

# THE DELAWARE MUNICIPAL COURT A GUIDE TO MUNICIPAL COURT

GOVERNING SMALL CLAIMS COURT, LANDLORD/TENANT LAW (FED), AND RENT ESCROW

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## INTRODUCTION ▲

This handbook is designed for average citizens who wish to use the Small Claims Division or Forcible Entry and Detainer Division of this Court without hiring an attorney. Like anything, it's not perfect, but it's designed to provide you with basic information that you may find useful while maneuvering your way through the judicial system. Unfortunately if you're reading this handbook, you're probably having some sort of legal problems. This is never a pleasant experience. Our goal is to make it as little of an inconvenience to you as possible. For your convenience, pages 16 - 25 consist of commonly used forms. These forms are referenced in appropriate chapters. Please make photocopies of these forms and use them where requested by a chapter.

## QUESTIONS ▲

*What is Small Claims Court?* Small Claims Court is a legal forum where average citizens can come to resolve their disputes without all of the technicalities and time requirements of regular legal proceedings. Cases are processed quickly—usually within fifty (50) days. Claims are limited to \$3,000.00 or less. The issues are generally simple. Lawyers are permitted, but not required. The Ohio Rules of Evidence do not apply and the Rules of Civil Procedure are relaxed.

*What is FED Court?* F.E.D. is an acronym that stands for “Forcible Entry and Detainer.” This is a fancy way of saying that someone is wrongfully entering upon and/or withholding real estate from the rightful owner. FED complaints are generally filed by landlords to evict tenants and recover possession of the rental property.

*What is Rent Escrow?* Rent escrow is a process whereby a tenant can pay rent to the Court rather than the landlord when the landlord has failed to comply with its duties under state law. It is a technical process that is designed to force a landlord to address legitimate complaints by tenants.

*Why should I read this Handbook?* This Handbook provides basic information on how to proceed and what to expect. When people know what to expect from the legal system, they tend to be more satisfied in the outcome of cases because they understand what is happening to them and why. Certainly, this Handbook is not a substitute for the advice of a lawyer. You should read all parts of the Handbook that apply to your case. Many rules include references to sections of law you can find at your local library. Ask your local librarian for assistance in locating these materials.

*Do I need a lawyer?* A lawyer is not required, but may make your life easier even in simple cases. A lawyer is required to represent a corporation or another person. Remember, Small Claims Court is different from FED Court and the regular Civil Division. Generally, you should consult a lawyer whenever you are facing important legal issues.

If you have questions, our clerks are here to help answer them. The clerks cannot provide legal advice, but they can provide forms and answer basic questions. If you find that you still have questions about complicated matters, it's probably a good idea that you seek the advice of a lawyer. If you can't afford a lawyer, try calling the Legal Aid Society at (740) 369-3059. We understand that things can be frustrating when you are involved in legal controversy. Our goal is to help you have your day in court – to present the issues for the Judge or Magistrate to make a determination. We ask that you remember

that we handle around 25,500 criminal/traffic and civil cases every year and to have patience with the system and the personnel.

## HELPFUL DEFINITIONS ▲

(These are not precise legal definitions)

**Affidavit:** A notarized written statement made by a person out of court, under oath, subject to the criminal penalties for perjury.

**Attachment:** See Garnishment Order.

**Case:** A lawsuit between two parties.

**Complaint:** Written statement alleging a legal claim against a Defendant. The filing of a complaint begins a legal suit.

**Contempt of Court:** Disobedience of a court order that may result in penalties for the person disobeying the order.

**Continuance:** Rescheduling a case to a later date at the request of a party or the Court for good reason.

**Counter-claim:** A claim filed by the Defendant against the Plaintiff for money owed.

**Default Judgment:** Decision for the Plaintiff when the Defendant fails to appear in court or file an answer.

**Defendant:** The person being sued.

**Dismissal:** Decision for the Defendant when the Plaintiff fails to appear in court.

**FED:** Stands for *Forcible Entry and Detainer*. A complaint that is filed when someone is in wrongful possession of a home or other real estate which seeks to have the property restored to the rightful owner, such as when a tenant fails to pay rent for an apartment.

