

RESOURCES

Abandoned Commercial Tenant & Abandoned Personal Property: What is a Commercial Landlord to Do with the Personal Property?

In the event a commercial tenant abandons the premises (absent a writ of execution) and in doing so leaves personal property on the premises, what options, if any, does a landlord have with regard to the abandoned personal property when the tenancy was created pursuant to an oral lease?

Under an oral lease, when a commercial tenant voluntarily abandons the premises and leaves personal property on the premises, the landlord's ability to either dispose or sell the personal property appears to hinge on the value of the personal property. For example, if the landlord wishes to donate the abandoned personal property and the value of the abandoned personal property is \$500 or less, then NCGS Section 42-25.9(d) provides that the landlord can donate the personal property to a non-profit organization that regularly provides free or at a nominal price clothing and household furnishings to people in need as long as (i) the organization agrees to (a) store the personal property for thirty (30) days and (b) release the personal property to the commercial tenant at no charge if the commercial tenant so requests, (ii) the landlord posts a notice at the abandoned premises containing the name and address of the organization that is holding the personal property, (iii) the landlord posts the same notice for thirty (30) days at the place where the landlord receives the rent, and (iv) the landlord sends the same notice by first-class mail to the last known address of the commercial tenant.

On the other hand, if (i) the landlord wishes to sell the personal property, (ii) the landlord has a lawful claim for damages against the commercial tenant, (iii) the commercial tenant has been gone from the premises for twenty-one (21) or more days after the paid rental period has expired, and (iv) the value of the personal property is \$100 or more, then pursuant to NCGS Section 44A-2(e) the landlord has a lien on the personal property and can sell the personal property in order to enforce such lien as long as at least twenty (20) days prior to the sale the landlord (a) sends a notice of the sale to the commercial tenant at his last address, (b) posts a copy of the notice of sale at the courthouse, and (c) publishes the notice of sale in a local newspaper once a week for two consecutive weeks prior to the sale.

However, what are the landlord's options if the personal property is over \$500 and the landlord wishes to throw away the personal property? Similarly, can the landlord sell the personal property pursuant a private sale without having to comply with the notice requirements of NCGS Section 44A-2(e)? Unfortunately, the North Carolina general statutes do not address the above-described scenarios in the context of a commercial tenant that voluntarily abandons the premises. Yet, the statutes do address the answers to these questions when the commercial tenant has been removed from the premises pursuant to a *writ of execution* by the sheriff. See NCGS Section 42-25.9(g).

In light of the failure of the statutes to set forth rules regarding the disposal or sale of personal property in the above-described scenarios, it seems unreasonable that a landlord would be forced to simply keep the abandoned personal property at the premises in the event the value of the personal property is over \$500 rather than give away or dispose of the personal property or sell the personal property pursuant to a private sale. Consequently, there likely exists a practical argument that NCGS Section 42-25.9(g) is an available option that provides a landlord with the ability to (i) throw away, (ii) dispose of, or (iii) sell the abandoned personal property when the commercial tenant voluntarily abandons the premises as long as the landlord satisfies the requirements of this statute. For example, NCGS Section 42-25.9(g) states that ten (10) days after being placed in lawful

possession of the premises by a writ of execution, the landlord may (i) throw away or dispose of the personal property immediately or (ii) sell the abandoned personal property provided (a) the landlord provides the commercial tenant with written notice of the private sale at least seven (7) days prior to the sale and (b) the commercial tenant may at any time prior to the sale repossess the personal property as long as the commercial tenant makes a request for the return of the personal property. Based on the foregoing, in addition the remedies set forth in (i) 42-25.9(d) and (ii) NCGS Section 44A-2(e), a landlord may also look to the remedies set forth in NCGS Section 42-25.9(g) with regard to the disposal or sale of the abandoned personal property.

Carruthers & Roth, P.A.
(336) 379-8651
235 North Edgeworth Street
P.O. Box 540 (27402)
Greensboro, NC 27401