

7/5/73

First Supplement to Memorandum 73-54

Subject: Study 78 - Rights and Duties Upon Termination of a Lease

INTRODUCTION

Mr. Denitz has sent me a copy of the tentative recommendation attached to Memorandum 73-54 on which he has marked various suggested editorial and policy changes. Rather than reproduce and send you another copy of the tentative recommendation showing those changes, I have indicated below the policy questions or significant editorial revisions he suggests. Assuming that the tentative recommendation is approved for distribution for comment after the July meeting, the staff will take the other editorial revisions he suggests into account (together with those suggested by members of the Commission) when we revise the tentative recommendation prior to sending it out for comment.

SUGGESTED REVISIONS

Mr. Denitz suggests the following significant revisions:

Clarification of time when lease terminates. The following revisions suggested by Mr. Denitz appear to the staff to be desirable to clarify the various provisions relating to when the lease terminates:

(1) Revise subdivision (a)(3) of Section 1953.20--page 3 of statute--to read:

(3) The property will be deemed abandoned and the lease will terminate pursuant to Section 1951.2 on the ~~17th~~ 16th day after the effective date of the notice unless the lessee, ~~within 15 days from~~ during the first 15 days after the effective date of the notice, contacts the lessor and manifests his intent not to abandon the property.

(2) Revise the first sentence of subdivision (c) of Section 1953.20--page 4 of statute--to read:

(c) If the notice contains the information required by subdivision (a) and is given in compliance with subdivision (b) and the lessee fails to contact the lessor ~~within 15 days from~~ during the first 15 days after the effective date of the notice and manifest his intent not to abandon the property, the property shall be deemed abandoned within the meaning of Section 1951.2 and the lease shall terminate on the ~~17th~~ 16th day after the effective date of the notice.

(3) Revise subdivision (a)(2) of Section 1953.30--page 7 of statute-- to read:

(2) ~~Fifteen days~~ On the 16th day after the lessee has deposited in the mail a written notice addressed to the lessor at his last known place of business, stating that the lessee has abandoned the property and that the lease is terminated.

Comparable revisions would be made in Section 1963.40(a)(5), (b), and in Section 1963.50(a)(4), (b).

Section 1953.30 (page 7 of statute). Mr. Denitz suggests that the following sentence be added following subdivision (a)(2):

The effective date of a notice mailed to an address not in this state shall be five days after mailing if not sent by airmail.

While this addition would be consistent with the notice given by the landlord to the tenant to remove his property, we do not see the need for the provision. If it is added, subdivision (a)(2) will need to be revised accordingly and will become more complex.

Revision of Comment to Section 1953.30 (page 8 of statute). Mr. Denitz suggests that the first two sentences of the Comment at the top of page 8 of the proposed statute be revised to read:

Because Section 1953.30 is a method of bringing Section 1951.2 into operation, there is an implied requirement under Section 1953.30 that the lessee be in default at the time he gives the notice under the section.

The question is whether the lessee must be in default at the time he gives the notice or whether he can give the notice and thus terminate the lease even though he does not otherwise want to default.

Sections 1963.30 and 1963.50. The staff believes that the following revisions, suggested by Mr. Denitz, should be made:

(1) On page 15 of the draft statute, revise the first sentence of subdivision (b)(1) to read:

(1) The tenant or a person reasonably believed by the landlord to be the owner pays the landlord the reasonable cost of storage and takes possession of the items of personal property.

(2) On page 21 of the draft statute, revise the sentence set out below (about the middle of the page) to read:

After deduction of the costs of storing, advertising, and sale, any balance of the sale price which has not , as to a given item, been claimed by the tenant or a person reasonably believed by the landlord to be its owner of the property shall be paid into the treasury of the county in which the sale took place ~~within~~ during the first 30 days from after the date of sale.

Section 1174 of the Code of Civil Procedure. Mr. Denitz suggests that Section 1174 be revised to read as set out in Exhibit I (attached).

