



Preparation of Witness Testimony

Eviction Practices and Procedures

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Preparation of Witness Testimony

While few detainer warrants result in trial, it is important to note that if a trial occurs, then normal rules of evidence and civil procedure apply. Witnesses must be properly qualified and the landlord's proof of damage must consist of admissible evidence. Written statements in lieu of personal appearance are not admitted as these documents contain hearsay.

Credibility is often an issue in Landlord/Tenant disputes and the status of the books and records kept by the Landlord are often important factors in determining who will prevail at trial. All repair requests and complaints made by the Tenant should be properly documented and matched to the responses made by the Landlord. The lease itself should be reviewed prior to trial to ensure compliance with all appropriate provisions. Additionally, the lease should be reviewed by the Landlord's attorney annually so that any changes in the law can be reflected.

Burden of Proof

In Court if the Landlord is an individual proof must be presented by the Landlord or an agent. If the Landlord is a corporation proof must be presented by an Officer or Employee who has sufficient personal knowledge to give testimony and is in a position to testify from business records. An individual is entitled to proceed pro se, that is act as his own attorney in a Landlord/Tenant case but a corporation cannot and must employ the services of an attorney to pursue a detainer warrant action.

In order for the Landlord to prove its case, evidence must be shown that the Tenant breached the lease agreement, that notice was given or in appropriate circumstances, waived. Thereafter, the Landlord must prove the amount of damages which may include unpaid rent, late charges, costs of repair and replacement, reimbursement for utilities, attorneys fees if provided for in the lease, and in appropriate cases based upon willful conduct of the Tenant, punitive damages.

The written lease agreement will be the first exhibit to the witness' testimony and will serve to place before the Court all provisions of the lease. Other exhibits may include copies of the appropriate notices forwarded to the Tenant and receipts for expenses incurred because of the Tenant's default. Generally, if the case involves non-payment then the only witness needed for the Landlord would be the property manager. However, if the claim involves damages to the unit then it will be necessary to subpoena the company that performed the repair work in order to testify that the actions were necessary, reasonable and proper. In order to maximize any recovery the Landlord should ensure that proper records are made of all damages caused by the Tenant. Photographs are especially effective in presenting the Landlord's case. In General Sessions Court the case is tried before a Judge without the intervention of a jury.

If the breach does not involve non-payment of rent then other witnesses may be needed to establish the Landlord's case. Official personnel such as police officers or other government officials generally make good witnesses and impress upon the Court that the Landlord has acted fairly in seeking eviction of the Tenant.

If neighbors of the Tenant are to be called as witnesses it is extremely important that they be properly prepared before trial. The testimony of the neighbors must be based upon personal observations and not upon hearsay evidence; that is information obtained from other individuals. The Landlord should be aware that while many neighbors are quick to complain to the management office they are often reluctant to become witnesses in Court and if subpoenaed they may become nervous in the trial setting.

Recovery of Damages, Rule 54(b) Judgment and Local Court Rules

The judgment in the detainer warrant action becomes final after 10 days. *See, T.C.A. § 29-*

18-126. If after the expiration of 10 days from the date of judgment the Tenant has not voluntarily surrendered possession of the unit then a Writ of Restitution may be filed in order to allow the Landlord to recover physical possession when the Sheriff's department physically evicts the Tenant from the premises. It is important that the Sheriff's department be able to contact the Landlord when the Writ is to be served so that a time for recovery of possession of the premises can be scheduled. A Sheriff's deputy will be present for service of the Writ of Restitution. Generally the Sheriff is present only to ensure that there is no breach of peace. It is the Landlord's duty to provide the actual labor which is needed to set out the possessions of the Tenant from the leased premises. Generally a company affiliated with the Sheriff's department will be used. The cost of enforcement of the Writ is not recoverable at the trial because it is unknown at that time. The use of the Writ is a last resort by the Landlord and every effort should be made to encourage the Tenant to remove himself and his possessions voluntarily. If the Landlord allows the Tenant to satisfy the judgment then the Landlord has waived its right to obtain possession. Therefore, the Landlord assuming the Tenant again defaults would be required to re-institute its detainer warrant action.

