Metro Court LLT Eviction Case Checklist (Long Version)

☐ **Gather the basic facts:**

- ☐ **What kind of tenancy is in question?**
  - *There are some types of tenancies where UORRA does not apply (institutions, real estate contract, transient occupancy, occupancy conditional on employment with owner, premises are primarily agricultural). Occupancy in hotel/motel may not constitute transient occupancy if (1) rent is paid weekly or less often AND (2) resident manifested intent to make unit their residence or household. NMSA 1978, § 47-8-3(V).*
  - *At this stage in the project, we are only focusing on eviction proceedings where UORRA applies.*

- ☐ **Do the eviction filings include the lease and relevant notice(s)?**

- ☐ **What type of lease are we dealing with?**

  - ☐ Active term lease (the eviction filing came within the term of the attached lease)
  - ☐ Term lease that has converted to month-to-month (the eviction filing came outside the term of the attached lease)
  - ☐ Other

- ☐ **What is the claimed rationale for the eviction?**
  - ☐ Nonpayment of rent
  - ☐ Material noncompliance
  - ☐ Substantial violation
  - ☐ Lease termination (no-cause)

- ☐ **Is the unit or property federally subsidized?**

  - ☐ Is the individual unit in question federally subsidized?*
    - *Where to check:*
      - ☐ *Within eviction filings for the case (look for 30-day notices)*

  - ☐ Is the property as a whole federally subsidized?
    - *Where to check:*
      - ☐ *National Housing Preservation Database*
      - ☐ *Freddie Mac*
      - ☐ *Fannie Mae*
      - ☐ *HUD Database*
      - ☐ *NM Mortgage Finance Authority (source for links to relevant databases if links above are not working)*

* If it is clear that the individual unit is subsidized, checking for property-wide subsidies may be unnecessary. Once you find the property in one database, it is unnecessary to check the others.

- ☐ Do any other units in the building receive federal subsidies?
  - *Where to check:*
    - ☐ *Within other recent eviction filings by that landlord for other units in the same property*

☐ **Is the filing party (landlord) registered to do business in the state of New Mexico?**

- *Where to check: https://enterprise.sos.nm.gov/search/business*
- *A business that is not registered to do business in the state cannot file a case in a New Mexico court. NMSA 1978, § 53-17-20. Note that this would not apply to private individuals/sole-proprietorships.*

☐ **Are there substantive issues with the eviction claim?**

- For nonpayment-of-rent evictions:
  - ☐ Is the amount identified as unpaid correct?
    - *Landlords may charge incorrect amounts, add illegal/improper fees, or fail to account for partial rent payments.*
      - ☐ Does the amount of unpaid rent over the timeframe specified align with the monthly rent specified in the lease?
        - *If we are dealing with an active term lease, failure to align is a serious problem!*
        - *If we are dealing with a term lease that has converted to a month-to-month lease, it is possible the rent has increased since the term of the lease. However, the landlord is required to provide **30-day notice** of any rent increases in a month-to-month arrangement. § 47-8-15. This notice must be made by hand-delivery or first-class mail (posting alone is insufficient, and other types of notice—like email—arguably do not fulfill the notice requirements). § 47-8-13(D). If the landlord has not included proof of such notice within the eviction filings, we may be able to argue that they failed to provide evidence of this notice.*

- Fees:
  - ☐ Are any **late fees** charged equal to or less than 5 percent of the monthly rent?
    - *2025 Senate Bill 267 amended § 47-8-15(D) to **restrict late fees to 5 percent of rent** (previously was 10 percent); that calculation can only be based on the rent amount and can't include any additional fees (utilities, etc.). This change took effect on June 20, 2025, so a lot of landlords have not updated their leases. However, some are still executing new leases including 10 percent late fees, and some are still charging 10 percent late fees.*

