



DEATH OF THE LEASE TERM

If you're thinking about terminating a problem resident's lease at the end of its term, think again. You might find yourself in a legal issue.

YOU HAVE A problem resident in unit 105. You have received complaints regarding excessive noise and traffic from their neighbor, so you send a notice of lease violation due to the complaints. When the resident received the notice, she comes into your office to give you a piece of her mind. She claims you are favoring her neighbor by responding to her neighbor's complaint. She denies the noise and traffic. She promises to make your life miserable.

Within the next few days, you receive multiple requests for maintenance issues in her unit. You send maintenance to her unit each time she makes a request. However, most of her requests are without merit. When responding to one of her requests, she tells maintenance that she has distributed a petition to other residents to get you fired and will organize the residents (except for her neighbor) against you.

You review her lease file. She signed a 12-month lease ending July 31, 2017. You think: Great, I can give the resident a 60-day notice of lease termination and terminate her lease effective at its expiration, July 31, 2017. After all, either party can terminate the lease when it expires, right?

Maybe not ...

Contractually speaking, the knife cuts both ways. Either party can give the appropriate notice of termination to terminate the lease at the end of its term. However, there are a number of examples where the concept of the lease term has eroded.

Retaliation

Subchapter H of chapter 92 of the Texas Property Code addresses retaliation issues. Section 92.331(a) provides that an owner may not retaliate against a resident by taking certain actions because the resident:

1. In good faith exercises or attempts to exercise a right or remedy granted to the resident by lease, ordinance, or federal or state statute;
2. Gives an owner a notice to repair or exercises a remedy under chapter 92;
3. Complains to a governmental entity responsible for enforcing building or housing codes, a public utility, or a civic or nonprofit agency, and the resident:
 - a. Claims a building or housing code violation or utility problem; and
 - b. Believes in good faith that the complaint is valid and that the violation or problem occurred; or
4. Establishes, attempts to establish, or participates in a tenant organization.

Pursuant to section 92.331(b), an owner may not, within six months after the date of the resident's action, retaliate against the resident by depriving the resident of the use of the premises or terminating the resident's lease. The statute also prohibits retaliating by filing an eviction proceeding, unless the eviction is based on nonpayment of rent, damage to the property, threatening the personal safety of others or otherwise materially breaching the lease.

The retaliation statute is fairly broad and could be applied in a situation where a landlord terminates a lease or proceeds with an eviction action for something that is not based upon nonpayment of rent or a material breach of the lease.

Discrimination

Federal and state laws prohibit taking action against a resident because of the resident's race, color, religion, national origin, sex, famil-

Rarely would you ever terminate the lease of a good resident. When you terminate the lease at the end of its term, you are usually doing so with a resident who has been a problem. Although you cannot retaliate or discriminate against a resident, if the resident has violated the lease by making bad faith maintenance requests or caused problems for others at the property, the better practice is to identify the real reasons for the termination in your notice of termination. **This would give you a better chance of defending your actions if a resident claims retaliation or discrimination at the eviction proceeding.**

ial status or disability. If you terminate one resident's lease at the end of the term, but give other residents whose leases are expiring a notice of renewal, without another reason, the resident who received a notice of termination could claim that you are discriminating.

HUD's Model Lease for Subsidized Programs and Housing Assistance Payments Contract (for subsidized housing) (applicable to assistance housing):

The HUD Model Lease for Subsidized Programs allows terminations at the end of the term of the lease, but only for "other good cause." The Tenancy Addendum attached to the Housing Assistance Payments Contract provides that "good cause" may include: (i) the resident's failure to accept the owner's offer of a new lease or revision; (ii) the owner's desire to use the unit for personal or family use or for a purpose other than as a residential rental unit; (iii) a business or economic reason (such as sale of the property, renovation of the unit or the owner's desire to rent the unit for a higher rent).

Continued

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Tax Credit Properties

Tax credit properties are subject to the rules of the Texas Department of Housing and Community Affairs. Rule 10.610 of the TDHCA rules provides that owners must provide in any non-renewal or termination notice a specific reason for the termination or non-renewal.

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As you may be aware, the Texas legislature is currently in session. One of the bills that has been introduced would further erode an owner's right to terminate the lease at the end of the lease term. The bill involves the rehabilitation, demolition or change in use of residential property occupied by a resident. The proposal adds a section to the Texas Property Code stating that unless there is a casualty loss, making a unit unusable for residential purposes, an owner may not refuse to renew a resident's lease to allow the owner to rehabilitate, sell or close for demolition or redevelopment, or change the use of the unit unless the owner delivers certain advanced and specified notice. In other words, even if the lease term has expired, the owner cannot terminate the lease unless the owner gives the specified notice.

It appears that the owner's right to terminate a lease when its term expires is, itself, expiring. If you are terminating a lease at the end of the term, be careful! You may run into situations raised by the examples identified above or other circumstances which would restrict, or prohibit, you from exercising this right. As always, keep abreast of any new laws that result from the current legislative session. 