

Employment *and*
Housing Summit

2021

EVICTIION PREVENTION

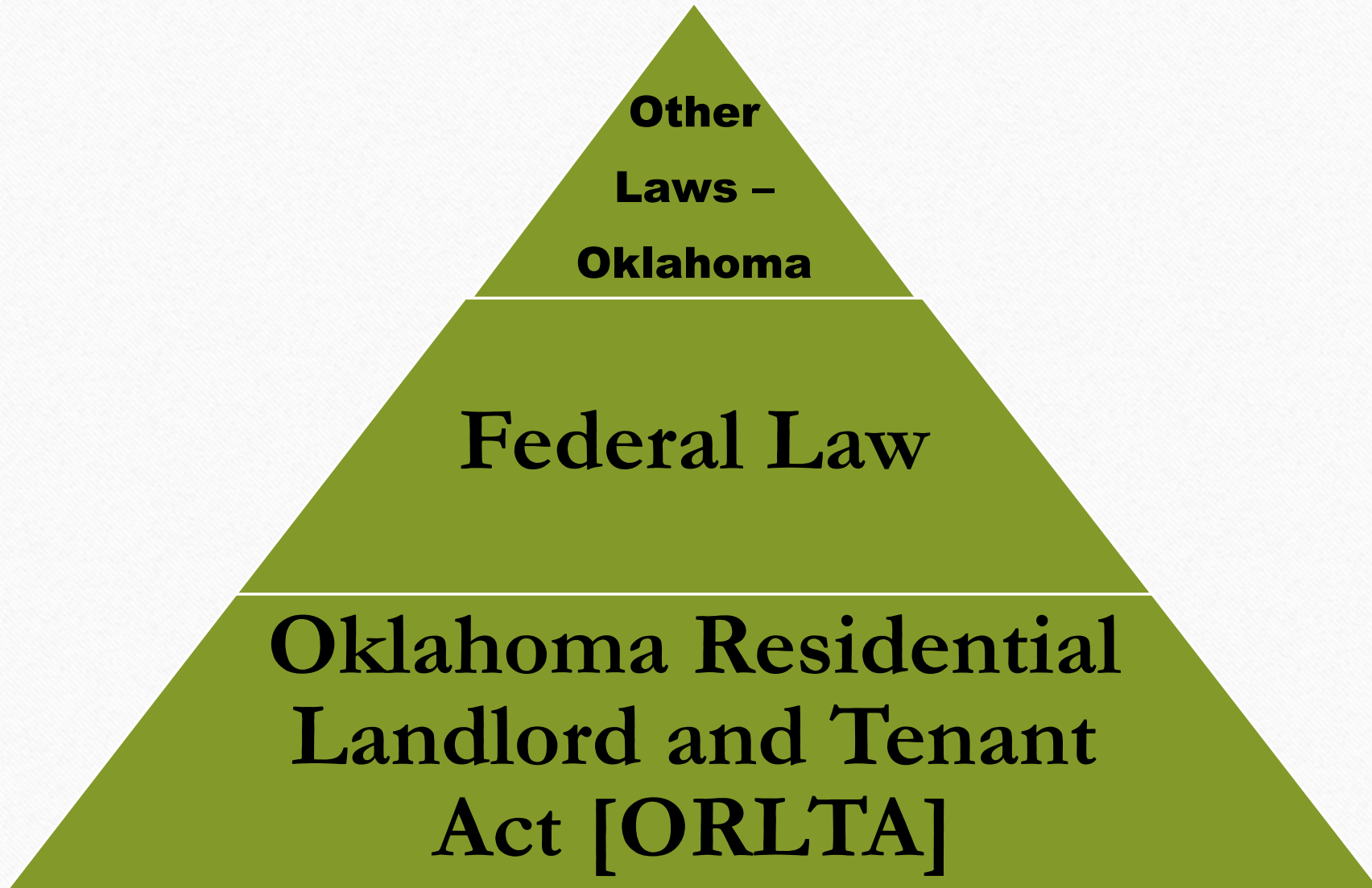
Eviction Prevention

**“EVICTIION PREVENTION BEGINS WHEN THE TENANT FIRST INSPECTS
THAT RENTAL PROPERTY WHICH THE TENANT WANTS TO CALL
HOME!”**

