

NOTICE OF COURT RULES

THE COURT PUBLISHES AND GIVES NOTICE OF THE FOLLOWING COURT RULES:

Rule 3.7 – Forcible Entry and Detainer Procedure

Rule 4.11.1 – Post-Conviction Motions on Court Fines, Costs, and Fees

COMMENTS ON THE COURT RULES MAY BE SENT IN WRITING TO:

DAYTON MUNICIPAL COURT
COURT ADMINISTRATOR ANN MARIE MURRAY
301 WEST THIRD STREET, ROOM 365
DAYTON, OHIO 45402

The Dayton Municipal Court finds an immediate need to revise DMCR 3.7, Forcible Entry and Detainer Procedure, to add Paragraph Q, Sealing of Eviction Records. The Court also makes revisions to Paragraphs A and J regarding manufactured homes, mobile homes, and recreational vehicles. The revisions are in bold type and shall be effective July 1 2024.

Rule 3.7 – Forcible Entry and Detainer Procedure

- A. This Rule applies to all eviction cases, including evictions from manufactured homes, mobile homes, and recreational vehicles where the Tenant is the Owner.

1. Forcible Entry and Detainer Complaint.

Forcible entry and detainer (eviction) cases shall be heard by the civil magistrate within the time required by law. The Complaint shall contain the reason for eviction. Copies of the 3-Day Notice, any other required notices, and the lease, land contract, or affidavit (if an oral lease) shall be attached to the Complaint. Failure to attach the required documents to the Complaint may result in dismissal. If plaintiff is representing a trust or estate, a copy of the order appointing plaintiff as trustee or executor must also be attached.

(a) Manufactured/Mobile Homes, and Recreational Vehicles.

Plaintiff must state on the Complaint the name of the legal owner of the manufactured or mobile home or recreational vehicle. If the Tenant is the legal owner, the procedures under R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14 must be followed.

2. Causes of Action.

The Forcible Entry and Detainer Complaint has two causes of action:

- (a) First Cause for Restitution of Premises (eviction and restoring possession of the premises).
- (b) Second Cause for Money Damages (request for back rent or other monetary damages).

- B. Service of Summons.

Service of summons in forcible entry and detainer (eviction) actions shall be in accordance with R.C. 1923.06 and the Ohio Civil Rules.

- C. First Cause for Restitution.

The Complaint is attached to the summons and advises defendants (tenants) of the reason for eviction. Defendants (tenants) are directed in the summons to appear on a certain date for the First Cause for Restitution Hearing (eviction trial).

- D. Trial by Jury.

Trial by jury shall be waived unless on or before the date set for hearing, a written jury demand is filed and the advance jury deposit is paid. A defendant requesting a jury trial shall post a bond in an amount determined by the Court. Upon timely filing of the jury demand and payment of the advance deposit and/or bond, the case shall be set for jury trial.

E. First Cause Restitution Hearing (Eviction Trial).

After the Magistrate determines that the defendant (tenant) was served with the summons pursuant to R.C. 1923.06, plaintiff (owner/landlord) shall present admissible evidence establishing the proper form, content, and service of the 3-Day Notice (R.C. 1923.04) and any other required statutory notices, and the tenant's failure to pay rent or other reason why restitution of the premises is being sought. Once plaintiff presents a prima facie case for restitution of the premises, the defendant (tenant) may cross-examine witnesses and present any legal defenses to being evicted. The plaintiff (owner/landlord) may also cross-examine the defendant and the defendant's witnesses. The plaintiff (owner/landlord) and defendant (tenant) must be ready at the time of the Hearing to present admissible evidence.

F. Failure of Plaintiff to Appear.

On the date of the Restitution Hearing, the plaintiff (owner, landlord, agent, or other person required for testimony) and plaintiff's attorney (if plaintiff is a corporation or limited liability company) shall be present in court. Failure to comply with this rule may result in dismissal of the case.

G. Failure of Defendant to Appear.

If the defendant (tenant) fails to appear on the date of the Restitution Hearing and the summons was properly served, the Magistrate shall hear the first cause for restitution as though the defendant (tenant) were present, pursuant to R.C. 1923.07.

