

# Tenant Lease Defaults and Landlord Options

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## **TENANT LEASE DEFAULTS AND LANDLORD OPTIONS**

### **Failure to Pay Rent, Default for Matters Other Than Rent, Default or Guarantors, Anticipatory Breach and Holdover Tenants**

Landlord's should have a provision in their lease that states that notice of non-payment of rent is waived. If that clause is contained in the lease, then it becomes a business decision on the part of the landlord regarding when to turn a defaulting tenant over to the attorney for eviction. If this clause is not contained in the lease, then a notice of default must first be sent to the resident before legal proceedings can be initiated.

Behavior often provides grounds for eviction from the premises. Under Tennessee's Landlord and Tenant Act, there are two types of notices to be sent to the breaching tenant. The first is the 14 Day Cure letter which has previously been described under Legislative Updates. This notice is used for common ordinary defaults which can be cured by the resident. They include loud noise and disturbing behavior, unauthorized guests who have become permanent occupants, violation of pet policies and parking restrictions. The purpose of the 14 Day Cure letter is to advise the tenant that a breach of the lease or particular rules and regulations must be cured within the appropriate time or that the landlord will terminate the lease.

More serious violations occur when the tenant or guests of the tenant engage in violent activities, drug incidents or prostitution. In these cases, the landlord will forward to the resident the 3-Day Notice to Vacate. Unlike the 14 Day Cure letter, the 3-Day Notice to Vacate does not provide an avenue for the tenant to cure the breach. Because of the serious nature of the 3-Day letter, the

landlord should not send this notice unless it can document the activity. While an attorney should be used regarding the 3-Day Notice, if a landlord chooses to prepare this notice, it should be remembered that a resident should never be accused of committing a crime. The situation should be described in appropriate detail and reference may be made to law enforcement investigation. However, the notice should not contain any material which could constitute libel and it should be noted that the landlord is subject to liability if the 3-Day Notice is not pursued in good faith.

An anticipatory breach occurs when a tenant advised the landlord in uncertain terms that a requirement to be performed in the future will not. When an anticipatory breach occurs. It is not necessary for the landlord to wait until the date of performance to pursue its legal remedies. For example, if a notice of non-renewal is set to a tenant advising the resident that the lease will not be renewed and that the tenant should vacate at the conclusion of the lease, but a response is provided that the tenant has no intention of moving, an anticipatory breach occurs. If it is clear that the resident will not vacate as required, it would not be necessary for the landlord to wait until the lease has expired to pursue eviction. Remember, often an anticipatory breach is withdrawn and before proceeding based upon the alleged anticipatory breach, the landlord must have proper evidence and proof if the tenant argues as a defense that the eviction process was initiated too soon.

A holdover tenant is a resident who continues to reside in the premises after the lease expires. Most rental agreements provide that if the tenant continues to occupy the residence without executing a new lease, that the tenant occupies on a month to month basis and that the rental rate increases by a set amount or percentage. Of course, the lease may also state that if a renewal document is not signed, that the lease is automatically renewed upon the same conditions as existed previously. The better practice is to require that at the conclusion of the lease, that the parties to the contract negotiate and execute a new lease agreement. However, if the landlord and tenant agree that the tenant can continue to occupy the unit on a month to month basis, a reasonable charge will be enforced by the courts as consideration for allowing the tenant to terminate the rental agreement upon a 30 day written notice.

## 1. LATE FEES, INTEREST, ATTORNEYS FEES AND OTHER DAMAGES

In a leasing situation, it is recommended that the lease contain ample language to govern the calculation of damages in the event of eviction, abandonment or other situations. However, if a lease does not contain specific provisions, or does not contain a provision specifically addressing the landlord's issue, then the Supreme Court has adopted the RESTATEMENT (SECOND) OF PROPERTY § 13.1. The Court stated:

"[t]he provisions of the RESTATEMENT (SECOND) OF PROPERTY § 13.1 (1977), reflect the principals of mutuality and fairness which should govern the determination and enforcement of the legal rights at issue in this case. Consequently, the resolution of the issues presented will be according to that section which states:

