Office, a copy of your answer should first be "served" on the landlord by giving it or mailing it to the landlord's

lawyer or to the landlord if there is no lawyer's name on the court papers. You should then bring a copy of the written answer with an affidavit swearing how you "served" the landlord to the Landlord-Tenant Clerk in the borough in which you live.

If you do not answer your case in writing, you must tell your answer to a Clerk in the Landlord-Tenant Clerk's Office in the borough in which you live. When you get to that office, you should stand on the line for filing an answer. When you get to the Clerk's window, tell the Clerk what your answer is. The Clerk will have form answers that list the reasons why tenants sometimes have not paid their rent. You can ask the Clerk to read that form to you. The Clerk should check off the reasons listed on the form that match the reasons you tell him or her. If that list does not include any of your reasons, ask the Clerk to add them to the form. After you tell the Clerk your answer, the Clerk will give you a copy of that form. You should check to see that the Clerk has checked or written down all of the defenses you told the Clerk. If the Clerk has not done that, ask the Clerk to do so. A copy of your answer will also be sent to the landlord or the landlord's attorney, and the original will be kept in the court file for your case. If one of the reasons you didn't pay the rent is because your apartment needs repairs, be sure to ask the Clerk for a housing inspection. (See "How Do I Request a Housing Inspection?" on page 24.)

What to say in your answer. You can defend yourself against the petition by showing any of the following. NOTE that this is not a complete list of all possible defenses.

- You did not receive any copies of the court papers.
- The court papers were not delivered to you properly. (See "How Are Legal Papers Served?" on page 10.)
- The landlord did not demand the rent properly.
- You have already paid all or part of the rent.
- The landlord is suing for the wrong amount of rent.
- The monthly rent the landlord is asking for is not the legal rent or the amount of rent you agreed to in your lease.
- The landlord owes you money because of a rent over-charge.
- Your apartment or building needs repairs for conditions, such as leaks, peeling paint, broken plaster, or broken refrigerator; or services, such as heat or hot water, extermination for rats, mice or roaches, removal of lead paint, or installation of window guards or a smoke detector. Be sure to indicate all repairs and services that are not being provided. (See also "How Can I Force My Landlord to Make Repairs?" on page 25.)
- You receive public assistance and there are housing code violations in your apartment or building.
- Your apartment is an illegal apartment. You may have to show that you did not know that the apartment was illegal when you moved in and that there are unhealthy or dangerous conditions in the apartment. You should also know that if your building has three or more apartments, but is not registered as having three or more apartments < that is, it is not registered as a "multiple dwelling" < the landlord's case may have to be dismissed.
- The landlord waited too long to sue you for nonpayment of rent. If you think the landlord has intentionally waited too long to sue you so that the amount you owe would be so great that you would not have enough money to pay, you may have a defense called "stale rent." This defense can limit the amount of unpaid rent that you must pay in order to avoid being evicted, but it is usually very hard to prove.
- You are listed by the wrong name on the court papers.
- The person suing you in this case is not your landlord.

Can I have a jury trial? You can also ask for a jury trial in your answer, although the Judge may later decide that you gave up your right to a jury trial in your lease, if you had one (almost all leases include an agreement to give up a right to a jury trial). You must request a jury trial and pay a fee when you give your answer to the Clerk. If you cannot pay the fee because you do not

have enough money, you can request that the fee be waived. All of this must be done in the Landlord-Tenant Clerk's Office. If you are late in requesting a jury trial, you can ask the judge who has your case to still let you have a jury trial, but if you wait too long, your request will usually be denied.

The Clerk will tell you when to return to court. When you give the Clerk your answer, the Clerk will give you a date for you and the landlord to come to court. This is called your "court date." The Clerk will write or stamp the court date, time (usually 9:30 AM, 11:00 AM or 2:00 PM; if there is night court in your borough, the time might be 6:00 PM), and the courtroom number (also referred to as "Part" with a letter of the alphabet after it) on your copy of the petition and answer. The courtrooms or "parts" are also called "Resolution Parts." (See "What is a Resolution Part?" on page 14.) The court date is usually a week after you give your answer to the Clerk. You must be in the courtroom on your court date and on time. You should be there before the scheduled time so you have time to get through security at the entrance to the court house and to find the courtroom and get a seat. (See "What Do I Do When I Go Before the Judge?" on page 14.)

Free day care at Housing Court. If you have young children, you should check to see whether the Housing Court in your borough has day care. If it does, you should get to court before your scheduled time so you have time to leave your children at day care. Day care is free of charge.

If you do not answer the petition or do not go to court on your court date, you can be evicted. If you do not answer the petition on time, whether or not you received it, or you do not go to court on your court date, the landlord can get a final judgment and then have a City Marshal serve you with a "notice of eviction." (See "What is a Notice of Eviction?" on page 21.) If you receive a "notice of eviction," go right away to the Landlord-Tenant Clerk's office and ask for an "Order to Show Cause." (See "What Is an Order to Show Cause?" on page 22.)

Bring with you any papers or postcards you received from the court or from the landlord, and the "notice of eviction." Tell the Clerk if the papers were not delivered to you or were not delivered properly. (See "How Are Legal Papers Served?" on page 10.) Also tell the clerk why you did not go to court on your court date.

If a Judge signs the Order to Show Cause, this will stop the eviction at least until you can come back to court and tell a Judge what happened.

What Happens in an Holdover Case?

A holdover case is brought by a landlord to evict a tenant or the person in the apartment for reasons other than simple nonpayment of rent. A holdover case is much more complicated than a nonpayment case. The information given below is very general and there can be a number of differences in individual cases. Therefore, the help of a lawyer is especially important in holdover cases. (See "Where Can I Go for Help?" on page 28.)

