



James G. Dibbini, Esq.

LAW OFFICES OF

JAMES G. DIBBINI

570 Yonkers Avenue, 2nd Floor
Yonkers, NY 10704

TEL (914) 965-1011 · FAX (914) 965-0019

e-mail: jdibbini@dibbinilaw.com

website: www.dibbinilaw.com

Wishing you a healthy and prosperous 2008 from all of us at the Law Offices of James G. Dibbini.

So How Does a Residential Non-Payment Proceeding Work Anyway?

Our clients often ask us how the landlord-tenant litigation process works and how long a landlord must wait before he/she is able to evict a residential tenant. We want to take this opportunity to explain the process.

Ideally, our office will begin a non-payment proceeding when a landlord advises us that a tenant is a month or two behind in rent. (Waiting any longer makes it difficult for the tenant to catch up.) After the expiration of a three-day rent demand (a prerequisite to initiating suit that gives the tenant notice of late rent and three days to pay before commencing legal action), we then commence the proceeding by drafting, filing with the court and serving the tenant a notice of petition and a petition. Said notice of petition puts the tenant on notice to appear in court.

On the court date, the tenant may not appear, in which case we usually obtain a judgment by default. More often than not, however, the tenant does appear in court. When the tenant appears, he/she may admit what is owed and just request that the judge allow more time to pay. Other times, the tenant raises defenses to not paying such as needing repairs in the apartment.

Depending on the judge, the court and the circumstances of the case, the judge may adjourn the case so that the landlord may inspect the apartment and complete any alleged needed repairs. (In order to avoid court adjournments, we always recommend to our clients that there be no repairs outstanding at the commencement of a nonpayment proceeding.) In most cases we are able to promptly obtain a judgment for the rent owed (plus the court limited legal fees and court costs) and a warrant of eviction. A stay of eviction is legally required by the court which is essentially a grace period which provides the tenant time to pay what is owed before the warrant can be executed. The typical stay is anywhere from five to fourteen days, again depending on the judge, court and facts of the case.

(Continued on Page 2)

NEWSLETTER

- JANUARY 2008 -

VOLUME 7 NUMBER 1

MEMBER OF NEW YORK STATE BAR ASSOCIATION, WESTCHESTER COUNTY BAR ASSOCIATION AND YONKERS LAWYERS' ASSOCIATION



James G. Dibbini, Esq.

LAW OFFICES OF

JAMES G. DIBBINI

570 Yonkers Avenue, 2nd Floor
Yonkers, NY 10704

TEL (914) 965-1011 · FAX (914) 965-0019

e-mail: jdibbini@dibbinilaw.com

website: www.dibbinilaw.com

So How Does a Residential Non-Payment Proceeding Work Anyway?

(Continued from Page 1)

After the court date, our office immediately submits a judgment and warrant to the court for the judge's signature. After that paperwork is signed by the Judge (which could take two to five weeks depending on the court) only then can the marshal serve the tenant what is called a "72-hour notice" if the tenant has not yet satisfied the judgment. Essentially the 72-hour notice is a final warning to the tenants that they have three days to vacate or face eviction by the marshal. As you may know, legally a tenant cannot be evicted based on unpaid legal fees and court costs if the judgment is otherwise satisfied by the end of the stay.

When a tenant does not pay what is owed in the time allotted or vacate by the stay date, he/she may elect to file an "order to show cause," which is a request to stop the eviction and have the matter reconsidered by the judge. Technically the tenant's order to show cause should be based on a meritorious defense (a legal reason for not paying the rent). However, many judges sign the orders for almost any reason to provide the tenant extra time either to get the money to pay the landlord or to vacate. If the tenant files an order to show cause, we are required to go back into court to answer it. We usually request that the order be denied with no further stay to the tenant and which would allow the immediate eviction of the tenant. However, many judges today (even without any proof the tenant can pay the outstanding judgment) will allow the tenant another week or two before the marshal is allowed to finally evict the tenant.

As you may know, some tenants file multiple orders to show cause to continue to buy extra time and, oftentimes, judges will sign them even when there is no meritorious defense. In these cases, our office strives to obtain the shortest stays possible, so that matters can be resolved quickly.

If you have any further questions about the non-payment process, or other matters such as holdover proceedings, leases, DHCR Registrations, the sale or purchase of commercial properties or zoning matters, please do not hesitate to contact our office.

Disclaimer: The information provided is not intended to be legal advice, but merely conveys general information related to legal issues commonly encountered.

NEWSLETTER

- JANUARY 2008 -

VOLUME 7 NUMBER 1

MEMBER OF NEW YORK STATE BAR ASSOCIATION, WESTCHESTER COUNTY BAR ASSOCIATION AND YONKERS LAWYERS' ASSOCIATION