**Garnishment:** A court order to apply property of the judgment debtor that is held by a third party such as an employer.

**Order:** Usually used to apply the judgment debtor's salary, earnings, or bank accounts toward satisfaction of the judgment.

**Judge:** The Judge may preside over a case or may appoint a Magistrate or Acting Judge to preside over a case and render a decision on the matter.

**Judgment:** The final decision of the Court, when filed with the Clerk of Court.

**Judgment Creditor:** The person to whom a judgment debtor owes money.

**Judgment Debtor:** The person who owes money as a result of a court judgment.

**Judgment Debtor Examination:** A court order requiring the judgment debtor to appear in court and answer questions under oath about what property or wages the judgment debtor owns that can be applied toward satisfaction of the judgment.

**Jurisdiction:** The authority of the Court to hear a given case or type of case.

**Landlord:** A person or entity that leases places to live or work to tenants. Also known as a *lessee*.

**Magistrate:** A lawyer appointed by the Judge to preside over a case in the Judge's place.

**Magistrate's Decision:** A written decision by the Magistrate, either before or after trial, deciding matters related to the case. A Magistrate's Decision may be appealed to the Judge within fourteen (14) days of being filed with the Court.

**Motion:** A request for the court to do something. Example, motion to continue a trial date to another date.

**Perfection of Service:** Successfully serving the Defendant with the complaint and summons by one of the approved methods under Ohio law.

**Plaintiff:** The person filing the complaint and beginning the case.

**R.C.:** Abbreviation for "Ohio Revised Code."

**Rent Escrow:** Where a tenant pays rent to the Court instead of the landlord. It is a technical process that can be applied only in limited cases.

**Satisfaction of Judgment:** When the judgment debtor has completely paid the judgment.

**Second Cause of Action:** A complaint for money damages accompanying a FED complaint.

**Subpoena:** Court order requiring a witness to appear in court and give testimony and/or bring evidence to Court.

**Summons:** An order for the Defendant to appear in court.

**Tenant:** A person who leases a place to live or work. Also known as a *lessor*.

**Three Day Notice:** Legal notice required to be given by the landlord to a tenant before a FED complaint may be filed to evict the tenant.

**Vacate:** An action where the Court sets aside a previous order or judgment.

**Venue:** Geographic requirements on the filing of a case. Venue rules prevent people from filing cases in a court that has no geographic connection to the case.

**Writ of Attachment:** A court order requiring the judgment debtor to apply specific property toward satisfaction of the judgment.

**Writ of Execution:** A court order requiring the judgment debtor to apply specific property toward satisfaction of the judgment.

**Writ of Restitution:** A court order evicting a tenant from property and restoring that property to the owner.

## SECTION I. SMALL CLAIMS COURT ▲

### 1. *Types of cases heard in Small Claims Division.*

The Small Claims Division handles all types of cases involving amounts less than \$3,000.00. However, the Court does not have jurisdiction to hear: libel or slander, replevin, malicious prosecution and abuse of process actions, actions brought by an assignee or agent or actions for punitive damages unless provided by statute.

Additionally, if you are suing more than two defendants in one complaint, you may not proceed in Small Claims Division.

For more information: R.C. 1925.02.

### 2. *Filing a case in Small Claims Division.*

Filing a complaint; jurisdiction. Cases are filed at the Court with the Clerk of Court. The Magistrate or Judge hears and decides those cases which cannot be settled. The complaint may be filed on a complaint form provided by the Clerk of Court [See FORM A]. It must be for money only and not to exceed \$3,000.00. You must bring copies of any documents supporting your claim – at least one for the Court, one copy for each Defendant, and one copy for the Plaintiff – and you must have the current address of the Defendant.

Geographically, is this the right court (venue)? In order for this court to be the proper court for the filing of your actions, Delaware County must be:

1. the county in which the Defendant resides, or
2. the county in which the Defendant has his principal place of business, or
3. the county in which the Defendant conducted activity which gave rise to your claim, or
4. the county in which a public officer maintains his principal office, or
5. the county in which the property is situated if the subject of the action is real or personal property, or
6. the county in which all or part of the claim for relief arose.