Legal Papers You Should Receive Before You Have to Go to Court.

- **Notice to cure.** The landlord is usually, but not always, required to give you a written "notice to cure." This notice will tell you how the landlord thinks you are breaking your lease or acting in a way that is not appropriate for a tenant. It gives you a chance to correct the problem before the landlord starts a holdover.
- **Notice of termination.** Before court papers are delivered to you, the landlord must in almost all cases also give you a written "notice of termination." If you have received a notice to cure, you will likely receive the notice of termination about ten days later. This notice must give you details regarding how the landlord believes you broke your lease or regarding any other behavior for which the landlord is trying to end or terminate your

lease. If you do not have a written lease, the notice may simply say that the landlord has decided to terminate your tenancy. The notice must also tell you that you must be out of your apartment by a specific date or that the landlord will take you to court to evict you. Generally this notice must be given to you in one of the ways described in "How Are Legal Papers Served?" on page 10.

- **Notice to quit.** If the landlord was not required to give you a notice to cure or a notice of termination, you may simply receive a notice which tells you that you must be out of the apartment by a specific date (usually ten days after the notice is delivered to you). This notice, sometimes called a "Notice to Quit," may explain why the landlord believes that you do not have any right to stay in the apartment (for example, that you are not a tenant or that your lease has expired and the landlord does not have to renew it). Generally this notice must be given to you in one of the ways described in "How Are Legal Papers Served?" on page 10.
- **Holdover petition and notice of petition.** After the date listed in the notice of termination or notice to quit by which the landlord wants you out of your apartment, you must be given court papers called the "holdover petition" and "notice of petition" to bring you to court. These papers must be delivered to you in one of the ways described in "How Are Legal Papers Served?" on page 10.

How to answer the holdover petition. You can answer the petition orally or in writing when you go to court on your court date or you can answer in writing before your court date. (See "What to say in your answer" on page 7.) If you have questions about how to answer the petition or about what will happen on your court date, you can go to a Resource Center in the Housing Court in each borough. At the Resource Centers you will find written information and videos, as well as attorneys. These attorneys cannot give you legal advice or represent you, but they can give you important and helpful information about answering a holdover petition.

If you decide to answer in writing before the court date, a copy of your answer should first be "served" on the landlord by giving it or mailing it to the landlord's lawyer or to the landlord if there is no lawyer's name on the court papers. You should then bring a copy of the written answer with an affidavit, swearing how you "served" the landlord, to the Landlord-Tenant Clerk before the court date.

What to do after receiving the holdover petition. The holdover petition will tell you the court address, the courtroom number (also usually referred to as "Part" with a letter of the alphabet after it), and the date and time to show up at Housing Court, usually within two weeks of the date you received the court papers. You must be in court on your court date and on time. You should be there before the time indicated on the petition so you have time to get through security at the entrance to the courthouse and to find the courtroom and get a seat. (See "What Do I Do When I Go Before the Judge?" on page 14.)

Free day care at Housing Court. If you have young children, you should check to see whether the Housing Court in your borough has day care. If it does, you should get to court before the time indicated on the holdover petition so you have time to leave your children at day care. Day care is free of charge.

What to say in your answer. You can defend yourself against the holdover petition by showing any of the following things. NOTE that this is not a complete list of all possible defenses.

- What the landlord claims you did or did not do is not true, or is not as serious as the landlord claims it is.
- The notice to cure or notice of termination does not contain enough specific information to allow you to correct the problem or defend against the landlord's case.

- The notice to cure, notice of termination, notice to quit or holdover petition and notice of petition was not given to you properly. (See "How Are Legal Papers Served?" on page 10.)
- The landlord accepted rent from you after the date listed in the notice of termination and before you were served with the notice of petition and petition. This means that the landlord, by accepting your rent, may have renewed your tenancy and will have to restart the court case.
- The landlord is suing to "get even" because you recently complained to a government agency about your housing conditions or joined a tenants' association. (This is called a "retaliatory eviction.")
- The notice to cure or notice of termination was not signed by the landlord or an authorized agent.
- Even though you did not have a lease in your name, you now have a right to a lease in your name because you are a family member of the prior tenant and lived with that tenant before he or she left the apartment. Even if you were not legally related to the tenant, you may still have a right to a lease if you lived together "like a family," that is, you had a close emotional and financial relationship.
- The apartment you live in is an illegal apartment and is therefore not included in what is called a "multiple dwelling registration." A "multiple dwelling registration" is a document filed with the Buildings Department by your landlord stating that there are three or more apartments in your building. Apartments in the basement or in the attic, or apartments that have been created by subdividing other apartments are sometimes illegal. If your apartment is illegal, the landlord's holdover case in Housing Court must be dismissed. However, the landlord may be able to sue you in a different court in order to evict you.

Can I have a jury trial? You can also ask for a jury trial in your answer, although the Judge may later decide that you gave up your right to a jury trial in your lease, if you had one (almost all leases include an agreement to give up a right to a jury trial). You must request a jury trial and pay a fee before your case is on for the first time. If your case is adjourned, you can request a jury trial and pay the fee before the adjourned date. If you cannot pay the fee because you do not have enough money, you can request that the fee be waived. All of this must be done in the Landlord-Tenant Clerk's Office. If you are late in requesting a jury trial, you can ask the judge who has your case to still let you have a jury trial, but if you wait too long, your request will usually be denied.

How Are Legal Papers "Served"?

There are only three ways to deliver or "serve" a notice of petition and petition in nonpayment and holdover cases. The notice of termination and the notice to quit usually have to be served in one of these three ways also. The rules for serving the demand for rent and the notice to cure are more complicated and are not described here.

