

# **NEW YORK CITY CIVIL COURT**

**N.Y.C. Civil Court**

**Community Seminar Series**

**'HOLDOVER'**

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MS. JOYCE ZIMBERG: Good morning. My name is Joyce Zimberg and I'm a court attorney for a Housing Court judge, Judge Maria Milin. Today, we're going to have discussion on holdovers.

A holdover proceeding is very different than a non-payment proceeding. In a non-payment proceeding, if you pay the arrears and current rent, you can retain your apartment. In a holdover, the landlord wants possession of your apartment. And if the landlord wins, you can be evicted and lose your home.

Now there are different types of holdovers. I'm going to go through each one of them and I'm going to describe what they are.

The first one is a nuisance holdover. That's when you or a member of your family or a guest of you or your family engages, and this is important, in

a continuous course of conduct which threatens the health, safety or comfort of neighboring tenants or other building occupants.

I'll give you an example: playing excessively loud music, damaging landlord's property, refusing access to the landlord to make repairs, harboring an aggressive animal which bites, lunges, barks loudly. Remember, conduct must be recurring, frequent, continuous or extremely dangerous.

So, if you play loud music one night and that's it, they can't bring a holdover. It won't hold up because it's not continuous.

The next type, the next type of holdover is owner occupancy, or sometimes they call it owner's use. That's when the owner of the premises, or a member of his family wants to recover possession of a unit for personal use and occupancy.

Now, this type of proceeding is not easy for the landlord to win. There are many factors to consider. Whether the person is a senior citizen or a disabled person, whether he's subject to a rent regulatory, uh, scheme like rent stabilization or rent control, and also there has to be a legitimate purpose for which the landlord needs the premises.

Another holdover is a chronic non-pay or late pay, um, holdover, and that would mean there's a non-payment of rent or a late payment of rent. If a tenant fails to pay the rent, the landlord may commence a non-payment proceeding against you. If you pay what is owed, you may avert an eviction and that's a simple non-pay.

However, when a tenant is chronically delinquent in paying rent, or he chronically fails to pay, then that repeated failure to pay rent in a timely

manner is a violation of a substantial obligation of the lease.

So, whereas normally it would be brought as a non-payment proceeding, if it happens on a continuous basis, then the landlord can bring a proceeding to actually have you evicted.

There's another one, an illegal sublet. When you vacate an apartment and you lease it to someone else without authorization from your landlord, that is being--that is illegally subletting your apartment.

The prime tenant, the one who is subletting, either illegally or not, must maintain the unit as his primary residence. Unless you first obtain permission from the landlord, you may not sublet the apartment to anybody else.

In addition, if you do sublet with permission from your landlord, you may not overcharge a subtenant more than a

proportionate share of the rent.

I'll give you a very quick example. You got permission from your landlord to sublet your apartment. The rent is \$1,000. You ask your sub-lessee to pay \$900. Can't do that, that's not proportionate.

Another kind of holdover is a non-primary residence holdover. Now, the rent regulation laws are intended to protect tenants who use their apartments as their primary resident. If a tenant does not use their rent-regulated apartment as their primary resident, they can face eviction.

So, if you, if you have an apartment and you don't live there, you live someplace else but you keep it for either, uh, a friend or you keep it as a storage place but you actually live somewhere else as your prime resident, they can bring a holdover against you and

get you evicted.

Now, the next one is--the generic term is a breach of the lease. In every lease there are specific conditions by which a landlord and the tenant must abide. If there is a failure on the part of the tenant to do a specific act or refuse to do a specific act, it can be considered a breach of the lease and can lead to eviction.

I have listed below some examples, so let me describe them. I listed seven but there are many more: when the tenant in a rent-stabilized apartment refuses to sign a renewal lease after an offer has been made; refusable--refusal of access to do repairs; illegal use, drugs or prostitution; someone who disconnects the smoke detector. Now you think, "I could be evicted for that?" Well, yes, because it can result in a fire which jeopardizes the entire building.

If you install appliances without the landlord's consent or authorization. Believe it or not, if your lease has a, uh, no washing machine clause and you go ahead and install it anyway, the landlord could move to have you evicted.

Another breach of the lease would be harboring a pet in violation of a no-pet clause in the lease.

Now, even though I'm listing some of them, there's a lot more to each one. The landlord has to prove by more than 50% that you actually breached the lease. So even though I'm mentioning them, there's a lot more that goes into it.

Also, another breach of the lease is using the residential dwelling unit as a business. If you're supposed to be in an apartment and you're supposed to use it as your home, if you open up a business-- some people open up hair salons, some people open up daycares, if it's supposed



to be used for residential use, the landlord can bring a holdover proceeding, breach of lease, against you.

And this is another kind of holdover where there's actually no lease and it's a non rent-regulated apartment. And usually that's when there's a two or three or four family house. Not every tenant has a lease.

The tenancies that are usually without a lease are in private homes, as I mentioned, or non rent-regulated apartments. Without a lease, it is much easier for an owner to regain possession of the premise, of the premises.

Another one is a squatter licensee. A squatter is an occupant of the premises who intruded into, or as it's called, squatted upon, the premises without the permission of the owner. You may have heard squatter's rights, different, uh, definitions of squatter,

but that is what a squatter is.

Some people confuse it with a licensee. A licensee is a person who enters the premises with permission of the person entitled to possession. However, that license is subject to the permission of the owner or the person in possession and can be revoked.

So, if you initially got in, somebody invites you in but then they want you out, that means that the license has ended and you become something called a licensee, or you remain a licensee and they want you out.

Another type of holdover is a superintendent or employee type of holdover. That may be maintained if the respondent entered into possession of the premises as a condition of his employment.

