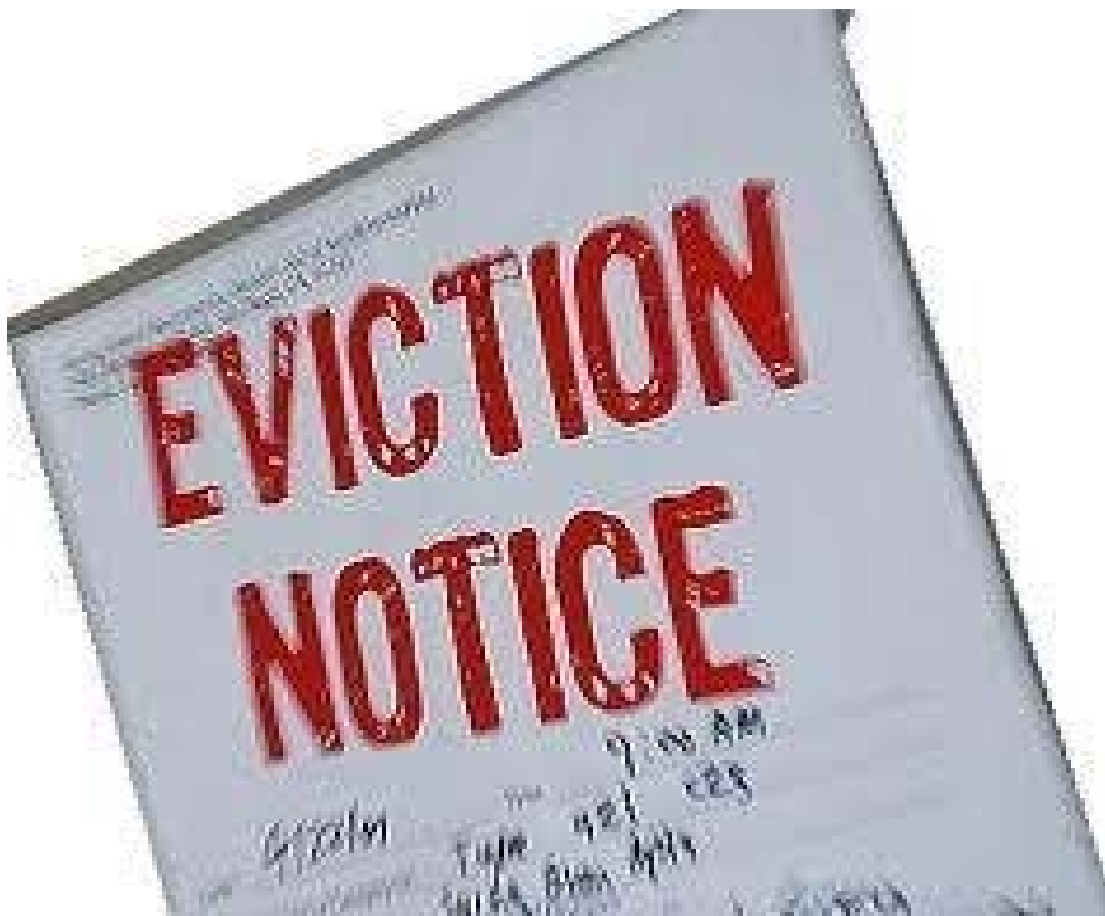


How to Answer Your Eviction During and After COVID-19



Legal Services of Greater Miami, Inc.
Tenants' Rights Project

TEMPORARY COURTHOUSE CLOSURES DUE TO COVID-19

Courthouses remain generally closed to the public. But, the public is allowed to enter the courthouse for emergency filings, to deposit rent, or to file an answer or claim of exemption. You must wear a mask when going to court. If there is a hearing in your case, it will be held by Zoom or over the telephone.

WHAT IS AN "EVICTION"?

An eviction is a lawsuit where the landlord asks a court to remove you from your unit. Before starting an eviction, the landlord must give you a written notice. If you do not do what the notice requests or you do not leave, the landlord will file an eviction against you in County Court.

