

That “Abandoned” Feeling – Part I

By FDR [Frank D. Rubin]

This article deals with when you may have to decide if your tenant has abandoned your rental premises. One advantage of an abandonment is that you do not have to retain the services of an attorney (oh, so costly). You also miss out on all the jobs of our court system in an unlawful detainer proceeding. There is a real benefit to declaring a unit abandoned.

As I noted in a prior column, some of the most contentious areas of landlord tenant law have been clarified with definitions worked out by the state of California Legislature and made into law. Most landlord tenant laws are encompassed in the California Civil Code. A definition and procedure to declare a rental unit abandoned is one of those code clarifications.

Despite the attitude of this column, most code sections are actually helpful in defining owner’s relationships with our residents. Not all state legislation is a lawyer’s full employment act.

Think of the situation before the enactment of the abandonment procedures in the early 1970’s. It was an adventure. If you made a mistake, you would be liable for a wrongful eviction and in the case of personal property, you could also be liable for having to replace those things that you may have disposed of.

What was the criteria for abandonment prior to the code? It varied every day in every court. Some would say the premises were abandoned if the mail was piled up. Other courts would require a very long time period before there could be a belief of abandonment.

What California Civil Code Section 1951.3 did was by legislative edict define exactly what gave an owner the right to determine an abandonment and how to declare one. Without the code section, it was orchestrated chaos. You were at risk even with the wisest legal advice. Now, if you meet the code requirements and follow the code procedure, not only do you avoid the entertainment of an unlawful detainer action but you also are insulated from liability in an action for a wrongful lockout.

To do a notice of abandonment, you first have to meet two criteria (1) have a reasonable belief that the tenant has abandoned the premises and (2) rent (in some amount) has been due for fourteen or more consecutive days. If that is the situation, then you are allowed to make use of the abandonment procedure.

Having a reasonable belief of abandonment gets us back to the pre-code days. Still, you have to be able to express the situation with clear facts. Things such as - no one has seen the resident. No mail has been picked up. No lights are on in the unit. The criteria that nothing has been paid for fourteen consecutive days and rent is due is pretty simple.

If you meet those two factors then you prepare and mail to anywhere there is any chance that the missing (abandoned) resident might be a notice of abandonment.

For each copy of the notice of abandonment that you send out also get a certificate of mailing. That is not certified or registered mail but a piece of paper issued at the post office at time of mailing that verifies that you did the mailing. That is all you need. Of course, you do mail a copy of the notice of abandonment to the unit that you think has been abandoned as well as to anywhere else you think the abandoning tenant might actually receive it.

You are getting a lot for going through this procedure. It is a small inconvenience to follow the code-mandated procedure as closely as you can. I always feel more comfortable when my clients have mailed the abandonment notice to two or three different addresses.

Look at your rental application for place of work, who to contact in an emergency etc. for addresses other than the unit in question.

For the next eighteen days after you mail the notice of abandonment of real property, it is up to the missing persons to contact you. If you continue to hear nothing more then at the end of the eighteen days, the real property is yours. No eviction, no sheriff's lockout, no courts, you just take over possession.

When you take over possession after an abandonment of real property, you have control of the unit as if the resident moved out and surrendered the keys to you. As with any time a resident leaves, and you as the owner take possession, you can change the locks, check out the premises, fix up and clean as is needed and move on to find a new resident for the unit.

A security deposit accounting should be done at that time within the twenty-one days of move-out as is required by law. The twenty-one days time to account for the security deposit starts to run on the day you take possession at the expiration of the abandonment notice. If there is a lease still in effect and your resident still has time left on the lease then the resident would be liable for damages until the time of re-rental. If the re-rental is for less than the abandoned tenant's leased rate, the abandoned tenant will owe the lease rate shortage through the lease term.

But what do you do if the abandoning resident leaves or after an unlawful detainer and a sheriff's lockout, you find a bunch of personal property left at the premises? Stay tuned for next month's column.

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