

## Chapter 10



### THE TENANT'S PROPERTY

There are two situations where a landlord might try to hold a tenant's personal property, and these situations raise both practical and legal problems for the tenant. The first situation is where the landlord claims a *landlord's lien* on the tenant's property as security for past due rent. The second situation is where the landlord believes the tenant has abandoned the rental unit and left personal property behind. This section of the guide will discuss these two situations.

#### A. The landlord's lien

At one time, landlords were able to hold property as a way of either punishing a tenant or to extort disputed rent. In 1995, the legislature abolished the lien on tenant property for unpaid rent. Now, the landlord's lien is illegal (NMSA § 47-8-36.1(A)). A landlord may seize a tenant's property only by an order issued by a court (NMSA § 47-8-36(A)). (However, the landlord in a mobile home park can assert a lien and hold the tenant's mobile home—but not personal property—under certain conditions (NMSA § 47-10-9(E)). See Chapter 12 on mobile homes.)

Most reputable landlords never used the landlord's lien even when it was legal, but the type of landlord who wants to seize a tenant's clothes, personal effects, kitchen utensils, and bedding might still try to do it. If a landlord is holding the tenant's property, the tenant should call the police or seek legal advice. The landlord has stolen the tenant's property. The landlord has committed *conversion*, and that may entitle the tenant to damages and even a civil penalty in court.

#### B. Abandoned property

It is very important that the tenant remove all personal property so that it cannot be sold or thrown away. Still, sometimes, a tenant will move out and leave property behind. In other cases, the tenant may have actually abandoned the rental unit, leaving personal property in it. In still other situations, a tenant may be lawfully evicted and not be able to remove all his or her personal property when the sheriff serves the eviction order. The law provides several options for the landlord and the tenant in these situations.

##### 1. The tenant abandons the rental unit

If a tenant fails to give a landlord notice of an extended absence or is gone for seven or more days while behind in rent without telling the landlord, the landlord may consider the rental unit abandoned (NMSA § 47-8-3 and NMSA § 47-8-3(A)). In that situation, the landlord may enter the rental unit and put the tenant's property in storage (NMSA § 47-8-34.1(A)(1) and NMSA § 47-8-34(B)). The landlord must notify the tenant that the property is being stored (NMSA § 47-8-34.1(A)(2)) by mailing a notice to the tenant's last known address, or the best address the landlord has from the tenant (for example, the tenant's employer's address or some other address provided to the landlord in case of emergencies) (NMSA § 47-8-34.1(A)(3)). The notice will say that the landlord is storing the property and intends to dispose of it in thirty days unless the tenant claims it. The landlord must make arrangements for the tenant to get the property within that time (NMSA § 47-8-34.1(A)(5)), but the

tenant may be liable for the cost of storage (NMSA § 47-8-34.1(G)).

## 2. The tenant moves out because the lease has ended

When a tenant has moved out, the landlord must hold all property left behind for at least fourteen days and give the tenant the chance to claim it (NMSA § 47-8-34.1(B)). In this situation, the landlord is not required to give any notice, so the tenant should check with the landlord no later than ten days after moving out to make sure that there is no property being stored. If there is, the tenant should claim the property, but the tenant may still have to pay for any storage charges (NMSA § 47-8-34.1(G)).

## 3. The tenant has been evicted

Once a tenant has been evicted by a court action, the landlord must hold any property left behind for only three days after the date the tenant is forced to move under the eviction order (NMSA § 47-8-34.1(C)). The three days start on the day the sheriff changes the locks on the door—*not* the day the landlord and tenant went to court. During those three days, the landlord must give the tenant reasonable opportunities to come to the property and move personal belongings.

If the tenant and the landlord can agree on a longer period to hold the property, the longer period will apply. Any such agreement should be in writing and signed by the landlord. After the three days, the landlord does not have to store the property (NMSA § 47-8-34.1(C)).

## 4. Disposition of the property

A landlord may not charge the tenant for anything other than reasonable costs of moving and storing the property. The landlord may not hold the property for security on a debt or judgment without getting a formal execution in court (NMSA § 47-8-34.1(H)). However, if the landlord has stored the property and allowed the tenant the required amount of time to claim it, the landlord may dispose of the property.

If the property is left behind after an eviction, the landlord can do anything with it he or she wants, so long as the tenant had three days after the eviction to claim the property (NMSA § 47-8-34.1(C)). In all other cases, the landlord's duties in disposing of the property depend on the value it has.

After the time for the tenant to claim the property has run, the landlord may dispose of the property. If the property is worth less than \$100, the landlord may keep it, or sell it and keep the proceeds (NMSA § 47-8-34.1(D)). If it is worth more than \$100, the landlord may sell it, but the tenant is entitled to any amount over the storage and sale costs (NMSA § 47-8-34.1(E)(1)). If the property is worth more than \$100, and the landlord wants to keep it, the landlord must determine its fair market value and pay the tenant any amount over the cost of storing the property (NMSA § 47-8-34.1(E)(2)).

