

2010 -- S 2214

LC00236

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PROPERTY - RESIDENTIAL EVICTIONS

Introduced By: Senator John J. Tassoni

Date Introduced: February 09, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 34-18-35 and 34-18-56 of the General Laws in Chapter 34-18
2 entitled "Residential Landlord and Tenant Act" is hereby amended to read as follows:

3 **34-18-35. Eviction for nonpayment of rent.** -- (a) If any part of the stipulated rent is due
4 and in arrears for ~~fifteen (15)~~ ten (10) days, the landlord shall send a written notice, in a form
5 substantially similar to that provided in section 34-18-56(a), specifying the amount of the rent
6 which is ~~fifteen (15)~~ ten (10) days in arrears, making demand for the rent, and notifying the tenant
7 that unless he or she cures the breach within five (5) days of the date of mailing of the notice, the
8 rental agreement shall terminate, and the landlord shall commence an eviction action in the
9 appropriate district court or housing court.

10 (b) If the tenant fails to cure his or her breach by paying the stipulated rent in arrears
11 within five (5) days of the date of mailing of the notice, the landlord may commence an eviction
12 action against the tenant, which shall be filed no earlier than the sixth (6th) day after mailing of
13 the written demand notice. The action shall be commenced by filing a "Complaint for Eviction
14 for Nonpayment of Rent" in the appropriate court in the form provided in section 34-18-56(d).

15 (c) The summons for eviction for nonpayment of rent shall specify the date for hearing
16 and be in the form provided in section 34-18-56(g). The summons shall specify that the defendant
17 may file and serve his or her answer prior to or at the time of hearing, and that if he or she fails to
18 answer or appear at the hearing, he or she shall be defaulted.

19

1 (d) If the defendant files his or her answer and commences discovery prior to the hearing,
2 and it appears, for good cause shown, that the defendant will not be able to conduct his or her
3 defense without the benefit of discovery, the court may continue the hearing to allow a reasonable
4 time for the completion of discovery. In the case of such a continuance, the court may, in its
5 discretion, order interim rent, or other remedy, to be paid to preserve the status quo pending
6 hearing. Except as provided in this chapter, the landlord may recover possession and actual
7 damages. In cases where the tenant had received a demand notice pursuant to subsection (a)
8 within the six (6) months immediately preceding the filing of the action, and the tenant's
9 nonpayment was willful, the landlord may also recover a reasonable attorney's fee.

10 (e) The tenant shall have the right to cure his or her failure to pay rent by tendering the
11 full amount of rent prior to commencement of suit. If the tenant has not received a notice pursuant
12 to subsection (a) of this section within the six (6) months immediately preceding the filing of the
13 action, the tenant shall have the right to cure his or her failure to pay rent after commencement of
14 suit by tendering the full amount of rent in arrears, together with court costs, at the time of
15 hearing.

16 **34-18-56. Notices and complaint forms.** -- (a) A notice in substantially the following
17 language shall suffice for the purpose of giving a tenant a five (5) day demand for payment of
18 rent prior to commencement of an eviction pursuant to section 34-18-35:

19 FIVE-DAY DEMAND NOTICE
20 FOR NONPAYMENT OF RENT
21 R.I.G.L. 34-18-35

22 Date of Mailing: _____

23 TO: _____
24 (tenant)

25 _____
26 _____
27 (rental address)

28 You are now more than ~~fifteen~~ ten days in arrears for some or all of the rent owed under
29 your rental agreement. State law requires that you be sent this Notice of arrearage.

30 Unless you make payment of all rent in arrears within five days of the date this notice
31 was mailed to you, an eviction action may be instituted in court against you. You can prevent the
32 eviction by paying all rent owing within five days of the mailing of this notice.

33 If you believe you have a legal reason for not paying this rent, you will be able to present
34 that defense at the eviction hearing. The rent in arrears as of the above date is \$_____.

35 _____
36 (landlord or owner signature)
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I certify that I placed in regular U.S. mail, first class postage prepaid, a copy of this Notice, addressed to the tenant, on the _____ day of _____, 19__.

