

## Legal Tactics used by Tenants to delay eviction

### Answer to Complaint Motion to Quash

This is the most common filed by tenants and means that they want to go to have a trial with the Landlord. Many answers do not have merit but some do contain legitimate defenses that will have to be analyzed by the property owner to determine the most practical course of action. This is usually the case where there are fair housing issues, severe habitability problems, or other issues, which will cause the Landlord to lose the case such as technical defenses.

The Court is required to set the trial within 20 days of receiving the request for trial. When the Landlord meets their burden of proof at trial and the tenant fails to present any evidence to defeat the Landlord's case, the court will award the Landlord possession of the premises, forfeiture of the rental agreement, damages for past due rent, attorneys fees if applicable, and court costs.

On some occasions, the tenant will file a Motion to Quash in which the tenant says to the Court that he or she was not properly served with the summons and complaint so that the case should be dismissed. The obvious question is how does the tenant know about the unlawful detainer case if they not have a copy of it?

Most judges will deny the tenant's motion and order the tenant to file an Answer within five days. However, if the judge believes that the tenant was not properly served, the process server or attorney can simply re-serve the summons and complaint on the tenant at the hearing if the tenant even shows up. This type of motion delays the case about 10-12 days.

### Demurrer / Motion to Strike

Another motion that is filed by tenants to challenge the legal sufficiency of the Landlord's complaint for unlawful detainer. It essentially says that the Landlord has no case. If the demurrer does raise valid issues such as serious defects in the unlawful detainer complaint, the Landlord can amend the complaint to correct the alleged defect. Usually, the demurrer has no merit, but the Landlord's attorney must file a written opposition and appear at Court for oral argument. Again, most judges will deny the tenant's demurrer and order the tenant to file an answer within five days, but the effect of the demurrer is to delay the case another 2-3 weeks.

### Bankruptcy

This is probably the worst thing that a tenant can do to delay the eviction, as it is expensive and extremely frustrating for the Landlord.

When the Sheriff or Marshal arrives to perform the lockout, if the tenant shows a bankruptcy petition the Sheriff/Marshal must immediately stop the eviction. Filing any type of bankruptcy petition creates an "Automatic Stay" of all state court actions against a debtor. Because bankruptcy law is federal law, it pre-empts California State law and the Landlord is powerless to proceed without obtaining what is known as "Relief from the Automatic Stay." The Landlord's attorney must file a Motion for Relief in the Bankruptcy court and a hearing is held in which the debtor-tenant is allowed to respond to the Landlord's motion. Normally, these motions are granted in favor of the Landlord because the tenants have no equity in the property, and it is not part of their bankruptcy. When the "Order for Relief" is signed by the Judge and mailed back to our office, we immediately forward it to the Marshal for final lockout.