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Newsletter, December 2009 Evictions & Unlawful Detainers

This article gives a short overview of evictions (unlawful detainers) from a landlord's perspective. When you, the landlord, need to evict a tenant, you may not use self-help measures to remove the tenant. For example, you may not lock out the tenant, cut off utilities or place a baseball bat strategically upside the tenant's head. Instead you bring an unlawful detainer lawsuit against the tenant.

Unlawful Detainer Process. An unlawful detainer lawsuit moves fast. It begins when the landlord files a complaint. In most cases, the tenant has only 5 days to answer the complaint. Once the tenant files an answer (or fails to answer, in which case the landlord takes a default), the court can render judgment within 20 or so days. Compare this to most litigation which takes years to finish.

If the tenant files an answer and defends the case, the court holds a hearing where the parties present their cases. If the tenant wins, it may stay in the premises and perhaps recover its attorney fees from the landlord.

If the landlord wins, the court will issue a writ of possession. The writ of possession orders the sheriff to remove the tenant from the premises. The tenant has 5 days from the date that the writ is served to leave voluntarily. If the tenant does not leave by the end of the 5th day, the sheriff may lock the tenant out and seize the tenant's property in the premises. Once the sheriff has removed the tenant, the landlord may reclaim the premises. The court also may award the landlord any unpaid rent, court costs, plus attorney's fees if the lease has an attorney's fee clause.

Cost. A landlord's minimum costs in an unlawful detainer action are around \$1,500 in attorney's fees plus around \$800 in filing fees and service of process costs. The \$1,500 applies if the tenant does not file an answer. If the tenant files an answer and defends the case, or files in bankruptcy, then attorney's fees go up.

Timing. The eviction process takes a minimum of 1 ½ months to finish, from pre-complaint notice to sheriff lockout of the tenant. The minimum time applies if the tenant does not answer the

complaint and you take a simple default. If the tenant raises defenses or files in bankruptcy, however, the eviction will take many more months.

Be Careful. It's easy to foul up an unlawful detainer case, including the notice period, complaint, service of process plus a host of other requirements. For example, sometimes it's hard to keep track of the various notice periods and response periods that apply. Pre-complaint notice periods range from 3 days to 30 to 60 to 90 to something else. After you file the complaint, tenants then have various deadlines for filing a response depending on how you made service. Also factor in the separately running response time for a Prejudgment Claim of Right to Possession.

In unlawful detainer cases, courts will not cut you any slack. The court will make you start over at the beginning for each mistake and you'll lose valuable months. You need to do the job right the first time.

That's it for my short overview of evictions. This is just an introduction designed to let you see the forest for the trees. To explore all details would require a multi-volume treatise. Evictions can be tricky and there's a lot of law out there. If you do nothing else, get a lawyer to help you. Good luck.

Funny Papers



Koala was sitting in a gum tree smoking a joint when little lizard walked past, looked up and said, 'Hey koala! What're you doing?'

Crocodile had to check this out and walked into the forest and found the tree with koala. Crocodile looked up and said, 'Hey you!'



Koala said, 'Smoking a joint, come on up.'

So little lizard climbed up and partook. After a while little lizard said his mouth was dry and he wanted a drink from the river.



Little lizard was feeling loose and he leaned over too far and fell in the river. Crocodile saw this and swam over to little lizard and helped him to the side.

Then he asked little lizard, 'What's the matter with you, lil brother?' Little lizard explained that he was sitting with koala in the tree smoking a joint, and fell in the river when taking a drink.



Koala looked down at him and said,

'Duuuude... How much water did you drink?'