

## Chapter 91

### Landlord and Tenant; Unit Ownership

#### 91.010

##### NOTES OF DECISIONS

A vendor of real property recognizes his purchaser as a tenant when he interposes a counterclaim for rent in the purchaser's action for rescission. *Woodard v. Willamette Val. Irr. Land Co.*, (1918) 89 Or 10, 173 P 262.

A vendee in possession under a contract to purchase is not a tenant within the meaning of the forcible entry and detainer statutes. *Schroeder v. Woody*, (1941) 166 Or 93, 109 P2d 597.

#### 91.020

##### NOTES OF DECISIONS

The nature of a tenancy created by lease is determined by the terms of the lease, and not by the purposes for which the demise was made. *Francis Bros. v. Schallberger*, (1931) 137 Or 529, 3 P2d 530, 83 ALR 108.

**FURTHER CITATIONS:** *Gray v. Gray*, (1955) 205 Or 116, 286 P2d 138; *Smith Tug & Barge Co. v. Columbia-Pacific Towing Corp.*, (1968) 250 Or 612, 443 P2d 205.

**ATTY. GEN. OPINIONS:** Inheritance tax application to tenancy by the entirety, 1954-56, p 143.

#### 91.040

**CASE CITATIONS:** *Lilley v. Gifford Phillips Wood Prod., Inc.*, (1957) 211 Or 439, 305 P2d 390, 313 P2d 441, 316 P2d 506.

#### 91.050

##### NOTES OF DECISIONS

An oral agreement to lease does not create a tenancy unless the tenant obtains possession of the premises with the consent of the landlord. *Neppach v. Jordan*, (1887) 15 Or 308, 14 P 353.

A tenancy at will is created when land is demised "until the landlord sells the realty," the landlord having waived his right to terminate by mere notice. *Lum Sing v. Gribler*, (1924) 109 Or 598, 221 P 1060.

An estate for years does not become a tenancy at will when the tenant fails to pay rent and becomes subject to ejection by the landlord. *Francis Bros. v. Schallberger*, (1931) 137 Or 529, 3 P2d 530, 83 ALR 108.

**FURTHER CITATIONS:** *Rosenblat v. Perkins*, (1889) 18 Or 156, 22 P 598, 6 LRA 257; *Hislop v. Moldenhauer*, (1892) 23 Or 119, 31 P 252; *Forsythe v. Pogue*, (1894) 25 Or 481, 36 P 571; *Wolfer v. Hurst*, (1905) 47 Or 156, 80 P 419, 82 P 20, 8 Ann Cas 725; *Grandy v. Robinson*, (1947) 180 Or 315, 175 P2d 463; *Gray v. Gray*, (1955) 205 Or 116, 286 P2d 138.

**LAW REVIEW CITATIONS:** 25 OLR 204.

#### 91.060

##### NOTES OF DECISIONS

A tenant holding over after the expiration of a lease for years was considered a tenant from year to year. *Rosenblat v. Perkins*, (1889) 18 Or 156, 22 P 598, 6 LRA 257.

**FURTHER CITATIONS:** *Hislop v. Moldenhauer*, (1892) 23 Or 119, 31 P 252; *Forsythe v. Pogue*, (1894) 25 Or 481, 36 P 571; *Gray v. Gray*, (1955) 205 Or 116, 286 P2d 138; *Smith Tug & Barge Co. v. Columbia-Pacific Towing Corp.*, (1968) 250 Or 612, 443 P2d 205.

**LAW REVIEW CITATIONS:** 25 OLR 204.

#### 91.070

**CASE CITATIONS:** *Lum Sing v. Gribler*, (1924) 109 Or 598, 221 P 1060; *Yoshida v. Sec. Ins. Co.*, (1933) 145 Or 325, 26 P2d 1082.

**LAW REVIEW CITATIONS:** 13 OLR 88.

#### 91.080

##### NOTES OF DECISIONS

The only restriction upon a landlord's right to immediate entry upon the expiration of the term of a lease is that the entry must not be forcible. *Smith v. Reeder*, (1892) 21 Or 541, 547, 28 P 890, 15 LRA 172.

**FURTHER CITATIONS:** *Calcagno v. Holcomb*, (1947) 181 Or 603, 185 P2d 251.

#### 91.090

##### NOTES OF DECISIONS

Acceptance of overdue payments by the lessor does not constitute a waiver of the right to re-enter for a failure to pay rent promptly in the future. *Francis Bros. v. Schallberger*, (1931) 137 Or 529, 3 P2d 530, 83 ALR 108; *Title & Trust Co. v. Durkheimer Inv. Co.*, (1937) 155 Or 427, 63 P2d 909, 64 P2d 834; *Rainey v. Quigley*, (1947) 180 Or 554, 178 P2d 148, 170 ALR 1149. *Rainey v. Quigley*, supra, distinguished in *Caine v. Powell*, (1949) 185 Or 322, 202 P2d 931.

In order for a tenant to be affected by this statute the lease must reserve a fixed rent payable at a definite time. *Clanton v. Ore. Kelp-Ore Prod. Co.*, (1931) 135 Or 321, 296 P 30; *Western Rebuilders & Tractor Parts, Inc. v. Felmley*, (1964) 237 Or 191, 386 P2d 813, 391 P2d 383.

