

GUIDELINES FOR A TENANT EVICITION APPEAL

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You are sitting at your favorite restaurant celebrating. It was a long, hard battle, but after several months you finally had your summary process trial. Yesterday the judge's decision arrived. You won! It was a great victory. Now you were certain that this horrible, problem tenant would be gone in a few days.

Then you get a call from your office. A notice was just delivered saying that your tenant, never one to give up easily, had appealed the decision. What did this mean? How long would the tenant be allowed to stay?

Since most eviction cases are settled prior to trial, and only some of those which go to trial are appealed, many managers don't have a good idea of what happens if a case is appealed. The specific appeal procedures vary from state to state, but the rules in Massachusetts are illustrative of the issues involved in appeals in any state in New England.

In Massachusetts, the summary process trial will occur in either a District Court or a Housing Court. Once a decision is made, the tenant has 10 days to

appeal. If no appeal is taken, after the 10 days an execution will be issued and you will then be able to have a constable move the tenant out upon 48 hours notice.

If the tenant appeals from a District Court judgment, in most counties he/she is entitled to a whole new trial in Superior Court. It may take a month or more before the second trial is held. If you win a second time, the tenant may still appeal to the state Appeals Court.

It is important that you know your rights during the appeal period and exercise those rights to help control the tenant's behavior and obtain possession in as short a time as possible.

A tenant appealing from a judgment of one of the Housing Courts goes directly to the Appeals Court. This appeal may take one year or longer, and in most cases the tenant is allowed to remain in the apartment during the appeal. What an unpleasant surprise and major headache for you, the manager! There are, however, some things you can do to ensure that your terrible tenant will either be a good tenant during the appeal, or that he will be evicted in a much shorter time.

Whether the appeal is from the Housing Court or the District Court, you can ask the trial judge to place conditions on the appeal with which the tenant will have to comply. For example, during the appeal the tenant will have to pay the rent by the first of each month, not engage in activities which disturb other tenants, and otherwise comply with all of the obligations contained in the lease. If the tenant abides by these conditions, you won't have any problems during the appeal. But if he/she violates one of the conditions, you quickly file a motion with the Court asking that the appeal be dismissed. If the judge dismisses the appeal, you will be able to obtain the execution within a few days.

In addition, particularly with appeals to the Appeals Court, there are many procedural requirements with strict timelines that the tenant must follow. During the appeal, the tenant's actions with respect to these requirements and timelines should be monitored closely. As soon as the tenant misses a deadline prescribed by the rules, you file a motion asking for the dismissal of the appeal.

Having a tenant appeal a judgment can be very frustrating. It is important that you know your rights during the appeal period and exercise those rights to help control the tenant's behavior and obtain possession in as short a time as possible.