

NEW YORK CITY CIVIL COURT

N.Y.C. Civil Court

Community Seminar Series

'My Landlord Says I'm a Nuisance'

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MS. JOYCE ZIMBERG: Good afternoon, everybody. It was very nice of you to come out on this rainy day.

Today I'm going to be talking about nuisance. And the topic was, "Help, my landlord says I'm a nuisance".

The first thing we have to determine is what is a nuisance holdover? In a holdover proceeding, a landlord wants to evict a tenant or an occupant for reasons other than non-payment of rent.

The reason it's called a holdover, and I'll explain a little more later, is because the tenant is holding over, or remaining in the apartment after the landlord has terminated the tenancy.

Now, a landlord may bring a nuisance holdover if a tenant or a family member or a guest of the tenant engages in a continuous--that's a very important word--continuous course of conduct which

threatens the health, safety and welfare of--and comfort, of the neighboring tenants in the building's occupants.

I will give you some examples, but remember, the key word is continuous. If it happens once, even if it happens twice, unless it's especially egregious, that does rise to the level of nuisance.

One--here are some examples of some behaviors that will, will allow a landlord to bring that kind of proceeding: aggressive, anti-social and antagonistic behavior towards the landlord or causing damage to the landlord's property; causing a dangerous situation which threatens the safety or welfare of other tenants; creating loud noise or music; banging or jumping so as to annoy the neighbors; threatening or harassing the other tenants, causing them to be fearful; refusing access to the landlord to make repairs; refusing to renew an expiring

lease; using or permitting the premises to be used for immoral or illegal purposes-- prostitution, drugs, et cetera; and harboring an animal with a tendency to bite, lunge, continuously bark loudly, frighten other tenants with aggressive behavior, or destroy the landlord's property. Once again, remember, it has to be continuous to rise to the level of nuisance.

The, the--excuse me, the landlord is usually, but not always required to give the tenant a written notice to cure before beginning a lawsuit against them. The notice to cure must specifically describe what the landlords think-- landlord thinks you are doing wrong and it must give you a chance to correct the problem within a specified amount of time.

If you correct the problem to the landlord's satisfaction, the landlord will most likely not pursue the matter in

court. In other words, he'll send the notice to cure. If the problem is cured that should be the end of the lawsuit. But if the landlord believes that the nuisance is continuing, the landlord will begin a lawsuit against you in Housing Court.

The landlord usually, but not always, also must give the, the tenant a notice of termination. That's because once the notice of cure goes out, the landlord says, well, I'm giving you an opportunity to stop what you're doing, but if the nuisance has not been cured, the notice of termination will actually end the tenancy.

If you remain in the apartment after receiving the notice of termination, you are holding over, hence, the name a holdover.

The landlord will then consider you to no longer be a tenant, but

ultimately is--it is up to the court to decide if your tenancy continues or not. So even though you get a notice saying your tenancy has been terminated as of this particular date certain, it's ultimately up to the court to make that determination.

The next set of papers you will receive, um, is called a petition and notice of petition, but more commonly called a dispossess. Service of the petition and notice of the petition has to be done in a very specific manner.

That notice of petition and petition of service will actually start the lawsuit. You then have to answer the petition. You can do it when you come into court.

What is an answer? An answer is your response to the allegations in the petition. You can answer orally on the day you come in, or in writing when you go

to court on the first date, or if you wish, you can actually answer in writing ahead of time. And usually, if you retain legal counsel, he or she will prepare an answer for you.

What are allegations? You'll see the word in the papers you get from your landlord or your landlord's attorney. An allegation is a claim that you have done something wrong. An allegation is not proof that you have done anything wrong. That is why it is very important to think about what the landlord claims and you have to decide whether you think it's true.

Sometimes the landlord is correct and sometimes the landlord is incorrect. That's why it is important to come to court and answer the petition and explain why you think the allegations are incorrect.

Now, even if you think the

allegations are true, don't despair. You might have mitigating circumstances that might lessen the chance that you will lose your apartment.

