COMMON LANDLORD LEGAL QUESTIONS

…and answers thereto.
Prepared for LandlordsNY

2014

Itkowitz PLLC
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What YOU Wanted to Know:
Questions (and Answers!) Based on What the LLNY Membership Asked 'Legal Expert' Michelle Maratto Itkowitz in 2014

A Program Prepared for LandlordsNY.com

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And, yes, this is legal advertising. (And we hope it works!)

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I. IT'S BEEN AN AWESOME YEAR BEING THE LANDLORDSNY "LEGAL EXPERT" -- INTRODUCTION

I've had many different types of clients in my twenty plus years practicing real estate litigation in New York City. I represent tenants as well as landlords, buyers as well as sellers, contractor as well as sub-contractor, brokers as well as appraisers, co-ops as well as condos. I represent some big clients, with names you would recognize, as well as many small clients. I have done a great deal of teaching and publishing. If you really care to see more details about me -- you can check out my bio at the end of this book, or on my website, www.itkowitz.com. The point is – I am not exactly new at this.

So when I agreed last year to be the LandlordsNY "Legal Expert", i.e. the person who answers questions from the membership as a free service offered by the world's first, best, and biggest online networking platform exclusively for property owners and managers, I figured it would be an easy gig for me. But it really hasn't been. Many of the questions that I got challenged me. I have thought a great deal about why LLNY has been so much work for me. I offer three answers below.

First, most questions from the LLNY membership are not routine because the members are often not consulting me when they actually have legal problems. They are consulting me BEFORE they have legal problems. They are consulting me to PREVENT legal problems. That's so smart and I love answering such questions. It requires me, however, to bring a different perspective to a dilemma.

Another reason that answering questions for the LLNY membership is tricky is because many members are anonymous (they use user names on the site) and they don't necessarily want to give me every single detail that I wish I had. That requires me to fill in blanks and answer questions in the alternative. For example:

> *I assume you are referring to a Rent Stabilized tenancy, so I answered the question that way. But if you are asking about a free-market tenancy the answer is totally different, so let's talk about that next.*

Finally, I think that being the LLNY "Legal Expert" is a challenge because I really want to do a good job. I always did, but that sentiment only increased as in my twenty plus years practicing real estate litigation in New York City. I got to know the LLNY membership – by

following the blog, fielding all these questions, and working with members on different LLNY projects. The community being built by LLNY is unique, and badly needed in the real estate industry.

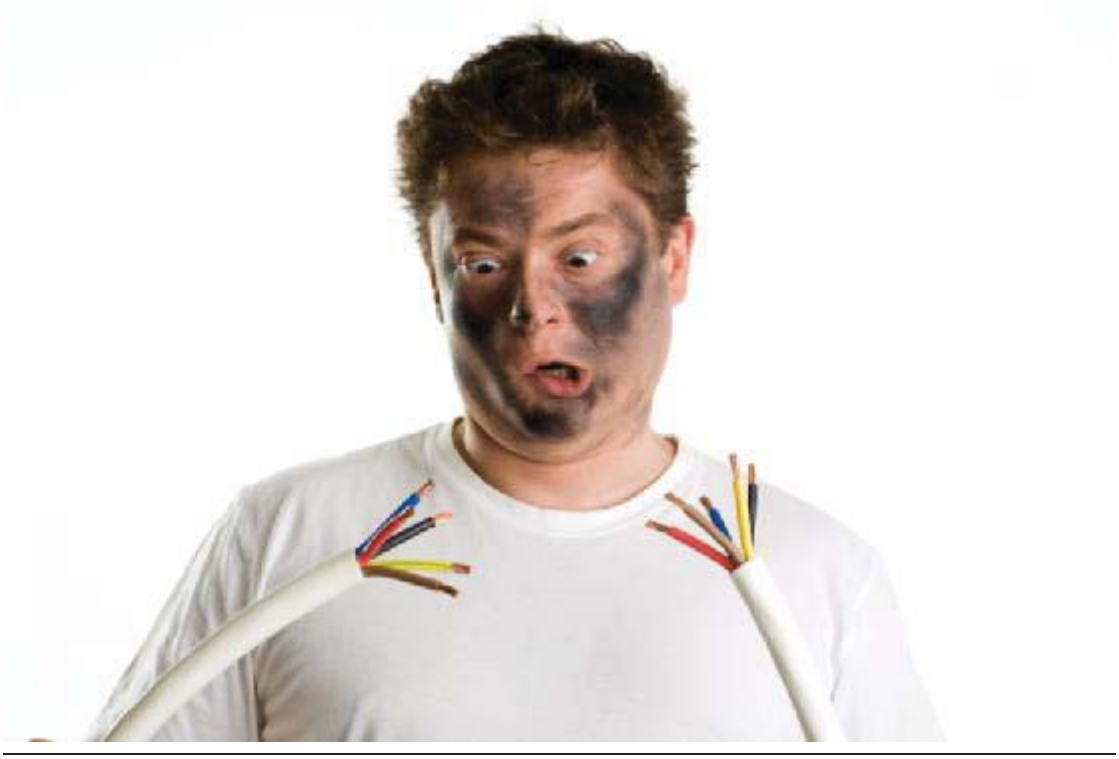
I go to many real estate related events. The draw at such shows is allegedly that you will hear "industry leaders" tell their "secrets" and help the rest of us do things better. What these panels and presentations often end up being, however, is a bunch of inaccessible people up on the stage talking about their successes. When I attend these forums, I notice that many attendees end up congregating and networking in the walkways by the less interesting vender booths. Because I am often the "less interesting vender booth" (I can admit it!) I overhear many of these conversations. It has occurred to me that these interactions are the real value in most real estate conferences – people on the front lines of real estate – owning, managing, broking, building, etc. – interacting with each other. I always wish there could be more opportunities for this kind of exchange of ideas. LandlordsNY IS that opportunity for real, authentic connection with one's peers. And it doesn't happen just once in a while, it's online 24/7. I have cherished being a part of that.

In this book, I include fifteen of the questions I got from the LLNY membership in 2014 and my answers thereto. The book is intended to be a companion to a seminar of the same name that I am teaching at the December 9, 2014 LandlordsNY Symposium.

Keep the questions coming! I will do my very best to keep answering them, and to keep learning from you.

II. I NEED EMERGENCY ACCESS TO A TENANT'S APARTMENT FOR A CONED INSPECTION OF MY BUILDING, WHAT DO I DO?

Question: "I have a major issue on my hands. I just completed a full building electrical upgrade going from fuses to breakers and upgrading the main panel. The building has 39 units. 38 of 39 units have been completed successfully over the last number of months. The one missing tenant is refusing to allow any access to anybody and the electrician needs to get in to make the change. I am told that Con Edison could potentially fail the inspection as the job wouldn't be 100% complete. The building is meant to be inspected next Friday. That apartment still has not been accessed. Short of breaking into the apartment, i have no idea how to get in to do the work. If i take the tenant to court it could be months. What remedies do i have under the law? Can i claim emergency access? thanks"



Answer:

You are not going to love my answer.

No Emergency Access

First, I do not believe that you can let yourself in to the apartment without the tenant's permission under these circumstances. The situation you describe is not really "an emergency." Well…it is your emergency, maybe. But you know how the old saying goes – *"Your lack of planning is not somebody else's emergency."* You did 38 other apartments. The time to get heavy on this one was a while ago.

