

## **Form DC 102b**

# **COMPLAINT, DAMAGE/HEALTH HAZARD TO PROPERTY**

### **Use this form if:**

- you want to start eviction proceedings against a tenant who has caused extensive and continuing damage or a serious and continuing health hazard to rental property, and
- you delivered to the tenant within 90 days of discovering the damage or health hazard a demand for possession because of damage or health hazard, and
- at least 7 days has passed since the date you delivered the demand for possession.

## COMPLAINT CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

### DID YOU . . .

1. Fill out all requested information on the form? YES
2. Attach a copy of the demand for possession and any other supporting documents? YES
3. Make all necessary copies of the form and attachments? YES
4. Prepare the top portion of the summons form (DC 104)? YES
5. File the complaint, attachments, filing fee, and summons with the clerk of the court? YES
6. Have the summons and complaint, with attachments, served on the tenant? YES
7. Keep one copy of the summons, complaint, and attachments for yourself? YES

If you cannot answer “yes” to all the above steps, a hearing/trial on your complaint may be delayed or your complaint may be dismissed.

By using this form packet you are representing yourself in a court action for eviction. In order to receive the action you seek, you must follow the instructions in this packet. If you fail to do even one of the required steps, the court may not give you the result you want.

**If you have any questions about any step in the process, refer to pages 3 through 7 of this booklet for details.**

## **INSTRUCTIONS FOR USING FORM DC 102b FILING AND SERVING A COMPLAINT**

### **»» DECIDING TO FILE A COMPLAINT**

If you served a notice to quit because of a serious and continuing health hazard or extensive and continuing damage to your property and the tenant did not repair the damage or remove the health hazard or move out as you requested in the notice, you must file a complaint with the district court to regain possession of your rental property by evicting the tenant and, if applicable, to get a judgment for money damages against the tenant.

### **»» FILING A COMPLAINT**

#### **1. Do you need an attorney?**

To get an order evicting the tenant from your property, you must file a complaint with the district court in the county or city where the property is located. You can hire an attorney or represent yourself. If you can follow all the steps outlined in this packet, you may not need an attorney. However, if after reading this packet you think you need assistance, you should call an attorney. If you are not the owner or sublessor of the property, an attorney must sign the complaint and appear in court. A sublessor is a tenant who has sublet his or her property to another.

#### **2. What does it cost?**

There is a fee for filing a complaint against a tenant who has damaged the rental property or created a health hazard on the rental property. The cost to file a complaint with the district court is \$45.00, plus there is an electronic filing system fee of \$10 (complaint for possession only or money damages only) or \$20 (combined complaint for possession and money damages). If you are seeking money damages, you must pay an additional filing fee as follows:

- \$25 for damage claims up to \$600
- \$45 for damage claims from \$600 to \$1,750
- \$65 for damage claims over \$1,750 to \$10,000
- \$150 for damage claims over \$10,000 to \$25,000

The plaintiff (landlord) is responsible for paying the filing fee and other fees. If the judge rules in favor of the plaintiff, these fees may be added to the judgment amount against the defendant.

#### **3. Fill out the Complaint form.**

Fill out form DC 102b (Complaint, Damage/Health Hazard to Property) on the website or get a paper copy of the form from the court to fill out. Follow the instructions on page 8. After completing form DC 102b, print four copies. If there is more than one defendant, you will have to make extra copies for each defendant before you file your complaint.

Fill out the top part of form DC 104 (Summons). You will provide the summons (form DC 104) to the court when you file the complaint (form DC 102b). After completing form DC 104, print the form. Two of the copies are for the tenant and contain a section on how to get legal help. The remaining three copies contain a section for certificate of mailing. Finally, there are two proofs of service.

If you are demanding a jury trial, fill out form MC 22 (Jury Demand). Print out the same number of copies that you printed of the complaint.

