

If the Tenant does not answer within 7 days after service, the Landlord may request a Writ of Possession.

If the Landlord fails to appear, the case will be dismissed.

### Step 5: Mediation

Mediation is an option for both parties and allows you to direct the outcome of the case by working with a neutral third person. If an agreement is reached, the case ends.

The Court offers mediation services for free on the day of the hearing. If the parties cannot reach agreement, the case goes to trial.

### Step 6: Getting Ready for Trial

Trial is an opportunity for both parties to present their evidence to a judge. Evidence may be presented through documents or witness testimony. You should bring all people who have direct knowledge of the facts related to your case and any documents (the lease, photographs, repair bills, receipts) or other physical evidence you feel will help the Court better understand your case. The Court's ruling will be based on the witnesses and evidence shown at trial.

The Court cannot consider any statements (written or oral) of any person not present at trial. The person or witness must appear in person to testify so that the opposing party can cross-examine (question) them. There are limited exceptions when such evidence will be allowed.

### Step 7: Trial

Arrive early. Immediately before court starts, the case manager will call the calendar. This lets the court know who is present. Parties who miss the call of their case or name run the risk of having their case dismissed or a judgment entered against them.

The Landlord will present its side first, followed by the Tenant. You may question the witnesses and evidence. Any counterclaim will be heard at this time. The burden is on the Landlord to prove the claims on its Affidavit and the Tenant to prove any counterclaims.

To win, the party must show that the weight of the evidence is in its favor.

The Judge will also determine if any money for rent or other charges must be paid and to whom.

### Step 8: Writ for Possession

If the Tenant loses after the hearing, the Judge will issue an Order granting the Landlord a writ of possession in seven (7) days. This gives the Tenant 7 days to vacate the property. This 7 day grace period is set by legislature and the Judge cannot change it.

### Step 9: Appeal

The Tenant has 7 days from the date of the judgment to file an appeal.

To stay in the home during the appeal, Tenant must pay the judgment and future rent into the registry of the Court. The judgment must be paid at the time of the appeal.

The Tenant must also pay the costs to transfer the case to the State or Superior Court for the appeal.

### RESOURCES

*The Judges and staff of the Magistrate Court cannot provide legal advice.* For questions, please view [www.georgialegalaid.org/eviction](http://www.georgialegalaid.org/eviction) or the Georgia Landlord-Tenant Handbook, at [www.dca.ga.gov/housing/HousingDevelopment/programs/downloads/Georgia\\_Landlord\\_Tenant\\_Handbook.pdf](http://www.dca.ga.gov/housing/HousingDevelopment/programs/downloads/Georgia_Landlord_Tenant_Handbook.pdf). *While these publications may be helpful, they should not be a substitute for legal advice.*

### FREE OR REDUCED COST LEGAL ASSISTANCE:

Atlanta Legal Aid Society, [www.atlantalegalaid.org](http://www.atlantalegalaid.org)  
Georgia Legal Services Program, [www.glsfp.org](http://www.glsfp.org)  
Atlanta Volunteer Lawyers Foundation, [avlf.org](http://avlf.org)

### HOUSING COURT ASSISTANCE CENTER

Tenants seeking legal assistance in filing their answer can meet with an attorney or law student practitioner under the supervision of an attorney. The Center is located in the Magistrate Court Clerk's Office in TG-100.

Bring any helpful documents such as your lease, any written notice from your Landlord, and any evidence of your counterclaims.

## FULTON COUNTY MAGISTRATE COURT

### LANDLORD-TENANT (DISPOSSESSORY ACTIONS)

### TENANT PAMPHLET



Chief Magistrate  
Judge Cassandra Kirk

Justice Center Tower  
185 Central Avenue S.W.  
Atlanta, GA 30303

### HOURS OF OPERATION

Monday - Friday  
8:30am – 5:00pm

### CONTACT

Telephone: 404-613-5360

[www.magistratefulton.org/  
dispossesory.php](http://www.magistratefulton.org/dispossesory.php)

An Innovative, Efficient and Accessible Court

**DISCLAIMER:** The information in this pamphlet is not legal advice. It is intended to give a general overview of the procedures and forms used in the Fulton County Magistrate Court. Consult an attorney with specific questions about your case.

When a Landlord wants a Tenant to move out of a rental property and the Tenant will not move voluntarily, the Landlord must come to court to use the dispossessory process for an Order to remove the Tenant from the property.

