

# What To Do In Court – Eviction Proceedings

## 1 Show up for your RETURN DATE

Your first court appearance is called the “return date” and can be found on the summons you received. If you do not show up for this date, you will get a **default judgment** which means **you can be evicted**

## 2 At the RETURN DATE, ask for a HEARING

A date will be set for you and the landlord to return to court where you can present your defenses and submit evidence that supports your position

### Common Defenses to Assert at the HEARING

#### 1 Coronavirus Defenses

You live in public/subsidized housing OR your landlord has a mortgage backed by Fannie Mae, Freddie Mac or HUD

You lost income during the Covid-19 pandemic  
If you experienced a decline in income during the state of emergency (starting March 12, 2020) or shortly before, you can request a 60 day extension

#### Other Defenses

The notice from your landlord contains errors  
The amount you owe is incorrect, OR the landlord did not give you 5 days to pay OR the notice includes attorney’s fees or court fees.

Your lease renewed after you received a notice of eviction from your landlord

#### 2 Evidence to Present

**Documentation** – to prove that your property is covered by the moratorium on evictions, search the National Low Income Housing Coalition's database by zip code and bring a printout. <https://nlihc.org/federal-moratoriums>  
**Statute** – tell the judge you are protected by the CARES Act.

**Documentation** – proof that you lost income such as paystubs, bank account statements, notice of termination, letter from employer, etc.  
**Statute**- refer the judge to the law explaining the 60 day extension rule: Va. Code Ann.§ 44-209

**Documentation** - A copy of the notice and evidence of the amount you actually owe  
**Case Law** - Ask the judge to refer to the case *Johnston v. Hargrove*, which states that an eviction must be based on a **precise** demand for rent due.  
**Statute** - Ask the judge to refer to the statute Va. Code Ann. § 55.1-1245(F) (2020), which outlines the 5 day requirement.

**Documentation** - A copy of the notice and a copy of your lease  
**Case Law** - Ask the judge to refer to the case of *Mullins v. Sturgill* which states that any recognition by the landlord that tenancy exists after notice of termination results in a waiver of their right to terminate.

#### 3 Actions to Request from the Judge

**Judgment for defendant**  
A judgment for defendant stops an eviction. Your landlord can file a new case when the CARES Act expires on July 25, 2020 if you owe rent then. They must give you 30 days notice and cannot file your case in court before August 25, 2020.

**60 day extension**  
Ask the judge to reschedule your return date for 60 days.

**Dismissal of case**  
While your landlord can refile the case after 1) fixing the errors on the notice and 2) serving you with the updated notice, a dismissal allows you time to either catch up on rent or request a repayment agreement.

**Dismissal of case**  
Your landlord can refile the case after providing you with a new notice that goes along with your new lease.

## Tips for a Successful Court Appearance



If you plan to **present evidence** that is on your **cell phone**, **contact the court** ahead of your return date and/or hearing to let them know



If your return date is extended for **60 days**, work out a **payment plan** with your landlord



If you are able to pay rent, **do it**. You have **until the day of your return date** to **stop the eviction** proceeding and pay rent



If your notice contains errors, tell the judge your notice is **“defective”**. This is the **proper legal term**

For more information on eviction defenses, contact the [Legal Aid Justice Center](#):

434-977-0553

[justice4all.org](http://justice4all.org)

For free legal help call:

1-866-LEGL-AID or call the

Eviction Legal Helpline at

1-833-NOEVICT