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**WHAT IS A HOLDOVER PROCEEDING AND
WHY WOULD A LANDLORD COMMENCE ONE?**

A holdover proceeding is a proceeding to evict a tenant on any grounds other than the nonpayment of rent. A landlord generally initiates a holdover proceeding when a tenant stays past the expiration of the lease without the consent of the landlord or when a tenant violates a term of the lease or rent laws (i.e. if a tenant uses the apartment for illegal activity, like selling drugs, or behaves in a way that threatens the life, safety or comfort of other tenants). Because a tenant faces the permanent loss of his/her apartment, holdover proceedings are inherently more complicated than the average nonpayment proceeding where the main issue is whether or not a tenant paid his/her rent.

To commence a holdover proceeding, oftentimes a landlord must first provide a tenant with written notice that his/her actions are in violation of the lease and provide the tenant with time to cure – usually ten days (this type of notice is known as a “Notice to Cure”). [Please note a landlord may skip this step if the tenant’s actions are incurable.] Next, a landlord would serve the tenant with written notice of termination of his/her lease (this type of notice is known as a “Notice to Vacate”). This notice must contain a date by which the tenant must vacate; generally one full calendar month is required, for example, if the landlord serves the notice on June 15th, the tenant will have until July 31st to vacate.

If the tenant fails to vacate after the expiration of a Notice to Vacate, a landlord would then need to commence the holdover action in court. A landlord must be careful not to accept rental payments from the tenant once he/she commences this type of action. Accepting rental payments after the holdover proceeding begins could reverse the landlord’s previous actions and lead to a dismissal of the proceeding. To avoid dismissal, the landlord should reject any payments made by the tenant until the landlord requests and receives permission from the court to allow him/her to accept “use and occupancy” payments from the holdover tenant. Granting “use and occupancy” allows a landlord to collect the money owed without facing prejudice.

Landlords must be careful when initiating holdover proceedings, because they can face penalties if they try to evict a tenant in a “frivolous” manner. Thus, this type of action should not be brought when the landlord knows the case has no real merit as the court may view such action as harassment and may assess sanctions.

If you are having trouble with a tenant please contact James G. Dibbini & Associates, P.C. today to discuss whether a holdover proceeding is the right course of action for your situation.

Our office also provides legal services in the areas of:
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General Business Law, Tax Certiorari, DHCR Representation and Zoning Matters

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