

Frequently Asked Questions by Residential Landlords in Appeals to County Courts at Law

The information that follows was written for residential landlords and property owners in appeals of eviction cases in the Johnson County Courts at Law. It answers **some basic** questions about the appeal of a residential eviction case from a Justice of the Peace (JP) Court to a County Court at Law. You will find information on this topic from many other sources.

THIS INFORMATION IS NOT A SUBSTITUTE FOR REPRESENTATION BY AN ATTORNEY.

It is recommended that you retain an attorney to represent you in the County Courts at Law. A self-represented (Pro Se) litigant is expected to be able to conduct an entire proceeding, including conducting a trial in accord with the Texas Rules of Civil Procedure and the Texas Rules of Evidence without assistance. A Pro Se Litigant in a non-jury trial needs to be able to make an opening statement, call and question witnesses, present and admit exhibits, cross-examine adverse witnesses, argue the case and provide a properly drafted judgment. If the case is before a jury, the Pro Se Litigant must additionally be able to select potential jurors. You should be aware that Texas attorneys may use traditional or modern methods of advertising their services, including, but not limited to, internet, newspaper, periodical, television and radio. For assistance in finding an attorney you may use the Texas State Bar Information & Referral service at (800) 252-9690 (Toll Free), Monday - Friday, CST, 8:30 a.m. to 4:30 p.m. The call-in service is closed on legal holidays. To access a range of paid, free or reduced fee legal resources in your county, please visit www.texasbar.com/selfservice. You may also get a referral to an attorney anytime by visiting the Texas State Bar [online service](#). **Please note that this is an automated system and an attorney you may be referred to may not match your specific requirements.** You may also call the State Bar of Texas during business hours to speak with a staff member.

Who may benefit from reading this list of frequently asked questions?

This question and answer information is intended for residential property owners or landlords who have had a judgment rendered in their favor in a Justice of the Peace Court in Johnson County, Texas. It is designed to provide general answers to many common issues in the appeal of an eviction case from a Justice of the Peace (JP) Court to a County Court at Law. The questions and answers here are not case specific and may not apply to your case situation.

Who can appeal in an eviction case?

The property owner, landlord or the tenant can appeal a JP Court judgment in an eviction case (a.k.a. forcible eviction case) and receive a completely new trial (trial de novo) in a County Court at Law.

Where are the County Courts at Law and the County Clerk's Office?

The Johnson County Courts at Law # 1 and # 2 are on the fourth floor of the Guinn Justice Center, 204 South Buffalo Avenue, Cleburne, Texas 76033. The Clerk's Office for each Court is also on the fourth floor of the Guinn Justice Center, 204 South Buffalo Avenue, Cleburne, Texas 76033.

Can I represent myself?

Yes, if you personally own 100% of the rental unit (house, duplex, etc.). No, if the rental unit is owned by a **legal entity** (corporation, Limited Liability Company, Limited Partnership, etc.). An attorney must represent the legal entity. Just because a sole owner can represent him/herself doesn't mean he/she **should**. Eviction appeals can be complicated. An error on your part could cause you to lose the case. A Pro Se Litigant in a non-jury trial needs to be able to make an opening statement, call and question witnesses, present and admit exhibits, cross-examine adverse witnesses, argue the case and provide a properly drafted judgment. If the case is before a jury, the Pro Se Litigant must additionally be able to select and interview potential jurors. The tenant may be represented by an attorney in a County Court at Law even if he or she wasn't represented at the JP Court. Special rules (Texas Rules of Civil Procedure, Rule 500, et. seq.) apply to Justice court proceedings that DO NOT apply in County Courts at Law. The Texas Rules of Evidence do not apply to justice courts but the evidence rules do apply in County Courts at Law. One who knows the rules likely has an advantage in a contested proceeding. As well, a justice court judge may question a witness or party and may summon any person or party to appear as a witness.

What if the tenant(s) move?

Appeals are time-critical. If the JP court rendered judgement in your favor, there is only a 5 day window (counting Saturdays, Sundays and holidays), from the day the JP Judge signs the judgment for the eviction to become final. Note that an exception to this rule exists if the **5th day** lands on a weekend or holiday, then the tenant can file an appeal on the next day the court is open. If the tenant

remains in the rental after the judgment becomes final, the property owner/landlord can ask the JP Judge for a “Writ of Possession” after 5 days (counting Saturdays, Sundays and holidays) from the day the JP Judge signed the judgment for your eviction.

