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The Eviction Process from Start to Finish

By Steven C. Williams

An eviction is the general term used for terminating a tenancy and recovering possession of property. An eviction can be as simple as serving a notice of termination of tenancy and having your tenant vacate. But as you will see, it can become very timely and costly when the tenant refuses to leave. This may be particularly true when the tenant resides in a rent controlled unit.

Terminating the Tenancy

The eviction process begins by terminating the tenancy. This can be done by serving the tenant with a written notice of termination of tenancy. However, if the unit is controlled by an eviction ordinance, then the landlord can't terminate the tenancy unless he or she has just cause to do so. San Francisco Administrative Code Section 37.9(a) sets forth the fourteen just cause grounds permitting the termination of a tenancy in a rent controlled unit in San Francisco. Oakland Municipal Code Section 8.22.360 provides eleven just causes for eviction in Oakland.

There are typically four different types of notices which can be used in terminating a tenancy: three day notices to perform or quit; three day notices to quit; thirty day notices terminating the tenancy; and 120 day notices terminating the tenancy. Which notice to use depends on the situation.

Three Day Notices to Perform or Quit

Three day notices to perform or quit are typically used when the tenant fails to pay rent or breaches the rental agreement. This notice must give the tenant an opportunity to pay the rent or cure the breach. If the tenant pays the rent or cures the breach within the three day notice period, then the tenant may remain in possession. However, if the tenant fails to timely pay the rent or cure the breach, and the notice provides that the rental agreement is forfeited, then the landlord is entitled to recover possession of the unit from the tenant after the three day notice period. It is important to note that the three day notice period does not include the date the notice was served.

Three Day Notices to Quit

A three day notice to quit may be served on a tenant when the tenant is using the unit for

an illegal purpose, committing waste, or subletting or assigning contrary to the rental agreement. The tenant's improper use of the premises actually terminates the tenancy. The three day notice simply tells the tenant to vacate within three days of the service of the notice, excluding the date of service. After the three day period, the landlord is entitled to possession.

Thirty and Sixty Day Notices Terminating the Tenancy

Thirty day notices are commonly used to terminate month-to-month tenancies. The tenancy is terminated thirty days after the service of the notice, excluding the date of service. It is important to note that effective January 1, 2003, a thirty day notice to terminate a month-to-month tenancy may no longer be sufficient. Instead, a *sixty* day notice is required for most residential tenancies where the tenant has been in possession for less than one year.

120 Day Notices Terminating the Tenancy

A 120 day notice must be served on a tenant when a landlord seeks to withdraw all rental units in a building from rent or lease under the Ellis Act (i.e. go out of the residential rental business). The tenancy is terminated 120 days after the service of the notice, excluding the date of service. But, if a tenant is at least 62 years of age or disabled and has lived at the rental unit for at least one year, then the 120 day notice period may be extended to one year; in these cases, a tenant might receive the equivalent of a year's notice!

Other Factors to Consider When Serving a Notice

As illustrated, the notice period may be as short as three days or as long as one year. To make matters worse, if the notice expires on a weekend or holiday, then the tenancy is not terminated until the end of the next business day.

Additionally, the notice period for some notices may also be extended if the notice cannot be personally served on the tenant. For example, if a three day notice to pay rent or quit is served by posting it on the tenant's door and mailing it to the tenant, then the three day notice period is extended by five days. In such a case, a three day notice actually becomes an eight day notice.

Recovering Possession of the Property

Filing an Unlawful Detainer Action

Even after a notice has been served and the tenancy terminated, tenants often refuse to comply and vacate. At this point, the landlord cannot take matters into his or her own hands by physically removing the tenant. Instead, the landlord must sue the tenant in court by filing an unlawful detainer action against the tenant.

To initiate the unlawful detainer action, a complaint must be filed with the court and served on the tenant, along with a summons. The summons and complaint should be personally

served on the tenant. Often times, personally serving the tenant is difficult and time consuming when the tenant avoids the service.

If personal service cannot be made after repeated attempts, then the landlord must apply to the court for approval to serve the tenant by posting the summons and complaint at the unit and mailing it to the tenant. Unfortunately, in San Francisco this process can delay the unlawful detainer action by up to a month or more and increase the cost of evicting the tenant. It is best to serve the tenant personally as soon as possible.

