

## WHAT IS AN EVICTION CASE?

An **eviction case** is a lawsuit to recover possession of real property (like land, a house, or an apartment building) from someone who is occupying it. The most common eviction case is filed by a landlord to remove a tenant from the landlord's property. Rule 500.3(d).

If a person is evicted, they are permanently deprived of their right to possession of that property.

Eviction cases provide a simple and speedy method for determining who is entitled to possession of a premises. A court does not determine title (who owns the property) in an eviction case. Rule 510.3(e).

The only issue that a Judge may consider in an eviction case other than who gets possession of the premises is a claim for back rent (as long as the amount of back rent is within the jurisdiction of the justice court ( Rule 510.3(d); Property Code § 24.0051(b).

## GENERAL EVICTION PROCEDURES

### 1. Grounds for Eviction

#### General grounds for an eviction include:

- A tenant breaches a lease term (including not paying rent) and fails to surrender possession upon demand.
- A tenant holds over after termination of their lease and fails to surrender possession upon demand.
- The occupant is a tenant at will or by sufferance and fails to surrender possession upon demand.
- The occupant is a squatter or squatter's tenant and fails to surrender possession upon demand.

### 2. Notice to Vacate

A **notice to vacate** tells a tenant or occupant that they must vacate the premises within a certain amount of time. A landlord may not file an eviction suit until after a proper notice to vacate has been given, the time period in the notice has expired, and the premises have not been vacated. Property Code § 24.005.

Rule 510.3(a)(3) expressly requires the landlord to include in the petition "a description of when and how the notice to vacate was delivered."

Once a notice to vacate has been delivered, the landlord must wait until after the deadline for the tenant to vacate before they can file an eviction suit.

**For example**, if a landlord has to give a tenant a three-day notice to vacate, then he has to wait until those three days have passed after the notice to vacate was delivered before he can file a suit.

## **How much Notice is required?**

### **A Tenant under a Written or Oral Lease**

The landlord must give a tenant who defaults (breaches a lease term, including not paying rent) or holds over after the end of the rental term or renewal period at least three days' written notice to vacate, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. Property Code § 24.005(a).

### **A Tenant at Will or Tenant by Sufferance**

The landlord must give the tenant at least three days' written notice to vacate, unless the parties have contracted for a shorter or longer period in a written lease or agreement. Property Code § 24.005(b)

### **Squatters**

The person entitled to possession must give the occupant oral or written notice to vacate, but the notice may be to vacate immediately or by a specified deadline. An eviction suit may be filed immediately upon giving notice in this situation. Property Code § 24.005(d).

**Delivery of the Notice to Vacate** Generally, the notice to vacate must be given in person or by mail to the premises.

In person delivery means: Personally delivered to the tenant or any person residing at the premises who is 16 years of age or older; or Personally delivered to the premises by attaching the notice to the INSIDE of the main entry door. Property Code § 24.005(f).

Delivery by mail means delivery by regular mail, registered mail or certified mail, return receipt requested, to the premises in question. Property Code § 24.005(f). The notice period is calculated from the day on which the notice is delivered. Property Code § 24.005(g).

## **3. Filing the Eviction Suit**

Filing Fee in Wichita County is \$54

Service Fee for civil process is \$125 per Defendant

Total Amount: \$179.00 (add \$125.00 for each additional Defendant)

**\*\*Plaintiff must pay both fees for Eviction\*\***

*-A judgment or writ of possession may not be issued or executed against a tenant obligated under a lease who is not named in the petition and served with a citation. Rule 510.3(c). This means that while the plaintiff would only pay one filing fee, they must pay service fees for each defendant since each defendant must be separately served with the citation.*

*An eviction suit is initiated when the plaintiff or the plaintiff's authorized agent files a written sworn petition with the justice of the peace in the precinct where the premises are located. Rule 510.3(b).*

## Petition

**A petition in an eviction case must be sworn to by the plaintiff and must contain ALL of the following:**

- If the eviction is based on a written residential lease, the plaintiff must list all tenants obligated under the lease whom the plaintiff seeks to evict.
- a description, including the address, if any, of the premises that the plaintiff seeks possession of;
- a description of the facts and the grounds for eviction;
- a description of when and how the notice to vacate was delivered;
- the total amount of rent due and unpaid at the time of filing, if any;
- a statement that attorney's fees are being sought, if applicable (Rule 510.3(a))

## 4. Trial Date and Computation of Time

**\*\*The trial date must be set to be not less than 10 days and not more than 21 days after the petition is filed. Rule 510.4(a)(10)**

To compute time in any case, you should:

- count every day, including Saturdays, Sundays, and legal holidays; and
- include the last day of the period, but if the last day is a Saturday, Sunday or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday or legal holiday.

