

Statutes -- Eviction for Non-Payment of Rent

§ 89-7-23. Notice to terminate tenancy.

Notice to quit shall be necessary only where the term is not to expire at a fixed time. In all cases in which a notice is required to be given by the landlord or tenant to determine a tenancy, two (2) months' notice, in writing, shall be given where the holding is from year to year, and one (1) month's notice shall be given where the holding is by the half-year or quarter-year; and where the letting is by the month or by the week, one (1) week's notice, in writing, shall be given. This section shall not apply to rental agreements governed by the Residential Landlord and Tenant Act.

Sources: Codes, 1857, ch. 41, art. 21; 1871, § 1640; 1880, § 1330; 1892, § 2544; Laws, 1906, § 2882; Hemingway's 1917, § 2380; Laws, 1930, § 2224; Laws, 1942, § 946; Laws, 1991, ch. 478, § 15, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-7-27. Proceedings against tenant holding over.

A tenant or lessee at will or at sufferance, or for part of a year, or for one or more years, of any houses, lands, or tenements, and the assigns, under-tenants, or legal representatives of such tenant or lessee, may be removed from the premises by the judge of the county court, any justice of the peace of the county, or by the mayor or police justice of any city, town, or village where the premises, or some part thereof, are situated, in the following cases, to wit:

First. Where such tenant shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his term, without the permission of the landlord.

Second. After any default in the payment of the rent pursuant to the agreement under which such premises are held, and when satisfaction of the rent cannot be obtained by distress of goods, and three days' notice, in writing, requiring the payment of such rent or the possession of the premises, shall have been served by the person entitled to the rent on the person owing the same.

Sources: Codes, 1857, ch. 41, art. 27; 1871, § 1646; 1880, § 1333; 1892, § 2547; Laws, 1906, § 2885; Hemingway's 1917, § 2383; Laws, 1930, § 2226; Laws, 1942, § 948.

§ 89-7-29. Affidavit to remove.

The landlord or lessor, his legal representatives, agents, or assigns, in order to have the benefit of such proceedings, shall make oath or affirmation of the facts which, according to the last preceding section, authorize the removal of the tenant, describing therein the premises claimed and the amount of rent due and when payable, and that the necessary notice has been given to terminate such tenancy.

Sources: Codes, 1857, ch. 41, art. 28; 1871, § 1648; 1880, § 1334; 1892, § 2548; Laws, 1906, § 2886; Hemingway's 1917, § 2384; Laws, 1930, § 2227; Laws, 1942, § 949.

§ 89-7-31. Issuance of summons.

On receiving such affidavit, the county judge, justice, mayor, or other officer shall issue a summons, directed to the sheriff or any constable of the county, or the marshal of the city, town, or village wherein the premises, or some part thereof, are situated, describing the premises, and commanding him to require the person in possession of the same or claiming the possession thereof, forthwith to remove therefrom, or to show cause before the justice or other officer, on a day to be named not less than three nor more than five days from the date of the summons, why possession of the premises should not be delivered to the applicant.

Sources: Codes, 1857, ch. 41, art. 29; 1871, § 1649; 1880, § 1335; 1892, § 2549; Laws, 1906, § 2887; Hemingway's 1917, § 2385; Laws, 1930, § 2228; Laws, 1942, § 950.

§ 89-7-33. Service of summons.

Such summons shall be served as a summons is served in other cases, if the tenant can be found; if not, then by putting up a copy in some conspicuous place on the premises where the tenant last or usually resided.

Sources: Codes, 1857, ch. 41, art. 30; 1871, § 1650; 1880, § 1336; 1892, § 2550; Laws, 1906, § 2888; Hemingway's 1917, § 2386; Laws, 1930, § 2229; Laws, 1942, § 951.

§ 89-7-35. Proceedings where no defense.

