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My Lease Says What?

By Elizabeth B. Goudey

The law of landlord and tenant in Wyoming can trace its origins back hundreds of years to feudal England when a lease was considered a conveyance of an interest in land. Landlord and tenant law, then, has its roots in British property law. When the Wyoming Territorial Legislature adopted the common law of England in 1876 (see W. S. §8-1-101), British law as it existed in 1607 became the rule of decision in this state unless modified by Wyoming courts or until repealed by the legislature. And what was the basic principle of landlord and tenant law in 1607? It was (and arguably still is) that in exchange for the rents, the landlord impliedly covenanted that he had the legal right to transfer the possession of the property and that he would leave the tenant in quiet enjoyment of the leasehold.

As the centuries progressed and tenants moved off the land and migrated to the cities, a shift occurred in landlord and tenant law. It became obvious that it was no longer the land that was the important feature of the leasehold conveyance but the dwelling unit upon the land. Prospective tenants searching for housing began to be presented with residential leases that bound them to their landlords in a contractual relationship. And so it was that landlord and tenant law began to become a combination of ancient British property law and the law of contracts.

Why a Lease?

A landlord usually will require a written lease to be assured that he will receive a specified rent for a specified period of time. He will also want to define his rights and remedies against a tenant who may default on her obligation to pay rent or who may damage the property. These are legitimate reasons to require a written lease.

A tenant, on the other hand, may want a lease to be assured that her right to occupy the property is not disturbed and to be guaranteed that the rent will not be adjusted during the term of the lease. These, too, are legitimate reasons to require a written lease.

A good lease, like any fair contract document, will attempt to balance the rights and responsibilities of the signatory parties. But in landlord and tenant law the reality is often that a tenant is presented with a document drafted by the landlord and then told that if the rental unit is to be hers, she must sign the lease as is. In those communities in Wyoming in which there is a limited number of affordable housing units, this is an obvious disadvantage in the bargaining power between the landlord and the tenant. Lease terms certainly can be

negotiated between the parties, but a truly negotiated lease is rare in the normal residential market.

Assuming that a tenant has located a satisfactory rental unit and has carefully inspected it, what is the typical tenant to do when presented with a lease drafted by the landlord? The answer is run, not walk, to an attorney for a lease review.

The Lease Review

A lease review is a limited type of consultation between attorney and client. There are no standardized lease forms in use in Wyoming. Every landlord is free to draft her own. There are one-page leases and 15-page leases. There are leases written in plain English and leases that are sometimes almost incomprehensible even to a trained reader. In a lease review, the attorney and the tenant will analyze every word in the document. The meaning of both favorable and unfavorable provisions will be pointed out to the tenant. Possible amendments or additions to the lease should be discussed. It will be determined whether all the terms and additions or corrections or guarantees that the landlord had assured the tenant would be included in the lease are indeed included. It will be emphasized that if the client signs the document, she will be bound by it because it is indeed a contract. And then the attorney may mention the Wyoming Residential Rental Property Act, W.S. §§1-21-1201, et seq.

The Fly in the Ointment

The Wyoming Residential Rental Property Act (the WRRPA) was passed by the Wyoming Legislature in 1999 in recognition of the fact that some of the principles of the common law of landlord and tenant had become obsolete. For instance, up until the passage of this Act, Wyoming had continued to apply the ancient common law rule that absent a contractual provision in the lease, a landlord generally owed no duty to a tenant or her guests for dangerous or defective conditions on the premises. On July 1, 1999, the law changed and it was henceforth the recognized duty of a landlord to maintain leased premises in a fit and habitable condition. The Act also set out a tenant's duties in regard to maintaining a rental unit and permitting entry by the landlord, among other things. Other sections of the WRRPA speak to the return of a posted security deposit, disposition of personal property abandoned by a tenant, and a tenant's remedies in regard to a demand for repair. All of this might seem favorable to a tenant but §1-21-1202(d) is the fly in the ointment. This section states "Any duty or obligation in this article may be assigned to a different party or modified by explicit written agreement, signed by the parties." Thus, the importance of the lease review.

What to Look for in a Lease

In reviewing a lease with a client, an attorney should look for:

(1) Any provision that is contrary to the WRRPA such as a provision that assigns a duty set over to the landlord in the Act to the tenant or modifies the Act's security deposit terms.

(2) Any ambiguity in the lease. Surprisingly, what initially appears to be a fixed term lease may contain some kind of provision that contradicts the expiration date. For instance, the lease may say that a tenant must give a 30-day notice to vacate. Of course, any ambiguity in a lease could be construed against its drafter and therefore may be favorable to a tenant.

(3) Any statement that the landlord may enter without consent or without reasonable notice. This is contrary to a tenant's most important right, i.e., the tenant's property right of possession.

(4) An acceleration of rent clause. Typically this type of clause says that upon a tenant's default upon any of the provisions of the lease, the entire balance of the rent will become immediately due and payable.

(5) An attorney's fees provision that says the tenant will be responsible for landlord's attorney's fees incurred because of any dispute between the parties including any unsuccessful landlord outcome in litigation.

(6) Any provision that states the tenant agrees to abide by any rules or regulations made subsequent to the time the lease agreement is signed.

(7) A waiver of legal rights in regard to any defect in the rental unit.

(8) A statement that, if evicted, the lease is still enforceable against the tenant and all rent post eviction is still due and payable.

(9) Any lead paint disclosures as required by current federal law.

(10) Assorted "fines" and fees, i.e., pet fines, party fines, right to sublease fees, unreasonable late rental penalties, etc.

(11) A careful assessment of what, if anything, the landlord is agreeing to do.

Back to the Beginning: The Ace in the Hole

Of course, if a tenant should sign a lease that contains any or all of the types of provisions listed above, she is probably bound by them. But if the written lease and contract doctrines and the WRRPA have become the linchpins of modern landlord and tenant law, what, if anything, from the tenant's viewpoint remains of the common law? It can be argued that the basic promises between landlord and tenant that first were recognized hundreds of years ago are still viable; that in exchange for the rents the landlord must impliedly protect the tenant

from any disturbances that substantially interfere with the tenant's quiet enjoyment of the property and his possessory rights; and that when the tenant's quiet enjoyment is breached in a substantial manner, when the landlord is aware of the circumstances and does not correct them, the tenant can declare the lease terminated under the doctrine of constructive eviction and suffer no ill consequences. *Merrill v. Jansma*, 2004 WY 26, 86 P.3d 270 (Wyo. 2004), a case interpreting the WRRPA, did abrogate the common law of landlord immunity in tort, but did not explicitly overrule any other common law doctrine and in fact quoted *Kaycee Land and Livestock v. Flahive*, 2002 WY 73, ¶ 9, 46 P.3d 323 ¶ 9 (Wyo. 2002) with approval: "It is not to be presumed that the legislature intended to abrogate or modify a rule of the common law by the enactment of a statute upon the same subject; it is rather to be presumed that no change in the common law was intended unless the language employed clearly indicates such [intent]....The rules of common law are not to be changed by doubtful implication, nor overturned except by clear and unambiguous language."

Therefore, when advising tenant clients and in spite of what their lease may or not say, do not disregard the common law. It is still worth investigating its magic and its protections.

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