

## Montour Town Court

### Summary Proceedings (Evictions)

#### NON-PAYMENT PROCEEDINGS:

(Eviction for Non-Payment of Rent only)

**Jurisdiction:** Property must be located within the Town of Montour.

**Forms:** The forms necessary for initiating a Landlord-Tenant Proceeding can be purchased from a stationary or office supply store or obtained from your attorney. The Court does not supply these forms.

Note: To collect on damages to a property caused by a tenant or to collect for fees and services other than rent, the landlord must file a Small Claim petition with the Court.

IF YOU HAVE ANY QUESTIONS REGARDING LANDLORD-TENANT LAW, YOU MAY CONSULT WITH AN ATTORNEY. **THE COURT CANNOT PROVIDE LEGAL ADVICE.**

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For Non-Payment Rent, the following procedures should be followed:

#### 1. 3 DAY NOTICE:

Unless there is a written or verbal lease which indicates otherwise, before a Summary Proceeding (Landlord-Tenant proceeding) can be brought for non-payment of rent, a personal demand for rent or service of a written notice giving the tenant at least 3 days to pay the rent or surrender possession of the premises must be served upon the tenant.

The 3 day notice must state the amount of the rent due and the period of time for which the amount is due, together with a demand that the total amount be paid within three (3) business days after service of the notice. The date of service, Saturdays, Sundays and holidays are excluded.

**2. AFFIDAVIT OF SERVICE** (for service of 3 day notice): After the 3 day notice has been served on the tenant, an Affidavit of Service must be signed before a Notary Public by the person that served the 3 day notice. The papers must be served by a person over the age of 18 years old. It is suggested that the papers NOT be served by the landlord, but by a disinterested third person.

**After the tenant has been served with the 3-day notice and has failed to pay the rent due, a Landlord-Tenant Proceeding can be initiated in the Town Court by completing and filing the following documents:**

**3. NOTICE OF PETITION**(e.g. Blumberg Form X445):

This paper can be issued by an Attorney, a Judge or the Clerk of the Court. If a Judge or the Clerk of the Court is asked to sign the Notice of Petition, the Petition must be completed by the landlord and submitted to the Town Court offices before it is served on the tenant.

Special Note: When completing the Petition (see below) and Notice of Petition, the landlord must contact the Court for a court date, which must appear in the Notice of Petition. The Court Date cannot be sooner than 5 days nor later than 12 days from the date the tenant is served. The Judge will set the court date and the landlord (petitioner) and the tenant (respondent), if properly served, must appear on the court date.

**4. PETITION** (e.g. Blumberg Form X444):

The Petition is a form that must be completed by the landlord and attached to the Notice of Petition and the 3-day notice, which was previously served on the tenant. The Petition must state the respondent's interest in the property, that is, the petitioner must specify if the respondent is a tenant, a sub-tenant, or someone in possession of the property for some other reason. To do this, the petitioner should state if there is a written lease or a verbal agreement to lease, and if so, the terms of such an agreement (length of lease term and payment schedule e.g. payment once a month)

**The landlord is to sign the Petition before a Notary Public.**

When the papers are completed, a Court Date provided and the Judge or Clerk of the Court has signed the Notice of Petition, then and only then can the tenant be served with the Notice of Petition and Petition.

**The Notice of Petition, Petition, 3-day Notice (previously served on the tenant) and corresponding affidavit must be filed with the Court in DUPLICATE along with the filing fee. The Judge or Clerk of the Court will sign the Notice of Petition and return the Notice of Petition and Petition to the Landlord. The Notice of Petition and Petition must be served on the Tenant not less than 5 days and not more than 12 days before the Court date.**

**5. AFFIDAVIT OF SERVICE** (for service of Notice of Petition and Petition):

This affidavit of Service is filed with the court after service of the Notice of Petition and Petition on the tenant. The Notice of Petition and Petition must be served by a person 18 years or older. The person serving the papers will be attesting to the fact that the papers were served within the time limits allowed (not less than 5 days and no more than 12 days before the Court date). The person who serves the papers must not be a party to the action. It is preferable that personal service be made upon the respondent-tenant or upon a person of suitable age and discretion residing with the respondent-tenant. In cases where personal service is not possible, service may be made by "nail and Mail" that is, posting the papers on the door of the residence of the respondent-

tenant AND mailing a copy of the papers by certified mail, return receipt requested.  
(RPAPL sec. 735)