Housing Eviction Legal Assistance Program (HELP)

- Housing Eviction Legal Assistance Program – ACCESS TO JUSTICE
- 1000 + cases since 4/2018 in Oklahoma County
- 60% minority/40%white
- 98% at bottom of economic scale
- No legal status or income qualifiers
- Pre-eviction dispute representation
- Eviction Defense
- HUD subsidized Housing – Administrative Proceedings
- Director: Richard Klinge
- Email - rklinge@okcu.edu Office – 405-3208-5207 Cell – 405-696-9281

WHAT LAW APPLIES WHEN YOUR CLIENT HAS A DISPUTE WITH THE LANDLORD



ORLTA

Enacted 1978
Landlord Oriented
Minimal Substantive Changes Since 1978

Based on 1972 URLTA
Oklahoma refuses to adopt 2015 URLTA changes in 2020

41 O.S. 101et seq

Limited Applicability of 41 O.S 1-61

2021 Pending Bills
Domestic Violence Protection SB 200
Minor's Right to sign contracts (HB2367)

CDC Moratorium
Federal Executive Orders
**Consolidated Appropriations Act,
2021**

Choice Vouchers
HUD Projects
LIHTC
Other HUD Programs

Federal Law

Immigration Laws

Fair Housing
Due Process Issues
ADA
VAWA
**Foreclosure Protections for
Tenants**

Contract Law
Corporate Law
Agency Law
Criminal Law
Tort Law
Waiver
Divorce

Fair Housing
Statutory Interpretation 25
O.S. §1451 seq
Oklahoma Supreme Court
Administrative Decision
Applying Federal Laws

Other
Oklahoma Laws

Procedural Laws:
FED Process - 12 OS §1148.1 et seq
Civil Procedure - 12 O.S. §2001 et seq.
Evidence – 12 O.S. §2101 et. seq.
Small Claims – 12 O.S. §1751 et seq,

Catastrophic Health Emergency
Powers Act, 63 O.S. § 6401 et seq
[City-County Stay-At-Home
Ordinances)
City, County, State Building and
Maintenance Codes

The CDC Moratorium: Myths and Reality

CDC Moratorium: Considerations / Applicability

- **The CDC Moratorium and available rent assistance under the Consolidated Appropriation 2021 Act are separate but related issues. The Act and the current CDC Order are separate documents**
- **THE CDC Moratorium currently runs through June 30,2021.**
- **In Oklahoma County and Western Oklahoma, contact *okcommunitycares.org* for rent and utility assistance**
 - **Contact HELP or Legal Aid for legal assistance**
- **Outside of Oklahoma County: check availability of Rent and Utility assistance in your county**
 - **Contact 211 or Contact Legal Aid in your county**
- **If Tenant is eligible for the CDC Moratorium:**
 - **Landlords can still file evictions; but if tenant qualified the eviction will be stayed.**
 - **Stops eviction for delinquent rent only; does not forgive or excuse rent or late fees or stop evictions for non-rent based evictions.**
 - **May not apply to month-to-month or end of lease terminations; but argument exists in support of coverage**

CDC Moratorium - Federal Troubleshooting Tools for Tenants

Websites:

Declaration:

https://www.cdc.gov/coronavirus/2019-ncov/downloads/EvictionDeclare_d508.pdf

Current CDC Order:

<https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-03292021.pdf>

- **Find emergency rental financial assistance - Call (800) 569-4287 to find a listing for local HUD-approved housing counselors**
- **Report problems with debt collection -Submit a complaint to CFPB at [cfpb.gov/complaint](https://www.consumerfinance.gov/complaint)**
- **Report discrimination - Submit a complaint. Call HUD at (800) 669-9777**

How To Use the CDC Declaration

1. See if the tenant qualifies for eviction protection under the CDC Order. If you or your tenant would like help from an expert, contact (800) 569-4287 or go to <https://www.hudexchange.info/programs/housing-counseling/rental-eviction/> to get contact information for a local HUD-approved housing counselor. Also, you or the tenant can contact HELP or Legal Aid for any questions.
2. If the tenant qualifies, the tenant(s) sign the declaration
3. The tenant (s) gives the signed declaration page to the individual or company the tenant rents from (for example, building management, landlord, etc.). Keep a picture or copy for the tenant's records and call your expert back if there's a problem.
4. **Note**. If tenant is undocumented, consider immigration law implications.

