The Tenant from Hell

by Zachary Lawrence JD

Pacific Heights is a 1990 American thriller movie starring actors Melanie Griffith, Matthew Modine and Michael Keaton. It's the story of a young couple that purchased an expensive 19th-Century house in the exclusive Pacific Heights neighborhood of San Francisco. This young couple, (Griffith and Modine) have some extra rooms in their new home, so they decide to rent out one room to Carter Hayes - (actor Michael Keaton).

Keaton's character goes on a wild rampage, damages the property, fails to pay rent, and accuses the owners (Griffith and Modine) of everything from poor plumbing to kidnapping the Lindbergh baby. Keaton's character in this film may sound familiar to many landlords. His character is indeed, the tenant from Hell.

The landlord refused to adopt a strong posture with her tenant. A few days later, the client calls saying that the tenant was now suing her for one million dollars. They ended up settling for $10,000.00.

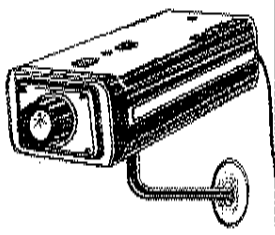
Although I would recommend this movie for its entertainment value, this article is not a movie review. It's about every landlord's worst nightmare and the legal tools at his or her disposal to get rid of such a tenant.

I spoke in detail about this subject with attorney Andy Baker. Andy is a real estate attorney specializing in unpermitted or "Bootleg" units. He also has personal experience with "tenants from Hell".

Zac: How should a landlord deal with a tenant from Hell?

Baker: Before I became an attorney, I was a real estate agent, so I have experience dealing with difficult tenants. It's clear to me that no matter how good, ethical and honest a landlord or property manager may be, some tenants are simply impossible to satisfy. The more they get, the more they want. So I've decided to take a strong-arm approach in dealing with these tenants from Hell.

I once had a client who had a tenant from Hell. She asked me how to deal with it and I told her to be tough with the tenant. She told me that the tenant really liked her and was basically



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a good person but the client refused to adopt a strong posture with her tenant. A few days later, the client calls me saying that the tenant is now suing her for one million dollars. They ended up settling for $10,000.00.

Zac: I often hear tenants make threats such as: "If you don't make the repairs I want, I'll file a report with the LAHD" (Los Angeles Housing Department). My take on that is....let them!

If there is a bona fide issue of habitability that requires the attention of the landlord, the Housing Department will simply issue a "Notice to Comply". This is a document that orders the landlord to make any necessary repairs which he must address by a certain date. If the landlord keeps his units in good shape - and finds no basis for the complaint, then call the tenant's bluff, and encourage them to call Housing. I often receive these notices and the inspection report states that there is nothing to be done. Check Mate.

Baker: You're right. When a tenant threatens to call the Housing Dept., the best defense is an educated landlord - a landlord who understands the duties owed to his tenant and those duties owed to him by his tenant. So when a tenant makes a threat to "blow the whistle", the landlord can simply say ..."Go ahead, make my day".

Zac: Landlords often hear the word "Habitability". Although I have a law degree and can cite California Civil Code Section1941 (requiring the landlord to maintain the unit in habitable condition), I don't believe you need a law degree to understand the meaning of the word. Isn't it really common sense for a landlord to keep his unit in such a condition that any reasonable person would find comfortable?

Baker: I agree - hot water, a roof that doesn't leak, working plumbing, and working electricity. These are the "bread and butter" features of habitability.

Zac: Some landlord's claim that they have no duty to upgrade their units to code because their building was built prior to the enactment of a particular code and therefore, they are excused due to a "Grandfather" clause. Please explain.

Baker: The issue is not the age of the building, but whether the construction was legal in the first place. If it was legal when it was constructed, it's legal today, even if it doesn't comply with today's codes.

Zac: What about those laws which, for example, may require a landlord to change out his plumbing fixtures and replace them with "low flow" fixtures. If those fixtures were legal 30-years ago, must the landlord now comply with the new law and replace them?

Baker: Now you're getting into Constitutional law. Briefly, if the City has a rational basis for changing the law, a landlord must obey that law. **When the City passes a law that supports the safety and health of a tenant, the landlord will always be on the losing side of the argument,** notwithstanding his Grandfather clause.