In any event, when your landlord is serving you with a notice of petition and petition in a nonpayment or holdover case, one of these three ways must be used. In addition, every person named in the petition must be served his or her own set of legal papers.

- **"Personal Delivery."** One copy of the notice of petition and petition may be given to you personally. If they are given to you personally, no other copies have to be served on you.
- **"Substituted Service."** This kind of service takes two separate steps and must result in your being served with three copies of the notice of petition and petition. One copy must be given to a person of "suitable age and discretion" who lives or works at your home, not just someone who happens to be there. (This person does not have to be an adult, but it should not be a small child.) By the next day, excluding weekends and certain holidays, the two other copies must be mailed to you, one copy by regular and one copy by

registered or certified mail. Certified mail does not require a return receipt, but you will probably have to sign for it.

- **"Conspicuous Place Service"** often called "Nail and Mail Service." This kind of service also takes two separate steps and also must result in your being served with three copies of the notice of petition and petition. The person serving the notice of petition and petition must come to your apartment at least two times to try to give those papers to you personally or to someone who lives or works at your home. Those two attempts must be at different times of the day, usually once during working hours and once during non-working hours. After those two attempts, the person serving the notice of petition and petition can attach one copy to your apartment door or place it under your door. By the next day, excluding weekends and certain holidays, the two other copies must be mailed to you, one copy by regular mail and one copy by registered or certified mail. Certified mail does not require a return receipt, but you will probably have to sign for it.

If you receive a notice from the Post Office that the Post Office has registered or certified mail for you, go pick it up. It is always better to know what papers the landlord has sent you. The court will find that the landlord has properly served the notice of petition and petition even if you don't pick it up from the Post Office (as long as the landlord has followed all of the other service requirements described above).

What Do I Do If I Was Not "Served" Properly?

When you answer, tell the Clerk or the Judge if the landlord did not follow one of these three ways to serve you with the legal papers. The Judge may decide to set a date for a hearing, called a "traverse" hearing, to decide whether the service of the court papers was proper. The landlord's process server may be asked to tell under oath how the legal papers were served. You will have the right to ask the process server questions, to testify yourself, and to call witnesses to explain that the papers were not received in one of the ways described above. If the Judge finds the service of the legal papers was not correct, the case will be dismissed. However, the landlord may start the case over again by giving you a new set of legal papers. If you receive a new set of legal papers, do not ignore these court papers. You must answer them as described above or you may be evicted from your home.

What Should I Bring to Court?

Every time you go to Housing Court, take the following things with you:

- All court papers and other papers you have received from your landlord.
- Your lease and renewal leases, if you have them.
- If the case is for nonpayment of rent, bring proof of your rent payments. Bring rent receipts, canceled checks or copies of money orders. If you paid your rent by money order, you will have to ask the money order company to trace them so you will have proof that they were cashed by the landlord. You should never pay your rent in cash without getting a rent receipt then and there, immediately. Do not accept promises that the receipt will be sent to you later.
- Records of all your apartment and building problems, including problems with heat, hot water and all other repairs and services. This would include records that you kept regarding the dates you did not have hot water and the temperature in your apartment on the days when there were heat problems.
- Pictures of all problems in your apartment or building. Put the date the picture was taken and what it shows on the back of the picture.
- Copies of letters or other documents you sent to the landlord, superintendent or government agencies (and proof, if you have it, that the letters were mailed and received) regarding problems with your apartment or building. Sending letters by certified mail,

return receipt requested, is a good idea since that will give you proof of mailing and receipt.

- Lists of the dates on which you talked with the landlord, superintendent or other building staff about problems in your apartment or building and what you said. It is a good idea to send a follow-up letter by certified mail, return receipt requested, to your landlord or superintendent about such conversations so you have proof of those conversations.
- Receipts for labor and materials for any repairs that you made.
- Anything else you believe will help your case.
- If your case is scheduled for a hearing or trial, also bring all witnesses you want to testify. Your witnesses must be present for the hearing or trial, because in general sworn statements and affidavits are not permitted at a hearing or at trial.
- If you have trouble getting documents or witnesses that you need, you can ask the Court to issue a subpoena. A subpoena is a court order that directs someone, including a government agency, to come to court on a particular date either to testify or to produce a document. You can ask for a subpoena up to 48 hours before the trial date. There are subpoena forms in the Landlord-Tenant Clerk's Office. The Clerk will explain how to fill out the subpoena so it can be given to a Judge to sign.

What Do I Do When I Go Before the Judge?

Get to court early! Leave plenty of time to get through security at the entrance of the court house. On your first court date, you must be in the courtroom that you were told to go to by the Clerk (in a nonpayment case) or that was indicated in the Notice of Petition (in a holdover case). The first courtroom you go to is usually called a Resolution Part.

What Is a Resolution Part?

- It is a courtroom where the landlord and tenant have a chance to discuss and try to settle the case.
- It has a Housing Court Judge, two court attorneys, a court clerk, and a court officer.

What Should You Do When You Go to the Resolution Part?

- Find your name on the calendar, usually posted in the hallway outside the courtroom. Write down the calendar number of your case.
- Tell the court clerk that you are the tenant and the calendar number of your case.
- Ask the court clerk if you also have to check or circle your name on a list of cases.
- Be seated in the courtroom or stay near the courtroom so you can hear when your case is called.
- Silence is required in the courtroom.
- You are free to try to settle the case with the other side, but you do not have to speak with the other side without the Judge or the court attorney being present.
- If your landlord does not have an attorney and both of you want to try to mediate your case, you can ask that the case be sent to a Housing Court mediator. (Mediation is not available in all boroughs.) With the help of a mediator, you and your landlord may be able to reach a settlement, which will be written in a document called a "Stipulation of Settlement." (See "What About Settlements and Stipulations?" on page 16.) A Judge will always review the Stipulation of Settlement after mediation.
- If you want to speak with the Judge, you should tell the court clerk to put your case up before the Judge. If you don't do this, you could wait all day.

