

## **The Mediation Process**

### **Why you might want to mediate**

Very few small landlords can really afford the cost of the litigation process, as well as the strain on schedules and the stress on psyches. Litigation can drag on into a year or even longer, and often both parties are left with angry and bitter feelings. Tenants have been known to seek revenge or try and harm reputations. So mediation is a low-cost, faster, lower stress, and generally more amiable solution.

Mediation is only one of the three general voluntary methods of conflict resolution, with negotiation being the first and most informal method...meeting with, talking to and listening to the tenant to try and work out a solution to the problem – conflict resolution by agreement. If no agreement can be found, mediation can be a very useful next step –third party assistance to help find common ground. Mediation agreements are not binding. The third process is arbitration and is conflict resolution by agreement to have a third party make a final and binding decision.

Beginning in September of this year, the Superior Courts are emphasizing the mediation process for conflict resolution, including landlord/tenant disputes. There are trained, experienced volunteer mediators through the Spokane Courthouse. It is also highly recommended that landlords include mediation in their lease agreements as the first step in a situation of non-compliance of any of the lease terms.

Mediation is generally an informal process, and there are a number of mediation clinics and law firms that specialize in mediation in our area. Check the Yellow Pages under “Mediation.” When contacting them, mention the nature of the problem and ask about scheduling, costs, and the background of those who would be acting as mediators. When there is a serious problem with your tenant you shouldn’t have to wait more than a few days to a week, be surprised by unexpected charges, or find that the mediating staff is under-experienced. So be sure to ask enough questions to select a mediator that will be helpful in your immediate situation.

After you establish these details, contact the tenant and offer to submit the dispute to mediation. Explain what you know about the process and tell him or her that you would like to try resolving the situation in that way because you think it would be fair to both of you. A tenant cannot be forced into mediation, but if you have decided to try the mediation process, do your best to persuade the tenant it is better than the alternative legal actions for all concerned. If the tenant agrees, set up a mutually satisfactory time to meet at the mediator’s office.

### **Why You Might Not Want to Mediate**

A good mediator can save the day...and hundreds, if not thousands, of dollars. A bad mediator can escalate the problem and mediation does have a few pitfalls. One of the biggest is that some who advertise their mediation services rely on “words of wisdom,” pop psychology, or even bully techniques rather than having the professional skills to move the parties through the logic and analysis necessary to reach an acceptable compromise.

A good mediator is a good communicator, grasps the facts quickly, shows empathy but relies on impartiality and fairness in using those facts to reach an understanding of the disputants and keeps the focus on the clients rather than relating past cases or entertaining stories from the past. Also, a good mediator understands the legal system, local regulations, and any dangers that may lie ahead if you decide to go to court.

An unfortunate tendency of inexperienced or rushed mediators is that they often look for a way to split the settlement down the middle. They interpret mediation as a meeting in the center rather than using standards of justice and fairness to determine the end result. The tenant may have been willing to agree to a 30 percent/70 percent decision knowing he or she was completely in the wrong. So try and determine the mediator’s approach to the process.

One other factor to beware of is that occasionally a savvy tenant, experienced in manipulating landlords, will use the mediation process as a way to delay being evicted and prolong what may be a cushy situation. The tenant can also discover exactly what evidence the landlord has or what arguments the landlord may make in court, giving the tenant plenty of time and information to form rebuttals against the landlord. These circumstances are rare, but take time to evaluate your tenant in the most practical light as you move through the problem-solving process.

### **The Actual Process**

Like a judge, the mediator listens to both parties state their positions, but instead of rendering a verdict, he asks questions to gain more information and tries to get the parties to discuss their differences frankly and work out a solution between themselves. The mediator has neither the position nor the authority of a judge and makes no rulings himself. But because he or she is not hamstrung by courtroom procedures, he is in a position to let the disputants “slug it out” verbally, refereeing the dispute in a fair and impartial manner until an agreement can be reached. And because the agreement “belongs” to the participants, they are more likely to abide by it, and even feel a sense of accomplishment.

At the meeting, be prepared to convince the tenant of the merits of your position in a calm, logical way, and be as reasonable to the tenant’s point of view as you can. Negotiate, if you have to, but emphasize why you maintain the position you do. Your rental unit, after all, is a business with expenses and the tenant would not work at a job without being paid. If the two of you can come to an agreement, put it in writing spelling out the exact terms – not just the financial terms, but behavioral ones as well. Make sure the tenant has a copy of the agreement and if he/she has written anything, be sure you have a copy of that as well.

### **The Mediator’s Strength is His or Her Skill**

Since the mediator can take no action that binds the disputants, there is little or no harm he can do to the situation. His strength is derived from the confidence both sides have in him and in the process. If the mediator openly commits to one side or expresses sympathy with one of the party’s facts, it will be difficult to continue to mediate. So the participants should not expect to “win over” the mediator to their side. If the mediator is professional, that just won’t happen. It is more important that the mediator keep the trust of both sides so that a fair resolution be worked out.

### **After Mediation**

Give the tenant a chance to abide by the agreement, but don’t waste time trying to re-negotiate again if the terms are broken. Begin the eviction process. Since the tenant was open to the mediation, but for whatever reason, just did not or could not follow through, the tenant may be willing to avoid eviction and move out immediately through other means of persuasion.

You might agree that if they move within a set number of hours or days, you will keep the situation confidential and not report it to credit or tenant screening agencies. You might offer to chip in a specific amount of money for moving expenses, return a specific amount of the deposit (even though there may be some damages), or that you will apply the deposit toward whatever rent they still owe. This way, the tenant would be leaving with a clear slate so they can get on with their lives and you can cut your losses without losing more time, money and re-rent the unit as quickly as possible. This agreement could save court costs, legal services fees, more lost rent, and lots of aggravation!! Plus, at this point, it would seem that your chances of collecting a court judgment against that particular tenant may be very slim. Each situation has a different set of facts, and you should always take the specifics into consideration, but in general, limiting losses early may be the best and most financially beneficial path.