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Zac: Let's say that you rented a unit that came with air conditioning. Over time, the unit has repeatedly failed. And over time, the landlord has repeatedly paid to get it working. The landlord now wants to simply remove the AC unit due to the high cost of maintenance. Can he do it or is he in breach of the rental agreement?

Baker: The answer depends on whether this unit is in a rent-controlled jurisdiction. If the building is in the City of Los Angeles and was built before 10/1/1978, then it's a rent controlled unit. And if it is a rent controlled unit, the landlord may not reduce the value of the unit that he's renting. There's no law that says a unit must have air conditioning.

However, if the unit was rented with a working AC, it must be maintained, replaced or removed. If the landlord, in this scenario, elects to simply remove the AC, he is in breach of contract. The tenant would be entitled to either a rent reduction, (due to the diminution of value of the premises) or the repair of the AC unit.

The HDIC (Housing and Community Investment Dept.) of Los Angeles offers a published guideline called "Suggested Valuation Guidelines Table" (www.hdicla.lacity.org).

This document provides landlords with dollar amount guidelines to determine the corresponding reduction in rent for removal of services. For example, the suggested rent reduction for removal of an AC unit is $56.00 to $111.00 month.

Zac: So the tenant may reject the offer of a rent reduction and legally compel the (Rent Control) Landlord to provide a working AC. Correct?

Baker: Correct.

Zac: And what if the building is not under rent control?

Baker: Then the landlord wanting to reduce services would serve the tenant with a Notice of Change in Terms of Tenancy. This would allow the

(non-rent control) landlord to reduce services and without the requirement of a corresponding reduction in rent. Unless the (non-rent control) tenant can prove that removal of the AC unit is a violation of the State's Health & Safety Code, the landlord will prevail.

The best way for a landlord to protect himself from fines or penalties is to document everything. Keep maintenance records and receipts; take dated photos of your repairs and save e-mail correspondence between yourself and your tenant.

Zac: Let's talk about settlements. A contested eviction can cost a landlord thousands in legal fees. When will a landlord know it's time to cut his losses and settle with the tenant?

Baker: As a lawyer, I believe in a "win-win" scenario, meaning I want my client to win more. But there comes a time when a landlord may consider cutting his losses.

There are times when a landlord pays tenant relocation fees, files all the proper documents, and the tenant still sues the landlord for issues of habitability. During the course of such a lawsuit, the case goes to mediation.

The mediator will say. "Let's see what it will cost (the landlord) to proceed with this case". The mediator will then spell out the landlord's approximate cost for legal fees, depositions, expert witnesses, etc.

So the estimated cost for a landlord to continue with this lawsuit is now X dollars. And the cost for him to settle is Y dollars. Y dollars is always less than X dollars. Now that the landlord has this information, he may elect to settle, cut his losses and save thousands in legal fees. In such cases, the landlord elects to settle 99% of the time.

If it's a legitimate "habitability" case, in which the tenant claims issues of habitability but can't prove it, then the landlord should go to court if he can get a "bench" trial (a judge-only trial, no jury). These trials are usually over quickly.

But if the "tenant from hell" is represented by counsel, they could demand a jury trial and try to make it as expensive (for the landlord) as possible. ***Everything in real estate is a numbers game and a financial analysis. In other words, ask yourself how you can get out of this situation as inexpensively as possible.***

I don't believe in dragging a landlord through a case in which I don't believe he will prevail.

In the good old days (about ten years ago), tenants would not respond to an Unlawful Detainer case. The landlord would then receive a default judgment and take possession of his unit.

Nowadays, and in 99% of the cases I've worked, the tenants do respond. They may respond in Pro Per (representing themselves in court) or they may hire a tenant rights lawyer (at no cost to the tenant), such as those working for the "Shriver Project". Once a tenant "lawyers-up", it escalates the costs for the landlord. So

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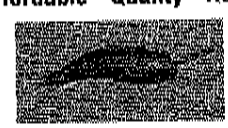

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during any eviction case, a landlord must constantly ask himself "How do I get out of this?"

Zac: There are cases where a tenant is short on the rent to the tune of, say $50.00. The landlord has served the tenant with a Three Day Notice to Pay or Quit, and the Notice has been ignored. In this scenario, what advice do you have for a landlord?

