

A Guide to TENANT SELECTION, EVICTION and GOOD TENANT RELATIONS

Prepared by U-HAB The Urban Homesteading Assistance
Board and HPD Department of Housing Preservation and
Development of the City of New York

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GLOSSARY

ORIENTATION

About the Homesteader's Handbook Series

The purpose of the *Homesteader's Handbook Series* is to outline and explain the many responsibilities and tasks involved in tenant self-management, and to suggest methods that will help tenant associations complete those tasks and meet those responsibilities effectively, efficiently, and cooperatively. Every tenant group is different, and no book can teach you everything you need to know about successful organizing and building management, but the *Homesteader's Handbook Series* attempts to present the basic, standard practices developed and successfully employed by tenants, U-HAB, and TIL during the program's first sixteen years.

**Titles in the
HOMESTEADER'S HANDBOOK Series includes:**

- **Volume 1** A Guide to Organization & Governance
- **Volume 2** A Guide to Communications, Problem Solving & Decision Making.
- **Volume 3** A Guide to Tenant Selection, Eviction & Good Tenant Relations.
- **Volume 4** A Guide to Banking, Budgets & Rents.
- **Volume 5** A Guide to Operations & Record Keeping.
- **Volume 6** A Guide to Maintenance & Repair.
- **Volume 7** A Guide to Sample Forms.

How to Use This Book

The contents of this handbook are divided into three sections:

SECTION 1 • Provides a step-by-step guide to finding and selecting the best new tenants to fill vacancies in your building. It explains the role of the Tenant Selection Committee, and offers tips on how to conduct interviews with prospective tenants that are informative, effective, and fair (pages 2 to 15).

SECTION 2 • Includes advice about how to encourage tenant participation in the affairs of the building, and how to maintain good tenant relations. This section also offers suggestions on how to deal with potentially troublesome issues, especially financial matters and rent collection, in positive, even-handed and professional ways (pages 16 to 17).

SECTION 3 • Addresses rent-collection and the process of evicting tenants who do not pay their rent, or who cause other serious problems for the building (pages 18 to 30).

*for more
information call:*

**UHAB (212) 226-4119
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A **Glossary** follows the major text. If you run into any technical terms or other unfamiliar language in the text that you don't understand, flip back to the glossary for an explanation (page 31).

Finally, don't be afraid to contact HPD or your UHAB representative if you have any questions or confusion.

Good Luck !

Section 1

TENANT SELECTION

Introduction

This guidebook explores some of the things that the members of a tenant association can do to make sure that their building is occupied with good tenants. This is very important, because if you don't get good tenants into your building now, when you are still participating in TIL, you will have a harder time later making the transition to cooperative ownership.

Tenant relations, and especially tenant selection and evictions, are among the most important and difficult issues that a tenant association must confront. A tenant association is only as strong as its members make it, and those members are yourselves: the building's tenants. Good tenants are cooperative, helpful and considerate. They keep the whole building's interests in mind and help make it a better place for everyone to live. Bad tenants are selfish and thoughtless. Good tenants can make a tenant association stronger, pitching in to help when help is needed, greatly reducing the cost of building management and maintenance and improving the quality of life for everyone. Bad tenants are just the opposite. They cause problems, create extra work, increase costs, and lower the quality of life. We've all lived in buildings with bad tenants, and we know how difficult they can be.

In this section we'll look at the role of the Tenant Selection Committee in seeking, screening, and selecting new tenants, and at a range of techniques that can be used to ensure that new tenants will be positive contributors to the life of your association. We will also explore some strategies for helping them to see how their own lives can improve if they take a more active role in the association. It is important to remember that bad tenants are not necessarily bad people. They may never have had a chance to take control of their own living situations before, so they might not realize that each individual can make a real difference. If we can help them to understand this, they may be able to change and improve. Sometimes, though, a bad tenant simply refuses to change. For these cases, this manual also provides step-by-step instructions on how to proceed: what to do to protect the association's interests while respecting the tenant's legal rights; how to collect unpaid rents and arrears; how to properly build a solid legal case for eviction; and, finally, how to evict a bad tenant.

The Tenant Selection Committee

The Tenant Selection Committee is one of the most important standing committees of the tenant association, responsible for doing most of the work associated with renting vacant residential and commercial spaces in your building. When a vacancy occurs, committee members must

advertise the space, interview candidates, and recommend their choices to the tenant association's Executive Committee. (For more information about the tenant association's committee structure and the make-up and responsibilities of different committees, please see the *Homesteader's Handbook Volume 1: Organization & Governance*.)

The Tenant Selection Committee is so important because of the impact these decisions can have on the quality of life in the building as a whole, and particularly on the work of the tenant association. A well chosen tenant will pay rent, cooperate with the association, and participate actively in meetings and committees. A bad tenant can cost the association thousands of dollars in uncollected rent and legal fees — money which could otherwise be used for repairs or improvements in the building.

Responsibilities of the Tenant Selection Committee

Avoiding Conflict of Interest

This committee must pay special attention to avoiding conflict of interest. If a member of the committee is related to an applicant, then this member may not participate or vote in the selection process. In general, it may be a good idea to limit membership on the tenant selection committee to those tenants who don't anticipate having a family member, former neighbor, or other close acquaintance apply for a vacancy in the near future.