You are correct that the standard Housing Court routine here will take weeks, likely months – I will describe that below anyway, so that this answer is thorough, and because you should have started that process weeks or months ago when you began the upgrade and started getting resistance from the tenant. Before I do that, however –

Seeking Emergency Relief in Supreme Court

There IS a legal maneuver you could try, and it has a chance of working. You could go to Supreme Court with an emergency application seeking a preliminary injunction. For that, you need a lawsuit against the tenant (a summons and complaint) and an order to show cause (an emergency motion). That can get you relief in a few days' time – if the judge buys that you will be irreparably harmed by tenant's failure to give you immediate access.

The cons of going this route can be pretty big: (a) I am not sure a judge will believe that you will be irreparably harmed by tenant's failure to grant access on a specific upcoming day in the next week; and (b) This procedure will run you lots of legal fees, no matter where you go. Oh and (c) If you lose and the lease has a legal fees provision, you could end up paying the tenant's legal fees. The pro of this approach is that it might scare tenant into a negotiation and get you quick access.

I must say, however, that my law partner, Jay, read this over and wanted me to convey the following to you – That he thinks you would get the emergency relief. He says, "Con Ed can be rescheduled tin times but if the tenant is refusing access it won't matter. The application is for emergency access and to declare the landlord can enter to get inspections and make repairs and tenant is obligated to respond; injunction aimed at getting immediate compliance."

Reasonable minds can differ. The bottom line is that there is no guaranty you would get the emergency relief of the tenant immediately being ordered to let you in.

Con Ed

Now let me ask you two things –

(1) You say: *"I am told that Con Edison could potentially fail the inspection as the job wouldn't be 100% complete."* Are you sure that is correct? I see this often in my work. People want to go legal over something that could be solved without lawyers. We need to know if this one apartment out of 39 is really a problem. I am going into the LandlordsNY network and see if I can get some clarity on this and get back to you.

(2) Why can't you or your contractor or architect call Con Ed and reschedule? This can't be the first time Con Ed has encountered this issue.

Sorry, I know this is not what you wanted to hear. Next, again to make this answer thorough, I outline the usual procedure to go through when a tenant is not granting access.

What to Do When Tenant Does Not Provide Access (and You Have More Time)

I am going to assume that the building is Rent Stabilized. If the building is not Rent Stabilized, let me know and I will correct this part. This is what a landlord should do if a Rent Stabilized tenant has unreasonably refused the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or authorized by the DHCR, or for the purpose of inspection or showing the housing accommodation to a prospective purchaser, mortgagee or prospective mortgagee, or other person having a legitimate interest therein.

First, the tenant has to be given at least five days' notice of the inspection or showing, to be arranged at the mutual convenience of the tenant and owner so as to enable the tenant to be present at the inspection or showing, and so that such inspection or showing of the housing accommodation is not contrary to the provisions of the tenant's lease or rental agreement. If the notice of inspection or showing is served by mail, then the tenant shall be allowed five additional days to comply, for a total of ten days because of service by mail, before such tenant's refusal to

allow the owner access shall become a ground for removal or eviction. Rent Stabilization Code § 2524.3(e).

If that does not work, then there are two possible next steps here. One is to go straight to a notice of termination of the tenancy, as technically allowed by Rent Stabilization Code 2524.3(e) and 2524.2(c)(2). But, case law has held that if the lease calls for a notice to cure in this situation (and most will), that the landlord first has to give a notice to cure the default of failing to allow access. *Karagiannis v. Nasr, 17 Misc.3d 133(A) (AT 2nd, 2007).* So the next step is likely a notice to cure pursuant to the lease, which must be extremely detailed and list all of the efforts landlord made to obtain access, and then a notice of termination pursuant to RSC 2524(c)(2). Finally, if none of that works, a summary holdover proceeding.

Ultimate Answer

Finally, I know you are short on time, so maybe a hybrid approach could work; here is what I think I would do (without knowing more):

- Have a lawyer write a strong letter to the tenant explaining that it must allow access. Cite the law above. And threaten to take the tenant to court.

- In the meantime, call Con Ed, explain the problem and ask (a) will lack of access to one apartment ruin the inspection? And, if so (b) can you reschedule to a time when this apartment has been finished and you can have access for an inspection.

Let me know if you need anything else.

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III. IN NYC, CAN YOU SEND [RENT STABILIZED] LEASE RENEWAL [OFFERS] VIA E-MAIL OR WEBSITE?

Question: "In NYC, can you send [Rent Stabilized] lease renewal [offers] via e-mail or website?"

Answer: First, I assume you mean Rent Stabilized lease renewals, and I assume you are talking about sending the lease renewal *offers*. The short answer is: NO.

Rent Stabilization Code § 2523.5(a) states:

> On a form prescribed or a facsimile of such form approved by the DHCR, dated by the owner, every owner, …, shall notify the tenant named in the expiring lease not more than 150 days and not less than 90 days prior to the end of the tenant's lease term, **by mail or personal delivery**, of the expiration of the lease term, and offer to renew the lease or rental agreement at the legal regulated rent permitted for such renewal lease and otherwise on the same terms and conditions as the expiring lease.

> Emphasis supplied.

Case law supports that strict compliance with the statute is mandatory. *5700, 5800, 5900 Arlington Ave. Assoc. v. Dogan, 135 Misc.2d 338 (Civil Court, Bronx 1987)*, (Personal delivery of renewal offer under door of tenant's apartment by landlord's agent did not comply with statute requiring mailed offer.) See also *Reliance Properties, Inc. v. Cruz, 143 Misc. 2d 556, 557, (AT2nd, 1989)*.

If you are really asking, however – Can the Rent Stabilized tenant send his executed lease renewal *to landlord by email?* I think the answer here is that the tenant, although they are supposed to mail it back, can get the executed lease renewal form to landlord just about any way they want to, and late as well! Equity will intervene to prevent a forfeiture arising out of a tenant's neglect or inadvertence, especially where a landlord is not harmed by the delay and the tenant would be severely prejudiced. *Baja Realty, Inc. v. Karoussos, 120 Misc.2d 824 (AT 1st 1983).* In *210 Realty Associates v. O'Connor 302 A.D.2d 396 (2nd Dept. 2003),* the court stated:

> Contrary to the petitioner's contentions, the Appellate Term correctly determined that the City Court possessed, and providently exercised, discretion to forgive the respondent's default in renewing the lease for her rent-regulated apartment. The respondent's default was inadvertent, and upon being notified of her failure to renew the lease, she promptly notified the petitioner of her desire to do so. The petitioner demonstrated no prejudice as a result of the brief delay in renewing, and the respondent would be greatly harmed by being evicted from her long-term home. Accordingly, the City Court providently exercised its discretion to relieve the respondent of her default so as to avoid an inequitable forfeiture.

Therefore, **the bottom line is this – the Landlord should stick to the letter of the law when it comes to offering Rent Stabilized lease renewals**. **Tenants**, **however**, **pretty much never get evicted for failing to send the renewal back executed the correct way**.

Let me know if you need anything else.

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IV. CAN THE SECURITY CAMERAS IN MY BUILDING RECORD AUDIO INPUT?

Question: "I am going to install several video cameras on the outside front and rear areas of my 4 family townhouse. None of the cameras have a built in mic However, I have an external mic kit that can be attached to one of those cameras. I understand that in NYS, one party needs to consent in order for audio recording when inside. However what is the laws for recording audio and video outside of the building and on a public sidewalk? Can someone install a video camera with audio input in this scenario?"

Answer:

Audio surveillance is governed by the Federal Wiretap Act, which prohibits intentionally intercepting "any wire, oral or electronic communication." See, 18 U.S.C. §2511. Furthermore, § 250.05 of the New York Penal Law, captioned "Eavesdropping," renders it a class E felony for any person, other than a law enforcement officer acting under an eavesdropping warrant or a video surveillance warrant issued by a court, to engage in, among other forms of surveillance, "mechanical overhearing of a conversation." The same statute defines " 'mechanical overhearing of a conversation' " as "the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment." N.Y. Penal Law § 250.00.