NOTE: Your landlord cannot change the locks, turn off the utilities, or do anything else which forces you to move out. This is called an illegal eviction or a "prohibited practice," and is a violation of the Florida Law. It can make your landlord liable to you for three times your rent, or actual damages, whichever is higher, and attorney's fees and costs. See our brochure "What to Do If Your Landlord Locks You Out or Shuts Off Your Utilities"

REASONS WHY YOU CAN BE EVICTED

- **Non-Payment of Rent Notices Under the Normal Rules.**

Before you can be legally evicted for non-payment rent, the landlord must give you a **THREE DAY NOTICE** under the normal rules. The Three-Day notice must list the amount of rent that you owe and tell you to pay the rent or move out within three days. The Three-Day Notice must clearly state the day the rent is due. The three days cannot include the day you received the notice, Saturday, Sundays, or legal holidays. For example, if you get the notice on Thursday, then Friday is day one, Monday is day two, and Tuesday is day three -- the day you must pay your rent.

The Three Day Notice can only ask for rent. It cannot ask for late fees, repairs, or other charges. Make sure you read your lease. If the lease says that late fees are considered rent, then the landlord can include them in the Three Day Notice.

Once a Three Day Notice has expired, the landlord has the right to file an eviction complaint with the Court. If the Three Day Notice is defective or has a mistake on it, the landlord will have the opportunity to fix the notice before the judge will dismiss the eviction. Even so, you should still point out to the judge that the notice is defective.

SPECIAL CONSIDERATIONS DUE TO COVID-19

FEDERAL LAW: CARES ACT:

Due to COVID-19, several laws went into effect related to evictions. The CARES Act is a **federal law** prohibiting certain landlords from filing new eviction lawsuits and from charging late fees. This applies to landlords in federally subsidized housing programs, HUD Housing Programs, Low-Income Housing Tax Credit properties, most affordable housing, properties where at least one tenant has a Section 8 voucher, and private landlords with a federally backed mortgage. The moratorium went into effect on March 27, 2020 and extended for 120 days (until July 25, 2020). Now that the moratorium has ended, the landlord must provide at least 30 days' notice before filing a lawsuit for eviction. The earliest a landlord covered by the CARES Act can file an eviction is August 23, 2020. Additionally, the landlord cannot charge you late fees before July 25, 2020.

If you are a tenant trying to determine if a mortgage is federally backed you could inquire with your landlord or you could review this data for a non-exhaustive database of federally backed mortgages:

<https://nlihc.org/federal-moratoriums>

<https://florida.evictionprotection.org/>

Note that these search tools do not cover mortgages for buildings with 1 to 4 units or buildings that accept vouchers. Your home may be covered under the CARES Act even if it is not listed in these databases.

Note that the CARES Act does NOT prevent the landlord from proceeding with evictions filed before March 27, 2020.

THE CARES ACT AND MIAMI-DADE COUNTY COURTS: As A result of the Federal Cares Act, the Miami courts have instituted Administrative Order 20-10, entitled *In Re Evictions under the "Coronavirus, Aid, Relief and Economic Security Act" (the CARES Act)*. This is a rule requiring every landlord who has filed a non-payment of rent eviction on or after March 27, 2020 to file a declaration under penalty of perjury verifying whether or not the property which the eviction case is seeking to recover possession of has a Federally backed mortgage loan, a Federally backed multifamily mortgage loan, or is otherwise a "covered dwelling" under section 4024 of the CARES Act. This sworn declaration of the landlord asserting that their property is not a "covered dwelling" can be filed after the eviction is filed. However, this declaration must be filed before any landlord can obtain a judgment of eviction in a non-payment of rent eviction. If the landlord does not file this declaration you should raise this as a defense and in the motion to determine rent. (Discussed later). This requirement is scheduled to end after August 23, 2020.

STATEWIDE MORATORIUM:

In addition to the federal CARES Act- there is a separate **Florida statewide** eviction moratorium. From April 2, through July 29, 2020, evictions for non-payment of rent were suspended by the Governor. On July 30, 2020, the Governor issued a new executive order (20-180) which suspended “final action” in certain non-payment eviction cases through September 1, 2020. This Statewide moratorium only applies to non-payment evictions where the non-payment is a result of COVID-19 loss of employment, loss of hours or income due to COVID-19, or other monetary loss due to COVID-19.