If, at the time appointed, it appear that the summons has been duly served, and if sufficient cause be not shown to the contrary, the magistrate shall issue his warrant to the sheriff or any constable of the county, or to a marshal of the city, town, or village where the premises, or some part thereof, are situated, commanding him to remove all persons from the premises, and to put the applicant into full possession thereof.

Sources: Codes, 1857, ch. 41, art. 31; 1871, § 1651; 1880, § 1337; 1892, § 2551; Laws, 1906, § 2889; Hemingway's 1917, § 2387; Laws, 1930, § 2230; Laws, 1942, § 952.

§ 89-7-37. Defense may be made.

The person in possession of such premises, or any person claiming possession thereof, may, at or before the time appointed in the summons for showing cause, file an affidavit with the magistrate who issued the same, denying the facts upon which the summons was issued; and the matters thus controverted may be tried by the magistrate.

Sources: Codes, 1857, ch. 41, art. 32; 1871, § 1652; 1880, § 1338; 1892, § 2552; Laws, 1906, § 2890; Hemingway's 1917, § 2388; Laws, 1930, § 2231; Laws, 1942, § 953.

§ 89-7-39. Continuances, subpoenas.

The magistrate may, at the request of either party, adjourn the hearing from time to time, one adjournment not to exceed ten days, except by consent, and may issue subpoenas and attachments to compel the attendance of witnesses.

Sources: Codes, 1857, ch. 41, art. 35; 1871, § 1655; 1880, § 1339; 1892, § 2553; Laws, 1906, § 2891; Hemingway's 1917, § 2389; Laws, 1930, § 2232; Laws, 1942, § 954.

§ 89-7-41. Form of judgment for landlord.

If the decision be in favor of the landlord or other person claiming the possession of the premises, the magistrate shall issue his warrant to the sheriff, constable, or other officer, commanding him forthwith to put such landlord or other person into possession of the premises, and to levy the costs of the proceedings of the goods and chattels, lands and tenements, of the tenant or person in possession of the premises who shall have controverted the right of the landlord or other person.

Sources: Codes, 1857, ch. 41, art. 36; 1871, § 1656; 1880, § 1340; 1892, § 2554; Laws, 1906, § 2893; Hemingway's 1917, § 2390; Laws, 1930, § 2233; Laws, 1942, § 955.

§ 89-7-43. Judgment for defendant.

If the decision be in favor of the tenant, he shall recover costs of the applicant, and the magistrate shall issue execution therefor.

Sources: Codes, 1857, ch. 41, art. 37; 1871, § 1657; 1880, § 1341; 1892, § 2555; Laws, 1906, § 2892; Hemingway's 1917, § 2391; Laws, 1930, § 2234; Laws, 1942, § 956.

§ 89-7-45. Stay of proceedings.

If the proceedings be founded upon the non-payment of rent, the issuance of the warrant for the removal of the tenant shall be stayed if the person owing the rent shall, before the warrant be actually issued, pay the rent due and the costs of the proceedings, or give such security as shall be satisfactory to the magistrate, to the person entitled to the rent, for the payment thereof and costs in ten days; and if the rent and costs shall not be paid accordingly, the warrant shall then issue as if the proceedings had not been stayed.

Sources: Codes, 1857, ch. 41, art. 38; 1871, § 1658; 1880, § 1342; 1892, § 2556; Laws, 1906, § 2894; Hemingway's 1917, § 2392; Laws, 1930, § 2235; Laws, 1942, § 957.

§ 89-7-47. Record, appeals.

The magistrate before whom proceedings shall be had against a tenant holding over, shall keep a full record of his proceedings, and shall carefully preserve all papers in the cause, and the same costs shall be taxed and paid as are allowed for similar service in cases of unlawful entry and detainer, and the right of appeal shall exist as in such cases.

Sources: Codes, 1857, ch. 41, art. 39; 1871, § 1659; 1880, § 1343; 1892, § 2557; Laws, 1906, § 2895; Hemingway's 1917, § 2393; Laws, 1930, § 2236; Laws, 1942, § 958.