



Legal Aid  
Society  
of Hawai`i

# How To Counterclaim If You Are Facing An Eviction

## Important

Use this brochure if you have received court papers (*Complaint & Summons*). This brochure/packet should be read with our brochure called *Eviction: The Court Process*. If you have any questions, please call the Legal Aid Society of Hawai`i. *See the back of this brochure for phone numbers.*

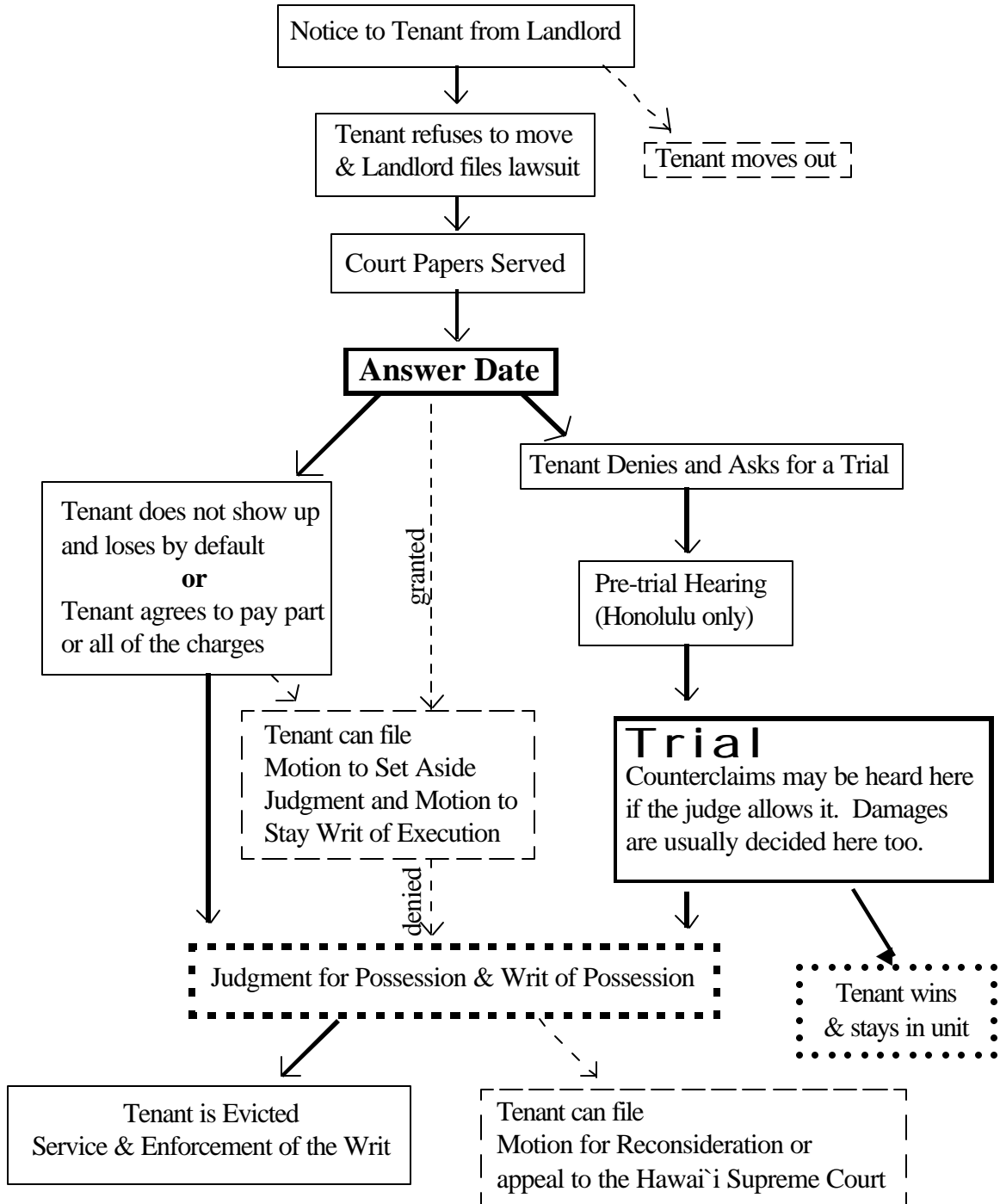
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## Landlord-Tenant Evictions

Use this page as a checklist whenever you have dates scheduled.  
Write in the dates next to each event and make notes.



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# Part I: What To Expect If You Counterclaim

## What Is An *Answer & Counterclaim*?

The *Answer & Counterclaim* forms in this packet are your chance to tell your side of the story and to bring your own claims against the Landlord.

### In order to evict you, a Landlord needs to do three (3) things:

- (1) give you proper written notice telling you he or she wants you out;
- (2) serve you with court papers (*Complaint & Summons*) telling you to go to court, and
- (3) win at court before a judge and get a judgment against you (called a “writ of possession”) that orders you to move out.

The whole process can take between two weeks to a month depending on how you respond to the court papers.

### Once you receive court papers, you have three (3) options:

- (1) you can find a new place to live and move out.

If you owe back rent, or if you agree with the Landlord’s claims against you, you can start looking for a new place to live. The earlier you move out, the easier it may be for you. If you owe back rent or if you just want to find out how to “buy time” to find a new place to live, this packet may not be necessary for you. Call the Legal Aid Hotline (536-4302) 9-11:30/1-3:30 for more information.

- (2) you can defend your position in court to try to (a) reduce the amount of money the Landlord may claim you owe and/or to (b) stay in the unit.

This means you will Answer (“respond to”) the court papers you have received before a judge.

