
SMALL CLAIMS COURT



Small Claims Court exists to provide a forum for the speedy trial of fairly simple claims at a minimal cost.

WHAT IS A SMALL CLAIM?

A small claim is defined in Kansas as a claim for recovering money or personal property from an individual, a business, or an organization where the amount involved is \$4000 or less. It is especially useful for the collection of back rent from a tenant who has moved out or a decision on who should pay a disputed repair bill. Evictions are not handled in Small Claims Court.

WHO MAY FILE A SMALL CLAIM?

Anyone may file a small claim, but there are some restrictions.

1) Most important, you represent yourself and the tenant represents himself or herself. If any person filing in Small Claims Court has someone representing them and the representative is an attorney or was formerly an attorney, then the other party is entitled to have an attorney represent them. If an attorney or former attorney is representing themselves in a small claims suit, then the other party is allowed an attorney as well.

2) Persons under 18 must be represented by an adult.

3) You may not authorize a third party to sue on your behalf. (Rare exceptions to this rule can be made with the consent of the judge in situations where, for instance, a person is senile or is otherwise unable to represent himself or herself.)

4) The statute of limitations varies depending on the type of claim (i.e., 2, 3 and 5 years). Generally, the sooner you file the better.

5) No person or entity may file more than 20 small claims in any calendar year in any one county. Any attempts to do so may result in fines being assessed and judgments which cannot be enforced.

HOW DO YOU FILE A SMALL CLAIMS SUIT?

A small claims suit should be filed in the county where the tenant resides or has a place of business or where the incident in question took place. Some courts will allow you to file on someone outside the county but within the state of Kansas; some will not. If your case is against someone who is out of state, you may not be able to use the Kansas small claims procedure.

To start a small claims suit, you must fill out a form provided by the clerk of the court. To find the right office, look for a sign in the county courthouse saying Small Claims or Limited Action or District Court.

The form you fill out is not complicated. You must simply list your name and address, the defendant's name and address, and state your claim. After you have completed the form, return it to the clerk and pay a filing fee which may range from \$30 to \$50 depending upon the amount of the claim. The judge may waive this fee if good cause is shown that you cannot afford it. You must sign your form in front of the clerk or, if you file by mail, you must have it notarized.

The clerk will then assign a date and time for your claim to be heard. The sheriff will serve a summons on the defendant to notify him or

her of the court proceedings. (See "The Eviction Process" subsection in the Evictions chapter for details about service of notices.)

If you have not heard from the court, check in at least a day before your hearing is scheduled to make sure the defendant was served the court summons. If not, you will need to give the court any clues you can (addresses, times, etc.) on how to find this person. There cannot be a trial until the defendant is notified. A "publication" process is available if your opponent truly can not be found, but you can't collect money that way.

It is important to remember that the person you are suing may bring a countersuit against you. So, know as much as possible about the circumstances involved in your claim.

WHAT IF YOU ARE THE ONE BEING FILED AGAINST?

You will receive a summons stating that the tenant claims you owe an amount of money up to \$1800 for a security deposit return, damages, or whatever. You can defend yourself if you feel the tenant owes you money. It costs nothing to counter-sue unless your claim is over \$1800 and you choose to take it to a higher court.

WHAT IF YOUR OPPONENT OFFERS TO SETTLE?

To "settle" means to make some sort of deal regarding a certain amount and payment terms and "drop" the case from court.

It is advisable to settle only if you have been paid or your items returned in full. (This settlement should include any court costs and interest desired.) If you aren't totally satisfied, go ahead to court and get your hearing and official judgment on the entire claim.

If a case is settled, the plaintiff (person who filed) should notify the court in writing and

have the hearing cancelled. Check with the court to see if there is a form that can be filled out and signed; otherwise, a letter of dismissal should be written and delivered to the court. The defendant should check with the court the day before the scheduled court date and make sure the plaintiff did have the case dismissed. When in doubt, you should appear at the appointed date and time for your own protection.

WHAT PREPARATION IS NECESSARY BEFORE GOING TO COURT?

Make sure you have all materials and papers that are important to your case. If you are suing for rent, bring your rent ledger. If you are suing for damages, bring repair receipts and proof of payment. It is important that you write down all of the facts of the case before the hearing and take them with you. You should not expect to read this at the trial, but it can be an important reference so you don't forget any details or dates when you are speaking to the judge.

Be sure to inform any witnesses you have of the date and time of the hearing. It is up to you to see that they are there. Witnesses can be subpoenaed by the court. However, if the court calls them, you will have to pay a witness fee. Depositions (signed statements from witnesses) are not allowed.

If you need more time to prepare your case or if for some very important reason (such as serious illness) you, as either plaintiff or defendant, cannot make it to court on the day of your hearing, you must request a "continuance" from the clerk or judge at the Small Claims Court. This must be done as far in advance as possible. Although everyone has a legal right to one continuance, the court may set a deadline (usually a day or two before) after which time none will be granted. If you fail to ask for a continuance and do not appear in court for the hearing, you may lose your right to be heard by the judge and may automatically lose your case.

