

Chapter 3: Rule 3.7

Forcible Entry and Detainer (Eviction) Procedure

The Dayton Municipal Court has revised DMCR 3.7, Forcible Entry and Detainer (Eviction) Procedure, after giving notice of the revisions and an opportunity for comment.

The following revised DMCR3.7 shall take effect on July 5, 2017.

- A. **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. The Forcible Entry and Detainer Complaint has two causes of action:
 - 1. First Cause for Restitution of Premises (eviction and restoring possession of the premises).
 - 2. 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.
- 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.
- 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. The Notice of Eviction shall inform the tenant that:
1. The Court has granted restitution of the premises to the owner and set a date for eviction;
 2. The tenant must vacate and remove all personal property before the date of eviction;
 3. On the date of eviction the tenant will be forcibly evicted; and
 4. 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.
- L. ABANDONED PROPERTY AFTER EVICTION. 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.
- M. LIABILITY FOR A TENANT'S PERSONAL PROPERTY. Neither the Court nor any Court employee shall assume liability for any tenant's personal property removed or disposed of after an eviction. The plaintiff/owner should seek legal advice if there is a question on whether to remove or dispose of a tenant's personal property.
- 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.

Chapter 2: Rule 3.15 Mediation

The Dayton Municipal Court finds a need to revise Paragraph (E) of DMCR 3.14, Mediation, to make mediation procedures compatible with revised DMCR 3.7, Forcible Entry and Detainer (Eviction) Procedure, when it goes into effect on July 5, 2017. The following revised Paragraph (E) shall go into effect on July 5, 2017:

- E. On Eviction cases, the parties shall discuss the First Cause for Restitution and the Second Cause for back rent and damages. The mediator shall prepare and file a written Mediated Agreement on the First Cause for Restitution and on the Second Cause for Damages. The owner/landlord shall file a motion requesting an Entry Granting Restitution and a Writ of Restitution if the defendant (tenant) fails to comply with the Mediated Agreement for restitution of the premises. The owner/landlord shall request a Conversion Hearing to convert the Mediated Agreement into a Judgment if the defendant (tenant) fails to pay the agreed damages or comply with the Mediated Agreement on the Second Cause. Upon successful completion of all terms and conditions of the First and Second Causes in the Mediated Agreement, the Eviction case shall be dismissed and a Dismissal Entry filed.