



Preventing Evictions: An Overview of Housing Court Procedures

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Presentation to the Bronx Health Housing Consortium

The Brook Supportive Housing Residence • 455 E. 148th St at Brook Avenue • Bronx, NY 10455

June 6, 2017

3:00 – 5:00 p.m.



Training Goals

- Overview of housing court proceedings
- Share best practices for helping navigate housing court and avoid eviction
- How to obtain legal assistance and advice for tenants in housing court
- How to get rent arrears assistance



New York City Housing Court

- Housing Court a division of the New York City Civil Courts, special focus on housing conditions, and landlord tenant disputes
- There are Housing Courts for each of the five boroughs
- The Bronx Housing Court is at:
1118 Grand Concourse, Bronx, NY 10456
- In the Bronx the NYCHA Public Housing cases are heard in Part A which is in the basement of the Bronx Supreme Court Building at
851 Grand Concourse, Bronx, NY 10451

No Self Help Eviction in NYC

- A person who has a written lease, or has lived in an apartment in NYC for a least 30 days cannot be removed from their apartment without due process of law through a court proceeding.



Housing Court Proceedings are Summary Proceedings

- Expedited scheduling
- Limited discovery
- In theory limited adjournments
- Limited jurisdiction over legal issues



Legal Representation in Housing Court

- There is currently no right to counsel in housing court (though there is going to be expanded access to attorneys for tenants coming soon)
- Landlords that are corporations must appear with an attorney and cannot appear *pro se*
- The vast majority of landlords have lawyers
- The vast majority of tenants do not have a lawyer and instead appear *pro se*
- There is a real power imbalance between pro se tenants and represented landlords so the more information tenants have about court process and rights the better off they are.

Two kinds of Housing Court Eviction Proceedings

- Non-payment – Landlord is seeking to collect unpaid rent
- Holdover (HO) – Landlord is seeking to regain possession of the apartment for some reason other than unpaid rent



Other Types of Housing Court Cases

- Housing Part (HP) actions – Tenant or occupant sues the landlord to get repairs in their apartment or to stop landlord harassment – can only get repairs, cannot get an abatement or reduction of rent
- Illegal lockout proceedings – Tenant or occupant sues the landlord or another tenant for illegally evicting them from the apartment, or “constructively evicting” them by creating conditions that make the apartment unlivable

Going to Housing Court

- Court rooms open at 9:30 for the morning calendar – tenants may need to get there early because there are often long lines to get in later. Courts close at 1:00 p.m. and reopen at 2:15 p.m.
- Go prepared for it to take all morning and possibly all day – before tenants go they should eat breakfast, take medications etc.
- Tenants should try to get child care and plan to have someone pick up children from school if at all possible
- Tenants should bring lease, receipts – proof of payments, any notices from the landlord or the landlord’s attorney, letters showing that they receive Section 8 and what their share is, DHRC rent history, PA printout showing rent payment history and where rent was being sent
- Once tenant is in the court house they should go to the court room, find their case on the bulletin board in the hallway before entering and check in with the court clerk at the computer at the front of the court room

Danger of Default

- Tenants in particular must go to every court date if they do not have an attorney because if they do not appear they will be found to be in default (“defaulted”) and a judgment will be awarded to the landlord.
- Essentially, the landlord wins without having to prove their case
- In the morning if the tenant arrives after 10:30 a.m. you are in grave danger of being defaulted



Players in Housing Court

- Judge – An attorney who is appointed as a judge to make decisions in Housing Court cases
- Court Clerk – Usually at the computer in the court room – maintain court files, checks in the landlord and tenants
- Court Attorney – An attorney who works for the court/judge
- Court Officer – Works for the courts, maintains order in the court room
- Interpreter – Works for the courts, translates for the parties
- Attorney for the Landlord (Petitioner in a Non-Payment Case) – Attorney who represents the landlord's interests, works for the landlord
- Attorney for the Tenant (Respondent in a Non-Payment Case) - Attorney who represents the tenant's interests
- Petitioner – Party who started the case (Landlord)
- Respondent – Party responding to the case (Tenant)