Service of the complaint and summons on the defendant. Notice of the suit must be given to the Defendant by service of the complaint and summons. This is usually done by requesting that the Clerk of Court serve the complaint by certified mail, return receipt requested, but may be done by personal or residential service instead (service by a bailiff or special process server costs more). The clerk will also have you sign a request for regular mail service in the event of failure of certified mail service [See FORM F]. Where the return receipt is returned “unclaimed” or “refused,” the Clerk of Court may serve the complaint and summons by regular mail. You are responsible for providing the address of the Defendant. If service cannot be perfected within sixty (60) days, your complaint may be automatically dismissed by the Court. Usually, however, your case will be heard about forty (40) days from the date it is filed.

Court costs. The clerk will inform you of court costs. You will be required to pay the court costs up front. If you win your suit, the Defendant will be ordered to pay your court costs to you in addition to any judgment against the Defendant. You will not be repaid for court costs if you lose the case, including if your cases are dismissed or withdrawn.

Questions. If you have any questions about the procedure you must follow or any other matter relating to your case, ask the clerk for help. If, however, you need legal advice, you must talk to an attorney. Court personnel are not permitted to help you with substantive legal advice.

For more information: R.C. 1925.04, R.C. 1925.05, R.C. 1925.08, Civil Rule 3, Civil Rule 4.1, and Civil Rule 4.6.

### **3. *Change of address or telephone number.***

If you change your mailing address or telephone number after you have become a party to a Small Claims Court suit, either as the Plaintiff or Defendant, you must promptly notify the court of the change. All notices concerning your suit, including changes of the trial date, will be sent to your last known address. Your interests may be hurt if the court is unable to contact you due to a change of address.

### **4. *Counter-claims.***

If you have received notice that you have been sued in Small Claims Court, and you believe that you have a claim against the Plaintiff arising out of the same transaction or occurrence, you may file a counter-claim against the Plaintiff. To remain in Small Claims Court, your counter-claim may not exceed \$3,000.00 – if it does, you will be automatically transferred to Regular Civil Division which operates under more strict rules of procedure. A counter-claim must be filed no later than seven (7) days prior to the scheduled trial date. If you file a counter-claim with the court, you must serve the Plaintiff and all other parties with a copy of the counter-claim at least seven (7) days prior to the date of the trial. You should be aware that if you fail to file a valid counter-claim that you have against the Plaintiff, you may be barred from bringing that counter-claim as a later separate action.

For more information: R.C. 1925.02; Civil Rule 13.

### **5. *Transfer to Regular Civil Division.***

A party may request to transfer a case from the Small Claims Division to the regular division of the court by filing, (1) a “Motion to Transfer,” (2) an affidavit stating that a good defense exists and setting forth

the basis of the defense, and (3) by paying a filing fee. Please present a proposed “Entry of Transfer” for the Judge or Magistrate to sign. Once transferred, the case will follow the procedure of cases filed in the Regular Civil Division. Motions to transfer to Regular Civil Division are typically used where a counter-claim exceeds the jurisdiction of the Small Claims Division or where complex legal issues are presented by the case. Representation by an attorney is recommended following such a transfer.

For more information: R. C. 1925.10.

## **6. Continuances.**

Motions for continuances must be in writing and filed with the Clerk and served on the other parties at least seven (7) days prior to trial except in exceptional circumstances. [See FORM D]. If you request a continuance, you must: (1) include the case name and number, (2) sign the request, (3) mail a copy of the request to the opposing party, and (4) certify on the original that you file with the Court that you mailed a copy to the opposing party. Continuances will only be granted for good cause. Filing fee of \$20.00 must accompany the request for continuance and will not be refunded if the request is denied.

## **7. Representation by an attorney at trial; suits involving corporations.**

Small Claims Court is designed to be a legal forum where attorneys are not necessary. Attorneys may appear with clients in Small Claims Court. Persons who are not lawyers are prohibited from representing corporations or other persons in any Court including Small Claims Court.

