Landlord's and Tenant's Guide to Unlawful Evictions In Ohio

By Eric E. Willison and Andrew J. Ruzicho II,

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Important Disclaimer:

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Chapter 1: The Statutory Eviction Process

I. Description of the Lawful Eviction Process

In Ohio, landlords wanting to get rid of tenants must do so via the statutory eviction process laid out in Ohio Revised Code Section 1923.04. Directly below you will find a brief overview of the legal eviction process so that you can understand the difference between it and an unlawful eviction, often called a "self help" eviction.

The first thing that has to happen is that the landlord must put a three day notice to vacate upon your door. This three day notice to vacate is of vital importance to later proceedings, because it is what gives the Court the jurisdiction to hear a case of eviction. Without this three day notice, or if the three day notice is defective or was waived, then the Court is without jurisdiction to hear the matter and any decision that it comes to is null and void.

Once the landlord has stuck this notice on your door, you will have three days to move out. Weekends, holidays, and the day the notice was posted don't count, so if your landlord posts the notice on Friday, he must wait through Monday, Tuesday and Wednesday and come back Thursday morning to see if you are still at the Apartment before he can file his motion for forcible entry and detainer.

If the landlord comes back after the end of the third day and finds that you are still there, he can go down to the Court and file a Forcible Entry and Detainer Action against you. This is basically a lawsuit in Small Claims Court alleging that he has the right to have you removed from the premises. A hearing date will be set for you and the landlord to come in and argue it out in front of the Court. You can present witnesses and other evidence in your favor, as can the landlord.

If your landlord loses, then his Forcible Entry and Detainer Action will be dismissed, and he will have to wait until you breach the lease again before he can start the eviction process anew with another three day notice. If he tries to evict you again for the same thing, you can show the Court a copy of your previous decision and argue that it is Res Judicata. Res Judicata means that once an issue has been decided, that is the end of it, and the Court will not let the landlord have another chance at the same dispute.

But I am going to assume that your landlord won at Court (so that we can move on through the eviction process) and that the Judge issued a decision in his favor. Just getting a decision from the Judge is not sufficient. We are now at the point wherein the landlord will want to convert the Judgment Entry in his favor to that of a Writ of Restitution (also known as a red tag).

Once this Writ of Restitution is placed upon your door, you will have about five days from the time it was filled out to get out. If you do not leave at that point, the landlord can schedule a time to meet with a Sheriff's deputy or a Court Bailiff (this is done through a Praecipe for Set Out), travel to the Apartment, forcibly enter it, and remove you and your possessions to the curb.

It is possible for a tenant to mistake a lawful eviction for an unlawful one. This often happens when the tenant goes out of town for three months and forgets to pay the rent. The eviction papers are posted on the door, but the tenant, being out of town, never sees them. The hearing is set and the tenant never shows, not knowing of the action. The landlord gets a decision and a writ of restitution, sets the stuff out and changes the locks.

The tenant returns weeks later to find his apartment locked and all his stuff gone. He may think that he is the victim of an unlawful eviction, but in reality, the landlord may well have gone through the required process. The best way to tell is to contact the local court which handles evictions in your area and ask if there were any cases filed against you recently. The eviction action should pop up on their computers.

II. Commercial v. Residential Distinction

There is a very important distinction in Ohio law between the way that landlords can get rid of commercial as opposed to residential tenants. Residential tenants have the protection of the Ohio Landlord Tenant Act of 1974's Chapter 5321.15 which prohibits self help evictions on the part of landlords.

Commercial tenants (those using the rented premises for other than residential purposes, do not have this protection. Landlords are allowed to seize possession of the rented premises by simply locking the tenant out. The only restriction upon landlords here is that this dispossession must be done without a breach of the peace. But we are going to concentrate here on residential tenants.

Chapter 2: Protections of Residential Tenants

A. Common Law v. Statutory Protections

In Ohio, there are two remedies that a tenant has when he is injured by the misdeeds of the landlords. The first arise out of common law, and the other arises out of statutory law. We all know what statutory law is. That is when the legislature gets together and enacts a statute for all residents of the state to obey.

But before there is a statute covering a certain area though, there is the common law. Common law refers to court decisions covering that situation. Long before there was a statutory law saying that landlords could not simply enter into your rented apartment and remove your stuff, there were cases which made certain deeds legally actionable wrongs. In the absence of statutory guidance, courts tended to follow what other courts have already decided. They do this for reasons of consistency. Here are the common law claims that a tenant would have against a landlord who unlawfully entered the apartment and removed the tenant's belongings:

1. Conversion

Conversion is the wrongful control or exercise of dominion over property belonging to another inconsistent with or in denial of the rights of the owner. Tabar v. Charlie's Towing Serv., Inc. (1994), 97 Ohio App.3d 423 at 427. In order to prove the conversion of property, the owner must demonstrate that he demanded the return of the property from the possessor after the possessor exerted dominion or control over the property, and that the possessor refused to deliver the property to its rightful owner. Id. at 427-428.

Wrongful purpose or intent is not a necessary element of conversion; thus, a defendant is liable even if he is acting under a misapprehension or mistake. Fulks v. Fulks (1953), 95 Ohio App. 515 at 518-519. But wrongful intent can be a factor if the court is thinking about awarding punitive damages because of the conversion. Baltimore & Ohio Ry. Co. v. O'Donnell (1892), 49 Ohio St. 489, paragraph five of the syllabus; Gordon v. Morris, 2001 Ohio App. LEXIS 338 (February 2, 2001) Greene Co. App. No. No. 2000-CA-69, unreported.

2. Trespass to Chattels

A trespass to chattels is the little brother of a conversion action. It can best be described as a temporary conversion. Let's illustrate this by way of example. You are walking down the street and a thief runs up and steals the bag you are carrying. You chase after him, write down the license plate of the car he jumps into, and then you call the police. The police catch him three days later and you get back all of the stuff in the bag undamaged.

What the thief did was to deprive you of the use of these items for three days, and that is an actionable claim at law. So you can recover as actual damages the value of the use of those items over the three day period the thief had them. If the thief had sold or damaged the items, then you would have a conversion on your hands, and you would get the whole value.

In the self help eviction context, perhaps the landlord only locked you out and kept you from your possessions for three days. But when you got back in, everything was there, and undamaged. You would not likely have a claim for conversion, but you would have one for trespass to chattels.

3. Trespass

The essential elements necessary to state a cause of action in trespass are: 1) venue (meaning the court in which you bring the action is the proper court), 2) an intentional act by defendant whereby defendant enters upon land in the possession of another or causes a thing or person so to do, 3) such act being unauthorized, the defendant having no express or implied permission to enter the property of the possessor, nor any easement, license, right-of-way or other grant of ownership permitting the entrance in question. Blashinsky v. Topazio, 1987 Ohio App. LEXIS 6445 (April 17, 1987) Lake Co. App. No. No. 11-113, unreported.

4. Invasion of Privacy

A landlord's invasion of a tenant's privacy may result in a court awarding damages. The Ohio Supreme Court in Housh v. Peth (1956), 165 Ohio St. 35 held that an injured party may recover for an invasion of privacy if he can prove a wrongful intrusion into his private activities which would cause outrage, mental suffering, shame, or humiliation to a person of ordinary sensibilities. Ohio Courts have found that a self help eviction can constitute the tort of invasion of privacy. Meacham v. Miller, 79 Ohio App.3d 35.

5. Intentional Infliction of Serious Emotional Distress

A claim for intentional infliction of serious emotional distress requires proof of the following four elements: 1) that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff; 2) that the actor's conduct was so extreme and outrageous as to go "beyond all possible bounds of decency" and was such that it can be considered as "utterly intolerable in a civilized community," Restatement of Torts 2d (1965) 73 Section 46 comment d; 3) that the actor's actions were the proximate cause of plaintiff's psychic injury; and 4) that the mental anguish suffered by plaintiff is serious and of a nature that "no reasonable man could be expected to endure it, Restatement of Torts 2d (1965) 77, Section 46, comment j. Ashcroft v. ML Sinai Medical Ctr. (1990), 68 Ohio App.3d 359 at 366 quoting Pyle v. Pyle (1983), 11 Ohio App.3d 31 at 34.

The problem with this claim for relief is that it is difficult to prove, and that the damages are somewhat hard to calculate. At a minimum, the psychic damages you suffered must have at least resulted in your seeking some sort of medical attention or psychological counseling. The bill for such counseling would be good evidence of some of your damages under this claim for relief. But don't go into court thinking that you can just skate by simply by alleging this tort. You had better be prepared to back it up with evidence of serious mental distress necessitating more than just taking a day off work to "cope."

5. Breach of Contract

There are three elements to any contract in Ohio, offer, acceptance and consideration. If I offer to pay you $10.00 to mow my lawn, that is an offer, and it creates in you a power to bind me to a contract by putting forward an acceptance. An acceptance is when you say that you will accept my offer to mow the lawn for ten dollars. The consideration, the third element, is the bargained for exchange between the parties. That would constitute the ten dollars I pay you, and the hour or so of service you provide to me by mowing my lawn. In the consideration element, each party gives up something in order to get something else. I give up my ten dollars and you give up your time and labor.

A breach of a contract is when one party does not perform up to the terms of the contract. In the context of a self help eviction, one of the terms of the contract for the rental of the apartment is that the tenant will pay the rent and the landlord will provide the space to the tenant for the tenant's quiet enjoyment. Thus if the tenant has paid the rent for July, but the landlord locks the tenant out on July 15, then the landlord has violated the rental agreement's covenant of quiet enjoyment, and this is a breach of the lease agreement.