Setting the Action for Trial

Once the summons and complaint are served on the tenant, the tenant must file an answer to the complaint within five days if personally served or within fifteen days if served by posting and mailing. After the tenant files an answer, the landlord may request that the court set a trial date. Generally, the court will set the trial date within 20 days.

A tenant may utilize various procedural tactics to delay the unlawful detainer action and increase the landlord's costs. For instance, prior to filing an answer, the tenant may file certain motions challenging the allegations of the complaint or the service of the summons and complaint, such as a motion to quash, a motion to strike, or a demurrer. These challenges require a court hearing and may delay the proceeding more than a month. The landlord will incur additional costs defending these challenges, which are often frivolous. There are various tenant advocacy groups which will counsel and assist tenants in delaying unlawful detainer actions.

Once the trial date is set, the court is reluctant to continue that date absent a good reason. Thus, the landlord can usually expect to begin the trial within 20 days of the landlord's trial request.

In the event the tenant fails to answer or respond to the complaint in any way, then the landlord may simply obtain a judgment for possession from the court. This is known as a "default judgment" and entitles the landlord to possession. A trial is not necessary to obtain a default judgment.

Discovery and Settlement Conference

After the tenant files a response to the complaint, either side may propound discovery in an effort to prepare for trial or settlement. Discovery is the process whereby the parties gather information about the action from the other party through various methods such as depositions, written interrogatories, or document requests. While discovery does not delay the eviction process, it will add to the cost of eviction.

Approximately one week before trial, there might be a formal settlement conference at the courthouse. This usually happens if the tenant demands a jury trial. A judge or a judge pro-tem (neutral attorney) will attempt to get the parties to settle the unlawful detainer action. If the action does not settle, then it proceeds to a trial. If there is no formal settlement conference date,

there will be an informal settlement opportunity the morning of trial.

Trial

Either party has a right to a jury trial. Tenants typically demand jury trials. A jury trial takes longer than a court trial, and as such, will add to the cost of the eviction. Most residential unlawful detainer trials are relatively short. They rarely last longer than a week and can often be completed within 1-4 days. Of course, this may vary depending on the type of eviction and whether a jury is demanded. Because of the time and preparation involved the cost of proceeding through a trial can be substantial.

At trial, the landlord will try to prove that the tenancy was lawfully terminated and that the tenant remains in possession. If the landlord is successful, then he or she may obtain a judgment for possession of the unit as well as for any unpaid rent and damages (lost rent) that have been incurred since the tenancy was terminated. This will finally entitle the landlord to possession of the unit. The landlord still cannot physically remove the tenant -- he or she must obtain the assistance of the sheriff.

Removing the Tenant

Once a judgment for possession is obtained, whether by default or trial, the landlord can obtain a writ of possession, which in turn, is delivered to the sheriff with instructions to evict the tenant. Once the sheriff receives the writ of possession, the sheriff goes to the property, posts a notice of eviction on the door, and returns approximately 5 days later to perform the physical eviction. In San Francisco, the sheriff only evicts on Wednesdays. The time period for this process is approximately 12 to 16 days from the time the writ of possession is delivered to the sheriff. An additional week may be added to this process if the eviction is scheduled to occur around the holidays.

Even after a judgment for possession is obtained and the sheriff has scheduled the eviction, the tenant can still delay his or her eviction by asking the court for a temporary stay of eviction because of some hardship. If granted, the eviction will be delayed for a certain period of time. In San Francisco, tenants are occasionally successful at obtaining one week stays of eviction. A longer stay of eviction will usually not be granted except in extraordinary circumstances.

Conclusion

Terminating a tenancy and recovering possession of the property can be rather painless when the tenant vacates in accordance with a notice. On the other hand, when the tenant refuses to comply with the notice and vacate, the landlord could be in for a long and costly battle. In either event, before endeavoring to evict a tenant, the landlord should consult with an attorney to ensure compliance with all state and local laws.

Steven C. Williams is an associate at Wiegel & Fried, LLP. The information contained in this article is not intended

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