The Tenant Selection Committee:

- Develops tenant selection procedures and guidelines and submits them to the full tenant association for approval;
- Develops a standard application for prospective residential (and commercial) tenants;
- Distributes applications, procedures and guidelines to tenants in the building;
- Maintains a file of completed applications for future vacancies;
- Reviews all applications on file when a space is vacated and notifies qualified applicants that a space is available;
- Advertises vacancies, if necessary;
- Develops a standard list of interview questions for prospective tenants (see page 9);
- Conducts interviews with prospective tenants and checks references and income eligibility,
- Makes recommendations to the tenant association; and
- Maintains a waiting list of qualified applicants.

About Fair Housing

It is important to remember that the Tenant Selection Committee must abide by all City, State, and Federal fair housing laws, as well as all HPD and TIL program policies. Interviewers cannot ask questions about a candidate's marital status, sexual orientation, religion, race, national origin or citizenship. The fair housing law is briefly described below. If you have any questions about the Tenant Selection Committee's fair housing obligations, be sure to speak with your TIL or UHAB coordinator.

The fair housing law protects all people from being denied equal access to housing because of race, color, religion, national origin, sex, age (in publically assisted housing), marital status, disability, sexual orientation, lawful occupation, national origin or citizenship status, or because children may be residing with her or him.

**HOUSING
DISCRIMINATION
IS AGAINST
THE LAW!**

In order to comply with
fair housing regulations
Tenant Selection
Committee interviewers
must not ask prospective
tenants any of the
following questions:

- Are you married?
- Do you have a boyfriend
or a girlfriend?
- What is your religion?
- What church do you go
to?
- Have you ever been
arrested?
- Are you an illegal alien?
- Do you have a green
card?
- How old are you?
- Are you gay?
- Are you heterosexual?
- Where were you or your
parents born?
- Do you drink alcohol?
- Do you smoke?

**A FEW MORE THINGS TO BEAR IN
MIND :**

- If your building has adopted a “no pets” rule, you must
make an exception for seeing eye-dogs.
- You may only ask prospective tenants about the number of
children who will be moving into an apartment in order to
determine the proper occupancy level (see below) or the
possible need for window guards.
- When conducting credit checks for applicants who do not
have credit cards or bank accounts, you may request proof
of past payments, such as utility or telephone bills. If a

prospective tenant cannot provide a W-2 form for income verification, you may ask to see original pay stubs.

- Your tenant association is required to make your building handicap accessible unless the cost of doing so will cause undue hardship to the tenant association. In any case, you may not deny an apartment to disabled persons if they agree to make any needed changes to the apartment at their own expense. However, you may require that they agree to return the apartment to its original condition if they decide to move.

Finally, remember that the fair housing law protects everyone. Design your selection procedures to be fair and consistent. Use the same procedures, questions and selection criteria for every applicant, and be sure to take notes (minutes) of your interviews with applicants, so that your tenant association will have a record in case conflicts arise about the committee's recommendations or selections.

Determining an Appropriate Occupancy Level

The law states that two adults may occupy one living space. Living space is defined as any room in an apartment except for bathrooms, kitchens and small hallways. According to the law, two children under age 12 are equivalent to one adult. For example, two adults and two children may legally occupy a 3 1/2 room apartment which contains one bedroom and a living room.

Tenant Selection Guidelines

The selection of tenants is one of the most important decisions that your tenant association will make. It is essential that you establish clear, consistent criteria for evaluating potential tenants in your building before you begin interviewing applicants. These criteria should be discussed with all of the building's current tenants at a general meeting, and if possible, accepted by consensus. Of course, your selection criteria will apply to the specific concerns and conditions of your building, but they still have to comply with all fair housing laws and regulations. The primary reason for

having an established, written set of tenant selection criteria is to ensure that all prospective tenants receive the same treatment from the selection committee. This not only improves the quality of participation in your building, it protects your tenant association against later claims of unfair treatment. Using your selection criteria in the same fair and consistent manner with every potential tenant will help prevent and resolve conflicts about tenant selection in your building. Some possible criteria are listed on the next page.

Preparing for the Selection Interview

After your tenant selection committee has established clear selection criteria, you can prepare to interview candidates. The most important rules for the interview process are fairness and consistency. Every applicant should be interviewed in the same way, with the same questions. Before beginning any interviews you should prepare a standard application which every potential tenant will complete in advance of their interview. Your committee should create a written list of questions which will be asked of all applicants, and you should be careful to ask all of these questions in each interview.

Possible Selection Criteria for Prospective Tenants

MATCHING FAMILY SIZE TO APARTMENT SIZE:

Does the applicant make the best possible use of the available space? Does the applicant's family size fall within the limits established by the fair housing occupancy guidelines?

RENT PAYING HISTORY: Does the applicant have a history of paying rent on time, or does he or she have a record of past arrears in other buildings where he or she has lived?

CURRENT OCCUPANCY AND NEED: People who already live in your building and are tenants in good standing may be given preference over outside applicants for relocation within the building to relieve overcrowding, if their family has grown too large for the apartment they now occupy.

AGE OR DISABILITY: Elderly or disabled tenants may be given preference in the assignment of available apartments, especially for apartments which are particularly accessible or located on lower floors.

QUALITY OF REFERENCES: Business and personal references of all applicants should be checked and compared, and preference may be given to those whose references are more positive.

