

HOW NOT TO EVICT



COUNSEL'S CORNER

Jessica Briones was a tenant at Brazos Bend Villa Apartments, Richmond Texas (has Richmond been subsumed by Houston yet?). She had occupied her unit since January 2007. Jessica's lease obligated Brazos to furnish her 10 days notice to discuss with Brazos a possible breach or allegation of lease termination, before Brazos could take any action adverse to her possession.

Evidently Brazos was concerned that Jessica was using or possessing marijuana in her apartment, so on April 30, 2012, Brazos furnished Jessica notice of lease termination coupled with a written statement that she had the right to meet with a property manager within 10 days to discuss the termination. The notice also demanded that she vacate by June 1, 2012. Jessica did not *go gentle into that good night* (that's from a famous villanelle written by Dylan Thomas a century ago . . . oh never mind).

Consequently, on June 6, 2012, Brazos filed a lawsuit for eviction in JP Court in Fort Bend County. Brazos won so Jessica appealed.

The appeal was heard in Fort Bend County Court At Law, where according to Texas procedural rules both parties were granted an entirely new trial. A full-on mulligan. Brazos again won a Judgment for exclusive possession, plus attorneys' fees of \$2,950 through trial, and \$10,000 for an appeal to the next level.

Brazos then obtained a Writ of Possession placing Brazos in possession of Jessica's apartment. Regardless of the fact that Jessica was now on the outside of the apartment community, she again appealed claiming that Brazos failed to furnish her proper notice.

Basically, Jessica's position was that Brazos was required to furnish her 10 days in which to discuss any alleged breach with Brazos *before* demanding that she vacate. And that the notice given, being a lease termination coupled with a statement that she could discuss the termination with a manager within the next following 10 days, did not comport with the Lease she had signed and both parties had honored in the previous five years.

The appellate court agreed with Jessica. Brazos was required to furnish Jessica at least two written notices. The first should have given her 10 days to discuss the proposed breach or lease termination with a property manager. The second should have given Jessica notice that her lease was terminated and she needed to vacate if she wanted to avoid legal proceedings.

Jessica won; Brazos lost. See *Jessica Briones v. Brazos Bend Villa Apartments*; No. 14-12-01125-CV; Texas Court of Appeals; 14th District; September 9, 2014.

Lessons learned:

1. Even when tenants have been removed from the premises – voluntarily or involuntarily – they may still litigate and if they lose, then they may appeal. It's an interesting dichotomy in law that protects rights of tenants. And if you consider it, there can be no other logical way as appeals take years to conclude. This one was completed in a bit more than two years, but a further appeal to the Texas Supreme Court would have added two more years.
2. We handle many tenant evictions here. It is a rarity that the notices furnished to the tenants 100% comply with the lease and laws. Property managers use preprinted eviction forms and they work well for normal evictions where the tenant doesn't pay rent. However, those same notices often are insufficient when the lease obligates the Landlord to furnish notices and opportunities to cure defaults before the lease can be terminated. Or when tenant's breach is not related to the failure to pay rent, but is something unusual instead.
3. Read your form lease. Do it now. Find all the ways the tenant can breach and make a list. Is it complete? Then review the lease to determine what steps the landlord must take before terminating the lease. Another list. After that – one more task – find out exactly what type of notice must be furnished before you can terminate a lease, to whom it must be given, by whom, how it is to be posted / mailed / delivered, at what address must it be posted, delivered or sent, and at what timing interval. Then, compare it to Texas laws. And make a final list.

Are you satisfied?

See <http://law.onecle.com/texas/property/92.0081.00.html> for *residential* self-help rules. See <http://law.onecle.com/texas/property/93.002.00.html> for *commercial* self-help rules. See <http://law.onecle.com/texas/property/91.001.00.html>, <http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.24.htm> and https://www.supreme.courts.state.tx.us/rules/trcp/trcp_part_5.pdf for Texas rules that apply to both residential and commercial judicial evictions.

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