

Mock Eviction Docket

New Judge School 2016-2017

Characters: Judge, Cynthia Clerk, Linda Landlord, Tommy Tenant

Bailiff Calls Court to Order

JUDGE: Good morning everyone, please be seated. Today, we have our eviction docket scheduled, so we will go ahead and get started. I know that these cases can sometimes be emotional, but I would like to remind everyone that we have to keep a professional courtroom, with no outbursts. Thank you so much.

I would like to call our first case, Linda Landlord vs. Danny Deadbeat.

Linda Landlord approaches the party table

LL: Hi Judge, I'm Linda Landlord, and I am ready to proceed.

JUDGE: I don't see Danny Deadbeat anywhere. Is Danny in the courtroom today? ... Let me check the file.....OK I see that Danny was served with the citation 8 days ago, so since he was served more than 6 days before trial, we can move forward with a default judgment. Let me take a look at the pleadings.....Since Danny isn't here, I have to take your sworn petition as true. OK I see that the petition says that he had pets in violation of the lease agreement. I don't see, though, where it says that you actually gave him a notice to vacate. As you know, you have to prove that you gave the proper notice to vacate, otherwise I can't give you possession, even though Danny hasn't appeared today.

LINDA: Oops, I'm sorry, Judge, that was just an oversight. Can I modify my pleadings to include it now?

JUDGE: I can't let you modify pleadings orally without the defendant here, but since this is the trial day, I can go ahead and swear you in and let you testify on the notice to vacate issue.

LINDA: Yes, Your Honor.

JUDGE: Raise your right hand. Do you swear that the testimony you are about to give in this case is the truth, the whole truth, and nothing but the truth?

LINDA: I do.

JUDGE: Tell me about the notice to vacate in this case.

LINDA: OK, I gave him the notice to vacate in person when he came in to pay rent on November 2, 2016. Per our lease, 24 hours notice to vacate is appropriate. I then discovered on November 4 that he had still not vacated the premises, so I came in and filed my eviction suit.

JUDGE: And you aren't seeking rent in this case?

LINDA: No, Your Honor.

JUDGE: OK. Based on your sworn testimony, and your petition, I am granting you possession of the premises located at 4402 Spanish Gold Ln. Mr. Deadbeat, as you know, has 5 days in which to file an appeal. Cynthia?

Cynthia Clerk enters and approaches the bench

CYNTHIA: Yes, Judge?

JUDGE: Generate a default judgment in the matter of Linda Landlord v. Danny Deadbeat for my signature. Once I sign it, remember it must go out immediately to Mr. Deadbeat at the premises address.

CYNTHIA: Got it.

JUDGE: Thank you.

Cynthia exits

JUDGE: OK, let's see, next case is Linda Landlord vs. Tommy Tenant. Is Tommy Tenant here today?

Tommy Tenant enters and approaches the party table

TOMMY: Yes sir, I am here.

JUDGE: OK, then we will begin. Since Tommy Tenant appeared, I can't rely on Linda Landlord's petition, so we will have a trial where Linda will have to show

that she is entitled to possession of the premises, and that she gave a proper notice to vacate. I will be asking questions of both parties, since the Rules of Civil Procedure applicable to justice courts give me the duty to develop the facts of the case. That means my goal is to find out the truth and ensure that the proper party wins the case. Any questions?

LINDA and TOMMY: No, Your Honor.

JUDGE: OK. I'm going to put you both under oath. Raise your right hands. Do you swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

LINDA and TOMMY: Yes, Your Honor.

JUDGE: All right. Linda, you're the plaintiff, so you have the burden to prove the case, and so you can go first. Tell me why we are here today.

LINDA: OK, thanks Your Honor. I rented out one of my duplex units, specifically the one located at 1525 Lobo Mountain Lane, Unit A, to Tommy Tenant with a lease beginning on July 1, 2016, to expire on June 30, 2017. The terms of the rental were that Tommy would pay rent in the amount of \$800 every month. Rent was due on the 1st of each month. It was late on the 3rd with a \$50 late fee. Tommy was late in August, paying on the 7th. He was late again in September, paying on the 5th. I told him when he paid on the 5th of September that the late payment of rent was unacceptable and that he would have to pay on time or I would have to move to end his tenancy. He said that he understood. I didn't get October's rent on time either. I asked him on the 10th about the rent, and he gave me a partial payment of \$400. I told him that was insufficient, but haven't received any other rent. I gave him a 24 hour notice to vacate by mailing it to the premises on October 25th.

JUDGE: Does your lease specify a notice to vacate period?

LINDA: Yes, all my leases stipulate a 24 hour notice to vacate.

JUDGE: OK, proceed.

LINDA: I then filed the case on October 29th. I want possession of the premises. Additionally, I want \$1200, the \$400 from October that is remaining, and November's \$800.

JUDGE: Anything further?

LINDA: Nothing at this time, thank you.

JUDGE: Tommy, tell me your side.

TOMMY: Well, Judge, what she isn't telling you is what a dump this place is. Ever since I moved in, I have had issues with the property. Hot water stops working, then windows won't lock, we had a rodent infestation, on and on and on. I finally told her when I paid \$400 that the other \$400 I spent on a new hot water heater because she just refused to fix the thing.

JUDGE: Did you give her a written notice about the water heater?

TOMMY: No, but she knew about it. She would even say when I called her "is this gonna be about that water heater again?" I do also have my receipt here for the water heater and installation, which was \$400.

JUDGE: And you also haven't paid November's rent?

TOMMY: Well no since she said she was gonna try to kick me out. If I don't get kicked out, I can have November's rent to her by the middle of next week.

JUDGE: Do you agree that your lease has a 24 hour notice to vacate time period?

TOMMY: I don't know, I haven't looked at it since I signed it.

JUDGE: Do you have anything else you want to tell me about your lease or your failure to pay rent?

TOMMY: No, but I guess I also don't see how the thing where it says she is suing me says she wants \$400 and now today she says \$1200 all of a sudden?? Can she really do that?

JUDGE: She can modify her petition at trial if there is no unfair surprise. Your lease did say rent became due on the 1st, right?

TOMMY: Yes sir.

JUDGE: Since you were aware that more rent became due on November 1, I find it not to be an unfair surprise to add November's rent to this suit today. OK. At this point, I am going to render my judgment. I award possession of the premises at 1525A Lobo Mountain Ln to Linda Landlord, and award a monetary judgment

of \$1200 plus court costs. Unfortunately, Mr. Tenant, there are some really specific rules on when you can deduct repair costs from your rent, and you didn't follow those procedures. In the future, if you have similar issues with your housing, it may be a good idea to contact an attorney or Legal Aid to figure out the best way to move forward.

Both parties have 5 days to appeal my judgment here today. Mr. Tenant, if you have not vacated the premises or filed an appeal within 5 days, Ms. Landlord will be able to get a writ of possession. What that means is that the constable will go out and supervise the physical removal of you and your possessions from the premises.

Any questions?

TOMMY: What if I pay \$400 today and \$800 by the end of next week, could you let me stay then?

LINDA: Judge, I can agree with that if you will make the judgment say that he can stay if he pays \$400 today and \$800 by November 19.

JUDGE: I have no power or authority to make a judgment conditional or enforce any settlement agreement you guys independently come to. Ms. Landlord is free to pursue a writ of possession in support of this judgment, or not, as she sees fit. The court will issue the writ if she requests it after the appeal window is closed, as long as it is requested less than 60 days from today's date.

Anything else?

TOMMY: No, Your Honor.

LINDA: No, Your Honor.