#### 4. Put your packet together.

After printing the completed complaint (form DC 102b), the summons (form DC 104), and jury demand (form MC 22, if needed), put together four packets. For each packet, put the summons on top, followed by the complaint, the jury demand (if needed), the demand for possession, and your lease or occupancy agreement. Staple each packet individually. All these documents are your complaint packet. **NOTE:** These instructions are written for one defendant. If there is more than one defendant, you will have to make an additional copy for each defendant for all the remaining steps. Keep for yourself the remaining summons page and the two proof of service pages. You will need these later. See Step 5a and Step 5b.

#### 5. File the Complaint packet with the court.

Generally, it is a good idea to file your complaint packet with the court in person because you can make arrangements with the court to have the summons and complaint served on the defendant. Also, if you have forgotten something, you can take care of that right away. To file in person, follow the instructions in step 5a.

If you don't want to file with the court in person, you can mail all four complaint packets and the remaining summons page to the clerk of the court in the district court where your property is located. The steps for mailing are more inconvenient because you may have to go to the post office several times and the arrangements for service of the complaint packet will be more time-consuming. To file by mail, follow the instructions in step 5b.

You must include payment for the filing fees when you file the complaint packet. If you can't afford to pay the filing fee, ask the clerk of the court for a Fee Waiver Request (form MC 20, which is not included in this packet). If you are also seeking money damages, make sure you include the additional filing fee.

##### **Step 5a: Filing with the court in person and making arrangements for service by the court**

**Filing the Summons and Complaint packet:** Take to the clerk of the court in the district court where your property is located all four complaint packets, the fifth copy of the summons form DC 104 that you made in Step 4, and the two proofs of service from form DC 104. Bring your payment for the filing fee with you.

Be prepared to pay for the cost of service. This includes the cost of serving two packets to the defendant, one by first-class mail and one by personal service or delivery as required by Michigan Court Rule 4.201(D). This costs \$26.00 plus mileage for each defendant (tenant).

The clerk will record the filing of your complaint, assign a case number, and write the name of the judge assigned to your case on all copies of the summons and complaint forms. The clerk will issue the summons by dating, signing, and sealing the summons.

**Serving the Summons and Complaint packet:** The clerk will keep the original of the summons and complaint packet for the court file, will mail one copy to the defendant, will make arrangements for personal service or delivery, and will return the remaining packet to you.

##### **Step 5b: Filing with the court by mail and making arrangements for service**

**Filing the Summons and Complaint packet:** In deciding whether to file by mail, you should first consider how you want to handle service of the summons and complaint packet on the defendant (tenant). According to Michigan Court Rule 4.201(D), the summons and complaint must be served on the tenant by two methods, one of which is mailing by first-class mail to the defendant.

The court will mail the summons and complaint packet to the defendant if you provide the court with a postage-paid envelope for this purpose. For your convenience, it is recommended that you get a postage-paid envelope from the post office for this purpose because you will already be at the post office getting your complaint packets weighed. You will have to make your own arrangements for serving the remaining summons and complaint packet as required by the court rule.

Go to the post office with all four copies of your complaint packet, the fifth copy of the summons form, and your payment for the court's filing fee. Have two of your complaint packets weighed by the post office so that you can prepare a postage-paid envelope for the court to return these two packets to you after the clerk of the court records the filing of your complaint. Paper clip this envelope to the back of two packets.

Have the remaining complaint packet weighed by the post office so that you can prepare a postage paid envelope for the court to mail this packet to the defendant. Paper clip this envelope to one packet.

Place all four packets, the fifth copy of the summons form, payment for the filing fee, and the two postage-paid envelopes in an envelope addressed to the court and have the post office mail the package to the court.

When the filing is received, the clerk will record the filing of your complaint, assign a case number, and write the name of the judge assigned to your case on all copies of the summons and complaint forms. The clerk will issue the summons by dating, signing, and sealing the summons.

The clerk will keep the original of the summons and complaint packet for the court file, will mail one copy to the defendant in the postage-paid envelope you provided, and will return the remaining three packets and the extra copy of the summons form to you in the other postage-paid envelope that you provided. If you do not provide the postage-paid envelope to the court for mailing a packet to the defendant, you will have to go to the post office to have this done because you must provide the court with a postal receipt showing that you mailed the summons and complaint packet.

