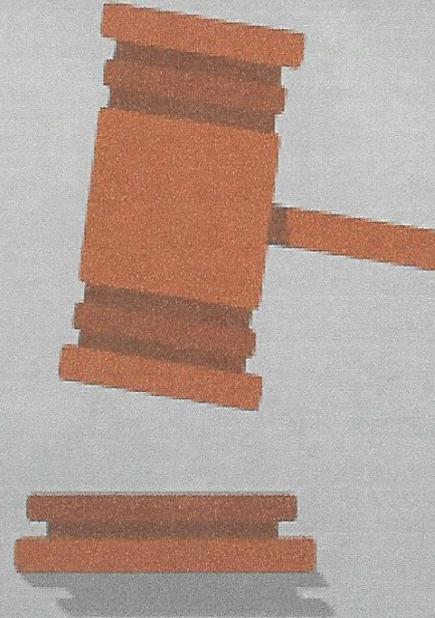
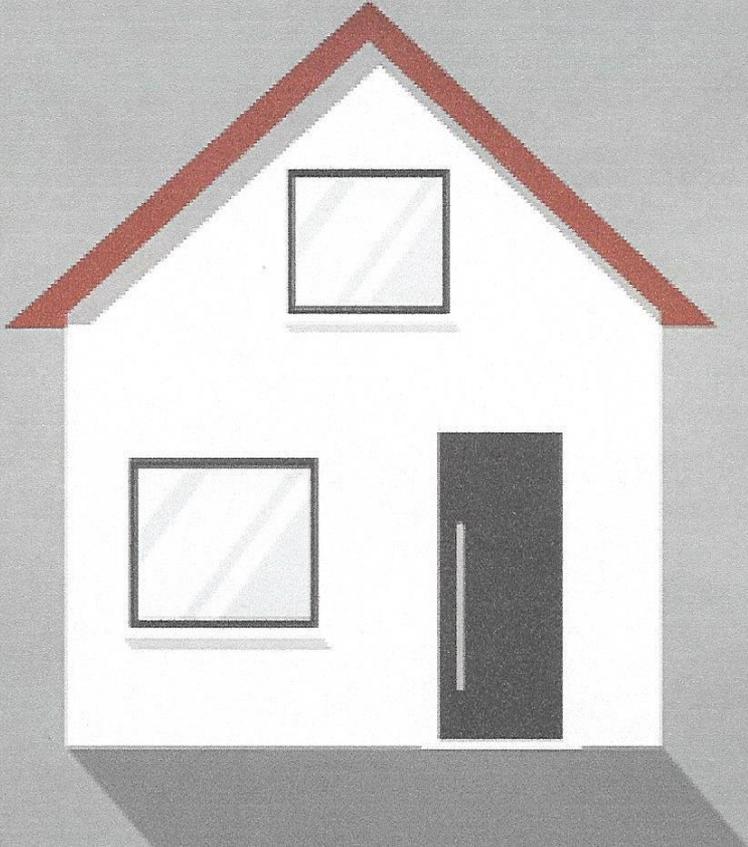


Discovery, Motions and Defenses



TENANT RIGHTS TRAINING SERIES

**Jul 30,
2020
6:30 pm**

Event 02

Tenant Rights Training Series

DISCOVERY, MOTIONS & DEFENSES

*Common Motions, Defenses and Discovery Questions
used during Eviction Hearings*

Sponsored by

NH Legal Assistance, Granite State Organizing Project
& Manchester Housing Alliance



NEW HAMPSHIRE'S EVICTION PROCESS WALK THROUGH

[Step 1 The Written Eviction Notice](#)

[Step 2 The Landlord & Tenant Writ](#)

[Step 3 The Appearance Form](#)

[Step 4 The Notice of Hearing](#)

[Step 5 Raising Defenses at the Hearing](#)

[Step 6 The Writ of Possession](#)

[Step 7 Asking for a Discretionary Stay](#)

[Step 8 Filing a Notice of Intent to Appeal](#)

[Step 9 The End of the Line](#)

As of July 1, 2020, per NH Emergency Order #51

For every eviction notice issued by the owner of restricted or non-restricted property that is based in whole or in part on nonpayment of rent that became due and payable between **March 17, 2020** and the **date of this Order**, ***the minimum 7 day notice period required in RSA 540:3 is hereby extended to 30 days.*** Therefore, every such eviction notice shall provide that the tenant must vacate the premises no less than 30 days from the date of service of the eviction notice. For purposes of this Order, the terms "restricted property" and "non-restricted property" shall have the meanings assigned to those terms in RSA 540: 1-a.