**The Affidavit of Service must be filed with the Court within 3 days after service.  
FAILURE TO FILE THE AFFIDAVIT OF SERVICE WITHIN 3 DAYS AFTER SERVICE MAY  
RESULT IN THE DISMISSAL OF THE CASE.**

**If at any time, it is determined by the Landlord that the Court date is no longer  
needed, the Landlord should notify the Court, in writing as soon as possible which may  
be faxed to the Town Court. Note: The filing fee cannot be returned.**

**If the tenant pays the outstanding rent before the Court proceeding, the tenant  
cannot be evicted from the premises.**

**If the tenant fails to appear on the Court Date, the Court may sign the following  
document:**

**6. WARRANT for Non-Payment:** (e.g. Blumberg Form T447):

This document should be completed prior to the Court date by the landlord and brought to the Court hearing. The Court will sign this document if the tenant fails to appear for the Court hearing. This will enable the Sheriff to remove the tenant from the premises.

Note: There is a mandatory 72-hour waiting period between the time you serve the tenant with a warrant and when the tenant may be removed from the premises by the Sheriff.

**HOLDOVER PROCEEDINGS:**

(Any eviction for grounds other than Non-Payment of Rent)

**Jurisdiction:** Property must be located within the Town of Montour Falls

**Forms:** The forms necessary for initiating a Landlord-Tenant Proceeding can be purchased from a stationary or office supply store or obtained from your attorney. The Court does not supply these forms.

**IF YOU HAVE ANY QUESTIONS REGARDING LANDLORD-TENANT LAW, YOU MAY  
CONSULT WITH AN ATTORNEY. THE COURT CANNOT PROVIDE LEGAL ADVISE.**

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**All landlord-tenant summary proceedings, other than for non-payment of rent (see Instructions for non-payment), are called “holdover” proceedings. These include actions:**

- To remove tenants whose written lease has expired but who remain beyond the expiration date
- To remove tenants who remain on the premises after proper notification that the lease has ended
- To remove non-tenants such as squatters
- To remove objectionable tenants for violations of the lease or violations of the law

A proceeding to evict a tenant whose written lease has expired may be commenced at the end of the lease term without a notice of termination given. The landlord may file a Notice of Petition and Petition for eviction with the Court (see step 3 below).

If there is no written lease, the tenancy must be terminated by a 30 day written notice (see step 1 below).

In a ‘holdover’ proceeding, a landlord can make a claim for a “sum of money that was payable at the time when the (eviction) proceeding was commenced (plus) the reasonable value of the use and occupation to the time when the warrant was issued, for any period of time with respect to which the agreement does not make any provision for payment of rent” (RPSPL749-3).

Note: To collect on damages to a property caused by a tenant or to collect for fees and services other than rent, the landlord must file a Small Claim petition with the Court.

### **1. 30 DAY NOTICE:**

The 30 day notice is a notice given to the tenant, renting on a month-to-month basis, requiring that the tenant surrender the premises within 30 days. (Not: if the only complaint is that the tenant has failed to pay rent, follow the instructions for non-payment). It is important to note that the 30 day notice must be served on May 31<sup>st</sup> or before, the notice may require the tenant to vacate on or before July 1<sup>st</sup>. However, if the notice is served on June 1<sup>st</sup>, the notice could not legally require the tenant to move before August 1<sup>st</sup> which would be 30 days from the next rental date.

### **2. AFFIDAVIT OF SERVICE**

(for service of 30 day notice): After the 30 day notice has been served on the tenant, an Affidavit of Service must be signed before a Notary Public by the person that served the 30 day notice. The papers must be served by a person over the age of 18 years old. It is suggested that the papers NOT be served by the landlord, but by a disinterested third person.