A landlord may think himself clever by getting rid of the covenant of quiet enjoyment in the lease in an attempt to avoid this problem. But the courts in Ohio have long implied such covenants into leases even where no such covenant exists. When I say "imply" I mean pretend. The courts will act as if the covenant is in there even if it is not. The same is true of the warranty of habitability. Even if there is no warranty of habitability clause in the lease agreement, the courts will imply it into the lease and find that the landlord's failure to keep the place in a fit and habitable condition has been violated if the landlord does not fix certain problems.

One measure of damages for a breach of the lease by lock out would be the pro-rated rent that the tenant paid for the time he was locked out.

B. Statutory Remedies. Ohio Revised Code Section 5321.15

If you are a residential tenant, then the landlord cannot conduct a self help eviction against you. The specific statute on point is Ohio Revised Code Section 5321.15 which states as follows:

Ohio Revised Code Section 5321.15 Residential premises landlord restrictions.

> (A) No landlord of residential premises shall initiate any act, including termination of utilities or services, exclusion from the premises, or threat of any unlawful act, against a tenant, or a tenant whose right to possession has terminated, for the purpose of recovering possession of residential premises, other than as provided in Chapters 1923., 5303., and 5321. of the Revised Code.
>
> (B) No landlord of residential premises shall seize the furnishings or possessions of a tenant, or of a tenant whose right to possession has terminated, for the purpose of recovering rent payments, other than in accordance with an order issued by a court of competent jurisdiction.

(C) A landlord who violates this section is liable in a civil action for all damages caused to a tenant, or to a tenant whose right to possession has terminated, together with reasonable attorneys fees.

Thus we see the important restrictions placed upon landlords of residential rental housing. It is important to note that the statute is not limited to locking out the tenants. It also prohibits shutting off the utilities in an attempt to drive the tenants out. It also prohibits threatening to lock out the tenants or threatening to shut off their utilities.

It is also important to note that this statute applies to tenants who have a right to occupy the rented premises and whose right to occupy the rented premises has ended. This means that just because the tenants are behind on the rent or holding over from last year's lease, the landlord cannot just lock them out and put their stuff in the dumpster.

C. Defective Eviction No Excuse

If the landlord tries to go through the statutory eviction process, but messes it up by not getting proper service of process under the law upon the tenant, then if the landlord removes the tenant's belongings and locks him out, even pursuant to what appears on its face to be a valid writ of restitution, the landlord is still liable for damages. Castle Apartments, Inc. v. Allgood 43 Ohio App.3d 163.

Chapter 3: Punitive Damages Awards

I. What are Punitive Damages?

Everybody's eyes light up when they hear about punitive damages. This is because in some ways, its money for nothing as far as the plaintiff is concerned. This is because punitive damages do not (and are not meant to) compensate the wronged party for the actual damages he suffered. Rather, they are intended to punish the wrongdoer in order that he may learn a lesson not to repeat such conduct in the future, and that others contemplating such wrongdoing may be instructed by his example.

Even though the punitive damages don't compensate the Plaintiff for his actual damages, the Plaintiff still receives them from the court if they are awarded. Many criticize this as unfair since it gives the Plaintiff a windfall, but that is how our system works sometimes. If you don't want to pay someone punitive damages, then perhaps the best thing to do would be to act responsibly and fairly at all times.

Whenever a person commits an intentional tort, like trespass, trespass to chattels, conversion, intentional infliction of emotional distress, or invasion of privacy (there are other intentional torts, like defamation or false imprisonment, but they don't really apply to this context), the wronged person has the possibility of recovering punitive damages.

Punitive damages are intended to deter conduct resulting from a mental state that is so callous in its disregard for the rights and safety of others that society deems it intolerable. Ward v. Hengle (1997), 124 Ohio App.3d 396 at 405 quoting Calmes v. Goodyear Tire Co. (1991), 61 Ohio St.3d 470 at 473. A party seeking punitive damages has the burden of proving by clear and convincing evidence that he is entitled to them. Cabe v. Lunich (1994), 70 Ohio St.3d 598 at 601. Punitive damages may be awarded only where actual damages have been awarded, Gordon v. Morris, 2001 Ohio App. LEXIS 338 (February 2, 2001) Greene Co. App. No. No. 2000-CA-69, unreported, and actual malice on the part of the wrongdoer has been shown. Rice v. CertainTeed Corp. (1999), 84 Ohio St.3d 417 at 422.

"Actual damages" is a term often used to denote either "compensatory" or "nominal" damages. Ouillett v. Johnson (1947), 71 N.E.2d 488. Compensatory damages are those that measure the actual loss to the injured party and are designed to make him whole again. Fantozzi v. Sandusky Cement Prod. Co. (1992), 64 Ohio St.3d 601 at 612.

Nominal damages are those recoverable where a legal right is to be vindicated against an invasion thereof which has produced no actual loss of any kind, or where, from the nature of the case, some injury has been done, the extent of which the evidence fails to show. Lacey v. Laird (1956), 166 Ohio St. 13 paragraph two of the syllabus. Nominal damages are limited to some small or nominal amount in terms of money. Gordon v. Morris, 2001 Ohio App. LEXIS 338 (February 2, 2001) Greene Co. App. No. No. 2000-CA-69, unreported.

In law school, we discussed a hypothetical case where two kids threw a baseball across the backyard of a third person without ever setting foot on his property. The baseball never touched the ground or caused any damages, but it did bother the owner who hypothetically brought suit against the trespassers. If the landowner was successful in his suit, he would likely be awarded nominal damages (perhaps $10.00).

Actual malice, necessary for an award of punitive damages, is (1) that state of mind under which a person's conduct is characterized by hatred, ill will, or a spirit of revenge, *or* a conscious disregard for the rights and safety of other persons that has a great probability of causing

substantial harm. Preston v. Murty (1987), 32 Ohio St.3d 334 at 335. Attorney fees may be awarded as an element of compensatory damages in cases where punitive damages are warranted. Zoppo v. Homestead Ins. Co. (1994), 71 Ohio St.3d 552 at 558. A trial court may award attorney fees where the wrongdoer has acted in bad faith, vexatiously, wantonly, obdurately or for oppressive reasons. Buller v. Respicare, Inc. (1987), 39 Ohio App.3d 17.

Simply put, to get punitive damages, you have to show evidence to the court about your opponent's behavior which pisses the court off. Here is what one trial court said in a decision which will show you the necessary state of mind you need to get the court in:

> The absurdity [*sic*] of the attempts of the Plaintiffs to try to get their property and the Defendant's unwillingness to exert any effort to get that property to them until approximately six months later is an outrage. Defendant adopted a pose in court of lack of knowledge that the Plaintiffs were attempting to retrieve the property. The Court does not believe that pose.

Now there you have a pissed off judge ready, willing and able to award punitive damages to the Plaintiff.

II. Adequacy of Punitive Damages Awards

In the case of Babcock v. Milligan, 2002 Ohio App. LEXIS 2847 (May 3, 2002) Coshocton Co. App. No. 01CA013, unreported, the tenants, the Babcocks, rented an apartment from the landlords, the Milligans. The rental agreement between the parties called for the tenants to pay the landlord $350.00 for a security deposit, but the tenants only paid $275.00. The landlord sent the tenants a letter warning them that he would evict them if they did not pay the entire deposit. When the tenants still did not pay, the landlord started removing the belongings of the tenants from the apartment without filing an eviction action.

The tenants sued and won in the trial court, but the trial court awarded them $1,000.00 in actual damages for the value of their lost possessions, but only $50.00 in punitive damages. Punitive damages are awarded to punish the guilty party and deter tortious conduct by others. Detling v. Chockley (1982), 70 Ohio St.2d 134 at 136.

The policy goals behind an award of punitive damages are fully accomplished, if at all, at the time punitive damages are awarded. The amount of punitive damages is not fixed at the time the tort occurs, but rather accrues only after a reasoned determination by a jury of an amount that fairly punishes the wrongdoer for his malicious or malevolent acts and that will deter others from similar conduct. Actual damages, sometimes called compensatory damages, on the other hand, are awarded to make the victim whole and, in a sense, accrue at the time of injury.

The tenants appealed this ruling. The Fifth District Court of Appeals held that it was error for the trial court to only award $50.00 in punitive damages. The Court reasoned that when ordering punitive damages, the court is to make a reasoned determination of an amount that fairly punishes the wrongdoer for his malicious or malevolent acts and that will deter others from similar conduct. Babcock v. Milligan, 2002 Ohio App. LEXIS 2847 (May 3, 2002) Coshocton Co. App. No. 01CA013, unreported.

The Court also reasoned that a $ 50.00 punitive damages award is less than the filing fee for a forcible entry and detainer action, and that one does not have to speculate whether such a low amount would deter any future action. The clear message sent by the $ 50.00 punitive damages award is that self-help evictions contrary to statutory regulations will be rewarded. Given the fact that the trial court found in favor of appellants on all claims save conversion and

further found appellees' action were done with malice, the Fifth District Court of Appeals found that the $ 50.00 punitive damages award was inadequate and remanded the case to the trial court for a specific just determination on the amount of punitive damages.

III. Need for Special Pleading of Punitive Damages

General damages are those that "necessarily result from the injury complained of. Gordon v. Morris, 2001 Ohio App. LEXIS 338 (February 2, 2001) Greene Co. App. No. No. 2000-CA-69, unreported; 30 Ohio Jurisprudence 3d (1999) 171, Damages, Section 138. General damages are presumed to flow from the injury and may be alleged in a lump sum, even though the pleader sets out with particularity different items of injuries for which the plaintiff claims damages. Id.

