

# CIVIL DISPUTES BETWEEN LANDLORD-TENANT IN MEDIATION

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## **Abstract**

*Mediation is a dispute resolution mechanism between the parties on a dispute, which is characterized by: flexibility, time and monetary efficiency, confidentiality, as well as other elements that make it a suitable method for resolving disputes. The objective of this paper is to present the settlement of landlord-tenants disputes through mediation, as it is well known that the rent-lease relationship is a very widespread problem, in modern times. This paper was conducted as a literature review, through the following methods: descriptive, comparative, and analytical methods. Disputes between tenants and landlords cause a burden on the judicial system, reduced quality of life between the parties to the dispute and economic damage to both parties. Mediation, as an alternative process of dispute resolution has resulted to be an appropriate process for resolving landlord-tenant disputes due to time and monetary efficiency, maintaining positive relations between the parties and preventing individual and social economic damage.*

**Keywords:** civil disputes, tenant, landlord, mediation.

**JEL Classification:** K12

## **1. Introduction**

Conflicts between landlords and tenants, in the context of the responsibilities and obligations of the parties to the lease contract, are a part of modern daily life considering the fact that in urban locations, the largest percentage of real estate is under lease contracts<sup>2</sup>. Landlords and tenants are in a reciprocity of rights and obligations towards each other. While landlords have obligations to ensure the tenants full access of the property, to ensure a relatively quiet environment, to maintain and repair the property based on contractual agreements between the parties, the tenants have obligations of fulfilling the monetary obligations on time, to preserve the property and compensate the landlord in case of a causative damage by the tenant<sup>3</sup>.

The relations between landlords and tenants, are defined by a long duration and a high intensity. These relations do not end on the events of gaining access to the property for the tenant or by the signing of the lease contract, instead they continue to exist as long as the tenant remains in the property or extend to the future after the lease contract ends, in case there are unresolved problems between the parties<sup>4</sup>. Keller has defined that in the reports between landlords and tenants, there is a disbalance of power in between the parties, as the landlords take a dominant position in the case of disputes, that is directly dependent on the actual real estate market, the socioeconomic status and the existing legislation<sup>5</sup>.

Recent studies on the conflicted reports between landlord and tenant, have concluded that the parties in dispute have different perspectives on the cause of conflict. Tenants consider as causes of conflict the impact of financial responsibilities and power imbalance, contrary to landlords, that have defined the tenant's negligence as a point of conflict<sup>6</sup>.

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<sup>2</sup> Bryks, S., (2011), "Analysis of 44 Cases before the Landlord and Tenant Board Involving Bad Bug Infestations in Ontario: Canada: Focus on Adjudication Decisions Based on Entomological/Pest Management Evidence and Accountability under the Residential Tenancy Act and Other Applicable Legislation", *Insects*, Vol.2, pp. 343-353.

<sup>3</sup> Smith, S.L., (2006), "Landlord & Tenant Obligations", Illinois State University; Carr, H., Cowan, D., Hunter, C., & Wallace, A., (2010), "Tenure rights and responsibilities", JRF Programme paper: Housing Market Taskforce, University of Bristol, pp.8-13; <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/tenure-rights-responsibilities-full.pdf>.

<sup>4</sup> Keller, S.E., (1988), "Does the Roof have to Cave in? The Landlord/Tenant Power Relationship and the Intentional Inflection of Emotional Distress", *Cardozo Law Review*, Vol.9, pp.1663-1698.

<sup>5</sup> Ibid, pp. 1664-1668.

<sup>6</sup> Dillahunt, T., Mankoff, J., Paulos, E., (2010), "Understanding Conflict Between Landlords and Tenants: Implications for Energy Sensing and Feedback", *UbiComp 2010*, Sep.26-29, Copenhagen, Denmark.

## 2. Eviction

Disputes between landlords and tenants vary, as both parties may commit different violations to the lease contract. While the tenants could commit violations such as failing to pay rent or delaying payments, leaving the property before the contract terminates, damaging the property and other violations of the contract, on the other hand the landlords can commit violations by changing the price of rent, failing to meet contractual obligations of maintaining and repairing the property, and eviction<sup>7</sup>.