(landlord or owner signature)

(b) A notice in substantially the following language shall suffice for the purpose of giving a tenant a notice of noncompliance with the rental agreement pursuant to section 34-18-36:

NOTICE OF NONCOMPLIANCE
R.I.G.L. 34-18-36

Date of Mailing: _____

TO: _____
(tenant)

(address)

You are in breach of your rental agreement, or of your legal duties under R.I.G.L. 34-18-24, because you:

(provide details)

To remedy this situation you must do the following within twenty days of the date of mailing of this Notice:

If you do not remedy this situation within twenty days, your rental agreement will terminate without further notice on _____ (date, which must be not less than twenty-one days from the date of mailing of this Notice). (NOTE: Under the law you lose this right to remedy your noncompliance if this is the second notice on the same subject within the past six months.) After that date an eviction case may begin in court, and you may be served with a complaint. You will have the right to a hearing and to present any defenses you believe you have.

(signature)

(name and address of land- lord/owner)

I certify that I placed in regular U.S. mail, first class postage prepaid, a copy of this Notice, addressed to the tenant, on the _____ day of _____, 19__.

(landlord or owner signature)

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(c) A notice in substantially the following language shall suffice for the purpose of giving a tenant notice of termination of tenancy pursuant to section 34-18-37:

NOTICE OF TERMINATION OF TENANCY
R.I.G.L. 34-18-37

Date of Mailing: _____

TO: _____
(tenant)

(address)

You are hereby directed to vacate and remove your property and personal possessions from the premises located at _____

(address of premises)

and deliver control of the premises to the landlord/owner on the first day after the end of your current rental period, namely _____.

(insert date)

This notice is given for the purpose of terminating your tenancy. You must continue to pay rent as it becomes due until the date indicated above. If you fail to pay that rent, a nonpayment eviction action may be instituted against you.

If you fail to vacate the premises by the date specified, an eviction may be instituted against you without further notice. If you believe you have a defense to this termination, you will be able to raise that defense at the court hearing.

(signature)

(name and address of land- lord/owner)

I certify that I placed in regular U.S. mail, first class postage prepaid, a copy of this Notice, addressed to the tenant, on the _____ day of _____, 19____.

(landlord or owner signature)

(d) A complaint in substantially the following language shall suffice for the purpose of commencing an eviction action for nonpayment of rent pursuant to section 34-18-35:

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

_____, Sc.

DISTRICT COURT

_____ DIVISION

PLAINTIFF

DEFENDANT

(Landlord's Name)

(Tenant's Name)

V _____

(address)

(address of rental premises)

1 COMPLAINT FOR EVICTION
2 FOR NONPAYMENT OF RENT
3 R.I.G.L. 34-18-35

4 1. Plaintiff is the owner/landlord of the rental premises listed above, in which the Defendant
5 Tenant currently resides.

6 2. Defendant is more than ~~fifteen~~ ten days in arrears in rental payments due to the plaintiff from
7 the defendant. The rent is \$_____ per _____, and the amount in arrears is \$_____
8 as of the _____ day of _____, 19____.
9 (month)

10 3. Plaintiff has served the five-day demand notice as required by law, and a copy of that notice is
11 attached to this complaint. The notice was mailed to the defendant on the _____ day of
12 _____, 19____.

13 4. Defendant has not paid the rent in arrears or offered the full amount in arrears, either before or
14 after the demand notice. Defendant remains in possession of the rental premises.

15 WHEREFORE, Plaintiff requests that this Court grant a judgment for possession of the premises
16 (eviction of the tenant) and for back rent in the amount of \$_____, plus costs.

17 _____
18 (Name & address of landlord/owner or attorney for landlord)

19 _____
20 Date complaint
21 filed with clerk _____
22

23 (e) A complaint in substantially the following language shall suffice for the purpose of
24 commencing an eviction action for noncompliance with the rental agreement pursuant to section
25 34-18-36, or an eviction action for unlawfully holding over after expiration or termination of the
26 tenancy pursuant to section 34-18-38:

27 STATE OF RHODE ISLAND AND PROVIDENCE
28 PLANTATIONS

29 _____, Sc. DISTRICT COURT
30 _____ DIVISION
31 PLAINTIFF DEFENDANT

32 _____
33 (Landlord's Name)

32 _____
33 (Tenant's Name)

34 V

35 _____
36 (address)

35 _____
36 (address of rental premises)

37 COMPLAINT FOR EVICTION
38 FOR REASON OTHER THAN
39 NONPAYMENT OF RENT

40 R.I.G.L. 34-18-36

41 R.I.G.L. 34-18-38

42 1. Plaintiff Landlord(s) owns the rental premises listed above, in which the Defendant
43 Tenant(s) resides.