The rule that breach of a covenant will not justify a forfeiture, in the absence of an expressed forfeiture clause, has been modified by this statute in regard to payment of rent. *Clanton v. Ore. Kelp-Ore Prod. Co.*, (1931) 135 Or 321, 296 P 30.

The lease may require the landlord to give notice of his intent to terminate the tenancy for nonpayment of rent. *Title & Trust Co. v. Durkheimer Inv. Co.*, (1937) 155 Or 427, 63 P2d 909, 64 P2d 834.

Equity granted relief from forfeiture for default in payment of rent when the lessee was misled by the lessor regarding the default provisions of the lease. *Caine v. Powell*, (1949) 185 Or 322, 202 P2d 931.

When the lease provided for the payment of rent on October 1, the tenant was not in default until the midnight of October 11. *Loe v. Klein*, (1951) 191 Or 654, 233 P2d 209.

In absence of facts sufficient to warrant equitable relief, failure of tenant to pay rent within 10 days after date due operated to terminate tenancy, notwithstanding a subsequent tender. *Baker v. Lehrer*, (1957) 210 Or 635, 312 P2d 1072.

FURTHER CITATIONS: *Kruse v. Blair*, (1928) 127 Or 393, 272 P 265; *Moore v. Richfield Oil Corp.*, (1962) 233 Or 39, 377 P2d 32.

## 91.110

## NOTES OF DECISIONS

A notice to quit should describe the premises with reasonable certainty and require the tenant to remove therefrom on a specified day. *McClung v. McPherson*, (1905) 47 Or 73, 88, 81 P 567, 82 P 13.

Service of notice is necessary only in the cases specified by statute. *Francis Bros. v. Schallberger*, (1931) 137 Or 529, 3 P2d 530, 83 ALR 108.

FURTHER CITATIONS: *Weddle v. Parrish*, (1931) 135 Or 345, 295 P 454.

## 91.210

## NOTES OF DECISIONS

A requirement that the rent shall be paid on or before the 10th day of the month calls for payment on or before the 10th day of the month for which rent is payable. *Backus v. West*, (1922) 104 Or 129, 205 P 533.

Where the rent paying period is one month, payment must be upon the first day of each month, in the absence of any other provision in the lease. *Id.*

## 91.220

## NOTES OF DECISIONS

This section was copied from the revised statutes of Massachusetts. *Stewart v. Perkins*, (1869) 3 Or 508.

One who is in possession of realty as agent of the lessee is not personally liable for rent. *Id.*

Since the right to rent is not created by statute, an express or implied contract of leasing must be present before any obligation arises under this section. *Holman v. De Lin*, (1897) 30 Or 428, 47 P 708.

When money is deposited with the lessor to be forfeited upon the default of the lessee, it will be construed to be a penalty rather than an advance payment of rent if the tenant subsequently defaults. *Moumal v. Parkhurst*, (1918) 89 Or 248, 173 P 669.

The lessee and his assignee are both liable for rent accru-

ing while the assignee retains the leasehold. *Huston v. Barnett*, (1918) 90 Or 94, 175 P 619.

Condemnation of the property is not an eviction excusing nonpayment of rent. *Schmid v. Thorsen*, (1918) 89 Or 575, 170 P 930, 175 P 74.

The lessee of a life tenant must pay to the personal representative all rent due for the use of the premises until the death of the life tenant, and if he possesses the land after that time he is liable to the remainderman for rent in accordance with the lease. *Peery v. Fletcher*, (1919) 93 Or 43, 182 P 143.

FURTHER CITATIONS: *Smith v. Chipman*, (1960) 220 Or 188, 348 P2d 441; *Criteser v. Tallon*, (1961) 229 Or 46, 366 P2d 1064; *Kimbrough v. Smith*, (1970) 255 Or 123, 464 P2d 696.

## 91.310

## NOTES OF DECISIONS

Even though statutory notice is waived, the tenant is entitled to harvest crops planted during the tenancy if the leasehold is terminated at the instance of the landlord and without the fault of the tenant. *Hostetler v. Eccles*, (1920) 98 Or 355, 194 P 166; *Hostetler v. Eccles*, (1924) 112 Or 572, 230 P 549.

The right to emblements exists when service of notice to quit by the landlord is required by statute, but does not exist when notice by the landlord is unnecessary due to the certainty of the term, the derelict of the tenant or the giving of notice by the tenant. *Francis Bros. v. Schallberger*, (1931) 137 Or 529, 3 P2d 530, 83 ALR 108.

Only crops planted or sown for purposes of agriculture are within the protection of the statute. *Weddle v. Parrish*, (1931) 135 Or 345, 295 P 454.

FURTHER CITATIONS: *Sievers v. Brown*, (1899) 34 Or 454, 56 P 170, 45 LRA 642; *Laam v. Green*, (1923) 106 Or 311, 211 P 791.

## 91.420

CASE CITATIONS: *State v. Johnson*, (1969) 1 Or App 363, 462 P2d 687.

## 91.505 to 91.675

ATTY. GEN. OPINIONS: Applicability to development composed of individual ownerships within a commonly owned area, 1964-66, p 312; application of subdivision law to condominiums, 1966-68, p 69; application of Subdivision Control Law, (1969) Vol 34, p 407.

LAW REVIEW CITATIONS: 2 WLJ 434-451, 459, 494.

## 91.605

LAW REVIEW CITATIONS: 5 WLJ 234.