VALUE TO THE BUILDING: In deciding between two or more similarly qualified applicants, preference may be given to potential tenants whose skills could benefit the building. For example, a potential tenant with a knowledge of accounting, or construction, could be a valuable asset to your tenant association.

COMMUNITY INVOLVEMENT: Applicants who have demonstrated a special interest in your neighborhood or community, or in the neighborhood where they currently live, by participating in community affairs or serving on their Community Board, could prove to be an asset to your building..

PAST EXPERIENCE WITH TENANT SELF-MANAGEMENT: People who have had previous experience with tenant associations or are eager to participate in the tenant association often will be better and more active tenants.

Interviewing Style

You should remember that the interview need not be an overly formal process. Meeting with potential tenants before they move in will give you both a good opportunity to get to know one another, and to decide whether living and working in a tenant- managed building is the right thing for the applicant to do. The success of tenant managed buildings depends largely on the ability of all tenants to cooperate and build a concensus and a sense of community. The selection interview is a good time to help prospective tenants understand how import their participation is to the life of the building. In this way, unsuitable tenants may screen themselves out by deciding not to move in.

As you begin each interview, briefly explain to each candidate the selection process that will be used and ask them if they understand what it means to be a part of a TIL building. Then you can begin your questions. Throughout the interview, try to encourage the applicants to ask plenty of questions themselves — remember, most prospective tenants will not have had any experience with tenant-managed

buildings, so it is very important that they familiarize themselves with conditions in your building before they decide to move in.

Remember to compare the candidate's interview answers to the information that they have included on the written application they've prepared in advance. Most importantly, make sure to keep written notes of your interview. These are your official minutes, and they will help you later when checking references and comparing different candidates (using your established selection criteria). In case of conflicts or legal actions resulting from an unfavorable candidate recommendation or selection decision, the minutes of your selection interview will be necessary to support your case.

Possible interview questions for prospective tenants

- Have you ever had your own apartment before?
- Why did you leave (or why are you leaving) your previous residence?
- Do you get along well with other tenants in your building?
- Why do you want to move into this building?
- How were you referred to this building?
- Have you ever been a fire victim? If yes, please explain.
- Have you ever been evicted? If yes, please explain.
- What are your primary sources of income?
- What is the total amount of your household income?
- Who else will be living full-time in the apartment with you?
- If you have children who will stay with you, are they enrolled in school? Where?
- Have you ever been convicted of any crime? If yes, please explain.
- What would you do if a neighbor was using or selling drugs?
- What would you do if a neighbor was creating a disturbance in the building?
- What is your relationship to the people that you have listed as references?

- Are you currently enrolled in a school or training programs? If yes, please explain.
- Have you ever been a member of a tenant association before? If yes, please explain.
- Have you ever been involved in a community group or done volunteer work? If yes, please explain.
- Do you have any special skills that would benefit our tenant association?
- How do you think you could involve yourself in our tenant association?
- Do you have any questions about the TIL program?

Section 2

GOOD TENANT RELATIONS

Maintaining Good Tenant Relations

When a tenant moves into a TIL building, he or she is joining an active community of other residents who are working together to create a strong and lasting tenant association and a high quality of life for everyone who lives in the building. This is a cooperative effort. The officers of the tenant association must not be regarded as landlords (and, at the same time, must not behave like landlords, either), and the tenants themselves are not at all like traditional tenants. That is, in a tenant managed building the tenants cannot sit back and wait for the landlord to solve problems. They must take the bulk of the responsibility themselves for transforming their building into the kind of place where they and their families will want to live. In effect, they are serving as their own landlords.

Nothing is more important to the success of a tenant managed building than the quality and strength of the tenant community it contains. By far the best way to prevent the problems caused by bad tenants or a lack of community is to avoid them in the first place. We have already discussed a variety of ways to ensure that new tenants moving into your building will be positive rather than negative influences. But what can we do after they've moved in?

The following pages look into positive ways to reduce the potential problems in your building.

Avoiding Disputes

The easiest means of solving problems is to prevent them from happening in the first place. Problems within a tenant-managed building (or any other building, for that matter) can arise from many sources. Legitimate differences of opinion about how the building should operate can lead to serious disputes. So can the behavior of inconsiderate or thoughtless tenants, such as abusing the privacy rights of their neighbors or threatening the safety of the building by allowing drug dealers or other criminals to enter the building. Problems may also occur if tenants begin to feel that the tenant association officers are exercising power in an unfair way and behaving like landlords, or if certain tenants or groups of tenants think that they are being singled out for unfair treatment. And, of course, there are countless problems that are simply inevitable, and exist as a natural result of having large numbers of people living together in a relatively small space.

As a general rule, most of the major problems a tenant association will encounter with tenants within its building fall into two categories: financial or social. Financial problems typically involve a tenant's inability or refusal to keep up with rent payments, while social problems often involve disagreements, or thoughtless or criminal behavior. In any of these cases, the first tool to use in trying to achieve a resolution is good communication. By improving your ability to communicate with each other, you may be able to prevent potential problems from ever happening, or if they do happen, to resolve them without having to go to court. For more information on how to maintain good communications in your building, see the *Homesteader's Handbook Volume 2: Communications, Problem Solving, and Decision Making*.

Promoting Positive Outcomes

Try to make a few **optimistic** assumptions:

In attempting to solve problems or resolve disputes

within your building, it is a good idea to try to emphasize the positive.