It is generally easier to obtain a judgment for possession than to collect the money damage awarded. Garnishments against the Tenant's employment and execution upon the Tenant's bank account can be used to satisfy the money judgment previously obtained. The Statute of Limitations for collection of a judgment is 10 years and if done in a timely manner a judgment can be renewed. If the judgment is for a significant amount, a certified copy may be lodged at the Register's office which would serve as a judgment lien if and when the ex-Tenant obtains title to real property in that county. A judgment lien will be lost unless an execution is taken out within ten (10) years from the date the judgment is entered.

The first appeal from General Sessions Court is to Circuit Court. The case is heard de novo

in Circuit Court; that is without the presumption that the General Sessions Court is correct. If the judgment is granted in the Landlord's favor in General Sessions for non-payment of rent and the Defendant appeals to Circuit Court then to remain in possession pending the appeal the Defendant must post a bond or other security in the amount of one years rent. If the Defendant appeals a judgment based upon non-payment of rent and does not post the required bond then the Landlord may proceed to obtain a Writ of Restitution without the requirement of posting a bond. If the Defendant appeals from a judgment that does not involve the payment of rent then the Landlord to obtain possession must execute a bond in double the value of one years rent conditioned to pay all costs and damages accruing to the Tenant from the wrongful enforcement of the Writ of Restitution. The Landlord is entitled to interest on the judgment which accrues from the date of the judgment in the event that the Defendant's appeal shall fail. *See T.C.A. § 29-18-130*. In Tennessee the judgment rate of interest is 5.5%.

It should be noted that a person once evicted who illegally repossesses the premises commits a Class C Misdemeanor. *See, T.C.A. § 29-18-133*. Likewise, a Landlord who obtains possession without following the prescribed Statutes will be liable to the Tenant for damages based upon wrongful eviction.

If the Tenant fails to timely appeal to the Circuit Court he may within 30 days petition the Circuit Court for Writs of Certiorari and Supersedeas. The Tenant must post a bond sufficient to pay rent during the period of litigation as well as for other costs and damages. The Tenant must adequately explain to the Circuit Court why the appeal was not timely filed and provide an argument why the Tenant is likely to succeed at the Circuit Court level. Assuming that the Writs are granted they operate to stay further action to enforce the judgment. A final judgment of the Circuit Court can be appealed to the Court of Appeals and from the Court of Appeals to the Supreme Court if

permission is granted by the Supreme Court. Generally, due to the expenses involved with appeals to the Court of Appeals it is extremely rare for this to occur in a residential eviction action.

Effective July 1, 1999 a procedure has been enacted providing statutory authority for Landlords to evict Tenants in non-Landlord and Tenant Act counties. The Landlord shall provide 14 days notice for termination of a tenancy for the purpose of evicting a residential Tenant for the following reasons. (1) Tenant neglect or refusal to pay rent that is due and is in arrears, upon demand; (2) Damage beyond normal wear and tear to the premises by the Tenant, members of the household, or guests; or (3) the Tenant or any other person on the premises with the Tenant's consent willfully or intentionally commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other Tenants, the Landlord, the Landlord's representatives, or other persons on the premises.

If the notice of termination is given for reason one or two above and the breach is remediable by repairs or the payment of rent or damages or otherwise and the Tenant remedies the breach then the lease will not terminate. However, if the same act or omission occurs within six months the Landlord may terminate the rental agreement upon 14 days written notice. For any other default not described above a 30 day termination notice given by the Landlord is required for the purpose of eviction of a residential Tenant. *See, T.C.A. § 66-7-109.*

FINAL NOTE.

It is a trend in landlord/tenant law that a perpetrator in a domestic abuse case may be evicted and the victim allowed to stay. The perpetrator would remain financially liable. This occurs if the victim obtains and keeps in force an order of protection.

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