- (3) you can counter-sue the Landlord for problems he or she has caused you.

This means you will counter-claim and ask the court to consider awarding you damages.

### This packet is used for those who:

- (1) have received court papers for eviction
- (2) want to answer and counterclaim the Landlord’s claims
- (3) want to tell their side of the story to the judge.

**This packet will cover:**

- (1) how to fill out an *Answer & Counterclaim*, and
- (2) how to file and serve these documents.

**Remember: Filling out an *Answer & Counterclaim* does not mean you are going to win. In most cases, it only buys you time to move out. You should prepare as if you will be evicted, so that you do not find yourself without a place to live.**

# How Do I Counterclaim?

In general, you should counterclaim by your Answer Date (the first hearing) or at least 48 hours before the trial. Your Landlord had to do a few things before the sheriff could serve you with your court papers. Since you are bringing a claim against the Landlord you will need to also do a few things by the Answer Date:

**1. Fill Out And Make 5 Copies Of The Enclosed *Answer & Counterclaim* Form (See Part II on Page 6)**

This is your response to the Landlord's complaint and it lets you tell your side of your story of the judge.

**2. Pay \$30 When You File Your Forms OR Ask The Court For A Waiver (by filling out the *Ex Parte Application for Relief from Costs*) See Text Box on Page 16 for more information.**

If you can not afford the court filing fees you can ask for waiver of the costs. If you are asking for a waiver, fill out the *Ex Parte Application* form enclosed with this packet, take it to the District Court in your circuit. Drop it off and come back the next day to see if it was approved. This waiver takes a day to get approved so if you need to turn in your *Answer and Counterclaim* immediately, pay the \$30 rather than turn your forms in late.

**4. File All The Forms**

Go to District Court in your circuit (see the back of this instruction packet for the addresses and phone numbers), pay the filing fee if your fee waiver (*Ex Parte Application*) was not approved Ex Parte Waiver, and ask them to file stamp each of the *Answer & Counterclaim* copies. The file stamps tells anyone who receives a copy that it has been filed in District Court. The clerk will keep the original for the court's records.

**5. Serve ("Give the documents to")The Landlord's Attorney. (if no attorney, serve your Landlord)**

Serving your Landlord means to deliver a file-stamped copy of your *Answer & Counterclaim* to your Landlord's attorney (if your Landlord doesn't have an attorney, give the document to your Landlord). You can deliver it personally or mail it. Serve the papers on the same day that you got them file-stamped at court.

# Part II: How To Fill Out, File, And Serve The Counterclaim

This part will teach you how to:

- (1) fill out the *Answer & Counterclaim* form  
This is your response to the Landlord's complaint and it lets you tell your side of your story to the judge.
- (2) fill out the *Ex Parte Application* form  
This acts as a fee waiver if you cannot afford the court filing fees (\$30.00).
- (3) file both papers with the court
- (4) serve ("give the documents") your Landlord or Landlord's attorney.

You will find both forms you will be filling out in Part IV of this packet.

## Filling Out The *Answer & Counterclaim*

### Step 1: Preparation To Fill Out This Form

Gather the following documents and items. There are two court forms at the back of this packet. Look for the one called "*Defendant(s)' Answer And/Or Counterclaim To Complaint For Summary Possession; Declaration; Certificate of Service; Exhibits*".

- ▶ Complaint & Summons
- ▶ Written Notice (letter from your Landlord)
- ▶ Lease (if you have one)
- ▶ Rental Receipts (any payments you made to your Landlord)
- ▶ Typewriter or Black Pens for filling out the forms

### Step 2: Fill In The Basic Information

There are instructions on the *Answer & Counterclaim* form and the *Ex Parte Application*. The instructions are in shaded print like this: YOUR NAME.

**Step 3: Fill In Part A (“Defenses Based On Jurisdiction And/Or Due Process”)**

“Jurisdictional defenses” means the Landlord has not followed the technical rules for suing you. If he or she does not follow these rules, then the case can be dismissed, and the Landlord may have to start over again. These defenses are important in some instances, but may only buy you a little time. Generally, they will not permanently get rid of the law suit.

**Note: While The Landlord May Not Have Followed The Rules Exactly, Some Judges May Not Dismiss the Case If You Only Have Jurisdictional Defenses**

Read the following descriptions of each defense and check the appropriate boxes on your *Answer & Counterclaim*.

**1a. “Landlord has not given me the required notice before starting this action.”**

Check this box if your Landlord did not give you (1) written notice to move out, or (2) the right amount of time to move out in your written notice.

*BEFORE YOU RECEIVED EVICTION COURT PAPERS FROM YOUR LANDLORD, YOU SHOULD HAVE RECEIVED A LETTER LIKE THIS FROM YOUR LANDLORD. THE LETTER SHOULD TELL YOU WHAT OCCURRED (NON-PAYMENT OF RENT, BREAKING OF HOUSE RULES, TERMINATION OF YOUR MONTH-TO-MONTH RENTAL, ETC.) AND HOW MANY DAYS YOU HAVE UNTIL THE CHANGE TAKES PLACE.*

**Is the Notice Proper?**

If the notice is not proper you can ask the court to dismiss the case at the beginning of the trial.

1. All Notices must be written.
2. All Notices must be proper. Your notice should give you the proper amount of time after you RECEIVE the notice to (1) resolve the problem, or (2) move out before the Landlord can file a complaint against you in court to evict you.

If you have a written lease or an oral agreement to rent monthly, or if your lease expired and you have paid rent for two (2) months, you are entitled to the certain notice requirements.

