

Landlord Woes –

What to do when a tenant does not pay rent

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Landlord-tenant disputes are surprisingly common. Most of the time, the dispute begins with a tenant who defaults on rent, and the landlord is then put in a position of deciding whether to take formal steps to recover the rent, or perhaps even to terminate the lease.

In this article we will set out various types of solutions available to landlords, and the circumstances in which each one is most suitable.

Solution 1: Writ of Possession

As its name suggests, a Writ of Possession allows a landlord to recover vacant possession of the rental premises. A Court-appointed bailiff will attend at the premises and require the tenants to leave the premises.

This solution is most suitable for a landlord who has already decided to terminate the lease, and wishes to cut its losses by having the tenant vacate the premises as soon as possible. While changing the locks seems like an easier and cheaper solution, this is not advisable if the tenant is still occupying the premises, or if the tenant's belongings are still in the premises. Doing so can expose the landlord to civil liability for false imprisonment or for damage to the tenant's items.

Where a tenant refuses to vacate the premises, or where the landlord is unsure if the tenant has abandoned the premises, the Writ of Possession is most effective in enabling the landlord to regain access to the premises via legal means.

If a landlord only wishes to recover unpaid rent, but is willing to let the tenancy continue, a Writ of Possession will not be applicable. This brings us to the next solution.

Solution 2: Writ of Seizure and Sale

A Writ of Seizure and Sale is useful where a landlord wishes to recover unpaid rent.

In this instance, a Court-appointed bailiff will attend at the premises, seize items of value, and sell these items at an auction. The auction proceeds can then be used to repay the landlord. Depending on the value of the items and the amount of rent outstanding, the landlord may or may not recover a substantial amount of unpaid rent.

Often, a Writ of Possession is applied for together with a Writ of Seizure and Sale in order to allow a landlord to recover vacant possession of the premises as well as to recover unpaid rent.

If a landlord is willing to let the lease continue, and simply wishes to recover unpaid rent, the landlord can apply for a Writ of Seizure and Sale alone. Alternatively, the landlord can consider the next solution below.

Solution 3: Writ of Distress

Like a Writ of Seizure and Sale, a Writ of Distress allows a Court-appointed bailiff to attend at the premises and seize items of value. If the tenant does not pay the outstanding rent and all other fees associated with the Writ of Distress within 5 days, the bailiff will sell the items at an auction. The auction proceeds can then be used to repay the landlord.

This option is only applicable to a landlord who does not intend to terminate the lease, but wants to recover unpaid rent.

Pre-solution Steps

Before taking any of the steps above, a landlord should obtain a Court judgment stating what reliefs the landlord is entitled to. These reliefs include payment of the unpaid rent, or recovery of vacant possession of the premises.

Depending on which steps the landlord chooses to take, the landlord may also need to seek leave from the Court before applying for any or the above Writs.

As the application for the various Writs can be rather technical, we suggest that a landlord seek legal advice in order to ensure that all procedural requirements are met and that recovery can take place smoothly.

Other Considerations

In asking the question of which solution to employ, one of the landlord's considerations would be the remaining duration of the lease.

If a tenant defaults on his rent early in the lease, a landlord may wish to take steps to recover unpaid rent early, but may be willing to let the tenancy continue. In this instance, a Writ of Distress may be most appropriate.

If the landlord wants to cut its losses and avoid future problems by terminating the tenancy, a Writ of Possession is often most helpful, especially when coupled with a Writ of Seizure and Sale.

If only a few months are left of the tenancy, a landlord who prefers not to incur costs on legal proceedings may wish to wait it out rather than applying for a Writ of Possession, in the hope that the tenant will automatically leave the premises at the end of the tenancy. However, if the amount of unpaid rent is significant and exceeds the security deposit sum, the landlord may want to apply for a Writ of Distress to recover the unpaid rent in the meantime.

Where a Tenant Pays

At times, when faced with formal Court proceedings and the prospect of eviction, a tenant may decide to make payment of all unpaid rent and other costs incurred by the landlord, in order to avoid further proceedings. This can happen as late as after the landlord obtains a judgment stating that the landlord is entitled to vacant possession and repayment of rental arrears, or just before eviction.

The law provides that when a tenant makes payment of all such sums within certain stipulated periods of time, the landlord cannot continue taking steps to evict the tenant. For instance, the Writ of Possession provides for a 4-week period to allow the tenant to pay all outstanding sums and avoid eviction.

Conclusion

In the face of a defaulting tenant, a landlord will ultimately have to take into account various considerations in deciding what steps would be most suitable. This includes timing and the lease duration, how much the landlord is willing to incur in costs, whether the landlord is keen to take out formal proceedings, and whether there is a possibility that litigation can be avoided.

If you have any uncertainties as to the options available to you, and which would be most ideal in your situation, do seek advice from a lawyer.

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