- ☐ Does the lease specify a late fee that is more than 5 percent of the monthly rent?
  - *Even if the landlord is only charging a 5 percent late fee, if the lease was executed after June 20, we could argue that the landlord's inclusion of an illegally high fee in the lease term was a problem. If the lease was executed prior to June 20, and especially if it has turned to month-to-month lease, this is less important, although we may try to convince the landlord they should amend their leases to be in compliance with the law.*
- ☐ Are **all fees** identified in the lease?
  - *2025 Senate Bill 267 amended UORRA to add § 47-8-19.1,* ***which requires landlords disclose all fees and charges****, and § 47-8-19.4,* ***which requires landlords provide notice of increases of fees included in the rental agreement****. We believe we can argue that this requires residents to assent to the imposition of new fees that were NOT included in the original lease.*
    - *Charging unauthorized fees or failure to disclose fees is an "unfair trade practice," which carries legal significance that can give tenants additional ways to enforce their rights including greater damages and attorney's fees. NMSA 1978, § 57-2-12(D)(20) (defining "unfair or deceptive trade practice" to include "charging an applicant a fee in violation of [UORRA]").*
  - *If the fees are identified in the lease but the amount being charged is greater than the amount identified in the lease, it is possible that they were added at a later time. However, the landlord is still required to provide fee-increase* ***notice 60-days prior to the date of next rent due****. § 47-8-19.4. If the landlord has not included proof of such notice within the eviction filings, we may be able to argue that they failed to provide evidence of this notice.*
    - ***Examples****: Rent is due on the 1st of the month on a standard (1-year or more) lease.*
      - *If notice of a fee increase occurred on September 30, the earliest the increase could take effect is December 1.*
      - *If notice of a fee increase occurred on October 1, the earliest the*

increase could take effect is January 1 (remember how many months have fewer than 31 days!).

- *If notice of a fee increase occurred on October 15, the earliest the increase could take effect is January 1.*

- *Remember that notice of fee increases **must be in writing** pursuant to § 47-8-19.4, and thus must comply with § 47-8-13(D): notice must be made by hand-delivery or first-class mail (posting alone is insufficient, and other types of notice—like email—arguably do not fulfill the notice requirements).*

- Did the landlord charge a fee for posting a notice of nonpayment?
  - *Sometimes landlords immediately charge a fee for posting a notice of nonpayment in addition to a late fee. If this means the effective cost of being late is over 5% of the rent, we may be able to argue that this effectively undercuts the spirit of the 5% limitation.*

□ Did the owner continue accepting rent payments?

- *"The general rules are that acceptance of rent with knowledge of an existing breach constitutes a waiver of the right of forfeiture for such breach, and that if, by his words and conduct a landlord has led his tenant to believe that he would not enforce a right of forfeiture, he will be estopped to avail himself of a forfeiture." Easterling v. Peterson, 1988-NMSC-030, ¶ 6, 107 N.M. 123.*

- ***NOTE:** New Mexico law gives special protections to residents of subsidized housing. If being evicted for nonpayment of rent, the judge can arrange a payment plan for an individual to pay their debt and stay in the home. City of Albuquerque v. Brooks, 1992-NMSC-069, ¶ 10, 114 N.M. 572. Therefore, if there are cases with individuals on subsidized housing with leases that are being terminated for non-payment, we could encourage them to request a payment plan.*

  - For substantial-violation evictions:

    □ Is the alleged violation one of the seven types of violations that constitute a substantial violation pursuant to § 47-8-3(V)?

    (1) possession, use, sale, distribution or manufacture of a controlled substance, excluding misdemeanor possession and use;
    (2) unlawful use of a deadly weapon;
    (3) unlawful action causing serious physical harm to another person;
    (4) sexual assault or sexual molestation of another person;

(5) entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;
(6) theft or attempted theft of the property of another person by use or threatened use of force;
(7) intentional or reckless damage to property in excess of one thousand dollars ($1,000)
3- day notice requirement and the tenant does not have the right to cure.

☐ Is the tenant alleged to have committed the violation or consented to a guest committing it?
If the tenant was not the one to commit the alleged violation, then it is not a substantial violation. The landlord will have to prove in court that the tenant committed the alleged violation or consented to a guest committing the violation.

- For material-noncompliance evictions:
  - ☐ (If eviction on first notice) Is there information to suggest that the violation was cured?
  - ☐ Was the noncompliance truly material?