As in other interpersonal interactions, it is well accepted that conflicts between parties may arise. These conflicts, however, vary on their impact. Disputes arising by a limited damage on the property, a minor sanction by either party, or a light misunderstanding, can be resolved without further procedures, while on the presence of considerable disagreements, intentional damage on the property, contractual violations and eviction, there is escalation of conflict between the parties that is not easily resolved.

Eviction is a contemporary problem, which is defined as, the exclusion of the tenant from the use of the property<sup>8</sup>. Regardless of the circumstances in which the eviction takes place, whether as a result of financial crisis, economic development, or other circumstances, eviction is an event which causes imbalance in the tenant's life and well-being, as they not only lose access to a property, but it also alters the security of life, the social and civil aspects of their lives and can cause damage to their physical and mental health as a result of this event<sup>9</sup>. The effects of eviction are not only defined within the landlord-tenant relationship, but by comparing the scale of the problem where in America, 1 in 8 low-income families risk being evicted from rental property<sup>10</sup>, as well as the fact that in one a large percentage of these numbers, results in lack of housing<sup>11</sup>, which are indications that this is a problem of the community in general.

## 3. Mediation in landlord-tenant disputes

Mediation is a mechanism that can be used successfully to resolve an eviction dispute. Mediation in these disputes serves as a mechanism for resolving the conflict, which can prevent eviction, encouraging both parties to negotiate a joint agreement to resolve the problems between them, as well as can resolve disputes that already have resulted in eviction<sup>12</sup>. Among the factors that affect the settlement of disputes in mediation, is the presence of power imbalance between the parties, which in these cases is a concrete concern, as usually the parties to be evicted have failed to fulfill the lease obligations. due to financial crises. In such circumstances, the tenant may be in an already difficult financial position, which makes them exposed to possible unequal treatments.

In order to develop an effective mediation process that would prevent the eviction of a tenant, it is essential that mediation play the role of an empowering mechanism to the disadvantaged party, which the author *Hare*, has assessed that should be achieved through the provision of a notification that the landlord will apply for eviction in advance, giving the tenant an opportunity to prepare, and by providing access to legal resources and legal representation that the tenant can have the necessary legal assistance in mediation<sup>13</sup>.

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<sup>7</sup> Talamo, J.J., Warda, M., (2002), *"The Landlord's Legal Guide in California"*, Sphinx Publishing, Naperville, Illinois, pp.63-68.

<sup>8</sup> Soederberg, S., (2018), *"Evictions: A Capitalist and Global Phenomena"*, Development & Change, Vol.49 (2), pp. 1-24

<sup>9</sup> Vols, M., Belloir, A., Hoffmann, M., & Zuidema, A., (2019), *"Common Trends in Eviction Research: a Systemic Literature Review"*, Vols, M & Schmid, C.U., (Eds), *"Houses, Homes and the Law"*, The Hague: Eleven Publishing 2019, pp.1.

<sup>10</sup> Desmond, M., (2015), *"Unaffordable America: Poverty, Housing, and Eviction"*, Institute for Research on Poverty Fast Focus, No.22-2015, pp.2-3.

<sup>11</sup> Collinson, R., Reed ,D., (2018), *"The Effects of Evictions on Low-Income Households"*, pp.1-82, [https://www.law.nyu.edu/sites/default/files/upload\\_documents/evictions\\_collinson\\_reed.pdf](https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf).

<sup>12</sup> Cohen, M., & Noble,E., (2020), *"Preventing Eviction Filings, Piloting a Pre-Filing Eviction-Prevention Clinic"*, Metropolitan Housing and Communities Policy Center.

<sup>13</sup> Hare, R., (2020), *"Mitigating Power Imbalance in Eviction Mediation: A Model for Minnesota"*, Law & Inequality: A Journal of Theory and Practice, Vol. 38 (1), pp.135-164.

In general, in other disputes between landlords-tenants, in addition to empowering the parties that may be at a disadvantage, mediation enables the parties have fewer financial burdens, resolving the dispute more quickly, as well as ensuring the benefits of the agreement are reciprocal, which in the event of a trial would result in disproportionate benefit between the parties to the proceedings<sup>14</sup>.

