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Avoid Court-Ordered Rent Abatement if Tenant Didn't Give Notice of Defect

When you sue a tenant in housing court for nonpayment of rent, the tenant is likely to claim that there are defects in his apartment and use these defects as an excuse for not paying the rent. This claim is based on the legal concept known as the "warranty of habitability." This warranty requires you to keep apartments free from conditions that could be dangerous or hazardous to a tenant. Section 235-b of the state's Real Property Law says that the warranty of habitability is implied in every lease. If you violate the warranty of habitability, a court could award the tenant a rent abatement, the amount of which would be based on the seriousness of the defect.

But tenants can't surprise you in court with defects that they never told you about. If they do, you can avoid the rent abatement, says Manhattan attorney Adam Leitman Bailey. For example, in a case he handled, a court denied a tenant's claim for a rent abatement based on a breach of the warranty of habitability because the tenant didn't give the owner notice of the defect. In that case, the owner had sued the tenant for nonpayment of rent. The tenant asked the court for a rent abatement based on a breach of the warranty of habitability, claiming that there were conditions in her apartment that needed repair during the period when she owed rent. Although the court agreed that there were such conditions in the apartment, it refused to award a rent abatement to the tenant because the tenant admitted that she had never asked the owner to make any repairs in her apartment [2263 LLC v. Zimmerman: Index No. 68624/06 (Civ. Ct. NY 10/4/06)].

How to Prove Lack of Notice

In the case discussed above, the tenant admitted that she had never notified the owner of the need for repairs in her apartment. But what if you aren't so lucky? It can get tricky trying to prove that the tenant didn't give you notice, notes Bailey. Even if the tenant can't show proof of written notice, she may claim that she gave you oral notice. For example, the tenant may claim that she told the super about the problem.

How do you prove that you got no notice from the tenant of the need for repairs? Your best bet is to have a set procedure in place for handling tenant requests for repairs, says Bailey. Then, if the tenant doesn't follow the procedure, you'll have a better chance of convincing a court that you didn't get notice. For example, some owners keep a logbook of complaints (either on paper or on computer). Whenever a tenant complains about an apartment defect (whether the complaint is oral or in writing), the owner (or a staff member) notes the date, time, and description of the problem. If the tenant mentions the problem for the first time in court, the owner can show that the complaint wasn't listed in the logbook.

You'll also be in a better legal position if you've made sure that your tenants know whom to contact if there's a service problem. You can either post a sign in your building giving tenants a phone number to call to report problems, or just add a sentence with the information to your rent bills, suggests Bailey. You'll then be able to show a court that a tenant knew whom to contact with complaints, but never did so.

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