

# What Should the Landlord Do if the Tenant Abandons the Premises

[On behalf of Dornish Law Offices, PC](#) | Jun 15, 2010 | [All, Landlord-Tenant, Real Estate Practice](#)

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## **A. Termination of Leaseholds Generally**

A Landlord can terminate a leasehold for any one of three reasons: (1) the term for which the property was rented is over; (2) the Tenant is behind in rent; or (3) the Tenant has breached (broken) some clause of the lease agreement. The Landlord needs no reason to evict a Tenant if the Landlord gives the Tenant proper notice that the Landlord wants the property back at the end of the lease term.

## **B. Residential Abandonment**

Abandonment is defined as finding that a Tenant has abandoned the possessory interest in a leased premises. The common law requires evidence establishing the following: (1) the intention to abandon, and (2) conduct by which the intention is carried into effect. An intentional abandonment involves more than a temporary absence from the leased premises with an intent to return. The Tenant shall be deemed to have abandoned the property by being absent with visible intent not to return and with rent unpaid.

Form leases often set an arbitrary time limit of five or ten days for a Tenant's absence from the property. The lease declares such an absence will constitute an abandonment by the Tenant. The Landlord may then declare a forfeiture of the lease and retake possession of the premises. Deviation from the common law concept of abandonment may provide a Landlord with a pretense for a self-help eviction. The Landlord can claim that he/she is retaking possession of the leased premises in the Tenant's absence, despite the Tenant's intention to remain in possession.

If the Tenant abandons the property and fails to remove his/her personal property from the premises after termination of a rental agreement, the Landlord shall leave the abandoned property in the premises or remove and store all abandoned property. A tenant does not forfeit or lose title to his personal property by neglecting to remove it from the leased premises after

termination of the lease. This is true even if the tenant fails to remove his property within a reasonable time after the expiration of the lease. *Bednar v. Heights Plaza Materials, et al.*, 435 Pa. Super. 417, 646 A.2d 573.

Therefore, any retention, use or disposal of the tenant's property constitutes a conversion of that property, and gives the tenant a right to file suit against the landlord. Because the law in this area is not definitive, different District Justices may have different standards on what is reasonable for time and notice so a call in advance is advisable.

### **C. Holdovers**

**Tenancy for years.** This is a lease for a fixed period of time, called a term. No notice is required to terminate a tenancy for years because the term defines when it ends. These leases are usually written and must be written if they are to extend beyond one year. These give both parties maximum security and predictability with rent and even rent increases spelled out. Of course, they reduce tenants' flexibility – they can't just move out in the middle of the term.

**Periodic tenancy.** This is also called a month-to-month tenancy. These leases are often for an indefinite period of time and require some notice to terminate. The notice period is usually the equivalent of one rent period, usually a month. Periodic tenancies may be oral. A periodic tenancy gives both landlord and tenant maximum flexibility and minimum security.

These two types of leases often meet at the end of a tenancy for years when no renewal is signed and the leasehold and by its terms (the status of the tenancy) switches to month-to-month. This is commonly called a holdover tenancy. Another way to describe a holdover is simply when a Tenant retains possession of the premises after the termination or expiration of a lease. In many leases, should the tenant holdover after the expiration of the lease, the rent is increased by the terms of the lease. If the lease does not address holdovers, a tenant's holding over may simply operate as a month to month tenancy. Because giving the proper form of notice is spelled out in many leases, landlords need to read the lease and send the right notices to avoid unintended holdovers.

### **D. Forcible Entries**

Self-help eviction is not permitted under Pennsylvania law. A landlord who desires possession of the leased premises because of non-payment of rent or failure of the tenant to vacate can only evict the tenant by bringing an action under the Landlord and Tenant Act of 1951. *Kuriger v. Cramer*, 345

Pa. Super. 595, 498 A.2d 1331. Under Pennsylvania Rules of Court, District Justice Rule 519 states the following:

1. If, on or after the sixteenth (16th) day following the service of the order for

possession arising out of a nonresidential lease, the Defendant or any unauthorized occupant remains on the real property, the officer executing the order for possession shall use such force as may be necessary to enter upon the property, by the breaking in of any door or otherwise, and to eject the Defendant and any unauthorized occupant and shall deliver possession of the real property to the Plaintiff or the Plaintiff's agent;

2. If, on or after the eleventh (11th) day following the service of the order for possession in cases arising out of a residential lease, the Defendant or any unauthorized occupant

remains on the real property, the officer executing the order for possession shall use such force as may be necessary to enter upon the property, by the breaking in of any door or otherwise, and to eject the Defendant and any unauthorized occupant and shall deliver possession of the real property to the Plaintiff or the Plaintiff's agent.

District Justice Rule 519 also provides that an order for possession becomes "stale" after sixty (60) days.

Otherwise, if a tenant changes locks in violation of a lease or refuses to allow access for

repairs, a landlord can follow provisions of the lease applicable or, in an emergency, break in and deal with any claim a tenant makes. When a landlord enters for any reason, he or she has a duty to keep tenant's property secure, even after an eviction, and can be liable for theft of "bailed" property if adequate security was not maintained (e.g., locks).