Frankly, I do not think that it matters whether the Eavesdropping occurs inside or outside – you cannot do it.

We also found this regulation, which is telling, regarding installing cameras outside public dance halls. NY Administrate Code Law Sec 20-360.2 states that: "…6. The video surveillance cameras shall not have an audio capability."

I checked online, as I am sure you did, looking at venders of security cameras and I saw that they too tread lightly when it comes to the issue of installing audio recording onto a camera. This is from one website:

Using audio surveillance microphones should be planned carefully and it is very important that you ensure you understand the laws of your state, city and county before installing audio devices. Here are just a few reasons why:

- If you record a private conversation, you are in danger of being accused of not only eavesdropping on the conversation, but wiretapping as well. This is allowed in some states but only if one of the parties is consenting (think of police wires). In many states though, you can be legally charged with eavesdropping, and that is not something you want when all you did was put a microphone on a camera.

- Some states will allow covert video surveillance but not audio surveillance, so if you have a camera with a built-in microphone, you need to make sure you either have it turned off, or you buy one without it. There are several legal ramifications to this and you are best to simply avoid the audio surveillance in general if your state does not allow it.

Most states will not allow any sort of 'covert' audio [recording] in public workplaces, public areas or public stores, …At the time of this writing, audio surveillance recording falls under federal wiretapping laws. You should consult your attorney to make sure that what you are doing is in compliance before implementing any audio surveillance equipment.

And that was written by people who make money off of selling the equipment.

I actually prevailed on an appeal where a Housing Court judge ordered my landlord-client to remove video cameras from a public hallway. The Appellate Term First Department said that the

landlord had the right to maintain a surveillance camera situated in the hallway outside of tenant's door in a non-primary residence case. See below link.

http://itkowitzaccomplishments.blogspot.com/2012/07/broome-realty-associates-v-eng.html.

Audio, however, is a completely different ball game. As a practical matter, what is it that you hope having audio recording will achieve anyway, that could not be achieved with video?

Let me know if you need anything else.

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V. I FOUND MY TENANT DEAD IN HIS APARTMENT, HE HAS NO FAMILY, HOW DO I GET THE APARTMENT BACK?

Question: "Unfortunately my super found a tenant deceased which was discovered according to the police 3 weeks after he passed. We are unaware of any next of kin and this tenant lived in the building for 30-40 years minimum. The body was removed and the police now sealed off the apartment. What steps as landlord am I required to take in order to get the apartment back asap? Is it my responsibility to look for and track down a next of kin if there was none on file? What about the belongings?"

Answer:

The following is from the New York City Public Administrator's website. http://www.nycountypa.com/faq.html#question9:

> **What Can I Do If I was the Decedent's Landlord?**
>
> If the decedent lived in a rental apartment, the landlord may file a "Report of Death" with the Public Administrator. If there are no known next of kin, then the Public Administrator will inventory the apartment, take any property of value, and release the apartment to the landlord. If there are known next of kin, or if a Will is found in the apartment, then the Public

> Administrator will usually not take any further action, unless the Office is appointed administrator of the estate by the Surrogate's Court. The landlord may be required to file a petition with the Surrogate's Court seeking the appointment of the Public Administrator.

But do not cross the police tape and enter the apartment, unless you have to for an emergency. You never know if relatives will come out of the woodwork, and you never know what tenant actually has assets. You do not want to be accused of stealing someone's Picasso and diamond rings.

My firm represented Lighthouse International, the organization for people with impaired sight. Via the Lighthouse, we were representing a very old and blind man living in a Rent Controlled apartment. He eventually died while in the apartment, and was found by the police when neighbors smelled a bad odor coming from the apartment. This old gentleman appeared very alone and friendless. While he was quite friendless, he was not penniless. Documents found in the apartment showed there was $1,800,000.00 in brokerage accounts. We actually did research and located the man's distant relatives who got to inherit the money.
http://itkowitzaccomplishments.blogspot.com/2012/07/accounting-of-ethel-j-griffin-public.html.

I am just saying – it is best to handle these situations by the book, via the Public Administrator.

Let me know if you need anything else.

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VI. CAN I PREVENT GUESTS/ROOMMATES BY PROHIBITING SUCH IN MY LEASES, IF SO, HOW?

Question: *paraphrased question* -- I have a two-family home and I want to write the lease for the rental apartment in such a way that the tenants cannot have a guest for more than a month. In addition, if the tenants do have a guest for more than a month, can I charge if their guest stays more than 29 days? I am renting the better space of my two-family house, a 1500sq ft duplx and it is very spacious. Thus, I am constantly dealing with this issue, especially when there's only two people in a two-bedroom apartment of such a large size. How can I word this so it a legal statement on my lease."

Answer:

I hate to be the bearer of bad news – but you can***not*** legally prevent either of your tenants from having roommates. Please listen carefully.

Under New York Real Property Law § 235(f), often referred to as the "Roommate Law", a residential lease entered into by one tenant implicitly permits that tenant to share the apartment

with either his/her immediate family or unrelated persons "for reasons of economy, safety and companionship." RPL § 235(f)-3. **This is true even if a residential lease says otherwise**.

In fact, as long as the tenant or the tenant's spouse is still living there full time (i.e. they haven't sublet the apartment), you have to let the tenant's immediate family move in with him or her, and on top of that, one additional occupant. That can get more crowded than you like, especially since you are living in the house as well. But you have no choice.

What CAN you do? Here are some suggestions.

- Screen potential tenants very well. Get references and actually check them. Talk to the potential tenant's last landlord.

- RPL § 235 (f)-5, you can request that the Tenant tell you the name of the occupant within thirty days of you demanding such. This isn't much, but it can show the tenant that you are watching the situation. Also, if tenant has more than one extra occupant, then you can talk to your lawyer and possibly proceed to terminate the lease early.

- Watch carefully who comes and goes, perhaps even consider using security cameras. What the tenant does NOT have a right to do is illegally sublet the apartment. In other words, the tenant cannot install someone new in the apartment and then move out. If that happens, the occupant has no right to remain and you can evict him or her. AS LONG AS, you do not take money from the occupant directly, which might establish a landlord and tenant relationship between you and the occupant. Watch out for that!

- The ultimate bottom line is that you are lucky that the apartment is in a two-family building and, thus, not subject to Rent Stabilization. Therefore, if you do not like a tenant's behavior, you can always refuse to renew the lease. Perhaps you should not make leases that are longer than a year.

Finally, let me leave you with the exact words of the statute (Real Property Law § 235(f)):

1. As used in this section, the terms:

(a) "Tenant" means a person occupying or entitled to occupy a residential rental premises who is either a party to the lease or rental agreement for such premises …

(b) "Occupant" means a person, other than a tenant or a member of a tenant's immediate family, occupying a premises with the consent of the tenant or tenants.

2. It shall be unlawful for a landlord to restrict occupancy of residential premises, by express lease terms or otherwise, to a tenant or tenants or to such tenants and immediate family. Any such restriction in a lease or rental agreement entered into or renewed before or after the effective date of this section shall be unenforceable as against public policy.

3. Any lease or rental agreement for residential premises entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupant, and dependent children of the occupant provided that the tenant or the tenant's spouse occupies the premises as his primary residence.

4. Any lease or rental agreement for residential premises entered into by two or more tenants shall be construed to permit occupancy by tenants, immediate family of tenants, occupants and dependent children of occupants; provided that the total number of tenants and occupants, excluding occupants' dependent children, does not exceed the number of tenants specified in the current lease or rental agreement, and that at least one tenant or a tenants' spouse occupies the premises as his primary residence.

