Town & Village Justice Court
Summary Proceeding Checklist – Process Issues

This bench card is intended to be used by town and village court judges in New York State

Counsel

Are the parties represented by counsel?

Yes → **No.** Discuss legal rights and obligations with litigants. RPAPL §745(2)(a) allows the court to grant adjournments in summary proceedings, and case law supports giving tenants a reasonable chance to retain or consult counsel. Refer tenants to the court forms which explain how to get legal representation.

I. Jurisdiction

1. Is the property located in the same municipality as this court? (RPAPL § 701(2).)
   - **Yes** → **No.** Dismiss the case, but with leave for the petitioner(s) to refile in the appropriate court.
2. Is the respondent (s) currently in physical possession of the property?
   - **Yes** → **No.** Dismiss the case since there is no basis for the summary proceeding.
3. Did petitioner(s) file a: **1) notice of petition** AND **2) petition** with **3) proof of timely service** of **BOTH** the Notice of Petition and Petition ALL parties per RPAPL § 733 and § 735?
   - **Yes** → **No.** Dismiss the case because the court lacks jurisdiction over at least one respondent(s), but with leave to refile after proper service of a new proceeding
4. Did the petitioner(s) use the notice of petition and petition forms as mandated by the Uniform Civil Rules for the Justice Courts § 214.1
   - **Yes** → **No.** Dismiss the case, but with leave for petitioner(s) to refile with the appropriate forms.

Proceed to II

II. Grounds For Summary Proceedings

Does the petitioner(s) have a valid basis for the action? Summary proceedings are either **holdover proceedings**, or **nonpayment proceedings**.

Holdover Proceedings

1. Is the petitioner(s) claiming that the respondent(s) violated some term of the lease **OR** overstayed the lease (RPAPL § 711(1)), **OR** is the petitioner(s) claiming that no landlord/tenant relationship exists? (RPAPL § 713.)
   - **Yes** → **No.** The petitioner(s) cannot bring a holdover proceeding. If the petitioner(s) is asking for payment of rent, they must bring a **nonpayment proceeding**.
2. Does the **Good Cause Eviction Law** (RPL Article 6-A) apply in your locality?
   - **No** → **Yes.** See Good Cause Eviction Law bench card.
3. If eviction is based on the lease expiring, has the appropriate notice been given? (RPL § 226-c.)
   - **30 day notice required** for occupancy less than a year **AND** no one year lease.
   - **60 day notice required** for occupancy or lease term of more than one year, but less than two years, or an initial lease term of at least one year.
   - **90 day notice required** for occupancy more than 2 years or lease term of at least two years.
   - **10 days' notice required** for an occupant who is alleged to not be a tenant, such as a licensee. (RPAPL § 713.)

   Note that a statutory **Good Cause notice** is required even if the locality has not adopted good cause protections.

   Note if eviction is based on termination of the lease for cause, rules governing the termination notice are determined by the lease and/or type of housing.
   - **Yes** → **No.** The petitioner(s) cannot continue with this holdover proceeding and the petition must be dismissed.

Nonpayment Proceedings

1. Is the petitioner(s) claiming that the respondent failed to pay **rent**? (RPAPL § 711(2).)
   - **Yes** → **No.** The petitioner(s) cannot bring a nonpayment proceeding. Nonpayment proceedings can only be used to recover rent, not to recover any other payments (like security payments or payments for damage of the property).
2. Does the **Good Cause Eviction Law** (RPL Article 6-A) apply in your locality?
   - **No** → **Yes.** See Good Cause Eviction Law bench card.
3. Has the respondent(s) at any point either offered to pay or paid the rent demanded in the proceeding? (RPAPL § 731(4).)
   - **No** → **Yes.** There is no basis for the proceeding
4. Did the petitioner(s) give the respondent(s) **fourteen days' notice** to pay rent or vacate the property, (RPAPL § 711(2)), **OR** 30 days' notice for HUD funded properties? (15 U.S.C.A. § 9058.)
   - **Yes** → **No.** The petition must be dismissed. The petitioner(s) must give written notice before bringing a court action.