DO I QUALIFY FOR THE CDC MORATORIUM?

If tenant checks at least one box in each column, tenant qualify.

Column A

- I received a stimulus check (Economic Impact Payment) in 2020 or 2021
- I was not required to report any income to the IRS in 2020 or 2021,
- I earned (or expect to earn) less than \$99,000 as an individual or less than \$198,000 as a joint filer you are likely to have earned under this amount if you receive any of the following benefits:
 - Supplemental Nutrition Assistance Program (SNAP)
 - Temporary Assistance for Needy Families (TANF)
 - Supplemental Security Income (SSI)
 - Social Security Disability Insurance (SSDI)
- None of the above — You do not qualify

Column B

- I cannot pay my full rent or make a full housing payment because:
- My household income has gone down substantially
- I have been laid off from work
- My work hours or wages have been cut
- I have extraordinary out-of-pocket medical expenses.
- None of the above — You do not qualify

My Declaration that I qualify

**By checking the
boxes to the right, I
declare that each
statement is true.**

- My income level qualifies for the reasons explained [above]
- I have done my best to make timely partial payments that are as close as possible to the full payment and to get government assistance in making my rent or housing payments.
- If I were evicted, I have no other available housing options, so I would:
 - Probably become homeless, or
 - Have to move to a homeless shelter, or
 - Have to move in with others who live in close quarters.
- I understand that after I sign:
 - Unless I come to an agreement with my landlord, I am still responsible for rent, back rent, and any fees, penalties or interest under my lease.
 - I must still follow the conditions of my lease.
 - Unless I come to an agreement with my landlord, if I fail to make my required payments, I could be evicted when this temporary halt of evictions ends.
 - I can still be evicted for reasons other than not paying rent or not making a housing payment.

If the Tenant Qualifies - Complete the Declaration - Give it to the individual or company from whom the tenant rents.

- Tenant(s) sign and dates the Declaration.
- It is signed under penalty of perjury. That means that the tenant promises that the statements above are the truth and that the tenant understands that the tenant can be criminally punished for lying.
- Give this signed page to the individual or company the tenant rents from.
- The Declaration has the following Notice to Landlords: “ATTN LANDLORDS: Thank you for your compliance. If you violate the CDC’s eviction Order, you and/or your business may be subject to criminal penalties, including fines and a term of imprisonment.”
- If the tenant has already signed an eviction moratorium declaration, you do not need to submit another one.

Stages in the life of a Lease: Commencement – The Honeymoon Begins

Stages in the life of a Lease: Commencement – The Honeymoon Begins

- **THIS IS A BUSINESS DEAL – TREAT IT LIKE ONE!**
- **A CAMERA IS A TENANT’S BEST FRIEND!**
 - **Copies of money orders**
 - **Copies of notices and documents**
 - **Texts and/or emails to give Notice under a Lease.**
 - **Delivery of rent**
 - **Delivery of notices**
 - **Property Issues – damages – repairs**
- **Writings, Writings, Writings, Photos, Photos, Photos**

Stages in the life of a Lease: Commencement – The Honeymoon Begins

- **Read, obtain, and keep a copy of the Lease! Ask Questions.**
- **The Lease, its Addenda and its Rules and Regulations constitute the Lease. Provisions in conflict with ORLTA are unenforceable. ORLTA §§103, 113.**
- **The Lease is the critical document(s) and all rights and obligations emanate from the Lease. See Slides 22,31,34, and 38 re HUD subsidized leases.**

Stages in the life of a Lease: Commencement – The Honeymoon Begins

- **Avoid verbal Leases!**
- **Do Not Sign a Rent to Buy, Option to Buy lease or Contract For Deed without or option to buy –without the advice of a competent real estate attorney. See FED Requirements at 12 O.S. 1148.6. See Slide 41.**
- **DO NOT sign separate agreements to “perform specified repairs, maintenance tasks, alterations or remodeling.”**