Punitive damages, on the other hand, do not follow as a necessary consequence of the claimed injury, and they must be specially stated. Gordon v. Morris, 2001 Ohio App. LEXIS 338 (February 2, 2001) Greene Co. App. No. No. 2000-CA-69, unreported; 30 Ohio Jurisprudence 3d (1999) 171-172, Damages, Section139. Punitive damages are occasioned by a special character, condition, or circumstance of a person wronged. Id. No recovery can be had for special damages not pleaded in the complaint. Id.

IV. Punitive Damages Not Available in Small Claims Court

If you bring your action in small claims court, that court does not have the power to make an award of punitive damages. So this should factor in your decision as to the court in which you wish to file.

Chapter 4: Common Landlord Defenses

Most landlords don't realize when they are setting your stuff out that they are doing anything wrong. But once they do realize the trouble that they are in (usually after speaking with an attorney), they will adopt one of three strategies for defending themselves. The first is to argue that you abandoned the apartment and that they were just getting rid of the stuff you left behind. The second is to argue that there was a valid surrender of the rented premises. The third defense is that they did not do what you are saying they did.

I. Defenses of Abandonment

Any property left behind by the tenant after the lease term becomes the property of the landlord. Abandoned property is property over which the owner has relinquished all right, title, claim, and possession with the intention of not reclaiming it or resuming its ownership, possession, or enjoyment. Doughman v. Long (1987), 42 Ohi App.3d 17 at 21. In order to prove that property has been abandoned, it must be shown that the owner intended to abandon the property, and engaged in acts or omissions implementing that intent. Hamilton v. Harville (1989), 63 Ohio App.3d 27 at 30.

A. Around Move Out Time

The defense of abandonment is especially popular with landlords around the time that the tenants were in the process of moving out anyway. Moving out is often a week long process for a lot of people who can't afford a moving service, so they pack up their stuff and move it one car load at a time. The result can be a house that looks like no one lives in it, one that just has a bunch of boxes of stuff all around. If the landlord snaps a few pictures of this, he might be able to convince a judge that no one could live in such surroundings and that as such, the property is abandoned.

In the case of Gordon v. Morris, 2001 Ohio App. LEXIS 338 (February 2, 2001) Greene Co. App. No. No. 2000-CA-69, unreported, the tenants (the Gordons) were in the process of moving out of the apartment they rented from their landlord (Morris). The tenants had even turned off the utilities toward the end of the last month they were there. But when they came back on the 27th of the month to get their appliances from the apartment, they found that the locks had been changed. Several attempts to meet with the landlord to resolve the matter failed, and the tenants filed a lawsuit in small claims court, which the landlord transferred to the regular division of the municipal court (not a smart move because this allowed the tenants to amend their claims for amounts greater than the $3,000.00 limit of the small claims court).

During the course of the lawsuit, the landlord returned the belongings to the tenants (the landlord had stored them in a storage facility). The trial court issued a decision finding in favor of the tenants on their conversion claim. The trial court initially awarded no compensatory damages to the tenants (since they got their stuff back), but did award them $ 1,000 in punitive damages, $ 1,462.50 in attorney fees, and ten percent interest from October 27, 1998. The court later awarded the tenants $96.77 for the five days for which they had paid rent but were locked out of the apartment (this was after an appeal when the appellate court reminded the trial court that punitive damages were unavailable to persons who were not awarded compensatory damages).

The landlord argued abandonment, but the court did not buy it. The fact that the tenants shut off the utilities and were in the process of moving out is not necessarily abandonment of the

premises. But whether property has been abandoned is almost always going to be a question of fact for the court to determine, so this issue is always going to be something of a toss up.

B. Staying Past Time When Tenant Said He/She Would Leave

Even if the tenant tells the landlord that he or she will be out or the rented premises by a certain time, the landlord still cannot go in after that time and start throwing stuff out without facing liability. In the case of Stark v. Weimer, 1999 Ohio App. LEXIS 1935 (April 30, 1999) Huron Co. App. No. H-98-031, the tenant told her landlord that she would be out of the rented premises on April 1, 1996 (never a good idea to quote April Fools Day as the date by which you will do something). The tenant turned off the utilities on March 1, 1996, moved out most of her larger items, taking them to her new apartment, and did not pay the rent for the month of March.

When the tenant came back in mid March to get the rest of her stuff, she found that the door had been padlocked. She called the police who came out and cut the padlock off the door. She then removed some of her belongings, but upon her return to the apartment later, she found that the rest of her stuff had been removed and put in storage. Apparently, the landlord's father had padlocked the door. The tenant got some of her stuff back from the landlord, but claimed that about $13,000.00 dollars of stuff was missing or damaged and sued.

After a jury trial, the tenant was awarded $18,000.00 in damages. The court held a separate hearing on the tenant's request for attorney fees and decided that, pursuant to R.C. 5321.04 and R.C. 5321.15, the tenant was entitled to attorney fees in the amount of $ 2,350.00 plus interest. The landlord appealed.

On the appeal, the landlord argued that there was no evidence to support the additional $5,000.00 that the tenant was awarded beyond her actual damages. The Sixth District Court of Appeals noted that though the common law tort of conversion (an intentional tort allowing for the recovery of punitive damages) was listed as a cause of action in the tenant's complaint, no evidence on the conversion was ever presented at trial, since the case was treated from start to finish by both parties as a violation of Ohio Revised Code Section 5321.15. Without evidence to justify punitive damages, the extra $5,000.00 was ruled excessive by the court of appeals.

But the lesson for landlords to take from this is that if you suspect that a tenant may still be either living at the rented premises or intending on coming back to remove the last of his/her stuff, you would be wise to go through the statutory eviction process, no matter what the tenant may have told you about his/her plans.

II. Defense of Surrender

The surrender of a leased premises terminates the lease and both parties are discharged from further obligations under the contract. In order to achieve a valid surrender, both the landlord and the tenant must consent to the termination by surrender. Such mutual consent distinguishes surrender from abandonment, in which the tenant acts unilaterally without the consent of the landlord.

Generally speaking, Ohio law requires that a surrender must be executed through a writing. In the absence of an express written agreement, however, a surrender may still be implied from the conduct of the parties. This is known as surrender by operation of law. An example of this would be an oral agreement to surrender coupled with the actual physical delivery of the premises by the tenant to the landlord. See White, Ohio Landlord Tenant Law (1996) 271-274, Section 12.10.

The Sixth District Court of Appeals has stated that a surrender by operation of law occurs when the conduct of the parties to the lease implies a mutual agreement to the tenant's surrender of the lease and landlord's acquiescence thereto. The intent to surrender a leasehold, as intimated from the conduct of parties totally independent of an express agreement, can only be presumed within the realm of reasonable common sense. Pietrykowski v. Hamblin, 1985 Ohio App LEXIS 6344 (April 12, 1985) Wood Co. App. No. WD-84-86, unreported.

In essence what the landlord is arguing here is that you and he mutually agreed that you would move out, and then you did, leaving some stuff behind. If the judge believes the landlord, then you will not win your case. But if you can convince the judge that you had no such agreement with the landlord, then you have a good chance to win your case.

III. Defense That Landlord Did Not Set You Out

Some landlords will claim that they have no idea what you are talking about, and that they never set out any of your property nor changed the locks. In that case, it will just come down to a matter of proof. The best thing to do when you first find that your landlord has changed your locks is to call the police and fill out a police report. Once you have a copy of that police report, then you are in a pretty good position.

It also helps to have some witnesses who are disinterested in the case to come in and testify for you. If you have a neighbor or a friend who saw you try to use your key and that it no longer worked, then that is a good thing to have that person testify about at your trial. Another good thing to have would be a video tape of you trying to open the door and your key not working.

It is no good for the landlord to argue that its employees set you out, and that they had nothing to do with it. A landlord will be responsible for the acts of its employees when their actions are in furtherance of the landlord's business. There are several names for this legal concept, but the most common names are 1) vicarious liability; 2) respondeat superior; 3) the master/servant rule; or 4) employer/employee liability.

IV. Limiting Defenses

It is possible that the landlord may argue that the actions he or she took were not motivated by malice against the tenant, and that while the landlord may have to pay the tenant's actual damages, that attorneys fees and punitive damages should not be recoverable. In the case of Lewis v. Urquhart, 1996 Ohio App. LEXIS 897 (March 11, 1996) Butler Co. App. No. CA95-07-118, the tenant alleged that the landlord cut off the water supply to the rented premises after the tenants failed to pay the rent for May of 1994.

The trial court ruled that the landlord owed the tenants $203.00 in actual damages because of the water shut off, plus court costs. But the trial court, after a hearing on attorneys fees, did not award any fees to the tenants. The trial court believed the landlords when they said that the reason they cut the water to the tenant's property was because there was a broken pipe and not because they were trying to force the tenant out. The Court of Appeals reasoned that

since the landlords' actions in failing to provide adequate water to appellants were not intentional or of such character as to warrant the award of attorney fees, the trial court’s decision denying fees was appropriate.

Chapter 5: Proof Needed to Win Damages

When a trial of a case starts, the judge looks at the case as a clean slate. He or she presumes nothing, and accepts nothing until it is introduced into evidence. Thus, just because you have alleged something in the pleadings of your case does not mean that the judge will award you money damages for it. You have to bring in some evidence (even if that is only your testimony under oath) that you suffered these damages.

