

## **Return to Sender – address unknown... an Abandoned Tenancy**

When times get hard the instances of tenants leaving without notice before a tenancy comes to an end increases.

“Doing a runner”, “skipping” “moonlight flitting” “walking” or “gone away” or in the words of the immortal song, “Return to sender... all indicate what in strict legal terms is known as abandonment of a tenancy.

Often the landlord or agent does not know the property is vacant until rent payments stop, and if that is not monitored closely or regular checks carried out on the property, several weeks can go by before anyone is alerted to a vacant let, which in winter could be suffering frost damage, or even squatters.

In addition, landlord insurance policies usually oblige the landlord to inform the insurers if a property is vacant for more than 2 weeks, so insurance cover is easily compromised when the property is abandoned.

When tenants leave like this they often leave possessions behind, even pets in some cases. They may push the keys through the letter box, take them with them or even give them to someone else.

Agents have a professional duty to their landlords to inform them without delay if a tenant abandons, so to protect themselves agents do need to be vigilant when a property is under full management.

When tenants' possessions are left behind, the landlord owes a legal duty of care to the tenant to protect them (Torts (Interference with Goods) Act 1977). This is the case even though the tenant may be in rent arrears and has damaged the landlord's property. But more ominously, for the landlord, leaving possessions indicates that the tenant may return at some point, which means the landlord must take extra care not to breach the provisions of Protection from Eviction Act 1977

It's a criminal offence to unlawfully deprive a residential tenant of his or her occupation of the premises, or attempt to do so. Put simply, a landlord cannot bar a tenant from a property without first obtaining a surrender of the tenancy or gaining consent from the courts – by obtaining a Possession Order. If the landlord or agent enters, takes over and re-lets, a returning tenant can land them in serious trouble.

There is only one 100% safe way to make sure you are not accused of unlawful eviction in these circumstances: obtain a court possession order.

The Thomas Cope case is a salutary warning to all landlords:

<http://news.bbc.co.uk/1/hi/england/kent/7605218.stm>

Without a clear cut ending of the tenancy evidenced by the tenant handing back the keys and vacating in the normal manner or by the landlord accepting an early surrender with

documentary evidence, then the landlord / agent is vulnerable.

Landlords and agents should keep a watch on their properties for signs of abandonment: unopened mail piling up behind the door, bins not emptied, drawn curtains, empty parking spaces etc. Better still it's a good idea to develop a close relationship with neighbours to report problems like this, and some landlords have a weekly cleaner going in.

What if you Strongly Suspect Abandonment?

The first thing you should do is speak to the neighbours - try to establish if they have seen the tenant/s recently or seen evidence of moving out. Get the names of the neighbours and ask if they would be willing to make a statement as to what they have seen should the need arise.

Once you are convinced the tenant has left you should cautiously enter the premises with spare keys. Have a witness: agent, landlord or others and be prepared to find the premises occupied. If that is the case you would need to make your excuses and leave fairly quickly – tenants should understand if you state your concern for their safety.

However, more likely you will find the place abandoned, perhaps cleared out or with some of the larger items left behind. Letters behind the door, rotting food in the fridge and a cold house are all signs you were right.

At this stage you may want to secure the property by changing the locks, turning off utilities supplies and possibly arranging for heating in winter, or draining down the heating system. The latter is often a bigger job than it appears and of course new inhibitor must be installed when it is re-filled.

You should take photographs of the state of the property and take all the meter readings. Better still you may ask your inventory clerk to do a full check-out inventory as independent evidence of the state of the property when abandoned. A careful note should be made of the tenant's possessions, photographs taken and an estimate made of their value.

To satisfy the courts, should your tenant return afterwards, you need to establish that abandonment has occurred "beyond all reasonable doubt" – you need to collate all the evidence you have obtained to date just in case.

You should then go ahead and affix an Abandonment Notice to the door of the property, and also serve at the property a 14 day Housing Act 1988 Section 8 Notice citing the relevant grounds for seeking possession.

The Abandonment Notice should explain to the tenant by name that you as landlord or landlord's agent that you believe the property at the given address has been abandoned, that the keys are available from the agent or landlord at a given address, but failing collection after 14 days the property will be taken back. The notice should also mention that any belongings will be held for a period of 3 months, after which they will be sold and any proceeds used to pay for storage charges, any surplus being due to the tenant.

If the tenant completed a comprehensive Tenancy Application form, which should always be

the case, then the landlord has sufficient information to attempt to trace the tenant or find his whereabouts from next of kin, employers or tracing through national insurance number, copy of photo passport / driver's license, car registration etc.

It should always be born in mind that there can be legitimate reasons why a tenant fails to appear: accidents, delayed abroad, in hospital, in prison etc., so reasonable attempts should be made to ascertain the facts.

Once a Housing Act Shorthold Tenancy is no longer the main residence of the tenant then Council Tax liability falls on the landlord. This the landlord can claim back from the tenant as the tenancy agreement should make clear, but in these circumstances this is unlikely to happen. Utilities supplies will be the responsibility of the tenant up to the point of abandonment. Meter reading should be taken when the when the property is taken over and utilities suppliers should be informed in writing.

Taking over the property

It's a good idea to inform the local authority's rent officer of the situation in writing so that this is recorded officially and independently before actually taking over, once the notices have expired.

To protect themselves, the landlord / agent should consider applying to the court of a formal possession order at the same time. As this may take some time, the procedure can be progressing as the property is being prepared and marketed.

Dispose of any non-valuable items left behind, but be prepared to store any more valuable items. They are unlikely to cover their costs of storage when sold or given to charity, but the tenants interests in them must be protected by law.

Any important looking mail should be returned to sender marked gone away.

An abandonment situation may be the result of family troubles, redundancy, debt or even crime so there are no winners and the situation is costly in time and money for landlord and agents.

Invariably there are rent arrears and possibly damage to the property, so there will probably be a claim against any deposit which has been protected. All the necessary documentary evidence should be compiled to support a claim against the deposit.

If arrears are substantial it may be worthwhile to attempt to trace the tenant and bring a Small Claim Court action.

Tracing is often successful given sufficient details on the tenant, though it can take several weeks or even months for a tenant to establish themselves in a new location and be recorded on traceable data bases, so be patient.