## 5. Service of Citation on Defendant and Return of Service

**\*\* When a petition is filed, the court must immediately issue a citation directed to each defendant. Rule 510.4(a).**

**Who May Serve** The citation must be served by a constable or sheriff, unless another person is authorized by a written court order. Rule 510.4(b)(1).

Required Method of Service Eviction citations may be served:

- by delivering a copy to the defendant in person along with a copy of the petition and all documents filed with the petition; or
- by leaving a copy of the citation, along with a copy of the petition and all documents filed with the petition, with some person other than the plaintiff over the age of 16 years at the defendant's usual place of residence. Rule 510.4(b)(2).
- The citation must be served on the defendant at least six days before the day set for trial. Rule 510.4(b)(2)

## 6. Trial and Rendering Judgment

Both Parties must check in and notify the court that they are present for case.

The Court will call out case when the Judge is ready to begin the Trial.

The Judge will call and hear the case just like any other civil case, and has the duty to develop the facts of the case as necessary by asking questions of any witnesses or the parties. Rule 500.6.

If the plaintiff does not appear for trial, the court may postpone or dismiss the suit. Rule 503.6(b).

If both parties are present, (or the requirements for a default judgment are met), the Judge should award possession to the plaintiff if it can check each of the following four boxes as a result of the hearing (otherwise award possession to the defendant):

- Filed in the correct precinct
- Proper notice to vacate
- Proper service
- Proper grounds for eviction, such as nonpayment of rent or some other breach of the lease (and no retaliation or rent deduction defense)

When making its ruling, the Judge should award the following along with possession (as applicable):

If the judgment is in favor of the plaintiff,

- the judge must render judgment for the plaintiff for possession of the premises,
- court costs, interest, delinquent rent as of the date of entry of the judgment, if any,
- and attorney's fees if recoverable by law.

If Default Judgment,

The allegations of the sworn petition must be taken as true and judgment by default must be rendered in favor of the plaintiff if:

- The petition contains all required information;
- The defendant fails to appear at trial;
- No answer was filed before the case was called for trial;
- Proof of service has been filed in accordance with Rule 510.4;
- The plaintiff has filed the required military service affidavit and the court is not barred from granting a default judgment under the Service members Civil Relief Act.

If a party is awarded money damages (back rent, attorney's fees, and costs), the party may file an **abstract of judgment** just as in other civil suits. Property Code § 52.003.

**\*\*\*The Judge may not award late fees or other penalties in an eviction suit\*\*\***

## 7. Writ of Possession

If the judgment is in favor of the plaintiff, the Judge must award a writ of possession upon demand of the plaintiff and payment of any required fees. Rule 510.8(d).

\*\*Writ of Possession Fee is \$205.00

Except in the case of an immediate possession bond a writ of possession **may not issue before the 6th day** after the date a judgment for possession is signed or **the day following the deadline for the defendant to appeal the judgment**, whichever is later. Rule 510.8(d)(1). This gives the defendant time to perfect an appeal.

A writ of possession must not be issued if an appeal is perfected and, if applicable, rent is paid into the registry of the court, as required by the rules and the Property Code. Rule 510.8(d)(3).

### Time Limit on Issuance of Writ of Possession

How long after judgment does a landlord have to request a writ of possession?

Generally, a writ of possession may not be issued more than 60 days after a judgment for possession is signed. But for good cause, the court may extend the deadline for issuance of a writ of possession to 90 days after the judgment for possession is signed. Rule 510.8(d)(1).

### Written Warning

The constable executing the writ must post a written warning on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted. Property Code § 24.0061(d)(1).

### Execution

The constable will contact the plaintiff to schedule date and time to execute writ.

A constable or sheriff may use "reasonable force" in executing a writ of possession. Property Code § 24.0061(h).

When a tenant's personal belongings are removed, they should be placed in such a way that they do not block a sidewalk or street, and should not be left out in inclement weather. Property Code § 24.0061(d)(g).