- For lease-termination (no cause) evictions:
  - ☐ Is the individual unit subsidized?
    - *No-cause lease termination is not permitted for most subsidized units. 24 C.F.R. 247(a). UORRA § 47-8-37 does not apply.*
  - ☐ If there is an active term lease, is there a provision for no-cause termination in that lease? If so, did the notice comply with that provision?

☐ **Did the landlord comply with notice requirements?**
Strict compliance with notice requirements is a jurisdictional prerequisite to maintaining an eviction action. Dickens v. Hall, 1986-NMSC-029. Landlords must wait until the notice period expires before filing for eviction, and judges are required to dismiss prematurely filed restitution petitions.

***NOTE**: If the last day for a tenant to vacate or cure falls on a weekend or holiday, the tenant has until the end of the next business day to vacate or cure (however, the number of days is counted based on calendar days, not business days). This applies to all notice periods (including 30-day notice periods).*

- ***Example:** A 3-day notice is issued on Monday, February 2. The resident must vacate or cure by the end of the day Thursday, February 5. The landlord may file suit on Friday, February 6.*
- ***Example:** A 3-day notice is issued on Wednesday, February 4. The resident must vacate or cure by the end of the day Monday, February 9. The landlord may file suit on Tuesday, February 10.*
- ***Example:** A 3-day notice is issued on Thursday, February 5. The resident must vacate or cure by the end of the day Monday, February 9. The landlord may file suit on Tuesday, February 10.*

For cases in which the property is federally subsidized but the particular unit is not, we should review for compliance with both the subsidized and non-subsidized notice requirements. If they meet the non-subsidized requirements but not the subsidized requirements, we can make an argument that they should be held to the subsidized requirements. If they fail to meet either requirement, our primary argument will likely be that they failed to meet the standard (non-subsidized) requirements (this is an easier argument). However, if the individual unit is federally subsidized (for example, if the resident has a voucher), then the subsidized notice requirements apply.

For individual units, the CARES Act requires 30-day notice in ***nonpayment of rent*** *evictions. 15 U.S.C. § 9058(c). For properties that otherwise receive federal subsidies (whether as a whole or in other units), we may be able to argue that they should also be subject to the CARES Act notice requirements.*

For individual units, we may be able to persuade the court that the language of the CARES Act applies to all types of violations, including ***material noncompliance evictions*** *or* ***substantial violation evictions****. As with non-payment evictions, for properties that otherwise receive federal subsidies (whether as a whole or in other units), we may be able to argue that they should also be subject to the CARES Act notice requirements.*

- For all eviction types, if the individual unit is subsidized:
  - ☐ Did all the notices provided also include:
    (1) Notice of rights under VAWA
    (2) VAWA certification form
    These notices must be provided along with all other notices per 24 C.F.R. 5.2005(a)(1)-(2).

- For nonpayment-of-rent evictions:
  - ☐ Did the landlord provide **3-day notice** (regular), § 47-8-33(D), or **30-day notice** (subsidized), 15 U.S.C. § 9058(c)?
    - ***Example*** *of 3-day notice, assuming no weekends or holidays: Rent is due by the 1st. Notice of nonpayment is provided on the 2nd. The 3-day notice period covers the 3rd through 5th. The earliest the landlord can file for eviction is the 6th.*
    - ☐ Was the notice served after the date the rent was actually due?
  - ☐ Was notice provided via either (1) hand delivery, (2) first-class mail, or (3) posting?
    - *Notice must be provided in one of these manners. § 47-8-13(D).*

- For substantial violation evictions:
  - ☐ Did the landlord provide **3-day notice** pursuant to § 47-8-33(I)?
    - ***Example*** *of 3-day notice, assuming no weekends or holidays: Violation occurs on the 1st. Notice of violation is provided on the 2nd. The 3-day notice period covers the 3rd through 5th. The earliest the landlord can file for eviction is the 6th.*
  - ☐ Was notice provided via either (1) hand delivery or (2) first-class mail?

