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NEWSLETTER

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What to Do If a Tenant Stops Paying Rent

Many clients who are property owners, landlords and even tenants call us asking about the eviction process, specifically evictions concerning the nonpayment of rent, so we have taken the time to briefly outline the steps in a nonpayment proceeding.

A nonpayment proceeding is an eviction proceeding brought by a landlord because the tenant has failed to maintain rental payments in accordance with the lease agreement. When attempting to evict a tenant due to the nonpayment of rent, it is crucial that the landlord carefully follows all applicable statutory laws, regulations and the lease, if any. If the landlord does not, the eviction proceeding could be dismissed by the court. The following is an overview of the steps a landlord must follow in a nonpayment proceeding in New York:

1. Demand for rent

Before commencing a nonpayment proceeding with the court, a landlord must make a demand for rent- verbally or in writing. The demand must give the tenant at least 3 days to pay the rent; however, the lease should be reviewed to make sure a longer notice period is not required. If the demand is in writing, which is the better choice, the landlord must have the notice served on the tenant preferably by a process server.

2. Choosing the Correct Forum

Before starting the action, it is important to choose the correct court. The court in which a landlord should commence the action will depend on where the property is located. Nonpayment proceedings can be brought in local housing, city, town and village courts depending on the specific area. Additionally, depending on the property's location, the landlord may have a choice to bring it in either the town or village court.

To start a nonpayment proceeding in a city court, the landlord must file the Notice of Petition and Petition with the court clerk but to start the action in a town or village court, the landlord must serve the tenant the Notice of Petition and Petition first and then file thereafter.

3. Notice of Petition and Petition

If the demand for rent has been served and has expired without the tenant paying the missing rent, in nonpayment proceedings brought outside of New York City, the landlord can start the nonpayment proceeding by drafting and filing with the appropriate court and/or serving the tenant with a Notice of Petition and Petition. The Notice of Petition informs the tenant when he/she must appear in court and the Petition gives the reasons why the landlord has commenced the proceeding against the tenant. The tenant must be served with these documents at least 5 days, but no more than 12 days, before the court date included on the Notice of Petition.



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4. First Court Appearance

For cases brought outside of New York City, if the tenant fails to appear, the court will either adjourn the matter to another date or enter a default judgment granting a Judgment and Warrant of Eviction. The court will also grant a Judgment and Warrant of Eviction if the tenant appears and admits the claims in the Petition.

However, if the tenant appears, denies the claims in the Petition and asks for a trial, the court can immediately proceed with the trial if the parties are ready or the matter can be adjourned for a later date.

5. Trial

At trial, both parties submit their evidence to the court to support their claims and refute the opposing party's claims. If the court finds in favor of the landlord, it will issue a Judgment and Warrant of Eviction but if the court finds in favor of the tenant, the case will be dismissed and the tenant can stay in the apartment.

6. Judgment and Warrant of Eviction

A Judgment and Warrant of Eviction are the required legal documents that must be signed by the court in order to legally evict a tenant. The landlord must submit a proposed Judgment and Warrant of Eviction for the judge to sign.

The Judgment orders the tenant to leave the premises or pay the landlord any money owed. The Warrant of Eviction is the court order permitting the physical eviction of the tenant. This Warrant must be given to a Marshal who will then serve it on the tenant along with a 72 Hour Notice to vacate the apartment. However, the Warrant of Eviction may not be readily enforceable because the court may decide to grant a Stay of Eviction. A Stay of Eviction gives the tenant more time to pay the unpaid rent. Once the Stay expires, the Warrant of Eviction is enforceable or the court, in its discretion, can decide to issue another Stay.

7. Marshal

Only enforcement officers, such as a Marshal, can legally evict a tenant by serving the tenant with the Warrant of Eviction and the 72 Hour Notice to vacate the apartment. Once the 72 Hour period has expired and the tenant does not vacate the apartment, the Marshal is authorized to physically evict the tenant from the premises.

James G. Dibbini & Associates, P.C. has over 20 years of experience representing landlords in nonpayment proceedings. Let us help you. Give us a call at (914) 965-1011 or email us at jdibbini@dibbinilaw.com.

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