

ANATOMY OF AN EVICTION ACTION

**By: Bradley S. Dornish, Esquire
Dornish & Scolieri, P.C.**

When a Tenant has violated the terms of lease in Pennsylvania, it is important that the Landlord quickly begin steps for eviction as the law protects those who are vigilant and hurts Landlords who sit on their rights.

I. NOTICE TO VACATE

We recommend that when rent is not paid within thirty days or other conditions of the lease such as pet clauses, maintenance, or payment of utility bills are not honored, then a notice of eviction substantially the form attached should be sent. Note that a tenant by a lease may waive notice or shorter notice periods may be set. If no notice is set and notice is not waived, a lease up to one year requires 15 days notice to vacate and a lease for more than one year requires thirty days for breach of terms other than failure to pay rent. For failure to pay rent on demand between April 1 and August 31, ten days notice is required. Between September 1 and March 31, 30 days is required. After the expiration of the notice or if no notice is required, a Landlord and Tenant complaint should be filed with the District Justice in the district in which the property is located.

II. FILING OF COMPLAINT

The complaint should be substantially in the form attached, and should separately itemize your claim for the tenant's damage to the property, which we recommend that you support by getting a contractor or handyman's bid after inspection. You should also itemize damages for unjust detention of the property meaning that the tenant has held over after the expiration of the notice to vacate. This amount if available should be specified in your lease.

You should indicate the amount of rent remaining due and unpaid on the filing date of the

complaint and calculate the amount of rent per month or per day thereafter.

The District Justice is to issue a summons requiring the tenant to appear within 7 to 15 days after filing the complaint. Most district justices will set a 15 day hearing to allow time for service of the complaint on the tenant and an opportunity for a tenant to respond. Note that the form of the notice to the tenant of his or her rights has been changed and you should use the new District Justice complaint form and not the old form.

In reviewing your complaint, you should review your lease to determine if any collection fees, late fees or other charges are able to be demanded under the terms of the lease in addition to the items specified. You should fill those in as other claims on the complaint form. You should also make sure that your complaint requests possession. This is not automatic.

III. HEARING

At the District Justice hearing, you should have at least the original and two copies of the lease, your records of payment of rent received from the tenant as well as security deposits and your calculation of rent due. You should also have estimates for any damage to the property and a calculation of any other damages such as collection fees, damages for unjust detention or other items permitted under the lease.

You should have copies of your notice to vacate if required and be able to refer the District Justice to the paragraph in your lease which waives notice if you are proceeding under that section as well as paragraphs referring to late fees, collection charges or other items recoverable.

IV. JUDGMENT

After the hearing assuming you have won either or both money and possession of the property, the District Justice should enter judgment within three days of the hearing. You need to

make sure that the judgment is on the form attached and that the District Justice separately itemizes the amount of rent per month, the amount of rent in arrears, damages for unjust detention, if any, damages to the property and grants possession either definitely or if the money judgment is not satisfied by the time of eviction.

The landlord has to wait ten days on a residential lease and fifteen days on a commercial lease before proceeding for possession.

V. ORDER FOR POSSESSION

After the ten or fifteen day period is provided, the Order for Possession should be requested on the form attached. Note that the landlord now has to mail the order for possession to the tenant by first class mail and have the constable or sheriff serve it. The constable or sheriff must serve within 48 hours after they receive the order, and the order gives a residential tenant 10 days to vacate, commercial tenants 15 days to vacate after the date of service of the notice.

Two days after service of the notice, the landlord should contact the District Justice to make sure that service has been effective.

VI. APPEALS

Note that the tenant has 10 days to appeal judgment for possession on a residential lease unless the tenant persuades a judge for good cause shown to allow a later appeal to be filed. None the less, the tenant has thirty days to file an appeal for money damages. The same time periods apply to a landlord who has lost on possession or on money damages.

Filing of an appeal on a money judgment is still an automatic supersedeas preventing the landlord from executing on that judgment. However, on a judgment for possession, the tenant must deposit with the Prothonotary an amount equal to the lesser of three months rent or rent actually in

arrears on the date of filing the appeal in order to remain in the property and thereafter must pay an additional months rent every thirty days in order to remain in the property. If the tenant fails to make payments on time, landlord should file with the court a motion to strike the supersedeas. At this point, we recommend the involvement of an attorney; however, if you try to do this yourself, you should contact the court for instruction on how to schedule a motion and an appropriate form for the motion. This will vary from county to county.

At any time during the appeal, the landlord can apply for release of money paid into court and get compensated for the value of the tenant's actual possession of the premises. Once money is paid into court and the tenant has remained in the property, each month the landlord should petition for release of that money to enable the landlord to continue to pay his or her bills during the pendency of the appeal.