How does the tenant appeal?

To appeal an eviction, a tenant must file at the JP Court within 5 days of the day the judgment is signed either: an appeal bond (or cash bond) or a verified Affidavit of Inability to Pay Cost of Appeal or File Appeal Bond (Pauper’s Affidavit).

Can I contest the tenant’s Pauper’s Affidavit?

The property owner has 5 days from the day the tenant files the Pauper’s Affidavit to notify the JP Court Clerk of the portions of the affidavit that are contested. The JP Judge will hold a hearing within 5 days from the day you file your contest. The tenant has the burden to prove that he or she cannot afford to pay the costs of appeal, file an appeal bond, or pay the bond in cash. If your contest is granted, the tenant has 5 days to post the appeal bond, pay the bond in cash or appeal the JP Court’s decision to deny the Pauper’s Affidavit to the County Courts at Law. If your contest is denied or you don’t file a contest, the Pauper’s Affidavit is approved, and the case is sent to County Court at Law for a new trial. Note: If it’s obvious the tenant cannot afford the bond, you may not want to waste your time and the Court’s time contesting the Pauper’s Affidavit.

Can my employee appear in court on my behalf?

Generally, no, but a non-lawyer may file on behalf of personal owner a verified Motion for Writ of Possession for rent in a case where eviction is based on rent non-payment (Texas Property Code 24.0054 a.k.a. TPC 24.0054), and a non-lawyer may appear on a property owner’s behalf to file a properly prepared Motion to Dismiss the appeal.

Who gets possession of the rental unit during the appeal?

The tenant may remain in possession of the rental unit during the appeal if:

- the tenant paid an appeal bond or cash bond,
- **or** you’re evicting the tenant for a reason other than nonpayment of rent,
- **or** you’re evicting the tenant for nonpayment of rent and the tenant pays rent to the Court as required by TPC 24.0054 and described in the next answer.

Does the tenant have to pay rent during the appeal?

Generally, yes. Unless the tenant filed an appeal bond or cash bond, the tenant must pay rent during the appeal.

If the tenant appealed by *Pauper’s Affidavit* **and** the property owner or landlord is evicting the tenant for nonpayment of rent, the tenant must:

- 1) pay an initial deposit of 1 month’s rent to the JP Court Clerk **within 5 days** of filing the Pauper’s Affidavit **and**
- 2) pay rent as it comes due (within 5 days of its due date) to the Johnson County Clerk’s Office.

If the property owner or residential landlord is evicting a tenant for any other reason, the tenant must continue to pay rent directly to the property owner or landlord. If the tenant doesn’t pay as required, the property owner or landlord can file another eviction case based on nonpayment of rent.

If a portion of the rent is paid by a government agency, the JP Court will determine the amount to be paid by the tenant and the amount to be paid by the government agency. If you disagree with the JP Court’s determination, you have 5 days to contest it.

Can I get possession of the rental unit if the tenant fails to pay rent to the court during the appeal?

If the tenant appealed by filing a Verified Affidavit of Inability to Pay (*Pauper’s Affidavit*) **and** you’re evicting the tenant for nonpayment of rent, the property owner or landlord may obtain the right of possession during the appeal. If the tenant doesn’t make the initial deposit of rent to the JP Court Clerk within 5 days of filing the *Pauper’s Affidavit*, the property owner or landlord may request that the JP Court to issue a Writ of Possession immediately, without giving notice to the tenant and without a hearing by filing a properly prepared and verified document that the Tenant has failed to make the initial deposit of rent to the JP Court Clerk within 5 days of filing the *Pauper’s Affidavit*.

If the tenant fails to pay future rent within 5 days of its due date to the County Clerk, the property owner or landlord may file or cause to be filed a properly prepared and completed “Landlord’s Sworn Motion for Writ of Possession and Notice of Hearing.” This is a

document usually prepared by an attorney. To be considered by the Court at Law, the motion must contain all pertinent factual information, be in proper form, and be sworn to by the property owner or landlord in front of a notary. After the motion is filed with the county clerk. A hearing should be requested. The motion may contain a request for a hearing. All Texas Rules of Civil Procedure must be followed including sending a true copy of the Motion to the tenant by personal delivery, fax or certified mail return receipt requested on the day of filing. The tenant must receive at least 3 days' notice of any hearing on such a motion. The tenant may avoid a *Writ of Possession* if, on or before the date of the hearing, the tenant pays to the Court Clerk the rent owed. The tenant is only allowed to catch up in this manner once.

