

PROPERTY MANAGEMENT

Quarterly

Legal

How to handle evicted tenant's left-behind property

What can you do after your tenants move out but leave their personal property behind? Can you sell it to cover unpaid rent and expenses? Can you give it to a new tenant? Can you throw it all away? Most property owners have a plan to remove a defaulting tenant; but many do not think about the stuff that tenants could leave behind. This article will examine some of the issues landlords face when their tenant leaves personal property in the premises.

The most important lesson from this article is that regardless of how a tenancy ends, the landlord does not own personal property left behind by the tenant. Title to that property remains with the tenant even if the tenant left something behind. Consequently, landlords do not have the right to sell or give away any remaining personal property. Landlords and property managers should read this paragraph again.

This is a concept that is difficult for many landlords to accept. Surely, they believe, they can recoup some of the months of unpaid rent by selling computers, desks, tables, art or anything else left behind after their tenant is gone. Or they believe they can offer the personal property to a subsequent tenant as an incentive. But neither is the case. And taking such actions can create liability for the landlord.

So what options do landlords have? The most common solution is to initiate a court action for forcible entry and detainer. A FED is an expedited legal process for a



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landlord to retake possession of a leased premises. It provides for an expedited hearing to determine whether the landlord is entitled to retake possession. Typically, at that hearing the court will return possession of the premises to the landlord and then 48 hours

later the court will issue a writ of restitution. A writ of restitution is a court order directing the local sheriff to restore possession of the premises to the landlord. The landlord then provides the writ of restitution to the sheriff and the sheriff will schedule a time to oversee the eviction process.

The sheriff's job is to ensure the landlord is taking reasonable precautions in the removal of personal property from the premises and to maintain the peace if a dispute arises. It is the landlord's job, however, to schedule movers or laborers to perform the physical labor of removing the property.

Most frequently, any remaining personal property is moved outside of the premises and discarded. A landlord has the option to store the property and charge the tenant storage fees; however, if the tenants defaulted on the lease, they are unlikely to ever pay those storage fees. The greatest benefit of following this process is that Colorado statute provides for immunity to the landlord if this process is

followed and the property is subsequently damaged or lost. While neither of these options allow the landlord to claim ownership of the personal property, they do protect a landlord from liability from a tenant who claims his property was lost or damaged.

Another option, which can be exercised in conjunction with a FED proceeding, is to seek a determination that any property remaining in the premises has been abandoned. Many courts will decide this during the expedited FED hearing. Abandonment requires both an act and intent. Satisfying the act requirement can be easy: The tenant left and did not take his property. Satisfying the intent requirement can be more difficult. This is because a tenant may claim, for example, that he planned to retrieve the personal property but lacked the financial ability to hire movers, or that he did not have a place to move the personal property. Although it may seem obvious that the tenant intended to abandon his personal property, if your tenant has no defense to a lease default, he still could claim that you wrongfully disposed of his personal property and seek an offset against your claim for unpaid rent. That is why you should ask the court to find that any remaining personal property was abandoned and not just treat it as abandoned.

It is important to note that just because your tenant's personal property was deemed abandoned, it does not follow that a landlord assumes title to that property. Finders keepers is not the law of the

land. However, such a determination will provide an added layer of protection if your tenant later tries to assert a claim related to that property.

Additionally, if the property is abandoned, while the landlord may not be able to claim legal ownership of the personal property, there is effectively less of a barrier to a landlord acting as the owner. In that situation, the landlord might consider offering the use of the abandoned property to a subsequent tenant. But if you decide to go this route, be sure to disclaim any warranty for the personal property in your lease.

A lot of these decisions come down to your risk tolerance and circumstances by which your tenant surrendered his premises. If your tenant went out of business and you are not pursuing him for unpaid rent, then you might be more willing to risk holding on to apparently abandoned property. Conversely, if you plan to pursue a deficiency, then it may be riskier to exercise control over personal property in a manner that could undermine your claim.

As with all contracts, the first place to look to determine what can be done with seemingly abandoned personal property is the lease. Your lease may include the right to assert a lien over personal property in the premises or it could specify that property remaining after the tenant surrenders the premises will be deemed abandoned – although even with these provisions you should have a court confirm it. ▲