

A landlord leased a commercial building to a tenant for five years. Rent was payable on the first day of each month, and the landlord retained the right to terminate the lease if the tenant defaulted. The lease term ended 18 months ago. However, the tenant has stayed in possession of the building and has continued to pay the rent on time. The landlord has continued to accept the rent.

The fair rental value of the building is now substantially more than what the tenant has been paying, and the landlord recently found a third party who will pay the higher rent. When the tenant paid the rent two months ago, the landlord accepted the rent. At the end of the month, the landlord told the tenant in writing that she had to vacate at the end of the following month. The tenant, who is still in possession of the building, has informed the landlord that she does not want to move and is willing to pay the current fair rental value.

The landlord has asked his lawyer for advice regarding the right to possession.

Who should the lawyer say is entitled to possession?

- A. The landlord, because he gave proper notice to terminate the tenancy.
- B. The landlord, because he retained the right to reenter.
- C. The tenant, because she has stated that she is willing to pay the current fair rental value.
- D. The tenant, because the landlord has not shown good cause to terminate the tenancy.

Explanation:

Types of tenancies

(leases on land)

Type	Creation	Duration	Termination
Term of years	Agreement (ie, lease)	Fixed period (eg, one month, three years)	End of term (automatic) Breach of certain covenants (eg, rent, habitability)
Periodic tenancy	Agreement Presumed when lease has no specified termination date Operation of law (eg, holdover tenant)	Periodically renews until terminated	End of period (proper notice) Breach of certain covenants
Tenancy at will	Agreement Implied when person allowed to possess premises without paying rent	Indefinite period	At any time (reasonable notice)
Tenancy at sufferance	Implied when tenant keeps possession after lease expires (ie, holdover tenancy)	Continues until terminated	Landlord evicts Tenant vacates Landlord accepts rent (forms periodic tenancy)

A **tenant** has the right to possess the premises during the term of the lease. A tenant who **remains in possession** after the **lease term expires** is a **holdover tenant** (ie, tenant at sufferance). The landlord can then:

file a lawsuit to remove the tenant from the property (ie, an unlawful detainer action) *or*

accept rent and hold the tenant to a **periodic tenancy**—ie, a tenancy that automatically renews for successive periods of time depending on how rent was computed under the original lease (eg, monthly).

Either party (ie, landlord or tenant) can terminate a periodic tenancy **at the end of a period** by giving proper notice. **Notice is proper** if it is given **before the final period**

starts—eg, to terminate a month-to-month periodic tenancy on June 30, notice must be given by May 31.

Here, the tenant remained in possession of the building after her five-year lease term expired (holdover tenant). Since rent was computed monthly under the original lease, the landlord held her to a month-to-month periodic tenancy by accepting rent. And since the landlord gave her notice to vacate at the end of the following month *before* the start of that final month, notice was proper. Therefore, the landlord is entitled to possession.

(Choice B) Unless the lease expressly states otherwise, a landlord does not retain a right of reentry—ie, a right to reenter and retake possession of the premises if the tenant breaches the lease. Here, the landlord only retained the right to terminate the lease if the tenant defaulted on rent—not the right to reenter.

(Choice C) Although the tenant was willing to pay the current fair rental value for the property, the landlord was not obligated to lease the property to her.

(Choice D) A periodic tenancy can generally be terminated without cause. However, some courts have held that landlords must show good cause to terminate a periodic tenancy of federally subsidized *residential* housing. But since the landlord's property was a *commercial* building, he does not need to show good cause to gain possession.

Educational objective:

A holdover tenant—ie, one who remains in possession of the premises after his/her lease term expires—can be held to a periodic tenancy if the landlord accepts additional payments of rent. Either party can terminate the periodic tenancy at the end of a period if notice is given before that period starts.

References

Restatement (Second) of Property: Landlord & Tenant § 1.5 (Am. Law Inst. 1977) (periodic tenancy).

Restatement (Second) of Property: Landlord & Tenant § 14.4 (Am. Law Inst. 1977) (holdover tenant).

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