

Basic Real Estate Rule of Thumb: Talking About “Tenants at Will”

by Isaac Benmergui, Esq on September 8, 2014



What happens if the landlord contends that the real estate lease is *no longer in effect*? This, obviously, is due to the fact that a default notice was issued, stating that the tenant was late on the rent payments. Fair enough. What happens if the lease isn't in effect anymore? We have a situation where a tenant no longer is under contract, per se, but *at will*.

A “tenant at will” is basically someone staying in a property exclusively without terms, and can be terminated at any time by either the tenant or the landlord for any reason. Freedom, no chains, no boundaries. This imbues a tenant or landlord with the ability to change a situation without worrying about violating a contract. Think of the comparison and parallel with that of labor law and “at-will employment,” where an employer can fire someone for any reason, and an employee can quit for any reason.

Such a landlord could make this assumption due to failure to pay rent, especially when it involves a month-to-month basis. Even after a landlord files a simple and short “pay-or-quit” notice and the tenant *still* continues to fail to pay, we have a situation here where the landlord could easily recover real estate possession by issuing a default notice.

Again, though, there's that automatic stay. What can a landlord do? The evidence at hand points to the fact that there is this violation, and that the tenant is only occupying the premises “at will,” hence it can allow the landlord the ability to end the “agreement” effectively. But wait.... There's more....

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