44 2. CHECK ONE:

45 _____ Defendant breached the tenant's obligations under the rented agreement or section 34-18-24

1 as set forth in the attached copy of the notice of noncompliance which was mailed to the
2 defendant. Defendant has not cured or remedied the breach. (Plaintiff must attach copy of
3 required notice of noncompliance.)

4 ___ Defendant has remained in possession of the rented premises following the period set forth
5 in the attached notice of termination of tenancy which was mailed to defendant. (Plaintiff must
6 attach copy of required termination notice.)

7 ___ Defendant breached the tenants' obligations under section 34-18-24(8), (9) or (10).

8 3. Plaintiff seeks judgment for possession of the premises plus judgment in the amount of
9 _____ for _____
10 _____
11 _____
12 _____

13 (explain basis for money claim)

14 Plaintiff seeks costs and fees (if applicable).

15 _____
16 (Signature of Landlord/Owner or Attorney)

17 _____
18 Date complaint filed

19 with clerk _____

20 (f) A complaint in substantially the following language, or in similar language, shall be
21 sufficient for use by landlords or by tenants to bring any claims or causes of action other than
22 eviction actions:

23 NOT FOR EVICTION

24 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

25 _____, Sc. DISTRICT COURT
26 _____ DIVISION

27 PLAINTIFF

28 DEFENDANT

29 _____ (Name) _____ (Name)

30 V

31 _____
32 _____

33 (address)

(address of rental premises)

34 LANDLORD-TENANT COMPLAINT

35 (NOT FOR USE IN EVICTIONS)

36 1. Plaintiff is the ___ Tenant ___ Landlord/Owner of the rental premises at
37 _____.

38 (address of rental premises)

39 2. Defendant is the ___ Tenant ___ Landlord/Owner.

40 3. Plaintiff claims that defendant has breached the obligations of the rental agreement or
41 law in relation to this landlord-tenant relationship, as follows:

42 _____
43 _____
44 _____

45 (brief description of claim, attach extra sheet, if necessary)

1 4. Plaintiff seeks the following judgment or relief from the Court:
2 _____
3 _____
4 _____

5 Date Complaint Filed
6 With Clerk: _____
7 (Signature of plaintiff or plaintiff's attorney)
8 _____
9 (address)

10 (g) The summons in an action for eviction for nonpayment of rent pursuant to section 34-18-35
11 shall be in substantially the following form:

12 STATE OF RHODE ISLAND
13 DISTRICT COURT SUMMONS
14 EVICTION-NONPAYMENT OF RENT
15 DIVISION COUNTY CIVIL ACTION-FILE NO.
16 Address of Court:
17 _____
18 _____
19 _____
20 (name & address of plaintiff-landlord) (name & address of defendant-tenant)

21
22 TO THE TENANT: You are served with an eviction complaint for nonpayment of rent. If you do
23 nothing, you will lose by default and be evicted. If you claim any defense, you must complete the
24 enclosed ANSWER and file it with the Court Clerk at or before the hearing date. You should also
25 mail a copy to the landlord or the landlord's lawyer. Your hearing will be at 9:30 A.M. on the
26 hearing date, at the court address listed above. You should go to the hearing or you may lose by
27 default. If you think the case is "settled," you should still go to the hearing to make sure the
28 settlement is in the court record.

29 YOUR HEARING DATE IS: _____.
30 (Proof of Service on next page)

31 _____
32 PROOF OF SERVICE

33 I hereby certify that I served a copy of the Complaint and Summons & Answer upon the
34 defendant(s) by delivering or leaving said papers in the following manner:
35 _____ to the defendant personally; or
36 _____ at his or her dwelling unit or usual place of abode at the address listed below with a
37 person of suitable age then residing therein; or
38 _____ if none be found, by posting conspicuously on the door to the defendant's dwelling unit.

