

February 15, 2017



BY EMAIL

John W. McConnell, Esq., Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004
rulecomments@nycourts.gov

Dear Mr. McConnell:

Legal Services NYC is the largest civil legal services provider in the country. LSNYC's nearly 500 staff members work together to fight poverty and seek racial, social, and economic justice for low income New Yorkers. For almost 50 years, LSNYC has challenged systemic injustice and helped clients meet basic needs for housing, income and economic security, family and immigration stability, education, and health care. LSNYC is one of the two largest providers of no-cost representation in housing court for low-income New Yorkers. As a result, it is crucial for us and our client base that housing court forms are readable and informative. We are thrilled that these forms are being reconsidered and that we are being given this opportunity to provide comments.

LSNYC applauds the efforts of OCA and the New York State Access to Justice Program to make housing court proceedings simpler and more accessible to New Yorkers of all income levels and educational backgrounds. The proposed edits to the Model Notice of Petition and accompanying information sheet are a good first step towards this goal. However, LSNYC believes these forms can be made even clearer and more useable for low-income and *pro se* litigants, especially those who are limited English proficient (LEP) or who suffer from disabilities.

We have added certain specific suggestions directly to the Model Notice of Petition and the proposed Information on Answering in bold and underlined text and attached those suggestions to this letter. We also wish to provide a few overarching comments below.

First, LSNYC believes it is imperative that the Notice of Petition clarify that the Petitioner is seeking back rent from the Respondent, and that Respondents can avoid eviction by paying the rent owed or proving

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that they do not owe any rent. As currently worded, the petition implies that the landlord is seeking to evict the Respondent, regardless of the payment of rent (see items 1 & 2 on the Model Notice). Similarly, the Notice of Petition states that Respondents have a right to a trial to determine whether they can be evicted, when, in fact, a non-payment trial is to determine whether they owe any back rent, and, if so, how much (see item 3). Along these same lines, the Notice of Petition should also explain to Respondents that if they are unable to pay a judgment in the time ordered, they have the right to seek an Order to Show Cause to stop an eviction. Our specific comments in this regard are set forth on the attached Model Notice of Petition itself.

Our second overarching comment with respect to the Model Notice of Petition deals with language access and the rights of limited English proficient (LEP) housing court litigants. LSNYC is very pleased to see that the proposed Notice of Petition notifies Respondents that language help is available for those who do not speak English well, but we believe the current notification (item 7 on the Model Notice) is insufficient. More than half of New York City residents speak a language other than English at home, and nearly a sixth of NYC households contain no individuals over the age of fourteen who speak English well. Without accurate, accessible, translated forms and websites, and professional interpretation in courtrooms and clerk's offices, this huge population is denied meaningful participation in the court proceedings against them. *For additional information, see www.legalservicesnyc.org/interpretingjustice.* Therefore, it is vital that all housing court forms and court websites are easily accessible to LEP New Yorkers in languages they understand.

The Notice of Petition should notify people of their right to an interpreter and the availability of other language access resources in at least the top six languages, plus Urdu and Bengali. Additionally, the housing court websites – particularly the interpreter FAQs page, to which the Notice of Petition now directs people – should have a side bar in different languages directing people to information in that language. At the moment, the interpreter FAQ page has a side bar which says in English “translated information and materials.” Only by clicking on that can one find alternate languages. But, of course people, who do not speak English well are not going to understand what “translated information and materials” means in order to click on it. Moreover, those foreign language links themselves redirect to a page that does not actually provide information on how to obtain court interpreting services, nor does the page indicate that people who need a court interpreter should call the court clerk and request one in advance. LEP individuals who do not request court interpreting services in advance *very* frequently find their court date adjourned, requiring them to unnecessarily make two trips to the court house and take two days off from work, etc.

Similarly, the NYC housing court website must be translated into at least the top six languages, plus Urdu and Bengali, instead of only Spanish and Chinese, as it is currently. As above, it is important that people

who do not speak English can navigate easily to the translated portions of the website. For example, the current housing courts website includes many resources in other languages, but navigating to those resources is difficult even for English readers, and virtually impossible for people who are LEP.

