



The Tenant Who Won't Leave

By Thomas J. Vale

Sooner or later it happens. If you've owned and rented residential or commercial property, you will probably be faced with a tenant you don't want anymore. But because of legal constraints, you have no quick way of removing the tenant from your property. Now you are haunted by the tenant who won't leave. What should you do to protect yourself from being stuck with an unwanted tenant?

The best way to start any rental arrangement is with a detailed written lease. It always makes good business sense to have agreement set forth in writing; whether it is a lease agreement or a contract for any other type of business transaction. Like other types of contracts, some types of lease agreements will not be legally enforceable if they are not in writing. For example, a lease to run for more than one year is not enforceable unless it is in writing and unless it meets certain formal requirements for transactions affecting real estate.

In addition to having a written lease, you should be somewhat familiar with the notice requirements for terminating written leases and consult your attorney with specific questions. If you have a tenant who pays rent on a periodic basis and have no formal, written lease agreement, that tenant will be termed a periodic tenant. Now suppose you no longer want that periodic tenant. How long will it take to get the tenant removed from your property? The answer to this question depends in part upon whether the tenant is a residential tenant or an agricultural or non-residential tenant.

A periodic tenancy can be terminated only at the end of a rental period. Normally you would have to give a residential tenant a month's notice that his lease is being terminated. A month's notice with a residential lease may not seem too unreasonable. However, a periodic tenant who is using property for commercial or agricultural purposes is assumed to be a year-to-year agricultural lease, there is a specific notice law that requires at least 90 days notice of intent to terminate the tenancy.

These rules regarding the legal notice that must be given to tenants govern when the tenant has not breached any condition of the tenancy or failed to pay rent when due. If there is a breach of a short term tenancy, the landlord generally has the option of giving the tenant a five-day notice to pay the rent or vacate the premises or, in the alternative, a 14-day notice that the lease is being terminated and the tenant must vacate the property. If there is a breach involving a lease that runs for more than one year, the landlord normally must give the tenant a 30 day notice to comply with the terms of the lease or vacate the premises. Of course, giving the notice does not guarantee that the tenant will comply with the terms of the notice to vacate the premises in a timely fashion.

If the tenant fails to abide by the terms of a legal notice terminating the tenancy, the landlord is faced with the prospect of filing and eviction in court. This generally means at least several weeks will be added to the time period necessary to have the tenant legally removed from the property. Many property owners are understandably upset when they learn of the time and cost that may be involved in removing an unwanted tenant.





In addition to having a written lease, and having some understanding of the landlord/tenant law, it makes good sense to simply sit down and discuss in detail with a prospective tenant what each of you expects in the landlord/tenant relationship. This applies equally whether you are going to be the landlord or the tenant. You should also keep in mind that there are distinct differences in the way residential, commercial or agricultural leases are enforced under Wisconsin law. Discussing some of these aspects of landlord/tenant law with your attorney may help you avoid the tenant who won't leave.



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