

Q11 – July 2016 – Selected Answer 1

1. Mallico should follow the lock out procedures to retake possession of the premises.

Under the Texas property code, a landlord of commercial property may retake possession of the premises when the tenant is in default. An eviction suit may be instituted for a tenant who fails to pay rent but does not abandon the premises. A landlord may also lock out a tenant for failure to pay rent. Unlike with residential leases, this right does not have to be contracted for and is implied. Also, the landlord has a lien on all the personal property left on the premises and may withhold such property until rent is paid. In order to successfully lock out the tenant, the landlord must post a notice on the door of the premises on a 8x11 sheet of paper detailing the instructions of how the tenant may regain possession of the premises (provided with a new key) / retrieve personal property upon payment of back rent.

Here, even though Mallico's tenant has abandoned the premises, the tenant has left behind personal property used in the business such as furniture, retail stock, and equipment used in the business. A Mallico, has a landlord lien on the personal property inside the leased premises to secure rent. Therefore, in order to lawfully lock out the tenant, Mallico should proceed to posting an 8x11 sheet of paper instructing the tenant to report to a location to retrieve a new copy of the key, conditioned on payment of back rent. Also, if the tenant fails to return, after a reasonable amount of time, the landlord may sell the property upon notice to the tenant to recover losses due to failure to make payment.

Therefore, in order to lawfully retain possession of such as items, the landlord should comply with lock out procedures set forth above, in order to avoid any liability.

2. In Texas, a landlord has a lien on the personal property in the commercial lease space. Therefore, the landlord may retain the belongings in the leased space and sue for back rent and keep the personal items as collateral. Mallico, is retaining the property as a secured party. Therefore the obligations of a secured party attach to collateral and Mallico is required to keep the collateral in good condition and prevent damage. Also, if the tenant fails to return after a reasonable amount of time, Mallico may sell the collateral at an auction to satisfy the debt accrued from the failure to make payment.

3. the justice of the peace court is the court of jurisdiction for eviction/detainer actions. Therefore, the Tenant should properly file a complaint for reentry in the justice of the peace court.

Q11 – July 2016 – Selected Answer 2

1. Under the Texas Property Code, Malco has two options: (1) it can retake the premises after Tenant abandoned it and this will terminate Tenant's rent obligation; or (2) Malco can do nothing and re-let the premises and sue Tenant for any deficiency between the new lease and the old one. The issue is how Malco is permitted to re-take possession of the premises under the Texas Property Code.

Where a tenant unjustly abandons the leasehold the landlord has several options. First, the landlord will be permitted to retake possession of the premises. If the landlord chooses to do so, the Tenant's future obligation to pay rent will be terminated as will the lease itself. Second, the landlord can do nothing, re-let the premises, and recover deficiency from the tenant. If the landlord chooses the former, the landlord can change the locks on the premises. In the case of a commercial tenant the lease does not have to contain a provision permitting the lockout and no notice need be given. The landlord will be permitted to change the locks on the doors to the premises and will be required to post notice on the doors to the leasehold providing information regarding where and when the commercial tenant would be able to pay any past-due rent, and retrieve a new key. The landlord must make this option available to the commercial tenant within that tenant's business hours. If the landlord follows this procedure, the tenant will then either be required to pay the amount of rent past-due and retake possession of the premises, or if the tenant does not choose to do so within a certain amount of time, the landlord will be permitted to retake the premises.

If the tenant stays in possession of the premises but refuses to pay any rent that is due, the landlord can give the tenant 3 days notice of eviction. If the landlord gives such notice and the tenant still refuses to move out then the landlord can file a wrongful detainer suit. If the landlord gives 10 days notice, and on the eleventh day, the tenant has still failed to vacate the premises, the landlord will be able to obtain attorney's fees in the wrongful detainer suit against the tenant.

Here, because Tenant has abandoned the premises, Malco can change the locks and retake possession of the premises. This will terminate any obligations Tenant has to pay rent going forward, but Malco will be able to sue Tenant for past-due rent.