- ASSUME that a problem can be solved, instead of assuming that it can't.
- ASSUME that the residents of the building can cooperate, that they want to work together to improve the quality of life for everyone involved and only need a little assistance.
- ASSUME that a tenant who is late with the rent can pay it, and wants to, but may be avoiding the problem because of confusion or even embarrassment. Most tenants will try to work out a payment plan rather than face a dispossession.
- ASSUME that you, as tenants, can solve your own problems among yourselves, without resorting to legal actions.

Section 3

RENT COLLECTION & EVICTION

Dealing with Difficult Issues

Undoubtedly, the two most difficult and divisive issues a tenant association can face are **what to do about tenants in arrears** — that is, tenants who have not or cannot pay their rent or maintenance charges — **or what to do about tenants who don't follow the House Rules** or who break the law.

Rent collection is one of the first management tasks that confronts a TIL association. It is also the most important. An association that collects all of the rent due each month, or even most of it, will be able to pay its bills and make repairs and improvements to the building. Tenants who see their building improve will be much more likely to pay their rent and support the association. On the other hand, failure to collect rent regularly slows down repairs and improvements and makes future rent collection more difficult. Tenants who see their neighbors in arrears may think that they too can “get

away” without paying. Good tenants may become frustrated with the association and may withhold rent until they see some action.

The best way to solve rent collection problems is to establish and enforce clear policies; communicate clearly with the tenants about the importance of paying rent; help tenants on public assistance or rent subsidy; and pursue nonpayers as vigorously and professionally as possible, so that other tenants see that the association is serious about collecting all of the rent.

Collecting Rents and Establishing an Arrears Policy

LATE RENT NOTICE

Date _____

Dear _____

The Tenant Association has directed me to notify you that you owe \$ _____ in Rent from _____ to _____.

You are requested to contact tenant representative _____ in Apt _____ within five days from the date of this letter to set a date for an appointment to discuss this matter.

If _____ has not heard from you by that time, I am required by the Tenant Association policy to send you a three-day notice.

Very truly yours,

The principal rule when collecting rent is: **be professional**. Keep good records, enforce policies strictly, and treat everyone equally. The tenants may be your friends and neighbors, but when it comes to rent collection, you are partners in a **business**. You have been elected to do a job, and the other tenants should understand and respect your position.

Your Rent Arrears Policy should first state clearly when the rent is due, and where and how it is to be paid.

The Rent Arrears Policy should then state the procedure to follow when tenants fail to pay their rent. These tenants are endangering the future of everyone in the building and must be dealt with promptly and effectively. Try to speak with delinquent tenants directly and explain the importance of paying rent—successful persuasion can save you money in legal fees and it encourages a cooperative attitude among the

tenants. Nevertheless, you should stay strictly within the guidelines of an arrears policy.

ARREARS REPAYMENT AGREEMENT

Tenant Name: _____
Address/Apt.: _____
Date: _____
Amount of Arrears: _____
From: _____ To: _____

I, _____ agree to pay my full monthly rent of \$ _____ beginning on _____
In addition, I agree to pay \$ _____ per month above my monthly rent until all arrears are paid in full.

I understand that if my payments are not made in a timely fashion in accordance with the By-Laws of the building, I will be subject to eviction proceedings.

Tenant _____ Date _____
TA Representative _____ Date _____
TA Representative _____ Date _____

Sit down with the officers and the rent committee and review your rent collection and arrears policy. Is it working well? If not, why not? What could you do to improve collections? Try to work out a well-organized, professional approach to improving your collections, and to resolving any arrears problems tenants may have without going to court. Be certain to announce any decisions you make to the entire tenants association, either on the bulletin board, or in a newsletter, or at a general meeting, so that tenants understand that the association is serious about collecting the rent it is owed.

Finally, if you feel that you have already tried everything, but are still not seeing results, contact your TIL and UHAB coordinators. They will meet with you and your rent committee and analyze your specific cases. With time, patience, careful planning and diligent work, these problems can usually be worked out.

RENT ARREARS POLICY

- No later than two weeks after the rent is due, the rent committee will send a late rent notice. The rent committee will contact the tenant and set up a meeting to discuss the problem and work out a payment agreement.
- All communications with delinquent tenants will be sent by certified or registered mail. (If the matter eventually ends up in court, the association will have to prove that they attempted to collect the rent.)
- In order to enter into a payment agreement, the tenant must pay at least one-third the arrears due. (Exceptions to this rule may be made at the TIL coordinator's discretion.) All agreements must be reviewed and approved by the TIL coordinator.
- If the tenant in arrears does not respond after one month, the officers will contact TIL to ask permission to begin dispossession proceedings.
- After one month has passed, the association will send out a second late rent notice, again asking for a meeting to sign a payment agreement.
- Before the end of the second month, the association's lawyer will begin legal proceedings to recover the rent owed.

THE ASSOCIATION WILL SEEK TO RECOVER ALL LEGAL COSTS FROM THE TENANT.

Legal Matters

Legal matters — **especially evictions** — can be some of the most difficult problems that confront a tenant association. They are expensive, time-consuming, and often very technical. Moreover, they usually arise when other methods of

problem-solving, like communication or mediation, have failed.

Always send tenants who are late with their rent payment or are otherwise in violation of the house rules written notice of problems immediately after they occur. Also, always attempt to resolve conflicts through communication and mediation before resorting to legal action. This can save the association time and money. Nonetheless, going to court is sometimes necessary.