This Paragraph shall not apply to eviction notices issued before March 17, 2020.

CARES ACT COMPLIANCE

Applies to all properties with a federally backed mortgage. The landlord must complete an Affidavit of Compliance with CARES Act and have provided 30 days' notice prior to filing an eviction action on all covered properties.

Enacted March 27, 2020, landlords are required to submit a [CARES Act Affidavit](#) approved by the Circuit Court prior to requesting a Landlord Tenant Writ if a basis for the eviction is non-payment of rent.

"Covered Properties" Pursuant to Section 4024 of the CARES Act

A property which participates in, receives subsidies or benefit from, or has any tenant participating in or receiving subsidies or benefits from, any of the following programs:

Housing and Urban Development (HUD)

- Public Housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher Program or Project-Based Housing (42 U.S.C. § 1437f)
- Section 202 Housing for the Elderly (12 U.S.C. § 1701q)
- Section 811 Housing for Persons with Disabilities (42 U.S.C. § 8013)
- Section 236 Multifamily Housing (12 U.S.C. § 1715z-1)
- Below Market Interest Rate (BMIR) Housing (12 U.S.C. § 17151(d))
- HOME (42 U.S.C. § 12741 et seq.)
- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.)
- Continuum of Care or Other McKinney-Vento Act Homelessness Programs (42 U.S.C. § 11360, et seq.)

Department of Agriculture

- Section 515 Rural Rental Housing (42 U.S.C. § 1485)
- Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)
- Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)
- Section 538 Multifamily Rental housing (42 U.S.C. § 1490p-2)

Department of Treasury

- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)

Rural Housing Voucher Program

- Section 542 of the Housing Act of 1949 (42 USC § 1490r)

The CARES Act moratorium also applies to all properties with a federally backed mortgage or federally backed multi-family mortgage, meaning all mortgages owned, issued, or guaranteed by: Department of Housing and Urban Development (HUD)

- Department of Veteran Affairs
- Department of Agriculture
- Fannie Mae or Freddie Mac

Discovery in Landlord and Tenant Cases

Discovery is the process of exchanging information between the parties to a lawsuit. Court rules require a party, if asked, to answer the other side's questions before trial. In a landlord-tenant case, this means finding out the information your landlord has and what he plans to use in the case against you.

Your landlord may also serve you with discovery requests. If this happens, you must respond honestly, and sign your responses in front of a notary before sending them back to the landlord or his attorney.

The discovery process takes place between the parties and does not involve the court unless something goes wrong.

CIRCUIT COURT Rule 5.6 - A. *Discovery*

A. Both parties shall have a right to engage in discovery prior to the hearing on the merits, subject to the time frames set forth below:

1. All requests shall be made within five (5) days of the RETURN DAY. **2.** Written interrogatories shall be governed by Rule 3.23 with the exception of the following: responses to interrogatories shall be made within 14 days after receipt of the interrogatories. Requests for admissions and production of documents shall be made within fourteen (14) days after receipt of said requests. **3.** Depositions shall be taken no less than three (3) days from the date of the notice of deposition and within no less than seven (7) days of the scheduled trial date. Depositions shall otherwise be governed by Rule 3.26.

B. Upon the request of any party, the Court may grant a continuance of the scheduled trial date to allow time to complete discovery. Landlord and tenant actions shall be given priority on the Court's docket and, whenever possible, rescheduled within thirty (30) days.

WHAT INFORMATION DO I ASK FOR?

Details about the stated reason for the eviction.