I. Lists of Property and Values Insufficient

Here is an example of how a tenant can get screwed by not adhering to the rules of evidence when presenting the court with evidence of damages. In the case of Smith v. Seitz, 1998 Ohio App. LEXIS 3333 (July 9, 1998) Vinton Co. App. No. 97CA515, unreported, the tenant introduced lists of her possessions lost in a self help eviction. But the tenant never testified in court as to the items on the lists. She just introduced the lists as the evidence of her losses. While the trial court ruled in her favor and awarded her damages, the Fourth District Court of Appeals overruled this decision, finding that the lists of her possessions were nothing more than hearsay.

Trial courts normally have broad discretion in the admission and exclusion of evidence. State v. Sage (1987), 31 Ohio St.3d 173. However, the Rules of Evidence specifically provide that hearsay is not admissible. The lists were statements because they were "written assertions" and are hearsay because they were made out of court and were intended to prove the truth of the matter asserted (the missing items and their value). Smith v. Seitz, 1998 Ohio App. LEXIS 3333 (July 9, 1998) Vinton Co. App. No. 97CA515, unreported. Since the tenant did not testify about the contents of the lists, they were hearsay and it was error for the trial court to admit them. Had the tenant only read them aloud and testified that they showed the tenants missing items and their values, then the result might well have been different.

II. Owner's Testimony Competent

In general, an owner is competent to testify regarding the value of his or her property. Tokles & Son Inc. v. Midwestern Indemn. Co. (1992), 65 Ohio St.3d 621. This means that as the owner of property, you can give testimony about how much he or she thought it was worth. The trial court is free, of course, to give this testimony what weight the court thinks it is worth.

III. Types of Damages

If the landlord cuts the power off at the apartment or locks the tenant out for a significant period of time, the careful tenant lists all of his damages on the complaint. Damages that are often overlooked are listed below. Many of these damages are insignificant in and of themselves due to their small amounts. But recall that in order to get punitive damages, you must recover some actual damages. An award of $35.00 in lost food can save your bacon when it comes to your attorney arguing that you should be awarded punitive damages.

A. Food

If the electricity is cut off and the food in the fridge goes bad, then the value of this food should be included in the complaint. If the tenant is locked out long enough that the food goes bad simply because of the passage of time, then this should be listed as a damage.

B. Hotel Bills

Any payments made for alternate living arrangements should be listed as damage to the tenant. So if you had to get a hotel room for the evening because you could not get into your

place, then you should keep the receipts for this extra cost. If you had to eat out that evening because you could not get to the food in the refrigerator, then you should keep receipts for this cost as well. This doesn't mean that you should go to the fanciest restaurant in town and assume that it will be on the landlord's dime.

C. Pro-Rated Rent

You should be able to recover money for the days that you paid for your apartment but were not allowed the use of it. This is typically done by taking your monthly rental payment and dividing it by 30, then adding up the number of days you were locked out for which rent was paid.

D. Rental of Needed Items

If the tenant needed access to his emails and the tenants computer was locked away in the house, then any rental money spent by the tenant to access information on the computer or to get emails would likely be a recoverable cost.

E. Locksmith Costs

If you had to hire a locksmith to get back into your place, then you can and should present the receipt that the locksmith gave you for your payment to him or her.

Chapter 6: Attorney Fees

If you can show the court that the landlord violated Ohio Revised Code Section 5321.15, then the court can to set a hearing for determining what attorneys fees you incurred and whether they were reasonable. The failure of a trial court to award attorneys fees after finding that the landlord violated Ohio Revised Code Section 5321.15 is reversible error. Filyo v. Cannon, 1995 Ohio App. LEXIS 6085 (December 21, 1995) Perry Co. App. No. 95 CA 1, unreported. Once the trial court makes the determination of what your reasonable attorneys fees are, that determination is entitled to deference from the court of appeals. Kessler v. Thompson, 1993 Ohio App. LEXIS 2842 (June 3, 1993) Seneca Co. App. No. 13-92-51, unreported.

The amount of attorneys fees that you will be awarded are limited to what is reasonable. The factors that a court will use in determining what attorneys fees are reasonable are as follows: The time and labor involved in maintaining the litigation; the novelty and difficulty of the questions involved; the professional skill required to perform the necessary legal services; the attorney's inability to accept other cases; the fee customarily charged; the amount involved and the results obtained; any necessary time limitations; the nature and length of the attorney/client relationship; the experience, reputation, and ability of the attorney; and whether the fee is fixed or contingent. All factors may not be applicable in all cases and the trial court has the discretion to determine which factors to apply, and in what manner that application will affect the initial calculation. Bittner v. Tri-County Toyota (1991), 58 Ohio St.3d 143 at 145-146.

In fact, even if you are represented by a legal clinic run by student legal interns who cannot legally charge you for attorneys fees, if you win the case, the clinic can recover for the time that its interns spent upon your case. Jackson v. Brown, 83 Ohio App.3d 230. In that case, Ohio's Eighth District Court of Appeals reasoned that:

> In our judicial system, legal interns provide an important source of legal representations for the indigent. Argersinger v. Hamlin (1972), 407 U.S. 25 at 40-41 (Brennan, J., concurring). The Ohio Supreme Court as well has recognized the importance of legal interns and has enacted a rule which permits interns to enter into actual representation under the supervision of an attorney admitted to practice in the state of Ohio. Gov. Bar R. II.
>
> As the trial court noted, appellant does not cite any case law which specifically includes the services of a legal intern as part of an award of attorney fees. However, the efforts of paralegals and law clerks have been included; see Mieskoski v. Mieskoski (Apr. 28, 1987), Cuyahoga App. No. 52230, unreported, 1987 WL 11670; Maze v. Maze (July 22, 1985), Cuyahoga App. No. 49068, unreported, 1985 WL 8757.
>
> Given the recognition of legal interns by both the United States Supreme Court and the Ohio Supreme Court, Housing Advocates, Inc.'s status as a legal services organization and/or legal clinic fully within the purview of Gov. Bar R. II, court's compensation for the services of paralegals and law clerks, and a dearth of case law prohibiting their inclusion in an award for attorney fees, we find that an award for the efforts of a legal intern on behalf of a client is properly compensable as part of an award of attorney fees.

Some landlords have tried to argue that since the tenant and his attorney had a contingent fee agreement, then the tenant and his attorney are barred from recovering attorneys fees based

upon an hourly rate. But Ohio Courts have overruled this argument. Pursuant to Ohio Revised Code Section 5321.15(C), the trial court can award reasonable attorney's fees. A pre-existing contingent fee agreement does not impose a ceiling on nor bar an award of reasonable attorney's fees permitted by statute. Bynum v. Huffman, 1990 Ohio App. LEXIS 5666 (December 20, 1990) Cuyahoga App. No. 57730 citing to Blanchard v. Bergerson (1989) 109 S.Ct. 939. If a reasonable fee is authorized, no agreement that fails to provide a reasonable fee will bar an award by the trial court that considers all factors. Id. at 941-942.

Chapter 7: Court Tactics

I know that all of you have watched movies about the law. You've seen how attorneys get up in front of juries and thunder away at injustice and evil. They use procedural technicalities to win cases like magicians. You think attorneys score points by getting in those needling little jibes at the other attorney, the quick witted wise cracks with the perfect timing. This has nothing to do with the law. This has everything to do with pissing off judges so that they will not find in your favor. Judges place great stock in organized presentation of evidence. They place very little stock in courtroom antics.

Once again, I present you with the following information, not so that you can read it and be instantly qualified to bring your case to Court, but rather to give you a better understanding of what happens in a trial, how to act, and how much you need an attorney to act as an objective, knowledgeable, dispassionate observer and advisor.

A. Organization

Organization and preparation are key, but difficult for a lot of people. If you are a disorganized person, you are at an almost insurmountable disadvantage. Your landlord is either organized, or has hired someone that is. Organization and preparation usually win when it comes to a court battle with your landlord.

While your landlord has organization as his strongest weapon, you have energy on your side. If you are a student tenant (the ones most at risk in landlord tenant law), you should have boundless energy and creativity. If you can couple this with organization and a good set of facts, you will be a formidable opponent for your landlord.

You must tell your story to the Court in an organized manner. Courts are places of organization. They are their own bureaucracy, and they think along those same lines. Your landlord is something of a bureaucracy too, especially if you live in a multi-unit building. Your landlord understands the bureaucratic process from having done it so long.

Whenever you make a presentation, you want to have your ducks in a row. Nothing sucks confidence and credibility from your arguments more than an advocate who is fumbling around for things in messy pile of documents. When you want to show your lease to the Court, you should be able to find it immediately and hand it to the judge. The video tape of your apartment should be rewound to the starting point. The judge will not be filled with confidence as you fast forward through the end of a taped football game to get to what you need to show him.

A. Trial Note Book

How do you organize your documents? For those of you in school the answer is easy. The invention of the three ring note book with dividers is the answer to your problem. Below are the sections and how you want them organized.

1. The Opening Argument

Judges hear too many cases every day to be able to remember what yours is about as they walk into the Court. Your opening argument is your chance to remind and reorient the Court as to what is going on. So long as your opening argument is short and to the point, the judge will greatly appreciate it because after hearing a good opening argument, he will not be quite as embarrassed about walking into the Court a few minutes earlier not having the

slightest idea of what is going on. He will be able to categorize the case in his mind as follows: "Aha. Landlord tenant case, tenant alleges landlord locked him out without the proper procedure."

