

## **One Man's Trash is Another Man's Headache**

Following return of possession of a leased premise—whether involuntary by judicial order, voluntary through surrender or via sudden and abrupt departure—the landlord's responsibility to a renter does not end with a change in the legal possessor of the residence. After changing the locks, management must still deal with possessions left behind by the resident. Only one thing is absolutely certain at this point: simply throwing everything away without a plan is folly, both legally and economically.

### **'NEGLECTED' PERSONAL PROPERTY**

The Arizona Residential Landlord and Tenant Act (ARLTA) defines the procedures for handling “neglected” personal property. The base procedures are the same regardless of the manner in which the renter returned possession to the landlord:

*The landlord shall hold the tenant's personal property for a period of ten days after the landlord's declaration of abandonment. The landlord shall use reasonable care in holding the tenant's personal property. If the landlord holds the property for this period and the tenant makes no reasonable effort to recover it, the landlord may sell the property, retain the proceeds and apply them toward the tenant's outstanding rent or other costs which are covered in the lease agreement or otherwise provided for in title 33, chapter 10 or title 12, chapter 8 and have been incurred by the landlord due to the tenant's abandonment. Any excess proceeds shall be mailed to the tenant at the tenant's last known address. A tenant does not have any right of access to that property until the actual removal and storage costs have been paid in full, except that the tenant may obtain clothing and the tools, apparatus and books of a trade or profession and any identification or financial documents, including all those related to the tenant's immigration status, employment status, public assistance or medical care. If provided by a written rental agreement, the landlord may destroy or otherwise dispose of some or all of the property if the landlord reasonably determines that the value of the property is so low that the cost of moving, storage and conducting a public sale exceeds the amount that would be realized from the sale.*

There are two provisions of ARLTA that management should be familiar with in these situations: A.R.S. § 33-1370(E), which is the procedure for abandonment, but for post-eviction restoration of possession, the process is identical except that the period is extended to 21 days; and A.R.S. § 33-1368(F), which, in all other respects, is the same process.

To explain the procedures better, it is necessary to break the statute into manageable chunks. Let's start with the following provision:

*The landlord shall hold the tenant's personal property for a period of ten days after the landlord's declaration of abandonment. The landlord shall use reasonable care in holding the tenant's personal property.*

The first sentence sets forth the holding deadline: 10 days for abandonment and 21 days for move-out. The term ‘voluntary surrender’ is vague, but a good rule-of-thumb is to consider it 10 days if the resident fully and voluntarily moved out but 21 days if the resident was under a termination notice at time of surrender.

The second sentence requires that management take reasonable care with the personal property. Throwing it all out is not permissible at this stage, although disposal options arise later.

Let’s take a look at another provision:

*If the landlord holds the property for this period and the tenant makes no reasonable effort to recover it, the landlord may sell the property, retain the proceeds and apply them toward the tenant’s outstanding rent or other costs which are covered in the lease agreement or otherwise provided for in title 33, chapter 10 or title 12, chapter 8 and have been incurred by the landlord due to the tenant’s abandonment. Any excess proceeds shall be mailed to the tenant at the tenant’s last known address.*

This is where the process begins. Management may sell the personal property at public sale to recoup its costs for storage of the items. The requirement for sale seeks to obtain the maximum value on the possessions so that the landlord is able to retire at least part of the debts the resident owes to it. Management must refund any moneys remaining after the sale to the resident.

Neither of these two sentences outlines the procedure for disposal, but as you will see later, the process must be by “public sale.” After that sale, management must hold onto its records of the public sale for a period of 12 months and hold the excess value of the sale, after deducting storage and all other charges, for the “benefit of the tenant” if the proceeds check it mailed in accordance with the fourth sentence remains unclaimed.

## **INVENTORY**

You must inventory the items in the residence, as required in ARLTA:

*A tenant does not have any right of access to that property until the actual removal and storage costs have been paid in full, except that the tenant may obtain clothing and the tools, apparatus and books of a trade or profession and any identification or financial documents, including all those related to the tenant’s immigration status, employment status, public assistance or medical care.*

The fifth sentence of the provision enshrines management’s right for control over the residence. The statute does not require a landlord to permit at-will access to the premises except for the removal of certain limited items. It is recommended that landlords grant access to the premises for retrieval of any medication to the resident, even though the only statutory reference is to medical care documentation. We recommend that you grant a one-time period for removal, to reduce your expenses and to encourage the individual to remove his or her personal property.

Disposal of property is also included in the statute:

*If provided by a written rental agreement, the landlord may destroy or otherwise dispose of some or all of the property if the landlord reasonably determines that the value of the property is so low that the cost of moving, storage and conducting a public sale exceeds the amount that would be realized from the sale.*

The last sentence commands a landlord to utilize a public sale for the disposal of the personal property if the resident fails to reclaim it. The exception to this policy is for occasions where there is little to no value to recoup. Please be aware that we consider “so low” as no greater than 10 percent of the debt. Additionally, when the value of the items is in that gray area, disposal via charitable donation is generally acceptable.

## **STORAGE**

A different section of this statute defines storage. ARLTA permits you to recover costs of the storage location as well as any labor costs incurred to move the items there.

*After the landlord has retaken possession of the dwelling unit, the landlord may store the tenant's personal possessions in the unoccupied dwelling unit that was abandoned by the tenant, in any other available unit or any storage space owned by the landlord or off the premises if a dwelling unit or storage space is not available. The landlord shall notify the tenant of the location of the personal property in the same manner prescribed in subsection A of this section.*

A.R.S. § 33-1370(D) requires management to promptly notify the resident of the location, as it has no lien on the personal property (see A.R.S. § 33-1372), and the public sale may take place only after compliance with this section has been met.

Additionally, you cannot hold the property hostage for payment of any debts owed to you, beyond the cost of storage.

*If the tenant notifies the landlord in writing on or before the date the landlord sells or otherwise disposes of the personal property that the tenant intends to remove the personal property from the dwelling unit or the place of safekeeping, the tenant has five days to reclaim the personal property. To reclaim the personal property the tenant must only pay the landlord for the cost of removal and storage for the period the tenant's personal property remained in the landlord's safekeeping.*

Lastly, statute A.R.S. § 33-1370(G) needs no further definition, as the prohibition is absolute.

## **PUBLIC SALE**

The last condition to completing the disposal of the personal property is to conduct a public sale. The standard provisions for such an event are three-fold: to advertise, to sell, and to record.

For advertising, public sales must be advertised in a publication. There is no requirement on which publication you must use, though the internet (e.g., Craig's List) does not satisfy this duty at this time. Advertisements must be run twice before the sale, and a day-of-sale advertisement is most likely insufficient. Please note that while the two advertisements requirement is a minimum standard, it is also the accepted norm.

The sale itself may be conducted in any manner you choose. You may sell the items in lots, by individual item, or at auction; there is no requirement other than that the process be open.

Finally, you must also keep records of the transactions. As I mentioned before, you must keep your records for no fewer than twelve months after the date of the sale. Keep the inventory list and the sales log(s) together in your tenancy file; since you must keep that file for at least twelve months after the conclusion of the tenancy, these two requirements dovetail together nicely.

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