

PART #7: Evictions

The most important thing to know about evictions is that only a court action can make a tenant vacate a unit. A property owner can *ask* a tenant to leave; they can even demand that the tenant leave and have good reason to make this request. But every tenant (include most residents in supportive housing) have a right to be heard in court before vacating a unit. The owner *owns* the unit but the resident has *legal right to possess the unit*. Only a court can formally end that right of possession.

This does NOT mean that most evictions are illegal, just that every tenant has a right to be heard in court first.

Reasons to ask the tenant to leave: Here is when an owner DOES have the right to ask the tenant to leave and 'give' back possession of the unit to the owner:

- ◆ For Tenants With Leases:
 - at the end of the least term (and the owner does not want to renew the lease)
 - when the tenant has violated the lease (and if the lease stated that the owner may evict for such a violation)
 - non-payment of rent by the tenant [if the owner accepts rent payments covering owed rent, this will 'cure' the cause for eviction]
 - using the unit for illegal purposes
- ◆ For Tenants At Will:
 - good cause is not required; the owner can ask the tenant to leave at any time

Illegal Eviction Practices: Just because the owner or property manager (or even supportive housing program) has asked the tenant to leave does not mean that they must. Here are some of the ways that an owner might violate the law:

- ◆ "Self-help" eviction: when the owner changes the locks, moves belongings out of the unit, shuts off utilities or interferes in the tenant's use of the unit
- ◆ Retaliatory eviction: an owner can not evict someone for calling the board of health, seeking legal aid, withholding/deducting rent (with good cause), complaining about conditions or organizing with other tenants
- ◆ Discrimination

If your client believes that the owner is using illegal tactics against them, they can go to court and easily seek an emergency injunction against the owner, requiring the landlord to cease their illegal action. This will force the owner to follow *legal* methods of regaining possession of the unit.

The owner has every right to ask for possession of a unit back but the tenant has every right to question such a request---only the court has the power to decide who is right.

Housing Advocacy 101: Getting and Keeping Housing for Your Clients

The Eviction Process: Evictions in MA follow a well-defined process. It is important that both the owner AND the tenant be aware of this process and follow it closely. Not following the process can automatically lead to either side giving up their case in court. Here are the key parts of the eviction process:

- ◆ Notice To Quit (NTQ): This is the formal notice from the owner stating that they want the tenant to leave. For non-payment of rent, the owner only needs to give the tenant 14 days notice to quit. For every other reason, the owner must give 30 days notice to quit. Receiving a Notice To Quit does NOT mean that the tenant must move out by the specified date. That date is when the owner can take the next step (if the tenant remains in the unit). The termination date must be the date that rent is due, so a 30-day notice to quit will usually have to come with MORE than 30 days to respond. If a NTQ comes less than 30 days before the next rent date, then the termination date can be no sooner than the following rent due date.

- ◆ Summons and Complaint: If the tenant remains in the unit past the termination date, the owner can then go to court. The first step is sending the tenant a “summons and complaint” document. This is an official court document. This document will tell the tenant WHY they have terminated the tenancy. The summons and complaint must be served personally by a sheriff or constable to the tenant.

This ‘complaint’ is the basis for their action in court, as well as the basis for the tenant’s ‘answer.’ This document will contain 3 important dates. It will give an ‘entry date.’ This is the date by which the owner will ‘enter’ their case in court, following the delivery of the summons (if the owner fails to do this, the case may be dismissed). It will give a ‘summons date’, for when the tenant needs to appear in court. It will give an ‘answer date’. This last date is **very important!!** The tenant must file an ‘answer’ with the court by this date stating a response to the owner *or the court may automatically rule in favor of the owner.*

- ◆ Answer: This is the tenant’s opportunity to respond to the owner’s claims (with defenses) or make claims of their own against the owner (with counter-claims). Answers should be filed with the court and given to the owner or their lawyer. The tenant should provide an answer even if they expect to be evicted. The answer can include hardship information that will provide the basis for asking a judge for time to find a new unit.
- ◆ Discovery: As in every court case, the defendant has the right to examine the evidence against him or her. The tenant can file a ‘discovery request’ with their ‘answer’; this will require the owner or their lawyer to share their information or even submit to questions in advance under oath. The discovery process will delay the court date.
- ◆ Court Date: If the tenant does not appear in court, the case will likely ‘default’ in favor of the owner (the same can happen if the owner does not show up). Civil and housing court can be informal; tenants and their advocates should feel comfortable attending court. If the tenant goes to court, they should bring all relevant documentation that they can gather, such as health reports, inspection results, statements, and photographs of code violations. The tenant should prepare and go in with a brief but clear statement of their case for speedy presentation to the court. Review the comprehensive discussion of court appearances in Chapter 13 of *Legal Tactics*.
- ◆ Execution: If the tenant loses, the court issues an ‘execution order.’ It will state the date by which the tenant must leave. Only a sheriff or constable can deliver an execution order and they must give the tenant at least 48 hours notice.

Review: Eviction Timeline

AIDS Housing Corporation
October 31, 2006