Before Going to Court

Before going to court, however, you should always make sure that you have tried **all** other available options. Be sure that you have followed all the established policies of your building, and that you have delivered all the necessary notices in writing, and documented all of your actions. This is important whether the problem is nonpayment of rent or any other violation of the house rules.

With all legal issues, a little knowledge goes a long way. You don't need to be an expert to supervise a legal action, as long as you know the basics and are prepared.

- You must know how to build a case by fulfilling your legal obligation and producing written documents.
- You must know how to find a lawyer by checking references and conducting interviews.
- And you must be prepared when and if you finally go to court, having already gotten a Multiple Dwelling Registration (MDR) number, a copy of your current TIL lease and a copy of the tenant's month-to-month lease.

Nonpayments and Holdovers

The legal issues you are most likely to face in dealing with the tenants in your building are tenants who don't pay their rent (in legal terms, these are known as nonpayment cases) and tenants who are disruptive, destructive, or engage in illegal or antisocial activity within the building (these are called holdover cases). A basic understanding of these different types of legal actions and legal terms can help you in dealing with them when they arise.

Nonpayment cases are the most common. If face-to-face discussions, late rent notices, and written agreements haven't worked, you may need to go to court to collect rent. Then you'll need to understand 3-day notices, dispossesses, and stipulations. The tenant may present "show cause" orders that delay a case, but if you're persistent, you will eventually get a judgement. All of these terms and others are defined in the *Glossary* section of this manual, which you can find at the end of this chapter.

Holdover cases are similar to non-payments, except that in a holdover case you are not seeking payment of back rent; you are trying to have a tenant evicted. Holdovers are more complicated, usually more expensive and longer, and require a Notice of Petition, a Petition, 72-hour notice, usually a trial, a City marshal, and probably several show cause orders. Ultimately, if you have prepared your case well, an eviction will be ordered by the court. Like all legal actions, holdovers can sometimes be avoided by communicating directly with the tenant and trying to solve the problem before going to court.

Hiring and Working with a Lawyer

You will have to hire a lawyer in order to proceed with a non-payment or holdover case. The best way to find the right lawyer is to ask other tenant associations, TIL and U-HAB for recommendations. Keep in mind that you need a lawyer who specializes in landlord and tenant cases.

When you have identified several potential lawyers, you will want to interview them. During the interviews, ask each lawyer if they have had experience working with the TIL Program, ask them for an explanation of their rates and charges, and ask for references from other associations they have worked with. Also, explain your particular legal problem and ask them for an estimate of how much time and money it will take to get it resolved. It is important to remember that your lawyer will be working for you, defending your interests. You should feel comfortable talking to the lawyer and be confident of your ability to work with him/her.

Most lawyers will work with you on a contract basis, charging you only for the time they actually spend on your case, but remaining available to you at all times. This arrangement is known as a retainer agreement. A retainer

agreement is typically signed by the lawyer and an officer of the tenant association, and it states the services to be delivered, the terms of the agreement, the fees anticipated, and the payment schedule.

For additional information on finding, selecting, engaging, and working with a lawyer, see UHAB's manual, "*Managing Your Lawyer*", which is available from your U-HAB Coordinator.

Once you have hired the lawyer, it is essential that you stay in close contact as the case develops. One officer should be assigned to call the lawyer each week and check on the status of the case. If your lawyer is not performing satisfactorily, discuss this with him or her. This person, like your superintendent, is being **employed** by the building, is being paid for services performed, and should perform according to your needs and expectations. If this is not happening, don't be afraid to look for another lawyer. At the same time, don't call your lawyer unless you need to. Lawyers charge for their time, including time on the telephone, and it is expensive and wasteful for you to call them without a good reason to do so. Keep track of all conversations held with your lawyer and compare these records with your itemized bill.

Building and Documenting a Case

Even before starting a legal action, you should begin to build your case.

The first step to remember when building a case is to fulfill **your** legal obligations. This means managing your building in a professional manner, establishing and following clear policies, and keeping careful records. For example, a tenant might claim in court that s/he didn't pay rent because there was no information distributed on how or whom to pay—distribution of a rent policy would prevent this problem.

The second step is to document your case: collect and organize written records that you can present in court as evidence. The judge will ask you for documents that prove

your side of the story and if you don't have them, your case is greatly weakened. Good documentation of a non-payment or holdover case might include:

- Rent receipts, accounting reports
- Letters sent to the tenant by certified mail, with the receipts that they were received
- Notarized letters or affidavits from other tenants alleging specific activities
- Minutes of tenant association meetings at which the problem was discussed
- Photos or other evidence of damage or illegal activities
- Police or fire department reports

Whenever possible, original documents should be presented. If originals are not available, you may have to have notarized photocopies made, so that they can be admitted as evidence.

Be sure to send copies of all documents to your TIL coordinator, as well as to your lawyer. These people will keep the copies on file and can support you in court if the validity of the documents is challenged. All documents should include basic facts that describe the situation, using names and dates wherever possible.

Administrative Requirements

There are three administrative steps that you must take before going to court. They are:

1. When you go to housing court, your building must have a Multiple Dwelling Registration (MDR) number and a registered managing agent. The managing agent must be at least twenty-one years old and should be one of the officers. Cases can be dismissed if you have failed to register. Ask your TIL or UHAB coordinator for assistance with registering.
2. Every 11 months the tenant association is required to renew their lease with TIL. When you go to court, you will be required to show that you have a current TIL lease. Be sure to check the expiration date of your TIL lease before legal proceedings.

