



ILA Legislative Report

EDITOR'S NOTE: The Iowa Legislature is not currently in session. The 2004 session of the Iowa General Assembly will convene January 12, 2004.

Joe will be back in future issues with his reports of the legislative actions on the hill.



Joe Kelly
ILA Lobbyist

The Welcome Mat

The Iowa Landlord Association is pleased to announce the latest members to join ILA.

Members:

Dean & Foster Rentals in Granger
Gema Management in Urbandale
Garry & Judy Engeltjes in Alleman

Associate Members:

We encourage our members to use the knowledge and expertise of our Associate Members to help solve landlording issues and problems.

*From all of us at the
Iowa Landlord
Association,
we wish all of you
the very best Holidays!*

Need to Rent ???
advertise *your* rental at:
www.Vacancy4Rent.com

DIALOGUE WITH DIRECTORS



Did you miss our Fall Educational Seminar? Did you read our newsletter for October and November about the seminar? Rumor has it that some of you don't read it at all. We find that hard to believe.

Have you checked out our website lately at: www.iowalandlord.org? It improves every month.

Have you talked to Dave, Dennis or Connie lately?

If you did miss the seminar last month, here is who you missed: Mark Hanson, Joe Kelly, Dave Sollenbarger, Debbie Haukenberry, Jerry Molique, Deane Dolben and Don McNulty. Deane is the current president of the National Apartment Association. Jerry is the past president of NAA and is currently a regional VP, Debbie is from Kansas City and is the association executive with the Apartment Association of Kansas City. Want to know more about the NAA. Go to: www.naa.org. It is located in Alexandria, Virginia. But it is coming to Iowa next year. So be ready. The opportunities of belonging to the NAA are endless. Just check out their website.

We are already in the process of planning for our spring seminar in May of 2004. You won't want to miss this one.

Did you vote in the November 4th election? Look what happened in the Des Moines mayoral election. The front runner lost to the one they beat in the primary election by a substantial margin. Your one vote does make a difference. Both the candidates Mayor-Elect Frank Cownie and Councilman-Elect Bob McHahaffey, which ILA-PAC endorsed – won their respective seats! We will continue to make a

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This Month's December 2003 NewsBrief

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- ILA Legislative Report
- The Welcome Mat
- Photos from Fall Seminar

- Ask An Attorney
- Advertise with ILA

- Directors: • Dennis McDonald • Dave Sollenbarger
- WebSite: www.iowalandlord.org
 - Email: ilaservices@iowalandlord.org

Ask an Attorney: Legal Q & A



by **Mark V. Hanson**, Attorney at Law,
Whitfield & Eddy, P.L.C.
hanson@whitfielddlaw.com

Q: If a court date is set up for the FED and the tenant moves out prior to the court date, should the landlord follow through and obtain a judgement for eviction?

A: This same question arises when the tenant has apparently moved but left personal property behind and you do not know if they have abandoned, moved, or will show back up later and ask you where their personal property is. In this instance do you file the FED (short for Forcible Entry and Detainer - legal proceedings for evicting the tenant) in the first place? Iowa Code Section 562A.33 provides a landlord may not recover possession except as permitted in the Iowa Landlord Tenant Law, except in the case of abandonment or surrender.

I will separate the discussion into two parts - first where the landlord merely wants possession of the premises and second where the landlord wants to collect rent for the balance of the lease term.

Possession: In this instance all you are concerned about is regaining possession. What constitutes abandonment? Abandonment is vacating the premises with intent to relinquish rights. It is non use with intent to abandon. What acts would show abandonment? Giving specific notice to the landlord, surrendering the keys, and ceasing to exercise dominion over the premises are examples. But, often the tenants do not knock on your door at 1:00 am to hand over the keys (with all your light bulbs in their back seat.) Often the tenants vacate and leave personal property behind. Is the property in the unit of such value that you might think they would return to pick it up? Do they intend to retain possession for some length of time. These are judgment calls. There is no hard and fast answer.

I approach this matter from four considerations. First I like to close any door behind me, so I do not have to repeat some action I have already completed. So, if you have filed an FED, served it, and have a court date, I would complete the FED. You might agree with the tenant that the tenant is giving you possession and the keys, and you are going to dismiss or merely not show up at the FED. That would close the door for me.

Second, what is the landlord's comfort level that the tenant has actually abandoned? What is left in the unit? How much peace of mind does the landlord want to purchase by way of the expense of starting or merely completing the FED? That is a judgment call for the landlord. If there is a question that the stuff left behind might constitute valuable property of the tenant, if you complete the FED you have a right to set it out on the curb, and later have it hauled to the landfill (after neighbors sort through and take any good stuff.)

Third, does the landlord want the FED judgment on the tenant's record? Some landlords want the landlord community to

know about particular tenants.

Fourth, what are you going to do with the left behind personal property if you do not do an FED? This is a judgment call. Is it trash? Is it clothes. Is it beat up furniture, stereo, TV? If you move the property to storage, you are assuming to safe guard it. That exposes you to later claim by the tenant against you for the tenant's opinion of the value of the property. What ever you do, document what you do, take pictures, itemize.

Rent: There is a distinction between abandonment (tenant vacates with intent to no longer occupy the premises), surrender the premises or possession (tenant and landlord mutually agree the tenant is yielding occupancy), and surrender the term or estate (tenant and landlord mutually agree the lease is terminated and extinct). If the landlord by actual consent, by operation of law or implied action is found to have agreed to surrender the term or estate, the lease is extinguished and the balance of the rent for the unexpired term is lost. So, if the tenant offers you possession, what ever you do, if you intent to collect any rent for the balance of the term, state or give notice to the tenant you intend to retain your right to collect the balance of the rent due under the lease.