2. After Tenant's abandonment, Malco would be permitted to seize the remaining property on the premises in satisfaction of Tenant's unpaid rent and obtain a lien secured on that property. At issue is what rights and obligations Malco has with respect to the tenant's property left on the premises after the tenant has abandoned the leased property. Where a commercial tenant fails to pay rent, the landlord, under certain circumstances will be permitted to seize any property and inventory of the tenant that remains on the premises. Landlord will be able to obtain a lien against that property to secure the debt of the unpaid rent payments. Thus, where Tenant has not paid their rent and has abandoned the property, Landlord will be able to seize the property and obtain a lien securing the payment of the unpaid rent obligation. Here, if the tenant fails to pay the rent in arrears, Malco may be able to sell the property that remained on the premises in satisfaction of the obligation. Of course, as with any foreclosure-type sale, Malco would have to give Tenant reasonable notice of their intent to do so, an opportunity to cure the default (likely at least 30 days), and specify the time and place at which the sale will occur.

3. To properly file a complaint for reentry of the premises the Tenant would have to file its complaint in the proper justice of the peace court. The issue is in which court Tenant could properly file a complaint for reentry onto the premises. Landlord-tenant disputes are typically adjudicated in justice courts. More specifically, the suit is filed in the justice court in the county in which the leased property is located. Thus, if Tenant seeks to file a complaint for reentry onto the premises it will have to do so in a justice court in which the property is located.

1. How can Mallco lawfully re-take the premises?

The issue here is what procedure Mallco must follow to lawfully re-take possession of the Premises after the Tenant has abandoned them.

Under the Texas Property Code, a landlord may re-take possession of the the leased property in a commercial lease after a tenant has abandoned the property by sending notice to the tenant of its intent to retake the property to the address the landlord has on file for the tenant or by posting a notice on the property in a conspicuous place. In addition, the landlord is entitled to change the locks on commercial property when the tenant is delinquent in paying rent, so long as notice is conspicuously posted on the leased property notifying the tenant that the locks have been changed, and notifying the tenant of the location and hours of where the tenant may obtain new keys and pay the overdue rent obligations.

Here, Mallco was entitled to re-take possession upon sending notice to the tenant or posting the notice on the property a reasonable time before retaking the property. In addition, Mallco could change the locks on the property, so long as it posted a notice on the leased property for the Tenant to see that the locks have been changed since the Tenant is several months overdue on rent, stating the location of when and where Tenant may pay the overdue rent and obtain new keys. However, since Tenant has abandoned the premises, Mallco is not obligated to continue the lease and may consider the lease voided by the tenant and should relet the property to other possible tenants.

2. Rights and obligations re Tenant's stock, furniture, and equipment

The issue here is what rights and obligations Mallco has with regard to Tenant's retail stock, furniture, and equipment that remained on the Premises after Tenant abandoned the property.

Under the Texas Property Code, a landlord in a commercial lease has a temporary lien against the tenant's property and fixtures located within the lease property. When the tenant fails to pay rents, the landlord may enforce the lien against the tenant's property and fixtures within the property to satisfy the validly due rental obligations owed under the lease. Once that lien those obligations have been satisfied, the landlord must give the tenant access to retrieve their property from the leased premises or give the property back to the tenant. The landlord is not entitled to keep more than is owed him in delinquent rent.

Here, Tenant abandoned the property and left some of its furniture and equipment on the Premises. In addition, Tenant was delinquent in its rent obligations and owed Mallco rent for March and April 2016. Therefore, Mallco was allowed to enforce it lien against the tenant's property and fixtures and keep/sell as much of the property as is necessary to satisfy the delinquent rent obligation. Any property leftover should be returned to the Tenant or made available for the Tenant to retrieve.

3. In which court can Tenant properly file a complaint for reentry?

The issue here is where the Tenant should properly file its complaint for reentry to the Premises. Under the Texas Property Code, issues involving leases should be brought in the local justice of the peace court, which has exclusive jurisdiction over landlord-tenant disputes. Thus, Tenant can properly file its complaint for reentry in the Justice of the Peace court of the local county where the Premises are located.