39 ADDRESS OF DWELLING OR USUAL PLACE OF ABODE:
40 _____

41 NAME OF PERSON OF SUITABLE AGE:
42 _____

43 SERVICE DATE: _____

44 DEPUTY SHERIFF/CONSTABLE: _____
45 _____

1 CERTIFICATE OF SERVICE

2 I hereby certify that a copy of this Complaint and Summons was placed into regular U.S.
3 Mail, postage prepaid, on the _____ day of _____, 19____, addressed to defendant
4 at the following address:

5 _____
6 _____

7 (Signature of _____ Clerk)

8
9 (h) The summons in an action for eviction for noncompliance with the rental agreement pursuant
10 to section 34-18-36, or for unlawfully holding over after termination or expiration of tenancy
11 pursuant to section 34-18-38, shall be in substantially the following form:

12
13 STATE OF RHODE ISLAND

14 DISTRICT COURT

SUMMONS

15 EVICTION FOR REASON OTHER THAN NONPAYMENT OF

16 RENT

17 DIVISION

COUNTY

CIVIL ACTION-FILE NO.

18 _____

19 Address of Court:

20 _____

21 _____ V _____

22 _____

23 (name & address of plaintiff-landlord)

(name & address of defendant-tenant)

24 TO THE TENANT: You are served with an eviction complaint for noncompliance with
25 rental agreement (R.I.G.L. 34-18-36), or for unlawfully holding over after termination or
26 expiration of tenancy (R.I.G.L. 34-18-38). If you do nothing, you will lose by default and be
27 evicted. If you claim any defense, you must complete the enclosed ANSWER and file it with the
28 Court Clerk within TWENTY (20) days after you are served with this summons and complaint.
29 You should also mail a copy of the ANSWER to the landlord or the landlord's lawyer. If you file
30 the enclosed ANSWER, then you will receive another written notice telling you when the hearing
31 will be. If you have any questions, you may consult a lawyer. If you think the case is "settled"
32 you should still file the enclosed ANSWER or be sure that the written settlement is in the file at
33 the Clerk's office.

34 (Proof of Service on next page)

35 _____
36 PROOF OF SERVICE

37 I hereby certify that I served a copy of the Complaint, Summons, and Answer form upon
38 the defendant(s) by delivering or leaving said papers in the following manner:

39 _____ to the defendant personally _____

40 at his/her dwelling unit or usual place of abode at the address listed below, with a person of
41 suitable age then residing therein

42 _____ to an agent named below authorized by appointment or by law to receive service of process

43 _____ further notice as required by law was given as noted below

44 Address of dwelling or usual place of abode:

45 _____

46 Name of person of suitable age or of agent:

1 Service Date: _____

2 Deputy Sheriff/Constable (circle one):

3 _____
4 (signature)

6 (i) The summons in an action relating to any claims by tenants, or by landlords other than for
7 eviction, shall be in substantially the following form:

8 STATE OF RHODE ISLAND
9 DISTRICT COURT SUMMONS

10 _____
11 DIVISION COUNTY CIVIL ACTION-FILE NO.

12 _____
13 PLAINTIFF PLAINTIFF'S ATTORNEY

14 _____
15 ADDRESS

16 _____ vs _____

17 DEFENDANT
18 _____
19 DEFENDANT'S ADDRESS

20 _____

21 TO THE ABOVE-NAMED DEFENDANT:

22 You are hereby summoned and required to serve upon the plaintiff's attorney, whose
23 name and address appears above, an answer to the complaint which is herewith served upon you.
24 Your answer must be made within 20 days after service of this summons, excluding the date of
25 service. The original must be filed in writing with this court. If you fail to do so, judgment by
26 default will be taken against you for the relief demanded in the complaint.

27 _____
28 DATE CLERK

29 _____
30 SEAL OF THE DISTRICT COURT DATE RECEIVED

31 _____

32 PROOF OF SERVICE

33 I hereby certify that on the date below I served a copy of this summons and a copy of the
34 complaint received herewith upon the above-named defendant by delivering or leaving said
35 papers in the following manner:

36 _____ to the defendant personally.

37 _____ at his dwelling house or usual place of abode at the address entered below, with a person
38 of suitable age and discretion then residing therewith.

39 _____ to an agent named below authorized by appoint- ment or by law to receive service of
40 process.

41 _____ Further notice as required by statute was given as noted on the reverse side.