3. Each tenant in your building should have signed a month-to-month lease with the tenant association. Your tenant association should bring a copy of this lease to court to prove that the tenancy is legal. Month-to-month lease forms are available from your TIL coordinator

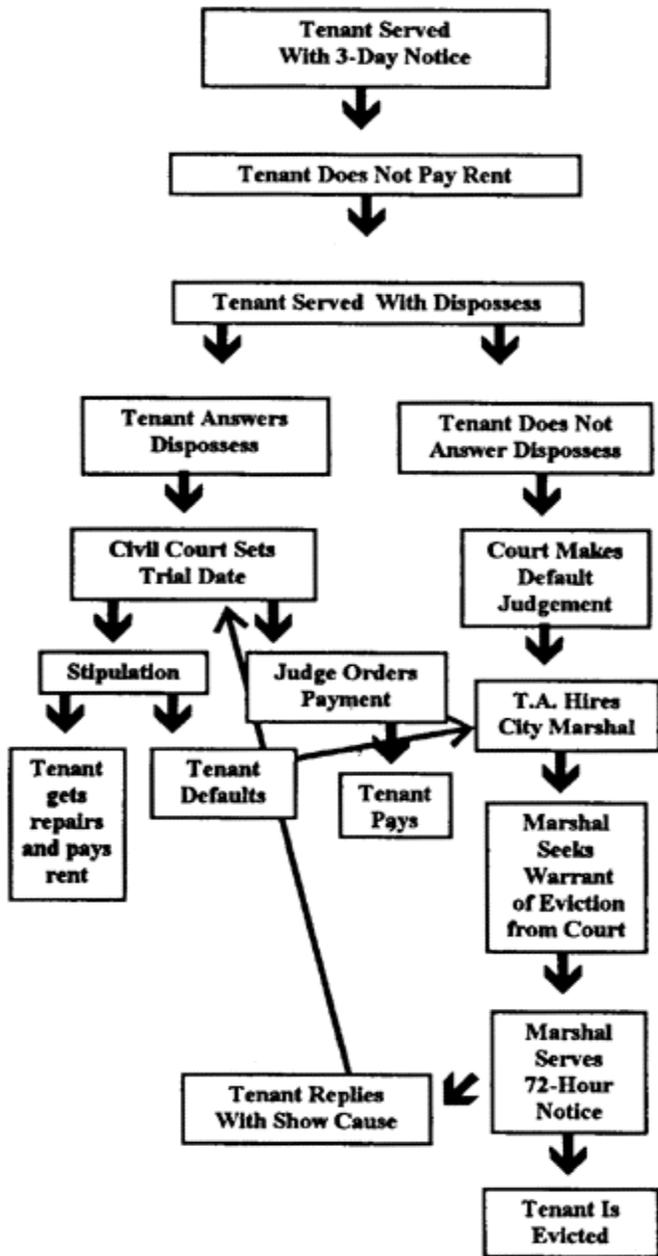
Building a Nonpayment Case

The purpose of a non-payment proceeding is to collect unpaid rent, not to evict the tenant. Eviction only occurs if the tenant fails to make payments that the court has ordered.

According to TIL program policy, tenant association officers can only initiate a non-payment case after a tenant has failed to pay rent for two months or longer. But several steps should be taken before you actually start your legal action.

Written “late rent” notices should be sent to the tenant who is in arrears, at least one of them by certified mail, at the times specified in your Rent Arrears Policy (usually two weeks after the date the rent was due.) The tenant association also should attempt to get the tenant to sign an arrears payment agreement, and to follow its terms, as an alternative to proceeding with legal action.

Non-Payment Court Proceedings



A tenant association can actually process a non-payment case by itself, using the procedure outlined below, and in some cases it may be possible to complete this procedure without having to engage a lawyer. In general though, it is strongly recommended that a lawyer be hired, because they are more experienced with the requirements of the housing court, and having a lawyer may serve to protect the tenant association against encountering unexpected costs and later complications.

The non-payment procedure begins when the tenant fails to pay the rent. The tenant association should make oral and written demands for the rent. If the tenant does not pay the rent owed, the tenant association should have the tenant served with a 3-day notice. If the tenant still does not pay the rent owed, the association should have a dispossess issued and a court date set.

In court, the burden of proof is on the tenant to prove that she or he has actually paid the rent, or has good and valid reason for not paying. The two sides meet to discuss issues and agree on terms which are written up in a stipulation to be signed by them and the judge. The judge will either sign the stipulation (a legal judgement, rendered by the judge after hearing the evidence from both parties in a dispute), order payment or, if there is no agreement, set a trial date. The tenant must pay the rent according to the terms of the stipulation or face an eviction procedure.

Tenants can delay eviction by using a “show cause order.” If the tenant can show cause for withholding rent in court during the 72 hours after the notice is served, then a new date will be set for a hearing in court. Show cause orders are sometimes used as a delaying tactic even if the tenant has a weak case—they can make court actions longer and more expensive.