H. Counterclaims on First Cause of Action.

All claims raised by the plaintiff/owner shall be consolidated with any counterclaims by the defendant (tenant) related to the first cause for restitution. The tenant shall serve any counterclaims upon the plaintiff/owner or their attorney. The tenant shall also deposit with the Clerk of Court all rent claimed by the plaintiff to be due and owing, unless this requirement is waived upon a showing of good cause.

I. Restitution Granted.

If the Court grants restitution of the premises to the plaintiff, the defendant (tenant) shall vacate the premises and remove all personal property.

1. Manufactured Home, Mobile Home, Recreational Vehicle (Tenant is Owner).

If the Court grants Restitution to a plaintiff who is a manufactured home park, the Entry of Restitution shall include the authority for the plaintiff to permit, in accordance with R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14, the removal and potential sale, destruction, or transfer of ownership of the defendant's (tenant's) manufactured home, mobile home, or recreational vehicle.

J. Writ of Restitution.

If the defendant (tenant) fails to vacate or remove personal property from the premises after restitution is granted by the Court, the plaintiff/owner may initiate a Writ of Restitution within 30 days from the date of the Entry of Restitution, by posting the required fee for the Writ with the Clerk of Court. The 30-day deadline for initiating the Writ may be stayed upon written approval of the Court. Upon receipt of the Writ of Restitution, the Bailiff's Office shall contact

the plaintiff/owner to set a specific date for the defendant (tenant) to be evicted and the premises restored to the owner. If the defendant (tenant) vacates the premises before the scheduled eviction date, the plaintiff shall immediately notify the Bailiff's Office.

1. Motion for Writ of Restitution (Manufactured or Mobile Home - Tenant Owner).

When the tenant is the owner of the manufactured home, mobile home, or recreational vehicle, plaintiff may request a writ of restitution by filing the Dayton Municipal Court form "Motion for Writ of Restitution (Manufactured or Mobile Home - Tenant Owner). Plaintiff and the home park operator are responsible for abiding by the commands of the Writ and for following the procedures of R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14.

2. Writ of Execution (Levy) Manufactured or Mobile Home (Tenant Owner).

If the Tenant Owner has been evicted and the manufactured home, mobile home, or recreational vehicle is abandoned pursuant to R.C. 1923.12(A), the plaintiff may request a writ of execution by filing the Dayton Municipal Court form "Motion for Writ of Execution (Levy) Manufactured or Mobile Home (Tenant Owner)," after the plaintiff or home park operator shows proof of compliance with the following:

- (a) The Notice to Remove procedures under R.C. 1923.12 for the Tenant Owner and all parties with a right to the manufactured home, mobile home, or recreational vehicle. Service of the Notice to the Tenant Owner shall be by posting and by ordinary mail sent to the last known address.**
- (b) The Affidavit of Value procedures under R.C. 1923.13 for the manufactured home, mobile home, or recreational vehicle.**
- (c) All other applicable procedures and requirements under R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14.**

3. A Writ of Execution (Levy) shall not be enforced for a manufactured home, mobile home, or recreational vehicle unless there has been compliance with statutory procedures.

K. Notice of Eviction.

The Notice of Eviction shall be served upon the defendant (tenant) by posting a copy on the premises and sending a copy by ordinary mail, pursuant to R.C. 1923.06.

1. Manufactured Home, Mobile Home, or Recreational Vehicle (Tenant is Owner).

The Dayton Municipal Court Notice of Eviction for Manufactured Homes form must be used and served on the Tenant (Owner).

2. The Notice of Eviction shall inform the tenant that:

- (a) The Court has granted restitution of the premises to the owner and set a date for eviction;**
- (b) The tenant must vacate and remove all personal property before the date of eviction;**

(c) On the date of eviction the tenant will be forcibly evicted; and

(d) Personal Property.

(1) Any personal property not removed before the date of eviction will be considered abandoned and subject to removal and disposal by the owner of the premises or the landlord.

(2) Manufactured/Mobile Home, Rec. Vehicle (Tenant Owner).

Plaintiff and the Home Park Operator shall comply with R.C. 1923.13 and R.C. 1923.14 regarding personal property that will be left behind after the eviction. Plaintiff and the park home operator will be responsible for securing any personal property left inside the manufactured home, mobile home, or recreational vehicle.

