



# LEGAL AID SOCIETY OF HAWAI'I



## EVICTIION: THE COURT PROCESS

This brochure describes what a private landlord and tenant go through when the landlord is trying to evict the tenant. If you are preparing for trial, pick up Legal Aid Society of Hawai'i's Answer and Counterclaim Packet for more detailed information.

### IMPORTANT

- This brochure does not apply to federally funded Hawai'i Public Housing Authority buildings though it does apply to state-funded Hawai'i Public Housing Authority.
- If you live in a HUD-subsidized building, you have extra rights and protections

Call the Legal Aid Society of Hawai'i for more information or visit us on the Web at <http://www.legalaidhawaii.org>.

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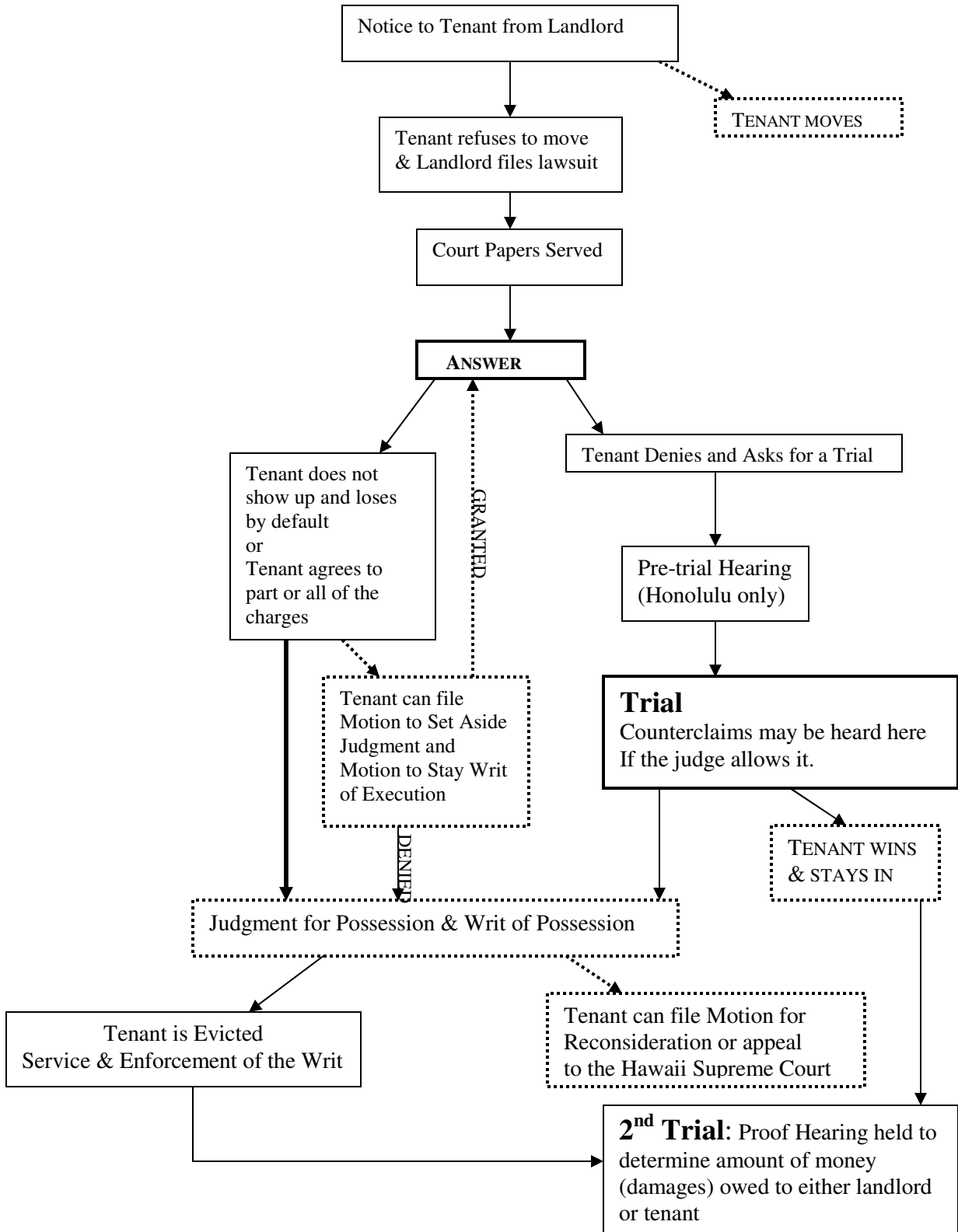
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# Landlord-Tenant Evictions

