

ASK THE ADMINISTRATOR

I recently had a spirited discussion with an RSA member on the issue of non-compliance with a judicial order to correct violations. The member asked why he had to comply with a judge's order when, in his opinion, the tenant was not cooperating and the tenant had misstated the facts to the judge.

Regardless of whether you feel that the "system" is unfair, you have an obligation to obey and follow court orders and the failure to do so will have serious consequences. A court-ordered stipulation to make repairs is a document that needs to be taken seriously. In addition to any financial consequences, an owner may be held in contempt. Further, the City may perform the repairs at your cost and, inevitably, at a higher expense. In extreme circumstances, an administrator may be appointed pursuant to Article 7-A of the Real Property Actions and Proceedings Law (RPAPL) to take over the day-to-day operations of your building. Thereafter, the 7-A Administrator, using the rent roll and City funds (which become liens), can make all necessary repairs and improvements.

If you go to court it is important to be respectful, in both your appearance and actions, to the Housing Court system--from the court officers to the clerk of the Part to the judge. I understand better than most (as I field hundreds of telephone calls a year from owners) the frustrations of owners who are forced to make repairs for violations or conditions which are caused not by them but by their tenants.

On the practical side, every communication you have with a tenant or any agency should be in writing. Emails and texts can be saved if that is the only option. But, be proactive! At least twice a year you should reach out to your tenants and see if any repairs are necessary. Insist on an actual apartment inspection regularly. Your and your superintendent's trained eyes may be able to see problems as they are developing. Always attend to repairs or problems when you first become aware of them. Make sure every tenant is aware of your policy and procedures relating to requests for repairs

Likewise, beware the tenant who cancels a repair appointment. Confirm the cancellation in writing so that you protect yourself in the event that the tenant later brings an "HP" action in Housing Court to force repairs and seek penalties and fines.

What can happen if you ignore a court order? In the case of *729 Prospect Realty Service Corp v Rodriguez*, a Bronx Housing Court judge found the owner to be in both civil and criminal contempt for an "obvious and flagrant failure" to comply with the Court's prior orders. Civil contempt results in fines; criminal contempt can result in jail time and/or fines.

Here, the owner was served with a post-eviction order to show cause (OSC) by the tenant for re-instatement to the apartment after being evicted for non-payment of rent. In the OSC, the judge stayed the re-rental of an apartment by the owner pending the hearing of the OSC. In the OSC, the

tenant claimed they would have the full amount of the unpaid rent to give to the Owner and asked for reinstatement to the apartment. On the return date, the tenant did not have the money yet from the third party source and the tenant's OSC was denied. But quickly thereafter, the tenant brought a second OSC seeking the same relief. At the hearing on the second OSC, the tenant had the money to pay the arrears. However, it came to light that the owner, despite the stay on re-renting the apartment in the first OSC, had re-rented the apartment **before** the first OSC return date. The Court did not take lightly the owner's failure to abide by its order.

The judge ordered the owner to immediately reinstate the tenant **and** pay for the hotel room costs until the tenant was put back in possession **plus** pay for the tenant's possessions to be returned (not normally a post-eviction cost for the owner), **and**, once restored to possession, pay the tenant \$150 for every day until restored to possession. Imagine the leverage the new Tenant has as a result. **Additionally**, the owner was fined \$1,000 for criminal contempt and \$1,000 for the civil contempt with an **additional** \$2,000 monetary fine to be paid to the tenant. Add in the owners' legal fees and, no doubt, the tenant's attorney's fees as well.

In another Bronx case, Housing Court Judge Steven A. Weissman, ruled in *Morris Ave. Equities Corp v Daisy Guzman* that, despite very specific orders from a prior judge -- going back to 2008 -- and three other non-payment cases in which the owner entered into court-ordered stipulations to make repairs (two in 2013 and one in 2014), the owner did not do so.

Judge Weissman found that the owner had submitted a forged sign-off letter from the tenant and that three written requests in 8 years were insufficient to show it was the tenant who was at fault for there being no or incomplete or shoddy repairs. The Judge awarded the tenant a 61% rent abatement until repairs were done. A hearing on legal fees has yet to be completed. The resulting monetary loss to the owner will be substantial and provides yet another example as to why it is best to comply with judicial orders.

If you ignore a judge's order, you do so at your own peril. ■



Article provided by Howard Stern, Esq., Administrator of the RSA Legal Plan, who is solely responsible for its content.