Don't read your opening argument to the Court. Have an outline of it and tell it to the Court in your own words. What follows is an excellent introduction:

> Your honor, my name is Adam Smith, and this case is about a wrongfully withheld security deposit. I entered into a one year written lease with my landlord on May 3, 1999. The lease was for the apartment at 123 Main Street, Columbus, Ohio, Apartment One. I paid a security deposit of $500.00, and the rent was $500.00 per month. I moved in on the first day of the lease, September 1, 1999.
>
> I paid the rent every month, but I fell behind in February 2000 after I lost my job. My landlord sent me a letter telling me that if I didn't pay all of my rent within a week, he would cut off the utilities to the place and change the locks and throw my stuff in the dumpster. I wrote him back that I didn't think that this was legal, but when I came home on February 15, 2000, my key didn't work and all of my stuff was in the dumpster and had been ruined by the rain.
>
> I have receipts for the value of many of my belongings, and I will testify to the value of the stuff as well. I think the evidence will show that there has been a conversion of my belongings, a trespass upon my property, and a violation of Ohio Revised Code Section 5321.15. I am asking you to award me my security deposit back in the amount of $4,517.98. I am also asking for another $5,000.00 in punitive damages as well. Thank you.

The above was short, too the point. Now the judge knows what went on and why you are taking up his time. Don't try to sound like a lawyer. Judges get enough of that. Be different. Sound like yourself. Don't go in for all this "May it please the Court" and "Consequently, per se, your honor" jazz. Nothing sounds dumber to a judge than someone trying to sound like an attorney.

The Opening Argument section of your trial notebook should have the above argument outlined on it. Even though you know the facts by heart, it's easy to freeze up. When you do freeze up, it helps to have an outline of all of the important dates, times, and amounts sitting right there at your finger tips.

2. Your Evidence Section

You should have four copies of every document that you want to show the Court. There will very likely be evidence stickers at the Bench that say "Plaintiff's Exhibit ___" or "Defendant's Exhibit ___." Ask the Court Reporter or Bailiff if you can have some of these on an earlier trip to the Court house to scout out the territory.

Perhaps you have four exhibits. The first is a copy of your rental agreement. Many rental agreements are printed on 14 inch paper. It's okay to have your lease shrunk down to 11 inch paper so long as you can still read all of the terms (note, if your Judge is elderly, you may want to keep things at their original size to make it easy on his eyes). You should have four copies of the rental agreement, and there should be a sticker on each one marking it as "Plaintiff's Exhibit #1" (if you are the Plaintiff).

Your second exhibit might be a video tape of a walk through of your apartment showing your belongings before the set out. You don't need four copies of this tape, but two might be handy so that you will still have one after leaving the original with the Court. It is difficult to store video tapes in a trial notebook since they are loose. So you should get one of those plastic pouches with a zipper on them that are three hole punched on the left side. Put the stickers directly on the tapes. Make sure they are rewound to their starting points.

Your third exhibit might be several receipts for the value of the items you claim to have lost. Your fourth exhibit might be a copy of the letter that your landlord sent you threatening to throw out your stuff.

The reason that you have four copies of each document is because you will need one to hand the other attorney, one to hand the witness, one to hand the judge, and one to refer to as you ask questions about it. It is imperative to have them all ready, pre-marked, and paper clipped together in your three ring trial notebook.

Each group of four copies should have a one page list of questions that stays with you in your trial notebook. On this paper will be the authentication questions and then the testimonial questions you will want to ask. Every piece of evidence needs to be authenticated before it is formally introduced. Authentication questions introduce the piece of evidence to the Court. They show the Court that there is some relationship between the evidence and the issues to be decided such that it warrants the Court's time to look at it. An example:

You: I am handing you what has been marked for identification purposes as Plaintiff's Exhibit Number One. Could you tell the Court what that is?

Landlord: That is the lease that we signed for the apartment.

You: When was that signed?

Landlord: May 3, 1999.

You have now provided the Court with sufficient information so that it can see that the evidence is related to the proceedings. The Court can now give it whatever weight the Court deems it deserves.

The questions you ask your witnesses should move through your story. Don't start out asking what stuff the landlord took out of the apartment. Take the Judge through the rental agreement signing, then onto the day you picked up your keys and moved in. Take him through your history of rental payments. Then take him through the letter you got and your response to it. Then take him through the set out.

Along the way, have him identify pieces of evidence. When you are asking about the rental agreement, ask him if Plaintiff's exhibit one is a copy of it. Some Courts prefer that you move to introduce each piece of evidence as you show it to the witness after it has been authenticated. But other Courts (and this is the more common practice, especially if you are trying the case to a Judge) want you to move to admit all of your evidence at the end of you presentation of evidence. At that point, objections to admission of the evidence are typically heard and ruled upon and exhibits are either admitted or excluded.

3. Closing Argument Section

You will want an outline of your closing argument. You do not want this to be a word for word script that you read to the Court. Things will get said during testimony that you will

want to re-emphasize to the Court. If you have a well spaced out outline, you can pencil stuff in between the lines where it fits in best. You want to restate the facts, show how they relate to the law, and then inform the Judge one last time what you are asking for.

4. Case Law and Statute Section

If your argument depends upon a certain statute or the ruling of a case that is on point, then you want to have a copy of such statute or case at your fingertips with the important provisions highlighted and tabbed so that you can turn right to them.

III. Being Nervous

It's okay to be nervous. No matter how much you prepare, you will be a little scared when you get up in front of the Judge. Being a little scared can work in your favor. It shows the Judge that being here is important to you. It reminds the Judge that you are the little guy that he is supposed to protect. It will make the Judge forgive a few of your mistakes. It is hard for the Judge to think of you as a smart ass punk kid if your voice is shaking a little bit at first.

A. Limiting Nervousness

Too much nervousness is not good. There are ways to take the edge off. Go to your Court on days when you are not scheduled. Sit in the back row and watch the proceedings. Watch how the attorneys conduct themselves. Watch how the Judge runs the Court, especially your Judge if possible. Watch how the Bailiffs and secretaries do things. Take notes. Feel free to ask them questions during the breaks if they have a spare moment (but don=t ask them for legal advice). A good question might be, "Excuse me, but I have a case in front of this Court in a few weeks time, and I was wondering if there is any rule about which of the two counsel tables at which the parties sit."

You might find that the Court will be deserted in the late afternoon. Ask around, but there probably won't be anyone that has a problem with you rehearsing your opening and closing arguments in the empty court room. Try to do this in your courtroom. Be friendly with the Court staff. If they like you, things will go very easily for you. If you piss them off, they will probably speak to the Judge about you in less than glowing terms.

IV. Three Stages of a Trial

The three stages of a trial can be broken down as follows. In the first stage, your opening presentation, you tell 'em what you are going to tell 'em. In the second stage, the presentation of evidence, you tell 'em, and in the third stage, the closing argument, you tell 'em what you told 'em. Pretty simple? You bet. Keep it that way.

A. Opening Argument

Keep this section simple. Illustrate where your arguments are going to go, and how the evidence will link up with your arguments. But don't allow yourself to try to testify during this period. This is a movie preview, like you see before the main event. It should be the roadmap, not the trip. You are using this opening argument to remind the Court of who you are and why you are here, because the Court has hundreds of other cases on its mind that are just as important as yours. Don't try to introduce your evidence. Keep it short. Don't repeat yourself. Don't try to score points.

B. Presentation of Evidence

You need to have the confidence in your evidence, preparation, and yourself to let your evidence speak for itself. This is very difficult, even for attorneys. People always want to put a spin on the evidence. The Judge does not want to see spin, he wants to hear the evidence speak for itself. The art of winning is letting your evidence do the talking. Let=s look at an analogy from another context.

A cop is walking along on his patrol and he gets a radio call informing him that the local convenience store has just been robbed. The suspect is said to be wearing a red shirt and dark blue jeans and was last seen in a foot chase with other officers. James Innocent gets out of his car after the long drive home from work and is walking up the sidewalk to his house. James is wearing a red shirt and dark blue jeans by chance.

Directly in front of him is a young man, about the same age and height, wearing the same clothing, walking nonchalantly along the sidewalk. The Police Officer rounds the corner, sees them both, and orders the two of them to stop. He knows that one of them is the crook.

The Police Officer tells them both that he is looking for suspect that just eluded other officers in a foot chase after robbing the convenience store. The crook immediately starts protesting his innocence upon questions by the Police Officer. He is extremely convincing, having lived the life of a con-man .

James Innocent is a little befuddled as he is just home from work, tired, and has no idea what is going on. The Police Officer has to choose one. James touches the left side of his chest and says to the Officer: “Feel my heart, then feel his. That will tell you who was in a foot chase with the police.” The Police Officer feels James’ heart, then puts his hand on the crook’s chest. The cop realizes that the crook’s heart is beating a mile a minute, while James’ heart rate is normal. James wins the argument by letting the evidence speak for itself.

The above is example contains all the elements of a trial proceeding. You have two advocates, James and the Crook. You have a judge (in this case the Police Officer). You have evidence, the heartbeats. Why would James want to get into a long diatribe about how the human heart increases its rate of operation during a foot chase? Why would James want to tell the cop what he was feeling as the cop felt his chest? Those types of statement detract from the power of the evidence. The evidence spoke so eloquently that the best lawyer in the world could not hope to match it.

The reason that letting the evidence speak for itself is that people tend to value their own conclusions and realizations more than the ones that others point out to them. That’s because their conclusions are their own. They take pride in them. When you let the evidence speak for itself and the Judge comes to a realization that favors you, when the other side tries to attack this realization, they are attacking the Judge’s own mental process.

Let’s take a courtroom example. Your landlord claims under oath that he never set out your belongings. Here’s what not to do.

You: Are you aware that you are under oath?

Landlord: Yes:

You: And are you aware of the penalties for perjury?

Landlord: Yes.

You: I'm going to show you the letter you sent me threatening to set out my stuff which shows that you are lying because it proves that you threatened to set out my stuff.