We also hope, as the courts are considering redrafting these forms, that the courts will consider ensuring that copies of these forms and related notices are sent to litigants in both English *and* Spanish, as proposed recently in a bill by NY State Assemblywoman Latoya Joyner. That bill also proposes requiring that litigants receive a multi-lingual notice directing LEP litigants to the courts' multi-lingual web-based materials and to a court telephone number where litigants may receive information in their native language on eviction procedures more generally.

Just as all housing court forms and websites must be more accessible to LEP litigants, they also must be more accessible to litigants with disabilities. The Model Notice of Petition's current suggestion that litigants "tell a Court Clerk" or visit a website for assistance if they require accommodations (see item 7 on the Model Petition) is impractical and inadequate at best. People with disabilities are disproportionately low-income, and are less likely to have access to the internet or to be able to get to facilities where they can use the internet for free. They also may have difficulty even getting to the courthouse to speak with a clerk. It is necessary that the Notice of Petition include a phone number for people with disabilities to call if they need to request a reasonable accommodation for their court cases.

LSNYC also has several suggestions and comments regarding the proposed Information on Answering sheet. The proposed Information on Answering sheet, which appears to be an adaptation of the current *pro se* answer form, has the potential to be a very helpful resource and can be improved to make the information more complete and clearer. As stated above, our specific suggestions are made on the attached document, and our general comments are below.

As an initial matter, several of the numbered items on the Information sheet are confusing because they combine unconnected concepts. For example, item 3 combines a defense based on a failure to name a necessary party with a defense concerning a tenant of record who has died. At the same time, the common defenses that the tenant of record has moved out or surrendered the premises are not available on the form. The same occurs in item 8, which refers to both a rent overcharge defense and a repair and deduct defense, and item 17, which refers to a landlord seeking the HUD or Section 8 portion of the rent and the landlord failing to notify HUD or the Housing Authority about this case. Each of these concepts should be separated

to make clear to tenants that each is its own defense, and thus, for example, one may have a defense where a necessary party has not been named regardless of whether the tenant of record has died.

Additionally, some defenses, such as improper service or breach of warranty of habitability, must be plead with particularity, or they are waived. Because these defenses require a Respondent to provide specific information, the Answer form should prompt Respondents to provide relevant details they might not otherwise know to include (The same way, for example, a tax preparer will always prompt people for certain obscure deductions that most people do not know about). The Information on Answering sheet should also provide examples or a definition of harassment in the housing context, which is not necessarily the same as the colloquial understanding of the term “harassment.”

Similarly, rather than asking tenants to let the clerk know about other counterclaims, it would be more clear and helpful to list common counterclaims such as breach of warranty, rent overcharge, harassment and attorneys fees. Although some of these items are also defenses, the relief available is much broader if pled as a counterclaim. As defenses, these claims can only act to offset the rent sought by the landlord; as counterclaims, however, these claims can help tenants receive substantial sums of money, particularly where landlords have overcharged tenants for many years.

LSNYC also strongly recommends that the Information on Answering sheet, as well as the Answer form itself, should state, in the top six languages plus Urdu and Bengali, that litigants have a right to a free interpreter and that the Answer form can be provided in their language or read to them in their language by an interpreter.

It is also important that the housing courts track the languages of litigants from the inception of a case, where possible, to ensure that interpreters in the relevant languages are available for each court date involving that litigant. Thus, the Answer form should include a text box with a list of languages where litigants can check off their primary language for the courts to track. For example, the forms could include a box on the side of the page that simply says “I speak _____” translated into at least the top six languages, plus Urdu and Bengali, as well as a blank spot where people can write in other languages. This would be a simple way for litigants to notify the court of their LEP status and the need for an interpreter during their housing court cases and help the courts ensure that interpreters are scheduled and available for all court dates.