Building a Holdover Case

The holdover is the most difficult and often the most time-consuming case to conduct. While a non-payment case seeks to collect rent from the tenant, a holdover seeks eviction of the tenant. Grounds for eviction might include selling drugs, destroying property, threatening other tenants, or illegally subletting the apartment. Since the burden of proof in a holdover is on your building’s tenant association to prove

that tenants charged with violations have done what you claim they have done, you will need well documented facts that describe and prove the situation. You will need to establish a strong “paper trail” and send copies of the information to your lawyer, as well as TIL and UHAB. Because of its complexity, you **must** hire a lawyer for a holdover.

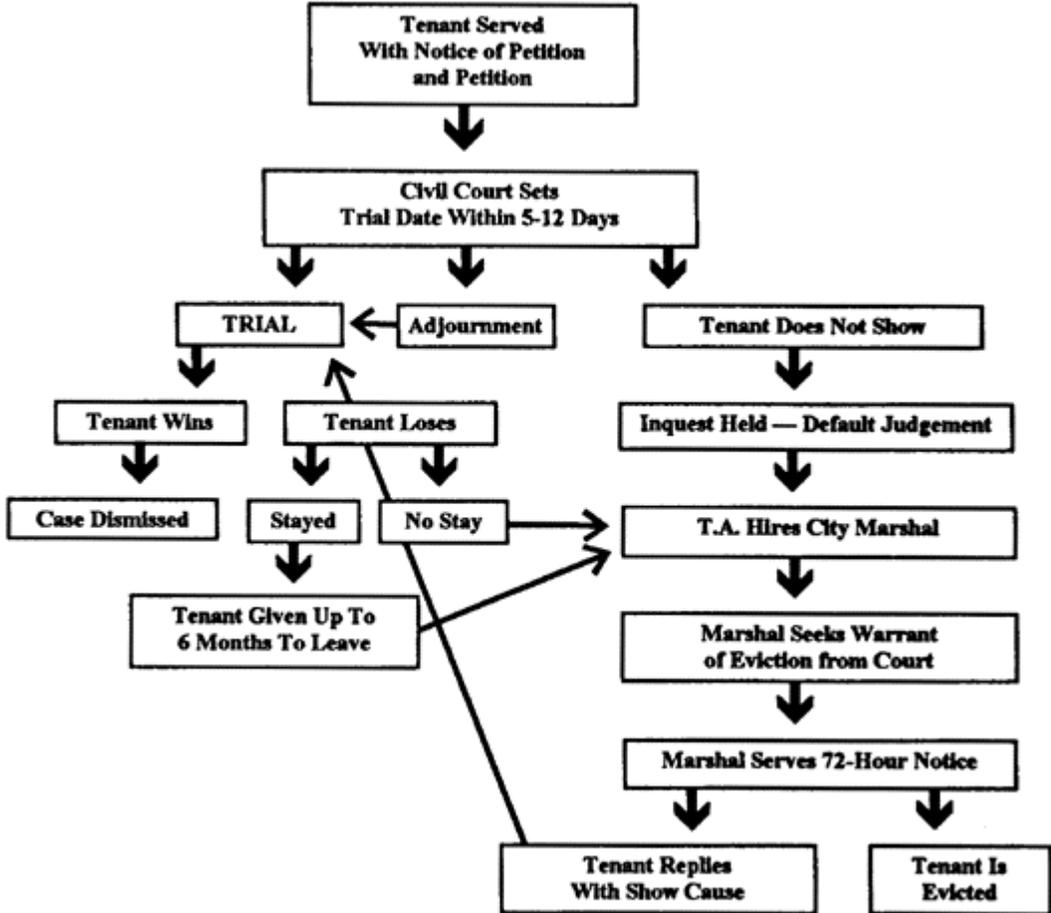
The tenant association begins a holdover case by having the tenant served with a Notice of Termination, also known as a 30 Day Notice. The term “30 Day Notice” is confusing, because the notice takes effect only on the **first** day of the month. As a result, more than 30 days are usually required for the notice to be served and to take effect. By delivering the Notice of Termination the tenant association is formally stating for the legal record that the tenant under notice has been disruptive or destructive, and therefore has broken the lease and is no longer welcome as a tenant. For this reason, the association should not accept rent from that tenant for the apartment during the time of the Notice. Again, bear in mind that holdovers are very complicated. You should consult your lawyer for specific instructions on notices and rent.

And if a stay is not granted—in what is called a “no stay” decision—the eviction, following legal procedures, may begin immediately.

Formal legal proceedings begin after the Notice of Termination has been served, when the tenant association serves the tenant charged with a Holdover Notice of Petition and Holdover Petition. These are legal documents drafted by your lawyer which list the specific charges against the tenant. Once these documents have been served, the court has five to twelve days to set a trial date. When the trial date arrives, the parties involved may go ahead with the hearing or else one or both of the parties may request an adjournment, delaying the trial to a later date.

If the case is tried and the tenant wins, the case is dismissed. The court has ruled that the association has no valid right to evict the tenant. If the tenant loses his or her case, he or she may be given a stay, a set period of time (up to six months) before they are forced to move out.

Holdover
Court
Proceedings



Carrying Out the Eviction

Eviction is the last resort. It is what happens when all else fails. Evictions are painful, disruptive, unpleasant, and difficult for everyone involved. When there is no other alternative and an eviction must proceed, it is absolutely essential to follow all the correct legal procedures, and to carry out the eviction in a professional, non-personal manner.

