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Ten Things a Landlord Should Do Before Bringing a Non-Payment Proceeding

The best thing for the landlord to do is to avoid the need to bring a tenant to court. However, inevitably, even if a landlord does everything correctly, there may be tenants who will fail or refuse to pay the rent.

The following "top ten" list describes things that a landlord should do before bringing a residential non-payment action. Some of these things will help the landlord avoid the need to bring a non-payment action, while others will allow for success in the non-payment proceeding.

1) Address tenants' requests and/or complaints:

If your tenant comes to you with a repair or lack of heat or hot water issues and you confirm the issues exist, quickly and properly fix the problem. In many instances, tenants will withhold rent because a landlord will not take their complaints seriously. Without repair/heat/hot water issues, the tenant will have fewer defenses in court to the non-payment of rent, thereby making the process more efficient and the outcome more favorable to the landlord.

2) If there are violations against the apartment or other portions of the property, clear them promptly:

Depending on the type and number of violations, outstanding violations against leased premises or other portions of the property can strengthen a tenant's claim for a rent abatement.

3) Be familiar with your lease terms:

The rent demand is a condition precedent to bringing a non-payment proceeding. This means that before a non-payment petition can be brought, the tenant must be served with a rent demand that clearly shows the amounts owed and how much time the tenant has to pay it.

The rent demand requirement is three (3) days if the lease is silent as to the notice period. However, many leases will specify a longer amount of time that must be given. If the lease specifies a five (5) day rent demand and the landlord only serves a three (3) day rent demand, the subsequent non-payment petition can be dismissed.

4) Rent demand should properly apprise the tenant of the amount owed:

Not only must the rent demand be served pursuant to the terms of the

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lease (as per #3 above), but the rent demand must also clearly state the amount of rent due for each respective time period.

A faulty rent demand may result in the dismissal of a non-payment action.

5) All DHCR registrations should be timely filed and copies available, if applicable:

If the non-payment matter goes to trial, the landlord is responsible for proving the amount of rent that is due and the most reliable and forceful way of doing this is to have a certified DHCR registration form that lists the legally regulated rent for the apartment.

Having the DHCR registrations handy will also allow for the landlord to ensure that he is charging the proper rent and will allow for the landlord or his/her agents to calculate any subsequent rent increases based on vacancy increases, annual increases, major capital improvements and/or individual apartment improvements.

6) Make sure your building complies with Multiple Dwelling Law, if applicable:

If your building is located within the five boroughs of NYC and has three (3) or more units, it must be registered with the Department of Housing Preservation and Development. Once registered, the building will be given a multiple dwelling registration (MDR) number and will list a registered agent for the building.

If a building that requires this MDR number does not have one, the landlord will not have the ability to seek rents in a non-payment case.

7) Keep track of which tenants received subsidized benefits such as Section 8 benefits:

Your attorney will need to know if the tenant that you are bringing to court receives assistance from the Department of Social Services, Section 8 program or other subsidies. This is because the agencies that distribute those benefits must be notified when there is a pending court action against the tenant, otherwise, you risk having the case dismissed.

8) Claim only rental items that are proper for a non-payment proceeding:

Certain things such as security deposits, amounts for fixtures or damages to property and even attorney's fees and late charges may not be obtainable in the New York City residential housing court. However, in many Westchester courts, landlords will have a more success in obtaining a judgment for some of these charges, if the lease provides for them.

9) Make sure a process server is able to reach the individual apartment doors and the doors are all clearly marked with the apartment number:

The process server needs to attempt personal service of the court papers upon the tenant before any other service methods are used. They will need access to building and must be able to locate the apartment in order to do their job properly.

10) Keep track of the number and names of tenants on a lease and adjust lease/lease renewals accordingly:

In order to obtain a judgment against a tenant, each tenant's name must be on the lease or the lease amendment or renewal.

For example, if you seek a money judgment for failure to pay rent but only one tenant is on the lease (despite the fact that maybe a spouse of the tenant is living at the premises), usually the money judgment will only be enforceable against the named tenant.

Please note the above list is not exhaustive. Each tenancy is unique and we strongly advise you to consult with an experienced landlord attorney regarding your specific matter. James G. Dibbini & Associates, P.C. has over 20 years experience in the area of landlord-tenant litigation and urge you to call our office today with any questions about your landlord-tenant issues.

Our office also provides legal services in the areas of:

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