AN OVERVIEW OF THE EVICTION PROCESS

The process to evict a tenant in Maine depends in part on the type of tenancy that is involved. A tenant that is renting property without a written lease agreement is a "tenant-at-will", and an eviction of this type of tenant is primarily governed by State law, Title 14 Maine Revised Statutes Annotated (M.R.S.A.), Section 6002. This section provides for termination for no cause, or "at the will of the parties", with a minimum 30 day notice in writing. It is also possible to terminate a tenancy-at-will with a 7 day notice, for several reasons, including; nonpayment of rent, substantial damage to the leased premises, nuisance, or a violation of the law. There are additional conditions for each of these, and the Statute should be reviewed.

The termination of a tenancy of a tenant with a written lease is primarily governed by the terms of that lease, provided they do not conflict with any State law. Section 6002 noted above, does not apply to leases, and its provisions should not be used to either draft a lease, or guide the eviction of a tenant with a written lease. Most leases will provide for some written notice to terminate the tenancy if the tenant has failed to comply with the terms of the lease. This provision must be followed in order to properly terminate the tenancy. A recent revision to State law (Section 6001) provides that a landlord may use the process outlined in Section 6002 if a lease "…does not include a provision to terminate the tenancy or does not provide for any written notice of termination in the event of a material breach of a provision of the written residential lease." This should not be an issue with a well drafted lease.

If the property or the tenant's rent obligation is subsidized in any way through a government program, the program's rules and regulations must be followed. The lease should track these rules, and if it does not, the rules would still control.

Once the tenancy has been terminated by a proper notice, if the tenant has not vacated, the landlord must bring a court action to enforce the termination. In Maine this type of action is called a "forcible entry and detainer", "FED" or FE & D". It is an eviction. The tenant must be served with a complaint and summons at least 7 days prior to the court hearing date, and that summons must advise the tenant of the date and time of the hearing, and the location of the court. Under the current COVID procedures the initial hearings are treated as "status conferences" and are held telephonically. Either the Plaintiff (landlord) or the court will notify the tenant of the date, time, and call in information for the conference. The procedure differs depending on which court the case is to be heard, and you or your attorney should check with the court clerk for the proper procedure. On the date of the conference the Judge will call the case, and if both parties have called in the Judge will usually ask if there is any agreement. If yes, the agreement is entered by the Judge as a court order. If there isn't an agreement, either mediation and or a final hearing will be set. Landlords no longer get a default judgment if the tenant fails to call in for the conference. However, if the landlord fails to call in, their case will be dismissed. Unfair? Absolutely, but that's the way it is.

If a hearing is held, the landlord must prove to the court that the tenancy has expired, or that the tenant has violated the terms of the rental agreement (whether written or oral) and that a proper notice (if required) was served on the tenant. The statutory procedure requires that all of the steps be met by the landlord, and one mistake, no matter how small or inconsequential may cause the landlord to lose. Therefore, it is wise to have a knowledgeable attorney handle your evictions.

Landlords may represent themselves in eviction actions, provided they individually own the property. If it is owned by a corporation, LLC, or partnership, an attorney must represent the owner. If an LLC is the owner, a member of the LLC may represent it if it is a single member LLC or it is owned by spouses. The eviction complaint must be brought in the name of the owner, and not a manager or management company. All of the known occupants should be listed as defendants, and each of them must be separately served with a summons and copy of the complaint.

If the judge rules in favor of the landlord, an order is entered that authorizes a Writ of Possession to be issued by the court clerk seven days after the order is entered in the court's docket. This entry does not necessarily occur on the same date as the hearing or the date of the court order. The parties can agree that the Writ may issue earlier or later, but the judge does not have the authority to enter anything other than seven days unless the parties agree. This is the main reason the parties are encouraged by the judge to discuss the case and try to settle it. If a trial is held, it is an all or nothing situation. If the landlord wins, the Writ issues in seven days. If the tenant wins, the landlord gets nothing. Either party may appeal the judge's decision, and may seek a new trial by a jury if there is a genuine factual dispute, and not just a claim that the judge misapplied the law. A timely and proper appeal will automatically stay the issuance of the Writ of Possession until the case is docketed in the Superior Court, at which time the tenant must ask for a further stay which is usually granted, with the condition that rent be paid during the appeal. Other conditions may be included if appropriate.

Once a Writ has been issued it must be served on the tenant by a deputy sheriff, and 48 hours after it is served the tenant is considered a trespasser without right, and any of their personal property still at the premises is considered abandoned. At that point they can be arrested if they don't leave.

The process can be daunting, especially to the novice landlord or attorney. Losing on a "technicality" is possible, and can become quite expensive. Paying an experienced attorney to do it right the first time will usually be less expensive in the long run, and with a properly drafted lease, you can sometimes recover those fees and costs from the tenant.