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Compliance Eviction (non-monetary) Cases During the COVID-19 CRISIS

Tschetter Sulzer clients have asked whether non-monetary evictions can be filed during the crisis. Non-monetary cases include demands for compliance or possession, notices to quit for repeat violations, and substantial violations. This advisement addresses these kinds of cases and the surrounding issues.

Currently, courts are not accepting any eviction filings. We have been successful in filing an eviction in Jefferson County based on a substantial violation. However, in order to get the court to accept this case, the firm had to spend significant additional time and effort on the case. We had to prepare a motion and supporting affidavit. We had to create these documents to convince the court that it was important for the case to be heard now. Based on the extra work non-compliance cases will require, until things go back to normal, all non-compliance cases will be billed at our normal hourly rates.

Clients should know this as well. Even with the extra effort, there is simply no guarantee that a given county court will accept the eviction case prior to the court going back to a regular schedule. This means that you could incur legal fees for a case that doesn't get heard by the courts until mid-May or even the end of May. Substantial violation cases are much more likely to be heard because they involve danger to person or property. Non-compliance or repeat violation cases are probably much less likely to be heard unless they involve health and safety issues. The bottom line is that you won't know until you file the case and the court rules whether they will hear the case prior to resuming normal operations.

OTHER CONSIDERATIONS:

The CARES Act signed into law by President Trump on March 27 imposes a 120 moratorium on rent based evictions on Covered Properties. The CARES Act did not place a moratorium on non-compliance evictions on Covered Properties. Again, non-compliance evictions are failure to comply, repeat violations, and substantial violations. Examples are unauthorized occupants, noise disturbances, drug or criminal activity, unauthorized animals, etc. The CARES Act does prohibit a landlord from terminating the relationship for no cause (non-renewing) until 30 days after July 25, 2020.

Although the CARES Act does not prevent Landlords from trying to evict tenants of covered properties for non-monetary lease violations, again we may still encounter resistance from the Courts. If there is a lease violation that is directly related to public health and safety concerns, the Court may be more likely to consider setting it sooner if it is filed with an additional motion for special consideration. For this reason, we anticipate having more success with the substantial violations as substantial violations are directly related to public health and safety by their very nature. For compliance and repeat violations such as unauthorized occupants, unauthorized animals, repeated noise disturbances, etc. it may be harder to convince a Court those violations deserve to be heard prior to the courts resuming normal operations.

While the CARES Act does not apply to Non-Covered Properties, Non-Covered Properties should know that the CARES Act may likely be raised in non-compliance cases (all cases for that matter) for the foreseeable future. Specifically, Colorado Legal Services (CLS) regularly asserts defenses in eviction cases that have no factual basis. For example, CLS asserts that the tenant didn't get served in cases where the tenant was personally served. Similarly, we anticipate that CLS may assert that a property is a Covered Property when it is not, and that as a covered property, the Landlord cannot evict because (1) this is an eviction during the moratorium period, and (2) the Landlord did not give a 30-day notice to vacate. Accordingly, through the end of August 2020, all clients managing Non-Covered Properties should be prepared to prove that their property is not on a Covered Property.

Whether to file a non-compliance eviction is your decision. You should consider the factors we have set forth in this advisement in arriving at your decision. We do recommend that cases far removed from health and safety concerns be postponed until courts are fully operational.

Please contact us if you have any questions or concerns about these cases.