

AGEC 3713 Agricultural Law - Landlord-Tenant Law

true

Introduction

- ▶ land is often leased
- ▶ six (6) essential elements:
 - ▶ a contract must exist between a landlord and a tenant
 - ▶ provision for the payment of rent
 - ▶ transfer of the estate to the tenant
 - ▶ possession and control must be with the tenant
 - ▶ There must be a reversionary interest of the landlord

License

- ▶ A license is a right to use property.
- ▶ It is not a landlord-tenant relationship
- ▶ Neither possession nor interest in real property given
- ▶ Example: parking space rental in a public parking facility

Case

Lee v North Dakota Park service

Supreme court of North Dakota held:

After reviewing and examining statutes, case law, authorities and texts, it appears that the major differences between a lease and a license are that a lease confers exclusive possession against the world and owner, unless otherwise provided, grants exclusive possession and profits, grants a corporeal hereditament or an estate in the land; whereas a license merely grants permission to use the land under certain conditions and restrictions.

Employment

- ▶ crop-share lease arrangements (are these leases or employment)
- ▶ Tenant and landlord share in production
- ▶ Tenant provides labor and inputs
- ▶ Landlord provided land and inputs

Crop-share lease vs Share-cropping

Share-cropping is an employment relationship

- ▶ Tenant owns the crops
- ▶ Share-cropper has no rights to either land or crops
- ▶ Share-cropper has no legal interest until their share is set aside at harvest
- ▶ Difference depends on degree of landlords control

Partnership

- ▶ share lease can be recharacterized as a partnership
- ▶ all partners are individually liable for debt and obligations to the partners
- ▶ special tax treatment for partners
- ▶ Oral lease agreements can lead to recharacterization
- ▶ Bankruptcy courts use this as it changes liability

Inns

- ▶ not leases or rental
- ▶ rather state innkeeper laws apply

Statute of frauds

- ▶ Leases do not need to be in writing to be enforceable
- ▶ enforcement of short term oral leases allowed by many states
- ▶ multiyear leases must be in writing in most states
- ▶ written leases advisable in anycase because leases tend to be longterm

Recording

- ▶ recorded in local land records office
- ▶ provides protection to tenant
- ▶ tenants should ensure right to payment for improvements when signing
- ▶ fixture filing at records office to protect tenant interest

Classification of tenancies

- ▶ year to year periodic tenancies (automatic renewal)
- ▶ tenancies by time (limited term)
- ▶ tenancies by time renewable with mutual agreement (usually written)
- ▶ tenancy at will (can be terminated by either party at any time)
- ▶ express action by parties or implied (tenancies at will)
- ▶ tenancy at sufferance (landlord and holdover tenant)

Holdover tenant

- ▶ lease has expired but has not yet vacated premises
- ▶ temporary status after which automatically considered year to year tenancy

Crop-share lease and flexible lease



Notice to quit

- ▶ 6 months for year to year (common law)
- ▶ states have varying statutes

Duties of the tenant

- ▶ Duty to pay rent
- ▶ No rent payment extinguishes landlord-tenant relationship
- ▶ Duty to not commit waste
- ▶ reasonable use of the property
- ▶ Farm in a husband like manner (do not misuse land and stock)
- ▶ do not injure the land (erosion)
- ▶ control noxious weeds

Duties of the tenant

- ▶ Duty to make repairs
- ▶ Maintain fences
- ▶ Comply with laws
- ▶ Avoid activities leading to contamination of land
- ▶ Written leases should list illegal activities
- ▶ Organic (certified) production has complicated leases
- ▶ Lease can ask for maintenance of certification

Risk of loss

- ▶ common law risk of loss requires insurance
- ▶ rebuild to original condition
- ▶ risk of loss altered by statute in many states
- ▶ Take-home message: buy insurance

Crop ownership

- ▶ Crop belongs to tenant until harvested and divided
- ▶ Lien against crops for rent , advances and other expenses
- ▶ Lien attached as crop starts to grow
- ▶ Federal Food Security act 1985, liens filed centrally.
- ▶ land lord must show that crop was grown on rented land
- ▶ Right to emblements gives tenants right to crop in event of lease termination
- ▶ statutory rights replace right to emblements in most states
- ▶ Growing crops are personal property and therefore remain tenants property

Right to sue

- ▶ Tenants have right to compensation for damages to crop
- ▶ Landlords have a right to compensation for damages to land and buildings
- ▶ Lease and state law can modify these rights

Liability for injuries

- ▶ on leased property landlord is not liable except if it is caused by hidden defects
- ▶ Depends on landlords knowledge of defect and whether he should have known
- ▶ Duty to disclose defects to tenants
- ▶ Tenant duties similar to landlords in possession
- ▶ Tenant liable even if landlord agrees to make repairs
- ▶ Landlord not usually liable for tenants negligence

Assignments and sublets

- ▶ Tenants can assign or sublet under common law
- ▶ Assignment, tenant replaced by new tenant
- ▶ Sublet original tenant becomes landlord
- ▶ Leases mostly forbid assignment and subletting without permission
- ▶ Assignment transfer of interest, sublet original tenant retains interest

Eviction

- ▶ If lease is terminated and tenant does not vacate
- ▶ Fails to pay rent
- ▶ Other breach of terms of lease
- ▶ usually supervised by judiciary
- ▶ Tenant liable for all remaining payments
- ▶ Landlord has duty to mitigate

Right to remove fixtures

- ▶ Tenant has a right to remove fixtures unless they are physically attached (see real vs personal property)
- ▶ severance impractical
- ▶ severance would cause damage
- ▶ Landlord can also grant permission or removal can be regulated by the lease

Farm program payments

- ▶ eligibility for federal farm programs needs to be considered
- ▶ This can be added to lease
- ▶ Current trend is not to do this because farm program changes annually

Residential leases

- ▶ Residential leases differ from agricultural and commercial
- ▶ freedom to contract (agriculture)
- ▶ Detailed landlord-tenant statutes in most states
- ▶ Landlord bears most risk
- ▶ fit and habitable premises
- ▶ building and housing codes
- ▶ maintain property
- ▶ Residential tenancies acts and security deposits