
How to Win A Chronic Nonpayment Case

By Adam Leitman Bailey, Dov Treiman and Carolyn Rualo.

Owners waste tons of money starting nonpayment cases and paying lawyers to prosecute these cases only to have the tenant pay on the eve of eviction and default again the very next month or months later. Most of the time, the legal fees and court costs are not reimbursed because these cases are settled. Therefore, it is essential for owners of rent stabilized apartments to spotlight frequently delinquent accounts and prepare them for chronic nonpayment actions. When done properly, this will allow the owner to either evict the delinquent tenants or force the tenant to become a regular payer.

The courts vary somewhat on what it takes to characterize a frequently late tenant as a "chronic nonpayer." Generally speaking, they will be looking for five or more court cases brought against the tenant in the course of approximately two years. However, any court case which involves the tenant getting some kind of repair schedule or rent abatement will not count towards this total. Also, most courts will not count demand notices, even though you had to pay your lawyer to prepare them. You should also be aware that in Manhattan and the Bronx, whether or not you agree to give the tenant a probationary period to develop a good payment record after the court chronic nonpayment case, the court will likely order one.

Adam Leitman Bailey, P.C. has implemented a system for all of its property owning clients, to identify intentionally late paying tenants and build chronic nonpayment cases. This system results in either the eviction of these tenants or insurance that they pay their rent timely.

Once a chronic late paying tenant has been identified, our firm commences due diligence. We begin by searching court records for previous cases and gathering prior orders and stipulations to evaluate the tenant's default history. We count the number of cases commenced and the number of default notices sent. We also collect rent ledgers and mark the dates of payment.

Simultaneously, we deliver rent demands to the tenant shortly after the rent's due date has passed. Starting the cases as soon as the tenant is in default strengthens our legal case. We also have brakes in place to make sure you never send a default notice until after the rent is due. In housing court as in life, the advantage

lies with the diligent. By sending out nonpayment notices immediately after each and every default date, we start more cases and create a stronger record of the late payments. This paper trail ultimately assists in obtaining an eviction.

Only the best owners can win these cases. Success in these cases depends largely on how proactive owners are with respect to inspecting and ensuring repair free apartments. Owners must inspect and repair tenant apartments as much as possible to avoid any claims or defenses that the failure to pay the rent is based on a lack of services. When a rent default occurs as a result of a tenant withholding rent due to the lack of repairs, the legal action may be negated and not considered in proving a chronic nonpayment case.

For these cases, owners must actively inquire about repair problems in the apartment. If conditions occur, the owner must immediately obtain access and inspect and repair as necessary by law, resolving any doubts in favor of doing the repair. We have our clients send letters to the tenants requesting an inspection to evaluate whether any repairs are necessary within their apartments. If repairs exist and denial of access to the apartment occurs, further certified letters are sent and continue to be sent until the granting of entrance.

Unlike your standard nonpayment case, the *chronic* nonpayment case cannot be cured by paying the rent. At the same time, the case will not be won unless the tenant *intentionally* has not paid rent for a long period of time for no good reason (i.e. the repair free apartment).

To avoid a trial many owners enter into a probationary agreement whereby the tenant must pay the rent on time for the next six months to two years or suffer eviction.

Hence, it is essential to build a case by researching, collecting evidence, and by being a good owner who provides required services and keeps repair free homes. The result will be either a good tenant or a vacant apartment. ♦

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