

## **Considerations For A Landlord Before Proceeding To Evict A Tenant**

There comes a time when every landlord finds themselves in a difficult position of having his rental property occupied by a tenant who is not paying rent, or is making a nuisance of himself and causing problems for other tenants, or is causing immense damage to the rental unit, or they conduct makes it impossible to continue with a landlord/tenant relationship. Though, state laws governing eviction vary significantly, the following are a few tips to help landlords finding themselves in the unpleasantly messy situation of evicting a tenant.

As the owner of a significant number of residential units, it will be to your benefit to engage a lawyer to advice you on eviction issues, as well as, for handling legal actions. An established relationship with a lawyer is useful as he will carry out various legal tasks charging a flat fee only, whereas, hiring a lawyer on a case to case basis can result in much higher legal fees.

### **Evicting a Tenant for Non-payment of Rent**

The eviction process involves serving a formal notice, informing the tenant the rent is overdue, and they are facing a possible eviction, if they do not pay on time. If a landlord is not knowledgeable about the legal terms of a notice, there are pre-printed forms which fulfill all legal requirements for a proper notice. In case, the rent arrearage has not been paid after the legally defined period i.e. usually, about a week, a landlord can begin eviction proceedings on the basis of non-payment of rent.

Bear in mind, if the tenant makes a partial payment during the eviction process, in most jurisdictions the acceptance of any payment of rent, even a small amount, can result in dismissal of the eviction lawsuit for non-payment.

### **Lease Violation**

When a tenant does not comply with the terms of the lease they signed, a landlord must provide a written warning, referring to the lease clause being violated, and allow them time to remedy the problem. This is so the tenant cannot later claim ignorance that they did not know, they were in violation of the lease, or they received no notice of the violation. The judge will be in favor of the landlord if it is established the tenant ignored a prior notice and the deadline.

### **Health and Safety Issues**

Certain tenants may pose a health or safety problem for other tenants or for the property, in general. In many jurisdictions, it is permissible for the landlord to evict tenants whose conduct is hazardous to the health of other tenants or can damage the property. First of all, a landlord should serve the tenant with a fixed period of time notice (a week) to remedy or repair the problem, or else move out. If no corrective action is taken, a landlord can proceed with the eviction proceedings.

Even if a tenant resolves the issue, but you still want them out, serve them a notice on eviction on health or safety grounds, as well as, a notice stating their tenancy is being terminated.

### **Bankruptcy**

In the event a tenant files for bankruptcy, an automatic stay prevents a landlord from continuing with the eviction proceedings until the bankruptcy is resolved, or the bankruptcy court permits eviction proceedings to continue by lifting the stay. This may require a motion to be brought before the bankruptcy court, asking for the stay to be lifted.

### **Tenant Counter-Claims**

When a landlord begins eviction proceedings, some tenant may bring counter-claims against the landlord, such as, inadequate maintenance of property or violation of the lease, and may ask the court to stop eviction proceedings or else for a substantial rent decrease in arrearage owed.

This is why it is good practice to keep written records of any complaints received from tenants about the rental unit or common areas, and steps taken by the landlord to resolve them, as also with warnings of tenant misconduct. Remember a landlord's can preclude a tenant's claim that despite repeatedly complaining about a problem with their unit, the landlord failed to respond with positive action, as long as the landlord has kept records of all interaction with the tenant and of action taken.

### **Trials**

Before going to court, a landlord must ensure all his documentation in relation to the case is in order and there is nothing missing. Unless a landlord is conversant with the rental laws of his state and has had enough experience in eviction cases, it is also advisable to engage a lawyer, well versed in property law of the state a landlord's rental property resides in.

The above should provide you with enough knowledge of what is required for a successful eviction.