What Should You Do When Your Case Is Called?

- Each case will be called by the Judge or the court attorney.
- When your case is called, the landlord and tenant will meet with the Judge or the court attorney.
- In a nonpayment case, your written answer should be in the court file; in a holdover case, if you served and filed a written answer, it should be in the court file. The Judge or court attorney should look at your answer. You can ask the Judge to add other defenses to your answer.
- If your apartment needs repairs and you did not ask for an inspection when you answered the petition, you can ask for an inspection. (See "How Do I Request a Housing Inspection?" on page 24.)
- If you need time to get an attorney or documents, or if you are not ready to discuss your case, you can ask to come back on a later date. That is called an "adjournment."
- The Judge can make you deposit the rent the landlord claims is owed as of the date the court papers were served if you request two adjournments or if the case has been in court for more than 30 days.
- **If you are not able to settle your case with the landlord before being called by the Judge or the court attorney**, tell the Judge or the court attorney your side of the case and whether you disagree with something the other side says. Sometimes the Judge or the court attorney is able to help you and your landlord reach an agreement.
- **If you are able to settle your case** with your landlord either before or after you meet with the Judge or court attorney, a Stipulation of Settlement will be written. (See "What About Settlements and Stipulations?" on page 16.) You will then go before the Judge with the Stipulation. The Judge should explain what is in the Stipulation and ask you if you have any questions about the Stipulation. Be sure to ask questions if you do not understand anything in the Stipulation. If you disagree with anything in the Stipulation or feel that you were forced into agreeing to the Stipulation, tell the Judge. No one can force you to settle a case.

What If the Case Is Not Settled?

- The case will be sent to a different courtroom, called a "Trial Part," for a trial on that day or be scheduled for trial on another day.
- At a trial, the landlord will have to prove his or her case and you will have to prove your defenses or claims. (See "What Happens if I Go to Trial?" on page 18.)

What If the Case Is Adjourned or Scheduled for Trial on Another Date?

- Be sure to come back to Court on that date and go to the courtroom you were told to go to by the Court. Follow the same instructions given above about checking your name on the calendar and checking in with the court clerk.
- If the case has been adjourned for trial, be sure that you come back to Court with all of your evidence and witnesses. (See "What Should I Bring to Court?" on page 18.)
- If you get any papers from the landlord or from the Court that tell you to come back to Court on a different date, **DO NOT IGNORE THEM**. Be sure you go back to court on that date.
- It is important that you read any papers that you receive because you may have to respond to them before you go back to court or when you go back to court.
- If you have any questions about the papers or about what will happen when you go back to Court, you can speak to an attorney in the Landlord-Tenant Clerk's Office who is called a "pro se attorney."

What About Settlements and Stipulations?

As described above, in the Resolution Part, in Mediation, or even in the Trial Part, you and the landlord, with the assistance of the Judge, the Judge's assistant or the court mediator, may reach a settlement in your case. Reaching an agreement is usually easier in a nonpayment case than in a holdover case since the landlord usually wants you to move out in a holdover case. Most nonpayment cases are settled, rather than going to trial.

Be careful. Agree only to what you think is fair **and be sure you can do what you promise.** Be sure you know what legal rights you may be giving up. Do not sign anything until you have read and understood the whole agreement and the court attorney or the Judge has explained to you what you are signing. If you have any questions or doubts, you have the right to ask to talk to the Judge who must approve your settlement.

Things to get in the agreement. NOTE that this is not a complete list of things that you can try to get in an agreement.

- **In a nonpayment case,** ask for a rent reduction if there have been problems with repairs for conditions, such as leaks, peeling paint, broken plaster, or broken refrigerator, or services, such as heat or hot water, extermination for rats, mice or roaches, removal of lead paint, or installation of window guards or a smoke detector. Ask that the landlord make these repairs or provide these services before you must pay any rent. If you do not have the money, try to get an installment plan to pay off the back rent over a long period of time, but be sure that you can make any payments you promise to make. Be sure that the landlord has to come back to court to evict you if he or she thinks that you have not paid the agreed on amount of back rent on time so you will have a chance to explain your side to a Judge.
- **In a holdover case,** be sure you get enough time to correct any problems you agree you should take care of. Be sure that the landlord has to come back to court to evict you if he or she thinks that you have not taken care of the problem so you will have a chance to explain your side to a Judge. If you agree that you do not have a right to remain in the apartment and that you will move out, be sure that the agreement gives you enough time to find someplace to move to. If you agree to move, try to get the landlord to give up any rent you owe so you will have some extra money to find another apartment and move your family and possessions.

Things to avoid in the agreement. NOTE that this is not a complete list of things to be avoided in an agreement.

- Do not agree to move from your apartment unless you are sure that you have someplace to move into and that you have no right to remain in your present apartment.
- Try **not** to agree to a **final judgment.** Try not to agree to the **issuance of a warrant of eviction.** If you agree to a judgment or to the issuance of a warrant of eviction, the landlord will be able to evict you without going back to court if you do not keep your promise. A warrant of eviction is especially dangerous because it allows the landlord to have a City Marshal serve you with a notice of eviction. (See "What is a Notice of Eviction?" on page 21.)

