

## **ANATOMY OF AN APPEAL: THE LEGAL STEPS**

Every party to a lawsuit has the right to appeal the judge's decision. This includes landlords and tenants in a Special Detainer, commonly known as an eviction action. This article will provide a brief overview of the appeal process from Justice Court to Superior Court.

Normally in eviction cases it is the tenant who appeals a judge's decision. The landlord has the same right to appeal but because of the costs and time it may take an appeal to run its course, very few landlords exercise this option.

Tenants, on the other hand, file the majority of eviction appeals. The reason may be to delay their removal from the apartment or to have the higher Court determine if the judge's decision was legally correct.

Under A.R.S. § 12-1179, either party may appeal from Justice Court to Superior Court by filing a written notice within five calendar days after "rendition of the eviction Judgment". Keep in mind that rendition of Judgment is when the judge gives his or her verbal decision, not necessarily when he or she signs a written form of Judgment, which might take a few days.

If the tenant does not file a written Notice of Appeal with the Court within the five days, the case cannot be appealed. Always check the date on the Notice of Appeal to make sure it has been filed timely.

Next, the tenant must post a bond(s) with the Court in the amount of the Judgment and pay all future rent to the Superior Court on the rental due date. If the tenant does not

post the bond set by the Court, the Writ of Restitution (lockout) will not be stopped and the tenant would have to move out.

If the tenant does post the bond but fails to pay future rent to the Clerk of the Superior Court, the landlord can file a motion in Superior Court to dismiss the appeal or to allow the landlord to issue the Writ of Restitution and regain possession of the rental property.

If the tenant files the Motion of Appeal in time, posts all the bonds set by the Court and keeps the rent current, then the next requirement is to pay the appeal fee and file a written brief. The written brief is the tenant's legal argument why they should not be evicted. The tenant must also get a transcript at the hearing and submit this with their brief. The landlord may also request a copy of the hearing and have it transcribed.

The Superior Court will allow the tenant approximately 20 days to pay a \$200.00+ fee. If not paid, the Appeal will be considered abandoned and returned to the Justice Court so the Writ of Restitution can be issued to remove the tenant.

Once the case is assigned to a particular judge, the Civil Appellate Rules of Procedure apply.

The tenant must file a written legal brief within 60 days after submitting his or her Notice of Appeal in Justice Court. If this is not done, a Motion to Dismiss the Appeal can be filed.

The brief tells the Court why the case was not properly decided by the Justice of the Peace. If the brief is timely filed, then the landlord must file his or her brief within 30 days. No new evidence may be submitted at this point.

Once the briefs are filed, the Court either sets a hearing date for oral arguments or

simply reviews the entire file and issues a decision. Assuming all of the above procedures have been properly followed, the judge's decision may come anywhere from two to four months after the original court date in Justice Court.

The only exception is that if the tenant is being evicted for a material and irreparable breach (commonly called an Immediate Eviction), then the Justice Court must set an emergency hearing and can issue the Writ of Restitution and have the tenant locked out, even if the tenant has properly perfected their Appeal.

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