
Tenancy at Sufferance: Holdovers

• General Rule
• Landlord’s Options
• Landlord’s Initial Election
• Statute

Crechale & Polles, Inc. v. Smith Cont’d

Potential Remedies Against Holdovers

• 1.5 month’s rent. Holding over creates a periodic tenancy measured by the way rent is computed: month-to-month.
• Five years’ rent. Holding over is an agreement to renewal of the original five-year term.
• One year’s rent. Holding over is an agreement for a new one-year term.
• Double rent. As demanded by Crechale and allowed by statute.
• Actual damages. If Crechale lost out on a new tenant or buyer, then Smith would be liable for the loss.
Crechale & Polles, Inc. v. Smith Cont’d

Holdovers in Texas

• Absent an agreement to the contrary, it is presumed that a holdover tenant is liable for rent for another period, if for one year or less, under the same terms as the original lease.

• In this instance, Texas courts would have required one year’s rent from the holdover.

Hannan v. Dusch, 153 S.E. 824 (Va. 1930), Casebook, p. 384

Delivery of Possession

• Implied Covenants
  • Quiet possession
  • American Rule: Legal right of possession
  • English Rule: Actual/physical possession
Rationale for Choosing American Rule

- Express covenant
- Virginia’s summary eviction statute (Texas: unlawful detainer)
- Liability for acts of third parties

Texas
In *Hertzberg v. Beisenbach*, 64 Tex. 262 (1885), the Texas Supreme Court said,

“We greatly prefer the English Doctrine.”
Assignments and Subleases

- Traditional Formula
- Intention of the Parties

Assignments

Traditionally, when the lessee transfers his entire interest under the lease, that is, when he transfers his right to possession for the duration of the term.
Subleases

- Traditionally, if lessee transfers something less than his entire estate, such as when the original lease is for two years, but he only transfers right to possession for one year, thus retaining a year.
- The sublessee’s estate is said to be carved out of the original tenant’s estate.
- In Texas, even if a tenant transfers the balance of the term but reserves the a power of termination or right of entry, the transfer is sublease. (Minority View)

Assignment or Sublease?

Why Does It Matter?!?!?

- There are different remedies if there exists between the parties—
  - Privity of contract.
  - Privity of estate.
- What is privity of estate?
  - The relationship between the party that has the leasehold (tenant) and the party that has the reversion (landlord).
Assignments and Subleases

• If there is an assignment of the lease from T to T1—
  • L and T are only in privity of contract.
  • L and T1 are in privity of estate.
  • L may sue T and/or T1 for non-payment of rent.

Assignments and Subleases

• If there is a sublease by T to T1—
  • L and T are still in privity of estate and privity of contract.
  • T and T1 are in privity of estate and privity of contact (but neither exists between L and T1).
  • L may sue T only for non-payment of rent.
  • T can sue T1 for non-payment of rent.
Assignments and Subleases

- *But* if there is a sublease by T to T1 and T1 agrees to be bound by the original/head lease—
  - If the jurisdiction recognizes L as a third-party beneficiary of T1’s promise to T, then T1 and L are in privity of contract and L can sue T1.
  - T can sue T1.
  - L and T are still in privity of estate and privity of contract and L can sue T.