Distinguishing Important Housing Papers

- Lease & Renewal Lease
- Rent Demand Notice
- Notice to Cure/Notice of Termination/Notice to Quit
- Notice of Petition and Petition
- Answer
- Stipulation or Order
- Marshal's Notice of Eviction
- Marshal's Notice of Possession



Commencement of an Eviction Proceeding

- Before starting a case the landlord has to give the tenant or occupant of the apartment the proper predicate notice to give the tenant or occupant the chance to avoid litigation
- To start the housing court case the landlord must serve and file a Notice of Petition and Petition (after they've given a predicate notice)

Predicate Notice in a Non-Payment Case is the Rent Demand

- May be in writing or oral unless it is required to be written by the terms of the parties' lease
- Lists the rent owed, and specifies the months for which the rent is owed
- Failure to serve a written rent demand where it is required by the lease is a defense to a non-payment case

The Landlord Starts the Non-Payment Case

- After serving the rent demand the landlord (usually through their lawyer) files a Notice of Petition and Petition (NPP) to start a Non-Payment Case
- The NPP must allege rent arrears due and the months for which those months are due
- The NPP must give the Respondent notice that a case is being started and that the Respondent must file an answer or a judgment of possession may be taken against them.
- The NPP must also allege among other things whether:
 - The parties have a written lease,
 - The apartment is governed by rent stabilization or rent control and validly registered with DHCR,
 - The tenant or apartment is a recipient of a Section 8 subsidy,
 - The apartment or building is governed by any other regulations that determine the rent or other rules governing the tenancy,
 - Whether the apartment is a multiple dwelling and validly registered with HPD

Tenant's Answer in a Non-Payment Case

- Tenant must go to housing court within five days to file their Answer to the NPP in order to get a court date
- If there is no answer = default judgment
- If there is no answer the landlord will not get a money judgment against the tenant, but will get a judgment of possession for the landlord and the tenant may be evicted, landlord may seek money judgment in civil court



Content of the Answer in a Non-Payment Case

- The tenant's Answer should raise all available defenses that apply:
 - Improper Service of the Rent Demand and NPP
 - Wrong party named either as petitioner or respondent
 - Wrong Address
 - Rent paid in full or in part
 - Incorrect rent amount
 - Conditions in the apartment
 - Section 8 or other subsidy
 - Landlord is seeking stale rent over a year old (laches)

“Holdover”

- The term “holdover” is used generally to refer to any summary eviction proceeding brought to evict on some basis other than nonpayment of rent.
- The grounds for the holdover arise from the lease, the regulatory status of the apartment, and the rights of the parties.



Start of a Holdover Case

- Before starting almost any holdover case the petitioner has to give the respondent the proper predicate notice to give the respondent the chance to avoid litigation
- To start the housing court case the landlord must serve and file a Notice of Petition and Petition – this notice will tell the tenant where and when they need to appear in court for their first court date

Predicate Notices in Holdovers

- Depending on the kind of holdover case, there are different notices that must be sent to a tenant before serving the Notice of Petition and Petition that starts the holdover
- Notice to cure – Required by lease or rent regulation. 10-day notice required for breach of lease cases where tenant rent regulated. Give notice of what the tenant must do to “cure” the specific lease violation and by what date, and the consequences of failing to cure. If served by mail add 5 days for mailing.
- Notice of termination– Required for all rent regulated tenancies and Section 8 tenancies; whenever ending the tenancy before the end of the lease OR where the lease requires the notice. Timing of notice specified by statute. E.g. 15 days for non-renewal of lease, 7 days for nuisance, violation of substantial obligation of tenancy refusal of access. . .
 - Not required at the end of a lease term in an unregulated tenancy but if the landlord accepts rent after the end of the lease term, month to month tenancy created and landlord has to provide 30 day notice of termination
- Notice to quit – Required in cases where there is no landlord tenant relationship, 10 days before serving the Notice of Petition & Petition E.g. licensee, squatter, remaining family member (not required in case of a former employee of the LL who occupied apartment as condition of employment)

