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Eviction: A landlord's best friend

By **STAN MULLIN**
Grubb & Ellis

The title to this article is somewhat misleading. Eviction, in and of itself, is a matter of last resort. The right to evict, that a landlord can wield, is actually "his best friend".

As a rule, courts throughout the country tend to favor tenants in litigation because the landlord is perceived to be more knowledgeable, sophisticated and have greater financial capacity to pursue a lawsuit, than is a tenant (if you have ever gone to trial with a Fortune 1000 firm, you will know that this premise is not universally true).

In the balance of this article, I have listed the primary steps to take to avoid disputes over the terms of your lease initially, and the steps

required (at least in California) to evict and subsequently collect on any funds due to the landlord, by a defaulting tenant.

Drafting the Agreement

The first step a landlord should take is to use care in the drafting of the lease agreement. Too often, landlords are too cheap to spend the nominal cost to have a lawyer, who specializes in real estate matters, review, negotiate and modify the non-business terms of the document. The lease should clearly outline what constitutes a default or breach of the terms of the agreement and, also list the remedies allowed to the party in compliance.

The two most common types of breaches that lead to eviction are: a) non payment of financial

obligations (i.e. base rent, operating expenses, etc.) and b) violations of any of the covenants and conditions outlined in the lease (i.e. storage of hazardous materials, using the property for something other than its intended purpose or abandoning the premises).

Tip — Insure that the tenant has a financial incentive to pay the full amount due, on time, each time it is due. My leases stipulate that rent is considered late, and a penalty is due, if payment is received by the landlord after the 5th of the month (commonly it is the 10th). Why the 5th? Often the landlord's payment on his promissory note is due on the 10th or 15th. Landlords don't want to be in the position to have their loan payment returned NSF because the tenant's check bounced. Landlords should charge the highest possible late fee for pay-

ments which are past due. As well, if the tenant pays late, offer him an incentive to pay the full amount due as soon as possible after the due date.

If there is not additional cost, regardless of whether their payment is made on the 11th or 30th of the month, it is unlikely the landlord will receive payment before the next month's due date. If a tenant has a history (one or more payments) of payments returned for insufficient funds, I think that the landlord should require that all subsequent payments be made in cash, money order or cashier's check. As well, the law allows landlords the right to charge their tenants and additional amount for checks returned for insufficient funds.

□ **EVICTON**, see page A7

□ **EVICTION**, from A5

When The Tenant Is In Default

Begin the documentation process. Start noting any conversations you have with the tenant or others regarding their violation.

Take pictures of anything that may constitute a breach of the agreement (This requires that you read and understand the document). Thorough documentation will help verify the claims made by the landlord and assist the court in ruling to the landlord's favor.

In addition, it will help the landlord recall past events that may come up in a deposition, arbitration or court appearance. Ultimately, landlords should do everything possible to motivate the tenant to pay his or her obligations.

Landlords should avoid litigation unless all other means of settlement have been exhausted. In most cases, both the plaintiff and the defendant end up losing to some degree.

Path To Eviction

OK, they don't want abide by the terms of the agreement. Now it's time to throw the tenant off the Premises (as a rule, I think that once the landlord decides to evict, he should not change his mind, even if the tenant states that he or she will come current and comply with all of the outstanding issues).

Engage a law firm that specializes in eviction services. They will save you a great deal time and money. Jim Grass and Linda Cardoso of the law firm of Kimball, Tirey & St. John in Newport Beach (949.476.5585) have been a great help to me with evictions of defaulting tenants.

1. Notice to Quit — The first step is to serve the tenant with a notice to cure the breach or quit. The type and length of the notice depends upon the nature of the breach. Most standard industrial leases include provisions that state what type of notice should be served in particular circumstances. The lease should also provide the manner in which the notice must be served. Generally, a landlord will not need to employ the services of a professional process server or a marshal to serve the initial notice to quit. Serving the tenant personally is always acceptable and often the lease allows for service via mail (certified or registered may be required). A copy of the notice should always be posted in a conspicuous place on the property when using service by mail.

2. If the default is not cured by the expiration date in the Notice, the next day a Unlawful Detainer suit (the legal procedure for eviction) may be filed in the form of a Summons and Complaint with the court of local jurisdiction. The Summons and Complaint is then served on the tenant giving notice that the suit has been filed and what the basis of the suit is. Service should be done by a professional process server or marshal.

In any case, service may not be done by anyone who is a party to the action (i.e. owner, manager, agent, etc). The tenant must be served personally with the summons and complaint. If, after several documented attempts, the tenant cannot be served personally, the court, upon petition, will usually allow service by the post and mail method.

3. Defendants must answer the Summons to the Court within five (5) days of personal service (delivery). Note that if the Summons is not personally served to each Defendant, the Defendant has 15 days from the date of being

served to respond to the Summons in front of the local court.

4. If the tenant does not answer the Summons, the court will award a Default Judgement for Possession and a writ of possession from the clerk of the court which will be delivered to the tenant by the marshal or sheriff (at this point the tenant's options have expired).

5. The marshal posts a five (5) day warning notice on the door of the tenant's business to allow him to vacate the property (it's likely the marshal will make sure that the tenant is clearly aware that if the tenant is on the premises at the time of lockout, he can be jailed by the marshal).

6. The marshal or your attorney will notify the landlord of the lockout date. The landlord should schedule a locksmith to meet him and the marshal at the property to change the locks on the day of the lockout. (the marshal is present to insure that conflicts do not occur at the time of eviction.)

Once They Are Out

If your tenant has left personal property on the premises, as a rule, you cannot use them as if they are your possession. Usually the law requires that:

a) The landlord must store the property, at the tenant's expense, for at least 15 days following the lockout. The property may be removed from the premises and put into storage. The landlord should arrange times which are mutually convenient to the landlord and tenant so that the tenant may retrieve the property.

b) If the tenant leaves personal property on the Premises after the 15th day, and it is determined that the property is collectively worth more than \$300.00, then the landlord must

arrange for the items to be stored until such time as the landlord can hold an auction to sell them off. (In cases where the property is worth less than \$300.00, the law will allow the landlord, after the 15th day, to dispose of the personal property, take ownership or sell it and keep the proceeds).

Also, remember that the landlord must notify the tenant within 21 calendar days (unless the lease states otherwise) of taking possession, regarding how the Security Deposit will be used (applied to late fees, past due rent, legal costs, costs for cleaning the building, etc.) and return any unused portion. Failure to provide the tenant with an accounting of the Security Deposit may result in a forfeiture of the entire amount of the deposit back the tenant, and in some cases, additional monetary damages may be imposed on the landlord.

Become familiar with your basic rights as a landlord so that the moment that your tenant is not in compliance with the terms of the lease, that you can immediately step in to rectify the violation and minimize the degree to which you, as the landlord, will be damaged. The process is more time consuming than difficult ... just get it started immediately.

Often, the result of strict enforcement of the terms of a lease is a history of timely rental payments and fewer disputes with your tenants.

Stan Mullin is a Senior Vice President in the Newport Beach office of Grubb & Ellis, with a focus on corporate real estate. He is also Vice Chairman of the Editorial Board of the Society of Industrial & Office Realtors ("SIOR") in Washington, D. C. You can learn more about his firm and the SIOR by looking up www.grubb-ellis.com and www.sior.com, respectively.