Landlords are now allowed to file evictions and proceed with the case. It is unclear what “final action” is prohibited by the moratorium. Legal Services believes this means that the judge should not enter an eviction judgment (eviction order) against a tenant impacted the COVID-19 emergency. Some landlords believe that a judge can enter the eviction order and the landlord is only prohibited from having the police remove the tenant. Legal Services will update this brochure as the law is clarified.

You will not automatically receive protection from the moratorium. If your landlord files an eviction against you, you must file an answer and motion to determine rent notifying the judge that you were unable to pay rent because of the COVID-19 emergency. (See below for details on how to file). Explain how you are still adversely affected by the COVID-19 emergency. You should attach as much documentation as possible to show how the emergency impacted your finances. For example, documentation of when and why you lost your income, loss of hours at work, or other financial losses may be helpful to show you could not pay rent due to the COVID-19 emergency. If you are covered by the moratorium, you should not be required to deposit any rent with the court.

The moratorium does not relieve you from the past due rent. **You still owe any missing rent for April, May, June, July, and August**, but your rent is not due until you are no longer adversely affected by the COVID-19 emergency.

COUNTY ORDINANCE:

Specifically, in **Miami-Dade County** there is a law suspending evictions from Miami-Dade **Public Housing and County-Owned Affordable Housing** during a state of emergency.

Under this ordinance, the landlord cannot take “any action to facilitate the eviction of residents.” This means that the landlord should not take any steps in the eviction process, including filing, if you live in public housing or county-owned housing.”

- **Breach of Lease or Violation of Rules and Regulations**

Your landlord can also file an eviction against you because the landlord says you violated the lease, violated its rules, or engaged in some behavior that threatens the health, safety, and welfare of the other tenants.

Under Florida law, the landlord must give you at least 7 days written notice of the problem. If the problem is one that can be fixed, the landlord must give a SEVEN DAY NOTICE TO CURE. The purpose of giving you the notice is so that you can stop doing what the landlord says is a violation. For example, your landlord sends you a notice that says your broken truck in the parking lot is a violation of the lease. If you move the truck, you have “cured” the problem and the landlord cannot file an eviction. But if you move the broken truck back into the parking lot in the next 12 months, the landlord can file an eviction.

If the problem is one that cannot be fixed the landlord must give you a 7 day notice terminating your tenancy. For example, if you severely damage the apartment, your landlord may terminate your tenancy and tell you to move out in 7 days.

If you are living in a property covered by the CARES Act, review the section above. The CARES Act prohibits a landlord from sending any notices before July 25, 2020. After July 25, the landlord must send you a 30-day notice.

- **Termination or Expiration of the Rental Agreement**

You can be evicted because the agreement with the landlord has been terminated or expired.

If you are a PRIVATE TENANT and have no lease, then the landlord must give you a written notice to make you move. The amount of notice depends on how often you pay your rent. If you pay rent weekly, then the landlord must give you a written notice to move out at least 7 days before your rent is due. If you pay rent monthly, then the landlord must give you written notice to move at least 15 days before your rent is due.

Note: If you live in Miami Beach or the City of Miami, the landlord must give you 30 days written notice telling you to move out. If your rent is due on the first of the month, the notice must end on the last day of the month.

If you live in private housing with no written lease, the landlord can evict you for any reason, as long as it is not discriminatory and not done in retaliation.

If you are living in a property covered by the CARES Act, review the section above. The CARES Act prohibits a landlord from sending any notices before July 25, 2020. After July 25, the landlord must send you a 30-day notice.

If you are in subsidized or public housing, different rules and laws apply to your situation. You need to speak with an attorney at Legal Services.

If you are behind in your rent and the landlord cannot bring a non-payment of rent eviction because of the moratorium, the landlord may try to terminate your lease without giving a reason as a way to get around the new changes in the law. If the landlord tries to terminate your tenancy as a month to month tenancy after you have not been able to pay your rent, you should assert in your Answer that the moratorium applies.

