

A landlord orally leased a commercial building to a tenant for a 10-year term, which ended one year ago. At the beginning of the lease term, the tenant installed numerous appliances in the building as well as a large air-conditioning system. The tenant alone paid for these items; they were installed with the landlord's permission and were used for the tenant's commercial enterprise.

At the end of the lease term, the tenant failed to vacate the premises in a timely manner and continued to pay rent while remaining in possession for another four months. Before vacating the building at the end of the fourth month, the tenant removed the appliances and the air-conditioning system that he had installed, causing no damage to the building.

Was the removal by the tenant proper?

- A. No, because he was a holdover tenant.
- B. No, because the lease was oral.
- C. Yes, because they were accessions.
- D. Yes, because they were trade fixtures.

### Explanation:

A tenant can remove **trade fixtures**—items the tenant attached to real property for **use in his/her trade or business**—without the landlord's consent if:

the removal will **not substantially harm** the property (eg, will not degrade the building's structural integrity) *and*

the items are removed **before**, or within a reasonable time after, the **lease terminates**.

Since a **periodic tenancy** has no defined end date, it **continues until** either the landlord or tenant gives **express notice to terminate** it. This tenancy can be created by agreement (eg, a written lease) or by implication (eg, when the tenant continues to pay, and the landlord continues to accept, rent after a prior lease has ended).

Here, the appliances and air-conditioning system are trade fixtures since the tenant installed them for use in his commercial enterprise. And though the tenant's oral 10-year lease ended one year ago, he then initiated a periodic tenancy by continuing to use the premises and pay rent for another four months. And since the tenant removed the trade fixtures before the end of the fourth month (before the tenancy terminated) and caused no damage to the building, the removal was proper.

**(Choice A)** Although he was a holdover tenant—a tenant who entered a valid lease and then stayed past the end of the lease term—he became a periodic tenant when he kept possession of the premises and continued to pay rent. Therefore, he had the right to remove the trade fixtures before the periodic tenancy ended.

**(Choice B)** Since the 10-year lease was oral and could not be performed within a year, it was unenforceable under the [statute of frauds](#). But the landlord and tenant then formed a periodic tenancy that (1) was not subject to the statute of frauds and (2) was still in effect when the tenant removed the trade fixtures. Therefore, the removal was proper (regardless of the prior oral lease).

**(Choice C)** Accessions are items that are so attached to other property that they cannot be removed without causing substantial damage. Here, the appliances and air-conditioning system were not accessions since they were removed without damaging the building. But had they been accessions, removal would have been improper.

### Educational objective:

Trade fixtures—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 (1) the removal occurs before, or within a reasonable time after, the lease ends and (2) the removal will not substantially harm the property.

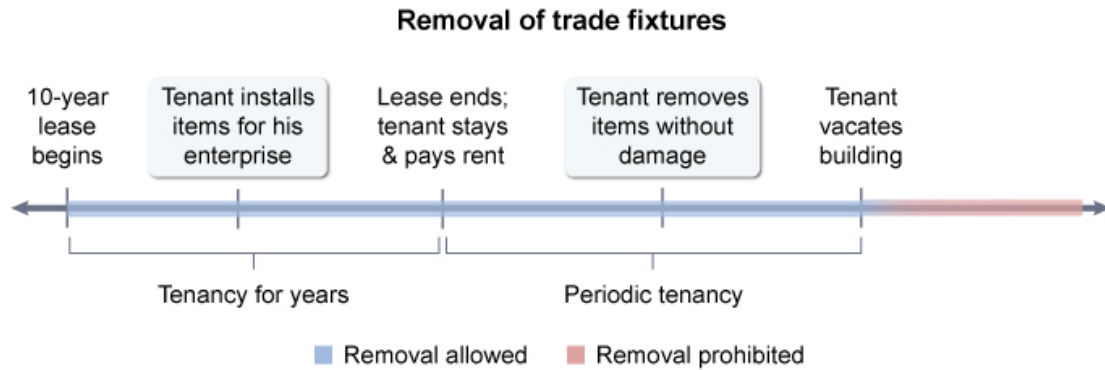
### References

Restatement (Second) of Prop.: Landlord & Tenant § 1.5 (Am. Law Inst. 1997) (periodic tenancy).

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

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