Ledger- accounting of rent payments.

Recent code enforcement inspections.

Repairs made or not made by landlord.

Names of witnesses, with addresses and phone numbers.

Descriptions of the incidents each witness may testify about.

Any complaints about you, from other tenants or anyone else.

WHAT INFORMATION DO I ASK FOR? Cont.

Names of other tenants who were recently evicted or who are about to be, and reasons for those other evictions.

Unwritten deals you may have made with the landlord.

Any efforts or arrangements you made to catch up on back rent.

Efforts made to change behavior the landlord warned you about.

Times that the landlord violated your rights (lockouts, utility shutoffs).

The eviction process itself, what papers were served and when.

MOTIONS

MOTIONS ARE A REQUEST FOR ACTION MADE BY THE PROSECUTION OR DEFENDENT IN COURT.

Common Motions used in Landlord Tenant cases can be:

MOTION TO DISMISS

MOTION TO CONTINUE

NH CIRCUIT COURT - GENERAL RULES - 1.8 MOTIONS

A. Any request for action by the Court shall be by motion. All motions, other than those made during trial or hearing, shall be made in writing unless otherwise provided by these rules. They shall state with particularity the grounds upon which they are made and shall set forth the relief or order sought.

E. Any motion which is capable of determination without the trial of the general issue shall be raised before trial, but may, in the discretion of the Court, be heard during trial

RULES FOR A CONTINUANCE - RULE 1.8-A

All motions for continuance shall be in writing, signed by the moving party stating the reasons therefor and stating that the opposing party does not desire a hearing on the motion, if such is the case.

No motion for continuance shall be granted without a hearing unless approval of the opposing party is obtained. The moving party shall have the burden of obtaining such approval.

Agreement of the parties shall constitute a waiver of hearing on a motion to continue, the Court shall exercise its sound discretion in granting such continuances.

GROUNDS FOR A CONTINUANCE - Rule 1.8-B

A. Where a trial has been scheduled in one case prior to the scheduling of another matter in another Court, or elsewhere, where an attorney or party has a conflict in date and time, the case first scheduled shall not be subject to a continuance because of the subsequently scheduled matter which is in conflict as to time and date except as follows: **(a)** A subsequently scheduled case involving trial by jury in a Superior or Federal District Court, or argument before the Supreme Court. **(b)** Unusual circumstances causing the respective Courts to agree that an order of precedence other than the above shall take place.

B. Other grounds for continuance may be illness of a defendant, defense attorney, or prosecutor; want of material testimony, document, or other essential evidence; unavoidable absence of an essential witness; and such other exceptional grounds as the Court may deem to be in the interest of justice.

C. Grounds for a continuance shall be set forth in detail in the motion.

CAUSE FOR A CONTINUANCE ...

YOU NEED TIME TO ASK QUESTIONS AND FOR THE OTHER PARTY TO RESPOND - **Discovery**

YOU REALISE THAT YOU NEED COUNSEL AND ARE ACTIVELY TRYING TO OBTAIN IT - **Absence or Incapacity of counsel**

YOU HAVE APPLIED FOR HELP PAYING THE AREAS/BACK RENT AND JUST NEED MORE TIME FOR PAPERWORK/AGENCY TO COMPLETE - **RSA 540:9-a Payment by Voucher and Application of Rents Paid by a Municipality**

UNUSUAL CIRCUMSTANCES AND EXCEPTIONAL GROUNDS THAT WOULD PREVENT JUSTICE.

MOTION TO DISMISS

The purpose of a motion to dismiss is to test the sufficiency of the complaint, not to decide the merits. When a defendant files a motion to dismiss, he asks the Court to throw out all or part of the plaintiff's case. When presenting your case as to why it should be dismissed you should be prepared to present your entire case, not just the dismissal.

CIVIL RULES III - PLEADINGS AND MOTIONS - Rule 12. Motions -- Specific

(d) *Motions to Dismiss.* Upon request of a party, hearings on motions to dismiss shall be scheduled as soon as practicable, but no later than 30 days prior to the date set for trial on the merits, unless the court shall otherwise order in the exercise of discretion. All parties shall be prepared, at any such hearing, to present all necessary arguments.