HOW TO WRITE YOUR ANSWER

1. Included with this brochure is a form "Answer, Affirmative Defenses, and Motion to Determine Rent." You need to first write the case number and the names of the parties on the top of the paper. The landlord is the Plaintiff, and you are the Defendant.
2. Read the complaint for eviction and respond to each of the paragraphs in the complaint. You respond by writing in your answer that you either admit or deny what is in each paragraph. If you do not know whether to admit or deny the paragraph, you can state that you are "without knowledge."
3. Then write your defenses and explain why you should not be evicted (i.e.: the landlord is retaliating because I called the housing inspector, there are bad conditions, I already paid my rent).
4. You have a constitutional right to demand a trial by a jury of your peers. You can waive this right in your lease. If you want to demand a jury trial, you should do it when you file your answer or within 5 days after filing your answer; otherwise, you may waive your right to demand a jury trial. There are pros and cons to demanding a jury trial. While it is your absolute right to demand a jury trial, it may be difficult to represent yourself at a jury trial. If you have questions about whether to demand a jury trial, you should speak with an attorney.
5. Sign your answer. Include your name, address, and telephone number.
6. File your original with the Court, mail a copy to your landlord, and keep a copy for your records.

FILING A MOTION TO DETERMINE RENT **OR** **DEPOSITING MONEY INTO COURT REGISTRY**

To defend an eviction in Florida, you MUST pay into the court registry the rent the landlord asks for in the eviction complaint OR if you disagree with the amount owed, ask the judge to determine

how much rent is due. A form for the “Answer, Affirmative Defenses, and Motion to Determine Rent” is included with this brochure. You can also use this website to help you create an answer and motion to determine rent: floridaevictionanswerbuilder.org

Things you might include in your Motion to Determine Rent:

- The amount demanded by the landlord is wrong.
- The landlord demands extra amounts that are not rent.
- You already paid the rent.
- The landlord failed to make repairs and the rent should be reduced.
- Your landlord turned off water or electricity or has illegally locked you out of your home.
- If you are covered under any of the moratoriums listed above you must assert in the motion to determine rent that you are not required to post money into the court registry because of the COVID-19 emergency.

Many judges will not consider a rent reduction until after you deposit all of the rent into the court registry.

Whatever your reasons, you should include proof of why you are asking the Court to determine how much rent you owe. For example, if you already paid your rent, include copies of the receipts. If you think your rent should be reduced for bad conditions in your home, include photographs.

You must also continue depositing your rent into the court registry while the eviction is pending.

NOTE: If you do not pay the rent into the court registry or do not file a motion to determine rent, you will waive all of your defenses, except for payment. This means you will lose your case automatically, and the landlord wins the case. You will not get to see a judge and you will be evicted from your home.

ALL RENT REMAINS DUE AND OWING

Even under the COVID-19 protections, you still owe rent. The landlord will not be able to evict you, but when the protections expire, you will need to pay all rent that you owe.

WHEN AND WHERE TO FILE YOUR ANSWER

Your answer is due in court on the fifth day after the eviction complaint was personally served on you or a member of your household or posted on your door. You do not count Saturdays, Sundays, or Holidays. Also, the day you are served does not count. If you fail to meet a court deadline or attend a hearing, you might lose the lawsuit, and the Judge may enter a Final Judgment of Eviction against you. This may be true even if you should be protected by the eviction moratorium.

There is a form answer and motion to determine rent attached to this brochure which you can use. You can also use this website to help you create an answer and motion to determine rent: floridaevictionanswerbuilder.org

Filing your answer means that you go to the Clerk of Court and say "I want to file an answer to an eviction." Take the original answer and 2 copies (one for yourself and one for the landlord). Make sure that the clerk date stamps all copies.