**Serving the Summons and Complaint packet:** When you receive the remaining two packets from the court, keep one packet for yourself and make arrangements with a process server to personally serve or deliver the remaining packet to the defendant by one of the methods in Michigan Court Rule 2.105 or by delivering the papers at the premises to a member of the defendant's household who is of suitable age, informed of the contents, and asked to deliver the papers to the defendant. Remember, if there is more than one defendant, you need to serve all of them.

You must hire a process server to serve the summons and complaint packet; Michigan Court Rules do not allow you to serve this packet yourself. Give the process server one packet plus the extra copy of the summons and the two copies of the proof of service from form DC 104 that you printed when you completed the form (see Step 4). The cost for service is \$26.00 plus mileage for each defendant (tenant).

It is important to serve the summons and complaint packet as soon as possible. Service must be done not less than three days before the date set for hearing/trial. To figure out when to serve the packet, do not count the day that you intend to actually serve the packet. The last day of this three-day period cannot be a Saturday, Sunday, or holiday when the court is closed.

## **6. Filing proof of service with the court.**

After the summons and complaint packet are served on the defendant by the process server, the process server will complete the proof of service for the summons form (DC 104) and file it with the court when service on the defendant has been completed. Unless the court has made arrangements for service, you should make arrangements with the process server beforehand to give you a copy of the completed proof of service for your own records.

**NOTE:** If the process server is unable to serve the summons and complaint packet on the defendant by personal service, the process server may serve the packet by one of the other methods stated in Michigan Court Rule 4.201(D). If you requested a money judgment, the defendant must be served personally before the court will act on your request for a money judgment.

## **7. Appearance and answer from defendant.**

The defendant must appear and answer the complaint by the date on the summons by either: 1) filing a written answer and serving you with a copy, or 2) orally answering each allegation in the complaint at the hearing/trial.

If you receive from the defendant a written answer to your complaint, make sure you read it before you attend the hearing/trial. Think about what you want to say on your behalf.

## **8. Prepare for the hearing/trial.**

To prepare for the hearing, gather the evidence you need to prove your case. This might include a receipt, guarantee, lease, contract, government inspection report, or accident report. If a damaged article is too big to bring with you, photographs can be presented as evidence.

It is unlikely that a letter or affidavit from a witness will be accepted as evidence by the court without the witness being physically present at the hearing/trial. Therefore, it is strongly recommended that witnesses appear with you at the hearing/trial. If a witness is unwilling to appear, you can ask the clerk of the court to issue an order to appear (subpoena), requiring the witness to appear at the hearing/trial. The order to appear must be served on the witness (along with any witness fee) no later than two days before the hearing/trial. You can pay the clerk of the court to make arrangements for service of this order.

## **»» INFORMATION ABOUT ATTENDING THE HEARING**

**Bring your copy of the Summons and Complaint packet with you to the hearing.** Also, bring with you all the evidence you gathered and witnesses who are willing to testify. If you received a written answer from the defendant, bring that also. Contact the court to find out if you will be required to prepare the judgment/order after the hearing/trial. If the court requires you to prepare the judgment/order, you may want to bring form DC 105 to fill out in the courtroom. The hearing will usually take place at the location stated in the summons/notice to appear. It is important for you to arrive at the court on time. If you file a complaint and are not in court when your case is called, the case may be dismissed.

