

## INSTRUCTIONS FOR FILLING OUT FORM

**PURPOSE.** This form is to be used when you have been served with a summons and complaint for eviction and/or money damages (for past due rent and/or damage to the premises or both) and you have a counterclaim against the opposing party. For example, if you are served with a summons and complaint for eviction and money damages and you want to counterclaim against the opposing party for any damages you may have suffered as result of your tenancy on the premises such as reimbursement for repairs the landlord should have been responsible for.

**FORMS INVOLVED.** The form is an **Answer and Counterclaim** to the opposing party's complaint and is required if you want to contest the complaint. It also contains a counterclaim. You will need to fill in the necessary information with help from the instructions below and then file the original with the appropriate court and mail a copy to the opposing party or their attorney.

**WARNING.** You must file an answer to plaintiff's complaint for eviction within seven (7) days of service of an eviction summons and complaint upon you or you will be in default and the plaintiff can seek a default judgment for eviction against you.

**What do I do if I am served with a Summons and Complaint for eviction.** This section explains what to do if you are served with a summons and complaint. If you are served with a summons and complaint you are being sued for some reason. As a result you must file an Answer with the court and a copy on the plaintiff within 7 days of service of the summons and complaint is served upon you or you are in default. Read the summons and complaint carefully. The complaint will tell you what the plaintiff(s) claim is against you.

**What is an Answer.** An Answer is a pleading where the defendant(s) responds to the plaintiff(s) complaint. You can answer the plaintiff(s) complaint by denying and/or admitting to any parts or all of plaintiff(s) allegations in the complaint. If you have any **affirmative defenses** to plaintiff(s) complaint you must specifically plead these affirmative defenses in your answer. If you fail to raise any affirmative defenses you may have you will be barred from using such a defense. This means that if you fail to raise an affirmative defense you waive the right to use such a defense. Affirmative defenses include accord and satisfaction (meaning you already settled this matter with the opposing party), arbitration and award (meaning an independent arbitrator already decided the case before the court did) assumption of the risk, contributory negligence, discharge in bankruptcy, duress (you were forced or threatened to do something you did not want to do), estoppel (meaning the other party cannot complain against their own actions), failure of consideration, fraud, injury by fellow servant, illegality, laches (meaning the other party waited too long to bring the action), license, payment, release (meaning the other party released you from any obligation), res judicata (meaning the court has already heard and decided the matter in an earlier case involving the same thing as this case), statute of frauds, statute of limitations (meaning the other party did not bring the action in the time set out in the code) and waiver (meaning the other party waived any claim they had).

**You also may need to file a counterclaim with your answer.** A **counterclaim** is like the plaintiff(s) complaint in that it sets out your cause of action against the plaintiff(s). You must file a counterclaim on any claim you have against the plaintiff(s) if it arises out of the same

transaction or occurrence raised in the plaintiff(s) complaint. Failure to do so could result in the court barring your claim. If you have a separate claim against the plaintiff(s) you do not have to counterclaim and can start a new action against the plaintiff(s) by filing your own summons and complaint.

**How to file an Answer and Counterclaim.** You must file an Answer and Counterclaim to the plaintiff's summons and complaint by filing the original with the court and by mailing a copy to the plaintiff if they are not represented by legal counsel or to their attorney if the plaintiff is represented. Look at the summons you received with the complaint, it will tell you where to mail your answer and counterclaim.

Again, you must file your answer and counterclaim with 7 days of being served with the plaintiff's summons and complaint for eviction or the plaintiff will seek a default judgment without a trial on the merits against you.

**PLAINTIFF'S BURDEN OF PROOF.** If the opposing party filed a complaint, they have the burden of proving that claim in court. In a typical civil case the other party has the burden of proving their claim by a preponderance of the evidence. This means that it is the other party's responsibility to prove their case. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). The opposing party or plaintiff has the burden of proving by a preponderance of the evidence the following to the court:

1. Each and every allegation and fact alleged in their complaint.
2. That there is a landlord-tenant relationship between you and the landlord. The landlord can prove this by showing an oral or written rental agreement between you and them where you agreed to rent a premises from the landlord for rent (usually monthly rent payable at the beginning of each month).
3. That you violated a term or condition of the rental agreement. This would include your failure to pay rent or to repair damages to the premises or for violation of any other term of the rental agreement. If the rental agreement was oral or written look to the tribal Landlord-Tenant code or the code on Forcible Entry and Detainer to see any rights you have under the code as a tenant and what the Landlord's duties are. Some tribal codes are comprehensive in this area and some are not.
4. Typically, a landlord is required to show and prove that they gave you proper notice to quit the premises before the landlord can file an action for eviction in tribal court. If the landlord has failed to give you proper notice to quit or vacate then the tribal court does not have jurisdiction to hear the eviction case and cannot proceed to evict.

**YOUR BURDEN OF PROOF.** If you filed a counterclaim you have the burden of proving that claim in court. In a typical civil case you have the burden of proving your counterclaim by a preponderance of the evidence. This means that by representing your self in a legal matter it is

your responsibility to prove your case. Don't expect the judge to prove your case for you. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). You as the defendant have the burden of proving by a preponderance of the evidence the following to the court:

1. You must prove any allegations in your counterclaim. This could include damages you suffered as a result of the landlord denying you basic services such as water or proper heating or reimbursement for any repairs you made to the premises that should have been the landlord's responsibility.

