

Insights

When a Commercial Tenant Disappears: A Landlord's Guide to Handling Unauthorized Move-Outs in Florida

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Imagine arriving at your commercial property to discover that your tenant has shut down its business, cleared out the space, and left without a word. No notice, no forwarding address, and possibly no final rent payment. In commercial leasing, this is known as a "midnight run," and it can leave landlords in a difficult and legally sensitive position.

While the instinct may be to simply change the locks and move on, Florida law imposes specific requirements that landlords must follow before they can legally retake possession and re-lease the space. Failing to follow these steps can expose a landlord to liability for what is known as a "self-help" eviction, even when the tenant has clearly abandoned the property.

Understanding the Three Key Scenarios

When a tenant abandons a commercial space, the landlord's legal options depend on two critical factors: (1) whether the tenant returned the keys to the premises and (2) whether the tenant is behind on rent. These two factors create three distinct legal pathways.

Scenario 1: The Tenant Returned the Keys

This is the simplest situation. When a tenant voluntarily returns the keys, that act is generally treated under Florida law as a "surrender" of the premises. In practical terms, the landlord is considered to have legal possession as soon as the keys are returned. No waiting period or court proceeding is required.

Scenario 2: No Keys Returned and the Tenant Is Behind on Rent

When a tenant has left without returning keys and has also stopped paying rent, Florida's abandonment statutes, found in Chapter 83 of the Florida Statutes, may apply.

Under these laws, a landlord can reclaim possession without filing a formal eviction lawsuit if two conditions are met: (1) the tenant has been absent for at least 30 consecutive days and (2) at least 10 days have passed since the landlord properly served the statutory three days' notice requiring payment of rent or possession of the premises under Section 83.20(2) of the Florida Statutes. The combination of physical absence and nonpayment of rent creates a legal presumption that the tenant has abandoned the property.

Scenario 3: No Keys Returned and Rent Is Current

This is the most complex and potentially risky scenario. When a tenant has abandoned the premises but is still current on rent, the abandonment statutes do not apply because nonpayment of rent is a required element. Without that statutory shortcut, the landlord cannot simply change the locks or take possession. Doing so could constitute an illegal self-help eviction, exposing the landlord to significant liability.

Instead, the landlord should consult legal counsel and pursue a formal eviction lawsuit, typically based on the tenant's breach of a continuous operation requirement in the lease. Only after a court grants possession can the landlord legally re-key and re-lease the space.

The General Process for Handling a Midnight Run

Every situation is unique and should be evaluated with the help of an attorney, but landlords should generally take the following steps.

Step 1: Document the Discovery

As soon as you discover that the tenant has permanently closed and vacated, document the date of discovery and the condition of the premises. Determine whether the tenant returned the keys. Thorough documentation from the outset will be critical if the matter later becomes a legal dispute.

Step 2: Send the Appropriate Legal Notice

Florida law requires landlords to provide specific types of written notice depending on the circumstances. In all cases, notices should be sent pursuant to the notice requirements set forth in the lease. If a notice requires hand delivery to the premises, take photographs of the delivery, including the front of the building and any identifying information.

Keep a careful record of all mailings and delivery receipts. If any letters are returned as unclaimed or refused, do not discard them. Instead, save the unopened letters and envelopes as part of your file. These records serve as important evidence that you followed the proper legal procedures.

Step 3: Know the Rules on Pre-Possession Entry

Before the landlord has obtained legal possession, entering the premises is generally not permitted. However, in an emergency, such as when the premises are left unlocked or there is a running appliance, decaying food, or a fire hazard, the landlord may be allowed to enter to address the situation. Many commercial leases contain provisions that allow the landlord to act in emergencies without prior notice, but it is important to review the specific lease language before taking action.

Step 4: Obtain Legal Possession

After determining which scenario applies (see Three Key Scenarios above) and completing any required notices or proceedings, the landlord will have legal possession of the space.

Step 5: Re-Key the Premises

Re-keying should only occur after the landlord has obtained legal possession. Changing the locks prematurely, before completing the proper legal steps, can create significant legal exposure for the landlord.

Step 6: Address Any Abandoned Personal Property

After taking legal possession and re-keying the premises, the landlord should determine whether any personal property remains in the space. Chapter 715 of the Florida Statutes sets forth specific procedures for handling abandoned property, and the required steps vary depending on the estimated value of the items left behind. It is advisable to engage legal counsel to conduct a lien search and prepare the appropriate notices.

Step 7: Complete the Vacate Process

Finally, the landlord should work with their property management and legal teams to determine the next steps. Common considerations include whether to formally terminate the lease, pursue collection of any outstanding balance, or seek payment of future rental obligations until the space is re-leased.

Key Takeaways for Commercial Landlords

1. **Do not take shortcuts.** Even when a tenant has clearly left, changing the locks or entering the premises without following the proper legal steps can expose you to liability.
2. **Document everything.** From the moment you discover the vacancy, keep detailed records of all observations, communications, and notices sent.
3. **Know which legal pathway applies.** The steps you need to follow depend on whether the tenant returned the keys and whether rent is current. Getting this wrong can delay the process or create legal risk.
4. **Consult with legal counsel early.** Particularly in situations where the tenant has not returned keys and rent is current, an eviction lawsuit may be required, and early involvement of an attorney is essential.
5. **Follow the rules on abandoned property.** Florida law requires specific procedures for handling personal property left behind by a tenant. Disposing of property without following these steps can result in additional liability.

Conclusion

A midnight run can be frustrating for any commercial landlord, but it is important to resist the urge to act hastily. Following the proper procedures and working with experienced legal counsel can help landlords protect their rights, minimize their exposure, and get the space back on the market as quickly as possible.

If you have questions about handling a tenant abandonment or other commercial leasing issues, please contact Michael Piccolo (michael.piccolo@lowndes-law.com) and Savannah Horton (savannah.horton@lowndes-law.com).