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What to do with a Tenant's Leftovers

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Introduction

This article examines the practical solutions available to a landlord in the situation where a tenant vacates a property and leaves personal items behind. In support of Womens' Day tomorrow, all references to persons will be in the feminine, but must be understood as referring to all genders.

Vacation/Absconding and Abandonment

Until such time as a tenant vacates the property voluntarily or the sheriff removes the tenant from the property in terms of an eviction order, the landlord is not entitled to access the property or "retake possession thereof" without the tenant's consent. If a landlord were to do this without the tenant's or the court's consent, this would amount to spoliation (depriving the tenant of the use and occupation of the property without her consent or an order of court), and also trespassing.¹

It is thus important for landlords to know at what point they are lawfully entitled to access (enter) the

property and remove anything left behind.

In some cases it is easy to know when a tenant has absconded from the property and abandoned his things - for example when she moves out without telling you in the middle of the night, takes most of her stuff, and leaves behind a few bits and bobs, which she never collects.

In other cases, however, it is not as clear-cut. Sometimes it can be difficult to ascertain whether a tenant has actually vacated or absconded from the property, especially when the tenant's items are still at or in the property. These situations arise quite often when eviction proceedings are currently pending against the occupant or the relationship between the landlord and the tenant has soured. In such circumstances, it may be difficult to confirm that the tenant has vacated the property and therefore it would be advisable for the landlord to do whatever she can to determine

¹ Section 1 of the Trespass Act, 6 of 1959.



whether the tenant has indeed left or is still in occupation.

This might include trying to contact the tenant to ask, contacting the tenant's family or friends or employer (if the landlord has these details), making enquiries with the neighbours in order to see whether the tenant has been seen at the property lately, checking security footage (if available and accessible), asking the armed response if they have seen the tenant, and checking to see whether lights are on the property at night or whether the municipal electricity and water meters are recording usage at the property.

Tenant's things left behind

In terms of our common law if movables have been left behind and (based on all of the circumstances) it can be reasonably assumed by the landlord that the tenant absconded from the property and abandoned these movables, the landlord would be lawfully entitled to dispose of such as the landlord sees fit (which includes selling the items in order to recoup any losses suffered by the landlord). This is because (subject to certain exceptions not mentioned here) unowned things in our law are "fair game" - they can become owned by others (in this case the landlord), who can do with them what they please.

Caution is the Name of the Game

In such cases it is always advisable to proceed with caution. This involves establishing as best as you can that the tenant has actually abandoned the property and the goods in question, thereafter

removing the movables to a safe and secure storage facility, and advising the tenant that she has a week to a month, or longer, in order to collect the movables and if not collected, they shall be disposed of.

The landlord should use her discretion on deciding on the time allowed in which to collect the movables (and in doing so should take into account, among other factors, the value of the movables, the hardship incurred to replace the movables and the possible sentimental value of the property).

Consequences of Getting It Wrong

If, however, it turns out that the tenant merely left the property temporarily, is possibly deceased, or has left the movables at the property to be collected at a later date, the disposal of these items might result in the tenant suing the landlord for the loss of these items, or even laying criminal charges against the landlord for theft. The tenant might also lay charges of trespassing against the landlord, or sue the landlord for spoliation asking for an order that the landlord restore possession of the property to the tenant. [If a tenant is deceased you must contact the executor and hand over the belongings of the deceased only to that executor.]

Conclusion

In these cases, the landlord must exercise her discretion in determining whether or not the tenant has vacated/absconded from the property and/or whether the items at the property have actually been abandoned.





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