

Rule 35
LANDLORD/TENANT ACTIONS

(A) Forcible Entry and Detainer

(1) In forcible entry and detainer (FED) actions under Ohio Revised Code Chapter 1923, summons shall be issued in the form as specified in section 1923.06(B) of the Ohio Revised Code and shall be served as in the Rules of Civil Procedure, except as set forth in subsection (3) therein. Service of summons shall be made at least 5 days before the hearing date.

(2) The summons shall state the hearing date to be 14 days from date of filing or as close thereafter as the court's docket permits, unless plaintiff requests a later hearing date in writing at the time of filing the complaint.

(3) Plaintiff shall request the Clerk to cause service of process for each defendant to be made by bailiff service and by ordinary mail service. If the plaintiff so requests, the Clerk shall also cause service by certified mail.

(a) The bailiff shall effect service at the premises that are the subject of the forcible entry and detainer action by the following means:

(1) The bailiff shall make service of process by locating the person to be served and tendering a copy of the summons and complaint to the person to be served (personal service) or shall leave a copy of the summons and complaint at the usual place of residence of the person to be served with some person of suitable age and discretion then residing therein (residence service).

(2) If the bailiff is unable to effect personal or residence service, the bailiff shall post the summons and complaint in a conspicuous place at the subject premises.

(b) The Clerk shall mail one copy of the summons and complaint by ordinary mail, certificate of mailing, to the address(es) set forth in the caption of the complaint and to any address(es) set forth in written instructions. If requested, the clerk shall mail by certified mail, return receipt requested, a copy of the summons, complaint, document, or other process to be served to the address set forth in the caption of the summons and to any address(es) set forth in any written instructions furnished to the clerk. The Clerk shall instruct the post office to return the certified mail within 10 days of mailing.

(c) Service of process shall be deemed complete on the date that either of the following has occurred:

(1) Service is made pursuant to section (A)(3)(a)(1) of this rule.

(2) Both ordinary mail service under section (A)(3)(b) and service by posting pursuant to section (A)(3)(a)(2) have been made.

(3) For service performed pursuant to certified mailing as described in this rule, on the date of mailing, if on the date of the hearing either of the following applies:

(a) The certified mail has not been returned for any reason other than refused or unclaimed.

(b) The certified mail has not been endorsed, and the ordinary mail has not been returned.

(4) Return of service of summons shall be made at least 3 court days before the hearing date. If service has not been completed and return made as provided herein, the plaintiff shall request that alias service be made, and the new summons shall state the hearing date as in (A)(2) above.

(5) The plaintiff shall furnish the Clerk with one original and two copies of the complaint for each defendant, unless the plaintiff requests service by certified mail in which case the plaintiff must furnish the Clerk with an additional copy of the complaint for each defendant. The plaintiff shall staple to each original and to all service copies of the complaint any exhibits required to be attached to the pleading pursuant to Civ.R. 10(D). The Clerk may refuse to accept any pleadings that do not conform to this section.

(6) A demand for trial by jury under Section 1923.10 of the Ohio Revised Code shall be filed no later than 3 court days before the hearing date. Non-jury cases will be heard by the housing magistrate. No continuance shall be granted longer than 8 days but for good cause and only in accordance with Section 1923.08 of the Ohio Revised Code. At the time of hearing, both the plaintiff and plaintiff's attorney, if plaintiff is represented, shall be present in court or the case may be dismissed.

(7) If defendant fails to appear at the FED hearing for possession of the premises, no default judgment on the first cause of action shall be ordered unless testimony is taken from the plaintiff or witness having personal knowledge regarding the proper form and service of the 3-day notice upon the defendant and regarding the grounds for the request for restitution of premises.

(8) Where a second cause of action in a FED has been filed alleging money damages, the second cause shall be set on the docket of the housing judge. The answer date on the second cause shall be 28 days from completed service of the complaint. In cases where defendant files an answer, the case will be set for trial before the housing judge. If defendant fails to appear or otherwise defend, default judgment may be entered in accordance with Rule 29(A).

(9) In FED cases based upon failure to pay rent where a counterclaim has been filed, the defendant shall be entitled to a single trial consolidating all claims in accordance with Ohio Revised Code, Section 1923.061(B). The consolidated trial shall be set three weeks after the initial hearing date or as close thereto as the Court's docket permits, unless a later date is consented to by plaintiff or as determined by the magistrate. The magistrate may require the defendant to deposit rent during the pendency of the action.