YOU SHOULD NOTE that if the agreement in a nonpayment case contains a final judgment for an amount of money and a deadline by which you must pay that amount, it will generally be very difficult to get a Judge to sign an Order to Show Cause to get more time to pay that amount unless you can deposit the entire judgment amount with the Court. Therefore, it is important not to agree to a final judgment if there is any chance that you may not be able to make the payment deadline. Getting the rent money on time can sometimes be a problem for tenants who need to get the money from the Department of Social Services. If the agreement does include a final judgment, be sure the agreement contains specific words agreeing that you can get more time

without depositing all of the rent money and also describing what you have to do to get more time.

- Do not agree to pay the landlord's lawyer's fees. Even if your lease says the landlord can get lawyer's fees, only the Judge can order lawyer's fees to be paid.

What if you've signed an agreement, but you can't do what you promised? If you cannot pay on time or do other things you promised in the agreement, go to the Landlord-Tenant Clerk's office and ask for an Order to Show Cause to get more time. (See "What is an Order to Show Cause?" on page 22.) A Judge will read your Order to Show Cause and decide whether to give you more time. If your request for more time is denied, you may be evicted if you cannot pay on time or keep other promises you made in the agreement. Also, as explained above, if the agreement is in a nonpayment case and if it contains a final judgment for an amount of money, the Judge usually cannot give you more time unless you can deposit all of the judgment amount with the Court or unless the agreement says that you can get more time without depositing all of the rent money.

What Happens If I Go To Trial?

When you enter the Trial Part courtroom, tell the court clerk or the court officer your name and the name of your case. If there is space in the courtroom, wait there to see how other tenants and lawyers talk to the judge, try to settle cases, or actually do a trial or hearing. When your case is called, answer "tenant" and go before the Judge. If you need to have the case put off in order to get documents or witnesses you will need for the trial, you can ask the Trial Part Judge to put off your case, but this may be very hard to do since cases that are sent to the Trial Part are supposed to be ready to go to trial. (See "What Should I Bring to Court?" on page 12 regarding some of the evidence you may need at a trial.)

The Judge will ask you and the landlord or his or her attorney some questions and may again try to settle the case. If you do not settle the case and both sides are ready, the Judge will probably hold a trial of your case that day.

It is important to remember that during the trial, **you should not argue with or address your objections, comments or arguments to the landlord or his or her attorney. Everything should be addressed to the Judge to try to convince the Judge to decide in your favor. In the same way, the landlord or his or her attorney should not address his or her arguments, comments or objections to you, but to the Judge.** In addition, neither you nor the landlord should interrupt each other unless you are making an objection during the trial. Finally, although you might get frustrated or upset during the trial because of something that happens, you should remember that shouting or talking in a way that might be seen as disrespectful will not help your case. Try to remain calm and courteous while you tell your story to the Judge in a clear and persuasive way.

At trial, the landlord's case will usually be presented first. All witnesses will be asked to swear or affirm that they will tell the truth. What the witness says to the court is called "testimony." During the landlord's case, you can "object" to questions that are being asked of a witness or to documents the landlord introduces. You can "object" if you think there is a good reason why the testimony or the document should not be allowed by the Judge, not just because you disagree with it. For example, you can object if the witness does not have personal knowledge of the things he or she is talking about, but is only repeating what someone else told him or her (that is called "hearsay") or if a government document is not certified or if a document is not an original or has been changed. You can always object if you think that the testimony or document has nothing to do with the case (that is called "irrelevant"). After the landlord's witnesses finish testifying, you

can also ask the landlord's witnesses questions about their testimony. That is called "cross examination."

After the landlord puts on his or her case, you will have a chance to present your case, including testifying on your own behalf and presenting other witnesses or evidence (such as letters, photographs, etc.) to the Judge. You must bring all evidence and witnesses to court on the day of the trial. (See "What Should I Bring to Court?" on page 18 regarding some of the evidence you may need at a trial.) The Judge will not accept written statements, even if they are notarized, from your witnesses. However, the Judge will accept public records if they are certified by the government agency you got them from, for example, printouts from the Department of Social Services (DSS), the Department of Housing Preservation and Development (HPD), or the Division of Housing and Community Renewal (DHCR). Your witnesses must appear in person to testify. All witnesses, including you, will be asked to swear or affirm that they will tell the truth. The Judge will listen to you and your witnesses, and will look at documents, photographs, and other evidence before making a decision.

Since you are not a lawyer, you should simply tell the Judge the facts of your case in a simple, straightforward way. Think of it as trying to tell a story to someone. The important thing is for you and your witnesses to tell the Judge the facts of your story in a clear, organized and understandable way. You will be able to refer to the court inspection, if there is one, to help you talk about the conditions in your apartment and you can also use photographs to help the Judge understand how bad the problems are.

The landlord or his or her lawyer may "object" to things that you or your witnesses say, or to documents or photographs that you try to give to the Judge. If you do not understand the landlord's objection, ask the Judge to explain it. The Judge cannot give you legal advice about your case, but he or she can explain what is going on, and the procedures and rules that must be followed at a trial. If the Judge agrees with the landlord's objection to your testimony or other evidence (that's called "sustaining" the objection), you or your witness may not be able to tell that part of your story to the Judge or you may not be able to give a particular document or photograph to the Judge. Therefore, it is important that you try to understand what is going on to the best of your ability. One way to do that is to ask the Judge to explain what is happening.

