

QUESTION OF THE MONTH

How can landlords avoid pitfalls when litigating against commercial tenants?



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Deciding to litigate against a commercial tenant that owes rent can be daunting. There is a minefield to cross between filing the lawsuit and obtaining an eviction or a judgment for the amount owed. It is best to be up to date and knowledgeable of the state and federal law, but the following can provide a starting road map:

Be aware of changes in the law

There are many requirements for a commercial eviction that a landlord must meet, and the list of

requirements is always growing. The Housing Stability and Tenant Protection Act of 2019 (HSTPA) is one example. This law affects residential and commercial tenants and has created a gray area for commercial landlords to navigate when a tenant has not paid rent.

Under HSTPA for residential evictions, it requires that the landlord send the tenant a notice to pay the owed rent in five days before filing a lawsuit. For commercial evictions, the courts have not yet clarified whether the landlord must send the notice.

This has opened the door for commercial tenants to argue that the landlord did not properly send the tenant the five-day notice and

request the court to dismiss the matter altogether. The tenant could even make this request at trial, potentially resulting in the case being dismissed and the landlord having to file a new case all while losing valuable months of rent.

Be careful in meeting requirements—new and old

In New York, there is a longstanding requirement that a landlord send a “notice to quit” with fourteen days’ notice to the tenant before the landlord files an eviction action. This requirement applies to commercial tenants.

A clever landlord may think to save time by combining the notice to pay the owed rent in five days (the HSTPA’s required notice) with the fourteen-day notice to quit, but this poses another gray area. In that situation, a court could end up finding that the notices were deficient, and that the landlord has to start over with new notices and then file a new lawsuit.

Don’t overlook the basics

Once the court has assigned a hearing date for the matter, it is crucial to properly serve a copy

of the petition documents on the tenant. There are several ways to serve the documents, and those ways may include personal delivery of the documents to the tenant, posting a copy of the documents to the leased space or sliding a copy of the documents under the entrance door.

Regardless of how the landlord chooses to serve a copy of the petition on the tenant, the key is that the service occurs between ten to seventeen days before the hearing date that the court set. If the landlord fails to serve the tenant during that timeframe, the matter is virtually guaranteed to be dismissed.

Another landmine that landlords have to avoid is the requirement that within three days of service of the petition documents on the tenant, the landlord must file with the Court proof of that service. And if the landlord does not do this? Case dismissed.

If the landlord has done everything right and the hearing date comes and the tenant does not appear, the landlord finally

obtains its judgment against the tenant. However, if the tenant appears and answers the petition, then a trial is set, and the parties will have to present their proofs to the judge. It is at that point that the landlord has cleared all the procedural hurdles and the substance is all that is left.

Litigating any matter can be difficult but having experienced counsel at your side can have impact.

Partner with experienced counsel

Litigating any matter can be difficult but having experienced counsel at your side can have impact. With the law always evolving, such as with the HSTPA and courts applying it to commercial evictions, it is crucial to have attorneys working for you that know how to navigate the system and increase the chances for success.

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