Notice Requirements

If your Landlord says:

- you owe back rent..... 5 business days
- you have violated house rules or the lease..... 10 days
- he/she wants you just to move out for no specific reason and you have a:
  - \* month-to-month lease..... 45 days
  - \* term lease and
    - ▶ lease expired..... no notice required
    - ▶ lease expired but paid rent two months after expired ..... 45 days
  - \* week-to-week lease..... 10 days
- he/she is demolishing the property..... 120 days
- he/she is converting the place into a condominium..... 120 days

If you have a week-to-week lease or if you work solely in exchange for rent, talk to one of our advocates by calling the Legal Aid Hotline. *See numbers at the back of this brochure.*

**1b. “Landlord failed to properly serve the *Summons & Complaint*”**

Check this box if the court papers were NOT hand-delivered by a sheriff OR someone over eighteen who is not your Landlord.

**1c. “Small Claims Court has jurisdiction over Security Deposit disputes”**

Look at your *Complaint* on line nine (9). If it says the Landlord wants your security deposit then you may want to check this box.

Security deposit disputes are supposed to be handled in Small Claims Court. Your case is currently being handled by the regular claims division of District Court. The judge will dismiss the security deposit part of the Landlord’s case and have him/her sue you in Small Claims Court for that amount. The other remaining issues in the *Complaint* will continue to be resolved in District Court.

**1d. “Other” (Usually this box is left unchecked)**

There may be other jurisdictional defenses that the Landlord has violated, depending on your situation. We have listed the main ones in 1a-1c. Do not check this box unless an attorney has informed you that you have additional jurisdictional defenses.

**Step 4: Fill In Part B (“Affirmative Defenses & Counts Of The Counterclaim”)**

This section tells the judge any unfair actions made by your Landlord while you lived in your unit. Read this section carefully. **Remember: for every box you check, you will have to prove these counterclaims to the judge.**

**1. “My place is not fit to be lived in (Implied Warranty of Habitability & HRS § 521-42).”**

Check this box if you feel your place was too unsafe or unclean to live in.

Examples of safety and health problems are:

- Structural Problems: holes in the ceiling/walls, windows/doors that leak, broken windows, broken/defective floors, or doors/windows that lack locks or are not secure.
- Plumbing Problems: leaky pipes, clogged drains, defective toilets, no hot/cold water, sewage backup, or an unsafe hot water heater.
- Electrical Problems: exposed wiring and lights, plugs or switches that do not work.
- Sanitary Problems: not enough trash cans, pest infestations, the pool has not been cleaned, or inadequate drainage.
- Safety Problems: stairs/railing that are not maintained, unsafe paving, unsafe fencing, or inadequate security in the common areas.

If you check this box, you will have prove it in court.

Examples of How to Prove That Your Place is Uninhabitable In Court:

- Photos of the rental unit showing the uninhabitable conditions
- Repair Receipts
- Witnesses that saw the uninhabitable conditions of the unit
- Citations from government agencies for code violations
- Inspection reports by the building inspector or Vector Control

NOTE: Call the following places in order to get your unit inspected if it has not already been inspected. Get a copy of any inspection report that is made. The report may be very persuasive evidence to the judge since it comes from an uninterested third party.

**Electrical**

Oahu: 523-4391  
Maui: 243-7255  
Hilo: 961-8331  
Kona: 329-4857

**Plumbing**

Oahu: 523-4396  
Maui: 243-7368  
Hilo: 961-8331  
Kona: 329-4857

**Vector Control**

Oahu: 483-2535  
Maui: 243-7375  
Hilo: 933-4551  
Honokaa: 775-9533  
Kealahou: 322-7011  
Kauai: 241-3306

Kauai: Electrical and Plumbing inspections are not available on Kauai. You must hire a contractor or electrician to do an inspection. If there are any violations, you can turn in their report as proof.

2. **“I should be reimbursed for the cost of repairs I made (HRS § 521-64, Unjust Enrichment).”**

Check this box if you have made repairs to the unit for which you have not been reimbursed.

If you made repairs, you may have a claim to be reimbursed. In order to collect repair costs you generally need to follow the Repair and Deduct Statute. This involves giving the Landlord WRIT- TEN notice of problems with your unit which you request to be fixed within a certain period of time. We have a brochure at Legal Aid which can help you in the future to get your Landlord to make repairs. However, if you didn't follow this properly you may claim that the Landlord has been UNJUSTLY ENRICHED by your repairs. In other words, the Landlord's unit was benefitted by your repairs.

Examples Of How To Prove That You Made Repairs In Court:

- Repair receipts  
**Note:** If you did the repairs yourself, estimate how many hours you spent and calculate how much a handyman would have charged for the job.
- Photos of the repairs (before and after)

3. **“My Landlord willfully interrupted the service of my utilities (HRS § 521- 74.5) AND/OR locked me out of my dwelling overnight (HRS § 521-63).”**

Check this box if your Landlord has threatened or acted to lock you out overnight and/or shut off your utilities.

It is illegal for your Landlord to lock you out overnight or shut off your utilities unless he or she has gone to court and received a court order (a “writ of possession”). You can be locked out if the Landlord changes the locks or if they threaten you to stay out of the place and because of it you move out.

Examples Of How To Prove That Your Landlord Locked You Out OR Turned Off Your Utilities:

- Contact the utility company and request a copy of the Landlord’s order to cut off the utilities.
- If you were locked out, keep a list of witnesses who saw that you were locked out.
- Document when you contacted the police to get back into your unit.

*Note:* If you check this box, you are entitled to receive money (“damages”) to pay you for these acts.

