
PROPER STEPS TO PREPARE PREMESIS FOR THE NEXT TENANT ¹

What rights does each party have when a tenant leaves property on the premises after vacating?

The goal is to protect your tenant's rights and ensure your non-liability for items that have been left behind after the tenant has vacated. It is important that a landlord protect themselves from claims by a tenant that their property has been destroyed or stolen after they have moved. (In legal jargon, this is known as "unlawful conversion." Conversion occurs when you take someone else's property and convert it to your own use or benefit, either by selling it or otherwise disposing of it, or using it yourself.)

What type of property is usually left behind?

Whether a tenant vacates voluntarily, or with the aide of the sheriff or marshal, landlords all too often must not only clean up and repair the damage, but also dispose of a pile of junk. You're much more likely to deal with a tenant's property when the tenant was evicted and wasn't allowed to take everything. The belongings of an evicted tenant are not to be put on the street. The law enforcement officer performing an eviction will allow the tenant to carry out a few armloads of personal possessions, leaving the remainder to be locked on the premises and stored by you until the tenant can arrange to take the items away.

Removing obvious trash is normally no problem, but even here you must exercise care. If you toss a moth-eaten book in the dumpster, and it turns out to have been a valuable first edition, you could have a problem.

As a general rule, the more valuable the property left behind by a tenant, the more formalities you must comply with when disposing of it. In rare instances, you may have a judgment against a tenant for unpaid rent or damages to your premises, and this tenant has left behind valuable property that she never claims. If so, you can safely have the property sold and the money applied to your judgment. However, this is only if you follow the legal procedures outlined in

this chapter. Proper procedure and documentation is critical.

You can not touch a tenant's property until you have legally gained possession of the premises. This occurs when a tenant finally leaves voluntarily, whether or not the TN gives you keys, or when the tenant is physically evicted by the sheriff, marshal, or constable. If you gained possession of the property after having heard nothing from the tenant for 18 days since mailing a Notice of Belief of Abandonment (see attached example), you should understand that your mailing of the abandonment notice relating to the real property – the premises- has nothing to do with the abandonment of any personal property abandoned inside. In other words, it only allows you to enter legally after the premises were abandoned, not dispose of property. You may dispose of property only after following the procedures described in this chapter.

May the Tenant Demand his Property?

Ideally, a tenant who has left behind property after moving out will contact you about reclaiming it. If not, try to contact the tenant to pick up the property. If you can't reach him, look through the tenant's rental application and phone personal or business references listed there.

By all means, if a tenant is willing to pick up his property, return it to him, even if he owes you money. If a tenant owes you money- for example, back rent- you can not insist that he pay you before you return his property. You can, however, deduct back rent from any security deposit. But remember the basic rule for returning deposits within three weeks after the tenant leaves applies to abandonment- regardless of whether the tenant has left property behind.

There is one exception, however: you may insist the tenant pay your costs of moving and storing the property before you return the belongings. If you have kept the property on the premises the tenant vacated, you have the right to insist on being paid the pro-rated daily rental value for keeping the property on your premises and/ or any out- of- packet costs you incur after that for renting storage space. You can also subtract the value of your time for packing the tenant's property up in the first place.

¹ The California Landlord's Law Book Vol. 1: Rights and Responsibilities. 7th Edition, Brown and Warner
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