Now, the employee's term of employment must first be terminated. So, in other words, a landlord can't say to

the superintendent, "okay, I'm bringing an action against you and you'll get the papers in a few days." If he doesn't first termination that superintendent's, um, term of employment first, then he can't maintain a proceeding.

Now, this is the important part about that. If the employee was a tenant first and then became an employee, this kind of proceeding may not be maintained because in order to bring an employee holdover, that person must have gotten the apartment as an incident to his employment. In other words, if he wasn't employed he wouldn't have gotten the apartment.

There's another one, and this is important in today's, um, unfortunate situation. After foreclosure, a purchaser of an--of the property or an apartment in foreclosure may maintain an eviction proceeding against remaining tenants.

Now, rent-regulated tenants cannot be evicted simply because of foreclosure. They maintain, or retain--excuse me--their rent regulatory status. But if they don't have a rent-regulated apartment, then there's--it's very easy for the, uh, person who bought the foreclosed property, it's very easy for them to, uh, proceed with eviction.

Another one is a lease expiration. Again, unless you are a rent-regulated apartment or in a rent-regulated apartment, when your lease expires you are obligated to leave the apartment. If you fail to do so, the landlord may be--bring a proceeding to evict you.

In a rent-regulated apartment, you must be offered a renewal lease unless you have breached your lease in some way. So that's why when you hear that it's really good to have to be in a rent-regulated apartment, it really is. You

have many more protections than somebody who lives in a house with no protection.

Another one is a harassment holdover. And that's when the tenant must engage in persistent and continuous course of conduct intending to harass the owner and/or other tenants in the building and interfere substantially with their comfort or safety.

Now, I'll give you another example of this, or the first one. Let's say you have an apartment and your next door neighbor comes to you one night and bangs on the door and says, "You know, I really don't like you, I want you out of the building." Then you don't have to do anything. Uh, let's say it happens again. He says to you, "I don't like your children running up and down the halls." But that's the, that's the end of it.

Um, if it's not continuing, and it's not intended to really harass--well

it could be intended to harass you as the other tenant, but it has to be continuous. It has to interfere with the comfort and safety of your--of the premises.

So those are--I would say that that was pretty much, um, all of the types of holdovers. There may be one or two but they may come under the breach of the lease provisions.

The, um, the next thing I just want to discuss with you is what happens when you actually receive legal papers from the landlord. You say, now what do I do?

On the papers you receive from the landlord, there will be a date and time and place where you are to appear for your court case. You must appear at that time. This is in a holdover. You will have--you will actually get a date and a time and a place to show up.

If you don't show up, the court

will send you a postcard with another date. That will mean that the--if you don't show up the second time, the landlord will be entitled to a default judgment against you. That's only after the court holds an inquest.

What is an inquest? It's a trial without you. And it's very easy to win a trial when only one person is doing the, um, the litigating.

Um, of course, naturally the landlord has to prove his case. If he gets up there and says, all right, I want a judgment. That's insufficient. He has to actually prove the case under the theory that he brought the case on.

Without any defense you may raise, which would counter what the landlord says, it's a lot easier for the landlord to win. That's why it's very important if you get documents from the court, from the attorney, show up. Even

if you can't, if there's something wrong, if you're ill, send somebody. And if it happens that they do an inquest and they prove their case, you may be evicted.

Now, when you get to court, you go directly to the courtroom that you're assigned on the papers and you look for your name and case number on the wall next to the courtroom. You will see it usually in between red lines. Then you check in with the court officer, sit down and wait until you're called.

If you appear in court on time, the landlord's attorney will talk to you, um, and discuss the case. You don't have to talk to the other side if you don't want. But it usually is helpful because the attorney has information and you may have other information and usually if you really discuss things in a reasonable manner you can agree.

If that's the case you can enter



into a stipulation of agreement. It's a stipulation of settlement and that means that both parties agree. If you don't agree, the case will be set down for trial at a later date and you will have to come back.

You also will have the right to ask for an adjournment, which is a postponement of the case, to obtain counsel. That would mean that you want to seek an attorney. You feel that you can't do it without having legal assistance.

However, in Housing Court, there is no automatic right to an attorney. You have to find your own and there are several ways to do this. You can ask court personnel for a list of free legal services organizations. But unfortunately, there are restrictions and usually a very long waiting time before you are assigned a counsel.

Some people, however, are not

eligible for free legal services, so you may have to get your own attorney. You contact a local Bar Association for referral and then, um, court personnel can provide you with some phone numbers.

You can come to court a week before your court date and watch some of the landlord/tenant attorneys. Some of the lawyers you may like. One of them may appeal to you in terms of style and knowledge and personality.

And you can ask them if they'll represent you in court. They usually will say, okay, you have to put down x amount of dollars before I do that. And depending on the difficulty of the case, the lawyer will tell you how much your--he charges. You can also ask someone who has been to Housing Court before for a recommendation.

Before you retain a lawyer though, make sure that he or she is

familiar with housing law. Don't use your Uncle Joe's criminal attorney. It usually won't work.

You also have the right to interpose an answer. It should be in writing and you must mention all of your defenses, including, and this is important, if you were not served the papers correctly. That's very important.

If you have retained a lawyer, he or she will interpose an answer for you. If not, they will help you downstairs. It's a very simple form just saying what you agree with or disagree with.

You may be able to see a pro-se attorney, and that's in a specific room, the Resource Room in every borough. That person will be available to answer your questions about court procedure and discuss your options. He or she, however, cannot give you legal advice.

I hope I've explained just very

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basically the types of holdovers and what you do when you receive papers in the mail which will say holdover. Thank you very much.

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