

EXAMINERS' ANALYSIS OF QUESTION NO. 9

1. The Summary Proceedings Act governs Reba's options for recovery of the real property with respect to addressing Harry's failure to pay rent. MCL 600.5701 et seq. According to MCL 600.5714:

(1) A person entitled to possession of premises may recover possession by summary proceedings in the following circumstances:

(a) When a person holds over premises after failing or refusing to pay rent due under the lease or agreement by which the person holds the premises within 7 days from the service of a written demand for possession for nonpayment of the rent due. . . .

* * *

(c) When a person holds over premises in 1 or more of the following circumstances:

* * *

(iii) After the termination of the person's estate by a notice to quit as provided by . . . MCL 554.134

Pursuant to MCL 554.134, generally, "an estate at will or by sufferance may be terminated by either party by giving 1 month's notice to the other party. . . ." Any notice to quit the tenancy must also be in writing. MCL 600.5716.

In the instant case, Harry has a monthly rental obligation under the lease. If Reba wants to simply terminate the tenancy with Harry because he has breached the lease by failing to pay, she is required to give Harry a written notice to quit demanding that he vacate the property on a date at least one month from the date that the notice is received. If Reba decides instead to give Harry the option to pay the back rent to remain in the property or move if he fails to pay, she would be required to

serve Harry with a written demand that he pay the back rent within seven days or move.

If Harry fails to timely vacate pursuant to either a one-month notice to quit or a 7-day demand for rent that is not satisfied, Reba may institute summary proceedings in the Uptown District Court to recover possession. If the court issues a possession judgment in favor of Reba, Harry will be ordered to either (a) vacate the property by the date indicated in the judgment if Reba is terminating the tenancy or (b) pay the rent or vacate the property by a date certain. MCL 600.5741. Failure of Harry to comply with the judgment terms would result in the court entering an order of eviction for execution by a court officer, if Reba so requests. MCL 600.5744(1).

2. The law of fixtures governs whether Harry would be entitled to remove the barber/salon chairs, shampoo bowls and mirrors from the property if he decided to vacate. "Property is a fixture if (1) it is annexed to the realty, whether the annexation is actual or constructive; (2) its adaption or application to the realty being used is appropriate; and (3) there is an intention to make the property a permanent accession to the realty." *Wayne County v Britton Trust*, 454 Mich 608, 610 (1997). Fixtures generally remain with the real property when an occupant vacates.

However, there is an exception for trade fixtures installed by a tenant which are considered personal property to which the tenant is entitled upon vacating. *Outdoor Systems Advertising, Inc v Korth*, 238 Mich App 664, 667-668 (1999). "A trade fixture is merely a fixture which has been annexed to leased realty by a lessee for the purpose of enabling him to engage in a business. The trade fixture doctrine permits the lessee, upon the termination of the lease, to remove such a fixture from the lessor's real property." *Id.*, quoting *Michigan Nat'l Bank Lansing v Lansing*, 96 Mich App 551, 555 (1980), *aff'd* 414 Mich 851 (1982).

As reflected by the facts, Harry installed the barber/salon chairs, sinks and mirrors specifically for purposes of conducting a barber/beauty shop business. Although these items, which are obviously "tools" of Harry's trade, were affixed to the real property owned by landlord Reba, they remain the personal property of tenant Harry. Under Michigan law they are considered

trade fixtures that Harry would be entitled to remove upon vacating the space.