Landlord: I may have been mistaken earlier. I have so many tenants.

You: No, you were lying weren't you? Weren't you?

Rather, the questioning should go something like this.

You: You never set out my stuff?

Landlord: No. I never set out your stuff.

You: I'm going to show you what has been marked for identification as Plaintiff's Exhibit Number Three [Hand out copies to Judge and other counsel]. Can you identify that for the Court?

Landlord: It's a letter I sent you.

You: Is that your signature?

Landlord: It appears to be.

You: [Hand Plaintiff's Three to the Judge] Does that refresh your memory as to whether or not you set out my stuff?

Landlord: I may have had your stuff set out by mistake.

You; My next question concerns....

Now you may read the two accounts and think that the first one has a lot more spark and excitement, and it does if your landlord breaks down and starts weeping and admits to the Court between sobs that he is sorry for swindling your money and that he should be led off in chains and beaten about the head and neck. You see this kind of drama all the time on TV and in the movies.

But the second line of questions speaks louder to a Judge. The Judge can look at the letter and see that the landlord threatened you with a self help eviction. He can see that this in itself is a violation of the law, and that it makes it much more likely that the landlord set your stuff out without process. Now it dawns upon the Judge that the landlord is lying.

Sometimes, you don't even want to catch the landlord in his lie until a bit later on. The following passage is an example of how to do this.

You: What did the Apartment look like when you got it back on September 1, 2000?

Landlord: You guys had lived like pigs the entire time you were there and it showed. The apartment was waist high in garbage, the refrigerator was tipped over in the kitchen, and there was a dead cat in the sink.

You: How long did it take you to clean it up?

Landlord: It took my work crew four days working eight hour shifts to get it ready.

You: Who was on your work crew?

Landlord: Mr. Wayne, Mr. Rogers, Mr. Sullivan, and Mrs. Miller.

You: Are they all here today?

Landlord: Yes, and they will all testify.

Once you have the landlord on the record committing to his version of what the apartment looked like, and you are done asking questions to the landlord, then you call all of the landlord's witnesses up to testify to the same thing. The Judge is going to wonder what in the world you are doing, and why you are calling witnesses who are backfiring on you. Then you call your witness that made the video tape of the apartment on the last day of the lease term.

You: What did the Apartment look like on the last day of the lease?

Witness: You guys had done a really good job of cleaning it up. It even smelled clean.

You: Did you do anything to document the condition of the Apartment on that last day?

Witness: Yes.

You: What did you do?

Witness: I made a video tape of the Apartment that showed its condition.

You: I'm going to hand you what has been marked for identification purposes as Plaintiff's Exhibit Three. Can you identify that for the Court?

Witness: That is the video tape I made of the Apartment.

You: Your honor, with your permission, I would like to play this tape for the Court.

At that point, you sit down and shut up. Let the tape speak for itself. The only questions you might want to ask while the tape is playing concern which rooms are which, because sometimes it is difficult for the viewer of a tape to orient himself with the layout of a residence as the video tape runs. Don't detract from the power of your video tape with stupid questions like "You don't see any garbage in the place do you?" or "Is there a dead cat in the sink?" At the end of the tape, just rewind it and put it in with a group of your exhibits for formal introduction into evidence.

I once took a creative writing class in college, and the professor was very fond of saying "Show, don't tell." In other words, don't tell the reader that your character was nervous. Write that his hand was shaking and he dropped his glass on the floor. The idea then is the same for presentation of evidence in court to a Judge. Let him figure a few things out for himself. That way your arguments will become his conclusions, and he will defend those conclusions against attack from your opponent because he took pride in thinking them up.

Remember though that with juries you cannot always afford to be so subtle. George Carlin once said that if you are tried by a jury, you are tried by 12 people that were not smart enough to get out of jury duty.

C. Closing Argument

Now it is the time to tell 'em what you told 'em. Briefly go through your story again. Point out how your version and the landlord's version differ, and how the evidence shows that each time, your side of the story is what really happened. Point out how the law and the facts come together in a way that judgment in your favor is appropriate.

A trial is all about telling your story to the decision maker and getting him to agree with you. Note that I did not say, forcing him to agree with you. Because you are trying to convince the Judge, you need to direct all of your evidence, testimony, and theories to him. I see a lot of lawyers who try to argue with me in front of a judge. They direct their comments and questions directly to me. I never even so much as look in their direction. My entire focus is on the Judge, the center of my particular universe. Why would I even want to speak with the other attorney while court is in session? I don't have to convince the other attorney to win.

Bad lawyers argue. Good lawyers persuade. Good lawyers keep it short and simple.

V. General Courtroom Tips

A. Know When To Sit Down and Shut Up

The first legal argument that I ever got to make in a Court to a Judge was in a divorce case. The issue was very easy (there was an Ohio Supreme Court decision in my favor). I went through my argument in about 45 seconds, and found that I was starting to repeat myself. At that point, I sat down and said nothing further. The other lawyer got up and spouted the biggest raft of legal nonsense and obfuscation that I had ever heard. I wanted to get up and refute him point by point, but it was not my turn to talk.

I was busy writing down all of the stupid things that the other attorney said and how I would counter them one by one when I noticed something. All the time that I was talking, the Judge didn't seem to be listening to me. He was writing something on his legal pad. When my opponent was talking, the Judge wasn't writing anything. He was just looking intently at my opponent while this guy was rambling on and on. I thought I was done for.

But I was making a rookie mistake. What I thought was a lack of attention on the part of the Judge during my argument was actually very focused attention. When I cited to my Supreme Court case, he wrote down the cite and a short synopsis of what I said it stood for. But by looking at my opponent and not writing anything down, he was completely ignoring my opponent because his arguments were legally untenable. They were not worthy of his notation. I learned that when you score a point in Court, you'll know it because the Judge makes a note on his legal pad. He will not smile, or nod, or jump to his feet and yell "Give 'em hell, counselor!" My client at the time didn't think that I did a very good job because the other guy got to do all the talking and I only spoke for less than a minute. But the client's mood and opinion of my legal skill improved when he got the ruling in his favor.

B. Never Be Anything But Polite and Respectful To The Other Side (Especially If They Are Being Rude To You)

On another instance, early in my legal career, the other attorney was going on and on trying to obfuscate some rather clear law, and he let this gem drop on me: "Your Honor, I don't know what they are teaching these kids in law school today about civil procedure, but . . ." I thought about getting up and letting him have a full scale barrage, reiterating all of my arguments and challenging him to answer them, but then the Judge, who had been peacefully dozing, was awakened by the comment of my opponent.

Well, how do you address Mr. Willison's argument on the first issue he raised?

Well your Honor, I think that . . .

I don't care much about what you think. What does the law say?

The law is unclear on that point, you see...

It doesn't seem unclear to me. It seems like a rather simple issue.

It's not a simple issue . . .

Maybe you just don't understand it, counselor.

Well, your Honor...

Let's move on to some other more reasonable argument, counselor.

During this back and forth between the Judge and the other side, which was getting nastier and nastier, I just sat quietly. My client leaned over and passed me a note asking: "Aren't you going to get into this?" I passed a note back. "No!" I didn't have dog in that fight. What could I have added other than something like "Yeah, your Honor, good point. Kick his butt!" The Judge was making all of my arguments, the other attorney was arguing with the Judge (the decision maker) and all was right with the world as far as I was concerned. When the Judge had finally had enough of the other side's folderol, he ended the proceedings. I got up to shake the other attorney's hand, but the guy was already out the door and heading home. The decision was in my favor.

C. Watch For Body Language

Watch the Judge's body language when he listens to arguments. If you get the sense that the Judge has already made up his mind in your favor, quit trying to convince him. Move on to your next strong point. Crossed arms often mean that the Judge is in disagreement (or the air conditioning might be on a bit too high). Move on to your next point. If the Judge uncrosses his arms, then he might be more likely to accept an argument if you show how the evidence nicely dovetails with what you are arguing.

D. Don't Be Put Off By Questions From The Bench

Many lawyers hate it when the Judge interrupts them or the proceedings and starts asking questions. In reality, this is a golden opportunity. The Judge is showing you his inner thought process. If he starts asking about when the keys were returned to the landlord, then you know that this is important to him for some reason. If you can apply the law and figure out what he is getting at, then you can be well ahead of the landlord, and maybe even the landlord's attorney. Note the answer to the Judge=s question in your closing argument in support of your points.

Here's an example. Let's say your case rises and falls upon when the Court determines that you gave possession of your apartment back to the landlord. If you gave it back by the end of August, you win. If you gave it back in September, the landlord wins.

You: When did your lease end?

Jim [your roommate and witness]: On August 31, 1999.

You: When did you send the landlord your forwarding address in writing?

Jim: In July of 1999.

You: When did you vacate the Apartment?

Jim: August 21, 1999.

You: No further questions, your Honor

Court: I have a question, when did you return the keys to the landlord?

Jim: On August 31, 1999.

Court: Thank you.

The Court has just told you that one of the important factors it will consider regarding possession of the Apartment is when the keys went back to the landlord. Stress the fact that the keys were returned on August 31, 1999 in your closing argument.

E. Don't Get Sidetracked

At all times during your case, remember what you are there to establish. Remember the old saying that when you are up to your ass in alligators, it is easy to forget that you are there to drain the swamp. If you are trying to get your security deposit back, and you have a video tape of the apartment's condition at move out and your landlord has been lying to the Court and you caught him with the tape, the case is over. All you need to do is stay on message and go home when Court adjourns.

