

SMALL CLAIMS COURT: WHAT YOU NEED TO KNOW

What is Small Claims Court?

Small Claims is a division of the Hamilton County Municipal Court that was created to permit easy access for people with disputes involving relatively small amounts of money. A Magistrate (a lawyer appointed by the court) hears small claim cases. Small Claims can only decide claims for money up to \$6,000. The Small Claims court cannot order a defendant to do anything other than pay a specific sum of money, so you must be able to put a price tag on any damages you have suffered because of the defendant's actions.

Some typical cases are:

- Tenants suing for the return of security deposits
- Landlords suing for property damage beyond the amount of a security deposit
- Vehicle accidents
- Faulty repairs of cars and other property
- Deceptive Sales

How to file in Small Claims Court

File at the "Issue Desk" in room 115 of the courthouse. You will need:

- **A Small Claims complaint**
- **Filing fee:** \$54 for one defendant with service by certified mail (add \$10.00 for each additional defendant served by certified mail). If you win, the filing fee is included in the judgment.
- **Service:** Until the defendant is served (given a summons to court) nothing can happen. To file, you will need an address for the defendant. Service is usually done by certified mail sent by the clerk. If the address is not correct or current, you will not be able to proceed with your case.

Avoid these common filing pitfalls to help make your case go smoothly:

- **Suing the wrong party:** Make sure you know the true, legal name of the person or business you intend to sue. If suing a business, make sure you have the right name (to get more information on correct legal name of a business, contact the Secretary of State at (877. 767.6446). If suing a

landlord for a security deposit, you must sue the owner of the property, not the property management company.

- **Being the wrong person suing:**
 - **Security Deposit:** You must be named on the lease to sue for a security deposit back.
 - **Property Damage:** You must prove you are the owner of the property in question.
 - **Car/Vehicles:** You must bring to court a copy of your car's title showing you as the owner.

Counterclaims

Once a person receives a complaint and summons naming them as a defendant, they have the opportunity to file a counterclaim if they can show that the party suing them has caused them damages. A counterclaim can be filed up to the day of your trial. However, to avoid delays in your case you will need to file no less than 10 days from your court date. The cost to file a counterclaim is \$15 and an additional \$10 for service to the opposing party.

Preparing for Your Court Date

Small Claims court moves fast, so you need to prepare ahead of time.

Collect Your Evidence: Small claims court has more relaxed rules of evidence than other courts. You will still need to collect evidence to prove your case.

- **Prove ownership:** Collect contracts for services, lease/rent agreements, proof of payment for services and other documents to show that you owned the property in question and show how the defendant was involved (as a renter, landlord, person doing repair work, seller, etc.)
- **Show Damages:** Photos (in print form) and videos (on a DVD disc) can help show the damaged condition of property. Also collect estimates of the cost of repair, receipts/statements from repair people and receipts for replacing property.
- **Print Digital Evidence:** It is usually best to print photos, text messages and emails from your phone or computer. Put video on a DVD disc. If you do not, the court may have to take your electronic devices into evidence.
- **Subpoena witnesses:** Small claims court will accept letters or affidavits from witnesses, but they are generally not given much weight. It is usually better to bring witnesses to court to testify. You can fill out subpoenas at the Issue Desk in 115 of the courthouse to ensure witnesses appear at court.

Organize your evidence: You will best be able to present your case if you are well-organized ahead of time.

- **List your damages and evidence:** A template evidence list is attached that can be helpful to provide to the court. It lists a description of your damages/evidence, amounts of damages and a description of the evidence you are using to prove each point. This will help you be organized in presenting your evidence to the court.
- **Print extra copies:** You should have at least two extra copies of your evidence packet, one for the court and one for the opposing party.
- **Practice:** At court, you will be given the opportunity to do an “opening” and “closing” where you can summarize your case. You will only have one chance to tell the court what happened, and taking some time to prepare your summary can pay off in court.
- **Observe small claims court:** The court is open to the public. If you are able, it can be helpful to see how hearings are conducted and to familiarize yourself with the hearing room.