COMMON REASONS TO DISMISS

THE INFORMATION ON THE DEMAND FOR RENT AND EVICTION NOTICE MUST MATCH AND CONTAIN ALL REQUIRED INFORMATION.

RSA 540:5 II. The district court shall provide forms for a demand for rent and eviction notice in the district court clerks' offices and on the New Hampshire judicial branch website. ***Although a landlord shall not be required to use the forms, a valid demand for rent or eviction notice shall include the same information as is requested and provided on such forms.***

RAISING DEFENSES AT A HEARING

You do have the right to speak up for yourself at the hearing. And you should! If you don't exercise your rights to speak against eviction, no one else at the hearing will do that for you. It is important to consider all possible defenses to eviction and counter claims. Defenses are legal reasons why the tenant should not be evicted, while counterclaims are claims for money that may reduce the amount of rent owed to the landlord.

Remember: Just because your landlord takes you to court for eviction doesn't mean the landlord will automatically win. Nothing is guaranteed for either a landlord or a tenant. It's all based on the facts and the law!

COMMON DEFENSES IN EVICTION

540:13-a Defense to Retaliation Your landlord cannot evict you if you can prove the reason for the eviction was that you exercised one of your legal rights. If an eviction is begun within six months after: Reporting a serious code violation; Lawfully withholding rent; Meeting with or organizing other tenants, it will be considered retaliatory unless your landlord can show some other good reason for the eviction.

540:13-d Defenses to Violations of Fitness. – No action for possession based on nonpayment of rent shall be maintained in regard to any premises leased or rented if such premises are in substantial violation of the standards of fitness for health and safety set forth in [RSA 48-A:14](#)/Local Codes/Ordinances or Bylaws established pursuant thereto, and such violation materially affects the habitability of said premises

DEFENSES IN EVICTION - Domestic Violence

540:2 VII. (a) No lessor or owner of restricted property shall terminate a tenancy solely based on a tenant or a household member of a tenant having been a victim of domestic violence as defined in RSA 173-B, sexual assault as defined in RSA 632-A, or stalking as defined in RSA 633:3-a, provided that the tenant or household member of a tenant who is the victim provides the lessor or owner with written verification that the tenant or household member of a tenant who is the victim has obtained a valid protective order against the perpetrator of the domestic violence, sexual assault, or stalking.

(b) A tenant who has obtained a protective order from a court of competent jurisdiction granting him or her possession of a dwelling to the exclusion of one or more other tenants or household members may request that a lock be replaced or configured for a new key at the tenant's expense. The lessor or owner shall, if provided a copy of the protective order, comply with the request and shall not give copies of the new keys to the tenant or household member restrained or excluded by the protective order.

DEFENSES IN EVICTION - Domestic Violence Cont.

(c) A lessor or owner who replaces a lock or configures a lock for a new key in accordance with subparagraph (b) shall not be liable for any damages that result directly from the lock replacement or reconfiguration. **(d)** If, after a hearing in the possessory action, the court finds that there are grounds under this section to evict the tenant or household member accused of the domestic violence, sexual assault, or stalking, it may issue a judgment in favor of the lessor or owner of the property against the person accused, and allow the tenancy of the remainder of the residents to continue undisturbed. The lessor or owner of the rental unit at issue in the possessory action shall have the right to bar the person accused of the domestic violence, sexual assault, or stalking from the unit and from the lessor's or owner's property once judgment in the possessory action becomes final against such person. Thereafter, and notwithstanding RSA 635:2, the person's entry upon the lessor's or owner's property after being notified in writing that he or she has been barred from the property shall constitute a trespass. **(e)** Nothing in this section shall preclude eviction for nonpayment of rent. A landlord may evict on any grounds set forth in RSA 540:2, II which are unrelated to domestic violence, sexual assault, or stalking.