Stages in the life of a Lease: Commencement – The Honeymoon Begins

- **Key Lease provisions to consideration**
- **Owners v. Managers - Who is the landlord? [ORLTA § 102(5), 108, 116]**
- **Term.**
 - **What is the initial term?**
 - **Are there automatic extensions of term unless notice given?**
 - **How much notice must be given?**
- **Joint and several liability. Every person who signs the Lease, is liable for the total amount of rent and other obligations under the Lease.**

Stages in the life of a Lease: Commencement – The Honeymoon Begins

- a. SET PAYMENT DATE IN WRITING. If the tenant makes any agreement to pay rent on other than the date set forth in the Lease, get such agreement in writing signed by both tenant and the Landlord.**
- b. Special deals, discounts, or referral fees**
- c. Pets/Assistance Animals [ORLTA § 113.2]**
- d. Utilities and appliances**
- e. Tenants vs. Occupants vs. Guests**
 - i. Tenant potentially liable for all of their actions?**
 - ii. List everyone who will occupy the premises**
 - iii. If occupants change, get written permission**

Stages in the life of a Lease: Commencement – The Honeymoon Begins

- **HUD Subsidized Lease.** Includes Section 8, Project Based, Public Housing –OCHA and OHFA or other applicable Public Housing Agencies
 - **Do not sign a lease for a Section 8 [Housing Choice Voucher] property until it passes inspection. Tenant could be liable for full lease amount.**
 - **Lease terminates; tenant must move or become liable for full rent**
 - **Get copy of HAP Contract and all exhibits**
 - **It effectively becomes part of the Lease**

Moving In

- **Thoroughly inspect the Dwelling Unit. Are there are any necessary repairs or maintenance items which need to be performed by the Landlord (ex, broken blinds, broken windows, stains in carpet, holes in walls, etc.)**
- **Bait and Switch “Hey this is not like the model apartment you showed me.” [ORLTA § 117, 118, 120] See *Ahlstrom* case at slide 45.**
- **Immediately take pictures or a video of the entire Dwelling Unit. Keep a copy.**
 - **This will provide evidence of what it looked like when the tenant moved in. Do not use sound - just the video. After the tenant moves in, follow up with the Landlord and request that these repairs be made by the Landlord.**

Moving In

- If the Landlord has a move-in checklist, complete it in detail and keep a copy for the tenant's records.
- List all items in need of repair inside or outside of the leased premises.
- If the Landlord does not have that Checklist, the tenant should do the inspection any way and write down each of the items identified which need repair or maintenance. Take pictures or a video of the entire Dwelling Unit.
- **Keep a copy.** This will provide evidence of what it looked like when the tenant moved in. Do not use sound - just the video. After the tenant moves in, follow up with the Landlord and request that these repairs be made by the Landlord.
- **Follow-up in writing** with the Landlord if repairs not made.

PAYING RENT

- **Tenant MUST pay rent on time or face late fees.**
- **Never pay in cash; but always get and keep a contemporaneous receipt.**
- **Burden of proof on payment is on the Tenant.**
- **Losing a job, being injured or being too sick to work are good moral reasons but they are not legal reasons a tenant to withhold rent. (However, see CDC discussion above)**
- **A tenant cannot withhold rent for failure of Landlord to Repair**
- **If a tenant pays by money Order, take a picture of it with the Landlord named filled in and with the receipt attached before tenant submits it to the landlord.**
- **The money order receipt says who bought it; not who cashed it!**
- **If tenant cannot pay on time, get a written agreement with Landlord to let the tenant pay at a later date. Get the agreement **IN WRITING!** Keep a copy or take a picture.**

THINGS JUST ARE NOT WORKING OUT

MAINTENANCE ISSUES

- **Landlord has duty to provide fit and habitable premises, to provide essential services, to maintain the common areas, and to maintain all provided appliances and fixtures in good repair and working order [ORLTA § 118]**
- **Follow the lease requirements for reporting repair or maintenance issues or for submitting work orders for maintenance issues or repairs.**
- **If possible, keep copies of any work orders submitted. Take photos or videos of the problem when first noticed.**

