

LEASE VERSUS TENANCY-AT-WILL

(Taken from a portion of a talk by David P. Chamberlain, Esq.)

The question is often asked: “*What is better, a lease or a tenancy-at-will?*” The answer is really a business decision on your part.

In the case of a *tenancy-at-will*, the ability of a tenant to be able to reinstate all the way up to the Writ of Possession at the end of the eviction process, can be a good thing – if you would like to keep the tenant. However, if you have a borderline tenant, such as one who you think might be dealing in drugs, you may not want the tenancy reinstated. If the tenant pays all your costs prior to the end of the eviction process, you have no choice. You *must* reinstate the tenancy.

If you have a *lease*, at the end of the 7th day or 5th day, or whatever you put in the lease, if they do not pay within that time frame, the lease is terminated. You do not have to accept them back if you have not accepted any money. So, there is a big distinction there.

Leases can be written so that tenants who violate lease provisions can be served with a 3-day, 4-day etc. notice. This is a shorter time frame than allowed by statute for a *tenancy-at-will*.

With a *lease*, it is sometimes hard to prove that a tenant has violated a lease provision. Thus, it can be more difficult to evict a problematic tenant.

With a *tenancy-at-will*, you can serve a 30-day no-cause eviction notice. That is a beautiful thing. You do not need a reason to evict. You just give them a 30-day notice and make it expire on a rent day if they are current on their rent. After 30 days, they are out. No questions asked. Judges handle these cases quicker and faster than any other case. If the notice was properly served, the tenant has no defense and loses in court. So, that is a good thing.

Leases allow you to put in specific clauses that define the terms between the parties. You can put into a lease language about renters insurance. You can put in a clause that allows you to evict for the problem of pest infestation caused by the tenant. That is not something covered by the statutes.

Another point in favor of a *tenancy-at-will* is that if the property is being sold and the *owners-to-be* want one or more apartments vacant before they take possession, a 30-day notice to the tenants will take care of it. With a *lease*, the landlord may not be able to get the tenants to move unless he has a clause in the lease, such as the following:

“In the event of a sale of the building by landlord, the landlord reserves the right to terminate the lease and evict the tenant(s) upon “x” number of days of notice being served.”

If you have a lease and it does not have such a clause, you might not be able to get the tenant(s) out prior to the closing.

So, there are plusses and minuses. It all comes down to the choice of the individual landlord.

David P. Chamberlain, Esq., (who only represents landlords), may be contacted at: Ainsworth & Thelin, P.A., 7 Ocean Street, P.O. Box 241, South Portland, Me. 04116-2412 Telephone # (207) 767-4824.