Finally, we suggest informing Respondents on both the Information sheet and Answer form that they may obtain a guardian *ad litem* (GAL) if they cannot adequately protect their own rights or participate fully in their own case. This will help vulnerable litigants avoid defaults and help both parties avoid unnecessary legal

costs that arise as a result of a late discovery that a tenant needs a GAL. If a tenant or the tenant's representative notes at the start of a case that a GAL may be needed, the court and the petitioner will be on notice and, where necessary, the tenant can be referred to Adult Protective Services.

LSNYC appreciates the opportunity to comment on these forms and hopes that its suggestions to make them even clearer and more useable for all litigants, especially those who are limited English proficient or who suffer from disabilities, will lead to further improvements to these important forms.

Very Truly Yours,

Legal Services NYC

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF _____

-against-

| | | |
|--|--------------------------------------|----------------------------------|
| | Petitioner(Landlord), | Index No. L&T _____ |
| | | Notice of Nonpayment Petition |
| | Respondent(Tenant), Address: | Petitioner Business Address: |
| | Respondent(Undertenant). Address: | |

Your landlord is suing ~~to evict you.~~ **you for nonpayment of rent.**

1. Your landlord has started an eviction nonpayment case against you **to get back rent your landlord believes you owe. If you do owe your landlord money and you do not pay it, your landlord will ask this Court to make you move out of your home, the place where you are living, for the reasons given in the attached Petition.**

2. Your landlord is asking this Court for:

- a money judgment for \$ _____, plus interest from _____, 20__, and
- **If you do not pay, the landlord will ask for permission to evict you from:**

| |
|--|
| Address or description of the premises |
|--|

3. You have a right to a trial to determine ~~if you can be made to move~~ **whether you have to pay the money your landlord is asking for,** but *only if* you Answer this Petition within the **five days** after these papers were given to you or ~~a person who lives with you~~ **to another person in your home,** or were posted at your home.

Warning! If you *don't* Answer the Petition within 5 days, a “default judgment” may be entered against you. **A “default judgment” means that you did not come to court when you were supposed to.** If that happens, the landlord will have the right to evict you. You can be evicted as early as ~~to~~ **11** days after you get this notice.

Even if you:

- **Do not think you owe the landlord any money, or**
- **Miss the 5 day deadline to Answer**

YOU SHOULD STILL COME TO COURT and tell the judge you want to Answer the Petition. Otherwise, you might get evicted!

4. The “Answer” is your response to this document. It should say the legal reason(s) that you don't owe all or part of the rent your landlord is asking for. These legal reasons are called “defenses.” Any defense you list will have to be proven by you in court. **Your answer might also state legal claims you have against your landlord. These are called “counterclaims.”** To Answer the Petition you must either:
 - Go to the landlord-tenant Clerk's Office at _____ and tell the Clerk your Answer **in person**, or
 - Give the landlord-tenant Clerk your Answer in writing (Civ-LT-91a). Information to help you Answer the Petition is attached (Civ-LT-92).
Important! If you don't tell the Clerk about a defense in your Answer you might not be able to talk about it later in this case or any other case.
5. When you Answer the Petition you will get a court date between 3 and 8 days later. **You must come to court on that day. If you do not come to court, the court may enter a default judgment against you, and your landlord may be able to evict you.**
6. If you are not named in this Notice ~~and you claim to have a right to live in the premises, you have a right to come to Court and Answer the Petition.~~ **but you live at the address on the papers, you should still come to court and Answer the Petition.**
7. Available Resources:
 - Language Services: If you don't speak or understand English well, you have a right to a free court interpreter.
If you need a court interpreter, you should tell the Court Clerk (address above in No. 4) or call 646 366-5670. For more information about court interpreters, visit <http://www.nycourts.gov/COURTINTERPRETER/faqs.shtml>. To read a translation of this Notice in another language visit www.nycourts.gov/languages/index.shtml.
[LSNYC comments: The above paragraph should be translated into at least the top 6 languages, plus Urdu and Bengali. The FAQs page does not actually provide information about requesting a court interpreter other than what is already in the sentence above, so people should not be directed to that website if they actually need a court interpreter. Additionally, that page is entirely in English. The list of languages in which translated materials are available should be visible right on the page without having to click any links or know any English to find the translations]
 - ADA Help: If you need special accommodations to use the court because of a disability, tell a Court Clerk or an ADA contact person listed at: www.nycourts.gov/accessibility/listbycounty.shtml.
[LSNYC comments: there should be a phone number for people with disabilities to call for assistance. Many low-income people do not have internet access, and it may be difficult for people with disabilities to come to the courthouse in person.]
 - Financial Help: If you do owe past rent and don't have the money to pay it, contact HRA's Infoline at (718) 557-1399 for more information about getting help paying back rent.
 - Legal Help. The court does not give you a lawyer. If you do not have money to hire a lawyer, ~~contact the~~ **you may be able to get a free one from the** Legal Aid Society (212 577-3300) or Legal Services NYC 212-431-7200 **(917-661-4500)** or **you can** visit LawHelpNY at www.lawhelp.ny.org. If you ~~can~~ **afford to hire have money to pay for** a lawyer, you can contact the New York City Bar Legal Referral Service at 212 626-7373.

