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Landlord and Tenant

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LANDLORD AND TENANT

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We now come to a subject in which there have been many decisions in the last few years.

CALENDAR YEAR TENANCIES

If the contract which existed between the landlord and the tenant prior to its termination was for a specified term, and after the termination the landlord accepts rent, the tenant is entitled to hold the premises for another like term. If it was a contract from month to month, with no specified termination date, the tenant holds the premises until the end of the calendar year;[1] but where premises are rented on a month to month basis, and no termination date is set for the contract, the tenancy is for the calendar year, and where before the end of the calendar year the landlord notifies the tenant that he desires possession and he accepts no further rents, and after the beginning of the next calendar year he gives no assent to the tenant's continued occupancy, the tenancy is at sufferance.[2]

Where premises are rented "by the month" with rent payable on the first of each month in advance, there being no termination date, the law will construe the tenancy to be for the calendar year and not at will. In such a case a notice given on 27 September demanding possession 26 November is not effectual to terminate the tenancy.[3]

CHANGES IN PREMISES BY ORDER OF GOVERNMENT

In *Shippen v. Georgia Better Foods, Inc.*[4] the court said that where in a 20 year contract for possession of premises, there is a clause which states that no relation other than that of landlord and tenant is created and where the municipal authorities require certain repairs and changes made to the premises, the landlord is bound to make the changes and repairs or bear their cost.

DISPOSSESSORY AFFIDAVIT

In *Battle v. Anchor Rome Mills, Inc.*[5] it was said that it is not necessary that an agent making an affidavit for the issuance of a dispossessory warrant be a duly licensed attorney at law.

Where the affidavit alleges that the tenant is holding over and beyond his term and has failed to pay the rent when due, and the counter affidavit

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1. Smith v. Hightower, 80 Ga. App. 293, 55 S.E.2d 872 (1949).
2. Pate v. King, 79 Ga. App. 571, 54 S.E.2d 476 (1949).
3. Hendrix v. Simpson, 81 Ga. App. 53, 57 S.E.2d 693 (1950).
4. 79 Ga. App. 813, 54 S.E.2d 704 (1949).
5. 80 Ga. App. 47, 55 S.E.2d 156 (1949).

does not deny that he is holding over and beyond his term, this is sufficient to authorize the eviction of the tenant.

A plea of tender of rent which fails to show what or how much was tendered when tender was made and refused, or that there was a continuing tender or a present willingness, readiness and ability to pay the rent, is insufficient.

The court, in *Holden v. Royal Mfg. Co., Inc.*,[6] said that a dispossessory warrant for the recovery of premises leased in writing is not a case founded on an unconditional contract in writing, since the action is not based on the lease.

Where the affidavit alleges non-payment of rent, a counter affidavit stating that no provision of the lease has been violated will withstand a general demurrer.

Dispossessory Warrant

Description of the Premises.—The question of description of the premises arises in this type of action just as it does in an ejectment suit. The description "a house and premises situated in Land Lots 66, 67 and 62 of the 2d District of Coweta County, the property of G.T." is too vague and indefinite.[7]

Evidence.—Where, in a dispossessory warrant hearing, there is no evidence as to rental price fixed by OPA or as to fair rental value, a verdict for the defendant is proper.[8]

Injunctions.—A dispossessory warrant will not be enjoined on the ground that the tenant is unable, on account of poverty, to give bond,[9] nor on the ground that the tenant has title to the land and was not a tenant.[10]

Rental Contracts or Leases

An unambiguous written contract for one-half of a building 50 feet wide may not be shown by parol evidence to exclude 12 of the 50 feet.[11] Typed provisions in a lease or contract of rental will prevail over printed matter, if there is a conflict.[12]

A contract granting the right to cut and box pine trees on described land, for turpentine purposes for four years, is not subject to an ad valorem tax.[13]

The reason for these decisions is obvious. Parol should not vary a written contract, special provisions prevail over general ones, and a four year contract is presumably a rental contract, and not realty. Only a five year lease is presumed to be one with an interest in land.

Quiet Enjoyment.—Where a landlord wilfully tears down the porch and steps of the premises, the tenant need not show monetary damage, but can

6. 79 Ga. App. 767, 54 S.E.2d 317 (1949).
7. North v. Tolbert, 80 Ga. App. 110, 55 S.E.2d 661 (1949).
8. Sikes v. Cantrell, 81 Ga. App. 629, 59 S.E.2d 552 (1950).
9. Reardon v. Bland, 206 Ga. 633, 58 S.E.2d 377 (1950).
10. Hall v. Johnston, 206 Ga. 843, 59 S.E.2d 382 (1950).
11. Touchstone v. Friedlander, 81 Ga. App. 489, 59 S.E.2d 281 (1950).
12. Taylor v. Dunaway, 79 Ga. App. 754, 54 S.E.2d 381 (1949).
13. Whitehead v. Kennedy, 206 Ga. 760, 58 S.E.2d 832 (1950).

recover for humiliation and embarrassment alone.[14] If the landlord enters upon the premises for the ostensible purpose of making repairs, but is so negligent that the premises are thereby rendered unfit for tenancy, and the negligence is such as actually deprives and imports an intent to deprive the tenant of his enjoyment of the premises it amounts in law to an eviction.

RENT CONTROL

In order for a tenant to take advantage of federal rent control acts, he must plead that the property is subject to such acts.

The regulations and orders of the administrator are in their nature legislative and administrative and not judicial. The fact findings on which they are based do not constitute estoppels by judgment. An order merely undertaking to find as a fact what the rent had been on a given date is not admissible in evidence.[15]

Foreclosure.—Where all right, title and interest of an owner of land has been divested by a sale made pursuant to a power of sale given by him in a deed to land to secure debt, one claiming possession under him by virtue of a contract to purchase the land, who thereafter remains in possession is a tenant at sufferance of the person who purchased the land at the foreclosure sale.[16]

Subtenants.—A landlord may elect to treat a subtenant as his own tenant even though the lease did not in the first instance give a right to the tenant to sublet.[17]

Parol Evidence.—Where a defendant by written contract rented machinery to the plaintiff, the plaintiff cannot give parol testimony that the defendant agreed in parol to let the plaintiff use the premises where the machinery was located, and that the defendant falsely represented himself as owning the premises.[18]

Duty to Repair.—In *Sixth Street Corp. v. Daniel*[19] the defendant rented an apartment to the plaintiff with an electric refrigerator furnished. The motor got out of repair, whereupon the tenant (plaintiff) notified the landlord's agent who undertook to repair it. When it appeared in good order, the plaintiff used it, and the court held that such use on the plaintiff's part was not negligence so as to bar his recovery for damages caused by the defective condition of the refrigerator.

14. Ivey v. Davis, 81 Ga. App. 598, 59 S.E.2d 256 (1950).
15. Snyder v. Prichard, 80 Ga. App. 344, 56 S.E.2d 158 (1949).
16. Crain v. Daniel, 79 Ga. App. 647, 54 S.E.2d 487 (1949).
17. Estralita, etc. v. Marietta, etc., 80 Ga. App. 196, 55 S.E.2d 822 (1949).
18. Cooper v. Vaughan, 81 Ga. App. 330, 58 S.E.2d 453 (1950).
19. 80 Ga. App. 680, 57 S.E.2d 210 (1950).