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



# My landlord wants to evict me – Can this brochure help me?

This brochure outlines the steps a landlord must take before they have the right to remove you from your home. Most of the information provided here is based on the eviction process in Honolulu District Court; however, the process is similar in District Courts across the State of Hawaii and offers useful information for anyone involved in an eviction. If possible, you should seek the advice of an attorney because this brochure is meant to provide information only and is not a substitute for legal advice.

## Overview: How can my landlord evict me?

Your landlord must go through a court process to evict you from your unit. It is illegal for the landlord to personally remove you from the rental unit unless the landlord first has a “Writ of Possession” from the Court, which must be “served” (given to you) by a sheriff or police officer. A Writ of Possession is a judgment by the Court that officially gives the unit back to the landlord.

**Notice:** Your landlord must give you written notice that you have to leave, unless you are at the end of a term lease and lease has expired. The notice must give you a certain number of days to either leave or correct the problem.

This notice is what triggers the right for your landlord to go to court and evict you if you do not leave or correct the problem.

For example, if you are behind on your rent, your landlord must send you a 5-day notice to pay in full or move. If you pay in full within that 5-day period, no eviction proceedings should begin. If you do not pay in full, including any late fees, your landlord has the right to file for eviction on day six.

### Proper Notice

To be proper, a notice must be written and it must give you a specified amount of time to fix the problem.

Non-payment of rent .....5 business days  
Violation of rules or lease ..... 10 days  
Termination of rental (for reasons except non-payment or lease violations)  
    month-to-month..... 45 days  
    week-to-week ..... 10 days  
If written lease and lease term is ending, NO notice is required.

REMINDER: These notices do NOT need to be served by a Sheriff or police officer.

There are other time limits. Call Legal Aid Society of Hawai`i for more information.

## I have received a notice from my landlord – What do I do now?

If you have received a notice from your landlord because you have not paid your rent or because you have violated the rules or lease, you need to decide if you want to fix the problem or move. If you know that you are no longer able to afford the rent because you lost your job, for example, it may be in your best interest to move in with family and friends temporarily. If you want to move after receiving this notice, talk to your landlord and try to reach an agreeable date. Make sure to get any agreement in writing – even if it is a letter or e-mail to your landlord saying “Thank you for your understanding given the recent loss of my job. Per our conversation, I will be vacating the unit on March 15<sup>th</sup>. I look forward to seeing you at noon on the 15<sup>th</sup> for my move-out inspection.” You need to think about which option is best for you.

If you have received a notice from your landlord which you believe is wrong, or if you know you are in violation of the rules or lease but cannot reach an agreement with your landlord, then you need to start preparing for eviction.

**Court Action:** If you do not move out or fix the problem, your landlord must go to court and start a court action by filing a “Complaint for Summary Possession.” Summary Possession means the landlord wants to regain possession of the unit.

**Court Papers Served:** After filing the Complaint, the landlord must have a sheriff, police officer, or someone over 18 years who is not a part of the eviction “serve” (give you) the court papers. The court papers do not have to be served to you personally, as long as it is given to a responsible person at your home who is 18 or older. Or the Court may allow the notice to be “posted” (taped to your door). These papers tell you what the landlord wants and when to go to your first court date.

Once you have been served with the Complaint, the court process to have you evicted begins.

#### **What should I do now?**

**Decide:** You need to decide if you want to move out or not. You may have some reasons why you want to stay. Your landlord may be wrongfully trying to make you move out. If you fight in court and lose, you may have to pay more than your back rent. You need to think about which option is best for you.

**Look for new housing:** If you have received court papers, start looking for new housing as soon as possible. If the landlord wins, the judge may let you have a little time to move out, but he does not have to. The sheriff can remove you as soon as the “Writ of Possession” is issued.