L. Abandoned Property After Eviction.

1. After the defendant (tenant) has been evicted and the premises restored, it shall be the responsibility of the plaintiff/owner to remove and lawfully dispose of any litter or abandoned personal property. The plaintiff may hire a company to assist with the removal and disposal. The Court shall not recommend a company. No items may be set out for bulk trash pick-up without first contacting the Department of Public Works for permission and scheduling a pick-up date. Any items scheduled for pick-up must be set out in accordance with Bulk Waste Pick-up Guidelines. Failure to properly dispose of abandoned personal property after an eviction is a violation of R.C.G.O. 93.46.1. Each day the violation continues constitutes a separate offense. The plaintiff/owner shall be responsible for any violations, regardless of who performed the removal or disposal. In addition to any penalties, the Court may order the plaintiff/owner to pay restitution to the City for cleaning up the property.

2. Personal Property in Manufactured Home, Mobile Home, or Recreational Vehicle.

After the Tenant Owner has been evicted, it shall be the responsibility of the plaintiff and home park operator to follow the procedures of R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14 before removing or disposing of any personal property remaining in the manufactured home, mobile home, or recreational vehicle. The plaintiff and home park operator shall retain and secure the personal property inside the manufactured home, mobile home, or recreational vehicle until claimed by the owner or disposed of pursuant to R.C. 1923.14.

3. Abandoned Manufactured/Mobile Home, Recreational Vehicle (Tenant Owner).

After the Tenant Owner has been evicted, it shall be the responsibility of the plaintiff and home park operator to follow the procedures of R.C. 1923.12, R.C. 1923.13, and R.C. 1923.14 before removing, destroying, selling, or transferring the title to an abandoned manufactured home, mobile home, or recreational vehicle. The plaintiff and home park operator shall be responsible for securing and retaining the manufactured home, mobile home, or recreational vehicle at their current location in the home park until claimed by the owner or disposed of pursuant to R.C. 1923.14.

M. Liability for a Tenant's Personal Property or Abandoned Manufactured Home.

Neither the Court nor any Court employee shall assume liability for any tenant's personal property or abandoned manufactured home, mobile home, or recreational vehicle after an eviction. The plaintiff and park home operator should seek legal advice if there is a question on whether to remove or dispose of a tenant's personal property or abandoned manufactured home, mobile home, or recreational vehicle.

N. Second Cause for Money Damages.

The Second Cause for Money Damages will be ordered continued at the First Cause for Restitution Hearing. Upon the timely filing of a written answer, a Hearing (trial) shall be set on the Second Cause for Money Damages. Any related counterclaims raised by the defendant (tenant) shall be served upon the plaintiff/owner or their attorney and shall be consolidated for hearing (trial) with the Second Cause for Money Damages. Failure to file a timely written answer to the Second Cause, as directed in the summons, may result in a judgment against the defendant (tenant) for money damages. If plaintiff/landlord files a motion for default or summary judgment, documentary evidence such as invoices, affidavits, photos, etc., establishing the amount of damages, must be attached to the motion. Failure to attach supporting documentary evidence will delay judgment and can cause judgment to be denied.

O. Mediation.

Parties may mediate either the first or second cause of the eviction action. See DMCR 3.14, Mediation, for the process and procedures involved in the mediation of the first and second causes of eviction cases.

P. Pay-to-Stay Affirmative Defense.

Affirmative Defense. On March 24, 2021, the City of Dayton enacted Revised Code of General Ordinance (RCGO) Sections 93.71, 93.72, 93.73, and 93.74 related to a tenant's defense of eviction within the City of Dayton, Ohio. The Ordinance Sections provide specific conditions in which a tenant may pay past due rent with reasonable late fees and court costs and stay in their residence through an affirmative "Pay-to-Stay" defense. If the tenant chooses to raise the Pay-to-Stay Affirmative Defense, it is their responsibility to meet the requirements of City of Dayton RCGO Sections 93.71, 93.72, 93.73, and 93.74. The tenant can access the Pay-to-Stay RCGO Sections through the City of Dayton website or by calling the City of Dayton. Neither the Court nor the Clerk can provide legal advice on this affirmative defense. A tenant or landlord that needs legal advice should contact an attorney.