Predicate Notice Defenses

- If a notice is required but was not served or was improperly served this is a basis for dismissing the case.
- If it doesn't give enough information to the tenant to let them know what they need to do to cure and by what date, the notice is defective and is a basis for dismissing the case. The Petitioner can't amend the predicate notice after the fact, they have to start over with an adequate notice.
- There may be other defects in the notice that a lawyer would be able to identify. It is a great source of procedural defenses.

Holdover Notice Of Petition

- Tells tenant court date and where the courthouse is located and the courtroom in which the case will be heard
- Should also reference the predicate notice and what the basis for the holdover is
- Has to seek “Use & Occupancy” to collect payment from the tenant for use of the apartment.
- Tenant’s Answer can be done in court before the court date or, in most cases, up to the trial date

Important Questions in Holdover Cases

- Is there a landlord tenant relationship?
- Is there a lease?
- Is the tenancy rent regulated or rent subsidized?
- Has the landlord accepted rent between when the tenancy ended and the filing of the housing court case?
- For an unregulated tenancy has the landlord accepted rent after the end of the lease term?



Types of Holdover Cases

- Breach of Lease – Tenant is breaking one or more terms of the lease
- Nuisance Behavior – Tenant is behaving in a way that includes noise, cluttered apartments, pets, inappropriate or criminal behavior
- End of a Month to Month tenancy
- Landlord wants the apartment for some other purpose
- Holdovers where no Landlord Tenant Relationship Exists

Adjournments

- An adjournment is a rescheduling of a housing court case to another, later date.
- Party seeking the adjournment must ask for it and articulate a valid reason for why the adjournment is needed
- Reasons for requesting an adjournment
 - To get an attorney
 - For the landlord to provide a zero balance rent breakdown
 - To get an HPD inspection of conditions in the apartment
 - To subpoena records from HRA, NYCHA, HPD or other entity or agency

Alternatives to Personally Appearing in Court

- Affidavit on Non-Availability
- Power of Attorney (POA)
- Guardian Ad Litem (GAL)
- Having an attorney



Resolution of a Housing Court Case

- Dismissal based on a legal defense – unusual where tenant does not have an attorney
- Stipulation of settlement – agreement between the parties as to settlement of the case
 - Most cases are decided this way
- Decision after Trial



Negotiating a Settlement

- The tenant can speak with the attorney for the landlord to attempt to settle the case and enter into a stipulation of settlement
- Do not get confused! The landlord's attorney represents the interest of the landlord, and is **not** a tenant's friend.
- Unless the tenant fully agrees with and understands what the landlord's attorney is proposing in the stipulation the tenant should not sign it. The tenant can discuss it with the court attorney first.
- If the rent that the landlord is trying to collect is too high, or the tenant doesn't owe it, the tenant should ask to adjourn the case to get proof and/or to meet with an attorney to advise them.
- If the tenant has conditions in their apartment, they should make sure that the landlord is making the repairs required by the housing code.
- If the tenant can't agree on terms with the landlord's attorney, or they don't want to speak with the landlord's attorney, the court attorney who works for the judge will have a case conference with the parties and try to help them settle the case.

Non-payment Stipulation of Settlement Terms

- Can include amount of rent due, repairs, date for payment of arrears, judgment
- Critical terms used in stipulations of settlements in non-payment proceedings:
 - Final judgment
 - Stay on issuance/execution of warrant
 - Default
 - Order to show cause (OSC)
 - Non-possessory judgment
 - Severance of claims
 - Payout
 - Acceleration of Rent Clause
- The Court Attorney and then the Judge should review the stipulation with a *pro se* tenant to make sure the tenant understands the terms of the agreement they are signing before finally accepting the stipulation

Terms in a Holdover Stipulation of Settlement

From tenant's point of view

- **Avoid:**
 - A final judgment
 - Admitting any of the allegations in the notice to cure, notice of termination and notice of petition and petition
 - Permanent exclusion
 - Unannounced visits by the landlord
- **Seek**
 - As short a probation period as possible
 - Landlord has to prove a course of conduct not just a single violation of the agreement before they can bring the case back to court.
 - Immediate restoration of the tenancy at the end of the probation period.