Non-performance of tenant's promise- remedies available except to the extent the parties to the lease validly agree otherwise, if the tenant fails to perform a valid promise contained in the lease to do, or to refrain from doing, something on the lease property or elsewhere, and as a consequence thereof, the landlord is deprived of a significant inducement to the making of the lease, if the tenant does not perform his promise within a reasonable period of time after being requested to do so, the landlord may:

- (1) terminate the lease and recover damages; or
- (2) continue the lease and obtain appropriate equitable and legal relief including
  - (a) recovery of damages, and
  - (b) recovery of reasonable costs performing the tenants promise.

The Cain Partnership, Ltd. v. Pioneer Investment Services, Co .. 914 S.W.2d 452, 459 (Tenn. 1996).

Generally, leases govern calculation of damages in most situations. Leases often provide a formula for calculating the tenant's liability for future rent. Issues to look for in lease provisions regarding recovery for future rents include: Whether the tenant receives credit if the landlord finds a substitute tenant that pays a higher rent; whether the landlord's claim for future rent is reduced to present value, and if so, how is that calculation performed; whether the formula that determines the landlord's claim for future rents applies regardless of whether a new tenant is found; whether the lease specifically provides if the landlord recovers all costs of finding a new tenant, including leasehold improvements and commissions; and whether the landlord can recover a pro-rata portion of what the landlord spend for leasehold improvements and commissions for the defaulting tenant.

In Tennessee, if a tenant abandons the landlord is required to mitigate or attempt to mitigate the damages suffered. The landlord has a duty to do "what is fair and reasonable to reduce his damages." *Nash/and Assoc. v. Shumate*, 730 S.W.2d 332, 333 (Tenn.App. 1987). Recently, the Court of Appeals in *Bellevue Properties, LLC v United Retail Incorporated*, 1999 WL 1 08622, p. 2, held that requiring a landlord to do "whatever it had to do in order to relieve" the tenant, exceeded the duty to mitigate and the fair and reasonable standard established in *Nashland*. Therefore, a landlord does not have to focus all of its leasing efforts on the defaulted tenant's space. It is sufficient if the landlord exercises reasonable diligence in attempting to lease all space available, even if the landlord leases other spaces before the defaulted tenant's space. *Id.* at *Bellevue*.

In *BVT Lebanon Shopping Center, Ltd. v. Wal-Mart Stores, Inc.*, 48 S.W.3d 132 (Tenn. 2001), the Supreme Court adopted diminution in value as a measure of damages for the breach of a covenant of continuance occupancy. This ruling dramatically increased the potential damages that can be awarded against an anchor tenant that breaches its lease. The court based its decision on the common sense standard that a landlord will suffer other economic losses in addition to the loss of future rentals if the anchor tenant abandons occupancy. Calculating damages based upon the diminution in value promotes the long standing objective of placing injured parties in as good of a position as they would have been if the contract had not been breached.

Often, landlords are required to seek damages for rent as it becomes due, or treat a lease as terminated and seek a single recovery for the whole breach. If the landlord elects to seek recovery for the whole breach, it must present proof of its future damages in light of the duty to mitigate damages. The Court of Appeals has affirmed a judgment for rent due for the remaining term of lease, less the fair rental value of the premises, and discounted to the present value. See *Ruck v. Peck Outdoor Advertising of Missouri, Inc.*, 1990WL 113821.

When dealing with holdover tenants, many commercial leases provide that if a tenant holds over the rent increases to a one hundred twenty-five percent (125%) or one hundred fifty percent

(150%) of the rent in effect at the end of the term. If this issue is litigated, a tenant could argue that rent increase is unenforceable as a penalty and violation of Tennessee public policy, however the landlord will argue this increase should be liquidated damages. The Tennessee Supreme Court has adopted a prospective approach to determine whether such provision is an unenforceable penalty or an enforceable liquidated damages provision. Under this approach, the court determines whether the liquidated damages provision was reasonable at the time it was entered into. The court does not consider whether at the time of the lawsuit, the liquidated damages provision is reasonable and why the actual damages that would have been awarded in lieu of the liquidated damages clause. See *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88 (Tenn. 1999). The key question regarding hold over tenant is whether the tenant is liable to the landlord for damages in addition to rent during a hold over term. The terms of the lease generally control whether a hold over provision is substituted for the hold over or whether the landlord can seek additional damages caused by the tenant's hold over.