- **Utilities Shut Off:** If your Landlord ever cut off, or interrupted your utilities, you could be entitled to a minimum of three times your monthly rent or \$1,000, whichever is greater in accordance with HRS §521-74.5.
- **Lockout:** If your Landlord locked you out overnight, then you could be entitled to an amount equal to two months rent or free occupancy for two months, and the cost of suit, including reasonable attorney fees in accordance with HRS § 521-63.

**Are You In An Emergency Situation?**

If your landlord is currently threatening to do either or these things, then you can seek immediate relief by asking for a Temporary Restraining Order (TRO) in court. A TRO is a court order telling the landlord to stop what he/she is doing. Legal Aid has a packet with information and forms that can help you get a TRO to stop the landlord from locking you out or shutting off your utilities. Call us or stop by to pick up the packet.

4. **“My Landlord gave me notice to quit or filed the complaint to retaliate against me. (HRS § 521-74).”**If your Landlord has decided to evict you after you complained to a government agency, requested repairs, or made other attempts to assert your rights under the law, then you may be able to argue a “retaliatory eviction”. The Landlord-Tenant Code (HRS 521-74) allows you to make the Landlord pay your attorney’s fees (if you hire an attorney) if you successfully show that

the eviction is in retaliation for something you have done. The judge can also force the Landlord to allow you to stay in the rental for a period of time.

Examples Of How To Prove Your Landlord Is Retaliating Against You In Court:

- Witnesses
- Copies of letters or notices your Landlord has written you
- Documentation of the times you asserted your rights under the law regarding your rental unit.

**5. “My Landlord gave me notice to quit or filed the complaint to discriminate against me.”**

Check this box if you believe the Landlord is trying to evict you for discriminatory reasons such as race, gender, or age. In this case, you can counterclaim and tell the court you believe the Landlord is violating the Fair Housing Act.

If you’ve been discriminated against, you can call the following places and ask them to investigate your case.

- Hawaii Civil Rights Commission: 586-8640
- Federal Discrimination Hotline: 1-800-347-3739
- Honolulu Fair Housing Officer: 527-5972

**6. “My Landlord has interfered with my use of the property (HRS § 521-53, Covenant of Quiet Enjoyment).”**

Check this box if your Landlord has harassed you or interfered with your right to the quiet peaceful enjoyment of the place you leased, such as:

- Entering the unit without your consent.
- Threatening you.
- Physically attacking you.

**7/8. Other**

Check these boxes if you have any other complaints against the Landlord which do not seem to fit in any of the above categories. Some examples may be:

- **My Landlord Illegally Increased The Rent (HRS § 521-21).**  
If your rent has ever been increased you should have received a **45 day written notice**. If not then the difference between the increased rent and the old rent needs to be payed back to you.

- **My Landlord has taken my personal property (Trespass to Chattels, Conversion, & HRS § 521-56).**

If your Landlord has taken your property without your permission then you can recover the property (and possibly receive damages) even if the Landlord took the property because you owed back rent. Make sure to document how much you believe the property is worth or how much it would cost to replace it.

- **My Landlord has intentionally or negligently inflicted emotional distress upon me by his or her conduct.**

### **Step 5: Fill In Part C (“Defenses To Complaint”)**

This section specifically defends any allegations that were made in the *Complaint*. Read the *Complaint* again. Look specifically at statement #6 on the *Complaint*.

If “**Unpaid Rent**” is checked and you disagree, check:

- 1. “I dispute the amount of money owed to the Landlord.”**

Check this box if the Landlord has incorrectly added up how much you owe, or has said you did not pay a certain month’s rent but you did. You need to find those receipts so they can be used as evidence.

If “**Other**” is checked and the Landlord is complaining that you failed to maintain the unit, check:

- 2. “I have kept up and maintained my rental unit (HRS § 521-51).”**

If the Landlord incorrectly believes you have not maintained the unit then check this box. Get witnesses and photos of the place to show that the place has been maintained.

If “**Other**” is checked and the Landlord is complaining that you violated a house rule, check:

- 3. “I have not violated any house rules (HRS § 521-52).”**

Find your lease and read it and see if it lists any house rules. If there are no written house rules, you can argue no violation occurred since you didn’t agree to any specific house rules when you leased the unit. Get witnesses and any other evidence that is appropriate. In the end it will be your word against the Landlord’s about whether you knew about or violated a house rule.

### **Step 6: Fill In Part D (“Remedies: What I Want The Court To Do”)**

This section lets the court know what you want and how much you feel you deserve.

- 1. “The Court should allow me to stay in the unit.”**

Check this box if you want to still live in the unit.

If you don’t want to stay in the unit, don’t check this box. Make sure to explain to the judge that you are willing to move out, but you want to go to court to resolve the damages stated in the Landlord’s complaint.

- 2. “The Court should award me court costs and  reasonable attorney fees.”

Check this box if you had to pay any court costs or had to hire an attorney.

To file this form it will cost \$10 unless you can get the fee waived by filling out the *Ex Parte Relief From Court Costs* form that is included in this packet. In addition you may have filing fees, sheriff’s fees, fees to subpoena witness, records, copying costs, lost wages, mailing charges, parking fees, and various other fees that may come up during your preparation for the case.

- 3. “The Court should order the Landlord to make repairs.”

Check this box if you want the Landlord to make repairs. Even if you are moving out of the unit, you can request that the Landlord make repairs. This will improve the housing for future tenants so they don’t have to go through what you did, and will force the Landlord to clean up the unit.

