

## MY TENANT WENT AWOL -- WHAT DO I DO?

A situation that commercial landlords encounter all too often is the tenant who suddenly disappears. The tenant simply vacates the premises and leaves no forwarding address. The possibility of recovering damages seems remote. The landlord's immediate goal is to get possession as quickly as possible so that a new tenant can be brought in. But the landlord may be uncomfortable in simply changing the locks and taking possession without clear confirmation that the tenant has actually abandoned. This article attempts to give some guidance on what to do in this situation.

Consider a hypothetical tenant who is a month or two behind in its rent and has apparently vacated the premises with no forwarding address. The tenant has left behind various items of personal property, which can range from outdated furniture to expensive manufacturing or computer equipment. What should the landlord do upon discovering that the tenant has left?

The answer to this question involves both a legal and a practical component. When a tenant has actually abandoned the premises, it is not normally necessary to pursue an unlawful detainer lawsuit. Instead, the procedure provided by statute is to serve a "Notice of Belief of Abandonment." This notice may be given if (a) the rental has been unpaid for at least 14 consecutive days and (b) the landlord "reasonably believes" that the tenant has actually abandoned the premises. If those two criteria are met, and the tenant does not respond to the notice within 18 days of mailing, or 15 days after personal service, the premises are presumed to be abandoned. Thus, the conservative landlord will give the notice and wait the 18 days prior to actually taking physical possession of the premises.

The notice procedure is not an exclusive method of proving that the real property has been abandoned. Where a landlord has a good faith belief that the tenant has actually abandoned, the landlord may immediately retake possession of the premises. In this situation, the notice can be sent as a backup if the landlord will not be putting a new tenant in within 18 days anyway. It is important to remember that the re-taking of possession commences the time period in which the landlord must account to the tenant in writing for any security deposit.

If the landlord has a new tenant ready to move in, or it is necessary to immediately clean or refurbish the premises for marketing purposes, the landlord may prefer to take possession immediately. If this action is ever challenged, the landlord can assert that the premises appeared abandoned and that the landlord was merely attempting to secure the premises and mitigate damages.

The other issue that often arises when a tenant vacates prematurely is that personal property remains on the premises. Again, there is a statute designed to take care of this situation. The Civil Code provides an 18-day notice procedure, during which time the landlord stores the personal property either on the premises or in a storage facility. If the personal property

remaining on the premises is worth less than \$300, these items may be kept, sold or destroyed without further notice if not reclaimed within 18 days. Here, again, the statutory scheme does not always deal with the practicalities of the situation.

In particular, the tenant often leaves behind tables, chairs or other miscellaneous items which appear to have no real value. It makes little sense for the landlord to keep these items on the premises if they may interfere with the ability to clean and re-lease the premises, or to incur the cost of storage of these basically worthless items. In this situation, it often makes sense to simply take an inventory of the items, photograph both the premises and the items themselves, and put the vacating tenant to proof that the items actually had any value. In my 25 years of experience representing landlords, I have yet to have a tenant make such a claim -- though the landlord should recognize that there is some risk in following the "practical" as opposed to the "strictly legal" approach. However, if the items left behind clearly have value, these items should be treated in the manner called for by the statute. Of course, the more valuable the items that remain, the less likely it is that the premises have actually been abandoned.

Another situation that often occurs is that there is equipment owned by a third party who had leased it to the tenant. These items are often in the form of manufacturing or computer equipment. Normally the owner is identified on the equipment itself. Once again, while the statute gives the landlord the right to return these items to the former tenant without liability to the personal property lessor, this is often not a practical alternative. Where the tenant has suddenly vacated, it is often difficult to deliver those items to the tenant. In this situation, the Civil Code provides that the landlord cannot be held liable if the personal property is turned over to a person "reasonably believed" to be the owner, so long as the landlord gives notice to the tenant of the existence of the items of property. Once again, in my experience, where leased personal property has been returned to the personal property lessor, an adverse claim is rarely if ever actually asserted by the tenant.

Of course, each situation is different, and the reasonableness of the landlord's conduct is measured against all of the facts. The most persuasive fact is often that the tenant vacated suddenly without leaving a forwarding address. Courts are understandably reluctant to punish a practical businessperson who has acted promptly and reasonably to protect property. The other possibility to consider is to not take possession of the premises. For a discussion of when that option is appropriate, refer to this link:

<http://www.greenbergglusker.com/news/articles/LandlordsSecretWeapon>