## **8. Witnesses and subpoenas.**

A party should try to have all witnesses attend the trial and testify on his/her behalf. If a witness does not want to appear and testify voluntarily, a party may request the clerk to issue a subpoena ordering the witness to appear at the trial and/or bring items in the person’s possession to court. Requests for subpoenas should be made at the earliest possible date. A witness fee may need to be paid and tendered with the subpoena.

For more information: Civil Rule 45.

## **9. Trial proceedings.**

Who will hear my case?/Court record. A Magistrate or Acting Judge may be appointed by the presiding Judge to hear the case. The proceeding may be recorded by audio or video tape. If a party desires a court reporter, then the party must make arrangements for the presence and payment of a court reporter.

**Witnesses and exhibits to prove your case will be necessary at this hearing.**

Basic procedure. Arrive early on the day of your trial so exhibits can be marked and exchanged. The Plaintiff will present evidence first. The Plaintiff may do so by testifying on his/her own behalf and also by having other witnesses, including the Defendant, testify. After each witness’s testimony, the Defendant may question the witness. The Plaintiff may show the court physical evidence, such as receipts, written leases, or other items to support the claim for damages. After the Plaintiff has finished, the Defendant may testify and present witnesses and present physical evidence. After each of the Defendant’s witnesses have testified, the Plaintiff may question the witness. After the Defendant has finished, the Plaintiff may present additional evidence which rebuts the Defendant’s evidence. During

rebuttal evidence, the Plaintiff should not repeat testimony which was already given to the Court. After the Plaintiff has finished his/her rebuttal testimony, each party may, at the Judge or Magistrate's discretion, make a final statement to the Court to summarize their respective positions. Remember, although the trial is informal, all parties and witnesses are subject to penalties for contempt of court and perjury.

During the trial, the Court may stop at any point to ask questions of any of the parties or witnesses and has the discretion to conduct the trial in any manner in order to derive the truth.

How do I prove my case? The Court can decide the case only on the facts presented by the parties at the trial and on the law as it applies to those facts. Therefore, know as much about your case as possible and tell the court as much as you can. You should lay a solid foundation for your claim as to dates, parties involved, actions taken or not taken, and damages occurring. Bear in mind that the Judge or Magistrate has no knowledge of the events surrounding your claim and can only rely on the information presented at trial.

If you are the party trying to recover damages, (the Plaintiff, on a claim -OR- the Defendant on a counter-claim), you have the burden of proving your case by a preponderance of the evidence, or that it is more likely than not that you are entitled to win (ie. Is there a 51% likelihood that you should win?). You must prove two things before the court can award you judgment:

A) **Liability** - You must prove to the Court by your evidence, that the other party has done something that makes that party legally responsible to you for damages. Examples of this would be that the other party has failed to pay rent owed; caused an accident resulting in damage to your property; or ordered and received goods without paying for them.

B) **Damages** - You must also then prove the actual amount of damages (money) which you are entitled to recover. The law provides that a party seeking a court judgment must prove both liability and damages before the Court may enter a judgment in his/her favor. The Judge cannot speculate or guess what the damages were. If a party cannot produce evidence to show the amount, the Court cannot award a judgment. Damages can be a tricky area of law. If you are unsure of how to prove your damages, you should seek legal advice.

*Example:* The Plaintiff files a complaint alleging that the Defendant was negligent in the operation of his automobile and that a crash occurred between their automobiles as a result. Plaintiffs' complaint alleges that the Defendant's negligence caused \$1,000.00 worth of damage to Plaintiff's car. To win, the Plaintiff must prove both that it is more likely than not that: (1) the Defendant's actions were negligent, ie. That the Defendant knew or should have known that they could cause damage to others and that the Defendant had a legal duty to avoid such damages, (2) the Defendant's negligence caused damage to the Plaintiff, and (3) the amount of the damages were \$1,000.00 (Note: Plaintiff may end up proving less damages than asked for in which case he/she will receive the amount proved). The areas of burden of proof and proof of liability and damages are very important to the parties seeking recovery for damages. If you are not sure what proof is needed at the trial, you should seek legal advice on that problem. You could then decide to hire an attorney to assist you at the trial, or, after being advised what the law requires, continue to represent yourself.