Baker: Technically, the tenant is in violation of his rental agreement. However, $50.00 is not a material amount. However, if he keeps doing this, it will become a material amount. *Only when the amount withheld by the tenant becomes a material breach of the lease agreement, would I pursue the tenant and file an Unlawful Detainer.*

Zac: What exactly is a material breach?

Baker: You and I both learned in law school the distinction between a major breach and minor breach of contract. A major breach goes to the essence of the contract. In terms of dollar amounts, it's a subjective standard. Perhaps one landlord would consider withholding 20% of the monthly rent to be a material breach. Another landlord may consider 5% withheld to be a material breach. There's no hard and fast rule on this matter.

Zac: What should a landlord reasonably expect to pay for an Unlawful Detainer?

Baker: Good question. I'd say the low end would be $750.00 for an uncontested eviction. For a contested eviction (where the tenant files an Answer), I'd say about $2,000.00 just to get to trial with little or very limited written discovery.

It also depends if it's a bench trial (judge-only trial) or a jury trial. I've seen fees for a bench trial as low as $1,000.00, with the average being about $2,500.00. And the high end is … .pick a number!

Depending on how ethical the lawyer is, he may "profile" his client. If the client is of

modest means, the lawyer may charge only $1,000.00. And if the client is a "deep pocket", the lawyer may charge him $10,000.00.

Jury trials can be very expensive. Tenants will often hire a lawyer that knows the system and can milk the process, know what they can get away with, exposing the landlord to legal fees to the tune of about $25,000.00.

Zac: Does a lawyer have a fiduciary duty to advise this landlord that it's cheaper to settle, such as to offer the tenant money to vacate, (Voluntary Vacate Agreement) rather than spend much more on legal fees?

Baker: A lawyer has a duty to present his client with all the viable options. You've got to do right by your client.

Zac: What are the tools of settlement available for a landlord in order to, as Pontius Pilate said, "wash his hands" of this matter?

Baker: A landlord can offer cash for keys, also known as a Voluntary Vacate Agreement (VVA). The buyout amounts for a VVA stated by the Housing Department are only guidelines. Although the landlord must present the tenant a document stating these guidelines, the parties are free to agree on a lesser amount.

I often have cases where a landlord discovers that his tenant occupies an unpermitted unit. The landlord will then offer the tenant occupancy in a permitted unit, but without relocation fees.

If the tenant agrees, that's okay. There's nothing in the Code that states that this kind of arrangement is unacceptable in terms of the relocation fees. Some landlords disclose the relocation fee guidelines to the tenant, and some don't. In the case of an unpermitted unit, some landlords offer to pay for the tenant's hotel bill, without relocation fees, while his unit is being legalized. This is a cheaper alternative to paying relocation fees. ***The official answer to all this is, you must do everything legally. The unofficial answer is that Landlords often do whatever they can get away with without putting themselves in harm's way.***

Zac: Tell me about the options of mediation and arbitration.

Baker: Mediation is an informal, non-binding and voluntary process. In L.A., they offer free mediation through the City Attorney's office. And in my experience with this type of mediation, you get what you pay for.

The parties are given a court-appointed mediator that will attempt to work out a settlement.

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Courts favor mediation and so do I. Cases get resolved through mediation. Other terms used to describe mediation are Alternative Dispute Resolution (ADR) and arbitration. Arbitration can be binding or non-binding.

Before taking a tenant to court, a landlord should consider whether at this particular point in time if the courts are currently favoring landlords or tenants.

Clearly the courts favor tenants and have been for the last 25 years. Why? Because the landlords have taken advantage of the tenants for so long that the legislators decided to act and shift the burden on the landlords.

Arbitration is like a mini-trial, but you don't follow the same rules as in a court of law. Arbitration is usually conducted by Alternative Dispute Resolution (ADR) services and there is limited discovery. The arbitrator has the power to swear in a witness, review exhibits, and make all the decisions. It's a lot less formal than a trial.

If it's binding arbitration, then the decision made by the arbitrator is final. No grounds for appeal. You do that because it's cheaper and faster than a trial. It's a great alternative to a trial.

Zac: However, a tenant is always entitled to a jury trial. Correct?

Baker: Correct. And any provision in a lease that waives a tenant's right to a jury trial in unenforceable.

Closing Comments

Inspect your units regularly. Keep accurate maintenance records and stay abreast of current landlord-tenant laws. These are the best tools for dealing with a "tenant from Hell".

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