**INSTRUCTIONS FOR FILLING OUT THE FORM.** To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the Answer:

(1) on this line insert the name of opposing party.

(2) on this line insert your name.

(3) on this line insert the numbered paragraphs of the plaintiff's complaint that you admit or do not contest. By admitting to a paragraph you can not dispute that allegations at the trial.

(4) insert the numbered paragraphs of the plaintiff's complaint that you can neither admit or deny because you do not have knowledge or information of whether that allegation is true.

(5) insert the numbered paragraph of the plaintiff's complaint that you deny or contest. By denying a paragraph you can challenge that allegation at trial.

(6) list any affirmative defenses you may have. If you have any affirmative defenses to plaintiff(s) complaint you must specifically plead these affirmative defenses in your answer. If you fail to raise any affirmative defenses you may have you will be barred from using such a defense. This means that if you fail to raise an affirmative defense you waive the right to use such a defense. Affirmative defenses include accord and satisfaction, arbitration and award, assumption of the risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, injury by fellow servant, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations and waiver. The most common affirmative defenses in landlord-tenant disputes is estoppel (the landlord waited too long to bring the action for back rent when the landlord knew he could have brought the action earlier), statute of limitations (a tribe's statute of limitations start to run as each month's rent is due-so any months rent due more than two years before the filing of the complaint is barred if the tribe's statute of limitations is two years) and accord and satisfaction (you reached an agreement with the landlord and you have abided by your part of the agreement).

(7) insert any counterclaims you may have against the plaintiff. This could include damages you suffered as a result of the landlord denying you basic services such as water or proper heating or reimbursement for any repairs you made to the premises that should have been the landlord's responsibility. (Skip this section if you do not have a counterclaim against the plaintiff/landlord)

(8) on this line insert the day.

(9) on this line insert the month.

(10) on this line insert the year.

(11) on this line insert your name by signing.

(12) on this line insert the address where you mailed your answer and counterclaim. It will be either the plaintiff if they are not representing by legal counsel or to their attorney if the plaintiff is represented. Look at the summons you received with the complaint, it will tell you where to mail your answer and counterclaim.

**ROSEBUD SIOUX TRIBAL COURT )  
ROSEBUD INDIAN RESERVATION )SS  
ROSEBUD, SOUTH DAKOTA)**

**IN CIVIL COURT**

(1) \_\_\_\_\_  
\_\_\_\_\_

DOCKET \_\_\_\_\_

PLAINTIFF(S)

ANSWER AND  
COUNTERCLAIM

VS

(2) \_\_\_\_\_  
\_\_\_\_\_

DEFENDANT(S)

Comes now, the above named defendant and for his/her answer to plaintiff's complaint states and alleges as follows:

1. That the plaintiff's complaint fails to state a claim or cause of action against defendant for which relief may be granted, and defendant moves that the same be dismissed on the merits and with prejudice.

2. That defendant denies each and every allegation contained in plaintiff's complaint, except those specifically admitted to herein.

3. That defendant admits the allegations contained in paragraphs (3) \_\_\_\_\_ of the plaintiff's complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph (4) \_\_\_\_\_ of the complaint.

4. That defendant denies the allegations contained in paragraphs (5) \_\_\_\_\_ of the plaintiff's complaint.

#### AFFIRMATIVE DEFENSES

As and for affirmative defenses to the plaintiff's Complaint, defendant alleges:

1. Accord and Satisfaction; Statute of Limitations and Estoppel.

2.(6) \_\_\_\_\_  
\_\_\_\_\_.

3.(6) \_\_\_\_\_  
\_\_\_\_\_.

4.(6) \_\_\_\_\_  
\_\_\_\_\_.

COUNTERCLAIM

Defendant, for his counterclaim against the above-named plaintiff, hereby states and alleges as follows:

1.(7) \_\_\_\_\_  
\_\_\_\_\_.

2.(7) \_\_\_\_\_  
\_\_\_\_\_.

3.(7) \_\_\_\_\_  
\_\_\_\_\_.

4.(7) \_\_\_\_\_  
\_\_\_\_\_.

5.(7) \_\_\_\_\_  
\_\_\_\_\_.

6.(7) \_\_\_\_\_  
\_\_\_\_\_.

Wherefore, defendant prays that the relief requested in plaintiff's complaint be denied and that plaintiff's complaint be dismissed with prejudice.

Dated this (8)\_\_\_\_ day of (9)\_\_\_\_\_, (10)\_\_\_\_\_.

(11)\_\_\_\_\_  
Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that I served a true and correct copy of the forgoing Answer and Counterclaim upon the plaintiff or their attorney by first class mail by depositing said copy in the United States Mail addressed to plaintiffs or plaintiffs attorney's last address at (12) \_\_\_\_\_

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Dated this (8) \_\_\_\_\_ day of (9) \_\_\_\_\_, (10) \_\_\_\_\_.

(11) \_\_\_\_\_  
Defendant