#### 4. Conclusion

Mediation is considered a mechanism of dispute resolution with multiple benefits, which offers a quicker and cheaper dispute resolution compared to litigation. The characteristics of mediation such as confidentiality, self-determination, flexibility, and efficiency are some of the potential advantages of resolving a civil dispute by mediation. Disputes between landlords and tenants cause financial issues and a lower quality of life for the parties involved in the dispute as well as the community. Mediation in these disputes offers the parties a cheaper, quicker, and more flexible way of resolving the dispute. Due to the nature of these disputes, the parties also benefit from the preserved interpersonal relationships that are achieved through communication and mutuality on the agreements that are achieved by mediation. Another important prospect of this specific dispute resolution mechanism is the balance of power between parties. In conclusion, mediation in disputes between landlords and tenants is considered a successful mechanism that offers multiple advantages and should be promoted as a dispute resolution in landlord-tenant disputes.

#### Bibliography

1. Bryks, S., (2011), "Analysis of 44 Cases before the Landlord and Tenant Board Involving Bad Bug Infestations in Ontario: Canada: Focus on Adjudication Decisions Based on Entomological/Pest Management Evidence and Accountability under the Residential Tenancy Act and Other Applicable Legislation", *Insects*, Vol. 2, pp. 343-353.
2. Carr, H., Cowan, D., Hunter, C., & Wallace, A., (2010), "Tenure rights and responsibilities", JRF Programme paper: Housing Market Taskforce, University of Bristol, <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/tenure-rights-responsibilities-full.pdf>.
3. Cohen, M., & Noble, E., (2020), "Preventing Eviction Filings, Piloting a Pre-Filing Eviction-Prevention Clinic", Metropolitan Housing and Communities Policy Center.
4. Collinson R., Reed D., (2018), "The Effects of Evictions on Low-Income Households", pp.1-82, [https://www.law.nyu.edu/sites/default/files/upload\\_documents/evictions\\_collinson\\_reed.pdf](https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf).
5. Desmond, M., (2015), "Unaffordable America: Poverty, Housing, and Eviction", Institute for Research on Poverty Fast Focus, No.22-2015.
6. Dillahunt, T., Mankoff, J., Paulos, E., (2010), "Understanding Conflict Between Landlords and Tenants: Implications for Energy Sensing and Feedback", UbiComp 2010, Sep.26-29, Copenhagen, Denmark.
7. Hare, R., (2020), "Mitigating Power Imbalance in Eviction Mediation: A Model for Minnesota", *Law & Inequality: A Journal of Theory and Practice*, Vol. 38 (1), pp.135-164.
8. Keller, S.E., (1988), "Does the Roof have to Cave in? The Landlord/Tenant Power Relationship and the Intentional Inflection of Emotional Distress", *Cardozo Law Review*, Vol. 9, pp.1663-1698.
9. Lebovits, G., & Hidalgo, L.R., (2010), *Alternative Dispute Resolution in Real Estate Matters: The New York Experience*, *Cardozo Journal of Conflict Resolution*, Vol.11, pp. 437-461.
10. Smith, S.L., (2006), "Landlord & Tenant Obligations", Illinois State University.
11. Soederberg, S., (2018), "Evictions: A Capitalist and Global Phenomena", *Development & Change*, Vol.49 (2), pp. 1-24.
12. Talamo, J.J., Warda, M., (2002), "The Landlord's Legal Guide in California", Sphinx Publishing, Naperville, Illinois.
13. Vols, M., Belloir, A., Hoffmann, M., & Zuidema, A., (2019), "Common Trends in Eviction Research: a Systemic Literature Review", Vols, M & Schmid, C.U., (Eds), "Houses, Homes and the Law", The Hague: Eleven Publishing 2019.

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<sup>14</sup> Lebovits, G., & Hidalgo, L.R., (2010), *Alternative Dispute Resolution in Real Estate Matters: The New York Experience*, *Cardozo Journal of Conflict Resolution*, Vol.11, pp. 437-461.