

JUDY STUDEBAKER  
LEGAL SERVICES OF THE HUDSON VALLEY  
90 MAPLE AVENUE, WHITE PLAINS, NY 10601  
Tel: 914-949-1305 ext. 110

## **HOW TO STRETCH AGENCY DOLLARS**

### 2 Different Types of Landlord Tenant Proceedings:

Non-Payment - Landlord claims Tenant owes money: **PAY AND STAY** (or does not pay and Judge orders Tenant to move out and Tenant is evicted by marshal/constable/sheriff)

Holdover - Landlord wants Tenant to move out: Only Judge can order the tenant to vacate and only marshal/constable/sheriff can serve 72 hour notice and then evict. Tenant may have a lot of rights depending on type of housing. See below.

### **FIRST QUESTION TO ASK A TENANT:**

#### What kind of housing is it?

1. Is it subject to the Emergency Tenant Protection Act (ETPA)? **SAVE THE HOUSING**  
ETPA regulated building if 6 or more units built prior to 1974:  
Dobbs Ferry, Eastchester, Harrison, Hastings-on-Hudson, Larchmont, Mamaroneck, Mt. Vernon, New Rochelle, Sleepy Hollow, Tarrytown, White Plains, Yonkers - Except: 50 Croton-on-Hudson, 16 Mt. Kisco, 12 Port Chester, 20 Irvington, 20 Pleasantville, 50 Rye

#### Why save ETPA housing?

Rent is regulated and can only increase by certain percentages for each lease renewal - Tenant has a right to renew for one or two year terms

Tenant cannot be evicted (except for nonpayment) unless landlord proves to a court the reasons for the eviction. The ETPA regulations list the specific grounds for eviction.

2. Does the tenant live in a Public Housing Project? **SAVE THIS HOUSING**

#### Why save Public Housing:

Rent is based on 30 percent of entire household's gross income (wages, child support, public assistance, SSI, SSD, social security, unemployment benefits).

Tenant cannot be evicted (except for nonpayment) unless tenant is given a notice to terminate, stating the reasons. The tenant has the right first to an informal meeting with the landlord. Then, if not resolved, the tenant also has a right to a grievance hearing. If the tenant loses, the tenant still has a right to tell the judge why she should not be evicted.

3. Does the tenant live in some other kind of federal subsidized housing? **SAVE THIS APT.**  
There are many other kinds of subsidized housing in addition to Public Housing. The rent can be increased by the landlord only by HUD regulations.

The tenants have a right to a Notice to Terminate stating the specific reasons for termination. The tenant has a right to tell the court why she should not be evicted. If uncertain on the type of housing, call Legal Services. (The court papers may not state the kind of housing and the landlord's lawyer may not know it either).

4. Does the tenant have a Section 8 Voucher? **SAVE THIS HOUSING!**

The tenant's rent, like Public Housing tenants, is based on 30 percent of the total family income.

If the tenant does not pay the rent or gets evicted for nonpayment, Section 8 may terminate the tenant. If the tenant loses her voucher, she would have to reapply for Section 8. There is a very long waiting list and some lists are closed.

If the tenant is terminated by Section 8, the tenant has a right to a formal grievance hearing, to look at her file, to bring witnesses and to have a representative (Legal Services attorney) present.

5. Does the tenant live in Unprotected Housing (no ETPA, no federal subsidy, no Section 8)?  
**DO NOT SAVE IF:**

a. Tenant lives in a basement apartment - probably illegal. Call Tax Assessor of town/village/city and ask what kind of building it is (for example, one family, two family etc.) or Building Department.

b. Tenant lives in 3<sup>rd</sup> floor or attic apartment in a two family house. Unless there is a fire escape to the 3<sup>rd</sup> floor, probably illegal. Call Tax Assessor or Building Department to find out.

c. Tenant lives in a rooming house. Probably illegal. Check with Tax Assessor (not Building Department) to see if the building is listed as one or two family house or if it is in fact a legal rooming house.

d. Tenant is a month-to-month tenant without a written lease. The landlord can accept the payment of the rent arrears and then turn around and serve the tenant a 30 day notice to terminate. No reason for termination is required for a month-to-month tenant. Save only if the landlord will give the tenant a one year lease.

e. Tenant cannot pay future on-going rent. If monthly net (not gross) income is greater than all monthly expenses, tenant must move.

Does apartment need repairs? If paying arrears, this is an opportunity to get apartment fixed.

NY Real Property Law 235-b Warranty of Habitability requires a landlord to maintain a tenant's apartment free from "any conditions which would be dangerous, hazardous or detrimental to their life, health or safety." A tenant may negotiate a decrease in amount due in exchange for repairs.. A landlord's Breach of the Warranty of Habitability is a defense to a nonpayment proceeding.

1. Ask tenant to make a list of all conditions in need of repair. Room by room, locks, apartment door, windows, plumbing (kitchen & bathroom), electricity, refrigerator, stove, smoke detectors, leaks, cracks, peeling paint, extermination, mail box.
2. Tell tenant to send the list with a letter to the landlord requesting immediate repairs. Send by certified mail and keep a copy of mailing receipt, letter and list.
3. Advise tenant to call Building Department for inspection. Give inspector copy of list. Go to Building Department to get a copy of violation issued to landlord.
4. If Section 8 tenancy, send copy of list to Section 8 caseworker and request inspection.
5. If ETPA tenancy, wait 10 days from mailing letter to landlord then file Complaint for Decrease of Services and Request Reduction in Rent with NYS Division of Housing and Community Renewal. Include copy of letter to LL & list & proof of mailing, violation.
6. Call Health Department if mold, unhealthy conditions.
7. Call Fire Department if electric outlets spark, water leaking into overhead lights, gas leak from stove.
8. Call Police if landlord uses Self-Help to evict tenant (changes locks, puts furniture out, threatens tenant, enters apartment without notice and no emergency).