

LANDLORDS AND TENANTS

Rent Escrow

(THIS SECTION WAS NOT REVISED IN 10/04)

The Landlord and Tenant Law is contained in Chapter 5321. It became effective November 4, 1974. Frequently, Forcible Entry (Chapter 1923) is involved in rent deposit cases. Copies of the combined code sections can be obtained by writing to the Department of Economic and Community Development, P.O. Box 1001, Columbus, Ohio 43216. This pamphlet is invaluable to Judges as well as to clerks.

§5321.01 Gives the definition of tenant, landlord, residential premises, rental agreement, security deposit, and dwelling unit. §5321.07 (A) provides for the notice to the landlord to remedy the conditions. Sub section (B) provides for the deposit of rent with the Clerk. §5321.08 sets forth the duties of the Clerk after the rent is deposited. §5321.09 and §5321.10 provides for the release of the rental deposit to the landlord, either in full or in partial release.

Under §5321.07 (B) (1), the clerk is given the duty of accepting deposits of rent from tenants, and placing them in an escrow account. Certain conditions qualifying the tenant to deposit rent are enumerated in the law. The application should reflect these. (See Form-1 at the end of this section) However, the clerk should not refuse the rent without judicial authority. Many courts set hearings before a referee to establish the right to deposit rent, especially where it appears questionable from the application. The hearing can also expedite these cases.

Deposit of rent under §5321.07 (B) (1) does not constitute the filing of a case for purposes of the Monthly Supreme Court report, although the filing of a complaint under either Chapter 1923 or 5321 does. A complaint under either section is classified as Forcible entry and Detainer. The filing by the Landlord of an application for the release of rent under §5321.09 (A) does constitute a case because the court may order the release under §5321.09 (C). (See Form-3 at the end of this section) If the claim is such that it comes under the provisions of §1925.04, it is considered a Small Claim.

(See commentary on "Report Forms" under Rules of Superintendence for the Municipal and County Courts, from the Ohio Judicial College.)

§5321.08 lists the clerk's duties regarding the rent deposited in escrow. A separate docket and a separate account are required. 1% of the amount deposited may be kept for costs. Interest earned on the escrow account is to be paid into the treasury.

§5321.07 (B) (2) provides that the court may require the clerk to make disbursements upon the application by the tenant for use of rent to remedy conditions. The Rules of Superintendence do not mention this in the discussion of what constitutes the filing of a case.

Local rules have been adopted by some courts to help clarify and simplify procedures. (See Form-4 at the end of this section)

(Name of Court)
(Jurisdiction)

Form-1

APPLICATION BY TENANT TO DEPOSIT RENT WITH THE CLERK OF COURT

Case No. _____

NAME AND ADDRESS OF TENANT:

NAME AND ADDRESS OF LANDLORD OR
AGENT:

Telephone Number _____ Telephone Number _____

In accordance with §5321.07 (1), Ohio Revised Code, I hereby make application to deposit all rent that is due, and hereinafter becomes due the Landlord, with the clerk.

Signed: _____

Affidavit in Support of Application:

The undersigned, being first duly cautioned and sworn, according to law, says the following facts are true to the best of (his) (her) knowledge:

_____ Landlord did NOT supply (him) (her) with notice in writing that (he) (she) was a party to any rental agreement which covered three or fewer dwelling units. (§5321.07 (3) (C).

_____ Notice of the Landlord's failure to fulfill obligations, a copy of which is attached, was given in writing to the Landlord as prescribed in §5321.07 (A); or if no notice was given, the Landlord did not supply the tenant, in writing, with the name and address of owner or agent, if any, of the premises as set forth in §5321.18.

_____ That payment of my rent is due _____, in the amount of \$ _____.
§5321.07 (B).

Sworn to before me and signed in my presence this _____ day of _____,
20____.

Signed:

Clerk: _____

Court: _____

By: _____

Tenant

Deputy Clerk

(Form continued on next page)

NOTICE TO LANDLORD AND/OR AGENT: This is a copy of the Tenant's application, and is being mailed to you in accordance with §5321.08, Ohio Revised Code.

MAILED TO: _____ DATE MAILED: _____
 _____ Clerk: _____
 _____ Court: _____
 _____ By: _____
Deputy Clerk

FORM-2

(Name of Court)
(Jurisdiction)

AGREEMENT OF TENANT TO RELEASE ESCROW FUNDS

Case No. _____

I hereby authorize the release of rental Escrow Funds held by the Clerk of Court to _____, said funds having been paid into Court in lieu of payment of rent to my Landlord.

The condition(s) in the notice given pursuant to §5321.07 (A), Ohio Revised Code having been remedied, and that any violation of the health, building, and/or safety code have been remedied.

DATED: _____

Signature of Tenant

Street Address

_____, Ohio, _____
City Zip

(Name of Court)
(Jurisdiction)

APPLICATION FOR RELEASE OF RENTAL ESCROW

TO: THE CLERK OF COURT

Case No. _____

The undersigned respectfully requests that the Clerk of Court release certain Rental Escrow payment (s) made to said Clerk by:

_____,
Tenant Street No. & Apt. No.
_____, Ohio
City Zip

This request is being made under the provisions of §5321.09(A), Ohio Revised Code, and on the further ground(s) that:

- _____ That the condition contained in the notice given pursuant to Division (A) of §5321.07, Ohio Revised Code, has been remedied.
- _____ That the tenant did not comply with the notice of requirement of Division (A) of §5321.07, Ohio Revised Code.
- _____ That the tenant was not current in rental payments due under the rental agreement at the time the tenant initiated rent deposits with the Clerk of the Courts under Division (B) (1) of §5321.07, Ohio Revised Code.
- _____ That there was no violation of any obligation imposed upon the Landlord by §5321.04, Ohio Revised Code or by the rental agreement, or by any building, housing, health, or safety code.

