

Landlord-Tenant Legal Disputes and the Mediation Process

A Matrix of Issues - Prepared by Bob Sheppard, Sheppard-Rosen Law Firm, LLP (415) 296-0900

Minefield/Impediment	Tactical Approach (Tip/Trick)
I. Emotional Issues by Parties A. Tenants: "It's my home!" or "It's my business!" B. Landlords: "It's my property!" = ENTRENCHMENT!	1. Pre-mediation call by Mediator 2. Make it more collegial 3. Ask for collective effort at compromise 4. Remind parties re juries/unpredictability
II. "Issues" with the Lawyers A. Lawyer is Too Close to the Client B. <i>Cumis Counsel</i> "double-edged sword" C. Overzealous Advocacy ("We will win this case!") D. Ignorance of the Law ("Blind Advocacy")	1. Opening Statement - use first names, treat each other with mutual respect, 2. Separate lawyer from client 3. Healthy Challenges by Mediator 4. Ensure clients don't feel trapped 5. Don't allow the drama of the walk-out (get agreement in advance to stay till end of session)
III. Unique Legal Issues A. Recovery of Possession from defaulting Tenant B. Nuisance Tenant C. Local Statutes/Regulations; Treble Damages, Puni's D. Measure of Damages in Wrongful Eviction E. Immunities for Landlords - <i>Action Apartment</i> F. Constructive Eviction/Habitability Actions	1. Distribute appellate case decisions 2. Distribute statutes 3. Distribute Jury Verdicts 4. Probation Agreements for Tenants 5. "Stay and Pay" settlements 6. Buy outs of Tenants - money, waived rent 7. Unchartered legal territory of treble damages for constructive eviction
IV. Prematurity of Mediation? A. All Insurers for Landlord contacted/participating? B. Insurance Coverage for LL? (Coverage Counsel) C. Sufficient Evidence/Docs exchanged? D. Some/more discovery necessary? (Depos, Losses) E. Expert Witness Opinions/Findings	1. Pre-mediation calls to counsel 2. Continue mediation 3. Conditional Settlement? 4. Expert Witness exchange/appearance? 5. Have all necessary depositions been taken? 6. Have clear list of bullet points to work from
V. Lack of Preparation/Authority A. All Decision-makers present? B. All Owners present? C. All Tenants present? D. Parties properly prepared to make a statement? E. Principal's Contribution toward settlement	1. Mediator letter/call to get everyone 2. Pre-Joint Session private caucus to prep 3. Power of The Apology extended by Def. 4. Humanize the parties to each other 5. Use humor 6. Continue the mediation
VI. Attorneys Fees Driving Plaintiff's Case A. Per lease/rental agreement B. Per statute	1. Go to mediation early 2. Get print out of Attorney's hours 3. Let Plaintiff's Attorney know risks (reciprocal nature - could pay other side's)
VII. Long History of Conflicts between LL and T -History of Lack of Repairs/No Property Manager	1. New Property Manager; Prof. Prop. Mangmt 2. Receivership? 3. Rent Reducations
VIII. Venue and Jury Pools: Leverage for/against the LL/T	SF/Alameda: Pro-Tenant Most Others: Pro-Landlord
IX. Family Conflicts - Getting rid of the Relative?	1. Buy out 2. Buy in
X. When Guests Stay too Long? (Conversion to Tenancy?)	Civil Code/Penal Code on Boarders