Proceed to III

III. Form of Petition and Notice of Petition

To commence a summary proceeding, a petitioner(s) must file two separate documents: **(1) a petition** and **(2) a notice of petition.**

1. Does the petition contain the following information?
   - A statement of the petitioner's and respondent's ownership interest in the property and the relationship between the petitioner(s) and respondent(s)?
   - What the petitioner(s) is asking the court to do (the relief requested)?
   - A description of the property?
   - Verification by the petitioner(s) or the petitioner's legal representative, attorney, or agent? (RPAPL § 741.)

   Yes → **No.** Dismiss the case, but allow the petitioner(s) to correct the mistake and refile.
2. Does the **notice of petition** inform the respondent (s) when and where they must show up to court? (RPAPL § 731(2).)
   - **Yes** → **No.** Dismiss the case, but allow the petitioner(s) to correct the mistake and refile.
3. Has the notice of petition been issued by a judge, court clerk, or attorney? (RPAPL § 731(1).)
   - **Yes** → **No.** Dismiss the case, but allow the petitioner(s) to correct the mistake and refile.

Proceed to IV

IV. Service of Petition and Notice of Petition

Both the **petition** and **notice of petition** must be served on every respondent(s).

1. **Timing.** Were the (1) petition and (2) notice of petition both served between **ten and seventeen days** before the respondent(s) is scheduled to appear in court? (RPAPL § 733(1).)
   - **Yes** → **No.** The case must be dismissed.
2. **Methods.** Were the petition and notice of petition served in one of the following ways?
   - **Personal delivery to the respondent(s).**
   - **Substituted service.** Substituted service means service upon a person of suitable age and discretion who lives or is employed at the property sought to be recovered. (If this method is chosen, then the mailing requirement below must also be met.)
   - **Nail and mail.** This method is only to be used if one of other methods have failed. (If this method is chosen then the mailing requirement below must also be met.) Nail and mail is allowed after 2 attempts at personal service.

     Mailing requirement: To meet the mailing requirement, two copies of the petition and notice of petition must be mailed, one by regular mail and one by certified mail. The copies must be sent (1) to the property; or (2) if the respondent(s) does not live at the property, to the last known residence of the respondent(s); or (3) if there is no written information about where the respondent(s) lives, to the respondent's place of business. (RPAPL § 735.)

   - **Yes** → **No.** The case must be dismissed.
3. **Filing.** Were the petition, notice of petition, and affidavit of service filed within three days of service? (RPAPL § 735(2).)
   - **Yes** → **No.** The case must be dismissed.

Continue

Links to Resources

- **Landlord and Tenant Forms:** https://www.nycourts.gov/landlord-and-tenant-forms
- **Good Cause Eviction Law Notice** (form for landlords)**:** https://tinyurl.com/3whwxbbr
- **Municipalities and Units Covered by the Good Cause Eviction Law:** https://hcr.ny.gov/good-cause-eviction
- **Good Cause Eviction Checklist** (checklist for the Court)**:** https://tinyurl.com/4a76p4uc

6/26

Town & Village Justice Court
Summary Proceeding Checklist – Process Issues

This bench card is intended to be used by town and village court judges in New York State

Town & Village Justice Court
Summary Proceeding Checklist – Substantive Issues

1. Adjournment & Answers

A tenant may answer in writing or orally and present any legal or equitable defense in addition to a counterclaim. (RPAPL § 743.) The court must offer an adjournment of at least fourteen days if an issue of fact is raised. (RPAPL § 745(1).) The Court may grant additional adjournments. The Court can always adjourn if both parties consent.

2. Factual Dispute

If there is a dispute about a factual issue and one of the parties demands a trial, the request must be granted. (RPAPL § 745(1).)

3. Burden of Proof

The burden is on the petitioner to prove his or her case. That means the petitioner must submit evidence proving each of the facts that he or she claims is true. If the petitioner fails to prove his or her case, the case must be dismissed. Both sides, however, must be allowed to speak and present their cases. The rules of evidence apply, and a tenant cannot be evicted without a trial, unless there is an agreement to settle. A landlord's agent or attorney cannot submit evidence unless they are a fact witness.