## 10. *Decision of the Court.*

The Court may render judgment or final decision a number of ways.

Default judgment. If the Plaintiff appears at trial and the Defendant does not, the Plaintiff can ask the Court for default judgment against the Defendant for the amount stated in the original claim. For the Court to grant the default judgment, the Plaintiff must show the Court:

- A) That the Defendant was served with notice of the complaint.
- B) That, insofar as the Plaintiff knows, there are no legal, physical, or mental disabilities that would keep the Defendant from attending the trial or prevent him/her from understanding the nature of the proceeding.
- C) That the Plaintiff has a valid complaint and should recover from the Defendant.

Dismissal with prejudice. If the Defendant appears at trial and the Plaintiff does not, the Court may dismiss the complaint with prejudice. This means, the Plaintiff cannot refile the complaint.

Dismissal without prejudice. If neither party appears at trial, the court may dismiss the complaint without prejudice. This means, the Plaintiff may refile the complaint. However, the Plaintiff must pay all costs associated with refiling the complaint.

Agreed entry. If both parties appear and agree to a disposition, the Court will either enter an agreed judgment or a dismissal, depending upon the agreement of the parties.

Judgment. Following trial, the Court will either give a decision from the bench or take the matter under advisement for a written decision. If the case is taken under advisement for a written decision the decision will be mailed to the parties.

## **11. *Objections to Magistrate's Decision; Appeal.***

Objections to Magistrate's Decision. If you disagree with the Magistrate's Decision, you may file written objections to the decision with the Judge within fourteen (14) days of the filing of the Magistrate's Decision. You will need to comply with the Local Court Rules regarding such objections. These Local Rules can be obtained from the Clerk of Court and are available at [municipalcourt.org](http://municipalcourt.org) in the virtual "Law Library" section in the Delaware, Ohio area.

Appeal. A Judge's decision must be appealed to the District Court of Appeals within thirty (30) days of filing the judgment entry.

For more information: Civil Rule 53; Civil Rule 60; Civil Rule 62.

## **12. *Collecting your judgment.***

The loser (judgment debtor) in the case should make arrangements with the winner (judgment creditor) to pay the judgment amount in order to avoid further legal proceedings to collect the amount owed.

Determining the assets of the judgment debtor. If the judgment debtor does not voluntarily pay the judgment within thirty (30) days, the first step in collecting on your judgment is to identify any assets the

judgment debtor may have. You may request the Court to order the judgment debtor to disclose the debtor's finances, including assets, liabilities, and earnings on a standard questionnaire [See FORM C]. A court cost fee is assessed for this which may be recovered from the judgment debtor.

Where a questionnaire is not appropriate or has been tried and failed, the judgment creditor may request a court order for the judgment debtor to appear and answer questions under oath about the amount and location of any assets held by the judgment debtor. This is called a *judgment debtor examination*.

A standard questionnaire or judgment debtor examination and court order may be obtained by filing a motion with the court. [See FORM E].

Execution on judgment. When a judgment debtor fails to pay the judgment, the judgment creditor may initiate proceedings to force payment of the judgment. The Court cannot initiate action on its own. This is called *executing* on the judgment. There are a number of legal devices that may be used to force a judgment debtor to pay some or all of the judgment. Among other things, the judgment creditor may use the following legal devices to obtain satisfaction of judgment: Writ of Attachment, Writ of Execution, and Garnishment Order. These devices are briefly described in the definition section in the front of this manual. Many of these orders come on preprinted forms that you can obtain from the Clerk of Court. You may ask for these forms by name. Such devices do require payment of court costs, but these costs may be recouped from the judgment debtor as the judgment is collected. There are more involved procedures that may be used and you may want to contact an attorney regarding such procedures.

Contempt of Court. Where you have successfully obtained one of these court orders requiring the judgment debtor or someone else to do certain acts toward satisfying your judgment and the person so ordered refused to comply with the court order, you may request a contempt order form [See FORM H] from the Clerk of Court. A contempt order requests the court to hold the person violating the court's order in contempt of court for violating the order. A finding of contempt could result in that person being subjected to a criminal penalty, including fines and/or jail. Remember, however, a judgment debtor can be jailed for refusing to comply with a court order, but generally cannot be jailed simply for not paying on a judgment.