This pamphlet is for the Tenant, the individual or entity the Landlord is seeking to remove from his property. The Tenant should note whether they are the proper person to the action. The Tenant may choose: to answer, to answer and file a counterclaim or to not answer.

### THE BASICS

Before filing a case, the Landlord must make sure:

- The property is located in Fulton County;
- The Tenant was requested to give up possession of the property and leave;
- A Landlord-Tenant relationship exists:
  - A Landlord/Tenant relationship occurs by: (1) a written lease; (2) an oral lease; (3) being a “Tenant at will”, that is, the Tenant occupies the rental without a written lease with the Landlord’s consent and pays rent; or (4) being a “hold over Tenant,” which is when the Tenant remains on the property after the end of the lease.
- The Landlord is the property owner; or
- If an agent is used, the agent completes the Rule 31 form, allowing the agent to act on the owner’s behalf;
- The Landlord has not attempted any form of self-help eviction, such as changing the locks, threatening the Tenant, or suspending utility services. These acts are illegal and may subject the Landlord to a counterclaim for damages by the Tenant.

### E-FILING

The Court requires parties to electronically file (E-File) documents into the Court’s case management system. You can register for e-filing at [www.odysseyefilega.com](http://www.odysseyefilega.com). The Clerk’s office, located in Suite TG-100 in the Justice Center Tower, has public access terminals which allow

you to e-file for free. If you file elsewhere, there is a fee. The Court’s website has a link to check the status of your case.

### LANDLORD-TENANT PROCEDURE

#### Step 1: File Dispossessory Affidavit

Where the Tenant has not paid rent or has otherwise breached the lease and refuses to give up possession, the Landlord must file a “Dispossessory Affidavit” to remove the Tenant.

- The affidavit must be notarized with a signature and seal under oath OR sworn or affirmed by a deputy clerk. The affidavit must: (1) state the property is located in Fulton County; (2) list the exact address; (3) name each Tenant; (4) identify the reason why the Tenant should be moved (i.e. nonpayment of rent or breach of lease).
- On its website, the Court offer the Free Form generator, an interactive website to help guide you in writing your affidavit.
- The Landlord can request the Court require the Tenant pay the cost of filing and serving this action.

#### Step 2: Service

The Tenant must be served with a copy of the dispossessory warrant. Service may occur:

- Personally, on the Tenant (s);
- By being left with a person over 18 years of age at the Tenant’s residence; or
- After attempting personal service, by tacking a copy of the affidavit to the Tenant’s door AND mailing the Tenant a copy. This is tack and mail service.

#### Step 3: Tenant’s Answer

An Answer is a Tenant’s legal reply to the Landlord’s dispossessory affidavit. Within 7 days of being served, the Tenant must efile an answer to the eviction papers or lose the right to challenge the removal in court. The last day to Answer should be written on the eviction paperwork.

If the Tenant does not efile an answer, the Landlord may request to remove the Tenant on the eighth (8th) day. When the Tenant efiles an answer, the court will set a date for a

hearing. In the answer, the Tenant must admit or deny the Landlord’s claims and list any defenses or counterclaims for damages.

***Inability to pay rent due to illness, lost job or other financial hardship is not a defense to eviction.***

If this is the first time in 12 months a Tenant has been served, a Tenant may avoid being evicted by paying all monies owed *plus* the costs of the dispossessory warrant *within* 7 days of being served.

If the Landlord accepts the payment, the Tenant must file an answer stating money was offered and accepted.

If Landlord refuses to accept payment, the Tenant should efile an answer stating money was offered, but refused.

If a court finds that a Landlord refused a proper offer of money, the court can order the Landlord to accept payment of rent, late fees and court costs and require that the Landlord allow the Tenant to remain in possession, if the payment is made within 3 days of the court’s order.

#### *Repair and Deduct (Counterclaim)*

Landlords have a duty to make repairs which result from normal wear and tear. The Tenant cannot withhold rent, but Georgia Courts recognize a Tenant’s right to repair and deduct.

When a Landlord fails to respond to a repair request, the Tenant can hire a competent repair person to perform the repairs. The cost must be reasonable, and the Tenant may deduct the cost from the rent. In order to use this counterclaim, put your request in writing, keep all receipts and invoices, hire licensed workers, and perform only needed repairs, not upgrades.

#### Step 4: Default

If the Tenant fails to appear, the court may grant Judgment in the Landlord’s favor.