

Landlord & Tenant Law: Questions and Answers

For the past year or so, I have been fielding many phone calls for the AASEW from many members who have legal questions pertaining to landlord-tenant law. I have decided to provide some of those questions (without the caller's name or identifiable information) and answers to the AASEW so that they could incorporate them into this Q & A section of the newsletter with the hope that the information provided could benefit the membership at large and not just the individual caller.

If you have any general landlord-tenant questions that you would like answered in this column please feel free to submit them to me via email at tpettit@petriestocking.com. Please be aware however that due to limited space availability your questions should not be overly fact intensive; general questions are preferred and are more likely to be included in future editions of this newsletter.

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Subject: Effect of a Tenant's Bankruptcy on the Collection of Rent and/or Eviction

Question: Dear Tristan:

I have a tenant that is behind in paying their rent and I am planning on beginning the eviction process in the near future. Yesterday, however, I received some document from the U.S. Bankruptcy Court indicating that my tenant has filed for Chapter 13 bankruptcy. Before I send out the Notice Terminating Tenancy I wanted to know if the tenant's bankruptcy filing would cause any problems?

Answer: Yes, your tenant's bankruptcy filing has a huge impact on your ability to send out a Notice Terminating Tenancy, or any other attempts by you to collect your past due rent including the starting of an eviction action. When a person files for bankruptcy (regardless of the type. i.e. Chapter 7 or 13) there is something called an "automatic stay" put in place that prevents a landlord, or anyone else trying to collect from the individual debtor, from proceeding. By filing for bankruptcy your tenant is seeking protection from any and all creditors and because the tenant owes you rent, you are a creditor. Before you can attempt to collect the rent, or even continue to pursue the collection of your rent if you had previously started doing so prior to the tenant filing bankruptcy, you MUST first seek relief from the U. S. Bankruptcy Court by requesting that they lift the "automatic stay." Thus, the "automatic stay" prevents you from sending out a notice terminating the tenancy, calling the tenant and telling him/her to "pay up" or starting an eviction action. In order to seek relief from the "automatic stay" you or your attorney, will need to file a motion with the bankruptcy court asking for this relief. Once you are before the bankruptcy court, there are a number of scenarios that can occur all of which require much more time and space for explanation than this Q & A format allows. The key point however is that once a tenant has filed for bankruptcy you, the landlord, must stop all attempts at collecting any past due rent from the tenant or evicting them until you seek relief from the bankruptcy court. Failure to do so may result in you being sanctioned by the bankruptcy court and if you willfully violate the "automatic stay" the injured party (in this case the tenant that hasn't paid his/her rent) shall be allowed to recover actual damages against you including his/her costs and attorney fees, and if appropriate, even punitive damages.

As always, the above question and answer are general in nature and are not intended as specific legal advice, should you have questions regarding a specific legal matter you should contact an attorney.