So this is a very serious.

Unlike a non-payment where the court or the landlord's attorney will give you time to either get the money together or they will send you down to the Department of Social Services to see if you can get some, um, some sort of a loan, or as they call it, a one-shot deal, and they'll wait for the money to come if they are assured that there has been an approval. A holdover means the landlord wants you out.

There are defenses though to a nuisance holdover. And here are some possible defenses to the holdover proceeding. You could say the notice to cure, or the notice of termination fails to inform you what nuisance the landlord is alleging and you cannot prepare a

defense.

 In other words, if it just says you are being a nuisance, you have to leave by date certain. How are you going to prepare a defense to that? That is insufficient and most likely the court will dismiss the proceeding and the landlord would have to start all over again.

 Another defense is the notice to cure or the notice of termination is not signed by your landlord or the managing agent. You get a piece of paper and it says it's signed by, um, John Smith. You have no idea who John Smith is. It doesn't, it doesn't state anywhere in that that, that John Smith is the managing agent of the landlord or an attorney. It doesn't say anything. That's another reason why a judge can throw it out.

 Another defense is the landlord's claims are untrue and do not rise to the

level of a nuisance. And I said that before. Remember, it has to be continuous. It can't just be a one-time thing.

Also, you did not receive the legal matters in the manner--the legal papers in the manner prescribed by law. Landlord/tenant law is very, very specific. Everything that's served, everything that's done has to be in a specific form, a specific way. If there is any deviation, then also the court can dismiss the case.

Another defense is the petition fails to state a basis for the claim. And again, it comes down the papers read, the tenant is a nuisance, she's making noise. That's insufficient. That doesn't say it's continuous. It doesn't say that she's making, uh, noise to the detriment of her, uh, neighbors. So that will actually result in a dismissal as well.

Now, this one is--you have to pay attention to this one. A defense is that you paid rent and your landlord accepted the rent between a certain time. It's the time your tenancy was ended and the time you were served with a notice of petition and petition.

Now, think about it, say wait a minute. Why is that? I always pay my rent. This is not a case about rent. The reason being is when the landlord sends you a notice of termination and a date when that, uh, termination will occur, he's saying we're no longer landlord and tenant. We don't have that relationship anymore.

So why is he accepting rent? He can't accept rent at that point. It has to be--he can't accept rent until you are actually served with a petition and notice of petition. So it's very careful to think about that.

You know, and some very savvy tenants are very aware of that and sort of send the landlord a check or slip it under his door. And if they don't get that back immediately, then it could be grounds for dismissal.

Um, another reason is that you complained to a government agency that you needed repairs or you joined, um, a tenant's association and the landlord is punishing you by bringing a case. It's retaliation. If it's proven, the case will be dismissed as well.

And the last one is you live in an illegal apartment that's not registered with the Division of Housing and Community Renewal, Renewal as a multiple dwelling. Um, there are a lot of different factors to that, so that's probably--unless you have an attorney, that's probably not something that you would, uh, bring up.

Now, there are very important

things to remember. The first one, it seems obvious, but believe it or not, come to court on time. Um, you're scheduled to go to court at a set time and it's listed on the papers that you receive from the landlord.

The landlord has to include the courthouse, the part and the room number. if any of those items are missing, immediately, um, inform the court attorney or the judge, or even the clerk when you check in to the different part. That's important.

Um, bring with you all your documents that can disprove the landlord's case. Remember, the landlord wants to take possession of your home. This is a serious type of case because if the landlord wins, what happens, you could be evicted and you most probably will.

If you don't understand the documents you received, go to the Resource

Center. In every borough there is something called a Resource Center and you ask to see the pro-se attorney. The pro-se attorney is an attorney who works, like me, a court attorney who works for the court system and is there to speak to you and review your documents.

But you have to remember, the pro-se attorney is not your attorney. They are only there to explain court procedure and help you understand what the proceeding is about. They can't give you advice. Even when I'm in the courtroom, "what should I do? What should I do?" I can't give advice; I can just tell you what your options are. But they're valuable, the pro-se attorney.