DATED: _____

LANDLORD OR AGENT

(Name of Court)
(Jurisdiction)

JOURNAL ENTRY

Tenants depositing rent with the Court under §5321. Ohio Revised Code, are required to furnish a copy of the notice served upon the Landlord under §5321.07 (A) and proof that rent payments are current. Application made without such documentation may be set for hearing before final acceptance of the escrow account. A person acting as agent for other tenants of the same landlord must file a statement signed by such other tenants in (his) (her) presence. If one or more persons residing in a suite, the rent for which is in escrow under 5321, moves from the premises, another person cannot become a party to the escrow agreement without filing an application with the Clerk of Court.

Dated: _____
Judge

NOTE: THIS IS A SAMPLE OF ONE COURT'S LOCAL RULE. IT IS INCLUDED FOR THE PURPOSE OF ASSISTING OTHER COURTS.

FORCIBLE ENTRY AND DETAINER

Forcible Entry and Detainer (FED) is the term for what is commonly called an eviction. It is covered by Chapter §1923, Ohio Revised Code. FED is an action brought by a landlord to regain possession from a tenant. "Landlord and Tenant" are defined in §1923.01.

The complaint may include a claim for rent or damages. In such instances, the claim for right of possession is called the First Cause of Action, and that for money is called the Second Cause for Action.

§1923.04 provides that the landlord planning to bring the action must notify the tenant to leave the premises. This notice may be served by certified mail, personal services, or by leaving it "at his usual place of abode" or "at the premises from which the tenant is sought to be evicted". If the tenant remains in the premises after the expiration of the time given in the notice to leave the premises, the complainant must file an action in Forcible Entry and Detainer with the Court. The Clerk may explain procedure and requirements of the court, but should not advise on such matters as to the number of days which must be given the tenant in the various notices.

Service of the Complaint and Summons may be by certified mail, personal service, or residential service under Civ. R. 4. Service must be made at least five (5) days before the hearing date. Special provisions for the wording of the summons are defined in §1923.06.

Since the purpose of the FED statutes are to restore the landlord's property without delay, the hearing on the First Cause is held without the twenty-eight day waiting period required for regular civil cases. Any contrivance of more than eight (8) days granted at the tenant's request requires a bond to assure that the rent will be paid if the landlord gets judgment (§1923.08). A bond for rent is also required if the tenant (defendant) appeals. The bond may be based on the monthly rental (§1923.14).

The court may grant the landlord possession of the premises at the hearing. The Clerk then prepares a Writ of Restitution or Execution (§1923.13). The Writ is given to the Bailiff, and must be executed within ten (10) days. Most courts serve a copy of the Writ, along with a notice of the specific eviction time, to the tenant. If the tenant has not vacated by the date given in the Writ, he and his belongings may be physically removed by the Bailiff of the Court, who makes the return as in other Writs (§1924.14).

An eviction may be filed after the tenant has moved if there is property left behind, and it is necessary to obtain a Court order to enter the premises.

The Second Cause of Action (for money) is treated as in any other contract case except that if no continuance is requested, a hearing thereon may be held immediately. Money judgment can be granted at the hearing.

FORM-5

(Name of Court)
(Jurisdiction)
DESIGNATION OF AGENT IN RENTAL ESCROW

We the undersigned, designate, _____ as our agent to deposit rent under §5321, Ohio Revised Code, with (name of the court). We are all residents of _____ and enter into this agreement willingly.

Signature	Suite No.	Amount
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

State of Ohio :
:
(County) :

_____ being first duly sworn, deposes and declares that each of the signatures above was made in their presence, and that to the best of their knowledge and belief each signature is the signature of the person whose name purports it to be.

Sworn to before me and signed in my presence this ___ day of _____ 19 ___.

Signed:	Clerk: _____
	Court: _____
_____	By: _____
Agent	Deputy Clerk

Any defense to an eviction action may be asserted at trial. When the action for possession of residential premises based upon nonpayment of rent or for when the tenant is in possession, the tenant may counterclaim for any amount he may recover under the rental agreement or pursuant to health and safety violations of the Landlord Tenant Act. (See §3733 and §5321 respectively.) In that event, the court may order the tenant to pay into court all or part of the past due rent and rent becoming due during the pendency of the action. After trial and judgment, the party to whom a net judgment is owed must be paid first from paid into court, and any balance is to be satisfied as any other judgment. If no rent remains due after the money is so applied, Judgment must be entered for the tenants in the action for possession. If the tenant has paid into court an amount greater than that necessary to satisfy a judgment obtained by the landlord, the balance must be returned to the tenant.

If the defendant in a forcible entry and detainer action does not appear, and the summons was properly served, the municipal court judge must try the case as though the defendant was present.

If a jury is timely demanded by either party, the case proceeds in all respects as in other cases having jury trials. However, if the suit is not continued, and the place of trial is not changed, and neither party demands a jury on the return day of the summons, the judge tries the case.