Who sets the appeal case for trial?

The Court will not generally schedule the trial, absent a request from one or both of the parties. Either the property owner or the tenant may deliver a letter to the Court Coordinator requesting the trial be set (including suggested dates). A copy of this written request must be sent to the other party in accordance with the Texas Rules of Civil Procedure. Under certain circumstances, the law allows the Court to schedule the trial as soon as the case has been on file with the County Clerk's Office for at least eight (8) days. The Court Coordinator may also set the case for a pre-trial hearing. Once the trial date is set, the person requesting the trial must send notice of the trial date to the other party either by personal delivery, fax, or certified mail return receipt requested. The tenant must receive at least 3 days' notice of the trial setting. The attorney (or property owner if unrepresented) should file proof with the Court Clerk that notice was properly sent to the Tenant of the date and time of the trial.

What if a government agency doesn't pay its portion of the rent during the appeal?

If the JP Court found that a portion of the tenant's rent is paid by a government agency but the government agency does not pay, you may ask the County Court at Law to order the tenant to pay the full amount of rent into the court registry. You must be able to show that you did not cause the agency to stop paying its portion of the rent and that you are not able to take reasonable action to get the agency to start paying its portion of the rent.

Special Note to Texas Rent Relief recipients: If you are appealing an eviction after having received [Texas Rent Relief](#) funds, you may use those funds to pay rent to the County Clerk's office.

Can I refuse to let the tenant pay rent while the case is pending?

While you certainly could, you should realize that if you do, the tenant will not likely have set the money aside if the case doesn't go your way.

Does the Tenant have to file a Written Answer to the Landlord's Petition for Eviction in the Appeal Court?

If the Tenant didn't file a written answer to the lawsuit in the Justice Court, he or she must file one in the County Court at Law within eight days after the County Court at Law receives the case. The Clerk will send notice to the Tenant of this obligation. If no answer is filed, the property owner may win by default upon proper written motion. The attorney or property owner may present a Default Judgment to the court, but it is the responsibility of the attorney (or property owner) to make sure that the Default Judgment is in correct form.

How do I try my case?

This is far outside the scope of this basic brochure. You should know that an appeal means there will be a new trial in the County Court at Law. This may be a case before a judge or a jury. Each side has a right to a trial by jury. Trials are complex. If you are planning to represent yourself, you should thoroughly prepare. The County Court at Law is much more formal than JP Court and rules are strictly enforced.

What happens if I don't hire an Attorney and lose the Appeal Trial?

This is also outside the scope of this basic brochure. If you are unsuccessful at the County Court at Law level representing yourself, you will have to provide and file certain documents (including, but not limited to, transcripts, notices and requests) within strictly enforced time constraints in order to perfect the appeal. The process is complicated. If you lose the appeal trial, you should consult a lawyer immediately to discuss your next step.

What are some Courtroom Rules?

You should plan to arrive 15-30 minutes early. If you arrive late, the judge may have already ruled on your case. Be sure to leave enough time to find parking. There is ample free public parking near the Guinn Justice Center.

Wear Proper Clothes

Dress like you're going to a job interview. Shorts, flip-flops, and tank tops are strictly banned in the County Courts at Law. If you show up in improper attire, you may not be allowed in the courtroom and your opponent might win.

Be Respectful

When you are in Court, you should be respectful to the judge and the opposing party at all times. Address the judge as "Your Honor." Address the opposing party as "Sir" or "M'am." You should always stand when you speak to the judge, except while testifying as a witness. You should endeavor to be prepared. If possible, ask an attorney to help you get ready for your trial.

Evidence

You should have at least three copies of each Exhibit you plan to introduce. The original for identification and retention in the clerk's file; a copy for the opposing party and a copy for your use. All original exhibits should be Pre-Marked as appropriate. The Court Reporter for the County Court at Law may provide stickers for your to identify your exhibits.

Neatness Counts

Your documents (exhibits, pleadings, requests) should be clean and organized. If you intend to introduce evidence in a digital format, you should make sure the evidence is in a format that can be displayed or processed by the digital equipment available in court.