Respectfully submitted,

John H. DeMouilly
Executive Secretary

§ 1174

Code of Civil Procedure § 1174 (amended). Unlawful detainer proceedings

Sec. 3. Section 1174 of the Code of Civil Procedure is amended to read:

1174. (a)

If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for an unlawful detainer after neglect, or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement if the notice required by Section 1161 of the code states the election of the landlord to declare the forfeiture thereof, but if such notice does not so state such election, the lease or agreement shall not be forfeited.

(b)

The jury or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent. If the defendant is found guilty of forcible entry, or forcible or unlawful detainer, and malice is shown, the plaintiff may be awarded either damages and rent found due or punitive damages in an amount which does not exceed three times the amount of damages and rent found due. The trier of fact shall determine whether damages and rent found due or punitive damages shall be awarded, and judgment shall be entered accordingly.

(c)

When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, and the notice required by Section 1161 has not stated the election of the landlord to declare the forfeiture thereof, the court may, and, if the lease or agreement is in writing, is for a term of more than one year, and does not contain a forfeiture clause, shall order that execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or any other party interested in its continuance, may pay into the court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the proceedings, and thereupon the judgment shall be satisfied and the tenant be restored to his estate.

But if payment as here provided be not made within five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

(d) A plaintiff, having obtained a writ of restitution of the premises pursuant to an action for unlawful detainer, shall be entitled to have the premises restored to him by officers charged with the enforcement of such writs. Promptly upon payment of reasonable costs of service, the enforcing officer shall serve or post of copy of the writ in the same manner as upon levy of writ of attachment pursuant to subdivision 1 of Section 542 of this code. In addition, where the copy is posted on the property, another copy of the writ shall thereafter be mailed to the defendant at his business or residence address last known to the plaintiff or his attorney or, if no such address is known, at the premises. The writ of restitution of the premises shall include a statement that ^{ALL ITEMS OF} personal property remaining on the premises at the time of its restitution to the plaintiff will be sold or otherwise disposed of in accordance with Section 1174 ^{AS TO AGIVEN SUCH ITEMS,} of the Code of Civil Procedure unless the defendant or the owner pays the plaintiff the reasonable cost of storage and ^{THEREOF DURING THE FIRST} takes possession ^{AFTER} of the personal property within 15 days ^{AFTER} from the time the premises are restored to the plaintiff. If the tenant does not vacate the premises within five days from the date of service, or, if the copy of the writ is posted, within five days from the date of mailing of the additional notice, the enforcing officer shall remove the tenant from the premises and place the plaintiff in possession thereof. It shall be the duty of the party delivering the writ to the officer for execution to furnish the information required by the officer to comply with this section.

(e) All ^{ITEMS OF} ~~goods, chattels or~~ personal property ~~of the tenant~~ of which the plaintiff is not an owner remaining on the premises at the time of its restitution to the plaintiff shall be stored by the plaintiff in a place of

safekeeping for a period of 30 ¹⁵ days and may be redeemed by the tenant **A PERSON REASONABLY BELIEVED BY THE PLAINTIFF TO BE** or the owner upon payment of reasonable costs incurred by the plaintiff in providing such storage and the judgment rendered in favor of plaintiff, including costs. Plaintiff may, if he so elects, store such goods, chattels or personal property of the tenant on the premises, and the costs of storage in such case shall be the fair rental value of the premises for the term of storage. An inventory shall be made of all goods, chattels or personal property left on the premises prior to its removal and storage or storage on the premises. Such inventory shall either be made by the enforcing officer or shall be verified in writing by him. The enforcing officer shall be entitled to his costs in preparing or verifying such inventory.

In the event the property so held is not removed within 30 days, such property shall be deemed abandoned and may be sold at a public sale by competitive bidding, to

ITEMS OF PERSONAL PROPERTY HAVE

(f) After the ~~property has~~ been held for 15 days as required by subdivision (e), it shall be disposed of as follows:

(1) If the plaintiff reasonably believes an item of **PERSONAL** property to have been lost, it shall be disposed of pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code. If the appropriate police or sheriff's department refuses to accept

AN ITEM OF PERSONAL the property, it shall be deemed not to have been lost.

