

Judge Finds Landlord Liable!

by VAOA

The facts of this case are as follows. The landlord had sent a notice to quit to a tenant. It looked like the tenant was moving out; the tenant was packed up and said they were leaving.

At the same time, the landlord was showing the apartment for rent. The landlord told the prospective new tenant that the current tenant looked like they were moving out, however, if they did not move out, they would have to be evicted. The landlord signed the lease for this apartment, however, the lease did not mention anything about the potential eviction of the current tenant.

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At the end of the month when the new tenant was to move in, the old tenant refused to move. The new tenant was in a jam and sued the landlord for breach of contract, i.e., failure to deliver possession of the apartment.

The judge ruled as a matter of the law, that since there was nothing in writing qualifying the lease's promise to produce the unit to the new tenant, that the landlord was liable for the tenant's damages. The landlord argued that the court should consider circumstances surrounding their ability to provide the unit, and to consider the fact that the incoming tenant was aware of the possibility that the current tenant might have to be evicted. The court refused and held that the landlord had violated the lease by not delivering the apartment.

[Editor's Note: Notwithstanding, landlords can avoid this problem altogether by including language in their lease which addresses this issue. Here is language which we suggest you include in your leases when a situation like this occurs: "The landlord's obligation to deliver possession of the apartment is contingent upon the current occupant of the apartment building vacating the apartment and moving all of their personal property from the apartment. The parties to this lease acknowledge that failure of the current occupant to deliver possession will cancel this lease, and all deposit money and prepaid rent shall be returned. Neither party may claim damages arising from the failure to deliver possession."

You may change some of the language to suit your needs, however, you must clearly indicate that your obligation under the lease is conditional upon the current tenant vacating. It is always wise to seek an attorney's advice when adding clauses to your rental agreement.]

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