But your rental agreement had a no pets clause and you had a dog the whole damn time. The other attorney is asking you question after question about the dog, and you are arguing that the landlord knew about your dog, but took no action, or that you paid an extra pet deposit, or that your landlord said don=t worry about the dog clause, have a pet anyway, or that the dog was only there a few times. Stop. What are you doing?

Is the landlord claiming that the dog damaged the premises? No. Your video tape proves that the dog did no such thing. Then whether or not you had a dog has no relevance to your case. Why argue it? You should sit tall in the witness box and say: "Your Honor, I had a dog, and the lease said I wasn't supposed to. As the tape shows, it did no damage." What is there more to say? If the other side's attorney keeps hounding you on it, keep politely answering the questions, but eventually the Judge is going to get tired of it and instruct the other attorney to move on. But quit arguing about it. It merely clouds the focus of your case.

The other attorney is trying to get you off message. He is trying to make a simple case into a complex one, and by arguing every time the dog came over for a weekend rather than a week, you are going off message and the other side is taking the initiative. Stay on target. Stay on message. Keep coming back to your strong points.

Chapter 8: Documentation Methods

If you suspect that your landlord may set you out without the appropriate court process, or even if you don't and you just want to be safe, there are some proactive steps you can take to put yourself in the best position possible.

I. Video Tape Your Apartment

I sometimes get clients who tell me that their landlord cost them $50,000.00 in lost possessions when their stuff was set out. I ask if they have any proof that they ever owned a flat panel plasma television or a four carat diamond ring worth $15,000.00, and they say that all of their receipts were tossed out by the landlord. That becomes a tricky case.

Why not walk through your apartment with a video recorder and tape all of the items you own? If you say that you owned 200 DVDs, showing them all in the rack in which they are stored is some pretty good evidence for a court. A video of the plasma tv hanging on the wall is nice to have when it comes to court. It only takes about 10 minutes to put something like this together. I would even suggest showing a copy of that day's local newspaper at the start and the finish of the tape so that we can time stamp the tape with the headline date.

Store the tape at work or at the home of a highly organized friend.

II. Keep Your Receipts Safe

Have a folder into which you throw all of your receipts. Keep this folder in your car. If you can show the court that you paid $13,000.00 for a diamond ring via a receipt from a jeweler, then you are well on your way to recovery.

III. Don't Pay Cash For Your Stuff

If you can manage it, buy your items with a credit card or a debit card, or by check. That way, you can request that your bank or credit card company provide you with monthly statements showing your purchases of certain items you wish to recover. If you do pay cash, get a receipt and put it in the folder I mentioned above.

IV. Be Realistic About Damages

You must understand that the court is only going to award you your actual damages for your loss. This means that you will likely recover the value of the items at the time they were lost, not their replacement costs. The fact that you paid $10,000.00 for a plasma tv which can now be had for $2,000.00 is not the fault of your landlord. You will get the value of the used plasma tv. That value would be what a person would pay for it if you were selling it in a private sale.

V. Sentimental Values

While an item might have a sentimental value to you, courts in Ohio will not compensate you for the sentimental value of the item. Rather, the court will give you the value of what someone would pay for it at a garage sale. This means that your high school year book with all of those precious inscriptions like "Best wishes, now and in the future—Judy" or "Best of Luck with your future endeavors—Ed" won't be worth 10,000.00 to the court, despite the fact that you wouldn't have sold it even at that price.

If you have items of sentimental value and you think that there is a chance that the landlord will set you out, then you should probably protect those items by keeping them in a safer place.

Appendix of Useful Forms

I. Sample Complaint for Damages

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Thomas & Theresa Tenant **789 Long Street** **Anytown, Ohio,**	**:**	**Case No.** **Judge:**
Plaintiffs,	**:**	**Complaint for Damages With Jury**
v.	**:**	**Demand Endorsed Hereon**
Wrongful Rental Mgmt., L.L.C. **C/o Stat. Agent Joe Bozo** **91011 North Broad Street** **Columbus, Ohio**	**:**	
and	**:**	
William A. Owner **987 Elm Street** **Columbus, Ohio**	**:**	
Defendants.	**:**	

COMPLAINT

1. Plaintiffs, Mr. & Mrs. Thomas and Theresa Tenants entered into a lease agreement with Defendants for the apartment located at 123 East Main Street, Columbus, Ohio.
2. This lease was to end on December 31, 2007.
3. Defendants are the "landlords" of the Plaintiffs as that term is defined under Ohio Revised Code Section 5321.01.

4. Plaintiff Theresa Tenant stopped by the Defendants' offices at 456 West High Street during the week before Thanksgiving of 2007 and notified Defendants that Plaintiffs would be moving out at the end of their lease term.
5. Plaintiffs timely paid December, 2007's rent and Defendants cashed it (a true and accurate copy of the cancelled check is attached as Exhibit A)
6. Plaintiffs began to move their belongings out to their new residence.
7. When Plaintiff Theresa Tenant arrived at her apartment on December 17, 2007, she found that all of Plaintiffs' remaining belongings had been taken from the apartment.
8. Plaintiff Theresa Tenant inquired of Defendants' representatives what had happened.
9. Plaintiff Theresa Tenant was initially told that Defendants had considered the apartment abandoned because the keys had supposedly been turned in.
10. Plaintiff Theresa Tenant assured Defendants that she still had both sets of keys.
11. Plaintiff Theresa Tenant was then told that their belongings had been removed because the rent had not been paid for December, 2007.
12. Defendants then admitted their error in a letter dated December 18, 2007 (a true and accurate copy of which is attached hereto as Exhibit B)
13. Some missing items were recovered, to wit, two bags of clothing in bad need of dry cleaning after sitting in a dumpster.
14. A vanity was returned to Plaintiffs, but the chair to the vanity was broken, making it useless and this was left behind.
15. None of the other items listed below were returned:

	Missing Item:	Value:
1.	Columbia Coat (1); Three years old, excellent condition	$350.00
2.	Guess Coat (1); Six months old, new condition	$350.00
3.	Black Coat (1); Brand New, worn once	$200.00
4.	London Fog Heavy Overcoat (1); 2 years old $150.00	
5.	London Fog Light Overcoat (1); 1 year old	$100.00
6.	Timberland Work Boots, (1 pair) 6 months old	$100.00
7.	Women's Black Dress Shoes (2 pair) 2 years old	$50.00
8.	Brown Women's Dress Shoes (1 pair) 1 year old	$50.00
9.	Assorted DVDs (31) @ $15.00 apiece	$465.00
	Titles: Saving Private Ryan; Mallrats; The Big Lebowski; Clerks; City Hall; Scent of a Woman; The Deer Hunter; Raging Bull; Taxi Driver; Office Space; Carlito's Way; Godfather II; Devil's Advocate; Half Baked; Goodfellas; Casino; Little Mermaid; 101 Dalmations; Lion King; Aladdin; Scarface; Heat; Goonies; The Patriot; Braveheart; Final Destruction; Nightmare on Elm Street; True Romance; Willie Wonka & the Chocolate Factory; Pulp Fiction; & Reservoir Dogs.	
10.	Assorted CDs (154) @ $15.00 apiece	$2,310.00
	Groups: Red Hot Chili Peppers; Smashing Pumpkins; Rap CDs; Pearl Jam; Pink Floyd; Outcast; Radiohead; Bob Marley; Tribe Called Quest; Dave Matthews Band; Madonna; John Cougar Mellencamp; Tori Amos; Led Zeppelin; Beck; Bruce Springsteen; The Doors; Metallica; Oasis; Guns & Roses; Elton John; Pat Benatar; Bob Dylan; Grateful Dead; Soundgarden; Stone Temple Pilots; Nirvanna; "Singles" Movie Soundtrack; The Verve; The Verve Pipe; Pure Funk.	
11.	Play Station II Games (6) at $50.00 apiece	$300.00
	Titles: Madden 2002; NCAA 2002; Triple Play; Army Men; Devil May Cry; Exit to Eden.	
12.	Play Station II Memory Card	$35.00
13.	Surge & Spike Protector	$15.00
14.	Stackable Storage Boxes (4) @ $20.00 apiece	$80.00
15.	Vacation Souvenirs	$100.00
16.	Pictures (10 rolls film @ $8.00 per role)	$80.00
17.	Vanity Top Mirror	$25.00
18.	Pennsylvania Car Title replacement cost + gas	$63.00
19.	Candles	$100.00
20.	Top to Oak Desk	$100.00
21.	Cordless phone and digital answering machine	$145.00
22.	Men's OSU Work Pants (6) @ $26.00 apiece	$156.00

23. Men's OSU Polo Work Shirt (2) @ $21.00 apiece	$42.00
24. Men's OSU Chef Work Coat (2) @ $30.00 apiece	$60.00
25. Men's Hooded Sweatshirts (8) @ $55.00 apiece	$440.00
26. Men's Khaki Pants (2) @ $30.00 apiece	$60.00
27. Men's Jeans (2) @ $40.00 apiece	$80.00
28. Gap & Structure Button Down Shirts (6) @ $35.00 apiece	$210.00
29. Sweaters (10) @ $50.00 apiece	$500.00
30. Jerry Garcia, Regis, & Penny's Ties (15) @ $30.00 apiece	$450.00
31. Dress Shirts, Blue White and Purple (5) @ $30.00 apiece	$150.00
32. Maternity Outfits (4) @ $40.00 apiece	$160.00
33. Baby Outfits (2) @ $20.00 apiece	$40.00
34. Bag of Baby Clothing from Baby Gap	$75.00
35. Broken Vanity	$100.00
36. Food in Refrigerator	$150.00
37. Food in Cabinets	$60.00
38. Cleaning Supplies	$35.00
39. Tools	$25.00
40. Kids Toys	$30.00
41. Dry Cleaning for Two Bags of Clothing Recovered from Dumpster	$200.00
42. Dining Room Table Insert	$150.00
43. Pro-Rated Rent for December 2001 15 days @$16.45	$246.75
44. Sales Tax to replace Items a 5%	$392.55
45. Legal Fees (2.5 hours @ $125.00 per hour)	$312.50
Total Actual Damages:	$9,292.80

16. Before Plaintiffs left the Apartment, they provided written notice of their $99.00 security deposit to the Defendants' agents.