Take your answer to the courthouse where your eviction was filed, which is usually the courthouse closest to your home. The "Summons" will tell you where your case is filed. Here is a list of the Courthouses in Miami-Dade County:

Dade County Courthouse (05)
73 West Flagler Street
Miami, FL 33130

Coral Gables Branch Court (25)
3100 Ponce de Leon Boulevard
Coral Gables, FL 33134

North Dade Justice Center (23)
15555 Biscayne Boulevard
Miami, FL 33160

South Dade Justice Center (26)
10710 SW 211 Street
Miami, FL 33189

Hialeah Courthouse (21)
11 East 6 Street
Hialeah, FL 33010

Miami Beach Court Facility (24)
1130 Washington Avenue
Miami Beach, FL 33139

Caleb Center needs to be added

If you are unable to get to the courthouse, you may be able to file through the online filing system: <https://www.jud11.flcourts.org/coronavirus/ArtMID/2392/ArticleID/3445/COVID-19-Advisory-10-Self-Represented-Litigants-Urged-to-Sign-Up-on-Florida-Courts-e-Filing-Portal>

DEFENSES

You may be able to use these defenses in your answer. Write them under “Defenses.” If any of these apply, you should argue that you win the case because of these defenses.

- *Failure to serve a proper, non-defective termination notice.* This means that the landlord’s notice did not comply with your lease or Florida law (Florida Statute § 83.56). The judge must give the landlord the opportunity to fix a defective notice for non-payment only.
- *Corporation not represented by an attorney.* A corporation cannot represent itself and cannot appear in court without an attorney.
- *Improper party.* Only the owner or lessor of the property may file an eviction complaint. Check the property records to see who owns the property.
- *Failure to attach.* The landlord must attach certain documents to the complaint (i.e. the lease or three-day notice).
- *Payment.* If the landlord accepts rent after serving a three-day notice, he or she has waived the right to file suit. The landlord cannot accept rent after the complaint has been filed.
- *Tender.* If you were ready, willing, and able to make payment during the three-day notice period, but the landlord refused to accept your money. The landlord must accept your rent during the three-day notice.
- *Failure to maintain.* The landlord refuses to make repairs and has failed to maintain the property. (i.e.: no hot water, leaking roof, roach infestation, mold).
- *Retaliatory eviction.* Your landlord filed the eviction because you asserted your rights. For example, you contacted code compliance about conditions and then the landlord filed the eviction.
- *Discriminatory conduct.* The landlord is discriminating based on race, color, national origin, religion, sex, disability, domestic violence, having children, sexual orientation, gender identity, source of income, or some other protected class.

You may be able to assert defenses under the CARES Act, the Governor’s Executive Order, or Miami-Dade County Resolution 1253-19.

If you are suffering from COVID-19 or your health condition puts you in a high-risk category for COVID-19 you may want to ask your landlord for a Reasonable Accommodation. Make a request to your landlord for more time to find new housing if it is unsafe for you to leave your home due to your health condition. If your landlord will not grant your request and files an eviction, depending on your particular situation, you may be able to assert a violation of the Fair Housing

Act which requires the landlord to make accommodations due to your disability. You will need to obtain medical documentation to support this request.

WHAT HAPPENS NEXT?

If you filed a Motion to Determine Rent, the court will either schedule a hearing on the motion or enter an order requiring you to deposit rent. If there is a hearing, be prepared to tell the judge why the rent is wrong and how much you should deposit. If the court orders you to deposit rent, you must do it or you will lose your case automatically.

If you deposit the rent ordered by the court, you will probably go to “mediation.” This is a meeting between you, the landlord, the landlord’s attorney, and a mediator. While the courthouses are closed to the public, we anticipate these will be conducted remotely – either by phone or using Zoom. The mediator is a neutral person trained to help you and the landlord work out your problem. Mediation means that you try to compromise; but, do not agree to anything that you will not be able to do. If you reach an agreement at mediation, then you sign a paper called a “Stipulation.” The judge signs it too. This is a binding legal document. It is unlikely that you will be able to get out of this agreement if you change your mind. It is important that you understand the agreement before you sign it.

If you and the landlord cannot agree at mediation, then sometimes you may go directly to your final hearing or trial. Until the courthouse is open to the public, trials will be held remotely using Zoom (online).