4. Warranty of Habitability

If a tenant proves, either by testimony or other evidence such as photographs, that the property is unlivable or unable to be used in the manner intended to some extent because of conditions in need of repair, then the tenant shall be entitled to an abatement of rent in proportion to the degree to which the tenant's ability to live in and enjoy the property is compromised. A lease cannot waive a tenant's right to this remedy. (RPL §235-b.) Is the respondent arguing that some aspect of the property makes it unlivable (dangerous, hazardous, detrimental to life, health or safety of tenants? If so, the respondent may be entitled not to pay all or a portion of the rent due under the warranty of habitability defense. (RPL § 235-b.) If a condition dangerous to life, health or safety, or uninhabitable, the landlord has breached his duty to keep the housing habitable.

5. Refusal to Rent

Has the respondent paid all of the rent, or was rent refused by the petitioner? If so, then the nonpayment proceeding must be dismissed and the respondent cannot be evicted. (RPAPL § 731(4).)

6. Access to Records

Both sides must have access to the court documents (including notice of petition) prior to hearing.

7. Unique Circumstances

- If the dispute involves mobile homes, manufactured home, or land grant, special rules for proceeding may apply. (RPL §233.)
- If the respondent has a housing subsidy, special rules and protections apply. The Court should not grant an eviction unless the petitioner identifies the protections and shows that it followed the rules. (RPAPL § 741(4).)

8. Definition of Rent

In a proceeding relating to a residential dwelling or housing accommodation, the term "rent" shall mean the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement. No fees, charges or penalties other than rent may be sought in a summary proceeding pursuant to this article, notwithstanding any language to the contrary in any lease or rental agreement. (RPAPL § 702.)

9. Settlements

(RPAPL § 746.) In any proceeding under this article, if a settlement or stipulation is made, on the occasion of a court appearance in the proceeding, setting forth an agreement between the parties, other than a stipulation solely to adjourn or stay the proceeding, and either the petitioner or the respondent is not represented by counsel, the court shall fully describe the terms of the stipulation to that party.

Town & Village Housing Court
Good Cause Eviction Law (NY)

1. Overview

In housing covered by Good Cause Eviction (see links below), landlords cannot evict their tenants or refuse to renew their leases just because their lease has expired. Landlords must now have a reason to evict, enumerated in the law. The law also provides a defense against unreasonable rent increases, defined in the law. The law does not affect tenants in rent-regulated apartments, who are already protected from eviction without cause.

2. Required Language in Rent Demands and Eviction Petitions (Justice Courts)

Mandatory RPL § 231-c Notice

Every rent demand and eviction petition must include or attach the Good Cause Eviction Law Notice. (RPL § 231-c.) Failure to include it requires dismissal, with permission to refile after correcting the mistake.

Notice Must State Applicability

The notice must clearly state whether the unit is covered by Good Cause. If covered, the landlord must meet Good Cause standards. If exempt, the exemption must be stated and supported.

If Claiming an Exemption

The landlord must identify the specific statutory exemption (owner-occupied ≤ 10 units, small landlord exemption, new construction, high-rent exemption, etc.). Courts may require documents supporting the exemption.

Rent Demands Above the Threshold

If rent is increased beyond the Good Cause threshold, the notice/petition must state the percentage and dollar amount of the increase and the statutory justification.

Eviction for Alleged Good Cause (Nonpayment or Other Grounds)

Petitions must allege the specific Good Cause ground and facts supporting it (nuisance, illegal activity, chronic nonpayment, refusal of access, etc.).

Defective Papers

Missing or incomplete Good Cause notice, failure to specify applicability, or failure to articulate a statutory ground requires dismissal with permission to refile after correcting the mistake.

Judicial Verification

Courts may require confirmation of ownership/occupancy, certificates of occupancy, rent histories, operating expenses, or improvement documentation.

Use of State Form

Judges should confirm use and proper service of the statewide UCS Good Cause Eviction Law Notice form.

3. Links to Resources

- **Good Cause Eviction Law Notice** (form for landlords)**:** https://tinyurl.com/3whwxbbr
- **Municipalities and Units Covered by the Good Cause Eviction Law:** https://hcr.ny.gov/good-cause-eviction
- **Good Cause Eviction Checklist** (checklist for the Court)**:** https://tinyurl.com/4a76p4uc