For more information. R.C. 2333.09, R.C. Chapter 2715, R.C. 2329.09, R.C. Chapter 2716, R.C. 1925.15, and Civil Rule 69.

## SECTION II. LANDLORD/TENANT LAW (F.E.D. COURT) ▲

### 13. *Types of FED proceedings.*

FED complaints are generally filed by landlords to evict tenants from the rental property because the tenants have somehow breached the lease, ie. failed to pay rent, damaged the property, etc. Usually, this is a lease for residential property. However, FED may be used anytime someone is wrongfully withholding real property from the rightful owner (eg. default on a land installment contract, adverse possession, holdover tenants, etc.). These cases can proceed to final judgment in as little as two to three weeks.

For more information: R.C. 1923.01 & 1923.02.

#### **14. *Three day notice required.***

Generally, Ohio law requires that before a person may file a FED complaint, the person must notify the person to be evicted to leave the property in writing at least three (3) days prior to the filing of the complaint. The notice must be served by (1) certified mail, return receipt requested, (2) handing a written copy of the notice to the person personally, or (3) by leaving the written notice at the person's usual abode or the place from which the person will be evicted. Three (3) day notices that meet the legal requirements of the state law may be obtained from the Clerk of Court [See FORM G].

Every notice must be in writing and contain the following language in a conspicuous manner:

**“YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.”**

*Example:* Landlord serves tenant the required three (3) day notice by posting the written notice on the tenant's apartment door on Monday, January 2. Landlord may not legally file an FED complaint with the Court until Friday, January 6.

For more information: R.C. 1923.04.

#### **15. *Filing a FED complaint.***

This process is very similar to filing a complaint in the Small Claims Division. The complaint shall be filed in writing with the Court. If you are suing two (2) defendants or less, it may be filed on a form that may be obtained from the Clerk of Court [See FORM B]. A copy of the three (3) day notice and written lease, if any, must be attached to the complaint.

The Plaintiff may also file a second cause of action requesting money damages if applicable. Usually this occurs where a tenant owes back-due rent or has damaged the property. Usually the second cause of action will be handled separately from the FED action.

The Clerk of Court shall serve the FED complaint and summons to the Defendant(s) by regular mail and by personal service, residence service or “post on the door” service as directed by the Plaintiff. Both forms of service are required. “Post on the door” service is not sufficient to obtain a money judgment but is sufficient to obtain an eviction.

A FED complaint may only be filed in this Court if the real property that is contested is located within Delaware County.

For more information: R.C. 1923.05, R.C. 1923.081, and Civil Rule 10.

#### **16. *Counter-claims and defenses.***

Because FED cases move much quicker than regular civil cases, the Defendant does not need to file a written answer to the complaint. He/She may present any defenses at trial.

If the FED complaint is based upon nonpayment of rent for a residential premises, the tenant may counter-claim for money damages for any amount to which the tenant may be entitled under the lease or Ohio's Landlord-Tenant Law.

For more information: R.C. 1923.061 and Chapter 5321 of the Revised Code.

### **17. Continuances.**

FED actions are designed to quickly return disputed property to the rightful owner, therefore, continuances are not favored. The Court will not grant a continuance for more than eight (8) days, unless: (1) the landlord asks for the continuance, (2) the landlord consents to the continuance in writing, or (3) the tenant posts a sufficient bond with the Court to guarantee any losses that could be suffered by the landlord as a result of the continuance. [See FORM D].

For more information: R.C. 1923.08.

### **18. Trial proceedings.**

Trials. Trials will proceed similarly to the proceedings described above in 9. There are some notable differences, however.

First, FED trials are set relatively quickly. If the landlord has filed a second cause of action for money damages, often the second cause of action is separated from the FED complaint and continued until another day. This is because the tenant has a right to file an answer to the money damages. Often the trial is set on the FED complaint before the time within which the tenant is required to file an answer has run. This is to determine the issue of possession of the property as quickly as possible. If there is a second cause of action, it will proceed as a regular civil case on another date. When the Court hears the second cause of action, it will render judgment on the money damages at the end of the trial.