5. The tenant shall inform the landlord of the name of any occupant within thirty days following the commencement of occupancy by such person or within thirty days following a request by the landlord.

6. No occupant nor occupant's dependent child shall, without express written permission of the landlord, acquire any right to continued occupancy in the event that the tenant vacates the premises or acquire any other rights of tenancy; provided that nothing in this section shall be construed to reduce or impair any right or remedy otherwise available to any person residing in any housing accommodation on the effective date of this section which accrued prior to such date.

7. Any provision of a lease or rental agreement purporting to waive a provision of this section is null and void.

8. Nothing in this section shall be construed as invalidating or impairing the operation of, or the right of a landlord to restrict occupancy in order to comply with federal, state or local laws, regulations, ordinances or codes.

9. Any person aggrieved by a violation of this section may maintain an action in any court of competent jurisdiction for:

(a) an injunction to enjoin and restrain such unlawful practice;

(b) actual damages sustained as a result of such unlawful practice; and

(c) court costs.

Let me know if you need anything else.

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VII. CAN MY TENANT TAKE THE WALL-TO-WALL CARPET SHE INSTALLED WHEN SHE LEAVES?

Question: "I have a tenant that moved in last year. She wanted to know if she could replace the wall to wall carpet. I told her you can. She replaced the carpet and put down a new one which was installed properly. She is now moving out by the end of this month. She wants to take the wall to wall carpet she installed last year and replace it with my original carpet she took up. I can't imagine what condition that carpet would be in sitting somewhere for a year. Can she rip up the carpet she installed and put back my old carpet? I thought wall to wall carpet became a permanent fixture to the property?"

Answer:

I do not *think* the tenant can take the wall-to-wall carpet and replace it with the old carpet.

BUT BEFORE ANSWERING – I would first have to see any written contract or lease amendment between you and the tenant regarding this issue. Or, for that matter, any email between you on the subject, which may be considered a contract. If you and the tenant have a written agreement on this, it would likely control. I am guessing, however, that you do not have a written agreement.

Unlike personal property, fixtures are generally considered part of the real property, and thus can't be carried away by a departing tenant. *Posson v. Przestrzelski*, 111 A.D.3d 1235 (3rd Dept. 2013).

Whether or not something is a fixture or personal property is determined by this test articulated in *Mastrangelo v. Manning*, 17 A.D.3d 326 (1st Dept. 2005). Courts will consider the following:

(1) Is the item actually annexed to real property or something appurtenant thereto?

(2) Is the item applied to the use or purpose to which that part of the realty with which it is connected is appropriated?

(3) Is the item intended by the parties as a permanent accession to the property? (Less significance is accorded to the manner of annexation and more to the intention of the person annexing the property -- "The permanency of the attachment does not depend so much upon the degree of physical force with which the thing is attached as upon the motive and intention of the party in attaching it" (*McRea v. Central Natl. Bank of Troy,* 66 N.Y. 489 (1876). "The intent which is regarded as controlling is not the initial intention at the time the [item] is acquired, nor the secret or subjective intention of the party making the attachment, but rather the intention which the law will deduce from all the circumstances" (*Marine Midland Trust Co. of Binghamton v. Ahern,* 16 N.Y.S.2d 656 (Sup. Court Broome County 1939).

Unfortunately, the only case I could find on carpet held the carpet to be personal property. *Cosgrove v. Troescher*, 62 A.D. 123 (1st Dept., 1901). But, you will notice, *Cosgrove* is an very old case, and it actually had to do with carpet that was nailed to a stairway and hallway.

Here we are talking wall-to-wall carpet, which means that the carpet must have been custom cut for the apartment's unique floor plan. This item surely must have been intended (by you, landlord, at least) as a permanent addition to the property.

I would like to know if you have any email or other writings between you before answering and I would like to poke around a little more. I hope this helps.

Do you have a security deposit on this tenant? You could threaten that if she takes the carpet that you will hold the security.

Let me know if you need anything else. – Michelle
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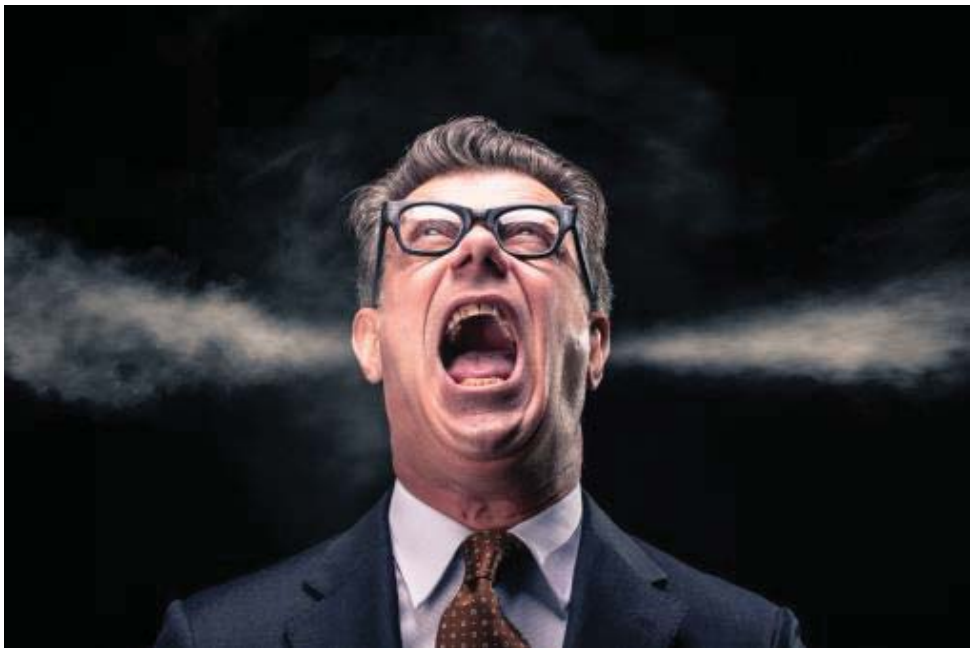
VIII. CAN I IMPOSE A FINE FOR TENANTS CAUSING BOILER TO MALFUNCTION?

Question: "Two tenants, one of which I moved to evict, caused the boiler to malfunction. The first tenant left the front door open for at least 10 hours. This caused the boiler to continuously go on. This then caused the air valve on the top floor to pop off. The tenant refused to allow the super in to inspect…Can I document this in a statement? How do I document this in a statement? Can I impose a fine for tenants causing boiler to malfunction?"



Answer:

You cannot fine your tenant.

What you can do is sue the tenant for damages. But the following are the hurdles to a lawsuit for damages being worthwhile:

(1) A problem of proof. How do you prove it?

(2) If you can prove it, what are your damages? How much did it cost you?

(3) If you ultimately win, does the tenant have money to pay a judgment

These are the practical questions that lawyers and owners do not often enough ask themselves. *Is it worth the expense of starting a damage lawsuit?*

By all means, document this incident in a statement and send it to DHCR or give it to your lawyer for the litigation. Depending on what types of lawsuits or proceedings are pending at DHCR or in court, I am not sure this information helps, but I suppose it cannot hurt. What I mean by that is the following -- if you are suing your tenant for nonpayment of rent, the fact that he left the door open has no role in the case. The Civil Court Housing Parts have limited jurisdiction. A nonpayment case is about whether the rent is owed, and nothing else. Again, if you want damages for the tenant sabotaging the boiler, you need to do a regular lawsuit.

My advice here would be more of a practical nature. If a tenant is propping a door to the building open you may have even bigger problems that the heat flying out. One such bigger problem could be a bad person walking right in and harming a tenant, thus giving rise to Owner liability. What you really need here is a system, be it technological or human, to make sure that no one can prop the front door to your building open.