MAINTENANCE ISSUES

- **Give the Landlord time a reasonable time to fix the issue(s).**
- **If the Landlord does not fix the issue(s), re-notify the Landlord in writing of the issue(s) which need repair. The writing can be in the form of a text, email, handwritten or typed note. Date, sign and keep a copy of the notice. (ORLTA § 121E).**
- **Be detailed and specific in the notice but not argumentative.**
- **If not repaired, tenant may be able to terminate depending on the Circumstances (ORLTA § 121A, C and D). Second notice required and specific delivery methods required (ORLTA § 111)**

MAINTENANCE ISSUES

- Take additional photos or videos if problems increase or new ones arise. Give additional written notice if new problems arise.
- Put any agreements reached with a Landlord in writing.
- Contact a lawyer to determine what a tenant's rights are in the event the landlord breaches its obligations under the Lease.[ORLTA § 117, 118, 120, 121]
- **IMPORTANT. A TENANT CANNOT WITHHOLD RENT BECAUSE THE LANDLORD DOESN'T FIX SOMETHING OR OTHERWISE BREACHES THE LEASE.**

MAINTENANCE ISSUES

- **TENANT'S ONLY EFFECTIVE REMEDY IS TERMINATION**
- Is it practical?
- Tenant Cannot Just Walk Away
- Should the tenant call appropriate government agency such as (i) Action Center in Oklahoma City, (ii) Oklahoma City County Health, (iii) Oklahoma Department of Environmental Quality, OCHA, OHFA or other applicable PHA, or (iv) applicable county or municipality with code compliance authority? **Maybe – Maybe not!**
- Benefits/Risks –Competent lawyers do **not** guaranty outcomes! Risks if all required steps not taken.
- Retaliation
- Is it a casualty loss or a maintenance issue? [ORLTA § 122]

BREACH BY TENANT

- **Failure to Pay Rent - 5-Day Notice to Quit (ORLTA § 131) Contact a lawyer if a tenant has questions.**
 - **If tenant is given a Five-day Notice to pay rent, tenant MUST pay the rent due plus the applicable late fee within the 5 days or landlord can sue for eviction. The landlord can give the notice and sue simultaneously' but the tenant still has the 5-day cure period.**
- **Other Breaches by Tenant (ORLTA § 132). Contact a lawyer if a Tenant receives any Notice to terminate the Lease from the Landlord!**
 - **Depending on issues notices range from immediate for criminal or other specified acts or 10/15-day notice for other breaches**
 - **HUD subsidized or LIHTC leases, the landlord has additional notices involved, landlord has additional federal notices.**
- **A LANDLORD CANNOT FORCE THE TENANT OUT WITHOUT TAKING THE TENANT TO COURT!**

Breach by Landlord – Repair Issues

- Two Stage Notice Process: Initial notice (121E) followed by formal termination Notice.
- Contact a lawyer to make sure proper notice is given to Landlord.
- ORLTA § 121E - Initial Notice
- ORLTA § 121A- Material Breach – 14/30 Day Notice
- ORLTA § 121C – Failure to provide essential services termination or other remedies to obtain other premises and offset rent
- ORLTA § 121D – Uninhabitable or imminent threat to health and safety
- ORLTA § 121B – **If repair under \$100**, and landlord does not repair, tenant can give ten-day notice and cause repair to be done and deduct rent

Other Breaches by Landlord

- **Notices for failure to provide 24-hour notice before entering Dwelling Unit [ORLTA § 124, 128]**
- **Notices for failure to timely deliver premises [ORLTA § 120] [Ahlstrom Case - Slide 45]**
- **Casualty loss [ORLTA § 122]**
- **LIHTC Issues - See attorney if LIHTC involved**

Other Breaches by Landlord - Federally Subsidized Properties

- **Section 8/multifamily subsidized properties/Public Housing**
- **Abatement of Payments by Housing Authority versus Termination of HAP Contract**
- **Project Based Multifamily**
- **Public Housing**
- **Discovery and due process**
- **Ten-day notice for hearing**