42 _____

43 Address of Dwelling or Usual Place of Abode

44 _____

45 Name of Authorized Agent or Person of Suitable Age

46 _____

47 Date Deputy Sheriff/Constable

48 _____

SERVICE FEE \$ _____

(j) The blank answer served in eviction actions shall be in substantially the following form:

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

_____, Sc.

DISTRICT COURT

_____ DIVISION

PLAINTIFF

DEFENDANT

(Landlord's Name)

(Tenant's Name)

V

(address)

(address of rental premises)

INSTRUCTIONS TO THE DEFENDANT

Listed below are several possible defenses to the eviction action your landlord has filed against you. If one or more of these defenses apply to your case, check the appropriate box(es). If space is provided, write in facts in support of that defense. Use additional paper if necessary. Some of these defenses are technical, and there may be others not listed here. You may consult a lawyer and seek representation before filling out this Answer.

TENANT'S ANSWER

() The complaint against me is untrue or fails to state the following facts:

() I offered rent, but my landlord refused it. I am still able and willing to pay the rent. I

() I have a defense for nonpayment because the landlord has failed to maintain the premises in a fit and habitable condition.

() My rent has not been paid, but I have a legally justifiable defense for not paying:

() I have a written lease which does not expire until:

() I have not received the required notice from the landlord before this complaint was served on me.

() The landlord is trying to evict me because I have exercised my legal rights by calling code enforcement officials, or by taking the following protected action:

() I have other defenses as follow:

WHEREFORE: Because of the defense(s) indicated above, I ask the court to grant a judgment in my favor and not order me to be evicted.

COUNTERCLAIM

Instructions: If you believe you are entitled to be awarded damages or money for any reason from your landlord, you may fill out the statement below:

I hereby sue my landlord for the amount of \$_____.

I believe I am entitled to receive an award of this amount because

1 _____

2 Name of Defendant (or attorney) Signature of Defendant

3 _____

4 _____

5 Address

6 _____

7 Telephone number

8

9 SECTION 2. Section 34-18-50 of the General Laws in Chapter 34-18 entitled "Residential
 10 Landlord and Tenant Act" is hereby amended to read as follows:

11 ~~**34-18-50. Payment of moving costs required.** -- Whenever the personal property of any~~
 12 ~~tenant is removed from the premises the tenant occupies by mandate of an execution from the~~
 13 ~~court of competent jurisdiction, the tenant shall pay the entire amount of the cost of moving the~~
 14 ~~personal property and any prepaid storage charges to the sheriff, constable, or other person who~~
 15 ~~lawfully caused the personal property to be so moved before the personal property can be~~
 16 ~~released to the tenant by the person, firm, partnership, company, association, or corporation~~
 17 ~~having lawful possession of the property. Further, the sheriff, constable, or other person who~~
 18 ~~lawfully caused the personal property to be so moved shall prepare and deliver a release in~~
 19 ~~writing stating that the costs of moving and any prepaid storage charges have been paid in full~~
 20 ~~and authorizing the release of the personal property to the tenant. This amount shall be paid to the~~
 21 ~~landlord as reimbursement for the costs of removing the personal property.~~

22 SECTION 3. Chapter 34-18-48.1 in Chapter 34-18 of the General Laws entitled
 23 "Residential Landlord and Tenant Act" is hereby amended by adding thereto the following
 24 section:

25 **34-18-48.1. Service of Possession Execution -.** -- Notwithstanding any general or public
 26 law to the contrary, all executions for possession, issued pursuant to this chapter, shall be served
 27 as soon as possible. Tenants, who continue to remain on the premises, after they have been served
 28 with an execution for possession, shall be deemed criminal trespassers in violation of section 11-
 29 44-26. Any possessions of the tenant(s) that remain on the premises, after service of a possession
 30 execution shall be deemed forfeited and subject to be removed by the landlord, without the
 31 assistance of a constable or sheriff and without the need to be stored.

32 SECTION 4. This act shall take effect upon passage.

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 LC00236
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY - RESIDENTIAL EVICTIONS

1 This act would allow a landlord who has a tenant that is more than ten (10) days in
2 arrears in rent, as opposed to the current fifteen (15) days, to send a letter to the tenant giving
3 them five (5) more days to pay their rent before filing a complaint for eviction. It would abolish
4 the landlord's current obligation to physically remove tenants and store their possessions, after
5 they have been served by a court possession execution by a sheriff or constable.

6 This act would take effect upon passage.

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