Deposit of Tendered Rent. If the tenant chooses to deposit the attempted tender of past due rent with reasonable late fees and court costs with the Clerk of Court, the funds will be recorded and deposited in the Rent Tendered Account on the Eviction Case. The funds will be held in trust to be applied to the Pay-to-Stay Affirmative Defense on the First Cause for Eviction only. If the tenant proves their Pay-to-Stay Affirmative Defense, the funds will be released to the landlord. If the tenant fails to prove their Affirmative Defense, then the funds will be released back to the tenant. The tenant must provide an alternate address, other than the eviction address, in case their funds need to be returned after they have vacated the premises. The funds in the Rent Tendered Account on the Eviction Case must be held by the Clerk of Court until the objection period is over and the Eviction First Cause of Action is disposed of by the Court. Any release or return of funds may take up to 45 days.

Q. Sealing of Eviction Records

1. Sup.R. 45 provides that a court may restrict public access to a court record when it finds by clear and convincing evidence that the presumption of public access is outweighed by a higher interest. Therefore, the Court has the authority to order the Dayton Municipal Clerk of Court ("Clerk") to seal an eviction record when the interests of justice outweigh the duty to provide public access. The Court shall examine the grounds for sealing each eviction record and may deny sealing a record when criminal activity, such as a violent offense or drug offense, led to the eviction. Whether an eviction record is sealed is up to the discretion of the Court.

2. Eviction Case Records that are Eligible to be Sealed.

Closed Cases that have a Final Decision by the Court are eligible to be sealed. An Eviction Case consists of a First Cause for Eviction and may have a Second Cause for Rent or Damages. The entire Case must be closed before it can be sealed. Closed means there is no pending First Cause for Eviction or Second Cause for Rent/Damages still open that needs to be determined by the Court. Eviction Cases are also not eligible to be sealed while objections or appeals are pending. These cases can be considered after the Final Decision on the objections and/or appeals.

(a) The following Closed Cases may be sealed sixty (60) days after the date of the Final Decision on the First Cause for Eviction:

- (1) Only first cause for eviction was filed, and the first cause for eviction was dismissed or judgment was entered for the Tenant/Defendant; or**
- (2) Court dismissed the first cause for eviction or entered judgment for the Tenant/Defendant, and any second cause for rent or damages, plus court costs, has been satisfied or dismissed; or**
- (3) Landlord/Plaintiff dismissed the first cause for eviction before adjudication of that claim, and any second cause for rent or damages, plus court costs, has been satisfied or dismissed.**

(b) The following Closed Cases may be sealed six (6) months after the date of the Court's Final Decision on the First Cause for Eviction:

Eviction Judgment for Landlord/Plaintiff and Rent/Damages Satisfied.

The Landlord/Plaintiff prevailed on the merits and was awarded judgment on the first cause for eviction and any second cause for rent or damages, plus court costs, has been satisfied or dismissed, plus the Applicant has not had another eviction judgment against them in the Dayton Municipal Court within the past three (3) years.

3. Procedure for Sealing an Eviction Record:

(a) File the Court's Application and Affidavit to Seal Eviction Record form.

The party requesting to have an eviction record sealed must use and complete the Court's Application and Affidavit to Seal Eviction Record form.

(1) The Application form.

The Application form must be filed with the Court even if the Landlord/Plaintiff does not oppose sealing the record or agrees to seal the record in an Agreed Entry.

(2) Affidavit.

The Application form includes an Affidavit attesting to all relevant facts.

(a) Agreed Entry.

If an Agreed Entry to Seal Eviction Record Without a Hearing was filed by the parties, a copy of the Agreed Entry must be filed with the Affidavit.

(b) Service of Notice, Application and Affidavit to Seal Eviction Record, and Response.

The Notice of Application, the Application and Affidavit to Seal Eviction Record, and the Response to the Application to Seal Eviction Record form (Response) forms will be served on Plaintiff/Landlord or their Counsel by the Clerk through ordinary mail.

(c) Response to Application to Seal Eviction Record.

(1) The Plaintiff/Landlord, their Counsel, or other responding party must file their Response to the Application to Seal Eviction Record form (Response) with the Clerk of Court within 21 days after being served. The Clerk of Court shall then serve the Response by ordinary mail upon the Defendant/Tenant.

