

# BARRY MALLIN & ASSOCIATES, P.C.

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ATTORNEYS AT LAW  
132 NASSAU STREET  
NEW YORK, NEW YORK 10038

(212) 285-1200  
FAX (212) 285-1202

## AN OVERVIEW OF LANDLORD-TENANT LAW REGARDING TENANT COOPERATIVES AND TIL BUILDINGS

### I. Introduction -Sources of Law:

Real Property Law (RPL)  
Real Property Actions and Proceedings Law (RPAPL)  
Civil Practice Law and Rules (CPLR)  
Private Housing Finance Law (PHFL)  
Case Law

### II. Non-Applicability of Rent Law to Co-ops

The Rent Stabilization Law does not apply to buildings owned as a cooperative or Housing Development Fund Corporation. See Section 26-504 of the Administrative Code of the City of New York and Jerome Avenue HDFC v. King, 147 Misc.2d 162, 560 N.Y.S.2d 601 (1st Dept. 1990).

### III. Relationship between a Cooperative and its Shareholders

The relationship between a cooperative and its shareholders is that of landlord-tenant. Esplanade Gardens, Inc. v. Reed, NYLJ 5/9/79 p.13, c. 3 and Southridge Cooperative Section No. 3, Inc. v. Menendez, 141 Misc.2d 823, 535 N.Y.S.2d 299 (Civ. Ct. Queens County 1988).

### IV. Overview of Housing Court

A. Co-op Part and Resolution Parts  
B. Trial Parts  
C. HP Part -Code Enforcement

### V. Documents Needed to Start an Action

A. Proof of ownership  
B. Multiple Dwelling Registration  
C. Rental Agreement

VI. Requirements for initiating a summary proceeding

A. Article 7, Real Property Actions and Proceedings Law (RPAPL)—strict compliance. Failure to comply with procedural requirements should often result in dismissal.

B. Jurisdiction

1. Property must be located in a court of civil jurisdiction in a city. Real Property and Proceedings Law §701.
2. Tenant must be in possession.
3. Tenant must be properly served with notice of petition and petition.

C. Notice of Petition. RPAPL §731

1. Must be issued by a judge, court clerk, or attorney --not by the landlord.
2. Must state time and place of hearing.
3. Must state consequences of failure to appear.

D. Petition (RPAPL) §741 must:

Describe the premises.

Allege facts upon which proceeding is based.

Be verified (sworn to) by landlord. Landlord's attorney or agent may verify only in special circumstances. CPLR §3020(D), 3021, 3022.

E. Service RPAPL §733 & 735

1. Time—Notice of petition and petition must be served at least 5 and not more than 12 days before -date of hearing. §733(1).
2. Manner -§735
  - a. Personal service on tenant, or
  - b. Substituted service upon person of suitable age and discretion at the premises, or
  - c. After “reasonable application”., “nail and mail”—attach papers to conspicuous part of property.

For service by method b. or c., copies of notice of petition and petition must be mailed to tenant within one day by registered and by first class mail.

3. Filing—Notice of petition, petition and affidavit of service must be filed with the court within 3 days of personal service or mailing. Service is not completed until affidavit of service is filed, §735(2), unless process was

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served personally on tenant, in which case service is complete upon delivery to tenant. \$35.00 filing fee must be paid at time of filing.

VII. Types of proceedings

a. Non payment (for Co-ops and TIL buildings)

1. What the landlord must allege/prove:

- a. Rental agreement/amount
- b. Amount of rent not paid
- c. Demand for rent (burden is on landlord to prove).
  1. Written—3 days.

2. Potential defenses

- a. No demand for rent.
- b. Rent was paid.
- c. Payment of rent after proceeding was commenced.
- d. Rent was tendered, but landlord refused.
- e. Warranty of Habitability R.P.L. §235-b

1. Statutory Warranty of Habitability is applicable to proprietary lessees as long as they reside in the apartment. Suarez v. River Cross Tenant's Corp., 107 Misc.2d 135, 438 N.Y.S.2d 164 (1<sup>st</sup> Dept. 1981).

2. Every rental agreement is a contract, and tenant is obligated To pay full rent only if the premises are:

- a. fit for human habitation.
- b. fit for users reasonably intended by the parties, or
- c. occupants are not subjected to conditions which would be dangerous, hazardous, or detrimental to their life, health, or safety.

3. Complaints to code enforcement official.

4. Waiver is not permitted.

5. Expert testimony not required to prove damages.

6. Tenant need not prove that landlord is at fault.

7. Landlord not responsible for condition created by tenant.

8. Remedy- court may reduce rent or in severe cases eliminate

tenant's obligation to pay rent until conditions corrected.

B. Holdover- Co-ops

1. Procedure for terminating a Renter's tenancy:

A. Lease

1. Expiration of lease term -- no termination notice required.
2. During lease term – provision of lease govern.
3. For HDFC's must specify reason for termination.

B. Oral month-to-month tenancy -- what the landlord must alleged/prove:

1. Notice of Termination of Month to Month Tenancy.

- a. Must give notice before beginning of rental month to Be out by end of next rental month (not just 30 days).
- b. Must give the specific termination date and date must be last day of the rental month.
- c. For HDFC's, must specify reason for termination.

