

EVICTION TRIALS — THE RULES OF COURT

by Amy N. Barnhouse
Attorney at Law

This article assumes that you filed your eviction at the right time on a good notice. Those issues will be dealt with in other articles. This article deals with only what you do in the event you were not able to settle your case and your tenant asks for a trial. This article also assumes that you have decided to represent yourself at trial. I strongly recommend that you hire an attorney to represent you at trial if the tenant has an attorney or is likely to hire an attorney. You are at an extreme disadvantage at trial if you are up against an experienced tenant attorney. If an attorney shows up on behalf of your tenant on the day of trial, ask the judge to set over your trial to allow you the opportunity to retain an attorney before the trial starts. In addition, I have received complaints from landlords who believe that the judge found against them solely because they were unrepresented at a trial. If you lose at trial and the tenant has an attorney, you will end up with the tenant remaining in possession of the premises and you will be responsible for paying the tenant's attorney fees and costs.

Eviction trials are less formal than other civil trials. However, it is a trial and you are in court. You will have more success if you play by the rules and offer your evidence in a manner acceptable to the judge. The first thing to keep in mind is that the court has a very short time to hear your case. The judge may have only two hours to hear three eviction trials. So, organize your evidence and present it in a concise manner.

In an eviction action, the landlord is the Plaintiff and the tenant is the Defendant. You put on your evidence first. After each of your witnesses testifies, the tenant has the opportunity to ask questions of your witness. You then can follow up with a very few questions of your own. You then call your next witness. You can call yourself as a witness as well. When you have presented all of your evidence, the tenant calls his or her witnesses and you get to cross-examine the tenant's witnesses.

Some keys to success.

1. You only want to ask questions that will help your case. Don't try to bully the tenant into admitting things that you know she will not admit. Ask only those questions you know the answer to and which the tenant has no choice but to admit. For example, "didn't you pay rent with an NSF check in June?" If you have the check, the tenant has to admit the bad check or blatantly lie on the witness stand. Either way, you win on that one.

2. Only testimony from live witnesses will be accepted. Affidavits or letters from witnesses are "hearsay" and are inadmissible. Each party is entitled to cross examine the other's witnesses. The court clerk can issue subpoenas for any essential witnesses. But, do not show up on the day of trial and ask for a new trial date because one of your witnesses did not show up.

3. You should have live witnesses testify to any important points. If you are evicting someone on a for cause notice and the issue is whether the tenant is disturbing other tenants with noise, you must have those other tenants at court to testify to the noise.

4. The court will want to know who, what, when, where and why. The court wants the facts, not your opinions. **Just the facts, ma'am.** What type of rental agreement do you have? How much is rent? When was the termination notice served and how? What was the termination date? If the notice is a for cause notice what day did the party start, when did it end, who complained, what did the tenant say. If you are evicting a section 8 tenant because her boyfriend is living there, you better be able to establish that he does his laundry there, parks his cars there, slept there every night during the time in question and moved in his personal belongings. Testimony that "he is always there" is not going to cut it.

5. Don't make overstatements. If you exaggerate, you will lose credibility. Instead testify to the facts that you have observed and have your other witnesses testify to what they have observed. Do not testify that Barbara Jones is "always noisy". Obviously, this is not true because she can't possibly be noisy when she is asleep or not at the apartment. Instead, testify as to dates and times at which she was noisy and how that noise disturbed the quiet enjoyment of her neighbors. Did the pounding wake up the people downstairs, can her neighbors hear her music over their televisions when they are turned up full blast?

6. Give examples. Testifying that the tenant is noisy does not convey the point that tenants three doors down were awakened at 2:00 am. Do the children pound on the floor so hard that another tenant's art work fell off the wall? Was she driving so fast that her wheels squealed when she turned the corner. Did your neighbor have to wear ear plugs and head phones and have a fan running to drown out the noise coming from your tenant?

7. Have all your documentation together and organized. If habitability is an issue, you will want to have all your receipts for repairs, photographs of your property, move in forms, a log of tenant complaints. Anything you want the judge to consider will have to be marked as an exhibit. I mark my exhibits first beginning with "Plaintiff's Ex. 1". After you mark the originals, make two copies of all exhibits. Give the court the original, keep a copy for yourself and give a copy to the other party. There is no rule requiring you to do this. But, it will keep your case moving, the judge will be impressed and everyone will have the same document in front of them.

8. In order to introduce an exhibit, you should have a live witness identify the exhibit. For example, "Exhibit 1 is the rental agreement signed by the tenant." Give the Exhibit to the court clerk and then tell the court, "I offer Exhibit 1." The court will then rule on whether the Exhibit is properly admitted. At the very least, you will need to offer the rental agreement and the termination notice as exhibits in order to establish your case.

9. Your credibility is essential. **TELL THE TRUTH.** This does not mean that you have to bare your soul to questions never asked. It does mean that if you have to concede a point, do so. The court will decide many issues according to who it believes. If the court decides that one party lacks credibility, the court will rule in favor of the other party on all issues in which there is a factual dispute.

10. Dress appropriately. Be understated, conservative and respectful looking. Dress as if you were going to an important meeting or church. No sweat pants, mini skirts, loud jewelry or big hair. **Tactfully**, confirm that your witnesses will also dress and act appropriately.

11. Be respectful to the court. Do not laugh, talk or disrupt the proceedings of the court while you are waiting for your trial. Make sure your witnesses treat this as a somber proceeding. You and your witnesses should not grimace, sigh, roll your eyes or make faces while anyone is on the witness stand. Do not resort to theatrics, tears or anger. Do not interrupt the judge. Be above the theatrics demonstrated by the tenant. Above all else, act in a professional and courteous manner. If you walk the high road at court, the judge may well assume that you have walked the high road throughout your dealings with your tenant. This again goes to the issue of credibility. Make it easy for the judge to respect and believe you.

Remember, whatever happens, you may be in this court again. Judges have long memories. For your own preservation, make that memory be one of you as a professional, credible landlord.