Late fees shall not exceed ten percent (10% of the amount of rent past due.

## **2. ACCELERATION OF RENT.**

The recovery of a monetary judgment or possession in a detainer warrant brings up a practical issue in a breach of lease case. Most commercial leases contain some type of provision for recovery of future rent termed an "Acceleration Clause". Many jurisdictions have held that such clauses are enforceable as long as the lease is specific as to the events which triggered the acceleration clause.

In 1995, the Tennessee Court of Appeals addressed the issue for recovery of future rent recognizing that there was no Tennessee case law on point. In this unpublished opinion, the Court of Appeals relied upon a bankruptcy decision, *In re: United American Financial Corp.*, 55 B.R. 117, 119-120 (Bankr. E. D. Tenn. 1985) And held that the trial court properly granted the landlord judgment for future rent. However, the court held that future rent must be discounted to present

Value, using the rate of ten percent (10%). See *Blankenship v. Century Health Services, Inc.*, 1995 WL 73561 (Tenn. App. 1995).

Notwithstanding the Blankenship case, most Tennessee judges are reluctant to give a landlord both possession of the premises and a judgment for future rent. The reasoning for this reluctance is that the detainer warrant statute provides that the trial court shall ascertain the arrearage of rent if the landlord is entitled to possession. Arrearage is defined as money which is overdue and unpaid.

In the *Nashland Associates, d/b/a Lion's Head Village v. Fred Shumates, Inc.*, 794 S.W.2d 254 (Tenn.App. 1989) case, the tenant defaulted for nonpayment of rent and the landlord sued for repossession of the premises and rent due and owing at date of trial. The lease contained an acceleration clause but was not at issue in the trial. An agreed order was entered into and the landlord retook possession of the premises and obtained a monetary judgment for rent past due. The tenant abandoned the premises and paid the judgment and believed that no future liability existed. However, six (6) months later the landlord brought a second lawsuit for damages and attorney's fees.

The tenant argued to the General Sessions judge that the law required the landlord to recover all rent and damages in the detainer action and that when it failed to sue for future rents and obtain possession, the landlord waived its rights for future rents. The judge agreed with the tenant's argument and dismissed the claim. The landlord appealed and summary judgment was granted in Circuit Court. On appeal, the Appellate Court held:

"To compel the landlord to seek future rent would put him in the position of attempting to recover speculative damages because the amount of the landlord damages are not known until he attempts to re-let the premises. Therefore, [Tennessee Law] and the tenant's interpretation would effectively bar the landlord from collecting damages and rents that accrue after landlord gains possession by detainer warrant regardless of the terms of the broken lease. *Nashland* at 254.

### **3. CLAIMS AGAINST PERSONAL PROPERTY/ LANDLORD LIENS**

Historically, the common law allowed a remedy of distress involving the self-help of a landlord. A landlord could retain the personal property of the tenant if the tenant owed back rent. If the landlord obtained possession of the tenant's personal property, then the landlord could sell such property and apply it to any rents owed.

In Tennessee, whether commercial or residential, a landlord would need to go through the detainer process, obtain a judgment, and then file the necessary writ to execute on a tenant's property.

One possible alternative for the landlord may be to include an express provision in the lease to acquire a valid lien on the tenant's property to secure payment of rent or performance of other lease obligations. This lien would be a contractual lien instead of a statutory lien. Beware that contractual liens are generally not favored by the law and provisions of such are generally strictly construed against the lessor. The lease terms would determine what properties the tenant would be subject to the lien, possibly including fixtures. This lien is personal to the tenant and would not attach property of third parties, assignees or subleasees.

