

CREW Atlanta blog: March 2016

“Dealing with tenant abandonment”

By Stephanie Friese, Esq. and Christine Norstadt, Esq., Pursley Friese Torgrimson, LLP

When a tenant vacates a leased premises, the landlord may be left with more than just an empty space. Tenants frequently leave behind personal property, begging the question: what can and should the landlord do with it? Special consideration should be made when it comes to the treatment of personal property in general, and particularly how to avoid potential liability to the tenant, as well as exercising extra care with respect to certain types of personal property. To that end, here are some tips.

First, file a dispossessory. The landlord should strongly consider filing a dispossessory, as this is the safest and most conservative course of action. The standard for a tenant’s legal abandonment of a leased premises is a high one and fact-specific. There is no Georgia statute that outlines the elements of abandonment of a leased premises. Instead, landlords must analyze and rely on the totality of the circumstances in making a determination that a tenant has legally abandoned the property. For example, even though a tenant may have failed to pay rent and has not occupied the premises for a period of time, those circumstances may not rise to the standard of *legal* abandonment of a leased premises in the eyes of the courts. And the potential risk for a landlord if she makes the wrong conclusion is great; the tenant could bring an action for wrongful eviction, which carries with it the possibility of punitive damages.

Additionally, filing a dispossessory proceeding ensures that the landlord regains legal possession of the premises, protects the landlord against claims by third parties, and upon the court’s issuing a writ of possession, the landlord may apply to the sheriff to conduct the eviction and remove any personal property remaining in the premises. Per O.C.G.A. § 44-7-55(c), upon the execution of a writ of possession, personal property remaining in the premises is “regarded as abandoned.” The sheriff will remove the personal property and place it at the landlord’s curb, whereupon, subject to compliance with local ordinances, the landlord is relieved of liability with regard to the personal property. Additionally, if the tenant leaves behind personal property when the lease is expired, a dispossessory is still the safest choice for the landlord.

If the landlord concludes that the tenant has legally abandoned the leased premises, then the landlord should:

Treat personal property in accordance with the lease. If the tenant has truly legally abandoned the leased premises, and personal property remains in the space, the landlord should read the lease carefully. The language regarding personal property will likely be in the same section as the surrender provision or holdover provision. If the lease does not address how to treat abandoned personal property,

then the landlord must use extra care to avoid any potential liability to the tenant for loss of the personal property or a possible conversion claim. One option is for the landlord to notify the tenant in writing that she considers the property abandoned and that tenant has a certain number of days to collect the property. If the landlord needs to clear the premises out immediately, another option is to store the property and send the tenant a notice explaining that the property will be stored for "X" days, and that the tenant may contact "Y" to pick it up.

Keep records. If the tenant has truly legally abandoned the leased premises, the landlord should thoroughly document the abandoned property with photographs. At a minimum, the landlord should maintain an itemized list of the property. If the landlord plans to remove property herself, the landlord should do so in the presence of a credible third party witness.

Store the property. Particularly if the personal property is valuable, such as equipment, or sensitive, such as medical records, the landlord should consider storing the personal property for a period of time, and perhaps sending another notice to the tenant to give the tenant another chance to collect the property prior to disposing of it. Again, a dispossessory will relieve the landlord of liability in connection with such property.

Bottom line, filing a dispossessory, in nearly all cases, is the best way to protect yourself when dealing with tenant abandonment.