In nonpayment cases:

- **If the Judge finds that you owe any rent**, the Judge will issue a judgment in favor of the landlord for that amount of rent and will usually give you only five days to pay that amount. **If you pay the full amount to the landlord within that time, the case is over.** If the landlord refuses to take the rent within those five days, you may pay the judgment amount by bank or certified check or money order to the Clerk of the Civil Court. The check or money order should be made payable to the "New York City Department of Finance."
- If as part of the nonpayment case the Judge agrees that you are entitled to repairs or services, the Judge may also order the landlord to make repairs or give you services by a certain date. **If the landlord fails to make repairs or give you services by the date the Judge ordered**, you should go to court and ask for an Order to Show Cause. (See "What is an Order to Show Cause?" on page 36.) The landlord will have to explain why he or she did not make the repairs the court ordered.
- **If you cannot pay the full amount of the judgment within five days**, the landlord can have a City Marshal ask for a warrant of eviction. Before your eviction, the City Marshal is required to serve you with a "notice of eviction." (See "What is a Notice of Eviction?" on page 34.) However, if you need more time to pay the full judgment amount, do not wait until you get the Marshal's Notice of Eviction to go to court to ask for an Order to Show Cause. (See "What is an Order to Show Cause?" on page 21 .) However, remember as discussed above that it may be difficult to get a Judge to sign an Order to

Show Cause to give you more time to pay the judgment unless you can deposit the entire amount of the judgment with the Court. If the reason you cannot pay the judgment amount on time is because, through no fault of yours, the Department of Social Services has delayed in giving you the money, be sure to put that fact in your Order to Show Cause.

In holdover cases:

- **If the Judge finds that the landlord has proven his or her case**, that is, that you have broken important terms of your lease or that the other reasons stated by the landlord for evicting you are serious, you may be given time to correct the problem. **If you correct the problem within the amount of time the Judge gives you (usually ten days), the case is over and you can remain in your apartment.**
- If you do not correct the problem within the time given or if the law does not give you time to correct a problem after trial, the Judge may order you to move out of your apartment. In most cases, the Judge has the power to give you up to six months to move if you pay a fair "use and occupancy" (usually the rent amount) during that time. The Judge often first gives you two to three months to move. If you have not moved within that time and want more time, you must go back to Court for an Order to Show Cause to get the additional time (See "What is an Order to Show Cause?" on page 22 .) You may have to convince the Judge that you really have tried to find another apartment in order to get the additional time. Keep all ads for apartments that you tried to get, with dates and notes like "already taken," "too small" or "in bad neighborhood" to show to the Judge. The Judge may then give you extra time to move, but almost never more than a total of six months. When your time to move is up, the landlord can get a City Marshal to serve a notice of eviction on you and then evict you.
- As described above, during the time that you stay in the apartment, you will probably be ordered to pay rent, but now it is called "use and occupancy" or "U & O." The Judge will tell you how much "U & O" to pay. It will usually be the same amount as your rent was. The Judge may allow the landlord to evict you if the "U & O" is not paid on time.

What Is a "Notice of Eviction"?

A "notice of eviction" is a written notice from a City Marshal that warns you that you and your family can be evicted soon. An eviction means that the Marshal can come to your apartment, remove you and your family and your belongings from the apartment, and change the door locks. If the notice of eviction is given to you personally, you can be evicted on the fourth business day after that, not counting weekends and legal holidays. If the notice is not served on you personally, then you can be evicted on the sixth business day after it is left with someone else in your apartment or left on your apartment door, not including weekends and holidays. However, since mistakes can happen, you should not wait until the fourth or sixth business day before you do something either to stop the eviction or to move out of the apartment if you agree that you do not have the right to remain in the apartment.

The notice of eviction is supposed to be served like other legal papers. (See "How Are Legal Papers Served?" on page 10.) However, even if the Marshal does not serve the papers on you in the right way, it may be difficult for you to stop the eviction or for you to have a judge put you back in your apartment after the eviction if the landlord has a judgment against you after trial or if you have not kept the promises you made in an agreement settling your case.

The notice of eviction is the last court paper that needs to be served on you before you are evicted. The notice of eviction will be served after the court issues a warrant of eviction. In a nonpayment case, before the warrant is issued, the landlord must accept your rent and may not go forward with the eviction. However, after the warrant is issued, even if you pay the rent, the

landlord may still choose to evict you or the landlord may choose to let you stay in the apartment. The only way you can be sure that you will not be evicted after the warrant is issued is to get a written signed statement from the landlord that he or she will not evict you after you have made payment or to get an Order to Show Cause stopping or putting off the eviction. If you don't have the landlord's signed written agreement or an Order to Show Cause stopping the eviction, the City Marshal may seek to evict you even though you paid the full judgment to the landlord.

In any event, if you receive a notice of eviction and want to stop or put off your eviction, **go immediately** to the Landlord- Tenant Clerk's Office and ask for an Order to Show Cause. (See "What is an "Order to Show Cause"?" on page 22.) Also, **immediately call the City Marshal's Office** listed on your notice of eviction and ask if a specific date has been set for your eviction. The phone number for the Marshal's Office will also be on the notice. Call the City Marshal each day until you find out the date scheduled for your eviction. However, do not wait to get an Order to Show Cause until your eviction is actually scheduled because, by that time, it may be too late.

What is an "Order to Show Cause"?

To try to stop an eviction, or to force the landlord to live up to his or her part of an agreement or the Judge's order, or to bring your case back before the Judge for any other reason, go to the Housing Court Clerk's Office and ask for an Order to Show Cause. Fill out an affidavit, which is your sworn statement explaining why you need the Court to stop your eviction or give you whatever other assistance you are asking for, and ask the Clerk to have the Judge sign the Order to Show Cause. The Order to Show Cause will also include an order preventing your eviction until your request can be heard in court at a later date. Ask the Clerk if you should wait or return early the next day. **If your eviction is scheduled for that same day, be sure to tell the Clerk that you cannot wait until the next day.**

If you are being evicted because you did not come to court when you were supposed to, you must show two things in the Order to Show Cause: (1) a good reason for not going to court when you were supposed to, such as "I never received the court papers" or "I was sick," and (2) a good defense against the landlord's claim in the petition, such as "I paid part or the full amount" or "I need repairs." (See "What to say in your answer" on page 4 [nonpayment case] and on page 8 [holdover case].)