2. Procedure for Terminating a Shareholder's Tenancy:

a. Proprietary Lease—provisions of the proprietary lease govern.

1. Service of 30 Day Notice to Cure

must specify paragraph(s) of proprietary lease and/or house rules(s) which have been breached

- a. must set forth facts that establish the breach of the lease
- b. include date by which cure must be effected
- c. signed by officer of co-op or person authorized by co-op to sign on behalf on the board (authorization must be attached to notice)

2. Service of 5 Day Notice of Termination

- a. must specify failure to remedy default set forth in Notice to Cure (attach prior notice with affidavits of service)
- b. must include date on which lease terminates signed by officer of co-op or person authorized by co-op to sign on behalf of the board (authorization must be attached to notice)

b. Grounds for Terminating a Shareholder's Proprietary Lease:

1. Non-Primary Residence

The Shareholder must use the Apartment as his or her primary residence, which is defined as: 1. Shareholder is domiciled at the Apartment or, 2. if not domiciled at the Apartment, Shareholder had spent more than 183 days in the preceding year calendar year at the Apartment.

a. Important Criteria in Establishing a Case

1. Income Tax Returns
2. Length of time in apartment
3. Address listed on important documents

4. Alternate residences
  5. Illegal subletting or apartment
  6. Utility Records
  7. Testimony of building employees and shareholders
2. Use of the premises—Residential use
  3. Illegal Subletting—Shareholder needs Boards permission to sublet
  4. Illegal Alterations—Shareholder needs Boards permission before undertaking major alterations
  5. Objectionable Conduct—Violating House Rules Co-op may decide by an affirmative vote of two-third of the Board of Directors, at a meeting duly called for that purpose, that the tenancy of the shareholder is undesirable, because of objectionable conduct.
  6. Chronic Non-Payment of Maintenance  
The case law holds that there is no “magic number” of the prior non-payment proceedings that the co-op had to bring against the shareholder to maintain a holdover for chronic non-payment. The courts will look at the totality of the circumstances presented and make its decision determination based upon if the tenant chronically and unjustifiably refused to pay rent when due and as a result, the landlord was compelled to bring numerous non-payment proceedings within a relatively short period of time. Sharp v. Norwood, 643 N.Y.S.2d 39, 223 A.D.2d 6 (1<sup>st</sup> Dept. 1996).
- C. Holdovers- TIL Buildings
1. Thirty Day Notice of Termination  
The court have found that the City of New York is so entwined with management of a building in the TIL Program as to constitute significant and meaningful government participation. Such participation triggers the constitutional due process guarantees and requires that a tenant be given notice of the reasons for termination of the tenancy. 512 East 11<sup>th</sup> Street HDFC v. Grimmet, 181 A.D.2d 24 (1<sup>st</sup> Dept. 1992).
  2. Grounds for Termination
    - a. Non-Primary Residence
    - b. Illegal Subletting
    - c. Nuisance
    - d. Use of the Premises
- D. Potential defenses for tenant

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1. Acceptance of rent for a period after expiration of notice and prior to commencement of summary proceeding.
2. Discrimination on the basis of race, sex, marital status, handicap.
3. Retaliatory eviction RPL §235-b
4. Improper Service

**E. Answer RPAPL §743**

1. May be oral or in writing on date of hearing.
2. If notice of petition served at least 8 days before return date, may demand answer 3 days before return date (oral or written).

**F. Stipulation of Settlement**

Stipulations of Settlement are written agreements between the parties settling the case. All stipulations should be "So Ordered" by the Court. This means the Judge has reviewed and approved the agreement. When the tenants is unrepresented, the Court will review the stipulations with the tenant and make sure that the tenants understands what he or she is signing.

**1. Non-Payment**

The main issue in a non-payment case is most frequently the amount of time the tenant can be given to pay, and assistance in getting help from the Department of Social Services.

**2. Holdover**

The main issues to be considered in a stipulation disposing of Holdover proceedings are the behavior alleged to have breached the lease, and the negotiable terms of settlement, i.e., waiver of the breach with a period of probation or the time to move out with or without the payment of use and occupancy or cash inducements to move.

**G. Trial**

1. If tenant disputes all or part of landlord's claims, a trial must be held.
2. Sworn testimony must be taken from landlord's witnesses first to establish landlord's prima facie case.
3. If landlord fails to establish prima facie case, proceeding must be dismissed.
4. If the landlord does establish prima facie case, then tenant must be given opportunity to rebut landlord's evidence and offer testimony to present defenses.

**H. Judgment**

1. Must be entered, determines rights of parties.
2. Money judgment - - only if losing party was personally served or answered or appeared -- limit to amount of money judgment.

**I. Warrant of Eviction**

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1. Where judgment is in favor of landlord, court issues warrant to direct the marshal to remove the tenant.
2. Marshal must serve 5 days notice of eviction upon tenant.
3. After notice expires, Marshal may physically remove tenant between sunrise and sunset.

**J. Staying or Vacating the Warrant.**

1. Non-payment proceeding - - deposit of rent, interest, and costs with the court at time prior to execution of warrant terminates the proceeding and prevents eviction. §755.
2. "For good cause shown"- - at any time. RPAPL §749 (3).