(B) Rent Escrow Cases

(1) After rent escrow is filed:

(a) The Toledo Municipal Court civil clerk's office gives notice of rent escrow to the landlord; the clerk also notifies the Citizens Dispute Settlement Program (CDSP). (ORC §5321.08; §3733.121).

(b) The tenant continues to deposit rent until agreement of parties, further order of the court, or until tenant moves from dwelling unit.

(c) CDSP and the housing court magistrate screen the cases to determine whether the case is appropriate for mediation.

(d) If the case is appropriate for mediation, the clerk stamps on the jacket "referred to CDSP"; if not appropriate, the clerk schedules the case on the housing court docket. The court services department notifies the landlord and tenant of the hearing date.

(2) Cases diverted to CDSP:

- CDSP.
- (a) The first mediation session shall be set within 2-3 weeks after referral to CDSP.
 - (b) The case remains with CDSP until successful conclusion or mediation is no longer appropriate.
 - (c) At the conclusion of the case, the mediated contract setting out rights and obligations of parties and effecting deposit of rent in escrow is filed by CDSP with the civil clerk's office.
 - (d) If the case is not resolved through mediation, CDSP transfers the case back to the civil clerk's office for referral to the housing court magistrate's docket; the court services department notifies the landlord and tenant of the hearing date.
 - (e) The goal of CDSP is to assist parties in reaching a mutually satisfactory resolution.

(3) Cases heard on the housing magistrate's docket:

- (a) The initial hearing will be set 2-3 weeks after the case is referred to the housing court magistrate's docket, at 2:00 p.m., Monday, Tuesday, Thursday, or Friday.
- (b) At the initial hearing, the tenant shall establish compliance with ORC §5321.07 and must prove that:
 - (1) reasonable notice was given to the landlord 30 days prior to filing, or that an emergency situation exists;
 - (2) the tenant has reasonable grounds to believe the landlord violated a statutory or contractual duty which materially affects health and safety, and the condition remains uncorrected; and
 - (3) the tenant was current in rent before filing the rent escrow application.
- (c) If the tenant fails to satisfy the burden of proof set forth in subsection 3(b) above, the magistrate shall proceed in accordance with ORC §5321.09(c) to have the rent less 1% costs released to the landlord.
- (d) The purpose of the initial hearing shall be solely to verify the tenant's factual allegations which give rise to the application for rent escrow, and the issues which may be raised at this hearing shall be limited to those set forth in section 3(b) above.
- (e) If the tenant satisfies the burden of proof set forth in section 3(b) above, the magistrate may request the housing specialist to inspect the premises, to file a report of the existence of code violation, and to recommend corrective actions, if necessary. The magistrate may make such other orders as appropriate, may set the matter for further testimony, or may refer the matter to CDSP.
- (f) After hearing, the magistrate shall make orders or prepare decisions in accordance with Civil Rule 53(C) and (E).

(4) General:

- (a) All rent monies held in escrow by the clerk's office will continue to be withheld until an agreed entry is filed by CDSP or until an order is made by the housing court judge or magistrate or until the tenant gives written notice to the clerk that the condition has been remedied, after which the clerk will refer the matter to the magistrate for an entry.
- (b) The rent escrow will continue in effect for subsequent months and the tenant shall continue to deposit rent during those subsequent months, unless there is an agreement signed by the parties and filed by CDSP, or until an order is made by the housing court judge or magistrate, or the tenant vacates.
- (c) All rent escrows where no action has been taken for a period of 6 months (i.e., action being defined as either payment, mediated agreement, hearing, or motion) shall be subject

to dismissal by the court pursuant to Rule 40, Rules of Superintendence for the Courts of Ohio.

(d) The clerk's office shall deduct one percent (1%) of the deposited money as its fee prior to release of any rent escrow. ORC §5321.08(D); §3733.121(D).

(C) Housing Magistrate

(1) In all proceedings before the housing magistrate, the Ohio Rules of Civil Procedure, Ohio Rules of Evidence, and Municipal Rules of Court apply. Any party may appeal to the housing court judge from any order of the housing court magistrate in accordance with Civil Rule 53(C)(3)(b) and from any decision of the housing court magistrate in accordance with Civil Rule 53(E)(3).

(2) The magistrate's orders are effective when entered. The magistrate's decision is effective when approved by the court.

(3) All appeals of magistrate's orders and objections to magistrate's decisions shall be referred to the housing court judge.