

LANDLORD/TENANT FAQ

1. How long should I wait before commencing an eviction proceeding?

Each situation requires independent analysis. As a general rule, landlords seeking to evict tenants delinquent in the payment of rent and seeking payment of arrears, should not allow the delinquency to go on longer than three payment periods.

2. What is a summary proceeding?

A summary proceeding is a special procedure established by the New York Real Property Action and Proceedings Law which allows landlords to go to a Court of limited jurisdiction, in an expedited manner, to remove tenants who are in breach of their lease, or who remain after the lease has expired or been terminated.

3. What if a Tenant's breach involves something other than non-payment?

There are two "types" of summary proceeding: (a) Non-payment proceedings and (b) Holdover proceedings. Non-payment proceedings, not surprisingly, involve the failure of a tenant to pay rent and/or additional rent under the lease. Holdover proceedings involve all other breaches not involving non-payment. The most common grounds for a holdover proceeding involve a tenant whose lease has expired, is not renewed, but remains in possession of the leased space.

4. How long does it take to get a tenant out?

It varies depending upon how far into the process you get (most cases settle and thus do not require the maximum amount of time) and how complex the issues and defenses are. Typically, the landlord must serve a rent demand, which requires full payment in 3 days. If full payment is not made, landlord brings a summary proceeding, by petition, served on tenant and filed in the appropriate Court. The first court date ("return date") must be 5-12 days after service (very quick by normal litigation standards, hence "summary proceeding"). However, each party has a right to an adjournment. Usually the adjournment is 1-3 weeks. Assuming a trial is held and the sheriff is required to forcibly remove the tenant's belongings 3-6 months is a safe assumption.

5. Do the Courts favor tenants?

Landlord tenant proceedings are state-driven and very technical. Landlords and their lawyers must be careful to follow all of the statutory requirements. Judges tend to extend courtesies and seek less harsh treatment of tenants in residential cases. In the context of a commercial proceeding, however, the participants are parties to a commercial contract. It is incumbent on landlords to follow the strict statutory steps. If they fail to do so, the result is often dismissal and re-filing. Tenants lawyers seek-out and try to exploit technical, statutory errors.

6. Does the landlord have to appear in Court?

Only at trial. Attorneys for the landlord can handle the proceedings on behalf of their clients (even entering information stipulations or settlement). It is good practice for landlords or their agents to be available by phone on every date the matter is on for appearance.

7. What if the Tenant does not have a lease (or the lease is expired)?

If the tenant does not have a lease or the lease is expired, tenant is treated as a holdover. Landlord must provide a full payment period notice (one month-encompassing an actual payment period) prior to termination or commencement of a summary proceeding.. The Notice in a holdover proceeding declares the tenancy terminated as of a specific date. If tenant has not provided vacant possession by the designated date, landlord may bring a petition seeking a Judgment of Possession and Warrant of Eviction.

8. How does the Landlord enforce its possessory rights if the Tenant does not leave?

The end result of a landlord/tenant summary proceeding is the issuance of a Judgment of Possession; a Warrant of Eviction and, sometimes, a money judgment for rental arrears (in the case of a non-payment proceeding) or “fair use and occupancy” (in the case of a holdover proceeding). The Warrant is delivered to the sheriff of the County where the premises are located who then enforces the warrant by physically removing the tenant and property.