- *Posting alone is insufficient in these cases. If the notice is posted, it must <u>also</u> be hand delivered or mailed. § 47-8-13(D).*

☐ Did the notice specify the time, place, and nature of the alleged substantial violation pursuant to § 47-8-33(I)?

- For material-noncompliance evictions:
  - ☐ Did the landlord provide **7-day notice** (regular), § 47-8-33(A)-(B?
    - ***Example** of 7-day notice, assuming period does not end on weekend or holiday, for first substantial violation: The noncompliance occurs on the first. Notice of the noncompliance is provided on the 2nd. The 7-day notice period covers the 3rd through 9th. The resident has the right to cure through the 9th. The earliest the landlord can file for eviction is the 10th.*
    - ***Example** of 7-day notice, assuming period does not end on weekend or holiday, for second substantial violation within six months: The noncompliance occurs on the first. Notice of the noncompliance is provided on the 2nd. The 7-day notice period covers the 3rd through 9th. The resident has no right to cure. The earliest the landlord can file for eviction is the 10th.*
  - ☐ Was notice provided via either (1) hand delivery or (2) first-class mail?
    - *Posting alone is insufficient in these cases. If the notice is posted, it must <u>also</u> be hand delivered or mailed. § 47-8-13(D).*
  - ☐ Did the notice(s) specify the date(s) on which the noncompliance occurred?
    - *This is required pursuant to § 47-8-33(A)-(B).*
  - ☐ Was/were the notice(s) provided within 30 days of landlord's knowledge of the incident(s)?
    - *This is required pursuant to § 47-8-33(C).*

  A material noncompliance eviction may be based on failure to cure the noncompliance within 7 days, § 47-8-33(A), OR because the tenant has engaged in two (or more) acts of material noncompliance within six months, § 47-8-33(B).

    - If the eviction is based on failure to cure the material noncompliance:
      - ☐ Did the notice state that the rental agreement would terminate upon the second material noncompliance within six months pursuant to § 47-8-33(C)?
    - If the eviction is based is based on the tenant engaging in two (or more) acts of material noncompliance within six months:
      - ☐ Did the landlord provide both notices?
        - *If the landlord failed to provide both notices, we may be able to argue that they failed to provide evidence of either the initial or second notice (probably the initial notice is the one they'd be most likely to exclude).*

- ☐ Did the second noncompliance occur within six months of the first noncompliance?
- ☐ If the second notice is for the same noncompliance as the first notice, was it provided prior to the close of the tenant's period to cure the noncompliance (i.e., within the 7-day cure period)?
  - *If the notices are for the same noncompliance, we can argue that providing a second notice prior to allowing them an opportunity to cure is improper. If the tenant cures the noncompliance within the 7 days provided by the initial notice, the second notice should be invalid.*

- For termination-of-lease evictions (no-cause):
  - ☐ Is there an active term lease (versus a month-to-month or week-to-week lease)?
    - *No-cause eviction from an active term lease is generally not permitted (this should be reflected in the lease). However, a landlord may notify a resident of termination prior to the end of the term lease as long as the termination would occur at or after the close of the term and the notice complies with the other requirements outlined below.*
      - ***Examples**: A lease term ends on November 30. Under the terms of the lease, rent is due on the 1st of each month.*
        - *The landlord provides notice of termination on November 15. The termination date is now December 31.*
        - *The landlord provides notice of termination on October 31. The termination date is now November 30.*
        - *The landlord provides notice of termination on August 1. The termination date is still November 30 (when the lease would otherwise end).*
  - ☐ If it's a month-to-month lease, did the landlord provide **notice of at least 30-days prior to the next rent due date** as required pursuant to § 47-8-37(B)?
    - ***Examples**: Rent is due on the 1st of each month.*
      - *The landlord provides notice of termination on November 15. The termination date is now December 31.*
      - *The landlord provides notice of termination on October 31. The termination date is now December 1.*
  - ☐ Was notice provided via either (1) hand delivery or (2) first-class mail?
    - *Posting alone is insufficient in these cases. If the notice is posted, it must <u>also</u> be hand delivered or mailed. § 47-8-13(D).*

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