**Prepare for your next hearing:** Your next hearing could be the Answer Date, the Pre-Trial (for Honolulu only), or the Trial. This brochure covers each of those areas in detail below.

## **I was served with a Complaint – What happens next?**

When you receive the court papers, they will contain both a **Complaint** and a **Summons**. In the Complaint, the landlord can ask for the judge to order you to move out. The Complaint may also ask the judge to order you to pay back rent, court fees, and attorney’s fees. If the Complaint asks for **damages**, that just means your landlord wants you to pay him money, for example any past rent due or rent for the days after the eviction notice expired. It does not mean that you are accused of causing physical damage to the unit.

The final part of the Complaint is called the **Summons**. The Summons is almost always on the last page of the Complaint. The Summons is a command from a judge for you to appear at the first hearing, the “Answer Date.” The Summons will either (1) tell you to come to a specific court on a specific time, date, and place, or (2) tell you to come to court on the fifth day after you receive the document. If it tells you to come on the fifth business day, start counting the day after you received it. Do NOT include weekends or holidays. Example: if you received the Complaint on a Monday, you should start counting on Tuesday: Tuesday, Wednesday, Thursday, Friday, *Monday*. Show up on the following Monday. If in doubt, call the Court where your hearing is scheduled and ASK!

Pay attention to what time you are required to be in Court and plan to arrive at least a half hour before your scheduled time. Sometimes it can take 30 minutes to get through the security checkpoint and if you are even a minute late – you could lose!

# Your First Court Appearance: The Answer

## What's going to happen today?

The Answer date is simply a time when you go before the Judge and respond to the landlord's Complaint. The Judge uses the Answer Date to determine whether or not this case needs to go to trial. You can call the Legal Aid Society of Hawaii for an Answer and Counterclaim Packet you can fill out. There are 5 important things to remember.

### 1. Show up on time or lose

If you do not show up for your Answer Date, or any other hearing, you could lose. The landlord will get everything he or she asked for, and you could be evicted that day. This is called a Default Judgment.

In Honolulu, the first court date is extremely fast. Even if you are only two minutes late to your hearing, you could have already lost. Make sure you are early and leave plenty of time to find parking (feed the meter for at least 1 1/2 hours)

### 2. Find your case

Go to the courtroom at least a half hour before the time of the hearing and bring the Complaint and Summons. Find the case list and make sure your case is listed. The case list is typically posted on a clipboard right outside the courtroom door or is inside the courtroom. You need to look at this list to make sure your case is scheduled and you are in the right courtroom. Make a note of the number next to your case (1, 2, 3, etc.) because the cases may not always be called in order, but they will call your case by that number.

If your name is on the list, let the clerk know you are there and take a seat inside. If it is not, then check with the clerk to see who you need to call or where you need to go. Let the clerk know your case is not on the list and they will double check to make sure they have the most updated version of that day's case list. If your case is not on the list and you think it should be - do NOT leave the courtroom until you have spoken with the clerk and received instructions on what to do next. In Honolulu, after speaking to the clerk in the courtroom and confirming you are not on the calendar for today, you should go to the service center on the third floor and find out when your hearing is scheduled.

### 3. Wait for your case to be called

After you check in with the clerk, wait inside the courtroom until your case is called. Turn your cell phone off, take off your hat and remove your sunglasses. The cases are not necessarily heard in any order. The Judge may skip around to different cases on the list. You should not leave the room at any point because your case could be called at any time. If you are not present when the judge calls your case, you may lose by default. When your case is called by the court clerk, answer "Here" loudly and go up to the Judge.

## I missed a hearing

If you miss any of your court dates (Answer Date, Pre-trial hearing, or Trial), you could lose by default. Everything in the landlord's complaint will be seen as true, and you will be evicted. You may be able to ask the judge to give you another hearing if you have a good reason for being late or not appearing. You must file these forms as soon as possible:

- Motion to Set Aside Judgment and
- Motion to Stay the Writ of Execution.