Watch for these terms

- Probationary period – time when the respondent has to comply with the stipulation before their tenancy is fully restored
- Judgment of Possession – Gives the landlord right to regain possession of the apartment
- Stay on issuance/execution of warrant – stops or delays the eviction process
- Default – a party fails to comply with the terms of their stipulation
- In the event of default – what happens if the stipulation is violated
- Vacate/ surrender apartment
- Broom clean condition



Trial

- Opportunity to litigate defenses that the landlord will not consent to in a stipulation
- Burden of proof
 - Landlord must prove everything alleged in the Petition
 - If the landlord does this, then the tenant has to prove any affirmative defenses
- Limited time after trial for payment of any arrears

Final Judgment

- Gives the landlord a judgment against the tenant that usually includes a money judgment and a possessory judgment
- A money judgment permits the landlord to collect the amount agreed on by the parties or ordered by the court
 - If the tenant pays the judgment amount before the pay date or before an eviction is completed, usually the landlord will accept the payment or a court will direct the landlord to accept the payment and vacate the possessory judgment.
 - When a money judgment is satisfied the landlord should issue a satisfaction of judgment providing proof that the money has been paid.
- A possessory judgment permits the landlord to regain possession of the apartment and evict the tenant but it is usually stayed for a period time to permit the tenant to pay the arrears due or to vacate the apartment.
- A judgment remains on a credit report for seven years, even after it is paid.

Warrant and Marshal's Notice of Eviction

- Once the landlord has a final judgment s/he can apply to the court for the issuance of a warrant of eviction
- A warrant is issued to the City Marshal selected by the landlord for execution
- The City Marshal then issues a Marshal's Notice and serves it on the tenant
- The Marshal may evict the tenant(s) on or after the 6th business date on the Marshal's notice
- Tenants can call the Marshal's office to find out if they are scheduled for eviction, but should beware that on or after the 6th business day, if the Marshal's office says the tenant is not scheduled for eviction or is scheduled for eviction on a particular date, may be subject to change, and the eviction will still be legal

Stopping an Eviction – The Order to Show Cause (OSC)

- Ex Parte Motion directly to the court
- Gets Respondent back into court to stop an eviction, or to resolve some other problem in the case
 - Need more time to move or get rent arrears money together
 - LL didn't make repair per stipulation
 - Mutual or unilateral mistake of fact in the parties' agreement
 - Missed court date or other default
 - Illegal Lock Out

Filing an OSC

- Tenant goes in to Bronx Housing Court Room 230 to file an OSC on or after date when the stay of the execution of the warrant of eviction has expired
- Should take to court a pen and copies of:
 - Last stipulation or court order
 - Marshal's notice of eviction if any
 - Proof of payments made since the last court date
 - Copies of money orders made out to the landlord and available for payment
 - Proof of pending application or approval for rent arrears grant from HRA or charity
 - Other documents that support request for additional time to get the monies together or request for additional time to move
- OSC will usually be sent to the judge in the court part where the case was settled and the tenant will be sent to that court room to wait for the judge's decision
- If the judge grants the OSC the tenant must serve the City Marshal and the landlord's attorney as directed by the court in its order. On the return court date the tenant must show proof that s/he served the OSC papers properly.
- If the judge denies the OSC the tenant should read the denial carefully to see if they can find out why it was denied so that they can remedy any defect and resubmit the OSC.