My law partner, Jay B. Itkowitz, assisted with this answer.

Let me know if you need anything else.

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IX. A TENANT WHICH I AM ATTEMPTING TO EVICT, IS VIDEOTAPING AND/OR WRITING DOWN ANYONE'S ID, CONTRACTORS ESPECIALLY. ARE HER ACTIONS LEGAL?

Question: "A tenant which I am attempting to evict, is videotaping and/or writing down anyone's ID, contractors especially. Are her actions legal? Am I at all at risk for a lawsuit? And can I have her arrested for these actions? This is a tenant who has been arrested for aggravated harassment."

Answer: This answer was supplied by my partner, Jay B. Itkowitz jitkowitz@itkowiitz.com.

We live in the day and age of the personal digital assistant ("pda"), cell phones, etc. Everyone takes picture and video of whatever suits their fancy. You can take video of accidents, police actions (see police behavior in Ferguson) and all types of human behavior. All of this behavior is protected by the First Amendment to the United States Constitution. If your tenant wants to talk to your contractor or the people who work for that company that is also protected by the First Amendment. What is not protected is harassment. What is harassment? I would say it is like what one Supreme Court Justice said when asked whether he could define pornography. *"I can't define it but I know it when I see it."* I suspect the same is true of the word harassment. So, for instance, a tenant can ask a contractor or worker to identify himself or herself. Then it is up to that person to decide whether to answer. If the person doesn't want to talk to the Tenant and the Tenant persists in talking to that person is such a way that interferes with that person's ability to work, that could well constitute harassment. In terms of whether you are at risk for a lawsuit, the answer is yes. A landlord is always at risk of a lawsuit. That does not mean that any lawsuit will be successful. Tenants have been known to look for reasons to sue a landlord when there is friction between the tenant and the landlord, or, when the tenant owes money and doesn't have it to pay the rent.

Let me know if you need anything else.

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X. DO I HAVE TO SEND AN 11-PAGE RIDER WITH ALL RENEWALS? THAT'S INSANE.

Question: "Do I have to send an 11 page rider with ALL renewals? That's insane."

Answer:

Short Answer: Yes.

Long Answer: Look, extra paperwork is BIG part of having Rent Stabilized tenants. I was teaching a Continuing Legal Education Class the other day, and I was summing up quickly what the characteristics of Rent Stabilized tenancies and how they differ from free-market apartments. I listed three things:

(1) You can't choose your tenants (unless you are filling a vacancy);
(2) You can't raise your rents according to the market (but rather only in accordance with the Rent Guidelines Board increases, which were historically low this year); AND
(3) Rent Stabilization means way more paperwork.

Not only do you need to send the 11-page rider, but also you need to keep a copy of it as well, to prove that you sent it.

Let me offer you an example of a bad thing that can happen if you do not send the rider. Let us say that you end up in court with the Tenant, suing him or her for rent. The Nonpayment Petition is required to "state the facts upon which the special proceeding is based," (Real Property Actions and Proceedings Law § 741(4)). It is generally accepted that such facts must include, when applicable, the rent regulatory status of the premises sought to be recovered. *Caceres v. Golden*, N.Y.L.J., 3/27/91, p. 25, col. 4 (App.Term, 2d and 11th Jud. Dists.) ("In view of landlord's failure to plead compliance with the appropriate regulations and in view of the undisputed showing that landlord is not in compliance with these regulations, tenant's motion should have been granted and the petition dismissed.")

Thus, if you sue the Tenant and say in the petition that you are in compliance with the appropriate regulations, but really are not because the Tenant never got the proper Rent Stabilization rider, then the Tenant has a ground to assert that the case should be dismissed. To be sure, the problem

is fixable. However, why give the Tenant an obvious thing to complain about and make a motion over, slowing your nonpayment case down?

XI. WHAT ARE MY RENT STABILIZED TENANT'S RIGHTS WITH RESPECT TO SUBLETTING HER APARTMENT?

Question: "My tenant sent me an email stating she is moving to Ohio to pursue a degree program for 3 years and she will sublet her apartment while she is gone. According to her, the stabilized rules allow for this scenario. I cannot find any information that supports this. The sublet is not a relative. Can she legally do this? What are my options? Thank you."

Answer:

The short answer is – No, your Rent Stabilized tenant may not sublet her apartment for three years. Moreover, the process of subletting might not be as simple as she thinks because there are many rules with which she must comply. Let me explain the law here, and then I will suggest that your best option is sending the tenant a letter containing this information, and making it clear that you expect her to abide by the rules.

How Long Can a Sublet Last?

The first place to start is with the length of time this woman wants to sublet. **A tenant may not sublet an apartment for more than two years out of the four–year period before the termination date of the sublease**. *Rent Stabilization Code § 2525.6(c).*

Procedure for Subletting

The devil is sometimes in the details. A landlord **may not unreasonably deny a sublet *if the tenant follows the procedures required by New York Real Property Law 226-b***. Here are the details:

An owner may not unreasonably deny a sublet if the tenant follows these procedures:

1. Inform the owner of an intent to sublease by mailing a notice of such intent by certified mail, return receipt requested, no less than 3**0 days prior to the proposed subletting** with:

(a) the term of the proposed sublease
(b) the name of the proposed subtenant
(c) the business and home address of the proposed subtenant
(d) tenant's reason for subletting
(e) tenant's address for term of the proposed sublease
(f) written consent of any co-tenant or guarantor of the lease
(g) a copy of the tenant's lease, where available, attached to a copy of the proposed sublease, acknowledged by the tenant and subtenant as being a true copy of the sublease.

THEN…

2. Within **ten (10) days** after the mailing of the request, the owner may ask the tenant for additional information. **Within 30 days** after the mailing of the tenant's request to sublet, or of the additional information reasonably asked for by the owner (whichever is later), the owner must send a reply to the tenant consenting to the sublet or indicating the reasons for denial. Failure of the owner to reply to the tenant's request within the required 30 days will be considered consent.

If the owner consents, or does not reply to the request within the appropriate 30 day period, the apartment may be sublet. However, the prime tenant remains liable for all obligations under the lease.

If the owner unreasonably withholds consent, the tenant may sublet the apartment and may also recover court costs and attorney's fees spent on finding that the owner acted in bad faith by withholding consent. If the owner reasonably withholds consent, the tenant may not sublet the apartment.

Finally, whether a landlord's withholding of consent is "reasonable" is naturally a fact-sensitive question but a court will objectively evaluate the proposed sublet based on the character and financial status of the subtenant as relevant factors. *See Vance v. Century Apartments Associates, 93 A.D.2d 701, 703-04 (1st Dep't 1983)* ("Where a lease affords to a tenant a right to assign or sublet subject to the consent of the landlord, the reasonable ground to support a withholding of consent has always been tested by an objective standard, relating to the acceptability of the proposed subtenant or assignee. Thus, among the relevant criteria from the point of view of the landlord is the character and financial responsibility of the proposed tenant and the nature of the occupancy or purposes for which the property is to be used.")

In other words, this tenant should spend less time lecturing you on her right to sublet for three years (which she does not really have), and more time reading up on the proper procedure for subletting her apartment (which is available to her on the DHCR website).

The Costs of Subletting

Subletting can never, for a Rent Stabilized tenant, be about making a profit on the Landlord's real estate.

The owner may charge the prime tenant the sublet allowance in effect at the start of the lease, if the lease is a renewal lease. The allowance is established by the New York City Rent Guidelines Board Order. The prime tenant may pass this sublet allowance along to the subtenant.