To do this, you can pick up forms for these at Legal Aid Society of Hawai'i, or pick up a form for the Motion to Set Aside Judgment at the District Court. Fill these out and file them the same day if possible.

You must prove 1) you had a good reason for missing your hearing (e.g. in the hospital), AND 2) you have a valid defense to the eviction which would merit rescheduling your hearing.

#### 4. Give the Court your “Answer” – Admit or Deny/Agree or Disagree

On the Answer Date, all the Court wants to hear is your answer to the Complaint.

If you “Admit” or “Agree” to the Complaint, you are telling the Court you agree with **everything** in the Complaint and you don’t want to tell your “side of the story” to the Judge. If you admit (agree) to anything mentioned in the Complaint in court, the Judge may decide on the spot that the landlord is the winner and may order you to leave your unit immediately. For example, if the case is about nonpayment of rent and you admit that you owe any money to the landlord, you may be evicted as soon as the Order is entered.

If you “Deny” or “Disagree” with the Complaint, you are telling the Court you disagree with **something** in the Complaint, and you want to tell your “side of the story” to the Judge. For example, if your landlord claims you owe three month’s rent in the Complaint but you have receipts proving you only owe one month’s rent then you disagree with something in the Complaint.

#### What if I also have legal claims against my landlord?

A **counterclaim** is a separate court action you file in response to your landlord’s claims, which fights your eviction and asks the court to award you money. It is like a counter-suit. You need to file and serve your landlord after you receive the complaint and summons BUT before your answer date hearing. Legal Aid has an Answer and Counterclaim packet that you can use.

If you do not have time before your answer date, you need to ask the court’s permission. At your Answer Date, ask the Court for “leave to file a counterclaim.” The Judge will give you a deadline to file – make sure you write it down! If the Court says no, call Legal Aid for more assistance.

What Happens if I “Admit?”	What Happens if I “Deny?”
<ul style="list-style-type: none"> <li>• The allegations your landlord put in the Complaint will be considered true, your landlord will be entitled to any money he or she demanded, and your case will be over.</li> <li>• The Judge will issue a Judgment of Possession, granting your landlord the immediate right to take back the premises and ordering you to vacate (likely the same day).</li> <li>• The Judge will issue a Writ of Possession, allowing the Sheriff to physically remove you, and your possessions, if you do not move out as your were ordered.</li> <li>• The Judge will issue a Judgment, directing you to pay money to your landlord any rent due and additional damages such as court costs, interest, and reasonable attorneys fees.</li> <li>• Your credit and renting history may be damaged.</li> </ul>	<ul style="list-style-type: none"> <li>• The allegations in the Complaint will have to be proved by your landlord, and you may plead counterclaims, affirmative defenses, and defenses—your case will continue.</li> <li>• The judge will schedule the next court date (Pre-Trial or Trial) and you may argue your case to the judge.</li> <li>• You will have the opportunity to mediate with your landlord to try to settle the dispute.</li> <li>• You will have time to vacate your rental unit and obtain legal counsel.</li> <li>• <b>RISKS:</b> You may have to pay more money to your landlord for rent, court costs, interest, and reasonable attorneys fees if you lose.</li> </ul>

## 5. Note Your Next Hearing (Pre-Trial in Honolulu, Trial in other Courts)

If you “Deny,” the Judge will set a specific date and time for the next hearing. Make sure you write down the day and time! If you are in the Honolulu District Court, your next hearing will be a Pre-Trial Hearing, typically scheduled for the following Monday. If you are at any other courthouse, you will be given a specific date for the Trial, usually within a week.

### Can I try to reach an agreement with my landlord outside of Court?

YES! At any time during the eviction process, you and your landlord (or your landlord’s attorney) can try to reach an agreement. If you already have a new place to move, you can reach an agreement as to a move-out date. If you pay your landlord any back rent owed, you may be able to stop the eviction. Make sure you get any agreement in writing and you must still show up to court for your next scheduled appearance to inform the Court of 1) your agreement and/or 2) to dismiss the case.

Keep in mind, if your landlord filed for eviction properly because you owed back rent or broke the rules, you may still be responsible for attorney’s fees and costs. If you and your landlord can reach an agreement outside of court, you could be saving yourself from more costs.