Eviction – Importance of Planning

- If an OSC is denied the tenant needs to have Plans A & B
 - Plan A – Preventing the eviction
 - Seek emergency legal assistance
 - Immediately develop a solid plan to pay arrears
 - Call City Marshal to refer to APS if there is a disabled adult in the household
 - Plan B – Preparing for an Eviction
 - Go Bag - Important documents, medicines, irreplaceable items like photos etc.
 - Plan for a place to stay and for storage of property



Post-eviction Orders to Show Cause (OSC)

- Even after an eviction a tenant can file an OSC seeking to stay reletting (rerenting) of the apartment because:
 - They have the arrears money (or almost have it) and want to be restored
 - They need to get into the apartment to get their things



Tips for Getting Rent Arrears From Any Source

- Must show future ability to pay the rent
- Have current month's rent & plan for future rent
- Reasonable explanation for how they fell behind and that it will not recur
- Plan for getting to a zero balance
- Sympathetic facts
- It is extremely helpful if you can help a tenant to put together an organized, complete, persuasive rent arrears application and provide a cover letter setting out the favorable facts of their case
- It is essential to follow up regularly with HRA or the charity to make sure that the application does not fall through the cracks



Arrears Money Available for People Receiving Public Assistance (PA)

- **Unpaid shelter and stale shelter checks** – This is money that PA has already issued on behalf of the tenant that the landlord hasn't received or hasn't cashed. The tenant is entitled to have this money paid to the landlord.
- **FEPS** – (Family Eviction Prevention Supplement) Family with a minor child, at least one open PA shelter case in the household, monthly rent and rent arrears within FEPS limits, tenant must seek a FEPS provider to submit the application
- **City FEPS** –
 - Applicant Arrears – Arrears owed at the time the person applied for PA
 - Excess Rent and Duplication of Rent – Rent arrears that have accrued during the time tenant was getting PA shelter payments.
- **SEPS** – Adult only household
 - **Prior shelter**
 - **DV survivor**
 - **Risk of eviction and military service**

Arrears Money Available From HRA for People Not on PA

- EAF “Emergency Assistance to Needy Families with Children”
- EAA “Emergency Assistance to Adults” – households with SSI
- ESNA “Emergency Safety Net Assistance”
- Exception to Policy Grant
- HASA



Other Government Sources of Rent Arrears

– HomeBase

– Foster Care Rent Subsidy



Charities

- **Emergency Rent Coalition Hotline**
212-962-4795
- Catholic Charities - (212) 419-3700
- Federation of Protestant Welfare Organizations (212) 801-1350
- Bridge Fund (a loan not a grant, for working poor – go through Housing Ct. Answers Hotline 212-962-4795)
- Coalition for the Homeless - (212) 776-2047
- Part of the Solution (POTS) (718) 220-4892



Charities

- Use when tenant has been denied HRA grant/loan or when HRA unwilling to pay the entire arrears.
- Start with the Emergency Rent Coalition Hotline
- Build and maintain contacts
- Each charity has its own forms and process



Legal & Other Resources

- Legal Representation
 - Legal Aid Society/Housing Help Program/ Assigned Counsel Project – Bronx Housing Court Rm 250 and Rm 540, 1118 Grand Concourse,
 - Legal Services NYC – Bronx - Bronx Housing Court Rm 370, 1118 Grand Concourse Ph: 718-928-3700
 - BOOM!Health Legal Advocacy 718.295.5605 or www.boomhealth.org
 - NAICA – FEPS applications Suite 1B, Bronx, NY, 10452 or Basement of Bronx Housing Court Located at:1118 Grand Concourse
 - POTS – 2759 Webster Ave., Bronx NY, 10458 Ph: 718-220-4892
 - Bronx Defenders – 360 E 161St St., Bronx, NY 10451 Ph: 718-838-7878



Legal & Other Resources

- Legal Information
 - Bronx Housing Court Resource Room - 250
 - Housing Court Answers – Lobby of Housing Court
 - Law Help - <http://www.lawhelpny.org/>
- APS – Elderly tenants facing eviction
- Coalition for the Homeless
 - www.coalitionforthehomeless.org
 - Rental Assistance/Eviction Prevention Programs