**After the tenant has been served with the 30 day notice and has failed to vacate the premises, a Landlord-Tenant Proceeding can be initiated in the Town Court by completing and filing the following documents:**

**3. NOTICE OF PETITION** (e.g. Blumberg Form T449):

This paper can be issued by an Attorney, a Judge or the clerk of the Court. If a Judge or Clerk of the Court is requested to sign the Notice of Petition, the petition must be completed by the landlord and submitted to the Town Court offices before it is served on the tenant.

**Special Note:** When completing the Petition (see below) and Notice of Petition, the landlord must call the Court for a court date which must appear in the Notice of Petition. The Court Date cannot be sooner than 5 days nor later than 12 days from the date the tenant is served. The landlord and the tenant, if properly served, must appear on the court date.

**4. PETITION** (e.g. Blumberg Form T448): the Petition is a form that must be completed by the landlord and attached to the Notice of Petition and the 30-day notice, which was previously served on the tenant. The landlord is to sign this paper and sign the verification in front of a Notary Public. When the papers are completed and a Court Date has been provided and the Judge or Clerk of the Court has signed the Notice of Petition, then and only then can the tenant be served with the Notice of Petition and Petition.

**The Notice of Petition, Petition, 30-day Notice (if applicable) (previously served on the tenant) and corresponding affidavit (if applicable) must be filed with the Court in DUPLICATE along with the filing fee. The Judge or Clerk of the Court will sign the Notice of Petition and return the Notice of Petition and Petition to the Landlord. The Notice of Petition and Petition must be served on the Tenant not less than 5 days and not more than 12 days before the Court date.**

**5. AFFIDAVIT OF SERVICE** (for service of Notice of Petition and Petition):

This Affidavit of Service is filed with the Court after service of the Notice of Petition and Petition on the tenant. The Notice of Petition and Petition must be served by a person 18 years or older. The person serving the papers will be attesting to the fact that the papers were served within the time limits allowed (not less than 5 days and no more than 12 days before the Court date). The person who serves the papers must not be a party to the action. It is preferable that personal service be made upon the tenant. In cases where personal service is not possible, service may be made by "nail and mail", that is, papers by certified mail, return receipt requested. (RPAP: sec. 735)

**The Affidavit of Service must be filed with the Court within 3 days after service. FAILURE TO FILE THE AFFIDAVIT OF SERVICE WITHIN 3 DAYS AFTER SERVICE MAY RESULT IN THE DISMISSAL OF THE CASE.**

**If, at any time, it is determined by the Landlord that the Court date is no longer needed, the Landlord should notify the Court, in writing, as soon as possible which may be faxed to the Town Court. Note: The filing fee cannot be returned.**

**If the tenant fails to appear on the Court Date, the Court may sign the following document:**

**6. WARRANT for Holdover: (e.g. Blumberg form T453)**

This document should be completed prior to the Court date by the landlord and brought to the Court hearing. The Court will sign this document if the tenant fails to appear for the Court hearing. This will enable the Sheriff to remove them from the premises.

Note: There is a mandatory 72-hour waiting period between the time you serve the tenant with a warrant and when the tenant may be removed from the premises by the Sheriff.

**'HOLDOVER' PROCEEDINGS TO EVICT FOR VIOLATIONS OF THE TERMS OF THE LEASE OR VIOLATIONS OF THE LAW:**

**Jurisdiction:** Property must be located within the Town of Montour Falls.

**Forms:** The forms necessary for initiating a proceeding to evict for violations of the terms of the lease/violations of the law can be obtained from stationary stores.

**IF YOU HAVE ANY QUESTIONS REGARDING LANDLORD-TENANT LAW, YOU MAY CONSULT WITH AN ATTORNEY. THE COURT CANNOT PROVIDE LEGAL ADVISE.**

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**1. NOTICE TO OBJECTIONABLE TENANT:**

Before commencing an eviction proceeding, the landlord must give the tenant notice of his/her objectionable conduct that is the basis of the landlord's decision to terminate the lease. The written lease may set forth the length and/or type of notice to be given to the tenant. If there is a written lease, each party must comply with its terms. Note: If the grounds for eviction is alleged illegal use of the property such as drug dealing, then there are special procedures set forth in the New York Real Property Actions and Proceedings law sec. 715.