Tenant Training and Organizing

Please have all attending Print, Sign and Date for Record of Attendance,

1. _____

2. _____

3. _____

4. _____

Address _____

Complaint _____

HOUSING STANDARDS

NH, RSA [48-A:14](#) Minimum Standards Established

Infestation of insects, bed bugs and rodents; not reduced atleast 60 days

Defective internal plumbing, septic or sewage system; inadequate supply of hot water

Improper or Defective electrical system/wires, Danger of shock or fire

Leaks or Holes in Roof/Ceiling/Walls/Floors that reduce function or safety

Porches, stairs or railings are not structurally sound; Accumulation of Garbage or Rubbish in common areas; Free of chipping/peeling paint, exposed lead.

Improperly installed Gas Lines/Pilot Lights/Appliances/Heating Facilities that are free of Leaks/Defects and that adequately/safely heat all rooms (65)

RENT WITHHOLDING

To Withhold Rent Or Not To Withhold Rent - That Is The Question

Your landlord hasn't fixed the problem or seems to be ignoring you, but is rent withholding your best choice? The problem must be serious enough and certain legal steps followed correctly.

540:13-d Defenses to Violations of Fitness. – No action for possession based on nonpayment of rent shall be maintained in regard to any premises leased or rented if such premises are in substantial violation of the standards of fitness for health and safety set forth in [RSA 48-A:14](#)/Local Codes/Ordinances or Bylaws established pursuant thereto, and such violation materially affects the habitability of said premises, provided that Tenant gave notice of violation to whom he/she pays rent while not in arrears and the landlord failed to correct the violations within 14 days or as promptly as conditions require upon receipt of written notice within reason.

SELF-REPRESENTATION (PRO-SE)

Self-representation carries certain responsibilities and risks that pro se parties should be aware of before they file a case. Individuals who are considering representing themselves are encouraged to carefully review the risks associated with self-representation and to educate themselves regarding potential consequences. ***Even if you would like to represent yourself, it may help to talk to an attorney who can explain some of the risks applicable to your particular case.***

[PRO-SE GUIDE 2017](#)

IF YOU WOULD PREFER TO HAVE AN ATTORNEY REPRESENT YOU BUT YOU ARE UNABLE TO RETAIN ONE, YOU SHOULD CONSIDER CONTACTING THE FOLLOWING SERVICES FOR FREE OR LOW-COST LEGAL ASSISTANCE:

[NH Modest Means Legal Program](#) (603) 715-3290

[Legal Advice and Referral Center](#) (800) 639-5290 or (603) 224-3333

[New Hampshire Legal Assistance](#) (603) 224-4107

[Disabilities Rights Center Inc.](#) (for disability-related cases)

(603) 228-0432 or (800) 834-1721

NEW HAMPSHIRE DISTRICT COURT

New Orders on Court Operations, In-Court Hearings and Out-of-Court Hearings in Response to Coronavirus Disease 2019(COVID-19)

The United States District Court for the District of New Hampshire has entered new Standing Orders regarding court operations [\(20-5\)](#) and as well as procedures governing any in-court hearings [\(20-6\)](#) and out-of court videoconference and telephonic hearings [\(20-7\)](#) scheduled before April 13, 2020. Additionally, the court has issued an order authorizing audio and video conference hearings in criminal cases as permitted by the CARES Act [\(20-12\)](#).

For more information on court operations, please visit the court's [COVID-19 webpage](#).

<http://www.nhd.uscourts.gov/>

NEED ASSISTANCE WITH RENT OR EMERGENCY HOUSING?

- ❑ [211](#) NH
- ❑ Local City Welfare Office [Municipal Directory](#)
- ❑ Catholic Charities NH [Crisis Fund](#) 603-624-4717
- ❑ [The Front Door Agency](#) (Greater Nashua Area) 603-886-2866
- ❑ <http://www.capnh.org/>

ADVOCACY & TENANT ORGANIZING

Contact:

The Granite State Organizing Project (GSOP)

Violakat@granitestateorganizing.org
adibacco@granitestateorganizing.org

OR

603-668-8250

Q&A