

Why Not to Rent Property to a Family Member?

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Scenario

My uncle just got divorced and asked if he can stay in our vacation home in the Hamptons during the offseason while he gets his life all together again. His wife got exclusive occupancy of their house in the divorce and he really has no place to go.

We typically rent our place every summer for the months of June through August, and I'm worried that my Uncle will get really comfortable during the off season and will never leave. We need to be sure that we can get him out for the rental months, as we need the money. What can we do?

The answer depends on two very important factors:

1. Do you really need the money from your rental?
2. Are you actually related to your family member?

Answer

If you are counting on rental income to support your property, you cannot let your uncle stay at your place, even for the weekend. If you need that money to pay your bills and your uncle doesn't leave, your act of letting him stay will jeopardize your livelihood. Remember that your creditors do not care for your uncle. Be responsible first and take care of your obligations -- your uncle is not your creditors' problem and simply put, your electric company doesn't care why you haven't paid your bill.

Now, if you don't rely upon the funds to pay your bills, let's discuss what may happen if your uncle just won't leave. For starters, just assume that your uncle isn't an uncle at all and is instead just a close friend that you call "uncle" so he will be treated as an ordinary individual using your property. In that situation, what happens when a tenant/licensee just won't leave?

In New York, if you have a written lease and you act promptly after the tenant holds over, you will have to file a Petition in your local Village/Town Court and get what is called a Warrant of Eviction in order to get him out by way of a court action called a summary proceeding. Then, you will have to wait until the Sherriff is good and ready to pull him out by his ear, which in the end can take several months and cost a lot of money including court fees, attorneys' fees, Sherriff fees and moving company fees to remove his personal belongings.

Guess what happens if you don't act immediately with that petition, then, you will have to mail him what is called a 30 Day Notice to Quit to first terminate his tenancy before you start with the Petition, which will tack on at least an additional month to get him out. Failure to act quickly at the end of the term of a written rental agreement automatically converts that term rental into a month-to-month tenancy, which needs to be ended prior to starting the eviction proceeding. So, either way it will take a while.

On the other hand, in New York, if you are trying to evict a true family member and you resort to a summary proceeding, it will likely be dismissed by the Court. Instead, you will end up in a prolonged action, called an Ejectment Proceeding in the Supreme Court. By the way, those months to get a non-family member out may become years in an ejectment proceeding, which is a much more complex and costly proceeding.

The reason why you will need to go the ejectment route is that you generally can't evict a family member in a summary fashion. This is because a family member's right to use the property stems from a true family relationship and not from mere permission to use the property; this is why you want to let your uncle stay in your home in the first

place and Courts know this fact.

In New York, you can avoid this problem by getting a written lease, granting exclusive possession and collecting rent from your uncle. As a result, it will become clear to the Court that you are not just helping out a family member, but instead renting your property.

So, you can let him stay if you don't need the money from the rental to pay your bills. However, it's never easy to get a tenant to leave who doesn't want to go and it's impermissible to simply lock him out (treble damages for self-help in New York). To mitigate your exposure, use a written lease and have him pay rent. No good deed goes unpunished.

This article was based upon New York Law and advice may change depending on your State's laws.

Adapted from this [Dan's Papers](#) post

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