

HAPPY BIRTHDAY TO THE TEXAS LOCKOUT STATUTE

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NOTE: From all of us at Kessler Collins PC, have a great Christmas and a Happy New Year. May 2015 bring you good tenants, strong occupancy, peace and prosperity.

If you have a question that we can turn into an article, please feel free to contact us. I was a little leery about writing an article on what we have come to call the Texas “Lockout Statute”, being that it’s the holiday season and who wants to lockout a toy store or gift shop at this time of year. On the other hand, 2014 is the 25th anniversary of this statute we have all come to know and love, so what the heck – let’s give it a shot.

The Lockout Statute is one of the best specimens of compromise legislation that I have seen. A trained eye can tell that Sections 93.002 and 93.003 of the Property Code was a hard fought compromise between commercial landlord and tenant lobbies. While it gives landlords great power, it provides generous remedies to tenants if landlords do not give proper notices or perform lockouts without a statutory basis.

CAVEAT-WE ARE DISCUSSING COMMERCIAL LOCKOUTS. THESE STATUTES DO NOT APPLY TO RESIDENTIAL TENANCIES

There are three circumstances where a landlord may exclude a tenant from the premises without going through a court – (1) bona fide repairs, construction, or an emergency; (2) removing the contents of a premises abandoned by a tenant; (3) changing the door locks of a tenant who is delinquent in paying rent.

The first and second circumstances are not terribly controversial or coercive. The first one is mostly a safety concern. The second allows for orderly removal of contents of an abandoned space. Practice point – just be sure you can prove that the space is abandoned before you start removing property.

The third circumstance is the one that we see most often. Technically it is the only circumstance that mentions the actual changing of locks. However, it does not mean you can change the locks when the tenant is actually occupying the space. That implicates false imprisonment! Nor does it mean that you can change the locks for violation of any other provision of a lease. It is simply a self-help remedy for one kind of violation – failure to pay rent.

On the other hand, the statute provides that a lease supersedes the statute to the extent of any conflict. That is a bit confounding. It does not necessarily mean that a lease can expand the umbrella of self-help remedies. Nor does it necessarily mean that a lease can reduce the protections afforded to tenants under the law. Unfortunately, the courts have not opined on what that provision means, so we are left to our own interpretations.

Most of you are familiar with the requirement that before the landlord may change the locks in a space leased by a tenant who is delinquent in paying rent, it must place a notice on the tenant’s front door stating the name and the address or telephone number where a new key can be

obtained. The key must be provided during the tenant's regular business hours and only if the tenant pays the delinquent rent.

As a practical matter, changing the locks will usually get the tenant's attention and result in payment of the delinquent rent, a partial payment plus an agreement for payment of arrearage, or the tenant's bankruptcy. If bankruptcy results, the landlord will usually be required to allow the tenant back in whether or not the back rent has been paid.

Now let's discuss tenant remedies – in a few circumstances, a tenant may take advantage of a long set of provisions which allow it to go to justice of the peace court and obtain a “writ of reentry” for an unlawful lockout. Few tenants who are delinquent in rent will be able to afford to go to court; and even if a tenant does, it will have to show that the lockout was unlawful.

A more troubling penalty for a landlord who violates the statute is the possibility of being on the defensive side of a suit for actual damages (e.g. loss of business), one month's rent or \$500 (whichever is more); attorney fees, and costs LESS delinquent rent or any other sums the tenant may owe the landlord. In addition, the tenant will get the choice to terminate the lease (and possibly avoid future rent) or recover possession of the premises. No landlord that I have come across wants to be put on the defensive end of a lawsuit; so, as I noted at the beginning of this article, make sure you are right before you act.

The moral of this little story is to be careful when using this form of self-help. It is a great remedy, but it can be a minefield. If you run into a problem, please take care to contact competent legal counsel to assist you.