1. If you are representing yourself, you are expected to conduct yourself in a professional manner and to follow the same general rules as an attorney.
2. Make a list of information you think is important for the judge to know. You can use this list as a reminder to bring up the points you think are important.
3. If you need someone to attend this hearing who is unwilling to attend, follow the procedure in Michigan Court Rule 2.506 to get an order to appear (subpoena) or consult an attorney.
4. Go to the court on the scheduled day and time. Dress neatly. Arrive 10 or 15 minutes early. Bring witnesses with you.
5. Go to the clerk and tell him/her your name and that you are there for a hearing. Follow the clerk's directions and do not interrupt a hearing in progress.
6. The court will call the case and you will have an opportunity to explain your case to the judge and to prove: 1) that the tenant willfully or negligently caused a continuing and serious health hazard or extensive and continuing damage to the property, 2) that the tenant was given notice to remove the health hazard or repair the damage or move out and that this notice was given within 90 days of discovering the health hazard or damage, and 3) that the tenant did not remove the health hazard or repair the damage or move out within 7 days of the notice. Evidence that you present is subject to the Michigan Rules of Evidence. Witnesses will be allowed to tell the court about facts they know firsthand that support your evidence.
7. When your case is called, go to the front of the courtroom and follow the directions of the judge. The hearing/trial will generally be conducted following the procedure in Michigan Court Rule 2.507. Make sure to read this court rule before the hearing/trial. You may want to ask the judge to consider awarding a money judgment for costs pursuant to MCL 600.5741.
8. After the judge makes a decision, in most cases the court will prepare an appropriate judgment. If you are required to prepare the judgment, you may want to use form DC 105 to record what the judge said.
9. The judge will instruct you about what to do next.

## »» EVICTING THE TENANT

If the court enters a judgment in your favor but does not grant an immediate order of eviction, and the defendant does not move out as stated in the judgment, you can file an application with the court to have the defendant evicted. See Michigan Court Rules 4.201(K)(5) and (L)(1). Follow the instructions on the Application and Order of Eviction, form DC 107. After an order of eviction is entered, you must serve the order on the defendant as stated in Michigan Court Rule 2.602(D)(1). An order of eviction can only be enforced by those persons specified in Michigan Court Rule 3.106(B).

## »» COLLECTING A MONEY JUDGMENT

If a money judgment is awarded and it is not paid when ordered, additional papers must be filed with the court to collect on the judgment by having wages or a bank account garnished or property seized. This cannot occur until 21 days after the judgment is entered. The court may ask that information be provided for these collection efforts. See <http://courts.mi.gov/self-help/center/collect/pages/default.aspx> for details.



## INSTRUCTIONS FOR COMPLETING "COMPLAINT, DAMAGE/HEALTH HAZARD TO PROPERTY"

**Please print neatly. After filling in the form, you will need to make at least three copies of the form.**

Items A through J and L must be completed before your complaint can be filed with the court. Item K is completed only if applicable. Please read the instructions for each item. Then fill in the correct information for that item on the form.

- A** Fill in the district court number, the court address, and the court telephone number.
- B** Write in the names, addresses, and telephone numbers of the plaintiff and the defendant. You, the landlord, are the plaintiff. The tenant is the defendant.
- C** Check the box that is true for you. If another civil case was filed that involved you and the tenant regarding the same problem stated in this complaint, write the name of the court where the case was filed, the case number, and the name of the judge assigned to hear that case. Check the box whether that case is or is not still pending.
- D** Write in the name of the person who is entitled to possession of the property. In most cases this is the owner but it can be another person, such as a person subleasing the property.
- E** Describe the part of the property of which the defendant has possession.
- F** Describe in detail the extensive and continuing damage that has been done to the property or the serious and continuing health hazard that exists on the property. State how long this has been going on.
- G** Check item 6 if the lease or agreement between you and the tenant is for regulated housing operated by or under rules of a governmental unit, and state the rule or law that gives you authority to end the lease or agreement.
- H** Check item 7 only when applicable.
- I** Check the box in item 9 if you want an immediate order of eviction to be entered by the court.
- J** If you want a jury trial, you must complete and file MC 22 (Jury Demand). You must pay a \$50.00 jury fee at the time of filing the demand.
- K** If you want the court to award you a money judgment for damages to the property, check item 10 and write in the details about the damage and cost.
- L** Write in today's date and sign your name. If you are not the owner or sublessor, an attorney must sign the complaint.

- Read pages 4 through 6 of this booklet for details on filing and serving this form.

**You must read this booklet for directions on the legal process.**