Iowa Code Section 562A.29 provides if the tenant abandons the unit, the landlord shall make reasonable efforts to rent it. The lease is terminated (and thus the landlord no longer has right to collect further rent under it) if the landlord re-rents it before the unexpired term runs, or if the landlord fails to use reasonable effort to rent the unit, or if the landlord accepts abandonment as a surrender. This surrender is the surrender of the term or estate.

So the caution to the landlord is if you want to go after the tenant for the balance of the term's rent, be careful to not do anything that would cause you to lose your right to claim the balance of the rent due. Make effort to rent and document your efforts. Tell your vacating tenant you are not waiving your right to the balance of the rent due for the term of the lease. Do not accept surrender of possession as surrender of the term or estate.

Editors Note: If you have legal questions you would like covered in this article, please forward them to: dennis@iowalandlord.org. Opinions and advice contained should be individually considered, and if you have specific questions concerning your operation or legal responsibility you should seek qualified legal assistance of an attorney of your choice.

"The determination of the need for legal services and the choice of a lawyer are extremely important decisions and should not be based solely upon advertisements or self-proclaimed expertise. This disclosure is required by the rule of the Supreme Court of Iowa."

Need to Rent ???
advertise your rental at:
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The ILA Fall Seminar



The 2003 ILA Fall Seminar - National, Regional, and local speakers - talking about topics and issues of interest to you. Next month - more photos!



Directors... – Continued from Page 1 ...

difference in future elections, whether they be local or at the state level. We will support candidates who support our cause at the local level and candidates at the state level who are attempting to change our antiquated property tax law to make it more equitable to apartment owners. We are also still pursuing the best way to get those inspection fees reduced.

Well, the holidays are fast approaching and another year is coming to a close. We, who work for you through the ILA, hope that 2003 has been a prosperous and safe year, and we hope that 2004 will be the same. From the staff at the ILA, have a safe and enjoyable holiday season!

Would you like to list your property on the Iowa Landlord Association Apartment Rental Search but you're not on the Internet?



**Iowa Landlord Association
Apartment Search Service
Listing Form**

Make copies of this form, fill out the form and FAX to: 515-255-0675

You can mail or fax in your listing directly to our office if this would be easier for you.

To list your property, please fill out this form and send a picture of your property to our office.

Have you a rental property you wish to sell? Advertise it on the web site! Call us for details.

Interested in banner ads on our website?

ILA Rental Property Search Listing Rates

- Listing Prices = Members - \$50/mo., Non-Members - \$100/mo.
- Pictures/Logo inclusion = \$10/submission
- Picture/Logo image preparation (if needed) = \$35/hr.
- Photography Services = \$50 trip fee; \$35/hr after 1 hour; Materials at cost; Service available in the Des Moines metro and Polk County surrounding areas; Services are on a scheduled basis; Contact information@iowalandlord.org for arrangements.

Your Company: _____
 Your Name: _____
 Your Company Address _____
 Your Phone number for contact _____
 Property Address: _____
 Property City, Zip: _____

Monthly Rent Price: \$ _____ / Month
Number of Bedrooms: Studio/Efficiency 1 2 3 4+

Type of Housing: Condos, Townhomes, or Duplexes
 Unfurnished Apartments Furnished Apartments
 Single Family Dwelling Short Term Rentals Senior Community

Utility Arrangements: None Supplied Some Paid All Paid

Accommodations and General Amenities – Please check the items associated with this property:

Air Conditioning:	<input type="checkbox"/>	Dishwasher:	<input type="checkbox"/>	Wheelchair Accessible: ..	<input type="checkbox"/>
Microwave:	<input type="checkbox"/>	Stove:	<input type="checkbox"/>	Trash Compactor:	<input type="checkbox"/>
Balcony / Patio:	<input type="checkbox"/>	Refrigerator:	<input type="checkbox"/>	Garbage Disposal:	<input type="checkbox"/>
Dining Room:	<input type="checkbox"/>	Fireplace:	<input type="checkbox"/>	Pet Friendly:	<input type="checkbox"/>
Computer High				Laundry Type:	
Speed Broadband				<input type="checkbox"/> Washer / Dryer	
Internet Accessibility: ..	<input type="checkbox"/>	Cable Ready: ...	<input type="checkbox"/>	<input type="checkbox"/> Washer / Dryer Connections	
		Garage:	<input type="checkbox"/>	<input type="checkbox"/> Laundry Facility	

Community Accommodations and Amenities

Club House:	<input type="checkbox"/>	Storage Facilities:	<input type="checkbox"/>	Gated Access:	<input type="checkbox"/>
Public Transportation: ..	<input type="checkbox"/>	Tennis Courts:	<input type="checkbox"/>	Playground:	<input type="checkbox"/>
Fitness Center:	<input type="checkbox"/>	Swimming Pool: ..	<input type="checkbox"/>	Whirlpool / Spa:	<input type="checkbox"/>

Run Dates of Your Listing

Date Begin: _____ Date End: _____

Your Email Address:

Additional Information About This Rental:

**** Don't Have A F.A.X. - - Just copy and mail your form to us. ****



(HINT! For the cost of an ILA membership - Non-members can purchase their membership, save money and experience ALL the benefits of ILA membership!)

Need to Rent ???
 advertise your rental at:
www.vacancy4rent.com