- **Help at the Courthouse:** There is a Help Center in the courthouse where you can speak to a Court Attorney or a Volunteer Lawyer.
- **Online Help:** Visit the Housing Court's website at: www.nycourts.gov/nychousing (also available in Spanish and Chinese) or visit LawHelpNY at www.lawhelpny.org.

[LSNYC comments: the housing court page should be translated into the top 6 languages, plus Urdu and Bengali, at a minimum]

Postponements and Rent Deposits. In court you can ask to postpone your case. But, if your case is not finished 30 days after the first court date, or you ask to postpone the case twice, the court can order you to deposit money in court or make a rent payment to the landlord. If you don't do this, the landlord may get a judgment against you without a trial. If you fail to make future payments ordered by the court, your case may go to trial right away. RPAPL Sec. 745.

After Judgment. If the court orders a judgment against you after a trial, the court may give you up to 5 days to pay the judgment and not be evicted. If you need more time to pay, you can go to the Clerk's office and ask for an Order to Show Cause. In the Order to Show Cause you will tell the Court why you need more time to pay. You should also give the Court proof that you are trying to pay the money you owe. A judge will decide whether you will be given more time to pay the money.

Once the warrant of eviction is issued, the landlord can still evict you even if you pay the rent. If you get a Notice of Eviction after you have paid the rent, you should go to the Clerk's office and ask for an Order to Show Cause. After the warrant of eviction is issued, you will get a Notice of Eviction from a Marshal giving you at least ~~72 hours~~ 6 days from the date on the Notice to move. If you don't move you will be evicted unless you get an Order to Show Cause signed by a judge.

City of New York, County of __ Dated:-----' 20_
Clerk of the Civil Court of the City of New York:-----

Petitioner or Attorney for Petitioner: _____
Address: _____
Telephone No. _____

INFORMATION ON ANSWERING A NOTICE OF PETITION AND PETITION
(EVICTION CASE ~~DISPOSSESS PAPERS~~ for NON-PAYMENT of RENT)

If you are in court for a "Non-Payment" case, because the Landlord claims you owe rent, you have the right to tell the Court the reason(s) why the rent may not be owed. Below are some reasons, called defenses, which the Court can consider in deciding how much rent you may owe to your Landlord. Tell the Clerk any reason(s) which you believe you are able to prove to the Judge. You may go to the Help Center if you need more information to help you answer in your case.

[LSNYC comments: regarding the text box above, there should be some mention of counterclaims. Also, there should be an indication that the list below is non-exhaustive. An explanation of the need to verify an answer that includes certain defenses, and how to do so, would also be helpful.]

SERVICE

1. I did not receive a copy of the Petition and Notice of Petition (Eviction papers/Dispossess).
2. I did not receive the court papers correctly as required by law. *(See a Housing Court Counselor (.Pro-Se Attorney) or seek legal advice if you think you did not receive the eviction papers properly.)*

[LSNYC comments: need to explain what correct service is and prompt tenant to specifically explain the manner in which they did (or did not) receive the papers, and to rebut the process server affidavit if wrong. For example, "the papers were not handed to me in person AND they were not mailed to me by certified mail, posted to my door," etc.]