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**PAY SPECIAL ATTENTION TO THE  
FOLLOWING INFORMATION ABOUT DAMAGES**

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- 4. “The Court should award me:”(Damages)

Damages means money awarded to you to repay you for what you have suffered.

- Statutory Damages:** If you had your utilities shut off or you were locked out, then the law has already placed a value on how much you have been damaged. They are called statutory damages because the value of the damages you can receive is stated in the statute.

Utility Cut Off: Under the law you are entitled to an amount three (3) times your monthly rent or \$1,000 (whichever is greater) for each time or month your utilities were cut off. Enter this amount onto the form.

Lockout: Under the law you are entitled to an amount equal to two (2) months rent or ask for free occupancy for two months, and the cost of suit, including reasonable attorney fees in accordance with HRS § 521-63. Enter this amount onto the form.

- Actual Damages:** Actual damages are different from statutory damages in that the amount of money you believe your Landlord owes you is not pre-determined by statute. Instead you have the job of trying to determine how much damage you have suffered. You need to be able to defend how you came up with the dollar amount of your damages in Court in order for you to win.

### Examples Of Actual Damages:

- The cost of repairs.
- The cost of finding a new place.
- The amount of money you have overpaid for living in your place since it is not worth how much you've payed.

### How To Figure Out Repair Costs (Actual Damages):

1. Gather your receipts.

Receipts are one of your best forms of evidence. You simply add up your receipts to calculate your repair costs. It makes it easier for the judge if you have a sheet of paper listing all the receipts and totaling them up.

2. Place a dollar value on your non-receipt costs.

Sometimes you will have made repairs without having hired someone or bought supplies. In these cases you should try to calculate how many hours you spent to make the repair and multiply it by how much a handy man (electrician, plumber, etc.) would have charged.

**Example:** You fixed a hole in the wall. You purchased the supplies for \$30 and you kept the receipt. The whole job took you 2 hours. You understand that a handyman would charge \$15 an hour to do the same job (2 hours X \$15 =\$30). You know this because you called around and that is the going price. Your total damages would be \$30 (receipt damages) + \$30 (non-receipt costs) = \$60.

### How To Figure Out How Much Your Place Is Really Worth (Actual Damages):

Ask yourself what would be the **difference** between the agreed rent and the fair rental value of the unit in the current unfit condition and multiply it by the amount of months you have been there.

#### **Formula:**

[Agreed Rent - Fair Rental Value] x Amt. of Months You Have Lived There=Rental Damages

- ▶ Agreed Rent = The amount stated in your lease
- ▶ Fair Rental Value = The rent for a place with similar problems. A good resource would be the newspaper or a rental agency.
- ▶ Amt. Of Months = How many months you have lived there

**Example:** If your rent was \$1,000 a month but your place has a rat infestation, rotting wood, and plumbing problems a place like that normally might rent for \$300. You would find that out by looking through the newspaper and trying to figure out what a comparable place would rent for. The difference of \$700 would be your damages for each month you lived there. If you lived there for 5 months it would total up to \$3,500. [ $1,000-300$ ] x 5 = \$3,500

### How to Figure Out Property Damage (Actual Damages):

If your personal property has been damaged or destroyed, you can ask for (1) what you believe the fair market value of an item is, (2) the repair costs, or (3) the cost to replace the item.

**5. “The Court should order other relief as it believes just.”**

This is a catchall request which helps the judge to come up with additional damages which you have not thought of asking for.

**6/7. Other**

Check this box if you want to ask the judge to do certain things or to award other types of damages, such as punitive damages which you may feel are appropriate for your case. (Note: Punitive damages are awarded to punish and to deter others from acting similarly. They are rarely awarded, unless you can prove the Landlord acted with malice, criminal indifference to civil obligation, or conscious indifference to the consequences of his/her actions.)

### **Step 7: Fill In the Certificate of Service**

On the blank space provided, enter the date. Place an “X” next to “hand-delivery” if you plan to give the “court-stamped” copy of this form to your landlord or landlord’s attorney. Place a “X” next to “Mail, Postage Prepaid” if you plan to mail it to him or her. Fill in the address where you served your landlord. In the boxes provided, write the date and sign and print your name. By signing here you are telling the court and you will give a copy of this form to your landlord or landlord’s attorney.

### **Step 8: Fill in the Declaration**

Sign and date this form in the boxes provided. By signing this document you are telling the court that you believe everything in the document is the truth under penalty of perjury.

## **Part III: After You Fill Out the Answer and Counterclaim Form**

Your work is not over yet. Now that your Answer & Counterclaim is completed, you will need to serve it on your landlord or landlord’s attorney. It is best to get this done before the Answer Date. If you don’t meet this deadline then the judge might not allow you to counterclaim. If you haven’t filled out the papers by the Answer Date, ask the judge for “leave of the court to file a counterclaim.” The judge might say okay, and give you a few days to file the counterclaim, but try as much as possible to get your counterclaim turned in by the Answer Date.

- **Checklist Of Things To Do Next:**

- Make 5 copies of the *Answer & Counterclaim*

- File the *Answer & Counterclaim*, plus the copies.

To file your 5 copies of the *Answer & Counterclaim*, go to the District Court in your circuit, between 7:45 a.m. to 4:15 p.m. (M-F) to file. (See the back of this information packet for addresses and phone numbers for the District Courts.)

Bring \$30 or an approved *Ex Parte Waiver of Cost* form (see Shaded Box on Page 13 for instructions on how to fill out an *Ex Parte Waiver of Cost* form). Ask the clerk to file- stamp your 5 copies of the *Answer & Counterclaim*. The clerk will keep your original of the *Answer & Counterclaim* for the court's records, and will give back to you the file-stamped copies.

