

## **Court Says Tenant's Conduct Does Not Warrant His Eviction by CD Publications**

New York. A landlord cannot evict a tenant because his conduct did not constitute a nuisance even though he caused the landlord problems for several years, says the court. The landlord filed an eviction action against the tenant claiming the tenant failed to vacate after receiving a termination notice from the landlord. The landlord said the tenant was committing a nuisance on the property and should be evicted because of his conduct.

The landlord claimed the tenant "engaged in a course of conduct intending to harass the building management and this conduct is destructive to the well being of the whole building and is in violation of the Policies and Procedures section of the lease." The termination notice stated that the tenant disrupted a news conference with the director of the building "through loud behavior" and had to be restrained by security and his case manager.

The notice further stated he "verbally" castigated the building management staff while he was picketing in front of the building. It was further alleged he failed to cooperate with his case manager and failed to comply with the terms of his mandated monthly visits. The landlord also claimed that the tenant made "unfounded complaints" to the local housing departments about the lack of heat in his apartment - which triggered a building inspection.

The landlord was not cited for a building code violation after the inspection. The tenant filed a motion to dismiss the landlord's eviction lawsuit for lack of subject matter jurisdiction and for failing to state a cause of action "due to insufficient facts." The tenant says the eviction lawsuit should be dismissed because the termination notice was defective and as a result the notice did not terminate his lease.

Under state law, the termination notice "as a whole" must provide sufficient facts to the tenant to allow him to "frame a defense." The landlord is not required to "lay bare their trial proof in the termination notice" says the court. But if the termination notice is insufficient, the proceeding must be dismissed.

In earlier decisions, the courts required that termination notices be "definite and unequivocal" and provide the "who, what, when, where, etc.," behind the claims. But now the courts case their determination of whether the termination notice is adequate or not by using the "standard of reasonableness in view of all attendant circumstances" test.

The tenant claims the allegations set forth in the notice of termination are vague and lack specific factual information "sufficient to state a cause of action."

According to the tenant, the termination notice fails to allege dates for some of the allegations described in the notice and many of the incidents occurred more than two

years before the notice was given. He further claims the landlord failed to allege the specific lease provisions he violated and failed to provide facts to support the violations. The trial court says the termination notice only alleges that the tenant “severely criticized” the landlord’s management company and other tenants was not aggressive or threatening.

Thus, the trial court concludes the “termination notice is not reasonable in view of the attendant circumstances.” The notice claims he violate the lease but fails to state showing or describing how he violated the lease but fails to state facts showing or describing how he violated the lease agreement or the property’s rules and regulations as required.

The notice fails to provide any facts showing the tenant engaged in physical violence or threatened physical violence on the property. The notice says he “engaged in loud behavior” which resulted in him being restrained and that he verbally criticized the management company and picketed the building.

The termination notice also claims used or misused drugs but there are no allegations the drugs were illegal or “not necessary” for the treatment of the tenant’s cardiac condition. The allegations set forth in the termination notice do not constitute a nuisance says the court. A termination of tenancy based upon a nuisance claim brought by a landlord will be upheld if the conduct “deemed objectionable is recurring, frequent, continuous, or extremely dangerous with the conduct occurring without interruption or extended breaks between incidents.”

The landlord’s notice and eviction petition fail to show a pattern of “continuity or ongoing conduct”. The incidents complained of occurred in 2004 and 2005 and do not show frequent, recurring, and continuous conduct necessary to constitute a nuisance. The landlord’s termination notice fails to state a cause of action and is insufficient to support a termination or eviction proceeding and the landlord’s case is dismissed.

***Lesson: The landlord’s notice was not defective-the landlord simply lacked sufficient cause to evict this tenant according to the court. Obviously this tenant caused problems for the landlord but his actions did not rise to the level of nuisance as required to evict. The landlord may have waited too long after the incidents to evict the tenant-landlords must act promptly to evict problem tenants or the court may conclude the problems are simply not serious enough to warrant an eviction.***

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