At the trial, the landlord goes first and presents his case. You can question the landlord and his witnesses. This is called cross examination. When the landlord is done, you present your case. You can have your own witnesses testify and submit your own evidence and documents. The landlord or his attorney can question you and your witnesses.

After hearing from all of the witnesses and looking at all the evidence, the judge then makes a decision. If the judge rules for you, there is no eviction and you remain living there. However, sometimes the judge may put conditions in the ruling. Make sure you understand the judge’s decision before you leave. Sometimes a judge will try to get the parties to reach an agreement. For example, a judge may ask the landlord to agree that the case will be dismissed if you move out by a certain date to avoid a final judgment.

If you lose the Court hearing or if you did not answer the lawsuit in the first place, the court will enter a final judgment of eviction. The judge can also make you pay the landlord’s attorney’s fees and court costs. If the landlord sued you for unpaid rent, the judge could enter a judgment against you stating that you owe money to your landlord. To appeal the decision, you must file a notice of appeal within 30 days, but an appeal will not keep you from being evicted unless the judge gives you a “stay pending appeal.” Typically, you must have the rent to get a stay during the appeal.

WRIT OF POSSESSION

If you do not move out, the Court will tell the Sheriff to move you and your family and everything you own out of the place where you are living. The notice that the Sheriff will post on your door is called the “Writ of Possession.” It gives you 24 hours’ notice to move out. If you have not moved out by the time the Sheriff comes back, the landlord or the landlord’s agent may remove your belongings from the unit. The landlord will also change the locks when the Sheriff is there. They can do this whether you are home or not, have children, or are sick. In Miami-Dade County, the Sheriff typically returns several days after posting the notice on the door – not the next day. But, you cannot count on this extra time. For more information, see our brochure “Writ of Possession.”

In Miami-Dade County, due to the **COVID 19 Emergency**, the Police Department is not executing writs of possession and is not removing tenants while we are under a state of emergency. When writs of possession resume, Legal Services believes there will be a significant delay in executions of Writs of Possession.

HOW TO DO I CHECK THE STATUS OF THE CASE?

You can check the status of the eviction case online, by looking at the “docket.”

To check the case online:

- Go to <https://www2.miami-dadeclerk.com/ocs/>
- Click on “Standard Case Search.”
- Click on the “Local Case Number” tab.
- Enter the case number. You will also have to enter the code in the image.
- Click “Search” Then, click on “Docket” to get the latest update on your eviction case

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: _____
CIVIL DIVISION

Plaintiff(s),

vs.

Defendant(s).

_____/

**ANSWER TO EVICTION,
DEFENSES, AND MOTION TO DETERMINE RENT**

ANSWER

1. I ADMIT paragraphs _____ of the Plaintiff's Complaint for Eviction.
2. I DENY paragraphs _____ of the Plaintiff's Complaint for Eviction.
3. I am without knowledge of paragraphs _____ of the Plaintiff's Complaint for Eviction.
4. I want to recover my attorney's fees and costs under Fla. Stat. 83.48 and 83.59 if I prevail.

DEFENSES

- ☐ I live in Federally Subsidized Housing (examples: Public Housing, Section 8, Low-Income Housing Tax Credit properties, and other types of subsidized housing) and I am protected by the CARES Act. The landlord cannot file an eviction against me between March 28 and July 25, 2020. After July 25, 2020, the landlord must send me a 30-day notice to pay rent before the landlord can file an eviction.