- **TENANT CANNOT JUST WALK AWAY FOR BREACH BY LANDLORD**

Things To Do When Lease Is Terminated By Either Landlord Or Tenant

- **After a tenant has moved everything out and before returning the keys:**
 - **If the lease requires a walk-through with landlord, comply with lease requirements. Document and photograph anything the landlord says is the tenant's responsibility**
 - **Clean the Dwelling Unit thoroughly.**
 - **Take pictures or a video of the entire Dwelling Unit so tenant can show what it looked like when tenant vacated. This will be very important to have if a dispute about property damage arises between the Tenant and the Landlord.**
 - **Return the keys to the Landlord. Get receipt for keys or take selfie of the return of the keys.**
 - **Always return all keys and garage door openers and similar devices belonging to the landlord.**
 - **Request Return of Deposit in Writing. See Slide 36.**

Return of Deposit [ORLTA § 115]

- The Landlord has 45 days after the later of termination of the lease, delivery of the premises or receipt of written demand from tenant to return the deposit to either send a certified letter to tenant returning the deposit or some of it and/or explaining in detail why some or all of the deposit was not returned.
- Tenant must provide landlord a written demand for the return of the deposit and an address where the deposit should be sent. If written demand not made within six months from termination, tenant waives the right to any deposit.

Miscellaneous Lease Issues

- Landlord generally must give 24 hours' notice before entering tenant's apartment and it must be at a reasonable time except in case of emergency. [ORLTA § 124,128]
- Impact of Covid-19
- Quiet Enjoyment/Marijuana laws
- Reasonable Accommodations
- Sale or foreclosure of Dwelling Unit [ORLTA § 114 – also Federal Law]
- Fair Housing Issues/Marijuana laws
- Can I sublet or make my leased premises an Air B&B my dwelling unit?
- Evicting family members.

A Forcible Entry and Detainer is filed

What Happens When the Landlord Pursues an Eviction

- **A LANDLORD CANNOT FORCE A TENANT TO LEAVE A DWELLING UNIT WITHOUT FIRST TAKING THE TENANT TO COURT AND OBTAINING A JUDGMENT AGAINST THE TENANT AND OBTAINING AND EXECUTING UPON A WRIT OF ASSISTANCE.**
- **Generally, a notice must also have been served on the tenant by the landlord.** See Slide 31.
- **Recommendation.** A tenant should try to avoid getting an eviction because this will make it more difficult to rent another leased property. Additionally, it can adversely affect the tenant's credit rating. Try and reach a settlement, if possible, with landlord.
- **The effect of the CDC Moratorium See Slides 5-15.**
- **Effect on HUD Housing:** Duty to Report FED to PHA and potential loss of HUD housing eligibility.

What Happens When the Landlord Pursues an Eviction

- A Forcible Entry and Detainer Action (FED), which is commonly called an eviction action, is commenced by the landlord by the filing of a Petition and serving Summons on the Tenant.
- By law, an FED is set 5-10 days after filed. Thus time is of the essence. Contact an attorney as soon as tenant is served with a Summons and Petition.
- Keep all notices and pleadings served on tenant and any envelopes in which they were served.
- The nature of the service of the Summons and Petition sets the type of judgment to which the landlord is entitled.
 - Personal versus constructive service
 - Did the tenant appear in court regardless of the type of service

What Happens When the Landlord Pursues an Eviction

- Consider any counterclaims [or potential separate actions against landlord] and
- Comply with FED statutes if tenant claims an interest in the property., [See 12 O.S. §1148.6]
- See FED process generally at 12 O.S. §1148.1 *et seq.*
- If the tenant goes to Court without an attorney and cannot reach an agreement with the Landlord or its attorney, the tenant has a right to have a hearing before the Court.
- If an agreement is reached with the Landlord, whether before or after an FED is filed, make sure that it is reduced to writing and that tenant gets a copy of the final agreement. Do not leave Court without a copy of any such Agreement.