## Your Second Court Appearance: Pre-Trial

**FOR HONOLULU CASES ONLY!**

**IF YOU HAD YOUR HEARING AT ANOTHER COURTHOUSE, SKIP TO THE TRIAL STAGE.**

Pre-Trial is the second proceeding in the eviction process. You will meet your landlord, his or her attorney (if applicable), and the Judge for an informal conference. The Judge will begin by asking whether you have reached an agreement. If you have not reached an agreement, the Judge will ask you to meet with a mediator to try and resolve your eviction dispute. The mediator’s job is to help you settle the dispute; he/she is not on any “side.” Rather, the mediator’s job is to listen to both sides of the story and to try and help you reach a fair settlement. After mediation, you will meet with the Judge again to tell him/her whether you have reached a settlement.

### What happens if we reach a settlement?

If you reach a settlement, the mediator will put the agreement in writing. Make sure you review it and understand what you are agreeing to. Never sign an agreement you do not agree with or do not understand! You will go back in front of the Judge with your landlord and the mediator. The Judge will review the agreement and make sure both you and your landlord agree to the terms. If you both agree to the written terms of the settlement, the Judge will read the agreement into the court record. Once the agreement is read into the record it becomes a binding court order. At this point, you should not have any additional court dates unless you agreed to one in your

### Mediation

In Honolulu, the Judge usually asks you and your landlord to meet with a mediator, provided by the Court, at your Pre-Trial.

In other courts, the Court may or may not provide mediation. If they do provide mediation, usually you will meet with the mediator on the same day as your answer date (instead of pre-trial).

The mediator’s job is to help you and the landlord settle the lawsuit. The mediator should listen to your side of the story as well as the landlord’s.

To prepare for this meeting, think about the kind of settlement that you would be willing to accept from the landlord. It might be a good idea to write this down in a note to yourself. In the middle of a meeting it is easy to get sidetracked or swayed by what others are saying. Do not accept a settlement that is not fair to you or that you cannot follow.

You do NOT have to reach an agreement at the mediation. You have the right to go to trial and have your story heard by the Judge.



settlement. For example, you may have reached a settlement agreement to pay your landlord \$500 to stay for an additional two weeks. Your landlord may not be willing to dismiss the eviction case because they want to make sure you actually move out in two weeks. So, in the settlement agreement, you could agree to a court date in one month to make sure everyone follows the terms of the agreement. If you do move out and pay the \$500, then your landlord will dismiss the case at the next court date. If you do not follow the terms of the agreement, then your landlord has the right to come back to court at that next court date.

**What happens if we can't reach a settlement?**

If you can't reach a settlement, the Judge will schedule your case for Trial. Typically, the Trial will be scheduled within a week or less. You will have to tell the Judge the names of witnesses you expect to have at your Trial. Your landlord will do the same. You will also be given a date to exchange exhibits with your landlord. Exhibits are things like letters or pictures that you want the Court to see as proof of your side of the story. Exchanging exhibits is part of the discovery process. Discovery is the legal process where you obtain information from your landlord to help prove your case, and vice-versa.

It is VERY important to exchange your exhibits with your landlord on the date the Court ordered you to do so. If you do not exchange your exhibits by the court-ordered date, the Judge may not allow you to use them in the trial and you could lose because you will have no documents as evidence.

**Will I have to pay to stay?**

If the landlord requests it, or the Judge decides it is necessary, you may be ordered to deposit any disputed rent as it becomes due, not including past rent, into a **rent trust fund** (held by the Court). If you cannot put up the money, then the landlord could automatically win the case and you may be evicted. If this happens, call Legal Aid Society of Hawai'i immediately.

If the Judge plans to set up a trust fund, object on the ground that the landlord did not ask for a trust fund in the original complaint. If the landlord did ask for one in the original Complaint, say it violates "due process" because you can be evicted for not paying into the trust fund without the chance to present a defense.

**Preparing for Trial:**

- 1) Consider any defenses you can prove to the Court as to why you should not be evicted. Gather all evidence you can to prove these defenses.