17. More than 30 days have passed sine the lease term ended and said notice was provided and Defendants have yet to return any portion of the Plaintiffs' security deposit.

18. More than 30 days have passed since the lease term ended and said notice was provided and Defendants have failed to provide any itemized listing of damages to Plaintiffs.

First Claim for Relief: Conversion

19. Plaintiffs reallege all of the foregoing allegations as if fully re-written herein.

20. Defendant Wrongful Rental Mgmt. has exercised wrongful dominion and control over the possessions listed above in Paragraph 15 in a manner inconsistent with the rights of the Plaintiffs as owners.
21. Plaintiffs have suffered damages as a result of this wrongful self help eviction in violation of Ohio Revised Code Section 5321.15 in the form of lost use of the premises for which they had paid December's rent, lost value of the items listed in Paragraph 14, pain, suffering, worry, and mental anguish.

Second Claim for Relief: Vicarious Liability for Conversion

22. Plaintiffs reallege all of the foregoing allegations as if fully re-written herein.
23. At all times material to this Complaint, Defendant Wrongful Rental Mgmt. was acting as the agent or employee of Defendant William Owner and thus has made William Owner vicariously liable for the acts of its agent or employee, Defendant Wrongful Rental Mgmt. since the acts taken were done in the furtherance of William Owner's business.
24. Plaintiffs have suffered damages as a result of this conversion and wrongful self help eviction in violation of Ohio Revised Code Section 5321.15 in the form of lost use of the premises for which they had paid December's rent, lost value of the items listed in Paragraph 15, pain, suffering, worry, and mental anguish.

Third Claim for Relief: Violation of Ohio Revised Code Section 5321.15

25. Plaintiffs reallege all of the foregoing allegations as if fully re-written herein.
26. At all times material to this complaint, Defendant Wrongful Rental Mgmt. is a landlord pursuant to Ohio Revised Code Section 5321.01(B).

27. At all times material to this complaint, Plaintiffs were tenants pursuant to Ohio Revised Code Section 5321.01(A).

28. Defendant Wrongful Rental Mgmt. initiated an act against Plaintiffs, to wit, that of removing their possessions and changing the locks on their doors, for the purposes of recovering possession of the premises other than as provided in Chapters 1923, 5303, and 5321 of the Revised Code.

29. Defendant Wrongful Rental Mgmt. has participated in an illegal self help eviction.

30. Plaintiffs have suffered damages as a result of this wrongful self help eviction in violation of Ohio Revised Code Section 5321.15 in the form of lost use of the premises for which they had paid December's rent, lost value of the items listed in Paragraph 14, pain, suffering, worry, and mental anguish.

Fourth Claim for Relief: Vicarious Liability for Violation of R.C. Section 5321.15

31. Plaintiffs reallege all of the foregoing allegations as if fully re-written herein.

32. At all times material to this Complaint, Defendant Wrongful Rental Mgmt. was acting as the agent or employee of Defendant William Owner and thus has made William Owner vicariously liable for the acts of its agent or employee, Defendant Wrongful Rental Mgmt. since the acts taken were done in the furtherance of Defendant William Owner's business.

33. Plaintiffs have suffered damages as a result of this wrongful self help eviction in violation of Ohio Revised Code Section 5321.15 in the form of lost use of the premises for which they had paid December's rent, lost value of the items listed in Paragraph 15, pain, suffering, worry, and mental anguish.

Fifth Claim for Relief: Trespass to Chattels

34. Plaintiffs reallege all of the foregoing allegations as if fully re-written herein.

35. Defendant Wrongful Rental Mgmt. has temporarily exercised wrongful dominion over property listed in Paragraph 14, to wit, to bags of clothing, in a manner which is inconsistent with the rights of the Plaintiffs, the owners of the property.

36. This trespass to chattels (throwing the clothes into a filthy dumpster) damaged the Plaintiffs in that they had to pay for dry cleaning of all of the items, at a cost to them of $100.00.

Sixth Claim for Relief: Vicarious Liability for Trespass to Chattels

37. Plaintiffs reallege all of the foregoing allegations as if fully re-written herein.

38. At all times material to this Complaint, Defendant Wrongful Rental Mgmt. was acting as the agent or employee of Defendant William Owner and thus has made William Owner vicariously liable for the acts of its agent or employee, Defendant Wrongful Rental Mgmt. since the acts taken were done in the furtherance of Defendant William Owner's business.

39. Plaintiffs have suffered damages as a result of this trespass to their chattels in the form of monetary loss to the dry cleaners of $100.00.

Seventh Claim for Relief: Wrongful Retention of Security Deposit in Violation of Ohio Revised Code Section 5321.16.

40. Plaintiffs reallege all of the foregoing allegations as if fully re-written herein.

41. Both Defendants were, at all times material to this complaint, landlords, as that term is defined by Ohio Revised Code Section 5321.01(B).

42. Plaintiffs paid Defendants a security deposit for the rental premises in the amount of $99.00.

43. Defendants received written notice of the Plaintiffs forwarding address for the return of the security deposit prior to the end of Plaintiffs' lease term.

44. Plaintiffs' lease term has now ended and neither of the Defendants has sent to the Plaintiffs either the security deposit or an itemized list of deductions from the deposit within 30 days as is required and mandated by Ohio Revised Code Section 5321.16.

Eighth Claim for Relief: Breach of Contract

45. Plaintiffs reallege all of the foregoing allegations as if fully re-written herein.

46. Plaintiffs and Defendants entered into a rental contract for the premises known as 123 East Main Street, Columbus, Ohio.

47. Plaintiffs do not have a copy of the written lease agreement because it was destroyed or lost when Defendants removed the belongings of the Plaintiffs from the rental premises, and thus the Plaintiffs cannot attach it in compliance with Civil Rule 10

48. Plaintiffs performed all of their obligations under the rental agreement in a timely fashion.

49. Defendants breached the rental agreement by locking the Plaintiffs out in the middle of December, and disposing of all of the legally stored belongings of the Plaintiffs.

50. Plaintiffs have suffered actual damages in the amounts specified above.

Ninth Claim for Relief: Invasion of Privacy

51. Plaintiffs reallege all of the foregoing allegations as if fully re-written herein.

52. Defendants' actions in conducting a wrongful self help eviction has had the effect of invading the privacy of the Plaintiffs.
53. At all times relevant to this complaint, Defendant William Owner was vicariously liable for the actions of Defendant Wrongful Rental Mgmt.
54. Plaintiffs have been damaged by the invasion of their privacy.
55. Tenth Claim for Relief: Intentional Infliction of Serious Emotional Distress
56. Plaintiffs reallege all of the foregoing allegations as if fully re-written herein.
57. Defendants either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff
58. Defendants' conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community,
59. Defendants' actions were the proximate cause of plaintiffs' psychic injury.
60. The mental anguish suffered by plaintiff is serious and of a nature that no reasonable man could be expected to endure it.

Wherefore, Plaintiffs demand judgment against the Defendants, jointly and severally, in an amount in excess of $25,000.00 in order to compensate them for their damages. Further, Plaintiffs demand double damages for the wrongfully withheld portion of their security deposit, as well as attorneys fees pursuant to Ohio Revised Code Section 5321.15, 5321.16, and common law. Further, Plaintiffs demand punitive damages in an amount in excess of $25,000.00, together with punitive damages in an amount in excess of $25,000.00, interest, costs, and whatever other relief, legal or equitable, to which they may be entitled.

Respectfully submitted,

Eric E. Willison (#0066795)
625 City Park Avenue
Columbus, Ohio 43206-1003
(614)221-3938
Attorney for Plaintiffs

JURY DEMAND

Plaintiff demands that the issues of this case be tried by a Jury of eight (8) persons.

Eric E. Willison (#0066795)
Attorney for Plaintiffs

II. Sample Demand Letter

Thomas Tenant
123 East Main Street
Columbus, Ohio

October 31, 2007

Wrongful Rental Mgmt., Inc.
987 Northwest High Street
Anytown, Ohio

Dear Sirs:

Please be advised that I am a tenant at the apartment I rented from you known as 123 East Main Street, Anytown, Ohio. My lease began on December 1, 2007 and is set to end on December 1, 2008. When I arrived home on October 31, 2007, my key no longer worked in my door. Further, a look in the windows of the apartment showed me that all of my possessions are gone. I am not aware of any valid Forcible Entry and Detainer Action filed against me by you regarding this apartment.

It appears to me that your actions are in violation of Ohio Revised Code Section 5321.15, which states that landlords may not perform self help evictions, nor even threaten such evictions, even against a tenant whose right to be at the rented premises has terminated.

As such, please consider this a formal demand for [amount] which represents the value of the items which I lost because of your improper actions. If I do not hear back from you by November 10, 2007, I will be forced to contact an attorney and file a lawsuit against you for the following claims, including but not limited to, breach of contract, trespass, trespass to chattels, conversion, invasion of privacy, intentional infliction of serious emotional distress, and violation of Ohio Revised Code Section 5321.15. You may contact me with a response in writing at [address].

Very truly yours,

Thomas Tenant