If the prime tenant sublets the apartment fully furnished, the prime tenant may charge an additional rent increase for the use of the furniture. **This increase may not exceed ten percent of the lawful rent**.

The prime tenant may not demand "key money" or overcharge the subtenant. If the prime tenant overcharges the subtenant, the subtenant may file a *"Tenant's Complaint of Rent Overcharge and/or Excess Security Deposit"* with DHCR. If the DHCR finds that the prime tenant has overcharged the subtenant, the prime tenant will be required to refund to the subtenant three times the overcharge.

Your Options

From what little you have told me, you have two options. One is to do nothing, and the other is to assert your rights in a letter to the tenant. Let us use my Legal Project Management method for evaluating each option.

Option 1: Do nothing; Hope for the best.

Doing nothing is an option that lawyers do not explore with their clients often enough. So let us do that here.

Pros: The pros of doing nothing are that doing nothing is easy and cheap, in the short term. And sometimes doing nothing works out in life and in business. You never know.

Cons: The cons of doing nothing are that you are handing the management of your real estate asset over to this Rent Stabilized tenant who is planning on disappearing for three years.

Risks: The risk of doing nothing is that a lot of bad stuff can come of you not being more involved in this sublet (or denial of sublet) process. The subtenant installed by the prime tenant could be a psychopath. In that case, you have to begin eviction proceedings against the tenant (you have no privity of contract with the sub). The subtenant may be a perfectly nice person but may simply stop paying the sub-rent, in which case the tenant will stop paying you rent. The tenant may overcharge the subtenant and take the tenant to court, which will also likely result in the tenant missing rent payments. These are just the three most obvious problems. When someone moves into your real estate, whom you did not put there, there is always a whole bunch of risks.

Option 2: Write the tenant a letter (or have a lawyer do so) that pretty much says everything I did above. Demand that the tenant comply with the rules for subletting. Send her a copy of DHCR Fact Sheet #7 http://www.nyshcr.org/Rent/FactSheets/orafac7.htm. Let her know that this is a serious business.

Pros: The pros of this approach are that you are not allowing this Rent Stabilized tenant to push you around and run your real estate for you. In which case, if she wants to go away for graduate school, she might give up the apartment and you get a twenty percent (20%) vacancy increase. Or, she may illegally sublet the place without seeking your permission pursuant to RPL § 226-b, in which case you have grounds for her eviction.

Cons: The cons of asserting your rights are that you need to spend some time and energy writing the letter and making sure it gets to the tenant by both regular and overnight (and/or certified) mail. Alternatively, you need to pay your lawyer to get it done.

Risks: The risk is – and this is not really a bad thing – is that the tenant has her act together and complies with RPL § 226-b and you get a decent subtenant in place for two years who plays by the rules. The other risk is that the tenant might just give up on graduate school and stick around, which doesn't really put you in any place different than where you are today with her as your tenant.

Obviously, I like Option 2 better. You may have more options as the situation progresses.

One final warning. Never accept rent directly from the subtenant (on a bank account only in the subtenant's name). Doing so may create a direct landlord and tenant relationship between you and the subtenant, and if the tenant does decide to stay in Ohio, then the subtenant becomes your new Rent Stabilized tenant.

Let me know if you need anything else.

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XII. WHAT CAN I DO WHEN I HAVE A TENANT HARASSING OTHER TENANTS?

Question: "A tenant moved in to Apt 7G in August 2013. As soon as she moved in, she began complaining that the neighbor in 7F, next door, was making a lot of noise. The neighbor has been living there for 10 years with no prior complaints against him. The new tenant would bang on the wall and call the police at all hours of the night. In fact, 7G called the police on just about everyone else on the floor too (different nights). 7F was so upset that she was going to break her lease. We were able to relocate her within the building.

Once the 7F was relocated, someone started throwing jam at the door of and putting glue on the locks of 6F! This happened three days in a row. The fourth day 6F told us that a woman banged on her door at 2:00 a.m. complaining of noise from the wall that butts up against the "G" apts. We showed her a pic of 7G and she identified her as the nighttime visitor.

Now 7G is stomping on the floor (awaking 6F, 6G, and 6H) and calling the police nightly. 7G is leaving messages for us four or five times per night about how she is being harassed by the downstairs neighbor. 6G now has had her door pelted w/ maple syrup & hot sauce!

We have put up a security camera facing 6G & 6Fs doors. We have requested that all tenants being harassed send us a letter about it, so we have a written record. For the past two nights 7G has been leaving messages about the noise but 6G is out of the country (obviously we didn't tell her this)!

We have told 7G that if she were truly miserable we would allow her to break her lease and move out penalty-free. I've heard how difficult it is to remove a tenant by starting a holdover. Please, do you have any suggestions?"

Answer:

What kind of tenancy is this – Rent Stabilized or Free Market? If it is **not** a Rent Stabilized tenancy, then there is a logical end in sight. When her lease ends do not renew her. No reason needs to be given.

If you cannot wait for the expiration, or if the tenant is Rent Stabilized, you can attempt to terminate the lease for nuisance. Nuisance requires multiple incidents of objectionable conduct. *Metropolitan Life Ins. Co. v. Moldoff, 187 Misc. 458, (App. Term 1946), judgment aff'd, 272 A.D. 1039, (1st Dep't 1947).* You certainly have that!

A nuisance termination notice needs to be very detailed about the acts constituting nuisance. You need to put the dates, times, and locations of each incident and then you need to describe each incident. It looks like you have all the facts nicely organized already. You should take all your notes and keep them together, and start a log (like an excel chart) where you write an entry with all the information for each thing that happened – date / location / incident description. Save emails, phone messages, or notes from the tenants who are victims of the harassment.

A nuisance proceeding can be settled with a "curative stipulation" in which the tenant admits to the objectionable behavior and agrees not to do it again upon pain of eviction. A court will usually evict a tenant who enters into such a stipulation and violates it.

If there is no settlement, a nuisance proceeding trial can be time consuming, expensive and a stressful to all involved. You have to be able to prove your allegations in court with evidence, i.e., live testimony from tenants, building personnel and/or pictorial evidence. In this respect, it is good that you put in cameras. But cameras alone will not do it. You really need testimony. The hardest part about these cases is that often the other tenants who are the victim of harassment are hesitant to come to court and testify. However, the circumstances you describe would seem to justify serious consideration of the initiation of a nuisance proceeding.

You may have no choice but to start a case. If the residents being harassed get mad enough, they might withhold rent and/or complain to DHCR about the situation.

Courts take these cases seriously. Courts do not like to evict tenants, but they also do not let tenants harass other tenants.

Finally, before resorting to or as preparation for litigation with this crazy tenant -- If the tenant is elderly, engage them in conversation and try to find out where their adult children are. If the tenant is in bad enough shape (advancing Alzheimer's for example), it might be a good thing to contact the children. And/or you can call New York City Adult Protective Services, sometimes they can help http://www.nyc.gov/html/hra/html/services/adult.shtml. I have successfully resolved situations in this way before – by getting the crazy person the help they really need.

Let me know if you need anything else.

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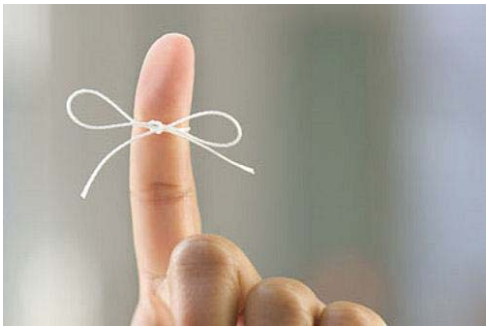
XIII. I FORGOT TO INCLUDE THE APARTMENT ADDRESS IN THE LEASE, IS THE LEASE STILL VALID? MY TENANT IS TRYING TO USE THIS TECHNICALITY TO NOT PAY RENT.