What's an Affirmative Defense?	What's a Defense?
<p>You are telling the Judge you should not be evicted because of an action taken by your landlord that violates the Landlord-Tenant Code, including:</p> <ul style="list-style-type: none"> <li>• Failure to maintain electrical, plumbing, appliances, and other facilities, in a good working order, including repairs.</li> <li>• Failure to keep common areas clean and safe.</li> <li>• Failure to allow you to fix the rental agreement violation.</li> <li>• Illegal lockout, utility shut off, or rent increase.</li> </ul>	<p>A Defense is a response to the allegations in the Complaint, including:</p> <ul style="list-style-type: none"> <li>• Improper Notice (e.g. you never received a 5-day notice for failing to pay you rent).</li> <li>• Incorrect amount of rent in dispute.</li> <li>• Compliance with the terms of your rental agreement, or house rules (e.g. your landlord claims you had a loud party late at night but you can prove with airline tickets you were not on the island the night of the incident).</li> </ul>

- 2) Locate useful witnesses that will help your case, for example:
  - a. building inspectors (who can testify to the condition of your rental unit),
  - b. utility company workers (who can testify to your utilities being shut off),
  - c. other tenants (who can testify to your landlord’s general disposition and treatment of the rental unit and/or other tenants),
  - d. family members (who can testify to the events that occurred).
- 3) Gather the documents to prove your case, for example:
  - a. If your landlord is evicting you for non payment of rent, you will need any receipts, canceled checks, bank statements, etc. which prove you paid.
  - b. If your landlord is claiming your damaged the unit, bring any pictures you have which prove it was already damaged.
  - c. If your landlord is evicting you for unauthorized tenants, bring proof that the person your landlord believes is living with you lives somewhere else – a lease or their mail.
- 4) Gather any correspondence between your and your landlord that supports your case, for example:
  - a. Letters,
  - b. Emails,
  - c. Text messages (have your cell phone provider print them up for you),
  - d. Hand-written notes

Note: if you are concerned that a useful witness may not show up at Trial you can Subpoena them. Obtain a Subpoena Form from the District Court, and serve the form on the witness: 1) personally by a Sheriff or individual over the age of 18 years-old who is not a party to the case do it; or 2) by registered mail.

You should also read Legal Aid’s brochure on “How to Represent Yourself” so that you understand how the procedures work at Trial and what you will need to do for the Judge to consider all your evidence.

## **Your Final Court Appearance: Trial**

Trial is the third court hearing in the eviction process for Honolulu and the second hearing for other courts. You and your landlord will appear before the judge and present your case. Your landlord will present his/her case first and you will follow. There will be no jury. The Judge will decide the case based on 1) the evidence, testimony, and exhibits; and 2) how those facts fit the law.

Your landlord must prove to the Judge that the facts in the Complaint are true. For example, you have not paid your rent, you were given proper notice, or you violated your lease/house rules. Your landlord will also have to prove that you are still living in the unit.

If the Judge decides that your landlord has not proven the facts in the Complaint, you then get a chance to tell the Judge your side of the story. Once the Judge hears from you and your landlord, he/she will decide which one of you he/she agrees with.

### **Can my landlord do that?**

Just because your landlord owns the property does not mean he or she can do anything illegal, such as:

- Locking you out without a court order
- shutting off your utilities
- evicting you in retaliation (e.g. you reported a code violation to the city)
- discriminating against you
- taking your personal property

If you feel your landlord is evicting you illegally or threatening to do something illegal, call Legal Aid immediately.

## What Happens if I Win?

If you win, your landlord may be subject to stiff penalties. By example, the Judge may award you damages, including: reasonable attorneys fees (usually 25% of the rent owed, if you hired an attorney), court costs, interest, etc. The Judge may even order your landlord to allow you to stay in the rental unit, with necessary repairs (if applicable). Finally, the Judge may schedule a Proof of Damages Hearing to determine if you are entitled to any additional damages (money).

## What Happens if I Lose?

If you lose, the Judge will issue:

- 1) Writ and Judgment of Possession:  
This gives your landlord the right to take possession of your unit away from you. The landlord now has the right to have a Sheriff physically remove you, and your belongings, from the unit. They now have the right to change the locks.
- 2) Judgment:  
The Judgment is a Court Order which directs you to pay your landlord a certain amount of money.