Your Court Date

Be on time: Court begins promptly. If you are late, the court will likely enter a “default judgment,” which means you lose automatically because you were not there.

Before your case is called: The magistrate will do a roll call to see who showed up on each case. The magistrate will likely ask the parties to meet in the hallway to show each other their evidence and discuss their case. This is a good opportunity to come to an agreement before court if possible.

Mediation: A mediator will often be available for some cases. Mediation is completely voluntary and either party can end the mediation and proceed with their court date. The mediator will help discuss the case and propose possible ways to agree on a settlement.

Your trial: When your trial starts, both parties will first be sworn in. The parties will take turns presenting their arguments and evidence, with the plaintiff going first. If you are appearing on behalf of an LLC, you will not be allowed to give an opening or closing or ask any witnesses questions. Only an attorney representing an LLC can do these things.

- **Opening:** Your opening should briefly explain what happened and why you should win. You can also briefly explain what your evidence will show.
- **Evidence:** It can be helpful to first give the magistrate a list of your evidence in the order you plan on presenting it. (A template evidence list is attached). You will have the opportunity to present contracts, photos, receipts and other documents. You can also bring witnesses to testify. The opposing party will be given the opportunity to ask you and your witnesses questions.
- **Closing:** The magistrate will usually ask you if you have anything else to say before making a decision. You have the opportunity to briefly summarize why you should win given the evidence presented by both sides. You cannot present new evidence at closing.

- **Decision:** In most cases, the magistrate will rule at the end of the trial. The magistrate will not accept any further evidence or argument after making a decision in the case.

After trial, now what?

If you win: Winning in small claims means that the court has confirmed that the losing party has a legally enforceable obligation to pay. You still need to collect the debt. The losing party has 15 days from the day you were in court to voluntarily pay the judgment. After 15 days, you can start collection procedures. (19 days is recommended to allow for delays in signing, weekends and holidays). The Help Center guide, **Collecting a Judgment**, has information to help you through the process.

If you lose: If the Magistrate finds against you, there are procedures for appealing. The success of the appeal will hinge upon whether the Magistrate made any errors in reaching the decision. You have 7 days from the Magistrate's ruling to make a written request for a detailed decision of the Magistrate and 14 additional days to file written objections to the Magistrate's decision detailing the errors you believe the Magistrate has made. If your objections are upheld, you will probably be granted a new hearing. If your objections are overruled, you may appeal the Judge's ruling to the First District Court of Appeals.

Case Number

Name

Evidence List

	Description of Damages	Amount of Damages	How Damages Calculated	Description of Evidence to Show Damages
1				
2				
3				
4				
5				
6				
7				
8				

_____ **Case Number**

The Evidence List template in this guide is meant to help you begin to organize the evidence for your hearing. A similar list may be helpful to provide the magistrate at your hearing.

_____ **Name**

Evidence List

	Description of Damages	Amount of Damages	How Damages Calculated	Description of Evidence to Show Damages
1	In this Section, list a basic explanation of each of your damages. Some examples are: <ul style="list-style-type: none"> • Damaged carpet • Broken windows • Repair car's radiator • Unpaid security deposit 	Here, list the amount you are asking for on each of your damages. The total on the bottom should be the total for which you are asking.	For each of your damages, explain how you came to the amounts of the damages. Some examples include: <ul style="list-style-type: none"> • Labor at \$___/hr + replacement material costs (be as specific as you can about the materials) at \$___. • Replacement costs • Repair costs 	For each of your damages, list the evidence you will produce to prove your case. This template gives space for 2 pieces of evidence for each, but you likely could need more spaces for more pieces of evidence. Some examples include: <ul style="list-style-type: none"> • Lease agreement • Contract • Photos/video • Repair estimate • Receipts
2				
3				
4				
5				
6				
7				
8				