If you are being evicted because you did not keep your promise in the settlement agreement or the Judge's order, you must show that you have a good excuse for not having done so. In a nonpayment case, it will be difficult to get the Judge to sign an Order to Show Cause stopping the eviction unless you can deposit the entire judgment amount with the Court or you can prove that you do not have all of the money because of a delay by the Department of Social Services and not through any fault on your part. **If the Judge refuses to sign your Order to Show Cause**, he or she should write "Denied" on it. You can still try to have an Appellate Term Judge sign it. However, as discussed above, in a nonpayment case, the Appellate Term also usually cannot sign an Order to Show Cause stopping the eviction unless you can deposit the entire judgment amount with the Court.

Ask the Housing Court Clerk for the location of the Appellate Term. If the Appellate Term Judge signs the Order to Show Cause, you will have to serve the Order to Show Cause as described below. You may also need to bring the original back to the Housing Court Clerk. You should ask the Appellate Term Clerk exactly what you must do.

If the Judge signs your Order to Show Cause, you must deliver the copies in the way the order tells you to and you must do it by the date and time stated in the order, which is usually the next day. Usually you must deliver the Order to Show Cause and your affidavit to the landlord's lawyer or to the landlord, if there is no lawyer, and, if there is a warrant of eviction, to the City Marshal.

The Clerk will show you how to find the addresses of the landlord or the landlord's lawyer and the Marshal. If your eviction is scheduled for that same day or if the Marshal is in a different borough, the Clerk should also call the Marshal to tell him or her that an Order to Show Cause has been signed stopping the eviction. The Clerk will also give you an Affidavit of Service for you to fill out later after you have served the Order to Show Cause. If you have any questions about how to serve the Order to Show Cause, ask the Clerk.

When you serve the Order to Show Cause, you should ask the landlord or the landlord's lawyer and the City Marshal to sign or stamp their name and the date and time of service on your copy of the Order to Show Cause. If they do not sign or stamp your copy, you must fill out the Affidavit of Service given to you by the Court Clerk as proof of the date and time that you served the Order to Show Cause. Then, you must sign the Affidavit of Service and have it notarized. **You must have either a stamped or signed copy of the Order to Show Cause or your Affidavit of Service when you go back to court. If you do not and the landlord does not show up, your Order to Show Cause may be denied and you will have to start the process all over again. You may even get evicted in the meantime.**

The Order to Show Cause will tell you the day, time and courtroom to go to when you return to court. Be there on time. Check the calendar on the wall outside of the courtroom to make sure your case is on the calendar. Find your case on the calendar and write down your calendar number so you will know when your case will be called. If your case is not on the calendar, go to the Housing Court Clerk's office or ask the Judge's Clerk what you should do.

When your case is called, stand up and say loudly "Tenant." If the landlord does not answer, you may, as described above, have to show your Affidavit of Service and, if you were also told to mail the Order to Show Cause, your Post Office mailing receipts. Even if the landlord is there, he or she may deny that you properly served the Order to Show Cause and you will have to show your proof of service.

If the landlord answers, you will be told to step up to see the Judge. Tell the Judge what the problem is. For example, tell the Judge why you missed your earlier court date or why you have not been able to pay the rent under the stipulation you signed or what the landlord has failed to do. (See "What Happens If I Go to Trial?" on page 18 for some hints on how to tell your story to the Judge.) What will happen depends on the Judge's decision. If you do not understand what is happening, ask the Judge to explain.

How Do I Request a Housing Inspection?

Even before there is a court case, if you have problems in your apartment or building, you can call (212) 824-4328 to request a housing inspection. If an inspection is made, the landlord will receive a notice of all violations.

Once a court case has begun, if you have repair problems in your apartment or building, you should ask for an inspection from the Clerk or the Judge the first time you are in court or as soon as possible. You have a right to ask for a housing inspection and you should ask for it if you need it to prove that there are bad conditions.

If you request an inspection from the Clerk when you answer in a nonpayment case (see "How to answer" on page 4) or from the Clerk or the Judge on the first court date in a holdover or nonpayment case (see page 14), you may get a date for the inspection and a date to return to court. You will be asked to make a list of the repairs needed. Make sure to include every problem in your apartment and in the public areas of the building. If a problem or area is not on the list, the inspector may refuse to look at it.

On the day of the inspection, someone must be home from 9:00 AM to 5:00 PM to let the inspector in. Be sure to show the inspector all problems in the apartment, hallways, and other public areas.

How Can I Force My Landlord to Make Repairs?

If your landlord sues you for nonpayment of rent and you have conditions in need of repair in your apartment, **be sure to ask the Clerk for an inspection when you first go to court.** That way, the Judge will have an inspection report in your court file. When you go before the Judge you should tell the Judge about any repairs that are needed in your apartment or your building. If necessary repairs have not been made, the landlord may not have lived up to his or her obligations under what is called the "warranty of habitability." This means the landlord has not kept the apartment and the public areas of the building up to standard living conditions. The Judge may reduce the amount of back rent that you have to pay because of this. This is called an "abatement." You can also ask the Judge to order the landlord to make repairs. (See "How Do I Request a Housing Inspection?" on page 24.)

You can also sue your landlord to get repairs made. Before starting any action in Housing Court, tell your landlord and superintendent about any problems in your apartment or building. If possible, write a letter to your landlord and superintendent, preferably sent by certified mail, return receipt requested, so you have proof of this. Include a list of the problems and tell them how long each problem has existed. Keep a copy of the letter and the certified mail receipt. If your landlord refuses to make repairs, you can bring one of two kinds of actions in Housing Court, a Housing Part ("HP") proceeding and/or a 7A proceeding.