Nonpayment Eviction Procedure

- In a non-payment case, the eviction procedure begins after the tenant has failed to pay rent and:
 - after the dispossess is served and no court date is sought by the tenant (a Default Judgement will be issued by the court), or
 - a stipulation made in court is violated and the judge signs a Default Judgement, or
 - the trial judge orders the eviction.
- The tenant association must hire a City marshal to carry out the eviction. The marshal will ask the court for a Warrant of Eviction, and after receiving it, will serve the tenant with a 72-hour notice. This gives the tenant one last chance to pay or face eviction.
- If the tenant does not respond, then the tenant association should set a date with the marshal on which the marshal will give possession of the apartment to the tenant association, thereby making the tenant association responsible for the contents of the apartment. Alternatively the tenant association may have the marshal hire a moving company to remove the tenant's belongings from the apartment for storage.

Holdover Eviction Procedure

- In a holdover case where the offending tenant offers no defense in court or is found guilty at the trial, the eviction procedure starts with the hiring of a city marshal, who will seek a Warrant of Eviction from the court.

- The marshal will then serve the tenant with a 72-hour notice, which gives the tenant one last chance to seek a trial. Tenants who choose to “show cause” must then prove to the court why they should not be evicted. If the tenant does not seek to show cause, the association must hire a marshal to carry out the eviction.

Conclusion

The success of your Tenant Association can depend very much on the **positive** steps you take to avoid problems, not just on how well you solve problems.

A strong Tenant Selection Committee that develops and follows good Tenant Selection Procedures and leads the whole tenant association in working for good tenant relations can avoid many problems.

Clear and fair rent collection and non-payment policies let every member know what is expected of them and avoids future misunderstanding.

Carefully following these policies and keeping good records assures that every one is treated fairly. This is your best chance for avoiding court and assuring success, if going to court becomes necessary.

Your hard work in Tenant Selection, Tenant Relations and Rent Collection will result in a well functioning tenant association with actively participating members along with a steady income from rent. These are the foundations for success in the future as a Cooperative.

GLOSSARY

ARREARS: Unpaid rent that is owed to the tenant association. To be “in arrears” is to owe past due back rent.

CURE: To correct a problem. For example, a

MARSHAL: A City officer responsible for carrying out a court-ordered eviction.

MEDIATION: The process by which a neutral outsider works with both parties in a dispute and attempts to help

A common example is when a tenant who is about to be evicted, obtains a show cause order seeking to stop the eviction. When this happens the landlord or agent must go to court to explain why the eviction

tenant who has violated a lease (for instance by illegally subletting) but who then corrects the problem (by making the sublet legal or by moving back into the apartment) has “cured” the violation.

DEFAULT JUDGEMENT: A ruling by a court in favor of one party because the other party did not appear for trial.

DEPOSITION: Evidence given under oath to a court reporter in response to questions from lawyers before a case goes to trial.

DISPOSSESS: A term commonly used to describe legal proceedings taken against tenants for non-payment of rent or other actions that might lead to his or her eviction.

EVICTION: The final stage of a dispossession action. When all other efforts to correct a tenant-caused problem have failed, an eviction may be the last resort. To evict a tenant is to remove him or her from an apartment by legal process.

HOLDOVER PROCEEDING: A legal action initiated to evict a tenant who is in violation of a lease for reasons other than non-payment of rent or maintenance, such as selling

them work things out without going to court. This person is called a mediator.

MULTIPLE DWELLING REGISTRATION (MDR) Number: The number assigned by the New York City Office of Rent and Housing Maintenance to any building containing at least three apartments. An MDR number and a registered managing agent are required to take a tenant to court.

NONPAYMENT PROCEEDING: Taking a tenant to court to recover rent or maintenance arrears. Most people refer to this as a “dispossession” proceeding.

NOTICE TO CURE: A legal document, commonly used in a holdover proceeding, which informs the tenant that a part of the lease has been violated and that gives the tenant a specific amount of time in which to cure, or correct, the violation.

NOTICE TO TERMINATE: A legal document, commonly used in a holdover proceeding, which informs the tenant that the association intends to end the lease agreement between the tenant and the tenant association because the lease has been violated and the violation has not been cured.

should proceed.

PETITION: A legal document which requests the court to hear your case. For example, when a landlord wants to initiate a dispossession action against a tenant, he or she must enter a petition in housing court.

PROCESS SERVER: A person who is in the business of delivering court papers according to specific legal requirements.

RETAINER AGREEMENT: A form of contract, often called simply a “retainer.” One common example of a retainer is the agreement between a lawyer and a client which spells out what services the lawyer will provide and at what price, as well as how payments will be made.

SETTLEMENT: The result of negotiations between disputing parties in court when there is no trial. A settlement is usually put into a written document, called a stipulation, and described as “so ordered” by the judge.

STIPULATION: A legal document, signed by a judge, which outlines the terms of a settlement between two disputing

drugs or other illegal activities, or some other consistent violation of the house rules or the tenant association by-laws, such as making disruptive noise. This is often referred to simply as “a holdover,” as in: “a holdover case.”

LEASE: A written or oral agreement stating the terms under which a person may live in an apartment, or a business may occupy a commercial space.

ORDER TO SHOW CAUSE: Sometimes called a “show cause order,” or simply a “show cause.” A legal document which requests specific things from a person and orders him or her to go to court to explain why the requests should not be granted.

parties in court.

THREE-DAY NOTICE: A legal document notifying a tenant in arrears that he or she has three days in which to pay the rent owed or face legal proceedings.

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