

## Dealing with a Tenant's goods after lease termination

There are a number of circumstances where a landlord is entitled to terminate the lease. The most common cause of termination is for non-payment of rent and outgoings. In terminating a lease, a landlord will often simply re-enter the premises, change the locks and notify the tenant that the lease is terminated. This would usually come after a series of requests, demands, warnings or a default notice (or a combination of those things).

A dilemma that faces both tenant and landlord is what to do about the tenant's goods in the premises. The tenant is likely to need those goods for trading, but no longer has access to the premises. The landlord wonders whether it can hold on to the goods until the arrears are paid. Alternatively, the landlord wants to clear the goods out quickly so that the premises can be re-let and a rental income can resume.

There are some basic rules in Victoria that govern dealing with tenant's goods after termination of a lease. They can be summarised as follows:

1. A landlord does not have a "lien" over the tenant's goods remaining in the premises. If a tenant wants to get access to the premises to remove its goods, the landlord must arrange access and allow the tenant to remove its goods. It is illegal to hold the tenant's goods and demand payment in exchange for release.
2. After termination of the lease, a tenant has no right of entry in the premises any more. It is not entitled to break in or force entry simply because its goods are still on the premises. If the tenant breaks in or enters without permission, it is a trespasser.
3. A commercial lease will usually describe goods that are not removed by the tenant as being "abandoned". Although some landlords would like to treat abandoned goods as their own, the law requires compliance with a process contained in the *Landlord and Tenant Act 1958* – which goes something like this:
  - a. If a tenant fails or refuses to remove its goods, the landlord can remove and store the goods at the cost of the tenant. Obviously, the tenant won't be paying up front for the storage bill, but the landlord is entitled to demand payment of the storage costs prior to release of the goods.
  - b. Some goods may belong to people other than the tenant (eg, coke fridge, leased copiers, etc). In order to recover those goods from the landlord, the person asserting ownership must establish a claim of ownership to the landlord's reasonable satisfaction.
  - c. If goods are still in the landlord's possession 3 months after re-entry, then the landlord is entitled to sell the goods. The intended sale must be notified to the tenant and anyone else the goods may belong to, as well

as being advertised in a Victorian and local newspaper. The notice must be given at least 1 month ahead of the sale, and the sale must be by public auction. The notice must contain certain information – a reputable auction houses should be familiar with the notices and process.

- d. If goods are not worth selling (as many aren't), they can either be given away or thrown away, but prior notice should always be given to a tenant before doing either.

In many cases, removing a tenant's fit-out will also cause expense that will only add to the landlord's loss. However, it may be that removal of fit-out is required before the premises are re-lettable. This highlights the importance of ensuring that a landlord holds adequate security to cover at least some of its losses in the event of lease termination.

Lastly, beware of disposing of goods that are of high value or are likely to belong to someone other than the tenant (even if the goods have not yet been claimed). To dispose of those goods (either by selling them or giving them away) may result in a claim against the landlord for "conversion", adding to the landlord's woes and possibly costs.