(2) If the plaintiff reasonably believes that the total resale value of the aggregate of all **ITEMS OF PERSONAL** property not disposed of under paragraph (1) does not exceed \$100, such **ITEMS OF PERSONAL** property may be disposed of in any manner.

(3) **ITEMS OF PERSONAL** Any such property not disposed of under paragraph (1) may be sold at public sale by competitive bidding. The sale shall be held at the place

where the property is stored, after notice of the time and place of such sale has been given at least five days before the date of such sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held. Notice of the public sale may not be given more than five days prior to the expiration of the 30 15 days during which the property is to be held in storage. All money realized from the sale of such personal property shall be used to pay the costs of the plaintiff in storing, advertising, and selling such property and any balance thereof shall be

applied in payment of plaintiff's judgment, including costs. Any remaining AS TO A GIVEN ITEM, THE A PERSON REASONABLY BELIEVED BY balance which has not been claimed by the defendant or owner of the property THE PLAINTIFF TO BE THE OWN

HEREOF shall be returned to the defendant, paid into the treasury of the county in which the sale took place within 30 days from the date of sale.

The owner has one year from the date of payment to the county within which to claim the balance. In case of multiple claims as to the ownership of the balance, or any portion thereof, the decision of the county as to which claimant is entitled thereto is final.

(4) If the plaintiff reasonably believes that a person other than the DEFENDANT AN ITEM OF PERSONAL " " is an owner of the property, notice shall be given such owner and such property shall be disposed of pursuant to Section 1963.40 or 1963.50 of the Civil Code (EXCEPT THAT SUCH "NOTICE" NEED NOT BE GIVEN TO DEFENDANT AS TENANT), SAID "NOTICE"

(g) For the purposes of subdivision (f), "reasonable belief" means that belief a prudent person would have without making any investigation (including any investigation of public records) except that, where the plaintiff has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation

(g) FOR THE PURPOSES OF THIS SECTION 1174, THE TERMS "ITEM OF PERSONAL PROPERTY", "OWNER",

SAID "NOTICE" SHALL BE GIVEN IN THE MANNER PROVIDED IN SECTION 1963.40 OR 1963.50 (AS THE FACTS MAY DICTATE) BUT MAY, AT THE OPTION OF PLAINTIFF, BE MAILED AT ANY TIME ON OR AFTER THE MAKING OF THE WRIT OF RESTITUTION UNDER SUBDIVISION (C) HEREOF, SAID "NOTICE" SHALL BE EFFECTIVE AT THE TIME PROVIDED IN SECTION 1963.60

"PREMISES", AND "REASONABLE BELIEF" SHALL HAVE THE SAME MEANINGS AS ARE SET FORTH IN SECTION 1963.10, AND THE TERMS "PLAINTIFF" AND "DEFENDANT" SHALL, RESPECTIVELY, BE INTERCHANGEABLE WITH THE TERMS "LANDLORD" AND "TENANT" AS USED IN SECTIONS 1963.10^{§ 1174} AND 1963.50 AND 1963.60.

would be reasonable in relation to the probable value of the property involved,
"reasonable belief" includes that belief a prudent person would have if such
an investigation were made.

Comment. Section 1174 is amended to conform generally to the provisions of Civil Code Section 1963.10 et seq. relating to disposition of property abandoned on leased premises. See Civil Code § 1963.10 et seq. and Comments. The provision that permitted the plaintiff to apply the balance of the proceeds of sale to his judgment has been deleted because it was unconstitutional. See Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971); cf. Love v. Keays, 6 Cal.3d 339, 491 P.2d 395, 98 Cal. Rptr. 811 (1971). ~~Where the defendant disputes the plaintiff's estimation of the reasonable costs of storage, he may bring an action against the plaintiff for conversion.~~