

Matthew Bender Practice Guide: California Landlord-Tenant Litigation



**By Andrew Westley and Michael J. Salt
Matthew Bender, 2003
\$140**

This single-volume, loose-leaf binder provides a straightforward explanation of the issues facing landlords and tenants when litigation must be considered. A number of useful checklists are designed to give practitioners a quick

preview of the relevant factors that must be considered before selecting and pursuing a course of action.

Much of the book's discussion and analysis focus on either the landlord's or the tenant's perspective, and as a result there are separate checklists for landlord and tenant clients. The opposing viewpoints allow attorneys to advise clients according to their situation. The checklists are supported with substantive discussions of landlord and tenant rights, defenses, and strategies. Citations of case law and statutory law provide excellent starting points for the reader to conduct additional research. These substantive discussions, for the most part, follow the order set in the checklists. The authors also provide a variety of sample forms, which cross-reference to source materials. The cross-references are useful when a practitioner is trying to verify that the form is up-to-date or is comparing forms from different sources. Caution is appropriate when using the forms, but they provide a fine starting point and can be supplemented to accommodate local rules or the particulars of a given case.

The book begins with a discussion about how to interview a client and discover what the client's goal is for the resolution of the issue. In this initial step in the process various fee arrangements to negotiate with the client are also raised.

The book proceeds through a discussion of the various rights of landlords and tenants, when they can be asserted, and the consequences of prevailing in the exercise of these rights. For example, the relevance of dependent and independent covenants is highlighted. Many landlords often learn through experience that the tenant's covenant to pay rent and the landlord's warranty of habitability are dependent, which means that the tenant does not have to pay rent if the premises are not habitable. Similarly, a legal analysis of a dispute between a landlord and a tenant often will focus on determining if there is a breach of a condition or a covenant.

The authors describe the choices of remedies available for a given breach and the procedural steps necessary to pursue these remedies. For example, possession of the premises may be prosecuted through an unlawful detainer action. This is a summary proceeding that may result in possession more quickly than a case based on a quiet title action. The speed of an unlawful detainer action, however, comes at the cost of having to pursue damages in a separate action.

Coverage of the end of a case includes a discussion of enforcement, removal of personal property, and disposition of the security deposit. For example, the book describes what a landlord actually does to

remove the tenant if an unlawful detainer action is successful. After reading this book a practitioner will likely feel prepared to confront landlord-tenant litigation issues and to discuss them with clients.

Caveats

However, this book is only one volume, and excluded details subtract from the book's nuts-and-bolts usefulness. For example, how does one contact the sheriff's office to serve an order to vacate, and how much will this cost? These mundane details are often of great significance to the attorney who is prosecuting a landlord-tenant case. Further, the book focuses on the steps involved in enforcing either landlord or tenant rights. A welcome complement would include discussion of the defenses that may be asserted by landlords or tenants, including technical defenses to pleadings and service of process that can delay the prosecution of a case. Often, these measures are the best weapon of defense counsel, along with such substantive defenses as bankruptcy and retaliatory eviction.

This book, like many other resources on the subject, discusses residential and commercial landlord-tenant issues. A larger body of statutory and case law pertains to residential leases, and the authors focus on residential law and note how commercial leases differ. For a commercial lease practitioner, this method of presentation can be distracting. On the other hand, a significant amount of overlap would result if one book for commercial and one for residential landlord-tenant litigation were published.

It is helpful that there is a general discussion of rent control ordinances. For many practitioners rent control law is mysterious and difficult to research. At this time, rent control ordinances are limited to a handful of localities and cover only residential leases. However, in order to provide a better resource for readers who want a single-source guide for landlord-tenant litigation, it would be very helpful if the authors explored the rights and obligations of landlords and tenants under each of the specific rent control ordinances. This information would be of critical significance to the handling of a case if a rent control ordinance is applicable.

A topic somewhat related to rent control is public housing and subsidized housing. This is another area in which practitioners need guidance on the rules established by statutory regimes. Unfortunately, this area is not covered. Readers should also be aware that the book does not cover marina leases, RV park leases, and mobile home park leases. These relationships are subject to their own statutory and case law framework. The authors do note, however, that they lack the space needed to cover these relationships.

In general, however, the book's easy-to-follow format and wealth of practical advice in pursuing a basic landlord-tenant case should be welcome to many California attorneys. ■

Gordon Eng is a real estate and business law practitioner located in Torrance. He is a member of the Executive Committee of the Real Property Law Section of the State Bar of California.