TENANT'S INSTRUCTIONS/FED

First Appearance in Court

The Summons served on you (the tenant) will state a certain time for the landlord and you to appear in court for a "First Appearance." **NO POSTPONEMENTS** are allowed for either side once the first appearance is set.

At the first appearance, the judge will ask you and the landlord if you have settled the matter or if you want to have a trial. Landlords and tenants often settle cases by the tenant agreeing to leave before the case comes to court by the tenant paying rent due and the landlord agreeing to let them stay, or by agreeing on a date by which the tenant will move.

If you want a trial, you should ask for one at the first appearance. The trial will not be held at that time. Both parties will receive a Notice of Trial. If the trial is not held within 15 days, the Judge will require you to pay rent into the court. At the first appearance, either side may ask the Judge for a continuance, or time in which to consult an attorney.

If either you or the landlord does not appear in court at the time of the first appearance, the other side will win by "default." If the landlord does not appear, the FED is dismissed and the landlord may begin by filing a new FED and paying the appropriate fees again. If you do not appear, the landlord will get a "Judgment of Restitution" and may have you evicted by the Sheriff's office.

Filing an Answer

If you want to have a trial and your are not represented by an attorney, you may use a form called an "Answer." This form is available at the Trial Court Administrator's office. The "Answer" is a legal document you use to explain to the court and the landlord why you should not be evicted. These reasons are called "defenses." If you will be represented by a lawyer you should consult them about filing an "Answer."

COURT STAFF IS NOT ALLOWED TO ADVISE YOU ABOUT FILING AN ANSWER

Fees and Costs

You must pay the required fee of $98.00 at the time of filing your "Answer." You have a choice of having a court trial or a jury trial. If you want a court trial, you must pay an additional court trial fee of $91.00. If you want a jury trial, the additional fee will be $130.00. The trial fee is due on or before the date of trial. If the landlord requests a jury trial, they are responsible for the $130.00 jury fee.

Trial

At the time set for trial, both you and the landlord must appear in court and present your cases. There will not be a jury unless either side has requested a jury in writing.

At the time of the trial, you should bring any witnesses you have to testify in support of your claim or defense. You must have your witness in court to testify. This allows the other side to ask the witness questions. You should bring any account books, statements, receipts, contracts, dishonored checks, photographs, reports from building inspectors or any other evidence that would support your claim or defense. The judge may decide not to allow certain kinds of written evidence unless you have a witness who actually prepared the evidence or who is responsible for keeping it as a business or public record.

PARTIES NEEDING LEGAL ADVICE ABOUT EVIDENCE, WITNESSES OR TRIALS SHOULD CONTACT AN ATTORNEY. THE TRIAL COURT ADMINISTRATOR'S OFFICE CANNOT GIVE LEGAL ADVICE ON HOW TO CONDUCT A TRIAL.

At the trial, the plaintiff will present his case first. The you will then have the opportunity to put on your case. The landlord then has a chance to answer, or rebut any claims made by you.

Judgment

If the judge decides in your favor , the landlord's eviction action will be dismissed. This means that you still have the right to reside in the dwelling. If the landlord wants to evict you for some other reason, the landlord must begin again. The judge may also require the landlord to pay you for any court costs or fees that you have incurred.

Enforcing the Judgment of Restitution

If you do not move out by the date set in the Judgment, the landlord may go to the Trial Court Administrator's office to apply for a Notice of Restitution which will start the process for having the Sheriff evict you. The Sheriff serves you with the "Notice of Restitution" which informs you that you have 4 days to vacate the premises. If you do not move out within 4 days, the landlord may then return to the Trial Court Administrator's office for a "Writ of Execution for Restitution of Premises" to evict you. The Sheriff may forcibly evict you.

Stipulated Agreements

At the trial, you and your landlord may sign an agreement that allows you to remain in the dwelling provided you perform some task (such as repairs) or pay money by a certain date. The Judge will then enter an order staying the execution of the Judgment of Restitution. If you do not comply with this written agreement, the landlord may file an affidavit explaining your breach of the agreement and requesting that the stay on the Judgment of Restitution be set aside. The landlord must serve you with a copy of the affidavit. If you disagree with the allegations, you may ask for a hearing within four days of the filing of the affidavit and notice to you. If you do not respond during that four day period, the judge may set aside the stay and the clerk of the court will issue the Notice of Restitution. If you ask for a hearing, you must provide a written explanation as to why the landlord is not entitled to return of the premises. You must

file your request for a hearing before the writ is filed. If the Judge grants the hearing, the only issue at the hearing is whether the parties have complied with the agreement entered in the judgment. If the landlord fails to attend this hearing, the Judge may withdraw the Writ of Execution. If you fail to appear at this hearing, the Judge may order the Writ of Execution to be enforced and you will be removed from the premises.

If you comply with the agreement, the Court will automatically dismiss the case after 12 months from the date of the entry of the judgment and stipulation. You will receive no notice of the dismissal.