- ☐ My Landlord has a federally backed mortgage and I am protected by the CARES Act. for the landlord cannot file an eviction for non-payment of rent between March 28 and July 25, 2020. After July 25, 2020, the landlord must send me a 30-day notice to pay rent before the landlord can file an eviction.
- ☐ I do not know whether I live in federally subsidized housing, whether my landlord has a federally backed mortgage, or whether this is a “covered” property but I demand proof from the landlord that my property is exempt from the CARES Act.
- ☐ I paid the rent that is due and owing, but my landlord charged me fees or penalties related to the late rent. Pursuant to the CARES Act, a landlord is prohibited from charging fees, penalties, or other charges related to non-payment of rent from March 28 through July 25, 2020.
- ☐ I am affected by the COVID-19 emergency. I have suffered monetary losses, loss of income, or loss of employment. My landlord is evicting me for non-payment of rent. Pursuant to Executive Order 20-94, 20-121, 20-137, 20-159, 20-180 my rent is not due until I am not adversely affected by the COVID-19 emergency. Any case filed during this time should be dismissed.
- ☐ Pursuant to Administrative Order 20-10, entitled the Order In Re Evictions under the “Coronavirus, Aid, Relief and Economic Security Act” (the CARES Act), the landlord is required to file a declaration under penalty of perjury verifying whether or not the property which the eviction case is seeking to recover possession of has a Federally backed mortgage loan, a Federally backed multifamily mortgage loan, or is otherwise a “covered dwelling” under section 4024 of the CARES Act. The landlord has not filed the required declaration and therefore is not entitled to proceed with this eviction.
- ☐ I asserted my rights under the CARES Act. As a result, the Landlord is retaliating against me and filing this eviction in violation of Florida Statute 83.64.
- ☐ I organized with other tenants around our protections and rights under the CARES Act. As a result, the Landlord is misrepresenting the basis of this eviction to circumvent those protections or to retaliate against me.
- ☐ This case is motivated by non-payment protected by the CARES Act and/or Executive Order 20-94, 20-121, 20-137, 20-159, 20-180 and my landlord is misrepresenting the basis for eviction to circumvent those protections

Other Defenses:

MOTION TO DETERMINE RENT AND REQUEST FOR HEARING

I am respectfully requesting that this Court determine how much rent I should deposit into the Court Registry and to set a hearing on the same because (check all that apply):

- ☐ I already paid my rent. Attached are receipts.
- ☐ I live in a property covered by the CARES Act, so under federal law, I cannot be evicted for non-payment of rent because the landlord has not given me a 30 day notice to vacate as required by the CARES Act. As a result, I cannot be required to deposit rent into the Court Registry until the landlord complies with the CARES Act.
- ☐ I live in a property covered by the CARES Act, so under federal law, I cannot be charged or evicted for late charges or fees which accrued from April to July and, as a result, the landlord is demanding an incorrect amount.
- ☐ I am unsure whether the CARES Act applies to my property so I am demanding a hearing to determine CARES Act eligibility.
- ☐ Pursuant to Administrative Order 20-10, entitled the Order In Re Evictions under the "Coronavirus, Aid, Relief and Economic Security Act" (the Cares Act), the landlord is required to file a declaration under penalty of perjury verifying whether or not the property which the eviction case is seeking to recover possession of has a Federally backed mortgage loan, a Federally backed multifamily mortgage loan, or is otherwise a "covered dwelling" under section 4024 of the CARES Act. The landlord has not filed the required declaration and therefore is not entitled to proceed with this eviction. Since the landlord has not established that the property is not covered under the CARES Act, I assert the protection of the CARES Act. Accordingly, there is no obligation for me to post money into the court registry.
- ☐ Pursuant to Executive Order 20-180, rent is not due if I have been adversely affected financially by COVID-19 through September 1, 2020. Pursuant to the Executive Order the rent cannot be considered due until I am no longer adversely affected by the COVID-19 Emergency. Because this eviction was filed during the moratorium and I have been

adversely affected, I should not be required to deposit any rent. I was adversely affected by the COVID-19 emergency because:

☐ The amount of money the Plaintiff is demanding is incorrect, because:

☐ There are bad conditions in my rental unit and my rent should be reduced. I have attached photographs and/ or described the conditions below:

☐ Other: _____

WHEREFORE, I respectfully request that this Court set a hearing to determine how much money I should deposit into the Court Registry, and for all other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

- ☐ I am demanding a jury trial.
☐ I am not demanding a jury trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I sent a copy of this Answer, Defenses, and Motion to Determine Rent to Plaintiff via First Class U.S. Mail at _____

_____, on this ____ day of _____, 2020.

Defendant's Name: _____

Address: _____

Telephone: _____

THIS IS A SAMPLE FORM CREATED BY LEGAL SERVICES OF GREATER MIAMI