

LANDLORDS & THE LAW

“The Tough Evictions”

by Ted Smith, Attorney - Smith & Associates

When relations with your resident break down, it may be time to evict. While the unlawful detainer procedure can be tedious, it's important to remember that it is the only legal way to evict the resident who is creating a problem. Shortcuts such as lock-outs, utility shutoffs or physical threats are illegal and dangerous. You may find yourself on the wrong end of a lawsuit for such conduct.

During our years of exclusively representing landlords in the tenant eviction process, we've come to categorize certain types of cases. Here is a sampling of the toughest eviction cases we have successfully handled for clients in the past.

Domestic Violence

When couples fight in the apartment, both are guilty of disturbing the quiet enjoyment of adjacent residents at the apartment community. Management cannot take sides in the domestic dispute and both parties are subject to eviction based on violation of the lease agreement. Assuming she qualifies on her own and that she can convince you the boyfriend or husband will not ever return – sometimes with a restraining order against him – it will remain quiet and calm, then you can let her stay so long as there are no further problems. But, that would be your choice. If the problem surfaces again, you can evict at that point.

Drug Dealers

The drug dealer resident may look good going in but suspicious activity begins right away. There may be traffic in and out of the apartment but no substantial disturbances. Narcotic detectives may have the apartment under surveillance but are unable to gather enough evidence to effectuate an arrest. These “discreet” drug dealers are a particularly difficult eviction. In order to win this case, it will be necessary to show that there is a violation of the lease agreement by the traffic, or the surrounding residents are concerned for their safety, or police have searched the premises and found illegal drugs or made an arrest. Fortunately, for eviction purposes, it is not necessary for the resident to be convicted for drugs – the related problems should be enough proof to evict.

The Professional Tenant

They're out there. Renters who make a living moving from apartment to apartment without paying rent. We evict the same people over and over again. The professional tenant frequently has had legal training and employs various delay procedures not seen in the usual case – demurrers, motions and discovery. Some repeatedly use the eviction delay “trilogy” – an answer, a third party claim and a bankruptcy. The professional tenant usually pays one month's rent or bounces that check and then nothing more is paid. It is up to the rental owner to initiate eviction proceedings at that point.

Extreme care must be taken in the rental selection process. A thorough scrutiny of the application must be made to avoid one of these residents becoming your problem.

Lease Options

Sometimes what appears to be a straight eviction based on nonpayment of rent is complicated by the fact that the owner has given the resident an option to purchase the property. Maybe an escrow has been opened. Perhaps the resident has been given a deed conditioned on performance of certain terms. When the resident stops paying “rent”, he may try to block the owner’s eviction by exercising the option and claiming violation of the purchase agreement. These issues make the eviction much more difficult than usual.

Evictions of Family and Friends

Sometimes a friend or family member will be allowed to stay in the apartment either rent-free or under a verbal understanding. In some cases, the resident is named in the will of the owner of the property who recently has passed away. The family member claims a portion of the estate, creating all kinds of problems with the premises. The family member or friend can still be evicted with proper notice, but it will be up to the court to decide whether this is a true landlord/tenant relationship or there are title issues involved.

By using extreme caution and reducing all of the details of the agreement to writing, eviction problems in these areas can be minimized.

“Phantom” Occupants

Let’s assume that the tenant of record signed a six month lease of the premises which turned into a month-to-month tenancy after the first six months. This was one year ago. For the last several months, a money order has been mailed for the rent, which has been paid on time. The owner hasn’t seen the tenant of record for many months and there has been very little activity in the unit. The tenant of record has never terminated her month-to-month tenancy by proper, written 30 day notice. Then, without warning, an unknown adult approaches the owner and hands the owner a check (in his name) for the rent. The owner, who does not know this individual and has no financial information on him and hasn’t seen the tenant of record for some time, inquires as to the tenant’s status. The person walks away without providing information or filling out a rental application. Despite this, the owner cashes his check.

This has been sloppy management of the property in not keeping track of who is actually living in the unit. It is our position that the tenant of record never properly terminated her month-to-month tenancy and still remains on the hook. This is especially true since we have no information on the gentleman who is actually occupying the apartment. As a result, a three day notice to pay rent or quit or a 30 or 60 day notice will be served on the tenant of record together with Does one through five. The unknown occupant(s) can be legally evicted and will not be able to get away with the fact that he won’t disclose his true name or fill out an application. He will be evicted along with the tenant of record, who will remain responsible for the judgment because she is the one who apparently gave the keys to and let the unknown occupant live in the unit.

The owner might want to do a little homework by contacting the tenant of record and reminding her that she is still the tenant, she has never legally terminated her tenancy and the unlawful detainer will be filed because the unknown occupant refuses to provide any information. It is possible the lawful tenant can convince the unknown tenant to leave and for herself, issue a written notice that she has vacated. But, it is most likely that she is unable to control the unknown, having passed the apartment to him some time ago.

Suspicious Activity and A Long-Term Lease

The residents executed a 12-month lease of the premises just a month ago. Since moving in, there has been suspicious activity, including traffic in and out and loitering in the common areas; police detectives have been out on two occasions to ask questions but there have been no busts, no arrests and no visible drug or other criminal activity. Still, suspicions run high.

This is probably the most difficult type of eviction because even though the owner has suspicions, there is no tangible evidence to prove a lease violation and you will have to show that in this case because the residents have a lease. Going with the lease eliminates the option and quite frankly, the luxury of serving a 30 day notice. Even though there are alleged violations, a 30 day notice is not the correct notice when there is a fixed lease. The owner will have to prove the violations in question. What are they? Suspicions about drug activity, too many people visiting, standing in the driveway, a police detective at the property but no arrests made. At this point, the violations fall short of an eviction, but the situation should be carefully monitored. Things could change in an instant.

For example, you could receive a letter from the local law enforcement agency stating that the premises are under surveillance for possible drug activity and please evict the tenants. With that letter, you have free rein on a three day notice to quit based on activity which the police perceive as illegal conduct in the unit. Falling short of that letter, you will need an arrest or some kind of demonstrable act that would give rise to an eviction notwithstanding the lease.

Under these circumstances, the owner would be well advised to carefully watch the unit and keep a diary on activity so that if and when it comes time to pull the trigger on an eviction, the owner has his paperwork in order.

For over 25 years, Smith & Associates has exclusively represented San Diego County's owners, property management companies, and apartment managers in the unlawful detainer process. With a history of thousands of successful unlawful detainers, we speak with experience on every facet of the legal procedure. See why San Diego County's experienced property managers prefer Smith & Associates. Call Ted Smith for a free consultation. Smith & Associates, P.O. Box 80306, San Diego, CA 92138, Telephone: (619) 299-1761; Fax: (619) 297-9724 or ted@outyougo.com.