Why Doesn’t My Key Work?

Landlord Commercial Lease Remedies: A Current View

Presented by:
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"Look. I just don't feel the relationship is working out."
Common Law Remedies

• Breach of Express Covenant
  – Independent covenants unless:
    1. remedy expressly in lease, or
    2. tenant’s anticipatory repudiation
Common Law Remedies

• Anticipatory Breach
  – Maintain lease and sue for rent*
  – Treat as anticipatory repudiation
  – Repossess and release
  – Forfeiture

*abrogated for mitigation requirement
Modern Day Remedies

- Landlord’s election
- Mitigation
  - Austin Hill Country Realty Inc. v. Palisades Plaza, Inc., and
  - Section 91.006 of T.P.C.
Landlord’s Right to Damages

- Suit for Rent

- Mitigation required if:
  - Landlord re-enters
  - Lease allows re-entry without surrender, forfeiture or eviction
Landlord’s Right to Damages

- Anticipatory breach without reletting
  - Damages = PV of contracted rent and reasonable cash market value of the lease over unexpired term
Landlord’s Right to Damages

- Liquidated Damages
  - Enforceable if:
    - Harm is incapable or difficult to estimate, and
    - Amount is reasonable forecast of just compensation
“Well, when it’s my turn, I just hope I go quietly . . . Without a lot of running around.”
Repossession

- Common law self-help
  - Must have express remedy in lease
  - Must be exercised peaceably and without force or violence
Repossession

- Statutory - Chapter 93 of T.P.C.
  - Authorizes change of door lock
  - Delinquent in paying “rent”
  - Requires posting of written notice
Repossession

• Judicial Eviction - Chapter 24 of T.P.C.
  – Authorizes suit in Justice Court for possession
  – Appropriate when tenant holdover after termination of:
    • right to possession after expiration of lease term
    • right to possession for default
Repossession

• Judicial Eviction - Elements

  – Default gave rise to landlord’s right to terminate tenant’s possession
  – Landlord gave notices required under lease
Repossession

• Judicial Eviction - Elements (cont.)
  – Proper notice to vacate and quit under Section 24.005
  – Landlord had right to terminate and exercised it
  – Tenant’s refusal to surrender
Repossession

• Judicial Eviction — Appeal
  – Trial de novo to County Court
    Not limited to jurisdictional limits of Justice Court
    Award of attorneys’ fees
  – No further appeal unless residential
"Again? You just had a glass of water 12 days ago."
Res Judicata & Collateral Estoppel

- General Rule
  - Prevents relitigation of claims that have been or should have been litigated
  - Prevents relitigation of issues that have been resolved in prior suit
Res Judicata & Collateral Estoppel

• Exception
  – Forcible detainer does not bar subsequent claims between landlord and tenant, other than possession
Liens

• Contractual Liens
  – Must be in lease and meet requirements of Section 54.043 of the T. P.C.
  – Subject to Article 9 of T.B.O.C.
  – May foreclose without judicial proceedings and lack of personal property exemptions
Liens

• Statutory Liens
  – Statutory lien to secure payment for rent due or to become due
  – Attaches to all non-exempt personal property of tenant in the building
  – Must be enforced by distress warrant
Abandoned Property

- Writ of possession
- Section 93.002 of T.P.C.
  - Presumption of abandonment
  - 60 days from date property is stored