The Judge may determine how much you owe your landlord at the Trial. The Judge may decide to schedule a separate trial on damages only to determine how much you owe your landlord.

## How can the landlord collect the money from me?

If the landlord wins the case, the landlord will have a Judgment against you which allows the landlord to collect money owed by you. The Judgment will likely appear on your credit report. If you have little or no assets, you may be considered judgment proof. This means the landlord cannot collect from you because you make too little to take.

If you have a job, or make over \$217.50 a week (this amount changes, so call Legal Aid for up to date information), the landlord may be able to “garnish” (take) some of your wages directly from your paycheck. The landlord must follow certain steps to garnish your paycheck and you will get a notice from your employer if the landlord tries to do this.

## If I lose, how much will I have to pay?

The Court decides how much you owe and orders you to pay it. If you have claims about what the landlord did, that may offset some of the amount awarded to the landlord. The costs you may have to pay include:

- **Rent and late fees** the landlord proved you owe.
- **Landlord’s attorney fees**, usually 25% of the amount of rent owed to the landlord as determined by the Judge. These can be collected only if the landlord actually hired an attorney.
- **Landlord’s court costs** such as the filing fee and the sheriff’s fee for serving the court papers.
- **Holdover Rent** is a penalty for staying in the rental unit after you should have gone. The Judge usually decides the amount. Holdover rent is normally twice the normal rent and is “prorated” from the time the rental agreement terminated to the time that you actually leave the rental unit. “Prorated” means that the monthly rent is broken down to a day-by-day rate.
- **Cost of repairs** for any damages to the unit.
- **Interest** may be applied at a reasonable rate to the balance of any money owed.

The landlord could also follow the legal process to put a “lien” on any property you have. This would mean the landlord would get any profits from the sale of those things, such as a house, car, or boat. For more information on how your landlord can collect his or her judgment, call Legal Aid Society of Hawaii.

### **If I lose, is there any way to change the Court’s order?**

If there are extreme circumstances such as fraud or new evidence which was not available at the time of your Trial, you may be able to ask the Court to change its ruling. Call the Legal Aid Society of Hawai‘i or a private attorney for more information. You will have to file a Motion for Reconsideration with the Court. This does not stop the enforcement of the Writ of Possession, unless you file a separate Motion asking the Court to Stay the Writ of Possession. This is an extremely time consuming and potentially costly process should you lose and be held responsible for your landlord’s additional attorney’s fees. Carefully consider if the new information or evidence is enough that you think a Judge would reopen your case and reconsider the facts.

#### **Additional Legal Aid Society of Hawai‘i Brochures you may find helpful:**

*Affordable Housing Listing*

*Housing and Rental Assistance Programs and Agencies*

*Illegal Lockouts & Utility Cut-Offs Self-Help Packets*

*How to Stop an Eviction when you missed your Court hearing (Motion to Set Aside Judgment and Motion to Stay Writ of Execution)*

*How to Answer and Counterclaim if you are facing an Eviction*

*Debt Collection & Garnishment*

### **Useful Names & Numbers**

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

Legal Hotline

Oahu: 536-4302

Maui: 242-0724

Hilo: 934-0678

Kona: 329-8331

Kauai: 245-7580

Lanai: 565-6089

Molokai: 553-3251

Open M-F (9-11:30am; 1-3:30pm)

**District Court**

Oahu: 538-5151 Maui: 244-2800

**BIG ISLAND:**

Hilo: 961-7470 Kona: 322-2022

Hamakua: 885-4615

Kauai: 246-3330 or 246-3337

Molokai: 553-5451

Lanai: 565-6447

#### **Office of Consumer Protection’s Landlord/Tenant Hotline**

Oahu ..... 586-2634

Neighbor Islands ..... 1-800-513-8886

**REMEMBER: THIS PAMPHLET IS MEANT TO GIVE YOU GENERAL INFORMATION AND NOT TO GIVE YOU SPECIFIC LEGAL ADVICE ABOUT YOUR CASE. THE LAW OFTEN CHANGES. EACH CASE IS DIFFERENT**