- Serve a file-stamped copy of the *Answer & Counterclaim* on your Landlord's attorney or on your Landlord (if your Landlord does not have an attorney).

### **Can You Afford The Filing Fee?**

Filing a counterclaim will cost you \$30. If you don't think you can afford this, you can ask the court to waive the \$30 fee by filling out an *Ex Parte Application For Relief from Costs; Declaration; Order* form. Generally, if you are unemployed or on welfare you will qualify for the waiver.

#### **How To Fill Out The *Ex Parte Application*:**

A copy of the *Ex Parte Application* is enclosed in this instruction packet. Follow the instructions in shaded grey print. Answer all of the questions. Be sure to sign where necessary. Fill out the entire form except for the "Order" box on the back page (this is where the judge will sign).

**After you complete the *Ex Parte Application* form, you need to file it BEFORE you file the other documents.**

#### **How To File The *Ex Parte Application* Form:**

Go to the District Courthouse in your circuit between 7:45am and 4:15pm (see the back of this information packet for addresses and phone numbers). Give the *Ex Parte Application* form to the clerk. The clerk will ask for a phone number where you can be contacted after a judge has looked at the form and has decided whether or not to approve your request. They will only try to call you once so if you don't have an answering machine, you might not realize that they have called. If you don't have an answering machine, or are not by the phone all day, it's safe to assume a decision has been made by the next day and you should go to the court and check if your *Ex Parte Application* was approved.

### **Serving The Counterclaim**

When you get the file-stamped copies back, you need to either mail or directly serve your Landlord's attorney or your Landlord if he/she does not have an attorney.

**To serve** you need to find the attorney's address on the *Complaint* or, if the Landlord does not have an attorney, then you can serve the Landlord instead.

**Mail or hand-deliver a file-stamped copy of the *Answer & Counterclaim* within 24 hours of filing the forms, preferably the same day.** The Landlord’s attorney (or the Landlord if he/she does not have an attorney) needs to receive it by the Answer Date in order for him/her to have a chance to respond to it.

**Note:** If the Answer Date is less than 48 hours away play it safe and hand- deliver it versus mailing it. You can even hand-deliver it on the Answer Date. If you decide to mail the *Answer & Counterclaim* and it is close to the Answer Date, then it is possible the attorney won’t receive it until after the Answer Date and he/she will argue that they didn’t have sufficient notice and that the counterclaim should not be allowed.

**Note:** If you can’t file or serve by the Answer Date then you should ask the judge for “leave of court to file a counterclaim.” In other words, you are asking for more time to fill out the forms.

## **Part IV: After You File And Serve The *Answer & Counterclaim***

After you have filed the *Answer & Counterclaim*, you have to go through a court process. To understand the court process, read our brochure, “*Eviction: The Court Process*”, which thoroughly explains the procedure. Below is an abbreviated checklist you can use to keep track of what you need to do at each step. Write down your hearing dates in the blanks provided as you proceed through your case. It will make it easier if you have all of your court dates and legal information in the same place.

**1. Go to the Answer Date (Date/Time: \_\_\_\_\_)**

- a. **If you haven’t filed your *Answer & Counterclaim* by the Answer Date, enter a “General Denial”, and ask for “leave of court to file a counterclaim”.**

Ask the judge if you can have “leave of court to file a counterclaim”. This means you are asking permission to file a counterclaim. If the judge say yes then he or she will give you a few days to file it.

- b. **If you have filed your *Answer & Counterclaim* by the Answer Date, go and enter a “General Denial”.**

Tell the judge you “generally deny the complaint” and have filed a counterclaim against the Landlord.

- c. **Write down when your next hearing date will be.**

Write down the date that the court gives you for your next hearing. In Honolulu, there will first be a pre-trial hearing (go to #2 for more information). For the other district courts , you will get two dates (go straight to #3).

**Note:** **If you fail to appear at your answer date, the court could rule on behalf of your Landlord (i.e. default judgment) and you could be evicted immediately.** If this happens contact us at Legal Aid to see how you might be able to get a new hearing. We have a packet called “*How To Stop An Eviction When You’ve Missed A Hearing*” which may be able to help you.

2. **If you are not in Honolulu, SKIP this section and GO TO #3. Go to your Pre-trial Hearing (this only applies to Honolulu District Court Cases). (Date/Time: \_\_\_\_\_)**

In the pre-trial hearing, the judge will try to get you to mediate the issue with someone. If you are not able to work it out then the judge will give you two dates:

3. **Trial Information**

- a. **Exchange of Exhibits (Date/Time: \_\_\_\_\_)**

You will need to make two copies of all the evidence you will use. You will need to mail copies of the evidence you will use at trial to your Landlord's attorney or to your Landlord (if he/she does not have an attorney) by a certain date before the trial. Bring the other copies to the trial. Evidence includes rental receipts, repair receipts, copies of building inspector reports, and names of people you will use as witnesses in court.

**Obtaining Witnesses & Documents**

When you counterclaim against your Landlord you may want to bring in witnesses or documents to help back up your story. Some witnesses that might be useful: (1) you've contacted the building inspector and she has said that the place is substandard and not safe (2) the Landlord has cut off the utilities by calling the utility company to turn it off, (3) you've been locked out of your apartment by your Landlord and you had to contact the police to help you get back in.

If you want to call a witness that you don't think will show up, you can subpoena that witness. A subpoena is an official court document which requires the witness (such as a building inspector, utility company representative, or police officer) to show up to court. If you want them to also bring a document (building inspector report, utility cut off order from the Landlord, or a police report about being locked out) then the document is called a subpoena duces tecum.

