

Top 5 Disputes Between Landlords & Tenants

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- 1. Tenant's Violation of Town / Village Code:** Noise violations, occupancy limits and parking issues can cause a landlord to find himself in Town or Village Court facing a citation but through no fault of his own. All it takes is an annoyed neighbor's complaint and the Code Enforcement will be knocking on the door to the landlord's rental property. Moreover, a tenant has legal authority to invite Code Enforcement officials into the dwelling where they can find more structural violations of the Code at the property. Not only will this result in a waste of the landlord's time and money (i.e. fines), but the landlord lacks the requisite control to remedy the situation, which is often required by the prosecuting attorneys in order to make a plea bargain. So, a landlord will be left with the only option of pursuing an eviction proceeding against the tenant. Hopefully the landlord had a lease that provided that compliance with local laws was a substantial aspect of the tenancy. Better yet, savvy landlords will include a liquidated damages provision in their lease (i.e. predetermined monetary damages agreement) to adequately compensate the landlords for their time and costs in appearing in Town/Village Court, including attorneys' fees, fines and the like.
- 2. Damage to Property:** Upon retaking possession, landlords often find their couches ripped, the floor stained and the appliances broken. Not only is the security deposit typically insufficient to cover the damage, but tenants often insist that the current condition of the property was substantially the same condition as when they first took possession. Smart landlords should have insisted on baseline pictures of the property that were dated and countersigned by the landlord and tenant so that both could dispositively establish the condition before and after the tenancy. Regardless, the landlord is now required to bring a lawsuit, but this lawsuit must be brought in Supreme Court because a summary proceeding in Town/Village Court (aka eviction proceeding) is only available while the tenant remained in possession of the property. So, now the landlord is stuck in a drawn-out lawsuit without dispositive proof as to the baseline condition of the property. In this scenario, savvy tenants may even be able to recover their security deposit by using the General Obligations Law as a sword. Simply, a landlord who either commingled the security deposit with his own money or does not expressly notice the tenant with the identity of the banking institution where the tenant's money is located will have to return the money irrespective of the damage to his property.
- 3. Non-Payment:** Base rent is obviously owed, adjusted rent for percentage-based annual increases can be confusing, but determining responsibility for additional rent can be impossible. At the end of the day, third-party providers will track down the landlord for payment of property improvements even if the landlord had no knowledge that the tenant contracted for the services. Think repairmen, pool maintenance, landscaping, resurfacing tennis courts and the like. Even mundane needs, such as utilities, cesspool service and garbage disposal, can create conflict. However, only items identified in a lease as "rent" and "additional rent" can be recovered in a non-payment proceeding in Town/Village Court while other missed payments will require a Supreme Court action for breach of contract and/or indemnification/contribution from the tenant for monies paid by the landlord to third-party providers. Before going into battle with a tenant, a savvy landlord will review his lease and notice the tenant through a properly drafted Predicate Notice of the specific item left unpaid and the provision of the lease requiring payment. Often, articulating responsibilities in black and white in a lease is all that is needed to avoid a lawsuit between a landlord and tenant.

4. **Holdover After Lease Term:** Think a landlord always gets his property back at the end of a lease term? Think again. If the tenant doesn't leave voluntarily, the act of changing the locks can turn the landlord into a defendant in a lawsuit for self-help eviction, which calls for treble damages by statute against the landlord. If the tenant doesn't leave, a savvy landlord will not accept any money from the tenant post-lease termination and instead will quickly commence an eviction proceeding. Conversely, a sharp tenant knows to send a check right after the tenancy expires and when the landlord accepts such money, the tenancy automatically turns into a month-to-month tenancy, which requires a one-month notice before the tenancy can be terminated and an eviction proceeding commenced thereafter. Generally, tenants can buy themselves another two to three months in the property from this simple trick.
5. **Jurisdiction of the Court:** The most common, and perhaps most important, landlord/tenant dispute does not concern the substance of the tenancy but instead whether the landlord brought his claim against the tenant in a procedurally correct manner. There are two procedural issues that are generally before the Court when an eviction is sought. The first concerns service of a document called a Predicate Notice and the second concerns service of the Petition, which is the document that commences the actual lawsuit. If there are disputes as to the service of the Petition, a special hearing, a Traverse Hearing, will be held in advance of the actual landlord/tenant case. In contrast, issues with respect to the Predicate Notice are addressed in the actual landlord/tenant case.

So, our court system addresses the thing that must happen second first and the thing that must happen first second. Predicate Notices, required if a term of a lease is violated and there is a cure provision in the lease, are used when there is a non-payment and when a landlord wants to terminate a month-to-month tenancy. In both a Predicate Notice and a Petition, disputes can concern the content of the documents, how the documents are served on the tenant, when those documents are served on the tenant (i.e. they can't be too early or too late before the hearing date for the Petition or after the tenant's breach for the Predicate Notice), and even issues that arise when the person who signed the documents is not the proper party (i.e. landlord's attorneys or agents who are unknown to the tenant cannot sign and a landlord who was not the original landlord to the lease must establish his authority through documentation accompanying the Petition and Predicate Notices if not already known to the tenant). Savvy tenants know to dispute every aspect of the service of everything. Plus, these tenants understand the value in making the case about how the landlord didn't observe the required procedures instead of a case about the tenant wrongfully possessing the landlord's property.

Adapted from this [Dan's Papers Article](#).