

# Legal Lines

by Tamara Cross, Esq.

## Delay tactics used by residents in unlawful detainer trials And ways to avoid them

Many community owners and managers have been through the unlawful detainer process. Not all of them, however, have encountered just how different and difficult one unlawful detainer action can be from another with regards to time frames, discovery and even trial. If you are lucky, your encounter with an unlawful detainer action took approximately three to four weeks and ended nicely in a default judgment without the need to go to court. This article will walk you through the non-default unlawful detainer action and address some of the options that resident/tenants have to delay the process and to make the unlawful detainer action a long, expensive experience.

In discussing the difficult unlawful detainer trial, this article will address the delay tactics taken by residents and their attorneys, the defenses raised to complicate the issues, and finally, suggestions on how best to avoid these delays.

### Summary proceeding

The unlawful detainer trial was intended to be a "summary eviction proceeding," which means it was intended to be a quick and limited proceeding in comparison to the general civil litigation matters. For example, in a general civil lawsuit, the defendant has 30 days to answer the complaint, but only five days to answer in an unlawful detainer action. Also, the trial in a general civil lawsuit may take over a year to be heard, where the unlawful detainer trial is required to be set within 20 days of the tenant's answering.

The issues in an unlawful detainer action are

intended to be limited as well. The right to possession of the premises and the damages resulting from the unlawful detainer are the only issues that should be tried.

Despite the attempt to keep the unlawful detainer action quick and limited, resident defendants familiar with the system understand how to drag it out and delay the trial and the lock-out, so that the resident remains in the premises much longer than he or she should.

### Avoiding service

The first and easiest delay tactic taken is to avoid service of the unlawful detainer complaint. Unlike the service of a termination notice (whether it be a three-day or 60-day notice), the unlawful detainer complaint must be personally served (or subserved) on the resident defendant. Clever resident defendants will avoid being served personally or subserved because this requires the owner to obtain a signed order to post and mail from the court. This can delay the lawsuit for several weeks, and give the resident defendant several more weeks to answer the complaint.

### Filing the answer

Many residents understand that even if there is no real justification to fight the eviction, filing an answer in an unlawful detainer lawsuit will delay their lock-out for at least three weeks, as opposed to not answering and having a default



judgment entered against them. In addition, many resident defendants get a waiver of court costs, unlike owners who typically must pay \$195 to file a complaint.

### **Motions to quash summons and demurrers**

If the resident defendant is ambitious, further delay can be taken by filing a motion to quash service of summons alleging that the unlawful detainer complaint was not properly served or by filing a demurrer alleging there is some defect on the face of the complaint. These motions may delay the trial setting for several weeks.

### **Frivolous affirmative defenses and discovery**

If the resident defendant files an answer, they may assert “defenses,” or reasons why they believe they should not be evicted. Often times these defenses are meritless and intended solely to cause delay and allow harassing fishing expeditions from owners. The affirmative defenses frequently asserted by resident defendants are:

1. Resident defendant offered the back-due rent before the notice period expired, but owner/manager refused to accept it;
  2. Plaintiff owner waived the notice by accepting some or all of the amounts owed after the notice expired;
  3. Plaintiff owner changed, or canceled, the notice to quit;
  4. Plaintiff owner discriminated against resident defendant or is unlawfully retaliating against the resident defendant;
  5. Plaintiff owner violated a rent control ordinance; and,
  6. Plaintiff owner breached the warranty of habitability and/or resident defendant properly invoked the “repair and deduct” remedy, but plaintiff did not give proper credit.
- Since resident defendants typically own the manufactured home, breach of habitability issues may arise in regards to the common areas and homesite/space (unless the community owns the manufactured home and rents it to the resident defendant). A recent bill was introduced to require resident defendants to include specific information about the alleged habitability issue in the answer in an attempt to limit the frivolous use of this defense.

Furthermore, resident defendants can utilize written questions, oral depositions and subpoenas to elicit information to prove these defenses. Oftentimes this discovery delays the process and a continuance must be issued to allow the parties to conduct and complete these “discovery” procedures.

In addition, the resident defendant can request the

unlawful detainer action be heard in front of a jury, instead of a judge. This creates more expense for the payment of jury fees and is more time consuming to pick and have a jury available.

### **Bankruptcy**

If at any stage during the unlawful detainer trial, the resident files a petition for bankruptcy, not only will this act as a serious delay to the owner in obtaining possession, it may also wipe out the owner’s ability to recover some or all of the amounts owed.