Question: "Lease agreement questions; I signed a lease agreement, but the agreement does not have any address whatsoever of the property. The only items that it has are names and signatures. To make matters interesting (or chaotic), the mother of the tenant ripped the original contract in front of my wife's cousin. The tenant does have a copy of the first lease agreement (with no address). Is the contract considered legal? If not, what should I do? During heated argument the tenant flat out said that they were not going to pay rent going forward and live there until the "contract" expires. Any help would be greatly appreciated."



Answer:

Wow, that sounds frustrating. Please listen very carefully. The short answer is that the lease is probably not valid if it does not identify the apartment, ***but that does NOT give the tenant the ability to remain there rent-free;*** The lack of a lease does, however, create some problems for you.

A valid lease must include essential terms. To insure that a tenancy is formed, the agreement should minimally confer exclusive possession and control, identify the landlord and the tenant, describe the premises being demised, list the rent sought and delineate a specific-occupancy term. *See Davis v. Dinkins, 206 A.D.2d 365 (2d Dep't 1994)* (Since the area and the term of the lease were not discernible by objective means, no lease was created). My guess is that it could go either way in Housing Court – the judge might determine that the premises IS discernable, by the fact that the tenant is living in the particular apartment. Then again, the lack of an apartment number or address in the lease could very likely be fatal to the lease becoming an enforceable document. I would need to know more details.

Even without a written lease, however, if the tenant has moved into the apartment and started paying rent in a regular amount and at regular intervals (for example $1000.00 per month every month), then a month-to-month landlord and tenant relationship has been created, it just is not governed by an existing lease. An occupancy which spans from month-to-month predicated upon the payment of a monthly rental is usually a tenancy from month-to-month. Gerolemou v. Soliz, 184 Misc. 2d 579, (App. Term 2nd dept. 2000) ("There was nothing in the papers submitted on plaintiff's motion for summary judgment which would indicate that the tenancy was other than month-to-month. In the absence of contravening proof, the law presumes that where there is a general letting with a monthly rent reserved, an indefinite month-to-month tenancy is created.")

Therefore, **you can still sue the tenant for the monthly rent that you agreed upon and/or for possession of the apartment back**. The problem is that there are a ton of things in the standard written lease that protect the landlord, and without a written lease, you don't have things like the waiver of trial by jury. If your tenant gets a clever lawyer they can slip a jury demand into your routine landlord and tenant case and hold it up for weeks and cost you a fortune in legal fees while your lawyer picks a jury. This is not likely to happen, but it is an example of how a lease protects a landlord in a fundamental way.

A more basic problem is that if she just moved in but has not started paying rent in a regular amount and at regular intervals, it will be harder to prove what the deal between you was intended to be. She might tell the court that your agreement was for her to pay $1.00 every 6 months. Then it comes down to your word against hers.

It might create more of a hassle for you and your lawyer, but, no, she cannot remain there rent-free because of this small paperwork error. You need to be aggressive (legally, that is), in my opinion, and not let the tenant get too comfortable in her position that she is there rent-free.

This answer changes completely, of course, if the apartment is Rent Stabilized. You did not say that the apartment was Rent Stabilized, so I assumed that it was not.

Let me know if you need anything else.

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XIV. MY TENANT WANTS ME TO MAKE SPECIAL ACCOMMODATIONS IN THE BUILDING FOR A DISABLED RELATIVE THAT IS STAYING WITH HER; DO I HAVE TO DO THIS?

Question: "Disabled Guest at the Building; The bldg built in 1936 is a residential rent stabilized property in Brooklyn. The tenant has been in the building for 30 years. Last week she called me and stated that the day before her brother moved in with her to stay for 2 weeks. He is in a wheel chair and he moved in so he would be in town for treatments for MS. There is no handicapped access to the building. There are no tenants that require it. There is a ramp at the back of the building but we keep the door locked since the supers' apartment is down there and we store our supplies and equipment there. The tenant wants a key to the door. We refused but stated that if she gives advanced notice we will have someone there to open and close the door for them. The next day we opened the door so they could go to the doctor's appointment but she didn't give us enough warning and they had to wait 20 min for us to come to open the door to let them back in. The tenant became irate stating that that is why she needs the key to the door. She has now contacted HPD and filed a complaint against us for "not providing a key for access to building entrance". (Which is untrue since it is not the entrance and she has a key to the entrance.) Does she have a legal argument when she informed us after the fact that she was going to have an occupant there with a disability for 2 weeks? Must we install permanent ramps for a 2 week occupant? It seems excessive. Installing a temporary ramp would not make sense either since we would need to unlock it and relock it up every time they need to come and go. Your advice will be truly appreciated. Thank you."

Answer:

As this is a temporary situation, prudence would suggest you do everything possible to avoid a fight with the tenant in this situation. The reason is that a tenant aggrieved by a failure to accommodate the disabled faces a potential litany of expensive litigation. The tenant can file a complaint with the New York City Human Rights Commission, the New York State Division of Human Rights, can file a complaint in Supreme Court and more importantly federal court. Courts and agencies are generally unsympathetic to owners complaints of expense and inconvenience on its part in refusing to make "reasonable accommodations" to those with legitimate disabilities.

Specifically, on May 24, 2011 new regulations were promulgated by the Equal Employment Opportunity Commission ("EEOC"), the regulatory body charged with implementing the Americans with Disabilities Act ("ADA"), which went into effect broadening the scope of what could qualify as a disabling condition under the ADA. Here, of course, there is no question that a person suffering from MS would qualify as disabled so we need not discuss whether the person falls under the protection of the statute. According to the interpretive guidance to the new regulations, their intended effect is to shift the focus from the question of whether the complainant in fact suffers from a "disability" to whether obligated parties met their obligations in "reasonably accommodating" the complainant after engaging in an "interactive process".

The passage of these new regulations also has implications for disability discrimination claims brought under the Fair Housing Act ("FHA") because courts and administrative judges routinely refer to ADA discrimination cases to inform decisions under the FHA. Thus, it behooves owners and managing agents to have in place a procedure to field requests for reasonable accommodation and to initiate an ongoing interactive process with the requesting party.

With the passage of the EEOC's new rule that broadens the definition of "disability", the incentive has never been greater for landlords to implement procedures that facilitate an interactive process with a requesting party. Because it remains unclear exactly how much a disability must restrict a major life activity to be considered "substantially limiting", the onus is on the housing provider to take the initiative and develop a record of the inquiry and attempts to come up with reasonable accommodations. ***Indeed, failing to engage in such a process or thwarting its progress can raise an inference of bad faith or discriminatory intent, or, lead to per se liability.*** See for example, *Riverbay Corp.*, 2012 WL 1655364 at *24 (imposing civil penalties for defendant's blatant disregard for the interactive process); *We Can Work It Out*, 2007 U.Ill. Rev. at 774-777.

(noting that many courts have held that an employer's refusal to engage in an interactive process can lead to independent liability under the ADA and speculating that courts could well adopt a similar *per se* rule under the FHA given the overlapping jurisprudence).

It appears from your description that you have attempted to informally implement an "interactive process" with this tenant by coming up with a compromise that the Tenant has rejected. The question then becomes whether a fight over this issue is worth it to you.

In light of the potential costs of a fight and the potential liability, it would be prudent to see if you could figure out a way to give this person a key for the temporary period that her brother is staying with her. You should keep these concepts in mind in the event that someone living in the Building becomes disabled at some time in the future, as people tend to do so as they age. Consideration of the installation of a ramp in the future would not be a bad idea, depending on the number of units in the building. I assume there are a significant number of apartments inasmuch as you have a live in super. Alternatively, you might consider using the back ramp on a permanent basis in case this question comes up again in which case you should provide for security through the back way entrance to protect the super and your equipment and still utilize the ramp. That might well be a cheaper alternative to installing a ramp. One thing you want to avoid is an unnecessary expensive proceeding before an administrative and/or state or federal tribunal.

