

THE CONGRESS OF NEUTRALS UNLAWFUL DETAINER MEDIATION CHECKLIST

Mediators in unlawful detainer cases should consider the following guidelines and procedural issues:

1. The Landlord-Tenant Relationship: Landlord-tenant relationships are typically a long-term relationship between the landlord and the tenant. In most instances, where rent has not been paid for, or an important condition of the lease has been breached, the relationship is broken. Mediators can, with little difficulty, inquire of plaintiff landlord whether they would consider allowing the tenant to remain if rent is repaid.
2. Negotiating a Move-out Date: If a tenant has substantially breached the rental agreement, typically a failure to pay rent, the landlord will simply insist the the tenant leave. At that point, the mediator can inquire whether the tenant is willing to vacate, and by what specific date. The first issue to be negotiated, in the usual case, is when the tenant will leave, and if that date is acceptable to the landlord.
3. Tenant Defenses: In some situations, the tenant has a defense to the eviction. These are limited by statute. They are limited to “habitability” and the usual breach of contract defenses are often barred. Where the tenant has given notice to the landlord that, e.g., the plumbing does not work, the stove is broken, the front door lock is broken, the windows are broken, there is a hole in the floor, the heating system does not work... these are habitability defenses under the implied warranty of habitability. These are discussed in *Civil Code* § 1941.3 et. seq.
4. Jurisdictions Under Rent Control: San Francisco, Berkeley, Oakland and other cities have enacted rent control ordinances. These create a different set of factors and may improve the tenant’s bargaining position. Tenants, or tenant right representatives who come to Contra Costa County often attempt to negotiate from a position of strength which may or may not be appropriate as there is no rent control in Contra Costa County. Sometimes, this makes negotiation impossible.
5. Waiver of Rents and Damages: Landlords sometimes are so anxious to have a tenant vacate they will waive all rents and damages, in exchange for an agreement that the tenant will move out. In other cases, the landlord will waive only a portion of the rents and damages. It is worth discussion whether the landlord can collect rents and damages from a tenant who vacates and disappears.
6. Penalty for Breach of Settlement Agreement: Some landlords will agree to waive a portion of the rent owed on the condition that the tenant make some payments and move out by a certain date. The landlord may want to negotiate, however, for a stepped-up judgment, such as all back-rents owed, if the defendant tenant breaches the settlement agreement.
7. Stipulation for Entry of Judgment: In many cases, the landlord will make a deal in exchange for a move out date and a waiver of some the rents. The proper document, in addition to the Mediated Settlement Agreement, is a Stipulation for Entry of Judgment. With this, the landlord can, with a sworn declaration, get a judgment of

possession where the tenant fails to vacate by the agreed upon date. The landlord is not required to go through a full trial, and the defendant has waived his or her defenses. This is in lieu of an immediate judgment, which might damage a tenant's credit. The mediator must be careful not to get too involved in providing advice on the enforcement proceedings if the landlord has to return to court to enforce the stipulation for entry of judgment. Typically, the landlord presents a declaration that the tenant has failed to vacate by the agreed upon date, and submits the stipulation for entry of judgment, and a proposed form of judgment to the court.

8. Don't Cut Corners in the Mediation Process. At some unlawful detainer calendars, things move quickly. There is a tendency to try to get to negotiations too quickly. However, the opportunity to settle can be lost if the plaintiff does not come to understand what the defendant's defenses are, and if the defendant doesn't come to understand the plaintiff's needs, desires, and the true situation. These are best explored in the traditional mediation mode of a private meeting, around a table where the parties can meet and work toward an informed decision. In all cases, the parties must be informed of what the mediation procedure is, and get written consent in an agreement to mediate. Please ask the bench officer when he or she wants the parties back in court.

Congress training materials: unlawful detainer checklist
