

A Tale of Woe (Landlord Learns the Hard Way) **by Andrew Cohn, Attorney at Law**

I see it all the time. It's late October and I get a call from a small landlord. His tale of woe: his tenant didn't pay the rent in September. The tenant claimed he'd just started a new job, and begged the landlord to apply the security deposit to September's rent. He promised that everything would be OK starting October. The landlord agreed.

Predictably, October rolls around and no rent check arrives. After a week, the landlord goes to a stationary store, gets a 3-Day Notice and serves it on the tenant. The tenant doesn't respond. When the landlord asks him in person about the rent, the tenant tells him "my lawyer will be calling you." The next day the lawyer, who works for a clinic which provides no-cost representation to tenants, does call, and tells the landlord that the form of the 3-Day Notice he used is invalid in Oakland (or Berkeley, or San Francisco -- pick your rent-control city).

I check out the 3-Day Notice he used.
The tenant's attorney was right. It's invalid
in rent control cities like Berkeley, Oakland,
or San Francisco, which require special forms.

When the landlord finally comes to me, he's out two month's rent and falling behind on his mortgage payments.

I ask him whether he screened the tenant up front. Did he do a credit check? Talk to previous landlords? Check whether the tenant had been evicted before? "No, no, and no." "He seemed like such a nice guy, and he kept saying how perfect the apartment was."

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I prepare a new notice, and then file an eviction lawsuit (known as an Unlawful Detainer). The tenant proves hard to serve, and by now it's mid-November.

The tenant (his attorney, actually) files an answer which claims that there are habitability problems -- leaks, rats, a busted heater -- which excuse him from paying rent. We now have to go to trial.

I ask the landlord about the habitability problems. He says the place was spotless when the tenant moved in. Did he do an inspection with the tenant when he moved in, and have the tenant sign off on it? "No."

So now it will be the landlord's word against the tenant's.

As soon as I get the tenant's answer, I apply to the court for a trial date. It's now close to Thanksgiving. While the court is supposed to set the case for trial within 20 days, it is often longer, and the trial is set for December 21st.

A week before, the tenant demands a jury trial. (That's his right under the 7th Amendment of the Constitution. Talk to James Madison if you don't like it).

We get a new trial date, because jury trials are only set on Fridays, but the next two Fridays, December 24th and January 31st, are court holidays, so our new date is January 6th.

By this time the landlord is out five month's rent.

We report to the courthouse. 50 other cases are set for trial that same morning. The judge tells everyone to go out in the hall and try to settle the case.

I seek out the tenant's attorney. She's handling 15 cases simultaneously. When I finally button-hole her, she claims that the place is a rat-infested slum, and we're going to spend a week in trial. Of course, she's bluffing, because she's got 15 other cases, but the threat alone is worth something in settlement negotiations.

She says the tenant will move out, but needs until the end of February.

My client hits the roof. I urge him to consider the offer in economic terms alone. If we go to trial, we'll almost certainly win. But nothing's guaranteed, and we'll be sitting around for days in court, with him spending several thousand dollars more (at least) in attorney's fees.

And even after we win, it will be close to Valentine's Day by the time the sheriff actually throws out the tenant. Sure, he'll also get a judgment for the back rent, but that's only a piece of paper. If the tenant

could pay the judgment, he'd probably have paid the rent five months ago.

So what would you do? Take the tenant's attorney's deal, or help put your attorney's kids through college?

BUT, there could have been a better ending had the landlord taken a few precautions:

- Screen prospective tenants. Run a credit check. Verify income. Call previous landlords.
- Perform a pre-move-in inspection. Have the tenant sign off on it.
- Fix any problems that arise promptly. Save your receipts.
- Never apply the security deposit to the rent.
- Get help promptly, especially if you live in Berkeley, Oakland, or San Francisco, where rent control laws make it difficult to handle an eviction yourself.

Andrew Cohn graduated from U.C. Berkeley's Boalt Hall School of Law and has practiced since 1989 in both Oakland and Berkeley. He has a general practice in civil litigation, including business disputes and real estate litigation. Much of his practice focuses on landlord-tenant problems and rent control issues as they arise in Oakland and Berkeley. He has handled hundreds of evictions, both commercial and residential, throughout the Bay Area and can be reached at (510) 841-4796.