(2) Failure to file a Timely Response.

Failure to file a timely Response to the Application to Seal Eviction Record form with the Clerk may result in the statements on the Application being taken as true, and the eviction record being sealed without a hearing.

(d) Hearing.

Either party may request an oral hearing.

(1) No Hearing Requested.

If no hearing is requested, the matter may be decided without a hearing unless the Court finds one is necessary.

(2) Criminal Activity.

A hearing shall always be necessary when criminal activity, such as a violent offense or drug offense, led to the granting of the eviction judgment to the Landlord/Plaintiff. It is the Applicant's burden to show at the hearing that the Applicant did not commit and was not convicted of a violent offense or drug offense that led to the eviction.

(e) The Court Considers the Application.

The Court may consider all relevant factors when examining an Application, which may include, but are not limited to:

- (1) The disposition of the eviction case, including whether any second cause for rent or damages, plus court costs, has been satisfied or dismissed;**
- (2) Whether the sealing of the record is agreed to or disputed by the opposing party;**
- (3) If the Landlord/Plaintiff received judgment on the eviction, the grounds upon which the judgment was granted and whether the Applicant has had an eviction judgment against them in the Dayton Municipal Court within the past three (3) years;**
- (4) Whether criminal activity by the Applicant, such as a violent offense or drug offense, led to the eviction; and**
- (5) Any other information relevant to the determination of whether justice requires the sealing of the record.**

4. Sealing of Record after Application Granted.

If the Court grants an Application to Seal an eviction case record, the Clerk shall cause the entire eviction case record to be redacted from all public records to the same extent that it would for the sealing of a criminal case record, including the electronic case index system. The Clerk shall retain both the sealed electronic record and physical file, should one exist, in accordance with its record retention policy. The Clerk shall ensure that the record of the case can be retrieved and unsealed if the Court orders access to the sealed record.

(a) Government Officials Entitled to Access.

Upon the filing of a Motion, access to the sealed eviction record may be provided to government officials as required by law.

5. Denied Application to Seal Eviction Record.

Once an Application to Seal an eviction record is denied, another Application to Seal may be filed but it will not be granted unless good cause is shown.

6. Procedure for Unsealing Eviction Record.

A party to the original action, or any government official or agency entitled to access the sealed eviction record, may file a Motion to Unseal Court Record with Affidavit.

(a) Affidavit Setting Forth Good Cause and Hearing.

An Affidavit shall be attached to the Motion to Unseal Court Record, which sets forth good cause why the record should be unsealed. A copy of the Motion to Unseal Court Record shall be served on the parties to the case by the Clerk of Court. A hearing shall be held unless the Court finds one unnecessary.

(b) Entry Ruling on Motion to Unseal Court Record.

The Court shall determine whether there is good cause to unseal the Court record and file an Entry granting or denying the Motion. The Clerk shall serve the Entry upon the party or government official requesting the record be unsealed and upon all parties to the case by ordinary mail.

(c) Motion and Entry to Unseal shall be Filed under Seal.

The Motion to Unseal Court Record with Affidavit and the Entry Ruling on the Motion to Unseal Court Record shall be filed under seal.

The Dayton Municipal Court finds an immediate need to create Dayton Municipal Court Rule (DMCR) 4.11.1, Post-Conviction Motions on Court Fines, Costs, and Fees to promote due process and prompt resolution, and ensure efficiency and consistency of all post-conviction motions regarding Court fines, costs, and fees.

DMCR 4.11.1 below shall be effective on the filing date of this Order.

Rule 4.11.1 – Post-Conviction Motions on Court Fines, Costs, and Fees

- A. Based upon subject matter and the Administrative Order of the Judges, all post-conviction motions on Court fines, costs, and fees, filed with the Clerk of Court, shall be referred for review by the Administrative Judge, who shall:
 - 1. Preside over any proceedings and follow the procedures established by the Judges in their Administrative Order, then issue entries and orders ruling on the motions.
- B. The Exception shall be post-conviction motions submitted by the Warrant Enforcement Division. These motions are ordered referred to the Magistrates. The Administrative Judge may also refer other appropriate post-conviction motions on fines, costs, and fees to the Magistrates.