You might consider sitting in on Small Claims Court before you file or at least before your hearing date comes up. Small Claims hearings are public. By attending at least one session in advance, you will know how small claims cases are handled by the court and the judge in your county. The clerk's office can advise you when a landlord/tenant case is scheduled.

WHAT HAPPENS IN COURT?

Be sure that you appear in court on the date and time assigned by the clerk. **Get there early!** If you are not present, your side of the case will not be heard and your opponent will win.

At the hearing, the claim is heard by a judge. There is no jury. You and your opponent represent yourselves. The only information the judge should have ahead of time is the original claim form and possibly a counterclaim form (though counterclaim forms can be turned in at the trial).

The procedure is very simple. You present your side of the story to the judge. In doing so, you show any evidence and call any witnesses you have to testify. You can testify on your own behalf. If you do, tell your side. You don't need questions. The judge may then ask questions of you and your witnesses. Your opponent will be asked to present his or her case and any claim that he or she may have against you. When your opponent is finished, the judge may question your opponent and your opponent's witnesses.

SOME HINTS!

You may want to prepare an "opening statement" – one or two sentences that summarize your side of the case – and practice it in advance.

When presenting your case, make your statements short and present any pertinent documents.

If you have any witnesses, take them with you when your case is called. If you don't, they may

never be called forward by the judge. It is important to answer the judge's questions directly and in a calm manner.

Speak clearly, directly, and only when spoken to. If you must interrupt or insert a point, do it as politely as possible. Never be rude to the judge or your opponent either in speaking or by making gestures or faces.

WHAT ABOUT THE RULING?

The judge considers the argument and evidence and decides the validity of your claim. He or she may award an entire request, part of it, or none of it. If you win, the judge may order your opponent to pay you interest and/or reimburse you for your filing fee in addition to the amount you asked for. The judge may decide that your opponent's claim is more valid than yours and order you to pay money to your opponent.

COLLECTING

Winning in court does not necessarily mean that you get paid promptly, in full, or ever.

Payments can be made through the court or directly between you and your opponent. Installment payments are allowed if both parties are willing. Use of the court will provide an official record. Use receipts, whatever you do.

Your judgment is "good" almost forever as long as you keep checking in with the court and officially renewing it at least every five years or so.

After 10 days, assuming no appeal has been filed, the court can assist you in collecting your money. It will be up to you to make sure appropriate papers are filed and to find out where this person's money is. You may hire an attorney or use a collection service to assist at this time. "Aid in Execution" and "Garnishment" are the two court-assisted collection procedures.

AID IN EXECUTION

You can go back to the court clerk and ask to have the court "aid" you in "execution" of the

her of judgment. Most courts will provide the necessary form. There should be no cost to you.

The sheriff will send an order summoning your opponent to return to court. You will have to appear, too. At the appointed time, the judge will assist you in questioning the person to determine whether a payment can be made immediately to you directly or through the court; whether an acceptable payment plan can be worked out; and/or to discover where the person banks or works so that garnishment can proceed.

This procedure can be used as often as necessary.

GARNISHMENT

In a garnishment procedure, the court gets the money owed you directly from your opponent's source of income or bank account. You will have to find out where the person works or banks and fill out a garnishment request form with the court clerk. Then the court will contact the business and arrange the garnishment at no cost to you. If you can't find out whether the person has income, employment, or money, you can ask the court to assist you through an "Aid in Execution" (see above).

The law permits garnishment from each paycheck, though a certain minimum amount must be left in each check. Welfare, disability, and Social Security checks cannot be garnished.

Limited action garnishments continue until you stop them. You must keep careful track of the amount you receive and file a form to stop the garnishment as soon as the judgment has been paid.

A checking or savings account can be garnished in one lump sum. When filing for this type of garnishment, you must enter 1-1/2

times the amount due on the form. Give the court a week or so to issue the garnishment. Once a business has received garnishment papers, it should be holding your money. The business must file an "answer" with the court. The court will send a copy to you. Next, you must sign or call the court for an "order to pay in and disburse." Then the court will collect the money from the business and send it to you.

WHAT IF IT TURNS OUT THAT THE SCOPE OF THE CLAIM IS BEYOND THAT OF SMALL CLAIMS COURT?

You may decide that your claim is too complicated for Small Claims Court or a judge may decide that. You then have three options.

- 1) **You can drop the claim.** Your filing fee will not be returned.
- 2) **You can reduce your claim** to fit the limits of Small Claims Court, thereby waiving the right to pursue what you left out.
- 3) **You can go to the next higher court level.** There you will probably need an attorney and the fee will be higher if your claim is over \$4000.

A claim cannot be split into two suits.

CAN SMALL CLAIMS COURT DECISIONS BE APPEALED?

A judgment made in Small Claims Court may be appealed to the next higher level of the District Court within ten days. This will give you a trial "de novo" (completely new) on your original claim. You will have to pay court fees again. Hiring an attorney is advisable because of the complexity of the forms and the legal arguments. If you lose a second time, the judge is supposed to order you to pay your opponent's attorney's fees.

References: Kansas Small Claims Procedure Act, K.S.A. 61-2701 through 61-2713; Aid in Execution, K.S.A. 61-3604 through 61-3611; Garnishment and Attachments, K.S.A. 60-729 through 60-744.