
Index No. _____

[2]

Petitioner-Landlord,

-against-

**PRO SE ORDER TO SHOW CAUSE TO STAY
ISSUANCE OF EXECUTION OF
WARRANT, OR ALTERNATIVELY, TO VACATE
JUDGMENT & WARRANT**

Respondent-Tenant

Upon the annexed affidavit of [3] _____ (TENANT) sworn
to on [4] _____, 20____, and on all the proceedings in this matter, let the Petitioner-Landlord or
attorney show cause before this court at Landlord-Tenant Part at the courthouse located at
[5] _____, New York on * _____, 20____ at ____ a.m./p.m. (or
as soon as the clerk calls the matter), why an order should not be made:

- (1) staying the issuance or execution of a judgment and warrant pursuant to CPLR §2004, and §2201 and
- (2) restoring the matter to the calendar so that the respondent may be heard,
OR ALTERNATIVELY
- (1) vacating the warrant of eviction and the judgment in favor of the landlord pursuant to RPAPL §749(3) and CPLR 5015(a) and,
- (2) dismissing the petition for reasons set forth in the annexed affidavit, and
- (3) granting any other relief as this court deems just, and it is

ORDERED, that until this motion is heard and an order deciding this motion is entered by the court clerk, all proceedings by the Petitioner-Landlord, Petitioner's agent or attorney and any marshal/constable/sheriff of the City/Town/Village to enforce the judgment and execute the warrant of eviction of the tenant are stayed, and it is further

ORDERED, that the Tenant may personally or by facsimile serve a copy of this order together with a copy of the annexed affidavit on the Petitioner-Landlord, petitioner's agent or attorney, and in addition upon any marshal/constable/sheriff of the City/Town/Village or upon a person authorized to accept service on their behalf, if a warrant has been issued, on or before * _____, 20____.

Dated:* _____

Affidavit of Service to be filed by _____.

Date: _____, 20____.

JUDGE OF THE CITY/JUSTICE COURT*Numbers 1-10: Read instruction sheet before completing.****LEAVE BLANK FOR THE JUDGE TO COMPLETE**

Admission of Service: Received by Marshall/Constable/Sheriff _____ on _____
Received by Attorney/Landlord/Agent _____ on _____

Index No. _____

Petitioner-Landlord,

-against-

**AFFIDAVIT IN SUPPORT OF
ORDER TO SHOW CAUSE**

Respondent-Tenant

.....
County of _____
(State of New York) ss:

(TENANT)(3) _____ being sworn, says

FIRST: I am a Tenant in the above entitled proceeding, and I make this affidavit in support of this motion for an order:

- a) staying the issuance or execution of a judgment and warrant of eviction and
 - b) restoring the matter to the calendar so that I may appear and answer the petition
- OR ALTERNATIVELY**
- a) vacating the warrant of eviction and the judgment entered in favor of the landlord
 - b) dismissing the petition

SECOND: This is a summary proceeding to recover possession of real property and I am a tenant of the premises at [6] _____.

THIRD: On information and belief, a judgment has been entered in this proceeding.

FOURTH: On information and belief, a warrant for my eviction was or is about to be issued to the Marshal/Constable/Sheriff and may be executed momentarily, causing severe hardship to me.

FIFTH: I did not appear in court to make a timely answer to the petition in this proceeding because (REASON FOR NON-APPEARANCE IN COURT OR FAILURE TO ANSWER) or I did appear in court and the following occurred:

[7] _____

SIXTH: I have a meritorious defense in this proceeding, as follows: (DEFENSE)

[8] _____

SEVENTH: I have/have not made a previous application for the relief requested.

EIGHTH: I have no one else to serve copies of this Order to Show Cause and therefore I request permission to serve this order personally.

WHEREFORE, I ask this court to grant the relief requested in this Order to Show Cause and such other relief it deems just and proper.

[9] _____
SIGNATURE OF TENANT

[3] _____
(PRINT TENANT'S NAME)

[10] Sworn to before me this
____ day of _____, 20__

NOTARY PUBLIC

INSTRUCTIONS FOR FILLING OUT THE ORDER TO SHOW CAUSE AND AFFIDAVIT

The numbers on this list of instructions match the Order to Show Cause and Affidavit form. Fill in each blank according to the matching instructions.

- [1] Write the name of the City/Town/Village and County where the court is located.
- [2] Write the caption exactly as it appears on your court papers. The caption is on the top of the court papers and states the landlord's (petitioner) name and tenant's (respondent) name.
- [3] Print your name.
- [4] Write the date your signed affidavit was notarized before a Notary Public.
- [5] Write the address of the court including the name of the City/Town/Village.
- [6] Write your address and apartment number.
- [7] Explain the reason why you did not appear in court or what happened when you did go to court.
- [8] Explain why you think the court should vacate the judgement and warrant. For example, why you did not pay your rent or why you believe that you do not owe the rent.
- [9] Sign your affidavit before a Notary Public. Do not sign until you are in front of the Notary and have completed the form.
- [10] The Notary Public fills this part out.

INSTRUCTIONS FOR GETTING THE ORDER SIGNED BY THE COURT AND SERVED

- After you complete the affidavit and have it notarized, take the Order to Show Cause to the court clerk for the judge to sign. Ask the clerk when the order will be signed by the judge and when you can pick it copies to serve upon and deliver to the landlord and the marshal/constable/sheriff.
- Remember the date the judge said you are to return to court, and the date you must serve the Order to Show Cause upon both the marshal/constable/sheriff and the landlord, agent or attorney. The eviction is not legally stopped until the marshal/constable/sheriff is served with a copy of the Order signed by the judge.
- When you serve the Order to Show Cause, ask each person served to sign their name and the date on the original order. If anyone refuses to sign, complete the Affidavit of Service and have it notarized. Return the original Order to Show Cause and Affidavit of Service to the court. **The case will not be on the court calendar until the original Order to Show Cause is returned to the court.**

INSTRUCTIONS FOR COMPLETING THE AFFIDAVIT OF SERVICE OF THE ORDER

If any of the persons you serve refuses to admit receipt of a copy of the order by signing their name on the original Order to Show Cause, you must complete the affidavit of service to indicate who was served and where and when.

This affidavit **must** be notarized by a notary public before the original papers can be filed with the court.

AFFIDAVIT OF SERVICE OF ORDER TO SHOW CAUSE

State of New York, County of _____:

[3] _____, being sworn says: I am the tenant in this proceeding and am over 18 years of age and reside at _____. On _____, 20____, at _____ (address) I served a copy of this order and affidavit by: (check applicable box and write name of person served).

[] PERSONAL SERVICE ON _____, Petitioner by delivering a true copy to Petitioner personally at _____. I know the person served to be the person described as Petitioner.

[] PERSONAL SERVICE ON _____, Petitioner's agent by delivering a true copy personally at _____. I know that the person served is the agent of the Petitioner.

[] PERSONAL SERVICE ON Petitioner, a Corporation/Partnership by delivering a true copy to _____ personally at _____. I know that this person is the _____ (position) of the Corporation/Partnership.

[] PERSONAL SERVICE ON _____, the Petitioner's attorney by delivering a true copy personally to the office of Petitioner's attorney and the person served is the attorney or secretary authorized to accept service.

[] PERSONAL SERVICE ON _____, Marshal/Constable/Sheriff.

[] CERTIFIED MAIL, RETURN, RECEIPT, REQUESTED, on _____.

[] By FAX at # _____, the number designated by _____ for receipt of papers.

[9] _____
(Signature of Tenant)

Sworn to me this
[10] _____ day of _____, 20____.

Notary Public