

A tenant leased a commercial property from a landlord for a 12-year term. The property included a large store and a parking lot. At the start of the lease period, the tenant took possession and with the landlord's oral consent installed counters, display cases, removable shelving, and special lighting. Both parties complied with all lease terms.

The lease is set to expire next month. Two weeks ago, when the landlord contacted the tenant about a possible lease renewal, she learned that the tenant had decided not to renew the lease and planned to remove all of the above-listed items on or before the lease termination date. The landlord claimed that all the items had become part of the real estate and had to remain on the premises. The tenant asserted his right and intention to remove all the items.

Both the lease and the statutes of the jurisdiction are silent on the matter in dispute. At the time the landlord consented and the tenant installed the items, nothing was said about the tenant's right to retain or remove the items.

The landlord has sued the tenant to enjoin his removal of the items. How is the court likely to rule?

- A. For the landlord as to items bolted or otherwise attached to the premises, and for the tenant as to items not attached to the premises other than by weight.
- B. For the landlord, because the items have become part of the landlord's real estate.
- C. For the tenant, because all of the items may be removed as trade fixtures without any obligation to restore the premises.
- D. For the tenant, provided that the tenant reasonably restores the premises to the prior condition or pays for the cost of restoration.

Explanation:

A tenant **cannot remove fixtures**—ie, items so connected with (or attached to) real property that they are considered a part of that property—without the landlord's consent. However, a tenant **can remove trade fixtures**—ie, items attached to real property by the tenant for **use in his/her trade or business**—without the landlord's consent if:

the items are removed **before**, or within a reasonable time after, **the lease terminates** and the removal will **not substantially harm** the property (eg, will not degrade the building's structural integrity).

But after the removal, the tenant must **reasonably restore** the property to its prior condition or **pay restoration costs**.

Here, the counters, display cases, removable shelving, and special lighting are *trade fixtures* since the tenant installed them for use in the store and parking lot that he leased from the landlord. Since there is no evidence that removing these items will substantially harm the property and the lease will not expire until next month, the tenant can remove them. However, he must reasonably restore the premises to its prior condition or pay restoration costs **(Choice C)**.

(Choice A) Although some of the tenant's trade fixtures may be bolted or otherwise attached to the premises, there is no evidence that removing them will substantially harm the property. Therefore, the court will likely allow the tenant to remove all of these items regardless of how they were attached.

(Choice B) Fixtures are considered part of the landlord's property (ie, real estate), but trade fixtures are not. Instead, the tenant retains ownership of the trade fixtures and can remove them from the landlord's property if the above conditions are met.

Educational Objective:

Trade fixtures—ie, items attached to real property by a tenant for use in his/her trade or business—can be removed without the landlord's consent if the removal (1) occurs before, or within a reasonable time after, the lease ends and (2) will not substantially harm the property. However, the tenant must reasonably restore the property to its prior condition or pay restoration costs.

References

Restatement (Second) of Prop.: Landlord & Tenant §§ 12.2–12.3 (Am. Law Inst. 1997) (restoration after removal of trade fixtures).

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When tenant can remove item without landlord's consent