Second, if the tenant does not appear, the Court must try the case as though the tenant were present. The landlord must always be prepared to produce testimony at the FED trial.

Third, lawyers may participate fully in FED actions.

At the conclusion of the case, the Court will render judgment. The Court will either find that the tenant is wrongfully withholding the property from the landlord and issue a Writ of Restitution to evict the tenant and restore the landlord, or will find that the tenant is not wrongfully withholding the property and dismiss the complaint. If the landlord wins, the tenant is evicted and pays the court costs. If the tenant wins, the tenant remains in possession of the property until the natural termination of his/her lease and the landlord pays the court costs.

If there is a second cause of action for money damages, it will not be decided at the FED trial unless the tenant agrees to address the issue as well. Generally, the second cause of action will be continued for trial or final disposition on another day. Second causes of action are governed by the rules that apply to civil cases filed in the regular civil division.

### **19. Restitution of Premises.**

If the landlord wins and the tenant is to be evicted, the Court will schedule a “set-out” or *eviction* date.

The Court’s bailiff will appear at the property at the time set for the eviction. The tenants will be moved out by that time or the landlord must have sufficient personnel hired to move out the tenant. The bailiff will not physically move out any of the tenant’s belongings. The bailiff merely serves the eviction order and maintains the peace as the tenant and furnishings are removed from the premises.

## SECTION III. RENT ESCROW PROCEDURES ▲

### 20. *Rent escrow.*

**A. Scope.** Rent escrow may be used by a tenant where the landlord has breached duties under state law. Currently, these duties are found generally under Chapter 5321 of the Ohio Revised Code. Rent escrow cannot be used against landlords who only rent three (3) or less apartments. The Delaware Municipal Court can handle rent escrow cases only when other rental property is in Delaware County, Ohio.

**B. Procedure.** Before a tenant can use rent escrow, the tenant must give written notice to the landlord, specifying the acts, omissions, or code violations that constitute a violation of the landlord’s duties. The notice must be sent to the person or place where rent is normally paid. If the landlord fails to fix the problem within a reasonable time or within thirty (30) days and if the tenant is otherwise current on rent payments, the tenant may:

1. Deposit all rent that is due and becomes due with the Court;
2. Apply to the Court to order the landlord to fix the problem and deposit rent and if necessary request reduced rent;
3. Or, terminate the lease.

An application for rent escrow may be filed by a tenant along with one (1) month’s rent. The tenant must bring the current address of the landlord or landlord’s agent. The Clerk of Court shall serve the application on the landlord by certified mail, return receipt requested. The Clerk may also have the tenant sign a request for regular mail service in the event that service by certified mail service fails.

For more information: R.C. 5321.07.

**C. Filing fees.** Court costs of 1% of the amount deposited shall be assessed against the rent deposited at the end of the case.

**D. Complaints.** A complaint to release the total rent deposited may be filed by the landlord any time after the tenant’s application for rent escrow has been filed. The Clerk shall serve the tenant by regular mail. A trial shall be scheduled within sixty (60) days.

For more information: R.C. 5321.09.

**E. Answers and counter-claims.** Answers and counter-claims may be filed by the tenant after the landlord has filed a complaint requesting total release of the rent escrow. The answer and/or counter-claim shall be heard at the time of the trial.

**F. Partial release of rent.** At any time during the pendency of a rent escrow case, either party may file a motion for the partial release of rent deposited. If no hearing or trial has been set, the Clerk of Court shall set a hearing date. If the matter has been set for an oral hearing or trial, the motion shall be consolidated with the pending trial or hearing.

**G. Continuances.** Requests for continuance shall be in writing and bear a certificate showing that service was made on the opposing party by regular mail or personal delivery. Under no circumstances will a continuance be permitted less than seven (7) days prior to the hearing except upon showing of exceptional reasons. Continued cases will be rescheduled at the earliest possible time. Filing fee of \$20.00 must accompany the request for continuance and will not be refunded if the request is denied.