Let me know if you need anything else.

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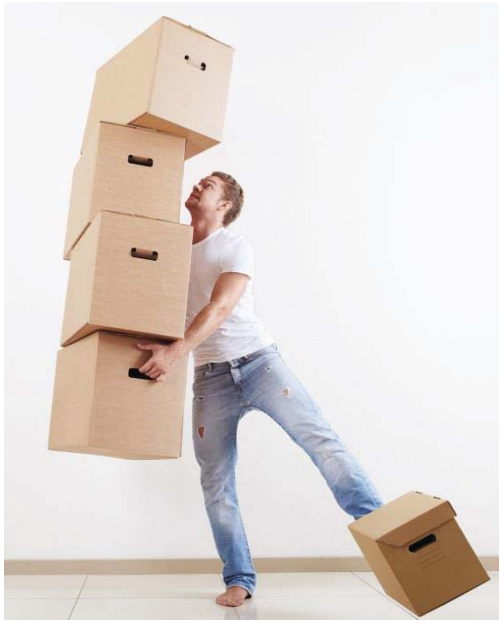
XV. WHAT IS THE LAW REGARDING PERSONAL PROPERTY REMAINING IN AN APARTMENT AFTER AN EVICTION IS CARRIED OUT BY A MARSHAL? CAN I PUT THE ITEMS IN STORAGE IN THE TENANTS NAME. WHAT ARE THE LANDLORD'S OPTIONS?

Question: "What is the law regarding personal property remaining in an apartment after an eviction is carried out by a marshal? I understand that the landlord must keep the property in the apartment for 30 days or put the items in storage in the tenants name. What are the landlord's options? Thanks."



Answer:

Two Options on Eviction Day

Landlord has two options on eviction day. Landlord can ask the New York City Marshal to deliver either legal possession or full possession (otherwise known as a "move out eviction"). A full eviction is the removal of the tenant and the tenant's belongs both of which the Marshal oversees. Legal possession removes the occupant from the space but the personal property of the former tenant remains under the care and control of the landlord. Most "evictions" are actually the Marshal returning legal possession to the landlord even though the terms are commonly used interchangeably.

Legal Possession

If only legal possession is being given back to the landlord, the Marshal will take an inventory of everything inside the premises. The Marshal is required to prepare a written inventory of the items in the premises, "The inventory must be complete and accurate, giving a description of all appliances, household furniture, goods and properties present. Both the quantity and condition of the property must be noted." New York City Marshals Handbook, Chapter IV, § 6. After the Marshal takes an inventory the landlord will have to sign a statement releasing the Marshal from all liability for any damage to the tenant's property. The landlord should make sure he gets a copy of the inventory.

The landlord may not merely dispose of the tenant's property left inside the premises. Landlord must maintain the personal property, either in the premises or somewhere else. It is important that the Tenant be allowed to retrieve their belongings. If a tenant does come back to get their things, make sure they are supervised whenever entering the premises. Do not give the tenant a copy of the new keys. If landlord removes the tenant's belongings to a different location for storage, landlord can be exposed to liability for any damage to the tenant's belongings.

I am not sure where you got, "that the landlord must keep the property in the apartment for 30 days". There is no statute that says that the landlord must hold on to Tenant's property for 30 days. Many leases, however, do have something to say about the issue, and that is what controls in these situations. The Standard Form of Apartment Lease promulgated by the Real Estate Board of New York says at 9(B):

When this Lease ends, You must remove all of your movable property…If your property remains in the Apartment after the Lease ends, Owner may … consider that You have given up the Apartment and any property remaining in the Apartment. In this event, Owner may either discard the property or store it at your expense. You agree to pay Owner for all costs and expenses incurred in removing such property. The provisions of this article will continue to be in effect after the end of this Lease.

Move Out Eviction

Special moving/storage companies may be engaged to move the tenant's belongings to a warehouse at the time of eviction, thus immediately delivering full possession to the landlord. The landlord is responsible for the moving charges and the tenant is responsible for the storage charges. Usually

once the property is removed the storage company will not release the tenant's belongings until the tenant pays for the storage.

Take Pictures

Whether the Marshal is delivering legal possession or full possession, it is sometimes useful for the landlord to photograph the premises immediately after the eviction.

Marshal's Handbook

The following is from the Marshal's Handbook promulgated by the New York City Department of Investigations:

In the event the landlord demands that the premises be turned over in "broom clean" condition, the marshal must conduct an eviction. The marshal must hire a bonded moving company which is licensed by the New York State Department of Transportation. The marshal must also direct the moving company to deliver the items removed from the premises to a warehouse licensed by the Department of Consumer Affairs … the cost of removal of the tenant's property and its delivery to a bonded warehouse must be borne by the landlord.

All marshals are required to prepare a written inventory of all items contained in the premises of any tenant to be evicted. The inventory shall be prepared regardless of whether the marshal does an eviction **or** a legal possession. The inventory must be complete and accurate, giving a description of all appliances, household furniture, goods, and properties present. Both the quantity and condition of the property must be noted.

Let me know if you need anything else.

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ABOUT THE AUTHOR

Michelle Maratto Itkowitz practices real estate litigation. She has over twenty years of experience, and is best known for her work in the area of commercial and complex-residential landlord and tenant law in the City of New York. She also is very experienced in general commercial litigation and all manner of real estate transactions

Michelle publishes and speaks frequently on legal issues in real estate. The groups that Michelle has written for and/or presented to include:

- Lawline.com
- The Columbia Society of Real Estate Appraisers
- LandlordsNY
- Lorman Education Services
- The Association of the Bar of the City of New York
- The New York State Bar Association, Real Property Section, Commercial Leasing Committee
- Thompson Reuters
- The Cooperator
- The New York State Bar Association CLE Publications
- The TerraCRG Brooklyn Real Estate Summits
- The Association of the Bar of the City of New York
- BisNow

Michelle creates and shares tons of original and useful content on real estate and law –- from booklets to podcasts to the many useful articles that can be found on her Teaching and Publishing blog. She is frequently quoted in the press on a variety of real estate and legal issues. As the "Legal Expert" for LandlordsNY, the first online social networking platform exclusively for landlords and property managers, Michelle answers member's questions, guest blogs, and teaches. Michelle recently developed a six-part, seven-hour continuing legal education curriculum for Lawline.com entitled "New York Landlord and Tenant Litigation". Over 16,000 lawyers have purchased Michelle's earlier CLE classes from Lawline, and the programs have met with the highest reviews. Michelle is currently co-authoring a chapter on lease remedy clauses for the New York State Bar Association, Real Property Section, Commercial Leasing Committee.

Michelle is admitted to practice in New York State and the United States District Court for the Southern District of New York. She received a Bachelor of Arts in Political Science in 1989 from Union College, and a Juris Doctor in 1992 from Brooklyn Law School. She began her legal career at Cullen & Dykman.

Michelle is a pioneer of Legal Project Management, a unique and better way for lawyers and clients to work together. Michelle writes and speaks extensively about Legal Project Management. Ask Michelle about our alternative legal fee options! (This is her favorite topic.)

There are many ways to keep up with Michelle. When Michelle tweets (@m_maratto), which is not an obnoxious amount, she does so in an easy to understand manner about useful stuff regarding real estate, business, the legal industry, and organic herb gardening. Feel free to contact Michelle; she would be happy to speak to you.