

Eviction Defense: Helping Older Tenants Remain at Home

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

About Greater Boston Legal Services

Greater Boston Legal Services (GBLS) is a civil legal services program providing assistance to income eligible clients and older adults in the Greater Boston area of Massachusetts. It receives Title III funding for work with other adults.

GBLS is not LSC-funded, and so can do work and take on clients that might otherwise be barred by LSC restrictions (class actions, immigration status, attorney's fees, etc.)

Key Lessons

1. Older adults face barriers to remaining in their homes and legal advocates play an important role in overcoming those barriers.
2. Older tenants face unique barriers in the court system.
3. Although they vary from state-to-state, there are common types of older tenant evictions and claims to fight against eviction.

Older Tenants: Barriers to Remaining at Home

Barriers to Remain

- Four types of barriers to remaining at home:
 - Economic displacement
 - Mobility and independence issues
 - Tenant remaining lease compliant
 - Actions of others putting tenant at risk

Economic Displacement

- Gentrification
- Income loss (short term & long-term)
- Getting into and retaining affordable housing

Examples of Economic Displacement

- Mrs. O'Brien's rent has been \$800/month, and the landlord has demanded a rent of \$1500/month.
- Mr. Perez can no longer work and other benefits (unemployment or Social Security) aren't sufficient for him to cover the rent and other expenses.
- Ms. Lau has a Section 8 voucher, but the owner is renovating and asks everyone to leave.

Mobility/Independence Issues

- Access barriers, transfer/relocation
- Assistance in carrying out activities of daily living
 - Living with or renting from family members
 - Live-in aides, personal care attendants, etc.

Tenant Remaining Lease Compliant

- Financial management:
 - Representative payee
 - Secure payment arrangements
- Behavioral issues:
 - Dementia
 - Hoarding
 - Contenance

Actions of Others Creating Risk

- Exploitation by other family members
 - Financial
 - Unauthorized occupancy
 - Criminal activity or other wrongdoing
- Exploitation by the landlord
 - Failure to maintain property
 - Outrageous conduct

Court System Barriers

Court System Barriers

- Access:
 - Inability to get to court (illness, distance, mobility, location)
- Time:
 - Speed with which tenants must take action
- Cognitive and language issues:
 - “Legalese,” expectation that tenants know what to say

Getting Past Court Barriers

- Meaningful help with response to court
 - Eviction clinics, court service centers, on-line materials
 - Limited assistance programs (Attorney of the Day)
 - Diversion programs (mediation, homeless prevention)
 - Full Representation

Decision-Making and Client Guidance

- Client's primary role in decision-making
- Informed consent:
 - Need to know the range of options
- Getting guidance as to what may work but not being directed by others; potential conflicts
- Places where substituted judgment may enter:
 - Rules of Professional Responsibility, guardians ad litem, full guardianship or conservatorship

Pretrial, Trial, and Post-Trial Process

- Varies by state and locality
- Varies by type of housing
- Right to cure defaults
- Mediation and negotiated settlements (pros/cons)
- Discovery and pretrial motions
- Trial (by judge or jury)
- Appeals; stays of execution

Resources for Assistance with Court

- Service providers
- Friends/family
- Community organizing (anti-displacement)
- Court-related programs (diversion)
- Local programs for homeless prevention
- Attorney of the Day programs at court
- Legal services & clinical programs

Common Eviction Defenses/Claims (varies by state/local law)

- Conditions of disrepair:
 - Implied Warranty of Habitability, Quiet Enjoyment, Consumer Rights
 - Protection Against Retaliation
- Good Cause or No Substantial Lease Violation Shown; Cure or Equitable Anti-Forfeiture
- Reasonable Accommodation or Other Anti-Discrimination Defense

Common Eviction Defenses (cont'd)

- Often there are procedural defenses:
 - Defective notice or didn't follow subsidy rules
 - Defects with Process
 - Waiver or Re-creation of Tenancy; Statute of Limitations

Massachusetts Examples

Massachusetts Protections

- Stay of execution for up to 6 months in “no fault” evictions (up to 12 months if household member is 60 or older or has disability): G.L. c. 239, § 9
- Seeking priority on public housing waiting list for “emergency case” eviction
- Switching between subsidy programs (switch from tenant-based may avoid gentrification; switch to tenant-based may allow relocation closer to family)

Client Examples, MA Protections

- Ms. O'Brien asks for a stay of execution because she is 70 and a rent increase is “no fault.” Court gives 5 months at first—may seek extension.
- Mr. Perez gets help with back rent, and owner agrees to give some time. Tenant applied for emergency status for affordable public housing.
- Ms. Lau decides, in addition to looking for another place with voucher, to also apply for public housing with elevator and no “no fault” eviction.

Additional Resources

- U.S. Department of Housing and Urban Development (HUD)
 - [HUD-Approved Housing Counseling Agency](#)
 - [HUD Rental Assistance Information](#)
 - [Fair Housing Information](#)
 - [Tenants' Rights State Information](#)
 - [Resource Locator](#)
- Legal Assistance
 - [Legal Services Corporation: Find Legal Aid](#)
 - [American Bar Association Volunteer Lawyers](#)
- Advocacy Organizations
 - [National Housing Law Project](#)
 - [National Fair Housing Alliance](#)
- Publications & Reports
 - National Consumer Law Center, Guide to Surviving Debt (10th ed. 2016)
 - Joint Center for Housing Studies of Harvard University, Housing America's Older Adults (2014)

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Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.