Contractual liens are generally considered chattel mortgages and are security interests under Article 9 of the Uniform Commercial Code. Therefore, enforcement of said liens would be governed by the UCC. Be further advised that although the code permits a secured party to take possession of collateral upon default without resorting to judicial process, the trend in recent decisions is to require the landlord to proceed through the proper legal or equitable action to enforce the contractual lien even if the lease authorizes self-help.

#### **4. GUARANTEES AND GUARANTORS**

The Statute of Frauds prevents verbal guarantees from being enforced in court. Under Tennessee common law, a minor is obligated for the payment of his or her necessities. A residential lease is a necessary, but a commercial lease is not. However, a landlord should never lease to a minor without obtaining the signatures of adults as guarantors. If these third parties are co-debtors then the lease should be written and the guarantee drafted whereby legal action may be commenced directly against the guarantors if necessary to obtain payment of the leasehold obligations. If possible, these guarantors should be residents of Tennessee, as it is much more difficult to succeed with collection against out of state individuals.

If a corporation or other business entity is the tenant, then a corporate officer and the majority owner should act as the guarantors of the lease. In this manner, the landlord would obtain both corporate and individual liability for financial obligations under the lease. While out of state guarantors are liable for debts incurred in Tennessee, and courts in Tennessee would have jurisdiction as stated previously, collection will be difficult and expensive. Therefore, if it appears that there will be no assets in Tennessee which can be made the subject to the landlord's execution of the judgment, other forms of security should be investigated. When drafting the guarantee, it should provide that it remains in full force and effect for any renewals, expansions or extensions of the lease.

As additional credit enhancements, a landlord may wish to require a significant security deposit. Additionally, the landlord may wish to obtain a letter of credit from the tenant. If the landlord has obtained a letter of credit and a financial default occurs, then the landlord is able to submit a draft to the appropriate financial institution and obtain payment. As with guarantors, the bank upon which the letter of credit is drawn should be located in the state of Tennessee.

## **EVICTIONS & UNLAWFUL DETAINER**

### **1. Self-Help and Termination Notice**

Some landlords (at least those who have not yet been sued) still believe that it is legal to "lock out" a commercial tenant who has not unequivocally abandoned the premises. A great many form leases give this right to the landlord (i.e., "with or without force"). While at early common law a landlord had the right to recover property by force, Tennessee law clearly and unambiguously holds that "no person shall enter upon any land [unless] entry is given by law, and only then in a peaceable manner." Most states, like Tennessee, hold that the existence of a speedy statutory remedy for the removal of tenants who unlawfully remain in possession bars the landlord's entry by self-help. As one Tennessee court commented in 1928: "the remedy of detainer was given in order to preserve the peace and harmony of society, by preventing persons from taking redress into their hands. *Cutshaw v. Cutshaw*,

3 Tenn. App. 666 (1925). Some courts, growing in number, hold that virtually any nonviolent entry that is made without the express consent to a tenant is an actionable wrong by a landlord. Tennessee law also defines a "forcible entry" to include "entering peaceably and then turning or keeping the party out of possession."

If a landlord resorts to self-help, the damages recoverable by the tenant for a wrongful trespass can include not only punitive damages, but the difference between the market value of the premises and the rent fixed in the lease and lost profits, including expenses incurred in order for the tenant to reestablish his business.

The exception to the above rule is if the tenant has clearly and unequivocally abandoned the property. *See, Jaffe v. Bolton*, 817 S.W.2d. 19 (Tenn. App. 1991). The problem in making this decision is that it depends totally on the facts. Unless the landlord is 100% sure that the tenant has totally abandoned the premises, it is always better to be on the safe side and file an eviction action to obtain legal possession of the premises. If the landlord is wrong, a constructive eviction may occur, which would relieve the tenant from any future rent because the abandonment has been "accepted" by the landlord.

It is also always advisable to write a tenant before a landlord resumes possession of abandoned premises, declaring the tenant to be in default for abandonment, and giving notice of what action the landlord will take within the specified period set out in the lease.

