**32 Eviction**

*This section describes the situations in which the owner can evict a tenant.*

**The Eviction Process**

All legal evictions must go through a court process. Although a landlord may tell a tenant that they must leave by a certain date or else the landlord will evict the tenant, no legal evictions can happen in New York State unless the landlord starts a court case. Once a court case starts, the eviction cannot happen until a landlord receives an official court judgement against the tenant. There are three ways that a landlord may get a judgment against a tenant:

1. If the tenant never appears in court, the landlord will win the case with a “default judgment”.
2. The judge may make a decision based on the facts before them.
3. A tenant may agree to a judgment against them as part of a court agreement with the landlord.

Once the landlord gets a judgment, the landlord can ask the court to issue a warrant for eviction to a sheriff or a marshal. It is the sheriff or the marshal that will carry out the actual eviction. Official tenants are not the only ones protected by this rule—that a landlord must go through a court process—if you have paid rent in the apartment or lived in the apartment thirty days or more, the landlord must go through the legal process. If the landlord evicts the tenant illegally, the landlord may be liable to the tenant for 3 times the tenants' damages. Tenants who think that they might be evicted are encouraged to seek legal aid.

**Housing Court**

In New York City, landlord/tenant cases are brought in housing court. Housing Court can hear only a limited group of cases:

* eviction cases by the landlord against the tenant
* cases to get the landlord to make repairs in the tenant’s apartment (this case is brought by the tenant against the landlord)
* illegal eviction cases

**Types of Evictions Cases**

Nonpayment Cases

The most common type of case found in housing court of **nonpayment cases**, where the tenant fails to pay their rent. The landlord’s goal in this type of case is get the tenant to pay the rent that they owe Before the case begins in court, the landlord must ask the tenant for the rent that the landlord claims is owed. That is called a **rent demand**. Whether or not that demand has to be in writing depends on whether a tenant’s lease requires notices to be in writing. How much time a tenant has to respond to the landlord’s demand will depend on what the lease says about the rent demand although three or five days is common. Item 17 entitled “Default” is the section of the original lease where this information is specified. If the rent demand does not have to be in writing, the landlord or the landlord’s agent must tell the tenant that the tenant owes rent and how much rent is owed.

Holdover Case

The second type of eviction case is called a **holdover case.** It’s called a holdover case because the tenant has held over after the landlord has given the tenant a termination notice. These cases are eviction cases that are not about the rent. Even if the tenant has paid all of the rent, the landlord is still asking the court to evict the tenant. There is one type of holdover that is about the rent and that is a case called a chronic **rent delinquency case**. In that case, the landlord is asking the court to evict the tenant because there have been many nonpayment cases brought against the tenant. Although rent is mentioned in this type of case, the landlord’s ultimate goal is the tenant leaves the apartment.

No Lease Case

The most common type of eviction case is a case brought because the tenant has **no lease.** In apartments that are not covered by rent regulation, once a lease is over, the tenant does not have the right to remain and a landlord can bring a case to evict the tenant. The landlord does not have a give a good reason to evict the tenant. *However, if the tenant lives in regulated housing, the landlord must have good cause to evict the tenant.*

Good cause to evict a tenant means that the tenant has broken their lease agreement or are causing a nuisance.

Common examples of a tenant breaking their lease agreements include:

* You do not live in the apartment as your primary residence
* You have a pet in violation of your lease (see annotation #27 on the Annotated Lease)
* You sublet your apartment without permission
* You have a washing machine and the lease prohibits a washing machine

Common examples of nuisance include

* An apartment with a lot of clutter
* Noise
* You have a history of paying your rent late and your landlord has brought you to court for nonpayment of rent on many cases
* There is a continuing course of objectionable conduct by the tenant or someone who lives with the tenant or the tenant’s guest
* Illegal activity in the tenant’s apartment

In any of the above mentioned cases, the landlord must notify the tenant before the landlord begins the case in court. If the case is a breach of lease case, the landlord must give the tenant a notice to cure and give the tenant a chance to fix the problem or “cure” the breach. If the landlord thinks the problem has continued, the landlord will then bring a notice of termination and give the tenant notice that the landlord as terminated the tenant’s tenancy. However, even after the termination notice, the landlord must still go to court. Item 17 entitled “Default” is the section of the original lease where this information is specified .

In some unusual cases, the landlord must notify DHCR of their intent to evict a tenant before they can legally begin the court proceedings. For example, it the landlord wants to demolish the building.