You can obtain the form (form #1DC49) at District Court. The court clerk can also help you with any general questions about subpoenas, but they will not be able to give you any legal advice.

You will next have to serve the subpoena. You can do this in three ways: (1) hire the Sheriff to do it, (2) have a friend over 18 years of age who is not a party to the case do it, or (3) serve it by mailing by using registered mail—return receipt requested.

You will be solely responsible for correctly serving the person(s). This means that you must properly serve the person(s) and you must pay all the expenses related to proper service. If the person is not properly served, the court cannot make them show up to testify or bring the documents you want.

- b. **Trial Date (Date/Time: \_\_\_\_\_)**

A date will be set for the trial. If the date conflicts with your schedule, speak up and suggest a different date.

#### 4. Prepare For Trial

- a. Read our brochure *“How To Represent Yourself & Eviction: The Court Process”*
- b. Gather evidence such as
  - Rental Receipts
  - Building Inspector Reports
  - Witnesses
  - Repair Receipts
- c. List every argument your Landlord will make against you and list every defense and proof you may have for that claim.

#### 5. Prepare For Life After The Trial (Organize Your Thoughts)

- a. If you lose

In the majority of cases the Landlord wins. You may be able to reduce the judgment by fighting it out in court but in general the odds are in favor of you being evicted, especially if you owe back rent. With that in mind you should be strategically taking advantage of the time it takes for your Landlord to evict you (approximately 3 to 4 weeks). During this time, you should be looking for a new place to live. We have a Housing Referral List which may help you.

- b. If you win.

You should ask yourself if you really want to live there. If your relations with your Landlord are so strained as to make your life difficult then you may want to consider actually moving.

#### 6. Trial (for possession of the unit) (Date/Time: \_\_\_\_\_)

The purpose of this trial is to determine if you have broken the lease and therefore are not entitled to possession of the unit. Even if you win on the counterclaim, if you are shown to have violated the house rules or that you owe back rent, the Landlord will win possession.

- a. If you lose

The judge will issue a **Writ of Possession**, which is a fancy court paper that the Landlord can give to the sheriff to have him/her remove you from your place. The sheriff will generally give you 24 hours to move out. Another hearing called a **Proof/Damages Hearing** will be set for about a month later. At that hearing the court will determine exactly how much money you owe the Landlord. The court at that time will take into account how much your counterclaims are worth.

- b. If you win

The judge will say that you can remain in your place since you have not violated your lease. Another hearing called a **Proof/Damages Hearing** will be set for about a month later. At that hearing the court will determine exactly how much the Landlord owes you based on the value of the counterclaims.

**7. Proof/Damages Hearing (Date/Time: \_\_\_\_\_ Sometimes the Proof Hearing is done at the Eviction Trial)**

This is the last hearing you will have to go to. At this hearing the court will hear you and your Landlord argue over the exact amount of money both of you owe each other. The evidence you used at the trial should also be used here.

**8. Collecting On The Judgment**

**a. If you won**

Congratulations. The court staff will inform you on the process by which you can collect on your judgment.

**b. If you lost**

The Landlord will have a judgment against you but that is just a piece of paper. A judgment alone doesn't mean the Landlord can collect the money from you. He or she will try to garnish your paycheck but **if you have little or no assets, you may be considered judgment-proof, which means the Landlord cannot collect from you because you make too little to take.** For more information about debt collection, call us at Legal Aid. See the back of this brochure for phone numbers.

## Legal Terms

Answer the defendant's response to a complaint, filed in the court  
Complaint the paper filed with the court to start a lawsuit  
Counterclaim filed by the defendant to defeat the plaintiff's action and to ask for money  
Damages amounts owed, not the same as physical damage  
Defendant one against whom a complaint is filed  
Default judgment a judgment entered against the defendant due to the defendant's failure to respond to the complaint or appear at trial; generally grants everything the plaintiff requested  
Eviction court process to remove a tenant from a landlord's property, called "summary possession" in Hawai'i  
File to deliver documents to the clerk at the court  
Garnishment taking a portion from your wages to satisfy a money judgment  
Judgment the decision the court enters which is legally enforceable

## Additional Legal Aid Society of Hawai'i Brochures:

*Eviction: The Court Process*  
*Housing Referral List*  
*How to Stop An Illegal Lockout*  
*How to Stop An Illegal Utility Shut-off*  
*How to Stop An Eviction When You Missed Your Hearing*  
*Debt Collection & Garnishment*

Mediation when a third person comes between two parties to try and encourage a settlement  
Parties the persons actively taking part in the prosecution and defense of a legal proceeding  
Plaintiff the one who starts a lawsuit  
Pro Se representing yourself without a lawyer  
Serve to deliver a copy of something you file with the court to the other part to the suit  
Summary Possession court process to remove a tenant from a landlord's property, also called "eviction"

## Useful Names and Numbers

### Legal Aid Society of Hawai'i - <http://www.legalaidhawaii.org>

LEGAL HOTLINE open Monday to Friday 9-11:30am & 1-3:30pm

Oahu call 536-4302 Maui call 242-0724 Kauai call 245-7580 Lanai call 565-6089

Hilo call 934-0678 Kona call 329-8331 Molokai call 553-3251

### District Court Street Addresses

OAHU (First Circuit):

File all forms at Honolulu District Court:

1111 Alakea Street

3rd Floor

538-5151

MAUI (Second Circuit):

Haopili Hale

2145 Main Street

Suite 137

Wailuku

244-2800

KAUAI (Fifth Circuit):

