



# Judgment - Possession vs. Money Damages

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### **Judgment - Possession v. Money Damages**

\_\_\_\_\_ General Sessions Courts have original jurisdiction in detainer warrant matters. These Courts have the authority to enter a judgment in an unlimited amount for rent and damages while the Tenant is in possession. However, assuming the Landlord has obtained possession and a civil warrant is filed for collection of rental arrearage and damages, General Sessions Courts are limited in that jurisdiction to \$25,000.00. For the purpose of calculating whether a judgment entered in General Sessions is within or exceeds the monetary jurisdictional limit the following amounts shall not be included: Attorneys fees, court costs and any discretionary costs.

Each General Sessions Court Clerk has a standard pre-printed form for detainer warrants. The requirements for these forms can be found at T.C.A. § 29-18-112. If the Landlord has already obtained possession of the apartment and is seeking to recover rent arrearage or damages against a former Tenant, then a civil warrant should be filed. The detainer warrant may be served upon any adult person found in possession of the premises and service of process upon such party in possession shall be good and sufficient to enable the Landlord to regain possession of such Landlord's property. Private process servers may now be used to serve warrants. See, T.C.A. §16-15-901.

Service of Process may also be made by lodging the original summons and a copy certified by the Clerk with the Sheriff of the County in which suit is brought who shall promptly send postage prepaid, a certified copy by certified returned mail to the defaulting Tenant as follows:

In the case of an individual, to that party. In the case of a corporation, to an officer, managing agent or agent for Service of Process. In the case of a partnership, to a partner or agent.

If the Sheriff is unable to serve any named defendant personally or if after 3 attempts of personal service of process during a 10 day period with such attempts being documented on the face of the warrant no such person is found in possession of the premises, service of process for determining the right of possession of the subject premises as to all who may have a contractual or possessory property right therein may be had by the sheriff of the county or such sheriff's deputy taking the following actions at least 10 days prior to the date specified therein for the Defendant to appear and make a defense; (A) posting a copy of the warrant or summons on the door of the premises; (B) sending by United States Postal Service First Class Mail with Certificate of Mailing a copy of the warrant or summons to the so named Defendant at the last known address, if any and; (C) Making an entry of this action on the face of the warrant or summons filed in the case. If this final method of obtaining service of process is used, a judgment for possession only is obtained. The Landlord would not be entitled to obtain a monetary judgment under this recently enacted procedure. *See, T.C.A. § 29-18-115.*

A defendant in a General Sessions eviction case is not required to file a written answer. If appropriate the defendant may file a motion to dismiss although most courts allow oral motions to be made at the date of trial.

A tenant may defend against the detainer warrant by proving that the landlord has waived its right to terminate the lease after a breach occurred. The landlord must always be aware that once notice has been given that a tenant has breached the terms of the rental agreement, that the landlord can no longer accept rent from the tenant unless the landlord gives the tenant notice that he is accepting rent with reservations of his right to terminate the lease. A landlord who accepts rent without reservation and with knowledge of a tenant's default waives his right and is estopped from

terminating the lease. Therefore the landlord should give the tenant written notice immediately upon discovery of a breach that any rent accepted will be accepted with reservation of the landlord's right to terminate.

The burden of proof is upon the landlord to prove the tenant's breach. The tenant begins for the trial by putting witnesses on first. After cross examination the defendant will call his witnesses either to prove that no breach existed or that the breach has been cured in a timely manner.

If the tenant believes that the landlord has in fact breached the rental agreement the tenant is entitled to file a counter claim against the landlord. Additionally, as discussed above the tenant may bring a counter claim asserting that the landlord is retaliating against the defendant because the tenant has exercised its rights under the lease or under applicable law.

It is unusual in General Sessions Court for discovery to occur. However, upon appropriate motion to the General Sessions Court, a judge may allow discovery prior to trial which would hopefully lead to a compromise and settlement of the case. In any event each party is entitled to review prior to trial all relevant lease agreements, documents, and written evidence or proof that either party intends to present to the court during the trial.

As with other types of litigation, most landlord tenant disputes are resolved through negotiations rather than through actual trial. In a residential landlord and tenant case the agreement is generally written directly upon the detainer warrant. If the agreement is complex then the parties may draft an agreed order similar to that used in courts of record and it will be presented to the judge for signature. Many times an eviction case will be continued so that the settlement agreement can be executed and thereafter the detainer warrant dismissed so that there is no record of the dispute.

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