

Cheat Sheet: Negotiating with Landlords in Nonpayment of Rent Eviction Cases

Goals of Negotiations with Landlord in Nonpayment of Rent Evictions Cases

- A. First, need to figure out what the client wishes to do.** The goal of the negotiation will be drastically different if the client simply needs time to move compared to if the client wishes to stay and does not have anywhere else to go. Must discuss client's goal with client first before starting negotiation. First question I always ask client is do you want to try to stay or do you simply need more time to move?
- 1. Answer 1: client wants to move** → the goal is to get as much time for move as possible.
 - Ask how long client needs to move?
 - Should client pay anything for extended period to move?
 - Whether client pays any money during this time depends on client's ability to pay.
 - Offering to pay rent for the month that client is staying can also help influence the landlord to allow the client to stay longer.
 - **TIP:** Must balance the ability of client to pay the rent for the time period that client is staying compared to client's need to use this money to move to a new place. Generally, the need to pay rent at a new place outweighs the obligation to pay rent at the current place that client is moving from and client may make decision that money is better spent on down payment and security deposit at new place.
 - 2. Answer 2: If client wants to stay and LL is willing to let client stay**, then usually just a matter of working out a payment plan. See discussion on payment plans in training materials on agreements and stipulations.
 - 3. Answer 3: If client wants to stay but LL is not willing to let client stay**, then must figure out if client has any leverage in the case (see below).
 - Non-payment of rent cases are difficult, because if LL does everything correctly, then there is generally not a defense.
 - **Leverage 1: Demand for possession is invalid:**
 - Requirements for Demand for Possession or Notices to Quit:
 - 1) Must be written,
 - 2) Must give the tenant 10 days to pay the rent or cure the lease violation,
 - CO Executive Order: Any nonpayment demands issues from 6/13 to 7/13 (could be extended) requires 30 day period to pay the rent, not 10.
 - 3) Must specify the tenant's supposed lease violation,
 - 4) Must describe the property,
 - 5) Must state the time when the property has to be delivered to the landlord.
 - 6) Computing Time: The day of the violation or default does not count in 10 days, but weekends and holidays do. If final day is a weekend or holiday, then the next weekday is the end of the 10-day period.
 - 7) If defective notice, then case should be dismissed and landlord would have to start over. This would cost the LL time and money and thus provide leverage to the client.
 - **Leverage 2: Partial Payment**
 - Review if client has paid any money to the LL during the notice period and whether LL accepted the money. This could provide a waiver argument.
 - Any colorable argument that client can make that could force a trial could provide time and leverage to client in negotiations.

- **Leverage 3: LL gave more time to pay**
 - Review if LL has texted, emailed or given the tenant any other written communication about allowing tenant to pay rent late or extend deadline to pay rent past the notice period.

- **Leverage 4: Warranty of habitability issues**
 - Ask client about any possible habitability claims. This gets complicated with the analysis of whether proper notice provided, paying a rent bond, etc., but could provide some leverage if LL is touchy about property or has failed in any way to provide a habitable rental.

- **NO Leverage: BE NICE!**
 - Generally speaking be nice when talking with landlord, but especially if the tenant does not have any leverage. There is no point in being aggressive. Any smart LL, even a pro se LL, will simply say ok then let's have the court decide and if the notice is proper and rent is owed, then LL will win.

Different approaches (email v. phone)

- This relates back to the previous section about being nice. I always like to call LL first and make contact. I think this gives a personable aspect to the negotiations and lets LL know that you simply want to resolve this fairly
 - side note- LL may still be really mad about tenant not paying rent. Empathize and when proposing solutions address how they will result in LL being paid.
- After reaching out over the phone and if agreement is reached, then follow up with email and summarize and confirm the agreement. Ask for a response from LL confirming agreement and then draft stipulation (see training on drafting stipulations).
- Best to get a written agreement drafted and signed and filed with court so LL does not change mind.

Best Practices

- Know your position of leverage! Give LL a reason to want to work with tenant. If tenant can pay rent and catch up, then this is much more economical for LL than going through FED process.
- Good to talk first on phone, but confirm everything in writing, including specifics and details about agreement (will be discussed in stipulations section).