## **2. Waiver and Unlawful Detainer**

The Tennessee Legislature first passed a forcible entry and detainer statute act in 1851. While actions to evict commercial tenants can be filed in any court (Chancery, Circuit or General Sessions), the vast majority of "detainer warrants" are filed in the General Sessions court of the county where the property is located. The great advantage to filing in General Sessions is the speed by which a landlord can obtain a trial date and recover legal possession of the property. To expedite the process, under Tennessee law a landlord is not limited in the amount of money it can recover from a tenant

in a detainer action filed in General Sessions court. General Sessions courts have a jurisdictional limit of up to \$25,000.00. However, in detainer actions, jurisdiction is unlimited, and there have been instances where landlords have obtained a \$100,000 judgment against a commercial tenant (although this certainly does not ensure collection of the judgment).

The process itself is very simple and inexpensive. Just like a residential eviction action, all that is required is to fill out a printed "detainer warrant". The attorney simply fills out the information and files it with the court. A caveat: ensure that the description of property is complete, because if a landlord has to resort to having the Sheriff physically evicting the tenant, the description in the writ of possession must match the description in the detainer warrant.

Under Tennessee law a detainer warrant can be served upon any adult person found in possession of the premises [and] service of said process upon such party in possession shall be good and sufficient to enable the landlord to regain possession of the property."

Therefore, a commercial landlord can serve a waitress, a cashier or a manager, as long as that individual is an "adult". This applies even if the commercial lessee is an individual. The only problem which might arise is whether or not a judge will allow the landlord to recover not only possession of the property, but a monetary judgment if only a mere employee is served. A landlord must prove that the person served had the authority under his employment to send the detainer warrant to an authorized representative. Some judges do not recognize this distinction. One practical suggestion is to designate on the warrant itself who shall be served with the warrant- normally the manager. Of course, the warrant is not required to be served at the place of business.

When the detainer warrant is served, a trial date is placed on the warrant itself by the Sheriff. The date will usually be ten to fourteen days after service of the warrant. Under Tennessee law, the trial date cannot be set less than six days after service of the warrant. *T. C. A. § 29-18-116*. The Sheriff normally calls the attorney listed on the warrant and informs him of the trial date.

The author of this article has filed, on behalf of commercial landlords, probably 1,000

detainer warrants against commercial tenants over the last thirty-five years. Of these 1,000, probably five have actually gone to trial. The reason for this small number is obvious. There are simply not that many defenses a tenant can assert when rent has not been paid, which accounts for ninety-nine percent (99%) of all detainer warrants. In most instances, the tenant either abandons the property, works out some sort of settlement, or never shows up at trial. One tactic is to convince the tenant prior to trial to agree to a judgment and attempt to work out a settlement, i.e., a payment plan, within the next few days. If the negotiations break down, judgment has already been obtained and the landlord does not have to return to court.

It also must be emphasized that General Session judges will normally postpone a trial, on the first trial date, for any reason. However, a detainer warrant action, unlike a regular small claims action, can only be continued upon a showing of "good cause". The definition of "good cause" differs from judge to judge. However, even if "good cause" is shown, the postponement cannot be for more than fifteen (15) days. *Id.* Accordingly, if the situation arises where immediate repossession of the premises is important, or if the landlord's representative has to travel for the hearing, then the practical advice would be for the landlord's attorney to write to the tenant immediately after service and state that the trial will not be continued for any reason. A copy of the letter should also be sent to the court clerk. This will buttress the attorney's argument, when the trial date arrives, and the tenant makes his argument for a continuance, as to why the trial should not be continued. These actions, however, are no guarantee that the judge will not listen sympathetically to the small, local businessperson and postpone the trial for one week.

### **3. Judgment- Possession v. Money Damages**

General Sessions Courts have original jurisdiction in detainer warrant matters. These Courts have the authority to enter a judgment in an unlimited amount for rent and damages while the Tenant is in possession. However, assuming the Landlord has obtained possession and a civil warrant is filed for collection of rental arrearage and damages, General Sessions Courts are limited in that

jurisdiction to \$25,000.00. For the purpose of calculating whether a judgment entered in General Sessions is within or exceeds the monetary jurisdictional limit the following amounts shall not be included: Attorneys fees, court costs and any discretionary costs.

