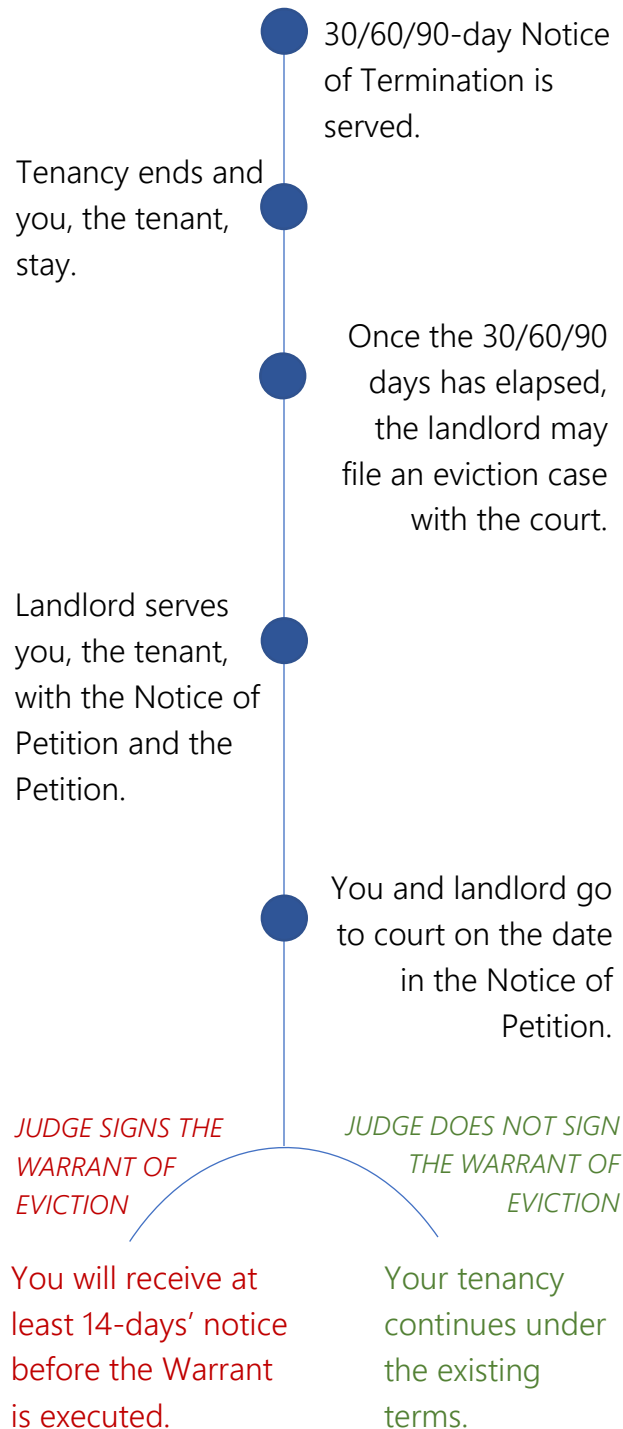


## Holdover Eviction Timeline



## OUR LOCATIONS

Main Office - Utica  
120 Bleecker Street  
Utica, New York 13501

Syracuse  
221 South Warren Street  
Suite 310  
Syracuse, NY 13202

Binghamton  
105 Court Street, 3rd Fl.  
Binghamton, NY 13901

Watertown  
215 Washington Street  
Suite 202  
Watertown, NY 13601

Oswego  
335 West First Street  
Suite 2  
Oswego, NY 13126

Oneonta  
189 Main Street, #3  
Oneonta, NY 13820-3510

Farmworker Law Project (statewide)  
P.O. Box 282  
Wappingers Falls, NY 12590

This brochure is intended to give general information, not legal advice. The information in this brochure may not apply to your particular situation. You should also know that the law could change in the future. Whenever possible, speak to a lawyer for advice and representation.



*Making Justice Accessible*

## Holdover Evictions



**Legal Aid Society of Mid-New York, Inc.**

Housing Preservation Line: (315) 793-7083

HelpLine: (877) 777-6152

[www.lasmny.org](http://www.lasmny.org)

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## WHAT IS A HOLDOVER EVICTION?

A holdover action is a type of eviction action where a landlord tries to evict a tenant who has stayed past his or her lease term. For example, if a tenant's lease ends in July, and the tenant does not vacate, the landlord may be able to start a holdover proceeding in August.

## WHAT ARE THE REASONS A LANDLORD CAN FILE A HOLDOVER EVICTION?

A holdover eviction is any eviction that isn't a nonpayment. These are some common reasons for a holdover eviction:

- 1) The landlord wants to end the lease because the tenant violated a lease clause (the tenant has breached the lease).
- 2) The lease has expired but the tenant hasn't left.
- 3) A person who is not a tenant will not leave.

## #1: WHEN YOU HAVE BREACHED THE LEASE

To evict for a lease breach, the lease must authorize an early termination for breach. If the lease doesn't say this, the landlord can't end the lease early for a lease breach.

The landlord generally must give you notice of the breach and an opportunity to "cure," or fix it. In private housing, this notice could be oral or written. There are special rules if you live in subsidized housing.

Common breaches include having pets, alterations to the apartment, chronic late rent, and objectionable conduct.

## #2: WHEN THE LEASE HAS EXPIRED BUT YOU HAVEN'T LEFT

Are you entitled to be notified by your landlord about when the lease ends?

Yes, you are entitled to a Notice of Termination, also called a Notice of Non-Renewal. The amount of time you are entitled to depends on the length of time you've lived there, or the length of the lease, whichever is longer. This is called the 30/60/90-day notice.

30-day notice—you've lived there less than 1 year, and your lease is for less than 1 year

60-day notice—you've lived there for more than 1 year, but less than 2 years, or your lease term is for at least 1 year, but less than 2 years

90-day notice—you've lived there for more than 2 years, or your lease is for more than 2 years

What if you don't have a lease?

If you don't have a lease with your landlord, the law assumes you have a month-to-month tenancy, and it continues indefinitely until terminated by one of the parties (RPL 226-c). The above 30/60/90-day notice requirement applied to month-to-month tenancies.

## #3: WHEN SOMEONE OTHER THAN THE TENANT WON'T LEAVE

Non-tenants may be evicted under RPAPL 713.

This includes squatters, licensees, and people who live somewhere incident to employment (like an in-home nurse or a nanny).

Tenants at Will are people who live somewhere for an indefinite duration with the landlord's permission, and without an agreement to pay rent. They are entitled to 30-day notice.

## HOLDOVER DEFENSES

**Surrender of Possession** – If you leave the apartment, which requires you to return the keys, before the first court date, the eviction action must be dismissed.

**Rent Acceptance** – If the landlord accepts rent money after the lease ends, but *before* filing for eviction in court, it voids the 30/60/90-day notice, and the landlord has to give you a new one. The acceptance of rent in this scenario generally creates a new month-to-month tenancy. RPL § 232-c.

**Retaliatory Eviction** – Under RPL § 223-b, it is assumed to be retaliatory if the landlord tries to evict you within 1 year after making a good-faith complaint to the landlord or an agency (like Codes). Then, it's the landlord's burden to prove that the eviction is for a non-retaliatory reason.

**Domestic Violence** – Landlords generally may not evict tenants based on their status as a domestic violence victim. *See our Domestic Violence Evictions pamphlet for more information.*

**Cure** – If the landlord is trying to evict you for breaching the lease, the court must grant a 30-day cure period before issuing a warrant. RPAPL § 753(4).