HP proceedings. If your apartment needs repairs, you can bring an "HP" case ("H" for "Housing" and "P" for "Part"). To begin the case, you must buy an index number to file your case in Court. This costs \$35.00 and must be paid by money order made out to "Clerk of the Civil Court." If you cannot afford the \$35.00, you can ask the Court Clerk for papers to fill out so you can start the case without paying the fee. After completing these papers, a Judge will decide whether you can begin your case without paying the fee.

Then, fill out the HP proceeding papers explaining what needs to be repaired in your apartment and in the public areas of your building. The court may set dates for a housing inspector to visit your building and for a court hearing.

Before you start an HP action, talk to the other tenants in your building. If there are building-wide problems, you and the other tenants in your building may also be able to get help in forcing your landlord to make repairs from the pro se Court Attorney or the Department of Housing Preservation and Development ("HPD") Tenant Assistance Unit or from other organizations listed on pages 28-29.

7A Proceedings. If your building has serious problems, such as frequent lack of heat and hot water or lack of basic maintenance or services, and not just problems in one apartment, or if your landlord is harassing you, you should consider getting together with other tenants and bringing a 7A Proceeding. In a 7A Proceeding, the tenants in a building ask the court to remove the landlord as active manager and to appoint an administrator, who is supervised by the Court and who will collect the rent monies and use them to make repairs and to put the building back in shape. The landlord keeps legal ownership, but no longer has the power to operate the building. If the 7A administrator succeeds in repairing the building, the court can give control of the building back to the landlord.

At least one-third of all the tenants in the building must agree to bring a 7A Proceeding. Often, a tenants¹ association can help in getting enough tenants together to bring a 7A Proceeding. You

and the other tenants in your building may be able to get help from the Court's pro se attorney, the HPD Tenant Assistance Unit or other organizations listed on pages 28-29.

How Can I Be Prepared for Resolving Housing Problems?

Keep records, even if you have never had a problem with the apartment or building you live in. You should always keep the following in a safe place:

- Your lease and renewal leases.
- A list of the dates when you paid rent.
- Proof that you paid rent. If you pay by personal check, keep the canceled check. If you pay by money order, keep a copy of the money order. If you pay by cash, get a rent receipt immediately. Do not accept promises that the receipt will be sent to you later. You have a right to get one every time you pay rent in cash.
- Notices from government agencies about your apartment.
- Copies of all letters or papers about your apartment, including any letters or complaints you sent to your landlord or to a government agency. If you sent these letters by certified mail, return receipt requested (which is a good idea), keep the receipts you receive from the Post Office showing that the person or the agency received the letter and signed for it.
- A list of the dates when you do not have heat or hot water. The easiest way to do this is on a calendar. This list should also include the temperature in the apartment and outside on each date.
- A list of the dates when you have major problems, such as leaks, flooding, broken windows or broken locks, and photographs of any of those problems. This list should also include the dates you talked to the landlord or superintendent regarding these problems.
- Receipts for work and materials if you are forced to make repairs yourself after notifying the landlord that repairs are needed.

Where Can I Go For Help?

- **To find a lawyer.** Lawsuits brought in Housing Court should be taken seriously. Your landlord will probably have the assistance of a lawyer. You should find a lawyer to help you if you can. If you can afford a lawyer, but do not know how to find one, call the Legal Referral Service at (212) 626-7373. They will refer you to a lawyer who will charge a \$25.00 consultation fee for the first half-hour. If you decide to hire the lawyer after this consultation, you and the lawyer will work out the fee that you will pay. If you cannot afford a lawyer, call the Legal Aid Society at (212) 577-3300 or Legal Services at (212) 431-7200.
- **To get more information on your rights in Housing Court.** The City-Wide Task Force on Housing Court has information tables in most Housing Courts, or you can call them at (212) 982-5512 or the Metropolitan Council on Housing at (212) 693-0550. Also, in some of the Housing Courts there is a Resource Center where you can view a video about Housing Court procedures and get written information and forms.
- **To get an interpreter.** The Clerk or the Judge at the Housing Court will get an interpreter for you.
- **To apply for public assistance.** Go to your local office of the New York City Department of Social Services ("DSS"). Also, check to see if there is a DSS liaison office in the Housing Court in your borough.
- **To report bad housing conditions and heat or hot water complaints.** Call the New York City Housing Inspection Unit at (212) 824-4328.
- **To organize other tenants in your building.** Call the Metropolitan Council on Housing at (212) 693-0550 or the New York State Tenant & Neighborhood Coalition at (212) 695-8922.

- **If you are being sexually harassed.** Call the Housing Discrimination Clinic of the New York Law School at (212) 431-2176.
- **If your landlord is discriminating against you due to your age, race, gender, sexual orientation or any other grounds.** Call the New York City Commission on Human Rights at (212) 306-7500 or the New York State Division of Human Rights at (212) 722-2856; or the Open Housing Center at (212) 941-6101.
- **To bring an HP action.** Call the HPD Tenants Assistance Unit at (212) 386-5000 or go to the HP Clerk at the Housing Court. 28
- **To bring a 7A proceeding.** Call the Community Action Unit at (212) 240-5096 or the HPD 7A Counseling & Assistance Unit at (212) 386-8834.
- **For rent control and rent stabilization tenants.** Call the New York State Division of Housing and Community Renewal at (718) 739-6400. This office hears complaints about rent overcharges, landlord decreases in service, harassment by the landlord, refusal to renew your lease, and other problems.
- **For security deposit complaints.** Call the New York State Attorney General's Consumer Frauds & Protection Bureau at (212) 416-8000.