Each General Sessions Court Clerk has a standard pre-printed form for detainer warrants. The requirements for these forms can be found at T. C.A. § 29-18-112. If the Landlord has already obtained possession of the apartment and is seeking to recover rent arrearage or damages against a former Tenant, then a civil warrant should be filed. The detainer warrant may be served upon any adult person found in possession of the premises and service of process upon such party in possession shall be good and sufficient to enable the landlord to regain possession of such Landlord's property. Private process servers may now be used to serve warrants.

Service of Process may also be made by lodging the original summons and a copy certified by the Clerk with the Sheriff of the County in which suit is brought who shall promptly send postage prepaid, a certified copy by certified returned mail to the defaulting Tenant as follows:

In the case of an individual, to that party. In the case of a corporation, to an officer, managing agent or agent for Service of Process. In the case of a partnership, to a partner or agent.

If the Sheriff is unable to serve any named defendant personally or if after 3 attempts of personal service of process during a 10 day period with such attempts being documented on the face of the warrant no such person is found in possession of the premises, service of process for determining the right of possession of the subject premises as to all who may have a contractual or possessory property right therein may be had by the sheriff of the county or such sheriffs deputy taking the following actions at least 10 days prior to the date specified therein for the Defendant to appear and make a defense; A) posting a copy of the warrant or summons on the door of the premises; B) sending by United States Postal Service First Class Mail with Certificate of Mailing a copy of the warrant or summons to the so named Defendant at the last known address, if any and; C) Making an entry of this action on the face of the warrant or summons filed in the case. If this final

method of obtaining service of process is used, a judgment for possession only is obtained. The Landlord would not be entitled to obtain a monetary judgment under this recently enacted procedure.

A defendant in a General Sessions eviction case is not required to file a written answer. If appropriate the defendant may file a motion to dismiss although most courts allow oral motions to be made at the date of trial.

A tenant may defend against the detainer warrant by proving that the landlord has waived its right to terminate the lease after a breach occurred. The landlord must always be aware that once notice has been given that a tenant has breached the terms of the rental agreement, that the landlord can no longer accept rent from the tenant unless the landlord gives the tenant notice that he is accepting rent with reservations of his right to terminate the lease. A landlord who accepts rent without reservation and with knowledge of a tenant's default waives his right and is stopped from terminating the lease. Therefore the landlord should give the tenant written notice immediately upon discovery of a breach that any rent accepted will be accepted with reservation of the landlord's right to terminate.

The burden of proof is upon the landlord to prove the tenant's breach. The landlord begins the trial by putting witnesses on first. After cross examination the defendant will call his witnesses either to prove that no breach existed or that the breach has been cured in a timely manner. If the tenant believes that the landlord has in fact breached the rental agreement the tenant is entitled to file a counter claim against the landlord. Additionally, as discussed above the tenant may bring a counter claim asserting that the landlord is retaliating against the defendant because the tenant has exercised its rights under the lease or under applicable law.

It is unusual in General Sessions Court for discovery to occur. However, upon appropriate motion to the General Sessions Court, a judge may allow discovery prior to trial which would hopefully lead to a compromise and settlement of the case. In any event each party is entitled to review prior to trial all relevant lease agreements, documents, and written evidence or proof that

either party intends to present to the court during the trial.

As with other types of litigation, most landlord tenant disputes are resolved through negotiations rather than through actual trial. In a residential landlord and tenant case the agreement is generally written directly upon the detainer warrant. If the agreement is complex then the parties may draft an agreed order similar to that used in courts of record and it will be presented to the judge for signature. Many times an eviction case will be continued so that the settlement agreement can be executed and thereafter the detainer warrant dismissed so that there is no record of the dispute.

#### **4. Appeal and Stay of Execution**

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 year's 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 year's 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 judgment in the event that the defendant's appeal shall fail.

It should be noted that a person, once evicted, who illegally repossesses the premises commits a Class C Misdemeanor. 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 Supercedeas. 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.

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