3059 Umi Street, Rm 111

Lihue

246-3330

BIG ISLAND (THIRD CIRCUIT):

Hilo: 75 Aupuni Street

Hilo

961-7470

Kona: Old Kona Hospital

Keakealani Bldg., Rm. 240

Kealakekua

322-2022

Hamakua: South Kohala Courthouse

Waimea Civic Center

67-5175 Kamamalu Street

Kamuela

885-4615

**APPENDIX:**  
***BLANK FORMS FOR YOU TO USE***

1. EX PARTE APPLICATION FOR RELIEF FROM COSTS  
(YOUR REQUEST TO WAIVE FILING FEES)
  
2. ANSWER AND COUNTERCLAIM FORM

**DEFENDANT(S)' ANSWER AND/OR COUNTERCLAIM TO COMPLAINT FOR SUMMARY POSSESSION; DECLARATION; CERTIFICATE OF SERVICE; EXHIBITS**

Oahu = First Circuit  
 Maui = Second Circuit  
 Big Island = Third Circuit  
 Kauai = Fifth Circuit

**IN THE DISTRICT COURT OF THE \_\_\_\_\_ CIRCUIT**  
*same as in Complaint*  
**\_\_\_\_\_ DIVISION**  
**STATE OF HAWAII**

Plaintiff(s)  
 (Your Landlord's Name)  
  
*Same as name in the Complaint*

Reserved for Court Use

Civil No. *Same as number in the Complaint*

Defendant(s)  
 (Your Name)  
  
*Same as name in the Complaint*

Defendant(s)/Defendant(s)' Attorney (Name, Attorney Number, Address, Telephone and Facsimile Numbers)

*Your name and address*

Street Address, City, State, ("the property"):  
  
*Address of place you were renting*

**Defendant Pro Se**

**ANSWER AND  COUNTERCLAIM**

I,     Your Name     (1) generally deny each statement of the Plaintiff's Complaint, (2) ask leave of Court to file a Counterclaim, and (3) answer and defend the Complaint filed in this cause of action as follows:

Check all the boxes that apply to your situation.

**A. Defenses Based On Jurisdiction And/Or Due Process**

- 1. This case should be dismissed because:
  - a. Landlord has not given me the required notice before starting this action.
  - b. Landlord failed to properly serve the Summons & Complaint (DCRCP 4).
  - c. Small Claims Court has jurisdiction over Security Deposit disputes (DCSCR 4).
  - d. Other

**continued on reverse side**

f:\justice\brochure\housing\aa&cc.pkt\ctfrm.p65  
 (6/98)

**SEE REVERSE SIDE**

I certify that this is a full, true, and correct copy of the original on file in this office.

Clerk, District Court of the Above Circuit, State of Hawai'i

Check all the boxes that apply to your situation.

**B. Affirmative Defenses &  Counts of the Counterclaim**

- 1. My place is not fit to be lived in (Implied Warranty of Habitability & HRS § 521-42.)
- 2. I should be reimbursed for the cost of repairs I made. (HRS § 521-64, Unjust Enrichment.)
- 3. My Landlord willfully interrupted the service of my utilities (HRS § 521-74.5) AND/OR locked me out of my dwelling overnight (HRS § 521-63).
- 4. My Landlord gave me notice to quit or filed the complaint to retaliate against me. (HRS § 521-74.)
- 5. My Landlord gave me notice to quit or filed the complaint to discriminate against me.
- 6. My Landlord has interfered with my use of the property. (HRS § 521-53, Covenant of Quiet Enjoyment.)
- 7. Other:
- 8. Other:

**C. Defenses To Complaint**

- 1. I dispute the amount of money owed to the Landlord.
- 2. I have kept up and maintained my rental unit (HRS § 521-51.)
- 3. I have not violated any house rules (HRS § 521-52.)

**D. Remedies: What I Want The Court To Do**

- 1. The Court should allow me to stay in the unit.
- 2. The Court should award me court costs and  reasonable attorney's fees.
- 3. The Court should order the Landlord to make repairs.
- 4. The Court should award me:
  - Statutory Damages totalling: \$ \_\_\_\_\_  
*(Three months rent for utility cut-off, two months rent for lock-out)*
  - Actual Damages, totalling: \$ \_\_\_\_\_
  - Other: \$ \_\_\_\_\_
- 5. The Court should order other relief as it believes just.
- 6. Other:
- 7. Other:

**CERTIFICATE OF SERVICE**

Put a check below next to the type of delivery you used.

I hereby certify that a copy of this document was served on Opposing Party(s) or his/her/their attorney at their last known address(es) on write the date you served your landlord by hand-delivery or Mail, Postage Prepaid, at the following address(es):

Write the address where you served your landlord

Date:

Sign and print your name  
(Print/Type Name and Signature of) Defendant(s)/Defendant(s)' Attorney

**DECLARATION**

I have read this Motion, Answer, and Counterclaim, know the contents and verify that the statements are true to my personal knowledge and belief. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAII THAT THE FOREGOING IS TRUE AND CORRECT.**

Date:

Sign and print your name  
(Print/Type Name and Signature of) Declarant

In accordance with the **Americans with Disabilities Act** if you require an accomodation or assistance, please contact the District Court- Administration Office in your Circuit at least ten (10) working days in advance of your hearing or appointment date. **OAHU:** 538-5121; TTY: 539-4853 **BIG ISLAND:** Hilo: 961-7470 Kona: 322-2022 Hamakua: 885-4615 **MAUI:** 244-2800 **KAUAI:** 246-3330