

Eviction Practices – Preparation of Witness Testimony

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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.

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