When the resident files for bankruptcy, all eviction actions against the resident defendant must stop (be “stayed”). Thus, if the trial date or lock-out date is set to move forward, the trial or lock-out is stayed until the bankruptcy matter is dismissed or until the bankruptcy court (after a motion and hearing) relieves the owner from the stay and allows the owner to continue with the eviction process.

### **Post trial motions: hardship, stays and appeals**

Even if the owner is granted possession of the premises by the court, this does not guarantee a quick possession and lock-out. The resident defendant has several post-trial alternatives to delay the lock-out and continue to remain in possession of the premises.

California law allows the resident defendant, after losing an unlawful detainer trial, to request the court weigh the costs and hardship of evicting the resident defendant with the costs and hardship to the owner if the resident defendant was allowed to continue his or her tenancy and pay owner what is owed. In the manufactured home situation, resident defendants often plead the hardship to the resident is greater than for a typical apartment renter, since the manufactured home resident defendant must move or sell the manufactured home, which is expensive and may result in a substantial loss of equity in the home.

Finally, a familiar delay tactic is for the tenant to attempt to “stay” or stop the scheduled lock-out after a judgment for possession and lock-out is granted to the owner. Any time prior to the actual lock-out by the sheriff, the resident defendant can go into the court (typically with a 24-hour notice to owner) and request a stay or continuance of the lock-out date. This request can be made if the resident defendant will be filing one of the post trial motions discussed, or just because the defendant needs additional time



to find another place and move out. Continuance of the lock-out date and the amount of time the resident defendant is given usually remains in the discretion of the judge hearing the request.

In addition, the resident defendant can always appeal the judgment against him or her obtained in the unlawful detainer trial and the lock-out may be stayed during the appeal process.

### What owners can do to limit these delays

There are things the owner can do to limit these delay tactics. The owner can negotiate with the tenant early on in the litigation and enter a stipulation to be enforced by the court.

I know the term "settlement" or "stipulation" intimates that the owner gave in, but this is not necessarily the case. When the stipulation is done carefully and creatively, the owner can succeed in using this tool to limit these delay tactics as well as achieve the results the owner would hope to obtain at trial, including collecting past due rent, utilities, attorney fees and evicting the resident.


The terms of a stipulation can take several forms, depending on what the owner's goal is in pursuing the eviction. If the owner simply wants his or her past rent and utilities paid by the resident and doesn't mind the resident continuing the residency, the stipulation can ensure that the resident timely pays what is owed and can even set up a term where if the resident is late again on the rent (within a reasonable time period from entering the stipulation—usually six months to a year), the owner does not have to start the whole process of filing a three-day notice to pay rent or quit, waiting 60 days and then filing an unlawful detainer action, all over again.

The stipulation should set forth the amount to be paid and state that if the resident fails to pay or defaults on any terms of the stipulation, the owner can submit a declaration of default to the court without further hearing on the matter. Upon the declaration for default, the court will grant the owner the right to an immediate lock-out and eviction of tenant. In addition, the court would grant a money judgment for past due rent, utilities and all attorney fees.

If the owner does not want to reinstate the tenancy, the stipulation should set forth a date certain for the resident to vacate and what amounts and when are to be paid by the resident. Several

terms can be negotiated to sway the resident to agree to terminate the tenancy and leave on a certain date, without having a trial. Some negotiable terms are to reduce some of the money the resident owes for past due rent and utilities, reduce the attorney fees requested at trial, offer a neutral reference and/or allow additional time for the resident to move out than the court would give if the matter went to trial.

The stipulation should be submitted to the judge handling the lawsuit and the judge should sign the stipulation, making the terms of the settlement a court order. Therefore, if the resident fails to leave when requested or fails to pay as promised, the owner does not need to start the process over again, the owner just needs to request the court enforce the terms of the stipulation.

Stipulations do several things. They limit the delays stated above, which can cause additional fees and lost rent. They also limit the judge's discretion by setting forth what the owner and resident agree to, not what the judge decides is appropriate. California judges have broad discretion to rule on a resident's defenses to eviction and to grant them stays and hardships. This is a strong incentive to enter into a stipulation. The owner may have to compromise a bit, but typically if these stipulations are done correctly and creatively, the owners can end up getting everything they would have received at trial, while limiting delays, limiting risk and avoiding a trial. 

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