Note; To collect on damages to a property caused by a tenant or to collect for fees and services other than rent, the landlord must file a Small Claim petition with the Court. If a tenant does not cure the violation of the lease within the time required by the lease or continues the objectionable behavior AND proper notice has been provided to the tenant as dictated in the lease, the landlord may initiate an eviction proceeding in the Town Court by completing and filing the following documents:

**2. NOTICE OF PETITION:**

This paper can be issued by an Attorney, a Judge or the Clerk of the Court. If a Judge or the Clerk of the Court is requested to sign the Notice of Petition, the petition must be completed by the landlord and submitted to the Town Court offices before it is served on the tenant. Special Note: When completing the Petition and Notice of Petition, the landlord must call the Court for a court date which must appear in the Notice of Petition. The court Date cannot be sooner than 5 days nor later than 12 days from the date the tenant is served. The landlord and the tenant, if properly served, must appear on the court date.

**3. PETITION** (e.g. Blumberg Form T510):

The Petition is a form that must be completed by the landlord and attached to the Notice of Petition and the 3-day notice, which was previously served on the tenant. The landlord is to sign this paper and sign the verification in front of a Notary Public. When the papers are completed and a Court Date has been provided and the Judge or Clerk of the Court has signed the Notice of Petition, then and only then can the tenant be served with the Notice of Petition and Petition.

**The Notice of Petition, Petition, Notice to the tenant (previously served on the tenant) must be filed with the Court in DUPLICATE along with the filing fee. The Judge or Clerk of the Court will sign the Notice of Petition and return the Notice of Petition and Petition to the Landlord. The Notice of Petition and Petition must be served on the Tenant not less than 5 days and not more than 12 days before the Court date.**

**4. AFFIDAVIT OF SERVICE** (for service of Notice of Petition and Petition):

This Affidavit of Service is filed with the Court after service of the Notice of Petition and Petition on the tenant. The Notice of Petition and Petition must be served by a person 18 years or older. The person serving the papers will be attesting to the fact that the papers were served within the time limits allowed (not less than 5 days and no more than 12 days before the Court date). The person who serves the papers must not be a party to the action. It is preferable that personal service be made upon the respondent-tenant or upon a person of suitable age and discretion residing with the respondent-tenant. In cases where personal service is not possible, service may be made by "nail and mail", that is, posting the papers on the door of the residence of the respondent-tenant AND mailing a copy of the papers by certified mail, return receipt requested. (RPAPL sec. 735)

**The Affidavit of Service must be filed with the Court within 3 days after service. FAILURE TO FILE THE AFFIDAVIT OF SERVICE WITHIN 3 DAYS AFTER SERVICE MAY RESULT IN THE DISMISSAL OF THE CASE.**

If, at any time, it is determined by the Landlord that the Court date is no longer needed, the Landlord should notify the Court, in writing, as soon as possible which may be faxed to the Town Court. Note: The filing fee cannot be returned.

If the tenant fails to appear on the Court Date, the Court may sign the following document:

## 5. WARRANT:

This document should be completed prior to the court date by the landlord and brought to the Court hearing. The Court will sign this document if the tenant fails to appear for the Court hearing. This will enable the Sheriff to remove them from the premises.

NOTE: There is a mandatory 72-hour waiting period between the time you serve the tenant with a warrant and when the tenant may be removed from the premises by the Sheriff.

The court holds these hearings on the third (3<sup>rd</sup>) Tuesday of the month at 3:00 PM. Summary Hearings, (Evictions) or Small Claims are not heard on the first Monday of the month.

### **Fees:**

**Small Claims:** For damages of \$1,000.00 or less: \$15.00  
For damages of over \$1,000.00 and up to \$5,000.00: \$20.00

**Summary Hearings (evictions, hold over): \$20.00**

Payable by Cash, Money Order or Credit Card – no personal checks

**THIS FEE IS NONREFUNDABLE**