PARTIES

3. My name is not correct, is wrong or is missing from the court papers. The tenant is dead **or has moved out.**

[LSNYC comments: these are two separate defenses and should be broken out.]

4. The Petitioner is not the Landlord or Owner of the building, or otherwise a proper party.

RENT

5. I was not asked, either orally or in writing, to pay the rent before the Landlord started this case.
6. I tried to pay the rent, but the Landlord refused to accept it.
7. The monthly rent being requested is not the legal rent or the amount on the current lease.
8. The Landlord owes money to me because of a rent overcharge. **The Landlord owes money to me because** I paid for repairs or services.

[LSNYC comments: these are two separate defenses and should be broken out.]

9. The rent, or a portion of the rent, has already been paid to the Landlord.

APARTMENT

10. There are conditions in the apartment/building/house which need to be repaired and/or services which the Landlord has not provided.

[LSNYC comments: Could there be a prompt here to have the Respondent specify a list of the bad conditions? Also, could there be a prompt here to raise the possibility of a warranty of habitability counterclaim? And finally, should there be a indication that Respondent could consider specifying conditions going back up to 6 years as a counterclaim?]

11. The petition does not describe the apartment/house correctly, **for example, it states the** wrong apartment/house number. **The petition contains** wrong or missing **information about** program(s)/and or laws covering my tenancy.

[LSNYC comments: these are two separate defenses and should be broken out.]

12. The apartment/house is an illegal apartment.

OTHER

13. Laches: the petition comes as a surprise, the landlord knew for a long time that I owed the rent and waited too long to bring me to court. This delay has caused me harm.

[LSNYC comments: this defense would be better placed in the "Rent" section above]

14. I am not certain the petition is correct.

[LSNYC comments: this does not articulate a cognizable defense. It should either be deleted or amended to prompt the Respondent to indicate that some other specific information contained in the Petition is incorrect]

15. NEW YORK CITY ONLY The Petitioner has harassed me

[LSNYC comments: here, it would be helpful if a definition of harassment or a list of examples of harassment could be provided. It would also help if the Respondent could be prompted to identify all instances of the harassment alleged.]

-
16. I am in the military /dependent on someone in the military.

17. The petition seeks the HUD OR Housing Authority Section 8 part of the rent. The petitioner did not notify

HUD OR Housing Authority about this case. Other-----

[LSNYC comments: these are two separate defenses and should be broken out]

COUNTERCLAIMS

18. I seek a judgment and/or order based upon the above defense(s).-----

19. Other counterclaim(s): *(Please tell the Clerk any other reason(s) why you believe you do not owe your Landlord some or all of the rent or tell the clerk if you wish to file a counter claim).*

[LSNYC comments: some explanation of what counterclaims are and some examples would be helpful here.]

From: Ray Beckerman <[REDACTED]>
Sent: Thursday, December 15, 2016 11:12 AM
To: rulecomments
Subject: I think the proposed amendments to eviction petition are good

Categories:

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From: Holder, Don (Law) <[REDACTED]>
Sent: Thursday, December 15, 2016 12:18 PM
To: rulecomments
Subject: comment from interested members of the public and the legal profession on the Proposed Amendment to Model Eviction Notice of Petition

Categories:

I've always been impressed by the way legal documents were written to communicate with the reader, and one thing that I have always noticed is that as soon as you get to a portion of the document that a lawyer should be reading, the language changes to a higher level of education by using terms and sentence structures that suggest that only a qualified individual should read it. Legal documents should be written in a form to educate individuals, not "dummy them down" and in this case, it should be boldly stated in a place where an individual may confuse the intent of this form, that this form is **not an eviction notice**, and also offer definitions on legal terms that may pose some difficulty to an individual. Let's make America great simply because it is great.