
WHY WAIT 3 WEEKS FOR A TRIAL

This typical scene plays out with all too much frequency. The Landlord walks into an attorney's office to do an eviction on his constantly late tenant. He tells the attorney that this will probably be an uncontested eviction because the tenant told the landlord that he is sorry he can't pay the rent but he just doesn't have the rent money for this month. Once the eviction is started, the landlord gets a call from the attorney who tells him that he has bad news, his tenant has filed an answer. The attorney further informs him that there will be trial in three weeks and the landlord will have to spend a morning of his valuable time in court. The landlord is furious at the situation, this was supposed to be uncontested.

The landlord has another option instead of a trial. That option is called a motion for summary judgment. In essence, a motion for summary judgment is a motion that is filed with the court so that a landlord can get in front of the court within five to seven days so that he can get a judgment rendered in his favor to evict the tenant.

The advantages of the motion for summary judgment for the landlord are three-fold. First, in an era where rents are approaching all time highs, a landlord can save two weeks worth of lost rent by using the summary judgment. If one assumes that a two-bedroom apartment is renting for \$1,200.00, the savings to the landlord would be \$600.00 that he would not be losing in lost rent.

The second advantage of the

motion for summary judgment is that the landlord does not have to waste his valuable time in court nor does he have to confront the tenant. This is done by the landlord signing a declaration that his attorney prepares which is attached to the motion for summary judgment. This acts as his testimony in court.

The third advantage of filing a motion for summary judgment is the success rate of receiving a judgment for possession and money. If the tenant fails to file an opposition to the motion for summary judgment, the motion should be granted because it is an unopposed motion. In a normal unlawful detainer, to contest the matter, all the tenant has to do is fill in a check the box answer that the court provides. However, to oppose the motion for summary judgment, there is no check box form. A tenant has his feet put to the fire because he has to type out the proper law and declarations, in proper form, to successfully defend against this motion. The tenant can have numerous defenses but if he has not filed an opposition, the court, if it follows the law, should grant the motion and judgment should be entered.

If the tenant should file a written opposition to the motion for summary judgment, that opposition has to raise a triable issue of fact, i.e., a claim for breach of warranty of habitability or that the tenant wasn't served with the notice that is being sued upon.

Even a blind squirrel occasionally finds an acorn. If the tenant files a

successful opposition to the motion for summary judgment, all is not lost for the landlord. The motion for summary judgment also acts as discovery, meaning that the landlord now knows what the tenants case is about as the tenant has to outline it is his opposing declarations. The tenant also has to put forth his evidence that he intends to present at trial. The landlord saves additional monies in the long run because he now knows exactly how the tenant will present his case and what evidence he will introduce into court. This will allow the attorney to better prepare his case to counteract the tenant's case.

In the world where landlords lament the facts that the tenants have all the rights, a motion for summary judgment is a little known weapon that the landlord has in his arsenal which gives the landlord the advantage in court. The uneven playing field that is sometimes tilted in the tenants favor is now tiled back in favor of the landlord.

Steven D. Silverstein has practiced unlawful detainer law for over 25 years. He has served a Judge Pro-Tem in the Orange County Court system. Mr. Silverstein has given lectures to fellow attorneys on landlord-tenant law. He can be reached at his Tustin office by calling 714-832-3651.