What Happens When the Landlord Pursues an Eviction

- If the tenant does not understand something, ask the court clerk in the Courtroom. DO NOT LET LANDLORDS OR THEIR ATTORNEY INTIMIDATE A TENANT.
- In Oklahoma County, If a tenant does not reach an agreement to settle ITS case and if the Court rules in favor of the Landlord, the landlord upon request will a Writ of Assistance Writ. The Writ orders the Sheriff to deliver to the tenant a written notice stating that if the tenant does not vacate within 48 hours after said Notice is posted by the Sheriff, the Sheriff will forcibly remove the tenant from the leased premises after the expiration of said 48-hour period (Notice).
- If a tenant is evicted from the leased premises and does not get all of the tenant's personal property before the end of said 48 hours, the tenant has limited rights to later remove the property pursuant to ORLTA § 130. However, it is best to get all property out before the end of the 48 period.
- If a tenant loses a FED action, the tenant should contact an attorney immediately to determine if there is any right to vacate the judgment either through ta Motion or a Petition to Vacate.
- Limited right to seal eviction records. [CCP contract contains agreement to seal.] But see 51 O.S. §§24A.29, .30.

Resources

Legislative History of ORLTA

- The primary law regulating residential leases throughout in Oklahoma is the Residential Landlord and Tenant Act (ORLTA). See 41 O.S. §101 *et seq.* It was initially enacted in **1978**. It is based on the 1972 version of the **Uniform Residential Landlord and Tenant Act (URLTA)** developed by the Uniform Law Commission (ULC). See www.uniformlaws.org
- The Oklahoma Legislature gutted key tenant protections from the URLTA.
 - Retaliatory Eviction
 - Independent Duties to Pay Rent and to Repair
 - Apply equitable principle/Unconscionability (**Adhesion Contract Issues**)

Evolution of ORLTA – Appellate decisions

- **Waggoner v. Bennett**, 814 P.2d 476 (Okla. 1991)
 - Specified Remedies in ORLTA override common law remedies
- **Stone v. Linden**, 210 P.3d 866 (Okla. 2009)
 - Damage claim by tenant for personal property damage not barred by ORLTA since not specified.
- **Miller v. David Grace, Inc.**, 212 P.3d 1223 (Okla. 2009)
 - General duty of care upon landlords to maintain the leased premises
- **Saunders v. Smothers**, 454 P.3d 746 (Okla. 2019)
 - Miller, supra applied to tenant who slipped on water from leaking hot water tank –question of fact for jury.
- **Tracy-Herald Corp, v, Jones**, 466 P.3d 624 (OK Civ App 2020)
 - How notice to cure under 41 OS 131 is a due process issue; but the form of the notice is not.
- **Ahlstrom v. Campbell Real Estate** --- P.3d ---- (2020) 2020 OK CIV APP 70 (9/23/20)
 - If property not in compliance with ORLTA at commencement does ORLTA 120 or 121 apply
- **Shropshire v. Parsons**, 2021 OK Civ APP 13 (3/18/2021) – Need for certified counterclaim in small claims landlord/tenant dispute

Legal Resources To Assist Tenants

- Legal Aid of Oklahoma, <https://www.legalaidok.org/>.
- Metropolitan Fair Housing Council of Oklahoma, Inc. <http://www.metrofairhousing.org/resources.html>.
- **OCU School of Law- Housing Eviction Legal Assistance Program (HELP) –800 N. Harvey Ave., Room 230F, Oklahoma City, Oklahoma 73102-2813. Contact: Richard Klinge, rklinge@okcu.edu; 405-208-5207 (office) 405-696-9281 (cell).**
- Still She Rises – Tulsa, <https://www.stillsherises.org/>
- University of Tulsa School of Law, <https://law.utulsa.edu/wp-content/uploads/sites/3/2020/06/TWC-Eviction-Court-Report-FINAL.pdf>.

Resources Regarding Tenant Rights

- Covid-19 Oklahoma Court Orders, <https://www.oscn.net/notices/>.
- FED Procedural Statutes, 12 O.S.1148.1-1148.16 [See OSCN]
- Legal Aid of Oklahoma, <https://oklaw.org/>
- National Housing Law Project, <https://www.nhlp.org/>
- National Low Income Housing Coalition, <https://nlihc.org/>.
- Oklahoma Residential Landlord and Tenant Act 41 O.S. Section 101 et seq. [See OSCN]
- Oklahoma Supreme Court Network (OSCN), www.oscn.net.