They also have, um, in the Resource Centers, they also have a lot of, um, lists of important things. For example, if you need an attorney, you can get a list of free legal services from the

court, or you can retain one on your own. The lists are--it's very important that you look at those lists. They have phone numbers. They have information as to whether you can just walk in or whether you have to call in advance to make a reservation.

And, um, what you should know though is the free legal services, you have to be, um, I, I wouldn't say quite indigent, but you'd certainly have to have a very low or nonexistent income or you'd have to be, um, on public assistance. And even then, they have a limited number of attorneys to go around, so you might have to wait, or you might not even be able to have an attorney representing you.

Um, the Bar Association in every borough has, also has a list of attorneys who practice and are knowledgeable about landlord/tenant law.

Now, sometimes what I've

experienced is an attorney comes in and they're representing a respondent, that'll be the tenant. And, um, I, I see right away that the attorney doesn't quite know some of the rules or what's going on and I ask that attorney whether or not he or she is a regular practitioner in landlord/tenant court. And they'll tell me, no, I'm a criminal attorney, but I'm doing this as a favor for whatever or whomever.

And it's probably not the best thing to do to come in with an attorney who is not aware of Housing Court procedures. Sometimes it's even better to come in pro-se or without an attorney.

You have the court attorney, you have the clerk, you have the interpreters, you have the judge, you have the court officers. Everyone in court is aware that you are without an attorney, or pro-se, and they make sure to explain things to

you.

 If you still don't understand, they'll explain it again or they will send you down to the resource room, the Resource Center to have one of the attorneys explain it to you. You usually don't walk out of the courtroom not knowing what's going on.

 Um, if you don't come to court on--at the appointed time, you may have a default judgment against you. But, in a holdover proceeding, what happens is if you don't show up on the first time, the court will adjourn the case, even over the objections of the landlord, and send you a postcard.

 The reason they do that is because sometimes the tenants are not served. Sometimes it's an error. Sometimes it's on purpose. Whatever reason, the court is aware that sometimes people--or they're in the hospital. Or

sometimes they're incarcerated. So the judge, the judges, the court want, wants to know that you have been given, um, due process. You've been given your right to have your day in court.

Um, let's say the second time you come in--you don't come into court on let's say the day that the postcard tells you to come in. This will result in a default judgment against you and it may result in an eviction if you fail to ask the court to vacate that default.

Okay, what do I mean by that? The landlord has to come in that day and prove his case. He can't just say well, okay, I'm here, they're not, I want a default judgment. It doesn't work that way.

In a holdover proceeding, they still have to prove their case. They have to have their witnesses. They have to have their documents. They have to have,

um, some document showing that there even is a landlord/tenant relationship. So if they do that, there will be a default judgment against you.

So the only way to get around that is it's an order to show cause. It's a--you don't even have to remember that. It's just, um, you have to go into court. Let's say you'll get, probably you'll get a marshal's notice after, after the, uh, warrant is issued. The warrant is a piece of paper that will allow the marshal to come to your house. So eventually you'll be getting a marshal's notice.

Once you get that, instead of panicking, you take it, you come back to the court, you ask the court--that's in the office, the clerk's office. You ask the court, uh, the court clerk, I want to stop the eviction. You show them the, uh, piece of paper which is the marshal's notice or notice of eviction. And they

have you fill out some papers, and then it's sent up to the judge to sign it.

I would say 90% of the time, the first time that there's an order to show cause in that case the judge will sign it. After that, the judge has a lot of discretion to grant or deny your request. So it's important if you were in the hospital and you missed the court date, or you missed the date of the, um--on the postcard, it's important to have documents with you.

I was in the hospital. Um, I have plane tickets. I didn't--I wasn't aware of this. I was in, um, I was in the Dominican Republic helping my grandmother. You know, it's, uh, the courts are aware that not everybody is where they're supposed to be at every minute of the day.

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